

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

JLF 114 Liberty, LLC,

Case No. 18-10608 (SHL)

Debtor.

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**DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. §1125
RELATING TO JOINT PLAN OF REORGANIZATION**

JFL 114 Liberty LLC (the “Debtor”) together with CREIF Lender LLC (“CREIF”) (collectively the “Proponents”), hereby jointly submit this Disclosure Statement (the “Disclosure Statement”), pursuant to §1125 of Title 11, United States Code (the “Bankruptcy Code”), in connection with the Proponent’s accompanying Plan of Reorganization dated May 18, 2018 (ECF #19) (the “Plan”). Defined terms in the Plan shall have the same meaning for purposes of this Disclosure Statement.

INTRODUCTION

The Plan is submitted to provide a mechanism for the distribution of the proceeds of the sale (the “Sale”) of the Debtor’s rights, title and interest in the Debtor’s condominium apartment located 114 Liberty Street, Unit No. 8, New York, NY (the “Apartment”) following an auction (the “Auction”).

The Auction was previously conducted on April 18, 2018, at which time the bid of Richard B. Pacella (the “Purchaser”) in the amount of \$6.2 million (the “Purchase Price”), plus the payment of a 4% Buyer’s Premium from the Purchaser, was the highest and best offer received for the Apartment. The Purchaser and the Proponents thereafter executed a Real Estate Asset Purchase Agreement (the “APA”) to memorialize the terms of the Sale.

The Sale of the Apartment and the APA were approved by Order of the Bankruptcy Court dated May 16, 2018 (ECF #18) (the “Sale Order”), free and clear of all liens, claims, taxes and non-permitted encumbrances, pursuant to 11 U.S.C. § 363(b) and (f), as permitted by 11 U.S.C. §§ 1123(a)(5)(D) and 1123(b)(4). The Sale shall close after confirmation of the Plan but no later than June 15, 2018 to take advantage of the mortgage recording and transfer taxes exemption provisions of Section 1146(a) of the Bankruptcy Code.

The Plan provides for the distribution of the proceeds of the sale (the “Sale Proceeds”) in accordance with bankruptcy priorities. As set forth below in detail, the Proponents project that all of the Sale Proceeds be used to pay secured and administrative expense claims, with no funds remaining for unsecured creditors. Indeed, as set forth below, the Proponents project that will be only a minimal distribution to the secured creditors.

However, because the Debtor has certain potential objections to the validity of the Secured Claims, the Plan provides for the distribution of the Sale Proceeds to all classes in a classic “waterfall”, following the priority scheme established in the Bankruptcy Code until all of the Sale Proceeds are distributed.

CREIF has a first priority mortgage lien in the Sale Proceeds in the aggregate amount of \$6,814,954.46 as of February 1, 2018, including all principal, accrued interest, accrued default interest, advances, and other fees and expenses. CREIF has agreed to reduce its Allowed Secured Claim to \$6.1 million plus legal fees in an amount to be determined, but estimated to be \$75,000 (the “CREIF Legal Fees”). From this amount, CREIF has agreed to carve out the sum of \$100,000 (the “Carve Out”) to pay administrative expenses, including professional fees and statutory quarterly fees owed to the U.S. Trustee. The remainder of the Carve Out, if any, will be used to fund a *pro rata* payment to pre-petition unsecured creditors, although it is not

expected that there will be any funds remaining from the Carve Out after payment of administrative expenses.

To the extent that \$6.2 million Purchase Price exceeds the amount of CREIF's voluntarily reduced claim of \$6.1 plus the CREIF Legal Fees (the "Surplus"), this Surplus will be available in tandem with the Carve Out for distribution to creditors, in order of priority. However, as set forth below, the Surplus will likely be exhausted in paying Allowed Secured Claims, and it is not expected that there will be any monies remaining from the Surplus to pay a dividend to Unsecured Creditors.

