UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

BH SUTTON MEZZ LLC, a Delaware Limited Liability Company, SUTTON 58 OWNER LLC, a Delaware Limited Liability Company, and SUTTON 58 OWNER LLC, a New York Limited Liability Company, Debtors.	Chapter 11 Case No.: 16-10455 (SHL) (Jointly Administered)

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CHAPTER 11 DEBTORS' SECOND AMENDED JOINT DISCLOSURE STATEMENT

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

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION (THE "**PLAN**") PROPOSED BY THE DEBTORS. NO OTHER REPRESENTATIONS CONCERNING THE DEBTORS, THE VALUE OF ITS ASSETS OR BENEFITS OFFERED UNDER THE PLAN HAVE BEEN AUTHORIZED.

THE APPROVAL OF THE DISCLOSURE STATEMENT MEANS THAT THE BANKRUPTCY COURT HAS FOUND THAT THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION TO PERMIT CREDITORS OF THE DEBTORS TO MAKE A REASONABLY INFORMED DECISION IN EXERCISING THEIR RIGHT TO VOTE UPON THE PLAN. [COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION ON THE MERITS OF THE PLAN.] A COPY OF THE PLAN IS ANNEXED HERETO AS EXHIBIT "1" AND DESCRIBED HEREIN.

ANY REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN YOUR ACCEPTANCE WHICH ARE OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION WHETHER TO APPROVE THE PLAN.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION; NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS DOCUMENT WAS COMPILED FROM INFORMATION OBTAINED BY THE DEBTORS AND FROM OTHER SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION AND BELIEF.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. ALL CREDITORS AND OTHER INTERESTED PARTIES ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ CAREFULLY THE ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS, BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN.

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I

INTRODUCTION

A. Background

BH Sutton Mezz LLC, a Delaware Limited Liability Company ("**Sutton Mezz** "), Sutton 58 Owner LLC, a Delaware Limited Liability Company ("**Sutton Owner DE**") and Sutton 58 Owner LLC, a New York Limited Liability Company ("**Sutton Owner NY**"), each a debtor and debtor-in-possession (collectively, the "**Debtors**") submit this Second Amended Joint Disclosure Statement (the "**Disclosure Statement**")[1] pursuant to § 1125 of Title 11 of the United States Code (the "**Bankruptcy Code**"), to creditors of the Debtors (the "**Creditors**" and each a "**Creditor**") in connection with the: (i) the Debtors' Second Amended Joint Plan of Liquidation dated November 11, 2016, proposed and filed by the Debtors (the "**Plan**")[2] with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"); and (ii) hearing on confirmation of the Plan to be scheduled by further notice and/or Order of the Court. Unless otherwise defined herein, all capitalized terms contained herein will have the meanings ascribed to them in the Plan.

Attached as an exhibit to and accompanying this Disclosure Statement is a copy of the following:

Exhibit "1" - The Plan

BALLOTS ARE NOT BEING PROVIDED TO HOLDERS OF ANY ALLOWED CLAIMS BECAUSE ALL CLASSES ARE UNIMPAIRED AND AS SUCH ARE NOT ENTITLED TO

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[1] It should be noted that the Debtors expended extensive time and effort in an attempt to formulate and file a consensual plan with Sutton Lender and the Creditors' Committee (each as defined herein), but were unable to do so. Approximately one week prior to the date hereof, the Debtors came to the determination that, due to multiple unacceptable provisions demanded by Sutton Lender, a joint plan with the Debtors, Sutton Lender and the Creditors' Committee was not possible.

[2] All capitalized terms not defined herein shall be ascribed the same meanings as in the Plan.

VOTE AND ARE PRESUMED TO HAVE CONCLUSIVELY ACCEPTED THE PLAN. THE DEBTORS RESERVE ALL RIGHTS UNDER RULE 3017 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND APPLICABLE CASE LAW AUTHORITY THAT COURT APPROVAL OF THIS DISCLOSURE STATEMENT AND/OR THE DEBTORS' UTILIZATION OF THIS DISCLOSURE STATEMENT MAY NOT BE REQUIRED BY VIRTUE OF THE FACT THAT NO CLAIMS ARE IMPAIRED BY THE PLAN.

B. The Plan Confirmation Process

The Bankruptcy Court approved this Disclosure Statement as containing adequate information to permit creditors of the Debtors to make a reasonably informed decision in exercising their right to vote upon the Plan. Approval of this Disclosure Statement does not, however, constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan. Each Creditor should read this Disclosure Statement and the Plan in their entirety.

Pursuant to various provisions of the Bankruptcy Code, only classes of claims that are "impaired" under the terms and provisions of a plan are entitled to vote to accept or reject such plan. According to the Plan, all Classes are unimpaired, not entitled to vote and are deemed to have conclusively accepted the Plan.

In accordance with Section 1128 of the Bankruptcy Code, the Bankruptcy Court shall schedule pursuant to separate notice or Order a hearing to consider confirmation of the Plan (the "**Confirmation Hearing**") before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, Courtroom 701, New York, New York 10004-1408. Objections, if any, to confirmation of the Plan shall be served and electronically filed with the Bankruptcy Court in accordance with such further notice from and/or Order of the Court. The Confirmation Hearing may be adjourned from time to time by the

Bankruptcy Court without further notice except for the announcement of the adjourned hearing date made at the Confirmation Hearing or at any subsequent adjourned date.

II

SUMMARY OF PLAN

The table below provides a summary of the classification and treatment of Claims under the Plan. The figures set forth in the table below represent the Debtors' best estimate of the total amount of Allowed Claims in each of these cases. These estimates have been developed by the each Debtor based on: (i) an analysis of its books and records; and (ii) filed proofs of claim. By an Order of the Bankruptcy Court, July 25, 2016 was set as the last date for filing Proofs of Claim with the Clerk of the Bankruptcy Court for Sutton Mezz and Sutton Owner DE. There can be no assurance that the amount of Claims that may be filed and allowed by the Bankruptcy Court will not exceed the amounts set forth or described herein. Nothing set forth in these schedules shall be deemed an admission by the Debtors as to the existence, validity, priority or amount of any claim asserted against the Debtors. The Debtors fully reserve all of its rights to object to claims.

A. Summary of Categories of Claims:

Class	Nature of Claims	Approximate Dollar Amount of Claims in Class
Unclassified – Superpriority Administrative Expense	Superpriority Administrative Expense Claim of Sutton Lender in accordance with the Cash Collateral Order, as amended.	An amount up to $1,804,107.07 to the extent actually paid and advanced by Sutton Lender in accordance with the Cash Collateral Order, as amended.
Unclassified – Administrative Expense	Administrative claims of the Estates including Professionals retained pursuant to Court Order.	Approximately $2,000,000 in the aggregate for all Estate professionals, including expenses as of October 15, 2016;[3] all other post-petition administrative claims to be paid as they come

[3] Such fees and expenses of the Debtors' Estates' professionals will correlate to such services rendered through the date of confirmation, including litigation.

		due or as set forth in the Claims Treatment section below.
Unclassified – U.S. Trustee	United States Trustee	Unknown
Unclassified – Priority Tax Claims	Priority Tax Claims	$5,800
Class 1	Allowed Acquisition Loan Claim	The amount as determined by the Court in the Adversary Proceeding. The Debtors believe the amount is $91,813,761.
Class 2	Allowed Building Loan Claim	The amount as determined by the Court in the Adversary Proceeding. The Debtors believe the Building Loan is usurious, but its maximum allowed amount if not usurious is $477,507.
Class 3	Allowed Non-Governmental Real Property Lien Claims	$1,220,700 (approx.)
Class 4	Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY	$18,000,000 (approx.)
Class 5	Allowed Sutton Mezz Membership Interest	Balance of Sale proceeds remaining after Classes 1-4 are paid in full to the extent allowed.
Class 6	Allowed Unsecured Claims of Sutton Mezz	The Creditors in this class are substantially similar and/or duplicative to the Creditors in Class 4.
Class 7	Allowed June Mezz Loan Claim	Principle amount of $20,000,000, subject to a Final Order in the Adversary Proceeding.
Class 8	Allowed BH Sutton Owner LLC Member Interest	Balance of Sale proceeds.

B. **Summary of Plan Distributions:** A summary description of each class of Claims and the treatment of such Claims is set forth below:

Class Description	Treatment
Unclassified: Superpriority Administrative Expense This class consists of the Superpriority Administrative Expense Claim of Sutton Lender in accordance with the Cash Collateral Order.	The Superpriority Administrative Expense Claim shall be paid up to the amount actually paid and advanced by Sutton Lender in accordance with the Cash Collateral Order, as amended, but in an amount not to exceed $1,804,107.07, on the Effective Date, or on such other date and upon such other terms as may be agreed upon by Sutton Lender and the Debtors. As of the date hereof, Sutton Lender has advanced approximately $724,133.66

	in connection with the Cash Collateral Order.
Unclassified: Administrative Expense This class consists of administrative Claims of the Debtors' Estates, including professionals employed by the Debtors' Estates.	Each holder of an Administrative Expense Claim shall be paid in full, in cash, on the Effective Date, or on such other date and upon such other terms as may be agreed upon by the holder of such Allowed Administrative Expense Claims and the Debtors. Administrative Expenses claims of the Debtors' professionals are subject to Court approval.
Unclassified: U.S. Trustee This class consists of outstanding fees owed, if any, to the United States Trustee.	Any fees due to the United States Trustee shall be paid as they come due up through and including the earlier of the date of entry of a final decree closing these Chapter 11 proceedings or the date of entry of an order dismissing or converting these cases to cases under Chapter 7 of the Bankruptcy Code.
Unclassified: Priority Tax Claims This class consists of priority Claims held by governmental units.	Allowed Priority Tax Claims of governmental units, if any, will be paid in full, in cash, on or within thirty (30) days after the Effective Date.
Class 1: Allowed Acquisition Loan Claim This class consists of the Claim held by Sutton Lender with respect to the Acquisition Loan.	On or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding, the holder of the Acquisition Loan Claim, to the extent and amount deemed secured, shall be paid from the Sale proceeds in the full amount as determined and allowed by the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding and in an amount sufficient to render such claim unimpaired under Section 1124 of the Bankruptcy Code. Any portion of the Acquisition Loan Claim that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY.
Class 2: Allowed Building Loan Claim This class consists of the Claim held by Sutton Lender with respect to the Building Loan.	On or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding, the holder of the Building Loan Claim, to the extent and amount deemed secured, shall be paid from the Sale proceeds in the full amount as determined and allowed by the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding and in an amount sufficient to render such claim unimpaired under Section 1124 of the Bankruptcy Code. Any portion of the Building Loan Claim that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY.
Class 3: Allowed Non-Governmental Real Property Lien Claims This class consists of the Claims of non-governmental agencies in connection with a lien against the Real Property on account of mechanics liens or judgment liens.	Allowed Claims in this class, if any, shall be paid on or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order of the Bankruptcy Court ruling on the nature, extent and validity of any such claim, from the sale proceeds with 1% interest from the Sutton Owner DE Petition Date, in an amount sufficient to render such claim unimpaired under Section 1124 of

