

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Case No. 1:13-44020-cec

Prime Properties of New York, Inc.,

Chapter 11

Debtor.  
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Hon. Carla E. Craig  
United States Bankruptcy Judge

PRIME PROPERTIES OF NEW YORK, INC. AND NY BROOKLYN  
INVESTOR II TRUST 19'S JOINT DISCLOSURE STATEMENT  
FOR THEIR JOINT PLAN OF REORGANIZATION OF  
PRIME PROPERTIES OF NEW YORK, INC.

<p><b>THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.</b></p>
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**KRISS & FEUERSTEIN LLP**

360 Lexington Avenue, Suite 1200  
New York, NY 10017  
(212) 661-2900  
Jerold C. Feuerstein, Esq.  
Jason S. Leibowitz, Esq.

*Attorneys for FTBK Investor II LLC, as  
Trustee for NY Brooklyn Investor II Trust 19*

**KERA & GRAUBARD**

240 Madison Avenue, 7<sup>th</sup> Floor  
New York, NY 10016  
(212) 681-1600  
M. David Graubard, Esq.

*Attorneys for Prime Properties of New York,  
Inc.*

**TARTER KRINSKY & DROGIN LLP**

1350 Broadway  
New York, NY 10018  
(212) 216-8005  
Scott S. Markowitz, Esq.

*Attorneys for Nicholas Gordon*

Dated: New York, New York  
April 29, 2014

Prime Properties of New York, Inc. (the "Debtor"), by and through its Vice President and sole shareholder, Nicholas Gordon ("Gordon"), along with secured mortgagee FTBK Investor II LLC, as Trustee for NY Brooklyn Investor II Trust 19 ("FTBK", and together with the Debtor, the "Plan Proponents") have filed their *Joint Plan of Reorganization for Prime Properties of New York, Inc.*, dated April 26, 2014 (the "Plan"), with the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"). This *Joint Disclosure Statement for the Joint Plan of Reorganization of Prime Properties of New York, Inc.* (the "Disclosure Statement") is being submitted for the approval of the Bankruptcy Court for use in connection with the Plan (which provides for the sale of the Debtor's primary asset), pursuant to § 1125 of Title 11 of the United States Code (the "Bankruptcy Code").

A copy of the Plan accompanies this Joint Disclosure Statement. Unless otherwise defined herein, the meaning of all capitalized terms used in the Disclosure Statement shall have the meaning ascribed to them in the terms defined in Article 1 of the Plan.

**The Plan Proponents believe that Confirmation of the Plan is in the best interests of all Creditors.**

## **SUMMARY OF THE PLAN**

The Joint Plan provides for FTBK, or its designated nominee, to purchase the real property and improvements thereon located at 300-304 10<sup>th</sup> Street, Brooklyn, New York 11215 (Block 1016; Lots 2 and 5) (the "Property") from the Debtor in accordance with the provisions of the Bankruptcy Code, pursuant to a private sale (the "Sale") pursuant to 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004(f), with a closing of such Sale immediately following Confirmation of the Plan.

Proceeds generated from the Sale, in addition to the Cash being held by the Receiver (the "Receivership Funds"), will be utilized by the Debtor to fund distributions under the Plan to satisfy all Allowed Claims of creditors of the Debtor in full, plus post-petition interest at four (4%) percent per annum from the Petition Date. FTBK or its designated nominee has agreed to purchase the Property at the Sale by (i) satisfying and/or credit bidding its Secured Claim; and (ii) providing an additional cash contribution (the "Cash Contribution") to the Debtor in the amount of \$3,150,000.00 simultaneously with the closing of the Sale. In addition thereto, all remaining Receivership Funds shall be turned over to the Debtor by the Receiver. The Cash Contribution and the Receivership Funds shall be utilized to pay all Allowed Claims, including Administrative Claims and Professional Fees, in full plus post-petition interest at four (4%) percent per annum from the Petition Date.

Through the Sale, FTBK, or its nominee, shall take title to the Property free and clear of all liens, claims and encumbrances on confirmation, except that at its election ownership shall be subject to the Mortgage (defined below).

The table below provides a summary of the classification and treatment of Claims and Interests under the Plan. The figures set forth in the table below represent the Plan Proponents best estimate of the total amount of Claims and Interests filed or scheduled in the Case. These estimates have been developed by the Plan Proponents based on an analysis of the Schedules filed by the Debtor, documents provided by the Debtor's principal, Proof of Claims filed by Creditors,

and certain other documents of public record. Although the Plan Proponents believe that the amounts of the Claims set forth below are substantially correct, there can be no assurance that Claims and Interests will be allowed by the Bankruptcy Court in the amounts set forth below:

Class	Claim/Interest	Treatment of Claim/Interest	Estimated Amount of Claims or Interests <sup>1</sup>
1	IRS Tax Claim	Unimpaired	\$0 <sup>2</sup>
2	Priority Claims (Non-IRS)	Unimpaired	\$1,117.57
3	FTBK Secured Claim	Unimpaired	\$13,934,681.19 <sup>3</sup>
4	Other Secured Claims	Unimpaired	\$88,123.77
5	General Unsecured Claims	Unimpaired	\$240,370.81
6	Equity Interests	Unimpaired	\$0.00

#### CONFIRMATION OF THE PLAN

Pursuant to § 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a combined hearing to consider approval of this Disclosure Statement and Confirmation of the Plan, **on June 3, 2014 at 1:00 p.m., Eastern Standard Time, in the United States Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11021.** The Bankruptcy Court has directed that objections, if any, to the Approval of the Disclosure Statement or Confirmation of the Plan be filed and served on or before May 27, 2014 at 4:00 p.m. EST.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of § 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Plan Proponents intend to seek Confirmation of the Plan at the Confirmation Hearing. **The Plan Proponents believe that the Plan satisfies all applicable requirements of § 1129(a) of the Bankruptcy Code.** Confirmation makes the Plan binding upon the Debtor, its Interest Holders, all Creditors, and other parties regardless of whether they have objected to the Plan. Since no classes of claims are impaired under the Plan, all classes of claims are deemed to have accepted the Plan.

As of the Effective Date, all holders of Claims or Interests will be precluded from asserting any Claim against FTBK, the Debtor, or the Debtor's assets or Property or other

<sup>1</sup> The amounts set forth in this schedule are not, and should not be deemed an admission by the Plan Proponents as to the validity or amount of any claim and the Plan Proponents reserve all rights to object to any claim in this Case.

