

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X

In re:

Chapter 11

**WEST 41 PROPERTY LLC,**

Case No: 16-22393 (RDD)

Debtor.

-----X

**FIRST AMENDED DISCLOSURE STATEMENT FOR FIRST  
AMENDED PLAN OF REORGANIZATION OF WEST 41 PROPERTY LLC**

**ROBINSON BROG LEINWAND  
GREENE GENOVESE & GLUCK P.C.**  
Attorneys for the Debtor  
875 Third Avenue  
New York, New York 10022  
Tel. No.: 212-603-6300

Fred B. Ringel, Esq.  
A Mitchell Greene, Esq.

New York, New York  
December 14, 2016

## **DISCLAIMER**

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT (THE “**DISCLOSURE STATEMENT**”) IS INCLUDED HEREIN FOR THE PURPOSES OF SOLICITING ACCEPTANCES OF THE CHAPTER 11 PLAN OF REORGANIZATION OF WEST 41 PROPERTY LLC, DATED OCTOBER 28, 2016 (AS MAY BE AMENDED, MODIFIED, OR SUPPLEMENTED FROM TIME TO TIME, THE “**PLAN**”), AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.<sup>1</sup> A COPY OF THE PLAN IS ANNEXED HERETO AS EXHIBIT A. NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN MAY BE MADE EXCEPT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE.

**ALL HOLDERS OF CLAIMS ARE ADVISED AND ENCOURAGED TO READ THE DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. IN PARTICULAR, ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN SECTION VI (CERTAIN OTHER FACTORS) OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. THE PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. IN THE EVENT OF ANY CONFLICTS BETWEEN THE DESCRIPTIONS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN GOVERN.**

THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH OTHER NON-BANKRUPTCY LAW.

---

<sup>1</sup> Unless otherwise expressly set forth herein, capitalized terms used but not otherwise herein defined have the same meanings ascribed to such terms in the Plan.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING WITH RESPECT TO PROJECTED CREDITOR RECOVERIES AND OTHER FORWARD-LOOKING STATEMENTS, ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBE HEREIN.

AS TO CONTESTED MATTERS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT ALSO WILL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR AND DEBTOR IN POSSESSION IN THE DEBTOR'S CHAPTER 11 CASE. THE DEBTOR URGES EACH HOLDER OF A CLAIM OR INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN ON SUCH HOLDER'S CLAIM OR INTEREST.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF.

I.

**INTRODUCTION**

On March 25, 2016 (the “Commencement Date”), West 41 Property LLC. (the “Debtor”) commenced with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor’s chapter 11 case (the “Chapter 11 Case”) is being administered under the caption In re West 41 Property LLC., Case No. 16-22393 (RDD).

On December \_\_, 2016, the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical holder of an Allowed Claim to make an informed judgment whether to accept or reject 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.

The purpose of this Disclosure Statement is to provide holders of Claims entitled to vote to accept or reject the Plan with adequate information about (i) the Debtor’s business and certain historical events, (ii) the Chapter 11 Case, (iii) the Plan, (iv) the rights of holders of Claims and Interests under the Plan, and (v) other information necessary to enable each Holder of a Claim entitled to vote on the Plan to make an informed judgment as to whether to vote to accept or reject the Plan. Holders of Interests are not entitled to vote on the Plan (see discussion at Section V of the Disclosure statement).

Pursuant to section 1125 of the Bankruptcy Code, the Debtor submits this Disclosure Statement to all holders of Claims against the Debtor entitled to vote on the Plan to provide information in connection with the solicitation of votes to accept or reject the Plan. The Disclosure Statement is also available to all holders of Claims against and Interests in the Debtor for informational purposes, including detailing the impact the Plan will have on such holders’ Claims and Interests. The Disclosure Statement is organized as follows:

{00829675.DOCX:1 }

- Section I includes certain general information.
- Section II provides an overview of the Debtor's business.
- Section III sets forth key events leading to the Chapter 11 Case.
- Section IV discusses the Chapter 11 Case.
- Section V contains a summary of the Plan.
- Section VI describes certain factors affecting the Debtor.
- Section VII discusses certain U.S. federal income tax consequences of the Plan.
- Section VIII addresses confirmation of the Plan.
- Section IX concludes this Disclosure Statement and recommends that eligible creditors vote to accept the Plan.

A. **VOTING PROCEDURES**

As set forth in more detail in Section V.B of this Disclosure Statement, certain holders of Claims are entitled to vote to accept or reject the Plan. For each holder of a Claim entitled to vote, the Debtor has enclosed, along with a copy of the Disclosure Statement, among other things, a ballot and voting instructions regarding how to properly complete the ballot and submit a vote with respect to the Plan. Holders of more than one Claim will receive an individual ballot for each Claim. The individual ballots must be used to vote each individual Claim. For detailed voting instructions, please refer to the specific voting instructions and the ballot enclosed with this Disclosure Statement.

All completed ballots must be actually received by the ballot collector at the following address no later than 5:00 p.m. (Eastern Time) on January 27, 2017 (the "Voting Deadline").

Via Regular Mail, Overnight Couriers, or Hand Delivery:

West 41 Property LLC Balloting  
c/o Robinson Brog Leinwand Greene Genovese & Gluck P.C.  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, NY 10022  
ATTN: Fred B. Ringel

If you are holder of a Claim that is entitled to vote on the Plan and you did not receive a ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan, or the procedures for voting with respect to the Plan, please contact Nathanael F. Meyers at (212)-603-  
{00829675.DOCX:1 }

6363 or email (nfm@robinsonbrog.com).

**THE BALLOT COLLECTOR WILL NOT COUNT ANY BALLOTS  
RECEIVED AFTER THE VOTING DEADLINE.**

## **B. DISCLOSURE STATEMENT EXHIBITS**

The following are exhibits to this Disclosure Statement. Exhibit A is annexed to the Disclosure Statement. Exhibits B through E are located in the Plan Supplement and will be filed by the Plan Supplement Filing Deadline:

- EXHIBIT A – Plan of Reorganization of West 41 Property LLC
- EXHIBIT B – City Global Settlement Agreement
- EXHIBIT C – Sale and Bidding Procedures
- EXHIBIT D –Form of Asset Purchase Agreement
- EXHIBIT E – Liquidation Analysis

## **C. THE DEBTOR'S PROFESSIONALS**

The Debtor has retained the following professionals pursuant to separate orders of the Bankruptcy Court: (i) Robinson Brog Leinwand Greene Genovese & Gluck P.C. (“RBL”), as Reorganization Counsel to the Debtor; (ii) Lawrence J. Berger P.C. as Special Tax Counsel to the Debtor, (iii) Bedford Soumas LLP as Special Litigation Counsel to the Debtor with respect to Landlord-Tenant matters; (iv) Richard A. Solomon as Special Litigation Counsel to the Debtor with respect to City Building, fire Department and ECB matters and (v) Fasten Halberstam LLP as Accountants to the Debtor. In addition J&C Lamb Management is the Debtor’s property manager.

## D. IMPORTANT DATES

Please take note of the following important dates and deadlines with respect to the Debtor's Plan:

Deadline to file and serve any objection or response to the Plan ( <b>the "Plan Objection Deadline"</b> )	January 27, 2017 at 5:00 p.m. (prevailing Eastern Time)
Deadline for completed ballots to be received by the Ballot Collector ( <b>the "Voting Deadline"</b> )	January 27, 2017 at 5:00 p.m. (prevailing Eastern Time)
Scheduled date and time for the commencement of the hearing to consider confirmation of the Plan  ( <b>the "Confirmation Hearing"</b> )	February 10, 2017 at 10:00 a.m. (prevailing Eastern Time)

## E. BRIEF OVERVIEW OF THE PLAN <sup>2</sup>

The Plan described in this Disclosure Statement provides the Allowed Claims of creditors to be satisfied in two steps. First, the Plan Fund will be funded by SF IV Bridge I LP ("Stabilis") in an amount, in addition to the Debtor's Available Cash on the Effective Date, which will pay, in full on the Effective Date, (i) the Allowed Claims in Classes 1, 3, 4, 5 and Administrative Claims, Priority Tax Claims and Fee Claims (including the Estimated Professional Fee Escrow); (ii) to fund the Disputed Claim Reserves; (iii) to fund reserves for Post-Confirmation Legal Fees; and (iv) to fund reserves for Plan Administrator fees and expenses subsequent to the Effective Date (collectively, the "Plan Fund"). The amount paid by Stabilis to fund the Plan Fund, which is estimated to be between \$500,000 and \$1,650,000<sup>3</sup>, will be added to

---

<sup>2</sup> This summary is qualified in its entirety by reference to the Plan. Statements as to the rationale underlying the treatment of Claims and Equity Interests under the Plan are not intended to, and will not, waive, compromise or limit any rights, claims, defenses, or causes of action in the event that the Plan is not confirmed. You should read the Plan in its entirety before voting to accept or reject the Plan.

<sup>3</sup> The amount of the Plan Fund may decrease if the Debtor is successful on its pending claims objections. The exact amount will be calculated by the Debtor three (3) days prior to the Confirmation Hearing.

the Allowed Claim of Stabilis. As a result, all creditors holding Allowed Claims except for the claims held by Stabilis will have been paid in full on the Effective Date or their claims will have been reserved for in the Disputed Claim Reserve.

Second, the Plan provides for the sale of Property (the “Sale Transaction”) pursuant to the Purchase Agreement after a post-confirmation marketing period of up to a maximum of six (6) months, which may be extended by the Plan Administrator, after consultation with Stabilis, for up to an additional three (3) months, if an acceptable purchase price for the Property has not been offered (as determined by the Plan Administrator in consultation with Stabilis). The Purchase Agreement provides for Stabilis to be the “stalking horse” bidder for the Property at an amount of not less than \$50,000,000<sup>4</sup> in accordance with section 363(k) of the Bankruptcy Code, subject to higher or better bids achieved in accordance with bids submitted at or prior to the Bid Deadline after marketing of the Property by the Real Estate Broker retained by the Plan Administrator, pursuant to the Sale and Bid Procedures approved in connection with the Plan. A form of asset purchase agreement, which all bidders must use in connection with the Sale Transaction, will be made available to all bidders. If there are multiple offers for the Property, the Plan Administrator will conduct an auction in accordance with the Bidding Procedures. At the conclusion of the auction, a successful bidder will be selected by the Plan Administrator and the Plan Administration will seek Bankruptcy Court approval to close the Sale Transaction with the highest bidder for the Property, with the second highest bidder serving as the back-up bidder. Upon the closing of the proposed Sale Transaction, the Plan provides that the proceeds will be distributed to holders of Allowed Class 2 Secured Claims and Allowed Class 6 Existing Equity Interests in accordance with the terms of the Plan.

Significantly, the Plan has been structured so that all creditors holding Allowed Claims<sup>5</sup> on the Effective Date will not have to wait for the closing of the sale of the Property to be paid under the Plan, but will be paid from the Plan Fund immediately after the Effective Date, unless the Plan provides for payment on a later date.

---

<sup>4</sup> The amount of the Staking Horse Bid will be announced by the Plan Administrator in conjunction with the finalization of the date for the auction under the Sale and Bidding Procedures. The amount of the Stabilis Staking Horse Bid cannot be finally determined at this time and may increase, at the discretion of Stabilis, for (i) any additional advances under the DIP Facility made prior to the Effective Date of the Plan (ii) for interest on the Stabilis Class 2 Claim and the DIP Facility, and (iii) for interest on the Plan Fund advance at the rate of 10.5%, less (iv) any payments made by the Debtor prior to the closing of the Sale.

