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

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	:
In re	: Chapter 11
	:
EVERGREEN GARDENS MEZZ LLC, et al.,	: Case No. 21-10335 (MG)
	:
Debtors.¹	: (Joint Administration Pending)
	:
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**MOTION OF DEBTORS FOR ENTRY OF AN ORDER (A) SCHEDULING COMBINED
HEARING ON ADEQUACY OF DISCLOSURE STATEMENT AND CONFIRMATION
OF DEBTORS' JOINT CHAPTER 11 PLAN; (B) ESTABLISHING PROCEDURES
FOR OBJECTING TO DISCLOSURE STATEMENT, SOLICITATION PROCEDURES,
AND CHAPTER 11 PLAN; (C) APPROVING FORM, MANNER, AND SUFFICIENCY
OF NOTICE OF COMBINED HEARING, COMMENCEMENT OF CHAPTER 11
CASES, AND SECTION 341(a) MEETING OF CREDITORS; (D) CONDITIONALLY
APPROVING THE DISCLOSURE STATEMENT FOR PURPOSES OF SOLICITING
THE MEZZANINE LENDER; AND (E) GRANTING RELATED RELIEF**

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Evergreen Gardens Mezz LLC ("EGM" or the "Initial Debtor"), together with
Evergreen Gardens I LLC ("EG I") and Evergreen Gardens II LLC ("EG II" and, together with

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors' principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

EG I, the “**Subsidiary Debtors**” and, together with the Initial Debtor, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Relief Requested

1. These Chapter 11 Cases are “Partial Prepackaged Chapter 11 Cases” within the scope and definition set forth in Parts II and III of the Amended Procedural Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York, as amended, effective June 27, 2013 (as adopted by General Order M-454) (the “**Guidelines**”),² as the Subsidiary Debtors, contemporaneously with the filing of their chapter 11 petitions, filed, among other documents, the Plan and Disclosure Statement (each as defined below). Shortly after midnight on September 14, 2021, the Subsidiary Debtors commenced their solicitation of votes to accept the Plan. The Debtors have established October 18, 2021 as the deadline for receipt of votes to accept or reject the Plan.³

2. By this Motion, pursuant to sections 105, 1125, 1126, 1128, and 1129 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 3017-

² Part II of the Guidelines provides that “a ‘prepackaged Chapter 11 case’ is one in which the Debtor, substantially contemporaneously with the filing of its Chapter 11 petition, files a Confirmation Hearing Scheduling Motion for Prepackaged Plan in substantially the form annexed [to the Guidelines] as **Exhibit A** and satisfying the criteria set forth in Part III.A. below (“Prepack Scheduling Motion”), Prepackaged Plan, disclosure statement (or other solicitation document), and voting certification.” Pursuant to Part III.D(ii) of the Guidelines, the Court may, upon request of the debtor or other party in interest in an appropriate case, apply some or all of these guidelines to “‘Partial Prepackaged Chapter 11 Cases’ -- i.e., cases in which acceptances of the Debtor's plan were solicited prior to the commencement of the case.”

³ Consistent with the Part III.C of the Guidelines, if a debtor commences a chapter 11 case after solicitation has commenced but before the expiration of the voting deadline, “the Debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline; and after notice and a hearing the Court shall determine the effect of any and all such votes.”

1, 3018-1 and 3018-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), the Debtors request entry of an order:

- (a) scheduling a combined hearing (the “**Combined Hearing**”) to consider:
 - (i) the adequacy of the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* [ECF No. 71] (as may be modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”);
 - (ii) the adequacy of the Debtors’ procedures for the solicitation and tabulation of votes to accept or reject the Plan, including, without limitation, the procedures utilized by the Subsidiary Debtors to commence the solicitation of votes on the Plan prior to the commencement of the Subsidiary Debtors’ Chapter 11 Cases (collectively, the “**Solicitation Procedures**”); and
 - (iii) confirmation of the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* [ECF No. 70] (as may be modified, amended, or supplemented from time to time in accordance with the terms thereof and the RSA (as defined below), and together with all exhibits and schedules thereto, the “**Plan**”);
- (b) establishing procedures for objecting to the Disclosure Statement, Plan and the Solicitation Procedures;
- (c) approving the form, manner, and sufficiency of notice of the Combined Hearing, commencement of the Subsidiary Debtors’ Chapter 11 Cases, and the meeting of creditors pursuant to section 341(a) of the Bankruptcy Code (the “**Section 341(a) Meeting**”);
- (d) with respect to the Initial Debtor only, conditionally approving the Disclosure Statement as having “adequate information” under section 1125 of the Bankruptcy Code to allow the Initial Debtor to commence solicitation of votes on the Plan from its only creditor, MREF REIT Lender 9 LLC (the “**Mezzanine Lender**”); and
- (e) granting related relief.

3. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”). In support of the relief requested herein, the Debtors submit the following: (i) *Certification of Series E Notes Trustee Regarding Solicitation*

of Votes from Series E Noteholders on Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC [ECF No. 74] (the “**Series E Notes Trustee Certification**”), and the *Certification of Gornitzky & Co., as Counsel to Series E Notes Trustee, Regarding Solicitation of Votes from Series E Noteholders on Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* (the “**Series E Notes Trustee Israeli Counsel Certification**”) attached thereto, and (ii) *Declaration of John Burlacu Regarding Prepetition Solicitation of Votes on Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* [ECF No. 75] (the “**Donlin Declaration**”). Copies of the Series E Notes Trustee Certification and the Donlin Declaration are annexed hereto as **Exhibit B** and **Exhibit C**, respectively.

4. The following table provides certain dates and proposed dates related to specific relief requested in the Motion (subject to the Bankruptcy Court’s calendar):

Event	Date
Voting Record Date	August 19, 2021
Distribution of Solicitation Packages (to all voting creditors other than the Mezzanine Lender)	September 14, 2021
Subsidiary Debtor Petition Date	September 14, 2021
Distribution of Combined Notice	September 17, 2021
Plan Supplement Deadline	October 11, 2021
Voting Deadline	October 18, 2021, at 5:00 p.m. (Eastern Time)
Objection Deadline	October 18, 2021, at 5:00 p.m. (Eastern Time)
Reply Deadline	October 25, 2021, at 5:00 p.m. (Eastern Time)
Confirmation Hearing	On or about October 29, 2021

5. Additionally, for the convenience of the Court and parties in interest, summarized below are the attachments and exhibits cited throughout this Motion:

Pleading or Document	Exhibit
Proposed Order	Exhibit A
Series E Notes Trustee Certification	Exhibit B
Donlin Declaration	Exhibit C
Combined Notice	Exhibit D
Forms of Ballot	Exhibit E
Notice of Non-Voting Status	Exhibit F

Jurisdiction

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

7. On February 22, 2021 (the “**Initial Debtor Petition Date**”), the Initial Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. On the date hereof (the “**Subsidiary Debtor Petition Date**”), the Subsidiary Debtors commenced their own voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

8. Following a robust and comprehensive marketing process, the Debtors have secured the support and commitment, pursuant to an executed restructuring support agreement, dated August 31, 2021 (the “**RSA**”), of their senior, secured noteholders and mezzanine lender.

These two key creditor constituencies support, in accordance with the RSA, a value-maximizing chapter 11 plan that will implement a sale of substantially all of the Subsidiary Debtors' assets to an affiliate of Atlas Capital Group, LLC (the "**Purchaser**") for approximately \$506 million pursuant to the terms of a signed purchase and sale agreement (the "**Purchase Agreement**").

9. Prior to the date hereof, in accordance with applicable securities law, the Subsidiary Debtors commenced the solicitation of votes by each class of voting creditors on the Plan utilizing the Disclosure Statement, pursuant to sections 1125 and 1126(b) of the Bankruptcy Code. The Debtors have not yet commenced the solicitation of votes with respect to the Mezzanine Lender, the only known creditor, impaired or otherwise, of the Initial Debtor, and as set forth below, the Debtors are requesting conditional approval of the Disclosure Statement herein for the sole purpose of allowing them to commence the solicitation of votes on the Plan from the Mezzanine Lender. The solicitation period for the Plan will remain open for all voting creditors for thirty-four (34) days until October 18, 2021. Pursuant to this Motion, the Debtors are requesting a joint hearing for approval of the Disclosure Statement, the Solicitation Procedures, and Plan to be held within 45 days of the date hereof.

10. Information regarding the Subsidiary Debtors' business, capital structure, and the circumstances leading to the commencement of the Subsidiary Debtors' Chapter 11 Cases is set forth in the *Declaration of Asaf Ravid Pursuant to Local Bankruptcy Rule 1007-2 in Support of Subsidiary Debtors' Chapter 11 Petitions and Related Relief*, sworn to on the date hereof (the "**Ravid Declaration**"), which has been filed with the Court contemporaneously herewith and is incorporated herein by reference.⁴

⁴ Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Ravid Declaration.

Basis for Relief Requested

11. The Plan classifies claims against, and interests in, the Debtors, and provides for the treatment of each class as follows:⁵

Claims against and Interests in EG I

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
1	Priority Non-Tax Claims	Except to the extent that a holder of an Allowed Priority Non-Tax Claim against EG I agrees to a less favorable treatment, in full and final satisfaction, settlement and release of such Allowed Priority Non-Tax Claim, at the sole option of the Plan Administrator: (i) each such holder shall receive payment in full in Cash in an amount equal to such Claim, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is reasonably practicable; or (ii) such holder shall receive such other treatment so as to render such holder's Allowed Priority Non-Tax Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100%
2	JPM Secured Claims	Except to the extent that the holder of the JPM Secured Claims agrees to a less favorable treatment and in accordance with the DIP Standstill Agreement, in full and final satisfaction, settlement and release of such Allowed JPM Secured Claims against EG I, on or as soon as practicable after the Effective Date, the holder of the Allowed JPM Secured Claims shall receive Cash in an amount equal to such holder's Allowed JPM Secured Claims.	Unimpaired	No (Presumed to accept)	100%
3	Other Secured Claims	Except to the extent that a holder of an Allowed Other Secured Claim against EG I agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each holder of an Allowed Other Secured Claim against EG I will receive, on account and in full satisfaction of such Allowed Claim, at the sole option of the Plan Administrator: (i) Cash in an amount equal to the Allowed amount of such Claim; (ii) return of the applicable collateral or the proceeds thereof in satisfaction of the Allowed amount of such Other Secured Claim; or (iii) such other treatment sufficient to render such holder's Allowed	Unimpaired	No (Presumed to accept)	100%

⁵ This summary is for ease of reference only and shall not limit, modify, or amend the proposed treatment set forth in the Plan, which, in the event of any inconsistency, shall govern.

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
		Other Secured Claim Unimpaired.			
4	General Unsecured Claims	Except to the extent that a holder of an Allowed General Unsecured Claim against EG I agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement and release of such Allowed General Unsecured Claim, at the sole option of the Plan Administrator: (i) each such holder shall receive payment in full in Cash in an amount equal to such Claim, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim, or as soon thereafter as is reasonably practicable; or (ii) such holder shall receive such other treatment so as to render such holder's Allowed General Unsecured Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100%
5	Intercompany Claims	(b) Except to the extent that EG II, the Mezzanine Lender, and the Series E Notes Trustee agree to less favorable treatment of such Claim, in full and final satisfaction, settlement and release of such Class 5 Allowed Intercompany Claims: (i) EG II shall not receive any distribution on the Effective Date on account of the EG I Affiliate Intercompany Claim. Instead, the distribution that would otherwise be payable to EG II on account of the EG I Affiliate Intercompany Claim shall be retained by EG I and utilized by EG I to partially pay the 2020 PSA Claim, as provided under the RSA, and any remaining amounts owed to EG II on account of the EG I Affiliate Intercompany Claims shall be waived and deemed satisfied, settled and released in full by EG II and its Estate; (ii) The BVI Intercompany Claim shall be treated by the parties in accordance the RSA and shall not be Allowed or paid by EG I or the Plan Administrator, until the earlier to occur of (A) the written consent by the Mezzanine Lender; or (B) the entry of a Final Order requiring such payment; and (iii) The EG I Operating Expense Claim shall have been paid in full by EG I to EG II, without setoff, recoupment, or deduction, or reduction in anyway, from the proceeds of the DIP Loan, in accordance with the DIP Budget, and such amounts shall constitute Allowed DIP Claims of the DIP Lender.	Unimpaired	No (Presumed to accept)	100%

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
6	Equity Interests	On or as soon as reasonably practicable after the Effective Date, following the payment of all Allowed Claims against EG I, all of the Assets of EG I, including all Cash, Avoidance Actions, and other Causes of Action of EG I, shall be transferred to EGM, in full and final satisfaction, compromise, settlement, release, and discharge of the Allowed Equity Interests, and all Equity Interests in EG I shall be cancelled and extinguished and EG I shall be deemed dissolved under applicable non-bankruptcy law; provided, however, that Post-Effective Date EGM shall continue to maintain the EG I Disputed Claims Reserve for the benefit of holders of Disputed Claims against EG I.	Unimpaired	No (Presumed to accept)	100%

Claims against and Interests in EG II

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
1	Priority Non-Tax Claims	Except to the extent that a holder of an Allowed Priority Non-Tax Claim against EG II agrees to a less favorable treatment, in full and final satisfaction, settlement and release of such Allowed Priority Non-Tax Claim, at the sole option of the Plan Administrator: (i) each such holder shall receive payment in full in Cash in an amount equal to such Claim, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is reasonably practicable; or (ii) such holder shall receive such other treatment so as to render such holder's Allowed Priority Non-Tax Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100%
2	Series E Secured Claims	Except to the extent that a holder of an Allowed Series E Secured Claim against EG II agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement and release of such Allowed Series E Secured Claim (but not the Series E Notes Deficiency Claims), on or as soon as practicable after the Effective Date, each holder of an Allowed Series E Secured Claim shall receive its Pro Rata Share of the Series E Secured Claim Distribution.	Impaired	Yes	93%

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
3	Other Secured Claims ⁶	Except to the extent that a holder of an Allowed Other Secured Claim against EG II agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each holder of an Allowed Other Secured Claim will receive, on account and in full satisfaction of such Allowed Claim, at the sole option of the Plan Administrator: (i) Cash in an amount equal to the Allowed amount of such Claim; (ii) return of the applicable collateral or the proceeds thereof in satisfaction of the Allowed amount of such Other Secured Claim; or (iii) such other treatment sufficient to render such holder's Allowed Other Secured Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100% (As discussed in further detail below, the Debtors do not believe there are any Other Secured Claims against EG II but have nevertheless provided a Class for them in the Plan.)
4	Convenience Claims	Except to the extent that a holder of an Allowed Convenience Class Claim against EG II agrees in writing to less favorable treatment, on the Effective Date, each holder of an Allowed Convenience Claim shall receive payment in Cash in the amount of its Allowed Convenience Claim, in full and final satisfaction, settlement, discharge, and release of, and in exchange for, its Allowed Convenience Class Claim.	Unimpaired	No (Presumed to accept)	100%
5	General Unsecured Claims	Except to the extent that a holder of an Allowed General Unsecured Claim against EG II agrees to less favorable treatment, in full and final satisfaction and release of, and in exchange for the General Unsecured Claims of EG II (but not any Series E Noteholders' claims against the BVI Parent), each holder thereof shall receive its Pro Rata Share of the amounts recovered by the Plan Administrator, if any, from the prosecution of Avoidance Actions and other Causes of Action of Post-Effective Date EG II, to the extent such Avoidance Actions and Causes of Action do not constitute collateral of the Series E Noteholders under the Series E Indenture or the Cash Collateral Orders, net of fees and expenses associated with prosecuting such action. The Plan Administrator shall make distributions to the holders of General Unsecured Claims against EG II from such proceeds as and when the Plan Administrator deems appropriate, after consultation with the Series E Notes Trustee. The rights to such proceeds shall be	Impaired	Yes	Uncertain, depending upon the results of litigation.

⁶ The Debtors do not believe there are any Other Secured Claims against EG II but have nevertheless accounted for them as a Class in the Plan.