<sup>2</sup> The IRS Tax Claim was reduced to \$0.00 by amendment filed by the Internal Revenue Service on February 13, 2014.

<sup>3</sup> This amount is the amount set forth in FTBK's proof of claim filed on September 23, 2013, as Claim Number 6-1 and does not include any post-petition amounts which have accrued since the Petition Date, which will be added to this sum and are all a part of FTBK Allowed Secured Claim and will be included as a component of the credit bid portion of the purchase price paid by FTBK.

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.

#### **NO VOTING – SUMMARY**

**THE PLAN PROVIDES FOR PAYMENT TO EACH CLASS OF CREDITORS HOLDING ALLOWED CLAIMS IN FULL PLUS POST-PETITION INTEREST FROM THE PETITION DATE AT FOUR (4%) PERCENT PER ANNUM. THERE ARE NO CREDITORS HOLDING CLAIMS THAT ARE IMPAIRED, OR THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN, OTHER THAN FTBK WHICH HAS WAIVED THIS RIGHT.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE PLAN PROPONENTS. THE STATEMENTS AND OPINIONS SET FORTH HEREIN ARE THOSE OF THE PLAN PROPONENTS, 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.**

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

This Disclosure Statement is being furnished by the Plan Proponents to the Debtor's known creditors pursuant to § 1125(b) of the Bankruptcy Code. The Plan has been filed with the Bankruptcy Court and is incorporated herein by reference. Parties in interest may view the Plan on the internet at <http://www.nyeb.uscourts.gov>.<sup>4</sup>

The purpose of this Disclosure Statement is to enable you, as a Creditor to make an informed decision in exercising your right to consider whether to object to the Plan.

The historical information concerning the Debtor has been prepared using certain filings made with the Bankruptcy Court. The estimates of Claims and Interests set forth herein may vary from the final amounts of Claims or Interests allowed by the Bankruptcy Court.

Notwithstanding any provision of the Plan to the contrary, definitions and descriptions contained herein respecting pre-Petition documents, agreements, or claims are provided solely for the purpose of identification and classification thereof and do not constitute an admission by the Plan Proponents of the existence, validity, allowance, or amount of any such claim,

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<sup>4</sup> A password is necessary for access to view documents on the Internet.

document or agreement. The Plan Proponents expressly reserve the right to challenge the existence, validity, allowance, or amount of any such claim, document or agreement.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, as well as descriptions of certain other related documents. While the Plan Proponents believe 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 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 or its assets, results of business operations or financial condition are authorized by the Plan Proponents, other than as set forth in this Disclosure Statement, its exhibit(s) and the Plan.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified herein. The delivery of this Disclosure Statement shall not create, under any circumstances, an implication that there has been no change in the facts set forth herein since the date hereof.

This Disclosure Statement is intended for the sole use of Creditors and Interest Holders to be informed about the Plan. Each holder of a Claim or Interest should review this Disclosure Statement, its exhibit(s) and the Plan. Holders of Claims or Interests are urged to consult with their own legal and financial advisors.

Solicitations of votes to accept or reject the Plan will not be made by the Plan Proponents in accordance with this Disclosure Statement and § 1125 of the Bankruptcy Code as pursuant to § 1126(f) of the Bankruptcy Code, all classes of claims are conclusively presumed to have accepted the Plan. 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.

#### **PLAN PROPONENTS’ RECOMMENDATION**

In the Plan Proponents’ opinion, the treatment of Creditors under the Plan provides a greater recovery than is likely to be achieved under any other alternative, including liquidation under Chapter 7. See “ALTERNATIVES TO THE PLAN.” Since the Plan provides for full payment plus interest of all Allowed Claimholders, § 1129(a)(7) of the Bankruptcy Code has been satisfied as creditors are not entitled to be paid more than one hundred (100%) percent plus interest on account of their claims.

## **BACKGROUND**

### **THE DEBTOR**

The Debtor's business consists of the ownership and operation of the Property. Upon information and belief, the Property consists of two adjacent five-story, residential apartment buildings, which collectively contain a total of fifty-five (55) units, fifty-two (52) of which are residential units and three (3) stores on the corner of 10th Street and 4th Avenue, Brooklyn New York. The Plan Proponents make no representations as to whether the residential units at the property are subject to rent regulation such as the New York City Rent Stabilization Code. Upon information and belief, the Debtor's sole source of income is from rents generated by the Property. In this regard, in the Petition the Debtor identified itself to be *Single Asset Real Estate* by checking the box marked "Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)" under the section of the Petition labeled "Nature of Business". The Debtor's principal and its 100% shareholder, Nick Gordon, managed the Property until March 2011, when management of the Property was taken over by the Receiver.

### **FTBK**

FTBK is the Debtor's sole mortgagee, holding a secured pre-petition claim in the amount of \$13,934,681.19, which claim is secured against the sole asset of the Debtor's estate, based on a note and mortgage described in detail below. FTBK's claim was filed in the Court's Claims Register<sup>5</sup> on September 23, 2013 as Claim No. 6.

FTBK is a secured creditor of the Debtor by virtue of a series of assignments (discussed below) of a Promissory Note (the "Note") executed by the Debtor on or about April 30, 2007 in favor of Washington Mutual Bank ("WAMU"), in the original principal sum of \$8,000,000.00, which is secured by (among other things) a Mortgage (the "Mortgage") that encumbers the Property.

On or about August 18, 2009, the Mortgage was assigned to Fannie Mae by a certain Assignment of Mortgage from the Federal Deposit Insurance Corporation ("FDIC"), acting as receiver for WAMU, pursuant to the FDIC's authority under the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. Section 1821(d). The Assignment of Mortgage from the FDIC to Fannie Mae was recorded in the NYC Department of Finance Office of the City Register on September 15, 2009 under CRFN No. 2009000296508.

On or about April 11, 2011, Fannie Mae assigned the Mortgage to JPMorgan Chase Bank, N.A. ("JPMorgan") as evidenced by a certain Assignment of Security Instrument. The Assignment of Security Instrument was recorded in the NYC Department of Finance Office of the City Register on April 18, 2011 under CRFN No. 2011000139933.

