

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

AFP HOLDING, INC.,

Case No. 17-42642(CEC)

Debtor.

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**DISCLOSURE STATEMENT PURSUANT TO  
SECTION 1125 OF THE BANKRUPTCY CODE**

AFP Holding, Inc. (the “Debtor”) hereby submits this Disclosure Statement (the “Disclosure Statement”), pursuant to §1125 of Title 11, United States Code (the “Bankruptcy Code”), in connection with the Debtor’s accompanying Chapter 11 Plan of Liquidation of even date (ECF #74) (the “Plan”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Plan.

**I. OVERVIEW**

**A. Summary of the Plan.**

The Plan is predicated upon two events. The first event is completing an auction sale (the “Auction”) of the Debtor’s real property located at 54-14 74<sup>th</sup> Street, Elmhurst, New York (the “Property”).

The specific terms and conditions of the Auction will be established by the Bankruptcy Court pursuant to a Bidding Procedures Order which will be presented to and approved by the Court. Maltz Auctions, Inc., d/b/a Maltz Auctions (“Maltz”) has been designated as the Court-appointed auctioneer to conduct the Auction.

The Property is encumbered by three mortgages. The first mortgage lien is jointly held by SummitBridge III Investment LLC (“SB”) and by New York Business Development Corp.

(“NYBDC”) (collectively the “First Lender”). The First Lender’s joint claim arises as a result of an Intercreditor Agreement between SB’s predecessor and interest, the Bank of America and NYBDC. As of March 1, 2018, SB has a claim of \$1,545,434.89 for principal and \$692,869.97 for non-default rate interest, advances and enforcement costs. NYBDC has a claim for \$1,437,671.40 for principal plus \$646,655.61 for non-default rate interest, advances and enforcement costs as of March 1, 2018. The third mortgage is held by the U.S. Small Business Administration which has filed a claim for \$1,854,120.64 for unpaid principal and \$378,690.28 of accrued interest and costs as of March 8, 2018. Each First Lender has retained the rights to make a credit bid either individually or jointly at the Auction.

The second major event upon which the Plan is based involves the Debtor’s collecting upon its Casualty Loss Claim which arises from a burst pipe which caused extensive damage at the Property on January 8, 2018. The Debtor has retained United Public Adjusters and Appraisers Inc. (“United”) as its adjuster to present and prosecute the Debtor’s claim to the insurance company. The Casualty Loss Claim constitute proceeds of collateral belonging to the First Lender and to the SBA. To the extent that the net proceeds of the Casualty Loss Claim exceeds the amounts owed to the First Lender, any surplus will be paid to the SBA.

The First Lender has agreed, as will be more specifically described within this Disclosure Statement, to carve out monies from its collateral and those funds which will be paid to creditors under this Plan.

#### **B. Approval of this Disclosure Statement.**

On June \_\_\_, 2018, the Bankruptcy Court entered an order: (i) approving the Disclosure Statement (the “Disclosure Statement Order”) as containing “adequate information” to enable the holders of claims against the Debtor to make an informed judgment as to whether

accept or reject the Creditors' Plan; and (ii) authorizing the Debtor to use the Disclosure Statement in connection with the solicitation of votes to accept or reject the Plan. **The Disclosure Statement Order establishes June \_\_\_\_, 2018 as the deadline for the return of Ballots accepting or rejecting the Plan (the "Voting Deadline").**

**APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN. THE DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL REVIEW OF THE PLAN. THE DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW.**

**C. Confirmation of the Plan.**

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan on the same day and time, to wit, July \_\_\_\_, 2018 at \_\_\_\_\_.m., Eastern Standard Time. The hearing will be conducted by the Honorable Carla E. Craig, Chief Bankruptcy Judge at the United States Bankruptcy Court, 271 Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201. At the hearing, the Bankruptcy Court will determine whether the requirements of §1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Debtor believes that the Plan will satisfy all applicable requirements of §1129(a) of the Bankruptcy Code.

Any creditor or party in interest may object to confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, shall be served upon counsel to the Debtor, Goldberg Weprin Finkel Goldstein LLP, Attn: Neal M. Rosenbloom, 1501 Broadway, 22<sup>nd</sup> Floor, New York, New York 10036, counsel for the First Lender, the United States Trustee and all parties

who have filed a Notice of Appearance on or before July \_\_\_\_, 2018. The hearing may be adjourned from time to time without further notice other than by announcement in open court.

In order for the Plan to be accepted on a consensual basis, each impaired class must accept the Plan. Acceptance is based upon affirmative votes from each impaired class of voting creditors holding at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims of those creditors in a particular impaired class who actually vote.

In accordance with §1126(f) of the Bankruptcy Code, all classes of claims that are impaired may vote to accept or reject the Plan. A class of claims is impaired if the Plan modifies, alters or changes the Claimant's legal, equitable or contractual rights against the Debtor. In this case, the Class 2 Claim of the First Lender, the Class 3 Claim of the Second Lender, SBA and the Class 4 Claims of General Unsecured Creditors are all impaired or potentially impaired and eligible to vote on the Plan. In the event that the Plan is not accepted by all impaired classes of creditors, the Debtor reserves the right to seek confirmation of the Plan under the so-called cram down provisions of §1129(b) of the Bankruptcy Code.

Ballots for acceptance or rejection of the Plan will accompany the Plan, and should be completed by all creditors in an impaired class. After carefully considering this Disclosure Statement and the Plan, please indicate your vote on the enclosed ballot and return same before the voting deadline of June \_\_\_\_, 2018 to Goldberg Weprin Finkel Goldstein LLP, Attn: Neal M. Rosenbloom, 1501 Broadway, 22<sup>nd</sup> Floor, New York, New York 10036. Facsimile: (212) 221-6532. E-mail: Nrosenbloom@gwfglaw.com.

In order to be counted, your ballot must be actually received on or before June \_\_\_\_, 2018 at 5:00 p.m. Eastern Standard Time (the "Voting Deadline"). All forms of personal delivery of ballots including overnight delivery service, courier service, and delivery by hand are acceptable.

Facsimile and electronic transmissions are also acceptable. There is no need to file your Ballot with the Clerk of the Bankruptcy Court. If your ballot is damaged or lost, or if you do not receive a ballot, you may request a replacement by contacting Goldberg Weprin Finkel Goldstein LLP, Attn: Neal M. Rosenbloom at the stated address.

Only actual votes will be counted. A failure to return a ballot will not be counted either as a vote for or against the Plan.

**D. Disclaimer.** The Bankruptcy Court's conditional approval of this Disclosure Statement does not constitute an endorsement of the Plan. No representations other than those explicitly set forth in this Disclosure Statement are authorized concerning the terms of the Plan or the Debtor's development plans, the scope of assets or the extent of the Debtor's liabilities.

This Disclosure Statement contains summaries of certain provisions of the Plan, certain statutory provisions, certain events in the case and certain financial information. Although the Debtor believes that the Disclosure Statement is accurate, the terms of the Plan govern, and creditors are advised to review the Plan in its entirety.

