

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

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In re:

Chapter 11

**WEST 16<sup>TH</sup> STREET OWNER, LLC,**

Case No: 17-23496-rdd

Debtor.

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**AMENDED DISCLOSURE STATEMENT FOR AMENDED PLAN  
OF LIQUIDATION OF WEST 16<sup>TH</sup> STREET OWNER, LLC**

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF  
THE PLAN FOR WEST 16<sup>TH</sup> STREET OWNER, LLC. ACCEPTANCES OR  
REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE  
STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.  
THIS DISCLOSURE STATEMENT IS BEING SUBMITTED TO THE  
BANKRUPTCY COURT FOR APPROVAL BUT HAS NOT BEEN  
APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION  
CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT.**

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**Dated:** New York, New York  
~~December 14, 2017~~ January \_\_, 2018

## DISCLAIMER

ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS SHOULD READ THIS DISCLOSURE STATEMENT AND ALL EXHIBITS HERETO, INCLUDING THE PLAN. 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 DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, AND (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR WITH “ADEQUATE INFORMATION” (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR.

A glossary of terms frequently used in this disclosure statement, is set forth in Article 1 of the plan of liquidation filed with the Bankruptcy Court.

### **SUMMARY**

The Debtor, **West 16<sup>th</sup> Street Owner, LLC**, (the “Debtor”), has filed its [\*Amended Plan of Liquidation of West 16<sup>th</sup> Street Owner, LLC\*](#) dated ~~December 14, 2017~~[January , 2018](#) (the “Plan”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). This [\*Amended Disclosure Statement for Amended Plan of Liquidation of West 16<sup>th</sup> Street Owner, LLC\*](#) (the “Disclosure Statement”) is being submitted to the Bankruptcy Court for approval for use in connection with the solicitation of acceptances of the Plan from holders of Claims against and Interests in the Debtor pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

In the Debtor’s opinion, the treatment of claims under the Plan provides a greater recovery for Creditors than that which is likely to be achieved under other alternatives for the reorganization or liquidation of the Debtor.

**Accordingly, the Debtor believes that Confirmation of the Plan is in the best interests of Creditors.**

### **THE DEBTOR, THE TENANTS IN COMMON AND OWNERSHIP OF THE PROPERTY**

The Debtor, along with 367 Trans Holdings LLC, Druckner 2 Holdings LLC, Drig Cap Holdings LLC and Sonlow LLC, (collectively, the “TICs”) own and operate an apartment building located at 123-129 West 16<sup>th</sup> Street, New York, New York (the “Property”). The April 23, 2015 deed to the Property reflects that the Debtor holds an undivided 63% tenancy in common interest in the Property. 367 Trans Holdings LLC holds an undivided 3.6% tenancy in common interest in the Property. Druckner 2 Holdings LLC holds an undivided 13.9% tenancy in common interest in the Property. Drig Cap Holdings LLC holds an undivided 6% tenancy in common interest in the Property. Sonlow LLC holds an undivided 13.5% tenancy in common interest in the Property. The Property is encumbered by mortgages in favor of ATK Lender LLC (“ATK”). [ATK is a New York LLC whose manager is Julia Yakovleva.](#)

[West 16<sup>th</sup> RT LLC owns a 1% interest in the Debtor. West 16<sup>th</sup> Preferred B LLC owns a 99% interest in the Debtor. West 16<sup>th</sup> Street RT LLC is 100% owned by Raphael Toledano. The Debtor is managed by Richard Cohn. Mr. Toledano is not involved in any management decisions with respect to the Debtor.](#)

### **The Tenants in Common Agreement**

The Debtor and the TICs entered into a Tenants in Common Agreement dated April 22, 2015 (the “TIC Agreement”). Pursuant to the TIC Agreement, and Section 363(i) of the Bankruptcy Code, the TICs hold a right of first refusal with respect to any sale of the Property.

Given that the Debtor is not a 100% owner of the Property, and the Property is owned collectively pursuant to the TIC Agreement, the TICs opposed any sale of the entire Property pursuant to Section 363(h) of the Bankruptcy Code unless the TICs claims are properly addressed in the Plan. Therefore, following extensive negotiations, and with the consent of the TICs, the Debtor's Plan provides for a sale of its interest in the Property as well as the TICs interests in the Property by way of a sale of the Property in the Debtor's chapter 11 case. Pursuant to 11 U.S.C. § 363(j), the Debtor is required to, and therefore must pay to the TICs the proceeds of the sale of the Property allocable to the TICs interests, less the costs and expenses of such sale, according to the interests of such co-owners and of the Debtor. The TICs have agreed to subordinate their interests to ATK and to reduce their monetary claims allocable to their percentage ownership interest and accept the aggregate amount of \$4,000,000 from the Sale Proceeds in full and final satisfaction of their claims to the Property.

As a result, the Plan provides for the Debtor to sell the Property and make a \$4,000,000 distribution on account of the TICs Claims under section 363(h) and (j) of the Bankruptcy Code from the Sale Proceeds.

The TICs payment will discharge the claims and interests of the Holders of the TIC monetary claims allocable to their percentage ownership interest in full, and as part of that discharge, the TICs have agreed not to exercise their right of first refusal with respect to the Property pursuant to the TIC Agreement and Section 363(i) of the Bankruptcy Code and such rights shall be deemed terminated and extinguished pursuant to the Plan upon confirmation.

## **THE PLAN**

The Plan provides for a sale of the Property pursuant to bidding procedures as approved by the Court, (the "Bid Procedures"). Currently, the Debtor has entered into a "stalking horse" contract (the "Stalking Horse Contract") with AAK Acquisitions LLC ("AAK") for their purchase of the Property for \$49,309,007.32. The Stalking Horse Contract provides for an assumption of ATK's mortgages in the amount of \$43,762,007.32 and cash in the amount of \$5,547,000.00, which shall be used to pay Administrative Claims, including claims of professionals, real estate taxes, Other Secured Claims, the TIC Claims and to establish a \$50,000 fund for pro rata distribution to holders of Unsecured Claims (the "Unsecured Creditors Fund"). A copy of the proposed form of Bid Procedures and Stalking Horse Contract will be attached to the Debtor's 363 motion seeking approval of the proposed bidding procedures and a sale of the Property to Purchaser, subject to higher and better offers (the "Sale Motion"). Pursuant to the Bid Procedures, the Property will be marketed by publication of notice of the auction in the NY Real Estate Journal. In the event a higher or better offer is submitted in accordance with the Bid Procedures, the auction will proceed and the Property sold to the person or entity making the highest or best offer for the Property at the auction. Thereafter the Sale Proceeds will be distributed to creditors pursuant to the Plan. In the event that no bids for the Property are received and/or no higher or better offers obtained, the Property will be sold to AAK and the \$5,547,000 cash component of the purchase price set forth in the Stalking Horse Contract will be used to fund payments under the Plan.

With respect to the relationship between ATK and AAK, Debtor is advised that AAK is 100% owned by Mercury US Trust 2014. The beneficiaries of Mercury US Trust 2014 are the children of the individual who controls ATK.

The Plan complies with section 1129(b) of the Bankruptcy Code, in that the Property will be sold and the Sale Proceeds distributed to the TICs and to the Debtor’s creditors in the order of Bankruptcy Code priorities.

The table below provides a summary of the classification and treatment of Claims under the Plan. The figures set forth in the table below represent the Debtor’s best estimate of the aggregate amount of Claims in the Case. These estimates are based on an analysis of the Schedules filed by the Debtor, the Proofs of Claims filed by Creditors, and certain other documents of public record. There can be no assurance that Claims will be allowed by the Bankruptcy Court in the amounts set forth below. The aggregate amount of Allowed Claims may be significantly lowered from the amounts set forth below as the result of objections to claims which may be brought by the Debtor or through stipulations which may be negotiated with various creditors.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
\$0.00	Administrative Claims (excluding Claims for professional compensation and reimbursement and Administrative Tax Claims, but including post-petition ordinary course liabilities)	<b>Non-Voting.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, each Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full on (i) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law, or (z) three business days after such Claim becomes an Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Debtor and the Holder of such Claim; <i>provided, however,</i> that any Administrative Claim incurred by the Debtor in the ordinary course of its business shall be paid in full or performed by the Debtor in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.

<sup>1</sup> Amounts set forth in this chart are not and should not be deemed admissions by the Debtor as to validity or amount of any scheduled or filed claim. Debtor reserves all rights to object to any scheduled or filed claim in the Debtor’s case. The Debtor is in the process of reviewing all claims and determining whether any objections should be filed.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
\$ 0.00	Administrative Tax Claims	<b>Non-Voting.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, all allowed Administrative Tax Claims shall be paid, in Cash, in full either (i) on or prior to the Closing, or (ii) upon such other terms as may be agreed to, in writing, between the Debtor and such Governmental Units on or before the Confirmation Date.
As of November 30, 2017, Debtor's counsel is owed approximately \$98,053.31 fees and expenses	Administrative Claims for Professional Compensation and Reimbursement <sup>2</sup>	<b>Non-Voting.</b> Each Person seeking an award by the Bankruptcy Court of Professional Fees shall file its final application for approval of its Professional Fees no later than 60 days after the Administrative Bar Date. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim.
\$35,897.00	Priority Tax Claims	<b>Non-Voting.</b> Subject to the provisions of article 7 of the Plan with respect to Disputed Claims, in full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtor and such Governmental Units, all Allowed Priority Tax Claims shall be paid by the Debtor in Cash in full, together with interest on or prior to the Closing Date.
Class 1 \$40,890,210.95 per filed claim and cash collateral stipulation	Allowed ATK First Mortgage Claim	<b>Impaired.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, the ATK First Mortgage shall be assumed by AAK pursuant to the Stalking Horse Contract at the Closing; or, if the Property is sold at auction, in full satisfaction, settlement, release and discharge of the ATK First Mortgage Claim, ATK Lender shall receive Cash in the amount of its Allowed ATK First Mortgage Claim from the Sale Proceeds at the Closing. The ATK First Mortgage Claim shall be Allowed in an amount not less