On or about September 27, 2011, JPMorgan assigned the Mortgage to FTBK as evidenced by an Assignment of Mortgage. The Assignment of Mortgage from JPMorgan to FTBK was

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<sup>5</sup> Although the Debtor listed FTBK in its schedules as the Debtor's only creditor holding a claim of \$8,500,000.00, the filed proofs of claim total not less than \$15,835,252.49, inclusive of FTBK's secured claim.

recorded in the NYC Department of Finance Office of the City Register on October 16, 2012 as CRFN: 2011000387476.

The Debtor defaulted under the terms of the Note and Mortgage by failing to make the payment due on April 1, 2009 (the “Default”), resulting in the commencement on November 5, 2010, of a foreclosure action in the Supreme Court of the State of New York, Kings County under index number 27411/10 (the “Foreclosure Action”). In connection with the Foreclosure Action, by *Order Appointing Receiver* of the Hon. Anthony J. Cutrona, J.S.C. dated March 23, 2011, Gregory M. LaSpina, Esq., was appointed Receiver (the “Receiver”) over the Debtor’s Property.

While the Foreclosure Action was pending, on June 28, 2013 (the “Petition Date”), the Debtor filed its second<sup>6</sup> petition (the “Petition”) for Chapter 11 bankruptcy relief before the Bankruptcy Court for the Eastern District of New York which resulted in a stay of the Foreclosure Action.

## SIGNIFICANT EVENTS IN THIS CHAPTER 11 CASE

### RETENTION OF PROFESSIONALS

11 U.S.C. § 327(a) of the Bankruptcy Code provides that the 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).

By Order of this Court dated August 14, 2013 [docket item 30], Kera & Graubard (“Debtor’s Counsel”) was retained as counsel to the Debtor *nunc pro tunc* to the Petition Date.

### THE PETITION AND SCHEDULES

In its Petition and Schedules, the Debtor identified FTBK as its only creditor. Contrary to the Debtor’s disclosures, there have been a total of nine (9) timely filed claims against the Debtor’s estate, totaling \$15,920,249.49, which includes FTBK’s secured claim.

Based on the Petition and Schedules, the Debtor’s sole source of gross income is derived from collecting rents from tenants residing at the Property. This is consistent with the Debtor’s designation on the Petition as the nature of its business is a Single Asset Real Estate entity. The Debtor filed amended Schedules reflecting a potential lender liability claim against FTBK.

### OPERATING REPORTS

Pursuant to the requirements of the Office of the United States Trustee for the Eastern District of New York, the Debtor has filed monthly operating reports (“MOR’s”) with the Bankruptcy Court for the periods from the Petition Date through February 2014.<sup>7</sup> The MOR’s

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<sup>6</sup> Notably the docket reflects the Debtor’s prior filing as Case Number: 09-46912-jbr, which was dismissed on November 16, 2010.

<sup>7</sup> On March 20, 2014 the Debtor amended its operating reports for the months of September 2013, October 2013 and December 2013.

contain a disclaimer which provides that that all rent is being paid to the Receiver and further references to the Receiver's reporting. Copies of the monthly reports which the Debtor has filed may be obtained from the Bankruptcy Court during normal business hours, or may be obtained upon written request made to counsel for the Debtor.

### **THE TURNOVER MOTION**

On July 5, 2013 the Debtor filed a Motion to Compel the Receiver to turn over the Property. On July 5, 2013, FTBK filed a Motion to Excuse Turnover. In connection with the turnover motions, the Court scheduled an evidentiary hearing and FTBK sought discovery and the deposition of the Debtor's principal. After the motions had been briefed, and facing a motion to compel discovery, the Debtor withdrew its motion and FTBK's motion to excuse turnover was granted.

### **BAR DATE AND OBJECTION TO CLAIMS**

In accordance with the requirements of § 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtor 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. Notably, FTBK was indicated by the Debtor to be the Debtor's only creditor. Pursuant to § 501 of the Bankruptcy Code any creditor or interest holder may file a Proof of Claim or Interest and, unless disputed, such filed Proof of Claim or Interest supersedes the amount and priority set forth in the Debtor's schedules. On August 14, 2013, the Bankruptcy Court entered an Order [docket item 31] fixing September 23, 2013 as the last date for filing Proofs of Claim in the Debtor's case (the "Bar Date").

The Plan provides that the Debtor and/or the Debtor's Equity Interest Holder, Gordon, has thirty (30) days from the Effective Date to file objections to filed Claims, unless further extended by court order. It is expected that the Debtor and/or Gordon will object to certain claims filed by the New York Housing Preservation and Development Corporation as well as a claim in the amount of \$117,766.29 filed by Brooklyn Union Gas. The Debtor and/or Gordon will attempt to reach a settlement of these Disputed Claims prior to filing a formal claim objection. If neither the Debtor nor Gordon file an objection to a properly filed proof of claim on or before thirty (30) days from the Effective Date (or as extended by the court) then such Claim will be deemed Allowed and will be entitled to the full Distribution under the Plan on account of its Allowed Claim.

### **THE DEBTOR'S PLAN & THE EXCLUSIVITY PERIOD**

Due to the Debtor's designation as Single Asset Real Estate, the Debtor was required to file a Plan and Disclosure Statement which have a reasonable possibility of being confirmed within a reasonable time or commence making monthly payments to FTBK on or before September 28, 2013 (the "Deadline"). No monthly payments were made by the Debtor to FTBK.

On September 18, 2013, the Debtor filed its Chapter 11 Plan of Reorganization (the "Debtor's Plan") and Disclosure Statement ("Debtor's Disclosure Statement") [docket items 41 and 42 respectively].



Notwithstanding, the filing of the Plan and the Debtor's Disclosure Statement, the Debtor never set a hearing in connection with the approval of the Debtor's Disclosure Statement, and instead, moved for dismissal of this Case. In response, FTBK opposed the Debtor's request for dismissal by cross-moving the Bankruptcy Court for an Order compelling the Debtor to produce the outstanding tax returns, and further relief, including a finding that the Debtor and its principal, Gordon, were in civil contempt for their failure to comply with the Orders of the Bankruptcy Court for their failure to comply with their obligation to file tax returns on behalf of the Debtor.