## **II. EVENTS LEADING UP TO THE PROPOSED PLAN**

The Property was acquired in May, 1999 for the purpose of being developed into a commercial building (the "Project") in Elmhurst, New York. The Property was extensively renovated through the use of building loans obtained from Bank of America, NYBDC and Empire State Development Corp. acting on behalf of the SBA. Unfortunately, the Debtor was never able to generate sufficient income from its tenants to service the debt on the Property. Attempts to renegotiate the interest rate paid under the three mortgages were unsuccessful and in 2012, Bank of America and Empire State Development Corp. commenced an action in the

Supreme Court, New York County to foreclose their mortgages. During the pendency of the foreclosure proceeding, SB acquired the mortgage of Bank of America.

The Debtor defended the foreclosure proceeding which remained pending at the time bankruptcy proceedings were initiated against the Debtor. On May 23, 2017, SB filed an involuntary Chapter 7 case against the Debtor. The Debtor responded to the involuntary case by filing a motion to dismiss the case or, in the alternative, for the Court to abstain from exercising jurisdiction based upon the pending State Court foreclosure action. Memoranda of Law were submitted on behalf of the Debtor and on behalf of SB and evidentiary hearings were held before the Court. Ultimately, the Court denied the Debtor's motion and the Debtor was then authorized to answer the involuntary petition.

The Debtor moved to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code and on March 9, 2018, the Court entered an Order for relief under Chapter 7 of the Bankruptcy Code and at the same time converted the Chapter 7 case to a Chapter 11 reorganization proceeding.

While these events were unfolding, in the midst of a record cold spell on January 8, 2018, a pipe burst on the top floor of the Property causing extensive damage to the entire Property and making the Property uninhabitable by the existing three tenants who fully occupied the building.

The Debtor then gave notice to the three commercial tenants under their lease agreements that the Debtor would be terminating their leases. The leases have been terminated and the tenants have removed as much of their personal belongings from the Property as they could, given the fact that as a result of the accident, the building elevator is not operating.

The Debtor promptly engaged the services of United Public Adjusters and Appraisers Inc. ("United" or the "Adjuster") to assist it to present and negotiate its damage loss claim to the

Debtor's insurance company, The Philadelphia Indemnity Insurance Company (the "Insurance Company"). After the loss, United has been actively engaged in working with the Debtor and the Insurance Company to adjust the Casualty Loss Claim.

After the case was converted to a Chapter 11 case, the Debtor moved to retain Goldberg Weprin Finkel Goldstein LLP as its counsel and to formally retain United as its public adjuster.

The Debtor was in regular contact with counsel for and representatives of the SB and NYBDC and with the First Lender's consent, filed an application and an Order to retain Maltz Auctions Inc. ("Maltz") to conduct an auction of the Debtor's Property and to have a Bidding Procedures Order presented to and approved by the Court. On March 27, 2018, the Court entered an Order retaining Maltz as the Debtor's auctioneer. The Debtor has filed a motion for authorization to have Maltz auction the Debtor's Property under terms and conditions which will be approved by the Court (ECF #63).

The Debtor has also moved on consent of SB and NYBDC for authorization to use cash collateral.

The Debtor has worked diligently with its counsel and counsel for SB and NYBDC to structure what has been styled as a Plan Agreement which is a consensual document made between the Debtor and its equity holders, SB and NYBDC governing critical procedures in this Chapter 11 case (ECF #66). A copy of the so-called Plan Agreement is annexed as **EXHIBIT "A"** to this Disclosure Statement.

The Plan Agreement, among other things, sets forth the amounts of the First Lender's claims, the process by which the Property is to be sold and provides for carve outs to fund the Plan. Specifically, and subject to approval of the Court, (a) \$40,000 will be carved out to pay administrative fees and disbursements of the Debtor's counsel, Goldberg Weprin Finkel

Goldstein LLP, (b) to pay United's six percent contingent fee, (c) the administrative fees of the auctioneer and (d) payments to fund the Debtor's Plan of Liquidation based upon the gross proceeds of the sale of the Property and the net insurance proceeds received from the Debtor's insurance claim. Specifically, the following amounts will be made available:

1. Ten Thousand (\$10,000.00) Dollars for gross sale proceeds and net insurance proceeds of \$3,500,000 or less;
2. One (1%) percent of gross sale proceeds and net insurance proceeds in excess of \$3,500,000 but less than \$4,100,000; and
3. Two (2%) percent of the gross sale proceeds and net insurance proceeds in excess of \$4,100,000.

Net insurance proceeds are defined as monies received after deducting the cost of repairs, the adjuster's compensation, the cost of the sale of the Property or any other legitimate expense in connection with the Property.

It is difficult to estimate the actual amount of money which will be received through the sale of the Property and as a result of prosecuting the Debtor's Casualty Loss Claim. The Debtor shall work with the First Lender to attempt to enhance the amount of monies which will be available from both sources of recovery.

Specifically, the Debtor and the First Lenders have retained Maltz because of its extensive experience in auctioning properties in bankruptcy proceedings. It is the belief of the Debtor and the First Lenders that the Property's value is enhanced being sold as a vacant property without tenancies. It is the parties' belief that the Property value is best utilized in the hands of an entity which will utilize the entire building for its commercial business purposes. In order to sell the Property, certain repairs must be made to critical systems within the building,



such as, the elevator, sprinkler system and the building must be environmentally certified to be free of certain designated contaminants. It should be noted that the First Lenders reserve the right individually or jointly to credit bid their mortgages as part of the auction process.

As of the date of this Disclosure Statement, the Debtor is actively pursuing its Casualty Loss Claim. United has submitted a claim for building loss damages of \$2,400,000 together with a personal property claim in excess of \$280,000 for personal property damages, however, this personal property claim is capped at \$100,000 under the Debtor's Insurance Policy. This portion of the claim would predominately belong to the Aldona Fire Protection Inc. ("Aldona") which had personal property located on the Premises at the time of the casualty loss on January 8, 2018. Aldona's claim does not affect the Debtor's building damage claim.

The building loss portion of the Debtor's policy has \$3,000,000 of coverage along with a co-insurance claim. The claim is subject to negotiation between the Debtor and the Insurance Company. Once the parties agree on the amount of the Casualty Loss Claim, an application will be filed with the Court to approve and authorize settlement of the insurance claim. If the parties cannot agree on the amount of the claim, the Debtor reserves the right to commence an action against the Insurance Company to realize upon its claim under the controlling policy of insurance.

It should be noted, that the Debtor has submitted to the Court and the Court has entered a so-called Bar Order (ECF #61) which fixes the last day for creditors to file claims as May 28, 2018 and for governmental entities to file claims by September 5, 2018.

