

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In Re:

GEMINI PROPERTY MANAGEMENT, LLC,

Debtor.

Chapter 11

Case No. 16-10331

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**GEMINI PROPERTY MANAGEMENT'S AMENDED DISCLOSURE STATEMENT,  
DATED JANUARY 31, 2017**

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

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## **I. INTRODUCTION**

This is the disclosure statement (the “Disclosure Statement”) in the Chapter 11 case of GEMINI PROPERTY MANAGEMENT, LLC (hereinafter, the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the Debtor’s Plan of Reorganization (the “Plan”) filed by the Debtor on October 21, 2016. 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.***

The proposed distributions under the Plan are discussed at pages 6-8 of this Disclosure Statement. General unsecured creditors are classified in Class 4, and will receive a distribution of 5% of their allowed claims, to be distributed as follows: Five (5) equal annual installments.

### **A. Purpose of This Document**

This Disclosure Statement describes:

1. The Debtor and significant events during the bankruptcy case,
2. How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed)
3. Who can vote on or object to the Plan,
4. What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
5. Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
6. 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 Objecting; Date of Disclosure Statement Approval 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. *Time and Place of the Hearing to Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to approve this Disclosure Statement will take place on November 30, 2016 at 10:30 a.m., in Courtroom 330, at the US Bankruptcy Court, James T. Foley Courthouse, 445 Broadway, Suite 330, Albany, NY 12207.

Once this Disclosure Statement is approved, the court will set a date in which to confirm the plan.

2. *Deadline For Objecting to the Adequacy of Disclosure Statement*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Gemini Property Management, LLC by November 23, 2016

3. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact:

Tully Rinckey, PLLC  
Robert J. Rock, Esq.  
441 New Karner Rd.  
Albany, New York 12205  
518-218-7100

## **II. BACKGROUND**

### **A. Description and History of the Debtor's Business**

The Debtor is a Limited Liability Company. Since April 25, 2001 the Debtor has been in the business of residential property leasing and management.

### **B. Insiders of the Debtor**

I. Michele Wilson, sole-proprietor and principal.

- a. FY 2014 Income: \$30,000.00
- b. FY 2015 Income: \$30,000.00
- c. YTD 2016 Income: \$25,000.00

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

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were:

I. Michele Wilson

The Managers of the Debtor during the Debtor's Chapter 11 case have been:

I. Michele Wilson

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the “Post Confirmation Managers”), will be:

I. Michele Wilson

The responsibilities and compensation of these Post Confirmation Managers are described in section III.D of this Disclosure Statement.

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

Debtor’s business is the residential rental of real property located at 295 Mettacahonts Road, Accord, NY (hereinafter, “Debtor’s Property” or the “Property”). This property consists of 14 units of varying sizes (1-3 Bedrooms) and rents (\$600-\$1300 per month).

In 2015, Debtor’s real estate was reassessed by Ulster County Tax Department. As a result, the Property’s Fair Market Value was reassessed at \$700,000.00. Debtor was able to challenge this assessment and successfully reduced it to \$550,000.00; however, this reassessment was unexpected and severe. As a result, Debtor’s real property tax obligations nearly tripled. As the tax payment was part of Debtor’s mortgage escrow, this reassessment had a ripple effect that drastically increased Debtor’s mortgage payment.

City National Bank, the mortgage holder, denied Debtor’s request to make partial payments in order to bring the arrears current over time. A foreclosure action ensued. In that action, City National Bank moved for, and received, an assignment of rents effectively stopping Debtor’s entire cash-flow. This action followed.

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

At present, few significant events have occurred during Debtor’s case:

1. Tully Rinckey, PLLC, has been approved as counsel for Debtor.
2. Debtor and Secured Creditor, City National Bank, have entered into an adequate protection agreement that allows for the payment of current principal and interest amounts owed as well as providing for future tax escrow.
3. Debtor is working diligently to achieve 100% occupancy in its rentals. At current, 11 units are rented and current with rents. One unit must be cleaned prior to renting. Two require renovation prior to renting. Renovations are anticipated to cost \$15,000.00.

