

Kevin J. Nash, Esq.  
Goldberg Weprin Finkel Goldstein LLP  
1501 Broadway, 22<sup>nd</sup> Floor  
New York, NY 10036  
(212) 221-5700

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

477 West 142<sup>nd</sup> Street Housing Development  
Fund Corporation,

Case No. 15-12178 (SHL)

Debtor.  
-----X

**DISCLOSURE STATEMENT**

477 W. 142<sup>nd</sup> Funding LLC (the "477 Funding" or the "Plan Proponent"), as the first mortgagee and sole secured creditor of 477 West 142<sup>nd</sup> Street Housing Dev. Fund Corp. (the "Debtor"), hereby submits this Disclosure Statement (hereinafter the "Disclosure Statement") in connection with its Revised Amended Chapter 11 plan of reorganization (hereinafter the "Plan").

**I. INTRODUCTION**

This Plan is predicated upon a sale and transfer of the Debtor's real property located at 477 West 142<sup>nd</sup> Street, New York, NY (the "Property") to 477 Funding's designee (the "Newco") without an auction process. The sale shall be free and clear of all claims, liens, taxes and encumbrances (except for the mortgage debt which shall be assumed by Newco). In consideration for the sale and transfer of the Property, Newco will pay all allowed claims and capital gains taxes in bankruptcy, including allowed Administrative Expenses; claims of New York City for allowed and outstanding real estate taxes, water bills, ECB violations and HPD judgments; and any allowed unsecured claims. These claims are projected to aggregate no more

than \$2.8 million, and likely substantially less, depending on the outcome of objections, and are projected as follows:

Administrative:		
Gregory Messer, Trustee	\$173,250.00	Estimated
Trustee's professionals	\$325,000.00	Estimated
Office of the U.S. Trustee Quarterly Fees	\$9,750.00	Estimated
Projected Capital Gains tax upon transfer	\$1,005,000.00	Subject to adjustment
Priority:		
New York City General Corp. Tax	\$42,601.36	Disputed
Secured:		
New York City Real Estate Taxes	\$535,421.96	Subject to adjustment
New York City ECB	\$111,669.76	Subject to adjustment
New York City HPD	\$71,245.28	Subject to adjustment
Unsecured:		
General Unsecured Creditors (including NFF)	\$532,467.25	Disputed
Total:	\$2,806,405.61	

The Plan also treats existing shareholders very favorably, allowing them to remain at the Property for the duration of their respective lives under Life Occupancy Leases at a monthly rent of \$400. 477 Funding previously sought and obtained the support of all shareholders for the Plan, including a release of all claims and UCC statements filed by New Future Foundation, Inc. (NFF) on July 19, 2017. Based upon shareholder support, a sale of the Property by the Operating Trustee has been deferred to afford 477 Funding an opportunity to proceed with its Plan. A copy of the prior shareholder consents to the Plan is attached hereto as Exhibit A.

Thereafter, however, NFF improperly re-filing a claim on July 25, 2017, even though Queen Mother Dr. Delois Blakely (Queen Mother Blakely) previously acknowledged under

oath in a sworn certification filed on July 19, 2017, that NFF had released all prior claims, which are highly suspect in any event. The latest filing by NFF is fraudulent and will be vigorously challenged in bankruptcy.

477 Funding, however, continues to operate in the good faith belief that Queen Mother Blakely, who signed the withdrawal of claims on behalf of NFF on July 19, 2017, is not behind the recent filings. Thus, 477 Funding will focus its objections on the *ultra vires* acts of Ruth Brinkley, who will be made subject to contempt proceedings along with her cohorts at BFF involved in the re-filing. The õping pong gameö being played by NFF should not derail the consents previously obtained to the Plan from the shareholders. Moreover, 477 Funding is prepared to assume all obligations arising out of the bogus claim of NFF and the expungement of this claim is not a condition to closing.

