

**TARTER KRINSKY & DROGIN LLP**

*Attorneys for Park 91 LLC,  
Debtor and Debtor in Possession*  
1350 Broadway, 11<sup>th</sup> Floor  
New York, New York 10018  
(212) 216-8000  
Scott S. Markowitz, Esq.  
Arthur Goldstein, Esq.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re: : Chapter 11  
: :  
PARK 91, LLC : Case No.: 15 - 10957 (JLG)  
: :  
Debtor. :  
----- X

**DEBTOR'S AMENDED DISCLOSURE STATEMENT TO ACCOMPANY  
ITS AMENDED PLAN OF LIQUIDATION DATED SEPTEMBER 2, 2015**

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION 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 COURT.**

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I

**INTRODUCTION**

On April 17, 2015 (the “Petition Date”), Park 91, LLC, debtor and debtor-in-possession (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

Pursuant to § 1125 of the Bankruptcy Code, the Debtor submits this first amended disclosure statement (the “Disclosure Statement”) relating to its plan of liquidation dated August 6, 2015, as amended on September 2, 2015 (the “Plan”).

The Debtor provides this Disclosure Statement to all of the Debtor’s known Creditors, and other parties in interest in order to provide adequate information to enable them to make an informed decision as to whether to accept or reject the Plan. All holders of Claims are hereby advised and encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan.

The Plan summary and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan (a copy of which accompanies this Disclosure Statement as **Exhibit “A”**).<sup>1</sup>

The Plan is predicated on a settlement between the Debtor and the senior secured creditor, 2013 NY Funding, LLC, which holds a first mortgage on the Debtor’s sole asset, a town house located on Park Avenue and 91<sup>st</sup> Street in Manhattan. It generally provides the Post-confirmation Debtor a period of twenty-two (22) months to sell its sole asset conditioned upon the Post-confirmation Debtor making certain interest payments to its senior secured creditor and

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<sup>1</sup> Capitalized terms not otherwise defined in this Disclosure Statement have the meanings assigned to them in the Plan.

remaining current on other obligations such as payment of Real Estate Taxes, insurance, and the like. If the Debtor does not default and makes all payments required by the Plan, the Debtor will have an opportunity to market the townhouse through more traditional means by the use of the broker as long as the Property is sold by April 30, 2017 (defined in the Plan as the “Sale and Payment Deadline”). However, upon the Auction Commencement Date, which is defined under the Plan to be the earlier of (a) the Post Sale Payment Commencement Date (defined in the Plan as the next ensuing day, including intermediate Saturdays, Sundays and legal holidays, immediately following the expiration of the Sale and Payment Deadline, *i.e.*, May 1, 2017 if there is no Event of Default) or, (b) the Post Event of Default Commencement Date if there is an occurrence of an Event of Default (as defined in the Plan to include, among other things, the Post-confirmation Debtor’s failure to timely make payments when due under the Plan beyond any applicable cure period), the Plan provides for the immediate appointment of the Plan Administrator who will be charged with, among other things, taking control of the Property and other Post-confirmation Estate Assets and selling the Property via Auction. The Auction will be conducted by the Plan Administrator with the assistance of an Auctioneer and sold by the Auction Deadline, which is sixty (60) days after the Auction Commencement Date. The senior secured creditor will have the right, but not the obligation, to Credit Bid the total amount of its Allowed Secured Claim at the Auction.

The Plan also provides that if the Property is to be sold through the Auction process, the Debtor’s occupants, which are Michael Gardner and Lynda Gardner (together, the “Gardners”), the only Interest holders of the Debtor, will vacate and surrender possession of the Property to the Plan Administrator by no later than thirty (30) days after the Auction Commencement Date. Further, if for any reason the Gardners fail to do so, the Plan provides certain mechanisms to

effectuate such relief, although it is not anticipated that will be necessary. The Gardners are consenting to such relief because they recognize it will be necessary for them to have vacated the Property in advance of any Auction, in order to maximize the value of the Property at such Auction.

By Order dated September \_\_, 2015, the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable creditors of the Debtor to make an informed judgment about the Plan. However, the Court's approval of this Disclosure Statement does not constitute a recommendation by the Court either for or against the Plan. No statements or information concerning the Plan and the transactions contemplated thereby have been authorized, other than the statements and information set forth in this Disclosure Statement. All other statements regarding the Plan and the transactions contemplated, whether written or oral, are unauthorized.

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for **September 22, 2015 at 2:00 p.m.** in Courtroom No. 601 at the United States Bankruptcy Court located at One Bowling Green, New York, New York. This hearing may be adjourned from time to time without further notice other than by announcement in Court on the scheduled date of such hearing. At that hearing, the Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code. The Court will also receive and consider a ballot report prepared by the Debtor concerning the votes for acceptance or rejection of the Plan by the parties entitled to vote.

**No representations concerning the Debtor, the estimated value of the Debtor's property and/or the estimated assets to be generated from the liquidation of the Debtor's assets, are authorized by the Debtor other than as set forth in this Disclosure Statement.**

**Any representations or inducements made to secure your acceptance which are other than as contained in this Disclosure Statement, should not be relied upon by you in casting your vote with respect to the proposed Plan.**

**THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE GREATEST AND EARLIEST POSSIBLE RECOVERIES TO ALL CREDITORS UNDER THE CIRCUMSTANCES. THE DEBTOR BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF EACH AND EVERY CLASS OF CREDITORS AND RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN.**

This Disclosure Statement is based upon information available to the Debtor as of **September 2, 2015** and does not reflect events that may occur subsequent to that date, which may have a material impact on the information contained in this Disclosure Statement. The Debtor will not make any effort to supplement or amend this Disclosure Statement to reflect changes subsequent to the date hereof.

THIS DOCUMENT WAS COMPILED FROM INFORMATION OBTAINED BY THE DEBTOR FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF.

ALTHOUGH THE DEBTOR'S PROFESSIONAL ADVISORS HAVE ASSISTED IN THE PREPARATION OF THIS DISCLOSURE STATEMENT BASED UPON THE FACTUAL INFORMATION AND ASSUMPTIONS RESPECTING THE FINANCIAL, BUSINESS AND ACCOUNTING DATA PROVIDED BY THE DEBTOR, THE DEBTOR'S PROFESSIONAL ADVISORS HAVE NOT INDEPENDENTLY VERIFIED THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND MAKE NO REPRESENTATIONS OR WARRANTIES AS TO SUCH INFORMATION. SUCH

PROFESSIONAL ADVISORS DO NOT REPRESENT OR WARRANT THAT THIS DISCLOSURE STATEMENT IS COMPLETE OR IS FREE FROM ANY INACCURACY OR OMISSION.

### **CAUTIONARY STATEMENT**

CERTAIN INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF THE SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995, AS AMENDED. SUCH FORWARD-LOOKING INFORMATION IS BASED ON INFORMATION AVAILABLE WHEN SUCH STATEMENTS WERE MADE AND ARE SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE EXPRESSED IN THIS DISCLOSURE STATEMENT.

#### **A. Summary of Classification and Treatment**

Detailed elsewhere in this Disclosure Statement is a description of the technical aspects of the classification of Claims, the relative allocations of property to holders of such Claims, the methodology as to how such property is to be distributed, the risks inherent in the proposed Plan, and the applicable bankruptcy and tax consequences of the proposed reorganization. However, the Debtor believes that a broad overview of what, in the opinion of the Debtor, Creditors are likely to receive under the Plan, will be helpful for your consideration of whether you wish to accept or reject the Plan.



The following is a summary of the classification of all Claims under the Plan and the proposed treatment of each such Class under the Plan. This summary is qualified in its entirety by reference to provisions set forth in the Plan, the terms of which are controlling.

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>KIND OF PROPERTY DISTRIBUTED TO CLASS</b>	<b>PROJECTED ULTIMATE DISTRIBUTION AS PERCENTAGE OF ALLOWED CLAIM</b>	<b>VOTING RIGHTS</b>
Administrative (unclassified)	a. Professional Fees and Expenses	Cash	100% as allowed by the Court or as agreed between the holder of such Claim and the Post-confirmation Debtor.	No
	b. Accounts payable and other obligations which arose post-petition	Cash	100% on the Effective Date or as may be paid in the ordinary course of business.	No
	c. Goods delivered to the Debtor within the twenty days prior to the Petition Date	Cash	100% on the Effective Date.	No
Class 1	2013 NY Funding I LLC – Secured Claim	Cash	100% of Allowed Secured Claim plus interest at a rate of 9% per annum through September 30, 2015 and 6% per annum from the Effective Date until Property is sold or Allowed Secured Claim is paid in full.	Yes
Class 2	Surya Capital LLC – Secured Claim	Cash	100% of Allowed Secured Claim plus interest at a rate of 14% per annum until Property is sold.	Yes

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>KIND OF PROPERTY DISTRIBUTED TO CLASS</b>	<b>PROJECTED ULTIMATE DISTRIBUTION AS PERCENTAGE OF ALLOWED CLAIM</b>	<b>VOTING RIGHTS</b>
Class 3	City of New York Real Estate Taxes – Secured Claim	Cash	The Post-confirmation Debtor will pay the City of New York all outstanding real estate taxes over a period of one (1) year from the Effective Date at the statutory interest rate (\$5,000 per month for 11 months with balloon payment on 12 <sup>th</sup> month). The Post-confirmation Debtor retains the right to pre-pay the City of New York at any time, to the extent cash flow permits.	Yes
Class 4	Priority Tax Claims	Cash	100% of Allowed Claims paid over two (2) years from Petition Date (in equal quarterly payments) at the statutory rate of interest.	No
Class 5	General Unsecured Claims	Cash	100% of Allowed Claim, with interest at 4% per annum from the Petition Date, to be paid in cash on the Effective Date.	No
Class 6	Equity Interest Holders	Retain Interest	No Distribution	No

## II

### **VOTING INSTRUCTIONS AND CONFIRMATION OF PLAN**

#### **A. Manner of Voting on Plan**

Before voting, this Disclosure Statement as well as the Plan should be read in its entirety. You should only use the ballot sent to you with this Disclosure Statement to cast your vote for or against the Plan.

If you hold a Claim in Classes 1, 2 or 3, included in the package of materials forwarded to you along with this Disclosure Statement and the Plan is the enclosed ballot for your acceptance or rejection of the Plan. You should complete, date and sign your ballot and return it to Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attn: Scott S. Markowitz, Esq., attorneys for Debtor. All ballots must be received prior to **5:00 P.M. on September 16, 2015.**

#### **B. Claim Holders Entitled To Vote**

Under the Bankruptcy Code, any holders of Claims in Classes that are “impaired” under the Plan are entitled to vote to accept or reject the Plan, unless such Class neither receives nor retains any property under the Plan (in which case such Class is deemed to have rejected the Plan). Bankruptcy Code § 1124 provides generally that a Class is impaired if the legal, equitable or contractual rights of the Claims or interests in that Class are altered.

Subject to the exceptions provided below, any holder whose Claim is impaired under the Plan is entitled to vote if either (i) its Claim has been scheduled by the Debtor and such Claim is not scheduled as disputed, contingent or unliquidated, or (ii) such Claim holder has filed a proof of Claim with respect to a Disputed Claim.

