

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

**In re:**

**S & Y ENTERPRISES, LLC,**

**Debtor.**

Chapter 11

Case No. 10-50623 (ESS)

**THIRD AMENDED DISCLOSURE STATEMENT  
OF S&Y ENTERPRISES, LLC DATED AS OF ~~JANUARY 18,~~ MARCH 2, 2012**

**I. INTRODUCTION**

This is the third amended disclosure statement (the “Third Amended Disclosure Statement”) in the chapter 11 case of S&Y Enterprises, LLC (the “Debtor” or “S&Y” and, together with debtor Sky Lofts, LLC, the “Debtors”<sup>1</sup>). This Third Amended Disclosure Statement contains a summary of the principal provisions of the Third Amended Plan of Reorganization of S&Y (the “Third Amended Plan”)<sup>2</sup> filed by the Debtor on ~~January 27,~~ March 2, 2012. A copy of the Third Amended Plan is attached to this Third Amended Disclosure Statement as Exhibit A. *You should read the Third Amended Plan and this Third Amended Disclosure Statement carefully and discuss the documents with your attorney. If you do not have an attorney, you may wish to consult one.*

The proposed distributions under the Third Amended Plan are discussed at pages ~~13~~14-~~18~~19 of this Third Amended Disclosure Statement.

**A. Purpose of This Document.**

This Third Amended Disclosure Statement describes:

- The Debtor and significant events during its chapter 11 case;

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<sup>1</sup> Sky Lofts, LLC, which filed for relief under chapter 11 of the Bankruptcy Code on December 8, 2010 in the Eastern District of New York (Case No. 10-51510-ESS), is an entity that shares the same management and equity ownership as the Debtor.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Third Amended Plan.

- How the Third Amended Plan proposes to treat Claims or Interests of the type you hold (*i.e.*, what you will receive on your Claim or Interest in the event the Third Amended Plan is confirmed);
- Who can vote or object with respect to the Third Amended Plan;
- What factors the Bankruptcy Court will consider when deciding whether to confirm the Third Amended Plan;
- Why the Debtor believes the Third Amended Plan is feasible; and
- The effect of confirmation of the Third Amended Plan.

While the Debtor believes that the summaries contained herein provide adequate information with respect to the documents summarized, such summaries are qualified to the extent they do not set forth the entire text of such documents. This Third Amended Disclosure Statement describes the Third Amended Plan, but it is the Third Amended Plan itself that will, if confirmed, establish your rights.

**B. Deadlines for Objecting to the Third Amended Plan, Date of Plan Confirmation Hearing.**

The Bankruptcy Court has not yet confirmed the Third Amended Plan described in this Third Amended Disclosure Statement. This section describes the procedures pursuant to which the Third Amended Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Finally Approve This Third Amended Disclosure Statement and Confirm the Third Amended Plan.*

The hearing at which the Bankruptcy Court will determine whether to finally approve this Third Amended Disclosure Statement will take place on [ ] March 9, 2012 at 9:00 a.m., at the U.S. Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Courtroom 3585, Brooklyn, New York 11201.

2. *Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Third Amended Plan.*

Objections to this Third Amended Disclosure Statement or to the confirmation of the Third Amended Plan must be filed with the Bankruptcy Court by [ ] February 23, 2012, with a courtesy copy to Chambers and served upon each of the following:

(a) *Counsel for the Debtors:*

David Carlebach, Esq.  
Law Offices of David Carlebach Esq.  
40 Exchange Place, Suite 1306  
New York, New York 10005

(b) *The United States Trustee:*

Jacqueline Frome, Esq.  
Office of the US Trustee  
271 Cadman Plaza East, Suite 4529  
Brooklyn, New York 11201

(c) *Counsel for CAB Bedford LLC:*

Kelley A. Cornish, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019

(d) *Counsel for Capital One, N.A.:*

Joseph C. Savino, Esq.  
Lazer, Aptheker, Rosella & Yedid, P.C.  
Melville Law Center  
225 Old Country Road  
Melville, New York 11747-2712

(e) *Counsel for Galster Funding LLC:*

Brendan M. Scott, Esq.  
Klestadt & Winters LLP  
570 Seventh Avenue, 17th Floor  
New York, New York 10018

(f) *Counsel for North 3rd Development, LLC:*

Gregory C. Plotko, Esq.  
Kramer Levin Naftalis & Frankel  
1177 Avenue of the Americas  
New York, New York 10036

(g) *Counsel for Yehuda Backer:*

Steven J. Reisman, Esq.  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178-0061

3. *Contact Person for More Information.*

If you want additional information about the Third Amended Plan, please contact:

David Carlebach, Esq.  
Law Offices of David Carlebach Esq.  
40 Exchange Place, Suite 1306  
New York, New York 10005

**II. BACKGROUND**

**A. Description and History of the Debtor’s Business.**

The Debtor, S&Y, is a New York corporation formed on November 21, 1996 (it was formerly known as Adar Builders and Realty, LLC - the name was changed to S&Y Enterprises, LLC on January 22, 1997). S&Y is the owner of certain real estate located at 130 North 4th St. (a/k/a 193 Berry Street, a/k/a 240 Bedford Ave.), Brooklyn, New York. S&Y’s affiliate, Sky Lofts, LLC, is the owner of certain adjoining real estate located at 242-246 Bedford Avenue, Brooklyn, New York (the property owned by S&Y and Sky Lofts, together, the “Property”). S&Y and Sky Lofts have continued to own and operate the Property since the filing of their bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) on November 11, 2010 and December 8, 2010, respectively, as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

**B. Insiders of the Debtor.**

The following is a list of the names of S&Y’s insiders as defined in section 101(31) of the Bankruptcy Code and their relationship to the Debtor, as well as compensation paid during the pendency of this Bankruptcy Case.

<u>Name of Insider</u>	<u>Relationship to Debtor</u>	<u>Compensation During Pendency of Chapter 11 Case</u>
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<u>Name of Insider</u>	<u>Relationship to Debtor</u>	<u>Compensation During Pendency of Chapter 11 Case</u>
Yehuda Backer	Managing Member	\$ 9,564.27
Ruthe Backer	Member	\$ 0.00

**C. Management of the Debtor Before and During the Bankruptcy.**

During the two years prior to the Petition Date and during the Bankruptcy Case, Yehuda Backer was the Managing Member of S&Y. Following the Effective Date, Mr. Backer will continue to be the Managing Member of S&Y.