<sup>2</sup> Any agreement with respect to the waiver and/or modification of fees will be disclosed to the Court and the Office of the United States Trustee.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
		than \$40,890,210.95.
Class 2 \$2,871,796.37 per filed claim and cash collateral stipulation	Allowed ATK Second Mortgage Claim	<b>Impaired.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, the ATK Second Mortgage shall be assumed by AAK pursuant to the Stalking Horse Contract at the Closing; or, if the Property is sold at auction, in full satisfaction, settlement, release and discharge of the ATK Second Mortgage Claim, ATK Lender shall receive Cash in the amount of its Allowed ATK Second Mortgage Claim from the Sale Proceeds at the Closing. The ATK Second Mortgage Claim shall be Allowed in an amount not less than \$2,871,796.37.
Class 3 Estimated to be \$200,000	New York City Real Estate Tax Claim	<b>Unimpaired.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, in full satisfaction, settlement, release and discharge of the New York City Real Estate Tax Claim, New York City Department of Finance shall receive Cash in the amount of its Allowed New York City Real Estate Tax Claim from the Sale Proceeds at the Closing.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
<p>Class 4 Filed in the amount of \$862,000 by CDP General Contractors.</p> <p>Claimant has agreed to accept an amount not more than \$450,000 in full and final resolution of its filed claim no. 22. The claim shall remain subject to adjudication of a formal claim objection if not resolved consensually.</p>	<p>Other Secured Claims: mechanics liens</p>	<p><b>Impaired.</b> Subject to the provisions of Article 7 of the Plan, in full satisfaction, settlement, release and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive at the Closing, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim from the Sale Proceeds, (ii) such other treatment as to which the Debtor and each Holder of such Other Secured Claim shall have agreed upon in writing, or (iii) such treatment as determined by Final Order of the Court if the Claim is not resolved consensually.</p>
<p>Class 5 \$4,000,000<sup>3</sup></p> <p>The TIC's consist of: 367 Trans Holdings LLC, Druckner 2 Holdings LLC, Drig Cap Holdings LLC and Sonlow LLC, who are</p>	<p>Tenants in Common Claims</p>	<p><b>Impaired.</b> Subject to the provisions of Article 7 of the Plan, in full satisfaction, settlement, release and discharge of the Tenants in Common Claims, and in exchange for the Tenants in Common relinquishing their fee interests in the Property and agreeing not to exercise their rights of first refusal with regard to the Property pursuant to the TIC Agreement and 11 U.S.C. § 363(i), the Tenants in Common shall receive the sum of \$4,000,000 from the Sale Proceeds. Any right of first refusal shall be deemed terminated and extinguished upon Confirmation. By virtue of the sale of the Property under the Plan, the TICs will no longer own</p>

<sup>3</sup> The TIC's have a separate agreement with A&N Funding Co. LLC, Abraham Lokshin and Naum Lokshin (the "Lokshin Group") wherein the TIC's have agreed to pay the Lokshin Group a portion of the \$4,000,000 of Sale Proceeds designated to settle the TICs Claims in order to resolve certain disputes between the TIC's and the Lokshin Group. A&N Funding Co. LLC is a preferred member of the Debtor.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
collectively represented by Richard Lowinger.		any interest in the Property after the Closing.
Class 6 Approximately \$102,402.66 in scheduled/filed claims, including various claims filed by tenants at the Property.	Unsecured Claims	<p><b>Impaired.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, in full satisfaction, settlement, release and discharge of the Class 3 Unsecured Claims, the Holders of Allowed Class 3 Unsecured Claims against the Debtor shall receive their pro-rata share of the \$50,000 Unsecured Creditors Fund, or, if the Property is sold at auction, their pro-rata share of any Sale Proceeds remaining after payment is made in full to satisfy Allowed Claims in the following order: Administrative Claims, Priority Tax Claims and Claims in Classes 1, 2, 3, 4 and 5.</p> <p><a href="#"><u>In exchange for its treatment in Classes 1 and 2, ATK will waive its right to participate in any unsecured creditor distribution.</u></a></p>
Class 7	Interests	<p><b>Impaired.</b> After all payments are made under the Plan, any remaining Cash, including any Sale Proceeds, shall be distributed to the Holders of Interests. Thereafter, all interests in the Debtor will be canceled and of no further force and effect.</p>

**CONFIRMATION OF THE PLAN**

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan, on \_\_\_\_\_, **2018 at 10:00 a.m.**, Eastern Standard Time, in the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601. Objections, if any, to Confirmation of the Plan shall be filed and served on or before \_\_\_\_\_, **2018**.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Debtor intends to seek Confirmation of the Plan at the Confirmation Hearing. **The Debtor believes that the Plan**

**satisfies all applicable requirements of section 1129(a) and section 1129(b) of the Bankruptcy Code.** See “ACCEPTANCE AND CONFIRMATION -- Requirements for Confirmation” for a description of such requirements.

In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims of such Class that have timely and properly voted to accept or reject this Plan. Claims in Class 3 are unimpaired and under Section 1126(f) of the Bankruptcy Code are conclusively presumed to have accepted the Plan. Claims in Classes 1, 2, 4, 5 and 6 and Interests in Class 7 are impaired by this Plan and their votes to accept or reject the Plan are being solicited.

If all Classes have either accepted the Plan, been deemed to have accepted the Plan or are not entitled to vote, the Debtor shall request the Bankruptcy Court to confirm the Plan under Section 1129(a) of the Bankruptcy Code. In the event any Impaired Class fails to accept this Plan by the requisite statutory majorities, the Debtor reserves the right (i) to confirm this Plan by a “cram-down” of such non-accepting Class pursuant to Section 1129(b) of the Bankruptcy Code and (ii) to propose any modifications to this Plan and to confirm this Plan as modified, without re-solicitation, to the extent permitted by the Bankruptcy Code.

With the entry of the Confirmation Order, pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise provided in the Plan, the distributions provided for in the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims against the Debtor or any of its assets or properties, including any Claim accruing after the Petition Date and before the Confirmation Date. As of the Closing, all holders of Claims shall be precluded from asserting any Claim against the Debtor or its assets or properties or other interests in the Debtor based on any transaction or other activity of any kind that occurred before the Confirmation Date except as otherwise provided in the Plan. Confirmation makes the Plan binding upon the Debtor, all Creditors and other parties regardless of whether they have accepted the Plan.

#### **VOTING INSTRUCTIONS — SUMMARY**

The following discussion summarizes more detailed voting instructions set forth in the section of this Disclosure Statement entitled “VOTING INSTRUCTIONS.” If you have any questions regarding the timing or manner of casting your ballot, please refer to the “VOTING INSTRUCTIONS” section of this Disclosure Statement and the instructions contained on the ballot that you received with this Disclosure Statement.

**General.** The Debtor has sent to all of its known Creditors and Interest Holders who are in Classes impaired under the Plan a ballot with voting instructions and a copy of this Disclosure Statement. Creditors and Interest Holders may refer to the above chart to determine whether they are impaired and entitled to vote on the Plan. Creditors and Interest Holders should

read the ballot carefully and follow the voting instructions. Creditors and Interest Holders should only use the official ballot that accompanies this Disclosure Statement.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by (a) the Holders of two-thirds in amount and more than one-half in number of claims in each class who actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if (i) the Bankruptcy Court finds that the Plan accords fair and equitable treatment, and does not discriminate unfairly, with respect to the class rejecting it and (ii) at least one impaired class of creditors excluding insiders has accepted the Plan. See “REQUIREMENTS FOR CONFIRMATION” and “EFFECT OF CONFIRMATION.”

**As the preceding paragraph makes evident, a successful confirmation of the Plan depends upon the receipt of a sufficient number of votes in support of the Plan. YOUR VOTE IS THEREFORE EXTREMELY IMPORTANT. Creditors should exercise their right to vote to accept or reject the Plan.**

#### **NOTICE TO HOLDERS OF CLAIMS AND INTERESTS**

This Disclosure Statement and the accompanying ballot or notification of non-voting status are being furnished by the Debtor to the Debtor’s known Creditors and Interest Holders pursuant to section 1125(b) of the Bankruptcy Code. A copy of the Plan is included in this package and is incorporated herein by reference.

**THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION. PLEASE READ THIS DOCUMENT WITH CARE.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTOR. THE STATEMENTS AND OPINIONS SET FORTH HEREIN ARE THOSE OF THE DEBTOR, AND NO OTHER PARTY HAS ANY RESPONSIBILITY WITH RESPECT THERETO.**

**THE PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY ANY BANKRUPTCY COURT, THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE FAIRNESS OR MERITS OF THE PLAN OR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

The historical information concerning the Debtor has been prepared using the Debtor’s books and records and certain filings made with the Bankruptcy Court. The estimates of Claims set forth herein may vary from the final amounts of Claims allowed by the Bankruptcy Court. While every effort has been made to ensure the accuracy of all such information, except

as noted in the Disclosure Statement, the information presented herein is unaudited and has not been examined, reviewed or compiled by the Debtor's independent public accountants.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, and may contain descriptions of certain other related documents, if any. While the Debtor believes that these summaries are fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents. Reference is made to the Plan and the documents referred to herein and therein, if any, for a complete statement of the terms and provisions thereof. In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan shall be controlling. In reviewing the Plan and this Disclosure Statement, the reader should give special attention to "RISK FACTORS." No statements or information concerning the Debtor, the Property, or the Debtor's other assets, results of business operations or financial condition are authorized by the Debtor other than as set forth in this Disclosure Statement and the exhibits hereto (including the Plan).

Notwithstanding any provision of the Plan to the contrary, definitions and descriptions contained herein respecting pre-Petition Date documents, agreements, or claims are provided solely for the purpose of identification and classification thereof and do not constitute an admission by the Debtor of the existence, validity, allowance, or amount of any such claim, document or agreement. The Debtor expressly reserves the right to challenge the existence, validity, allowance, or amount of any such claim, document or agreement.

This Disclosure Statement is intended for the sole use of Holders of Claims and Interests to make an informed decision about the Plan. Each Holder of a Claim and Interest should review this Disclosure Statement, the Plan and all exhibits hereto. Holders of Claims and Interest are urged to consult with their own legal and financial advisors.