	the Bankruptcy Code, and after allowed payments to preceding classes. Any portion of a claim in this class that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY.
Class 4: Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY This class consists of general unsecured, non-priority Claims of the Sutton Owner DE and Sutton Owner NY.	Allowed Claims in this class shall be paid in full, with 1% interest from the Sutton Owner DE Petition Date, from the proceeds remaining from the Sale, within 30 days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of secured Allowed Claims in classes 1, 2 and 3.
Class 5: Allowed Sutton Mezz Membership Interest This class consists of the 100% membership interest owned by Sutton Mezz in and to Sutton Owner NY and Sutton Owner DE.	This class will receive the balance of the Sale proceeds after allowed payments to holders of Allowed Claims in Classes 1, 2, 3 and 4 are made, on or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding. This class will not retain the funds it receives but rather shall disburse such funds to Classes 6, 7 and 8 in accordance with the Plan.
Class 6: Allowed Unsecured Claims of Sutton Mezz This class consists of Allowed general unsecured, non-priority Claims of Sutton Mezz.	Allowed Claims in this Class shall be paid in full, with 1% interest from the Sutton Owner DE Petition Date, from the funds received by Class 5, within 30 days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of Allowed Claims in classes 1, 2, 3, 4 and 5.
Class 7: Allowed June Mezz Loan Claim This class consists of the Claim of Sutton Lender on account of the June Mezz Loan as against Sutton Mezz.	The June Mezz Loan Claim shall be paid from the remaining Sale proceeds on or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding, to the extent allowed by the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding, only after payments to Allowed Claims in Classes 1, 2, 3, 4, 5 and 6 are paid in full (to the extent allowed as provided in this Plan)
Class 8: Allowed Member Interest of BH Sutton Owner LLC This class consists of the 100% membership interest owned by BH Sutton Owner LLC in and to Sutton Mezz.	This class will be paid from the remaining Sale proceeds on or within thirty (30) days of the later of: (i) the Effective Date; or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of Allowed Claims in preceding classes.

C. Source of Information

The information contained in this Disclosure Statement was prepared by Joseph Beninati ("**Beninati**"), managing member and principal of each of the Debtors, based upon the Debtors' books and records, the Debtors' bankruptcy petition and schedules, and reviewing all proofs of claim timely filed with the Bankruptcy Court. The estimates of Claims set forth herein may vary from the final amount of Claims allowed by the Bankruptcy Court.

III

HISTORY OF THE CHAPTER 11 CASE

A. Historical Background Of The Debtors And Events Leading Up To The Chapter 11 Filing

The Debtors' businesses consist primarily of the development of a 950-foot building in midtown Manhattan (the "**Project**") in the historic Sutton Place neighborhood located at 428, 430 and 432 East 58th Street, New York, New York 10022 (the "**Real Property**"). According to an appraisal prepared by Cushman & Wakefield dated February 22, 2016 (the "**Appraisal**") the Project is valued at $181 Million "as is," $256 Million "fully massed," $277 Million with a completed foundation and over $1 Billion "as completed".[4]

i. The Project

In 2014, Beninati embarked on assembling the Project. To make his vision a reality, Beninati put together a team of professionals. Richard Kalikow, Esq. ("**Attorney Kalikow**") of Herrick, Feinstein LLP ("**Herrick**") and Herrick acted as counsel. The individuals involved in the Project are Beninati, Christopher Jones ("**Jones**") and Daniel Lee ("**Lee**" and, together with Jones and Beninati, the "**Sutton Principals**").

On or about June 13, 2014, Sutton Owner NY entered into an agreement of sale with 428-430-432 East 58th Street, LLC. Upon execution of the agreement, on or about June 13, 2014, Sutton Owner NY paid a non-refundable deposit of $3,200,000 (the "**Deposit**"), with the remaining purchase price to be paid at closing. The Deposit was paid by the Sutton Principals.

Simultaneous with negotiating and finalizing numerous contracts for the Real Property, significant zoning and unused development rights from neighboring buildings and tenant

[4] The values are taken from the February 22, 2016 Appraisal by Cushman & Wakefield, an independent, world-leading firm that is unaffiliated with the Debtors. The Appraisal was completed for an unaffiliated third party that proposed to invest $140 Million into the Project. Separately: (i) two of the largest residential brokerage firms in New York City – Douglas Elliman and Corcoran Sunshine – estimated that the "as completed" building would be valued at $840 Million and $770 Million, respectively.

buyouts, Beninati sought project acquisition financing for the initial phase of the Project. Although Beninati had been speaking with various lenders about financing approximately $60 Million to fund the first round of acquisition costs, Attorney Kalikow introduced him to N. Richard Kalikow ("**N.R. Kalikow**"), Attorney Kalikow's cousin, and N.R. Kalikow's son, Jonathan Kalikow ("**J. Kalikow**" and, together with N.R. Kalikow, "**Kalikow Lender**"), as a bridge lender for the Project. Attorney Kalikow conveyed that the bridge financing would allow for the first phase of project development and then Beninati could finish his second round of financing shortly thereafter. In fact, Kalikow Lender agreed to provide the initial funding and also agreed to subordinate that bridge funding to a new senior lender for the next phase of the Project. Attorney Kalikow acted as a broker and lawyer in assisting with bridge financing obtained from Kalikow Lender. The Complaint alleges that, in reliance upon both Attorney Kalikow and Kalikow Lender, Beninati agreed to use Kalikow Lender for the initial bridge financing.

ii. The January 2015 Financing

On or about January 16, 2015, Gamma Lending S58 LP ("**Gamma Lending**"), an affiliate or nominee controlled by Kalikow Lender, entered into a loan agreement with Sutton Owner NY in the principal amount of $32.25 Million (the "**Initial Loan**"). The January Loan was secured by a first priority mortgage on the Real Property and certain development rights in favor of Gamma Lending (the "**Initial Mortgage**"). The loan maturity date was also August 1, 2016 (i.e., 18-months).

On or about January 16, 2015, Gamma Lending and Sutton Mezz entered into a Mezzanine Loan Agreement in the principal amount of $20 Million secured by a pledge of

Sutton Mezz's membership interest in Sutton Owner NY (the "**January Mezz Loan**"). The loan maturity date was August 1, 2016 (i.e., 18-months).

In the Complaint filed in the Adversary Proceeding, the Debtors have alleged, among other things, that a typical mezzanine loan, not collateralized in real property, is a higher risk loan than a first mortgage loan and, therefore, will typically earn a higher interest rate. It is highly unusual for both a mezzanine loan and a first mortgage loan for the same project to bear the same rate of interest. Here, the Initial Loan and the January Mezz Loan bear the exact same rate of interest and have exactly the same terms except for the names and amount borrowed. It is the Debtors' position that the bifurcation of Beninati's request for a $63 Million loan into the Initial Loan and the January Mezz Loan, each held by the same lender with substantially similar terms, was intended to provide Kalikow Lender with a mechanism by which to circumvent the traditional foreclosure process and frustrate the subordination process. Beninati always contemplated a first mortgage structure with Kalikow Lender on the first loan. While he was aware of the mezzanine loan structure, in return, Kalikow Lender agreed to subordinate both its Initial Loan and January Mezz Loan to senior financing after the closing of the Gamma 1 Loan. Since the Gamma 1 Loan had an initial term of 18 months, Beninati believed the subordination would occur. As a result, according to Beninati, he agreed to the Gamma 1 Loan with the understanding that at least $150 Million of senior financing would be obtained shortly thereafter with Inbursa or another entity. It is undisputed that Kalikow Lender agreed to subordinate the Initial Loan and January Mezz Loan to senior financing.

At the same time, and as a condition precedent to the Initial Loan, Kalikow Lender insisted that Sutton Owner NY execute an agreement pursuant to which Kalikow Lender retained the right to exercise an option to purchase a 4,200 square foot residential unit of its choice from

the Project at a present day cost basis with no requirement of a down payment with all transfer taxes to be paid by Sutton Owner NY (the "**Apartment Option**"). The Apartment Option was recorded after the closing by Kalikow Lender and created an encumbrance on the Real Property (i.e., a "cloud" on title).

On January 20, 2015, Sutton Owner NY purchased the Real Property for $32.250 Million.[5]

On January 23, 2015, Sutton Owner NY and Gamma Lending entered into a first amendment to the Initial Loan, which increased the Initial Loan from $32.250 Million to $43 Million through an additional loan of $10.75 Million (the "**GAP Loan**"). Sutton Owner NY also executed a consolidated, amended and restated mortgage secured against the Real Property in favor of Gamma Lending in the amount of $45,979,880 (the "**Amended January Mortgage**").[6] The loan maturity date was August 1, 2016 (i.e., 18-months).

By Agreement dated January 23, 2015, the January Mortgage and the GAP Mortgage were consolidated to create a single first priority lien secured against the Real Property in the amount of $45,979,880 (the "**Consolidated January Mortgage**", and together with the January Mezz Loan, the "**January Loan**").[7] The January Loan Documents each had a maturity date of August 1, 2016 (i.e., 18 months). The January Mezz Loan was not consolidated with the January Loan.

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[5] Due to delays, Beninati was forced to pay a nonrefundable $250,000 extension fee, thereby increasing the purchase price.

[6] The difference between $10,750,000 and $11,494,970 relates to additional accrued interest Sutton Lender received in the amount of $744,970.

[7] Based upon a review of the closing statement and loan files in the Debtors' possession, another entity owned and/or controlled by Kalikow Lender called "Gamma Funding Management" provided the proceeds for the January Loan and not Gamma Funding (i.e., the contract lender on the loan documents).

In connection with the January Loan, Herrick issued an opinion letter dated January 23, 2016 to Gamma Funding on behalf of Sutton Owner NY and the Sutton Principals.

On January 23, 2015, using proceeds from the GAP Loan, Sutton Owner NY acquired certain unused developmental rights in connection with the Project for $8,847,129 (the "**January Development Rights**").

