

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
PARK 91, LLC,	: Case No.: 15 - 10957 (JLG)
	: :
Debtor.	: :
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**ORDER PURSUANT TO SECTION 1129 OF THE
BANKRUPTCY CODE CONFIRMING THE DEBTOR’S AMENDED PLAN OF
LIQUIDATION DATED SEPTEMBER 2, 2015, AS MODIFIED**

Park 91, LLC, the debtor and debtor in possession in this Chapter 11 Case (“Debtor”), having proposed and filed an Amended Disclosure Statement dated September 2, 2015 (Docket No. 36, the “Disclosure Statement”) with respect to the Debtor’s Amended Plan Of Liquidation dated September 2, 2015 (Docket No. 35, as modified on September 29, 2015, Docket No. 44, and as the same may be further amended or modified, the “Plan”)¹; and

This Court having entered an Order on September 3, 2015 Approving The Disclosure Statement And Fixing The Time: (1) For Filing Acceptances Or Rejections Of The Plan; (2) For Hearing On Confirmation Of The Plan; (3) For Filing Objections To Confirmation; And (4) Approving Form Of Ballots [Docket No.37] (the “Disclosure Statement Order”); and

And the Debtor having duly served the Disclosure Statement Order, together with the Plan, the Disclosure Statement and all other documents required pursuant to the Disclosure Statement Order, and no objections having been had to the Disclosure Statement; and

¹ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

Scott Markowitz, Esq. having certified on September 24, 2015 (the “Vote Certification”) [Docket No. 43], that (a) Debtor received the requisite acceptances both in number and amount from Classes 1 (Allowed Secured Claim of 2013 NY Funding), and 2 (Allowed Secured Claim of Surya) (the ballots voted in such classes being unanimous in accepting the Plan); (b) Classes 4 (Priority Claims), 5 (General Unsecured Claims) and 6 (Interests) are Unimpaired and deemed to accept the Plan; and (c) there were no votes cast in Class 3 (Unpaid Real Estate Tax Claims); and

Following a status conference held by the Bankruptcy Court on September 23, 2015 (the “Status Conference”), the Debtor having made, pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, certain modifications to the Plan to incorporate certain comments received from the Bankruptcy Court at the Status Conference, and the Bankruptcy Court having determined that such modifications do not adversely change the treatment of the claim of any creditor or the interest of any equity security holder as fixed in the Plan before such modifications, and that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code; and

A hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128 and 1129 of the Bankruptcy Code confirmation of the Plan having been held on September 29, 2015 (the “Confirmation Hearing”), and due notice of the Confirmation Hearing having been given to Holders of Claims against and Interests in the Debtor, and other parties in interest in compliance with the Disclosure Statement Order, the Bankruptcy Code and the Bankruptcy Rules, as established by the affidavits of service and mailing filed with this Court, and such notice being sufficient under the circumstances and no further notice being required; and

This Court having considered all evidence admitted at the Confirmation Hearing; and based upon all pleadings and papers filed in the Chapter 11 Case, including the Disclosure Statement, the Plan, the Vote Certification, the record of the Disclosure Statement Hearing, the record of the Confirmation Hearing and all other proceedings heretofore held in the Chapter 11 Case; and it appearing to this Court that (a) notice of the Confirmation Hearing and the opportunity of any party in interest to object to Confirmation of the Plan was adequate and appropriate as to all parties to be affected by the Plan and the transactions contemplated thereby, and (b) the legal and factual bases presented at the Confirmation Hearing establish just cause for the relief granted herein; and upon the record of the Confirmation Hearing and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY FOUND THAT:

A. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

B. This matter is a core proceeding which a bankruptcy court has the power to hear and determine in its entirety and enter a final order with respect thereto pursuant to 28 U.S.C. § 157(b)(2)(A), in that it is a proceeding concerning the administration of the estate; 28 U.S.C. § 157(b)(2)(L), in that it is a matter concerning confirmation of a plan; and 28 U.S.C. § 157(b)(2)(O), in that it is a proceeding affecting the adjustment of the debtor-creditor or the equity security holder relationship. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. On the Petition Date, the Debtor commenced a case under chapter 11 of the Bankruptcy Code.

D. This Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of this Court, and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the various hearings held before this Court during the pendency of the Chapter 11 Case (including the Confirmation Hearing).

E. Notice of the Confirmation Hearing and the opportunity of any party in interest to object to confirmation of the Plan were adequate and appropriate as to all parties to be affected by the Plan and the transactions contemplated thereby.