<sup>5</sup> Except for Stabilis who is providing the Plan Fund.



## F. SUMMARY OF DISTRIBUTIONS AND VOTING ELIGIBILITY

The following summary table briefly outlines the classification and treatment of Claims against and Interests in the Debtor under the Plan, and the voting eligibility of the holders of such Claims and Interests. As set forth in the Plan, the classification of Claims and Interests set forth herein will apply. The following summary table is qualified in its entirety by reference to the full text of the Plan.

Class	Designation	Treatment	Approx. Allowed Amount <sup>6</sup>	Approximate Percentage Recovery <sup>7</sup>	Entitled to Vote
1	Other Priority Claims	Unimpaired	\$0.00	100%	No (presumed to accept)
2	Stabilis Secured Claim	Impaired	\$43,481,392.47	unknown	Yes
3	Other Secured Claims	Unimpaired	\$0.00	100%	No (presumed to accept)
4	City of New York Claims	Impaired	\$375,000.00	100%	Yes
5	General Unsecured Claims	Unimpaired	\$1,101,557.99	100%	No (presumed to accept)
6	Existing Equity Interests	Impaired	n/a	unknown	Yes

Section V.B of this Disclosure Statement provides a more detailed description of the treatment of Claims and Interests under the Plan.

<sup>6</sup> The amounts set forth herein are estimates based upon the Debtor's books and records as of the Commencement Date. Actual allowed amounts will depend on, among other things, final reconciliation and resolution of all Claims, and the negotiation of cure amounts. Consequently, the actual allowed amounts may vary from the approximate amounts set forth herein. Secured Claims do **NOT** include post-petition interest and other amount allowable under section 506.

<sup>7</sup> The approximate percentage recovery for each Class set forth in this Disclosure Statement is based upon certain assumptions that are subject to change, including completion of the Auction. A detailed discussion of the analysis underlying the estimated recoveries, including the assumptions underlying such analysis, is set forth in the Liquidation Analysis annexed to this Disclosure Statement as Exhibit C.

Pursuant to the provisions of the Bankruptcy Code, only those holders of Claims or Interests in Classes that are impaired under a plan of reorganization and that are not deemed to have rejected the plan are entitled to vote to accept or reject such proposed plan. Classes of Claims or Interests in which the holders of Claims are unimpaired under a proposed plan are deemed to have accepted such proposed plan and are not entitled to vote to accept or reject the Plan. Classes of Claims or Interests in which the holders of Claims receive no distribution under a proposed plan are deemed to have rejected such proposed plan and are not entitled to vote to accept or reject the Plan.

#### **G. CONFIRMATION UNDER SECTION 1129(B)**

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtor reserves the right to amend the Plan or request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code or both. In addition, with respect to the Classes that are deemed to have rejected the Plan, the Debtor intends to request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

Section 1129(b) permits the confirmation of a chapter 11 plan notwithstanding the rejection of such plan by one or more impaired classes of claims or interests. Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and reasonable” with respect to each rejecting class. A more detailed description of the requirements for confirmation of a nonconsensual plan is set forth in Section X of this Disclosure Statement.

#### **H. CONFIRMATION HEARING**

Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held on **February 10, 2017 at 10:00 a.m.** (Eastern Time) before the Honorable Robert D. Drain at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601. Objections and responses to confirmation of the Plan, if any, must be served and filed as to be received on or before the Plan Objection Deadline **January 27, 2017 at 5:00 p.m. (prevailing Eastern Time)**, in the manner described in the order approving this Disclosure Statement (the “**Disclosure Statement Order**”) and Section X.B of this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

## II.

### OVERVIEW OF THE DEBTOR'S OPERATIONS

#### A. THE DEBTOR'S BUSINESS

The Debtor owns the real property and improvements located at 440 West 41<sup>st</sup> Street, New York, New York (the “**Property**”). The Property is improved by a 13 story building which currently contains multi-family residential apartments and several commercial units which are in the process of being renovated. The Property has 96 residential units and will have, when renovations are completed, a presently undetermined number of commercial units. The Debtor purchased the Property and has operated it since April 2015.

The Property was in a distressed state when it was acquired by the Debtor. The prior owner of the Property had made a determination to convert the Property from a multi-family residential apartment building into a hotel. However, the prior owner never completed the conversion and did not install the appropriate equipment needed to operate a hotel or the necessary safety equipment for transient use. As a result of the partially completed conversion, the Property was unable to legally operate as a hotel and had come to the attention of the City of New York and the Mayor’s Office of Special Enforcement through the prior owner, US Suite LLC, having advertised and marketed the property for short-term transient use and occupancy that the City claimed was illegal. (See, II.C- PENDING LITIGATION- *City Nuisance Abatement Litigation*).

The Debtor, upon acquiring the Property, and after extensive consultations with Stabilis, the Debtor’s existing first priority lender, the Debtor has embarked upon a course of action to reverse the conversion of the Property to a hotel and intends to convert the Property into a legal multi-family residential real property rental apartments with ancillary commercial units. However, the undertaking to “undo” what the previous owner has done and hiring the architects, construction managers and other personnel necessary to bring the Property into compliance with all appropriate local laws and building codes is a substantial and expensive endeavor. To Fund the anticipated renovations, the Debtor has entered into a \$2,000,000 multi-draw DIP Financing with Stabilis. The Debtor has also engaged numerous consultants, engineers, architects and other professionals to complete the necessary work at the property and has been reporting to the City’s Mayor’s Office of Special Enforcement regarding its ongoing progress in that regard.

## **B. PREPETITION CAPITAL STRUCTURE**

On April 1, 2015, Debtor and Stabilis executed that certain Loan Agreement (as amended or modified from time to time, the “**Loan Agreement**”) in connection with a loan in the original principal amount of \$28,000,000.00, evidenced and secured by, among other documents:

- i. That certain Amended and Restated Promissory Note, executed by Debtor as borrower, payable to the order of Stabilis, as payee, in the original principal amount of \$28,000,000.00 (the “**First Note**”);
- ii. That certain Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 1, 2015, executed by Debtor, as mortgagor, in favor of Stabilis, as mortgagee, recorded April 1, 2015 as CRFN 2015000137560 in the recording office of New York County, New York (the “**First Mortgage**”), covering, among other things, that certain real property, personal property and general intangibles described therein, with the real property being commonly known as 440 W 41<sup>st</sup> Street, New York, New York (collectively, the “**Pre-Petition Collateral**”); and
- iii. That certain Assignment of Leases and Rents dated April 1, 2015, executed by Debtor, as assignor, to Stabilis, as assignee, recorded April 1, 2015 as CRFN 2015000137561 in the recording office of New York County, New York (the “**ALR**”).

On July 30, 2015, Debtor, as maker, executed that certain Promissory Note payable to the order of Stabilis, as payee, in the original principal amount of \$890,000.00 (the “**Second Note**”).

On July 30, 2015, Debtor, as mortgagor, executed that certain Second Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, in favor of Stabilis, as mortgagee, to be recorded in the recording office of New York County, New York (the “**Second Mortgage**”), covering the Pre-Petition Collateral.

On August 31, 2015, Debtor, as maker, executed that certain Promissory Note payable to the order of Stabilis, as payee, in the original principal amount of \$2,885,000.00 (the “**Third Note**” and, together with the First Note and Second Note, the “**Notes**”).

On August 31, 2015, Debtor, as mortgagor, executed that certain Third Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, in favor of Stabilis, as mortgagee, to be recorded in the recording office of New York

County, New York (the “**Third Mortgage**”, and, together with the First Mortgage and the Second Mortgage, the “**Mortgages**”) covering the Pre-Petition Collateral. The Loan Agreement, Notes, Mortgages and ALR are collectively being referred to as the “**Pre-petition Loan Documents.**”

At the outset of the chapter 11 case, as set forth in the proposed Cash Collateral Stipulation submitted to the Court, the Debtor acknowledged that the Stabilis has duly perfected, valid, non-avoidable, first priority liens on and security interests in the Pre-Petition Collateral (collectively, the “**Pre-Petition Liens**”) to secure the obligations under the Notes (collectively, the “**Pre-Petition Obligations**”); and the Pre-Petition Obligations, Pre-Petition Liens, and Loan Documents are not subject to any counterclaim, right of offset, claim, or other defense of the Debtor of any kind.

### C. PENDING LITIGATION

#### *The City Litigation*

Prior to the commencement of this chapter 11 case, and prior to the Debtor acquiring title to the Property, on January 21, 2015, the City of New York (the “City”) commenced a nuisance abatement action in the Supreme Court, New York County, Index No. 450084/2015 (the “State Court Action”) against the Property’s previous owner, US Suite LLC (hereinafter “US Suite LLC”), and against defendants US Suite Management LLC d/b/a “Metro Apartments,” Ben Zion Suky, 440 West 41<sup>st</sup> St. LLC, SDF 92 West 41<sup>st</sup> Street LLC and other parties, captioned *The City of New York v. US Suite Management LLC d/b/a “Metro Apartments”, et. al.*, alleging that the prior owner and operators of the Property illegally maintained, permitted, conducted, offered and advertised illegal short-term transient stays of less than thirty days in violation of the applicable laws and municipal codes. The State Court Action sought an injunction against US Suite LLC and other parties from violating consumer protection laws by committing deceptive trade practices in the marketing and offering of illegal transient accommodations, to enjoin the public nuisances created by such illegal transient occupancy in the Property; and to obtain civil statutory penalties, and compensatory and punitive damages. Relief was also sought in rem against the Property as a defendant.

The Debtor, who did not take title to the Property until April 1, 2015, was **not** a defendant in the State Court Action.

However, the sale contract under which the Debtor took title to the Property included as a “Permitted Exception”, the State Court Action. The City took the position that the Debtor has successor liability for the nuisance abatement fines and penalties by virtue of the “Permitted Exception” provision in the Sale Contract. The

{00829675.DOCX:1 }

Debtor has denied it has such liability to the City.

In addition to the State Court Action, the City has also alleged that the Debtor is liable as the successor owner of the Property for ECB violations, Department of Building Violations, New York City Fire Department Violations and other fines, penalties and judgments, many which are against US Suite LLC and only a few which are against the Debtor. The Debtor has also disputed liability for those assessments which are not directly against it.

### III.

#### KEY EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASE

As a result of the City's nuisance abatement litigation and the City's continual imposition of violations at the Property as well as the need for substantial renovation and repairs in order to bring the Property into compliance with New York City local laws, the Debtor was unable to service its debt and move forward with the property renovations simultaneously. As a result, the Debtor fell behind on its debt service to Stabilis and to avoid the possible loss of the property to a foreclosure, filed the chapter 11 case to obtain the breathing space to allow the Debtor to resolve its issues with the City of New York and to make substantial progress in its program to renovate the property and achieve compliance with local law while reorganizing its financial affairs.

### IV.

#### THE CHAPTER 11 CASES

##### A. INITIAL PLEADINGS

Shortly after the chapter 11 case was filed, the Debtor filed the following initial motions or pleadings:

- (i) Motion for Approval of Adequate Assurance of Payment to Utility Services and Continuation of Service [ECF Doc No. 7];
- (ii) Application for Entry of Stipulation and Order (a) Authorizing Debtor's Interim Use of Cash Collateral, (b) Granting Adequate Protection to Lender and (c) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 [ECF Doc No. 18];

- (iii) Motion to Establish Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [ECF Doc No. 19]; and
- (iv) Application to Employ Robinson Brog Leinwand Greene Genovese & Gluck P.C. as Counsel to Debtor [ECF Doc No. 20].

