

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

8 WEST 58th STREET HOSPITALITY, LLC,

Case No. 14-11524-shl

Debtor.
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**DEBTOR'S AMENDED AND UPDATED DISCLOSURE STATEMENT
PURSUANT TO 11 U.S.C. §1125**

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR BANKRUPTCY COURT APPROVAL, BUT HAS NOT YET BEEN ACTUALLY APPROVED.

8 West 58th Street Hospitality, LLC (the "Debtor") hereby submits this ~~Disclosure Statement~~ amended and updated disclosure statement (the "Disclosure Statement"), pursuant to §1125 of Title 11, United States Code (the "Bankruptcy Code"), to include updates on the ongoing litigation involving BMG and the Balans. This Disclosure Statement is submitted in connection with the accompanying Debtor's amended liquidating plan of reorganization ~~of even~~ dated March 9, 2016 (ECF #109) (the "Plan"). Defined terms in the Plan will have the same meaning for purposes of this Disclosure Statement.

I. INTRODUCTION

The Debtor previously operated a restaurant (the "Restaurant") at 14 East 58th Street, New York, New York (the "Premises"). While the Debtor's operations were unsuccessful, the underlying Restaurant lease retained significant value, and attracted interest from a third party investor group consisting of Nello Balan and his daughter Lucy, together with their financial partner Oswaldo Karam. These individuals formed an entity known as Be My Guest LLC ("BMG"), which ultimately acquired the Debtor's lease pursuant to Order dated November 6, 2015

(the "Assumption and Assignment Order"). A copy of the Assumption and Assignment Order is annexed hereto as Exhibit A.

BMG's acquisition was memorialized by a series of letters dated July 9, 2014, as supplemented in relevant part by letter dated October 20, 2014. These letters, together with the agreements placed on the record of the October 29, 2014 Bankruptcy Court hearing, constitute the "Funding Agreements" for purposes of the Plan. Copies of the respective letters and the transcript of the October 29, 2014 hearing are collectively annexed hereto as Exhibit B.

Pursuant to the Funding Agreements, BMG agreed to cure all Lease arrears, as well as to pay the Debtor's estate a total balance of \$1,440,000 to be distributed to the holders of allowed administrative expenses and priority tax claims, fund a 25% dividend to allowed unsecured creditors and make distributions to equity holders over a period of up to four years.¹

~~While~~ BMG is currently in default in its funding obligations and has been held in contempt of Court. Nevertheless, the Debtor remains intent on pursuing litigation all necessary action to finally compel ~~BMG's~~ full compliance with the Assumption and Assignment Order, including entry of confessions of judgment against BMG, Nello Balan and Lucy Balan, and pursuit of additional sanctions. All future monies to be collected from BMG, Nello Balan and Lucy Balan shall be deposited into a common fund for bankruptcy purposes, designated under the Plan as the "Confirmation and Plan Fund."

These proceeds, as and when collected, will be used to fund the Plan distributions to creditors and equity holders even if the monies are received after the Plan is confirmed and

¹ BMG's commitment to fund \$1,440,000 initially was allocated as follows: (i) \$100,000 toward professional fees; (ii) \$120,000 toward sales tax, (iii) \$65,000 toward general unsecured claims and mechanics liens; (iv) \$350,00 toward Limited Partners; and (v) the balance of \$825,000 toward Max Burgio.

approved by the Bankruptcy Court. The final allowance of claims, as well as final allocations as between creditors and equity holders, all remain subject to further Bankruptcy Court review and approval as part of the confirmation process. The final allocations could change from the initial allocations referenced in the Funding Agreements.

Insofar as BMG is concerned, the point to emphasize is that BMG's funding obligations are not diminished or otherwise affected by any subsequent objections or reallocations between the Debtor's creditors and equity holders. In other words, however the claims are ultimately treated in bankruptcy does not negate BMG's overall financial obligations to pay over to the Debtor a total balance of \$1,440,000 as required by the Assumption and Assignment Order. Although BMG has raised objections regarding the proposed distribution structure under the Plan, BMG itself is not a creditor and has no standing to object. To the contrary, it is only the purview of the Debtor's actual creditors and equity holders to weigh-in on how the sales proceeds received from BMG and the Balans are ultimately allocated. In the interim, the Plan confirmation process shall run in tandem with additional litigation by the Debtor and judgment enforcement to finally compel ~~BMG's~~ compliance ~~with the Assumption and Assignment Order~~ by BMG, Nello Balan and Lucy Balan so the Debtor's estate receives the full benefit of all promised consideration and a fund for distributions to creditors is created.