No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. No person has been authorized to use or promulgate any information concerning the Debtor or its business or the Plan, other than the information contained in this Disclosure Statement and the exhibits hereto. You should not rely on any information relating to the Debtor or its business or the Plan other than that contained in this Disclosure Statement and the exhibits hereto.

#### **RECOMMENDATION**

In the Debtor's opinion, the treatment of Creditors under the Plan provides a greater recovery than is likely to be achieved under any other alternatives, including liquidation under Chapter 7. See "ALTERNATIVES TO THE PLAN." In particular, the Debtor believes that in a Chapter 7 liquidation: (1) administrative costs will be greater, (2) the TICS may not agree to accept less than the full amount of the Sale Proceeds allocable to their collective interests in the Property; (3) the TICs may withdraw their consent to a sale of the entire Property; and (4) only to the extent the Property was sold for a purchase price far in excess of the ATK

First Mortgage Claim and ATK Second Mortgage Claim, would Unsecured Creditors receive any distribution on account of their Allowed Claims. Further, the Debtor believes that the value of any distribution in a chapter 7 liquidation case will be discounted by the litigation and delays which will precede any such distribution.

**THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND INTEREST HOLDERS.**

**EVENTS LEADING TO CHAPTER 11**

Prior to the Petition Date, the Debtor and the TICs defaulted on their mortgage obligations resulting in the commencement of an action to foreclose the senior mortgage, by ATK's predecessor in interest, 125 West 16<sup>th</sup> Street LLC, in the Supreme Court, State of New York, County of New York under Index No. 850048/2017 (the "Foreclosure Action"). In the Foreclosure Action, a receiver was appointed but had not yet qualified as of the Petition Date. In order to preserve the Debtor's ownership interest in the Property for the benefit of its creditors and to preserve priorities of creditors, the Debtor commenced this chapter 11 case on September 28, 2017 with the consent of the TICs.

**SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York. The following discussion is intended to highlight some of the more significant events which have occurred during the pendency of the Debtor's case.

**CASH COLLATERAL**

The Debtor and ATK successfully negotiated a final cash collateral stipulation authorizing the Debtor's use of cash collateral which was noticed for presentment and which stipulation, as modified, was "so ordered" by the Court on December 5, 2017. The Court made various modifications to the cash collateral stipulation including that the Debtor's stipulations with respect to the ATK liens are not findings by the Court; that until the conclusion of the case, any creditors committee or other party given standing by the Court to act on behalf of the Debtor's estate shall have the right to challenge the Debtor's stipulations and the value of ATK's collateral; and that the adequate protection liens are subject to ATK's liens and any other liens or interests not junior or subject to ATK's liens.

Debtor's current counsel also served as counsel to the Debtor in its initial chapter 11 bankruptcy case, Case No. 15-10515 (JLG) which, pursuant to a plan confirmed, the Debtor along with the TIC's acquired the Property. Debtor's counsel attended the closing at which time ATK's predecessor in interest funded the Debtor's acquisition of the Property. The title company accepted their mortgage documents for recording which documents were properly recorded according to ACRIS records. The Debtor and the TIC's defaulted on the loan

obligations by failing to pay interest charges from July 2016 and thereafter, failing to pay property taxes and failing to pay the loans in full as of the maturity date, which was November 1, 2016. ATK is the successor in interest to the original lender.

An objection to the proposed cash collateral stipulation was filed by Richard Katz, a tenant at the Property pursuant to what Katz identifies as a “life leasehold estate”. Katz filed a proof of claim asserting monetary claims including but not limited to claims for Debtor’s purported breach of the warranty of habitability, purported failure to adequately maintain the Property and damages arising out of harm to Katz’s ability to sublet his apartment. Katz’s objection to the proposed cash collateral stipulation related to his position that the Katz lease is senior to the ATK first and second liens. Debtor disagrees that the Katz lease primes the lender’s liens.

### **RETENTION OF PROFESSIONALS**

Section 327(a) of the Bankruptcy Code provides that a debtor, with the court’s approval, may employ one or more accountants or other professional persons that do not hold or represent an interest adverse to the estate and that are disinterested persons to represent or assist the debtor in carrying out its duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

The Debtor is seeking authority from the Bankruptcy Court to retain the law firm of Robinson Brog Leinwand Greene Genovese & Gluck P.C. as its counsel, effective as of the Petition Date.

### **BAR DATE**

In accordance with the requirements of section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtor has filed its Schedules of Assets and Liabilities, including schedules of all of its known creditors and the amounts and priorities of the Claims the Debtor believes are owed to such creditors. Pursuant to section 501 of the Bankruptcy Code, any creditor may file a Proof of Claim and, unless disputed, such filed Proof of Claim supersedes the amount and priority set forth in the Debtor’s schedules. November 15, 2017 was set as the last day for creditors to file Proofs of Claim in the Debtor’s Chapter 11 case. A total of 26 claims were filed in the Debtor’s case.

There can be no assurance that the Allowed Claims as determined by the Bankruptcy Court will be in the amounts and priorities stated in the Schedules filed by the Debtor or the Proofs of Claim filed by the Creditors.

### **OPERATING REPORTS**

Pursuant to the requirements of the Office of the United States Trustee for the Southern District of New York, the Debtor will file monthly operating reports with the Bankruptcy Court. Copies of such reports may be obtained (i) from the Bankruptcy Court during

normal business hours, (ii) upon written request made to counsel for the Debtor, or (iii) from the Bankruptcy Court's Electronic Case Filing System ("ECF")<sup>4</sup> which may be accessed at the Bankruptcy Court's Internet website at www.nysb.uscourts.gov.

### **THE STALKING HORSE CONTRACT**

Prior to the Petition Date, the Debtor entered into extensive negotiations with the TICs with respect to a sale of the entire Property. With authority and input from the TICs, Debtor negotiated the Stalking Horse Contract pursuant to which AAK will purchase the Property.

### **PRE-PETITION MARKETING AND THE BROKER**

The Property was vigorously marketed pre-petition by Rosewood Realty Group, Inc. and Shaul Greenwald. Rosewood Realty Group, Inc., was retained pursuant to an exclusive right to sell agreement dated December 7, 2016 (the "Broker Agreement"), which Broker Agreement expired on or about March 7, 2017. The Broker Agreement provided that Rosewood would retain its entitlement to a commission under certain circumstances for an additional 6 months from the expiration or termination of the Broker Agreement. This time period expired on or about September 7, 2016, prior to the parties executing the Stalking Horse Contract. To the extent an application for the retention of a broker is required in connection with marketing and/or with respect to the payment of any commission due a broker for the sale of the Property, the application will be presented to the Court for approval and any commission shall be paid from the Sale Proceeds.

Counsel to the Debtor communicated with Rosewood prior to the parties executing the Stalking Horse Contract at which time counsel was advised by Rosewood that its estimate of the best offer the Property would obtain was \$40,500,000, but that any such offer would require a closing date be scheduled no earlier than 90-120 days from Bankruptcy Court approval of any such sale. It is the Debtor's position that the Stalking Horse Contract is the best offer available for the Property, which provides for a shorter closing period and funding that other buyers were not prepared to offer.

[Aaron Jungreis is the President of Rosewood Realty Group. Mr. Jungreis is an uncle, by marriage, of Raphael Toledano, the 100% owner of West 16<sup>th</sup> RT LLC, the 1% owner of the Debtor. Debtor is not aware of any relationship between Mr. Jungreis, Rosewood Realty Group and AAK or ATK.](#)

### **THE MANAGEMENT AGREEMENT**

The Stalking Horse Contract includes a provision that requires a third party management company to take over management responsibilities at the Property. An application seeking

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<sup>4</sup> Filing documents on the ECF requires a password which an attorney may obtain by contacting the Bankruptcy Court's technical assistance department, Monday through Friday, 9:00 a.m. to 4:00 p.m.

approval of the Management Agreement with Piermont Management LLC was noticed and has been approved by the Court by orders entered on December 4, 2017.

### **SUMMARY OF THE PLAN**

The following summary of the terms of the Plan is qualified in its entirety by reference to the provisions of the Plan, a copy of which is filed with the Clerk of the Bankruptcy Court and which is incorporated herein by reference.

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

Classification of claims is governed, in part, by sections 1122 and 1123(a) of the Bankruptcy Code. Section 1123(a) requires that a plan designate classes of claims, requires that the plan specify the treatment of any impaired class of claims, and requires that the plan provide the same treatment for each claim of a particular class, unless the holder of a claim receiving less favorable treatment consents to such treatment. 11 U.S.C. §1123(a)(1), (3) and (4). Section 1122(a) of the Bankruptcy Code provides, subject to an exception for administrative convenience, that “a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.”

Article 3 of the Plan classifies the various Claims against and Interests in the Debtor into six (6) classes of Claims and one (1) class of Interests:

- Class 1 – ATK First Mortgage Claim
- Class 2 – ATK Second Mortgage Claim
- Class 3 – New York City Real Estate Tax Claim
- Class 4 – Other Secured Claims: Mechanics Liens
- Class 5 – Tenants in Common Claims
- Class 6 – Unsecured Claims
- Class 7 – Interests

As set forth in Article 2 of the Plan, pursuant to section 1123(a)(1) of the Bankruptcy Code, certain Administrative Claims against the Debtor have not been classified. See “SUMMARY OF THE PLAN -- Treatment of Non-Classified Claims.”

### **TREATMENT OF CLAIMS CLASSIFIED UNDER THE PLAN**

Article 4 of the Plan provides for the treatment of **Unimpaired Claims** classified in Article 3 of the Plan as follows:

**Class 3 – New York City Real Estate Tax Claim.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, in full satisfaction, settlement, release and discharge of the New York City Real Estate Tax Claim, New York City Department of Finance

shall receive Cash in the amount of its Allowed New York City Real Estate Tax Claim from the Sale Proceeds at the Closing.