Thus, the key to the Plan remains 477 Funding's willingness to grant full non-assignable Life Occupancy Leases (as defined below) to all consenting shareholders at a fixed monthly rent of \$400. All tenants currently residing at the Property are eligible for Life Occupancy Leases, to wit: Queen Mother Dr. Delois Blakely and her daughter, Ini'Chinwa Thomas; Shirley Pitts; Margaret Callender; Charles DeBerry; and JoAnn McClain (singularly, a õCurrent Tenantö or collectively, the õCurrent Tenantsö). The grant of Life Occupancy Leases at a fixed rent of \$400 per month represents a significant enhancement from 477 Funding's earlier plan (ECF #104).

## **II. DISCLAIMERS**

The Bankruptcy Court's approval of this Disclosure Statement does not constitute an endorsement of the Plan. No representations other than those explicitly set forth in this Disclosure Statement are authorized concerning the terms of the Plan.

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

### **III. CONFIRMATION**

The Bankruptcy Court has scheduled a combined hearing to consider confirmation of the Plan on \_\_\_\_\_, 2017 at \_\_\_\_:\_\_\_\_.m., prevailing New York Time. The confirmation hearing will be conducted by the Honorable Sean H. Lane in the United States Bankruptcy Court, One Bowling Green, Courtroom 701, New York, NY 10004. At the confirmation hearing, the Bankruptcy Court will determine whether the requirements of Section 1129(a) of the Bankruptcy Code have been satisfied so the Plan can be approved. The Plan Proponent believes that the Plan will easily satisfy all applicable requirements of Section 1129(a) of the Bankruptcy Code.

Any creditor or party in interest may object to confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, shall be filed with Bankruptcy Court (with a courtesy copy to the Hon. Sean H. Lane) and served upon counsel to the Plan Proponent, Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, 1501 Broadway, 22<sup>nd</sup> Floor, New York, New York 10036, and counsel to the Operating Trustee, LaMonica, Herbst & Maniscalco, LLP, Attn: Gary F. Herbst, Esq., 3305 Jerusalem Avenue, Wantagh, New York 11793 on or before \_\_\_\_\_, 2017. The confirmation hearing may be adjourned from time to time without further notice other than by announcement in open court.

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

In accordance with section 1126(f) of the Bankruptcy Code, all classes of claims that are impaired may vote to accept or reject the Plan. A class of claims is impaired if the Plan modifies, alters or changes the Claimant's legal, equitable or contractual rights against the Debtor. Class 2 (Secured Claim of 477 Funding) is impaired and eligible to vote on the Plan. Class 4 (Shareholder Interests) is also impaired, but is not entitled to vote by reason of the insider status of the members of this Class.

Ballots for acceptance or rejection of the Plan will accompany the Plan, and should be completed by all voting classes of creditors. After carefully considering this Disclosure Statement and the Plan, please indicate your vote on the enclosed ballot and return same to Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, 1501 Broadway, 22<sup>nd</sup> Floor, New York, New York 10036. Facsimile: (212) 221-6532. E-mail: [KNash@GWFGlaw.com](mailto:KNash@GWFGlaw.com).

In order to be counted, your ballot must be actually received on or before \_\_\_\_\_, 2017 at 5:00 p.m. prevailing New York (the "Voting Deadline"). All forms of personal delivery of ballots including overnight delivery service, courier service, and delivery by hand are acceptable. Facsimile and electronic transmissions are acceptable as well. There is no need to file your Ballot with the Clerk of the Bankruptcy Court. If your ballot is damaged or lost, or if you do not receive a ballot to which you are entitled, you may request in writing a replacement by contacting Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, at the stated address.

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

#### **IV. GENERAL INFORMATION REGARDING THE DEBTOR**

##### **A. Background of Debtor's Business**

The Debtor owns the Property, which comprised of a mixed-use apartment building. The building is a 5 story walk-up located in the Hamilton Heights Historic District. The first floor consists of 4 commercial spaces. Floors 2, 3, 4 and 5 have two apartments each.

The Debtor is a Housing Development Fund Corporation (HDFC), which is a special type of limited equity housing cooperative in New York City. As an HDFC, the City of New York is able to sell buildings directly to tenant or community groups to provide low-income housing.

The Debtor was organized as an HDFC in 1982 pursuant to the provisions of Article XI of the Private Housing Finance Law of the State of New York. By deed dated December 7, 1982, the City of New York granted the Property to the Debtor.

