

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

Hearing Date: \_\_\_\_\_  
Time: \_\_\_\_\_

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In re:

Chapter 11

Sky Lofts, LLC

Case No. 10-51510-ess

Debtor.  
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**SECOND AMENDED PLAN OF REORGANIZATION OF SKY LOFTS, LLC, DATED  
MAY 11, 2011**

**ARTICLE I  
SUMMARY**

1.01 This Second Amended Plan of Reorganization (the "Plan") under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code") proposes to pay all creditors of Sky Lofts, LLC ("Sky Lofts" or "Debtor"), whose claims are allowed, in full on the Effective Date from the proceeds of the sale of the real estate owned by the Debtor, located at 242-246 Bedford Ave., Brooklyn, New York ("Sky Lofts Property"). The secured creditor and the unsecured creditors will be paid respectively in accordance with the terms set forth below.

1.02 This Plan provides for 2 classes of secured claims; 2 classes of priority unsecured claims, 2 classes of unsecured claims; and 1 class of equity security holders. Secured creditors and unsecured creditors holding allowed claims will receive distributions of one hundred (100%) percent of their allowed claims. This Plan also provides for the payment of secured tax claims, administrative claims and priority claims in full.

1.03 All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A Disclosure Statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. *Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)*

**ARTICLE II  
CLASSIFICATION OF CLAIMS AND INTERESTS.**

2.01 **Class I. Classification:** Class I consists of the secured claim of the New York City Water Board, which has a lien on the Sky Lofts Property in the amount of \$705.84 as of February 22, 2011 with interest continuing to accrue.

**Treatment:** Class I claim shall be paid in full on the Effective Date of the Plan using funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D.

2.02 Class II. **Classification:** Class II consists of the secured claim of Banco Popular, N.A., which holds a mortgage on the Sky Lofts Property, in the amount of \$8,254,520.65 as of February 22, 2011, with interest continuing to accrue.

**Treatment:** Class II claim shall be paid in full on the Effective Date of the Plan using funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D, to the extent that the Class II claim is an allowed claim. If, on the Effective Date, any objection to the claim has not been resolved, the amount of the claim shall be held in escrow until such time as the objection has been resolved, at which time the allowed amount of the claim shall be paid in full. No less than \$8,254,520.65 of the funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D will be reserved for allowed claims in this class. At Purchaser's election, the Banco Popular mortgage may be assigned, upon payment in full of Banco Popular's claim, to a lender of Purchaser's designation.

2.03 Class III. **Classification:** Class III consists of all the Priority Unsecured Claims of the Internal Revenue Service, in an amount to be determined. Class III is an unimpaired class.

**Treatment:** Class III claim shall be paid in full on the Effective Date of the Plan using funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D.

2.04 Class IV. **Classification:** Class IV consists of all the Priority Unsecured Claims of the New York City Dept. of Finance in the amount of \$53,633.04. Class IV is an unimpaired class.

**Treatment:** Class IV claims shall be paid in full on the Effective Date of the Plan using funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D.

2.05 Class V. **Classification:** Class V consists of all the non-Insider general unsecured claims against the Debtor. The general unsecured claims include those scheduled by the Debtor, which total \$33,412.00, any allowed amounts claimed by North 3<sup>rd</sup> Development LLC allocable to the Debtor rather than S&Y Enterprises LLC, and any allowed rejection damage claims. Class V is an unimpaired class.

**Treatment:** Class V claims shall be paid in full on the Effective Date of the Plan, with allowed interest from the Petition Date, using funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D to the extent that a Class V claim is an allowed claim. If, on the Effective Date, any objection to a claim has not been resolved, the amount of the claim shall be held in escrow until such time as the objection has been resolved, at which time the allowed amount of the claim shall be paid in full. A reserve from the funds from the sale of the S&Y Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D will be established to satisfy allowed claims.

2.06 Class VI. Class VI consists of all the Insider general unsecured claims against the Debtor. The Insider general unsecured claims scheduled by the Debtor total \$873,258.59. Class VI is an unimpaired class.

**Treatment:** To the extent funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D exceed the amount of Allowed Class I-V claims, holders of allowed Class VI claims shall receive their pro rata share of such excess. Class VI claimants waive any remaining allowed claims, amounts, and distributions after such excess has been distributed under this Plan.