The Debtor has four other entities beside CREIF which have potential liens against the Apartment, and thus the Sale Proceeds, including, in order of priority as understood by the Proponents, Weir Welding Company, Inc. ("Weir"), a judgment creditor with a claim in the amount of \$142,246.66; CapFlow Funding Group Managers, LLC ("CapFlow"), the holder of a second mortgage in the approximate amount of \$175,000; 114 Liberty Street Condominium (the "Condo Board") in the estimated amount of \$22,962; and the Internal Revenue Service ("IRS") in the amount of 335,753.52. The Debtor has potential objections to the validity of each of these four Secured Claims, on the grounds that (i) the underlying claims are properly debts of one of the principals of the Debtor, James Fernandez and are not properly chargeable against the Debtor; and/or (ii) the purported liens are not properly perfected.

If any of the liens asserted by Weir, CapFlow, the Condo Board and the IRS are found to be valid Secured Claims, the Surplus will be used to pay the Allowed Secured Claims in the order of priority¹, and will likely be exhausted by the Allowed Secured Claim with first priority,

¹ If more than one Secured Claims is allowed, the priority of the Allowed Secured Claims must also be fixed by the Court.

leaving no funds for a distribution to other Allowed Secured Creditors, or Priority and Unsecured Creditors.

If the objections are sustained and none of the Secured Claims is allowed, the balance of the Surplus, if any, after payment of CREIF's legal fees, will be available for distribution to Unsecured Creditors, including the disallowed lien claimants.

II. THE CONFIRMATION PROCESS

A. Approval of this Disclosure Statement.

Pursuant to 11 U.S.C. §105(d)(2)(B), this Disclosure Statement has been conditionally approved by the Bankruptcy Court as containing adequate information within the meaning of 11 U.S.C. §1125 necessary for creditors to (i) evaluate the Plan; and (ii) determine whether to accept or reject the Plan. Final approval of the Disclosure Statement will be sought by the Proponents in conjunction with confirmation of the Plan. The Court's preliminary approval of the Disclosure Statement is conditional, and creditors have the right to object to either final approval of the Disclosure Statement, or confirmation of the Plan.

B. Confirmation of the Plan.

The Bankruptcy Court has scheduled a combined hearing to consider both final approval of this Disclosure Statement and confirmation of the Plan on the same day and time, to wit, June ___, 2018 at 10:00 a.m., prevailed New York time.

The most critical aspect of the Plan is the proposed closing on APA prior to June 15, 2018. To protect against the possibility that confirmation may be delayed beyond this deadline, CREIF and the Purchaser reserve the right to proceed to closing on the APA even in the absence of confirmation, and thereby forsake the opportunity for transfer tax exemptions which would otherwise be available under Section 1146(a) of the Bankruptcy Code.

The combined hearing will be conducted by the Honorable Sean H. Lane in the United States Bankruptcy Court, One Bowling Green, Courtroom 701, New York, NY 10004 on June __, 2018 at 10:00 a.m. At the combined hearing, the Debtor shall request that the Bankruptcy Court finally approve the Disclosure Statement and confirm the Plan pursuant to Section 1129(a) of the Bankruptcy Code. The Proponents believe that they will be ready to close on the APA prior to June 15, 2018.

Any creditor or party in interest may object to final approval of the Disclosure Statement or confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, shall be filed with Bankruptcy Court (with a courtesy copy to the Hon. Sean H. Lane) and served upon the following parties:

- (a) The Debtor: c/o Paul A. Rachmuth, Esq., 265 Sunrise Highway, Suite 62, Rockville Centre, NY 11570 (paul@paresq.com);
- (b) CREIF: c/o Goldberg Weprin Finkel Goldstein LLP, 1501 Broadway, 21st Floor, New York, NY 10036, Attn: Kevin J. Nash, Esq. (knash@gwfglaw.com);
- (c) The Purchaser: c/o The Law Offices of Adrienne Woods, P.C., 459 Columbus Avenue, #314, New York, New York 10024 (adrienne@woodslawpc.com); and
- (d) The U.S. Trustee at: Office of the US Trustee, 201 Varick St., Ste. 1006, New York, NY 10014, Attn: Shannon Scott, Esq. (Shannon.Scott2@usdoj.gov);

on or before June __, 2018 at 4:00 p.m. prevailing New York time.