F. The Plan designates Claims and Interests in the following six (6) Classes: Class 1 (Allowed Secured Claim of 2013 NY Funding), Class 2 (Allowed Secured Claim of Surya), Class 3 (Real Estate Tax Claims), Class 4 (Priority Claims), Class 5 (General Unsecured Claims) and Class 6 (Interests).

G. Under the Plan:

1. Class 4 (Priority Claims), Class 5 (General Unsecured Claims) and Class 6 (Interests) are Unimpaired; as such, Holders of Claims in such Class are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code; and

2. Class 1 (Allowed Secured Claim of 2013 NY Funding), Class 2 (Allowed Secured Claim of Surya) and Class 3 (Real Estate Tax Claims) are Impaired and may receive distributions under the Plan; accordingly, such Holders had the right to vote to accept or reject the Plan.

H. Notice of the relevant deadlines for filing objections to the Plan and submitting Ballots was provided in accordance with the Bankruptcy Code, the

Bankruptcy Rules, and the Disclosure Statement Order to all known parties in interest, the United States Trustee, all known holders of Interests, all persons who have filed proofs of claim in the Chapter 11 Case, all persons who have requested special notice in the Debtor's case pursuant to Bankruptcy Rule 2002, the Internal Revenue Service, the Secretary of State of New York, any entity that has filed with the Court a notice of transfer of a claim under Bankruptcy Rule 3001(e) on or prior to the date of the entry of Disclosure Statement Order, all persons or entities listed in the Debtor's schedules, and all other known Creditors of the Debtor, and such notice is adequate and sufficient in accordance with Bankruptcy Rules 2002(b) and 3020(b).

I. As described in, and as evidenced by, the affidavits of service filed in the Debtor's bankruptcy case, the transmittal and service of the Plan, the Disclosure Statement, notice of the Confirmation Hearing, relevant deadlines and the solicitation materials was timely, adequate and sufficient under the circumstances.

J. As described in, and as evidenced by, the Vote Certification, upon the receipt and tabulation of the Ballots:

1. 100% of Class 1 (Allowed Secured Claim of 2013 NY Funding) in dollar amount, and 100% in number of the Holders of Claims in such Class that voted on the Plan, accepted the Plan. Class 1 accepted the Plan;

2. 100% of Class 2 (Allowed Secured Claim of Surya) in dollar amount, and 100% in number of the Holders of Claims in such Class that voted on the Plan, accepted the Plan. Class 2 accepted the Plan;

3. There were no votes cast in Class 3 (Real Estate Tax Claims).

The Plan was accepted by the two (2) Impaired Classes entitled to vote, however, having received no votes from Holders of Real Estate Tax Claims in Class 3, Class 3 is deemed

to reject the Plan. All procedures used to distribute the solicitation materials to the applicable Holders of Claims and Interests and to tabulate Ballots were fair and followed in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, and all other applicable rules, laws and regulations.

K. The Court makes the following factual findings with respect to the requirements of section 1129 of the Bankruptcy Code:

1. With respect to the requirements of section 1129(a)(1) of the Bankruptcy Code, the Plan complies with any and all applicable provisions and requirements of the Bankruptcy Code, including without limitation, sections 1122 and 1123. With respect to the requirements of section 1122 of the Bankruptcy Code, Article III of the Plan designates six (6) classes of Claims and Interests. This classification scheme of Claims and Interests is reasonable, and the Claims or Interests in each class are substantially similar to other Claims or Interests in such class. Valid business, factual, and legal reasons exist for separately classifying the various classes of Claims and Interests created under the Plan, and such classification and treatment does not unfairly discriminate between Holders of Claims and Interests.

With respect to the requirements of section 1123 of the Bankruptcy Code, the Plan:

(a) Designates classes of Claims, other than Claims specified in section 507(a)(1), 507(a)(2) and 507(a)(8) of the Bankruptcy Code, and a class of Interests, thereby satisfying the requirements of section 1123(a)(1) of the Bankruptcy Code;

(b) Specifies that Class 4 (Priority Claims), Class 5 (General Unsecured Claims) and Class 6 (Interests) are Unimpaired under the Plan, thereby satisfying the requirements of section 1123(a)(2) of the Bankruptcy Code;

(c) Specifies that Class 1 (Allowed Secured Claim of 2013 NY Funding), Class 2 (Allowed Secured Claim of Surya), Class 3 (Real Estate Tax Claims) are Impaired under the Plan, thereby satisfying the requirements of section 1123(a)(3) of the Bankruptcy Code;