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While BMG states that the restaurant has not yet reopened and has no income, rent continues to be paid, and significant funds have already been invested to renovate the premises. It is the Debtor's belief that BMG will not risk complete forfeiture of this sizeable investment by continuing to defy Bankruptcy Court orders.

A. Summary.

This Disclosure Statement has been found by the Bankruptcy Court to contain adequate information for use in connection with the solicitation of acceptances of the Plan from holders of claims against and interests in the Debtor pursuant to Section 1125 of title 11 of the United States Code (the "Bankruptcy Code").

The Bankruptcy Court's finding that the Disclosure Statement contains adequate information pursuant to Section 1125 of the Bankruptcy Code does not mean, indicate or imply in any manner that the Bankruptcy Court recommends either an acceptance or a rejection of the Plan by a party eligible to vote thereon.

A glossary of terms frequently used in this Disclosure Statement is set forth in Article II of the Plan. Capitalized terms not otherwise defined in the Disclosure Statement are defined in the Plan.

In the Debtor's opinion, the treatment of claims under the Plan provides a quicker and better recovery than creditors could reasonably expect under a liquidation in Chapter 7 of the Bankruptcy Code. In fact, since there are no assets left to liquidate, conversion of the case to Chapter 7 will merely add another layer of administration expenses ahead of all other creditors, and further delay distributions. Accordingly, confirmation of the Plan is in everyone's best interests, and the Debtor recommends that all creditors vote to accept the Plan.

B. Confirmation of the Plan

Pursuant to Section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan, on ~~June 15, 2016~~, 2016 at 10:00 a.m., Eastern Standard Time, before the Honorable Sean H. Lane in the United States Bankruptcy Court, One Bowling Green, Room 701, New York, NY 10004. The Bankruptcy Court has directed that

objections, if any, to Confirmation of the Plan be filed and served on or before ~~June~~ _____, _____, 2016.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 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 satisfies all applicable requirements of Section 1129(a) of the Bankruptcy Code.** Confirmation makes the Plan binding upon the Debtor and all creditors and equity holders, whether or not they have actually voted on the Plan.

C. Voting

(1) General. The Plan can be confirmed by the Bankruptcy Court and thereby made binding on creditors if it is accepted by (a) the holders of two-thirds in amount and more than one-half in number of claims in each impaired class who actually vote on the Plan, and (b) the holders of two-thirds in amount of equity security interests in each impaired class of interests who actually vote on the Plan. In this case, the Debtor is seeking ballots from Class 2, general unsecured creditors, whose claims are impaired, as they will be receiving a dividend of 25% of their allowed claims. Accordingly, general unsecured creditors should read the ballot carefully and follow the voting instructions.

(2) Deadline for Returning Ballots. The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be actually received by counsel for the Debtor, no later than 5:00 p.m., Eastern Standard Time, on ~~June~~ _____, 2016 at the following address:

Goldberg, Weprin, Finkel, Goldstein, LLP
1501 Broadway, 22nd Floor
New York, New York 10036
Attn: Kevin J. Nash, Esq.

E-mail: KNash@gwfglaw.com

Facsimile: 212-221-6532

(3) Voting Questions. If you have any questions regarding the provisions or requirements for voting to accept the Plan or require assistance in completing your ballot, you may contact Debtor's counsel, Kevin J. Nash, Esq. at (212) 221-5700.

D. Notice To Holders Of Claims

The historical information concerning the Debtor has been prepared using certain filings made with the State and Bankruptcy Courts. The estimates of claims set forth herein may vary from the final amounts of claims allowed by the Bankruptcy Court.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, and may contain descriptions of related documents. While the Debtor believes that these summaries are fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents. In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan shall be controlling.