A holder of a Disputed Claim is not entitled to vote on the Plan unless such Claim is temporarily allowed by the Debtor or by an order of the Bankruptcy Court in an estimated amount which it deems proper for the purpose of voting to accept or reject the Plan. In other words, only holders of Allowed Claims may vote to accept or reject the Plan. A Claim to which an objection has been filed by the Debtor or a Claim (i) which is listed on the Debtor's Schedules or Amended Schedules as disputed, unliquidated or contingent, and (ii) with respect to which a superseding proof of claim has not been filed, is not an Allowed Claim for voting purposes, unless the Claim is settled by agreement or the court allows the Claim (in whole or in part) by Final Order. Upon request of a party-in-interest, the court may temporarily allow or estimate a Disputed Claim for the purpose of voting on the Plan. Ballots cast in respect of claims other than Allowed Claims will not be counted. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the creditor is not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

**C. Classes Impaired Under the Plan**

Claim holders in Classes 1, 2 and 3 are impaired under the Plan and are eligible, subject to the limitations set forth above, to vote to accept or reject the Plan. Class 4 is not impaired under the Plan as this class consists of Priority Tax Claims which are treated in accordance with § 1129(a)(9)(C) of the Bankruptcy Code and are statutorily impaired but not entitled to vote. Class 5 is not impaired as all Class 5 Claim holders (if any) shall receive 100% of their Allowed Claim plus interest at four (4%) percent from the Petition Date on the Effective Date.

Any controversy as to whether any Claim or Class of Claims is impaired under the Plan shall, after notice of any hearing, be determined by the Bankruptcy Court.

**D. Vote Required For Class Acceptance**

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of impaired Claims as acceptance by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of holders of Allowed Claims in that Class who cast ballots.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a Class of interest holders as acceptance by holders of at least two-thirds (2/3) in amount of the allowed interests of such class who cast ballots.

**III**

**THE DEBTOR AND ITS OPERATIONS**

**A. General Background**

The Debtor, a New York limited liability company, is the fee simple owner of a townhouse at 1145 Park Avenue, New York, NY (the "Property"). The Property is located in the Carnegie Hill Historic District on Park Avenue and 91<sup>st</sup> street in Manhattan. The Property was built in 1885 and redesigned by Emery Roth, one of the most famous architects of that era. The Property is 4.5 stories and has approximately 5,200 square feet. The Debtor's two interest holders, Michael Gardner and Lynda Gardner, have been residing in the Property since its Purchase in 2004. The Debtor purchased the Property for \$5,550,000.00 of which \$1,050,000.00 was paid in cash and the balance through traditional mortgage financing. The Debtor through its Equity Interest Holders invested approximately \$5.5 million dollars in renovating the Property. Although the Property is nominally titled in a Limited Liability Company, which is owned by Michael and Lynda Gardner, all of the expenses related to maintaining the Property have been traditionally paid by Michael Gardner from his earnings. The utilities bills are registered in the individual names of Michael and Lynda Gardner.

In or about November 6, 2004, the Debtor executed and delivered to First Republic Bank (“First Republic”) a Consolidated Note (“First Consolidated Note”) in the amount of \$4,000,000. The First Consolidated Note was assigned to Signature Bank on or about December 3, 2008. On or about February 17, 2009, the Debtor borrowed an additional \$3,000,000 from Signature Bank and the Debtor executed an amended and restated mortgage note in the original principal amount of \$7,000,000 (the “Amended Note”) and a supplemental mortgage and mortgage consolidation, modification and extension agreement (“Mortgage”) each dated February 17, 2009. Michael Gardner also executed a guarantee in favor of Signature Bank (the “Guaranty”). The Amended Note required the Debtor to pay a monthly payment of \$48,363.81 which included interest at 6.75% and some amortization. Absent an event of default the Amended Note matured on March 1, 2014. As such the Signature loan was a five year loan.

**B. Signature Foreclosure Action**

In or about June 2012, Signature issued a default letter and accelerated the mortgage loan based upon the Debtor’s failure to pay the May and June 2012 Mortgage payments. According to Signature’s June 7, 2012 default letter, the unpaid principal amount of the mortgage at the time of default was \$6,705,715.74. Thereafter, in or about July 2012, Signature commenced a foreclosure action against the Property.

**C. Mortgage and Note Assigned to 2013 NY Funding I LLC**

On or about March 15, 2013, the Mortgage, Amended Note, Guaranty, and related loan documents (the “Loan Documents”) were assigned to 2013 NY Funding I LLC (“2013 NY Funding”). Shortly thereafter, 2013 NY Funding commenced their own foreclosure action and the Signature foreclosure action was discontinued.

**D. Additional Mortgages**

In or about October 2013, Michael and Lynda Gardner borrowed \$500,000 from Larry Levi (the "Levi Loan"). Michael and Lynda Gardner utilized the proceeds of the Levi Loan to pay some of their personal creditors and to otherwise fund Michael Gardner's business ventures and pay their ordinary living expenses. The Debtor guaranteed the Levi Loan and granted a junior mortgage on the Property to secure the Levi Loan. The Levi Loan was also secured by junior mortgages on two other pieces of real property owned individually by Michael and Lynda Gardner. Subsequent to borrowing the \$500,000, pursuant to the Levi Loan, Michael and Lynda Gardner sold one of the other properties, a house in Quogue, New York, which was additional collateral for the Levi Loan. From the sale proceeds, \$200,000 was paid to reduce the principal amount of the Levi Loan thereby leaving \$300,000 in unpaid principal which was now secured primarily by a junior mortgage on the Property and a junior mortgage on one other Property owned by Michael and Lynda Gardner in Dutchess County New York.

On or about February 2015, the Levi Loan was purchased by Surya Capital LLC, which at the same time lent the Debtor \$450,000 (the "Surya Loan"). The Surya Loan was secured by a junior mortgage on the Property as well as a junior mortgage on the Property owned by Michael and Lynda Gardner in Dutchess County New York. In total, Surya is owed \$750,000 based upon the Surya Loan and purchasing the Levi Loan. The Surya Loan earns interest at 14% per annum and matures on November 1, 2017. At the closing, monies were deducted from the Surya Loan to pay the first six months interest and interest payments of \$8,750 are required to be made commencing September 1, 2015.



**E. 2013 NY Fund Foreclosure**

As set forth above, on or about April 2, 2013, 2013 NY Funding commenced a foreclosure action against the Debtor in the Supreme Court of the State of New York, New York County (the "New York Court") under Index No. 850063/2013 (the "Foreclosure Action").

On or about January 9, 2015, the New York Court entered a Judgment of Foreclosure and Sale. The foreclosure sale was scheduled for April 22, 2015. As a result of the Chapter 11 filing, the foreclosure sale was stayed.

**F. Value of Property**

The Debtor believes that the fair market value of the Property is between \$13,000,000 and \$14,500,000, and, as of the Effective Date, is at least \$14,000,000. This valuation is not based upon a formal appraisal, but based upon Michael Gardner's research after consulting with numerous brokers and listing the Property for sale with a well known brokerage firm which has a history of selling high end townhouses on the upper east side of Manhattan.

**IV**

**THE CHAPTER 11 CASE**

**1. The Chapter 11 Filing**

The Debtor's Chapter 11 Case was filed on April 17, 2015. It is pending before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge. On the Petition Date, the Debtor filed Schedules A, D, E, G and H of its Schedules of Assets and Liabilities (Docket No. 3). On April 23, 2015, the Debtor filed Schedule F of its Schedules of Assets and Liabilities (Docket No. 10) and on April 29, 2015 filed its Statement of Financial Affairs (Docket No. 13).

**2. Retention of Debtor's Counsel**

An application to employ Tarter Krinsky & Drogin LLP ("TKD") (ECF Doc. Nos. 17 and 19) to act as bankruptcy counsel for the Debtor during the course of the Debtor's Chapter 11 Case was filed with the Bankruptcy Court. By order dated July 31, 2015, TKD was authorized to act as the Debtor's general bankruptcy counsel effective as of the Petition Date.

**3. Retention of Real Estate Broker**

Shortly after the Petition Date, the Debtor filed an application to retain Town Fifth Avenue LLC and Town Seventy Ninth Street LLC as real estate brokers to market and sell the Property (collectively, "Town"). The listing price for the Property is \$14,900,000. The brokerage commission is five percent, which decreases if the final purchase price is less than \$14,000,000. The listing agreement expires on August 31, 2015. By Order dated June 9, 2015, the Bankruptcy Court authorized Town's retention as the Debtor's exclusive real estate broker. Town has spent considerable effort marketing the Property since its retention. No acceptable offers have been made by prospective purchasers. The Debtor does not intend to extend Town's listing agreement.

**4. Bar Date and Proofs of Claim**

In a typical Chapter 11 case, the Bankruptcy Court sets a date by which all creditors must file proofs of claim with the Bankruptcy Court (the "Bar Date"). The Bar Date is usually quite significant as it assists the Debtor in determining whether claims have been asserted by creditors which are at odds with a debtor's books and records. Here, the Debtor, a single purposed limited liability company, which only owns the Property listed no unsecured creditors in its Schedules. The only creditors listed are the holders of the mortgages and the City of New York on account of unpaid real estate taxes. The only proofs of claim on file is a claim by the City of New York asserting unpaid unincorporated business tax in the amount of \$25,906.21 which includes a penalty

of \$3,750, and a claim by the Internal Revenue Service in the amount of \$10,500. The I.R.S's claim is an estimated claim based upon unfiled partnership tax returns. The Debtor disputes the I.R.S's claim as the Debtor is not a tax paying entity, and any taxes owed would be a responsibility of Michael and Lynda Gardner. Because the Plan provides that all secured claims will be paid the Allowed Amount of their claims over time and the Allowed Amounts are being liquidated as part of the Plan process, and the Plan provides for full payment to any Allowed Priority Tax Claims, the Debtor does not believe it is necessary to obtain a Bar Date and notice of any Bar Date would not be served on any potential creditors other than secured creditors as none were listed in the Debtor's Schedules.

V

**SUMMARY OF THE PLAN**

The Debtor submits that the treatment of Creditors under the Plan is more favorable than the treatment Creditors would receive if the Chapter 11 Case was converted to Chapter 7. Therefore, the Debtor submits that the Plan is in the best interests of the Creditors and the Debtor, and recommends acceptance of the Plan by holders of Claims in Classes 1, 2 and 3.

**THE SUMMARY OF THE PLAN SET FORTH BELOW IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PROVISIONS SET FORTH IN THE PLAN, THE TERMS OF WHICH CONTROL.**

**A. General**

**1. Brief Explanation 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 itself and its creditors and Equity Interest Holders. Upon the filing of a petition for reorganization under

Chapter 11 and during the pendency of the case, the Bankruptcy Code imposes an automatic stay of all attempts to collect on Claims against the Debtor and to enforce Liens against the Debtor's Property.

Confirmation and consummation of a plan of reorganization is the principal objective of a Chapter 11 case. In general, a plan divides the Claims against, and Interests in, a debtor into separate Classes and allocates plan distributions among those Classes. If the legal, equitable and contractual rights of a Class are unaffected by the Plan, such Class is considered "unimpaired." All unimpaired Classes are deemed to have accepted the Plan and therefore are not entitled to vote thereon. Bankruptcy Code §1126(g), on the other hand, provides that all Classes of Claims and Interests that do not receive or retain any property under the Plan on account of such Claims and Interests are deemed to have rejected the Plan. All other Classes of Claims and Interests are considered "impaired" and are entitled to vote on the Plan.