By filing these initial pleading, the Debtor was able to stabilize its operations in the chapter 11 case, arrange for service to its over 100 separate utility accounts and provide for the retention of reorganization counsel for its chapter 11 case.

## B. DEBTOR-IN-POSSESSION FINANCING

On April 28, 2016, the Debtor filed a motion (the “DIP Motion”) to obtain debtor-in-possession financing, in connection with a \$2 million debtor-in-possession facility (the “DIP Facility”) comprised of a new money term loan facility to be utilized by the Debtor to renovate its building, to correct building violations and pay operating expenses, including but not limited to real estate taxes. The DIP Facility is a senior secured superpriority facility provided by Stabilis. The DIP Facility is secured by, among other things, a first priority lien all of the Debtor’s assets and a super-priority claim to secure post-petition advances and extensions of credit under 11 U.S.C. § 364(c)(1) with priority over any and all administrative expenses specified in Bankruptcy Code Sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1114, or otherwise, subject only to the Carve-Out and the quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930. The DIP Facility also contains milestones that established process for the Debtor’s to pursue a plan of reorganization as provided below (subject to the Court’s calendar as to those dates requiring Court hearings):

<b>Plan Milestones</b>	<b>Date</b>
Filed a motion seeking approval of the DIP Financing with Stabilis	June 6, 2016
Met with the City of New York and the Mayor’s Office of Special Enforcement and proposed a plan for remediation of building code violations and conversion of the property from R1 to R2 status	July 15, 2016
File a Disclosure Statement and Plan of Reorganization and request a hearing on the adequacy of the Disclosure Statement	October 3, 2016 <sup>8</sup>
Commence a hearing on Confirmation of	November 29, 2016

<sup>8</sup> This deadline was extended by agreement with Stabilis to October 28, 2016.

a Plan of Reorganization	
--------------------------	--

The DIP Facility was approved on an interim basis on May 19, 2016. The DIP Motion was approved on a final basis by order of the Bankruptcy Court dated June 28, 2016 [ECF No. 64] and provides the Debtor with the working capital necessary to complete the renovation of the Property and operate its business during the Chapter 11 Cases.

### C. CITY GLOBAL SETTLEMENT STIPULATION

On September 7, 2016, the Debtor and the City of New York entered into the City Global Settlement Stipulation which resolved the City Nuisance abatement litigation referenced above as well as resolved numerous claims filed by various city agencies in the chapter 11 case totaling over \$2,000,000. Defending against the City claims had become burdensome to the Debtor and the Debtor was litigating, among other things, whether or not the City's claims were subject to the automatic stay or were exempt "police power" actions by a governmental unit. As a result of the City Global Settlement, all of the Claims between the Debtor and the City are being resolved and the litigation between the Debtor and the City agencies regarding matters which arose prior to confirmation of the Plan, will be concluded.

In exchange for releases of the City claims<sup>9</sup> and for the Debtor agreeing to Injunctions regarding certain alleged activities that the City contended constituted illegal use of the Property for Transient Business (as defined in the City Global Settlement Stipulation), the Debtor has agreed to pay the City \$375,000 to satisfy all of the City's claims including the alleged nuisance abatement claim.

On December 8, 2016, the Bankruptcy Court approved the City Global Settlement Stipulation.

### D. CLAIM OBJECTIONS

#### 1. *US SUITE LLC Claim*

On July 7, 2016, US Suite LLC filed claim no. 7 against the Debtor as an unsecured claim for \$28,000,000 allegedly based upon breach of contract, fraud and rescission with respect to the sale of the Property to the Debtor. Other than claiming that US Suite is owed \$28,000,000 for "breach of contract, fraud and

---

<sup>9</sup> In addition, under the Global City Settlement Stipulation, the City has agreed to discontinue the nuisance against US Suite LLC so that US Suite LLC cannot assert any type of claim against the Debtor arising from claims asserted against it by the City of New York.



rescission” and attaching a copy of the contract of sale for the Property, a contract which they were paid in full for, the claim is utterly devoid of any facts of explanation of why the Debtor has any liability to US Suite for a sale which it fully paid from the proceeds of a mortgage which now constitutes a first lien on the Property.

In early October, 2016, the Debtor filed an objection to the US Suite Claim. At a hearing held on December 8, 2016, the Bankruptcy Court sustained the Debtor’s objection on several independent grounds and disallowed the claim in full. An order disallowing the claim is being presented to the Court.

## *2. Alberto Cohen Claim*

On August 15, 2016, Alberto Cohen filed claim no. 14 against the Debtor as an unsecured claim for \$1,010,164 based upon an alleged promissory note executed by US Suite LLC dated June 5, 2012 for \$1,500,000 which Cohen claims West 41 Property acquired its real property “subject to” Cohen’s claim and thus is liable for its payment.

On October 28, 2016, the Debtor filed an objection to the Cohen Claim seeking to have the claim expunged on several grounds. Among other things, the Contract of Sale pursuant to which the Debtor acquired the property makes it clear that it took the property subject to an “Alleged Second Mortgage Claim for \$1,000,000 held by Gemini Capricorn Inc.” Gemini Capricorn has not filed a claim against the estate and the bar date has now passed. The obligors on Alberto Cohen’s promissory note are US Suite LLC and Ben Zion Suky, not West 41 Property LLC. Thus, it is the Debtor’s position that the claim is not enforceable against the Debtor and the Debtor requested that the claim be expunged for that reason. 11 U.S.C. § 502(b)(1).

After lengthy negotiations with Alberto Cohen, and to avoid protracted litigation, the Debtor has entered into a Stipulation agreeing to allow Alberto Cohen’s Claim as a general unsecured claim in the amount of \$200,000 in full and complete satisfaction of any and all claims he may hold against the Debtor. The settlement is without prejudice to any claims that Cohen may hold against third parties such as Ben Suky or US Suite or US Suite Management, provided however, that Cohen has agreed to indemnify the Debtor with respect to any claims that such third parties may make against the estate (including the reasonable legal fees and expenses incurred in defending against such claims.

The Debtor will be filing a motion pursuant to the Federal Rule of Bankruptcy Procedure Rule 9019 to settle this claim which will be heard by the Bankruptcy Court February 10, 2017.

{00829675.DOCX:1 }

V.

**THE PLAN**

**A. INTRODUCTION**

This section of the Disclosure Statement summarized the Plan, a copy of which is annexed as Exhibit A hereto. This summary is qualified in its entirety by reference to the provisions of the Plan, which provisions shall control in the event of any discrepancy with the descriptions contained in the Disclosure Statement.

In general, a chapter 11 plan divides claims and equity interests into separate classes, specifies the property that each class is to receive under the Plan, and contains other provisions necessary to implement the Plan.

Under the Bankruptcy Code, “claims” and “equity interests,” rather than “creditors” and “equity holders,” are classified because creditors and equity holders may hold claims and equity interests in more than one class.

Statements as to the rationale underlying the treatment of claims and equity interests under the Plan are not intended to, and will not, waive, compromise or limit any rights, claims or causes of action in the event the Plan is not confirmed.

**THE DEBTOR URGES YOU TO READ THE PLAN IN ITS ENTIRETY  
BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

One of the key concepts under the Bankruptcy Code is that only claims that are “allowed” may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below.

In general, an “allowed” claim or an “allowed” equity interest simply means that the debtor agrees, or in the event of a dispute, that the Bankruptcy Court determines, that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the debtor. Section 502(a) of the Bankruptcy Code provides that a timely filed claim or equity interest is automatically “allowed” unless the debtor or other party in interest objects. However, section 502(b) of the Bankruptcy Code specifies certain claims that may not be “allowed” in bankruptcy even if a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or under

{00829675.DOCX:1 }

applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damages in excess of specified amounts, late-filed claims, and contingent claims for contribution and reimbursement. In addition, Bankruptcy Rule 3003(c)(2) prohibits the allowance of any claim or equity interest that either is not listed on the debtor's schedules or is listed as disputed, contingent or unliquidated, if the holder has not filed a proof of claim or equity interest before the established deadline.

The Bankruptcy Code requires, for purposes of treatment and voting, that a chapter 11 plan divides the different claims against, and equity interests in, the debtor into separate classes based upon their legal nature. Claims of a substantially similar legal nature are not necessarily classified together, nor are equity interests of a substantially similar legal nature necessarily classified together. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the "claims" and "equity interests" themselves, rather than their holders, are classified.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as "impaired" (affected by the Plan) or "unimpaired" (unaffected by the Plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the Plan, and the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless the Plan (i) does not alter the legal, equitable and contractual rights of the holders, or (ii) irrespective of the holders' acceleration rights, cures all defaults (other than those arising from the debtor's insolvency, the commencement of the case or nonperformance of a nonmonetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable, and contractual rights.

Pursuant to section 1126(f) of the Bankruptcy Code, holders of unimpaired claims or interests are "conclusively presumed" to have accepted the Plan. Accordingly, their votes are not solicited. Under the Plan, the following classes are unimpaired, and therefore, the holders of such Claims are "conclusively presumed" to have voted to accept the Plan: Class 1 (Other Priority Claims), Class 3 (Other Secured claims), and Class 5 (General Unsecured Claims).

Under certain circumstances, a class of claims or equity interests may be deemed to reject a plan. For example, a class is deemed to reject a plan under section 1126(g) of the Bankruptcy Code if the holders of claims or equity interests in such class do not receive or retain property under the Plan on account of their claims or equity interests. In this plan, no class is conclusively presumed to have rejected the Plan.

## **B. UNCLASSIFIED CLAIMS**

### *1. Administrative Claims*

Administrative Claims are the actual and necessary costs and expenses of administration during the Chapter 11 Cases pursuant to sections 328, 330, 363, 364(c)(1), 365, 503(b) or 507(a)(2) of the Bankruptcy Code.

Except to the extent that a holder of an Allowed Administrative Expense Claim and the Debtor or the Plan Administrator agree to different treatment, the Debtor (or the Plan Administrator, as the case may be) shall pay to each holder of an Allowed Administrative Expense Claim (plus statutory interest on such claim, if applicable) Cash in an amount equal to such Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date and (b) the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; provided, that, the DIP Claims shall receive the treatment provided in Section 2.4 of the Plan; provided, further, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor shall be paid by the Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order) or as provided by Section 2.4 of the Plan, requests for payment of Administrative Expense Claims, other than requests for payment of Fee Claims, must be filed and served on the Debtor no later than the Administrative Expense Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order.

Holders of Administrative Expense Claims that are required to file and serve a request for payment of such Administrative Expense Claims and that do not file

{00829675.DOCX:1 }

and serve such a request by the Administrative Expense Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtor or its property, and such Administrative Expense Claims shall be deemed compromised, settled, and released as of the Effective Date. The Plan Administrator must file and serve objections to Administrative Expense Claims on or before the Administrative Expense Claims Objection Bar Date. For the avoidance of doubt, the Administrative Expense Claims Bar Date shall not apply to any DIP Claims.

## *2. Fee Claims*

All entities seeking an award by the Bankruptcy Court of Fee Claims (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is thirty (30) days after the Effective Date. No later than ten (10) days prior to the Effective Date, all entities holding claims for Fee Claims shall serve upon Stabilis a notice of the estimated amount of their unpaid Fee Claim and Stabilis shall segregate, into a Estimated Professional Fee Escrow, the amounts which are necessary to pay the amount of such Fee Claim, in full subject to allowance by the Bankruptcy Court (i) upon the later of (A) the Effective Date and (B) the date upon which the order relating to any such Allowed Fee Claim is entered or (ii) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Fee Claim, Stabilis and the Plan Administrator. The Plan Administrator is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

## *3. Priority Tax Claims*

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of the Effective Date, the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, and the date such Allowed Priority Tax Claim is due and payable in the ordinary course.