This Disclosure Statement is intended for the sole use of creditors to make an informed decision about the Plan. Each holder of a claim should review the Plan, this Disclosure Statement and any supplements hereto before casting a ballot.

No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and Section 1125 of the Bankruptcy Code. No person has been authorized to use or promulgate any information concerning the Debtor, other than the information contained in this Disclosure Statement and any supplements hereto.

II. EVENTS LEADING TO CHAPTER 11

The Debtor is a New York limited liability company that previously operated a Restaurant, pursuant to that certain lease dated August __, 2012 (the "Lease"), with 14 East 58th LLC, as successor to Lawrence Friedland and the Estate of Melvin Friedland (the "Landlord").

Max Burgio and his limited partners invested substantial sums to open the Restaurant in September 2013. However, for a variety of reasons, the Restaurant failed: following disappointing sales and accruals of extensive lease arrears, disputes with the Landlord arose over (i) the specific rent commencement date; and (ii) whether a ten (10) month free rent period covered both base rent and additional rent, including real estate taxes. While the Debtor believed the Landlord's claim was overstated in certain respects, it sought Chapter 11 relief on May 20, 2014 to stay an eviction proceeding in the Civil Court, New York City.

III. SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE

Following the Chapter 11 filing, the Restaurant's sales did not improve, and the Debtor continued to be unable to pay rent. Not surprisingly, the Landlord moved to compel payment of accruing post-petition arrears on threat of termination of the Lease. To defend against this motion, the Debtor pursued negotiations with Nello Balan and his partners, and ultimately obtained BMG's agreement to make certain good faith post-petition rent payments to the Landlord totaling \$250,000. As a result of these post-petition payments, the Debtor was able to stave-off the Landlord's motions and gain additional time to finalize its negotiations with the new investor group headed by Nello Balan. This new investor group became BMG.

Early on, Max Burgio was supposed to be a member of BMG. However, disputes subsequently developed between Messrs. Burgio, Balan and Karam over Mr. Burgio's continuing involvement. To resolve these disputes, Mr. Burgio agreed to relinquish his

membership interest in BMG in favor of receiving a series of payments totaling \$900,000 from BMG. Accordingly, the July 9, 2014 letter was superceded in relevant part by letter dated October 20, 2014 to reflect that Mr. Burgio would no longer be a member of BMG and instead would receive the agreed payments, none of which have been made except \$75,000 received in 2014.

At the ensuing October 29, 2014 Bankruptcy Court hearing to consider the Debtor's motion to assume and assign the Lease to BMG, certain additional statements were placed on the record relating to the collateral for Mr. Burgio's payments, i.e., BMG's agreement to provide a confession of judgment in the sum of \$600,000 and the Balans's agreement to provide a confession of judgment in the sum of \$150,000². The October 29, 2014 transcript was "So Ordered" by the Court and forms a component of the Funding Agreements.

Pursuant to the Assumption and Assignment Order, BMG cured all arrears, but has not made any of the required payments to the Debtor's estate. Instead, BMG first objected to the Debtor's initial Disclosure Statement (ECF #42), and then unsuccessfully moved in the Bankruptcy Court seeking to modify the Assumption and Assignment Order, arguing that the Funding Agreements were purportedly not final, and therefore BMG and the Balans should not be bound by their commitments. By Memorandum Decision and Order dated December 21, 2015 the Bankruptcy Court soundly rejected these arguments and denied BMG's motion in its entirety, ~~and~~ The Bankruptcy Court reaffirmed the validity of the Funding Agreements, replete with BMG's and the Balans's obligations to provide confessions of judgment to secure certain of

² As noted in the Plan, the remaining payments to Max Burgio may be reallocated, depending on the final amount of allowed administrative expenses and priority tax claims, plus consideration of any objections by unsecured creditors.

the payments ~~to Max Burgio.~~ A copy of the Bankruptcy Court's Memorandum Decision and Order is annexed hereto as Exhibit 5C.