Under the Bankruptcy Code, acceptance of the Plan is determined by Class; therefore, it is not required that each holder of a Claim or Interest in an impaired Class vote in favor of the Plan in order for the bankruptcy court to confirm the Plan. Generally, each impaired Class must vote to accept the Plan; however, the Bankruptcy Court may confirm the Plan in certain circumstances without the acceptance of all impaired Classes if at least one (1) impaired Class votes to accept the Plan and certain other statutory tests are satisfied. A further explanation of the requirements for Confirmation if an Impaired Class rejects the Plan is set forth below in this Disclosure Statement. Many of these tests are designed to protect the interests of Creditors and Interest Holders who either do not vote or vote to reject the Plan but who will nonetheless be bound by the Plan if it is confirmed by the Bankruptcy Court.

**2. Acceptance of the Plan**

As a condition to confirmation, Bankruptcy Code § 1129(a) requires that: (a) each impaired Class of Claims or Interests votes to accept the Plan; and (b) the Plan meets the other requirements of § 1129(a). As explained above, Classes that are unimpaired are deemed to have accepted the Plan and therefore are not entitled to vote thereon, and Classes that do not receive or retain any property under the Plan are deemed to have rejected the Plan and likewise are not entitled to vote thereon. Accordingly, acceptances of the Plan are being solicited only from those parties who hold Claims or Interests classified in impaired Classes that are to receive Distributions under the Plan.

An impaired Class of Claims will be deemed to have accepted the Plan if holders of at least two-thirds in dollar amount and a majority in number of Claims in such Class who cast timely ballots vote to accept the Plan. An impaired Class of Interests will be deemed to have accepted the Plan if the Plan is accepted by Interest Holders holding at least two-thirds in dollar amount of the allowed interests in such Class who cast timely ballots vote to accept the Plan.

Holders of Claims who do not timely vote on the Plan are not counted for purposes of determining acceptance or rejection of the Plan by any impaired Class of Claims or Interests.

**3. Classification of Claims and Interests Generally**

Bankruptcy Code § 101(5) defines a Claim as: (a) a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;” or (b) a “right to an equitable remedy for breach or performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.”

Bankruptcy Code § 1123 provides that a plan of reorganization shall designate Classes of Claims against and Interests in a debtor. Bankruptcy Code § 1122 further requires that each Class of Claims and Interests contain only Claims or Interests that are “substantially similar” to each other. The Debtor believes that it has classified all Claims and Interests in compliance with the requirements of §§ 1122 and 1123. However, it is possible that a holder of a Claim or Interest may challenge such classification and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In such event, the Debtor would, to the extent permitted by the Bankruptcy Court, modify the classifications in the Plan as required and use the acceptances received in this solicitation for the purpose of obtaining the approval of a Class or Classes of which the accepting holder is ultimately deemed to be a member. Any such reclassification could adversely affect the Class of which such holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required of that Class for approval of the Plan. Furthermore, a reclassification of Claims or Interests may necessitate a re-solicitation.

**B. Classification and Treatment of Claims and Interests Under the Plan**

The following describes the classification of Claims and Equity Interests under the Plan and the treatment that holders of Allowed Claims and Equity Interests are to receive if the Plan is confirmed and becomes effective. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest fits within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim or Equity Interest fits within the description of such different Class. As a general rule, Secured Claims are classified in separate classes based upon the priority of their security interest in a debtor’s assets. However, to the extent that the underlying collateral securing a Secured Claim is determined to have a

value less than the amount of the Secured Claim, such claimant is considered to be “undersecured” and may hold both a Secured Claim and an Unsecured Claim.

**1. Unclassified Claims**

The Plan does not classify Administrative Claims or statutory fees due to the United States Trustee, but does provide for the following treatment of such Claims.

(a) United States Trustee Fees. All fees payable by the Debtor under § 1930 of Title 28 of the United States Code that have not been paid prior to the Effective Date shall be paid by the Debtor on the Effective Date. In addition, the Debtor, or any successor thereto by merger, consolidation or otherwise, on or after the Effective Date, shall be liable for and the Post-confirmation Debtor shall pay such fees until the entry of a Final Decree in this case or until the case is converted or dismissed. The Post-confirmation Debtor shall file post-confirmation operating reports with the Bankruptcy Court and the United States Trustee until its Final Decree is entered.

(b) Administrative Claims. An “Administrative Claim” is a Claim for payment of an administrative expense of a kind specified in Bankruptcy Code § 503(b) and referred to in Bankruptcy Code § 507(a)(2), including the actual and necessary costs and expenses of preserving the estate or operating the Debtor’s business after the commencement of a Chapter 11 case, loans and advances made to the Debtor after the Petition Date, compensation for legal and other services and reimbursement of expenses awarded or allowed under Bankruptcy Code § 330(a) or § 331, certain retiree benefits, certain reclamation Claims arising under Bankruptcy Code § 503(b)(9) , and all fees and charges against the estate pursuant to Chapter 123 of Title 28 of the United States Code.

The Plan provides that each holder of an Allowed Administrative Claim (including, without limitation, the professionals' fees and expenses incurred by the Professional Persons shall be paid in Cash in full by the Post-confirmation Debtor and, as applicable, the Plan Administrator (a) upon the later of the Effective Date or the date upon which the Court enters a Final Order allowing such Administrative Expense Claim or (b) upon such other terms as may exist in accordance with the ordinary course of business of the Post-confirmation Debtor or, as applicable, the Plan Administrator (c) upon such less favorable terms as may be agreed between any holder of such Administrative Expense Claim and the Post-confirmation Debtor or, as applicable, the Plan Administrator. The Plan further provides that holders of Administrative Claims, including Professional Persons holding Claims for services rendered during the Chapter 11 case, must file requests for payment within forty-five (45) days after the Confirmation Date. The Debtor estimates that the aggregate amounts due to Professional Persons shall total approximately \$60,000, and shall consist of the professional fees of Debtor's counsel, TKD, exclusive of (i) the \$25,000 retainer paid to TKD prior to the Petition Date by Baytree Capital Partners LLC and Michael Gardner (personally), on behalf of the Debtor.

Administrative Claims representing obligations incurred by the Post-confirmation Debtor after the date and time of the entry of the Confirmation Order (including, without limitation, Claims for professionals' fees and expenses) shall not be subject to application to the Bankruptcy Court and may be paid by the Post-confirmation Debtor in the ordinary course of business and without Bankruptcy Court approval. After the Confirmation Date, the Post-confirmation Debtor or, as applicable, the Plan Administrator shall, in the ordinary course of business and without the necessity for any approval by the Court, pay the reasonable fees and expenses of the Professional Persons employed by the Debtor or, as applicable, the Plan Administrator, in connection with the



implementation and consummation of the Plan, the claims reconciliation process and any other matters as to which such Professionals may be engaged. The Plan provides that the fees and expenses of such Professionals shall be submitted monthly to the Post-confirmation Debtor or, as applicable, the Plan Administrator, by such Professionals in the form of a detailed invoice therefor, and shall be paid by the Post-confirmation Debtor upon such submission. If the Post-confirmation Debtor or, as applicable, the Plan Administrator, disputes the reasonableness of any such invoice and, if the dispute cannot be resolved by the parties, all unresolved disputes shall be submitted to the Bankruptcy Court on notice to the Post-confirmation Debtor or, as applicable, the Plan Administrator, for a determination of the reasonableness of such invoice.

**2. Class 1 – Secured Claim of 2013 NY Funding**

Class 1 consists of the Allowed Secured Claim of 2013 NY Funding, which holds a first mortgage on the Property. 2013 NY Funding's Secured Claim is estimated to be approximately \$9,371,918.89 as of September 30, 2015, plus such additional amounts as may accrue or become payable under the Loan Documents and Judgment, including attorneys' fees and expenses. As noted above, the Debtor believes the fair market value of the Property to be at least \$14 million, thus, the Debtor believes that 2013 NY Funding's claim is fully secured, and, as such, 2013 NY Funding will not have a Deficiency Claim.

Class 1 is impaired as the Plan proposes to alter the terms, conditions and payment schedule for 2013 NY Funding's Claim. Under the Plan, 2013 NY Funding will be paid the full amount of its Allowed Secured Claim over time either through a refinance or Sale of the Property.

The rates for payment of the indebtedness owed 2013 NY Funding (the only Class 1 Claimholder) and the maturity date for the payment of the principal and accrued interest and fees

on the 2013 NY Funding loan are proposed to be altered as provided herein, and, except as modified herein, the Note, Mortgage and other documents evidencing and securing the 2013 NY Funding indebtedness and all the terms and conditions thereof shall remain in full force and effect, and 2013 NY Funding shall retain its first priority Lien against the Property. The Debtor and Post-confirmation Debtor shall pay 2013 NY Funding's Total Allowed Secured Claim as follows:

(a) 2013 NY Funding's Total Allowed Secured Claim

As of the Petition Date, 2013 NY Funding's Allowed Secured Claim totaled \$8,981,635.09 ("2013 NY Funding's Allowed Pre-Petition Secured Claim"). Subsequent to the Petition Date, the Debtor and Guarantor acknowledge, consent and agree that 2013 NY Funding is to be paid (i) interest on 2013 NY Funding's Allowed Pre-Petition Secured Claim at the rate of nine percent (9%) per annum (which through September 30, 2015 totals approximately \$350,283.80), plus (ii) 2013 NY Funding's actual attorney fees and expenses accrued from the Petition Date (which through September 30, 2015 are estimated to be approximately \$40,000).

Accordingly, 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim is approximately  $\$9,371,918.89^2$  ( $\$8,981,635.09 + \$350,283.80 + \$40,000 = \$9,371,918.89$ ), plus any amounts paid or expended by 2013 NY Funding pursuant to the Plan, including, without limitation, any real estate taxes and insurance that may be paid by 2013 NY Funding.

Within three (3) Business Days of the Effective Date, the Debtor, the Guarantor and 2013 NY Funding shall agree in writing as to the actual amount of 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim as of September 30, 2015.

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<sup>2</sup> The \$9,371,918.89 sum is an estimate. The final Claim will include the actual amount of all attorney's fees and expenses incurred by 2013 NY Funding from the Petition Date through September 30, 2015.

(b) Sale, Repayment and Other Terms Absent Event of Default

Absent an Event of Default, the Post-confirmation Debtor shall have up to the Sale and Payment Deadline (*i.e.*, April 30, 2017), within which to (i) market and close on the sale of the Property, and (ii) pay 2013 NY Funding the full amount of 2013 NY Funding's Total Allowed Secured. The Sale and Payment Deadline may only be extended if agreed to in writing by 2013 NY Funding, in its sole and absolute discretion. For the avoidance of doubt, unless 2013 NY Funding otherwise agrees in writing, in its sole and absolute discretion, prior to the Sale and Payment Deadline, the Post-confirmation Debtor shall not be permitted to (aa) refinance the Property, or (bb) close on a Sale of the Property unless 2013 NY Funding is fully paid 2013 NY Funding's Total Allowed Secured Claim at the closing of the refinancing or Closing of such Sale. Further, at any Auction or other Sale of the Property, 2013 NY Funding shall have the right, but not the obligation, to Credit Bid the full amount of 2013 NY Funding's Total Allowed Secured Claim.