## *4. DIP Claims*

The DIP Claims shall be Allowed in the full amount due and owing under the DIP Financing Documents and the Final DIP Order. Except to the extent that a holder of a DIP Claim agrees in writing to a different treatment, each holder of a

{00829675.DOCX:1 }

DIP Claim shall receive Cash in an amount equal to the full amount of such Claim on the later of the Effective Date or the date of the closing of the Sale Transaction, provided that all proceeds of any Sale Transaction or other disposition of the DIP Collateral (as defined in the Final DIP Order) shall be applied to reduce the DIP Claims as and when such proceeds are received by the Debtor, pursuant and subject to the provisions of the Final DIP Order and the DIP Loan Agreement. Upon the indefeasible payment in full in cash of all DIP Claims in accordance with the preceding sentence, all Liens and security interests granted pursuant to the DIP Credit Agreement shall be deemed cancelled and shall be of no further force and effect and each Allowed DIP Claim shall be deemed to be fully satisfied, settled, released, and compromised. Pursuant to the DIP Financing Documents, all payments pursuant to Section 2.4 of the Plan shall be made to Stabilis in accordance with the DIP Financing Documents.

#### **D.CLASSIFICATION OF CLAIMS AND INTERESTS**

All of the potential classes for the Debtor are set forth in the Plan.

1. *Class 1 – Other Priority Claims*

Class 1 is Unimpaired by the Plan. Each holder of an Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and is, therefore, not entitled to vote to accept or reject the Plan.

Except to the extent that a holder of an Allowed Other Priority Claim against the Debtor that has agreed to less favorable treatment of such Claim, each such holder shall receive, in full and final satisfaction of such Claim, Cash from the Plan Fund in an amount equal to such Claim, payable on the later of the Effective Date, the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, and the date such Allowed Priority Tax Claim is due and payable in the ordinary course or as soon as reasonably practical thereafter.

2. *Class 2 – Stabilis Secured Claim*

Class 2 is Impaired by the Plan. The holder of the Stabilis Secured Claim is entitled to vote to accept or reject the Plan.

The holder of the Stabilis Secured Claim shall receive:

- i. if the Property is sold to a party other than Stabilis, Cash in an amount sufficient to satisfy the sum of (1) the Allowed Class 2 Claim, together

{00829675.DOCX:1 }

with all applicable interest, costs and fees and (2) the amounts advanced by Stabilis in connection with the Plan Fund, together with interest on such amounts at the rate of 10.5% per annum. In the event there is a surplus remaining after payment under this Section 4.2(b)(i), such surplus shall be paid to Allowed Class 6 Existing Equity Interests as set forth in Section 4.6(b) hereof. Pending the Closing of the Sale of the Property, the holder of the class 2 claims shall retain its Lien on the Property.

- ii. If the Property is sold to Stabilis pursuant to a bid made by Stabilis pursuant to section 363(k) of the Bankruptcy Code, then Stabilis shall receive the Property and no further distribution under this Plan.

### 3. *Class 3 – Other Secured Claims*

Class 3 is Unimpaired by the Plan. Each holder of an Other Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and is, therefore, not entitled to vote to accept or reject the Plan.

Except to the extent that a holder of an Allowed Other Secured Claim against the Debtor has agreed to less favorable treatment of such Claim, each holder of an Allowed Other Secured Claim shall receive, at the option of the Plan Administrator, (i) payment in full and final satisfaction of such Allowed Class 3 Claim, Cash from the Plan Fund in the amount of such Allowed Claim payable on the later of the Effective Date and the date on which such Other Secured Claim becomes an Allowed Claim, or as soon as reasonably practical thereafter, (ii) delivery of the collateral securing such Allowed Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code, or (iii) such other treatment necessary to satisfy section 1129 of the Bankruptcy Code.

### 4. *Class 4 – City of New York Claim*

Class 4 is Impaired, and holder of the City of New York Claim in Class 4 is entitled to vote to accept or reject the Plan.

The City of New York shall receive, in full and complete settlement of its Class 4 Claims, the sum of \$375,000, payable in Cash from the Plan Fund no later than sixty (60) days after the Effective Date. In addition, the City shall receive such other non-monetary consideration as is set forth in that certain *Stipulation and Order between the Debtor and the City of New York with respect to Global Settlement of City Claims and Litigation dated September 7, 2016* which is

{00829675.DOCX:1 }

incorporated into and approved under this Plan pursuant to Federal Rule of Bankruptcy Procedure 9019. A copy of the City Global Settlement Agreement is included in the Plan Supplement.

5. *Class 5 – General Unsecured Claims*

Class 5 is Unimpaired and holders of General Unsecured Claims in Class 5 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan.

On the Effective Date, or as soon thereafter as is reasonably practicable, except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment of such Allowed General Unsecured Claim or has been paid before the Effective Date, each holder of an Allowed General Unsecured Claim shall receive on the Effective Date, in full and final satisfaction of such Claim, Cash from the Plan Fund equal to the Allowed amount of such Claim plus accrued post-petition interest at the Federal Judgment Rate in effect on the Effective Date.

6. *Class 6 – Existing Equity Interests*

Class 6 is Impaired by the Plan, and the holders of the Allowed Existing Equity Interests are entitled to vote to accept or reject the Plan.

In the event that the Property is sold to a person other than Stabilis, the holders of Allowed Existing Equity Interests, in exchange for such interests and for its services supervising the renovation and construction at the Property, shall receive the Sale proceeds, if any, remaining after (i) payment of the Allowed Claims in Classes 1, 3, 4 and 5 and payment in full of Allowed Administrative Claims, DIP Claims, Allowed Priority Tax Claims and Allowed Fee Claims in full in Cash on the Effective Date from the Plan Fund and (ii) payment in full of the Stabilis Secured Class 2 Claim and the amounts advanced by Stabilis in connection with the Plan Fund, together with interest on such amounts at the rate of 10.5% per annum, from the Sale Proceeds, *provided however*, that the amount of such distribution to holders of Allowed Existing Equity Interests shall be subject to adjustment pursuant to a subsequent written agreement between Stabilis and the Holders of Allowed Existing Equity Interests in the Debtor which agreement shall be mutually acceptable to Stabilis and the holders of the Allowed Existing Equity Interests in their sole and absolute discretion. In the event the Property is sold to Stabilis pursuant to section 363(k) of the Bankruptcy Code, then Allowed Existing Equity Interests shall receive a fifteen (15%) percent equity interest in the entity making

{00829675.DOCX:1 }



the bid under section 363(k) in full and complete satisfaction of such Allowed Existing Equity Interests, *provided however*, that the amount and form of such interest in the entity making the bid pursuant to section 363(k) of the Bankruptcy Code shall be subject to adjustment pursuant to a subsequent written agreement between Stabilis and the holders of Allowed Existing Equity Interests in the Debtor which agreement shall be mutually acceptable to Stabilis and the holders of the Allowed Existing Equity Interests in their sole and absolute discretion.

#### **E. MEANS FOR IMPLEMENTATION**

##### 1. *The Plan Fund*

At least three (3) business days before the Commencement of the Confirmation Hearing Stabilis, shall deposit the amount necessary to fund, as reasonably determined by the Debtor, the Plan Fund on the Effective Date to make the plan distributions to creditors under the Plan and to fund any required reserves. Stabilis shall provide a written commitment for the Plan Fund prior to the commencement of the Confirmation Hearing. The Plan Fund shall be deposited into the escrow account of counsel to the Debtor.

##### 2. *The Sale*

The Confirmation Order shall authorize the Sale of the Property under sections 363, 365, 1123(b)(4), 1129(b)(2)(A)(iii) and 1146(a) of the Bankruptcy Code under the terms and conditions of the Sale and Bidding Procedures set forth in the Plan Supplement. Upon Confirmation, the Debtor shall be authorized to take any and all actions necessary to retain a broker to market the Property and consummate the Sale of the Property within 6 months of the Effective Date under the Sale and Bidding Procedures without further order of the Bankruptcy Court, provided that the Plan Administrator, after consultation with Stabilis, shall have a one-time right to extend the maximum six (6) month marketing period of up to nine (9) months by filing a notice on the Court's ECF docket.

##### 3. *Plan Administrator*

(a) *Appointment.* West 41 Property LLC shall serve as Plan Administrator for the Debtor.

(b) *Authority.* Subject to Section 6.2 of the Plan, the Plan Administrator

{00829675.DOCX:1 }

shall have the authority and right on behalf of the Debtor, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all provisions of the Plan, including, without limitation, to:

(i) except to the extent Claims have been previously Allowed, to control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, compromise or settle any and all Claims against the Debtor;

(ii) make Distributions to holders of Allowed Claims in accordance with the Plan;

(iii) exercise its reasonable business judgment to direct and control the Sale of the Property in accordance with the Sale and Bidding Procedures; to direct the wind down, liquidation, sale and/or abandoning of the remaining assets of the Debtor under the Plan and in accordance with applicable law as necessary to maximize distributions to holders of Allowed Claims;

(iv) prosecute all Causes of Action on behalf of the Debtor, elect not to pursue any Causes of Action, and determine whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Debtor;

(v) make payments to existing professionals who will continue to perform in their current capacities;

(vi) retain professionals to assist in performing its duties under the Plan;

(vii) maintain the books and records and accounts of the Debtor;

(viii) invest Cash of the Debtor, including any Cash proceeds realized from the liquidation of any assets of the Debtor, including any Causes of Action, and any income earned thereon;

(ix) incur and pay reasonable and necessary expenses in connection with the performance of duties under the Plan, including the reasonable fees and expenses of professionals retained by the Plan Administrator;

(x) administer the Debtor's tax obligations, including (i) filing tax returns and paying tax obligations, (ii) requesting, if necessary, an expedited determination of any unpaid tax liability of the Debtor or its estate under Bankruptcy Code section 505(b) for all taxable periods of the Debtor ending after the Commencement Date through the liquidation of the Debtor as determined under applicable tax laws and (iii) representing the interest and account of the Debtor or its estate before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit;

(xi) prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtor that are required hereunder, by any Governmental Unit or applicable law;

(xii) pay statutory fees in accordance with Section 14.1 of the Plan; and

(xii) perform other duties and functions that are consistent with the implementation of the Plan.

4. *Other Transactions*

In the discretion of the Debtor, after the Effective Date, the Debtor may engage in any other transaction in furtherance of the Plan. Any such transactions may be effective as of the Effective Date pursuant to the Confirmation Order without any further action by the members of the Debtor.

5. *[Intentionally Deleted]*

6. *Withholding and Reporting Requirements.*

(a) *Withholding Rights.* In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Person that receives a distribution pursuant to the Plan shall have responsibility for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. Any party issuing any instrument or making any distribution pursuant to the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) *Forms.* Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the Disbursing Agent or such other Person designated by the Plan Administrator (which entity shall subsequently deliver to the Disbursing Agent any applicable IRS Form W-8 or Form W-9 received) an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8, unless such Person is exempt under the tax Code and so notifies the

{00829675.DOCX:1 }

Disbursing Agent. If such request is made by the Plan Administrator or such other Person designated by the Plan Administrator and the holder fails to comply before the date that is 180 days after the request is made, the amount of such distribution shall irrevocably revert to the Debtor and any Claim in respect of such distribution shall be discharged and forever barred from assertion against any Debtor and its respective property.