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
		nontransferable except by will, intestate succession, or operation of law.			
6	Intercompany Claims	The holders of Allowed Intercompany Claims against EG II shall not receive or retain any property under the Plan on account of such Claims.	Impaired	No (Deemed to reject)	0%
7	Equity Interests	On or after the Effective Date, all Equity Interests in EG II shall be cancelled. The existing holder of the Equity Interests in EG II shall neither receive nor retain any property of EG II or direct interest in property of EG II on account of such Equity Interest.	Impaired	No (Deemed to reject)	0%

Claims against and Interests in EGM

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
1	Priority Non-Tax Claims	Except to the extent that a holder of an Allowed Priority Non-Tax Claim against EGM agrees to a less favorable treatment, in full and final satisfaction, settlement and release of such Allowed Priority Non-Tax Claim, at the sole option of the Plan Administrator: (i) each such holder shall receive payment in full in Cash in an amount equal to such Claim, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is reasonably practicable; or (ii) such holder shall receive such other treatment so as to render such holder's Allowed Priority Non-Tax Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100%
2	Mezzanine Loan Claim	(a) Except to the extent that the holder of the Mezzanine Loan Claim agrees to a less favorable treatment, in final settlement of such Mezzanine Loan Claim as against EGM, on or as soon as practicable after the Effective Date, the holder of the Allowed Mezzanine Loan Claims shall receive: (i) the Excess EGM Cash; (ii) its Pro Rata Share of the amounts recovered by the Plan Administrator of EGM, if any, from the prosecution of Avoidance	Impaired	Yes	56%

Class	Designation	Treatment	Impaired or Unimpaired	Entitled to Vote	Approx. Percentage Recovery
		Actions or other Causes of Action of EG I and EGM, net of fees and expenses associated with prosecuting such action. The Plan Administrator shall make distributions to the holder of the Mezzanine Loan Claim from such proceeds as and when the Plan Administrator deems appropriate, after consultation with the Mezzanine Lender. The rights to such proceeds shall be nontransferable except to an affiliate, or by will, intestate succession, or operation of law; and (iii) the remainder of the Disputed Claims Reserve after all Disputed Claims against EG I have been liquidated and paid, if applicable, in accordance with the terms hereof.			
3	Equity Interests	On or after the Effective Date, the Equity Interests in EGM shall be cancelled. The existing holder of the Equity Interests in EGM shall neither receive nor retain any property of EGM or direct interest in property of EGM on account of such Equity Interest.	Impaired	No (Deemed to reject)	0%

The Prepetition Solicitation

12. In connection with the Plan, the Debtors prepared the Disclosure Statement, describing, among other things, the Debtors' proposed Plan which seeks to implement the proposed sale to the Purchaser and describes the Plan's proposed effects on holders of claims against, and interests in, the Debtors. The process by which the Debtors have, or intend to, commence solicitation of votes to accept or reject the Plan from each of the impaired voting classes of claims is described below.

13. **EG I:** As set forth above, all of the creditors and interest holders of EG I are unimpaired and the holders of allowed claims and interests will be paid in full under the Plan. Accordingly, each of the classes of creditors and interest holders of EG I is, pursuant to section 1126(f) of the Bankruptcy Code, presumed to accept the Plan and none of EG I's creditors or

interest holders have been, or will be, solicited in connection with the Plan (collectively, the “**EG I Non-Voting Classes**”).

14. **EG II:** With respect to EG II, holders of claims in Class 2 (Series E Secured Claims) and Class 5 (General Unsecured Claims)⁷ are the only impaired voting classes of creditors of EG II under the Plan (the “**EG II Voting Classes**”). Holders of claims against EG II in Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), and Class 4 (Convenience Claims) are unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, these classes are presumed to have accepted the Plan and have not been and will not be solicited. Nor are the Debtors required to solicit votes from the holders of Claims in Class 6 (Intercompany Claims) and Interests in Class 7 (Equity Interests), as such classes will not receive or retain any property under the Plan and, pursuant to section 1126(g) of the Bankruptcy Code, are deemed to reject the Plan (EG II Class 1, Class 3, Class 4, Class 6, and Class 7, collectively, the “**EG II Non-Voting Classes**”).

15. Shortly after midnight on September 14, 2021, the Subsidiary Debtors, through their voting agent, Donlin Recano & Co (the “**Voting Agent**”), caused copies of the following materials in connection with voting on the Plan (the “**Solicitation Packages**”) to be transmitted to (i) Mishmeret Trust Company Ltd., as trustee for the Series E Notes (the “**Series E Notes Trustee**”), on behalf of the Series E Noteholders on account of their Class 2 Series E Secured Claims and their Class 5 Series E Notes Deficiency Claims, and (ii) the General Unsecured Creditors, as the other holders of Class 5 General Unsecured Claims against EG II:

⁷ As set forth in the Disclosure Statement, in addition to trade and other general unsecured creditors, Class 5 (General Unsecured Claims) against EG II includes the deficiency claims of the Series E Noteholders and the claims of any parties that have asserted mechanics’, materialman’s or other similar lien claims against EG II which the Debtors believe are wholly unsecured. For ease of reference, the holders of the Class 5 General Unsecured Claims other than the Series E Notes Deficiency Claims are referred to herein as the “**General Unsecured Creditors**”.

- the Disclosure Statement;
- the Plan;
- the exhibits to the Disclosure Statement, including:
 - the RSA;
 - the Purchase Agreement;
 - an organization structure chart; and
 - a liquidation analysis.
- the appropriate form of ballot (the “**Ballot**”) with voting instructions.⁸

16. As noted above, the Debtors transmitted one Solicitation Package to the Series E Notes Trustee on account of the Series E Noteholders’ Class 2 Series E Secured Claims and the Class 5 Series E Notes Deficiency Claims. Approximately 37 total Solicitation Packages were transmitted to the General Unsecured Creditors as holders of Class 5 General Unsecured Claims against EG II.

17. The Solicitation Packages were transmitted to the holders of claims in the EG II Voting Classes by first class mail and electronic mail (to the extent the Debtors had email address information for such parties). The Solicitation Packages included (i) the Plan and the Disclosure Statement (including all of the exhibits thereto)⁹, (ii) a physical copy of the appropriate Ballot, and (iii) return envelopes with postage included. The instructions on the Ballots advised parties in the EG II Voting Classes that, for a Ballot to be counted, the Ballot must be properly executed, completed, and delivered to the Voting Agent so that it is received by the Voting Agent

⁸ Substantially final forms of Ballots for each of the Voting Classes are described in further detail below and attached hereto as **Exhibit F**.

⁹ Any creditor that receives or has received a Solicitation Package may request a copy of the Disclosure Statement (and all attachments thereto) and/or Plan in paper format by contacting the Voting Agent by email at eginfo@donlinrecano.com or by telephone at (800) 283-2519 (toll free). Upon receipt of such request, the Debtors shall provide such creditor with a paper copy of the Plan and the Disclosure Statement at no cost to the creditor.

no later than 5:00 p.m. (Eastern Standard Time) on October 18, 2021 (the “**Voting Deadline**”), unless such time is extended by the Debtors.

18. The Series E Notes Trustee, as part of its Solicitation Package, received a master ballot to aggregate the votes of the Series E Noteholders’ Class 2 Series E Secured Claims and Class 5 Series E Notes Deficiency Claims. The master ballot received by the Series E Notes Trustee specified that the Series E Notes Trustee was to submit the completed and executed ballot to the Voting Agent by electronic mail. The General Unsecured Creditors, as the holders of the other claims in Class 5 (General Unsecured Claims), were encouraged to submit a customized electronic Ballot via online transmission through the E-Ballot platform on the website maintained by the Voting Agent for these Chapter 11 Cases, <https://www.donlinrecano.com/evergreen-vote> (the “**Case Website**”). However, the Ballots transmitted to the General Unsecured Creditors provide that paper ballots can be submitted to the Voting Agent via regular mail or overnight courier in the event that the General Unsecured Creditor is unable to utilize the E-Ballot platform.

19. **EGM:** With respect to EGM, the Mezzanine Lender, as the holder of the Class 2 Mezzanine Lender Claim, is the only known creditor of EGM and the only party entitled to vote under the Plan with respect to EGM (the “**EGM Voting Class**” and, together with the EG II Voting Classes, the “**Voting Classes**”). To the extent there are any Class 1 Priority Non-Tax Claims against EGM, those claims will be unimpaired and holders of allowed claims will be paid in full. All other classes of claims against, or interests in, EGM will not receive or retain any property under the Plan, are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, as such, their votes on the Plan will not be solicited (Class 1 (Priority Non-Tax Claims) and Class 3 (Equity Interests) of EGM, collectively, the “**EGM Non-Voting Classes**”

and, together with the EG I Non-Voting Classes and the EG II Non-Voting Classes, the “**Non-Voting Classes**”).

20. Due to EGM’s status as a debtor in possession, EGM was not able to avail itself of section 1125(g) of the Bankruptcy Code and commence solicitation of the Plan prior to the Court’s approval of a disclosure statement in accordance with section 1125(b) of the Bankruptcy Code.

Basis for Relief Requested

A. Scheduling Combined Hearing on Adequacy of Disclosure Statement, Solicitation Procedures, and Confirmation of Plan

21. Section 105(d)(2)(B)(vi) of the Bankruptcy Code authorizes the Bankruptcy Court to combine a hearing on a disclosure statement and the solicitation procedures with a hearing on the confirmation of a plan of reorganization. 11 U.S.C. § 105(d)(2)(B)(vi). Additionally, Part XI of the Guidelines specifies that, in a prepackaged or partially prepackaged chapter 11 case, the hearings on a debtor’s compliance with section 1126(b) of the Bankruptcy Code, which provides that votes solicited prepetition may be counted so long as the solicitation was in compliance with any applicable nonbankruptcy law governing the adequacy of disclosure, or, if no such law exists, after disclosure of adequate information as defined in section 1125 of the Bankruptcy Code, and on confirmation of the Plan “shall be combined whenever practicable.”

22. A Combined Hearing in these Chapter 11 Cases will promote judicial economy and will allow the Debtors to consummate their sale to the Purchaser and effectuate their Plan expeditiously. The adverse effects of the chapter 11 filings upon the Debtors’ going concern value will be minimized, and the benefit to creditors maximized, through the prompt distributions to holders of claims against and interests in the Debtors and the reduction of administrative expenses of the estates. Such benefits are the hallmarks of a prepackaged or partially prepackaged

plan. The Debtors, therefore, request entry of the Proposed Order, pursuant to section 105(d)(2)(B)(vi) of the Bankruptcy Code, setting a date for the Combined Hearing for the Court to consider the (a) adequacy of the Disclosure Statement, (b) confirmation of the Plan, and (c) approval of the Solicitation Procedures.

23. Bankruptcy Rules 2002(b) and 3017(a) require twenty-eight (28) days' notice be given by mail to all creditors of the time fixed for filing objections to and the hearing to approve a disclosure statement or confirmation of a plan of reorganization, subject to the Court's discretion to shorten such period under Bankruptcy Rule 9006(c)(1). Section 1128(a) of the Bankruptcy Code provides that, "[a]fter notice, the court shall hold a hearing on confirmation of a Plan." 11 U.S.C. § 1128(a). Part X.D of the Guidelines provides that notice of the hearing on the adequacy of a disclosure statement and confirmation of a plan in a partially prepackaged bankruptcy shall be mailed at least twenty-eight (28) days prior to the hearing date, unless such period is shortened by the Court.

24. The Debtors seek to consummate the Plan expeditiously and efficiently. Accordingly, the Debtors request that the Combined Hearing be held, subject to the Bankruptcy Court's schedule, on or about October 29, 2021, in compliance with both Part X.D. of the Guidelines and Bankruptcy Rules 2002(b) and 3017(a). The Debtors further request that the Proposed Order provide that the Combined Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Combined Hearing and that notice of such adjourned date(s) will be available on the electronic case filing docket.

25. It is in the best interest of the Debtors, their estates, their creditors, and parties in interest to hold the Combined Hearing as soon as practicable, consistent with the timing

requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Guidelines. The proposed schedule affords all parties in interest sufficient notice of the Combined Hearing. Holders of claims in the EG II Voting Classes received a copy of the Plan and Disclosure Statement (including the exhibits thereto) in advance of the Subsidiary Petition Date. And, subject to the Court conditionally approving the Disclosure Statement as set forth below, the Mezzanine Lender, as the one holder of claims in the EGM Voting Class, will be transmitted a copy of the Plan and Disclosure Statement (including the exhibits thereto) immediately following entry of the Proposed Order. All other holders of claims against, or interests in, the Debtors are not entitled to vote on the Plan (e.g., holders of claims or interests in Non-Voting Classes) and, as such, they will receive notice of their treatment in these Chapter 11 Cases and will be provided an opportunity to obtain a copy of the Plan and the Disclosure Statement with sufficient time to evaluate such documents prior to the proposed Combined Hearing and the Objection Deadline. Therefore, no party in interest will be prejudiced by the relief requested herein.

B. Deadline and Procedures for Filing Objections to Adequacy of Disclosure Statement, Confirmation of Plan, and Solicitation Procedures

26. Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the disclosure statement, the court . . . may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c). Moreover, Bankruptcy Rule 2002(b) requires that all creditors be given at least twenty-eight (28) days’ notice by mail of the time fixed for filing objections to approval of a disclosure statement or confirmation of a plan of reorganization, subject to the discretion of the Bankruptcy Court to reduce such time period under Bankruptcy Rule 9006(c)(1). Fed. R. Bankr. P. 2002(b). Local Bankruptcy Rule 3020-1(a) additionally provides that objections to confirmation of a plan of reorganization must be filed not later than seven (7) days prior to the hearing on confirmation, unless the Court orders otherwise.

27. The Debtors require at least one business day following entry of the Proposed Order for the service of notice of the Combined Hearing. As set forth above, the Debtors propose that the Combined Hearing be set, subject to the Court's schedule, on October 29, 2021.

28. The Debtors further propose that the Court direct that any objections with respect to the Disclosure Statement, the Solicitation Procedures, and/or Plan must (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection; (d) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (e) be filed with the Bankruptcy Court (i) by registered users of the Bankruptcy Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable; and (f) be served in accordance with General Order M-399 **no later than 5:00 p.m. (Prevailing Eastern Time) on October 18, 2021 (the "Objection Deadline")**, on the following parties:

- i. the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Jacqueline Marcus, Esq., and Matthew P. Goren, Esq.);
- ii. counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.);
- iii. counsel to the Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.);
- iv. counsel to the Purchaser, Thompson Hine LLP, 335 Madison Avenue, 12th Floor, New York, New York 10017 (Attn: John Bae, Esq. and Jonathan S. Hawkins, Esq.); and

- v. the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.).

29. The Objection Deadline will allow the Debtors and other parties in interest sufficient time to respond to objections to the Disclosure Statement, the Solicitation Procedures, and/or Plan. The Debtors propose to file the Plan Supplement no later than October 11, 2021, which is seven days prior to the Objection Deadline. In addition, the Debtors propose that they will file their brief and any affidavits or declarations in support of confirmation and a reply to any objections no later than four (4) days before the Combined Hearing. The proposed schedule for the Combined Hearing, including the fixing of the Objection Deadline, is in the best interests of the Debtors, their estates, their creditors, and all parties in interest.

C. Approval of Form, Manner, and Sufficiency of Notice of Combined Hearing, Commencement of the Subsidiary Debtors' Chapter 11 Cases, and Section 341(a) Meeting

30. A debtor is required to provide all creditors, equity holders, and parties in interest with notice of the commencement of the chapter 11 case. Bankruptcy Rule 2002(a) provides, in relevant part, that "the clerk, or some other person as the court may direct shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of the meeting of creditors under § 341 or § 1104(b) of the Code." Also, Part X.A of the Guidelines requires that notice of the filing of a partially prepackaged plan and disclosure statement and of the hearing to consider compliance with disclosure requirements and confirmation of the plan must be given to all parties in interest. Part VIII.A of the Guidelines provides that the debtor shall notify creditors of the date, time, and place of the section 341(a) meeting of creditors and that the date set for such meeting should be no more than forty (40) days after the filing of the petition.