Absent an Event of Default, the Debtor will have the ability to pay 2013 NY Funding's Total Allowed Secured Claim in full at any time prior to consummation of the Auction, without penalty.

Absent an Event of Default, commencing on October 1, 2015 (the "Initial Payment Date"), 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim will bear interest at six percent (6%) per annum.

Absent an Event of Default, commencing on the Initial Payment Date (*i.e.*, October 1, 2015) and continuing monthly thereafter, the Debtor shall pay 2013 NY Funding, on or before the 1<sup>st</sup> day of each month until the Property is sold or 2013 NY Funding is paid in full, interest only payments on 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim

at the rate of six percent (6%) per annum. The Debtor estimates such payments shall equal \$46,859.59 per month (which amount is subject to change depending on the final amount of 2013 NY Funding's Total Claim) (each, an "Interest only Payment" and collectively, the "Interest only Payments").

(c) Remedies for 2013 NY Funding in the Event of Default

(i) Event of Default

Upon the occurrence of an Event of Default, the Property will immediately and without further order of the Bankruptcy Court, notice or otherwise, be vested under the control of the Plan Administrator, who shall proceed with selling the Property at the Auction to be conducted by the Plan Administrator in accordance with the terms of the Plan.

(ii) Additional Remedies on Event of Default

Upon the occurrence of an Event of Default, (aa) all amounts due and owing to 2013 NY Funding by the Debtor, including without limitations, 2013 NY Funding's Total Allowed Secured Claim, shall immediately be due and payable to 2013 NY Funding; (bb) forbearance from foreclosure of the Judgment and other amounts due under the Plan shall immediately cease; and (cc) 2013 NY Funding shall be entitled to exercise all of its rights, claims and remedies of any kind or nature, at law, in equity, or otherwise, that 2013 NY Funding has or may have against the Debtor, the Guarantor, any other party to the Loan Documents and/or the Foreclosure Action, or otherwise in connection with the Loan Documents, the Judgment, the Foreclosure Action, the Property and the Plan, without further Order of any Court or any notice, demand or other action whatsoever by 2013 NY Funding or otherwise. Also, effective immediately upon the occurrence of an Event of Default, interest shall accrue on the total amount of 2013 NY Funding's Total Allowed Secured Claim then due and owing to 2013

NY Funding at the rate of nine percent (9%) per annum.

**3. Class 2 – Secured Claim of Surya Capital LLC**

Class 2 consists of the Allowed Secured Claim of Surya, which holds a junior mortgage on the Property. As explained herein, due to Surya's purchase of the Levi Loan, and its extension of an additional \$450,000 loan to the Debtor, Surya's Secured Claim totals \$750,000. The Debtor does not dispute Surya's claim and Surya's claim shall be deemed an Allowed Secured Claim in the amount of \$750,000. As set forth above, the Debtor believes the fair market value of the Property to be at least \$14 million, thus the Debtor believes that Surya's claim is fully secured, and, as such, Surya will not have a Deficiency Claim. Commencing September 1, 2015, the Debtor shall make monthly interest only payments to Surya in the amount of \$8,750 until the Property is sold or the Debtor otherwise pays Surya its Allowed Secured Claim plus interest at 14% per annum. Upon the sale of the Property as provided in the Plan, Surya shall be paid any outstanding amounts it is owed after payment of the Class 1 and Class 3 Allowed Secured Claims. Surya will retain its lien on the Property to the same extent and priority as existed on the Petition Date. Class 2 is impaired and is entitled to vote for or against the Plan.

**4. Class 3 – Unpaid Real Estate Taxes**

Class 3 consists of unpaid real estate taxes due to the City of New York, which is secured by a first lien on the Property. The Debtor estimates the current unpaid real estate taxes to be approximately \$83,000. The Post-confirmation Debtor shall pay all Allowed outstanding pre-Petition Date Real Estate Taxes to the City of New York over a period of twelve (12) months from the Effective Date at the statutory interest rate. The first eleven monthly payments shall be in the amount of \$5,000 each with the balance remaining to be paid on the twelfth month from

the Effective Date. The Post-confirmation Debtor shall have the right to pre-pay such amounts at any time. Ordinarily, the City of New York will agree to a payment plan conditioned upon timely payment of current taxes. Class 3 is impaired under the Plan.

**5. Class 4 - Priority Tax Claims**

Class 4 consists of Priority Tax Claims. Each holder of a Priority Tax Claim that has not been paid prior to the Effective Date shall be paid in full (in equal quarterly payments) over two (2) years from the Effective Date at the statutory rate of interest. The holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of interest, or on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim, except to the extent allowed as a part of an Allowed Priority Tax Claim pursuant to § 507(a)(1) of the Bankruptcy Code. In the event the Property is sold pursuant to the terms of the Plan, all Class 4 Claims shall be paid the Allowed Amount of its Class 4 Claim from the Sale Proceeds. Class 4 is not impaired under the Plan, as they are being treated in accordance with § 1129(a)(9)(C) of the Bankruptcy Code.

**6. Class 5 – General Unsecured Claims**

Class 5 consists of the holders of General Unsecured Claims. Class 5 is not impaired under the Plan. To the extent there are any holders of Class 5 Claims, they shall be paid in full, plus interest at the rate of four (4%) percent per annum from the Petition Date, in Cash, on the Effective Date. Based upon the Debtor's books and records, the Debtor believes there are no Unsecured Claims.

**7. Class 6 – Equity Interests**

Michael Gardner and Lynda Gardner are the sole Class 6 Equity Interest Holders and they shall retain their Equity Interests as it existed on the Petition Date in exchange for the Plan

Contribution. The Debtor estimates that the Plan Contribution will be approximately \$100,000, based upon the cash on hand and the estimated unpaid professional fees. The Plan Contribution has been calculated based upon the amount of cash which the Debtor will need to make the initial payments under the Plan on the Effective Date. It is expected that Michael Gardner will continue to make additional capital contributions to meet the obligations required under the Plan. Michael Gardner and Lynda Gardner shall not receive any distribution under the Plan. Class 6 is not impaired under the Plan.

**8. Controversy with Respect to Impairment**

In the event of a controversy as to whether a Claimant or holder of an Equity Interest is impaired, the Court shall, after notice and a hearing, determine such controversy.

**C. Treatment of Executory Contracts and Unexpired Leases**

As set forth in the Schedules, the Debtor had no Executory Contracts, including unexpired leases, as of the Petition Date and the Debtor and Guarantor affirm and acknowledge that the Debtor has not entered into any Executory Contracts, including unexpired leases, through the Confirmation Date. From and after the Confirmation Date, the Debtor and Post-confirmation Debtor will not, without the prior written consent of 2013 NY Funding, enter into any Executory Contracts, including, without limitations, any leases of residential or non-residential real property, use and occupancy or similar agreements in connection with the Property, prior to the Property either being sold in accordance with the terms of the Plan or 2013 NY Funding's Total Allowed Secured Claim otherwise being paid in full.

Notwithstanding the foregoing, unless (a) there is then pending before the Bankruptcy Court a motion to assume any such Executory Contract, including unexpired leases, or (b) the Bankruptcy Court has entered an order extending the period during which a motion may be made

to assume such Executory Contract, including unexpired leases, and such a motion is filed with the Bankruptcy Court before the expiration of such period, as of the Confirmation Date, any Executory Contract entered into by the Debtor that has not yet been (i) assumed and assigned, or (ii) assumed, shall be deemed to be rejected by the Debtor as of the Confirmation Date. The Confirmation Order shall be deemed an order under § 365(a) of the Bankruptcy Code rejecting any such Executory Contracts. Any Allowed Claim arising from the rejection of an Executory Contract shall be classified and treated as a General Unsecured Claim in Class 5 under the Plan.

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

**1. Source of Payments**

The Plan will be funded from the Plan Contribution and the Sale of the Property. The Plan Contribution will primarily be from Michael Gardner's earnings as an investment banker. Except as otherwise provided herein, Professional Fees and any other Distributions under the Plan shall be paid by the Plan Contribution, to the extent necessary.

The Post-confirmation Debtor or, if applicable, the Plan Administrator shall sell the Property pursuant to §§ 363 and 1123(b)(4) of the Bankruptcy Code. Absent an Event of Default, the Post-confirmation Debtor shall sell the Property by no later than April 30, 2017, time being of the essence. Following the Auction Commencement Date, the Plan Administrator shall sell the Property no later than the Auction Deadline, time being of the essence.

The Debtor previously retained Town Fifth Avenue LLC ("Town Fifth") as its real estate broker, which term expired August 31, 2015. The term was not and shall not be extended by the Debtor, the Post-confirmation Debtor or the Plan Administrator without 2013 NY Funding's prior written consent.



Any subsequently retained real estate broker, which may include Town Fifth, and the terms of any brokerage agreement to be entered into by the Debtor, the Post-confirmation Debtor or the Plan Administrator (each, a “Broker Agreement”) must (a) be reasonably acceptable to 2013 NY Funding in a writing signed by 2013 NY Funding prior to the Broker Agreement being entered into; (b) expressly provide that the Broker Agreement and any contract for the Sale of the Property entered into in connection therewith is subject to the Sale and Payment Deadline, and will terminate and be of no force or effect, with the broker and any proposed purchaser(s) of the Property having no recourse whatsoever against the Debtor, 2013 NY Funding, the Plan Administrator or the Property, other than possibly the return of the Deposit, if the Closing of the Sale of the Property and full payment of 2013 NY Funding’s Secured Claim does not occur on or before expiration of the Sale and Payment Deadline, time being of the essence; (c) expressly provide that the Broker Agreement will terminate and be of no force or effect, with the broker and any proposed purchaser(s) of the Property having no recourse whatsoever against the Debtor, 2013 NY Funding, the Plan Administrator or the Property, other than possibly the return of the Deposit, if any Event of Default occurs, time being of the essence; (d) expressly provide that if 2013 NY Funding acquires the Property, the broker shall not be entitled to a commission; and (e) include an acknowledgement that 2013 NY Funding (including its members, officers, employees, counsel and other professionals), shall have no liability or responsibility whatsoever for the payment of any fees, commissions or expenses to any broker in connection with, or otherwise relating to any Sale, transfer or other conveyance of the Property.

**2. Form of Contract of Sale**

The form of contract of sale and the terms thereof must be reasonably acceptable to 2013 NY Funding in a writing signed by 2013 NY Funding prior to the contract being entered into, and must be for consideration sufficient to pay 2013 NY Funding's Total Allowed Secured Claim in full (unless otherwise agreed to in writing by 2013 NY Funding). Any real estate contract must (a) include a minimum 10% deposit ("Deposit"); (b) expressly provide that it is subject to the Sale and Payment Deadline, and will terminate and be of no force or effect, with the proposed purchaser of the Property having no recourse whatsoever against the Debtor, 2013 NY Funding, the Plan Administrator or the Property, other than possibly the return of the Deposit, if the Closing of the sale of the Property and full payment of 2013 NY Funding's Total Allowed Secured Claim does not occur on or before expiration of the Sale and Payment Deadline, time being of the essence; and (c) expressly provide that the contract will terminate and be of no force or effect, with the proposed purchaser of the Property having no recourse whatsoever against the Debtor, 2013 NY Funding, the Plan Administrator or the Property, other than possibly the return of the Deposit, if any Event of Default occurs, time being of the essence. (Notwithstanding the foregoing, in the event 2013 NY Funding determines, in its sole and absolute discretion, to go forward with and close upon a contract pending at such time, the contract will not be terminated and will remain in full force and effect).