After the Gamma 1 closings were completed, Gamma Funding may have advanced a total of $63 Million.[8]

iii. The Period of Time After Gamma 1 and the Gamma 2 Closing (5 months)

After the Gamma 1 closings, Beninati had contracts and obligations to perform on additional development rights, which Kalikow Lender and Attorney Kalikow knew. Beninati worked feverishly to obtain the senior financing contemplated before Gamma 1 and agreed to by Kalikow Lender. In fact, Kalikow Lender agreed both in its executed term sheet and Gamma 1 loan documents that it would subordinate the January Loan and Mezz Loan to a senior loan facility.

According to Beninati, Kalikow Lender consistently put up roadblocks to subordination. At the time, Beninati had executed term sheets with lenders to provide additional senior financing and expense deposits were paid to prospective lenders. During this process, according to Beninati, Attorney Kalikow failed to assist and adequately represent the Debtors, and did not push back against Kalikow Lender. As time passed and the contract obligations for the next round of development rights loomed, Beninati was in an untenable position. Kalikow Lender never subordinated its loan to a senior loan facility.

The Debtors submit that, within months of the closing on the January Loan, Kalikow Lender realized the lucrative nature of the Project and the extraordinary accomplishments of

[8] The Debtors' accountant has yet to reconcile $4,257,810 related to the Gamma 1 closing.

Beninati and his team in putting together a massive assemblage for the Project. This occurred through, among other things, Kalikow Lender's presence at multiple meetings, Kalikow Lender routinely asking for updates, and Kalikow Attorney's discussions with Kalikow Lender. Documents turned over during discovery in the Adversary Proceeding reveal that Kalikow Lender essentially took subordination "off the table" in early April when it unilaterally offered to extend additional financing to the Debtors.

In essence, Kalikow Lender offered and, unsolicited, encouraged Beninati to obtain senior financing with Kalikow Lender. The Complaint alleges that in an effort to bait Beninati further, Kalikow Lender proposed Beninati take out all of his capital of $4.2 Million from the Gamma 2 financing and further enticed him with an equity joint development partnership option.[9] With this understanding, Beninati and Kalikow Lender agreed to pursue the next round of financing together.

iv. The June 2015 Financing

By Acquisition Loan Agreement dated June 19, 2015, Sutton 58 Associates LLC ("**Sutton Lender**"),[10] an affiliate or nominee controlled by Kalikow Lender, Sutton Lender extended a loan to Sutton Owner DE in the principal amount of $125,850,000 bearing interest at a rate of 6% per annum, and imposing additional interest of $25,170,000 to be paid at maturity (the "**Acquisition Loan**"). The maturity date for the loan was January 19, 2016 (i.e., 7 months). The Acquisition Loan was evidenced, in part, by a purported $82,850,000 promissory note (the

[9] Despite that option, Beninati never took his money out of the Project.

[10] On May 29, 2015, shortly before the Gamma 2 closing, Kalikow Lender created a new entity with a name substantially similar to Gamma Lending, i.e., "Gamma Lending S58 II LP", presumably for the Gamma 2 financing. Days later, however, Kalikow Lender created a new entity with a name substantially similar to the Debtors, i.e., "Sutton 58 Associates LLC", which became the lender for Gamma 2.

"**Acquisition GAP Note**") and purportedly secured by a mortgage encumbering the Real Property and Development Rights (the "**Acquisition GAP Mortgage**").

The Acquisition GAP Note and original note from the January Loan were then consolidated into a $125,850,000 amended and restated promissory note (the "**Consolidated Acquisition Note**"), representing the entire principal amount of the Acquisition Loan. Similarly, the Acquisition GAP Mortgage and the Consolidated January Mortgage were consolidated into an amended and restated mortgage purportedly securing the Consolidated Acquisition Note (the "**Consolidated Acquisition Mortgage**").

Sutton Owner DE and Sutton Lender executed a separate and distinct building loan agreement (the "**Building Loan Agreement")** for a loan of $1.4 Million, bearing interest at a rate of 6% per annum, and imposing "additional interest" of $280,000 to be paid at maturity or upon prepayment (the "**Building Loan**"). The maturity date for the Building Loan was January 19, 2016 (i.e., 7 months). The Building Loan was evidenced by a $1,400,000 promissory note (the "**Building Note**") and secured by a mortgage encumbering the Real Property and Development Rights (the "**Building Mortgage**"). The Debtors believe that the Building Loan is both criminally and civilly usurious under New York law.

Sutton Owner DE and Sutton Lender also executed a mezzanine loan agreement (the "**June Mezz Agreement**") in the face amount of $20 Million (the "**June Mezz Loan**"). The June Mezz Loan was evidenced by a $20 Million promissory note (the "**June Mezz Note**") and purportedly secured by a pledge of Sutton Mezz's membership interest in Sutton Owner DE (the Consolidated Acquisition Note, Building Loan and June Mezz Loan are collectively referred to as the "**June Loan**").

The Debtors believe that the proceeds of the Acquisition Loan were used to:

i. pay off the January Loan;

ii. purchase Kalikow Lender's Apartment Option for $1.375 Million (a present value price based on Defendants' $1.4 billion valuation of the "as completed" Project);

iii. close on the purchase of certain additional development rights and expenses;

iv. fund additional interest reserves; and

v. pay transactional costs and fees, including legal fees to Attorney Kalikow in the amount of $628,451.96, and Sutton Lender's counsel in the amount of $340,000.

The Debtors believe the proceeds from the Building Loan were used to:

i. pay an interest reserve of $49,933 ;

ii. pay an architectural reserve of $107,007; and

iii. pay a demolition reserve of $1,243,000. Aside from the interest reserve, only a portion of the Building Loan money was ever advanced by Kalikow Lender, in the amount of $477,067.

At the Gamma 2 closing Sutton Lender received the sum of approximately $72 Million on a $63 Million loan within a 5-month period. In doing so, Gamma Lending collected approximately $9 Million in interest, exit fees and buy back fees within five months of making its January Loan (i.e., approximately 38% annualized interest rate). Additionally, due to its created leverage, Sutton Lender further managed to modify the January Loan maturity date from August 1, 2016 to January 19, 2016, a reduction of eight (8) months. As a consequence, the Debtors had a shorter window (i.e. 7-months) within which to pay off a loan more than 2½ times in amount (i.e., $147 Million).

It cannot be overstated and is important for all interested parties to note the interpersonal relationship between Kalikow Lender and Attorney Kalikow. Effectively, Kalikow Lender had the benefit of sitting at both sides of the negotiating table. The attorney for the borrower was a family member of Kalikow Lender and had represented Kalikow Lender in many deals before.

To make matters worse, Attorney Kalikow's firm, Herrick, was contemporaneously representing entities owned by Kalikow Lender. The Sutton Principals believed that the loan documents would be negotiated in good faith and that the Debtors' attorney would act in good faith to ensure the preparation and execution of fair and reasonable legal and loan documents. A review of the loan documents, fees, transaction costs and reserves, however, illustrate atypical and unconscionable transactions.[11]

The Debtors submit that Sutton Lender at all times had knowledge of the Debtors' strategies, sale prospects, ideas, benefits and proprietary information not readily available to traditional lenders. Sutton Lender's special relationship with the Debtors is evidenced, in part, by certain reports prepared by J. Kalikow and regularly disseminated to investors in Gamma 1 and Gamma 2.[12]

v. The June Mezz Loan

Prior to the closing on the June Loan, Kalikow Lender and Sutton Owner DE agreed that Sutton Owner DE would borrow: (a) $145,850,000 as a single loan to refinance the January Loan and to acquire additional development rights; and (b) $1,400,000 as a building loan to fund the demolition of the existing buildings on the Real Property. The closing statement from the June Loan reflects what the parties actually agreed to, i.e., a $145,850,000 single mortgage loan rather

[11] For example, the Building Loan required that the Debtors obtain certain demolition permits within sixty (60) days from the date of the loan. The New York City Department of Buildings, however, requires that at least three sub-permits be issued for critical initial preparatory work actions (such as erecting scaffolding, disconnecting utilities and removing asbestos) *before* the demolition permits are issued, which process takes more than sixty (60) days. Kalikow Lender, being experienced in the New York City real estate development industry, knew that the sixty (60) day deadline was practically impossible to satisfy. The impossibility of performance under the Building Loan demolition permit requirement is part of the Debtors' breach of contract claim against Sutton Lender.

[12] Neither Gamma 1 nor Gamma 2 were funded solely by Kalikow Lender. Certain investors in the loans are from overseas, the most significant of which advanced approximately 70% of the funds loaned in Gamma 2.

than Kalikow Lender's allocation of a portion as a loan to attempt to make Sutton Mezz a borrower by technicality.[13]

vi. The Breakdown in the Relationship with Kalikow Lender

The Debtors allege that, after Gamma 2 closed, Kalikow Lender had a different motivation than a traditional lender. Beginning in June and culminating in December 2015, Kalikow Lender took greater control over the Project by refusing to fund the Project in accordance with the June Loan Documents.

Pursuant to the Building Loan documents, $107,067 was placed in an "Architect Reserve" for architectural fees incurred in connection with the Project. Additionally, $1,243,000 was placed in a "Demolition Reserve" for costs associated with the demolition of the existing buildings on the Real Property and $49,933 was placed in an interest reserve. Despite receiving appropriate disbursement requests, Kalikow Lender did not fund the $107,067 "Architect Reserve" for architectural fees or the $1,243,000 "Demolition Reserve" for costs associated with the demolition of the existing buildings, claiming that a demolition permit was required as a precondition to any disbursements. By failing to make the disbursements, the Complaint alleges that Kalikow Lender prevented the Debtors from completing the very work that was a prerequisite for the issuance of the demolition permit Kalikow Lender insisted was required. As a result of the failure to pay contractors and refusal to make proper disbursements from the various reserve accounts, among other reasons, the Debtors believe they were substantially limited in their ability to obtain replacement financing prior to the maturity date of the June Loan.

[13] Pursuant to the Plan, the Acquisition Loan and Building Loan, in whatever amount the Court determines, will be paid prior to creditors being paid, and the June Mezz Loan, in whatever amount the Court determines, will be paid, if sale proceeds are available, after the creditors are paid in full.

Importantly, Kalikow Lender, including its construction engineer, and representatives of Sutton Lender attended dozens of meetings with the Debtors on the Project. The parties emailed hundreds of times, had dozens of meetings, and spoke multiple times per week. Kalikow Lender took an active role and demanded the Sutton Principals make dozens of changes to the Project design, implementation and construction.