C. Voting and Objections

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

In accordance with section 1126(f) of the Bankruptcy Code, all classes of claims that are impaired may vote to accept or reject the Plan. A class of claims is impaired if the Plan modifies, alters or changes the Claimant's legal, equitable or contractual rights against the Debtor. In this case, all Classes of Claims are impaired and eligible to vote on the Plan except the Class 2 Secured Claims of the City of New York.

A Ballot for acceptance or rejection of the Plan will accompany the Plan, and should be completed by all voting classes of creditors. After carefully considering this Disclosure Statement and the Plan, please indicate your vote on the enclosed ballot and return same before the voting deadline to Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, 1501 Broadway, 22nd Floor, New York, New York 10036. Facsimile: (212) 422-6836. E-mail: KNash@GWFGlaw.com.

In order to be counted, your ballot must be actually received on or before June __, 2018 at 5:00 p.m. prevailing New York Time (the "Voting Deadline"). All forms of personal delivery of ballots including overnight delivery service, courier service, and delivery by hand are acceptable. Facsimile and electronic transmissions are acceptable as well. There is no need to file your Ballot with the Clerk of the Bankruptcy Court. If your ballot is damaged or lost, or if you do not receive a ballot to which you are entitled, you may request in writing a replacement by contacting Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, at the stated address.

Only actual votes will be counted. A failure to return a ballot will not be counted either as a vote for or against the Plan. If a creditor casts more than one ballot voting the same Claim before the Voting Deadline, the latest dated Ballot received before the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior ballots.

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

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

III. SIGNIFICANT EVENTS LEADING TO THE CHAPTER 11 FILING

For several years now, the Debtor and its members, James Fernandez and his spouse, Laura Fernandez, have been trying to save the Apartment from foreclosure. Mr. and Mrs. Fernandez initially purchased the Apartment in their names by deed dated February 17, 1999. Thereafter, they refinanced on several occasions, most recently on or about February 17, 2016.

At time, the mortgage was subject to potential foreclosure. In the hope of obtaining more time to sell the Apartment through a broker and maximize their recovery, Mr. and Mrs. Fernandez borrowed the sum of \$5,250,000 from CREIF pursuant to a note (the "Note") which had a maturity date of September 1, 2017. As part of the transaction, Mr. and Mrs. Fernandez formed the Debtor as equal 50% members, and transferred title to the Apartment to the Debtor, which was a co-borrower on the Note (jointly, Mr. and Mrs. Fernandez and the Debtor are

hereinafter the “Borrowers”). The Borrowers also executed a mortgage granting a first lien to CREIF in the Apartment.

Thereafter, the Borrowers were unable to identify a third party buyer, and fell into default under the Note both in their payments to CREIF and by not timely paying real estate taxes. Upon the failure of the Borrowers to cure the default, on September 8, 2017, and after the September 1, 2017 Maturity Date, CREIF served notice of an intended UCC sale on September 18, 2017 of the membership interests in the Debtor held by Mr. and Mrs. Fernandez.

On September 17, 2017, the day before the scheduled sale, Mr. Fernandez filed an individual Chapter 11 case for himself, which was assigned Case Number 17-12594 (SHL). While this filing invoked the automatic stay with respect to the sale, it left the ultimate disposition of the Apartment in some doubt, as neither the Debtor nor Mrs. Fernandez filed petitions of their own.

CREIF moved for relief from the automatic stay so that it could continue its foreclosure sale. Thereafter, CREIF and Mr. Fernandez reached an agreement to try to sell the Apartment through an auction, using CREIF as a stalking horse bidder in an effort to maximize the sale price. As part of this agreement, CREIF agreed to reduce its claim to \$6.1 million plus legal fees, subject to the Debtor obtaining a signed contract of sale or filing its own Chapter 11 petition within a fixed time frame. The Stipulation and Order was entered on March 1, 2018 (the “Stipulation”) in Mr. Fernandez’s Chapter 11 case. Pursuant to the deadlines fixed in the Stipulation, the Debtor filed its voluntary petition on March 2, 2018.

