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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

271 SEA BREEZE AVENUE LLC,

Chapter 11
Case No. 17-40216-ess

Debtor.

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DISCLOSURE STATEMENT

I. INTRODUCTION

271 SEA BREEZE AVENUE LLC (the “Debtor”) submits this Disclosure Statement pursuant to Section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ et seq. (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), in connection with its Chapter 11 Liquidating Plan dated April 14, 2017 (the “Plan”) to all known holders of Claims against or Interests in the Debtor in order to adequately disclose information deemed to be material, important and necessary to make a reasonably informed judgment about the Plan, including, who is entitled to vote to accept or reject the Plan. A full copy of the Plan is attached to this Disclosure Statement as Exhibit “A”. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

Under Section 1126(b) of the Bankruptcy Code, only Classes¹ of Allowed Claims that are “impaired” under the Plan, as defined by Section 1124 of the Bankruptcy Code, are entitled to vote on the Plan. Generally, a Class is impaired if its legal, contractual or equitable rights are altered or reduced under the Plan. Under the Plan, only Classes 1 and 4 are Impaired under the Plan and therefore they are the only Classes that will be permitted to vote to accept or reject the Plan. All other Classes are deemed to accept the Plan.

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims of the type you hold (*i.e.*, what you will receive on your claim if the plan is confirmed and your claim is “allowed” within the meaning of the Plan),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim under the Plan compares to what you would receive on your claim in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

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

¹ Capitalized terms not defined herein have the same meaning ascribed to them in the Plan.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on May 25, 2017 at 10:30 a.m., before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, in Courtroom 3585, at the United States Bankruptcy Court, Eastern District of New York – Brooklyn Division, 271-C Cadman Plaza East, Brooklyn, New York 11201.

2. Deadline For Voting to Accept or Reject the Plan

May 18, 2017 at 4:00 is the deadline for voting on the Plan. Class 1 and 4 creditors treatment under the Plan is Impaired under the Plan and thus Class 1 and 4 claims holders are entitled to vote on the Plan.

3. Deadline For Objecting to the Confirmation of the Plan

Objections to the confirmation of the Plan must be filed with the Court and served upon DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. by May 18, 2017.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. (914) 681-0200.

C. Disclaimer

The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet approved this Disclosure Statement on a final basis or

determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has conditionally approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. BACKGROUND

A. Description of the Debtor and Events Leading to Bankruptcy

The Debtor is a single asset real estate entity that owns unimproved real property located at 213-129 Sea Breeze Avenue, Brooklyn, New York, Block: 7280, Lot: 110 (the “Property”). The Debtor acquired the Property in early 2014 for the purpose of developing the Property. Currently, the Property consist of an unimproved 150,000 square foot parcel located in the Brighton Beach section of Brooklyn.

On January 2, 2014, the Debtor acquired the Property subject to a pre-existing mortgage. In connection therewith, on January 2, 2014, the Debtor entered into an agreement with SDF 50 CAP NY LLC (“SDF50 CAP”) assuming and modifying the pre-existing mortgage at an agreed principal of \$11,000,000.00, with a maturity date of February 1, 2015 (the “Amended and Restated Note”). As security for the Amended and Restated Note, the Debtor executed an assignment of leases and rents and an amended and restated mortgage and security agreement (the “First Mortgage Documents”) granting SDF50 CAP a security interest in the Property.

SDF50 CAP assigned the Amended Restated Note and the First Mortgage Documents to SDF50 Sea Breeze 1 LLC (“Sea Breeze 1”) on the same date they were executed.

In addition, on or around January 2, 2014, for good and valuable consideration, the Debtor issued a promissory note to the order of SDF50 Sea Breeze 2 LLC (“Sea Breeze 2”) with a principal balance of \$250,000.00, and a maturity date of February 1, 2015 (the “Second

Mortgage Note”). As security for the Second Mortgage Note, the Debtor executed an assignment of leases and rents and an amended and restated mortgage and security agreement (the “Second Mortgage Documents” and, collectively with the Amended and Restated Note, the First Mortgage Documents, and the Second Mortgage Documents, the “Loan Documents”) granting SDF50 CAP a security interest in the Property.

The Debtor defaulted on the Amended Restated Note and the Second Mortgage Note by failing to make the payment due on February 1, 2015 and all payments thereafter, including (but not limited to) a required pay-down of the principal balance in the amount of \$4,950,000.00 that was due on April 1, 2014. On or around June 24, 2015, Sea Breeze 2 assigned the Second Mortgage Note and the Second Mortgage Documents to Sea Breeze 1. On June 25, 2015, Sea Breeze 1 commenced a foreclosure proceeding on the Loan Documents against the Debtor in the Supreme Court of the State of New York, Kings County at Index Number 507874/15.