In the fall of 2015, the Debtors believe that Kalikow Lender began to send payments directly to vendors in a way that vendors were unable to reconcile payments. The wrong vendors, suppliers and contractors were paid and/or some vendors, suppliers and contractors were paid the wrong amount; in some cases they were overpaid but, in most, they were underpaid. The Complaint asserts that this was yet another way for Kalikow Lender to exert control of the Project and distract the Debtors. The Debtors' accounts quickly became delinquent and vendors, suppliers and contractors halted work on the Project. As a result, the Debtors believe they were derailed and had to spend time reconciling the accounting nightmare created by Kalikow Lender.

By October 2015, Kalikow Lender and Sutton Owner DE's relationship had been substantially affected. Beninati sent a letter to Attorney Kalikow expressing his frustrations with the situation created by Kalikow Lender and inability of the Debtors to obtain their money from their reserves to pay creditors. At this same time, it is clear Kalikow Lender knew creditors of the Debtors were not being paid and Sutton Lender would not release the Debtors' money to pay such creditors. Beninati also sent a letter to Attorney Kalikow about Kalikow Lender's insistence upon a pre-negotiation letter (as explained below), just so Kalikow Lender would meet with the Debtors. According to the Debtors, Attorney Kalikow failed to prevent Kalikow Lender from acting as more than a lender and gaining knowledge about the Project.

In December 2015, the Debtors were advised and directed to execute a pre-negotiation letter prepared by Attorney Kalikow and placed on Kalikow Lender's letterhead. The letter provided for, among other things, a purported waiver and release of: (i) any lender liability claims against Lender and Kalikow Lender, and (ii) any attorney conflict claims against Attorney Kalikow (the "**Waiver Letter**"). At the time the Waiver Letter was signed, the Debtors were not in default under the June Loan or the June Mezz Loan and no notices of default had been issued.

vii. The Attempted UCC Sale and State Court Action

On January 20, 2016, one day after the maturity of the June Mezz Loan, Sutton Mezz was sent a Notification of Disposition of Collateral (the "**Original Sale Notice**"), scheduling an auction sale to the highest qualified bidder on February 11, 2016 at Kalikow Lender's counsel's offices (the "**UCC Sale**"), which UCC Sale was subsequently amended and rescheduled for February 29, 2016.

While Beninati attempted to reach a resolution with Sutton Lender to ensure that creditors were paid, Sutton Lender demanded that a sale occur and it be paid almost $50 Million more than it was owed before creditors would be paid.

On February 17, 2016, the Debtors commenced an action in the Supreme Court of the State of New York, County of New York (the "**State Court**") captioned as, Sutton 58 Owner, LLC and BH Sutton Mezz LLC v. Sutton 58 Associates, LLC, under Index Number 650832/2016, seeking a temporary restraining order and preliminary injunction enjoining the UCC Sale from moving forward on February 29, 2016 (the "**State Court Action**").

On February 26, 2016, Sutton Mezz filed for Chapter 11 bankruptcy and the State Court Action was stayed.

B. The Jointly Administered Chapter 11 Cases

i. The Sutton Mezz Case

On February 26, 2016, Sutton Mezz filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court. On April 6, 2016, Sutton Mezz filed its schedules of assets and liabilities and statement of financial affairs, certain of which were amended on August 5, 2016.

Sutton Mezz has continued in the management of its business and the operation of its affairs as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No Trustee or Examiner has been appointed in the Sutton Mezz case.

On March 23, 2016, an Official Committee of Unsecured Creditors was formed in the Sutton Mezz case (the "**Committee**").

Sutton Mezz owns 100% of the membership interest in Sutton Owner DE and Sutton Owner NY.

ii. The Sutton Owner DE Case

On April 6, 2016, Sutton Owner DE filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code with the Court.

Sutton Owner DE has continued in the management of its business and the operation of its affairs as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No Trustee or Examiner has been appointed in the Sutton Owner DE case.

On May 3, 2016, an amended appointment of the Committee was filed with the Court.

iii. The Sutton Owner NY Case

On July 12, 2016, Sutton Owner NY filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code with the Court.

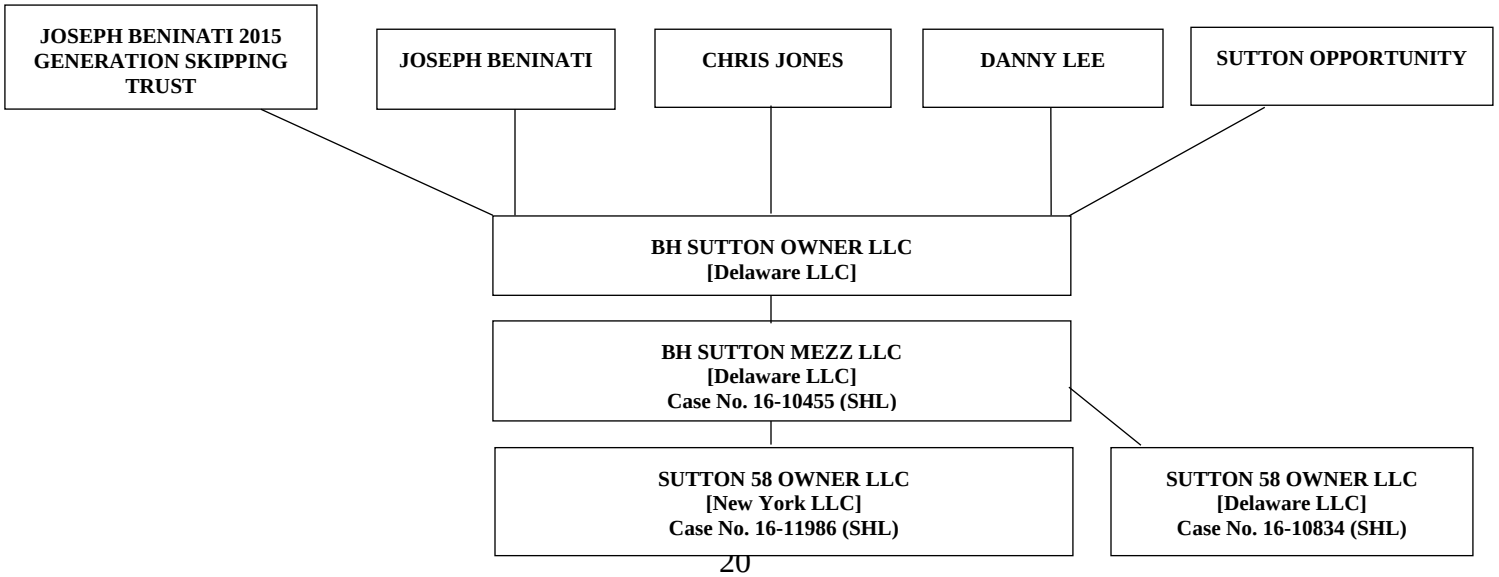
Sutton Owner NY has continued in the management of its business and the operation of its affairs as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No Trustee or Examiner has been appointed in the Sutton Owner NY case.

Pursuant to Orders of the Court, the Debtors cases are being jointly administered under the Sutton Mezz case.

iv. The Debtors' Assets and Organizational Structure

The discovery of a defective purported merger of Sutton Owner NY and Sutton Owner DE precipitated Sutton Owner NY's bankruptcy filing. The Debtors believed that a legal, valid merger never occurred with Sutton Owner DE. Documents evidence that Herrick never obtained the written consent of Sutton Lender for a merger as was required under the Gamma 1 loan documents. As a result, Sutton Owner NY was a separate and distinct legal entity from Sutton Owner DE.

An organizational chart identifying the Debtors and their non-debtor owners and their owners follows:



C. The Adversary Proceeding Against Sutton Lender And Its Affiliates

On July 13, 2016, Debtors commenced an Adversary Proceeding against Sutton Lender and its affiliates. In their Complaint, Debtors asserted various claims based on breach of contract, lender liability, promissory estoppel, breach of fiduciary duty, and theories of equity. Debtors also asserted several NY state law defenses to Sutton Lender's claims, including unconscionability and criminal usury. Based on Sutton Lender's pre-petition conduct, as asserted in the Complaint, the Debtors believe that the amount of Sutton Lender's claims will be substantially less than what it asserts, Sutton Lender's claims will be subordinated to the unsecured creditors' claims, and its lien will be transferred to the estate.

A trial in the Adversary Proceeding was conducted on November 1, 3, 7 and 9, 2016. Closing arguments are scheduled for November 17, 2016.

D. The Claims about a Defective Merger are No Longer Necessary

In addition to asserting the claims and state law defenses discussed in Section C above, Debtors also sought a declaration as to the effectiveness of a purported merger of Sutton Owner NY into Sutton Owner DE. In view of the Debtors' Plan, which pays creditors in full based upon a waterfall of the sale proceeds, determining whether the merger was legally effective is no longer necessary.[14] Consequently, this issue is now moot and the Debtors will seek to substantively consolidate Sutton Owner NY and Sutton Owner DE.

E. The Agreed Cash Collateral Order

In or around July 2016, the Debtors, the Committee and Sutton Lender all agreed that a critical step in the development of the Project was the demolition of the existing buildings on the Real Property. To this end, the Debtors, the Committee and Sutton Lender negotiated a stipulated

[14] The Debtors, however, expressly reserve all rights and claims against Herrick concerning, inter alia, the merger.

order (the "**Cash Collateral Order**") and budget (the "**Budget**") for the Debtors' use of cash collateral (the "**Cash** Collateral" or the "**Cash Collateral Funds**") in order to pay the actual and reasonable costs of the demolition. The Court approved and entered the Cash Collateral Order on August 9, 2016. See Dkt. No. 179.

The Cash Collateral Funds (from a reserve account established in connection with prior funding but secured to Sutton Lender) are in the amount of $1,804,107.07, as amended by the parties. The Cash Collateral Funds, as set forth in the Budget, were allocated for, among other things, the demolition of the existing buildings at the Real Property and to undertake such other permitted uses (if any). The vendors and tasks delineated in the Budget cover, among other things, architects, law firms, a dismantling company, NYC Department of Taxation and Finance, and the United States Trustee. The demolition of the buildings will enhance, protect and preserve the value of the Debtors' assets, as well as physically safeguard the public from the current hazardous conditions of the buildings, for the benefit of all concerned.

Pursuant to the Cash Collateral Order, Sutton Lender has a replacement lien and allowed first priority secured claim against all of the Debtors' assets (except for claims and causes of action under Chapter 5 of the Bankruptcy Code) in the amount of the Cash Collateral Funds. Further, Sutton Lender has an allowed super-priority administrative expense claim for such amount.

F. Retention of Professionals

By Orders of the Court, the Debtors employed LaMonica Herbst & Maniscalco, LLP ("**LH&M**") as their counsel effective as of their respective petition dates.

By Orders of the Court, the Debtors employed CohnReznick LLP as their general accountants.