As with many HDFCs, however, the Debtor did not live up to its original promise. In or about 2007, after the Debtor failed to pay its taxes, the City of New York foreclosed upon the Property. By judgment of foreclosure, dated June 11, 2007, the Supreme Court of the State of New York, New York County, authorized the Commissioner of Finance of the City of New York to prepare and execute a deed conveying full and complete title to the Property to the City or to a third party deemed qualified and designated by the Commissioner of the New York City Department of Housing Preservation and Development.

In order to resolve the tax lien obligation, in or about September 20, 2007, the Debtor executed (i) a mortgage note (the "Note") in the principal amount of \$650,000.00, dated

September 20, 2007, in favor of the original lender, Madison Park Investors LLC and E.R. Holdings LLC (collectively, the "Original Lender"); and (ii) a mortgage and security agreement, dated September 20, 2007, in favor of the Original Lender, encumbering the Mortgaged Premises and securing the repayment of the Note (the "Mortgage"). The Mortgage was duly recorded with the New York City Office of the City Register on October 4, 2007 at CRFN 2001000507377.

That obligation was unable to be serviced properly and on about February 3, 2009, the Original Lender commenced an action to foreclose the lien of the Mortgage in the Supreme Court of the State of New York, County of New York (the "Foreclosure Action"). Thereafter, by order, signed by the Honorable Milton A. Tingling, J.S.C. on October 29, 2013, and entered in the New York County Clerk's Office on November 21, 2013, the Court granted summary judgment in favor of the Original Lender, and referred the matter to C. Sidney Lester, Esq., as referee to compute the amount due.

In the interim, by instrument dated March 23, 2015, and duly filed and recorded with the New York City Office of the City Register at CRFN 2015000123482, the Original Lender assigned all right, title and interest in and to the Mortgage to 477 Funding.

Thereafter, by order signed by the Honorable Shlomo S. Hagler, J.S.C. on June 10, 2015, and entered in the New York County Clerk's Office on June 26, 2015, the Court granted judgment of foreclosure and sale in favor of 477 Funding. The Property was noticed for sale by the referee, which sale was scheduled to occur on August 5, 2015, at the New York County Courthouse, 60 Centre Street New York, New York.

In order to stay the sale, on August 5, 2015 (the "Petition Date"), Shirley Pitts, as the president of Debtor, filed a "bare-bones" petition in bankruptcy. As of the Petition Date, there

was due and owing to 477 Funding the sum of \$1,725,044.92, plus accrued interest, fees, taxes, insurance and other charges including attorney's fees. In addition to the secured claim of 477 Funding, the City of New York, through various agencies, has filed claims in excess of \$750,000.00.

**B. Events Subsequent to the Petition Date**

After a *öbare-bonesö* petition was filed without counsel, the Debtor failed to submit its schedules of assets and liabilities, or to retain counsel. Accordingly, the U.S. Trustee quickly moved for the dismissal or conversion of the case. Counsel then appeared on behalf of the Debtor and just as quickly moved to withdraw.

Shortly thereafter, a dispute among the seven tenants and shareholders of the Debtor became public, as papers were filed by two different groups, led by Bishop Shirley Pitts and Queen Mother Blakely, with each group claiming to be the rightful officers of the Debtor. At several subsequent hearings, neither side was prepared to argue their positions, and Court-ordered deadlines for submission of papers supporting the respective claims passed without the required filings. This led 477 Funding to move on February 10, 2016 for the appointment of an operating trustee.

After a hearing on the various motions held on March 16, 2016, 477 Funding's motion was granted, and Greg Messer was subsequently appointed as Chapter 11 Trustee (the *öOperating Trusteeö*). The Operating Trustee quickly asserted control over the case, retaining a managing agent, an accountant and an attorney to assist him. Operating reports were filed and a bar date for filing claims was set.

In August 2016, Ms. Pitts filed a plan of reorganization, amended in September 2016, proposing to pay 477 Funding's secured claim in a reduced amount, without any showing of the

source of the payment. Then in November 2016, an entity calling itself The Upper Group proposed a plan calling for the sale of the Property to "Newco", an entity to be created by The Upper Group for the purpose of acquiring title to the Property, for the sum of \$3.2 million. No creditors or insiders of the Debtor were identified as supporting the plan, which was largely copied directly from Ms. Pittsø filings.