(d) Provides the same treatment for each Claim or Interest of a particular class, unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such particular Claim or Interest, thereby satisfying the requirements of section 1123(a)(4) of the Bankruptcy Code;

(e) Provides adequate means for the Plan's implementation. In particular, the Plan and the various documents and agreements related thereto, provide adequate and proper means for the implementation of the Plan, including, but not limited to: (i) funding from the Plan Contribution and the Sale of the Property; (ii) providing for the orderly sale and liquidation of the Debtor's Property either by the Post-confirmation Debtor or, upon occurrence of the Auction Commencement Date, by the Plan Administrator in accordance with the terms of the Plan; (iii) additional Articles of the Plan set forth the procedure for the distribution of the proceeds of sale to be administered for the benefit of all Holders of Allowed Claims pursuant to the terms of the Plan, thereby satisfying the requirements of section 1123(a)(5) of the Bankruptcy Code;

(f) It is unnecessary for the Plan to address the issues of interests or issuance of securities because the Plan (i) provides for the liquidation or disposition of all

of the Debtor's assets and (ii) allows for the dissolution of the Debtor after the entry of the Final Decree;

(g) Contains only provisions consistent with the interests of the Debtor's Creditors and Interest Holders and with public policy with respect to the manner and selection of officers and directors, if any, and other responsible persons under the Plan, including the Plan Administrator, as applicable, thereby satisfying the requirements of section 1123(a)(7) of the Bankruptcy Code. The Plan provides that, on the Effective Date, all assets of the Debtor shall vest in the 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, if applicable, 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; and

(h) The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code.

2. With respect to the requirements of section 1129(a)(2) of the Bankruptcy Code, Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and

plan solicitation. As evidenced by the Disclosure Statement Order and prior Bankruptcy Court orders, and the filings submitted by Debtor, Debtor has complied with applicable Bankruptcy Code provisions, the Bankruptcy Rules and the Disclosure Statement Order in transmitting the Disclosure Statement, the Plan and related documents and notices to known creditors and parties-in-interest in soliciting and tabulating votes on the Plan. Good, sufficient and timely notice of the Confirmation Hearing and of all other hearings in this case has been provided to all known record holders of Claims and Interests and other parties in interest to whom notice was required to have been provided. The solicitation of acceptances or rejections of the Plan was (a) pursuant to the Disclosure Statement Order, (b) in compliance with all applicable rules and regulations governing the adequacy of disclosure in connection with such solicitation, and (c) solicited after disclosure to Holders of Claims or Interests of “adequate information” as defined in section 1125(a) of the Bankruptcy Code.

3. With respect to the requirements of section 1129(a)(3) of the Bankruptcy Code, Debtor has proposed the Plan in good faith, and not by any means forbidden by law. Debtor’s good faith is evident from the facts and the record of the Chapter 11 Case, the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Case. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtor’s estate and effectuating the orderly liquidation and distribution of the Debtor’s estate.

4. With respect to the requirements of section 1129(a)(4) of the Bankruptcy Code, all fees and expenses of Debtor’s Professionals remain subject to final review by the Court under the applicable provisions of the Bankruptcy Code. In addition,

Article IV of the Plan provides that each holder of an Allowed Administrative Claim (*including*, without limitation, the fees and expenses incurred by Professional Persons) and Allowed Administrative Claims arising under Bankruptcy Code §503(b)(9)) shall be paid in full, in Cash, by the Debtor, the Post-confirmation Debtor, or the Disbursing Agent (i) on the later to occur of the Effective Date or the date the order allowing such Administrative Claim becomes a Final Order, or (ii) upon such other terms as may exist in the Debtor's or the Post-confirmation Debtor's ordinary course of business; or (iii) upon such terms as may exist pursuant to Order of the Bankruptcy Court or an agreement between such Allowed Administrative Claim holder and the Debtor or Post-confirmation Debtor.

5. With respect to the requirements of section 1129(a)(5) of the Bankruptcy Code, as found above, all of the Debtor's Property shall vest in the Post-Confirmation Estate under the control of the Post-confirmation Debtor, *provided, however*, that upon occurrence of the Auction Commencement Date, the Post-Confirmation Estate Assets shall vest in the Plan Administrator, in accordance with the terms of the Plan.