31. In these Chapter 11 Cases, it would be efficient and cost-effective if the Debtors were permitted to serve parties in interest with a combined notice of these events rather

than individual notices. The Debtors, therefore, request authorization, in accordance with this Court's authority pursuant to Bankruptcy Rule 9007 and in accordance with the Guidelines, to mail, or cause to be mailed, by first class mail within one (1) business day after the entry of the Proposed Order, a combined notice of the commencement of the Subsidiary Debtors' Chapter 11 Cases, the Combined Hearing, and the Section 341(a) Meeting (the "**Combined Notice**"), substantially in the form attached hereto as **Exhibit E**, to (a) all of the Debtors' known creditors and interest holders, (b) counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.), (c) counsel to MREF REIT Lender 9 LLC, as Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.), (d) counsel to JPMorgan Chase Bank, N.A., as Mortgage Lender to EG I, Fried, Frank, Harris, Shriver & Jacobson LLP, 1 New York Plaza, New York, New York 10014 (Attn: Gary Kaplan, Esq. and Michael Barker, Esq.), (e) William K. Harrington, the U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.), (f) the Internal Revenue Service, (g) the United States Attorney's Office for the Southern District of New York, and (h) all other entities required to be served under Bankruptcy Rules 2002 and 3017, or otherwise in compliance with the Bankruptcy Code, Bankruptcy Rules, the Local Bankruptcy Rules, and the Guidelines (collectively, the "**Notice Parties**").

32. Among other things, the Combined Notice sets forth (i) notice of the commencement of the Subsidiary Debtors' Chapter 11 Cases; (ii) the date, time, and place of the Combined Hearing; (iii) instructions for obtaining copies of the Disclosure Statement and the Plan;

(iv) a summary of the Plan, including a chart summarizing Plan distributions; and (v) the deadline and procedures for objecting to the Disclosure Statement, the Solicitation Procedures, and confirmation of the Plan. In addition, the Combined Notice informs parties in interest of the Section 341(a) Meeting. Accordingly, the Combined Notice complies with requirements of Parts VIII and X.B of the Guidelines.

33. To provide additional notice to parties in interest in these cases, the Debtors propose to post to the Case Website maintained by the Voting Agent various documents filed in the Chapter 11 Cases, including the following: (a) the Plan, (b) the Disclosure Statement, (c) this Motion and any orders entered in connection with this Motion, and (d) the Combined Notice. The Case Website address is: <https://www.donlinrecano.com/eg>.

34. Bankruptcy Rule 2002(l) permits the Court to order “notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” In accordance therewith, the Debtors propose to publish the Combined Notice as set forth on **Exhibit E**, with reasonable adjustments and modifications to account for publication limitation (the “**Publication Notice**”), in *The New York Times* (National Edition) in English and in *Haaretz*, an Israeli newspaper, in Hebrew.

35. The proposed service of the Combined Notice will provide sufficient notice to all parties in interest in the Debtors’ Chapter 11 Cases of the commencement of such cases, the date, time, and place of the Combined Hearing, and the procedures for objecting to the adequacy of the Disclosure Statement, the Solicitation Procedures, and the confirmation of the Plan. In addition, the Publication Notice will provide sufficient notice to persons who did not otherwise receive notice pursuant to the Combined Notice.

D. Approval of the Solicitation Procedures

36. As described herein, the Subsidiary Debtors distributed the Disclosure Statement and solicited approval of the Plan prior to the commencement of their Chapter 11 Cases from the holders of claims in the EG II Voting Classes and, subject to conditional approval of the Disclosure Statement as requested herein, the Debtors will distribute the Disclosure Statement and solicit approval of the Plan from the Mezzanine Lender as the only creditor in the EGM Voting Class. There are no impaired classes with respect to EG I. The proposed Voting Deadline is thirty-four (34) days after service of the Solicitation Packages. Section 1126(b) of the Bankruptcy Code specifically provides that:

[A] holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if –

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

11 U.S.C. § 1126(b). Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes to accept or reject a plan of reorganization. Bankruptcy Rule 3017(e) provides that “the court shall consider the procedures for transmitting the documents and information required by [Bankruptcy Rule 3017(d)] to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of such procedures, and enter any orders as the court deems appropriate.” Fed. R. Bankr. P. 3017(e).

37. As set forth in the Series E Notes Trustee Israeli Counsel Certification, the Series E Deed of Trust and other documents governing the issuance, terms, conditions, and obligations of the Series E Notes (collectively, the “**Series E Note Documents**”) are governed by Israeli law. On August 24, 2021, in accordance with the Series E Note Documents and applicable Israeli securities law, the Series E Noteholders voted by approximately 90% in number and 97% in amount to authorize and direct the Series E Notes Trustee to vote to approve the RSA and authorized and directed the Series E Notes Trustee to vote their claims in favor of a chapter 11 plan of the Debtors, subject to receipt by the Series E Notes Trustee of a disclosure statement and plan that comply with the terms of the RSA. Accordingly, in accordance with the applicable provisions of the Series E Note Documents and Israeli securities law, subject to the Series E Notes Trustee’s receipt of a disclosure statement for the Plan, the Series E Notes Trustee has been directed and is bound to vote the claims of the Series E Noteholders (including, without limitation, any and all Series E Secured Claims and any unsecured Series E Notes Deficiency Claims) in favor of the Plan. After receiving the Disclosure Statement, the Plan, and the other documents included in the Solicitation Package on September 14, 2021, the Series E Notes Trustee returned to the Voting Agent a completed and executed master ballot, which reflects that the Series E Noteholders have voted overwhelmingly to accept the Plan with respect to both their Class 2 Series E Secured Claims and their Class 5 General Unsecured Claims. Accordingly, as set forth in the Series E Notes Trustee Israeli Counsel Certification, the prepetition solicitation of votes from the Series E Noteholders was conducted in accordance with the provisions of Series E Note Documents, Israeli securities law, and otherwise applicable Israeli law.

38. Further, the Debtors have worked to ensure that the solicitation of the Plan is in compliance with the Guidelines. Specifically, Part III.C of the Guidelines provides that in

cases where chapter 11 petitions are filed after solicitation has commenced, but before expiration of the applicable Voting Deadline, “the Debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline.” Because the Debtors will only accept, but not solicit Ballots until the Voting Deadline (other than with respect to the Mezzanine Lender as set forth below), the Solicitation Procedures are in compliance with the Guidelines. Accordingly, the Solicitation Package and prepetition Solicitation Procedures utilized and to be utilized, subject to conditional approval of the Disclosure Statement as requested herein, by the Debtors comply with the Bankruptcy Code, the Bankruptcy Rules, and the Guidelines.

E. Voting Record Date

39. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan of reorganization, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Bankruptcy Rule 3018(b) provides that “[a]n equity security holder or creditor whose claim is based on a security of record . . . shall not be deemed to have accepted or rejected the plan . . . unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation.” Fed. R. Bankr. P. 3018(b).

40. The Debtors propose setting August 19, 2021 as the record date (“**Voting Record Date**”) for determining which holders of claims and equity interests were entitled to vote to accept or reject the Plan, and the Solicitation Packages clearly identified such date as the Voting Record Date.

F. Approval of Voting Deadline

41. The Debtors established 5:00 p.m. (Eastern Standard Time) on October 18, 2021 as the Voting Deadline, giving the holders of claims in the Voting Classes more than thirty (30) days to submit a completed Ballot to the Voting Agent.

42. Bankruptcy Rule 3018(b) provides that prepetition acceptances or rejections of a Plan are valid only if the Plan was transmitted to substantially all the holders of claims or equity interests in each solicited class and the time for voting was not unreasonably short. Fed. R. Bankr. P. 3018(b). Bankruptcy Rule 3018(b) also requires that the solicitation comply with section 1126(b) of the Bankruptcy Code (*i.e.*, that the solicitation comply with applicable nonbankruptcy law or contain “adequate information”). The Debtors submit that the Solicitation Procedures satisfy the standards set forth in Bankruptcy Rule 3018(b) and section 1126(b) of the Bankruptcy Code.

43. As discussed above, Solicitation Packages were transmitted to all holders of claims in the EG II Voting Classes by first class mail and electronic mail (to the extent the Debtors had email address information for such parties). Subject to the relief requested herein, a Solicitation Package will be transmitted in the same manner immediately following entry of the Proposed Order to the Mezzanine Lender as the only creditor in the EGM Voting Class. The solicitation period of thirty-four (34) days, which extends from September 14, 2021 to October 18, 2021 at 5:00 p.m. (Eastern Standard Time), gives holders of claims in the Voting Classes sufficient time to review the Disclosure Statement and Plan. Accordingly, given the circumstances of the case and the solicitation process, the solicitation period is not “unreasonably short.”

44. A substantial percentage of the Series E Noteholder claims against EG II are held by sophisticated institutional creditors, many with substantial knowledge of the Debtors’ properties and operations. As such, before the commencement of the Solicitation Process, the

Debtors, the Series E Notes Trustee and/or representatives of the Series E Noteholders, and the Mezzanine Lender, spent a substantial amount of time negotiating the terms of the sale with the Purchaser and the terms of a chapter 11 plan to implement the sale as embodied in the Plan and RSA. Accordingly, the holders of claims in these classes were well informed as to all material terms of the Plan well before solicitation commenced and had sufficient time to consider the materials in the Solicitation Package and to make a well-informed voting decision.

45. Additionally, Part VII.A.1 of the Guidelines provides that “under ordinary circumstances” a court will approve as reasonable a “twenty-one (21) day voting period, measured from the date of commencement of mailing” with respect to the solicitation of votes of holders of “securities listed or admitted to trading on the New York Stock Exchange or American Stock Exchange or any international exchanges quoted on NASDAQ, and for securities publicly traded on any other national securities exchange (‘Publicly Traded Securities’).” Part II.A.3 of the Guidelines provides that a twenty-one (21) day voting period is reasonable “for all other claims and interests.

46. Accordingly, the Debtors believe that the solicitation period, which exceeds the 21-day voting period set forth in the Guidelines, is sufficient and appropriate for holders of claims in the Voting Classes to make an informed decision to accept or reject the Plan.

G. Approval of Solicitation Packages and Transmittal

47. The Debtors caused the Solicitation Package to be transmitted to holders of claims in the EG II Voting Classes on September 14, 2021 via first class mail and electronic mail (to the extent the Debtors had email address information for such parties). Upon entry of the Proposed Order, the Debtors will cause a Solicitation Package to be transmitted to the Mezzanine Lender, as the only creditor in the EGM Voting Class, in the same manner. The Solicitation Packages that have been, and will be, provided to the Voting Classes by first class mail include

(i) the Plan and the Disclosure Statement (including the exhibits thereto), (ii) a physical copy of the appropriate Ballot, and (iii) return envelopes with postage included. The Solicitation Packages contain adequate information to enable holders of claims in the Voting Classes to make a determination as to whether to accept or reject the Plan.

48. Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot, which substantially conforms to Official Form No. 14 only to “creditors and equity security holders entitled to vote on the Plan.” Fed. R. Bankr. P. 3017(d). The Debtors have distributed or will soon distribute to holders of claims entitled to vote ballots substantially in the forms annexed hereto as **Exhibit F**. The forms of Ballot are based on Official Form No. 14, but have been modified to address the particular circumstances of these Chapter 11 Cases and to include certain additional information that is relevant and appropriate for creditors entitled to vote to accept or reject the Plan. *See* Fed. R. Bankr. P. 3017(d).

49. The Solicitation Packages were transmitted to the Voting Agent who, in turn, has transmitted, or will soon transmit, the Solicitation Packages to the record holders of claims in the Voting Classes by electronic and first class mail. As mentioned above, holders of claims against, or interests in, the Debtors in the remaining Non-Voting Classes were not provided with Solicitation Packages. Such holders of claims or interests are either unimpaired and presumed to accept the Plan, or impaired and deemed to reject the Plan, pursuant to sections 1126(f) and (g) of the Bankruptcy Code.

H. Approval of Procedures for Vote Tabulation

50. The Debtors respectfully request that the Court approve the voting and tabulation procedures described herein in accordance with section 1126(c) of the Bankruptcy Code. Section 1126(c) of the Bankruptcy Code provides as follows:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

51. The Voting Agent will not count or consider for any purpose in determining whether the Plan has been accepted or rejected the following Ballots: (a) except in the Debtors' sole discretion, any Ballot received after the Voting Deadline, (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant, (c) any Ballot cast by a person or entity that does not hold a claim in the classes entitled to vote, (d) any unsigned or non-original Ballot, (e) any form of ballot other than the official form of Ballot sent by the Voting Agent, or (f) except in the Debtors' sole discretion, with respect only to the Ballots received by the General Unsecured Creditors, any Ballot transmitted to the Voting Agent by telecopy, facsimile, or other electronic means (excluding the Series E Notes Trustee's master ballot, the Mezzanine Lender's ballot, and any submissions through the Voting Agent's E-Ballot Platform). As specified on the Ballot, any Ballot that is otherwise properly completed, executed, and timely returned to the Voting Agent, but does not indicate an acceptance or rejection of the Plan, or that indicates both an acceptance and rejection of the Plan, will not be counted in determining the acceptance or rejection of the Plan.

52. The Debtors have solicited, and will solicit, impaired creditors in the Voting Classes, including Class 5 General Unsecured Creditors of EG II, based on the information available in their books and records, and propose that all claims be temporarily allowed in the amount set forth in their books and records for voting purposes only, subject to the following:

- i. If the Debtors' books and records reflect that a Claim is contingent, partially unliquidated, or disputed, such Claim shall be allowed in the partially liquidated amount for voting purposes only;

- ii. If a Claim is wholly contingent, unliquidated, or disputed, such Claim is accorded one vote and valued at one dollar (\$1.00) for voting purposes only, and not for purposes of allowance or distribution;
- iii. If a creditor holds or has purchased, based on the Debtors' books and records, duplicate claims within the same class against the same Debtor, such creditor shall be provided with only one Solicitation Package and one ballot for voting a single claim in such class against such Debtor;
- iv. If a creditor holds more than one (1) non-duplicative claim within a particular class against the same Debtor, such creditor shall be treated as if such creditor has only one (1) claim in such class in the aggregate dollar amount of such claims against such Debtor; and
- v. If a creditor seeks to challenge the allowance of its claim for voting purposes, the creditor shall file with this Court a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim for voting purposes in a different amount. Upon the filing of any such motion, the creditor's Ballot shall not be counted unless temporarily allowed by an order of this Court entered prior to or concurrent with entry of an order confirming the Plan. All motions pursuant to Bankruptcy Rule 3018(a) must be filed on or before October 11, 2021, which date is seven (7) days prior to the Voting Deadline;

provided, however, that, with respect to Claims allowed under the Plan, the allowed amounts of such claims shall be used for voting purposes.

53. The Debtors have required that the holders of claims in Voting Classes vote all of their claims either to accept or reject the Plan. Notwithstanding Bankruptcy Rule 3018(a), the Debtors propose that whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the last timely Ballot received prior to the Voting Deadline should be deemed to reflect the voter's intent and to thus supersede any prior Ballot(s), without prejudice to the Debtors' right to object to the validity of the second ballot on any basis permitted by law. Such procedures provide for a fair and equitable voting process and should be approved in these Chapter 11 Cases.

I. Notice of Non-Voting Status and Non-Transmission of Plan and Disclosure Statement to Certain Holders of Claims and Interests

54. For the reasons set forth herein, the Debtors request a waiver of the Bankruptcy Rule requirement that the Debtors mail copies of the Plan and Disclosure Statement

to holders of claims and equity interests in the Non-Voting Classes that are presumed to accept or deemed to reject the Plan. *See* Fed. R. Bankr. P. 3017(d) (requiring transmission of court-approved disclosure statement to, *inter alia*, classes of unimpaired creditors and equity security holders). Because the Subsidiary Debtors solicited acceptances and rejections of the Plan on a prepetition basis, no disclosure statement was “approved” under Bankruptcy Rule 3017(d), and therefore Bankruptcy Rule 3017 is not applicable here. Further, Part X.A of the Guidelines provides that “[n]o further distribution of the Plan or disclosure statement (or other solicitation document) beyond that which occurred prepetition is required unless requested by a party-in-interest.” The Non-Voting Holders will be provided with the Combined Notice, which sets forth a summary of the Plan and the treatment of such holder’s claims or interests, and provides the manner in which a copy of the Plan and the Disclosure Statement may be obtained, if desired. Moreover, it would be a significant and unnecessary administrative burden on the Debtors to transmit the Disclosure Statement and Plan to the holders of claims and interests that have been deemed to accept or reject the Plan. Accordingly, it is not appropriate to require the Debtors to transmit copies of the Solicitation Package to the Non-Voting Classes.