The Debtor's Plan and Debtor's Disclosure Statement merely provided that the Debtor may satisfy the claim of FTBK by payment in full upon a refinance or sale of the Debtor's real Property. See Debtor's Disclosure Statement at page 3, ¶ 1. In addition, the Debtor's Disclosure Statement provides that the Debtor shall reduce its obligation to the IRS by filing outstanding tax returns. The Debtor's Disclosure Statement further provided that the Debtor would have the ability to pay general unsecured creditors one-hundred percent (100%) of their claims. The Debtor's exclusive right to file a plan of reorganization in this Case expired on or October 26, 2013. As a result of a settlement between FTBK and the Debtor, the Debtor's Plan and the Debtor's Disclosure Statement shall be, and are hereby withdrawn, and instead, the Debtor requests that the Court confirm this Plan.

#### **FTBK'S MOTION FOR RELIEF FROM STAY**

On October 2, 2013, FTBK moved for relief from stay pursuant to 11 U.S.C. § 362(d)(3). By Order dated November 1, 2013, FTBK's Motion was granted.

#### **THE DEBTOR'S MOTION TO DISMISS**

On November 21, 2013, the Debtor filed a Motion for Voluntary Dismissal of Chapter 11 Petition. In response, FTBK Cross-Moved to compel discovery and opposition to the Motion to Dismiss. The aforementioned motions were heard by the Court on March 19, 2014, and adjourned to June 3, 2014. In view of the settlement embodied in this Plan, the motion to dismiss was withdrawn by the Debtor.

#### **FTBK'S PLAN AND DISCLOSURE STATEMENT**

On February 3, 2014, FTBK filed its Plan of Liquidation for the Debtor ("FTBK's Plan") [docket item 59] and Disclosure Statement for Plan of Liquidation for the Debtor ("FTBK's Disclosure Statement") [docket item 60], which, *inter alia*, proposed the sale of the Property pursuant to an auction with FTBK acting as the stalking horse with the ability to credit bid the full amount of its secured claim and providing for a modest distribution to unsecured creditors depending upon the purchase price obtained at the auction

Gordon filed an objection to FTBK's Disclosure Statement asserting among other things that the sale process was flawed and would not garner the highest and best price for the Property.

As a result of the settlement embodied in this Plan, FTBK's Plan and FTBK's Disclosure Statement shall be, and are hereby withdrawn, and instead, FTBK respectfully requests that the Court confirm the Plan.

### **THE DEBTOR AND GORDON'S OBJECTION TO FTBK'S CLAIM**

On March 12, 2014, Gordon filed a Notice of Objection of Nicholas Gordon (the "Claim Objection") to Claim No. 6 Filed by FTBK Investor II LLC As Trustee for NY Brooklyn Investor II Trust 19 and Counterclaim [Doc 68]. The Debtor joined in the FTBK Claim Objection [Doc 70]. In sum and substance, Gordon and the Debtor claimed that (i) FTBK should not be entitled to default interest, late charges, legal fees, and challenged the other components of the claim such as the advances made for insurance and taxes, and (ii) FTBK must prove possession of the Note or an Assignment. The Claim Objection further asserted that FTBK's ability to credit bid its secured claim should be limited.

The Office of the United States Trustee previously objected to the Disclosure Statement (the "UST Objection") on March 12, 2014 [docket item 73], upon information and belief, all objections of the United States Trustee have been addressed and resolved by way of the Plan and Disclosure Statement.

On March 19, 2014, a hearing was held in connection with FTBK's Disclosure Statement, at which hearing the Court advised that the Disclosure Statement was conditionally approved and provided certain directives as to how FTBK's Disclosure Statement should be modified for final approval.

As a result of the settlement of all disputes between FTBK and Gordon embodied in the Plan and Disclosure Statement, Gordon and the Debtor have agreed that the Debtor is obligated to FTBK for the full amount set forth in FTBK's Claim. In addition, FTBK and the Debtor hereby withdraw their Objections to FTBK's Claim and respectfully request that the Court confirm the Plan.

### **RESOLUTION OF THE DEBTOR'S PLAN, THE CLAIM OBJECTION AND FTBK'S PLAN**

Through extensive negotiations between the Debtor, Gordon and FTBK, the Debtor's Plan, the Claim Objection and FTBK's Plan and Disclosure Statement and any litigation which may have stemmed therefrom, has been resolved in its entirety as set forth in detail herein below.

#### **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 accompanies this Disclosure Statement and which is incorporated herein by reference.

## THE PROPOSED SALE

The Plan provides that the Property shall be sold in a private sale to FTBK or its designated nominee in satisfaction of FTBK's Allowed Secured Claim, plus an additional cash contribution by FTBK of \$3,150,000.00, subject to the approval of the Bankruptcy Court which shall be included in the Confirmation Order. In this regard, FTBK has agreed to purchase the Property as a credit against and/or in full satisfaction of its Secured Claim as its Claim exists as of the date of the Sale, and an additional cash contribution of \$3,150,000.00 the ("Cash Contribution") at a Sale pursuant to 11 U.S.C. §§ 363(b), (f), and (m), at which Sale, a closing shall occur immediately following Confirmation of the Plan.

Proceeds generated from the Sale, in addition to the Receivership Funds, will be utilized by the Debtor to fund Distributions under the Plan as necessary to satisfy one-hundred (100%) percent of all Allowed Claims of creditors of the Debtor in full with post-petition interest at four (4%) percent annum thereon from the Petition Date.

Through the Sale, FTBK, or its nominee, shall take title to the Property free and clear of all liens, claims and encumbrances pursuant to §§ 363(f) and 1123(a)(5) of the Bankruptcy Code. In addition, the Debtor shall utilize the Cash Contribution plus all remaining Receivership Funds, if any, to pay Allowed Claims.

Upon closing of the Sale, promptly after entry of the Confirmation Order, FTBK or its nominee, shall take title to the Property free and clear of all liens claims and encumbrances, except that at its election ownership shall be subject to the Mortgage. In addition to any proceeds received from the Sale of the Property, the Receivership Funds shall be used to fund the distributions under the Plan to pay Allowed Claims. FTBK's authority to purchase the Property in satisfaction of the amount of its claim is subject to approval of this Court, which shall be deemed granted upon entry of the Confirmation Order.

The closing of the Sale will take place promptly after entry of the Confirmation Order. The Debtor shall be required to execute any and all documents necessary to effectuate the conveyance of the Property to FTBK in accordance with the terms of the Plan, including without limitation a Bargain and Sale Deed with Covenants, a Bill of Sale and all required transfer tax returns and ACRIS documents. Upon the Sale, the Debtor (to the extent the Debtor is in possession of same) and/or the Receiver shall turn over all leases and security deposits to FTBK or its designee. Furthermore, on the Effective Date, the Debtor and/or the Receiver will provide FTBK, or its nominee, an assignment and assumption of all residential and/or commercial leases at the Property and the right to collect any and all rent arrears from such tenants. Moreover, FTBK, or its nominee, shall be entitled to collect any and all rental income from any residential and/or commercial tenant at the Property for the period commencing June 1, 2014 forward.