6. With respect to the requirements of section 1129(a)(6) of the Bankruptcy Code, the Plan does not provide for any changes in rates over which a governmental regulatory commission has jurisdiction. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Chapter 11 Case.

7. With respect to the requirements of section 1129(a)(7) of the Bankruptcy Code:

(a) The liquidation analysis provided with the Disclosure Statement, and the other evidence related thereto that was proffered or adduced at, or prior to, or in affidavits in connection with, the Confirmation Hearing, is reasonable and has not been controverted by other evidence. The methodology used and assumptions made in the liquidation analysis, as supplemented by the evidence proffered or adduced at or prior to the Confirmation Hearing, are reasonable; and

(b) Each Holder of an Allowed Claim or Interest in an Impaired Class has duly and timely accepted the Plan or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

8. With respect to the requirements of section 1129(a)(8) of the Bankruptcy Code, there are three (3) Impaired Classes under the Plan, specifically, Class 1 (Allowed Secured Claim of 2013 NY Funding), Class 2 (Allowed Secured Claim of Surya) and Class 3 (Real Estate Tax Claims). Classes 1 and 2 voted to accept the Plan, however, no vote was received for Class 3, which is deemed to reject the Plan (although, counsel for the Debtor indicated on the record at the Confirmation Hearing that he received an email from the Holder of the Class 3 Real Estate Tax Claims indicating the City of New York did not object to the Plan). Accordingly, section 1129(a)(8) is not satisfied, however, as discussed more fully below, the Plan does not discriminate unfairly and is fair and equitable with respect to Class 3 (Real Estate Tax Claims), as required by 11 U.S.C. § 1129(b).

9. With respect to the requirements of section 1129(a)(9) of the Bankruptcy Code, the Plan provides for treatment of Administrative Claims, Priority Claims and all other Claims entitled to priority pursuant to section 507(a) of the Bankruptcy Code in the manner required pursuant to sections 1129(a)(9)(A), (B) and (C), as applicable.

10. With respect to the requirements of section 1129(a)(10) of the Bankruptcy Code, among other things:

(a) at least one class of Claims is Impaired under the Plan (specifically, Classes 1, 2 and 3 are Impaired); and

(b) at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider (specifically, Class1 and Class 2).

11. With respect to the requirements of section 1129(a)(11) of the Bankruptcy Code, the Plan provides for either the sale of the Debtor's assets by the Post-confirmation Debtor or, upon occurrence of the Auction Commencement Date, the Auction sale of the Property and liquidation of the Post-confirmation Estate Assets by the Plan Administrator, thereby establishing that the requirements of this section have been met. Due to the nature of the Plan and the transactions contemplated therein, consummation of the Plan cannot be followed by a further liquidation of the Debtor, nor any need for further financial reorganization.

12. With respect to the requirements of section 1129(a)(12) of the Bankruptcy Code, the Plan provides that fees payable under section 1930 title 28 of the United States Code, and any accrued or accruing and unpaid fees will be paid by the

Debtor, the Post-Confirmation Debtor or the Disbursing Agent on the Effective Date, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

13. With respect to the requirements of section 1129(a)(13) of the Bankruptcy Code, the Debtor has no obligation to pay any “retiree benefits” (as that term is defined in section 1114 of the Bankruptcy Code).

14. With respect to the requirements of section 1129(b) of the Bankruptcy Code:

(a) Debtor, as proponent of the Plan, has requested that the Court confirm the Plan notwithstanding that the requirements of Bankruptcy Code section 1129(a)(8) have not been satisfied with respect to Class 3 (Real Estate Tax Claims);

(b) the Plan does not discriminate unfairly with respect to Class 3 (Real Estate Tax Claims), which is Impaired under the Plan and which is deemed not to have accepted the Plan, in that no other Classes under the Plan have Claims or Interests that are similar to the Interests in Class 3, and members within such Class are treated similarly;

(c) the Plan is “fair and equitable” (as defined in section 1129(b) of the Bankruptcy Code) with respect to Class 3 (Real Estate Tax Claims) in that (1) the Holders of Class 3 Claims retain the liens securing such claims whether the property subject to such Liens is retained by the Debtor or transferred to another entity up to the Allowed amount of such Claims; and (2) the Holder of the Class 3 claim shall receive on account of such claim deferred cash payments totaling at least the allowed amount of the Class 3 Claim. Further, the Plan provides for the Auction or Sale of the

Debtor's Property free and clear of liens, which will attach to the proceeds of Sale or Auction. Specifically, the Plan provides that 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 Plan also provides for the Post-confirmation Debtor to remain current in the payment of Post-confirmation Date Real Estate Taxes, and for the City of New York to otherwise be fully paid all Allowed Real Estate Tax Claims in accordance with the terms of the Plan.