IV. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE

Immediately following the commenced of the within Chapter 11 case, the Debtor and CREIF jointly moved for an Order authorizing the Auction and Sale of the Apartment and

approving bidding procedures. The Bid Procedures Order was entered on April 3, 2018 (ECF #11). A second joint order authorizing the retention of Maltz Auctioneers to market the Apartment for sale was also entered on April 3, 2018 (ECF #10).

As a result of the efforts of the auctioneer, an overbid of \$6.2 million was received from the Purchaser at the Auction, and the parties executed the APA memorializing the terms of the Sale.

Because the Sale is required to be closed by June 15, 2018, the Proponents are now proceeding on a fast track to obtain conditional approval of this Disclosure Statement, so that ballots can be solicited and the Confirmation Hearing on the Plan can be conducted prior to that date.

V. THE PLAN

A. Treatment Of Unclassified Claims

Administrative Expenses are not separately classified under the Plan and consist of the allowed professional fees and expenses incurred by the Debtor's counsel. All professional fees and expenses remain subject to Bankruptcy Court approval, after the filing of a written application and additional notice to creditors. Once allowed, professional fees and expenses will be paid from those funds remaining in the Carve Out deposited into the Confirmation Fund as established following the Closing Date after payment of U.S. Trustee Fees. Those fees are projected to be \$62,000, leaving \$38,000 for professional fees. It is expected that the fees allowed to the Debtor's counsel will exceed this amount, leaving no excess funds from the Carve Out for distribution to other creditors.

U.S. Trustee Fees. Any unpaid U.S. Trustee Fees shall be paid on the Effective Date, together with any unpaid interest from the Carve Out deposited into the Confirmation Fund as

established following the Closing Date. Thereafter, U.S. Trustee Fees shall continue to accrue and be paid (together with any interest) until the earlier of the entry of a final decree closing the bankruptcy case, or dismissal or conversion of this bankruptcy case.

B. Classification and Treatment of Claims and Equity Interests

1. Summary

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

| Class | Designation | Impaired |
|---------|---|----------|
| Class 1 | Allowed Secured Claim of CREIF | Yes |
| Class 2 | City Real Estate Tax Claims, if any | No |
| Class 3 | Secured Claim of Welding Company, Inc., if allowed | Yes |
| Class 4 | Secured Claim of CapFlow Funding Group Managers LLC, if allowed | Yes |
| Class 5 | Secured Claim of the IRS, if allowed | Yes |
| Class 6 | Secured Claim of 114 Liberty Street Condominium, if allowed | Yes |
| Class 7 | Priority Tax Claims, if any | Yes |
| Class 8 | General Unsecured Claims | Yes |
| Class 9 | Equity Interests of Members of the Debtor | Yes |

2. Classification, Treatment and Voting

Class 1 — Secured Mortgage Claim of CREIF

Classification: Class 1 consists of the allowed mortgage claim of CREIF, which has been voluntarily reduced to the sum of \$6.1 million plus the CREIF Legal Fees, pursuant to Stipulation and Order entered on March 1, 2018 (the “Stipulation”) in the related Chapter 11 case (Case No. 17-12594 (SHL)) of James Andrew Fernandez (“Mr. Fernandez”).

Treatment: The Class 1 Claim is allowed in the settled amount of \$6.1 million plus the CREIF Legal Fees. CREIF shall submit its bill for legal fees no later than June 4, 2018. The Confirmation Order shall include a provision fixing the amount of the CREIF Legal Fees. On

the Closing Date, CREIF shall be paid the sum of \$6.1 million plus the CREIF Legal Fees from the Sale Proceeds, of which, the sum of \$100,000, representing the Carve Out, shall be deposited into the Confirmation Fund for distribution under the Plan. The balance of the Sale Proceeds, representing the Surplus, shall also be deposited into the Confirmation Fund for distribution under the Plan.