~~Although~~After BMG filed an appeal, the Bankruptcy Court denied BMG's request for a stay pending appeal pursuant to Memorandum Decision and Order dated March 4, 2016, a copy of which is annexed hereto as Exhibit 5D. ~~As a result, BMG is now under Order to immediately provide the agreed upon confessions of judgment~~Thereafter, BMG's additional request before the District Court for a stay pending appeal was also denied pursuant to Order dated March 15, 2015. BMG then withdrew its appeal after the District Court expressed skepticism regarding BMG's chances for success. Thus, the Bankruptcy Court's Memorandum Decision and Order dated December 21, 2015 denying BMG's Rule 60(b) motion for relief from the Assumption and Assignment Order is law of the case. As such, certain of BMG's and the Balans' funding obligations are no longer appealable and are immediately enforceable prior to confirmation of the Plan to the extent of \$750,000.

~~Notwithstanding BMG's appeal~~Indeed, following the continued failure of the Bankruptcy Court's rulingsBMG and the Balans (i) to pay all of the monies owed; and (ii) to deliver the signed confessions of judgment, the Debtor moved on March 10, 2016 to hold BMG and the Balans in contempt. This motion was heard on March 31, 2016, and resulted in the finding of actual contempt against BMG and Nello Balan, pursuant to Order dated April 11, 2016, a copy of which is annexed hereto as Exhibit 5E.

After BMG and Nello Balan failed to make their required payments (\$600,000 from BMG and \$150,000 from Nello Balan) by the April 21, 2016 deadline, a contempt penalty of \$500 per day, computed on a pro rata basis of 80% - 20% (\$400 to BMG and \$100 to Nello Balan) began to accrue. These fines continue to accrue and will accrue into the future until there

is full compliance. As of May 31, 2016, the sum of \$616,000 will owed by BMG and the sum of \$154,000 will be owed by Nello Balan. These amounts will continue to mount pending full compliance.

Additionally, the Bankruptcy Court entered an Order on May 16, 2016, directing Lucy Balan to deliver a signed confession of judgment in the sum of \$150,000, a copy of which Order is annexed hereto as Exhibit 8Fö. Upon receipt of the final confession from Lucy Balan, Max Burgio will assign all three confessions to the Debtor for filing with the Bankruptcy Court and execution thereon.

The Debtor is moving forward with the confirmation process in ~~conjunction~~ combination with ~~renewed~~ continuing efforts to compel ~~BMG's~~ compliance by BMG and Nello Balan with the Funding Agreements. ~~The Debtor has updated~~ Although BMG and the Balans have asserted that they have neither income nor assets from which to meet their financial obligations, the Debtor notes that BMG owns the lease, and that the principals have paid millions of dollars for the construction of the new restaurant and to keep the rent under the lease current. Accordingly, contemporaneously with solicitation of votes on confirmation of the Plan and Disclosure Statement to reference the recent litigation with BMG and the efforts which will be made to ~~compel compliance~~, the Debtor will file motion papers to hold the principals of BMG personally liable for BMG's contempt, impose stricter sanctions, and will enforce the confessions of judgment. BMG and Balans have indicated that they intend to appeal the civil contempt orders, and the Debtor reserve all rights to contest the appeals.

IV. CLASSIFICATION OF CLAIMS UNDER THE PLAN

The Plan anticipates collection of the sums owed by BMG under the terms of the Funding Agreements, which will be the source of the Plan funding. ~~he~~The Plan classifies the various pre-

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petition claims against the Debtor into essentially two classes (i.e., Class 1 taxes and Class 2 unsecured creditors). Administrative expenses (i.e. post-petition obligations) are not classified.

A. Unclassified Claims

Administrative Expense Claims consist of the remaining unpaid post-petition operating expenses of the Debtor owed to vendors and suppliers, as well as the professional fees and expenses to be awarded to the Debtor's counsel, Goldberg Weprin Finkel Goldstein, LLP. The Debtor believes that substantially all post-petition operating obligations were paid prior to closure of the Restaurant with the exception of certain taxes. Unliquidated Administrative Expense Claims in excess of \$152,000 have been filed by New York State for purported sales and withholding taxes, based entirely upon estimates. The Debtor is preparing the outstanding tax returns and believes that the final allowed amounts will be approximately \$10,000.