On or about May 5, 2015, the Debtor entered into a Contract of Sale with Sergey Rybak and Jason Reznik (collectively, the “2015 Purchasers”) for the purchase of the Property, which included a payment into escrow of \$750,000.00 (the “Down Payment”). On or about July 1, 2015, the 2015 Purchasers cancelled the Contract of Sale and demanded a return of the Down Payment. The Debtor refused to return the Down Payment. On July 27, 2015, the 2015 Purchasers commenced suit against the Debtor seeking recovery of the Down Payment and foreclosure of a vendee’s lien on the Property. On April 8, 2016, the 2015 Purchasers obtained a judgment against the Debtor in the amount of \$66,479.49 for a deficiency, interest, legal fees and costs and disbursements. On or before August 8, 2016, the 2015 Purchasers noticed a public auction sale of the Property to be held on September 7, 2016, in order to satisfy the April 8, 2016

judgment. The public auction sale was cancelled upon the Debtor, by its sole member Miller, entering into a Settlement Agreement with the 2015 Purchasers. The settlement agreement required the Debtor to place into escrow with the 2015 Purchasers' attorney certain documents including a bargain-and-sale deed without covenants against grantor's acts (the "Deed"), and likewise required the 2015 Purchasers to place into escrow with their attorney certain documents including a fully-executed satisfaction of the April 8, 2016 judgment.

On October 5, 2016, the Debtor paid \$72,961.93, and the Deed and related documents, along with the other required documents were delivered to the Debtor for use or destruction, as the Debtor saw fit.

On November 16, 2016, the Honorable Justice David B. Vaughan of the Supreme Court of the State of New York, Kings County, entered a judgment of foreclosure and sale in favor of Sea Breeze 1 in the amount of \$18,517,500.00 as of July 15, 2016, with interest continuing to accrue, and directing a referee to conduct an auction of the Property (the "Judgment").

The Debtor made numerous attempts to work out a restructuring of the indebtedness with Sea Breeze 1 and Sea Breeze 2 but to no avail. However, in the middle of negotiations, the 2015 Purchasers backed out of the contract of sale with the Debtor, and upon information and belief, through a separate entity they created, Sea Breeze Tower Development, LLC (the “Buyer”), Buyer instead went to Sea Breeze 1 and made a deal to acquire Sea Breeze 1’s mortgage and complete the foreclosure process of the Property. On or about January 12, 2107, Sea Breeze 1 assigned the Loan Documents to the Buyer.

A foreclosure auction of the Property pursuant to the Judgment was scheduled to take place on January 19, 2017.

Without any consensual resolution with Sea Breeze 1 or Sea Breeze 2, the Debtor filed its Chapter 11 case on January 19, 2017 (the “Petition Date”) prior to the commencement of the foreclosure auction, to allow the Debtor the opportunity to either restructure the debt or develop the Property, which, if fully successful, would not only pay all of the Debtor’s claims in full, but achieve a return to equity.

B. Significant Events During the Bankruptcy Case

On January 19, 2017 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (Brooklyn Division) and continued in possession of its property and management of its affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

C. Retention of Professionals

At the outset of this case the Debtor retained DelBello Donnellan Weingarten Wise &

Wiederkehr, LLP as its bankruptcy counsel to assist in the successful administration of the Debtor's bankruptcy case. The retention of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP was approved by an Order of the Bankruptcy Court dated March 8, 2017, *nunc pro tunc* as of the Petition Date.

D. Schedules and Statement of Financial Affairs

On January 19, 2017, the Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs. Pursuant to an Order of the Bankruptcy Court dated February 28, 2017 (the "Bar Date Order"), the Court established May 1, 2017 as the last date by which creditors may file proofs of claim in the Chapter 11 Case, except as otherwise provided in the Bar Date Order. Pursuant to the Bar Date Order, notice of entry of the Bar Date Order was mailed, by first class mail, to all known creditors of the Debtor.

E. Section 341 Meeting of Creditors and Court Hearings

On February 24, 2017, the Debtor attended its Section 341(a) Meeting of Creditors. The Debtor also appeared at the initial case conference in this Bankruptcy proceeding before the Hon. Elizabeth S. Stong at the United States Bankruptcy Courthouse on March 9, 2017 and has appeared, through counsel, at all continued case conferences as scheduled by the Bankruptcy Court.