55. In addition to the Combined Notice, the Debtors propose to send to the holders of claims and interests in the Non-Voting Classes a notice of non-voting status (the “**Notice of Non-Voting Status**”), substantially in the form attached as **Exhibit G** hereto. The Debtors propose to direct the Voting Agent to mail the Notice of Non-Voting Status to such holders of claims and interests within two] days of entry of the Proposed Order or as soon as reasonably practicable thereafter. In addition to providing notice to the holders of such claims and interests of their non-voting status under the Plan, the Notice of Non-Voting Status contains a summary of

the Plan, including the release, exculpation, and injunction provisions set forth in Article XII of the Plan, as well as the Voting Deadline, the Confirmation Hearing, and the Objection Deadline.¹⁰

56. The Debtors submit that the noticing procedures proposed by the Debtors and described herein with respect to the holders of claims and interests in the Non-Voting Classes comply with the Bankruptcy Code and will be adequate and appropriate to provide such holders with notice of their non-voting status. Accordingly, the Debtors respectfully request that the Court approve the noticing procedures with respect to these Classes.

J. Adequacy of the Disclosure Statement

57. At the Combined Hearing, in addition to seeking confirmation of the Plan, the Debtors will seek the Court's ruling that the prepetition solicitation complied with section 1126(b)(2) of the Bankruptcy Code because the Disclosure Statement provided adequate information within the meaning of section 1125(a)(1) of the Bankruptcy Code.

58. Pursuant to section 1125 of the Bankruptcy Code, a Plan proponent must provide holders of impaired claims or interests with "adequate information" regarding a debtor's proposed Plan of reorganization. Section 1125(a)(1) of the Bankruptcy Code provides that:

"adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

¹⁰ With respect to Claims against, and Interests in (i) EG I in Class 5 (Intercompany Claims) and Class 6 (Equity Interests), (ii) EG II in Class 6 (Intercompany Claims) and Class 7 (Equity Interests), and (iii) EGM in Class 3 (Equity Interests), the Debtors request a waiver of any requirement to serve a Notice of Non-Voting Status or any other type of notice in connection with the Plan because such Claims are held by the Debtors or their non-debtor affiliates.

59. The Disclosure Statement is extensive and comprehensive and contains descriptions and summaries of, among other things, (a) the Plan, (b) the transactions to be effected in connection with the Plan, (c) certain events preceding the commencement of the Subsidiary Debtors' Chapter 11 Cases, (d) claims asserted against the Debtors' estates, (e) risk factors affecting the Plan, (f) a liquidation analysis, and (g) federal tax law consequences of the Plan.

60. Accordingly, and for the reasons that will be more fully established at the Combined Hearing, the Disclosure Statement contains adequate information as defined in section 1125(a)(1) of the Bankruptcy Code and should be approved.

K. Conditional Approval of the Disclosure Statement for Purposes of Soliciting the Mezzanine Lender

61. As the set forth above, the Debtors commenced solicitation of the creditors in the EG II Voting Classes prior to the date hereof. However, in light of EGM's status as a debtor in possession, the Debtors have not commenced solicitation of the Mezzanine Lender, the sole creditor in the EGM Voting Class. Section 1125(b) of the Bankruptcy Code provides, in relevant part, that:

“[a]n acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.”

11 U.S.C. § 1125(b).

62. As the set forth above, the Mezzanine Lender, as the only known creditor of EGM and the sole creditor in the EGM Voting Class, has committed, pursuant to the RSA, to support the Plan subject to the receipt of the Disclosure Statement. Accordingly, to abide by the timeline proposed in this Motion and to promptly close on the proposed sale of the Properties to

the Purchaser and expedite distributions to holders of allowed claims and interests, the Debtors request conditional approval of the Disclosure Statement as having “adequate information” under section 1125 of the Bankruptcy Code for the sole purpose of soliciting the vote on the Plan of the Mezzanine Lender. As noted above, the Mezzanine Lender is a sophisticated party and, as a party to the RSA, is intimately familiar with the terms of the Plan and has consented to this approach. Such relief will allow the Debtors to secure the votes needed to confirm the Plan in advance of the Combined Hearing and will not prejudice any party in interest objecting to the Disclosure Statement at the Combined Hearing.

63. Similar relief has been granted in other chapter 11 cases. *In re Seabras 1 USA, LLC*, Case No. 19-14006 (SMB) (Bankr. S.D.N.Y. May 22, 2020) [Docket No. 236]; *In re Navillus Title, Inc.*, Case No. 17-13162 (SHL) (Bankr. S.D.N.Y. August 20, 2018) [Docket No. 591]; *In re Lehman Brothers U.K. Holdings (Delaware) Inc.*, Case No. 17-12442 (SCC) (Bankr. S.D.N.Y. January 16, 2018) [Docket No. 48].

L. Confirmation of the Plan

64. As set forth above, the Plan filed by the Debtors is, pursuant to the RSA, supported by the Series E Trustee and the Mezzanine Lender and will be overwhelmingly accepted by the holders of Class 2 Series E Secured Claims and the Class 5 Series E Notes Deficiency Claims. The Debtors are further confident that when the voting on the Plan finally concludes the Debtors will have secured sufficient votes on the Plan for acceptance by all of the Voting Classes. The Debtors will be prepared to demonstrate at the Combined Hearing that the Plan satisfies all of the other requirements under section 1129(a) of the Bankruptcy Code and that confirmation of the Plan is in the best interests of the estates, creditors, and other parties in interest.

65. As noted above, the Debtors have requested that the Court schedule the Combined Hearing at which time the Debtors will seek confirmation of the Plan. Prior to the

Combined Hearing, the Debtors will file a brief and/or affidavit in support of the Plan demonstrating that the Plan satisfies each requirement for confirmation and responding to any objections to confirmation.

Notice

66. Notice of this Motion will be provided to the Notice Parties. The Debtors respectfully submit that no further notice is required.

67. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 14, 2021
New York, New York

/s/ Matthew P. Goren

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Gary T. Holtzer
Jacqueline Marcus
Matthew P. Goren

*Attorneys for the Initial Debtor and
Proposed Attorneys for the Subsidiary Debtors*

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, <i>et al.</i> ,	:	Case No. 21-10335 (MG)
	:	
Debtors. ¹	:	(Joint Administration Pending)
	:	
-----	X	

**ORDER (A) SCHEDULING COMBINED HEARING ON ADEQUACY OF
DISCLOSURE STATEMENT AND CONFIRMATION OF DEBTORS' JOINT
CHAPTER 11 PLAN; (B) ESTABLISHING PROCEDURES FOR OBJECTING
TO DISCLOSURE STATEMENT, SOLICITATION PROCEDURES, AND
CHAPTER 11 PLAN; (C) APPROVING FORM, MANNER, AND SUFFICIENCY
OF NOTICE OF COMBINED HEARING, COMMENCEMENT OF CHAPTER 11
CASES, AND SECTION 341(a) MEETING OF CREDITORS; (D) CONDITIONALLY
APPROVING THE DISCLOSURE STATEMENT FOR PURPOSES OF SOLICITING
THE MEZZANINE LENDER; AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”),² dated September 14, 2021 [ECF No. []], of Evergreen Gardens Mezz LLC (“**EGM**” or the “**Initial Debtor**”), together with Evergreen Gardens I LLC (“**EG I**”) and Evergreen Gardens II LLC (“**EG II**” and, together with EG I, the “**Subsidiary Debtors**” and, together with the Initial Debtor, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to sections 105, 1125, 1126, 1128, and 1129 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

(the “**Bankruptcy Rules**”), and Rules 3017 and 3018 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), for entry of an order:

- (a) scheduling a combined hearing (the “**Combined Hearing**”) to consider:
 - (i) the adequacy of the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* (as may be modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”);
 - (ii) the adequacy of the Debtors’ procedures for the solicitation and tabulation of votes to accept or reject the Plan, including, without limitation, the procedures utilized by the Subsidiary Debtors to commence the solicitation of votes on the Plan prior to the commencement of the Subsidiary Debtors’ Chapter 11 Cases (collectively, the “**Solicitation Procedures**”); and
 - (iii) confirmation of the *Joint Chapter 11 Plan of Reorganization of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* (as may be modified, amended, or supplemented from time to time in accordance therewith and the RSA, and together with all exhibits and schedules thereto, the “**Plan**”);
- (b) establishing procedures for objecting to the Disclosure Statement, Plan, and the Solicitation Procedures;
- (c) approving the form, manner, and sufficiency of notice of the Combined Hearing, commencement of the Subsidiary Debtors’ Chapter 11 Cases, and the meeting of creditors pursuant to section 341(a) of the Bankruptcy Code (the “**Section 341(a) Meeting**”);
- (d) with respect to the Initial Debtor only, conditionally approving the Disclosure Statement as having “adequate information” under section 1125 of the Bankruptcy Code to allow the Initial Debtor to commence solicitation of votes on the Plan from its only creditor, MREF REIT Lender 9 LLC (the “**Mezzanine Lender**”); and
- (e) granting related relief;

all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and

consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the relief requested in the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the Ravid Declaration, Series E Notes Trustee Certification, Series E Notes Trustee Israeli Counsel Certification, and Donlin Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted to the extent set forth herein.
2. The Combined Hearing (at which time the Bankruptcy Court will consider, among other things, the adequacy of the Disclosure Statement and confirmation of the Plan) will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in courtroom 523 of the United States Bankruptcy Court, One Bowling Green, New York, NY 10004, on October __, 2021 at __: __.m. (Prevailing Eastern Time). The Combined Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Combined Hearing and notice of such adjourned date(s) will be available on the electronic case filing docket.

3. Any objections to the approval of the Disclosure Statement, the Solicitation Procedures and/or confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection; (d) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (e) be filed with the Bankruptcy Court (i) by registered users of the Bankruptcy Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable; and (f) be served in accordance with General Order M-399 **no later than 5:00 p.m. (Prevailing Eastern Time) on October 18, 2021 (the "Objection Deadline")**, on the following parties:

- i. the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Jacqueline Marcus, Esq., and Matthew P. Goren, Esq.);
- ii. counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.);
- iii. counsel to the Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.);
- iv. counsel to the Purchaser, Thompson Hine LLP, 335 Madison Avenue, 12th Floor, New York, New York 10017 (Attn: John Bae, Esq. and Jonathan S. Hawkins, Esq.); and
- v. the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.).

4. Objections, if any, not timely filed and served in the manner set forth above shall not be considered and shall be overruled.

5. The Debtors shall file the Plan Supplement no later than seven (7) days before the Objection Deadline.

6. The Debtors shall file their brief in support of confirmation of the Plan, and their reply to any objections (and replies from any other parties) no later than four (4) days before the Combined Hearing.

7. The form of combined notice of the commencement of the Subsidiary Debtors' Chapter 11 Cases, the Combined Hearing, and the Section 341(a) Meeting (the "**Combined Notice**"), substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety, and the Debtors shall mail or cause to be mailed a copy of the Combined Notice or a summary thereof as soon as reasonably possible after the entry of this Order to: (a) all of the Debtors' known creditors, (b) counsel to Mishmeret Trust Company Ltd., as Trustee for the Bondholders, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.), (c) counsel to MREF REIT Lender 9 LLC, as Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.), (d) counsel to JPMorgan Chase Bank, N.A., as Mortgage Lender to EG I, Fried, Frank, Harris, Shriver & Jacobson LLP, 1 New York Plaza, New York, NY 10014 (Attn: Gary Kaplan, Esq. and Michael Barker, Esq.), (e) William K. Harrington, the U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.), (f) the Internal Revenue Service, (g) the United States Attorney's Office for the Southern District of New York, and (h) all other entities required to be served under Bankruptcy Rules 2002 and 3017; or otherwise in compliance with the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules.

8. The Notice of Non-Voting Status, substantially in the form attached to the Motion as **Exhibit G**, is hereby approved.

9. The Debtors shall not be required to mail the Combined Notice, a Notice of Non-Voting Status, or any other notice in connection with the approval of the Disclosure Statement and confirmation of the Plan to the holders of Claims or Interests in Class 5 (Intercompany Claims) and Class 6 (Equity Interests) against EG I, Class 6 (Intercompany Claims) and Class 7 (Equity Interests) against EG II, and Class 3 (Equity Interests) against EGM, as such Claims or Interests are held by the Debtors or their non-Debtor affiliates.

10. Substantially contemporaneously with the service of the Combined Notice, the Debtors shall cause to be posted to their Case Website, <https://www.donlinrecano.com/eg>, maintained by the Voting Agent, various chapter 11 related documents, including, among others, the following: (a) the Plan, (b) the Disclosure Statement, (c) the Motion and any orders entered in connection with the Motion, and (d) the Combined Notice.

11. Reasonably promptly following the date of entry of this Order, the Debtors shall publish a notice substantially similar to the Combined Notice, with reasonable adjustments and modifications to account for publication limitation, in *The New York Times* (national edition) in English and in *Haaretz*, an Israeli newspaper, in Hebrew.

12. The notice procedures set forth above constitute good and sufficient notice of the Combined Hearing, the commencement of the Subsidiary Debtors' Chapter 11 Cases, the Section 341(a) Meeting, and the deadline and procedures for objecting to the adequacy of the Disclosure Statement, the Solicitation Procedures, and confirmation of the Plan, and no other or further notice shall be necessary.

13. In accordance with the Solicitation Procedures, Claims in the Voting Classes shall be temporarily allowed in the amount set forth in the Debtors' books and records for voting purposes only, subject to the following:

- i. If the Debtors' books and records reflect that a Claim is contingent, partially unliquidated, or disputed, such Claim shall be allowed in the partially liquidated amount for voting purposes only;
- ii. If a Claim is wholly contingent, unliquidated, or disputed, such Claim is accorded one vote and valued at one dollar (\$1.00) for voting purposes only, and not for purposes of allowance or distribution;
- iii. If a creditor holds or has purchased, based on the Debtors' books and records, duplicate claims within the same class against the same Debtor, such creditor shall be provided with only one Solicitation Package and one ballot for voting a single claim in such class against such Debtor;
- iv. If a creditor holds more than one (1) non-duplicative claim within a particular class against the same Debtor, such creditor shall be treated as if such creditor has only one (1) claim in such class in the aggregate dollar amount of such claims against such Debtor; and
- v. If a creditor seeks to challenge the allowance of its claim for voting purposes, the creditor shall file with this Court a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim for voting purposes in a different amount. Upon the filing of any such motion, the creditor's Ballot shall not be counted unless temporarily allowed by an order of this Court entered prior to or concurrent with entry of an order confirming the Plan. All motions pursuant to Bankruptcy Rule 3018(a) must be filed on or before October 11, 2021, which date is seven (7) days prior to the Voting Deadline;

provided, however, that, with respect to Claims allowed under the Plan, the allowed amounts of such claims shall be used for voting purposes.

14. Notwithstanding Bankruptcy Rule 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the last timely Ballot received prior to the Voting Deadline should be deemed to reflect the voter's intent and to thus supersede any prior Ballot(s), without prejudice to the Debtors' right to object to the validity of the second ballot on any basis permitted by law.

15. The Debtors' Disclosure Statement is conditionally approved as having "adequate information" under section 1125 of the Bankruptcy Code for the sole purpose of soliciting votes to accept or reject the Plan from the Mezzanine Lender as the holder of the Class 2 Mezzanine Loan Claim against EGM.

16. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

17. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2021
New York, New York

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Series E Notes Trustee Certification

CHAPMAN AND CUTLER LLP
1270 Avenue of the Americas
New York, New York 10020
Telephone: (212) 655-6000
Facsimile: (212) 697-7210
Michael Friedman
Stephen R. Tetro II
Aaron Krieger

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, et al.,	:	Case No. 21-10335 (MG)
	:	
Debtors.¹	:	(Joint Administration Pending)
	:	
-----X		

**CERTIFICATION OF SERIES E NOTES TRUSTEE REGARDING SOLICITATION
OF VOTES FROM SERIES E NOTEHOLDERS ON JOINT CHAPTER 11 PLAN OF
EVERGREEN GARDENS I LLC, EVERGREEN GARDENS II LLC,
AND EVERGREEN GARDENS MEZZ LLC**

1. Giyora Luftig, President and Chief Executive Officer of Mishmeret Trust Company Ltd. (“**Mishmeret**”) and Rami Sebtly, Vice President of Mishmeret, hereby declare that the following is true and correct to the best of our knowledge, information and belief:

2. We submit this declaration in connection with the solicitation of votes to accept or reject the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* (as may be amended, modified, or supplemented from time to time, and together with any schedules and exhibits thereto, the “**Plan**”) filed by Evergreen Gardens Mezz

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

LLC (“**EGM**” or the “**Initial Debtor**”), together with Evergreen Gardens I LLC (“**EG I**”) and Evergreen Gardens II LLC (“**EG II**” and, together with EG I, the “**Subsidiary Debtors**” and, together with the Initial Debtor, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).