Pursuant to the Assumption and Assignment Order, BMG cured the lease arrears owed to the Landlord and BMG became responsible for all lease obligations accruing on or after November 6, 2014, so that there is no remaining claim due to the Landlord by the Debtor.

With respect to attorneys' fees, part of BMG's overall funding commitments includes monies allocated for professional fees of at least \$100,000, inclusive of \$20,000 previously paid to the Debtor's counsel. All professional fees remain subject to Bankruptcy Court approval after the filing of a written application and notice to creditors. Given the scope of the ensuing litigation with BMG, however, counsel fees and expenses are now projected to be greater than the initial allocation of \$100,000. Whatever the final amounts that may be awarded, all counsel fees shall be paid out of the Confirmation and Plan Fund as a priority obligation, with amounts in excess of \$100,000 to be paid out of Max Burgio's allocated share of the Confirmation and Plan Fund.

All accrued U.S. Trustee Fees shall be paid by the Debtor until the bankruptcy case is closed. Any U.S. Trustee Fees owed on or before the Effective Date of the Plan shall be paid from the Confirmation and Plan Fund.

B. Classified Claims and Interests

The categories listed below classify Claims against the Debtor for all purposes, including voting, confirmation and distribution pursuant to the Plan 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	Priority tax claims of governmental units	No
Class 2	Unsecured Claims	Yes
Class 3	Equity Interests (Limited Partners)	No
Class 4	Max Burgio	No

Treatment and Voting

Class 1 —Priority Tax Claims of Governmental Units

Classification: Class 1 is comprised of the allowed Priority Tax Claims of Governmental Units.

Treatment: The allowed Class 1 Priority Tax Claims shall be paid in the respective amounts ultimately allowed by Order of the Bankruptcy Court. The Confirmation and Plan Fund includes \$120,000 allocated by the Debtor for the payment of tax claims to be funded by BMG as follows: (i) \$30,000 upon the Effective Date of the Plan, with (ii) another \$90,000 to be paid by BMG in equal monthly installments over a period of thirty six (36) months following the Effective Date, as permitted by § 1129(a)(9) of the Bankruptcy Code. To date, priority tax claims in excess of \$416,000 have been filed, likewise based entirely on estimates. The Debtor will file the outstanding tax returns and believes that the actual allowed amounts for pre-petition

taxes will be less than \$120,000. However, to the extent that allowed Class 1 Priority Tax Claims exceed \$120,000, all additional taxes up shall be paid as a priority claim from Max Burgio's allocated share of the Confirmation and Plan Fund.

Voting: Class 1 is Unimpaired. Because allowed Priority Tax Claims are being paid in full, they are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

Class 2 – Unsecured General Claims

Classification: Class 2 is comprised of all allowed Unsecured General Claims, including the claims of alleged mechanic's lien holders. Mechanic lien creditors are treated as Class 2 unsecured general claims because the Debtor does not own real property under which a mechanic's lien properly attaches as a matter of law.

Treatment: Each holder of an Allowed Unsecured General Claim shall receive, in full and final settlement, discharge and satisfaction of such allowed Claims, a total *pro rata* distribution payable over a period of three (3) years equal to 25% of their allowed claims at a rate of 8.333 per cent per year beginning on the Effective Date of the Plan and continuing for two years. To date, general unsecured claims totaling just under \$600,000 have been filed. The Debtor believes that some of these claims may have been overstated, and reserves the right to file objections.

Based upon prior relationships, the Debtor and Max Burgio anticipate that the Class 2 unsecured general creditors will vote to accept the Plan. If this occurs, there will be no violation of the absolute priority rule even though the Plan does not pay unsecured creditors in full, while providing payments to limited partners and Max Burgio. In the unanticipated event that Class 2 unsecured general creditors does not vote to accept the

Plan, the Debtor reserves the right to amend the Plan to provide a greater *pro rata* dividend to Class 2 unsecured creditors so as to comply with the Bankruptcy Code. Any additional distributions to Class 2 creditors shall be paid out of Max Burgio's allocated share of the Confirmation and Plan Fund.