(d) all requirements of section 1129(b) of the Bankruptcy Code have been satisfied.

L. Any conditions to confirmation contained in the Plan have been satisfied or waived.

M. All documents necessary to implement the Plan shall, upon execution, be valid, binding and enforceable agreements and will not conflict with any federal or state law.

N. No governmental unit has requested a finding that the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, ~~which determination has not been challenged.~~ [JLG]

O. Votes for acceptance and rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure Statement Order, all other applicable provisions of the Bankruptcy Code and all other applicable rules, laws and

regulations.

P. Based upon the record before this Court in the Chapter 11 Case, the Debtor and its directors, partners, officers, agents, consultants, attorneys, independent accountants, advisors, Professionals, financial advisors, and employees (in such capacity), through their participation in the negotiation and preparation of the Plan and the Disclosure Statement and their efforts to confirm the Plan, have solicited acceptances and rejections of the Plan in good faith and participated in the Chapter 11 Case in compliance with the applicable provisions of the Bankruptcy Code and shall be entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article XI of the Plan, as modified herein, as set forth below.

Q. Post-confirmation Debtor, 2013 NY Funding, the Plan Administrator and all parties in interest will be acting in good faith if they proceed to (1) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby and (2) take the actions authorized and directed by this Confirmation Order, notwithstanding an appeal of this Confirmation Order, so long as no stay thereof is issued and in effect pending appeal, even if the Post-Confirmation Debtor, 2013 NY Funding and such parties in interest act with knowledge of such appeal.

R. This Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the injunction, and exculpation provisions set forth in Article XI of the Plan.

S. To the extent that the Debtor has not already been authorized to assume or reject an executory contract or unexpired lease pursuant to a prior order of this Court, and

except as otherwise provided in this Confirmation Order, the Plan constitutes a motion by the Debtor to reject, as of the Effective Date, all executory contracts, including, without limitation, unexpired leases and executory contracts of the Debtor. The decision regarding the rejection of the executory contracts or leases is based on sound business judgment and is in the best interests of the Debtor, its Estate and Creditors. Accordingly, the Plan complies with sections 365 and 1123(b)(2) of the Bankruptcy Code.

T. This Court may properly retain jurisdiction over the Chapter 11 Case, to the fullest extent authorized by law, including, without limitation, (1) to enforce and interpret this Confirmation Order and any of the orders that have been previously entered in the Chapter 11 Case and any stipulations that have been authorized and approved and (2) to issue any order that is necessary or appropriate to implement this Confirmation Order or the Plan, and (3) in accordance with Article XIV of the Plan.

U. All requirements for confirmation of the Plan set forth in section 1129(a), and, to the extent applicable, 1129(b), of the Bankruptcy Code have been satisfied.

V. The Plan is dated and identifies the proponent, thereby complying with all requirements of Bankruptcy Rule 3016.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The findings and conclusions of this Court as set forth herein and in the record of the Confirmation Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applicable to this matter by Bankruptcy Rule 9014. To the extent any of the findings of fact set forth above constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. The Plan, a copy of which is attached hereto as “Exhibit 1” and each of its provisions are confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code, the Plan is valid and enforceable pursuant to its terms and all parties in interest are authorized and empowered, or enjoined, as the case may be, to act in accordance with its terms (including any non-material amendments, modifications or supplements to the disclosures or documents comprising the Plan at any time prior to the Effective Date), and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan. No additional disclosure or further solicitation under Bankruptcy Rule 3019 is necessary. Notwithstanding the foregoing, if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

3. Upon the earlier of (a) the Post Sale and Payment Commencement Date and (b) a Post Event of Default Commencement Date, whichever first occurs (“Appointment Event”), 2013 NY Funding is authorized to file and serve a notice of settlement (“Notice of Settlement”) of the *Order Appointing the Plan Administrator and Approving the Auction Sale Procedures Pursuant to the Debtor’s Amended Plan Of Liquidation dated September 2, 2015, as Modified* (“Appointment Order”), in substantially the form of the order attached hereto at “Exhibit 2”, which Notice of Settlement will include a statement that an Appointment Event has occurred. Service of the Notice of Settlement and Appointment Order on not less than three (3) Business days’ notice (the “Notice Period”) via e-mail to (i) counsel for the Debtor at smarkowitz@tarterkrinsky.com; (ii) counsel for the City of New York at hughs@law.nyc.gov; (iii) Surya at JDave@suryacap.com; and (iv) the Office of the