By Order of the Court, the Debtors employed Lazer, Aptheker, Rosella & Yedid, P.C. as their special litigation counsel.

By Order of the Court, the Debtors employed Meridian Capital Group LLC and Jones Lang LaSalle Americas, Inc. as their co-real estate brokers.

By Order of the Court, the Committee employed Westerman Ball Ederer Miller Zucker & Sharfstein, LLP as its counsel.

The Debtors will seek to retain special real estate counsel to consummate the closing on the sale of the Assets.

The Debtors will seek to retain special counsel to pursue claims against Herrick. It is anticipated that such counsel will be employed on a contingency fee basis.

G. Claims Bar Dates

By Order of the Court dated June 8, 2016 (the "**Mezz and DE Claims Order**"), the Court fixed July 25, 2016 (the "**Mezz and DE Bar Date**") as the date by which creditors, with claims against Sutton Mezz or Sutton Owner DE must have filed a proof of claim ("**Proof of Claim**"). Accordingly, any Creditor having filed a Proof of Claim with the Bankruptcy Court on or before the Mezz and DE Bar Date, and whose Claim is deemed an Allowed Claim, will receive payment in accordance with the terms of the Plan. Any Creditor of Sutton Mezz or Sutton Owner DE who failed to file a Proof of Claim on or before the Mezz and DE Bar Date, i.e., July 25, 2016, which: (i) is not listed on the Sutton Mezz or Sutton Owner DE's Schedules; or (ii) is listed as "disputed," "contingent" or "unliquidated" on the Debtors' Schedules, will not receive a distribution under the Plan.

IV

THE PLAN OF REORGANIZATION

A. Explanation of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor seeks to reorganize its business and financial affairs. A debtor may also liquidate its assets and wind up its affairs in Chapter 11. The formulation and confirmation of a plan of reorganization is the principal purpose of a Chapter 11 case. A plan of reorganization sets forth the means of satisfying or discharging the holders of claims against a Chapter 11 debtor. Chapter 11 does not require that each holder of a claim against a debtor vote in favor of a plan in order for the Bankruptcy Court to approve a plan. If any class of claimants is "impaired" by a plan, the plan must be accepted by at least one "impaired" class of claims. A claim that will not be repaid in full, or a Claimant whose legal rights are altered, or an interest that is adversely affected, are deemed "impaired."

The holder of an impaired claim is entitled to vote to accept or reject the plan if the claim has been allowed under Section 502 of the Bankruptcy Code, or temporarily allowed for voting purposes under Rule 3018 of the Federal Rules of Bankruptcy Procedure. Acceptance by a particular class must be by a majority in number and two-thirds (2/3) of the dollar amount of the total claims actually voting in the class.

B. Claims

Pursuant to the Mezz and DE Claims Order, any Creditor of Sutton Mezz or Sutton Owner DE who failed to file a proof of Claim on or before the Mezz and DE Bar Date and: (i) was not listed on the Schedules; or (ii) was listed as "disputed," "contingent" or "unliquidated" cannot be treated as a Creditor with respect to such Claim for purposes of voting on and receiving a Distribution under the Plan.

All Proofs of Claim filed in this case will be reviewed, and to the extent necessary, the Debtors (except with respect to the Bauhouse Claim as set forth in the Plan) will file objections to filed claims. The Court will retain jurisdiction to adjudicate objections to claims brought by the Debtors, including any settlements or compromises of such claims. The Debtors reserve all rights to object to claims, and anticipates filing objections to one or more claims.

Notwithstanding anything to the contrary herein, the Creditors' Committee shall be vested with the right to review and, to the extent the Creditors' Committee deems necessary, object, on or before December 15, 2016, to the unsecured claim of Bauhouse Group I, Inc. (the "Bauhouse Claim"). The Creditors' Committee shall be vested with the right to adjudicate, resolve, settle and/or compromise, either directly with the Bauhouse Claimant or by Order of the Court.

C. Classes Of Claims or Interests

Unclassified Claims

1. Superpriority Administrative Expense: This claim consists of the Superpriority Administrative Expense Claim of Sutton Lender in accordance with the Cash Collateral Order, as amended.

2. Administrative Expense Claims: Allowed Administrative Expense Claims are claims against the estate for any costs or expenses incurred during the Chapter 11 case that are allowed and entitled to priority under Sections 503(b) and 507(a)(1) of the Bankruptcy Code, including, but not limited to, all actual and necessary expenses, and all allowances of compensation or reimbursement of expenses of professionals retained by the Debtors to the extent permitted by the Court.

Administrative Claims include claims of Professionals approved by Order of the Bankruptcy Court who have assisted in the administration of this case and the administrative

proofs of claims that were filed with the Court. This sum includes the fees and expenses of the Debtors' estate professionals (which includes the fees and expenses of the Committee professional) retained pursuant to Orders of the Bankruptcy Court. All such professional fees are subject to Court approval.

3. **Fees and Expenses of United States Trustee:** All statutory quarterly fees due to the United States Trustee that come due up to and including the earlier of the date of entry of a final decree closing these Chapter 11 proceedings or of the date of entry of an order dismissing or converting these cases to one under Chapter 7 of the Bankruptcy Code.

4. **Priority Tax Claims:** Allowed Priority Tax Claims of governmental units that are entitled to priority in payment over Allowed Unsecured Claims pursuant to section 507(a)(8) of the Bankruptcy Code.

Classified Claims

Class 1 Claim – Allowed Acquisition Loan Claim. This class consists of the claim held by Sutton Lender with respect to the Acquisition Loan.

Class 2 Claim – Allowed Building Loan Claim. This class consists of the claim held by Sutton Lender with respect to the Building Loan.

Class 3 Claims - Allowed Non-Governmental Real Property Lien Claims. This class consists of claims of non-governmental agencies that claim to have a lien secured against the Real Property on account of mechanics liens or judgment liens.

Class 4 Claims – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY. This class consists of general unsecured, non-priority claims against Sutton Owner DE and Sutton Owner.

Class 5 Interest – Allowed Sutton Mezz Membership Interest. This class consists of the 100% membership interest owned by Sutton Mezz in and to Sutton Owner NY and Sutton Owner DE.

Class 6 Claims – Allowed Unsecured Claims of Sutton Mezz. This class consists of general unsecured, non-priority claims against Sutton Mezz.

Class 7 Claim – Allowed June Mezz Loan Claim. This class consists of the claim held by Sutton Lender with respect to the June Mezz Loan.

Class 8 Interest – Allowed BH Sutton Owner LLC Member Interest. This class consists of the Allowed Member Interest in Sutton Mezz held by BH Sutton Owner LLC.

D. Treatment of Allowed Claims

Superpriority Administrative Expense Claim

The Superpriority Administrative Expense Claim of Sutton Lender is unimpaired. This claim shall be paid up to the amount actually paid and advanced by Sutton Lender in accordance with the Cash Collateral Order but in an amount not to exceed $1,804,107.07, as amended on September 30, 2016, on the Effective Date or on such other date and upon such other terms as may be agreed upon by Sutton Lender and the Debtors. As of the date hereof, Sutton Lender has advanced $724,133.66 in connection with the Cash Collateral Order, as amended. The holder of the Superpriority Administrative Expense Claim is not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Allowed Administrative Expense Claims

Administrative Expense Claims are unimpaired. Allowed Administrative Claims shall consist of: (a) fees and expenses (with any applicable interest) of the United States Trustee; (b) Professionals' Fees; and (c) the Debtors' post-Filing Date, pre-Effective Date operating expenses. Each holder of an Allowed Administrative Expense Claim shall be paid in full, in cash, on the Effective Date or on such other date and upon such other terms as may be agreed upon by the holder of such Allowed Administrative Expense Claim and the Debtors. In the event of any subsequent conversion of this case to a case under Chapter 7 of the Bankruptcy Code, all payments on account of any Allowed Administrative Expense Claim are deemed to have been made in the ordinary course of the Debtors' business and will not be deemed preferential or

unauthorized under Sections 547 or 549 of the Bankruptcy Code. Holders of Administrative Expense Claims are not entitled to vote on the Plan and are deemed to have accepted the Plan.

Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors will be assumed and paid by the Debtors in accordance with the terms and conditions of the arrangements with the particular creditor and in accordance with ordinary business terms.

United States Trustee Claims

The United States Trustee's claims are unimpaired. The Debtors will pay all statutory fees due to the United States Trustee that come due up to and including the date of the earlier of the entry of a final decree closing these Chapter proceedings or of the date of entry of an order dismissing or converting these cases to one under Chapter 7 of the Bankruptcy Code.

Priority Tax Claims

Priority Tax Claims are unimpaired. Allowed Priority Tax Claims, if any, will be paid in full, in cash, on or within thirty (30) days after the Effective Date.

Class 1 Claim – Allowed Acquisition Loan Claim

This class is unimpaired. This class consists of the claim of Sutton Lender on account of the Acquisition Loan as against Sutton Owner DE and Sutton Owner NY. The validity, nature, extent and amount of the Acquisition Loan Claim shall be determined by judicial ruling of the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding. On or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, the holder of the Acquisition Loan Claim, to the extent and amount deemed secured, shall be paid from the Sale proceeds in the full amount as determined and allowed by the Bankruptcy

Court pursuant to a Final Order in the Adversary Proceeding and in an amount sufficient to render such claim unimpaired under Section 1124 of the Bankruptcy Code. The Debtors believe that Sutton Lender advanced funds from the Acquisition Loan for the benefit of the Debtors totaling approximately $91,813,761, subject to deductions for impermissible charges, fees and expenses, in connection with the Acquisition Loan. In the Adversary Proceeding, the Debtors have disputed, among other things, the additional interest of $25,170,000 charged by Sutton Lender in connection with the Acquisition Loan. The allowed amounts owed to Sutton Lender on account of the Acquisition Loan shall be determined by Final Order in the Adversary Proceeding. A trial in the Adversary Proceeding was conducted on November 1, 3, 7 and 9, 2016. Closing arguments are scheduled for November 17, 2016.

Any portion of the Acquisition Loan Claim that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY. Therefore, Class 1 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 2 Claim – Allowed Building Loan Claim

This class is unimpaired. This class consists of the claim of Sutton Lender on account of the Building Loan as against Sutton Owner DE and Sutton Owner NY. The validity, nature, extent and amount of the Building Loan Claim shall be determined by judicial ruling of the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding. On or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, the holder of the Building Loan Claim, to the extent and amount deemed secured, shall be paid from the Sale proceeds in the full amount as determined and allowed by the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding, after payment to any allowed, secured

amount in Class 1, and in an amount sufficient to render such claim unimpaired under Section 1124 of the Bankruptcy Code. In the Adversary Proceeding, the Debtors have asserted, among other things, that the Building Loan is criminally and civilly usurious. The allowed amounts owed to Sutton Lender on account of the Building Loan shall be determined by Final Order in the Adversary Proceeding. A trial in the Adversary Proceeding was conducted on November 1, 3, 7 and 9, 2016. Closing arguments are scheduled for November 17, 2016.