3. On August 19, 2021, Mishmeret (the “**Series E Notes Trustee**”), in its capacity as trustee for the notes (the “**Series E Notes**” and the holders of Series E Notes, the “**Series E Noteholders**”) issued pursuant to that certain Deed of Trust, dated as of February 4, 2018 (as amended, modified, renewed, or supplemented from time to time, the “**Series E Deed of Trust**”), published a communication to each of the Series E Noteholders scheduling a vote by the Series E Noteholders on certain actions requested by the Subsidiary Debtors (the “**Proposal**”). Specifically, the Proposal requested an affirmative vote by each of the Series E Noteholders to authorize the Series E Notes Trustee to pursue all actions needed to consummate the sale transaction (as described and defined in the Proposal, hereinafter, the “**Sale Transaction**”), including entering into a restructuring support agreement (the “**RSA**”) and a term sheet annexed thereto (the “**RSA Term Sheet**”), subject to certain conditions elaborated in the Proposal.

4. As set forth in the Proposal, by voting in favor of the Proposal, each Series E Noteholder would, among other things, (a) provide its consent to the Sale Transaction, (b) provide its consent for the Subsidiary Debtors to file petitions for the Chapter 11 Cases, (c) authorize the Series E Notes Trustee to negotiate and sign all required documents in order to effectuate the authority granted to the Series E Noteholders’ representative and the Series E Notes Trustee in accordance with the Proposal and/or to consummate the Sale Transaction including any document and/or required consent in the Chapter 11 Cases, such as the RSA, and any required settlements in accordance with the RSA and/or any amendment to the RSA or such settlements, and (d) authorize the Series E Notes Trustee to vote the secured and unsecured deficiency claims of the Series E Noteholders in favor of a chapter 11 plan for the Subsidiary Debtors on substantially similar terms as those set forth in the RSA Term Sheet (the “**Acceptable Plan**”), subject to the Series E Notes

Trustee's receipt of a disclosure statement and Acceptable Plan that comply with the terms of the RSA, and subject to the conditions mentioned in the Proposal.

5. The Proposal was accompanied by a summary prepared by the Series E Notes Trustee's financial advisor that, among other things, summarized the material economic terms of the RSA and RSA Term Sheet. The Proposal was published to the Series E Noteholders in accordance with the applicable provisions of the Series E Note Documents and applicable Israeli law. A certification to such effect by counsel to the Series E Noteholders, Gornitzky & Co., is attached hereto as **Exhibit A**.

6. The deadline for the Series E Noteholders to respond to the Proposal was scheduled for August 24, 2021 at 5:30 p.m. (prevailing Israel time) (the "**Voting Deadline**"), which date was not less than five (5) days following transmission of the Proposal by the Series E Notes Trustee. Following the expiration of the Voting Deadline, the Series E Notes Trustee tabulated the response received from the Series E Noteholders in accordance with the Series E Note Documents and applicable Israeli law. Under the Series E Deed of Trust, only the votes of Series E Noteholders that actually vote are counted for purposes of tabulating whether a particular action has been approved. The final vote of the Series E Noteholders was as follows:

Number Accepting	Number Rejecting	Amount Accepting (%)	Amount Rejecting (%)	Class Vote
38	4	97.24%	2.76%	Accept/Approve

7. The total amount of Series E Noteholders that voted to approve the Proposal and instruct the Series E Notes Trustee in accordance with the Proposal, subject to the conditions thereto, represents approximately 84% of the total face amount of the Series E Notes. Under the applicable provisions of the Series E Note Documents, the Series E Noteholders overwhelmingly voted to approve the RSA and authorized and directed the Series E Notes Trustee to vote their claims in favor of the Acceptable Plan, subject to receipt by the Series E Notes Trustee of a disclosure statement and Acceptable Plan that comply with the terms of the RSA.

8. For the avoidance of doubt, the Plan summarized in the disclosure statement received by the Series E Notes Trustee on September 14, 2021 constitutes an Acceptable Plan.

Name:

Title:


Rani Setty
VP


Giyora Lefter
President and CEO

Exhibit A

Certification of Gornitzky & Co.

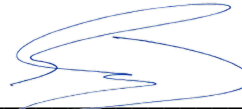
**CERTIFICATION OF GORNITZKY & CO., AS COUNSEL TO SERIES E NOTES
TRUSTEE**

1. I am a Partner in the law firm of Gornitzky & Co, a Tel Aviv based law firm specializing in restructuring and insolvency.

2. I have reviewed the Certification of Series E Notes Trustee (the “**Trustee Certification**”) to which this certification is attached as **Exhibit A**.²

3. Pursuant to Section 33 of the Series E Deed of Trust, the Series E Deed of Trust and other documents governing the issuance, terms, conditions, and obligations of the Series E Notes (collectively, the “**Series E Note Documents**”) are governed by Israeli law.

4. I certify, in my capacity as counsel to the Series E Notes Trustee, that the solicitation of votes on the Proposal was made in accordance with the provisions of the Series E Note Documents, Israeli securities law, and otherwise applicable Israeli law. The authorizations in the Proposal included, *inter alia*, the authorization of the Series E Notes Trustee to vote the secured and unsecured deficiency claims of the Series E Noteholders in favor of a chapter 11 plan for the Subsidiary Debtors on substantially similar terms as those set forth in the RSA Term Sheet (the “**Acceptable Plan**”), subject to the Series E Notes Trustee’s receipt of a disclosure statement and Acceptable Plan that comply with the terms of the RSA and subject to the conditions mentioned in the Proposal.



Name: Kfir Yadgar
Title: Partner

² Capitalized terms used but not herein defined have the meanings ascribed to them in the Trustee Certification.

Exhibit C

Donlin Declaration

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Gary T. Holtzer
Jacqueline Marcus
Matthew P. Goren

*Attorneys for the Initial Debtor and
Proposed Attorneys for the Subsidiary Debtors*

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

-----	X	
	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, et al.,	:	Case No. 21-10335 (MG)
	:	
Debtors.¹	:	(Joint Administration Pending)
	:	
-----	X	

**DECLARATION OF JOHN BURLACU REGARDING PREPETITION SOLICITATION
OF VOTES ON JOINT CHAPTER 11 PLAN OF EVERGREEN GARDENS I LLC,
EVERGREEN GARDENS II LLC, AND EVERGREEN GARDENS MEZZ LLC**

I, John Burlacu, pursuant to section 1746 of title 28 of the United States Code,
hereby declare that the following is true and correct to the best of my knowledge, information, and
belief:

Background

1. My name is John Burlacu. I am over the age of 18 and competent to testify.
I am a Senior Director of Donlin Recano & Co (“**Donlin**”), a chapter 11 administrative services
firm whose headquarters are located at 6201 15th Ave, Brooklyn, New York 11219. Donlin is the

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

proposed voting agent and proposed claims and noticing agent for Evergreen Gardens Mezz LLC (“EGM”), Evergreen Gardens I LLC (“EG I”), and Evergreen Gardens II LLC (“EG II” and, together with EG I, the “**Subsidiary Debtors**” and, together with EGM, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. I submit this declaration (the “**Declaration**”) regarding the procedures utilized by the Subsidiary Debtors to commence the solicitation of votes to accept or reject the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* [ECF No. 70] (as may be modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”), utilizing the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC* [ECF No. 71] (as may be modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”), prior to the commencement of the Subsidiary Debtors’ Chapter 11 Cases (collectively, the “**Solicitation Procedures**”). The Solicitation Procedures are outlined in the *Motion of Debtors for Entry of an Order (A) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Debtors’ Joint Chapter 11 Plan; (B) Establishing Procedures for Objecting to Disclosure Statement and Chapter 11 Plan; (C) Approving Form, Manner, and Sufficiency of Notice of Combined Hearing, Commencement of Chapter 11 Cases, and Section 341(A) Meeting of Creditors; (D) Conditionally Approving the Disclosure Statement for Purposes of Soliciting the Mezzanine*

Lender; and (E) Granting Related Relief (the “**Solicitation Procedures Motion** ²”) filed contemporaneously hereto.

Qualifications

3. I joined Donlin as a Project Manager in 2008. In my current capacity as a Senior Director at Donlin, I am responsible for heading the Solicitation and Distribution Departments. I have extensive experience with respect to providing case management services to chapter 11 debtors, including, among other services, claims administration, noticing, solicitation, balloting, and vote tabulation.

4. Over the course of my career, I have completed over 95 engagements involving the solicitation and tabulation of votes to accept or reject a chapter 11 plan. Representative chapter 11 proceedings where I, or members of my team that I supervised, have provided these services include the following: *In re Cosmoledo, LLC, et al.*, Case No. 20-12117 (MEW) (Bankr. S.D.N.Y. 2020); *In re Miami Metals, Inc., et al.*, Case No. 18-13359 (SHL) (Bankr. S.D.N.Y. 2018); *In re Cred, Inc. et al.*, Case No. 20-12836 (JTD) (Bankr. D. Del. 2020); *In re Alpha Entertainment LLC*, Case No. 20-10940 (LSS) (Bankr. D. Del. 2020); *In re Professional Financial Investors, Inc., et al.*, Case No. 20-30604 (Bankr. N.D. Cal. 2020); *Studio Movie Grill Holdings, LLC*, Case No. 20-32633-SGJ-11 (Bankr. N.D. Tex. 2020); and *In re Gump’s Holdings, LLC*, Case No. BK-S-18-14683-leb (Bankr. D. Nev. 2018).

Service and Transmittal of Solicitation Packages Prepetition

5. As set forth in the Solicitation Procedures Motion, prior to the filing of the Subsidiary Debtors’ Chapter 11 Cases, the Debtors, through Donlin, commenced solicitation of

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Solicitation Procedures Motion.

votes to accept or reject the Plan from the holders of claims against EG II in Class 2 (Series E Secured Claims) and Class 5 (General Unsecured Claims)³, the only impaired voting classes of creditors of EG II under the Plan (the “**EG II Voting Classes**”). Pursuant to the Plan, the only parties entitled to vote to accept or reject the Plan are the holders of claims in the EG II Voting Classes and the holder of the Class 2 Mezzanine Lender Claim against EGM. All other classes of claims against, and interests in, the Debtors, including all of the creditors and interest holders of EG I, are not entitled to vote on the Plan and have not been, nor will be, solicited in connection with the Plan.

6. In connection with voting on the Plan, shortly after midnight on September 14, 2021, Donlin caused copies of the following materials (the “**Solicitation Packages**”) to be transmitted to (i) Mishmeret Trust Company Ltd., as trustee for the Series E Notes (the “**Series E Notes Trustee**”), on behalf of the Series E Noteholders on account of their Class 2 Series E Secured Claims and their Class 5 Series E Notes Deficiency Claims, and (ii) the General Unsecured Creditors, as the other holders of Class 5 General Unsecured Claims against EG II:

- the Disclosure Statement;
- the Plan;
- the exhibits to the Disclosure Statement, including:
 - the RSA;
 - the Purchase Agreement;

³ As set forth in the Disclosure Statement, in addition to trade and other general unsecured creditors, Class 5 (General Unsecured Claims) against EG II includes the deficiency claims of the Series E Noteholders and the claims of any parties that have asserted mechanic’s, materialman’s or other similar lien claims against EG II which the Debtors believe are wholly unsecured. For ease of reference, the holders of the Class 5 General Unsecured Claims other than those deficiency claims of the Series E Noteholders are referred to herein as the “**General Unsecured Creditors**”.

- an organization structure chart; and
- a liquidation analysis.
- the appropriate form of ballot (the “**Ballot**”) with voting instructions.

7. Donlin, at the direction of the Debtors, transmitted one Solicitation Package to the Series E Notes Trustee on account of the Series E Noteholders’ Class 2 Series E Secured Claims and the Class 5 Series E Notes Deficiency Claims, which included a master ballot to aggregate the votes for all such Claims. Approximately forty-five (45) total Solicitation Packages were transmitted to the General Unsecured Creditors, as the holders of the other Class 5 General Unsecured Claims against EG II. The Solicitation Packages were transmitted to the holders of claims in the EG II Voting Classes by first class mail and electronic mail (to the extent the Debtors had email address information for such parties). The Solicitation Packages included (i) the Plan and the Disclosure Statement (including all of the exhibits thereto), (ii) a physical copy of the appropriate Ballot, and (iii) return envelopes with postage included. The Ballots provided that, for any votes to be counted, the Ballots must be completed, signed, and returned to Donlin so that they are actually received by 5:00 p.m. (Prevailing Eastern Time) on October 18, 2021 (the “**Voting Deadline**”), unless such time is extended by the Debtors.

8. Donlin did not transmit Solicitation Packages to the holders of any other claims against the Debtors. However, I understand that the Debtors are seeking conditional approval of the Disclosure Statement in connection with the Solicitation Procedures Motion, and, upon receiving such conditional approval, will direct Donlin to transmit a Solicitation Package to the holder of the Class 2 Mezzanine Lender Claim against EGM in the same manner utilized for solicitation of the holders of claims in the EG II Voting Classes.

9. I further understand that, upon receiving approval from the Court of the procedures set forth in the Solicitation Procedures Motion, the Debtors will direct Donlin to mail,

or cause to be mailed, by first class mail within one (1) business day after the entry of the Proposed Order, a combined notice of the commencement of the Subsidiary Debtors' Chapter 11 Cases, the Combined Hearing, and the Section 341(a) Meeting (the "**Combined Notice**"), substantially in the form annexed to the Solicitation Procedures Motion as **Exhibit E**, to (a) all of the Debtors' known creditors and interest holders, (b) counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.), (c) counsel to MREF REIT Lender 9 LLC, as Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.), (d) counsel to JPMorgan Chase Bank, N.A., as Mortgage Lender to EG I, Fried, Frank, Harris, Shriver & Jacobson LLP, 1 New York Plaza, New York, New York 10014 (Attn: Gary Kaplan, Esq. and Michael Barker, Esq.), (e) William K. Harrington, the U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.), (f) the Internal Revenue Service, (g) the United States Attorney's Office for the Southern District of New York, and (h) all other entities required to be served under Bankruptcy Rules 2002 and 3017, or otherwise in compliance with the Bankruptcy Code, Bankruptcy Rules, the Local Bankruptcy Rules, and the Guidelines.

10. In addition to the Combined Notice, I further understand that, upon approval of the relief requested in the Solicitation Procedures Motion, the Debtors will direct Donlin to send to the holders of Claims and Interests in the Non-Voting Classes the notice of non-voting status (the "**Notice of Non-Voting Status**"), substantially in the form attached as **Exhibit G** to the Solicitation Procedures Motion.

11. To provide additional notice to parties in interest in these cases, the Debtors intend to post to the website maintained by Donlin for these Chapter 11 Cases (the “**Case Website**”) various documents to be filed in the Chapter 11 Cases, including the following: (a) the Plan, (b) the Disclosure Statement, (c) the Solicitation Procedures Motion and any orders entered in connection therewith, and (d) the Combined Notice. The Case Website address is: <https://www.donlinrecano.com/eg>.