Article 4 of the Plan provides for the treatment of **Impaired Claims** classified in Article 3 of the Plan as follows:

**Class 1 – ATK First Mortgage Claim.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, the ATK First Mortgage shall be assumed by AAK pursuant to the Stalking Horse Contract at the Closing; or, if the Property is sold at auction, in full satisfaction, settlement, release and discharge of the ATK First Mortgage Claim, ATK Lender shall receive Cash in the amount of its Allowed ATK First Mortgage Claim from the Sale Proceeds at the Closing. The ATK First Mortgage Claim shall be Allowed in an amount not less than \$40,890,210.95.

**Class 2 – ATK Second Mortgage Claim.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, the ATK Second Mortgage shall be assumed by AAK pursuant to the Stalking Horse Contract at the Closing; or, if the Property is sold at auction, in full satisfaction, settlement, release and discharge of the ATK Second Mortgage Claim, ATK Lender shall receive Cash in the amount of its Allowed ATK Second Mortgage Claim from the Sale Proceeds at the Closing. The ATK Second Mortgage Claim shall be Allowed in an amount not less than \$2,871,796.37.

**Class 4 – Other Secured Claims.** Subject to the provisions of Article 7 of the Plan, in full satisfaction, settlement, release and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive at the Closing, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim from the Sale Proceeds, (ii) such other treatment as to which the Debtor and each Holder of such Other Secured Claim shall have agreed upon in writing, or (iii) such treatment as determined by Final Order of the Court if the Claim is not resolved consensually.

**Class 5 – Tenants in Common Claims.** Subject to the provisions of Article 7 of the Plan, in full satisfaction, settlement, release and discharge of the Tenants in Common Claims, and in exchange for the Tenants in Common relinquishing their fee interests in the Property and agreeing not to exercise their rights of first refusal with regard to the Property pursuant to the TIC Agreement and 11 U.S.C. § 363(i), the Tenants in Common shall receive the sum of \$4,000,000 from the Sale Proceeds. Any right of first refusal shall be deemed terminated and extinguished upon Confirmation. By virtue of the sale of the Property under the Plan, the TICs will no longer own any interest in the Property after the Closing.

**Class 6 – Unsecured Claims.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, in full satisfaction, settlement, release and discharge of the Class 3 Unsecured Claims, the Holders of Allowed Class 3 Unsecured Claims against the Debtor shall receive their pro-rata share of the \$50,000 Unsecured Creditors Fund, or, if the Property is sold at auction,

their pro-rata share of any Sale Proceeds remaining after payment is made in full to satisfy Allowed Claims in the following order: Administrative Claims, Priority Tax Claims and Claims in Classes 1, 2, 3, 4 and 5. In exchange for its treatment in Classes 1 and 2, ATK will waive its right to participate in any unsecured creditor distribution.

**Class 7 - Interests.** After all payments are made under the Plan, any remaining Cash, including any Sale Proceeds, shall be distributed to the Holders of Interests. Thereafter, all interests in the Debtor will be canceled and of no further force and effect.

#### **TREATMENT OF NON-CLASSIFIED CLAIMS**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims entitled to priority treatment under section 507(a)(1) of the Bankruptcy Code or Claims of Governmental Units entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code. Article 2 of the Plan provides for the manner of treatment of such non-classified Claims.

**Administrative Claims.** Subject to the provisions of article 7 of the Plan with respect to Disputed Claims, each Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full on (i) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law, or (z) three business days after such Claim becomes an Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Debtor and the Holder of such Claim; *provided, however*, that any Administrative Claim incurred by the Debtor in the ordinary course of its business shall be paid in full or performed by the Debtor in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.

Article 2 of the Plan sets a final date for the filing of Administrative Claims against the Debtor. The Administrative Bar Date is the date of the Closing. The Debtor shall deliver a notice of such bar date to all parties-in-interest simultaneous with the service of the Plan, the Disclosure Statement and appropriate Ballot or Notification of Non-Voting Status.

**Professionals' Fees.** Section 330 of the Bankruptcy Code sets the standard for the determination by the Bankruptcy Court of the appropriateness of fees to be awarded to Professionals retained by a Debtor in a case under the Bankruptcy Code. In general, "bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable service other than in a case under title 11." 124 Cong. Rec. H11091 (Daily ed. Sept. 28, 1978).

With respect to Professionals' Fees, the Plan provides that, subject to the approval of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the

Bankruptcy Code, the Debtor shall pay the Administrative Claims held by Bankruptcy Professionals as follows:

No later than three days prior to the Confirmation Date, each Professional shall provide the Debtor with an estimate of the total amount of compensation and expenses for which such Professional expects to seek final compensation pursuant to section 330 of the Bankruptcy Code. Such estimates shall include estimated sums for the preparation and prosecution of any application for final compensation. At the Closing, the Disbursing Agent shall segregate sufficient cash to pay all such estimated compensation and expenses in full unless otherwise agreed to by the Debtor and such Professionals; *provided, however*, that the failure of a Professional to provide such an estimate shall relieve the Debtor of its obligation to segregate funds for the payment therefore, but shall not relieve the Debtor of the obligation with respect to any allowed compensation and expense reimbursement.

All Professionals shall file final applications for approval of compensation and reimbursement of reasonable and necessary expenses pursuant to section 330 of the Bankruptcy Code no later than 60 days after the Administrative Bar Date. Any such application timely filed shall be deemed to be an Administrative Claim, subject to the entry of a Final Order by the Bankruptcy Court approving such application. Objections to any Professional's application for compensation or reimbursement must be timely filed and served upon such Professional, and upon the Debtor in accordance with the Bankruptcy Rules or as may be agreed between the Professional and the objecting party. Any such objection not timely filed and served shall be deemed to have been waived. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim

**Administrative Tax Claims.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, all allowed Administrative Tax Claims shall be paid, in Cash, in full either (i) on or prior to the Closing, or (ii) upon such other terms as may be agreed to, in writing, between the Debtor and such Governmental Units on or before the Confirmation Date.

**Priority Tax Claims.** Subject to the provisions of article 7 of the Plan with respect to Disputed Claims, in full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtor and such Governmental Units, all Allowed Priority Tax Claims shall be paid by the Debtor in Cash in full, together with interest on or prior to the Closing Date.

**Bankruptcy Fees.** All fees and charges assessed against the Debtor under section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Debtor, in full, in Cash when due, until the closing, conversion or dismissal of this Case, whichever is earlier.

## **DISPUTED CLAIMS AND INTERESTS**

Except as otherwise explicitly provided in the Plan, nothing shall effect, diminish or impair the Debtor's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, legal and equitable defenses to setoffs or recoupment against Unimpaired Claims, or recharacterization of Unimpaired Claims.

Article 7 of the Plan contains a mechanism for resolving disputes concerning the amount of certain Claims or Interests asserted against the Debtor by any Entity.

**Time to Object.** Unless otherwise ordered by the Bankruptcy Court for cause, the Debtor may file and serve any objection to any Claim at any time, but in no event after the later to occur of (i) 60 days after the Effective Date, or (ii) 60 days after the date proof of such Claim or a request for payment of such Claim is filed.

## **DISTRIBUTIONS UNDER THE PLAN**

Article 7 contains provisions governing the making of distributions on account of Claims. In general, any payments, distributions or other performance to be made pursuant to the Plan on account of any Allowed Claim shall be deemed to be timely made if made on the later of (i) the Closing or (ii) the expiration of any applicable objection deadline with respect to Disputed Claims or (iii) such other times provided in the Plan. All Cash payments to be made by the Debtor pursuant to the Plan shall be made by check drawn on a domestic bank. To the extent that any distribution is not paid on the Closing, funds in an amount necessary to satisfy any such unpaid claim shall be maintained in an escrow account for distribution thereafter.

**Disbursing Agent.** Robinson Brog Leinwand Greene Genovese & Gluck P.C. shall be the Disbursing Agent and shall make distributions under the Plan. Other than payments to be made at Closing, the Disbursing Agent shall distribute all Cash or other property to be distributed under the Plan and may employ or contract such third parties as may be necessary to assist in or perform the distribution of Cash or other property under the Plan. Pending the final distribution of all sums distributable under the terms of the Plan (including the delivery to the Debtor of unclaimed distributions pursuant to section 7.14 of the Plan), the Disbursing Agent shall have full authority to sign checks on any bank account of the Debtor to the extent necessary to make any payment or distribution contemplated by the Plan.

**Timing of Distributions Under the Plan.** Subject to sections 7.6 and 7.8 of the Plan, any payments, distributions or other performance to be made pursuant to the Plan on account of any Disputed Claim, shall be deemed to be timely made if made on the later of (i) the Closing, (ii) the expiration of any applicable objection deadline with respect to such Disputed Claim or (iii) such other times provided in the Plan.

**Method of Payment.** Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Plan shall be made by wire transfer of check drawn on a domestic bank.

**Claims Objection Deadline.** Unless otherwise ordered by the Bankruptcy Court, the Debtor may file and serve any objection to any Claim at any time, but in no event after the later to occur of (i) 60 days after the Effective Date, or (ii) 60 days after the date proof of such Claim or a request for payment of such Claim is filed.

**Prosecution of Objections.** After the Confirmation Date, only the Debtor or the Successful Purchaser shall have authority to file, settle, compromise, withdraw or litigate to judgment objections to Disputed Claims. The Debtor may comprise any objections to Disputed Claims without further order of the Court

**No Distribution Pending Allowance.** Notwithstanding any other provision of the Plan, no payment or distribution of any kind shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order.

**Escrow of Cash Distributions.** (a) On any date that distributions are to be made under the terms of the Plan, the Debtor shall make available any and all funds required to be disbursed on that date, and the Disbursing Agent shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, including, but not limited to (i) Disputed Claims that may be entitled to treatment as Administrative Claims or as Priority Non-Tax Claims pursuant to sections 503 and 507 of the Bankruptcy Code, (ii) claims of Governmental Units for any tax, (iii) any disputed Cure Amount, and (iv) any amount due but not payable on the Effective Date on account of Administrative Claims or claims entitled to priority pursuant to section 503 and 507 of the Bankruptcy Code. The Disbursing Agent shall also segregate any interest, dividends or other proceeds of such Cash. Such Cash together with any interest, dividends or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

(b) The Debtor shall have the right to seek an Order of the Bankruptcy Court, after notice and hearing, estimating or limiting the amount of Cash that must be so deposited on account of any Disputed Claim. Any Creditor whose Claim is so estimated shall have no recourse to any assets theretofore distributed on account of any Allowed Claim if the Allowed Claim of that Creditor as determined by Final Order exceeds the amount so deposited. Such Creditor shall have recourse first, to the undistributed assets in the Disputed Claims Reserve (on a Pro Rata basis with other Creditors of the same Class who are similarly situated) that exceed the aggregate amount of all Disputed Claims allowed by Final Order, or not yet resolved, and second any unpaid amount shall be an obligation of the Debtor.