F. Bar Date

The Bankruptcy Court has set May 1, 2017 as the last date for non-governmental persons to file a proof of claim in the Chapter 11 Case (the "Bar Date").

G. Buyer's Motion to Dismiss Case, or Relief from Stay, or Transfer Venue

Sea Breeze Tower Development LLC filed a motion (the "Motion") seeking (i) dismissal

of the Chapter 11 Case, or (ii) in the alternative, for relief from the automatic stay, and (iii) in the alternative, transfer of the Debtor's Chapter 11 case to the Southern District of New York. In its motion, Buyer alleged that, *inter alia*, the Chapter 11 case was filed in bad faith, the Chapter 11 Case was commenced without requisite authority, Buyer was not adequately protected by the value of the Property, and the Chapter 11 Case should be transferred to the Southern District of New York since an affiliate of the Debtor had a case pending in that venue.

In response, the Debtor argued that the Debtor filed its Chapter 11 case in a good faith effort to refinance or sell the Property while attempting to prosecute or resolve the Debtor's claims against Buyer for bad faith conduct and tortious interference of contract under New York law, whose conduct precipitated the Chapter 11 filing. Moreover, contrary to Buyer's allegations in the motion, the Debtor further argued that it filed the Chapter 11 Case with the full and unfettered authority of its manager and sole member. Finally, the Debtor argued that there was no cause to transfer the Chapter 11 Case to the Southern District of New York. Although there is indeed common ownership of the Debtor and 97 Grand Avenue, LLC ("97 Grand"), the Debtor is not an affiliate of 97 Grand, nor is 97 Grand an affiliate of the Debtor, The Debtor's property, member and books and records are all domiciled in Brooklyn. As a result, the Debtor argued there could not be a more appropriate venue than this Court.

At the hearing on the Motion, the Debtor and Buyer engaged in extensive and productive settlement discussions that resulted in the resolution of the Motion, Buyer's claims in this Chapter 11 Case, and the ultimate resolution of this Chapter 11 Case. The Debtor and Buyer have agreed to sell the Property to Buyer in the amount of \$13,500,000, plus the assumption and payment of real estate taxes on the Property, with Buyer credit bidding \$12,940,000 of its

secured claim, agreeing to waive its remaining claims against, inter alia, the Debtor's estate and paying to the Debtor's estate \$560,000.00 in cash, which shall be used to pay creditors and, to the extent available, equity Interest holders, under the Plan.

H. Resolution of Disputed Claims

The Debtor has resolved and fixed all known and/or filed claims in the Chapter 11 Case without the need for litigation.

The Debtor may bring claims objections after the expiration of the Bar Date but in no event later than 60 days after the Confirmation Date.

III. THE PLAN OF REORGANIZATION

The following is a brief summary of the Plan. The Plan represents a proposed legally binding agreement and creditors are urged to consult with their counsel in order to fully understand the Plan and to make an intelligent judgment concerning it. The Plan governs over any discrepancy in this summary.

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

A. Treatment of Unclassified Claims Under the Plan

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 Plan. They may, however, object if, in their view, their treatment under the Plan does not

comply with that required by the Bankruptcy Code. As such, the Debtor has *not* placed the following claims in any class:

1. Allowed Administrative Claims other than Claims of Professionals

Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate pursuant to 28 U.S.C. Section 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These Allowed Claims shall be paid in Cash on the later of the Effective Date or the Sale Closing Date (defined below), or as soon as is practicable thereafter. The Debtor estimates that the Allowed Administrative Claims other than Claims of Professionals or Administrative real estate tax Claims outstanding on the Effective Date are \$0.

2. Allowed Administrative Claims of Professionals

These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Debtor's only Professional whose employment has been approved by the Bankruptcy Court is its bankruptcy counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP. The Allowed Administrative Claims of the Professional shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, (ii) the Effective Date, or (iii) the Sale Closing Date. The Debtor estimates that the total net unpaid Allowed Professionals claims on the Effective Date total approximately \$50,000, representing net unpaid professional fees incurred through the Effective Date.

3. *United States Trustee's Fees*

These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor from the Post-Confirmation Reserve. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the entry of a final decree closing the Chapter 11 Case. The Debtor estimates these Claims to total approximately \$20,000.00.

4. *Allowed Priority Tax Claims*

Priority tax claims are unsecured tax claims of governmental units pursuant to §507(a)(8) of the Bankruptcy Code other than the tax Claims of the City of New York. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. The Debtor estimates these Claims to total approximately \$0.