*7. Exemption From Certain Transfer Taxes.*

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer under this Plan, (including any instrument of transfer executed in furtherance of the sale contemplated by the Plan), shall not be subject to tax under any law imposing a stamp tax, real estate Transfer Tax, mortgage recording tax or similar tax, including any such taxes due on any sale of the Property in connection with or in furtherance of the Plan and the funding requirements contained herein and shall not be subject to any state, local or federal law imposing such tax and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

*8. Effectuating Documents; Further Transactions.*

On and after the Effective Date, the Plan Administrator is authorized to and may issue, execute, deliver, file or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtor, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

*9. Preservation of Rights of Action.*

(a) Other than Causes of Action against an Entity that are waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Bankruptcy Court order, the Debtor reserves any and all Causes of Action. On and after the Effective Date, the Plan Administrator may pursue such Causes of Action in its sole discretion. No Entity may rely on the absence of a specific reference in the

{00829675.DOCX:1 }

Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor or the Plan Administrator will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. Prior to the Effective Date, the Debtor, and on and after the Effective Date, the Plan Administrator, shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. Notwithstanding anything contained herein to the contrary, the settlement of any Claims and Causes of Action which are expressly to be settled by Confirmation of the Plan itself shall be resolved only by Confirmation of the Plan itself.

*10. Closing of the Chapter 11 Case.*

After the Chapter 11 Case of the Debtor has been fully administered, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**F. GOVERNANCE**

*1. Limited Liability Company Form*

On the Effective Date, the Debtor shall maintain its current entity form as a New York limited liability entity

*2. Managing Member.*

The Managing Member of the Debtor, who held such position on the Commencement Date, shall continue to serve as the Managing Member of the Debtor until the next annual meeting or upon the removal or resignation of such individual.

*3. Limited Liability Company Existence.*

{00829675.DOCX:1 }

After the Effective Date, the Plan Administrator may decide to (a) maintain the Debtor as limited liability company in good standing until such time as all aspects of the Plan pertaining to the Debtor have been completed, or (b) at such time as the Plan Administrator considers appropriate and consistent with the implementation of the Plan pertaining to the Debtor, dissolve the Debtor and complete the winding up of such Debtor without the necessity for any other or further actions to be taken by or on behalf of the Debtor or its members or any payments to be made in connection therewith subject to the filing of a certificate of dissolution with the appropriate governmental authorities.

#### 4. *Wind Down*

After the closing of the sale of the Property subsequent to the Effective Date, pursuant to the Plan, the Plan Administrator shall wind-down, sell and otherwise liquidate assets of the Debtor in accordance with Section 5.3(b)(iii) of the Plan. The wind-down, sale and liquidation of the Debtor's assets (as determined for federal income tax purposes) shall occur as promptly as possible over a period of six months after the closing of the sale of the Property; provided, however, that the wind-down and liquidation may extend up to twelve months from the closing of the sale of the Property.

#### 5. *Certificate of Organization and By-Laws.*

As of the Effective Date, the certificate of organization and by-laws of the Debtor shall be amended to the extent necessary to carry out the provisions of the Plan. The amended certificate and by-laws of the Debtor (if any) shall be contained in the Plan Supplement.

### **G. DISTRIBUTIONS.**

#### 1. *Distribution Record Date.*

As of the close of business on the Distribution Record Date, the transfer register for each of the Classes of Claims or Interests as maintained by the Debtor shall be deemed closed, and there shall be no further changes in the record of holders of any of the Claims or Interests. The Debtor or the Plan Administrator shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date.

#### 2. *Date of Distributions*

Except as otherwise provided herein, the Debtor shall make the Initial Distribution to holders of Allowed Claims no later than the Initial Distribution Date and thereafter, the Debtor shall from time to time determine the subsequent Distribution Dates, if any. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

The Plan Administrator shall reserve an amount sufficient to pay holders of Disputed Claims the amount such holders would be entitled to receive under the Plan if such Claims were to become Allowed Claims. In the event the holders of Allowed Claims have not received payment in full on account of their Claims after the resolution of all Disputed Claims, then the Plan Administrator shall make a final distribution to all holders of Allowed Claims.

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

### *3. Delivery of Distributions.*

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Debtor or the Plan Administrator, as applicable, has determined the then current address of such holder, at which time such distribution shall be made to such holder without Interest; provided, however, such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the Initial Distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Debtor automatically and without need for a further order by the Bankruptcy Court for distribution in accordance with the Plan and the Claim of any such holder to such property or interest in property shall be released, settled, compromised, and forever barred. The Plan Administrator shall have no obligation to locate the current address for a returned distribution.

### *4. Manner of Payment Under Plan.*

At the option of the Debtor or the Plan Administrator, any Cash payment to be made hereunder may be made by a check or wire transfer.

{00829675.DOCX:1 }

*5. Minimum Cash Distributions.*

The Plan Administrator shall not be required to make any payment to any holder of an Allowed Claim on any Distribution Date of Cash less than \$100; provided, however, that if any distribution is not made pursuant to this Section 7.5, such distribution shall be added to any subsequent distribution to be made on behalf of the holder's Allowed Claim. The Plan Administrator shall not be required to make any final distributions of Cash less than \$50 to any holder of an Allowed Claim. If either (a) all Allowed Claims (other than those whose distributions are deemed undeliverable hereunder) have been paid in full or (b) the amount of any final distributions to holders of Allowed Claims would be \$50 or less and the aggregate amount of Cash available for distributions to holders of Allowed General Unsecured Claims is less than \$2,500, then no further distribution shall be made by the Plan Administrator and any surplus Cash shall be donated and distributed to an I.R.C. § 501(c)(3) tax-exempt organization selected by the Plan Administrator.

*6. Setoffs.*

The Debtor and the Plan Administrator may, but shall not be required to, set off against any Claim, any Claims of any nature whatsoever that the Debtor or the Plan Administrator may have against the holder of such Claim; provided that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Plan Administrator of any such Claim the Debtor or the Plan Administrator may have against the holder of such Claim.

*7. Distributions After Effective Date.*

Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

*8. Allocation of Distributions Between Principal and Interest.*

Except as otherwise provided in this Plan, to the extent that any Allowed Claim entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

*9. Payment of Disputed Claims*

{00829675.DOCX:1 }



As Disputed Claims are resolved pursuant to Section 8 of the Plan, the Plan Administrator shall make distributions on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date. Such distributions shall be made on the first Distribution Date that is at least forty-five (45) days after the date on which a Disputed Claim becomes an Allowed Claim, or on an earlier date selected by the Plan Administrator in the Plan Administrator's sole discretion.

## **H. PROCEDURES FOR DISPUTED CLAIMS.**

### *1. Allowance of Claims.*

After the Effective Date, the Debtor or the Plan Administrator shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim, except with respect to any Claim deemed Allowed under this Plan. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

### *2. Objections to Claims.*

As of the Effective Date, objections to and requests for estimation of, Claims against the Debtor may be interposed and prosecuted only by the Plan Administrator. Such objections and requests for estimation shall be served and filed (a) on or before the 60th day following the later of (i) the Effective Date and (ii) the date that a proof of Claim is filed or amended or a Claim is otherwise asserted or amended in writing by or on behalf of a holder of such Claim, or (b) such later date as ordered by the Bankruptcy Court upon motion filed by the Plan Administrator.

### *3. Estimation of Claims.*

The Plan Administrator may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or Plan Administrator previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any

{00829675.DOCX:1 }

such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor or Plan Administrator, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

*4. No Distributions Pending Allowance.*

If an objection to a Claim is filed as set forth in Section 8, no payment or distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

*5. Resolution of Claims.*

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Plan Administrator shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Claims, Disputed Claims, rights, Causes of Action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Debtor or their estates may hold against any Person, without the approval of the Bankruptcy Court, the Confirmation Order, and any contract, instrument, release, indenture, or other agreement entered into in connection herewith. The Plan Administrator or its successor may pursue such retained Claims, rights, Causes of Action, suits or proceedings, as appropriate, in accordance with the best interests of the Debtor.

*6. Disallowed Claims.*

All Claims held by persons or entities against whom or which any of the Debtor or the Plan Administrator has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549 and/or 550 of the Bankruptcy Code shall be deemed "disallowed" Claims pursuant to section 502(d) of the Bankruptcy Code and holders of such Claims shall not be entitled to vote to accept or reject the Plan. Claims that are deemed disallowed pursuant to this section shall continue to be disallowed for all purposes until the Avoidance Action against such party has been settled or resolved by Final Order and any sums due to

{00829675.DOCX:1 }

the Debtor or the Plan Administrator from such party have been paid.

## I. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

### 1. *Assumption and Assignment of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically assumed pursuant to sections 365 and 1123 of the Bankruptcy Code, and assigned to the Purchaser of the Property unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Purchase Agreement as being rejected in connection with Confirmation of the Plan or under the Purchase Agreement; (2) as of the Effective Date is subject to a pending motion to reject such Unexpired Lease or Executory Contract; (3) was previously assumed or assumed and assigned to a third party during the pendency of the Chapter 11 Cases; or (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan.

### 2. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any Cure Obligation due under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment in Cash on the Effective Date, subject to the limitation described below, by the Debtor as an Administrative Claim or by the Purchaser, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtor's Estate or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided that, depending on whether the Plan Administrator or the Purchaser has the obligation to pay the Cure Obligation, such party may settle any dispute regarding the amount of any Cure Obligation without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

At least fourteen (14) days before the Confirmation Hearing, the Debtor shall

{00829675.DOCX:1 }

cause notice of proposed Cure Obligations to be sent to applicable counterparties to the Executory Contracts and Unexpired Leases. Any objection by such counterparty must be filed, served, and actually received by the Debtor not later than ten (10) days after service of notice of the Debtor's proposed assumption and associated Cure Obligation. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed cure amount will be deemed to have assented to such Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the Effective Date of assumption and/or assignment. **Any prepetition default amount set forth in the Schedules and/or any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

### *3. Claims Based on Rejection of Executory Contracts and Unexpired Leases*

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtor's Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be filed with Bankruptcy Court and served on the Plan Administrator no later than fourteen (14) days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be filed with the Bankruptcy Court and served on the Debtor, no later than fourteen (14) days after service of the Debtor's proposed rejection of such Executory Contract or Unexpired Lease.

**Any holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely filed as set forth in the paragraph above shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Case on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtor, the Plan Administrator, the Debtor's Estate, or the property for any of the foregoing without the need for any objection by the Plan**

{00829675.DOCX:1 }

**Administrator or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtor's prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims, except as otherwise provided by order of the Bankruptcy Court.

*4. Purchase Agreement*

The Debtor's assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases assigned to the Purchaser pursuant to the terms of the Purchase Agreement.

*5. Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

*6. [Intentionally Omitted]*

*7. Reservation of Rights*

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by

{00829675.DOCX:1 }

the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor's Estate have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Plan Administrator, as applicable, shall have 60 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

J. [Intentionally Omitted]

K. **CONDITIONS PRECEDENT TO THE CONFIRMATION HEARING AND THE EFFECTIVE DATE.**

*1. Condition to the Confirmation Hearing.*

The Confirmation Hearing shall not commence unless the following condition has been satisfied:

- (a) Stabilis shall have executed an agreement whereby it has agreed to extend the maturity date of the DIP Loan from the Effective Date until the closing of the Sale Transaction on the same terms and conditions as existed prior to the Effective Date.