2.07 Class VII. **Classification:** Class VII claims consist of holders of Interests. The Debtor's Equity Interest Holders are: Yehuda Backer (99%) and Ruthe Backer (1%). Class VII is an unimpaired class.

**Treatment:** Class VII claim holders of an interest shall retain their respective equity interests. As set forth more fully in the Disclosure Statement, in light of the transfer of the real property to a third party, the equity has no value and the Debtor will likely dissolve post-confirmation.

**ARTICLE III**  
**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS,**  
**U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS.**

3.01

United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid on the Effective Date.

**ARTICLE IV**  
**TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN.**

4.01 Claims and interests shall be treated as follows under this Plan:

Class #	Description	Insider	Impairment	Treatment
I	<p><i>Secured claim of:</i> New York City Water Board</p> <p><i>Collateral description:</i> Secured Lien on Sky Lofts' property located at: 242-246 Bedford Ave., Brooklyn, New York, Brooklyn, New York</p> <p>Allowed Secured Amount:</p>	NO	unimpaired	Paid in full on the Effective Date

Class #	Description	Insider	Impairment	Treatment
	\$705.84			
II	<p><i>Secured claim of:</i> Banco Popular, N.A.</p> <p>Collateral description: Secured Lien on Sky Lofts' property located at: 242-246 Bedford Ave., Brooklyn, New York, Brooklyn, New York</p> <p>Allowed Secured Amount: \$8,254,520.65 plus allowed accrued interest</p>	NO	unimpaired	The allowed claim amount, as of the Effective Date, will be paid in full on the Effective Date with any amounts that remain subject to an unresolved objection to be held in reserve until resolved at which point any unpaid allowed amounts will be paid in full.
III	<p><i>Priority Unsecured Claim of:</i> Internal Revenue Service</p> <p>Allowed Priority Amount: Unknown</p>	NO	unimpaired	Paid in full on the Effective Date.
IV	<p><i>Priority Unsecured Claim of:</i> New York City Dept. of Taxation and Finance</p> <p>Priority Amount: \$53,633.04</p>	NO	unimpaired	Paid in full on the Effective Date.
V	<p><i>Non-Insider General Unsecured claims of:</i> all non-insider general unsecured claims scheduled by the Debtor (See ECF 11, Schedule F) the allowed unsecured claims of North 3rd Development LLC not otherwise allocable to S&amp;Y Enterprises, LLC, and the allowed unsecured claims from the rejection of executory contracts.</p> <p>Non-Priority Amount:</p>	NO	unimpaired	The allowed claim amounts, as of the Effective Date, will be paid in full on the Effective Date with any amounts that remain subject to an unresolved objection or unallowed claim to be held in reserve until such time that the objection is resolved at which point any unpaid allowed amounts will

Class #	Description	Insider	Impairment	Treatment
	\$33,412.00 - \$933,981.00			be paid in full.

VI	<p><i>Insider General Unsecured claims of:</i> all insider general unsecured claims scheduled by the Debtor. (See ECF 11, Schedule F)</p> <p>Non-Priority Amount: \$873,258.59</p>	YES	unimpaired	To the extent funds from the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D exceed the amount of Allowed Class I-V claims, holders of allowed Class VI claims shall receive their pro rata share of such excess. Class VI claimants waive any remaining allowed claims, amounts, and distributions after such excess has been distributed under this Plan.
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VII	<p>Equity Interest Holders:</p> <p>Yehuda Backer 99% Equity interest holder</p> <p>Ruthe Backer 1% Equity interest holder</p>		unimpaired	Will continue to retain equity interest.
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**ARTICLE V**  
**ALLOWANCE AND DISALLOWANCE OF**  
**CLAIMS AND RETENTION OF JURISDICTION.**

5.01 A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order. If a disputed claim has not been resolved by the

Effective Date, the amount of the disputed claim shall be held in escrow until such time that claim is allowed, if that claim is allowed by a final non-appealable order, at which time the amount of the allowed claim shall be paid to that claimant. If the disputed claim is not allowed, or the disputed claim is not allowed in full, any funds remaining in escrow shall be paid to the Debtor.