5. *Allowed Real Estate Administrative and Priority Tax Claims*

Allowed Administrative and Priority Real Estate Tax Claims incurred through the Sale Closing Date shall be paid by the Buyer in full on the Sale Closing Date.

B. Classes of Claims

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

1. *Class 1: Allowed Secured Claim of Buyer*

Class 1 consists of the Allowed Secured Claim of Buyer in the amount of \$19,660,648.90. The Buyer shall submit a credit bid for the purchase of the Property in the amount of \$12,940,000 which, when taken together with its cash payment to the Debtor in the amount of \$560,000 (already deposited in Buyer's counsel's escrow account), shall represent payment in full for the Property pursuant to the Stipulation, in full and final satisfaction of the Allowed Class 1 Secured Claim. The Class 1 Claim is Impaired under the Plan and the Buyer shall be entitled to vote to accept or reject the Plan

2. *Class 2: Allowed Non-Tax Priority Claims*

Class 2 consists of the holders of Allowed Class 2 Non-Tax Priority Claims. The Debtor shall pay to each holder of Class 2 Non-Tax Priority Claims the amount of their Allowed Claim in full and in Cash on the later of the Effective Date or the Sale Closing Date from the Sale Proceeds, in full and final satisfaction of such Claims as against the Debtor. The Debtor estimates these Claims to total approximately \$0.00. Class 2 Claims are not Impaired under the Plan and are deemed to accept the Plan.

3. *Class 3: Claims of the City of New York*

Class 3 consists of the Allowed Claims, both secured and unsecured, of the City of New York, except for Real Estate Tax Claims. Such Claims shall include but not be limited to Environmental Control Board judgments, Department of Buildings violations and other amounts due to the City of New York with the exception of real estate taxes. These claims total approximately \$65,000, although the Debtor disputes the claim. The Debtor shall pay the Allowed Class 3 Claims of the City of New York, in full and in Cash on the Sale Closing Date

from the Sale Proceeds, in full and final satisfaction of such Claims as against the Debtor and the Property. The Class 3 Claim is not Impaired under the Plan and the holder is deemed to accept the Plan.

4. Class 4: General Unsecured Claims

Class 4 consists of holders of all Allowed, non-priority Unsecured Claims against the Debtor.

The Debtor shall pay to holder of Class 4 General Unsecured Claims up to 100% of the amount of their Allowed Claim in full and in Cash, with interest at the Federal Rate, within thirty (30) days of the later of the Effective Date or the Sale Closing Date from the Sale Proceeds, after distribution to all unclassified (other than Real Estate Tax Claims), Administrative, Class 2 and 3 Claims and the Post-Confirmation Reserve, in full and final satisfaction of its Claims as against the Debtor. The Debtor estimates these Claims to total \$225,000. Class 4 Claims are Impaired under the Plan and are entitled to vote on the Plan.

5. Class 5: Interests

Class 5 consists of the holders of Interests in the Debtor. Class 5 Interests are held 100% by Harry Miller a/k/a Chaim Miller. Class 5 Interests shall receive the balance of the Sale Proceeds, after distribution in full to all unclassified, Administrative, Class 2, 3 and 4 Claims and the Post-Confirmation Reserve in full hereunder. Class 5 Interests are not Impaired under the Plan and are deemed to accept the Plan.

C. Resolution of Disputed Claims & Reserves

1. Objections.

An objection to either the allowance of a Claim or an amendment to the Debtor's

schedules shall be in writing and may be either filed with the Bankruptcy Court or pursued and resolved by other means by the Debtor, at any time on or before the Effective Date, and for a period of sixty (60) days thereafter, or within such other time period as may be fixed by the Bankruptcy Court for cause. The Debtor will object to and settle any Claims and shall settle, compromise, or prosecute all Claims objections.

2. Amendment of Claims.

A Claim may be amended prior to the Effective Date, only as agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be amended as agreed upon by the holder thereof and the Debtor to decrease but not increase, the face amount thereof.

3. Reserve for Disputed Claims.

In the event that a Disputed Claim is not resolved by the Effective Date and the Disbursing Agent decides, in its discretion, to effectuate distributions to holders of Allowed Claims in the same or junior Classes to the Disputed Claim, the Disbursing Agent shall reserve for the account of each holder of a Disputed Claim that property which would otherwise be distributable to such holder on such date were the Disputed Claim an Allowed Claim on the Effective Date, or such other property as the holder of the Disputed Claim and the Debtor may agree upon. The property so reserved for such holder, to the extent such Disputed Claim is allowed, and only after such Disputed Claim becomes a subsequently Allowed Claim, shall thereafter be distributed to such holder as provided below.