One of the goals that the Debtor had in mind in proceeding under Chapter 11 is to sell the Property under a Plan of Reorganization on a transfer tax exempt basis in accordance with 11 U.S.C. §1146(a). To comply with applicable law, the closing of the sale of the Property will

occur after entry of the Confirmation Order, however, the Debtor is uncertain at the present time when the actual sale will take place since repairs to the building are required before the Property can be sold. In addition, creditors are advised that a hearing was held before the Court on May 16, 2018 to authorize the sale of the Property and to approve bidding procedures which will control the sale of the Property. The Court approved Bidding Procedures and an Order memorializing the terms of the Bidding Procedures is being negotiated with SB and NYBDC as of the date of this Disclosure Statement.

### **III. THE PLAN**

#### **UNCLASSIFIED CLAIMS**

The Plan includes both classified and unclassified groups of claims. Unclassified claims are priority claims in bankruptcy which are being paid in full to meet the requirements of confirmation.

The first group of unclassified Claims primarily, if not exclusively, consists of the professional fees owed to the Debtor's counsel, Goldberg Weprin Finkel Goldstein LLP, the Debtor's Adjuster, United and Maltz, the Auctioneer. All three parties shall file a final application for allowance no later than thirty (30) days after the Effective Date. The First Lender has agreed to carve out \$40,000 from its recoveries to pay the Debtor's Counsel. United is retained on a contingent fee basis of six percent of the loss recovery and the Auctioneer shall be paid based upon the ultimate credit bid or sale price of the Property, if the successful bid is not a credit bid (ECF #57).

The Allowed Priority Tax Claims of the IRS and New York State and the City of New York are also unclassified under the Plan, since these claims will also be paid in full. At the present time, the IRS and New York State have not filed claims with the Court. The Debtor will

file a final tax return and any gains taxes will be paid from the recoveries. The Debtor does not believe that it owes taxes to New York State other than a nominal amount due for franchise taxes. The Debtor is current on amounts owed for real estate taxes and any such taxes will be an adjustment at closing of the Property. The City of New York has filed a claim for general corporation taxes of \$39,077.07 which the Debtor believes is in error or is drastically overstated. Whatever final amounts are allowed by the Court will be paid in full from the Confirmation Fund. The penalty portion of the allowed claims will be treated as a Class 4 general unsecured claim and shall share *pro rata* in the Carve-Out Fund.

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

### **Summary**

The categories listed below classify Claims against the Debtor for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

### **Summary of Classification and Treatment of Claims and Equity Interests**

Class	Designation	Impaired
Class 1	Real Estate Tax and ECB Claims of New York City	No
Class 2	Secured first mortgage claim of SB and NYBDC	Yes
Class 3	Secured claim of SBA	Yes
Class 4	Unsecured Claims	Yes
Class 5	Equity Interests	Yes

### **Classification, Treatment and Voting**

#### **Class 1 —Real Estate Tax Claims**

**Classification:** Class 1 is comprised of the Real Estate Claims.

Treatment: The Department of Finance, or such other agency designated by the City of New York, shall receive a cash payment on the Closing Date from the first proceeds of the Sale equal to the undisputed amount of all outstanding real estate taxes and related charges. Reserves shall be established at closing to address all disputed amounts for ECB Violations and other charges pending final allowance thereof.

Voting: Class 1 is unimpaired. The City of New York (“City”) is conclusively deemed to have accepted the Plan pursuant to §1126(f) of the Bankruptcy Code.

To date, the City has filed a questionable claim for business corporation in taxes in the total sum of \$39,077.02 dating back to 2015 through March 9, 2018. This claim will be objected to in its entirety. Thus, the Debtor anticipates significant reduction in Class 1 Claim, but whatever amount is ultimately allowed by the Bankruptcy Court, it shall be paid from the Auction Proceeds. The Debtor believes that it is current with the payment of real estate taxes and other taxes.

## **Class 2 —Secured First Mortgage Claim of SB and NYBDC**

Classification: Class 2 is comprised of the Secured First Mortgage Claim of the First Lender (SB and NYBDC). This is by far the largest claim to be paid for under the Plan totaling \$4,322,632.87 as of March 1, 2018.

Treatment: The Class 2 claimants have asserted a total claim in the sum of \$4,322,632.87 as of March 1, 2018 (the “Secured Claim”).

If the First Lender does not Credit Bid, it shall receive a cash payment on the Closing Date along with the Net Proceeds of the Casualty Loss Claim. In the event the final allowed amount of the Class 2 Secured Claim has not been fixed prior to the Closing Date, the Disbursing Agent shall pay the undisputed portions of the Secured Claim to the First Lender at Closing and

will establish a reserve for all amounts still in dispute. This reserve shall be held in escrow by the Disbursing Agent pending the final determination of any objection to the Class 2 Secured Claim. All carveouts and amounts owed for unclassified claims and Class 1 Claims shall be paid or reserved from the available monies and will be paid from the sale of the Property or from the Casualty Loss Proceeds. SB and NYBDC have consensually agreed amongst themselves that SB shall receive 51.78% of the Net Proceeds and NYBDC shall receive 48.22% of the Net Proceeds less the carveout and such other amounts directed by the Court but not more than the aggregate amount of their Allowed Secured Claim.

Voting: Class 2 is probably impaired because the combined net proceeds of the sale of the Property and the Casualty Loss Claim will in all likelihood, not be sufficient to fully satisfy the Class 2 claims. Any deficiency amount owed to the Class 2 claimants shall be treated as a Class 4 Unsecured General Claim.

### **Class 3 — Secured Claim of SBA**

Classification: Class 3 is comprised of the secured claim of the SBA in the sum of \$2,232,610.73 (the “Second Lender”).

Treatment: Payment of the SBA claim is a function of the amount realized from the sale of the Property along with settlement of the Casualty Loss Claim. The Debtor does not believe that the proceeds of the recoveries of these two assets will exceed the amount owed to the Class 2 claimant, however, the Debtor will try its best to maximize recoveries for all creditors. As such, the SBA has been set forth as a separate Class and will receive any surplus after satisfying all amounts owed to the Class 2 claimants. If the SBA receives a recovery on its secured claim, balance of the SBA claim shall constitute a Class 4 General Unsecured Claim to be treated ratably with all other general unsecured claims.

Voting: Class 3 is impaired since the value of the Property and the value of the Casualty Loss Claim is less than its allowed claim.

**Class 4 —Unsecured General Claims**

Classification: Class 4 is comprised of the Allowed Unsecured General Claims, consisting of all other Claims, such as the non-priority portion of the Claims filed by taxing authorities and claims of all other suppliers and vendors. Class 4 also consists of the deficiency claims of the First Lender and the SBA to the extent that the proceeds of the sale of the Property and the Casualty Loss Claim are insufficient to satisfy the potentially Secured Class 2 and Class 3 Claims.

Treatment: Based on the various scenarios, the Class 4 Unsecured Creditors shall share pro rata in the Carve-Out Fund of minimum of \$10,000 or such increased amount of the recoveries from the sale of the Property and the Casualty Loss Claim. Based upon the uncertainty of the value of the Property and the Casualty Loss Claim and whether the recoveries on these two assets will be sufficient to pay the Class 2 claim in full, solely for the purpose of voting on the Plan, SB and NYBDC shall each be deemed to have a \$100,000 Class 4 Claim. This right to vote as a Class 4 creditor does not in any other way affect the rights, liens, claims and privileges of SB and NYBDC as a matter of law or equity.