United States Trustee at richard.morrissey@usdoj.gov, as set forth in the Plan, is and shall be good and sufficient notice for all purposes under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, pursuant to Bankruptcy Rules 2002, 9006, 9007 and 9013, and Bankruptcy Code sections 102(1) and 105(a), and any requirements for other notice are hereby waived. The Appointment Order will be entered as soon as practicable after expiration of the Notice Period.

4. All documents necessary to implement the Plan, including the form of Appointment Order annexed hereto as Exhibit 2, and the Auction Sale Procedures annexed to the Appointment Order as Exhibit B, are hereby approved, and all other relevant and necessary documents shall, upon execution, be valid, binding and enforceable agreements and not be in conflict with any federal or state law.

5. Debtor (and its agents, directors, officers, employees, advisors and attorneys) have, and upon confirmation of the Plan will be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

6. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by Holders of Claims in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any Creditor as representing the actual classification of such Claim under the Plan for distribution

purposes; and (d) shall not be binding on the Debtor.

7. In accordance with section 1142 of the Bankruptcy Code, the Debtor, the Plan Administrator, the Post-confirmation Debtor, 2013 NY Funding and all parties in interest are hereby authorized, empowered and directed forthwith to take any and all actions, and to execute any and all documents, necessary to implement the provisions of the Plan, and to execute, deliver and file (as appropriate) all documents and take all actions provided in or contemplated by any of the same to accomplish the intent of the same. All such actions taken or caused to be taken shall be deemed to have been authorized and approved by this Court and shall be deemed effective pursuant to applicable law and without the need for any required approvals, authorizations or consents. Each of such documents and agreements will, upon execution, be valid, binding and enforceable against the Debtor and any other person who is a party thereto, and are entered into for good and valuable consideration, including the benefits of the Plan, and any or all of such documents and agreements shall be accepted by each of the respective state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

8. In accordance with section 1142 of the Bankruptcy Code and Bankruptcy Rules 7069 and 7070, the Debtor and all of its present and former directors, officers, agents, employees, attorneys, and accountants shall cooperate fully in providing the Post-Confirmation Debtor, 2013 NY Funding and the Plan Administrator with all information regarding and access to the Property; and to execute and deliver such documents and perform such acts, without need for the consent, approval or other action by any director(s), shareholder(s), or limited partner(s), as are reasonably necessary to enable the

Post-confirmation Debtor or the Plan Administrator as applicable to perform its duties with respect to the management of the Property to the extent provided for under the Plan.

9. 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.

10. As set forth in the Debtor's Plan and acknowledged, consented and agreed to by the Gardners by their signing this Order, the sole occupants of the Property are the Debtor's Interest Holders, Michael Gardner and Lynda Gardner (together, the "Gardners"). In the Plan and acknowledged, consented and agreed to by the Gardners by their signing this Order, the Gardners do not have a lease at the Property. The Gardners further acknowledged, consented and agreed to in the Plan, which is confirmed by their signing this Order, 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 shall 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. The Gardners are hereby directed and ordered to voluntarily surrender the Property by no later than thirty (30) days after the Auction Commencement Date, free of all tenants and occupants, in broom clean condition, without any damage to the Property of any kind, and shall not remove any fixtures from the Property. The Gardners shall be responsible for any**

and all damages caused by the Gardners' removal and/or vacatur from the Property. By signing this Order, the Gardners have indicated their acknowledgment, consent and agreement to the foregoing.

11. In the event the Gardners have failed to vacate the Property as set forth herein, effective immediately on and after the thirty-first (31st) after the Auction Commencement Date:

- (a) the U.S. Marshal is hereby authorized 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;
- (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 located at 1145 Park Avenue, New York, New York, including breaking open and entering said premises and evicting all persons, tenants and entities located within said premises;
- (c) the Plan Administrator, on whose behalf the Court issues this part of the Order, will act as substitute custodian of any and all property seized pursuant to this Order and 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 any property of the Gardners and any other Persons, tenants and entities, if any, from the Property, including any third-party claims;
- (d) the Plan Administrator, on whose behalf the Court issues this part of the Order, will account completely for all property seized pursuant to this Order and 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 any property of the Gardners and any other Persons, tenants and entities, if any, from 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 and this Order, including, without limitation, retaining such persons to change the locks of the Property to gain 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.