**3. Plan Administrator and Auction Sale**

If the Property is not otherwise sold in accordance with the terms hereof, effective immediately on the Auction Commencement Date, the Property shall automatically and without any other or further order, notice or action by 2013 NY Funding or otherwise, be vested under the control of the Plan Administrator and transitioned for sale at the Auction to be conducted by

the Plan Administrator, with the assistance of the Auctioneer. The Auction shall occur by the Auction Deadline, which may only be extended if agreed to in writing by 2013 NY Funding, in its sole and absolute discretion.

(a) **Plan Administrator.** Effective immediately on the Auction Commencement Date, the Plan Administrator is hereby designated, appointed and vested with full authority and control over the Post-confirmation Estate, including, without limitation, the Property, in all respects to effectuate and consummate the Auction of the Property in accordance with the terms of the Plan. The Plan Administrator will have the powers and responsibilities of a Disbursing Agent and trustee in all respects as it relates to the Sale and disposition of the Property and any Sale Proceeds.

**Duties and Powers.** (i) On the Auction Commencement Date, the Plan Administrator will be the representative of the Post-confirmation Estate and successor to the Debtor and Post-confirmation Debtor pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, and will have the rights and powers provided in the Bankruptcy Code, in addition to any rights and powers granted herein and in the Confirmation Order. In the Plan Administrator's capacity as the representative of the Post-confirmation Estate and successor to the Debtor, the Post-confirmation Debtor and the Post-confirmation Estate, the Plan Administrator will be the successor-in-interest to the Debtor and Post-confirmation Debtor with respect to all interests constituting Post-confirmation Estate Assets and with respect to the creditors holding Claims under the Plan. The Plan Administrator shall act in a fiduciary capacity for the holders of all Allowed Claims under the Plan and shall have all of the rights, powers and duties

of a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. The Plan Administrator shall assume all of the responsibilities, duties and obligations of the Post-confirmation Debtor's former officers and directors that arise after the Auction Commencement Date and is empowered and authorized to satisfy such responsibilities, duties, and obligations without further corporate authority as may have been required prior to the Auction Commencement Date. The Plan Administrator will pay from the Post-confirmation Estate all ordinary and necessary costs of protecting, preserving, disposing, liquidating and realizing upon the Post-confirmation Estate. The Plan Administrator shall also be vested with all rights, powers, and benefits afforded to a "trustee" under 11 U.S.C. § 108. The Plan Administrator will liquidate and administer the Post-confirmation Estate Assets, including making distributions from the Post-confirmation Estate, all in accordance with the terms of the Plan. Unless otherwise excused or exempted from doing so by the Bankruptcy Code, the Plan Administrator will abide by all laws, including tax laws. The Plan Administrator shall have sole and exclusive authority for the retention of professionals to assist in any manner on and after the Auction Commencement Date. (ii) The Plan Administrator will have the power to take any and all actions which, in the business judgment of the Plan Administrator, are necessary or appropriate to fulfill his/her obligations under the Plan, including, but not limited to, each of the powers set forth below:

- (aa) hold, manage, protect, administer, collect, sell, liquidate, prosecute, transfer, resolve, settle, adjust, invest, distribute, or otherwise dispose of any Post-confirmation Estate Assets solely for the benefit of Holders of Allowed Claims in accordance with the Plan;

- (bb) make all distributions to be funded under the Plan;
- (cc) assume control over all of the Post-confirmation Debtor's and Post-confirmation Estate's assets and operation of the Property and shall be authorized to continue the usual and ordinary operations of the Post-confirmation Debtor in the ordinary course of the Post-confirmation Debtor's business pending the Closing for the Property in accordance with the terms hereof, and to spend funds of the Post-confirmation Debtor and the Post-confirmation Estate for such purpose. The Plan Administrator shall need either the prior written consent of 2013 NY Funding or an Order of the Bankruptcy Court for any actions to be taken by him/her with respect to the Property that are outside the usual and ordinary operations of the Post-confirmation Debtor's business;
- (dd) pay all necessary expenses incurred in connection with the duties and responsibilities of the Plan Administrator under the Plan to the extent of available funds;
- (ee) administer, implement and enforce all provisions of the Plan;
- (ff) administer the Plan and the Post-confirmation Estate Assets;
- (gg) abandon any Post-confirmation Estate Assets;
- (hh) to invest Cash in accordance with section 345 of the Bankruptcy Code or otherwise as permitted by order of the Bankruptcy Court;
- (ii) to purchase and carry all insurance policies and pay all premiums and costs deemed necessary and advisable;
- (jj) undertake such other responsibilities as are reasonable and appropriate in connection with the Plan; and
- (kk) take all actions necessary to effectuate the Auction of the Property and disposition of the Sale Proceeds in accordance with the terms hereof.

**Compensation.** The Post-confirmation Estate shall pay reasonable compensation for the services provided by the Plan Administrator and any other Professionals or other entities retained by the Plan Administrator as permitted under the Plan. The Plan Administrator shall be entitled to receive from the Post-confirmation Estate

compensation for his/her services hereunder based on an hourly rate of \$575 per hour for actual time spent, plus reasonable out of pocket expenses. If there are insufficient funds in the Post-confirmation Estate to pay the foregoing compensation, such amounts will be paid from the first proceeds of sale of the Property.

**Plan Administrator Exculpation. The Plan Administrator, together with his/her partners, members, officers, directors, employees, agents, and representatives, are exculpated pursuant to the Plan from all Persons, entities (as defined in the Bankruptcy Code), holders of Claims and Interests, and all other parties in interest, from any and all causes of action, of any kind or nature, arising out of the discharge by the Plan Administrator of the powers and duties conferred upon the Plan Administrator by the Plan, any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, or applicable law, except solely for actions or omissions arising out of the Plan Administrator's willful misconduct or gross negligence. No Holder of a Claim or an Interest, or representative thereof, shall have or pursue any cause of action (i) against the Plan Administrator or his/her partners, members, officers, directors, employees, agents and representatives for making Plan Distributions in accordance with the Plan, or (ii) against any holder of a Claim for receiving or retaining Plan Distributions as provided for by the Plan. Nothing contained in this section shall preclude or impair any holder of an Allowed Claim from bringing an action in the Bankruptcy Court against the Post-confirmation Estate to**

**compel the making of Distributions contemplated by the Plan on account of such Allowed Claim.**

(a) **Execution of Documents.** Except as otherwise provided herein, from and after the Auction Commencement Date, the Plan Administrator is hereby authorized, and shall, execute, release and deliver, for and on behalf of the Post-confirmation Debtor and the Post-confirmation Estate, such documents and take such other actions as are necessary to effectuate the transactions provided for in the Plan, without the need for any additional approvals, authorizations or consents. This includes any documents required to effectuate the Auction of the Property and the Closing in accordance with the terms of the Plan, including, without limitation, the Deed, and to perform any act, including the satisfaction of any Lien, that is necessary for the consummation of the Plan.

**Miscellaneous.** Upon the completion of all acts required to be performed by the Plan Administrator under the Plan and/or the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for entry of the Final Decree), the Plan Administrator shall be relieved of his/her duties under the Plan for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Plan Administrator, the Post-confirmation Estate, or payments to be made in connection therewith. From and after the Auction Commencement Date, the Post-confirmation Estate and the Plan Administrator shall not be required to file any document, or take any action, to withdraw the Post-confirmation Debtor's business operation from any States where the Debtor or Post-confirmation Debtor previously conducted

business operations.

(b) **Auction**

(i) From and after the Auction Commencement Date the Plan Administrator shall proceed with selling the Property at the Auction, with the assistance of the Auctioneer. 2013 NY Funding shall be deemed the stalking horse bidder at the Auction with an opening Credit Bid in an amount to be determined by 2013 NY Funding, in its sole and absolute discretion, with 2013 NY Funding having the right, but not the obligation, to Credit Bid up to the full amount of 2013 NY Funding's Total Allowed Secured Claim at the Auction. If 2013 NY Funding pays for or otherwise advances to the Plan Administrator advertising or other expenses in connection with the Auction, such sum will be added to 2013 NY Funding's Total Allowed Secured Claim.

(ii) The Closing shall occur as soon as practicable following the Auction. Upon receiving the Sale Proceeds from the Auction, the Plan Administrator shall, to the extent there are funds available, make the following payments in accordance with herewith and their priority under the Plan:

- (A) First, to (aa) the Plan Administrator for any fees and expenses incurred by the Plan Administrator and any professionals retained by the Plan Administrator, and (bb) the U.S. Trustee fees through entry of the Final Decree (reserving funds as needed to cover such fees and expenses through entry of the Final Decree);
- (B) Second, any Real Estate Taxes which are Liens on the Property having priority over the Allowed Secured Claim of 2013 NY Funding (which shall be paid at the Closing or as soon thereafter as reasonably practicable);
- (C) Third, 2013 NY Funding until 2013 NY Funding's Total Allowed Secured Claim is fully paid (which shall be paid at the Closing or as soon thereafter as reasonably practicable); and
- (D) Thereafter, in order of priority in accordance with Article IV of the



Plan.

(iii) Upon disbursing the Sale Proceeds from the Auction, the Plan Administrator shall file a certification to that effect with the Bankruptcy Court (which may be included in the application for entry of the Final Decree).

(iv) Pending the Closing of the Sale of the Property, the Plan Administrator shall be authorized to continue to operate, maintain and preserve the Property.

(v) The Plan Administrator is authorized to retain the Auctioneer to assist him/her with the Sale of the Property.

**4. Sale, Free and Clear**

At the Closing of any Sale of the Property, including following the Auction, the Property shall be transferred to the Person or entity acquiring the Property free and clear of any Liens, Claims, Interests or encumbrances of whatever kind or nature accrued to the date of the Closing (including, without limitation, Executory Contracts, including any leases or use and occupancy agreements relating to the Property, or rights of first refusal affecting the Property), with such Liens, Claims, Interests or encumbrances, if any, to attach to the proceeds of sale, and subject to any Liens, Claims, Interests or encumbrances of whatever kind or nature thereafter accrued, but entitled to the benefits and subject to the burdens of all easements of record against the Property as of the date of the Closing. Any liens, claims, or encumbrances accruing from and after the date of the Closing shall be the responsibility of the Person or entity acquiring the Property at the Closing. The Person or entity acquiring the Property, including 2013 NY Funding if it acquires the Property through a Credit Bid at the Auction, or otherwise, or another Person or entity in accordance with the terms of the Plan, shall receive (w) the Deed for the Property, executed by the Post-confirmation Debtor or Plan Administrator, as the case may be, in accordance with the

terms of the Plan, for and on behalf of the Debtor, the Post-confirmation Debtor and the Post-confirmation Estate to be recorded in the appropriate office of the County Clerk or such other applicable recording offices and location(s) as may be appropriate; (x) together with any and all New York State and other governmental transfer tax returns; and (y) any and all affidavits, certificates and other documents which may be necessary or are usual and customary to facilitate the recording of the Deed subject to the Bankruptcy Code section 1146(a) exemption, and to effectuate the transfer of the Property. The Property is being sold pursuant to the Plan “AS IS”, “WHERE IS” in its condition on the date of the Closing.