Voting: Class 4 is impaired. The General Unsecured Claims are entitled to vote on the Plan.

**Class 5 — Equity Interests**

Classification: Class 5 is composed of the Equity Interests.

Treatment: Class 5 Equity Interest Holders will not receive any distributions because there is no surplus, and their membership interests will be canceled simultaneously with dissolution of the Debtor after the Chapter 11 case is closed.

Voting: As insiders, the votes of the Equity Interest Holders are not counted in considering confirmation of the Plan.

#### **IV. IMPLEMENTATION OF THE PLAN**

**Implementation.** The Plan shall be implemented through the proceeds received from the sale of the Property and by the receipt of funds on the Casualty Loss Claim. The expenses incurred to secure the Property after the Casualty Loss Claim and to restore the Property in preparation of the sale shall be deducted from the available funds. To date, the Debtor has received \$250,000.00 as an advance payment on its loss claim.

Immediately after the Casualty Loss, a company known as PuroClean Restoration Services was retained to drain water out from and to dry out the Building to remediate mold and to remove damaged property from the Premises. PuroClean has asserted that it is owed \$382,451 on account of its continuous efforts in the weeks after the loss. The bill is being reviewed by the Insurance Company. PuroClean has recently filed a mechanic's lien against the Property in the sum of \$341,082.50. The Debtor believes that this amount represents the agreed-upon reduction of the PuroClean claim. Another company known as Always Electric Corp. which restored electricity to the Property has asserted a claim of \$24,359.00. In addition, the proceeds of the Casualty Loss Claim will be further reduced by the amounts needed to restore elevator service to the premises, alarm and sprinkler service and to have the Property certified as being free of environmental contaminants which is a prerequisite to selling the Property.

The Bidding Procedures Order provides that the Property shall be sold, as is, where is, but free and clear of all claims, liens, taxes, notices of pendency, and non-permitted Encumbrances, with all claims, liens, taxes and non-permitted encumbrances to attach to the sale proceeds in the same extent, validity and priority, in accordance with Sections 363(b) and (f) and 1123(a)(5)(D) of the Bankruptcy Code. A Memorandum of Sale will be signed by the Successful Purchaser, and it will contain the essential terms and conditions of the sale.

If the Successful Purchaser seeks to have an assignment of the First Lender's mortgages, the Successful Purchaser will pay to the Debtor 50% of the tax savings which the First Lender will receive as a result of the mortgage assignments. The current mortgage tax for commercial properties in New York City is 2.8% of the principal amount of the mortgage. By way of illustration, if the mortgage placed on the Property is \$1,000,000, the tax savings is \$28,000.00 and \$14,000.00 will be paid to the Debtor's estate by the Successful Purchaser. The Successful Purchaser will also pay the sum of \$1,000.00 to counsel for each First Lender to reimburse the First Lender for its legal fees in preparing the assignment documents.

Based upon the existing title work available to the Debtor, among the disputed encumbrances which will be addressed and cleared under the Confirmation Order or the Sale Order which will be entered subsequent to the Confirmation Order, are the following items:

Various New York City judgments and ECB violations with fines.

**Credit Bids.** Pursuant to 11 U.S.C. §363(k), each Class 2 First Lender has retained rights to make a credit bid at the Auction either jointly or individually subject to making the payments described within this Disclosure Statement for professional fees, Auctioneer commission, adjuster fees and payments for unclassified claims, Class 1 claims and U.S. Trustee fees.



**Discharge of Obligations.** Except as otherwise expressly provided for and preserved herein, upon the occurrence of the Closing Date, as the case may be, any mortgages, judgments, liens, notes, bonds, agreements, instruments or documents, or otherwise, evidencing or creating any indebtedness, guaranties or other obligations of the Debtor that relate to Claims under this Plan and relating to the Property, shall be deemed satisfied and cancelled, and the obligations of the Debtor under each of the foregoing shall be discharged; provided, however, that the mortgages held by the First Lender may be assigned instead of discharged based upon an agreement to be executed between the Debtor and the Successful Purchaser upon the consent of the Class 2 First Lender, such consent not to be unreasonably withheld. Based upon these discharge provisions, all notices of pendency filed against the Property shall be deemed cancelled and vacated; all mechanic liens and brokers liens against the Property shall be deemed cancelled and vacated; and all recorded contracts of sale, memoranda or purchase options are likewise cancelled and vacated, and the Confirmation Order shall so provide. Notwithstanding Section 5.3 of the Plan, or any other provision of the Plan, the discharge of a debt of the Debtor shall not affect the liability of any entity on, or property of any other entity for, such debt.

**Post-Closing Date Transactions.** On or after the Closing Date, the Debtor is hereby authorized to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate the transfer of the Property, including the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, or right of the Debtor on terms consistent with the terms of this Plan and having other terms for which the applicable parties agree.

Immediately following the Closing, the First Lender shall take all steps necessary to discontinue with prejudice the foreclosure proceeding which it commenced against the Debtor

in the Supreme Court, Queens County (Index No. 702642/2012). In addition, the First Lender shall cause the filing of a stipulation of discontinuance with prejudice in actions relating to the foreclosure of the Property and the satisfaction of any judgments entered against former tenants at the Property.

**Transfer of Assets.** On the Closing Date, title to the Property shall be transferred to the Successful Purchaser free and clear of all claims, liens, taxes and non-permitted encumbrances by means of, inter alia, the following conveyances documents:

(a) a Quitclaim Deed to the Property in form and substance reasonably acceptable to the Successful Purchaser to be recorded in the appropriate register's office (the "Deed"), together with any and all New York City closing documents, including all New York State real property Transfer Tax returns and any and all affidavits, certificates and other documents which are usual and customary to facilitate a sale of real property in the City of New York; and

(b) a Bill of Sale, in form and substance reasonably acceptable to the Successful Purchaser, transferring all personal property of the Debtor used in or useful to the operation and maintenance of the Property.

**Transfer Taxes.** Pursuant to §1146(a) of the Bankruptcy Code, the making, delivery or recording of the deed or other instrument of transfer to the Property is being done in furtherance of this Plan. Accordingly, all deeds, bills of sale, assignments or other instrument of transfer to be executed by the Debtor shall not be subject to any deed, stamp, transfer or recording tax or similar government assessment, and the appropriate state and city agent shall forego the collection of any such transfer taxes and accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment,

including without limitation the New York City Real Property Transfer Tax and New York State Documentary Tax.

When the Property is sold, if the Successful Purchaser wishes to have the First Lender assign their mortgages to the Successful Purchaser's Lender, the Successful Purchaser will pay to the Debtor 50% of the tax savings which it would receive by virtue of the assignment (i.e., 1.4% of the principal amount of the mortgages assigned) and pay the sum of \$1,000.00 to the attorneys for each First Lender to compensate them for their legal costs in preparing the assignment documents.