After the Operating Trustee objected to both plans, more patently unconfirmable plans were filed, leading the Operating Trustee to move to sell the Property at an auction. The Operating Trustee's motion was filed on June 9, 2017, and preliminarily granted at a hearing held on July 13, 2017, subject to the Plan proposed by 477 Funding based upon the professed support of the shareholders.

In light of the filing of the Plan, the Operating Trustee consented to adjourn his sale. As of July 15, 2017, 477 Funding was able to obtain support from all five current tenants, who each signed their consent to the Plan. 477 Funding has now updated the Plan and is filing this Disclosure Statement to bring the documents current and be in a position to move forward expeditiously with the confirmation process.

Recently, however, NFF, an entity formerly controlled by Queen Mother Blakely, filed a new claim in the amount of \$500,000, signed by Ruth Brinkley. The claim is a sham, and 477 Funding intends to vigorously oppose it.

**IV. CLASSIFICATION AND TREATMENT OF CLAIMS, BANKRUPTCY FEES AND SHAREHOLDERS.**

Pursuant to Section 1122 of the Bankruptcy Code, the Plan divides creditors and interests into separate classes according to whether or not the claims are secured, and their priority status

under the Bankruptcy Code. Certain claims are not classified, in accordance with the Bankruptcy Code.

**A. Unclassified Claims**

**Administrative Expense Claims.** Administrative Expenses Claims consist of the costs and expenses of administering the Chapter 11 case, including, without limitation, Capital Gains Taxes arising out of the sale of the Property, plus the fees and commissions owed to the Operating Trustee and his professionals. The Administrative Expense Bar Date for the filing proofs of Administrative Expense Claims, including professional fees, shall be thirty days after entry of the Confirmation Order.

One of the purposes of this Plan is to ensure that the Operating Trustee and his professionals are treated fairly for their contributions of time and effort to this bankruptcy case. For the purposes of this Plan, the Operating Trustee, his counsel, LaMonica Herbst & Maniscalco LLP, and his accountant, Gary Lampert, CPA, shall be paid their respective allowed commissions, fees and expenses in full (including statutory commissions calculated as if the Property was sold for \$5.0 million), together with applicable commissions on such other distributions as the Operating Trustee may have already made prior to the Confirmation Date. Requests for fees, commissions and expenses shall be filed by the Operating Trustee and his professionals, and shall be paid at Closing or such later date as approved by the Court. Reserves shall be established at the Closing as appropriate to cover any pending fee applications, or fees and expenses necessary to complete the administration of the case though entry of a final decree. The potential Capital Gains Tax has been calculated by the Operating Trustee at \$1,005,000. The statement showing the calculation is annexed hereto as Exhibit 0B0, which remains subject to review and adjustment.

**Priority Tax Claims.** Priority Tax Claims are certain unsecured income and other taxes described by Section 507(a)(8) of the Bankruptcy Code, including the claims for general corporation taxes in the amount of \$42,601.36 filed by New York City. The proofs of claim filed by the City are estimated, and appear to be overstated. Accordingly, they will be the subject of an Objection. Whatever amount is ultimately allowed by the Bankruptcy Court, however, shall be paid by Newco on the later of the Effective Date, or the entry of a Final Order of the Bankruptcy Court allowing such Priority Tax Claims.

**United States Trustee Fees.** On the Effective Date, the Disbursing Agent shall pay all accrued United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 until the earliest of (a) entry of a Final Order, (b) dismissal of the Chapter 11 Case or (c) conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

**B. Treatment of Classified Claims and Interest**

**1. Summary**

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

**Summary of Classification and Treatment of Claims and Shareholders**

Class	Designation	Impaired
Class 1	Real Estate Tax, ECB and HPD Claims of New York City	No
Class 2	Secured first mortgage claim of 477 Funding	Yes
Class 3	Unsecured Claims	No
Class 4	Shareholders	Yes

**2. Classification, Treatment and Voting**

**Class 1 — Real Estate Claims of New York City**

Classification: Class 1 is comprised of the allowed Real Estate Claims of New York City, which filed several proofs of claims including alleged taxes due to DOF (\$535,421.96), alleged ECB violations (\$111,669.76) and alleged HPD civil penalty judgments (\$71,245.28).