**D. Events Leading to Chapter 11 Filing.**

Before the Petition Date, Capital One Bank, NA (“Capital One”) declared S&Y to be in default of its obligations to Capital One. By letter dated November 2, 2010, Capital One sent a notice of default (the “Notice”), and it made a demand for payment of the total balance due. In the Notice, Capital One advised S&Y that if it failed to cure the alleged default by November 8, 2010, Capital One would record the deed it held to the real estate owned by S&Y. Subsequently, Capital One agreed that the deadline for curing any default would be extended to November 12, 2010. S&Y was unable to perform as required in the Notice, and therefore filed a voluntary chapter 11 petition on the S&Y Petition Date to avoid the recording of the deed.

**E. Significant Events During the Bankruptcy Case.**

1. *The Original Sale Agreement and the Original Plans*

In early July 2010, principals of CA Bedford Holdings LLC (“CA Holdings”), CAB Bedford’s corporate parent, entered into negotiations with the Debtors’ managing member, Yehuda Backer with respect to a potential purchase of the Property.

On July 12, 2010, the Debtors entered into an Agreement of Sale (the “Original Sale Agreement”) with CAB Bedford for the purchase of the Property. The Original Sale Agreement provides for a sale of the Property to CAB Bedford in the amount of \$20 million in cash and a 60-day closing period without any closing contingencies.

Concurrent with the execution of the Original Sale Agreement, CA Holdings and Sky Lofts entered into the Operating Agreement of CAB Bedford LLC (the “Operating Agreement”), pursuant to which CA Holdings was appointed as Manager, and CA Holdings and Sky Lofts were allocated a 75% interest and a 25% interest, respectively, in the joint venture.

On October 15, 2010, the Debtors and CAB Bedford entered into the First Amendment to the Original Sale Agreement, pursuant to which the parties mutually

agreed to extend the closing date to April 15, 2011. Also, pursuant to the First Amendment, CA Holdings made a \$575,000.00 loan to the Debtors, which CA Holdings advanced, secured by a subordinate mortgage on the Property.

On November 22, 2010, the parties entered into the Second Amendment to the Original Sale Agreement, which, among other things, reduced the purchase price for the Property to \$16.5 million. Among other reasons, the price reduction reflected the realization of increased costs and increased difficulty with obtaining the zoning preconditional waiver contemplated by the parties. In addition, in consideration for the purchase price reduction, CA Holdings agreed to amend the Operating Agreement to eliminate the requirement that Sky Lofts fund any capital requirements of the joint venture. Thus, on November 23, 2010, the parties also entered into an Amended and Restated Operating Agreement. The Second Amendment was expressly subject to approval by the Bankruptcy Court in the S&Y Bankruptcy Case. On the same date, the parties entered into the Side Agreement which makes reference to the Original Sale Agreement, as amended, and the Operating Agreement, and provides, among other things, that Sky Lofts' interest in CAB Bedford would "spring into existence upon closing on the acquisition of the Property and not prior thereto."

On February 24, 2011, the Debtors filed disclosure statements (as amended on March 7, 2011, the "Original Disclosure Statements") for two corresponding plans of reorganization (as amended on March 7, 2011, the "Original Plans" and together with the Original Disclosure Statements, the "Original Plan Documents") that contemplated approval of the sale of the Property to CAB Bedford under the Second Amendment to the Original Sale Agreement.

Because all non-insider creditors would be paid in full with proceeds from the consummation of the Original Sale Agreement, the Debtors sought to have the Original Plans heard concurrently with approval of the corresponding disclosure statements. By Orders dated March 9, 2011, the Bankruptcy Court scheduled a hearing on the adequacy of the Original Disclosure Statements and confirmation of the Original Plans for April 28, 2011 (Sky Lofts Dkt. No. 41; S&Y Dkt. No. 35).

On April 27, 2011, the Debtors postponed the April 28, 2011 hearing to May 26, 2011.

## 2. *The New Sale Agreement and the Second Amended Plans*

On May 11, 2011, the Debtors filed the Second Amended Disclosure Statement of Sky Lofts dated May 11, 2011 (the "Sky Lofts Disclosure Statement") [Dkt. No. 58], the Second Amended Disclosure Statement of S&Y, dated May 11, 2011 (the "S&Y Disclosure Statement" and, together with the Sky Lofts Disclosure Statement, the "Second Amended Disclosure Statements" [Dkt. No. 42], and confirmation of the Second Amended Plan of Reorganization of Sky Lofts, dated May 11, 2011 (the "Sky Lofts Plan") [Dkt. No. 59] and the Second Amended Plan of Reorganization of S&Y, dated May 11, 2011 (the "S&Y Plan" and, together with the Sky Lofts Plan, the "the Second

Amended Plans” and collectively with the New Disclosure Statements, the “Second Amended Plan Documents”) [Dkt. No. 43].

The Second Amended Plan Documents were based upon a new agreement dated as of May 8, 2011 (the “New Sale Agreement”) to sell the Property to a new buyer named Bedford JV LLC (the “New Purchaser”) for \$21 million, plus certain additional consideration provided to the Debtors’ Managing Members. The Debtors intended to seek approval of the Second Amended Disclosure Statements and confirmation of the Second Amended Plans at the May 26, 2011 hearing. *See* Second Amended Disclosure Statements § I.B.1.

The New Sale Agreement, upon which the Second Amended Plans were premised, provided, among other things, (i) a seller covenant to terminate all negotiations with other parties concerning a sale of the Property and (ii) an outside closing date of up to five (5) years that could be further extended by the New Purchaser “for a period not to exceed an additional five (5) years.” New Sale Agreement §§ 9(b)(v); 18.

In addition to entering into the New Sale Agreement, the Managing Member of the Debtors, Yehuda Backer (and, together with his wife, Ruthe Backer, a Member of S&Y, the “Backers”) and Princeton Bedford, LLC (“Princeton Bedford”) (an affiliate of Princeton Holdings, LLC (“Princeton Holdings”) and the New Purchaser entered into a side letter agreement (the “Side Letter Agreement”), which was not filed with the Bankruptcy Court. The Side Letter Agreement provided, among other things, that the Backers would use their “best efforts” to seek approval of the New Disclosure Statements “as expeditiously as possible” and “take all other necessary and appropriate actions to support confirmation of the [New Plans];” *See* Side Letter Agreement § 1.