12. I was primarily responsible for supervising the employees of Donlin who assisted with the preparation of the Solicitation Packages and the transmission of the Solicitation Packages to the holders of claims in the EG II Voting Classes. In assisting the Subsidiary Debtors with the prepetition solicitation of votes to accept the Plan, Donlin adhered strictly to the Solicitation Procedures outlined in the Solicitation Procedures Motion.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: September 14, 2021
New York, New York

/s/ John Burlacu
John Burlacu
Senior Director
Donlin Recano & Co

Exhibit D

Combined Notice

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

-----	X	
	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, et al.,	:	Case No. 21-10335 (MG)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	X	

**NOTICE OF (I) COMMENCEMENT OF SUBSIDIARY DEBTORS'
CHAPTER 11 CASES; (II) SUMMARY OF DEBTORS' JOINT CHAPTER 11 PLAN;
(III) SCHEDULING COMBINED HEARING ON ADEQUACY OF DISCLOSURE STATEMENT
AND CONFIRMATION OF CHAPTER 11 PLAN; (IV) SCHEDULING OF SECTION 341(a)
MEETING OF CREDITORS; AND (V) RELATED MATTERS**

On February 22, 2021, Evergreen Gardens Mezz LLC (“EGM”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). On September 14, 2021 (the “**Subsidiary Debtor Petition Date**”), Evergreen Gardens I LLC (“EG I”) and Evergreen Gardens II LLC (“EG II” and, together with EG I, the “**Subsidiary Debtors**” and, together with EGM, the “**Debtors**”) filed with the Bankruptcy Court voluntary cases under chapter 11 of the Bankruptcy Code. Contemporaneously with the filing of the Subsidiary Debtors’ chapter 11 cases, the Debtors filed the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”),² and the *Disclosure Statement for Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”) pursuant to sections 1125 and 1126(b) of the Bankruptcy Code.

The Plan seeks to implement a sale of substantially all of the Subsidiary Debtors’ assets, comprised of the two residential real estate complexes (referred to as the Denizen X and the Denizen Y), for approximately \$506 million pursuant to the terms of a signed purchase and sale agreement with an affiliate of Atlas Capital Group (the “**Purchaser**”). Proceeds from the sale are to be allocated under the Plan according to the following allocation (the “**Agreed Proportions**”): 50.75% of the sale proceeds to EG I, on account of the Denizen X (the “**EG I Sale Proceeds**”), and 49.25% of the sale proceeds to EG II, on account of the Denizen Y (the “**EG II Sale Proceeds**”). The Plan provides for the following treatment of the Debtors’ creditors and interest holders:

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan.

EG I: All of the creditors and interest holders of EG I holding allowed claims and interests are unimpaired and will be paid in full under the Plan. Accordingly, each of the classes of creditors and interest holders of EG I (collectively, the “**EG I Non-Voting Classes**”) are, pursuant to section 1126(f) of the Bankruptcy Code, presumed to accept the Plan and none of EG I’s creditors or interest holders have been, or will be, solicited in connection with the Plan.

EG II: With respect to EG II, holders of claims in Class 2 (Series E Secured Claims) and Class 5 (General Unsecured Claims³) are the only impaired voting classes of creditors of EG II under the Plan (the “**EG II Voting Classes**”). Holders of Claims against EG II in Class 1 (Priority Non-Tax Claims), Class 3 (Other Secured Claims), and Class 4 (Convenience Claims) are unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, these classes are presumed to have accepted the Plan and have not been and will not be solicited. Nor are the Debtors required to solicit votes from the holders of Claims in Class 6 (Intercompany Claims) and Interests in Class 7 (Equity Interests), as such classes will not receive or retain any property under the Plan and, pursuant to section 1126(g) of the Bankruptcy Code, are deemed to reject the Plan (EG II Class 1, Class 3, Class 4, Class 6, and Class 7, collectively, the “**EG II Non-Voting Classes**”).

EGM: With respect to EGM, the Mezzanine Lender, as the holder of the Class 2 Mezzanine Loan Claims against EGM, is the only known creditor of EGM and the only party entitled to vote under the Plan with respect to EGM (the “**EGM Voting Class**” and, together with the EG II Voting Classes, the “**Voting Classes**”). To the extent there are any Class 1 Claims (Priority Non-Tax Claims) against EGM, those allowed claims will be unimpaired and paid in full. All other classes of claims against, or interests in, EGM will not receive or retain any property under the Plan, and, as such, their votes will not be solicited with respect to the Plan (Class 1 (Priority Non-Tax Claims) and Class 3 (Equity Interests) of EGM, collectively, the “**EGM Non-Voting Classes**” and, together with the EG I Non-Voting Classes and the EG II Non-Voting Classes, the “**Non-Voting Classes**”).

On September 14, 2021, the Debtors commenced solicitation of votes to accept the Plan from the EG II Voting Classes of record as of August 19, 2021. Following the Court’s entry of an order conditionally approving the Debtor’s Disclosure Statement for purposes of soliciting the Mezzanine Lender, on September ___, 2021, the Debtor commenced solicitation of votes to accept the Plan from the Mezzanine Lender. **The deadline for the submission of votes to accept or reject the Plan is October 18, 2021 at 5 p.m. (Prevailing Eastern Time).**

The Plan and Disclosure Statement may be obtained (a) by written request to the Debtors’ Claims and Noticing Agent, Donlin Recano & Company, Inc. at the following address: 6201 15th Avenue, Brooklyn, NY 11219; (b) by phone at (800) 283-2519 (toll free) and (212) 771-1128 (international); (c) by e-mail to eginfo@donlinrecano.com; (d) by accessing the Debtors’ case website at <https://www.donlinrecano.com/eg>; (e) through the Bankruptcy Court’s website www.nysb.uscourts.gov; or (f) at the office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004, between 9:00am – 4:00pm (Prevailing Eastern Time).

The Combined Hearing to consider, among other things, the adequacy of the Disclosure Statement, the Solicitation Procedures, and confirmation of the Plan will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom 523 of the United States Bankruptcy Court, One Bowling Green, New York, NY 10004, on _____, 2021 at

³ Class 5 (General Unsecured Claims) against EG II includes the deficiency claims of the Series E Noteholders and the claims of any parties that have asserted mechanic’s, materialman’s or other similar lien claims against EG II which the Debtors believe are wholly unsecured.

____ (Prevailing Eastern Time). The Combined Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Combined Hearing and notice of such adjourned date(s) will be available on the case website free of charge at <https://www.donlinrecano.com/eg>.

Any objections to the approval of the Disclosure Statement, the Solicitation Procedures, and/or confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection; (d) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (e) be filed with the Bankruptcy Court (i) by registered users of the Bankruptcy Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable; and (f) be served in accordance with General Order M-399 **no later than 5 p.m. (Prevailing Eastern Time) on October 18, 2021** (the "**Objection Deadline**"), on the following parties: (i) the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Jacqueline Marcus, Esq., and Matthew P. Goren, Esq.); (ii) counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.); (iii) counsel to the Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.); (iv) counsel to the Purchaser, Thompson Hine LLP, 335 Madison Avenue, 12th Floor, New York, New York 10017 (Attn: John Bae, Esq. and Jonathan S. Hawkins, Esq.); (v) counsel to JPMorgan Chase Bank, N.A., as Mortgage Lender to EG I, Fried, Frank, Harris, Shriver & Jacobson LLP, 1 New York Plaza, New York, New York 10014 (Attn: Gary Kaplan, Esq. and Michael Barker, Esq.); and (vi) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.).

**UNLESS AN OBJECTION IS TIMELY FILED AND SERVED IN
ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED
BY THE BANKRUPTCY COURT.**

**YOU ARE ADVISED TO CAREFULLY REVIEW AND
CONSIDER THE PLAN, INCLUDING THE DISCHARGE,
INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS,
AS YOUR RIGHTS MAY BE AFFECTED.**

IMPORTANT INFORMATION REGARDING THE RELEASES IN THE PLAN:

Section 12.5 of the Plan contains the following provision:

12.5. *Injunction.*

(a) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim extinguished, discharged, or released pursuant to the Plan, provided, however, the foregoing shall not enjoin or prevent any party from taking any action to enforce any rights or obligations granted pursuant to the Plan.

(b) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Plan Administrator and a holder of a Claim against or Interest in the Debtors, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against, or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action against the Debtors that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtors or the Post-Effective Debtors, or against property or interests in property of any of the Debtors or the Post-Effective Debtors, except as contemplated or Allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(c) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan will be deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in this Section 12.5.

(d) The injunctions in this Section 12.5 shall extend to any successors of the Debtors (including the Post-Effective Debtors), and their respective property and interests in property.

Section 12.6(b) of the Plan contains the following provision:

(b) **Third-Party Releases.**

As of the Effective Date, except (i) for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remain in effect or become effective after the Effective Date; (ii) defend against any objections to Claims that may be asserted under the Plan; or (iii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions made by the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, the Released Parties shall be deemed released and discharged by:

- (i) the holders of Claims who vote to accept the Plan;
- (ii) the Series E Notes Trustee;
- (iii) the Mezzanine Lender;
- (iv) the DIP Lender;
- (v) each of the other Released Parties; and

(vi) with respect to any Entity in the foregoing clauses (i) through (v), such Entity's (x) predecessors, successors, and assigns, (y) subsidiaries, affiliates, managed accounts or funds, managed or controlled by such Entity, and (z) all Persons entitled to assert Claims through or on behalf of such Entities with respect to the matters for which the releasing Entities are providing releases.

in each case, from any and all Claims, Interests, or Causes of Action whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or arising from, in whole or in part, the Debtors, the restructuring, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, the Purchase Agreement, the Sale Transaction, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Plan (including the Plan Supplement), the RSA, the Definitive Documents, the Sale Documents, the Mezzanine Loan, the EG I Secured First Lien Loan and related documents, the Series E Deed of Trust, the Series E Notes, the DIP Order, the DIP Documents, the Cash Collateral Orders, or any

related agreements, instruments, or other documents, the solicitation of votes with respect to the Plan, in all of the foregoing cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing in this Section 12.6(b) shall be construed to release the Released Parties from any gross negligence, willful misconduct, or fraud as determined by a Final Order. The Persons and Entities in (i) through (vi) of this Section 12.6(b) shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 12.6(b) against each of the Released Parties.

Section 12.7 of the Plan contains the following provision:

12.7. *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any conduct occurring on or after the Petition Date in connection with or arising out of the filing and administration of the Chapter 11 Cases, the postpetition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security or Asset of the Debtors; the negotiation and pursuit of the DIP Facility, the Cash Collateral Orders, the Disclosure Statement, the RSA, the Purchase Agreement, the Sale Transaction, including the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, and consummation thereof, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the DIP Documents; the Cash Collateral Orders; the administration of the Plan or the property to be distributed under the Plan; or the transactions in furtherance of any of the foregoing; except for acts or omissions of an Exculpated Party that constitute gross negligence, fraud, or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

Section 341(a) Meeting for Subsidiary Debtors

A meeting of creditors of Evergreen Gardens I LLC and Evergreen Gardens II LLC (the “**Subsidiary Debtors**”), pursuant to sections 341(a) and 343 of the Bankruptcy Code (the “**Section 341(a) Meeting**”), will be held on _____, 2021 at ____ (Prevailing Eastern Time). The Section 341(a) Meeting will be held telephonically and dial-in instructions will be provided pursuant to a separate notice. The Subsidiary Debtors’ representative, as specified in Rule 9001(5) of the Federal Rules of Bankruptcy Procedure, is required to appear at the Section 341(a) Meeting for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. The meeting may be adjourned or continued from time to time by notice at the Section 341(a) Meeting, without further notice to the creditors.

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Gary T. Holtzer
Jacqueline Marcus
Matthew P. Goren

*Attorneys for the Initial Debtor and
Proposed Attorneys for the Subsidiary Debtors*

Exhibit E

Forms of Ballot

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
In re : Chapter 11
:
EVERGREEN GARDENS MEZZ LLC, *et al.*, : Case No. 21-10335 (MG)
:
Debtors.¹ : (Joint Administration Pending)
:
-----X

MASTER BALLOT FOR ACCEPTING OR REJECTING JOINT CHAPTER 11 PLAN
OF EVERGREEN GARDENS I LLC, EVERGREEN GARDENS II LLC,
AND EVERGREEN GARDENS MEZZ LLC

MASTER BALLOT FOR:

CLASS 2 – Series E Secured Claims

CLASS 5 – Series E Notes Deficiency Claims

**THE VOTING DEADLINE TO ACCEPT OR REJECT
THE PLAN IS 5:00 P.M., EASTERN TIME, ON
OCTOBER 18, 2021 (THE “VOTING DEADLINE”),
UNLESS EXTENDED BY THE DEBTORS.**

This master ballot (the “**Master Ballot**”) is provided to Mishmeret Trust Company Ltd., as trustee (the “**Series E Notes Trustee**”) under that certain Deed of Trust by and between All Year Holdings Limited and the Series E Notes Trustee, dated as of February 4, 2018 (the “**Series E Deed of Trust**”), on behalf of the holders of the notes issued thereunder (the “**Series E Notes**” and the holders of Series E Notes, the “**Series E Noteholders**” or the “**Beneficial Holders**”) on account of their Class 2 Series E Secured Claims and Class 5 Series E Notes Deficiency Claims against Evergreen Gardens II LLC (“**EG II**”), to solicit the votes of the holders of such claims to accept or reject the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”). The Plan is attached as Exhibit A to the *Disclosure Statement for Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”), which accompanies this Ballot. All capitalized terms used but not defined herein or

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

in the enclosed voting instructions have the meanings ascribed to such terms in the Plan. Please review the Disclosure Statement and the Plan in their entirety before you submit this Master Ballot.

On February 22, 2021, Evergreen Gardens Mezz LLC (“**EGM**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). Evergreen Gardens I LLC (“**EG I**”) and Evergreen Gardens II LLC (“**EG II**” and, together with EG I, the “**Subsidiary Debtors**” and, together with the Initial Debtor, the “**Debtors**”) intend to also commence voluntary cases under chapter 11 of the Bankruptcy Code. The Plan can thereafter be confirmed by the Bankruptcy Court and thereby made binding on the Series E Noteholders if it is accepted by the holders of at least two-thirds of the aggregate principal amount and more than one-half in number of the Claims voted in each Impaired Class, and if the Plan otherwise satisfies the applicable requirements of section 1129(a) under the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court may nonetheless confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan, and (b) otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, it will be binding on the Beneficial Holders whether or not such holders vote or if such holders vote to reject the Plan.

Specifically, this Master Ballot is being submitted to the Series E Notes Trustee as the party authorized to vote the Class 2 Claims (Series E Secured Claims) against EG II arising under or relating to the Series E Deed of Trust and other documents governing the issuance, terms, conditions, and obligations of the Series E Notes. The Series E Notes Trustee is also authorized to vote the Series E Deficiency Claims, which, pursuant to the Plan, are classified as General Unsecured Claims against EG II in Class 5.

Please use this Master Ballot to cast the votes to accept or reject the Plan. If you have any questions on how to properly complete this Ballot, please call Donlin Recano & Co (the “**Voting Agent**”) at (800) 283-2519 (domestic toll-free) or (212) 771-1128 (international) or email eginfo@donlinrecano.com with a reference to “Evergreen” in the subject line. **THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

This Master Ballot should be used to tabulate votes by holders of claims against EG II in Class 2 (Series E Secured Claims) and Class 5 (Series E Notes Deficiency Claims) to accept or reject the Plan. In order for these votes to be counted, this Master Ballot must be properly completed, signed, and returned to the Voting Agent so that it is actually received by the Voting Deadline of 5:00 p.m. (Eastern Time) on October 18, 2021, unless such time is extended by the Debtors.

This Master Ballot is solely for purposes of voting to accept or reject the Plan and not for the purpose of allowance or disallowance of, or distribution on account of, Class 2 Claims (Series E Secured Claims) and Class 5 Claims (Series E Notes Deficiency Claims) against EG II.

Class 2 consists of the Series E Secured Claims².

The Plan proposes the following treatment of Allowed Class 2 Claims (Series E Secured Claims) against EG II: Except to the extent that a holder of an Allowed Series E Secured Claim agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement and release of such Allowed Series E Secured Claim (but not the Series E Notes Deficiency Claims), on or as soon as practicable after the Effective Date, each holder of an Allowed Series E Secured Claim shall receive its Pro Rata Share of the Series E Secured Claim Distribution.

Class 5 consists of General Unsecured Claims³ against EG II, including the Series E Notes Deficiency Claims.