**F. Projected Recovery of Avoidable Transfers**

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

### **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

### **H. Current and Historical Financial Conditions**

Debtor owns one piece of real estate located at: 295 Mettakahonts Rd, Accord, NY. The identity and fair market value of the estate assets are provided in Exhibit "B." This value is based on the most recent tax assessment of Debtor's real property as provided by Ulster County.

The Debtor's most recent financial statements issued before bankruptcy are set forth in Exhibit "C."

A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit "D."

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

### **A. What is the Purpose of the Plan of Reorganization?**

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

### **B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the 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 Code. As such, the Plan Proponent has *not* placed the following claims in any class:

#### *1. Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses and their proposed treatment under the Plan:

United States Trustee Fees:	Assessed Quarterly
Legal Fees:	\$20,000.00

These expenses are unimpaired.

## *2. Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

Upon information and belief, Debtor has no priority tax claims.

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

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

### *1. Classes of Secured Claims*

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

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Ulster County Real Property Tax Arrears  
\$18,103.21 to be paid back in equal installments over a 60 month period

City National Bank Mortgage Arrears  
Estimated at \$62,453.15 – to be treated through a modification proposed by City National Bank and tentatively accepted by Debtor. This modification will recapitalize the arrears into a new mortgage payment.

These claims are unimpaired.

### *2. Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim

receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

Upon information and belief, Debtor has no priority unsecured claims.

3. *Class of General Unsecured Claims*

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

Upon information and belief, Debtor has no general unsecured claims.

4. *Classes of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class of equity interest holders:

Michele Wilson - Upon information and belief, no claims outstanding/owed.

**D. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following: Residential Lease Rents

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Michelle Wilson: \$2,500.00/month

**E. Risk Factors**

The proposed Plan has the following risks:

1. Collection of rents: Debtor's cash flow relies entirely on rents received. As these are residential rents, defaults in leases can impede cash flow.



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

The Plan, in Exhibit “A,” lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Exhibit “A” also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Exhibit “A” will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is December 31, 2016.*** Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

## **G. Tax Consequences of Plan**

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

The following are the anticipated tax consequences of the Plan:

(1) Tax consequences to the Debtor of the Plan: None anticipated.

(2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation: None anticipated.

## **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the 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 and equity interest holder at least as much as the creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the 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 or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 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 or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest 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 or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest 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: August 29, 2016.**

**The deadline for filing objections to claims is February 28, 2017.**

### *2. What Is an Impaired Claim or Impaired Equity Interest?*

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

### *3. Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are not entitled to vote:

- Holders of claims and equity interests that have been disallowed by an order of the Court;
- Holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes;

- Holders of claims or equity interests in unimpaired classes;
- Holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- Holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- 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.***

***4. Who Can Vote in More Than One Class***

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by a cram down on non-accepting classes, as discussed later in Section [B.2.].

***4. Votes Necessary for a Class to Accept the Plan***

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

***2. Treatment of Nonaccepting Classes***

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cramdown” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and equitable toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a cramdown confirmation will affect you or equity interest, as the variations on this general rule are numerous and complex.***

### **C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a Chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit “E.”

### **D. Feasibility**

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

#### ***1. Ability to Initially Fund Plan***

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit F.”

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

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit “G.”

The Plan Proponent’s financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$9,520.00/year<sup>1</sup>. The final Plan payment is expected to be paid on November, 2021.

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

## **V. EFFECT OF CONFIRMATION OF PLAN**

### **A. No Discharge of Debtor**

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

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<sup>1</sup> Estimated over a 5-year amortization of average income projections (2017-2022).

## **B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

## **C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

/s/Michele Wilson

Michele Wilson, Plan Proponent

/s/ Michael L. Boyle

Michael L. Boyle, Esq.  
Tully Rinckey PLLC  
Attorneys for Debtor