The Side Letter Agreement also refers to the following additional agreements that the Backers entered into with the New Purchaser including: (i) that certain Promissory Note dated as of May 8, 2011 by Yehuda Backer, Ruthe Backer, Samuel Backer, and The Backer Group LLC to Princeton Holdings and (ii) that certain Collateral Assignment Agreement dated as of May 8, 2011 by and among The Backer Group LLC and Mr. Backer, as assignor, and Princeton Holdings, as assignee.

On June 6, 2011, the Debtors filed a notice of transfer of their insider claims to Princeton Holdings (*see* Sky Lofts Dkt. No. 69; S&Y Dkt. Nos. 53, 54).

Finally, pursuant to the Limited Liability Company Operating Agreement of the New Purchaser dated as of May 8, 2011, the Backers as the “Backer Member,” became a 35% member of the New Purchaser.

### 3. *The CAB Plan Objection*

On May 23, 2011, CAB Bedford filed its (I) Request for Adjournment of May 26, 2011 Disclosure Statement/Plan Confirmation Hearing and (II) Objection to the Approval of the Debtors’ Second Amended Disclosure Statements dated May 11, 2011 and the Debtors’ Second Amended Plans of Reorganization dated May 11, 2011. (Sky

Lofts Dkt. No. 63; S&Y Dkt. No. 44) (the “CAB Plan Objection”). As set forth in the CAB Plan Objection, CAB Bedford asserted that the sale of the Property to the New Purchaser would give rise to substantial damages in favor of CAB Bedford, thereby increasing total non-insider claims to an amount well in excess of the \$21 million cash purchase price under the New Sale Agreement. CAB Bedford, therefore, alleged that creditors would be impaired upon rejection of the Original Sale Agreement, and the Debtors could not confirm the Second Amended Plans without solicitation as required by the Bankruptcy Code.

4. *Adjournment of the Hearing to Approve the Second Amended Disclosure Statements and Confirm the Second Amended Plans*

On May 24, 2011, the Bankruptcy Court held an emergency hearing at which it determined that the Debtors could neither proceed with approval of the Second Amended Disclosure Statements nor confirmation of the Second Amended Plans.

In addition, at a status hearing on May 26, 2011, the Bankruptcy Court authorized a discovery process with respect to, among other things, the issues raised in the CAB Plan Objection.

In connection with the discovery phase of the bankruptcy proceeding, the Backers submitted to depositions. In addition, the principals of CA Holdings, Alex Adjmi and Michael Cayre, were deposed by Debtors’ counsel for two full days, and the principal of Bedford JV, Joseph Tabak, was deposed.

Additionally, the parties also served interrogatories upon each other and exchanged numerous documents regarding each party’s claims and positions. CAB Bedford produced documents demonstrating CA Holdings’ lease negotiations with several high-end retail tenants, extensive work to resolve the difficult zoning restrictions, and other efforts to develop the Property as contemplated by the Original Sale Agreement and amendment thereto.

The hearing to consider the Second Amended Plan Documents has been adjourned without a new hearing date having yet been set.

5. *The Rejection Motions*

On June 14, 2011, the Debtors filed a motion seeking to reject the Original Sale Agreement and to fix CAB Bedford’s resultant damage claims at \$100,000.00 (as amended on July 19, 2011, the “Rejection Motions”).

On August 1, 2011, CAB Bedford filed its Objection to the Debtors’ Amended Motions for Orders Pursuant to Sections 105(a) and 365(a) of the Bankruptcy Code to (I) Reject the Executory Contract of CAB Bedford and (II) Fix CAB Bedford’s Rejection Damage Claims (Sky Lofts Dkt. No. 86; S&Y Dkt. No. 79) (the “Objection”). In the Objection, CAB Bedford asserted that upon rejection of the Original Sale Agreement it would be entitled to assert a substantial rejection damage claim on account



of its right to specific performance under the Original Sale Agreement. In addition, CAB Bedford also alleged that it was entitled to assert an unjust enrichment claim for the substantial value conferred on the Debtors as a result of its efforts and expenditures in improving the Property in anticipation of consummating the Original Sale Agreement.

On August 8, 2011, the Debtors filed Replies in Support of the Rejection Motions (Sky Lofts Dkt. No. 88; S&Y Dkt. No. 80) (the "Replies").

In response to the Replies, on August 10, 2011, CAB Bedford filed a Declaration of Kelley A. Cornish in Response to the Replies (Sky Lofts Dkt. No. 91; S&Y Dkt. No. 83) (the "Declarations").

The hearing to consider the Rejection Motions has been adjourned. A status conference scheduled for January 10, 2012 with respect to these issues has also been adjourned.

As discussed below, however, the Debtors, CAB Bedford and the Backers have agreed to enter into the Rejection Stipulation, which consensually resolves the issues pertaining to the Rejection Motions. Accordingly, the Debtors have filed a Motion for An Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) Approving the Rejection Stipulation and Fixing the Amount of CAB Bedford's Rejection Damage Claims (the "Settlement Motion") [Sky Lofts Dkt. No. 120; S&Y Dkt. No. 107]. A hearing to consider the Settlement Motion is scheduled for March 9, 2012.

#### 6. *The CAB Plan Documents*

On August 10, 2011, CAB Bedford filed the following documents with the Bankruptcy Court: (i) the Disclosure Statement for CAB Bedford's Plan of Reorganization of S&Y dated August 10, 2011 [Dkt. No. 84]; (ii) the Disclosure Statement for CAB Bedford's Plan of Reorganization of Sky Lofts dated August 10, 2011 [Dkt. No. 92]; (iii) a Plan of Reorganization of S&Y dated August 10, 2011 [Dkt. No. 85] and (iv) a Plan of Reorganization of Sky Lofts dated August 10, 2011 [Dkt. No. 92] (collectively, the "CAB Plan Documents"). Pursuant to the CAB Plan Documents, CAB Bedford provided that it was willing to purchase the Property on certain revised terms and conditions set forth in such documents.

A hearing to consider the CAB Plan Documents has been adjourned without a new hearing date having yet been set.

#### 7. *CAB Bedford's New Offer Under the Third Amended Plan Documents*

Since CAB Bedford filed its competing CAB Plan Documents, the Debtors, CAB Bedford, the New Purchaser and the Debtors' Managing Member have engaged in extensive arms'-length, good faith negotiations, including participating in a mediation session with a neutral mediator, in an attempt to reach a global consensual

resolution of the matters presented by the Rejection Motions and the competing chapter 11 plans of reorganization, but ultimately were unable to reach a global agreement with respect to these issues.