In addition thereto, the Debtor, Gordon and their affiliates, subsidiaries, successors, assigns, principals, members, directors, shareholders and agents will give a General Release to FTBK, Madison Realty Capital and their affiliates, subsidiaries, successors, assigns, principals, members, directors, shareholders and agents. FTBK will also give a General Release to the Debtor and a release to Gordon limited to actions taken solely with respect to the Debtor.

## Classification of Claims and Interests

Classification of claims is governed, in part, by §§ 1122 and 1123(a) of the Bankruptcy Code. 11 U.S.C. § 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). 11 U.S.C. § 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 Five (5) classes of Claims and one (1) class of Interests:

- Class 1 - IRS Tax Claims
- Class 2 - Priority Claims (Non-IRS)
- Class 3 - FTBK Secured Claim
- Class 4 - Other Secured Claims
- Class 5 - General Unsecured Claims
- Class 6 - Equity Interests

Since no classes of claims are impaired under the Plan, holders of all classes of claims and claimholders are conclusively deemed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code and no voting or balloting will be conducted under the Plan. As set forth in Article 2 of the Plan, pursuant to § 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.”

**Class 1 – IRS Tax Claims.** Class 1 consists of all Allowed Claims, other than Administrative Claims or Bankruptcy Fees, of the IRS for unpaid and outstanding income taxes allegedly owed by the Debtor. Certain Claims for taxes and the payment of expenses incurred by the Debtor subsequent to the Petition Date may be entitled to priority treatment under § 507 of the Bankruptcy Code, and are treated elsewhere as non-classified Claims. See “SUMMARY OF THE PLAN -- Treatment of Non-Classified Claims.”

**Class 2 – Priority Claims (Non-IRS).** Class 2 consists of New York State Department of Taxation and Finance claim in the amount of \$1,117.57 for unpaid corporate taxes. Class 2 also includes any claims of the City of New York on account of unpaid real estate taxes assessed against the Property.

**Class 3 – FTBK Secured Claim.** Class 3 consists of the FTBK Allowed Secured Claim.

**Class 4 – Other Secured Claims.** Class 4 Claims consist of the Secured Claim of City of New York Housing Preservation and Development (“HPD”) against the Property for statutory emergency liens and statutory interest in the amount of \$25,363.26 (see Claim 9-1), the Secured Claim of the NYC Office of Administrative Trials and Hearings for environmental control board violations in the amount of \$59,216.31 (See Claim 8-1), and the secured portion of the NYS

DEPT OF TAX & FINANCE claim for unpaid corporate taxes in the amount of \$3,544.20 (See Claim 2-2).

**Class 5 General Unsecured Claims.** Class 5 consists of General Unsecured Claims of Consolidated Edison Company of New York, Inc. (“ConEd”), The Brooklyn Union Gas Company d/b/a National Grid (“National Grid”) and the 2 claims of HPD (see Claim 4-1 and 5-1) on account of penalties for violating the New York City Housing Maintenance Code. The Debtor disputes amounts owed to National Grid, on grounds that it has been improperly charged for tenants who had moved out of the Property. The Debtor intends to object to National Grid’s proof of claim. The Debtor also intends to object to the two (2) claims filed by HPD which aggregate to \$116,875.00 on the grounds that the claims are excessive and were issued on default.

**Class 6 – Equity Interests.** Class 6 consists of all Equity Interests in the Debtor.

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

Articles 4 and 5 of the Plan provide for the treatment of Claims classified in Article 3 of the Plan as follows:

**Class 1 – IRS Tax Claim.** The IRS amended Claim No. 3 was reduced to \$0.00. Holders of Class 1 Allowed Claims are unimpaired and are not entitled to vote as their claim has been reduced to zero.

**Class 2- Priority Claims (non-IRS).** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, on the Effective Date, in full satisfaction, release and discharge of a Class 2 Claim shall receive cash in the full amount of its Allowed Priority Tax Claim. Class 2 Claims aggregate to approximately \$1,117.57. Holders of Class 2 Allowed Claims are unimpaired and are not entitled to vote.

**Class 3 – FTBK Secured Claim.** In full satisfaction, release and discharge of the FTBK Secured Claim, FTBK shall obtain fee title to the Property free and clear of all liens, claims and encumbrances by virtue of its purchase of the Property through a combination of credit bidding its allowed secured claim and paying the Cash Contribution. The FTBK Secured Claim was \$13,934,681.19 as of the Petition Date, and shall also include any and all post-petition charges, penalties, attorney’s fees, accrued interest, protective advances and all other sums FTBK is entitled to pursuant to the Note and Mortgage incurred after the Petition Date. FTBK shall only be obligated to pay the Cash Contribution at the closing of the Sale of the Property. At the closing, the Property shall be conveyed to FTBK, or its nominee, subject to FTBK’s existing Mortgage of record if FTBK so elects. The Class 3 claimholder is not impaired and not entitled to vote, and supports the Plan, as it is a Plan Proponent.

**Class 4 - Other Secured Claims.** Class 4 consists of the Secured Claims of the City of New York Housing Preservation and Development against for emergency repairs allegedly performed at the property and the statutory interest which has accrued thereon and the secured claim of NYC Office of Administrative Trials and Hearings (Claim 8-1) as well as the secured portion of the Claim of the NYS Dept. of Tax & Finance (Claim 2-2). Allowed Secured Claims in

Class 4 will be paid in full plus applicable post-petition interest on the Effective Date. Class 4 is unimpaired and not entitled to vote.

**Class 5 – General Unsecured Claims.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, in full satisfaction, release and discharge of all Allowed Unsecured Claims (including deficiency claims), on the Effective Date, each holder of an Allowed Unsecured Claim shall receive a distribution in an amount equivalent to one-hundred percent (100%) percent of their Allowed Unsecured Claims from the Disbursing Agent plus post-petition interest on account of their Allowed Claims at a rate of four (4%) percent per annum from the Petition Date. It is estimated that the Allowed Unsecured Claims will not exceed \$240,370.81. Holders of Class 5 Allowed Claims are unimpaired and are not entitled to vote for or against the Plan.