Voting: Class 2 is impaired and eligible to vote.

Class 3 — Equity Interests (Limited Partners)

Classification: Class 3 is comprised of the following limited partners:

	<u>Limited Partner</u>	<u>Total Contribution</u>	<u>% of Total</u>
1.	Elettra Menarini	\$60,000	3%
2.	SC First Ventures S.A.	\$80,000	4%
3.	Eric Schwartz	\$110,000	5%
4.	Morris 58 LLC	\$130,000	6%
5.	Gregory Zenna	\$160,000	8%
6.	Opulence Partners LLC	\$750,000	36%
7.	TSJ Partners LLC	<u>\$800,000</u>	<u>38%</u>
	Total:	\$1,980,000	100%

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Class 3 does not include the managing member of the Debtor, Max Burgio and his company Luxury Hospitality LLC, which contributed approximately \$800,000 in capital, loans and services. Max Burgio shall receive a separate distribution as provided in Class 4 subject to possible reallocation to address potential issues under the Absolute Priority Rule. Max Burgio's separate treatment is set forth in the Funding Agreements.

Treatment: Each limited partner shall receive a *pro rata* share from the total sum of \$350,000, to be funded as part of BMG's funding commitments. The distributions to limited partners shall be made on a *pro rata* basis, over a period of four (4) years in equal annual installments beginning on the Effective Date of the Plan.

Voting: Class 3 is impaired but not eligible to vote as insiders of the Debtor.

Class 4 Equity Interests (Max Burgio)

Classification: Class 4 is comprised of Max Burgio.

Treatment: Max Burgio shall receive the balance of the funds collected from BMG pursuant to the Funding Agreements, after payment of (i) allowed administration expenses; (ii) allowed priority tax claims; (iii) the funding of a 25% *pro rata* distribution to allowed unsecured creditors; and (iv) payment of \$350,000 to the limited partners. BMG's overall funding commitments include payments aggregating \$825,000 allocated to Max Burgio, all of which becomes due by January 1, 2017. As noted throughout, the specific distributions to Max Burgio are potentially subject to readjustment and recalculation after further proceedings in the Bankruptcy Court concerning application of the Absolute Priority Rule.

V. IMPLEMENTATION OF THE PLAN

Implementation. The Plan shall be implemented through efforts to compel BMG's compliance with its funding obligations under the Assumption and Assignment Order. The Debtor's attorney as Disbursing Agent shall pursue collection efforts on behalf of all creditors and equity holders. All monies collected from BMG shall be deposited and maintained by the Disbursing Agent, and thereafter distributed pursuant to the terms of the Plan.

Post-Confirmation Transactions. The Disbursing Agent is 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 implementation of the Plan, including filing and prosecution of legal action against BMG to enforce the provisions of the Assumption and Assignment Order and the Funding Agreements.

Rights and Powers of the Disbursing Agent. The Disbursing Agent 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) make all distributions contemplated hereby to be made, (iii) prosecute, settle and enforce all causes of action and claims on behalf of the Debtor's estate against BMG or others, and (iv) exercise such other powers as may be deemed necessary and proper to implement the Plan.

Post-Confirmation Management. After the Effective Date, the Debtor shall wind-up its affairs under the direction of Max Burgio. The Debtor reserves the right to terminate and dissolve the limited liability company in accordance with applicable law.

Enforcement. The Disbursing Agent shall retain the full authority and power to pursue enforcement of the obligations owed by BMG and the Balans, as set forth in the Funding Agreements, including the right to institute appropriate enforcement actions before the Bankruptcy Court. The failure of BMG, Nello Balan and/or Lucy Balan to timely and completely honor their funding obligations shall subject the offending parties not only to monetary damages with interest and attorneys' fees, but also possible civil contempt for violating a Court order.

VI. PROVISIONS GOVERNING DISTRIBUTIONS

Disbursements. All distributions under the Plan shall be made by the Disbursing Agent with appropriate reserves to be established with respect to Disputed Claims (i.e. those claims, in whole or part, under objection as of the Effective Date).