Any portion of the Building Loan Claim that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY. Therefore, Class 2 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 3 Claims - Allowed Non-Governmental Real Property Lien Claims

This class is unimpaired. This class consists of the claims of non-governmental agencies in connection with a lien against the Real Property on account of mechanics liens or judgment liens. On or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order of the Bankruptcy Court ruling on the nature, extent and validity of any such claim, the holders of Allowed Claims in this class shall be paid from the Sale proceeds in full, with 1% interest from the Sutton Owner DE Petition Date, after payment to any allowed, secured amounts in Classes 1 and 2, and in an amount sufficient to render such claim unimpaired under Section 1124 of the Bankruptcy Code. In connection with the Cash Collateral Order, the Debtors have satisfied certain claimants' mechanics' liens. Presently, only two mechanics' liens exist in the aggregate amount of $1,220,700. The Debtors have not completed their review of both mechanics' liens and reserve their right to file an objection to the nature, extent and validity of such liens.

Any portion of a claim in this class that may be determined by Final Order to be a general unsecured claim shall receive the same distribution as Class 4 – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY. Therefore, Class 3 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 4 Claims – Allowed Unsecured Claims of Sutton Owner DE and Sutton Owner NY

This class is unimpaired. This class consists of Allowed general unsecured, non-priority claims of Sutton Owner DE and Sutton Owner NY. This class will be paid in full, with 1% interest from the Sutton Owner DE Petition Date, from the proceeds remaining from the Sale, within 30 days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of secured Allowed Claims in classes 1, 2 and 3. The general unsecured creditor base is approximately $18,000,000. Therefore, Class 4 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 5 Interest – Allowed Sutton Mezz Membership Interest

This class is unimpaired. This class consists of the 100% membership interest owned by Sutton Mezz in and to Sutton Owner NY and Sutton Owner DE. This class will receive the balance of the Sale proceeds after allowed payments to holders of Allowed Claims in Classes 1, 2, 3 and 4, on or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding. This class will not retain the funds it receives but rather shall disburse such funds to Classes 6, 7 and 8 in accordance with the Plan. Therefore, Class 5 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 6 Claims – Allowed Unsecured Claims of Sutton Mezz

This class is unimpaired. This class consists of Allowed general unsecured, non-priority claims of Sutton Mezz. This class will be paid in full, with 1% interest from the Sutton Owner DE Petition Date, from the funds received by Class 5, within 30 days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of Allowed Claims in classes 1, 2, 3, 4 and 5. The creditors in this Class are substantially similar to the creditors in Class 4. Therefore, to the extent not previously paid in Class 4, Class 6 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

Class 7 Claims – Allowed June Mezz Loan Claim

This class is unimpaired. This class consists of the claim of Sutton Lender on account of the June Mezz Loan as against the membership interest of Sutton Mezz. The June Mezz Loan is secured by a pledge of the Sutton Mezz Membership Interests to the extent and amount as allowed by judicial determination of the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding. The proceeds of the June Mezz Loan were to be used solely in connection with capital contributions to Sutton Owner DE or Sutton Owner NY. The June Mezz Loan Claim shall be paid from the remaining Sale proceeds on or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, to the extent allowed by the Bankruptcy Court pursuant to a Final Order in the Adversary Proceeding, only after payments to Allowed Claims in Classes 1, 2, 3, 4, 5 and 6 are paid in full (to the extent allowed as provided in this Plan). In the Adversary Proceeding, the Debtors have disputed the amounts owed to Sutton Lender in connection with the June Mezz Loan which principal amount is $20,000,000. The allowed amounts owed to Sutton Lender on account of the June Mezz Loan shall be determined

by Final Order in the Adversary Proceeding. A trial in the Adversary Proceeding was conducted on November 1, 3, 7 and 9, 2016. Closing arguments are scheduled for November 17, 2016. Therefore, Class 7 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan

Class 8- Interest – Allowed Member Interest of BH Sutton Owner LLC

This class is unimpaired. This class consists of the 100% membership interest owned by BH Sutton Owner LLC in and to Sutton Mezz. This class will be paid from the remaining Sale proceeds on or within thirty (30) days of the later of (i) the Effective Date or (ii) a Final Order in the Adversary Proceeding, and after allowed payments to holders of Allowed Claims in preceding classes. Therefore, Class 8 is unimpaired, not entitled to vote on the Plan and is deemed to have conclusively accepted the Plan.

IMPLEMENTATION OF THE PLAN

Under the Plan, Sutton Owner DE and Sutton Owner NY seek to substantively consolidate their Chapter 11 cases. Further, the Debtors intend on paying all creditors in full to the extent allowed by the Court. As such, regardless of the effectiveness of the Merger, and in an effort to implement the Plan, the Assets will be liquidated for the benefit of each of the Debtors' Estates and their Allowed Claims. In view of the foregoing, the Debtors no longer believe it is necessary to obtain an adjudication of the Merger. Since the Plan pays all creditors in full, the Merger determination is no longer necessary. Notwithstanding any language to the contrary herein, nothing contained in the Plan shall be deemed a waiver of any of the Debtors' rights, claims or causes of action against Herrick arising from or relating in any way to the Merger. The Debtors believe that the value of the Assets exceed the amounts owed to Sutton Lender.

The Debtors have already commenced a joint marketing program for a Sale of the Assets. In connection with the Sale, the Debtors have retained the Brokers, each a reputable and qualified real estate broker, to offer and market the Assets. The Sale of the Assets shall take place on the Sale Date. The Debtors have been diligently working with the Brokers in disseminating and making relevant information available so that prospective buyers can conduct all required due diligence in an efficient and responsible manner. A copy of the Terms of Sale containing the terms of the Debtors' Sale of the Assets as agreed by the Debtor, Sutton Lender and the Committee is annexed to the Plan as **Exhibit "A"**[15]. The Debtors will seek to modify the Sale Date to allow for a more robust marketing effort and sale. On the Effective Date, the Debtors shall sell, assign, transfer and convey all right, title and interest in and to the Assets in accordance with this Plan and the Terms of Sale. The Sale shall be free and clear of all liens, claims, and encumbrances of whatever kind or nature with such liens, claims, and encumbrances (to the extent and amount allowed), which such liens, if any, to attach to the proceeds of sale in the same order and priority as they existed on the Applicable Petition Date. As permitted by the Sections 1123(a)(5) and 1123(b)(4) of the Bankruptcy Code, confirmation of the Plan by the Bankruptcy Court shall constitute approval of a sale of the Assets to a prospective buyer and the authorization for the Debtors to close on the sale of the Assets.

In connection with a Sale of the Assets, Distributions to all Allowed Administrative Expense Claims and Allowed Claims under the Plan (to the extent not already paid) will be funded from the proceeds realized from the Sale of the Assets substantially in the following order:

[15] Notwithstanding, in view of the recent trial in the Adversary Proceeding, the Debtors will seek to modify the Sale Date to be conducted forty-five (45) days from the date of the Court's decision in the Adversary Proceeding, and reduce the amount to bid from $5 Million to $2.5 Million.

(i) The Superpriority Administrative Expense Claim of Sutton Lender in connection with the Cash Collateral Order, as amended.

(ii) customary and traditional closing costs including the buyer's premium of the Brokers as provided in an Order dated September 20, 2016, and to the extent applicable any capital gains taxes, title fees, recording costs, real estate tax adjustments, utility adjustments and transfer taxes that may be due and owing as of the closing;

(iii) payments to Gemini Residential LLC for additional zoning and development rights related to the Project in order to "fully mass" the Project in an approximate amount of $12 Million[16];

(iv) a return of $5,449,446 , plus interest at the contract rate under the Acquisition Loan to Sutton Lender for monies advanced to Gemini Residential LLC in connection with acquisition of certain inclusionary air rights; and

(v) payments to classes in accordance with Article III of this Plan.

The sale and transfer of the Assets by the Debtors to a buyer shall not result in the incurrence of any transfer tax, stamp tax or similar tax as those taxes are exempt under Section 1146(a) of the Bankruptcy Code. The Office of the City Register of the City of New York shall record any documents effectuating such transfer without the payment of such transfer taxes.

The Apartments shall be sold by separate application and further Order of the Court.

On or after the Effective Date, the Debtors shall continue to exist with all the powers of a limited liability company under applicable law, may use and dispose of property and compromise or settle any claims in accordance with this Plan.

Substantive Consolidation

Under the Plan, and by separate motion of the Debtors, Sutton Owner DE and Sutton Owner NY seek to substantively consolidate their Chapter 11 cases. Notwithstanding anything herein to the contrary, the Debtors shall, jointly and severally, retain all rights and remedies

[16] According to the Appraisal, the valuation of the Project will be increased by approximately $75 Million once it is "fully massed" with its air rights. As such, the Debtors seek to market and sell the Assets with the air rights so as to maximize value for the benefit of the Debtors' Estates and their creditors.

with respect to any and all claims and remedies as against Herrick Feinstein LLP under bankruptcy and non-bankruptcy law.

Assumption/Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, the Debtors, to the extent applicable, shall assume and assign the Inclusionary Air Rights Purchase Agreement dated January 20, 2015 with Gemini Residential LLC to the buyer of the Assets in accordance with Section 365 of the Bankruptcy Code.

On the Effective Date, Sutton Owner NY, to the extent applicable, shall assume and assign the construction licensing agreement (**"CLA"**) dated January 16, 2015 with ECC Realty LLC to the buyer of the Assets in accordance with Section 365 of the Bankruptcy Code. Such CLA provides for the manner in which the parties to the agreement will operate, cooperate and demolish the buildings in between the neighboring buildings. Such types of agreements are routinely negotiated and executed in projects of this nature to protect and safeguard neighboring buildings during the demolition process. To the extent such agreement is not an executory contract, then the agreement will be assigned to the buyer of the Assets, and the buyer will take title to the Assets subject to all rights, obligations and terms of such agreement on the Effective Date.