Following these extensive negotiations and the conclusion of the discovery process, the Debtors entered into further negotiations with CAB Bedford because it became apparent to the Debtors that continuing to pursue confirmation of the Second Amended Plans was not in the best interests of the Debtors' estates.

As described in the Declaration of Yehuda Backer In Support of (I) Confirmation of (A) the Third Amended Plan of Reorganization of S&Y Dated January 18, 2012 and (B) the Third Amended Plan of Reorganization of Sky Lofts Dated January 18, 2012 and (II) Approval of the Rejection Motions (the "Declaration"), which is being filed with the Bankruptcy Court concurrently with the Third Amended Plans and Third Amended Disclosure Statements, the Debtors' decision to pursue confirmation of the Third Amended Plans was based, among other things, on the fact that continuing to pursue confirmation of the Second Amended Plans would require protracted, expensive, complicated litigation to determine the amount of CAB Bedford's damage claims, and the high likelihood that such claims would ultimately be determined to be very substantial, making confirmation of the Second Amended Plans (which purported to pay all creditors in full in cash) impossible. Moreover, the delay and uncertainty presented by pursuit of confirmation of the Second Amended Plans would jeopardize the Debtors' chances of selling and developing the Property promptly to maximize its value.

The Debtors' negotiations with CAB Bedford were ultimately successful and resulted in the parties entering into the Amended CAB Sale Agreement and Amended CAB Operating Agreement, which are based on new and improved terms and conditions with respect to CAB Bedford's offer to purchase of the Property (the "New CAB Offer"). Specifically, CAB Bedford has agreed to purchase the Property for cash in the amount of \$21,000,000, plus indemnification for fees and expenses incurred on any claims that might be asserted by Princeton Holdings or related parties. CAB Bedford also has agreed to waive its rejection damage claims as a result of the rejection of the Original Sale Agreement. In addition, Sky Lofts will be a 35% member in CAB Bedford, and the Backers will retain their respective equity interests in the Debtors.

Additionally, [as described in the Settlement Motion](#), CAB Bedford, the Debtors and the Debtors' Members have entered into the Rejection Stipulation to resolve and settle all outstanding issues related to the Rejection Motions. Specifically, the Rejection Stipulation provides that (i) the Original Sale Agreement will be rejected as of the date upon which the order approving the Rejection Stipulation is entered and (ii) CAB Bedford's resultant damage claims will be fixed and stipulated to be twelve million dollars (\$12,000,000.00) (the "Rejection Damage Claim"), which the Debtors believe is a reasonable sum for which to settle the Rejection Motions given the Property's value and CAB Bedford's substantial efforts to develop the Property since July 2010. Further, as ~~part of~~ [described in the Settlement Motion, if](#) the Rejection Stipulation [is approved](#)

by the Bankruptcy Court, CAB Bedford has agreed to waive the Rejection Damage Claim conditioned upon confirmation and consummation of the Third Amended Plans.

As described in the Declaration, the Debtors' entry into the Rejection Stipulation is in the best interests of the Debtors' estates and, is an appropriate discharge of the Debtors' fiduciary duties to creditors. As an initial matter, the Rejection Stipulation consensually resolves all outstanding issues relating to the rejection of the Original Sale Agreement and the fixing of CAB Bedford's resultant damage claims. In addition, the parties entry into the Rejection Stipulation settles the ongoing complex litigation of these issues, which has resulted not only in significant expense to the Debtors' estates but also considerable delay in the Debtors' efforts to sell the Property for the maximum benefit to the estates. Such a resolution is beneficial to the Debtors' estates and creditors because continued litigation of these issues would likely take many months to resolve while the Property remains undeveloped.

In addition, because the Debtors and CAB Bedford have consensually agreed to the rejection of the Original Sale Agreement, the Debtors are now free to enter into the Amended CAB Sale Agreement, which provides the highest and best offer for the Property, and is in the best interests of the Debtors' estates inasmuch as all creditors will be paid in full in cash upon consummation of the Third Amended Plans.

8. *The New CAB Offer is the Highest and Best Offer for the Property and Therefore, the Third Amended Plans Should be Confirmed*

Pursuant to the Third Amended Plans, all Allowed Claims will be paid in full in cash by virtue of CAB Bedford's waiver of its Rejection Damage Claim under the Rejection Stipulation. Accordingly, the New CAB Offer, as set forth in the Third Amended Plans, is superior because it provides certainty of prompt payment in full for creditors by avoiding the expense and delay of litigation over the complex issues of the nature and amount of CAB Bedford's damages claims, which are resolved pursuant to the Rejection Stipulation, as well as extensive litigation over the competing plans.

#### 9. Recent Events

On January 9, 2012, the Princeton Note matured by its terms. By letter dated February 2, 2012, the lender provided notice to The Backer Group of alleged Events of Default under the Princeton Note due to non-payment of interest and principal due thereunder.

On February 14, 2012, the Backers, The Backer Group LLC and BFN Realty Associates, LLC entered into that certain promissory note, as borrowers, in favor of Terra Capital Group LLC ("Terra Capital Group"), an entity related to CA Holdings, as lender (the "Terra Capital Note"), pursuant to which Terra Capital made a loan to the Backers, The Backer Group LLC and BFN Realty Associates, LLC in the amount of \$3,750,000.00, the proceeds of which were used to repay the Princeton Note in full.

In connection therewith, the parties also entered into that certain Collateral Assignment Agreement dated as of February 14, 2012 by and among The Backer Group LLC, Pacific Dean Realty LLC, Maple St., LLC and Mr. Backer, as assignors, and Terra Capital Group, as assignee (the “Terra Capital Collateral Assignment Agreement”), pursuant to which the assignors collaterally assigned certain “insider claims” in the Debtors’ bankruptcy cases to Terra Capital Group as security for the Terra Capital Note. Accordingly, on February 21, 2012, the assignors filed certain Evidences of Transfer of Claim For Security (the “Terra Capital Transfer Notices”) (See Sky Lofts Dkt. No. 121; S&Y Dkt. Nos. 108, 109, 110). The Terra Capital Transfer Notices superseded the previously filed Princeton Transfer Notices (described above).