The Plan proposes the following treatment of Allowed Class 5 Claims (General Unsecured Claims) against EG II: Except to the extent that a holder of an Allowed General Unsecured Claim against EG II agrees to less favorable treatment, in full and final satisfaction and release of, and in exchange for the General Unsecured Claims of EG II (but not any Series E Noteholders' claims against the BVI Parent), each holder thereof shall receive its Pro Rata Share of the amounts recovered by the Plan Administrator, if any, from the prosecution of Avoidance Actions and other Causes of Action of Post-Effective Date EG II, to the extent such Avoidance Actions and Causes of Action do not constitute collateral of the Series E Noteholders under the Series E Indenture or the Cash Collateral Orders, net of fees and expenses associated with prosecuting such action. The Plan Administrator shall make distributions to the holders of General Unsecured Claims against EG II from such proceeds as and when the Plan Administrator deems appropriate, after consultation with the Series E Notes Trustee. The rights to such proceeds shall be nontransferable except by will, intestate succession, or operation of law.

INSTRUCTIONS FOR COMPLETING THE BALLOT

VOTING DEADLINE/VOTING AGENT:

To have the votes reflected on this Master Ballot counted, this Master Ballot must be completed, signed, and returned to the Voting Agent so that it is actually received by the Voting Deadline of 5:00 p.m. (Prevailing Eastern Time) on October 18, 2021, unless such time is extended by the Debtors. The Master Ballot must be delivered to the Voting Agent in the following manner:

² “**Series E Secured Claims**” means the Claims against EG II arising from the Series E Notes issued under the Series E Deed of Trust.

³ “**General Unsecured Claim**” means any Claim against a Debtor, that is not (a) an Administrative Expense Claim; (b) a Priority Tax Claim; (c) a Priority Non-Tax Claim; (d) the JPM Secured Claims; (e) the Series E Secured Claim; (f) an Other Secured Claim; (g) an Intercompany Claim; (h) a Convenience Claim; or (i) the Mezzanine Loan Claim, but shall include any (x) Series E Notes Deficiency Claims against EG II, (y) any mechanics' lien claims against EG II, and (z) any mechanics' lien claims against EG I that are not Other Secured Claims.

By e-mail to:

DRCVote@DonlinRecano.com with a reference
to “Evergreen Master Ballot” in the subject line

Master Ballots will not be accepted by telecopy, facsimile, or other electronic means of transmission (other than by e-mail to DRCVote@DonlinRecano.com with a reference to “Evergreen Master Ballot” in the subject line) or by mail or other means of physical delivery.

The Master Ballot should not be sent to the Debtors, the Bankruptcy Court, or the Debtors’ financial or legal advisors.

HOW TO VOTE:

1. We understand that, on August 19, 2021, in accordance with the Series E Deed of Trust and applicable Israeli securities law, the Series E Noteholders voted to authorize and direct the Series E Notes Trustee to vote to accept the Plan. With respect to the prior vote of each Series E Noteholder, you must properly complete the Master Ballot, as follows:

- a. Check the box, if applicable, in Item 1 on the Master Ballot;
- b. Provide the information requested in Item 2 of the Master Ballot, as transmitted to you by the Beneficial Holders. **IMPORTANT: EACH BENEFICIAL HOLDER MUST VOTE ALL OF ITS CLASS 2 SERIES E SECURED CLAIMS AND CLASS 5 SERIES E DEFICIENCY CLAIMS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTE. IF ANY BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH VOTE, PLEASE CONTACT THE VOTING AGENT IMMEDIATELY.**
- c. Review the certification in Item 3 of the Master Ballot;
- d. Sign and date the Master Ballot, and provide any remaining information requested;
- e. If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable Item of the Master Ballot to which you are responding;
- f. Contact the Voting Agent if you need any additional information; and
- g. Deliver the completed, executed Master Ballot so as to be received by the Voting Agent before the Voting Deadline.

2. The Master Ballot is *not* a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan.

3. The Master Ballot shall not constitute or be deemed a proof of Claim or an assertion of a Claim.

4. In the event that (i) the Debtors revoke or withdraw the Plan or (ii) the Confirmation Order is not entered or consummation of the Plan does not occur, this Master Ballot shall automatically be null and void and deemed withdrawn without any requirement of affirmative action by or notice to you.

IF YOU (I) HAVE ANY QUESTIONS REGARDING THE BALLOT, (II) DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT OR PLAN, OR (III) NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (800) 283-2519 (DOMESTIC TOLL-FREE) OR (212) 771-1128 (INTERNATIONAL) OR BY E-MAILING EGINFO@DONLINRECANO.COM WITH A REFERENCE TO “EVERGREEN” IN THE SUBJECT LINE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

NOTICE REGARDING CERTAIN RELEASES IN THE PLAN

PURSUANT TO THE PLAN, IF A BENEFICIAL HOLDER VOTES TO ACCEPT THE PLAN, SUCH HOLDER IS AUTOMATICALLY DEEMED TO HAVE CONSENTED TO THE RELEASE PROVISIONS IN SECTION 12.6(b) OF THE PLAN.

Section 12.5 of the Plan contains the following provision:

12.5. *Injunction.*

(b) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim extinguished, discharged, or released pursuant to the Plan, provided, however, the foregoing shall not enjoin or prevent any party from taking any action to enforce any rights or obligations granted pursuant to the Plan.

(c) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Plan Administrator and a holder of a Claim against or Interest in the Debtors, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against, or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action against the Debtors that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtors or the Post-Effective Debtors, or against property or interests in property of any of the Debtors or the Post-Effective Debtors, except as contemplated or Allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(d) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan will be

deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in this Section 12.5.

(e) The injunctions in this Section 12.5 shall extend to any successors of the Debtors (including the Post-Effective Debtors), and their respective property and interests in property.

Section 12.6(b) of the Plan contains the following provision:

(f) **Third-Party Releases.**

As of the Effective Date, except (i) for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remain in effect or become effective after the Effective Date; (ii) defend against any objections to Claims that may be asserted under the Plan; or (iii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions made by the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, the Released Parties shall be deemed released and discharged by:

(i) the holders of Claims who vote to accept the Plan;

(ii) the Series E Notes Trustee;

(iii) the Mezzanine Lender;

(iv) the DIP Lender;

(v) each of the other Released Parties; and

(vi) with respect to any Entity in the foregoing clauses (i) through (v), such Entity's (x) predecessors, successors, and assigns, (y) subsidiaries, affiliates, managed accounts or funds, managed or controlled by such Entity, and (z) all Persons entitled to assert Claims through or on behalf of such Entities with respect to the matters for which the releasing Entities are providing releases.

in each case, from any and all Claims, Interests, or Causes of Action whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or arising from, in whole or in part, the Debtors, the restructuring, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, the Purchase Agreement, the Sale Transaction, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Plan (including the

Plan Supplement), the RSA, the Definitive Documents, the Sale Documents, the Mezzanine Loan, the EG I Secured First Lien Loan and related documents, the Series E Deed of Trust, the Series E Notes, the DIP Order, the DIP Documents, the Cash Collateral Orders, or any related agreements, instruments, or other documents, the solicitation of votes with respect to the Plan, in all of the foregoing cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing in this Section 12.6(b) shall be construed to release the Released Parties from any gross negligence, willful misconduct, or fraud as determined by a Final Order. The Persons and Entities in (i) through (vi) of this Section 12.6(b) shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 12.6(b) against each of the Released Parties.

Section 12.7 of the Plan contains the following provision:

12.7. *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any conduct occurring on or after the Petition Date in connection with or arising out of the filing and administration of the Chapter 11 Cases, the postpetition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security or Asset of the Debtors; the negotiation and pursuit of the DIP Facility, the Cash Collateral Orders, the Disclosure Statement, the RSA, the Purchase Agreement, the Sale Transaction, including the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, and consummation thereof, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the DIP Documents; the Cash Collateral Orders; the administration of the Plan or the property to be distributed under the Plan; or the transactions in furtherance of any of the foregoing; except for acts or omissions of an Exculpated Party that constitute gross negligence, fraud, or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

PLEASE COMPLETE THE FOLLOWING:

Item 1. Certification of Authority to Vote. The undersigned certifies that, as of the Voting Record Date, the undersigned (please check the box if applicable):

☐ has full power and authority to vote to accept or reject the Plan on behalf of the Series E Noteholders listed in Item 2 below.

Item 2. Vote on the Plan.

The undersigned transmits the following votes of the Series E Noteholders in respect of their Class 2 Claims (Series E Secured Claims) and Class 5 Claims (Series E Notes Deficiency Claims) and certifies that the following Series E Noteholders have authorized and directed the Series E Notes Trustee to vote their claims in the manner set forth below. The amounts set forth below with respect to the Class 2 Claims (Series E Secured Claims) and Class 5 Claims (Series E Notes Deficiency Claims) held by the Beneficial Holders are solely for purposes of voting to accept or reject the Plan.⁴

⁴ Indicate in the appropriate column the principal amount of the Series E Secured Claims and Series E Notes Deficiency Claims voted by each Beneficial Holder. Please note that each Beneficial Holder must vote all of such Beneficial Holder's Claims to accept or to reject the Plan and may not split such vote.

Class 2 – Series E Secured Claims against EG II Class 5 – Series E Notes Deficiency Claims against EG II						
Name of Beneficial Holder (Individual or Entity, as applicable)	Principal Amount of Series E Secured Claims Held by Beneficial Holder	Principal Amount of Series E Notes Deficiency Claims Held by Beneficial Holder	Class 2 Series E Secured Claims Vote on Plan		Class 5 Series E Notes Deficiency Claims Vote on Plan	
			Accept	Reject	Accept	Reject
1.			☐	☐	☐	☐
2.			☐	☐	☐	☐
3.			☐	☐	☐	☐
4.			☐	☐	☐	☐
5.			☐	☐	☐	☐
6.			☐	☐	☐	☐

Class 2 – Series E Secured Claims against EG II						
Class 5 – Series E Notes Deficiency Claims against EG II						
7.			☐	☐	☐	☐
8.			☐	☐	☐	☐
9.			☐	☐	☐	☐
10.			☐	☐	☐	☐

Item 3. Certification.

By signing this Master Ballot, the undersigned certifies that:

(a) the undersigned (i) has received a copy of the Disclosure Statement and Master Ballot, and (ii) is authorized to vote to accept or reject the Plan on behalf of the Beneficial Holders.

(b) the undersigned has properly disclosed: (i) the number of Beneficial Holders voting Class 2 Claims (Series E Secured Claims) and Class 5 Claims (Series E Notes Deficiency Claims) against EG II through the undersigned; (ii) the respective amounts of Class 2 Claims and Class 5 Claims owned by each such Beneficial Holder; (iii) each such Beneficial Holder's respective vote concerning the Plan; and (iv) the name for each such Beneficial Holder.

Name of Signatory on behalf of Mishmeret Trust
Company Ltd.:

Signature:

Street Address:

City, State, Zip Code:

Telephone Number:

E-mail Address:

Date Completed:

**PLEASE COMPLETE, SIGN, AND DATE THIS MASTER BALLOT AND RETURN IT
PROMPTLY BY THE FOLLOWING METHOD:**

Via electronic mail service to:

DRCVote@DonlinRecano.com

with a reference to “Evergreen Master Ballot” in the subject line.

If the Voting Agent does not actually receive this Master Ballot on or before the Voting Deadline of 5:00 p.m. (Eastern Time) on October 18, 2021, and if the Voting Deadline is not extended, this Master Ballot will be rejected by the Debtors as invalid, and therefore, not be counted in connection with Confirmation of the Plan.

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

-----X
:
In re : **Chapter 11**
:
EVERGREEN GARDENS MEZZ LLC, et al., : **Case No. 21-10335 (MG)**
:
Debtors.¹ : **(Joint Administration Pending)**
:
-----X

**BALLOT FOR ACCEPTING OR REJECTING JOINT CHAPTER 11 PLAN
OF EVERGREEN GARDENS I LLC, EVERGREEN GARDENS II LLC,
AND EVERGREEN GARDENS MEZZ LLC**

BALLOT FOR: *CLASS 5 – General Unsecured Claims against Evergreen Gardens II LLC*

THE DEADLINE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M., EASTERN TIME, ON OCTOBER 18, 2021 (THE “VOTING DEADLINE”), UNLESS EXTENDED BY THE DEBTORS.

This ballot (the “**Ballot**”) is provided to you to solicit your vote to accept or reject the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”). The Plan is attached as Exhibit A to the *Disclosure Statement for Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”), which accompanies this Ballot. All capitalized terms used but not defined herein or in the enclosed voting instructions have the meanings ascribed to such terms in the Plan. The Disclosure Statement provides information to assist you in deciding how to vote on the Plan. You should review the Disclosure Statement and the Plan in their entirety before you vote. You may wish to seek independent legal advice concerning the Plan and your classification and treatment under the Plan.

On February 22, 2021, Evergreen Gardens Mezz LLC (“**EGM**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). Evergreen Gardens I LLC (“**EG I**”) and Evergreen Gardens II LLC (“**EG II**” and, together with EG I, the “**Subsidiary Debtors**” and, together with the Initial Debtor, the “**Debtors**”) intend to also commence voluntary cases under chapter 11 of the Bankruptcy Code. The Plan can thereafter be

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds of the aggregate principal amount and more than one-half in number of the Claims voted in each Impaired Class, and if the Plan otherwise satisfies the applicable requirements of section 1129(a) under the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court may nonetheless confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan, and (b) otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote or if you vote to reject the Plan.

Please use this Ballot to cast your vote to accept or reject the Plan. If you have any questions on how to properly complete this Ballot, please call Donlin Recano & Co (the “**Voting Agent**”) at (800) 283-2519 (domestic toll-free) or (212) 771-1128 (international) or email eginfo@donlinrecano.com with a reference to “Evergreen” in the subject line. **THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

This Ballot is to be used for voting by holders of Class 5 Claims (General Unsecured Claims) against EG II. In order for your vote to be counted, this Ballot must be properly completed, signed, and returned to the Voting Agent so that it is actually received by the Voting Deadline of 5:00 p.m. (Eastern Time) on October 18, 2021, unless such time is extended by the Debtors.

This Ballot is solely for purposes of voting to accept or reject the Plan and not for the purpose of allowance or disallowance of, or distribution on account of, Class 5 Claims (General Unsecured Claims) against EG II.

Class 5 consists of General Unsecured Claims² against EG II, including the Series E Notes Deficiency Claims and the Claims of holders of asserted mechanics’ liens against EG II.

The Plan proposes the following treatment of Allowed Class 5 Claims (General Unsecured Claims) against EG II: Except to the extent that a holder of an Allowed General Unsecured Claim against EG II agrees to less favorable treatment, in full and final satisfaction and release of, and in exchange for the General Unsecured Claims of EG II (but not any Series E Noteholders’ claims against the BVI Parent), each holder thereof shall receive its Pro Rata Share of the amounts recovered by the Plan Administrator, if any, from the prosecution of Avoidance Actions and other Causes of Action of Post-Effective Date EG II, to the extent such Avoidance Actions and Causes of Action do not constitute collateral of the Series E Noteholders under the Series E Indenture or the Cash Collateral Orders, net of fees and expenses associated with prosecuting such action. The Plan Administrator shall make distributions to the holders of General Unsecured Claims against EG II from such proceeds as and when the Plan Administrator deems appropriate, after

² “**General Unsecured Claim**” means any Claim against a Debtor, that is not (a) an Administrative Expense Claim; (b) a Priority Tax Claim; (c) a Priority Non-Tax Claim; (d) the JPM Secured Claims; (e) the Series E Secured Claim; (f) an Other Secured Claim; (g) an Intercompany Claim; (h) a Convenience Claim; or (i) the Mezzanine Loan Claim, but shall include any (x) Series E Notes Deficiency Claims against EG II, (y) any mechanics’ lien claims against EG II, and (z) any mechanics’ lien claims against EG I that are not Other Secured Claims.

consultation with the Series E Notes Trustee. The rights to such proceeds shall be nontransferable except by will, intestate succession, or operation of law.