**5. Transfer Taxes**

There will be no Transfer Taxes owed on any transaction in connection with or in contemplation of the Plan to the fullest extent permitted by § 1146 of the Bankruptcy Code. For the avoidance of doubt, any Sale, transfer or conveyance of the Property, including, without limitation, at an Auction by the Plan Administrator, shall be deemed a transfer under, pursuant to, in connection with and in furtherance of the Plan, and such Sale, transfer and delivery of any and all instruments of transfer, including without limitation, the Deed for the Property, in connection therewith shall not be taxed under any transfer taxes permitted by § 1146(a) of the Bankruptcy Code as interpreted by the Supreme Court in *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S.Ct. 2326 (2008). Such exemption shall include any Sale, transfer or conveyance of the Property to 2013 NY Funding in any manner provided for in the Plan Documents.

**6. Post-Petition Real Estate Escrow Account**

The Debtor and Post-confirmation Debtor shall remain current in the payment of all post-Petition Date and post-Confirmation Date real estate taxes. Each month the Debtor and, after the

Effective Date, the Post-confirmation Debtor shall deposit into the Debtor Self-Escrow Account an equal monthly installment in an amount sufficient to timely pay such real estate taxes as and when they become due. Prior to the Confirmation the Debtor and 2013 Funding shall agree in writing on the amount that is to be deposited monthly by the Post-confirmation Debtor into the Debtor Self-Escrow Account. For the avoidance of doubt, the funds deposited into the Debtor Self-Escrow Account shall be used by the Debtor and Post-confirmation Debtor solely and exclusively for the payment of post-Petition Date and post-Confirmation Date real estate taxes. Each month the Post-confirmation Debtor shall provide copies of the Debtor Self-Escrow Account statement showing the account balance therein to 2013 NY Funding. On the Auction Commencement Date, all of the funds in the Debtor Self-Escrow Account shall be turned over to the Plan Administrator for administration of such funds in accordance with the terms of the Plan.

**7. Insurance**

The Debtor and Post-confirmation Debtor shall maintain insurance on the Property in an amount to be agreed upon by the Debtor and 2013 NY Funding prior to the Confirmation, and include 2013 NY Funding as an additional insured and/or loss payee (as determined by 2013 NY Funding). On the Auction Commencement Date, the Plan Administrator will also be added as an additional insured and/or loss payee (as determined by the Plan Administrator). 2013 NY Funding shall have the right, but not the obligation, in its sole and absolute discretion, to pay the insurance premiums or insure the Property if the Debtor fails to timely do so or if necessary to protect and preserve the Property, in which event the amounts paid shall be included as part of 2013 NY Funding's Total Allowed Secured Claim.

**8. Management of Post-confirmation Debtor**

During the period from the Effective Date through the Auction Commencement Date, the

Post-confirmation Debtor, through Michael Gardner, will continue to manage the Property. No management fees will be paid to the Post-confirmation Debtor or Michael Gardner. From and after the Auction Commencement Date, the Plan Administrator will manage the Property.

No individuals other than Michael Gardner are proposed to serve, after confirmation, as a managing member of the Post-confirmation Debtor. No insiders other than Michael Gardner will be employed or retained by the Post-confirmation Debtor, however, Michael Gardner shall not be entitled to any compensation from the Post-confirmation Debtor.

**9. Guarantor Affirmation, etc.**

The Guarantor acknowledges, agrees, consents, affirms and ratifies that (a) as of the Petition Date, the Debtor and the Guarantor are indebted to 2013 NY Funding in respect of the loans and advances under the Loan Documents, including, without limitation, the Guaranty, the Note and the Judgment, in the aggregate amount of \$8,981,635.09, which sum is unconditionally due and owing to 2013 NY Funding without offset, defense, reduction or counterclaim of any kind or nature; (b) as of the day immediately preceding the Initial Payment Date (*i.e.*, September 30, 2015), the Debtor and the Guarantor shall be indebted to 2013 NY Funding in respect of the loans and advances under the Loan Documents, including, without limitations, the Guaranty, the Note, the Judgment and the Plan Documents, in the aggregate amount of the 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim, which sum shall be unconditionally due and owing to 2013 NY Funding as of such date without offset, defense, reduction or counterclaim of any kind or nature; and (c) from and after the Initial Payment Date (*i.e.*, October 1, 2015) the Debtor and the Guarantor shall be indebted to 2013 NY Funding in respect of the loans and advances under the Loan Documents, including, without limitations, the Guaranty, the Note, the Judgment and the Plan Documents, in the aggregate amount of the 2013 NY Funding's Total

Allowed Secured Claim, which sum shall be unconditionally due and owing to 2013 NY Funding without offset, defense, reduction or counterclaim of any kind or nature.

Within three (3) Business Days of the Effective Date, the Debtor, the Guarantor and 2013 NY Funding shall agree in writing as to the actual amount of 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim as of September 30, 2015.

Although by signing the Plan the Guarantor is hereby acknowledging, agreeing, consenting, affirming and ratifying his guarantee of 2013 NY Funding's Pre-petition Date Allowed Secured Claim, 2013 NY Funding's Total Pre-Confirmation Allowed Secured Claim, and 2013 NY Funding's Total Allowed Secured Claim, if requested, the Guarantor agrees that from time to time that he will execute a reaffirmation of his guarantee of such debts to 2013 NY Funding.

**10. Gardners' Agreement to Vacate the Property**

The sole occupants of the Property are the Debtor's Interest Holders, Michael Gardner and Lynda Gardner (together, the "Gardners"). The Gardners hereby acknowledge, affirm, consent and agree that they do not have a lease at the Property. The Gardners further acknowledge, affirm, consent and agree that it will be necessary for the Gardners to have vacated the Property in advance of any Auction of the Property, in order to maximize the value of the Property at such Auction. Accordingly, by no later than thirty (30) days after the Auction Commencement Date, time being of the essence, each of the Gardners, individually and as sole Interest Holders acknowledges, consents and agrees to (i) vacate and surrender possession of the Property, including removing all personal effects and other personalty of the Gardners and any other Persons, tenants and entities, if any, from the Property; and (ii) provide the Plan Administrator, including his/her agents and representatives, with immediate and complete access

to the Property.

In furtherance of the foregoing agreement, the Gardners acknowledge, consent and agree to execute and deliver to counsel for 2013 NY Funding prior to the Confirmation, to be held in escrow until the occurrence of the Auction Commencement Date, all documents reasonably necessary to cause the Gardners to be evicted and removed from the Property immediately on and after the thirty-first (31<sup>st</sup>) day after the Auction Commencement Date, without further notice, motion or order of any court, which documents may include a surrender agreement; a consent judgment of possession; and/or a warrant of eviction. In addition, the Gardners consent and agree that, subject to the Bankruptcy Court, the Confirmation Order will include the following language and provide for the following relief effective immediately on and after the thirty-first (31<sup>st</sup>) after the Auction Commencement Date:

- (a) the U.S. Marshal is authorized and directed to assist the Plan Administrator, including his/her agents and representatives, to gain access to the Property and to evict the Gardners, and any other Persons, tenants and entities, if any, from the Property, including the Gardners, and to remove all personal effects and other personalty of the Gardners' and any other Persons, tenants and entities, if any, from the Property;
- (b) the Plan Administrator, including his/her agents and representatives, are authorized under the supervision and with the assistance of the U.S. Marshal, to take all necessary steps to take possession of the Property, including breaking open and entering said premises and evicting all persons, tenants and entities located within said premises;
- (c) the Plan Administrator will act as substitute custodian of any and all property seized at the Property pursuant to the Plan and shall hold harmless the U.S. Marshals Service and its employees from any and all claims, asserted in any court or tribunal, arising from any acts, incidents, or occurrences in connection with the eviction of and seizure and possession of such personal effects and other personalty of the Gardners and any other Persons, tenants and entities, if any, from the Property the Debtor's property, including third-party claims;
- (d) the Plan Administrator will account for all personal property and effects seized and removed pursuant to the Plan, shall compile a written inventory of all such property and shall provide a copy to the U.S. Marshal who shall include such a copy with his return to the Bankruptcy Court;

- (e) the Post-Confirmation Estate will be responsible for any and all charges incurred with respect to the eviction of the Gardners and any persons, tenants and/or other entities occupying the Property and for any and all charges incurred with respect to the removal of the Gardners' personal effects and any other personalty remaining in the Property, at the time of the eviction including but not limited to storage charges, which charges shall be paid from the proceeds of the Auction Sale;
- (f) the Plan Administrator is authorized to do such things, execute such documents and expend such funds as may be necessary to effectuate the terms and condition of the Plan, including, without limitation, retaining such persons to change the locks of the Property to control access to the Property; and
- (g) anyone interfering with the execution of this Order is subject to arrest by the U.S. Marshal and/or his or her representative.

**E. Conditions Precedent to the Occurrence of the Effective Date**

The Effective Date will occur only if all of the following conditions have been fulfilled or waived:

- 1. The Confirmation Order in form reasonably acceptable to the Debtor and 2013 NY Funding shall have been entered by the Bankruptcy Court.
- 2. The Plan Contribution shall have been deposited into Debtor's counsel's attorney trust account.

**F. Objections to Claims and Procedures for Resolving and Treating Claims**

1. **Objections to Claims**

All objections to Claims shall be filed by the Debtor or Post-confirmation Debtor and served on the holders of such Claims within sixty (60) days after the Confirmation Date. If the objection to a proof of Claim that relates to a Disputed Claim has not been filed by the applicable date, the Claim to which the proof of Claim relates shall be treated as an Allowed Claim for purposes of Distributions under the Plan.

2. **Resolution of Disputed Claims**

Disputed Claims shall be divided into two (2) portions: the “non-disputed portion” and the “disputed portion.” The Post-confirmation Debtor shall pay the non-disputed portion of a Disputed Claim in accordance with Plan provisions for payment of a Claim in its Class.

3. **Estimation**

The Debtor or the Post-confirmation Debtor may, at any time, request that the Court estimate any Disputed Claim pursuant to § 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Post-confirmation Debtor have previously objected to such Claim. The Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim.

4. **Allowance of Disputed Claims**

If, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall, within thirty (30) days after the date on which the Claim becomes an Allowed Claim, or as soon thereafter as is practicable, pay to the holder of such Allowed Claim the amount of Cash that such holder would have been entitled to receive under the Plan if such disputed portion of such Claim had been an Allowed Claim on the Effective Date.

G. **Provisions Concerning Causes Of Action**

Except as otherwise provided herein or in any contract, instrument, release or other agreement entered into in connection with the Plan, the Post-confirmation Debtor shall retain, and may, with its determination of the best interest of the estate, enforce any claims, rights and causes of action that have been or may be commenced by the Debtor including, but not limited to, those arising under §§ 544 through 550 of the Bankruptcy Code.