**Class 6 – Equity Interests.** Equity interest holders shall retain their equity interests as they existed on the Petition Date, and are consequently unimpaired and deemed to have accepted the Plan.

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

Pursuant to § 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims entitled to priority treatment under § 507(a)(2) of the Bankruptcy Code or Claims of Governmental Units entitled to priority pursuant to § 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.** Administrative Claims are the costs and expenses of administration of this Case, allowable under § 503(b) of the Bankruptcy Code, other than Bankruptcy Fees. Administrative Claims include Claims for the provision of goods and service to the Debtor after the Petition Date, the liabilities incurred in the ordinary course of the Debtor's business (other than claims of governmental units for taxes or interest or penalties related to such taxes) after the Petition Date, Claims of professionals, such as attorneys, brokers, appraisers, and accountants, retained pursuant to an order of the Bankruptcy Court, for compensation and reimbursement of expenses under § 330 of the Bankruptcy Code, and tax claims for the period from the Petition Date to the Effective Date of the Plan.

Each holder of an Allowed Administrative Claim shall receive cash in the full amount of its Administrative Claim. It is estimated that the Administrative Claims total not more than \$205,000.00 which consists of the Debtor's counsel's professional fees in the approximate amount of \$50,000.00 and the Receiver's Administrative Claim on account of commissions and his Managing Agent's fees in the amount of approximately \$175,000.00.<sup>8</sup>

The Confirmation Order and the Plan shall provide that on or after the Effective Date (i) the Receiver shall be discharged and his bond cancelled and (ii) Harry Horowitz (the "Managing Agent") as property manager to the Receiver in connection therewith shall be relieved. The Receiver shall then be permitted to use the Confirmation Order to obtain a comfort order from the New York State Supreme Court, Kings County confirming the discharge pursuant to the Plan. All

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<sup>8</sup> The Debtor and Gordon reserve the right to dispute the Receiver's fees and commissions.

fees and expenses of the Receiver shall be paid from the Cash Contribution as well as the funds the Receiver is currently holding in his receivership account. If the Receiver is not holding sufficient funds to cover his commissions and the Managing Agent's fees, such fees shall be the responsibility of the Debtor, and paid from the Cash Contribution. The Confirmation Order shall provide that the Receiver and the Managing Agent shall turnover to FTBK and/or its nominee, all leases, and documents and other records with respect to the Property.

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 the Effective Date, the date payment of such Claim is due under the terms thereof or applicable law, or three business days after such Claim becomes an Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Disbursing Agent 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 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 first Business Day that is at least sixty (60) days after the Effective Date.

**Bankruptcy Fees.** All fees and charges assessed against the Debtor of its Estate under § 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Disbursing Agent in Cash in full as required by statute, and until the closing, conversion or dismissal of this case, whichever is earlier. The Disbursing Agent shall continue to be responsible for the payment of any such fees and charges. It is estimated that Bankruptcy Fees and charges will be approximately \$13,500.00.

**Professional Fees.** 11 U.S.C. § 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 the 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).

Reasonable compensation due to the Debtor's professionals pursuant to § 330 of the Bankruptcy Code, as determined by the Bankruptcy Court, shall be payable in full and in Cash on the Effective Date unless otherwise agreed to in writing between the holder of such claim and the Debtor and approved by the Bankruptcy Court.

## **DISPUTED CLAIMS**

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

**Time to Object.** Unless otherwise ordered by the Bankruptcy Court, objections to the allowance of any Claim must be filed no later than thirty (30) days after the Effective Date. Until the earlier of (i) the filing of an objection to a Proof of Claim or (ii) the last date to file objections to Claims as established by the Plan or by Final Order, Claims shall be deemed to be Disputed in their entirety if, (i) the amount specified in a Proof of Claim exceeds the amount of any corresponding Claim listed in the Schedules; (ii) any corresponding Claim listed in the Schedules has been scheduled as disputed, contingent or unliquidated; or (iii) no corresponding Claim has been listed in the Schedules.

#### **DISTRIBUTIONS UNDER THE PLAN**

Article 7 contains provisions governing the making of Distributions on account of Claims and Interests. In general, any payments, distributions or other performance to be made pursuant to the Plan on account of any Allowed Claim or Allowed Interest shall be deemed to be timely made if made on or within five days following the later of (i) the Effective Date or (ii) the expiration of any applicable objection deadline with respect to such Claim or Interest or (iii) such other times provided in the Plan. All Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank.

**Disbursing Agent.** Tarter Krinsky & Drogin LLP shall be the Disbursing Agent and shall make Distributions under the Plan for all claims against the Debtor's estate. The Disbursing Agent shall not be compensated for services rendered under the Plan and shall not be required to secure a bond.

Distributions shall be made: (1) at the addresses set forth on the Proofs of Claim or Proofs of Interests 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 Proof of Interest; or (3) at the address reflected in the Schedules if no Proof of Claim or Proof of Interest is filed and the Disbursing Agent has not received a written notice of a change of address. If the Distribution to the holder of any Claim or Interest 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. Neither the Debtor, FTBK, nor the Disbursing Agent shall be required to attempt to locate any holder of an Allowed Claim or an Allowed Interest.



## **UNCLAIMED DISTRIBUTIONS**

Any Cash or other property to be distributed under the Plan shall revert to the Disbursing Agent and such creditor shall forfeit its right to receive any Distribution(s) under this Plan if such Distribution is not claimed by the Entity entitled thereto before the later of (i) 120 days after the Effective Date or (ii) 60 days after an Order allowing the Claim of that Entity becomes a Final Order or are otherwise Allowed. Any such forfeited sums shall then be retained by the Reorganized Debtor.

## **DISTRIBUTIONS WITH RESPECT TO DISPUTED CLAIMS**

During the pendency of any objection to any Claim, no Distribution under the Plan will be made to the holder of such Claim. However, there will be set aside and reserved on behalf of such disputed Claim such cash or property as the holder thereof would be entitled to receive in the event such Claim was an Allowed Claim on the date of such Distribution. The Debtor may seek an order of the Bankruptcy Court estimating or limiting the amount of Cash or property that must be deposited in respect of any such Disputed Claims. Cash held in reserve for Disputed Claims will be held in trust for the benefit of the holders of such Claims.