**Preservation of Other Rights and Causes of Action.** Any Causes of Action belonging to the Debtor against third parties shall remain property of the Debtor's estate and shall be vested in the Reorganized Debtor (i.e., Debtor following Confirmation of the Plan) for prosecution as Reorganized Debtor deems necessary and appropriate. Notwithstanding the foregoing, the Debtor is currently unaware of any Causes of Action, and no additional litigation is contemplated.

**Post-Confirmation Management.** The Reorganized Debtor shall continue to be managed by the current Vice President, Darius Skarzynski pending formal dissolution of the Corporation following the entry of a final decree.

**Rights and Powers of the Debtor.** The Debtor shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) direct that all distributions contemplated hereby be made, and (iii) exercise such other powers as may be deemed by the Debtor to be necessary and proper to implement the provisions hereof.

**Rejection of all Existing Leases and Executory Contracts.** The Debtor is unaware of any unexpired leases or executory contracts to which it is a party, although certain contracts of sales have been previously recorded against the Property. Besides being extinguished, any unexpired leases or executory contracts to which the Debtor is party shall be deemed rejected as of the Confirmation Date, with any allowed rejection claims to be considered as part of the general unsecured creditor pool to share in the *pro rata* distribution to Class 4 Unsecured Creditors.

**Conditions Precedent to the Effective Date.** The following are conditions precedent to the Effective Date that must be satisfied:

(a) The Confirmation Order shall have been entered by the Bankruptcy Court confirming the Plan which shall approve a sale to the Successful Purchaser consistent with the terms hereof, or if the sale takes place after confirmation of the Plan, a separate Order will be submitted to the Court substantially in the form attached as Exhibit C to the Motion to, inter alia, Approve Bidding Procedures (ECF #63) which Order shall become effective immediately;

(b) The Closing Date shall have occurred, the purchase price paid by Successful Purchaser;

(c) There shall not be in effect on the Effective Date, any Order entered by a court of competent jurisdiction staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan; and

(d) All other actions and documents necessary to implement the Plan shall have been effected or executed in form and substance satisfactory to the Debtor.

**Retention of Jurisdiction.** The Bankruptcy Court shall retain jurisdiction after confirmation pending closure of the case to perform the following: (a) Ensure that the Plan is

fully consummated, and to enter any Order pursuant to §1142(b) of the Bankruptcy Code; (b) Resolve all matters arising under or relating to the Plan, including, without limitation, the enforcement, interpretation and any issues or dispute relating to the Closing on the Sale of the Property and the Debtor's Casualty Loss Claim including an action which may be brought to prosecute the Casualty Loss Claim; (c) Allow, disallow, determine, liquidate or classify, any secured or unsecured Claims, including, without limitation, the resolution of any request for payment of any Administrative Expenses, the resolution of any and all objections to the allowance any Claims, and the resolution of any adversary proceeding; (d) Grant or deny any and all applications for allowance of compensation and reimbursement of expenses by the professionals retained during the bankruptcy case; (e) Resolve any motions or applications pending on the Effective Date; (f) Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the Plan; (g) Enter such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, deeds, instruments and other agreements or documents created in connection with the Plan or to enforce all orders, judgments, injunctions, and rulings entered in connection with the bankruptcy case; (h) Issue any orders or take such other actions as may be necessary or appropriate to restrain interference by any person or entity with consummation or enforcement of the Plan; and (i) Enter a Final Decree concluding the bankruptcy case.

**V. BASIC REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

Section 1129(a) of the Bankruptcy Code lists a number of findings that need to be made prior to Confirmation. In this case, because the Debtor is selling the Property and distributing all of the net proceeds to the holders of allowed claims in accordance with the priority scheme established under the Bankruptcy Code, the Debtor believes that the Plan meets with all of the

requirements of §1129(a). In the end, the Debtor anticipates that all creditors will support the Plan as the best way to maximize the value of the Property.

**A. Feasibility Of The Plan.** As a prerequisite to confirmation, Bankruptcy Code § 1129(a)(11) requires that the Debtor and its equity interest holders demonstrate their ability to fund the Plan and establish that confirmation is not likely to be followed by the need for further financial reorganization or restructuring. Since the Debtor is liquidating its assets at fair market value, this test is easily met.

**B. Best Interests Of Creditors Test.** The Plan must also be in the “best interests of creditors”. This is a legal term of art, which requires that the Plan provides a dividend to a class of creditors that vote against the Plan, which is equal to or greater than the distribution that class of creditors would realistically receive if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. Here, a small carve out will be set aside by the First Lender which would not otherwise be available in a Chapter 7 case. Thus, the distribution to unsecured creditors under the Plan is greater than in a Chapter 7 liquidation.

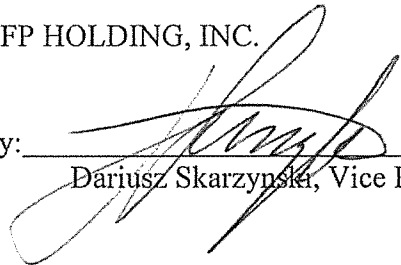
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**VI. CONCLUSION**

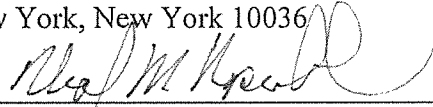
The Debtor believes the Plan should be confirmed, and urges creditors to vote in favor of the Plan.

Dated: New York, New York  
May 18, 2018

AFP HOLDING, INC.

By:   
Dariusz Skarzynski, Vice President

GOLDBERG WEPRIN  
FINKEL GOLDSTEIN LLP  
Attorneys for the Debtor  
1501 Broadway – 22<sup>nd</sup> Floor  
New York, New York 10036

By:   
Neal M. Rosenbloom

# **EXHIBIT “A”**



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

AFP HOLDING, INC.,

Case No. 17-42642(CEC)

Debtor.

-----X

**PLAN AGREEMENT**

**AGREEMENT**, dated as of April 16, 2018, by and between AFP Holding, Inc. (“**Debtor**”), the debtor in the involuntary bankruptcy proceeding, entitled “In re AFP Holding, Inc., pending in the United States Bankruptcy Court for the Eastern District of New York (the “**Court**”), Case No. 1-17-42642-cec (“**Debtor’s Case**”), SummitBridge National Investments III LLC (“**SB**”), New York Business Development Corporation (“**NYBDC**”), Aldona Skarzynski, (“**Aldona**”) and Dariusz Skarzynski, (“**Dariusz**” and together with Aldona, the “**Insiders**”) and together with Debtor, SB, NYBDC, and Aldona, the “**Parties**” and each a “**Party**”).