## **H. Provisions Governing Distributions**

### **1. Disbursing Agent**

Prior to the Auction Commencement Date, the Post-confirmation Debtor shall act as Disbursing Agent under the Plan. From and after the Auction Commencement Date the Plan Administrator shall act as Disbursing Agent. Prior to the Auction Commencement Date, and except as otherwise provided herein, Michael Gardner shall be in charge of all matters relating to the Distributions required by the Plan. From and after the Auction Commencement Date, the Plan Administrator shall be in charge of all matters relating to the Distributions required by the Plan. In the event that the Disbursing Agent changes prior to the entry of an order of Final Decree closing the Debtor's Chapter 11 case, the Bankruptcy Court and the United States Trustee shall be notified in writing of the identity and address of the new Disbursing Agent.

### **2. Unclaimed Distributions**

Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the proofs of Claim filed by such holders unless no Proof of Claim has been filed, in which case then to the address set forth on the Schedules filed with the Court, unless superseded by a written notice to the Disbursing Agent providing actual knowledge to the Disbursing Agent of a change of address.

If any holder's Distribution is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Disbursing Agent is notified in writing of such holder's then current address, at which time all Distributions shall be made to such holder, without interest.

3. **Professional Fees and Expenses**

Each of the Professionals requesting compensation for services rendered and reimbursements disbursed in the Chapter 11 Case shall file an application for an allowance of final compensation and reimbursement of expenses in the Chapter 11 Case incurred through the Confirmation Date within forty five (45) days after entry of the Confirmation Order.

4. **Rounding**

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect the rounding of such fraction to the nearest whole cent with the one-half cent being rounded up to the nearest whole cent.

I. **Provisions Concerning Injunction, Stays and Exculpations**

1. **Injunction and Stays**

**Except as otherwise expressly provided herein and related documents, all Persons or entities who have held, hold or may hold Claims against, or Interest in, the Debtor are, with respect to any such Claims or Interests, permanently enjoined on and after the Confirmation Date from: (a) commencing, conducting or continuing in any manner directly or indirectly, any suit, action or other proceeding of any kind (including without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the Post-confirmation Debtor, any of its property, including, without limitation, the Property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, any of the foregoing persons or entities, including, as applicable, the Plan Administrator, (b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order against the Debtor or the Post-confirmation**

Debtor, any of its property, including, without limitation, the Property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, any of the foregoing persons or entities, including, as applicable, the Plan Administrator, or any property of any such transferee or successor, (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance or Lien of any kind against the Debtor or the Post-confirmation Debtor, any of their property, including without limitation, the Property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing persons or entities, including, as applicable, the Plan Administrator, and (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtor or the Post-confirmation Debtor, any of their property, including without limitation, the Property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing persons or entities, including, as applicable, the Plan Administrator.

2. **Exculpation**

Neither the Debtor, 2013 NY Funding, the Plan Administrator, nor any of their respective officers, directors, employees and other agents, financial advisors, attorneys and accountants shall have any liability to any holder of any Claim or Interest for any act or omission in connection with or arising out of the negotiation, preparation and pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, the Chapter 11 Case or the property to be distributed under the Plan, except for liability based upon willful misconduct or gross negligence as finally determined by the Bankruptcy Court.

3. **Vesting of Property in the Post-confirmation Debtor**

As of the Effective Date, all assets of the Debtor shall vest in the Post-confirmation Debtor, free and clear of all Liens, Claims and Interests, except as otherwise provided in the Plan or the Confirmation Order.

**J. Cram Down**

In the event Classes of Claims or Equity Interests do not vote to accept the Plan, the Debtor reserves its right to invoke the “Cram Down” provisions of Bankruptcy Code §1129(b). In the event the Debtor exercises such right, the Debtor reserves the right to modify the Plan to the extent, if any, the confirmation of the Plan under §1129(b) of the Bankruptcy Code requires modification.

**K. Additional Terms**

1. The Debtor, the Post-confirmation Debtor, the Guarantor and, as applicable, the Auctioneer and Plan Administrator shall, at all times, reasonably cooperate with 2013 NY Funding in connection with the implementation of the Plan, including the Sale of the Property in accordance with the terms hereof. This includes, without limitation, providing reasonable access by 2013 NY Funding, the Plan Administrator, and each of their respective agents, representatives and potential bidders, to the Property and providing copies of documents as may reasonably be requested by 2013 NY Funding or the Plan Administrator.

2. Subject to Sections 363 (m) and (n) of the Bankruptcy Code, if 2013 NY Funding shall be the Person or entity entitled to acquire the Property following the Auction or otherwise, it shall have the right to assign its successful Credit Bid for no additional consideration and the right to close thereunder at or prior to the Closing for the Property. Any such assignee shall be entitled to all of the rights of 2013 NY Funding under the Plan, including but not limited to the

right to take title to the Property free and clear of any and all (a) Liens, Claims, Interests and encumbrances, of any kind or nature as provided under the Plan, and (b) Transfer Taxes.

**L. Retention of Jurisdiction**

**1. Retained Jurisdiction**

From and after the Confirmation Date and until such time as the Chapter 11 Case is closed, the Bankruptcy Court shall retain jurisdiction over the Debtor's Chapter 11 Case for all purposes permitted under the Bankruptcy Code, including, without limitation, the following:

a. To hear and determine any dispute relating to the Plan or any property described in the Plan and to enforce its provisions, including the summary transfer provisions in the event of a default by the Post-confirmation Debtor, including, without limitation, if there is an Event of Default.

b. To hear and determine all issues arising out of any motions, applications, adversary proceedings or contested or litigated matters in the Chapter 11 Case pending at the Confirmation Date or commenced thereafter.

c. To order recovery of any assets of the Debtor, whether title is presently held in the name of the Debtor or a third party.

d. To hear and determine motions to approve the Sale of the Property pursuant to § 363 or § 1123(b)(4) of the Bankruptcy Code and/or the rejection or assumption of Executory Contracts under § 365 of the Bankruptcy Code.

e. To hear and determine all issues relating to any purchases, sales or contracts made or undertaken by the Debtor during the pendency of the Chapter 11 Case.

f. To hear and determine all objections to Claims and all controversies concerning classification, allowance, valuation, liquidation, estimation, or satisfaction of Claims.

g. To make orders allowing amendment of the schedules filed in the Chapter 11 Case for any purpose including, without limitation, to prosecute objections to Claims not previously listed as disputed, contingent or unliquidated.

h. To hear and determine all applications for compensation of Professional and similar fees and reimbursement of expenses arising out of or relating to the case or any Claims.

i. To hear and determine any and all motions to abandon property of the Debtor's Estate or Post-confirmation Estate.

j. To make such other orders or give such directions as permitted by § 1142 of the Bankruptcy Code.

k. To consider and order any modifications or amendments requested to the Plan.

l. To remedy any defect or omission or reconcile any inconsistency in the Plan or the Confirmation Order in such manner as may be necessary or desirable to carry out the purposes and intent of the Plan.

m. To make all orders necessary or appropriate to carry out the provisions of the Plan.

n. To enforce all orders previously entered by the Bankruptcy Court.

o. To determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the Bankruptcy Code.

p. To hear and determine all matters and disputes relating to the Auction Commencement Date, appointment of the Plan Administrator, the Auction, any Event of Default, any Sale or other disposition of the Property, and any Closing.

q. Without limiting the generality of the foregoing and notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive

jurisdiction over the Post-confirmation Estate after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection herewith or therewith, including, without limitation, the implementation of the Plan.

**M. Final Decree**

The Final Decree closing the Chapter 11 Case shall not be entered until after either the Property is sold in accordance with the terms hereof or 2013 NY Funding is paid the full amount of 2013 NY Funding's Total Allowed Secured Claim. For the avoidance of doubt, the Chapter 11 Case shall remain open and pending before the Bankruptcy Court until after either the Property is sold in accordance with the terms hereof or 2013 NY Funding is paid the full amount of the 2013 NY Funding Total Allowed Secured Claim.

**N. Notices**

All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communications hereunder (each, a "Notice") shall be deemed duly given on the date of service of such Notice as long as it is sent either (a) by a recognized national overnight courier service for next day delivery, charges prepaid, or (b) by registered or certified mail, return receipt requested, and, in each case, addressed to the intended recipient as set forth below:

If to the Post-confirmation Debtor (or the Disbursing Agent prior to the Auction Commencement Date):

Park 91, LLC  
1145 Park Avenue  
New York, New York 10128  
Attn: Michael Gardner

With a copy to:  
Tarter Krinsky & Drogin LLP

1350 Broadway, 11<sup>th</sup> Floor  
New York, New York 10018  
Attn: Scott S. Markowitz, Esq.  
Arthur Goldstein, Esq.

If to the Plan Administrator  
(or the Disbursing Agent after to the Auction Commencement Date):

Salvatore LaMonica, Esq.  
LaMonica Herbst & Maniscalco, LLP  
3305 Jerusalem Avenue  
Wantagh, New York 11793

If to 2013 NY Funding:

c/o ERG Property Advisors  
777 Third Avenue, 27<sup>th</sup> Floor  
New York, New York 10017  
Attn: James Guarino

With a copy to:  
Westerman Ball Ederer Miller  
Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, New York 11556  
Attn: Thomas A. Draghi, Esq.

Any person may change the address at which he, she or it is to receive notices for purposes of the Plan by sending written notice pursuant to this provision to the Post-confirmation Debtor, the Disbursing Agent, 2013 NY Funding and, after the Auction Commencement Date, the Plan Administrator, as provided in the Plan.

**O. Miscellaneous Provisions**

**1. Applicable Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights and obligations arising under the Plan are governed under New York Law.



**2. Unenforceability of Particular Provisions**

Should any provision in the Plan be determined to be unenforceable in whole or in part, such determination shall in no way limit or affect the enforceability and operative effect of the remainder of the Plan, including any of its provisions to the extent not determined to be unenforceable.

**3. Revocation and Withdrawal Prior to Confirmation**

The Debtor reserves the right to revoke and withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if the Confirmation Date or the Effective Date does not occur, then the Plan shall be deemed null and void, and in such event nothing contained herein shall be deemed to constitute a waiver or release of any claim by or against the Debtor, or any other entity or to prejudice in any manner the rights of the Debtor, or any entity in any further proceedings involving the Debtor.

**4. Amendment and Modification**

The Debtor may propose amendments to, or modification of, the Plan at any time at or before Confirmation. After Confirmation of the Plan, the Debtor may, with the approval of the Bankruptcy Court and so long as it does not materially adversely affect the treatment of any Claim or Equity Interest, amend the Plan to remedy any defect or omission or reconsider any inconsistencies in the Plan or in the order of Confirmation as necessary or desirable to carry out the purpose and effect of the Plan.

**5. Post-Confirmation Professional Fees**

Subsequent to the Confirmation Date, the Debtor, the Post-confirmation Debtor and, as applicable, the Plan Administrator, shall be authorized and directed to pay reasonable

professional fees and expenses relating to the post-confirmation administration of its Estate and the Plan incurred by its Professionals.

**6. Successors and Assigns**

The rights, duties and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person, including, without limitation, any Chapter 7 trustee that may be subsequently appointed.