*2. Conditions Precedent to the Effective Date.*

The occurrence of the Effective Date of the Plan is subject to the following conditions precedent:

- (a) the Bankruptcy Court shall have entered the Confirmation Order, the Confirmation Date shall have occurred and the Confirmation Order shall not be subject to any stay;
- (b) Stabilis shall have transferred to Debtor's counsel, for deposit into its escrow account, within three (3) days from the entry of the Confirmation Order, the funds necessary to fund the Plan Fund pursuant to the terms of this Plan;
- (c) all actions, documents and agreements necessary to implement and consummate the Plan, including, without limitation, entry into the documents contained in the Plan Supplement required to be executed prior to the Confirmation Date, each in form and substance reasonably satisfactory to the Debtor and Stabilis and

- the transactions and other matters contemplated thereby, shall have been effected or executed;
- (d) all governmental and third party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan, if any, shall be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose materially adverse conditions on such transactions; and
  - (e) all documents and agreements necessary to implement the Plan shall have (i) been tendered for delivery and (ii) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

### *2. Waiver of Conditions Precedent.*

Each of the conditions precedent to the Effective Date in Section 11.2 other than the condition set forth in section 11.2(a) may be waived in writing by the Debtor.

### *3. Effect of Failure of Conditions to Effective Date.*

If the Confirmation Order is vacated due to a failure of a condition to the Effective Date to occur, (i) no distributions under the Plan shall be made and (ii) the Debtor and all holders of Claims and Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date ever occurred.

## **L. EFFECT OF CONFIRMATION.**

### *1. Vesting of Assets*

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtor's Estate shall vest in the Debtor free and clear of all Claims, liens, encumbrances, charges and other interests, except as provided pursuant to this Plan and the Confirmation Order.

### *2. Release of Liens*

Except as otherwise provided in the Plan or in any contract, instrument,

{00829675.DOCX:1 }

release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all rights, titles, and interests of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Debtor, unless sold to the Purchaser pursuant to the Sale Transaction, provided however, that the Lien securing the DIP Loan and the Lien securing the Stabilis Secured Class 2 Claim shall not be deemed released until the DIP Loan has been paid in full and the Stabilis Class 2 Secured Claim has been paid in full, from the proceeds of the Sale Transaction in accordance with the terms of this Plan.

### *3. Subordinated Claims*

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor reserves the right for the Plan Administrator to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

### *4. Binding Effect.*

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtor, and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.

### *5. Discharge of Claims and Termination of Interests.*

Except as otherwise provided in the Plan, effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor or any of their



assets, property or Estates; (b) all Claims and Interests shall be satisfied, discharged and released in full, and the Debtor's liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (c) all Entities shall be precluded from asserting against the Debtor, the Debtor's Estate, the Plan Administrator, the Purchaser, their successors and assigns and their assets and properties any other Claims or Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.

#### 6. *Term of Injunctions or Stays.*

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

#### 7. *Plan Injunction.*

Except (i) as otherwise provided under Final Order entered by the Bankruptcy Court or (ii) with respect to the Debtor's obligations under the Plan, the entry of the Confirmation Order shall forever stay, restrain and permanently enjoin with respect to any Claim held against the Debtor as of the date of entry of the Confirmation Order (i) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from the Debtor, from the Property, or from property of the Estate that has been or is to be distributed under the Plan, and (ii) the creation, perfection or enforcement of any lien or encumbrance against the Property and any property of the Estate that has been or is to be, distributed under the Plan. Except as otherwise provided in the Confirmation Order, the entry of the Confirmation Order shall constitute an injunction against the commencement or continuation of any action, the employment of process, or any act to collect, recover or offset from the Debtor, from the Property, or from property of the Estate, any claim, any obligation or debt that was held against the Debtor by any person or entity as of the Confirmation Date except pursuant to the terms of this Plan. The entry of the Confirmation Order shall permanently enjoin all Creditors, their successors and assigns, from enforcing or seeking to enforce any such Claims.

#### 8. *Limitation of Liability*

To the extent permitted under Section 1125(e) of the Bankruptcy Code,

{00829675.DOCX:1 }

neither the Exculpated Parties nor any of their respective officers, directors, or employees (acting in such capacity) nor any professional person employed by any of them, shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement, the Plan Supplement or the any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Plan, provided that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement, except in the case of fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing in this Section 12.8 shall limit the liability of the Debtor's professionals pursuant to Rule 1.8 (h)(1) of the New York State Rules of Professional Conduct. Nothing in the Plan or the confirmation order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor or any of its respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Debtor or any of its respective members, officers, directors, employees, attorneys, advisors, agents, representatives and assigns for any liability whatever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this Plan exculpate Debtor or any of its respective members, officers, directors, employees, attorneys, advisors, agents, representatives and assigns from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority.

## 9. *Release*

Except as otherwise provided in the Plan, upon the Effective Date, in consideration of the Cash and other property to be distributed to or on behalf of the holders of Claims and Interests under the Plan, the Plan shall be deemed to resolve all disputes and constitute a settlement and release, between and among the Debtor, on the one hand, and each Creditor and Interest Holder, on the other, from any claim or liability, whether legal, equitable, contractual, secured, unsecured,

{00829675.DOCX:1 }

liquidated, unliquidated, disputed, undisputed, matured, unmatured, fixed or contingent, known or unknown, that the Debtor, its Creditors or Interest Holder ever had or now have through the Effective Date in connection with their Claim or Interest (including, without limitation, any claims the Debtor may assert on its own behalf or on behalf of Creditors or Interest Holders pursuant to sections 510 and 542 through 553 of the Bankruptcy Code, any claims Creditors or Interest Holders may have asserted derivatively on behalf of the Debtor absent bankruptcy, any claims based on the conduct of the Debtor's business affairs prior or subsequent to the commencement of the Case or any claims based on the negotiation, submission and confirmation of the Plan).

10. [Intentionally Omitted]

11 *Injunction with Respect to City Settlement*

The Debtor, its principals, agents, property managers, employees, and/or authorized representatives, shall be and hereby are permanently enjoined from advertising, booking, making reservations for, renting, permitting, conducting, maintaining, and/or operating, a dwelling unit or units, or establishment, located at the Property for residential rentals or occupancies of twenty-nine days or less (a "Transient Business"), unless such rentals are permitted by applicable law and codes, heretofore or hereinafter enacted, and the applicable certificate of occupancy for the Property. In the event a tenant vacates a unit at the Property voluntarily before the expiration of thirty (30) days from the commencement of that tenant's occupancy, except where that unit is lawfully in a building being used for a Transient Business, that unit will not be re-rented until thirty days have expired from such commencement date. In the event the Property is sold under this Plan, this injunction shall apply to the Debtor's successors and assigns.

Additionally, pending the City's receipt of the Settlement Amount on or before the Effective Date (as defined in the City Global Settlement Agreement), the Debtor and its principals, shall be and hereby are permanently enjoined (the "Citywide Permanent Injunction") from Transient Business anywhere else in the City of New York, unless such rentals are allowed by the Applicable Laws and Codes, heretofore or hereafter enacted, and the applicable certificate of occupancy for such a property. Nothing in this paragraph shall constitute an admission by Debtor that Transient Business is currently being conducted at the Property.

12. [Intentionally Omitted]

13. *Solicitation of the Plan.*

As of and subject to the occurrence of the Confirmation Date: (a) the Debtor shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation.

14. *Plan Supplement*

The Plan Supplement shall be filed with the Clerk of the Bankruptcy Court by no later than five (5) business days prior to the Confirmation Hearing. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours.

**M. RETENTION OF JURISDICTION.**

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases for, among other things, the following purposes:

(a) to hear and determine motions and/or applications for the assumption or rejection of Executory Contracts or Unexpired Leases and the allowance, classification, priority, compromise, estimation or payment of Claims resulting there from;

(b) to determine any motion, adversary proceeding, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date;

(c) to insure that distributions to holders of Allowed Claims are accomplished as provided herein;

(d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim;

(e) to enter, implement or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(f) to enter the Sale Order and adjudicate any dispute related to such order, the Sale and Bidding Procedures, the Sale Transaction or the Auction of the Property;

(g) to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the Consummation, implementation or enforcement of the Plan,

including the Confirmation Order, or any other order of the Bankruptcy Court;

(h) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) to hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred before the Confirmation Date;

(j) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Purchase Agreement, or the Confirmation Order or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) to take any action and issue such orders as may be necessary to construe, interpret, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following Consummation;

(l) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations of the Debtor's tax liability under section 505(b) of the Bankruptcy Code);

(n) to adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

(o) to adjudicate any and all disputes arising from or relating to distributions under the Plan;

(p) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(q) to enter a final decree closing the Chapter 11 Cases;

(r) to enforce all orders previously entered by the Bankruptcy Court;

(s) to recover all assets of the Debtor and property of the Debtor's Estate, wherever located; and

(t) to hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtor pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory.

## **N. MISCELLANEOUS PROVISIONS.**

### *1. Payment of Statutory Fees.*

On the Effective Date and thereafter as may be required, the Debtor or the

{00829675.DOCX:1 }

Plan Administrator shall pay all fees incurred pursuant to § 1930 of title 28 of the United States Code, together with interest, if any, pursuant to § 3717 of title 31 of the United States Code for the Debtor's case; provided, however, that after the Effective Date such fees shall only be payable with respect to the Debtor's Case until such time as a final decree is entered closing the Debtor's Case, a Final Order converting such case to a case under chapter 7 of the Bankruptcy Code is entered or a Final Order dismissing the Debtor's Case is entered.

*2. Substantial Consummation.*

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

*3. Rule 9019 Settlement of Claims with the City of New York*

On December 8, 2016, the Bankruptcy Court approved the *Stipulation and Order between the Debtor and the City of New York with respect to Global Settlement of City Claims and Litigation* dated September 7, 2016 between the Debtor and the City of New York as being in the best interests of the estate and an appropriate exercise of the Debtor's business judgment. The terms of this settlement have been incorporated into the Plan.

*4. Amendments.*

(a) *Plan Modifications.* The Plan may be amended, modified or supplemented by the Debtor in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code; provided that such amendments, modifications, or supplements shall be satisfactory in all respects to the Debtor and Stabilis. In addition, after the Confirmation Date, the Debtor may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

(b) *Other Amendments.* Before the Effective Date, the Debtor may make appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan Supplement without further order or approval of the Bankruptcy Court.

*5. Revocation or Withdrawal of the Plan.*

The Debtor reserves the right, after good-faith consultation with Stabilis, to

{00829675.DOCX:1 }

revoke or withdraw the Plan, prior to the Confirmation Date. If the Debtor, in good faith, in consultation with Stabilis, revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor, the Debtor's Estates, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor, the Debtor's Estates, or any other Entity, **provided however**, that such withdrawal of revocation shall not affect the approval or implementation of the City Global Settlement Agreement.

*6. Severability of Plan Provisions upon Confirmation.*

If, before the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor or the Plan Administrator (as the case may be); and (3) nonseverable and mutually dependent.

*7. Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule in the Plan Supplement provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

8. *Time.*

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

9. *Additional Documents*

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

10. *Immediate Binding Effect.*

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and Plan Supplement shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtor, the Purchaser, the holders of Claims and Interests, the Released Parties, the Exculpated Parties, and each of their respective successors and assigns, including, without limitation, the Plan Administrator.

11. *Successor and Assigns.*

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or permitted assign, if any, of each Entity.

12. *Entire Agreement.*

On the Effective Date, the Plan, the Plan Supplement, the Purchase Agreement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.



13. *Notices.*

All notices, requests and demands to or upon the Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

(i) if to the Debtor or Plan Administrator:  
West 41 Property LLC  
c/o FIA Capital Partners LLC  
7280 West Palmetto Park Road  
Suite 106-N  
Boca Raton, Florida 33433  
Facsimile: (866)353-6360  
Attention: David Goldwasser

- and -

Robinson Brog Leinwand Greene Genovese & Gluck P.C.  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
Telephone: (212) 603-6300  
Facsimile: (212) 956-2164  
Attention: Fred B. Ringel., Esq.  
A. Mitchell Greene, Esq.