Treatment: The proofs of claim filed by the City are being reviewed, but appear to be overstated, and will be the subject of an Objection. Whatever amount is ultimately allowed by the Bankruptcy Court, it shall be paid on the Effective Date by Newco. The City of New York shall receive a cash payment on the Closing Date equal to the undisputed amount of all outstanding real estate taxes, ECB violations and HPD civil penalty judgments. Reserves shall be established with the Disbursing Agent, at closing to address all disputed amounts claimed by DOF, ECB or HPD pending final allowance thereof.

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

**Class 2 — Secured Claim of 477 Funding**

Classification: Class II consists of the Secured Claim of 477 Funding Claim. This claim is held by 477 Funding as assignee of Madison Park Investors LLC and E.R. Holdings LLC of a (i) mortgage note in the principal amount of \$650,000.00, dated September 20, 2007 (the "Note"); and (ii) a mortgage and security agreement, dated September 20, 2007 (the "Mortgage"), encumbering the Property and securing the repayment of the Note, as duly recorded with the New York City Office of the City Register on October 4, 2007 at CRFN 2001000507377, together with all interest, costs, fees (including attorney's fees), charges and other amounts to which 477 Funding is entitled pursuant to the Note and Mortgage. The assignment instrument, dated March

23, 2015, was duly filed and recorded with the New York City Office of the City Register at CRFN 2015000123482.

A judgment of foreclosure was entered against the Debtor in favor of 477 Funding on June 26, 2015 in the total sum of \$1,655,393.32.

As of the Petition Date, there was due and owing to 477 Funding the sum of \$1,725,044.92, including all accrued interest, plus fees, taxes, insurance and other charges including attorney's fees. Additionally, post-petition interest, costs and fees have been accrued, increasing the total claim to approximately \$2.2 million (subject to accounting).

Treatment: Newco's assumption of the mortgage debt as part of the sale and transfer of the Property means that 477 Funding shall effectively credit bid its Class 2 claim in consideration for transfer of title to the Property to Newco on the Closing Date.

Voting: Class 2 is impaired class and entitled to vote to accept or reject the Plan.

### **Class 3 – General Unsecured Claims**

Classification: Class 3 consists of allowed General Unsecured Claims against the Debtor. Three occupants of the Property (Blakely, DeBerry and McClain) have filed a total of five untimely proofs of unsecured claims (#s 11-15) totaling \$4,250,000.00. While these claims are highly disputed, there are nevertheless deemed withdrawn, extinguished and expunged in consideration for receipt of a Life Occupancy Lease by the applicable Shareholder. Likewise, in addition to receiving a Life Occupancy Lease, all Shareholders will obtain the additional benefit that the Debtor's claims against them for unpaid rent shall likewise be deemed waived and released by the Debtor's bankruptcy estate. These claims are significant, since rent has not been paid for many years, and potentially exceed \$437,400, as itemized on the attached scheduled

annexed hereto as Exhibit 5Cö. This schedule reflects historical rent arrears, which were provided to the Operating Trustee without the opportunity to fully verify same.

For purposes of the Plan, 477 Funding does not recognize that NFF holds a legitimate claim. Thomas S. Fleishell & Associates P.C. also filed a separate untimely claim in the amount of \$32,467.25 for alleged legal services. This claim shall also be the subject of an objection.

Treatment: To the extent that any Class 3 Claims are ultimately allowed, they shall be paid on the Effective Date or as soon thereafter as practicable. Class 3 is an unimpaired class and is not entitled to vote to accept or reject the Plan.

**Class 4 – Shareholders.**

Classification: Class 4 consists of the Shareholders in the Debtor.