By signing this Order, the Gardners have indicated their acknowledgment, consent and agreement to the foregoing.

12. By signing this Order the Gardners acknowledge, consent and agree that they are enjoined from and waive any right to make any motion or application of any kind, for any reason whatsoever, or seek an order to show cause in this or any other court (collectively, a “Relief Motion”) to stay their eviction by the U.S. Marshal as set forth herein or to otherwise remain in possession of the Property later than thirty (30) days after the Auction Commencement Date, subject to their being able to file a Relief Motion only upon the existence of a medical emergency or other similar extraordinary circumstance (“Extraordinary Circumstance”) during the one (1) year period immediately following the Confirmation Date, which may be opposed by 2013 NY Funding, the Plan Administrator and any other party in interest. For the avoidance of doubt, by signing this Order the Gardners acknowledge, consent and agree that absent the existence of an Extraordinary Circumstance, any such Relief Motion shall be deemed to be in violation of this Order and of no force and effect. This paragraph replaces paragraphs VI(J)(h) and (i) on pages 40 – 41 of the Plan, which are otherwise deleted in their entirety.

13. By signing this Order, the Gardners acknowledge, consent and agree

that (a) in the event the Gardners make a Relief Motion in contravention of this Order or that is otherwise denied, the U.S. Marshal shall commence or proceed with their eviction as set forth herein without a stay or further notice; (b) the Gardners shall be liable to the Plan Administrator and 2013 NY Funding LLC for all of the respective reasonable legal fees and other costs and expenses incurred by any of them in connection with opposing or in any way related to such Relief Motion (collectively, “Fees and Costs”); and (c) the Gardners waive any right to contest the assessment of any such Fees and Costs. This paragraph replaces paragraph VI(J)(j) on page 41 of the Plan, which is otherwise deleted in its entirety.

Plan Administrator and Auction Sale

14. If the Property is not otherwise sold in accordance with the terms of the Plan, 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.

15. In accordance with the Plan and the Auction Sale Procedures, from and after the Auction Commencement Date, the Plan Administrator is hereby authorized, empowered and directed forthwith (a) to proceed with and conduct the Auction, (b) in connection therewith, to select the Successful Bidder and Back-up Bidder for each Property, and (c) to execute and deliver any and all such documents as shall be necessary and appropriate to effect the sale and conveyance of the Property as provided for under

the Plan.

16. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or other Governmental Unit with respect to the implementation or consummation of the Plan and Disclosure Statement, any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. If the Plan Administrator has been appointed in accordance with the terms of this Order and the Plan, 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 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 Post-Confirmation Debtor, the Post-Confirmation Estate, or payments to be made in connection therewith.

17. 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.

18. The Plan Administrator, any Entity that acquires the Property at the Closing and/or or any agent or representative of such parties is authorized to serve upon all filing and recording officers a notice, in connection with the filing and recording of any instruments of transfer in accordance with the Plan, to evidence and implement this paragraph. All filing and recording officers are hereby directed to accept for filing or recording all instruments to be filed and recorded in accordance with the Plan and the exhibits thereto, without payment of any such taxes. This Court retains jurisdiction to enforce the foregoing direction, by contempt proceedings or otherwise.

19. In accordance the Plan, the Property is being sold without any representations, covenants, guarantees or warranties by 2013 NY Funding LLC, the Post-Confirmation Debtor or the Plan Administrator of any kind or nature whatsoever, and free and clear of any Liens, claims or encumbrances of whatever kind or nature accrued through the Confirmation Date, with such Liens, if any, to attach to the proceeds of sale, which shall be distributed in order of priority in accordance with the Plan, and subject to any Liens, claims 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 Confirmation Date. Any such Liens, claims or encumbrances of whatever kind or nature accruing after the Confirmation Date shall be the responsibility of the Entity acquiring the Sale Assets at the Closing, whether it be 2013 NY funding LLC through its Credit Bid or another Entity in accordance with the terms of the Plan and Auction Sale Procedures. Notwithstanding anything in the Plan or the Disclosure

Statement to the contrary, all Liens of the City of New York shall survive Confirmation of the Plan whether or not a proof of claim for any such claim secured by such Lien is filed.

20. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, waiver, estoppel (judicial, equitable, or otherwise), or laches shall apply to such claims or causes of action upon, or after, the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such claims or causes of action that have been released in the Plan or other Final Order.