**Distribution After Allowance.** Within 15 days after the entry of a Final Order resolving an objection to a Disputed Claim, the Disbursing Agent shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a Holder is then entitled with respect to any formerly Disputed Claim that has become an Allowed Claim.

**Investment of Segregated Cash.** To the extent practicable, the Disbursing Agent may invest any Cash segregated on account of a Disputed Claim, disputed Interest, undeliverable distribution, or any proceeds thereof (i) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by section 345 of the Bankruptcy Code; *provided, however*, that the Disbursing Agent shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash or proceeds. Segregated Cash shall be maintained in an authorized depository.

**Distribution After Disallowance.** Subject to section 7.7 of the Plan, the Cash segregated on account of Disputed Claims, including the allocable portion of the net return yielded from any investment thereof, if any, remaining after all Disputed Claims have been resolved by Final Order shall revert to the Debtor.

**Surrender of Instruments; Execution of Satisfactions and Releases.** (a) Notwithstanding any other provision of the Plan, no Creditor that holds a note or other instrument evidencing such Creditor's Claim may receive any distribution with respect to such Claim unless and until the original note or other original instrument evidencing such Claim shall have been validly surrendered to the Disbursing Agent at the sole cost and expense of such Creditor.

(b) Any Cash or property to be distributed pursuant to the Plan on account of any such Claim shall, pending surrender, be treated as an undeliverable distribution pursuant to section 7.13 of the Plan.

(c) In the event any Creditor is unable to surrender a note or other instrument evidencing a Claim against the Debtor that has been destroyed, lost or stolen, such entity may receive a distribution with respect to such Claim by presenting to the Disbursing Agent, in a form acceptable to the Disbursing Agent: (i) proof of such entity's title to such Claim; (ii) an affidavit to the effect that the same has been lost and after diligent search cannot be located; and (iii) such indemnification as may be required by the Disbursing Agent and all other entities deemed appropriate by the Disbursing Agent from any loss, action, suit or any claim whatsoever which may be made as a result of such entity's receipt of a distribution under the Plan.

(d) All questions as to the validity, form or eligibility of any note or other instrument evidencing a Claim so surrendered shall be resolved by Final Order of the Bankruptcy Court. The Disbursing Agent shall not be under any duty to give notification of defects in such tender and shall not incur liability for failure to give notification of such defects.

**Delivery of Distributions.** Except as provided in sections 7.13, 7.14 and 7.15 of the Plan, distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective Proofs of Claim filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim; or (3) at the address reflected in the Schedules if no Proof of Claim is filed and the Disbursing Agent has not received a written notice of a change of address.

**Undeliverable Distributions.** (a) If the distribution to the Holder of any Claim is returned to the Disbursing Agent as undeliverable, no further distribution shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then current address. Undeliverable distributions shall remain in the possession of the Disbursing Agent until the earlier of (i) such time as a distribution becomes deliverable or (ii) such undeliverable distribution becomes an unclaimed distribution pursuant to section 7.14 of the Plan.

(b) Until such time as an undeliverable distribution becomes an unclaimed distribution pursuant to section 7.14 of the Plan, within 30 days after the end of each calendar quarter following the Effective Date, the Disbursing Agent shall make distributions of all Cash and other property that has become deliverable during the preceding quarter. Each such distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such distribution would have been due had it then been deliverable to the date that such distribution becomes deliverable.

(c) Nothing contained in the Plan shall require the Debtor or Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

**Unclaimed Distributions.** Any Cash or other assets to be distributed under the Plan shall revert to the Post Effective Date Debtor if it is not claimed by the entity entitled thereto before the later of (i) one year after the Closing; (ii) one year after such scheduled payment to such entity under Article 4 of this Plan; or (iii) one year after an Order allowing the Claim of that entity becomes a Final Order, and such entity's claim shall be reduced to zero.

**Set-offs.** The Disbursing Agent may, but shall not be required to, set-off against the distributions to be made pursuant to the Plan the claims, obligations, rights, and liabilities of any nature that the Debtor may hold against the Holder of an Allowed Claim, *provided, however*, that neither the failure to effect such a set-off nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor (or the Disbursing Agent) of any such claims, obligations, rights, causes of action and liabilities that the Debtor or the Disbursing Agent has or may have against such Holder. To the extent the Disbursing Agent elects to effectuate a set-off, the Disbursing Agent shall notify the Holder of the Allowed Claim in writing at least ten (10) days prior to effectuating the set-off. To the extent the Holder of an Allowed Claim objects to the set-off, a written objection shall be provided to the Disbursing Agent no later than three (3) days prior to the set-off date or the objection shall be waived.

## COMPLIANCE WITH TAX REQUIREMENTS

In connection with the Plan, the Disbursing Agent shall comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities and distributions under the Plan shall be subject to such withholding and reporting requirements provided, however, that the transfer of any Cash, property or other interest under the Plan shall not be subject to any federal, state or local tax to the fullest extent provided under section 1146 of the Bankruptcy Code.

## EFFECTIVE DATE

The Effective Date of the Plan shall be the first business day after the Closing has occurred.

## CONDITIONS TO THE EFFECTIVE DATE

The Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied or waived in full:

- (a) The Confirmation Order shall have been entered in this case and no stay or injunction shall be in effect precluding the consummation of the transactions contemplated by this Plan and the Confirmation Order shall not have been modified or vacated on appeal; and
- (b) the Closing has occurred.

## TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**Assumption and Assignment of Executory Contracts and Unexpired Leases.**  
~~Any~~ Upon the Closing Date, the Unexpired Leases for residential units at the Property identified as Unit 114, 115, 125, 127, 131, 132, 134, 140, 142, 147, 151, 155, 156, and 157 shall be assumed by the Debtor and assigned to either AAK or, if the Property is sold at auction, the Successful Purchaser. Debtor and AAK reserve their rights to conduct due diligence regarding the leases for Units 162 and 165 prior to making any determination with respect to their assumption or rejection. All rights and defenses of the tenants and/or occupants of Unit 162 and 165, if any, are reserved, including with respect to the rent-regulated status of their tenancies and any rights or defenses they may have under the Bankruptcy Code. All Executory Contracts or Unexpired Leases that the Debtor has not assumed and assigned to AAK, or, if the Property is sold at auction, to the Successful Purchaser, will be deemed rejected by the Debtor on the Effective Date, and entry of the Confirmation Order by the Bankruptcy Court will constitute approval of such rejection pursuant to sections 365(a) and 1123 of the Bankruptcy Code. The Debtor shall, ~~within a reasonable period of time~~ not less than 14 days prior to the hearing seeking confirmation of the Plan, file a supplement to the Plan, including a schedule listing the ~~Unexpired Leases and~~ Executory Contracts and any additional Unexpired Leases that AAK or, if the Property is sold at auction, the Successful Purchaser, identifies for assumption and

assignment in connection with the sale of the Property and the tenants and/or occupants of Unit 165 may raise objections to the proposed rejection or assumption and assignment to the Stalking Horse Purchaser, or if the Property is sold at auction, the Successful Purchaser, within 7 days of the confirmation hearing.

**Assumption Cure Payments.** On the Closing Date, any and all undisputed Cure Amounts under any Executory Contract or Unexpired Lease that is being assumed pursuant to the Plan shall be paid by rent adjustments to pre-petition arrears, as appropriate. Unless the parties to the contract or lease agree otherwise, any and all disputed Cure Amounts under any Executory Contract or Unexpired Lease that is being assumed pursuant to the Plan shall be paid by rent adjustments to pre-petition arrears, as appropriate, by the later to occur of (i) ten (10) days after the entry of a Final Order determining the amount, if any, of the Debtor's liability with respect thereto and (ii) the Effective Date.

Any non-debtor party to an Executory Contract or Unexpired Lease to be assumed and assigned in connection with the sale of the Property shall have an opportunity to object to the proposed Cure Amount, if any, in connection with the assumption and assignment of the contract or lease. Objections must be in writing and filed and served in accordance with the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases attached to the Debtor's Sale Motion.

**Rejection Claims.** Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be treated as Unsecured Claims.

A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Debtor no later than 30 days after the later of (i) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely filed unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Effective Date. Any such Proof of Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the Debtor, its successors or their respective properties.

#### **IMPLEMENTATION OF THE PLAN**

**Implementation.** The Plan shall be implemented by the sale of the Property pursuant to the Bid Procedures as approved by the Bankruptcy Court. The Confirmation Order shall contain appropriate provisions, consistent with section 1142 of the Bankruptcy Code, directing the Debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer the Property of the Debtor as required by the Plan and to perform any act, including the satisfaction of any lien, that is

necessary for the consummation of the Plan. The Debtor on its own behalf and on behalf of the TICs is authorized to execute all documents required to transfer title to the Property at the Closing, free and clear of all liens, claims, encumbrances and adverse interests other than Permitted Exceptions as defined in the APA, and subject only to the ATK First Mortgage and ATK Second Mortgage in the event AAK is the Successful Purchaser of the Property.

Additionally, the Confirmation Order shall authorize the sale of the Property, free and clear of all liens, claims, and adverse interests, other than Permitted Exceptions as defined in the APA, and subject only to the ATK First Mortgage and ATK Second Mortgage in the event AAK is the Successful Purchaser of the Property, under sections 363, 365, 1123(b)(4), 1129(b)(2)(A)(iii) and 1146(a) of the Bankruptcy Code. The Confirmation Order shall authorize the Debtor to take any and all actions necessary consummate the sale of the Property without further order of the Bankruptcy Court.