The following agreements were also executed in connection with the above referenced transaction: (i) that certain Pledge and Security Agreement dated as of February 14, 2012, by and between Yehuda Backer and Terra Capital Group, whereby Yehuda Backer collaterally pledged his equity interests in BFN Realty Associates, LLC, The Backer Group LLC, Sky Lofts and S&Y to Terra Capital Group as security for the Terra Capital Note; (ii) that certain Pledge and Security Agreement dated as of February 14, 2012, by and between Ruthe Backer and Terra Capital Group, whereby Ruthe Backer collaterally pledged her equity interests in BFN Realty Associates, LLC, The Backer Group LLC and S&Y to Terra Capital Group as security for the Terra Capital Note; (iii) those certain Pledged Entity Consents dated as of February 14, 2012, by each of S&Y, Sky Lofts, BFN Realty Associates, LLC and The Backer Group LLC, (as Pledged Entities (as defined therein)) for the benefit of Terra Capital Group (as Lender); and (iv) that certain Second Mortgage (and Assignment of Leases and Rents and Security Agreement), dated as of February 14, 2012, by and between BFN Realty Associates, LLC, as mortgagor, to Terra Capital Group, as mortgagee.

10.     ~~9.~~ *Termination of the Debtors’ Exclusivity*

Section 1121 of the Bankruptcy Code establishes the time periods within which a debtor has the exclusive right to file and solicit acceptances of a plan of reorganization. *See* 11 U.S.C. §§ 1121(b), (c). Sections 1121(b) and (c) afford a debtor a 120-day period to propose a plan and a 180-day period to solicit acceptance of such plan (as of the petition date). *See id.*

Section 1121(c)(3) of the Bankruptcy Code provides that, “[a]ny party in interest, including . . . a creditor . . . may file a plan if and only if – the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interest that is impaired under the plan.” 11 U.S.C. § 1121(c)(3). The Bankruptcy Code thus gives debtors an additional sixty (60) days of exclusivity (measured from the petition date) upon the filing of a proposed plan within the proscribed 120-day period to solicit acceptances from impaired creditors.

S&Y filed its chapter 11 petition on November 11, 2010, and Sky Lofts filed its chapter 11 petition on December 8, 2010. The Debtors have not, within the exclusive periods, sought or obtained an extension of the exclusivity periods. Therefore, S&Y's exclusivity period terminated on May 9, 2011 and Sky Loft's exclusivity period terminated on June 6, 2011.

11. [~~10.~~ *Miscellaneous*]

There have not been any asset sales outside the ordinary course of business, debtor-in-possession financing, or cash collateral orders.

On December 2, 2010, an Application to Employ the Law Offices of David Carlebach, Esq. as counsel to S&Y was filed with the Bankruptcy Court (Dkt. No. 12), and on February 25, 2011, the Bankruptcy Court entered an Order granting Debtor's application to employ the Law Offices of David Carlebach, Esq. as Counsel to the Debtor (Dkt. No. 30).

In the S&Y chapter 11 case, on January 11, 2011, the Bankruptcy Court established the bar date for all creditors to file proofs of claim, that deadline is March 4, 2011 (Dkt. No. 20).

On December 6, 2010, S&Y commenced an adversary proceeding against Capital One captioned *S&Y Enterprises LLC v. Capital One, N.A.*, Adversary Proceeding No. 10-01328-ESS (the "Capital One Adversary Proceeding"). In its Complaint, S&Y alleges, *inter alia*, that Capital One asserted baseless defaults under the loan documents so that it could record the deed it held and wrest ownership of the Property from S&Y. The Complaint also alleges, *inter alia*, that Capital One damaged S&Y by sabotaging the sale of the S&Y Property. The Complaint seeks compensatory and punitive damages. On January 26, 2011, S&Y filed its Amended Complaint in the Capital One Adversary Proceeding (the "Amended Complaint"). The allegations concerning S&Y remained essentially the same as in the original Complaint. The Amended Complaint added Sky Lofts and debtor affiliate Twin City Lofts, LLC as plaintiffs. The Amended Complaint seeks both compensatory and punitive damages by all plaintiffs against Capital One.

On October 27, 2011, the Debtors entered into the Capital One Settlement Stipulation to consensually resolve the issues involved in the Capital One Adversary Proceeding, specifically, issues concerning the amount of Capital One's claims against S&Y. On November 8, 2011, the Debtors filed a motion (the "Capital One Settlement Motion") seeking to (i) approve the Capital One Settlement Stipulation and (ii) keep the settlement amount confidential. On November 22, 2011, CAB Bedford and North 3rd Development, LLC filed limited objections to the Capital One Settlement Motion [See Adv. Pro. Dkt. Nos. 38, 40]. The hearing to consider the Capital One Settlement Motion has been adjourned.

The following actions or proceedings were pending against the Debtor and its property, and are now stayed as against the Debtor:

*North 3rd Development, LLC v. Sky Lofts, LLC, et al.*  
(Kings County, New York, Civil Supreme Court, Index No. 29927/2010).

**F. Projected Recovery of Avoidable Transfers.**

The Debtor does not intend to pursue any known preference, fraudulent conveyance, or other avoidance actions.

**G. Claims Objections.**

The procedures for resolving Disputed Claims are set forth in Article VII of the Third Amended Plan.

**III. SUMMARY OF THE THIRD AMENDED PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. Purpose of the Third Amended Plan for Reorganization.**

As required by the Bankruptcy Code, the Third Amended Plan places Claims and Interests in various classes and describes the treatment each class will receive. The Third Amended Plan also states whether each class of Claims or Interests is impaired or unimpaired. If the Third Amended Plan is confirmed, your recovery will be limited to the amount provided in the Third Amended Plan.

**B. Unclassified Claims.**

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Third Amended Plan. They may, however, object if, in their view, their treatment under the Third Amended Plan does not comply with that required by the Bankruptcy Code. As such, the Debtor has not placed the following Claim in any class:

1. *Administrative Expenses.*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under section 507(a)(2) of the Bankruptcy Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within twenty (20) days before Petition Date. The following chart lists the Debtor's estimated administrative expenses, according to the Third Amended Disclosure Statements, and their proposed treatment under the Third Amended Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Allowed Professional Fees, as approved by the Bankruptcy Court (counsel and accountant)	Approximately \$ <del>200,000.00</del> <u>175,000.00</u>	Paid in full on the Initial Distribution Date, or, if Allowed subsequent to the Effective Date, then within ten (10) days of entry of a Final Order providing for such Allowance, by the Debtor using the proceeds of the sale of the Property.
Office of the U.S. Trustee fees	\$325.00	Paid in full on the Initial Distribution Date.