**WHEREAS**, Debtor is the owner of the non-residential real property located at 54-14 74<sup>th</sup> Street, Elmhurst, NY, 11373-4702 (the “**Real Property**”) improved by an office building (the “**Building**”) in which Debtor rented offices and other space to three tenants (the “**Tenants**”); and

**WHEREAS**, Aldona and Dariusz, together, are the owners of one hundred percent (100%) of the issued and outstanding shares of stock of Debtor and one hundred percent (100%) of the issued and outstanding shares of stock of Aldona Fire Protection Inc., d/b/a A Electric (“**Aldona Fire**”); and

**WHEREAS**, SB is the assignee of Bank of America N.A. and holder of a mortgage against the Real Property in an original principal amount of \$1,616,000 evidenced by a modified mortgage note and Mortgage Modification, Extension and Assignment of Rents Agreement (“**SB Mortgage**”); and

**WHEREAS**, NYBDC is the holder of a mortgage against the Real Property in the original principal amount \$1,500,000.00 (the “**NYBDC Mortgage**”); and

**WHEREAS**, the SB Mortgage and the NYBDC Mortgage share a first priority mortgage position against the Real Property; and

WHEREAS, Bank of America, N.A., the original mortgagee under and assignor to SB of the SB Mortgage, and NYBDC entered into an InterCreditor Agreement, dated as of May 7, 2010 (the “Intercreditor Agreement”), regarding their respective rights in the SB Mortgage and NYBDC Mortgage, and their rights in the event of a sale of the Real Property, which Intercreditor Agreement was recorded with the Register of the City of New York on May 25, 2010; and

WHEREAS, the Empire State Certified Development Corp. (“ESCDC”) assigned to the United States Small Business Administration (“SBA”) on May 7, 2010, a second priority mortgage against the Real Property in the original principal amount of \$1,984,000, which was recorded with New York City on May 28, 2010; and

WHEREAS, on May 23, 2017 (the “Petition Date”), SB filed an Involuntary Petition under Chapter 7 of the Bankruptcy Reform Act of 1978, as amended (the “Bankruptcy Code”) against Debtor commencing Debtor’s Case; and

WHEREAS, Debtor filed a motion to dismiss the Involuntary Petition under 11 U.S.C. § 305, or, in the alternative, for abstention under 28 U.S.C. § 1334(c); and

WHEREAS, on October 19, 2017, the Court denied Debtor’s motion to dismiss the involuntary petition or abstain; and

WHEREAS, on November 2, 2017, Debtor filed a motion to convert Debtor’s Case from Chapter 7 to Chapter 11; and

WHEREAS, on January 8, 2018, a pipe burst in the Building causing extensive water damage to the Building and the rental units in the Building (the “Loss”); and

WHEREAS, Debtor and Aldona Fire , an affiliate of Debtor, are the named insureds under a policy of casualty insurance, Policy No. PHPK1661006 (the “Insurance

Policy”) issued by Philadelphia Indemnity Insurance Company (the “Insurer”) covering the Loss and Debtor has timely filed a claim with the Insurer under the Insurance Policy; and

WHEREAS, SB, NYBDC, and ESCDC, as servicing agent for SBA, are named as loss payees under the Insurance Policy; and

WHEREAS, Debtor retained United Public Adjusters & Appraisers (“Adjuster”) to represent Debtor in adjusting the Loss and processing a claim against the Insurance Policy; and

WHEREAS, by notices dated January 31, 2018, to each of the Tenants, each of the leases for offices in the Building were terminated effective February 15, 2018, and the termination of each of the leases has been acknowledged by the Tenants; and

WHEREAS, by Order (the “Conversion Order”), entered March 12, 2018 (the “Conversion Date”), on consent of SB and NYBDC, the Court entered an order for relief under Chapter 7 of the Bankruptcy Code in Debtor’s Case, and converted Debtor’s Case to a case under Chapter 11 of the Bankruptcy Code; and

WHEREAS, by Order of the Court, dated March 27, 2018 and entered, March 28, 2018 [Dkt. No. 56], Goldberg Weprin Finkel Goldstein LLP (“GWFG”) was retained by Debtor as Chapter 11 counsel for Debtor; and

WHEREAS, by Order of the Court, signed March 27, 2018 and entered, March 27, 2018 [Dkt. No. 57], Maltz Auctions, Inc., dba Maltz Auctions (the “Auctioneer”) was retained by Debtor as auctioneer to sell the Real Property at an auction sale; and

WHEREAS, the parties desire to agree on the terms of a Chapter 11 plan to be filed by Debtor, and provide for the repair of the Building and sale of the Real Property using proceeds of the Insurance Policy;

NOW, THEREFORE, it is agreed as follows:

1. Sale of Real Property/Sale Motion. On or before April 18, 2018, Debtor shall file with the Court and serve on all creditors and parties in interest, a motion authorizing the sale of the Real Property, pursuant to 11 U.S.C. §§ 363(b) and (f) and 1123(a)(5)(D), at an auction sale to be conducted by the Auctioneer within sixty (60) days of completion of repairs and/or renovations to the Real Property (the “Repairs”), provided, however, that in the event the Repairs are not completed on or before June 1, 2018, upon written notice from either SB or NYBDC to the Parties and the Auctioneer, the Auctioneer shall schedule the auction sale of the Real Property for a date not less than sixty (60) nor more than ninety (90) days after the date of such notice and the sale shall be held on such date. The sale of the Real Property shall be free and clear of liens, claims, encumbrances, and interests (collectively, “Liens” and each a “Lien”), with such Liens, if any, to attach to the proceeds of the sale net of customary closing costs and adjustments, including but not limited to recordation fees, capital gains taxes on the sale, if any, title insurance charges, pickup fees, *etc.*, all other taxes associated with the sale, including commercial real estate taxes which may be incurred by Debtor’s bankruptcy estate (the “Estate”) as a result of the sale, the Auctioneer’s commissions and disbursements, in amounts approved by final order of the Court (“Net Sale Proceeds”), “as is”, “where is”, “with all faults”, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, subject to any state of facts that an accurate survey may show, any covenants, restrictions, and easements of record, any state of facts a physical inspection may show, any building or zoning ordinances or other applicable municipal regulations and violations thereof, and environmental conditions, but free of tenancies. The sale is to be made free of transfer taxes, pursuant to 11 U.S.C. §1146(a). The sale shall close after the effective date of Debtor’s confirmed Chapter 11 plan.

Debtor shall reasonably cooperate with SB and NYBDC in order to obtain the most favorable tax treatment on the sale of the Real Property. The sale shall not include any rights under the Insurance Policy or any proceeds of the Insurance Policy and the terms and conditions of sale and any order of the Court approving the sale shall expressly so provide. The Auctioneer shall be compensated for its services in connection with the sale as provided in the March 27, 2018 Order authorizing Auctioneer's retention [Dkt. No. 57].