**Plan Funding.** The Plan shall be funded by the Sale Proceeds and the Debtor's Available Cash on the Closing, including all amounts available in the Debtor's debtor in possession bank account. These funds shall be utilized to satisfy payments due consistent with the terms of this Plan.

**Vesting of Assets.** Except as otherwise provided in the Plan, at the Closing, the Property and any other purchased assets, shall either vest in AAK as set forth in the Stalking Horse Contract, or, if the Property is sold at auction, the Successful Purchaser, as set forth in the governing APA, free and clear of all Liens, Claims and encumbrances, except, if the Property is sold to AAK, subject to the ATK Lender First Mortgage and the ATK Lender Second Mortgage. At the Closing, any and all Liens, Claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Any remaining property of the Estate shall re-vest in the Post-Effective Date Debtor who may operate, buy, use, acquire, and dispose of the property of the Estate and may settle and compromise any claims, interests and causes of action in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

**Execution of Documents.** (a) Upon entry of the Confirmation Order, the Debtor, and any necessary party thereto, shall execute, release and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan. The Debtor on its own behalf and on behalf of the TICs is authorized to execute all documents required to sell the Property at the Closing.

(b) Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, the Debtor shall be authorized to execute, in the name of any necessary party any estoppel certificate, or any notice of satisfaction, release or discharge of any Lien, Claim or encumbrance (including, any Lien, Claim or encumbrance that is to be released and satisfied upon the Debtor's compliance with the provisions of Article 4 of the Plan) not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation, and the Confirmation Order shall expressly so provide.

**Filing of Documents.** Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

**Distributions.** Except as set forth elsewhere in the Plan, and except for payments to be made at the Closing, all payments required to be made under the Plan shall be made by the Disbursing Agent for disbursement in accordance with the terms of the Plan or any prior order of the Court as may be applicable.

**Preservation of Rights of Action.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into in connection with the Plan, the Debtor shall retain, and in accordance with its determination of the best interest of the estate, may enforce any claims, rights and causes of action (i) arising under sections 510 and 544 through 550 of the Bankruptcy Code or (ii) belonging to the Debtor as of the Petition Date, or the Debtor's Estate, and arising under any provision of state or federal law, or any theory of statutory or common law or equity.

Any recovery received by the Debtor through the prosecution, settlement or collection of any such claim, right or cause of action, shall be retained by the Debtor following the satisfaction of all other Allowed Claims under the terms of the Plan.

Notwithstanding any provision of the Plan to the contrary, definitions and descriptions contained herein respecting pre-Petition Date documents, agreements or claims are provided solely for the purpose of identification and classification thereof and do not constitute an admission by the Debtor of the existence, validity, allowance, or amount of any such claim, document or agreement. The Debtor expressly reserves the right to challenge the existence, validity, allowance, or amount of any such claim, document or agreement.

**Transfer Taxes.** Pursuant to 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 in connection with or in furtherance of the Plan, (including any instrument executed in furtherance of the transactions 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 the sale of the Property as contemplated by the Plan, and to the extent provided by 1146(a), if any, shall not be subject to any state, local or federal law imposing such tax.

**Post Confirmation Management/Post Effective Date Debtor.** The Debtor shall continue in existence as the Post Effective Date Debtor whose activities shall be limited to matters related to the implementation of the Plan and matters reasonably incidental thereto. The

Post Effective Date Debtor will have all of the rights, powers and duties necessary to carry out its responsibilities under the Plan and shall continue to be managed by Richard Cohn until its dissolution.

**Dissolution.** As soon as practicable after the Closing, the Post Effective Date Debtor shall take all necessary steps to effectuate its dissolution in accordance with applicable law.

## **MISCELLANEOUS PROVISIONS**

### **MODIFICATION AND REVOCATION OF THE PLAN**

The Plan may be altered, amended or modified by the Debtor, at any time before the substantial consummation of the Plan, as provided in sections 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Section 1127 of the Bankruptcy Code authorizes the proponent of a plan of reorganization to modify such plan at any time prior to confirmation of the plan so long as the plan, as modified, continues to meet certain technical requirements of sections 1122 and 1123 of the Bankruptcy Code with respect to the classification of Claims and Interests and the contents of a plan. Prior to Confirmation, if a proponent files modifications to a plan, pursuant to section 1127(a) “the plan as modified becomes the plan.” No order of the Court is required to modify the Plan under the terms of section 1127(a); however, the proponent of a modification to a plan must comply with section 1125 of the Bankruptcy Code with respect to the plan as modified. In other words, if a modification materially alters the treatment of any Creditor who has accepted the Plan, the Debtor will be required to make additional disclosures to those Creditors whose treatment has been materially and adversely altered and give such Creditors an opportunity to change their votes.

The Debtor may revoke or withdraw the Plan at any time prior to entry of the Confirmation Order. If the Debtor revokes or withdraws the Plan, or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against or any interest in, the Debtor; or (ii) prejudice in any manner the rights of the Debtor in any further proceedings involving the Debtor or any other party, or its Estate.

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, until the Case is closed, the Bankruptcy Court shall retain and have original, but not exclusive, jurisdiction to:

i) Insure that the Plan is consummated, and to enter any Order pursuant to section 1142(b) of the Bankruptcy Code, to compel the Debtor, Interest Holders and any other necessary party, to take such action and execute such documents to effectuate the Plan;

ii) Consider any modification of the Plan proposed pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019;

iii) Allow, disallow, determine, liquidate, classify or establish the priority, secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Expense, the resolution of any and all objections to the allowance or priority of Claims, and the resolution of any adversary proceeding;

iv) Grant or deny any and all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for any period ending on or before the Effective Date;

v) Resolve any motions pending on the Effective Date to assume, assume and assign or reject any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable and to hear, determine and if necessary, liquidate, any and all Claims arising therefrom;

vi) Ensure that distributions to Holders of Allowed Claims are accomplished in accordance with the provisions of this Plan;

vii) Decide or otherwise resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters or grant or deny any applications involving the Debtor that may be pending on the Effective Date;

viii) Enter such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan or Disclosure Statement or to enforce all orders, judgments, injunctions, and rulings entered in connection with the Case, including, but not limited to any Order necessary to enforce the provisions of Article 7 of the Plan;

ix) Resolve any and all controversies, suits or issues that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

x) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, or to modify the Disclosure Statement or any contract, instrument, release or other agreement or document created in connection with the Plan or Disclosure Statement;

xi) Remedy any defect or omission or reconcile any inconsistency in any Order, the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created in connection with the Plan, to the extent authorized herein or in the Bankruptcy Code;

xii) Issue any injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan;

xiii) Enter and implement such Orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

xiv) Determine any dispute arising under or related to the Plan, including, without limitation, any dispute concerning the scope or effect of any release or discharge provided for by the Plan or the Confirmation Order.

xv) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or Disclosure Statement; and

xvi) Enter an Order of Final Decree concluding the Case.

#### **RISK FACTORS**

Although the Debtor believes that it will be able to meet all of the obligations that it is undertaking pursuant to the Plan there can be no assurance that future events will not cause the Debtor to default on one or more of its obligations under the Plan or that the Closing will occur.

#### **CONFIRMATION OF THE PLAN**

All distributions to Creditors are contingent on the Plan being confirmed by this Court. Otherwise, the Debtor is not obligated, in any way, to make the payments required hereunder.

#### **RISK OF SUBSEQUENT REORGANIZATION OR LIQUIDATION**

The Plan provides for the liquidation of the Debtor thereby eliminating the risks associated with the need for further financial reorganization of the Debtor.

#### **VOTING INSTRUCTIONS**

A Creditor who is entitled to vote may accept or reject the Plan by executing and returning to the Balloting Agent (as defined below) the ballot (a "Ballot") that was sent out with this Disclosure Statement. See "VOTING INSTRUCTIONS -- Who May Vote." The following instructions govern the time and manner for filing Ballots accepting or rejecting the Plan, withdrawing or revoking a previously filed acceptance or rejection, who may file a Ballot, and

procedures for determining the validity or invalidity of any Ballot received by the Balloting Agent.

#### **DEADLINE FOR RECEIPT OF BALLOTS**

The solicitation period for votes accepting or rejecting the Plan will expire at 5:00 p.m., Eastern Standard Time, \_\_\_\_\_, 2018 (the “Voting Deadline”). A Ballot accepting or rejecting the Plan must be received no later than that date and time or it will not be counted in connection with the Confirmation of the Plan or any modification thereof.

#### **BALLOTING AGENT**

All votes to accept or reject the Plan must be cast by using the Ballot. Executed Ballots should be returned by \_\_\_\_\_, 2018 at 5:00 p.m. to:

Robinson Brog Leinwand Greene Genovese & Gluck P.C.  
875 Third Avenue  
9th Floor  
New York, New York 10022  
Attn: Lori A. Schwartz, Esq.

(the “Balloting Agent”). A Creditor entitled to vote who has not received a Ballot, or whose Ballot has been lost, stolen or destroyed, may contact the Balloting Agent at the address indicated above, or call Lori A. Schwartz at (212) 603-6334 to receive a replacement Ballot.

#### **WHO MAY VOTE - IN GENERAL**

Claims in Class 3 are unimpaired under the Plan. Holders of Claims in Class 3 are not being solicited. Claims in Classes 1, 2, 4, 5 and 6 and Interests in Class 7 are impaired. Holders of Claims in Classes 1, 2, 4, 5 and 6 and Interests in Class 7 are being solicited and are entitled to vote to accept or reject the Plan.

**Ballots Executed in a Representative or Fiduciary Capacity.** Ballots executed by executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, must indicate the capacity in which such person executed the Ballot and, unless otherwise determined by the Debtor, must submit proper evidence satisfactory to the Debtor of their authority to so act.

**Voting Multiple Claims.** A single form of ballot is provided for each Class of Claims. Any Person who holds Claims in more than one Class is required to vote separately with respect to each Class in which such Person holds Claims. However, any Person who holds more than one Claim in one particular Class will be deemed to hold only a single Claim in such Class in the aggregate amount of all Allowed Claims in such Class held by such Person. Thus each Person need complete only one ballot for each Class.