Voting: Class 1 is impaired by reason of the reduction in the amount of the Claim and the Carve Out. Class 1 is therefore entitled to vote on the Plan.

Class 2 — City Real Estate Tax Claims

Classification: Class 2 consists of the allowed City Real Estate Tax Claims, if any.

Treatment: CREIF previously advanced monies to pay outstanding real taxes, and based upon these payments and a check of ACRIS records, the Proponents do not believe that there are any secured claims held by the City of New York. However, a Class is being designated out of an abundance of caution to deal with any such claims which may be allowed.

To the extent any real estate taxes are not paid prior to or on the Closing Date, any residual real estate taxes and water and sewer charges owed to the City of New York as of the Closing Date shall be paid on the Effective Date of the Plan from the Confirmation Fund.

Voting: Class 2 is unimpaired, and not entitled to vote on the Plan.

Class 3 — Secured Claim of Weir Welding Company, Inc.

Classification: Class 3 consists of the Secured Claim of Weir, to the extent, if any, the Secured Claim is ultimately allowed by the Bankruptcy Court.

Treatment: Any allowed Class 3 Claim of Weir will be paid on the later of the Effective Date or the date of the entry of a Final Order allowing the Class 3 Claim from the Surplus deposited into the Confirmation Fund at the Closing, until the Surplus is exhausted.

To the extent that Weir is found to have a valid claim against the Debtor not otherwise entitled to status as a Secured Claim, or to the extent that any portion of the allowed Class 3 Claim remains unsatisfied after the Surplus is exhausted, that Claim shall be reclassified as a Class 8 General Unsecured Claim.

Voting: Class 3 is impaired and entitled to vote on the Plan.

Class 4 — Secured Claim of CapFlow Funding Group Managers LLC

Classification: Class 4 consists of the Secured Claim of CapFlow, to the extent, if any, the Secured Claim is ultimately allowed by the Bankruptcy Court.

Treatment: Any allowed Class 4 Claim will be paid on the later of the Effective Date or the date of the entry of a Final Order allowing the Class 4 Claim from those funds remaining in the Surplus after payment of the Class 3 Claim, until the Surplus is exhausted.

To the extent that CapFlow is found to have a valid claim against the Debtor not otherwise entitled to status as a Secured Claim, or to the extent that any portion of the allowed Class 4 Claim remains unsatisfied after the Surplus is exhausted, that Claim shall be reclassified as a Class 8 General Unsecured Claim.

Voting: Class 4 is impaired and entitled to vote on the Plan.

Class 5 — Secured Claim of the Internal Revenue Service

Classification: Class 5 consists of the Secured Claim of the IRS, to the extent, if any, the Secured Claim is ultimately allowed by the Bankruptcy Court.

Treatment: Any allowed Class 5 Claim will be paid on the later of the Effective Date or the date of the entry of a Final Order allowing the Class 5 Claim from those funds remaining in the Surplus after payment of the Class 3 Claim and the Class 4 Claim, until the Surplus is exhausted.

To the extent that the IRS is found to have a valid claim against the Debtor not otherwise entitled to status as a Secured Claim, or to the extent that any portion of the allowed Class 5 Claim remains unsatisfied after the Surplus is exhausted, that Claim shall be reclassified as a Class 8 General Unsecured Claim.

Voting: Class 5 is impaired and entitled to vote on the Plan.

Class 6 — Secured Claim of 114 Liberty Street Condominium

Classification: Class 6 consists of the Secured Claim of the Condo Board, to the extent, if any, the Secured Claim is ultimately allowed by the Bankruptcy Court.

Treatment: Any allowed Class 6 Claim will be paid on the later of the Effective Date or the date of the entry of a Final Order allowing the Class 6 Claim from those funds remaining in the Surplus after payment of the Class 3 Claim, Class 4 Claim and Class 5 Claim are paid in full, until the Surplus is exhausted.