**7. Binding Effect of Plan**

Upon the Effective Date, all of the provisions of the Plan shall be binding on the Debtor, on all holders of Claims, on all holders of Equity Interests, and on all other entities who are affected (or whose interests are affected) in any manner by the Plan.

**8. Authorization of Corporate Action**

Upon the entry of the Confirmation Order, all actions contemplated by the Plan will be deemed authorized and approved in all respects (subject to the provisions of the Plan). On the Confirmation Date, appropriate members or authorized signatories of the Debtor, the Post-confirmation Debtor and the Plan Administrator are authorized and directed to execute and to deliver any and all agreements, documents and instruments contemplated by the Plan and/or necessary for the consummation of the Plan, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without the need for any additional authorizations, approvals or consents. This includes, without limitation, any and all instruments required to effect a transfer of the Property, including without limitation, the Deed and any documents to satisfy any Lien in furtherance of the terms of the Plan.

## VI

### **CONFIRMATION PROCEDURES**

In order for the Plan to be confirmed by the Bankruptcy Court, all of the applicable requirements of Bankruptcy Code § 1129 must be met. These include, among others, requirements that the Plan: (i) is accepted by all impaired Classes or, if rejected by an impaired Class, “does not discriminate unfairly” and is “fair and equitable” as to each rejecting Class; (ii) is feasible; and (iii) is in the best interests of holders of Claims or Interests in each impaired Class.

#### **A. Solicitation of Votes; Acceptance**

The Debtor is soliciting the acceptance of the Plan from all holders of Claims in Classes that are impaired under the Plan and receiving Distributions thereunder.

Class 6 is not impaired under the Plan. Since that Class is unimpaired, it is deemed to have accepted the Plan and therefore is not entitled to vote thereon.

Classes 1, 2 and 3 are impaired Classes and are entitled to vote on the Plan. Classes 1, 2 and 3 will be deemed to have accepted the Plan if the Plan is accepted by holders of at least two thirds in dollar amount and more than one half in number of the Claims in that Class that have cast ballots on the Plan.

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

#### **B. Confirmation Hearing**

Bankruptcy Code § 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan (the “Confirmation Hearing”) after the period for submission of

Ballots has expired. The Confirmation Hearing may be postponed from time to time by the Bankruptcy Court without further notice except for an announcement of the postponement made at the Confirmation Hearing. Bankruptcy Code § 1128(b) provides that any party in interest may object to confirmation of the Plan. Objections must be made in writing, specifying in detail the name and address of the person or entity objecting, the grounds for the objection and the nature and amount of the Claim held by the objector, and must otherwise comply with the requirements of the Bankruptcy Rules and the Local Bankruptcy Rules. Objections must be filed with the Clerk of the Bankruptcy Court, with a courtesy copy delivered to the chambers of the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, and served upon the parties so designated in the Order and Notice accompanying this Disclosure Statement on or before the time and date designated in such Order and Notice. **FAILURE TO TIMELY FILE AND SERVE AN OBJECTION TO CONFIRMATION MAY BE DEEMED BY THE BANKRUPTCY COURT TO BE CONSENT TO CONFIRMATION OF THE PLAN.**

At the Confirmation Hearing, the Bankruptcy Court will determine, among other things, whether the following confirmation requirements specified in Bankruptcy Code § 1129 have been satisfied:

1. The Plan complies with the applicable provisions of the Bankruptcy Code.
2. The Debtor has complied with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means proscribed by law.
4. Any payment made or promised by the Debtor for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and

incident to the Chapter 11 Case, has been approved by, or is subject to approval of, the Bankruptcy Court as reasonable.

5. The Debtor has disclosed the identity and affiliations of all individuals proposed to serve, after confirmation, as directors or officers of the Debtor and the appointment to or continuance in such positions by those individuals is consistent with the interests of creditors and Interest holders and with public policy; and (b) the Debtor has disclosed the identities of any insider(s) that will be employed or retained by the Post-confirmation Debtor and the nature of any proposed compensation for such insider(s).

6. Each holder of a Claim in an impaired Class either has accepted the Plan or will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such entity would receive or retain if the Debtor were liquidated on such date under Chapter 7 of the Bankruptcy Code. See “Best Interests Test” below.

7. Unless the Debtor is required to seek nonconsensual confirmation of the Plan, each Class of Claims and Interests has either accepted the Plan or is not impaired under the Plan.

8. Except to the extent that the holder of a Claim has agreed to different treatment, the Plan provides that: (a) Allowed Administrative Claims will be paid in full on the later of the Effective Date, or the date the Claim is Allowed; (b) other Priority Claims will be paid in full on the Effective Date; and (c) Priority Tax Claims will receive payment in full plus interest over five (5) years.

9. At least one impaired Class has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class.

10. Confirmation of the Plan is not likely to be followed by the liquidation of or the need for further financial reorganization by the Debtor or the Post-confirmation Debtor.

**C. Best Interests Test/Liquidation Analysis**

The “best interests of creditors” test requires that the Bankruptcy Court find either that all members of each impaired class have accepted the plan or that each holder of an Allowed Claim or interest of each impaired class of claims or interests will receive or retain under the plan on account of such Claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To calculate what holders of Claims would receive if the Debtor was hypothetically liquidated under Chapter 7 of the Bankruptcy Code, the Court must first determine the dollar amount that would be realized from the liquidation (the “Chapter 7 Liquidation Fund”). The Chapter 7 Liquidation Fund would consist of the net proceeds from the disposition of the Debtor’s assets (after satisfaction of all valid liens) augmented by the Cash held by the Debtor and recoveries on actions against third parties, if any. The Chapter 7 Liquidation Fund would then be reduced by the costs of the liquidation. The costs of liquidation under chapter 7 would include the fees and expenses of a trustee, as well as those of counsel and other professionals that might be retained by the trustee, selling expenses, any unpaid expenses incurred by the Debtor during its Chapter 11 case (such as fees for attorneys, financial advisors and accountants) which would be allowed in the Chapter 7 proceedings, interest expense on secured debt and claims incurred by the Debtor during the pendency of the case. These claims would be paid in full out of the Chapter 7 Liquidation Fund before the balance of the Chapter 7 Liquidation Fund, if any, would be made available to holders of Unsecured Claims. In addition, other claims which would arise upon conversion to a Chapter 7 case would dilute the balance of the Chapter 7 Liquidation Fund available to holders of Claims. Moreover, additional claims against the Debtor’s estate

might arise as the result of the establishment of a new bar date for the filing of claims in a Chapter 7 case for the Debtor. The present value of the distributions out of the Chapter 7 Liquidation Fund (after deducting the amounts described above) are then compared with the present value of the property offered to each of the Classes of Claims and holders of Interests under the Plan to determine if the Plan is in the best interests of each holder of a Claim.

The Debtor believes that a Chapter 7 liquidation (*i.e.*, foreclose sale) of its assets would result in diminution in the value to be realized under the Plan by holders of Claims. That belief is based upon, among other factors: (a) the additional administrative expenses involved in the appointment of a trustee, attorneys, accountants, and other Chapter 7 professionals; (b) the substantial time which would elapse before creditors would receive any distribution in respect of their Claims due to a trustee's need to become familiar with the Chapter 11 case and the Debtor's books and records, and the trustee's duty to conduct independent investigations; (c) the additional unsecured Claims that may be asserted against the Debtor; and (d) the substantial cost and delay which can be avoided by a consensual plan. The Debtor's estimated liquidation analysis and the assumptions upon which it is based are annexed hereto as **Exhibit "B."** The Debtor believes that each member of an impaired class will vote in favor of the Plan thereby satisfying the best interest of creditors test.

## VII

### "CRAM DOWN"

The Bankruptcy Code provides a mechanism by which a plan may be confirmed even if it has been rejected by an impaired class of claims. Under the "cram down" provisions of the Bankruptcy Code (§1129(b)), the proponent of the Plan (in this case the Debtor) may request that it be confirmed despite its rejection by an impaired class, and the court will confirm the Plan if it

(i) does not discriminate unfairly against a dissenting impaired class, and (ii) is fair and equitable with respect to such class.

The Bankruptcy Code sets forth specific guidelines for determining whether a plan is fair and equitable with respect to a particular class of claims. For Unsecured Claims, as are those in Class 5, a plan must provide that equity interest holders do not receive or retain any property on account of their interest unless unsecured claims are paid in full plus interest. Here, the Plan provides that all holders of Allowed Unsecured Claims shall be paid in full plus interest on the Effective Date and are therefore unimpaired as that term is defined in Section 1124 of the Bankruptcy Code. For Secured Claims, as are in Classes 1, 2 and 3, a plan must provide that the holders of such Secured Claim retain the lien securing such claim to the extent of the Allowed Amount of such claim and that the holder of such claim receive on account of such claim of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in the property securing the lien. In other words, the secured creditor must receive the present value of the Allowed Amount of its Secured Claim which Allowed Amount is dependent upon the value of the property securing the Claim.

Under the Plan, 2013 NY Funding, Surya, and the City of New York (real estate taxes), the only three known secured claim holders, will retain their liens to secure the full amount of their Allowed Secured Claims and receive payments over time equal to the present value of the Allowed Amount of their Secured Claims as of the Effective Date of the Plan.<sup>3</sup> In the event the court declines to impose a "cram-down" on the rights of a non-consenting class unless certain modifications are made to the terms and conditions of such non-consenting class treatment under the Plan, the Debtor reserves the right, without re-solicitation, to propose such modification to such non-consenting class treatment and to confirm the Plan.



## VIII

### VOTING INSTRUCTIONS

Creditors should complete and sign the enclosed Ballot and return it to Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attn: Scott S. Markowitz, Esq., attorneys for Debtor. A ballot is enclosed with each copy of this Disclosure Statement being sent to all holders of Impaired Claims that filed proof of Claims or were scheduled by the Debtor. Ballots must be received on or before 5:00 p.m. Eastern Daylight Time on September 16, 2015.

If a ballot is damaged or lost, or if you have any questions concerning any voting procedures, you may contact Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attn: Scott S. Markowitz, Esq., (212) 216-8000

## IX

### CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

In view of the fact that Debtor will retain ownership of the Property, the transactions contemplated by the Plan will have no federal tax consequences to the Debtor.

**CREDITORS AND INTEREST HOLDERS ARE ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND TO THE DEBTOR OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

Since the tax consequences for each creditor will depend to a considerable extent upon its particular situation, the Debtor recommends that each creditor review the entire Plan and this Disclosure Statement to best determine the effect of the Plan on it.

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<sup>3</sup> Both 2013 NY Funding and Surya have agreed to vote in favor of the Plan.

X

**CONCLUSION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any other alternative. Accordingly, the Debtor urges holders of Claims to vote to accept the Plan by so indicating on their Ballots and returning them as specified in the Order and Notice accompanying this Disclosure Statement.

Dated: New York, New York  
September 2, 2015

**PARK 91, LLC**  
*Debtor and Debtor in Possession*

**TARTER KRINSKY & DROGIN LLP**  
*Attorneys for Park 91, LLC,  
Debtor and Debtor in Possession*

By: /s/ Michael Gardner  
Michael Gardner  
Managing Member

By: /s/ Scott S. Markowitz  
Scott S. Markowitz  
1350 Broadway, 11<sup>th</sup> Floor  
New York, New York 10022  
(212) 216-8000