## **DEFECTS OR IRREGULARITIES**

**ANY EXECUTED AND TIMELY FILED BALLOT WHICH DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PLAN.**

Where more than one timely and properly completed Ballot is received, the Ballot which bears the latest date will be counted.

The Debtor reserves the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the deadline for filing timely Ballots. Neither the Debtor, the Balloting Agent, nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. All questions as to the validity, form, eligibility (including the time of receipt), acceptance and revocation or withdrawal of Ballots will be determined by the Bankruptcy Court, upon motion and upon such notice and hearing as is appropriate under the circumstances. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots as to which any irregularities have not been cured or waived will not be counted toward the acceptance or rejection of the Plan.

## **REVOCAION OF PREVIOUSLY FILED ACCEPTANCES OR REJECTIONS**

Any Creditor who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Balloting Agent at any time prior to the Voting Deadline.

A notice of withdrawal, to be valid, must (i) describe the Claim, as the case may be, if appropriate, represented by such Claim, (ii) be signed by the Creditor in the same manner as the Ballot was signed and (iii) be received by the Balloting Agent on or before the Voting Deadline. The Debtor reserves the absolute right to contest the validity of any such withdrawals of Ballots.

## **ACCEPTANCE AND CONFIRMATION**

### **CONFIRMATION**

### **CONFIRMATION HEARING**

The Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing to consider confirmation of the Plan. The Confirmation Hearing is scheduled to commence on \_\_\_\_\_, 2018 at 10:00 a.m. in the United States Bankruptcy Court,

Southern District of New York, 300 Quarropas Street, White Plains, New York 10601. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing.

Any party in interest may object to Confirmation of the Plan by filing a written objection, setting forth their identity and standing and the facts and authorities upon which any objection is based, in the Office of the Clerk of the Bankruptcy Court, no later than \_\_\_\_\_, 2018 and by delivering a courtesy copy to the Chambers of the presiding judge. Copies of all objections must also be served upon (i) Robinson Brog Leinwand Greene Genovese & Gluck P.C., 875 Third Avenue, 9<sup>th</sup> Fl., New York, New York 10022, Attn.: A. Mitchell Greene, and (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014 so that they are received no later than \_\_\_\_\_, 2018. Any objection that is not timely filed and served as required will not be considered by this Court at the Confirmation Hearing.

#### **REQUIREMENTS FOR CONFIRMATION**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. These requirements include determinations by the Bankruptcy Court that: (i) the Plan has classified Claims and Interests in a permissible manner, (ii) the contents of the Plan comply with various technical requirements of the Bankruptcy Code, (iii) the Debtor has proposed the Plan in good faith, (iv) the Debtor has made disclosures concerning the Plan that are adequate and include information concerning all payments made or promised in connection with the Plan and the Case, (v) the Plan is in the “best interest” of all Creditors, (vi) the Plan is feasible, and (vii) the Plan has been accepted by the requisite number and amount of Creditors in each Class entitled to vote on the Plan, or that the Plan may be confirmed without such acceptances. The Debtor believes that all of these conditions have been or will be met prior to the Confirmation Hearing.

**Best Interest Test.** The so-called “best interest” test requires that each impaired Creditor and impaired Interest Holder either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value such entity would receive or retain if the Debtor was to be liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Impaired Class of Claims or Interests would receive if the Debtor was liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor’s assets and properties in a chapter 7 liquidation case. The amount that would be available for satisfaction of Allowed Claims against the Debtor would consist of the proceeds resulting from the sale of the Property. Such amount would be reduced by the amount of any Claim or Claims secured by the Debtor’s assets, the costs and expenses of the liquidation, and such additional Administrative Claims and Priority Claims that may have accrued. Such value is then

juxtaposed against the amount creditors are receiving under the Plan to determine if the value each impaired creditor is receiving is the same or more than such creditor would receive from a chapter 7 liquidation on the Confirmation Date.

The costs of liquidation under chapter 7 would become Administrative Claims with the highest priority against the proceeds of liquidation. Such costs would include the fees payable to a chapter 7 Trustee, as well as those which might be payable to attorneys, appraisers, accountants, brokers and other professionals that such a Trustee may engage to assist in the liquidation. In addition, chapter 7 costs would include any liabilities incurred or assumed pursuant to the transactions necessary to effectuate the liquidation. Moreover, claims entitled to administrative priority may arise by reason of any breach or rejection of any executory contracts entered into by the Debtor during the pendency of the Case in chapter 11.

After satisfying Administrative Claims arising in the course of the chapter 7 liquidation, the proceeds of the liquidation would then be payable to satisfy any unpaid expenses incurred during the time the Case was pending under chapter 11, including compensation for attorneys, financial advisors, appraisers, accountants and other professionals retained by the Debtor or any official committee appointed pursuant to section 1102 of the Bankruptcy Code.

After consideration of the effects that a chapter 7 liquidation would have on the proceeds available for distribution including (i) the increased costs and expenses of a chapter 7 liquidation arising from fees payable to a Trustee in bankruptcy and professional advisors to such Trustee, (ii) the erosion in value of the Property in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail, and (iii) the potential tax consequences that would arise from a sale of the Property in a chapter 7, the Debtor believes that no class of Creditors junior to the ATK First Mortgage Claim stands to receive any distribution.

**Liquidation Analysis.** The Debtor has concluded that the Plan provides to each Creditor recovery with a present value at least equal to the present value of the distribution which such person would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. The Plan provides for a sale in the chapter 11 case with the Sale Proceeds to be distributed to TICs pursuant to Section 363 of the Bankruptcy Code and to creditors in accordance with the priorities established by the Bankruptcy Code. The Plan also provides for an Unsecured Creditors Fund in the amount of \$50,000 to be established from the cash component of the purchase price set forth in the Stalking Horse Contract for pro-rata distribution to Unsecured Creditors. In the event the Property is sold at auction, there is the potential for additional sums to be available for Pro Rata distribution to Unsecured Creditors on account of their Allowed Claims.

The Debtor believes that in the event its assets were sold in chapter 7 liquidation, all of the proceeds would go to pay chapter 7 administrative claims, bankruptcy fees, chapter 11 administrative claims, and a portion of the Allowed ATK First Mortgage Claim. In such event, no funds would be remaining for distribution to any class of creditors junior to the ATK First

Mortgage Claim. Additionally, the sale of the Property proposed herein is with the consent of the TICs, who own a 37% interest in the Property. It is unknown if the TICs would consent to the sale of the Property or agree to waive their rights of first refusal in a chapter 7 scenario. Additionally, the Plan provides for a fixed payment to the TICs, whereas in a chapter 7 liquidation the TICs may not agree to a reduction in the monetary claims allocable to their percentage ownership interest in the Property. As such, the Debtor believes that no Creditors or Interest Holders would receive a distribution in a Chapter 7 case which is greater than the one they may be entitled to under the Plan.

The Debtor further believes that the net effect of a conversion of this case to chapter 7 would be to (i) increase the administrative expenses of the estate and (ii) decrease the funds available for non-administrative creditors.

The liquidation values stated herein assume that the Property would be liquidated in the context of a chapter 7 case and assumes the present values of such liquidation values as of December 1, 2017. The assumptions utilized in the analysis considered the estimated liquidation value of the Property and estimated amount of Claims that would be allowed, together with an estimate of certain administrative costs and other expenses which would likely result during the liquidation process. While the Debtor believes the assumptions underlying the Liquidation Analysis are reasonable, the validity of such assumptions may be affected by the occurrence of events, and the existence of conditions not now contemplated or by other factors, many of which will be beyond the control of the Bankruptcy Court, the Debtor and any trustee appointed for the Debtor. The actual liquidation value of the Debtor may vary from that considered herein and the variations may be material.

The Debtor has assumed that the Property would be sold within three months in a Chapter 7 liquidation. It is assumed that cash proceeds of liquidating the Property would total approximately \$40,500,000, which equates to approximately the amount of the ATK First Mortgage Claim. This discount in the purchase price for the Property is being utilized to take into account the negative impact on values attributed to the Chapter 7 process.

The Debtor believes that the total cash which would be administered in a hypothetical Chapter 7 case would aggregate approximately \$40,500,000 in proceeds from the liquidation sale of the Property. Upon consultation with its advisors, the Debtor assumes for the purposes of this analysis that the cash would be distributed as follows:

<b>Available for distribution</b>	<b>\$40,500,000</b>
<b>To the payment of:</b>	

Chapter 7 Administrative Claims:

Chapter 7 trustee commissions and expenses (approximately 3% of \$40,500,000)	\$1,215,000
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Chapter 7 trustee broker commissions and expenses (approximately 3% of \$40,500,000)	\$1,215,000
Chapter 7 trustee's professionals (attorneys, appraisers, auctioneers accountants, etc.)	\$250,000
ATK First Mortgage Claim	\$40,890,210.95
<u>Remaining Available Cash<sup>5</sup></u>	<u>\$0</u>
ATK Second Mortgage Claim	\$2,871,796.37
Chapter 11 Administrative Claims	\$200,000
Tenants in Common Claims	\$4,000,000
Other Secured Claims	\$200,000
General Unsecured Claims	\$tbd

**In a chapter 7 liquidation, there would be insufficient funds to satisfy the ATK First Mortgage Claim in full, resulting in no other funds available to pay any junior classes of claims.**

The Plan contemplates a chapter 11 sale which will provide payment to the TICs, in exchange for their consent to a sale of the Property under the Plan, assumption of the Allowed ATK First Mortgage Claim and Allowed ATK Second Mortgage Claim and a distribution to unsecured creditors. To the extent the Property is sold for a higher and better offer than the Stalking Horse Contract, payment will be made to ATK on account of the ATK First Mortgage Claim and ATK Second Mortgage Claim from the Sale Proceeds and there is the potential for additional sums to become available to supplement the Unsecured Creditors Fund. In a chapter 7 liquidation there would be insufficient funds to satisfy the ATK First Mortgage with no other classes of creditors junior to the ATK First Mortgage Claim receiving any distribution. Accordingly, the Debtor believes that the Plan provides Creditors with at least as much as they would be entitled to receive in a chapter 7 liquidation.