**C. Classes of Claims and Interests.**

The following are the classes of Claims set forth in the Third Amended Plan, and the proposed treatment that they will receive under the Third Amended Plan:

1. *Classes of Secured Claims.*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under section 506 of the Bankruptcy Code. If the value of the collateral or setoff securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured prepetition Claims and the proposed treatment under the Third Amended Plan:

Class #	Description	Insider?	Impairment	Treatment
I	<p><i>Capital One Secured Claim</i></p> <p>Collateral description: First Mortgage on the S&amp;Y Property located at: 130 North 4<sup>th</sup> St. (a/k/a 193 Berry Street, a/k/a 240 Bedford Ave.), Brooklyn, New York</p> <p>(i) If the Capital One Settlement Stipulation is approved by the Bankruptcy Court, the amount provided therein, or (ii) the aggregate amount of principal, interest and other amounts, if any, due and owing under the applicable loan documents.</p>	NO	Unimpaired	The Capital One Secured Claim shall be Allowed pursuant to this Third Amended Plan on the Effective Date and paid in full in cash on the Initial Distribution Date using funds from the Purchase Consideration.
II	<p><i>CAB Bedford Secured Claim</i></p> <p>Collateral description: Mortgage on S&amp;Y's Property located at: 130 North 4th St. (a/k/a 193 Berry Street, a/k/a 240 Bedford Ave.), Brooklyn, New York</p> <p>\$575,000.00 plus all accrued and unpaid interest</p>	NO	Unimpaired	Paid in full in cash on the Initial Distribution Date.
III	<p><i>Galster Funding Secured Claim</i></p> <p>Collateral description:</p>	NO	Unimpaired	Paid in full in cash on the Initial Distribution Date.



<b>Class #</b>	<b>Description</b>	<b>Insider?</b>	<b>Impairment</b>	<b>Treatment</b>
	Mortgage on S&Y's property located at: 130 North 4th St. (a/k/a 193 Berry Street, a/k/a 240 Bedford Ave.), Brooklyn, New York  Allowed Secured Amount: \$750,000.00, plus accrued and unpaid interest			

2. *Classes of Priority Unsecured Claims.*

Certain priority unsecured claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Bankruptcy Code are required to be placed in classes.

<b><u>Class #</u></b>	<b><u>Description</u></b>	<b><u>Insider?</u></b>	<b><u>Impairment</u></b>	<b><u>Treatment</u></b>
IV	<i>Priority Unsecured Claims of:</i>  New York State Department of Taxation and Finance: \$100.00  New York City Department of Finance: \$49,433.58.00  Internal Revenue Service: \$143.00	NO	Unimpaired	Paid in full in cash on the Initial Distribution Date.

3. *Classes of General Unsecured Claims.*

General unsecured claims are not secured by property of the estate and are not entitled to priority under section 507(a) of the Bankruptcy Code.

The following chart lists all classes containing the Debtor's unsecured prepetition claims and the proposed treatment under the Third Amended Plan:

<b><u>Class #</u></b>	<b><u>Description</u></b>	<b><u>Insider?</u></b>	<b><u>Impairment</u></b>	<b><u>Treatment</u></b>
V	All non-Insider general unsecured Claims, which	NO	Unimpaired	Class V Claims, to the extent Allowed

<u>Class #</u>	<u>Description</u>	<u>Insider?</u>	<u>Impairment</u>	<u>Treatment</u>
	aggregate to \$45,106.00, plus the North 3rd S&Y Claim (of \$0 to \$800,569.00) and non-Insider general unsecured Claims arising from the rejection of any executory contracts (excluding any Claim of CAB Bedford arising from or in connection with the rejection of the Original Sale Agreement, which is waived pursuant to the Amended CAB Sale Agreement).			on the Effective Date, shall be paid in full in cash on the Initial Distribution Date. To the extent a Class V Claim is not Allowed or constitutes a Disputed Claim as of the Effective Date, an amount equal to the disputed portion of any such Claim shall be held in the Disputed Claims Reserve pending resolution of the Claim. The Allowed amount of the Claim shall be paid in full in cash to the holder of such Claim within ten (10) days of entry of a Final Order providing for such allowance.
VI	All Insider general unsecured Claims, which aggregate to \$2,269,000.00.	YES	Unimpaired	Class VI Claims shall be Allowed in the amounts set forth in the Debtor's Schedules and Statements on the Effective Date and shall be paid in full in cash on the Initial Distribution Date.

4. *Class of Equity Interest Holders.*

Equity Interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity Interest holders.

The following chart sets forth the Third Amended Plan's proposed treatment of the class of equity Interest holders.

<u>Class #</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
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VII	Equity Interest holders: Yehuda Backer 99% Equity Interest holder Ruthe Backer 1% Equity Interest holder	Unimpaired	Upon the Effective Date, the holders of Class VII Interests shall retain their Interests in [ <del>the Debtor</del> ] <u>Reorganized S&amp;Y</u> .
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#### D. Means of Implementing the Third Amended Plan.

##### 1. *Source of Payments.*

In accordance with the Amended CAB Sale Agreement, upon the Effective Date, the Debtors will transfer the Property, free and clear of all liens and claims, to [~~CA Holdings~~]CAB Bedford in exchange for the Purchase Consideration. CAB Bedford will deposit \$1,000,000.00 in the Purchase Escrow prior to the Confirmation Hearing. As consideration for transfer of the Property, upon the Effective Date, CAB Bedford shall release the Purchase Escrow and tender the Balance to the Debtors to be distributed pursuant to the terms of Article VI of the Third Amended Plan. As of the Effective Date, pursuant to the Rejection Stipulation, CAB Bedford will be deemed to have waived all claims arising from and in connection with the rejection of the Original Sale Agreement.

##### 2. *Distribution*

Pursuant to Article VI of the Third Amended Plan, all Claims that are Allowed Claims on the Effective Date will be paid in full and in cash to the Record Holder from the Purchase Consideration on the Initial Distribution Date. Cash on account of Disputed Claims sufficient to pay such Claims in full to the extent such Claims are Allowed, will be held in the Disputed Claims Reserve, pending resolution as further set forth in Articles VI and VII of the Third Amended Plan. Following the making of distributions on the Initial Distribution Date under section 6.01(e) of the Third Amended Plan and the establishment of the Disputed Claims Reserve pursuant to section 6.02(a) of the Third Amended Plan, the Excess Plan Proceeds shall become the property of Reorganized Sky Lofts.

##### 3. *Claims Allowance and Disallowance*

Article VII of the Third Amended Plan sets forth the procedures for allowance and disallowance of Claims. Any excess sale proceeds held in the Disputed Claims Reserve after resolution of all Disputed Claims shall be paid to [~~the Debtors~~]Reorganized Sky Lofts.