4. Distribution to Holders of Subsequently Allowed Claims.

Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the Disbursing Agent shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan for such Allowed Claims at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.

D. Plan Funding and Means of Implementing the Plan

1. Plan Funding.

The Plan shall be funded with the net available proceeds from the purchase price of the Property, after the \$12,945,000 credit bid of Buyer of its Allowed Secured Claim, in the cash amount of \$560,000.00, to be paid to the Estate c/o the Disbursing Agent in accordance with the terms of the Stipulation (the "Sale Proceeds"), which shall be held pursuant to Section 345 of the Bankruptcy Code and ultimately distributed by the Disbursing Agent in accordance with the terms of the Plan. The Cash required to be distributed to holders of Allowed Claims under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on, or shortly after, the later of the Effective Date or the Sale Closing Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the later of the Effective Date or the Sale Closing Date, within ten (10) days after the order allowing such Claim becomes a Final Order. The Sale Closing Date is the later of (a) the date upon which the Debtor

closes on the Sale of the Property, or (b) the Disbursing Agent receives the Sale Proceeds.

2. *Means for Implementation.*

The Stipulation provides for the sale of the Property to the Buyer, the terms governing such transfer and the resolution of the Claims between the parties. The Cash proceeds from that sale shall be used to fund the Cash requirements of the Plan.

(a) Free and Clear of all Liens, Claims and Encumbrances. Pursuant to the Stipulation, Buyer shall acquire upon the Sale, and the Debtor shall convey, all of the right, title and interest that Debtor possesses as of the closing in and to the Property free and clear of all pre-closing liens, Claims, encumbrances, including any *lis pendens*, judgment, lien, or encumbrance of any kind, other interests, debts, causes of action, Interests, obligations, liabilities, and charges of any kind, nature or description whatsoever, whether fixed or contingent, legal or equitable, perfected or unperfected except as expressly provided in the Stipulation pursuant to Sections 363(b), (f), (k) and (m) and 1123(b)(4) and 1129 of the Bankruptcy Code (collectively, the “Liens and Claims”). All persons and entities asserting Liens and Claims of any kind or nature whatsoever against the Debtor or the Property, including but not limited to the Class 1, 2, 3 and 4 Claim holders and Class 5 Interest holders, arising under or out of, in connection with, or in any way relating to, Debtor, the Property, or the transfer of the Property to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting such Liens and Claims against the Buyer, its successors or assigns, its property, or the Property.

(b) Tax Exemption. The Plan expressly contemplates the Sale of the Property on or after the Effective Date. The post-Effective Date Sale shall therefore not be taxed under any law imposing a stamp or similar tax as provided for in Section 1146(a) of the Code including (a) the

transfer of the Property; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest; (c) the making or assignment of any contract, lease or sublease; or (d) the making or delivery of any deed or other instrument or transfer under, in furtherance of, or in connection with the Plan. All such transfers, assignments and sales will not be subject to any stamp tax, or other similar tax held to be a stamp tax or other similar tax by applicable law.

3. Disbursing Agent.

The Disbursing Agent shall be DelBello Donnellan Weingarten Wise & Wiederkehr, LLP. The Disbursing Agent shall make and effectuate all distributions required under the Plan and be responsible for the liquidation of the Debtor's remaining assets and administration of the Plan.

The Disbursing Agent shall open and maintain, in accordance with this Plan, an interest-bearing bank account in which all Cash received for purposes of distribution shall be deposited in accordance with section 345 of the Bankruptcy Code and as provided herein. The Disbursing Agent shall not be liable for any distributions made in accordance with this Plan. Unless otherwise ordered by a Final Order of the Bankruptcy Court or otherwise provided in this Plan, the record date for distributions shall be the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

To the extent that the Disbursing Agent shall maintain the Sale Proceeds in an attorney escrow account, there is no need for the Disbursing Agent to obtain a bond.

The Disbursing Agent shall not be liable to the Debtor, the Buyer, any creditor or any other person, firm or corporation, for any error of judgment or for any mistake of law or fact or any act done, caused to be done, or omitted to be done, by the Disbursing Agent or any of its

agents. The Disbursing Agent shall be liable only for acts of willful misconduct, gross negligence or breach of fiduciary duty by itself or such agents.