After the Effective Date, the Debtor shall have the authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, that they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtor is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

**VI.**

**CERTAIN RISK FACTORS AFFECTING THE DEBTOR**

**A. CERTAIN BANKRUPTCY LAW CONSIDERATIONS**

*1. Risk of Non-Confirmation of the Plan*

Although the Debtor believes that the Plan will satisfy all requirements

{00829675.DOCX:1 }

necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes.

### *2. Non-Consensual Confirmation*

In the event any impaired class of claims or interests entitled to vote on a plan of reorganization does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes.

### *3. Risk Related to DIP Credit Facility*

In the event of a breach of one of the milestones or another event of default under the DIP Facility, the DIP Lender may seek, among other things, to exercise certain remedies with respect to the collateral securing the DIP Facility, and to take certain other actions against the Debtor.

### *4. Risk Related to Auction*

Although the Debtor believes that they will be able to obtain competitive bids for the Property at the Auction, the Debtor is not certain whether offers will be made, what the content of those offers will be, or whether any Purchaser will enter into an Asset Purchase Agreement. However, Stabilis willingness to bid under section 363(k) and fund the Plan Fund has mitigated any risk related to the auction in the opinion of the Debtor.

## **B. ADDITIONAL FACTORS TO BE CONSIDERED**

### *1. The Debtor Has No Duty to Update*

The statements contained in this Disclosure Statement are made by the Debtor as of the Commencement Date, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtor has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

{00829675.DOCX:1 }

*2. No Representation Outside This Disclosure Statement Are Authorized*

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

*3. No Legal or Tax Advice Is Provided to You by This Disclosure Statement*

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim or Interests should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters his, her, or its Claim or Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

*4. No Admission Made*

Nothing contained in the Plan will constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Interests.

*5. Failure to Identify Litigation Claims or Projected Objections*

No reliance should be placed on the fact that particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtor may seek to investigate, file, and prosecute Claims and Interests and may object to Claims or Interests after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

*6. No Waiver of Right to Object or Right to Recover Transfers and Assets*

The vote by a holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtor (or any entity, as the case may be) to object to that holder's Claim or Interest, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtor or its Estate are specifically or generally identified in this Disclosure Statement.

6. *Information Was Provided by the Debtor and Was Relied Upon by the Debtor's Advisors*

The Debtor's advisors have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although the Debtor's advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

**VII.  
CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and to certain holders of Allowed Claims. This summary does not address the U.S. federal income tax consequences to holders of Claims whose Claims are entitled to payment in full in Cash, holders of Secured Claims or holders of Claims or Interests who are deemed to have rejected the Plan.

This summary is based on the U.S. Internal Revenue Code of 1986, as amended (the "Tax Code"), existing and proposed U.S. Treasury regulations (the "Treasury Regulations"), judicial decisions, and published rules and of the Internal Revenue Service (the "IRS") as in effect on the date hereof, all of which are subject to change, possibly on a retroactive basis. Any such change could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and subject to significant uncertainties. The Debtor has not requested an opinion of counsel or a ruling from the IRS with respect to any of the tax aspects of the Plan. This summary does not address state, local or foreign income or other tax consequences of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as non-U.S. persons, broker-dealers, banks, mutual funds, insurance companies, financial institutions, thrifts, small business investment companies, regulated investment companies, real estate investment trusts, tax-exempt organizations, retirement plans, individual retirement and other tax-deferred accounts, S corporations, partnerships or other pass-through entities for U.S. federal income tax purposes, any other Debtor entity, persons holding securities as part of a hedging, straddle, conversion or constructive sale transaction or other integrated investment, traders in securities that elect to use a mark-to-market method of accounting for their security holding, dealers in securities or foreign currencies, persons whose functional currency is not the U.S.

dollar, certain expatriates or former long term residents of the United States, persons who received their Claim as compensation or who acquired their Claim in the secondary market, and persons subject to the alternative minimum tax or the “Medicare” tax on net investment income). Additionally, this discussion does not address the Foreign Account Tax Compliance Act.

The following discussion generally assumes that, the various debt and other arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form, that the Plan will be treated as a plan of liquidation of the Debtor for U.S. federal income tax purposes, and that all distributions to holders of Claims and Interests will be taxed accordingly.

**ACCORDINGLY, THE FOLLOWING SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING OR FOR ADVICE BASED UPON THE PARTICULAR CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT ITS OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES APPLICABLE TO IT UNDER THE PLAN.**

#### **A. CONSEQUENCES TO THE DEBTOR**

As indicated above, the Debtor intends to treat the Plan as a plan of liquidation for U.S. federal income tax purposes in that the Debtor will remain in existence following the Effective Date solely for the purpose of winding up their affairs including, but not limited to, resolving outstanding Claims, selling their assets and distributing the proceeds and any remaining property to or for the benefit of holders of Allowed Claims and Interests. The U.S. federal income tax impact of the Plan on the NOLs and other tax attributes of the Debtor is further discussed below.

##### *1. Sale and Other Dispositions of Assets*

The Plan authorizes the Debtor to take any and all actions necessary to consummate the sale of the Property. The Tax Code as cancellation of debt income (“CODI”), upon the elimination or reduction of debt for insufficient consideration. The Tax Code provides an exception to such income recognition treatment for any CODI arising in bankruptcy, but generally requires the debtor to reduce certain of its tax attributes – such as current year NOLs, NOL carryforwards, tax credits, capital losses and tax basis in assets – by the amount of any such CODI that arises by reason of the discharge of the debtor’s indebtedness in the bankruptcy case.

{00829675.DOCX:1 }

CODI is generally the amount by which the adjusted issue price of indebtedness discharged exceeds the sum of the amount of cash and the fair market value of any other property given in exchange therefore. Any reduction in tax attributes under the CODI rules does not occur until the end of the tax year after such attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the tax year in which the CODI occurs. Accordingly, consistent with the intended treatment of the Plan as a plan of liquidation for U.S. federal income tax purposes, the Debtor expects that no CODI should be incurred by a Debtor as a result of the implementation of the Plan prior to the disposition by such Debtor of all or substantially all of its assets. In such case, the reduction of tax attributes resulting from such CODI (which, as indicated above, only occurs as of the end of the tax year in which the CODI occurs) generally should not have a material impact on the Debtor.

The Debtor's ability to utilize its NOL carryforwards and certain other tax attributes could be subject to limitation if the Debtor underwent or were to undergo an ownership change within the meaning of section 382 of the Tax Code by reason of the implementation of the Plan or otherwise. Nevertheless, there can be no assurance that all or a substantial amount of the CODI will not be incurred prior to the disposition of the Property, or that an ownership change will not occur upon consummation of the Plan due to, among other things, a lack of authoritative IRS guidance as to when CODI occurs in the context of a liquidating Chapter 11 plan. In such event, the Debtor could incur a material amount of U.S. federal income tax in respect of the sale of the Property depending, in part, on the amount realized upon the disposition of such assets and the then tax basis of the assets.

## *2. Alternative Minimum Tax*

In general, a U.S. federal alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income at a 20% rate to the extent that such tax exceeds the corporation's regular U.S. federal income tax. For purposes of computing AMT taxable income, certain tax deductions and other beneficial allowances are modified or eliminated. In particular, even though a corporation otherwise might be able to offset all of its taxable income for regular tax purposes by available NOL carryforwards, only 90% of a corporation's taxable income for AMT purposes may be offset by available NOL carryforwards (as computed for AMT purposes).

## **B. CONSEQUENCES TO HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS**

### *1. Recognition of Gain or Loss*

{00829675.DOCX:1 }

The U.S. federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, upon the origin of the holder's Claim, when the holder receives payment in respect of such Claim, whether the holder reports income using the accrual or cash method of tax accounting, whether the holder acquired its Claim at a discount, whether the holder has taken a bad debt deduction or worthless security deduction with respect to such Claim, and/or whether (as intended and herein assumed) the Plan is treated as a plan of liquidation for U.S. federal income tax purposes. A holder of a Claim should consult its tax advisor regarding the timing and amount of any potential bad debt deduction.

Generally, a holder of an Allowed Claim will recognize gain or loss with respect to its Allowed Claim) in an amount equal to the difference between (i) the sum of the amount of any Cash and the fair market value of any other property received by the holder and (ii) the adjusted tax basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). As discussed below, the amount of Cash or other property received in respect of Claims for accrued but unpaid interest will be taxed as ordinary income, except to the extent previously included in income by a holder under its method of accounting. See Section B.2.— "Allocation of Consideration to Interest."

Consistent with the treatment of the Plan as a plan of liquidation, any loss realized by a holder of a Claim may not be recognizable until all of the distributions to such holder are received.

When gain or loss is recognized, such gain or loss may be long-term capital gain or loss if the Claim disposed of is a capital asset in the hands of the holder and has been held for more than one year. Each holder of an Allowed Claim should consult its tax advisor to determine whether gain or loss recognized by such holder will be long-term capital gain or loss and the specific tax effect thereof on such holder.

## *2. Allocation of Consideration to Interest*

Pursuant to section 7.8 of the Plan, all distributions in respect of Allowed Claims will be allocated first to the principal amount of the Allowed Claim (as determined for U.S. federal income tax purposes), with any excess allocated to accrued but unpaid interest. However, there is no assurance that such allocation would be respected by the IRS for U.S. federal income tax purposes. In general, to the extent any amount received (whether stock, cash, or other property) by a holder of a debt instrument is received in satisfaction of accrued interest during its holding period, such amount will be taxable to the holder as ordinary interest income (if not previously included in the holder's gross income under the holder's normal method

{00829675.DOCX:1 }

of accounting). Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest claimed was previously included in its gross income and is not paid in full.

Each holder of an Allowed Claim is urged to consult its own tax advisors regarding the allocation of consideration and the taxation or deductibility of unpaid interest for tax purposes.

*C. [Intentionally Omitted]*

**D. WITHHOLDING ON DISTRIBUTIONS AND INFORMATION REPORTING**

All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then applicable withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. Holders of Allowed Claims are urged to consult their tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, a holder of an Allowed Claim that is a not a U.S. person may be subject to up to 30% withholding, depending on, among other things, the particular type of income and whether the type of income is subject to a lower treaty rate. As to certain Claims, it is possible that withholding may be required with respect to Distributions by the Debtor even if no withholding would have been required if payment was made prior to the Chapter 11 Case. A non-U.S. holder may also be subject to other adverse consequences in connection with the implementation of the Plan. As discussed above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. holders. Non-U.S. holders are urged to consult their tax advisors regarding potential withholding on Distributions by the Debtor.



In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holder's tax returns.