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. To the extent practicable, the Disbursing Agent shall hold such cash in a segregated account in accordance with § 345 of the Bankruptcy Code, and may invest any cash or other property segregated on account of a Disputed Claim, Disputed Interest, undeliverable distribution, or any proceeds thereof; however, 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, other property or proceeds.

## **SURRENDER OF INSTRUMENTS**

No Creditor that holds a note or other instrument of the Debtor evidencing such Creditor's Claim may receive any distribution with respect to such Claim or Interest unless and until the note or other instrument evidencing such Claim is surrendered pursuant to the provisions of the Plan. In the event an instrument evidencing a claim has been lost, stolen or mutilated, the Disbursing Agent may request reasonable affidavits and indemnification by a financially responsible party before making any distribution(s) to such Creditor.

## **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.

## **EFFECTIVE DATE**

The Effective Date of the Plan is defined as the Closing Date of the sale of the Property.

## **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Effective on and as of the Effective Date, all Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed rejected in accordance with § 365 of the Bankruptcy Code, except those pertaining to leases between the Debtor and residential and/or commercial tenants at the Property. The Plan Proponents do not believe that there are any executory contracts and unexpired leases which would be subject to rejection. For avoidance of doubt, only residential and/or commercial leases between the Debtor and tenants at the Property shall remain in full force and effect subject to their terms. In addition, on the Effective Date, the Debtor and/or the Receiver will provide FTBK, or its nominee, an assignment and assumption of all residential and/or commercial leases at the property and the right to collect any and all rent arrears from such tenants. It is further agreed that FTBK, or its nominee, shall be entitled to collect any and all rental income from any residential and/or commercial tenant at the Property for the period commencing June 1, 2014 forward.

**Rejection Claims.** Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease of the Debtor pursuant to the Plan 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 Disbursing Agent within 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 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 Claim not timely filed and served shall be forever barred from assertion and may not be enforced against FTBK (or its nominee), the Debtor, their successors or their respective Property.

## **TRANSFER OF THE PROPERTY**

Except as otherwise provided in the Plan, on the Effective Date all of the assets and Property of the Estate shall vest in FTBK, or its nominee, free and clear of all Liens, Claims and encumbrances and the Debtor shall be required to execute any and all documents needed to facilitate the transfer of the Property. On the Effective Date, any and all Liens, Claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Furthermore, on the Effective Date, all rent arrears, leases,

insurance claims and proceeds thereof to which the Debtor was entitled, shall be assigned to FTBK and/or its nominee.

## **FUNDING**

The Plan will be funded by moneys made available as a result of the Sale of the Property, including the Cash Contribution and the Receivership Funds. A detailed breakdown of how the Plan Proponents intend to fund the plan is as follows. FTBK has escrowed with its counsel, the sum of \$3,150,000.00. In addition, sums contained in the Receiver's account are currently estimated to be not less than \$215,000.00. In addition, FTBK has been further advised that claims by the Receiver (and persons reporting to the Receiver) total approximately \$175,000.00. Under the Plan, claims of the Receiver and persons reporting to the Receiver shall be paid in full, leaving a remaining balance of approximately \$40,000.00.

The Plan Proponents have been further advised that Debtor's counsel's legal fees total approximately \$50,000.00, and the estimated fees due to the Office of the United States Trustee upon a sale of the Property will total \$13,500.00.

In order to pay all estimated Administrative Claims and quarterly fees due to the Office of the United States Trustee (\$218,541.00), Other Secured Claims of \$88,123.77, and Priority Claims of \$1,117.57 in full, along with a 100% distribution to holders of Allowed Unsecured Claims (which based upon filed and scheduled claims will not exceed \$240,370.81), the Debtor is prepared to utilize Receivership Funds from the Receiver and the Cash Contribution from FTBK, to fund of the Plan. The total cash required to pay holders of all Allowed Claims and Administrative Claims (even if the claim objections are resolved in favor of the claimants) is estimated to be no more than \$540,000.00. All remaining funds after the payment to holders of Allowed Claims in Classes 1 through 5, shall be retained by the Reorganized Debtor.

The Debtor shall take all necessary steps and perform all acts to consummate the terms and conditions for the Plan. The Confirmation Order shall contain appropriate provisions consistent with § 1142 of the Bankruptcy Code, directing the Debtor and any other necessary party to execute or deliver or to join in the extension or delivery of any instrument required to affect the Plan or to perform any act necessary to consummate the Plan.

Except as set forth elsewhere in the Plan, 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.

## **PRESERVATION OF RIGHTS OF ACTION**

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 §§ 544 through 550 of the Bankruptcy Code or (ii) belonging to the Debtor as of the Petition Date, or the Estate, and arising under any provision of state or federal law, or any theory of statutory or common law or equity.

## **POST-CONFIRMATION OPERATING REPORTS AND UNITED STATES TRUSTEE'S FEES**

The Debtor shall be responsible for the preparation and filing of monthly operating reports and post-confirmation status reports which post-confirmation status reports shall be filed until the closing of the Debtor's Chapter 11 Case. All outstanding quarterly fees payable to the Office of the United States Trustee shall be paid by the Disbursing Agent until entry of a final decree.

## **TRANSFER TAXES**

Pursuant to § 1146(a) of the Bankruptcy Code, the initial 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 including but not limited to the sale of the Property to FTBK) shall be exempt and shall not be subject to tax under any law imposing a Transfer Tax, mortgage recording tax or similar tax as set forth in the Plan. In connection therewith, FTBK shall have the protections afforded under the "good faith" purchaser provisions of § 363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived.

## **REVOCATION OF THE PLAN**

The Plan may be altered, amended or modified by the Plan Proponents at any time before the substantial consummation of the Plan, as provided in §§ 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. § 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 §§ 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 § 1127(a) "the plan as modified becomes the plan." No order of the Court is required to modify the Plan under the terms of § 1127(a); however, the proponent of a modification to a plan must comply with § 1125 of the Bankruptcy Code with respect to the plan as modified.

If any of the Plan Proponents revoke or withdraw the Plan, or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor; or prejudice in any manner the rights of the Debtor in any further proceedings involving the Debtor.

## **RETENTION OF JURISDICTION**

The Plan contains detailed provisions providing for the retention of jurisdiction by the Bankruptcy Court over the Case for the purposes of, *inter alia*, determining all disputes relating to Claims or Interests and other issues presented by or arising under the interpretation, implementation or enforcement of the Plan.