Claim Objection Deadline. Unless otherwise ordered by the Bankruptcy Court, only the Debtor has standing to file and prosecute an objection to any Claim in the bankruptcy case. The objections to Claims shall be served no later than thirty (30) days after Effective Date in accordance with the applicable provisions of the Bankruptcy Code and Rules. Any claim under

objection at the time of the Confirmation Hearing shall not be eligible to vote on the Plan pursuant to 11 U.S.C. § 1126(a)

No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Disputed Claim are resolved by stipulation or order of the Bankruptcy Court which becomes final and non-appealable (hereafter referred to as a "Final Order").

Unclaimed Distributions. If a distribution to the holder of any allowed Claim or Interest is returned as undeliverable or unclaimed, no further distribution shall be made to such holder unless and until the Debtor is notified in writing of such holder's then-current address within ninety (90) days of the Effective Date. Thereafter, the distribution shall be forfeited and revert back to the Debtor.

Disputed Claims Reserves. From and after the Effective Date, and until such time as a Disputed Claim(s) has been compromised, settled or determined by Final Order, the Debtor shall establish and maintain a reserve account (the "Claims Reserve") necessary to ensure that each holder of a Disputed Claim shall receive, payment in full in accordance with the provisions of the Plan in the event such Claim is allowed in the maximum amount claimed. At such time as, and to the extent that, any Disputed Claim becomes Allowed by Final Order, in whole or in part, the Debtor shall utilize amounts held by the Debtor to make payment to the holder of such Claim as provided for herein. Following the payment, satisfaction or resolution of all Disputed Claims any amounts remaining in the Claim Reserve shall be transferred to the Disbursing Agent for distribution under the Plan to other creditors or equity interests.

Retention of Jurisdiction. The Plan contains detailed provisions providing for the retention of jurisdiction by the Bankruptcy Court over the Chapter 11 case for the purposes of, inter alia, determining all disputes relating to claims, resolving all matters relating to presented by or arising under the interpretation, implementation or enforcement of the Funding Agreements and the Plan, and to determine all other matters pending on the date of confirmation.

VII. BASIC REQUIREMENTS FOR CONFIRMATION OF THE PLAN

A. Generally. The Debtor's expectation is that all classes of claims will vote to accept to the Plan so that confirmation can proceed consensually under 11 U.S.C. §1129(a).

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied. These requirements include determinations by the Bankruptcy Court that: (i) the Plan has classified claims and interests in a permissible manner; (ii) the contents of the Plan comply with various technical requirements of the Bankruptcy Code; (iii) the Debtor have proposed the Plan in good faith; (iv) the Debtor has made disclosures concerning the Plan that are adequate and include information concerning all payments made or promised in connection with the Plan; (v) the Plan is in the best interest of all creditors, in that it provides a better recovery than a liquidation; and (vi) the Plan is feasible. The Debtor believes that all of these requirements will be met prior to the Confirmation Hearing.

B. Best Interest Test. The so-called best interest test requires that each impaired class of creditors either (a) accepts the Plan, or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value such entity would receive or if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code.

Under the Plan, holders of allowed unsecured claims will be paid a *pro rata* 25% dividend. Although this is less than 100%, it is expected that Class 2 Claims will vote as a Class to accept the Plan, which will satisfy the Best Interest Test and the Absolute Priority Rule, based upon creditor consent. **However, if the Class 2 creditors do not vote favorably on the Plan, the Plan is not confirmable. In such event, the Plan will have to be further amended to provide increased allocations for unsecured creditors.**

C. Feasibility. For the Plan to be confirmed, it must be demonstrated that consummation is not likely to be followed by further financial reorganization of the Debtor. In the end, the Debtor remains confident that BMG will honor its funding obligations, even if only under Bankruptcy Court order and compulsion.

CONCLUSION

For all of these reasons stated, the Debtor urges all creditors and equity holders to vote favorably on the Plan.

Dated: New York, New York

~~March 9, 2016~~

~~May 26, 2016~~

8 West 58th Street Hospitality LLC

GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway, 21st Floor
New York, NY 10036

By: /s/ Max Burgio, President

By: /s/ Kevin J. Nash, Esq.

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