4. *Distribution of Cash.*

Except as otherwise provided in the Plan, including without limitation Article IX of the Plan, the Cash required to be distributed to holders of Allowed Claims and Interests under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on, or shortly after, the later of the Effective Date or the Sale Closing Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the later of the Effective Date or the Sale Closing Date, within ten (10) days after the order allowing such Claim becomes a Final Order.

5. *Continuing Existence.*

All matters provided under this Plan, including all corporate action to be taken or required to be taken by the Debtor, and the execution of all necessary documents shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement or further action by members of the Debtor. From and after the Effective Date, the Debtor shall continue in existence for the sole purposes of (i) winding up its affairs as expeditiously as reasonably possible, (ii) resolving disputed Claims, if any, (iii) administering this Plan, and (vi) filing appropriate tax returns. Following the Effective Date, the Debtor shall not engage in any business activities or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Debtor.

6. *Vesting of Assets.*

As of the Effective Date, and except as otherwise provided in the Plan, all Estate assets shall vest in the Debtor with the Property to be transferred to the Purchaser, free and clear of all liens, claims and interests of any kind or nature whatsoever (except as expressly provided in the Stipulation. Except as otherwise set forth in the Plan, all Causes of Action shall survive Confirmation, and the commencement and/or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable or otherwise.

7. *Payment Dates*

If any payment or act under the Plan is required to be made or falls on a date which shall be a Saturday, Sunday or a legal holiday, then the making of such payment or performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed timely.

E. Executory Contracts and Leases

The Debtor does not believe there are any executory contracts that require assumption or rejection.

F. Tax Consequence of the Plan

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

Confirmation may have federal income tax consequences for the Debtor and Creditors. The Debtor has not obtained, and does not intend to request, a ruling from the Internal Revenue Service (the "IRS"), nor has the Debtor obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the

Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash and/or stock under this Plan.

1. Tax Consequences to the Debtor

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

2. Tax Consequences to Unsecured Creditors

An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be

determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

G. Avoidance and Recovery Actions

After due inquiry, the Debtor has determined that there are no Avoidance Actions that should be pursued.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, 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 Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that there are 2 classes (Classes 1 and 4) Impaired under the Plan and that the holder of the claims in these classes are entitled to vote to accept or reject the Plan. The Debtor believes that 2 classes (Classes 2 and 3) are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. What Is an Allowed Claim?

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was May 1, 2017.

2. What Is an Impaired Claim?

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Bankruptcy Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

Class 1 and 4 Claims are impaired under the Plan and entitled to vote.

Each Holder of a Claim in Classes 1 and 4 have been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 4:00 p.m. (Eastern Standard Time) on May 18, 2017 at the following address:

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Jonathan S. Pasternak, Esq.

Each Holder of an Allowed Claim in Class 1 and 4 shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code.

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims are *not* entitled to vote:

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not “allowed claims” (as discussed above), unless they have been “allowed” for voting purposes;
- holders of claims in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code; and
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.

B. Feasibility and Best Interests Test

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”).

For a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor will possess the resources to meet its obligations under the Plan. Since the Plan contemplates a liquidation of the Debtor’s assets, i.e., the Property, Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan. Moreover, on the Effective Date, the Debtor will have sufficient funds on hand to fund the Plan.

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the “Best Interest Test”).

The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Because the Debtor has proposed a liquidating Plan which distributes all proceeds thereof to holders of Allowed Claims in order of priority, no scenario exists, including but not limited to Chapter 7 liquidation, under which the creditors would be entitled to receive a distribution greater than that which the Debtor has proposed in its Plan. In fact, were the Debtor’s assets liquidated in a

Chapter 7 case, the creditors of the estate would stand to receive far less as the Administrative costs associated with such a case would be significantly higher.

The Debtor believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the “best interest” and feasibility requirements. The Plan is “fair and equitable” and “does not discriminate unfairly”. The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

C. Notices

Any notices to be forwarded under the Plan shall be in writing and sent by certified mail, return receipt requested, postage pre-paid; or by overnight mail or hand delivery, addressed as follows:

971 SEA BREEZE AVENUE LLC
c/o DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Jonathan S. Pasternak, Esq.

The above notice parties may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt. Any payment required under the Plan shall be deemed to have been paid on the date when such payment is received.

D. Conditions to the Occurrence of Confirmation.

The occurrence of Confirmation shall be subject to the entry of the Confirmation Order.