**Feasibility.** For the Plan to be confirmed, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor unless such liquidation is set forth in the Plan. The Plan

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<sup>5</sup> Analysis does not take into account tax arising from sale under a chapter 7 which will further diminish the distribution to the ATK First Mortgage Claim in a chapter 7 liquidation scenario.

calls for the sale of the Property with TICs consent, distribution of the Sale Proceeds and after the Closing the dissolution of the Post Effective Date Debtor.

Based on the Summary of the Plan, the Plan meets the feasibility requirements of the Bankruptcy Code.

**Confirmation With the Acceptance of Each Impaired Class.** The Plan may be Confirmed if each impaired Class of Claims accepts the Plan. Classes of Claims which are not impaired are deemed to have accepted the Plan. A Class is impaired if the legal, equitable or contractual rights attaching to the Claims of that Class are modified other than by curing defaults and reinstating maturities or by payment in full in cash.

Holders of Claims impaired by the Plan are entitled to file Ballots accepting or rejecting the Plan. Holders of Claims not impaired by the Plan, are deemed to accept the Plan, and may not vote to accept or reject the Plan. Holders of Claims that will neither receive nor retain any property under the Plan are deemed to reject the Plan.

The Bankruptcy Code defines acceptance of a plan by a Class of Claims as acceptance by the holders of two-thirds in dollar amount and a majority in number of Claims of that Class who actually voted. Only those Claims, the holders of which actually vote to accept or reject the Plan, are counted for the purpose of determining whether the requisite number and amount of acceptances have been received.

**Confirmation Without the Acceptance of Each Impaired Class.** In the event that any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm the Plan at the Debtor's request if (i) all other requirements of section 1129(a) of the Bankruptcy Code are satisfied, (ii) at least one impaired Class of Claims votes to accept the Plan without regard to any vote cast on account of a Claim held by "insiders" (as defined in the Bankruptcy Code) and (iii) as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such non-accepting Class. The Debtor believes that the Plan is in the best interest of all Creditors and strongly recommends that all parties entitled to vote cast their ballots in favor of accepting the Plan. Nevertheless, out of an excess of caution, pursuant to the Plan, the Debtor has requested that the Court confirm the Plan over the rejection of any non-accepting class in the event all other elements of section 1129(a) are satisfied.

A plan "does not discriminate unfairly" if the legal rights of a non-accepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are intertwined with those of the non-accepting class, and no class receives payments in excess of that which it is legally entitled to receive for its Claims. The Debtor believes that under the Plan all classes of Impaired Claims are treated in a manner that is consistent with the treatment of other classes of Claims with which their legal rights are intertwined, if any, and no class of Claims will receive payments or property with an aggregate value greater than the aggregate

value of the Allowed Claims in such class. Accordingly, the Debtor believes the Plan does not discriminate unfairly as to any impaired class of Claims.

Whether the Plan is fair and equitable depends upon the application of the so-called “absolute priority rule.” Subject to certain exceptions, this rule, codified in section 1129(b)(2) of the Bankruptcy Code, generally requires that an impaired Class of Claims that has not accepted the Plan must be paid in full if a more junior class receives any distribution under the Plan.

With respect to Secured Claims, the absolute priority rule allows the confirmation of a Plan over the rejection of a class of Secured Claims if the holders of such Claims retain their liens and each holder of a Claim of such class receives 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 property securing its Claim. The Debtor’s Secured Creditor, ATK, will either have its mortgages assumed or be paid from the Sale Proceeds at least the value of its interest in the Property securing its claim.

With respect to Unsecured Claims, the absolute priority rule allows the confirmation of a Plan over the rejection of a class of Unsecured Claims if the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

In this case, no payments will be made to the Debtor’s Interest Holders, unless all Allowed unsecured claims are paid in full. Moreover, after the Closing and distributions in accordance with the Plan are made, all interests in the Debtor shall be canceled.

With respect to the Allowed Interests, Section 1129(b)(2)(C) requires that the holder of such interest receive any fixed liquidation preference, fixed redemption price or value of such interest, or that no junior interest will receive or retain any property on account of such junior interest. To the best of Debtor’s knowledge, Interest Holders are not entitled to any fixed liquidation preference or redemption price and no junior interests are receiving or retaining any property under the Plan. Accordingly, the Plan complies with section 1129(b)(2)(C) of the Bankruptcy Code.

If the Plan is rejected by only one class of impaired creditors, the Debtor requests that the Plan be confirmed under section 1129(b).

## **EFFECT OF CONFIRMATION**

### **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 the 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. Notwithstanding anything to the contrary contained herein, nothing contained in the Plan of the Confirmation Order will be deemed to prevent ATK from enforcing any of its rights or claims under the ATK First Mortgage or the ATK Second Mortgage in the event AAK is not the Successful Purchaser of the Property.

#### 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, 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), provided however that nothing in the Plan or the Confirmation Order shall effect a release of any claim for any debt owed to the United States Government arising under the Internal Revenue Code; any state, city or municipality arising under any state, city or municipal tax code; any environmental laws or any criminal laws of the United States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any claim, suit or action arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United

States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall exculpate any party from any liability to the United States Government or any of its agencies or any state, city or municipality arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United States or any state. Notwithstanding anything to the contrary contained herein, nothing contained in the Plan of the Confirmation Order will be deemed to prevent ATK from enforcing any of its rights or claims under the ATK First Mortgage or the ATK Second Mortgage in the event AAK is not the Successful Purchaser of the Property.

#### LIMITATION OF LIABILITY

To the extent provided in 11 U.S.C. § 1125(e), neither the Debtor, the Interest Holders nor any of their respective officers, directors, members, general partner, managers or employees (acting in such capacity), nor any professional person employed by any of them (the “Released Parties”) 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 or 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 this case or the Plan 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 contained herein 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. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any claim or liability released pursuant to Article 8 of the Plan.

#### ~~DISCHARGE.~~

~~On the Confirmation Date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the Effective Date, to the extent specified in §1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in §1141(d)(6)(A); or (iii) of a kind specified in §1141(d)(6)(B).~~

#### ALTERNATIVES TO THE PLAN

If the Plan is not confirmed by the Bankruptcy Court, the alternatives may include (a) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; (b) the formulation, promulgation and confirmation of an alternative plan of reorganization or (c) dismissal of the Debtor’s case. In the case of dismissal, ATK would in all likelihood proceed with a foreclosure sale and seek to take ownership of the Property.

The Debtor believes that the Plan provides a recovery to all Creditors equal to or greater than would be obtainable in a chapter 7 liquidation.

The Debtor believes that the Plan enables Creditors to realize the most value under the circumstances.

#### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

The following summary of certain U.S. Federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to each holder of an Allowed Claim. Each holder of an Allowed Claim is urged to consult his own tax advisors. This summary does not cover all potential U.S. federal income tax consequences that could possibly arise under the Plan and does not address the Plan's U.S. federal income tax consequences for any holder of an Allowed Claim that is a partnership (or other pass-through entity) or otherwise subject to special tax rules.

The Debtor has not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will the Debtor, with respect to the federal income tax consequences of the Plan, obtain any opinion of counsel. Consequently, there can be no assurance that the treatment set forth in the following discussion will be accepted by the IRS. The Debtor offers no statements or opinions that are to be relied upon by the creditors as to the treatment of creditors' claims under the Plan. Matters not discussed in this Disclosure Statement may affect the tax consequences of the Plan on any particular holder of a Claim or Equity Interest

This summary is based upon the laws in effect on the date of this Disclosure Statement and existing judicial and administrative interpretations thereof, all of which are subject to change, possibly with retroactive effect. Holders of Allowed Claims should consult their own tax advisors as to the Plan's specific federal, state, local and foreign income and other tax consequences.

The tax consequences to Creditor and Interest Holders will differ and will depend on factors specific to each Creditor and Interest Holder, including but not limited to: (i) whether the Claim or Interest (or portion thereof) constitutes a claim for principal or interest; (ii) the origin of the Claim or Interest; (iii) the type of consideration received by the Creditor and Interest Holder in exchange for the Claim; (iv) whether the Creditor and Interest Holder is a United States person or foreign person for tax purposes; (v) whether the Creditor and Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor and Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim.

**THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR AND INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH**

**CREDITOR AND INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR AND INTEREST HOLDER AS A RESULT OF THE PLAN.**

**THE DISCUSSION HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY CREDITOR AND INTEREST HOLDER FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON A TAX PAYER. THE DISCUSSION HEREIN WAS WRITTEN TO SUPPORT THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT. EACH CREDITOR AND INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR AND INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

#### **ADDITIONAL INFORMATION**

Requests for information and additional copies of this Disclosure Statement, the Ballots and the other materials delivered together herewith and all deliveries, correspondence and questions, as the case may be, relating to the Plan should be directed to (i) the Debtor's counsel, Robinson Brog Leinwand Greene Genovese & Gluck P.C., 875 Third Avenue, 9<sup>th</sup> Fl., New York, New York 10022, Attn.: A. Mitchell Greene (212) 603-6399.

Copies of all pleadings, orders, lists, schedules, proofs of claims or other documents submitted in this case are on file in the Office of the Clerk of the United States Bankruptcy Court at 300 Quarropas Street, White Plains, New York 10601, and are available for public inspection Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m. and are also available for viewing on the Internet at <http://www.nysb.uscourts.gov>.

**CONCLUSION**

The Debtor believes the Plan is in the best interests of all Creditors and should be confirmed.

**Dated:** New York, New York  
~~December 14, 2017~~  
January 1, 2018

**WEST 16<sup>TH</sup> STREET OWNER, LLC**

By: ~~/s/ Richard Cohn~~  
RICHARD COHN  
MANAGER

**ROBINSON BROG LEINWAND  
GREENE GENOVESE & GLUCK P.C.**  
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New York, New York 10022  
Tel. No.: (212) 603-6300

By: ~~/s/ A. Mitchell  
Greene~~  
A. Mitchell Greene

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