Treatment: In consideration of the Life Occupancy Leases and other consideration, the consenting Shareholders shall be deemed to have surrendered their equity interests in the Debtor, and all of their claims shall be deemed expunged. Likewise, upon the Effective Date, all claims of the Debtor's estate against such consenting Shareholder for unpaid rent shall also be deemed waived and released.

Impairment. Class 4 is not entitled to vote on the Plan by reason of their insider status,

**VI. MEANS FOR IMPLEMENTATION OF THE PLAN**

**Transfer of Assets.** On the Closing Date, in return for payment to the Operating Trustee as the Disbursing Agent of a sum sufficient to pay all allowed claims in full under this Plan, title to the Property shall be transferred to Newco free and clear of all claims, liens, taxes and non-permitted encumbrances by means of, *inter alia*, the following conveyances documents:

- (a) Operating Trustee's Deed to the Property in form and substance reasonably acceptable to 477 Funding and Newco to be recorded in the appropriate

register's office (the "Deed"), together with any and all New York City closing documents, including all New York State real property Transfer Tax returns and any and all affidavits, certificates and other documents which are usual and customary to facilitate a sale of real property in the City of New York; and

(b) a Bill of Sale, in form and substance reasonably acceptable to 477 Funding and Newco, transferring all personal property of the Debtor used in or useful to the operation and maintenance of the Property.

**Confirmation Account.** The funds necessary for implementation of the Plan will be provided by 477 Funding and deposited into the Confirmation Account prior to the Confirmation Hearing for distribution to creditors by the Disbursing Agent in accordance with this Plan. Subject to necessary reserve(s) as set forth herein, to the extent that any funds remain in the Confirmation Account after all Allowed Claims are paid, whether because the amount of an Allowed Claim is reduced, or otherwise, such funds shall be the property of Newco and shall be returned to Newco.

**Life Occupancy Leases.** A Life Occupancy Lease shall be granted to all Current Tenants who support confirmation of this Amended Plan and actually vote in favor of this Plan.

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

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

**Preservation of Other Rights and Causes of Action.** Any Causes of Action belonging to the Debtor against third parties shall remain property of the Debtor's estate and shall be vested in the Disbursing Agent following Confirmation of the Plan for prosecution as the Disbursing Agent deems necessary and appropriate. To the extent that the Disbursing Agent recovers any monies on account of the Causes of Action, the net proceeds remaining after payment of fees and expenses, including reasonable legal fees, shall be paid to 477 Funding on account of its Class 2 Claim. To the extent that the Shareholders do not renege on their prior consents, then no additional litigation is contemplated. However, the situation will change if any Shareholders renege, in which event a reneging Shareholder shall forfeit its Life Occupancy Lease and shall remain liable for all unpaid rent obligations.

**Post-Confirmation Management.** The Debtor shall be dissolved on the Effective Date. The HDFC status of the Debtor and the Property shall terminate on the Effective Date.

**Rights and Powers of the Disbursing Agent.** Except as otherwise provided herein, the appointment of the Operating Trustee shall terminate upon the completion of the Closing. Thereafter, the Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to (i) effectuate the transfer of title to the Property to Newco; (ii) effectuate the dissolution of the Debtor; (iii) terminate the HDFC of the Debtor and the Property; and (iv) perform his duties as Disbursing Agent under the Plan; (b) make all distributions contemplated hereby; and (c) exercise such other powers as may be deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

The Disbursing Agent and any professionals necessarily retained by the Disbursing Agent with the prior written consent of 477 Funding shall be paid reasonable fees and expenses upon presentation of an invoice to 477 Funding, unless 477 Funding files a written objection to such fees and expenses within ten (10) business days after service, and in such event, the Court shall determine the dispute.

**Rejection of all Existing Leases and Executory Contracts.** All unexpired residential leases to which the Debtor is a party shall be deemed assumed as modified by this Plan to provide for a Life Occupancy Lease at \$400 per month rent for all consenting Shareholders.

All other commercial leases and executory contracts are likewise deemed assumed in accordance with their existing terms and conditions.