E. Conditions to the Occurrence of the Effective Date.

The Plan may not be effective until the entry of the Confirmation Order that remains in

full force and effect and shall not have been stayed or reversed.

F. Non-Occurrence of the Effective Date; Non-Waiver of Conditions.

In the event that the Debtor determines that the conditions to the Effective Date set forth in the immediately foregoing paragraph of this Plan cannot be satisfied, the Debtor may propose a new plan, may modify this Plan as permitted by law, or may request other appropriate relief.

G. Events of Default.

The occurrence of any of the following events shall constitute an event of default under the Plan (“Event of Default”):

(a) The failure of the Debtor, after receipt of ten (10) business days written notice, to make any payment required to be made under the Plan, which failure, prior to the receipt of the ten (10) days written notice, shall have remained uncured for a period of thirty (30) days after the date such payment is required to be made, unless the time for such payment has been extended in accordance with the Plan.

(b) The failure of the Debtor to comply with any of the other covenants contained in the Plan, which failure shall remain uncured for a period of thirty (30) days after the Debtor has received ten (10) days written notice of such failure.

(c) The failure to close on the Sale pursuant to the Stipulation of Settlement between the Debtor and Buyer.

H. Effect of Default.

In the event that the Debtor defaults under the provisions of the Plan, and such default is not cured, then, at the option of any creditor or the United States Trustee, a motion may be filed with the Bankruptcy Court seeking an Order of the Bankruptcy Court compelling the Debtor to make

such payment or act in a manner consistent with the provisions of the Plan or seeking the conversion of the Chapter 11 Case to a Chapter 7 proceeding.

V. EFFECT OF CONFIRMATION OF PLAN

A. Discharge of Debtor

Since the Plan provides for a liquidation of the Debtor's assets, the Confirmation Order shall not operate as a discharge pursuant to Section 1141(d)(1) of the Bankruptcy Code.

1. Exculpation.

Neither the Debtor, the Buyer, and their respective current and former officers, directors, members, managers, employees, attorneys and advisors, each in their respective capacities as such (each, an "Exculpated Party"), with respect to post-petition conduct only shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, or obligation, cause of action or liability for any Exculpated Claim, and shall be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. Each Exculpated Party and their respective affiliates, agents, directors, members, officers, officials, employees, advisors and attorneys have, and upon the Effective Date shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and applicable non-bankruptcy law and shall not be liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute and may be submitted as a complete defense to any claim or liability satisfied, enjoined or subject to exculpation pursuant to Article XI of the Plan;

provided, however, that nothing in the Plan shall, or shall be deemed to, release Debtor, the members of the Debtor, or exculpate the Debtor, the members of the Debtor with respect to, its obligations or covenants arising from bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Upon Confirmation, Creditors will be unable to pursue any claims that are satisfied, enjoined or subject to exculpation under the Plan, but creditors may pursue claims against the Debtor that may arise in the future, or pursuant to the Plan. Any such liability against the Debtor's professionals will not be limited to their respective clients contrary to the requirement of DR 6-102 of the Code of Professional Responsibility

2. Plan Injunction

Effective on Confirmation, all persons who have held, hold or may hold Claims, with regard to all Classes of Claims are enjoined from taking any of the following actions against or affecting the Debtor or assets of the Debtor with respect to such Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:

- (i) *ommencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtor;*
- (ii) *Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor;*
- (iii) *Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or the Purchaser, the assets of the Debtor; and*
- (iv) *Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.*

3. *Full and Final Satisfaction*

To the fullest extent permitted by Section 1141(a)-(c) of the Bankruptcy Code, all payments and all distributions pursuant to the Plan, shall be in full and final satisfaction, settlement and release of all Claims and Interests, except as otherwise provided in the Plan. Nevertheless, under Section 1141(d) of the Bankruptcy Code, the Debtor will not receive a discharge because the Plan is a liquidating plan.

B. Amendment, Modification, Withdrawal or Revocation of the Plan.

The Debtor reserves the right, in accordance with the Section 1127(a) of the Bankruptcy Code, to amend or modify the Plan prior to Confirmation. After the Confirmation Date, the Debtor may, upon order of the Bankruptcy Court, in accordance with §1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

The Debtor may withdraw or revoke the Plan prior to Confirmation. If such a withdrawal or revocation occurs, or if Confirmation does not occur, the Plan will be null and void. In such event, nothing contained in the Plan will constitute a waiver or release of any Claim by or

against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

C. Distributions Under the Plan

Distributions to holders of Allowed Claims shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court, or, if no proof of claim is filed, on the Schedules, or to such other address as may be designated by such Creditor in writing to the Debtor or the Disbursing Agent. A payment is to be deemed unclaimed if the payment on the distribution is not negotiated by the particular claimholder within 120 days of it being sent by the Debtor.