## **VIII. CONFIRMATION OF THE PLAN**

### **A. CONFIRMATION HEARING**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a chapter 11 plan. The Bankruptcy Court has scheduled the Confirmation Hearing to commence on February 10, 2017 at 10:00 a.m. (Eastern Time). The Confirmation Hearing may be adjourned from time-to-time by the Debtor or the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

### **B. OBJECTIONS**

Section 1128 of the Bankruptcy Code provides that any party in interest may object to the confirmation of a plan. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Bankruptcy Court, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtor's estate or property, the basis for the objection and the specific grounds therefore, and must be filed with the Bankruptcy Court, with a copy to the chambers of The Honorable Robert D. Drain, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York, together with proof of service thereof, and served upon the parties listed below so as to be received no later than the Plan Objection Deadline of January 27, 2017 at 5:00 p.m. (Eastern Time):

<p>Debtor: West 41 Property LLC c/o FIA Capital Partners LLC 7280 West Palmetto Park Road Suite 106-N Boca Raton, Florida 33433 Attention: David Goldwasser</p>	<p>Counsel to the Debtor: Robinson Brog Leinwand Greene Genovese &amp; Gluck P.C. 875 Third Avenue, 9<sup>th</sup> Floor New York, New York 10022 Telephone: (212) 603-6300 Facsimile: (212) 956-2164 Attention: Fred B. Ringel</p>
<p>Office of the United States Trustee  201 Varick Street Suite 1006 New York, NY 10014 Attn: Serene Nakano, Esq.</p>	<p>Counsel to Stabilis Reed Smith LLP 599 Lexington Avenue, 22<sup>nd</sup> Floor New York, New York 10022 Attention: Christopher Lynch</p>

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

### **C. REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

#### *1. Requirements of Section 1129(a) of the Bankruptcy Code*

##### **a. General Requirements**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied:

- (i) The Plan complies with the applicable provisions of the Bankruptcy Code.
- (ii) The Debtor has complied with the applicable provisions of the Bankruptcy Code.
- (iii) The Plan has been proposed in good faith and not by any means proscribed by law.
- (iv) Any payment made or promised by the Debtor or by a person issuing

{00829675.DOCX:1 }

securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved or is subject to the approval of the Bankruptcy Court as reasonable.

(v) The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is with the interests of creditors and equity holders and with public policy.

(vi) With respect to each Class of Claims or Interests, each holder of an Impaired Claim or Impaired Interest either has accepted the Plan or will receive or retain under the Plan on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.

(vii) Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (discussed below), each class of Claims or Interests has either accepted the Plan or is not impaired under the Plan.

(viii) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that administrative and priority claims will be paid in full on the Effective Date.

(ix) At least one class of impaired claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim in such class.

(x) Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. See "Feasibility Analysis" below.

(xi) All fees payable under section 1930 of title 28, as determined by the Bankruptcy Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

#### **b. Best Interests Test**

As noted above, the Bankruptcy Code requires that each holder of an Claim or Interest either (i) accepts the Plan or (ii) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. This requirement is referred to as the "best

{00829675.DOCX:1 }

interests test.”

The best interests test requires the Bankruptcy Court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor’s assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor’s assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

The Debtor believes that under the Plan all holders of impaired Claims and Interests will receive property with a value not less than the value such holder would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Debtor’s belief is based primarily on (i) consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of impaired Claims and Interests and (ii) the Liquidation Analysis prepared by the Debtor’s accountants that is set forth in the Plan Supplement.

The Liquidation Analysis is a comparison of (i) the estimated recoveries for creditors and equity holders of the Debtor that may result from the Plan and (ii) an estimate of the recoveries that may result from a hypothetical chapter 7 liquidation. The Liquidation Analysis is based upon a number of significant assumptions which are described therein. The Liquidation Analysis is solely for the purpose of disclosing to holders of Claims and Interests the effects of a hypothetical chapter 7 liquidation of the Debtor, subject to the assumptions set forth therein. There can be no assurance as to values that would actually be realized in a chapter 7 liquidation nor can there be any assurance that the Bankruptcy Court will accept the Debtor’s conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

### **c. Feasibility Analysis**

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization unless contemplated by the Plan. The Plan provides for the sale of substantially all of the Debtor’s assets and the distribution of the proceeds of such sale. Accordingly, the Debtor believes that all Plan obligations will be satisfied without the need for further reorganization of the Debtor.

## ***2. Requirements of Section 1129(b) of the Bankruptcy Code***

The Bankruptcy Court may confirm the Plan over the rejection or deemed

{00829675.DOCX:1 }

rejection of the Plan by a class of Claims or Interests if the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such class.

**a. No Unfair Discrimination**

The “no unfair discrimination” test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under a plan. A chapter 11 plan of reorganization does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class of claims or equity interests receives more than it legally is entitled to receive for its claims or equity interests. This test does not require that the treatment be the same or equivalent, but that such treatment is “fair.”

The Debtor believes that, under the Plan, all impaired classes of Claims and Interests are treated in a manner that is fair and consistent with the treatment of other classes of Claims and Interests having the same priority. Accordingly, the Debtor believes the Plan does not discriminate unfairly as to any impaired class of Claims or Interests.

**b. Fair and Equitable Test**

The “fair and equitable” test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. The test sets forth different standards for what is fair and equitable, depending on the type of claims or interests in such class. In order to demonstrate that a plan is “fair and equitable,” the plan proponent must demonstrate the following:

(i) *Secured Creditors.* With respect to a class of impaired secured claims, a proposed plan must provide the following: (a) that the holders of secured claims retain their liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder’s interest in the estates’ interest in such property, or (b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) or (c) of this paragraph, or (c) that the holders of secured claims receive the “indubitable equivalent” of their allowed

{00829675.DOCX:1 }

secured claim. The only secured impaired class of claims is Class 2 containing the claim held by Stabilis. The Plan provides for the treatment of Stabilis Claim in accordance with subsection (b) of 1129(b)(2)(A)(ii)(sale subject to section 363(k)).

*(ii) Unsecured Creditors.* With respect to a class of impaired unsecured claims, a proposed plan must provide the following: either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

Inasmuch as the Plan provides that holder of Claims or Interests in any Class senior in priority to the holders of Interests in Class 6 will be paid in full (or will have accepted the plan), the Plan satisfies the “fair and equitable” test with respect to all Impaired Unsecured Claims.

*(b) Holders of Equity Interests.* With respect to a class of equity interests, a proposed plan must provide the following: (i) that each holder of an equity interest receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest or (ii) that the holder of any interest that is junior to the interests of the class of equity interests will not receive or retain under the Plan on account of such junior interest, any property.

Pursuant to the Plan, Claims in Class 5 (General Unsecured Claims) are satisfied in full with interest at the federal judgment rate and no claim junior to equity interests will receive or retain under the Plan on account of such junior interest, any property. Accordingly, the Plan meets the “fair and equitable” test with respect to all Interests.

### **c. Application to the Plan**

As to any Class that may reject the Plan, the Debtor believes the Plan will satisfy both the “no unfair discrimination” requirement and the “fair and equitable” requirements, because, as to any such dissenting Class, there is no Class of equal priority receiving more favorable treatment, and such Class will either be paid in full, or no Class that is junior to such a dissenting Class will receive or retain any property on account of the Claims or Interests in such Class.

### *3. Alternative to Confirmation and Consummation of the Plan*

The Debtor has evaluated several alternatives to the Plan. After studying these alternatives, the Debtor has concluded that the Plan is the best option for the

{00829675.DOCX:1 }

Debtor and its estate and will maximize recoveries to parties-in-interest—assuming confirmation and consummation of the Plan. If the Plan is not confirmed and consummated, the alternatives to the Plan include a sale of the Property under section 363 of the Bankruptcy Code or a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

**a. Section 363 Sale**

If the Plan is not confirmed, the Debtor could seek from the Bankruptcy Court, after notice and a hearing, authorization to sell the Property and other assets under section 363 of the Bankruptcy Code. Indeed, the form of Asset Purchase Agreement will require any Purchaser to consummate a sale under section 363 in the event that the Plan is not confirmed. Holders of Claims in Classes 2 and 3 would be entitled to credit bid on any property to which their security interests are attached, and to offset their Claims against the purchase price of the property. In addition, the security interests in the Debtor's assets held by holders of Claims in Classes 2 (Stabilis Secured Claim) and 3 (Other Secured Claims), and by the DIP Lender, would attach to the proceeds of any sale of the Debtor's assets.

After these Claims are satisfied, any remaining funds could be used to pay holders of Claims in Class 4 (City of New York Claim) and Class 5 (General Unsecured Claims). The Debtor would need to file a plan of liquidation or convert the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code in order to distribute any proceeds from a sale. Upon analysis and consideration of this alternative, the Debtor did not believe a sale of their assets under section 363 of the Bankruptcy Code would yield a higher recovery than treatment under the Plan for holders of Claims and Interests.

**b. Liquidation Under Chapter 7**

In a chapter 7 case, a trustee is appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. Unsecured creditors are paid from any remaining sale proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

Substantially all of the Debtor's assets are being sold through the proposed Sale Transaction under the Plan. The Debtor believes that the Plan provides a

{00829675.DOCX:1 }

greater recovery to Holders of the City of New York Claim and Allowed General Unsecured Claims than would a chapter 7 liquidation for several reasons. First, liquidation under chapter 7 of the Bankruptcy Code would both decrease the aggregate proceeds available to holders of Claims and Interests and increase the magnitude of claims to those proceeds. Specifically, the Plan contemplates that the Debtor will conduct a controlled auction process designed to optimally market and maximize the value of the Debtor's Property. A liquidation of the Property under chapter 7 would be less orderly and would yield only the liquidation value of the Property, not its fair market value.

Second, and most significantly, in a chapter 7 liquidation, Stabilis would have no incentive to make the Plan Fund available, which is providing a certain and timely availability of funds to pay a 100% distribution to all creditors in classes 3, 4, 5 and allowed priority and administrative claims prior to Stabilis receiving its distribution of sale proceeds for its secured claim. Were this case to be liquidated in a chapter 7 case, no such fund would be available and Stabilis secured claim would likely increase substantially due to the accrual of additional interest on its secured debt, making it unlikely that other creditors would receive a distribution approaching the 100% to be paid for under the Plan.

Third, liquidating the Debtor's Estate under the Plan likely provides Holders of the City Claims and Allowed General Unsecured Claims with a larger, more timely recovery because of the fees and expenses that would be incurred in a chapter 7 liquidation, including the potential added time and expense incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Debtor and the estate. The Debtor believes that in liquidation under chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a chapter 7 trustee and its retained professionals would cause a substantial diminution in the value of the Debtor's assets. The assets available for distribution to creditors would be reduced by such additional expenses and by the Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts.

Based on the Debtor's analysis, it is probable that a liquidation of the Debtor's assets under a chapter 7 liquidation would result in smaller distributions being made to creditors than those provided for under the Plan because of (i) the likelihood that the assets of the Debtor would have to be sold or otherwise disposed of in a less orderly fashion over a short period of time, (ii) the increased interest on Stabilis claim, (iii) the loss of the Plan Fund as a resource for the payment to creditors and (iv) additional expenses and claims, some of which would be entitled

{00829675.DOCX:1 }



to priority, which would be generated during the chapter 7 liquidation process. Accordingly, the Debtor believes that the Plan is in the best interests of creditors.

### **c. Alternative Plans**

The Debtor does not believe that there are any alternative plans for the reorganization or liquidation of the Debtor's Estate then would, or indeed could, yield a better result for its creditors than the current proposed plan. The Debtor believes that the Plan, as described herein, enables Holders of Claims and Interests to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

### **4. Nonconsensual Confirmation**

In the unlikely circumstance that any impaired Class of Claims entitled to vote will not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code or both. With respect to impaired Classes of Claims that are deemed to reject the Plan, the Debtor would request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

**IX.**  
**CONCLUSION**

The Debtor believes that confirmation and implementation of the Plan is in the best interests of all creditors, and urges holders of impaired Claims to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than the Voting Deadline, January 27, 2017 at 5:00 p.m. (prevailing Eastern Time).

Dated: December 14, 2016  
New York, New York

Respectfully submitted,

By: /s/ David Goldwasser  
David Goldwasser  
Managing Member