4. *Post-Confirmation Management.*

Upon the Effective Date, the Debtor's managing member will continue to manage ~~the Debtor~~ Reorganized S&Y's affairs.

**E. Risk Factors.**

The Debtor does not believe that there are any risk factors with respect to the distributions required under the Third Amended Plan.

**F. Executory Contracts and Unexpired Leases.**

The Third Amended Plan, at Section 8.01, lists all executory contracts and unexpired leases of the Debtor. The Debtor will not assume any executory contracts or unexpired leases.

**G. Tax Consequences of the Third Amended Plan.**

*Creditors and Interest Holders Concerned with How the Third Amended Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.*

The Debtor does not believe that there are any special tax consequences associated with the Third Amended Plan.

**IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Third Amended Plan must meet the requirements listed in either sections 1129(a) or (b) of the Bankruptcy Code. The requirements include that the Third Amended Plan must be proposed in good faith; at least one impaired class of claims must accept the Third Amended Plan, without counting votes of insiders; the Third Amended Plan must distribute to each creditor and equity Interest holder at least as much as the creditor or equity Interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity Interest holder votes to accept the Third Amended Plan; and the Third Amended Plan must be feasible. These requirements are not the only requirements listed in section 1129 of the Bankruptcy Code, and they are not the only requirements for confirmation.

**A. Who May Vote or Object.**

Any party in interest may object to the confirmation of the Third Amended Plan if the party believes that the requirements for confirmation are not met.

A creditor or interest holder has a right to vote to accept or reject a chapter 11 plan only if that creditor or Interest holder has a claim or interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that no classes of Claims or Interests are impaired and that holders of Claims and Interests in each class are therefore not entitled to vote to accept or reject the Third Amended Plans.

1. *Who is **Not** Entitled to Vote.*

The holders of the following six types of Claims and equity Interests are not entitled to vote:

1. Holders of Claims and Interests that have been disallowed by an order of the Bankruptcy Court;
2. Holders of other Claims or Interests that are not “Allowed Claims” or “Allowed Interests,” unless they have been “Allowed” for voting purposes;
3. Holders of Claims or Interests in unimpaired classes;
4. Holders of Claims entitled to priority under sections 507(a)(2), (a)(3) and (a)(8) of the Bankruptcy Code;
5. Holders of Claims or Interests in classes that do not receive or retain any value under the Third Amended Plan; and
6. Administrative Expense Claims.

**B. Liquidation Analysis.**

To confirm the Third Amended Plan, the Bankruptcy Court must find that all creditors and equity Interest holders will receive at least as much under the Third Amended Plan as such claim and equity Interest holders would receive in a chapter 7 liquidation. Pursuant to the Third Amended Plan, all creditors are paid in full on account of their Allowed Claims and equity Interest holders will retain their Interests in the ~~[Debtor]~~Reorganized Debtors, therefore, all creditors and equity Interest holders will receive at least as much as they would have received in a chapter 7 liquidation.

**C. Feasibility.**

The Bankruptcy Court must find that confirmation of the Third Amended Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or ~~[any successor to the Debtor]~~the Reorganized Debtors, unless such liquidation or reorganization is proposed in the Third Amended Plan.

1. *Ability to Fund the Third Amended Plan.*

CAB Bedford shall release the Purchase Escrow and tender the Balance to the Debtors in exchange for the Property free and clear of all liens and claims, and, pursuant to the Rejection Stipulation, CAB Bedford shall be deemed to waive any and

all of its Claims arising or in connection with the rejection of the Original Sale Agreement pursuant to the Rejection Stipulation. These payments and waivers are sufficient to fund all payments owed on account of all Allowed Claims of the Debtors' creditors under the Third Amended Plan.

2. *Ability to Make Future Plan Payments and Operate Without Further Reorganization.*

All payments not made on account of Claims that are not Allowed Claims as of the Effective Date or any fees due as of the Effective Date, shall be made from the Disputed Claims Reserve. Upon confirmation of the Third Amended Plan, the Debtor will no longer own the Property or carry any debt, secured or unsecured. [~~The Debtor~~]Reorganized S&Y's Managing Member will [~~wind-down~~]administer the assets of the estate and [~~administer~~] the claims resolution process in accordance with the Third Amended Plan.

## V. RETENTION OF JURISDICTION

9.01 The Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of, and related to, the Bankruptcy Case and the Third Amended Plan pursuant to, and for the purposes of, section 105(a) and section 1142 of the Bankruptcy Code and for, among other things, the following purposes: (1) to hear and determine applications for the assumption or rejection of executory contracts or unexpired leases pending on the Confirmation Date, and the allowance of Claims resulting therefrom; (2) to determine any other applications, adversary proceedings, and contested matters pending on the Effective Date; (3) to ensure that distributions to holders of Allowed Claims and Interests are accomplished as provided herein; (4) to resolve disputes as to the ownership of any Claim or Interest; (5) to hear and determine timely objections to, or other proceedings challenging the allowance of Claims; (6) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated; (7) to issue such orders in aid of execution of the Third Amended Plan, to the extent authorized by section 1142 of the Bankruptcy Code; (8) to consider any modifications of the Third Amended Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order; (9) to hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331 and 503(b) of the Bankruptcy Code; (10) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Third Amended Plan, or any prior plan of reorganization filed by the Debtor, together with all documents, instruments and agreements related thereto; (11) to hear and determine any issue for which Third Amended Plan requires an order of, or other relief from, the Bankruptcy Court; (12) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code; (13) to hear and determine any Causes of Action preserved under the Third Amended Plan; and (14) to enter a final decree closing the Bankruptcy Case.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Modification of the Third Amended Plan.**

#### *1. Pre-Confirmation Modifications.*

Subject to the Letter Agreement, CAB Bedford may alter, amend, or modify the Third Amended Plan before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

#### *2. Post-Confirmation Immaterial Modifications.*

After the Confirmation Date, the Debtor may, subject to the Letter Agreement, with the approval of the Bankruptcy Court, without notice to all holders of Claims and Interests, insofar as it does not materially and adversely affect the holders of Claims and Interests, correct any defect, omission or inconsistency in the Third Amended Plan in such manner and to such extent as may be necessary to facilitate consummation of the Third Amended Plan.