To the extent that the Condo Board is found to have a valid claim against the Debtor not otherwise entitled to status as a Secured Claim, or to the extent that any portion of the allowed Class 6 Claim remains unsatisfied after the Surplus is exhausted, that Claim shall be reclassified as a Class 8 General Unsecured Claim.

Voting: Class 6 is impaired and entitled to vote on the Plan.

Class 7 – Priority Tax Claims

Classification: Class 7 is composed of the allowed priority tax claims of the IRS and New York State, if any.

Treatment: The Proponents do not believe that the Debtor owes any taxes to the State or IRS. However, a Class is being designated out of an abundance of caution to deal with any such claims which may be allowed.

To the extent allowed, the Class 7 claims will be paid *pro rata* from the funds remaining in the Surplus, if any, after payment of Class 3, 4, 5 and 6 Claims.

Voting: Class 7 is impaired and entitled to vote on the Plan.

Class 8 —Unsecured General Claims

Classification: Class 8 is composed of allowed Unsecured General Claims, including any unsecured deficiency claims held by the Class 3, 4, 5 and 6 claimants. This Class will also include any claims arising out of the rejection of any unexpired leases or executory contracts to which the Debtor is a party, although the Proponents do not believe that any rejection claims exist.

Treatment: Class 8 claims will be paid *pro rata* from the funds remaining in the Surplus, if any, after payment of Class 3, 4, 5, 6 and 7 Claims. As noted above, it is unlikely that there will be any Surplus remaining after payment to the Secured Creditors. Even if all of the Secured Claims are disallowed, the projected amount of the Surplus after payment of the CREIF Legal Fees is only \$25,000, so that any *pro rata* dividend will be de minimis.

Voting: Class 8 is impaired and entitled to vote on the Plan.

Class 9 — Equity Interests

Classification: Class 9 is composed of the Equity Interests of James Fernandez and Laura Fernandez.

Treatment: The Class 9 Equity Interests shall be deemed canceled as of the Effective Date of the Plan without any distribution from the Confirmation Fund.

Voting: Class 9 Equity Interest Holders are not eligible to vote because of their insider status.

VI. IMPLEMENTATION OF THE PLAN

Sources of Cash for Plan Distributions. The monies to fund the Plan will derive from the Sale of the Apartment, including the Carve Out and the Surplus to be deposited into the Confirmation Fund at the Closing.

Transfer Taxes. Pursuant to Section 1146(a) of the Bankruptcy Code, any deeds, mortgages, bills of sale, or assignments executed in connection with the Sale of the Apartment shall not be subject to any stamp, real estate transfer, recording, mortgage or other similar tax. All state, city and local government officials and agents shall forego the collection of any such tax or governmental assessment and shall accept for filing and recordation, without the payment of any such transfer tax (including, without limitation, payment of the New York City Real Property Transfer Tax (“RPT”) and New York State Transfer Tax), or government assessment, any instrument or other document issued or transferred pursuant to the Plan.

Discharge of Obligations. Except as otherwise expressly provided for and preserved herein, upon the occurrence of the Closing Date, any mortgages, liens, claims, taxes, judgments, notices of pendency and non-permitted encumbrances that have been asserted against the Debtor or the Apartment, shall be deemed cancelled and discharged as of record, with underlying claims to otherwise attach to the proceeds of sale unless paid on the Closing Date; provided, however, that the preceding proviso shall not affect the discharge of Claims pursuant to the Plan or result in any expense or liability to the Debtor.

Post-Closing Date Transactions. The Debtor will not operate after the Closing. As noted above, all equity interests in the Debtor shall be deemed canceled as of the Effective Date, and the interest holders shall take all steps necessary and appropriate to dissolve the Debtor.

On or after the Closing Date, the Disbursing Agent, on behalf of the Debtor, is hereby authorized to take all reasonable actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate implementation of the Plan and the transfer of the Apartment, including the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any

asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree.