On the Effective Date, Sutton Owner DE, to the extent applicable, shall assume and assign the CLA dated June 19, 2015 with 434 East 58th Street Owners Inc. to the buyer of the Assets in accordance with Section 365 of the Bankruptcy Code. To the extent such agreement is not an executory contract, then the agreement will be assigned to the buyer of the Assets, and the buyer will take title to the Assets subject to all rights, obligations and terms of such agreement on the Effective Date. Furthermore, on the Effective Date, Sutton Owner DE, to the extent applicable, shall assume and assign the Zoning Lot Development and Easement Agreement

(**"ZLDEA"**) dated June 19, 2015 to the buyer of the Assets in accordance with Section 365 of the Bankruptcy Code. To the extent such agreement is not an executory contract, then the agreement will be assigned to the buyer of the Assets, and the buyer will take title to the Assets subject to all rights, obligations and terms of such agreement on the Effective Date.

To the extent the Debtors were a lessee to any other executory contracts and/or unexpired leases, as of the Applicable Petition Date, the Debtors shall be deemed to have rejected each executory contract and unexpired lease to which it is a party, unless such contract or lease: (i) was previously assumed or rejected by the Debtors, (ii) previously expired or terminated pursuant to its own terms, or (iii) is the subject of a motion to assume filed on or before the Confirmation Date. The Confirmation Order shall constitute an order of the Court under Sections 363 and 365 of the Bankruptcy Code rejecting the contract and lease assumptions described above, as of the Effective Date. Notwithstanding any language to the contrary, the Debtors expressly reserve all rights to file a motion prior to the Confirmation Date seeking to assume any other executory contracts or unexpired leases not described above, on a case by case basis, in accordance with the terms set forth above.

To the extent applicable, any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, under Section 365(b)(1) of the Bankruptcy Code, at the option of the Debtors or the assignee of the Debtors assuming such contract or lease, by cure, or by such other treatment as to which each Debtors and such non-Debtor party to the executory contract or unexpired lease shall have agreed in writing. If there is a dispute regarding (i) the nature or amount of any cure, (ii) the ability of the Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of Section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or

(iii) any other matter pertaining to assumption, cure and assumption shall occur in accordance with a Final Order resolving the dispute and approving the assumption or the assumption and assignment, as the case may be.

If the rejection by the Debtors, pursuant to the Plan or otherwise, of an executory contract or unexpired lease results in a rejection claim that is not theretofore evidenced by a timely filed proof of claim or a proof of claim that is deemed to be timely filed under applicable law, then such Claim shall be forever barred and shall not be enforceable against the Debtors or the Debtors' Estates, unless a proof of claim is filed with the Clerk of the Court and served upon counsel for the Debtors within thirty (30) calendar days of entry of the Confirmation Order.

Notwithstanding any language to the contrary herein, pursuant to a stipulation dated August 10, 2016 [Dkt. No. 200], Sutton Owner DE enter into a new month to month lease with its landlord, JAL 58, LLC, with respect to Apartment 3A in the building located 422 East 58th Street, New York, New York 10022 for a monthly payment of $2,700 per month (the "**New Lease**"). The New Lease is a month to month tenancy and will not cause any unnecessary burden on the Debtors to perform. Under the New Lease, three (3) months of security deposits have been paid to the landlord by the principals. Sutton Owner DE is current with its obligations under the New Lease and intends to continue with the New Lease.

VI

FEASIBILITY

The Plan contemplates the liquidation of the Debtors' Assets and the proceeds of the Sale will be used to fund the Plan. The Debtors' Plan is capable of being achieved through the Sale of the Assets. The Debtors have already employed the Brokers that have commenced marketing efforts to sell the Assets. The Assets are highly desirable assets which will garner substantial

interest in the real estate marketplace, especially given the prestigious location and scarce amount of available properties for development of this type in the area.

Based upon the foregoing, the Debtors believe that they will be able to make the distributions proposed under the Plan. Thus, the Debtors submit that the Plan will satisfy the feasibility requirement for confirmation of the Plan.

VII

CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE

In order for the Plan to be confirmed, the Confirmation Order must be entered by the Bankruptcy Court and must be a Final Order.

VIII

VOTING

The Plan provides that all holders of claims shall receive a 100% distribution to the extent and amount allowed by the Court, as more specifically detailed above. As a result, all classes of Claims and Interests are unimpaired under the Plan, are not entitled to vote and are therefore deemed to accept the Plan.

IX

REQUIREMENT FOR CONFIRMATION OF THE PLAN

A. Confirmation Hearing

The Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing to consider confirmation of the Plan. The confirmation hearing (the "**Confirmation Hearing**") shall be scheduled by the Court to be held before the Honorable Sean H. Lane, in the United States Bankruptcy Court, Southern District of New York, One Bowling Green, Courtroom 701 New York, New York 10004-1408. The Confirmation Hearing may be adjourned from time to

time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing.

B. Objections to Confirmation

The Bankruptcy Court will direct that objections, if any, to Confirmation of the Plan be in writing, filed with the Bankruptcy Court with a courtesy copy to chambers of the Honorable Sean H. Lane, with proof of service and that such objections be served on or before such date as set forth in an additional notice or Order of the Court. Objections must be served upon (i) counsel to the Debtors, LaMonica Herbst & Maniscalco, LLP, 3305 Jerusalem Avenue, Wantagh, New York, 11793, Attention: Joseph S. Maniscalco, Esq. and Adam P. Wofse, Esq.; and (ii) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: Susan Golden, Esq. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

C. Acceptance of the Plan

Acceptance of the Plan requires that each impaired Class of Claims accepts the Plan, with certain exceptions discussed below. Thus, acceptance of the Plan is tested on a class by class basis. Classes of Claims that are not impaired under the Plan are deemed to have accepted the Plan. Under the Plan, all of the classes are unimpaired, not entitled to vote and are presumed to have accepted the Plan.

D. Confirmation of Plan

In order to confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of determinations concerning the Plan, including: (i) that the Plan has classified Claims in a permissible manner; (ii) that the contents of the Plan comply with the technical requirements of the Bankruptcy Code; (iii) that the Plan has been proposed in good faith; and (iv) that disclosures concerning the Plan have been made which are adequate and include information

concerning all payments made or promised in connection with the Plan and the Chapter 11 case. The Debtors believe that all of these conditions have been or will be met.

E. Cramdown

Section 1129 establishes the requirements for confirmation of a Chapter 11 plan. The requirements are numerous and differ depending on whether or not confirmation is consensual. If consensual confirmation is sought because all impaired classes accepted the plan, Section 1129(a) governs.

For non-consensual confirmation or "cramdown" under Section 1129(b), the Debtors must meet all of the requirements contained in Section 1129(a), except paragraph (8) of Section 1129(a). In addition, the Debtors must show that the plan does not unfairly discriminate against dissenting classes, and that the treatment of the dissenting classes is fair and equitable. In other words, the court may confirm over the dissent of a class of unsecured claims only if the members of the class are unimpaired, if they will receive under the plan property of a value equal to the allowed amount of their unsecured claims, or if no class junior will share under the plan. That is, if the class is impaired, then they must be paid in full or, if paid less than in full, then no class junior may receive anything under the plan.

Given that no classes are impaired under the Plan, the Debtors will not need to utilize the cram-down provision contained in Section 1129(b) of the Bankruptcy Code.

EFFECT OF CONFIRMATION; DISCHARGE OF DEBTS; INJUNCTION; RELEASE

A. Effect of Confirmation

On the Confirmation Date, the terms of this Plan bind all holders of all Claims against the Debtors, whether or not such holders accept this Plan.

B. Discharge of Debts

The rights afforded herein and the treatment of all Claims herein shall be in exchange for a complete satisfaction, discharge and release of Claims of any of any nature whatsoever, against the Debtors, the Debtors' Estates or any of its/their assets or properties. Except as otherwise provided herein, on the Effective Date, all such Claims against the Debtors shall be satisfied, discharged and released in full, and all persons or entities are precluded and enjoined from asserting against the Debtors, their successors, or their assets or property any other or further Claims based upon any act, omission, transaction or other activity of any kind or nature that occurred before the Confirmation Date.

C. Injunction

Effective on the Confirmation Date, all creditors who have held, hold, or may hold Claims against the Debtors or their assets are enjoined from taking any of the following actions against or affecting the Debtors or the assets of the Debtors with respect to such Claims (other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Debtors or the assets of the Debtors or any direct or indirect successor in interest to the Debtors, or any assets of any such transferee or successor; (ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree or order against the Debtors or their assets or any direct or indirect successor in interest to the Debtors, or any assets of such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the assets of the Debtors or any direct or indirect successor in interest to the Debtors, or any assets of any such transferee or successor other than as contemplated by the Plan; (iv) asserting any set-off,

right of subrogation or recoupment of any kind directly or indirectly against any obligation due the Debtors or their assets or any direct or indirect transferee of any assets of, or successor in interest to, the Debtors; and (v) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

D. Release

Effective on the Confirmation Date, the Debtors, Joseph Beninati, Chris Jones, Danny Lee, Joseph Beninati 2015 Generation Skipping Trust and Sutton Opportunity LLC, and each of their respective officers, directors, members, agents, representatives, general partners, managers, or employees and any professional person employed by any of the foregoing in these Chapter 11 proceedings including attorneys and accountants, shall be deemed released from all Claims, demands, actions, claims for relief, causes of actions, suits, debts, covenants, agreements and demands of any nature whatsoever, in law and in equity, that any creditor had, or now has, or may hereafter have against the Debtors, Joseph Beninati, Chris Jones, Danny Lee, Joseph Beninati 2015 Generation Skipping Trust and Sutton Opportunity LLC, and each of their respective officers, directors, members, agents, representatives, general partners, managers, or employees and any professional person employed by any of the foregoing in these Chapter 11 proceedings including attorneys and accountants, arising prior to the Confirmation Date. Except as otherwise provided herein and in Section 1141 of the Bankruptcy Code, all Persons shall be precluded and enjoined from asserting claims against the Debtors, Joseph Beninati, Chris Jones, Danny Lee, Joseph Beninati 2015 Generation Skipping Trust and Sutton Opportunity LLC, and each of their respective officers, directors, members, agents, representatives, general partners, managers, or employees and any professional person employed by any of the foregoing in these Chapter 11 proceedings including attorneys and accountants, their assets or properties, or against any property that is distributed, or is to be distributed under the Plan, any other or further Claim

upon any acts or omissions, transactions or other activity of any kind or nature that occurred prior to the Confirmation Date.