**Conditions Precedent to the Effective Date.** The following are conditions to the Plan:

- (a) The Confirmation Order shall have been entered by the Bankruptcy Court confirming the Plan and approving the sale and transfer of the Property to Newco consistent with the terms hereof;
- (b) The Closing Date shall have occurred;
- (c) All necessary and required funding in furtherance of the Plan has occurred;
- (d) There shall not be in effect on the Effective Date, any Order entered by a court of competent jurisdiction staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan; and
- (e) All other actions and documents necessary to implement the Plan shall have been effected or executed in form and substance satisfactory to 477 Funding and Newco.

**Retention of Jurisdiction.**

The Bankruptcy Court shall retain jurisdiction after confirmation pending closure of the case to perform the following:

- (a) Ensure that the Plan is fully consummated, and to enter any Order pursuant to section 1142(b) of the Bankruptcy Code;

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

## **VII. CONFIRMATION REQUIREMENTS AND PROCEDURES.**

To be confirmable, the Plan must meet the requirements listed in § 1129(a) or (b) of the Bankruptcy Code. The requirements include 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 Shareholder at least as much as the Creditor or Shareholder would receive in a chapter 7 liquidation case, unless the Creditor or Shareholder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129 of the Bankruptcy Code, and they are not the only requirements for confirmation.

In this case, 477 Funding is the only impaired creditor, and intends to vote in favor of the Plan. Moreover, the shareholders/tenants have already indicated their support for the Plan.

Prior to confirmation, 477 Funding will deposit sufficient funds up to \$2.8 million to cover the payments required to be made on the Effective Date, thereby establishing the feasibility of the Plan. Accordingly, 477 Funding expects the Plan to easily meet the requirements of Section 1129(a) for confirmation.

### **VIII. ALTERNATIVES TO THE PLAN**

The Plan Proponent believes that the Plan provides Creditors and Shareholders with a fair and proper conclusion of the bankruptcy. The principle alternative to Confirmation of the Plan is the sale of the Property by the Operating Trustee, in which event the status of the Shareholders will be in doubt, replete with renewed disputes among the Shareholders, as well as the loss of the waiver of claims for unpaid rent proposed in 477 Funding's Plan.

Since the Operating Trustee has already moved to sell the Property, it is likely that the sale will go forward in absence of confirmation of 477 Funding's Plan. 477 Funding reserves its rights as a secured creditor to credit bid its claim pursuant to Section 363(k) of the Bankruptcy Code.

It is possible that insufficient funds will be recovered from such a sale to pay all claims in full. Moreover, it is unlikely that the successful purchaser will offer Life Occupancy Leases to the current shareholder/tenants, and certainly not at the \$400 per month rent proposed in the Plan. There also will be increased administrative costs incurred by the Operating Trustee and his professionals to complete the liquidation of assets and make distributions to creditors, as well as inevitable delay in final resolution of the case.

Accordingly, 477 Funding submits that its Plan provides the best possible outcome for creditors and Shareholders.

**IX. TAX CONSEQUENCES**

Consummation of the Plan will result in recognition of income to the Debtor and the incurrence of tax on the part of the Debtor. The Operating Trustee has calculated potential maximum the capital gains tax due upon the sale of the Property, which shall be paid as an Administrative Expense Claim of the Debtor after proper reconciliation and adjustment. For the record, 477 Funding believes that the actual capital gains is much less.

The receipt of cash by a holder of an unsecured claim against the Debtor may be a fully taxable transaction. Accordingly, a holder of such a Claim may recognize gain or loss, and each creditor and holder of an interest is urged to consult its own tax advisor as to the consequences of the plan and applicable federal, state, local and foreign tax laws. the plan is not intended to result in the forfeiture or compromise of any of the Debtor's tax attributes, all of which are preserved to the extent allowed by applicable law.

**CONCLUSION**

477 Funding believes that Confirmation of the Plan is in the best interests of all Creditors and Shareholders.

Dated: New York, New York  
August 18, 2017

477 W. 142<sup>nd</sup> Funding LLC

Goldberg Weprin Finkel Goldstein LLP  
Attorneys for 477 W. 142<sup>nd</sup> Funding LLC  
1501 Broadway, 21<sup>st</sup> Floor  
New York, NY 10036

By: /s/ Isaac Lebovits  
Name: Isaac Lebovits  
Title: Managing Member

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