2. Allowed Claims of SB and NYBDC. SB shall have: (a) an allowed secured claim, as of March 1, 2018, in the amounts of \$1,545,434.89 for principal, \$692,869.97 for interest at the non-default rate per the note secured by the SB Mortgage, "Advances" as that term is defined in the Intercreditor Agreement in an amount to be agreed upon between SB and NYBDC or as determined by the Court, and "Enforcement Costs", as that term is defined in the Intercreditor Agreement, in an amount to be agreed upon between SB and NYBDC or as determined by the Court, plus interest, Advances, and Enforcement Costs accruing thereafter; and (b) an allowed unsecured claim in the amount of the difference between the amount of its allowed secured claim and (i) the amount paid to SB from the Net Sale Proceeds plus the proceeds of the Insurance Policy ("Insurance Proceeds") not expended to pay the cost of the Repairs, the Adjuster's compensation, the costs of sale of the Real Property or any other legitimate expense in connection with the Real Property ("Net Insurance Proceeds" and together with the Net Sale Proceeds, the "Net Proceeds") or (ii) the amount of its credit bid plus the Net Insurance Proceeds (such credit bid plus the Net Insurance Proceeds being defined as the "Credit Bid Proceeds"), whichever is applicable. NYBDC shall have: (a) an allowed secured claim, as of March 1, 2018, in the amounts of \$1,437,671.40 for principal, \$646,656.61 for interest at the non-default rate per the note secured by the NYBDC Mortgage, Advances in an

amount to be agreed upon between SB and NYBDC or as determined by the Court, and Enforcement Costs in an amount to be agreed upon between SB and NYBDC or as determined by the Court, plus interest, Advances, and Enforcement Costs accruing thereafter; and (b) an allowed unsecured claim in the amount of the difference between the amount of its allowed secured claim and (i) the amount paid to NYBDC from the Net Proceeds or (ii) the amount of its Credit Bid Proceeds, whichever is applicable. To the extent applicable, SB and NYBDC shall be entitled to retain and collect any deficiency on any unsecured claim from any third party obligors. Any portion of the allowed secured claims not paid from the Net Proceeds shall be deemed an allowed general unsecured claim entitled to such distributions as provided for that class of creditors in a confirmed Chapter 11 plan.

3. **Credit Bids.** The rights and obligations of SB and NYBDC to each other with respect to bidding and/or credit bidding at the sale of the Real Property and distribution of the Net Proceeds in payment of their respective allowed secured claims and their respective rights in the event either or both of SB and NYBDC are the successful bidder at the auction sale shall be governed by the Bankruptcy Code and the Intercreditor Agreement unless modified by a written agreement executed by both SB and NYBDC. Debtor agrees not to object to or dispute any effort by SB and/or NYBDC to jointly or individually credit bid.

4. **Tenancies.** Debtor represents that all tenancies in the Real Property have been lawfully terminated and the Real Property currently is free of any tenant or occupant. Debtor agrees not to enter into any leases or occupancy agreements or to permit any person or entity to occupy or use the Real Property or any portion thereof at any time after the date of this Agreement without the express written consent of both SB and NYBDC.

5. Repairs/Adjuster/Construction Manager. The scope, extent, quality, and detail of the Repairs and the cost thereof shall be determined by SB and NYBDC in consultation with the Adjuster. Subject to the prior consent of SB and NYBDC, the Adjuster shall prepare and negotiate a proof of loss with the Insurer and shall supervise all Repairs to be performed on the Building using the Insurance Proceeds to the extent necessary to obtain the best marketable result for sale of the Real Property and to maximize the assets of Debtor's Estate, as determined by SB and NYBDC. Debtor and the Adjuster shall involve SB and NYBDC in all communications with the Insurer regarding payments under the Insurance Policy and the claim being processed by the Adjuster as representative of Debtor. At any such time as SB or NYBDC shall request, Debtor shall duly retain a construction manager nominated by SB and NYBDC to supervise the repair of the Real Property using the proceeds of the Insurance Policy (the "**Construction Manager**") as provided for in this Section "5". After the insurance claim has been adjusted, the Debtor or the Construction Manager, if appointed, shall retain with the prior consent of SB and NYBDC, and supervise the payment of all vendors and contractors in connection with all Repairs on the Building. The Debtor or Construction Manager, if appointed, shall determine the scope of work to constitute the Repairs following consultation with SB and NYBDC, and with the prior consent of SB and NYBDC, shall have such work performed by licensed and qualified contractors with all required permits, and shall obtain a duly issued certificate of occupancy if appropriate. All contracts for employment of contractors performing the Repairs shall be subject to prior consent of SB and NYBDC.

6. Chapter 11 Plan. On or before April 30, 2018, Debtor shall file with the Court a proposed Chapter 11 liquidating plan (the "**Plan**") and disclosure statement ("**Disclosure Statement**") in a form and containing such terms as are reasonably agreed to by SB and



NYBDC, including: (a) in the event there is not a successful credit bid, the following: (i) provision for the closing of the sale of the Real Property after the effective date of the Plan (the "Effective Date"); and (ii) distribution of the Net Proceeds as follows: (A) first to pay the carveouts from the collateral of SB and NYBDC provided for in Paragraph "7" below, (B) second to pay the allowed secured claims of SB and NYBDC with the payments to be divided between them as provided herein, in the Intercreditor Agreement or such other agreement between SB and NYBDC, (C) third, to pay the allowed secured claim of SBA, if any, and (D) fourth, according to the priorities set forth in 11 U.S.C. § 507(a); (b) in the event of a successful credit bid, the following: (i) provision for the closing of the sale of the Real Property after the Effective Date; (ii) payment to Debtor's Estate of the carveouts from the collateral of SB and NYBDC provided for in Paragraph "7" below; and (iii) deemed payment to each of SB and NYBDC in the amount of the credit bid proportioned between them pursuant to the Intercreditor Agreement or as they shall both agree in writing; and (c) in any event, prior to any distribution to holders of allowed secured claims, SB and NYBDC, either alone or acting jointly, may investigate and prosecute, on behalf of Debtor's Estate: (i) any avoidance action to recover assets for Debtor's Estate which Debtor, as debtor-in-possession would have been empowered to bring prior to the Effective Date of the plan; (ii) prosecute any claim Debtor may have against the Insurer regarding the Insurance Policy; and/or (iii) object to any claims filed by any creditor other than SB or NYBDC. SB and NYBDC shall provide Debtor with its comments to a proposed Plan and Disclosure Statement within ten (10) business days after they are provided with a copy of the Plan and Disclosure Statement. The actual and necessary legal and other professional fees and disbursements incurred by SB and/or NYBDC in taking such actions shall be deemed Advances under their respective mortgages and the Intercreditor Agreement, and

added to their respective allowed secured claims, and in the event of a successful credit bid or to the extent that the Net Proceeds are insufficient to pay such additional allowed secured claims in full, such amounts shall be deemed allowed Chapter 11 administrative expenses under 11 U.S.C. § 503(b)(1)(A), payable pursuant to 11 U.S.C. § 507(a)(2). The Net Proceeds allocable to the allowed secured claims of SB and NYBDC which share first priority against the Net Proceeds shall be disbursed first to pay Costs of Enforcement, as provided in Paragraph "3" of the Intercreditor Agreement, second to pay Advances, as provided in Paragraph "3" of the Intercreditor Agreement, third to pay the "outstanding principal balance" (as defined and as provided to be paid in Paragraph "4" of the Intercreditor Agreement), and fourth to pay accrued interest, penalties, premiums, and all other charges other than the outstanding principal balance due under the respective mortgage notes of SB and NYBDC (except as may be limited by any agreement between SBA and either or both of SB and NYBDC), or otherwise as provided in a separate written agreement entered into between SB and NYBDC.