E. Exculpation

The Debtors, Joseph Beninati, Chris Jones, Danny Lee, Joseph Beninati 2015 Generation Skipping Trust and Sutton Opportunity LLC, and each of their respective officers, directors, members, agents, representatives, general partners, managers, or employees and any professional persons employed by any of the foregoing in these Chapter 11 proceedings including attorneys and accountants who provided services to the Debtors' Estates during these Chapter 11 cases, and all direct or indirect predecessors-in-interest to any of the foregoing Persons, will not have or incur any liability to any Person for any act taken or omission occurring on or after the Applicable Petition Date in connection with or related to these Estates, including but not limited to (i) the commencement and administration of these Chapter 11 cases, (ii) the operation of the Debtors during the pendency of these Chapter 11 cases, (iii) formulating, preparing, disseminating, implementing, confirming, consummating or administering the Plan (including soliciting acceptances or rejections thereof); (iv) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken during the administration of these Chapter 11 cases or in connection with the Plan; or (v) any distributions made pursuant to the Plan.

F. Co-Debtor Stay of the State Court Action

On March 10, 2016, Sutton 58 Associates LLC ("**Sutton Lender**") commenced an action styled *Sutton 58 Associates LLC v. Joseph Beninati, Christopher Jones, Daniel Lee*, Index No. 651296/2016 (the "**State Court Action**") in the Supreme Court for the State of New York (the "**State Court**") by filing a summary judgment in lieu of complaint against the Sutton Principals. By the State Court Action, Sutton Lender asserts that the Principals are personally liable to the

Sutton Lender for the full amount of the Mezz Loan pursuant to a personal guaranty executed by each of the Principals (the "**Guaranty**"). By the State Court Action, the Sutton Lender seeks a judgment against each of the Principals in the amount of: (i) $20 million, the principal amount defined under the June Mezz Loan, (ii) $4 million as additional interest under the June Mezz Loan, plus (iii) interest at the default rate under the June Mezz Loan of 24% compounded monthly.

Upon separate motion of the Debtors, the State Court Action should be stayed through the later of the Sale Date or the entry of a Final Order with respect to the claims raised in the Adversary Proceeding. The stay is necessary to foster the Debtors' liquidation efforts for several reasons.

First, the undivided attention of the Sutton Principals is crucial to facilitate the complex liquidation and sale process contemplated herein and in the Adversary Proceeding to assist the Debtors in prevailing on their claims. Forcing the Sutton Principals to defend the State Court Action, whereby the Sutton Lender seeks judgments against them in excess of $24 million, will only serve to distract the Sutton Principals from the Debtors' sale efforts to the detriment of all parties-in-interest.

Second, the identity between Sutton Mezz and the Sutton Principals are such that Sutton Mezz is the real party defendant to the State Court Action because: (i) the Sutton Principals' alleged liability in the State Court Action arises from the Guaranty and is derivative to Sutton Mezz's liability under the June Mezz Loan; and (ii) Sutton Mezz is obligated pursuant to its LLC Agreement and applicable law to indemnify the Sutton Principals with respect to any loss incurred in connection with the State Court Action.

Third, the Debtors' Assets are currently up for sale and being marketed. The outcome of the Adversary Proceeding and the sale could make the State Court Action moot.

The Debtors submit that there is a sufficient basis to stay to the State Court Action. The requested stay of the State Court Action will provide the Debtors with the "breathing spell" contemplated by section 362 and the opportunity to minimize administrative expenses that could otherwise frustrate their efforts to reorganize. Staying the State Court Action to cover the Principals is in the best interest of the Debtors, their creditors, and other parties in interest in these Chapter 11 cases. Accordingly, pursuant to Section 362 of the Bankruptcy Code, the State Court Action and any related claims as against the Debtors, Joseph Beninati, Chris Jones, Danny Lee, Joseph Beninati 2015 Generation Skipping Trust and Sutton Opportunity LLC, and each of their respective officers, directors, members, agents, representatives, general partners, managers, or employees and any professional person shall be stayed through the later of the Sale Date or the entry of a Final Order with respect to all claims raised in the Adversary Proceeding.

XI

ALTERNATIVES TO THE PLAN AND OTHER CONSIDERATIONS

A. Alternatives to the Plan

The Debtors believe that the Plan provides creditors with the earliest and greatest possible value that can be realized on their respective Claims. The principal alternatives to confirmation of the Plan are: (i) dismissal of the case, or (ii) conversion of the case to Chapter 7 of the Bankruptcy Code.

i. Dismissal

In the event of a dismissal of these cases, the Sutton Lender may pursue its non-bankruptcy rights and remedies, and will likely continue with its foreclosure of the member interests and take over the Assets. In such event, unsecured creditors will receive no distribution.

Therefore, the Debtors' best opportunity to satisfy its obligations to its creditors would be through the Debtors' Plan.

ii. Conversion to Chapter 7

The Debtors believe that a conversion to Chapter 7 would not be in the best interests of creditors. As described in Section XI (B) below ("**Best Interests of Unsecured Creditors**"), liquidation of the Debtors' assets under Chapter 7 of the Bankruptcy Code would not generate a greater distribution to creditors than proposed under the Plan. Similar to the analysis stated above concerning dismissal, due to the lack of additional assets, conversion under Chapter 7 of the Bankruptcy Code would entail the appointment of a trustee likely to have no historical experience or knowledge of the Debtors or their assets. Moreover, the additional administrative costs incurred by a trustee and its attorneys and accountants could also be substantial and will impact upon the ability of creditors to receive payments on their claims. Finally, any additional administrative costs will adversely affect the distribution to claimants and will not inure to their benefit. In the event of a sale by a trustee, the Estates would suffer the impact of applicable transfer taxes and would not obtain the benefit of the tax exemption under Section 1146(a) of the Bankruptcy Code. In such event, the only creditor which would likely receive any distribution would be to allowed secured claims, with no distribution to unsecured creditors.

Therefore, the Debtors believe that confirmation of the Plan is preferable to the alternatives described above because the Plan maximizes the property available for distribution to all Classes of Claims and appropriately distributes all of the Debtors' assets to the creditors without the added Administrative Expenses of a Chapter 7 Trustee and its attorneys and other professionals.

B. Best Interests of Unsecured Creditors

Notwithstanding acceptance of the Plan by Classes of Claims, in order to confirm the Plan, the Bankruptcy Court must independently determine that the Plan is in the best interests of all Classes of Claims. The "best interests" test requires that the Bankruptcy Court find that the Plan provides to each member of each impaired Class of Claims a recovery which has a present value at least equal to the present value of the distribution which each such creditor would receive from the Debtors if their assets were instead distributed by a Trustee under Chapter 7 of the Bankruptcy Code. The Debtors believe that the Plan satisfies the "Best Interests Test" with respect to all Classes of Claims since under the Plan unsecured creditors shall receive the distribution as indicated herein, whereas in a Chapter 7 liquidation such creditors would likely receive no distribution.

Significantly, if the merger was indeed ineffective, then the Real Property and the Development Rights are only available to the creditors of the Sutton Mezz and Sutton Owner DE Estates under the Plan. If the case is converted to Chapter 7, the Real Property and the Development Rights would not be available to the creditors of the Sutton Mezz and Sutton Owner DE Estates.

The cost of converting the case to one under Chapter 7 would include the fees of a trustee, as well as those of the Chapter 7 Trustee's counsel and other professionals that may be retained by the Chapter 7 trustee, and unpaid expenses incurred by the Debtors during the Chapter 11 case (such as fees for attorneys and accountants). These Claims, and such other Claims as might arise in the liquidation or result from the Debtors' chapter 11 cases, would be paid from the Debtors' assets before their assets would be available to pay other Claims.

THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE GREATEST AND EARLIEST POSSIBLE RECOVERY ON ACCOUNT OF CLAIMS AND THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS

C. Liquidation Analysis

The Plan already provides for a framework for the liquidation of the Debtors' Assets while retaining the ability to avoid the incurrence of transfer taxes pursuant to Section 1146(a) of the Bankruptcy Code. Based on the Appraisal, communications with the Brokers and the overall public interest in the Real Property, the Debtors estimate that creditors will receive payment in full in the amount and extent allowed by the Bankruptcy Court. If these cases were converted to Chapter 7 cases, unsecured creditors would likely receive no distribution as a liquidation would only result in certain secured creditors receiving a distribution. Further, a sale in a Chapter 7 case would subject the Sale to transfer taxes. Moreover, confirmation of the Debtors' Plan will avoid the additional layer of Chapter 7 Administrative Claims that must be paid if the case were converted to Chapter 7.

The Debtors believe that confirmation of the Plan is preferable to the alternatives described above because the Plan maximizes the value of all property available for distribution to all Classes of Claims. Accordingly, the Debtors believe that confirmation of the Plan, rather than the alternatives described above, is in the best interests of creditors and all parties in interest.

XII

RECOMMENDATION OF THE DEBTORS

The Plan and this Disclosure Statement were drafted and submitted by the Debtors. As such, the Debtors strongly support this Plan and believe that Confirmation of the Plan provides the creditors with the best possible recovery in the shortest possible time.

XIII

ADDITIONAL INFORMATION

Requests for information and additional copies of this Disclosure Statement, the Plan, and any other materials or questions relating to the Plan and this Disclosure Statement should be directed to Debtors' counsel, LaMonica Herbst & Maniscalco, LLP, 3305 Jerusalem Avenue, Wantagh, New York 11793, Attention: Joseph S. Maniscalco, Esq., Adam P. Wofse, Esq. and Holly R. Holecek, Esq., at (516) 826-6500 during regular business hours.

XIV

TAX CONSEQUENCES

The Debtors are not aware of any tax consequences which may result from the confirmation of the Plan. Creditors should consult with their own tax advisor concerning any such tax related implications. Creditors should consult with their tax advisor concerning: (a) any deductions which may be applicable to them as bad debt deductions; or (b) income tax implications based upon forgiveness of debt, if applicable, based upon the provisions of the Debtors' Plan.

Pursuant to IRS Circular 230 Notice: To ensure compliance with IRS Circular 230, holders of Claims are hereby notified that: (a) any discussion of U.S. federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by holders of Claims for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtors of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based upon their particular circumstances from an independent tax advisor.

XV

CONCLUSION

The Debtors believe the Plan is in the best interests of all creditors.

Dated: November 11, 2016
Wantagh, New York

LaMonica Herbst & Maniscalco, LLP
Counsel to the Chapter 11 Debtors

By: *s/ Joseph S. Maniscalco*
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Dated: November 11, 2016
Greenwich, Connecticut

BH Sutton Mezz, LLC

By: *s/ Joseph Beninati*
Joseph Beninati,
Managing Member

Sutton 58 Owner LLC, a Delaware Limited Liability Company

By: *s/ Joseph Beninati*
Joseph Beninati,
Managing Member

Sutton 58 Owner LLC, a New York Limited Liability Company

By: *s/ Joseph Beninati*
Joseph Beninati,
Managing Member