5.03 The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

5.04 The Court will retain jurisdiction over the case to hear any claim disputes and objections. This includes any pending tax certiorari proceedings involving the Debtor. The Court will also retain jurisdiction to resolve any issues regarding the Plan.

**ARTICLE VI**  
**PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

6.01 Executory Contracts and Unexpired Leases.

All executory contracts and unexpired leases are rejected on confirmation.

6.02 Claims on Account of the Rejection of Executory Contracts or Unexpired Leases.

All proofs of claim with respect to claims arising from the rejection of executory contracts or unexpired leases pursuant to this Plan, if any, must be filed with the Court within thirty (30) days after the date of entry of an order of the Court (including the confirmation order) approving such rejection. Any entity that is required to file a proof of claim arising from the rejection of an executory contract or an unexpired lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such claim, and such claim shall not be enforceable, against the Debtors, the estate or any of their respective property, and such claim shall be forever discharged.

**ARTICLE VII**  
**MEANS FOR IMPLEMENTATION OF THE PLAN.**

7.01 All allowed administrative expenses and allowed tax priority claims shall be paid in full by the Effective Date of the Plan by the Debtor using the proceeds of the sale of the Sky Lofts Property free and clear of any and all liens, claims and encumbrances pursuant to Section 1123(5)(D) of the Bankruptcy Code.

7.02 Exemption From Certain Transfer Taxes. Pursuant to § 1146(a) of the Bankruptcy Code, the exemptions from transfer taxes for property transferred under this Plan apply upon Plan confirmation. The following shall not be subject to any stamp tax, real estate transfer tax, mortgage recording tax, filing fee, sales or use tax or similar tax: (1) the transfer of any assets, sale, liquidation, transfer, foreclosure, abandonment or other disposition; (2) any restructuring transaction; (3) the making or delivery of any deed or other instrument of transfer under; or (4) the granting or recording of any lien or mortgage on the S&Y Property in connection with the closing of the Agreement of Sale, should Purchaseer elect to obtain a

mortgage, in furtherance of or in connection with the Plan, including any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments, liens, mortgages, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan, and any transfer of first lien collateral in accordance with the terms of the Plan, and the confirmation order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

7.03 The allowed general unsecured claims scheduled by the Debtor will receive One Hundred (100%) percent of their claims to be funded by the sale of the Sky Lofts Property as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D.

### **ARTICLE VIII** **GENERAL PROVISIONS.**

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Bankruptcy Code shall apply when terms defined or construed in the Bankruptcy Code are used in this Second Amended Plan, and they are supplemented by the following definitions:

"Bankruptcy Case" shall mean the Chapter 11 bankruptcy case of the Debtor.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Eastern District of New York.

"Confirmation Date" shall mean the date of the entry of the Confirmation Order. "Confirmation Order" shall mean the order of the Court confirming the Plan.

"Petition Date" shall mean December 8, 2010, the date of filing of its Bankruptcy Case by the Sky Lofts.

"Purchaser" shall have the meaning set forth in the Agreement of Sale attached to the Disclosure Statement as Exhibit D.

8.02 Effective Date of Plan. The Effective Date of this Plan is the date of the sale of the real estate as described in the Agreement of Sale attached to the Disclosure Statement as Exhibit D. In no event shall the Effective Date take place later than the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the Effective Date will be the third business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

8.03 Severability. If any provision in this 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 Plan.

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

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

8.06 Controlling Effect. Unless a rule of law or procedure is supplied by federal law, including the Code or the Federal Rules of Bankruptcy Procedure, the laws of the State of New York govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.

8.07 Corporate Governance. Pursuant to § 1123(a)(6) of the Bankruptcy Code, the Debtor shall be prohibited from issuing any non-voting equity security. The Debtor's equity security holders shall retain their voting power.

**ARTICLE IX**  
**NO DISCHARGE OF DEBTOR.**

9.01 No Discharge. In accordance with § 1141(d)(3) of the Bankruptcy Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Respectfully submitted,

Dated: New York, New York  
May 11, 2011

**Sky Lofts, LLC**

By: s/ Yehuda Backer  
Yehuda Backer, Managing Member

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