D. Unclaimed Property

If, after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under the Plan, and such unclaimed distributions shall be distributed in accordance with Article III of this Plan unless and until such unclaimed distributions total less than \$5,000, at such time will be deemed available for post-Effective Date Professional Fees, with the balance to be paid to holders of Class 4 Interests.

E. Retention of Jurisdiction

The Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case:

(a) To determine all controversies relating to or concerning the allowance of and/ or distribution on account of such Claims or Interests upon objection thereto that may be filed by any party in interest;

(b) To determine requests for payment of Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees

(c) To determine any and all applications, adversary proceedings, and contested or litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C Sections 157 and 1334;

(d) To determine all disputed, contingent or unliquidated Claims and all disputed Interests;

(e) To adjudicate controversies or interpretations pursuant to any order or stipulation entered by the Bankruptcy Court prior to Confirmation;

(f) To modify the Plan pursuant to Section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in the Plan or Confirmation Order to the extent authorized by the Bankruptcy Code;

(g) To make such orders as are necessary or appropriate to carry out the provisions of the Plan;

(h) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of the Plan;

(i) To determine any issues concerning the Stipulation and to issue and enforce injunctions or take other actions necessary to implement the Stipulation, this Plan, and the transfers of the Assets to the Buyer free and clear of all liens, claims, encumbrances and other interests; and

(j) To enter a final decree closing the Chapter 11 Case.

F. Post-Confirmation Fees, Reserves and Final Decree

The reasonable compensation and out-of-pocket expenses incurred post-Confirmation by the Disbursing Agent and Professionals retained in the Chapter 11 Case for post-Confirmation services shall be paid by the Disbursing Agent within ten (10) days after presentation of invoices for such professional services to the Disbursing Agent and Debtor; provided, however, that if the Debtor and the Professional cannot agree on the amount of post-Confirmation fees and expenses to be paid to such Professional, such amount shall be determined by the Bankruptcy Court.

The Debtor shall reserve \$25,000 from the Sale Proceeds in Order to fund post-Confirmation professional fees incurred by Debtor's counsel and the Disbursing Agent in connection with, *inter alia*, the Sale, the implementation of the Plan and in connection with the carrying out of duties and responsibilities as the Disbursing Agent as well as payment of United States Trustee fees. The balance of such reserve, if any, shall be distributed in accordance with Article III of the Plan.

G. Continuation of Bankruptcy Stays

All stays provided for in the chapter 11 case under Section 362 of the Bankruptcy Code, or otherwise, and in existence on Confirmation, shall remain in full force and effect until the Effective Date.

H. Enforceability.

Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any and all other provisions of the Plan.

I. Applicable Law.

Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the law of the State of New York.

J. Successors and Assigns.

The rights and obligations of any entity named or referred to in the Plan shall be binding upon and inure to the benefit of the successors and assigns of such entity.

K. Reservation of Rights.

Neither the filing of this Plan, nor any statement or provision contained herein, shall be or be deemed to be an admission against interest. In the event that the Effective Date does not occur, neither this Plan nor any statement contained herein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case.

L. U.S. Trustee Fees and Monthly Operating Reports.

After Confirmation, the Debtor will pay or cause the payment of fees, and any applicable interest, incurred pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. section 3717 and will file or cause the filing with the Bankruptcy Court and serve or cause service on the U.S. Trustee of monthly operating reports while the Chapter 11 Case remains open, unless the Bankruptcy Court orders otherwise.

M. Post Confirmation Reports.

The Debtor, through the Disbursing Agent, shall be responsible for filing post-Confirmation reports with the Bankruptcy Court and shall pay all quarterly fees required under

28 U.S.C. section 1930 until the earlier of (a) conversion or dismissal of the Chapter 11 Case or (b) entry of a final decree closing the Chapter 11 Case.

VI. RECOMMENDATION

The Debtor believes that confirmation of the Plan is preferable to any of the alternatives described above. The Plan will provide greater recoveries than those available in liquidation to all holders of Claims. Any other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs.

Dated: Brooklyn, New York
April 17, 2017

271 SEA BREEZE AVENUE LLC

By: /s/ Jonathan Rubin
Jonathan Rubin, Authorized Manager

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By: /s/ Jonathan S. Pasternak
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