#### *3. Post-Confirmation Material Modifications.*

After the Confirmation Date, the Debtor may, subject to the Letter Agreement, alter or amend the Third Amended Plan in a manner which, as determined by the Bankruptcy Court, materially and adversely affects holders of Claims or Interests, provided that such alteration or amendment is made after a hearing as provided in section 1127 of the Bankruptcy Code.

### **B. Governing Law.**

Unless a rule of law or procedure is supplied by Federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of New York (without reference to the conflicts of laws provisions thereof) shall govern the construction and implementation of the Third Amended Plan and any agreements, documents, and instruments executed in connection with the Third Amended Plan, unless otherwise specified.

### **C. Withholding and Reporting Requirements.**

In connection with the Third Amended Plan and all instruments issued in connection herewith and distributions hereunder, the Debtor and the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements.

**D. Transfer Free and Clear.**

Pursuant to section 1141(c) of the Bankruptcy Code, the transfer of the Property shall be free and clear of all claims and interests of creditors, equity security holders, and of general partners in the Debtor.

**E. Exemption From Transfer Taxes.**

Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, transfer and exchange under the Third Amended Plan of any securities, (b) the making or assignment of any lease or sublease, or (c) the making or delivery of any other instrument whatsoever, in furtherance of or in connection with the Third Amended Plan, shall not be subject to any stamp tax or other similar tax.

**F. Exhibits/Schedules.**

All exhibits and schedules to the Third Amended Plan are incorporated into and constitute a part of the Third Amended Plan as if fully set forth herein.

**G. Conflict.**

The terms of this Third Amended Plan shall govern in the event of any inconsistency with the summary of the Third Amended Plan set forth in the Third Amended Disclosure Statement. The terms of the Confirmation Order shall govern in the event of any inconsistency with the Third Amended Plan or the summary of the Third Amended Plan set forth in the accompanying Third Amended Disclosure Statement.

**H. Severability.**

If any provision in this Third Amended Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Third Amended Plan.

**I. Binding Effect.**

The rights and obligations of any entity named or referred to in this Third Amended Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

**J. Captions.**

The headings contained in this Third Amended Plan are for convenience of reference only and do not affect the meaning or interpretation of this Third Amended Plan.



**K. Exculpation and Limitation of Liability.**

Except as otherwise specifically provided in the Plan, S&Y, Sky Lofts and CAB Bedford, and each such parties' respective present or former members, officers, directors, employees, affiliates, direct and indirect subsidiaries, advisors, attorneys, accountants, underwriters, investment bankers, financial advisors, representatives, professionals or agents, acting in such capacity, and any such parties' successors and assigns, shall not have or incur, and are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or Interest or to any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or any of their successors or assigns, for any act or omission in connection with, related to, or arising out of, the Debtor or the Debtor's above-captioned Chapter 11 case, including but not limited to: (i) formulating, preparing, disseminating, implementing, confirming, consummating, or administering this Third Amended Plan; (ii) the Third Amended Disclosure Statement, or any contract, instrument, release or other arrangement entered into or any action taken or not taken in connection with the Third Amended Plan or the Debtor's above-captioned Chapter 11 case; or (iii) any distributions made pursuant to the Third Amended Plan, except for acts constituting willful misconduct or gross negligence, and in all respects such parties shall be entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Third Amended Plan. Nothing contained in the foregoing shall constitute a release of any claim of the Debtor otherwise expressly reserved in the Third Amended Plan.

**L. General Releases of Holders of Claims and Interests.**

On the Effective Date, and in exchange for the consideration provided by, and obligations of the Debtor and CAB Bedford as provided in the Third Amended Plan and the Third Amended Disclosure Statement, each Holder of a Claim or Interest will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the right to enforce the Debtor's or CAB Bedford's obligations under the Third Amended Plan and the contracts, instruments, releases, agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Debtor's above-captioned Chapter 11 case or the Third Amended Plan that such entity has, had or may have against either the Debtors and CAB Bedford, and each of their respective present or (solely to the extent such party served after the commencement of the Debtor's above-captioned Chapter 11 case) former members, officers, directors, employees, affiliates, direct and indirect subsidiaries, advisors, attorneys, accountants, underwriters, investment bankers, financial advisors, representatives, professionals or agents, acting in such capacity, and any such parties' successors and assigns. The Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise,

of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Third Amended Plan. Nothing contained in the foregoing shall constitute a release of any claim of the Debtor otherwise expressly reserved in the Third Amended Plan.

## **VII. CONFIRMATION AND EFFECTIVENESS OF THE THIRD AMENDED PLAN**

### **A. Conditions Precedent to Confirmation.**

This Third Amended Plan shall not be confirmed by the Bankruptcy Court unless and until the following conditions have been satisfied in full or waived by the Debtors and CAB Bedford in writing:

- (a) the Bankruptcy Court shall have entered an order approving the Rejection Stipulation;
- (b) the Bankruptcy Court shall have approved the Third Amended Disclosure Statement with respect to this Third Amended Plan in a form and substance acceptable to the Debtors and CAB Bedford;
- (c) the Third Amended Plan, including any amendments, modifications or supplements thereto, shall be acceptable to the Debtors and CAB Bedford;
- (d) the Bankruptcy Court shall have entered an order approving the Capital One Settlement Stipulation; and
- (e) the Confirmation Order shall be in a form acceptable to the Debtors and CAB Bedford.

### **B. Conditions Precedent to Effective Date.**

This Third Amended Plan shall not become effective unless and until the following conditions have been satisfied in full or waived by the Debtors and CAB Bedford in writing:

- 1. the Confirmation Order shall have been entered by the Bankruptcy Court, in a form acceptable to the Debtors and CAB Bedford;
- 2. the Confirmation Order shall have become a Final Order and is in full force and effect; and
- 3. the transaction set forth in the Amended CAB Sale Agreement shall be fully consummated.

**C. Waiver of Conditions.**

The Debtors and CAB Bedford may waive any or all of the conditions set forth in this Article XI at any time without leave or order of the Bankruptcy Court.

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Dated: New York, New York  
[~~January 18,~~ March 2, 2012

S&Y ENTERPRISES, LLC

By:           /s/ Yehuda Backer            
Name: Yehuda Backer  
Title: Managing Member

By:           /s/ David Carlebach            
David Carlebach  
A Member of the Firm

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Description	#7546597v9<US1> - Amended S&Y Disclosure Statement v9 [final version - filed on 1/27/12]
Document 2 ID	interwovenSite://US/US1/7546597/12
Description	#7546597v12<US1> - Amended S&Y Disclosure Statement v12 [with Curtis Mallet comments]
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Padding cell	

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