21. Without the need for a further Order or authorization of this Court, but subject to the express provisions of this Confirmation Order, Debtor is authorized and empowered to make non-material modifications to the documents filed with the Court or admitted in the record at the Confirmation Hearing in its reasonable business judgment as may be necessary, subject to the consent of 2013 NY Funding LLC to the extent such modifications negatively impact 2013 NY Funding LLC.

22. The Disclosure Statement and the Plan shall constitute due and sufficient notice of the intention to reject all executory contracts and unexpired leases that are not otherwise assumed. This Confirmation Order constitutes an order under section 365(a) of the Bankruptcy Code (a) rejecting any such executory contracts and unexpired leases.

23. 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; and (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 this Plan.

24. Unless otherwise provided by an Order that has heretofore been or is hereinafter entered by this Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

25. No Applications need be filed for compensation and reimbursement by professional persons for services rendered or expenses incurred on or after the Confirmation Date, and such compensation and reimbursement may be paid by the Post-confirmation Debtor or Plan Administrator as applicable, in accordance with the terms of the Plan and ordinary business practices and without order of the Court.

26. After the entry of this Confirmation Order, the Debtor, subject to the prior

consent of 2013 NY Funding LLC may, upon order of this Court, alter, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

27. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the receipt by 2013 NY Funding LLC, the Post-Confirmation Debtor and the Plan Administrator of written notice of any such order.

28. The provisions of the Plan and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any provision of this Confirmation Order shall be deemed a modification to the Plan and shall control and take precedence.

29. All exhibits to the Plan (inclusive of any amendments, modifications, and supplements thereto, including any non-material changes to such exhibits subsequent to the date of this Confirmation Order) and all documents and agreements introduced into evidence by the Debtor at the Confirmation Hearing (including all exhibits and attachments thereto) and documents requiring performance thereof by the Post-Confirmation Debtor are approved in accordance with their respective terms.

30. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent.

31. The failure specifically to include or reference any particular provision of the Plan or any related agreement in this Confirmation Order shall not diminish or impair the efficacy of such provision or such related agreements, it being understood that it is the intent of this Bankruptcy Court that the Plan be confirmed and such related agreements be approved in their entirety.

32. **Article XI(B) of the Plan is deleted in its entirety and replaced with the following language:**

“Exculpation. In accordance with section 1125(e) of the Bankruptcy Code, neither the Debtor, the Post-confirmation Debtor nor 2013 NY Funding LLC, nor any of its or their respective officers, directors, members, employees or other agents, financial advisors, attorneys, and accountants shall have any liability to any Holder of any Claim or Equity Interest for any act or omission in connection with or arising out of the negotiation, preparation and pursuit of confirmation and consummation of the Plan, including, without limitation, any solicitation of acceptance or rejection of the Plan, except for liability based upon willful misconduct or gross negligence as finally determined by a Final Order of the Bankruptcy Court.”

33. At the Confirmation Hearing, Debtor’s counsel informed the Court that the Debtor’s principal, Michael Gardner, had deposited into Debtor’s counsel’s attorney IOLA account the sum of \$90,000.00 to be administered in furtherance of the Plan (the “Initial Plan Contribution”). On consent of Mr. Gardner at the Confirmation Hearing, this Court authorized and directed Debtor’s counsel to release from the Initial Plan

Contribution and deliver to counsel to 2013 NY Funding, Westerman Ball Ederer Miller Zucker & Sharfstein, LLP (“Westerman Ball”), to hold in its non-interest bearing attorney IOLA account the first Interest only Payment that was due on or before October 1, 2015 under the Plan (the “First Interest only Payment”). Westerman Ball consented and agreed at the Confirmation Hearing to hold such funds in escrow pending further order of this Court. Upon entry of this Order, Westerman Ball is authorized to release the First Interest only Payment from escrow and deliver such funds to 2013 NY Funding.

34. Pursuant to the authority of this Court granted under Bankruptcy Rule 3020(e), this Confirmation Order shall not be stayed until the expiration of fourteen (14) days after entry of this Confirmation Order and shall be effective immediately upon its entry. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: New York, New York
October 14, 2015

/s/ James L. Garrity, Jr.
THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

READ, ACKNOWLEDGED, CONSENTED
AND AGREED TO:

/s/ Michael Gardner
Michael Gardner

/s/ Lynda Gardner
Lynda Gardner