Disbursements. All distributions under the Plan shall be made by the Disbursing Agent.

Automatic Rejection of all Existing Leases and Executory Contracts. On the Effective Date, any unexpired leases and executory contracts to which the Debtor is a party shall be deemed automatically rejected pursuant to 11 U.S.C. §365, without the necessity of the filing of a formal motion. Any claims for damages arising out of such rejection shall be filed with the Court in accordance with the terms of a separate Order to be entered by the Court dealing with the filing of claims.

VII. RETENTION OF JURISDICTION

9.1 **Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction until the case is closed to perform the following:

- (a) Ensure that the Plan is fully consummated, and to enter any Order pursuant to section 1142(b) of the Bankruptcy Code;
- (b) Resolve all matters arising under or relating to the Plan, including, without limitation, the enforcement, interpretation and any issues or dispute relating to the closing on the sale of the Apartment;
- (c) To determine applications for allowance and final compensation relating to professional fees under Section 330 and 331 of the Bankruptcy Code;
- (d) To amend or modify the Plan to remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary or advisable to carry out the purpose and intent of the Plan to the extent authorized by the Bankruptcy Code or the Bankruptcy Rules;

(e) To determine any and all controversies and disputes arising under or related to the Plan;

(f) To construe and enforce any and all provisions of the Plan;

(g) To determine any and all applications, motions, adversary proceedings and contested or litigated matters commenced prior to the Effective Date;

(h) To determine the validity, priority and extent of liens, claims and encumbrances upon the Apartment and to determine any questions and issues regarding title to and interests in the Apartment, and to enter any order, including injunctions, necessary to enforce the title, rights and powers of the Debtor or the debtor in possession;

(i) To enter a Final Order or decree in the Debtor's Chapter 11 Case; and

(j) To determine such other matters as may be provided for in the Plan, Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code or the Bankruptcy Rules.

VIII. CONFIRMATION OF THE PLAN

Section 1129(a) of the Bankruptcy Code lists a number of findings that need to be made prior to Confirmation. One of the prerequisites to confirmation, found in Section 1129(a)(11) of the Bankruptcy Code, requires that the Debtor demonstrate the ability to close on the sale, fund the Plan, and establish that confirmation is not likely to be followed by the need for further financial reorganization or restructuring. The Purchaser has already paid an initial deposit of \$620,000, and has provided evidence to the Proponents of his ability to close the Sale without financing. The Purchaser will be prepared to demonstrate that he has sufficient cash to close at the Confirmation Hearing.

In order for the Plan to be accepted on a consensual basis, each impaired class must accept the Plan or be deemed to accept the Plan. Acceptance is based upon affirmative votes

from each class of creditors holding at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims of those creditors in the particular class who actually vote.

Even though it is unlikely that funds will be available to pay junior lien holders and unsecured creditors, the Proponents anticipate that all classes of creditors will vote to accept the Plan because it provides for a distribution of the Sale Proceeds in accordance with the priority structure contained in the Bankruptcy Code.

Pursuant to Section 1129(b), the Plan can be confirmed even if a class of creditors rejects the Plan, under a so-called “Cram Down Confirmation” so long as (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.

CREIF will vote its Class 1 Claim in favor of the Plan, providing the necessary accepting class for “cramdown” purposes.

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 or Interests.

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 or

Interests that has not accepted the Plan must be paid in full if a more junior class receives any distribution under the Plan.

Since the Plan follows the priority structure established by the Bankruptcy Code, and no junior class will be paid until all senior classes are paid in full, the Proponents believe that the Plan meets all of the requirements of Section 1129(b), does not discriminate unfairly and complies with the absolute priority rule.

IX. CONCLUSION

The Proponents believe that the Plan should be confirmed as the best and most efficient method of distributing the Sale Proceeds and bringing the administration of this case to an expeditious end.

Dated: New York, NY
May 18, 2018

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

By: /s/Paul A. Rachmuth, Esq.