7. **Cash Collateral Motion.** Within ten (10) business days after execution of this Agreement, Debtor shall file with the Court a motion for approval of a cash collateral Agreement and order with SB and NYBDC (the "**Cash Collateral Order**"), which shall provide: (a) for Debtor's use of the Insurance Proceeds which constitute the cash collateral of SB and NYBDC only pursuant to a construction plan agreed to by SB and NYBDC in consultation with the Adjuster or Construction Manager; (b) monthly budgets to be prepared by the Construction Manager subject to approval of SB and NYBDC (or if prior to retention of the Construction Manager, prepared by Debtor and consented to in writing by SB and NYBDC) and including payment of UST quarterly fees as and when appropriate.; (c) that all proceeds of the Insurance Policy and any other funds to be received by Debtor or Debtor's Estate shall be deposited in a

lock box account to be maintained at a bank to be designated by SB and NYBDC which is a depository authorized for use in bankruptcy cases pending in the Eastern District of New York (the "Cash Collateral Account") which will require either written consent of SB and NYBDC or a Court order for any withdrawal from the Cash Collateral Account other than disbursements pursuant to budgets approved by SB and NYBDC; (d) for a carveout from the cash collateral of all secured creditors as follows: (i) an amount not to exceed \$40,000 for the Chapter 11 administrative fees and disbursements of Debtor's counsel, GWFG, subject to approval by final order of the Court; (ii) administrative fees and disbursements for Debtor's duly retained Adjuster in the amount due pursuant to the retention agreement between Debtor and the Adjustor subject to approval by final order of the Court; (iii) administrative fees and disbursements for the duly retained Auctioneer in the amount of his agreed upon compensation as provided above and in the order for his retention and subject to approval by final order of the Court; and (iv) for Debtor's Estate, in the following amounts: (1) \$10,000 for gross proceeds of the sale of the Real Property ("Gross Sale Proceeds") and Net Insurance Proceeds of \$3,500,000 or less; (2) one percent (1%) of the Gross Sale Proceeds and Net Insurance Proceeds in excess of \$3,500,000 but less than \$4,100,000; and (3) Two percent (2%) of the Gross Sale Proceeds and Net Insurance Proceeds in excess of \$4,100,000.

8. Insider Claims. Upon execution of this Agreement, the Insiders shall be deemed to have waived entitlement to any distribution from Debtor's Estate on any and all claims (as defined in 11 U.S.C. § 101(5)) against the Estate, including but not limited to distribution upon any claim heretofore or hereafter filed by or on behalf of either or both of the Insiders against Debtor's Estate, and any other claim available to the Insiders, including without limitation, any claim under 11 U.S.C. § 502(h), whether arising prior to or after the Petition Date,

whether known or unknown, liquidated or unliquidated, filed or unfiled, and any claim filed by the Insiders shall be expunged, waived, and released, and the Insiders shall take all action necessary to withdraw or expunge any claim filed by any of them in Debtor's Case, and agree not to file any claim in Debtor's Case after the date of this Agreement.

9. **Access to Real Property.** At all times after execution of this Agreement, Debtor shall provide unlimited access to the Real Property for SB, NYBDC, the Adjuster, the Construction Manager, and the Auctioneer, and any representatives thereof.

10. **Cooperation.** Debtor agrees to cooperate with SB, NYBDC, the Adjuster, the Construction Manager, if any, and the Auctioneer in effectuating the terms of this Agreement and shall duly execute and deliver all documents and perform all acts reasonably deemed necessary by Debtor, the Adjuster, the Auctioneer, the Construction Manager, if any, SB and/or NYBDC for the implementation of this Agreement. Aldona Fire acknowledges that it has no pecuniary interest in the Insurance Proceeds and agrees to cooperate in effectuating the adjustment of the Insurance Loss and payment of the Insurance Proceeds as provided above, and shall duly execute and deliver all documents and perform all acts reasonably deemed necessary by the Trustee for the implementation of this Agreement

11. **Multiple Counterparts/Facsimile and Electronic Signatures.** This Agreement may be executed in multiple counterparts and/or by facsimile signatures, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument having full force and effect.

12. **Choice of Law/Venue.** The Parties agree that this Agreement shall be governed by the substantive laws of the State of New York, without reference to choice of law principles,

and that venue of any action to enforce or interpret this Agreement shall be exclusively in the Court.

13. **Entire Agreement.** This Agreement contains the entire agreement between the Parties concerning the subject matter of this Agreement and same supersedes all prior agreements, understandings, discussions, negotiations, and undertakings between the Parties concerning the subject hereof, whether written or oral. This Agreement may not be changed or modified except in a writing signed by each of the Parties. No Party hereto has relied on any representation or promise not expressly set forth herein in entering into this Agreement.

14. **Final Settlement.** The Parties acknowledge and agree that this Agreement is being executed and delivered as a full and final settlement of the claims and defenses raised by the Debtor in the Involuntary Petition and any answer Debtor could have served thereto.

15. **Construction.** Any construction to be made of this Agreement shall not be construed for or against any Party, but rather shall be given a fair and reasonable interpretation based on the plain language of the Agreement and the expressed intent of the Parties.

16. **Headings.** The headings of paragraphs contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

17. **Binding Effect.** This Agreement and each term hereof shall be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

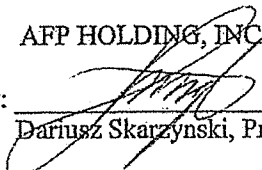
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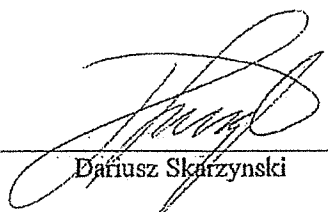
IN WITNESS WHEREOF, the undersigned Parties hereto have executed this

Agreement as of the date set forth above.

AFP HOLDING, INC.

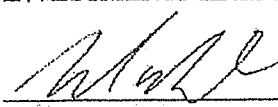
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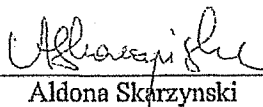
  
Dariusz Skarzynski, President

  
Dariusz Skarzynski

SUMMITBRIDGE NATIONAL  
INVESTMENTS III LLC

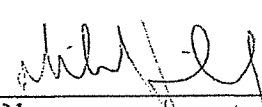
By:

  
Name: MARK A. KILCOM  
Title: AUTH. REP.

  
Aldona Skarzynski

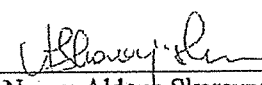
NEW YORK BUSINESS  
DEVELOPMENT CORPORATION

By:

  
Name: Michael Zihal  
Title: Sr. Vice President

ALDONA FIRE PROTECTION INC.

By:

  
Name: Aldona Skarsynski  
Title: President