## **RISK FACTORS**

Plan payments are to be made from the Sale Proceeds. There can be no assurance that the sale of the property will occur.

## **CONFIRMATION OF THE PLAN**

All Distributions to holders of Allowed Claims are contingent on the Plan being confirmed by this Court. Otherwise, the Debtor is not obligated to make the payments required hereunder.

## **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 June 3, 2014 at 1:00 p.m. in the United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York, Courtroom 3529.** 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.

The Bankruptcy Court has directed **that objections, if any, to confirmation of the Plan be filed and served on or before May 27, 2014.** Objections must be served upon (i) Counsel to the Debtor: Kera & Graubard, Esq., 240 Madison Avenue, 7<sup>th</sup> Floor, New York, New York 10016 - Attn: M. David Graubard, Esq., (ii) Counsel to FTBK, Kriss & Feuerstein LLP., 360 Lexington Avenue, Suite 1200, New York, New York, New York 10017 – Attn: Jerold C. Feuerstein, Esq., (iii) counsel to Gordon, Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attn: Scott S. Markowitz, Esq., (iv) The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014-9449 and be filed electronically in accordance with the Court’s ECF procedures.

## **REQUIREMENTS FOR CONFIRMATION**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of § 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 Plan Proponents have proposed the Plan in good faith, (iv) the Plan Proponents have 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 interests” of all Creditors and Interest Holders; and (vi) the Plan is feasible. The Plan Proponents believe 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 Class of Claims or Interest would receive if the Debtor were liquidated under Chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets in a chapter 7 liquidation case. The amount that would be available for satisfaction of Allowed Claims against and Allowed Interests in the Debtor would consist of the proceeds resulting from the disposition of the Debtor's assets, augmented by the cash held by the Debtor. 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 result from the termination of the Debtor's business. 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, financial advisors, appraisers, accountants and other professionals that such 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 this Case was pending under chapter 11, including compensation for attorneys, financial advisors, appraisers, accountants and other professionals retained by the Debtor.

**Liquidation Analysis.** The Plan Proponents have concluded that the Plan provides to each Creditor and Interest Holder a recovery with a *present value* which equals the distribution that such person would receive if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. The Plan provides for the Debtor's reorganization, the payment of all of the Debtor's outstanding secured indebtedness, and 100% plus interest to holders of all other Allowed Claims. Since Creditors would not be entitled to receive more than 100% plus interest in a Chapter 7 liquidation, § 1129(a)(7) of the Bankruptcy Code is satisfied.

**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. This Plan calls for the sale of the Debtor's Property to FTBK. Thus the Plan meets the feasibility requirements of the Bankruptcy Code as long as FTBK deposits the Cash Contribution in Escrow prior to the Confirmation Hearing.

## EFFECT OF CONFIRMATION

### LIMITATION OF LIABILITY

**11 U.S.C. § 1125(e) of the Bankruptcy Code, commonly referred to as the "safe harbor," protects persons acting in good faith, from civil claims arising in connection with solicitations of acceptances of plans of reorganization or participating in the offer, issuance, sale or purchase of a security under the Plan. Pursuant to § 1125(e), as set forth in Article 9 of the Plan, neither the Debtor, FTBK, or Purchaser 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 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 other action taken or omitted to be taken in connection with 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 9 of the Plan.**

### 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 or (b) the formulation, promulgation and confirmation or an alternative plan of reorganization involving a sale to a different purchaser; or (c) the dismissal of the Debtor's case.

The Plan Proponents believe that the Plan provides a recovery to all Creditors and Interest Holders equal to or greater than would be obtainable in chapter 7 liquidation or foreclosure sale and believes that the Plan enables Creditors to realize the most value under the circumstances.

The Plan Proponents reserve their right to file an amended plan and/or disclosure statement.

### 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 Plan Proponents have not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will the Plan Proponents, 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 Plan Proponents offer 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 Creditors and Interest Holders will differ and will depend on factors specific to each Creditor or 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 or Interest Holder in exchange for the Claim or Interest; (iv) whether the Creditor or Interest Holder is a United States person or foreign person for tax purposes; (v) whether the Creditor or Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor or Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim or Interest.

**THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR OR INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH CREDITOR OR INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR OR 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 OR 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 OR INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR'S OR INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**



### **ADDITIONAL INFORMATION**

Requests for information and additional copies of this Disclosure Statement 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) Counsel to the Debtor: Kera & Graubard, Esq., 240 Madison Avenue, 7<sup>th</sup> Floor, New York, New York 10016 - Attn: M. David Graubard, Esq., (ii) Counsel to FTBK, Kriss & Feuerstein LLP., 360 Lexington Avenue, Suite 1200, New York, New York, New York 10017 – Attn: Jerold C. Feuerstein, Esq., (iii) counsel to Gordon, Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attn: Scott S. Markowitz, Esq., or (iv) may be retrieved from the Court’s web site at <https://ecf.nyeb.uscourts.gov> (provided such party has PACER access) by searching Case No.: 1:13-44020-cec.

Copies of all pleadings, orders, lists, schedules, proofs of claims or other documents submitted in these cases are on file in the Office of the Clerk of the United States Bankruptcy Court, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201, and are available for public inspection Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m.

### **CONCLUSION**

The Plan Proponents believe that confirmation of the Plan is in the best interests of all Creditors.

Dated: New York, New York  
April 29, 2014

**KRISS & FEUERSTEIN LLP**

360 Lexington Avenue, Suite 1200  
New York, NY 10017  
(212) 661-2900

By: s/ Jason S. Leibowitz

Jerold C. Feuerstein, Esq.  
Jason S. Leibowitz, Esq.

*Attorneys for FTBK Investor II LLC, as  
Trustee for NY Brooklyn Investor II Trust  
19*

**KERA & GRAUBARD**

240 Madison Avenue, 7<sup>th</sup> Floor  
New York, NY 10016  
(212) 681-1600

By: s/ M. David Graubard

M. David Graubard, Esq.

*Attorneys for Prime Properties of New  
York, Inc.*

**TARTER KRINSKY & DROGIN LLP**

1350 Broadway  
New York, NY 10018  
(212) 216-8005

By: s/ Scott S. Markowitz

Scott S. Markowitz, Esq.

*Attorneys for Nicholas Gordon*

**NICHOLAS GORDON**

By: s/ Nicholas Gordon by Scott Markowitz

*with permission*  
Nicholas Gordon