The Debtors have solicited, and will solicit, impaired creditors in the Voting Classes, including Class 5 General Unsecured Creditors of EG II, based on the information available in their books and records. Accordingly, all claims shall be temporarily allowed in the amount set forth in the Debtors' books and records for voting purposes only, subject to the following:

- vi. If the Debtors' books and records reflect that your Claim is contingent, partially unliquidated, or disputed, your Claim shall be allowed in the partially liquidated amount for voting purposes only;
- vii. If your Claim is wholly contingent, unliquidated, or disputed, your Claim is accorded one vote and valued at one dollar (\$1.00) for voting purposes only, and not for purposes of allowance or distribution;
- viii. If you hold or have purchased, based on the Debtors' books and records, duplicate claims within the same class against the same Debtor, you shall be provided with only one Solicitation Package and one ballot for voting a single claim in such class against such Debtor;
- ix. If you hold more than one (1) non-duplicative claim within a particular class against the same Debtor, you shall be treated as if you have only one (1) claim in such class in the aggregate dollar amount of such claims against such Debtor; and
- x. If you wish challenge the allowance of your claim for voting purposes, you must file with this Court a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing your claim for voting purposes in a different amount. Upon the filing of any such motion, your Ballot shall not be counted unless temporarily allowed by an order of this Court entered prior to or concurrent with entry of an order confirming the Plan. All motions pursuant to Bankruptcy Rule 3018(a) must be filed on or before October 11, 2021, which date is seven (7) days prior to the Voting Deadline;

provided, however, that, with respect to Claims allowed under the Plan, the allowed amounts of such claims shall be used for voting purposes.

If you hold a Class 5 General Unsecured Claim against EG II in an amount in excess of \$10,000 (the "**Convenience Claim Amount**"), you may elect to have your Class 5 General Unsecured Claim irrevocably reduced to the Convenience Claim Amount and, therefore, be treated as a Convenience Claim against EG II in accordance with Section 5.4 of the Plan (the "**Convenience Claim Election**"); provided, however, that no holder of a General Unsecured Claim against EG II may subdivide its Claim into multiple Claims of \$10,000 or less for purposes of receiving treatment as a Convenience Claim. Pursuant to the Plan, all Convenience Claims against EG II will be paid in full in Cash on the Effective Date of the Plan.

INSTRUCTIONS FOR COMPLETING THE BALLOT

This Ballot is submitted to you to solicit your vote to accept or reject the Plan. The terms of the Plan are described in the Disclosure Statement, including all exhibits thereto. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

To have your vote counted, you must complete, sign, and return this Ballot so that it is received by the Voting Agent no later than the Voting Deadline, unless such time is extended by the Debtors. Ballots must be delivered to the Voting Agent (i) at an appropriate address listed below or (ii) via the Voting Agent's E-Ballot platform by visiting <https://www.donlinrecano.com/evergreen-vote> and following the instructions set forth on the website. Holders are encouraged to submit their Ballots via the E-Ballot platform. If you choose to submit your Ballot via the E-Ballot platform, you should NOT submit your hard copy Ballot as well. Please choose only one method of return for your Ballot.

If by U.S. Postal Service mail:

Donlin Recano & Company, Inc.
Re: Evergreen Gardens Mezz LLC, et al.
PO Box 199043
Blythebourne Station
Brooklyn, NY 11219

If by overnight delivery or personal delivery by hand:

Donlin Recano & Company, Inc.
Re: Evergreen Gardens Mezz LLC, et al.
6201 15th Avenue
Blythebourne Station
Brooklyn, NY 11219

If by electronic submission:

Visit <https://www.donlinrecano.com/evergreen-vote> and follow the directions to submit your E-Ballot. If you choose to submit your Ballot via Donlin's E-Ballot system, you should not also return a hard copy of your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized E-Ballot:

Unique E-Ballot ID#: _____

Ballots will not be accepted by telecopy, facsimile, electronic mail or other electronic means of transmission (except via the Voting Agent's E-Ballot platform).

The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant, (ii) any ballot cast by a Person that does not hold a Claim in Class 5, (iii) any unsigned Ballot, (iv) any ballot that does not contain an original signature; and (v) any Ballot transmitted to the Voting Agent by telecopy, facsimile, electronic mail or other means of electronic transmission (other than Ballots entitled to be submitted via the Voting Agent's online balloting portal). An otherwise properly completed, executed, and timely returned Ballot that does not indicate acceptance or rejection of the Plan, or that indicates both acceptance and rejection of the Plan, will not be counted in determining the acceptance or rejection of the Plan.

To properly complete the Ballot, you must follow the procedures described below:

- a. Make sure that the information contained in Item 1 is correct;
- b. If you have a Claim against EG II in Class 5 (General Unsecured Claims), cast one vote to accept or reject the Plan by checking the appropriate box in Item 2;
- c. If you elect to have your Class 5 Claim (General Unsecured Claim) irrevocably reduced to the Convenience Claim Amount and, therefore, to be treated as a Convenience Claim in accordance with Section 5.4 of the Plan, check the box in Item 3;
- d. **Make sure to read the information regarding the Releases in Item 4. Holders of Claims who accept the Plan are automatically deemed to have consented to the release provisions in Section 12.6(b) of the Plan.**
- e. If you are completing this Ballot on behalf of another entity, indicate your relationship with such entity and the capacity in which you are signing on the appropriate line in Item 5. By submitting the Ballot you are certifying that you have authority to so act and agree to provide documents evidencing such authority upon request (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act);
- f. If you hold Claims in other Classes you may receive more than one Ballot. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for such Class of Claims in accordance with the instructions on that Ballot. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you receive;
- g. You must vote all your Claims within a single Class under the Plan either to accept or reject the Plan;
- h. If more than one timely, properly completed Ballot is received, only the last properly completed Ballot received by the Voting Agent will be counted, unless the holder of the Claim receives Bankruptcy Court approval otherwise;

- i. If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately;
- j. Provide your name, mailing address, and any remaining information requested;
- k. Sign and date your Ballot; and
- l. Return your Ballot with an original signature to the Voting Agent. For the avoidance of doubt, a Ballot submitted by the E-Ballot platform shall be deemed to bear an original signature.

No Ballot shall constitute or be deemed a proof of Claim or an assertion of Claim.

In the event that (i) the Debtors revoke or withdraw the Plan or (ii) the Confirmation Order is not entered or consummation of the Plan does not occur, this Ballot shall automatically be null and void and deemed withdrawn without any requirement of affirmative action by or notice to you.

IF YOU (I) HAVE ANY QUESTIONS REGARDING THIS BALLOT, (II) DID NOT RECEIVE A RETURN ENVELOPE WITH YOUR BALLOT, (III) DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT OR PLAN, OR (IV) NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (800) 283-2519 (DOMESTIC TOLL-FREE) OR (212) 771-1128 (INTERNATIONAL), OR BY E-MAILING EGINFO@DONLINRECANO.COM WITH A REFERENCE TO "EVERGREEN" IN THE SUBJECT LINE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

PLEASE COMPLETE THE FOLLOWING:

Item 1. Amount of Class 5 Claims against EG II (General Unsecured Claims). For purposes of voting to accept or reject the Plan, the undersigned certifies that as of August 19, 2021, the undersigned holds a Class 5 Claim against EG II (General Unsecured Claims) against the Debtors listed below in the amount set forth below.

Claim Amount: \$[_____]

Item 2. Vote on the Plan. The undersigned holder of a Class 5 Claim against EG II (General Unsecured Claims) in the amount set forth in Item 1 above hereby votes to:

Check one box only:

9

Accept the Plan

9

Reject the Plan

Item 3. OPTIONAL – Convenience Claim Election. Check the box below if you elect to have your Class 5 General Unsecured Claim against EG II irrevocably reduced to the amount of \$10,000 and, therefore, to be treated as a Convenience Claim against EG II in accordance with Section 5.4 of the Plan. By making this Convenience Claim Election, your response to Item 2 above will be not be counted in determining the acceptance or rejection of the Plan.³ If you make a Convenience Claim Election, you will not be entitled to any other recovery or distribution on account of your General Unsecured Claim against EG II in Class 5:

☐ The undersigned certifies that it elects to voluntarily and irrevocably reduce the amount of its Class 5 General Unsecured Claim against EG II to \$10,000, such that it will be entitled to receive a distribution as a holder of a Convenience Claim pursuant to Section 5.4 of the Plan. Holders of Class 5 General Unsecured Claims against EG II that make such election shall only be entitled to a distribution on one Convenience Claim against the Debtors in full and final satisfaction of all of such holders' Claims that are based on the same liability or obligation as the Convenience Claim.

PLEASE TAKE NOTE THAT IF YOU SUBMIT THIS BALLOT TO THE VOTING AGENT AND EITHER: (I) FAIL TO INDICATE WHETHER YOU ARE ACCEPTING OR REJECTING THE PLAN OR (II) CHECK BOTH BOXES INDICATING THAT YOU ARE BOTH ACCEPTING AND REJECTING THE PLAN, YOUR BALLOT WILL NOT BE COUNTED IN DETERMINING THE ACCEPTANCE OR REJECTION OF THE PLAN.

³ Please consult Section 5.4 of the Plan for a complete description of the treatment of Convenience Claims.

Item 4. Releases.

PURSUANT TO THE PLAN, IF YOU RETURN A BALLOT AND VOTE TO ACCEPT THE PLAN, YOU ARE AUTOMATICALLY DEEMED TO HAVE CONSENTED TO THE RELEASE PROVISIONS IN SECTION 12.6(b) OF THE PLAN.

IMPORTANT INFORMATION REGARDING THE RELEASES IN THE PLAN:

Section 12.5 of the Plan contains the following provision:

12.5. *Injunction.*

(b) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim extinguished, discharged, or released pursuant to the Plan, provided, however, the foregoing shall not enjoin or prevent any party from taking any action to enforce any rights or obligations granted pursuant to the Plan.

(c) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Plan Administrator and a holder of a Claim against or Interest in the Debtors, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against, or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action against the Debtors that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtors or the Post-Effective Debtors, or against property or interests in property of any of the Debtors or the Post-Effective Debtors, except as contemplated or Allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(d) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan will be deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in this Section 12.5.

(e) The injunctions in this Section 12.5 shall extend to any successors of the Debtors (including the Post-Effective Debtors), and their respective property and interests in property.

Section 12.6(b) of the Plan contains the following provision:

(f) **Third-Party Releases.**

As of the Effective Date, except (i) for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remain in effect or become effective after the Effective Date; (ii) defend against any objections to Claims that may be asserted under the Plan; or (iii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions made by the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, the Released Parties shall be deemed released and discharged by:

(i) the holders of Claims who vote to accept the Plan;

(ii) the Series E Notes Trustee;

(iii) the Mezzanine Lender;

(iv) the DIP Lender;

(v) each of the other Released Parties; and

(vi) with respect to any Entity in the foregoing clauses (i) through (v), such Entity's (x) predecessors, successors, and assigns, (y) subsidiaries, affiliates, managed accounts or funds, managed or controlled by such Entity, and (z) all Persons entitled to assert Claims through or on behalf of such Entities with respect to the matters for which the releasing Entities are providing releases.

in each case, from any and all Claims, Interests, or Causes of Action whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or arising from, in whole or in part, the Debtors, the restructuring, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, the Purchase Agreement, the Sale Transaction, the business or contractual arrangements between any Debtor and any

Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Plan (including the Plan Supplement), the RSA, the Definitive Documents, the Sale Documents, the Mezzanine Loan, the EG I Secured First Lien Loan and related documents, the Series E Deed of Trust, the Series E Notes, the DIP Order, the DIP Documents, the Cash Collateral Orders, or any related agreements, instruments, or other documents, the solicitation of votes with respect to the Plan, in all of the foregoing cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing in this Section 12.6(b) shall be construed to release the Released Parties from any gross negligence, willful misconduct, or fraud as determined by a Final Order. The Persons and Entities in (i) through (vi) of this Section 12.6(b) shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 12.6(b) against each of the Released Parties.

Section 12.7 of the Plan contains the following provision:

12.7. *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any conduct occurring on or after the Petition Date in connection with or arising out of the filing and administration of the Chapter 11 Cases, the postpetition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security or Asset of the Debtors; the negotiation and pursuit of the DIP Facility, the Cash Collateral Orders, the Disclosure Statement, the RSA, the Purchase Agreement, the Sale Transaction, including the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, and consummation thereof, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the DIP Documents; the Cash Collateral Orders; the administration of the Plan or the property to be distributed under the Plan; or the transactions in furtherance of any of the foregoing; except for acts or omissions of an Exculpated Party that constitute gross negligence, fraud, or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

Item 5. Acknowledgements and Certification. By signing this Ballot, the undersigned acknowledges receipt of the Disclosure Statement, including the Plan and all other exhibits thereto. The undersigned certifies that (i) it is the holder of the Class 5 Claim against EG II (General Unsecured Claims) identified in Item 1 above; and (ii) it has full power and authority to vote to accept or reject the Plan. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Claimant:

Signature:

Name of Signatory (if different than claimant):

If by Authorized Agent, Title of Agent:

Street Address:

City, State, Zip Code:

Telephone Number:

E-mail Address:

Date Completed:

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

-----X	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, <i>et al.</i> ,	:	Case No. 21-10335 (MG)
	:	
Debtors. ¹	:	(Joint Administration Pending)
	:	
-----X		

**BALLOT FOR ACCEPTING OR REJECTING JOINT CHAPTER 11 PLAN
OF EVERGREEN GARDENS I LLC, EVERGREEN GARDENS II LLC,
AND EVERGREEN GARDENS MEZZ LLC**

BALLOT FOR: *CLASS 2 – Mezzanine Loan Claim against Evergreen Gardens Mezz LLC*

THE DEADLINE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M., EASTERN TIME, ON OCTOBER 18, 2021 (THE “VOTING DEADLINE”), UNLESS EXTENDED BY THE DEBTORS.
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This ballot (the “**Ballot**”) is provided to MREF REIT Lender 9 LLC (the “**Mezzanine Lender**”), in its capacity as lender under the certain Mezzanine Loan and Security Agreement, dated February 12, 2019 (the “**Mezzanine Loan**”), to solicit the Mezzanine Lender’s vote to accept or reject the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”). The Plan is attached as Exhibit A to the *Disclosure Statement for Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”), which accompanies this Ballot. All capitalized terms used but not defined herein or in the enclosed voting instructions have the meanings ascribed to such terms in the Plan. The Disclosure Statement provides information to assist you in deciding how to vote on the Plan. You should review the Disclosure Statement and the Plan in their entirety before you vote. You may wish to seek independent legal advice concerning the Plan and your classification and treatment under the Plan.

On February 22, 2021, Evergreen Gardens Mezz LLC (“**EGM**”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). On September 14, 2021, Evergreen Gardens I LLC (“**EG I**”) and Evergreen Gardens II LLC (“**EG II**”

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

and, together with EG I, the “**Subsidiary Debtors**” and, together with EGM, the “**Debtors**”) also commenced voluntary cases under chapter 11 of the Bankruptcy Code. The Plan can thereafter be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds of the aggregate principal amount and more than one-half in number of the Claims voted in each Impaired Class, and if the Plan otherwise satisfies the applicable requirements of section 1129(a) under the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court may nonetheless confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan, and (b) otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote or if you vote to reject the Plan.

Please use this Ballot to cast your vote to accept or reject the Plan. If you have any questions on how to properly complete this Ballot, please call Donlin Recano & Co (the “**Voting Agent**”) at (800) 283-2519 (domestic toll-free) or (212) 771-1128 (international) or email eginfo@donlinrecano.com with a reference to “Evergreen” in the subject line. **THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

This Ballot is to be used by the Mezzanine Lender as the holder of the Class 2 Claim (Mezzanine Loan Claim) against EGM.² In order for your vote to be counted, this Ballot must be properly completed, signed, and returned to the Voting Agent so that it is actually received by the Voting Deadline of 5:00 p.m. (Eastern Time) on October 18, 2021, unless such time is extended by the Debtors.

This Ballot is solely for purposes of voting to accept or reject the Plan and not for the purpose of allowance or disallowance of, or distribution on account of, the Class 2 Claim (Mezzanine Loan Claim) against EGM. However, the Plan provides for the allowance of the Class 2 Claim in the principal amount outstanding under the Mezzanine Loan plus any and all accrued and unpaid interest, including default interest, premiums, fees and expenses as of the Petition Date of EGM in the amount set forth in the Plan.

The Plan proposes the following treatment of the Allowed Class 2 Claim (Mezzanine Loan Claim) against EGM: Except to the extent that the holder of the Mezzanine Loan Claim agrees to a less favorable treatment, in final settlement of such Mezzanine Loan Claim as against EGM, on or as soon as practicable after the Effective Date, the holder of the Allowed Mezzanine Loan Claims shall receive:

- (i) the Excess EGM Cash; and
- (ii) its Pro Rata Share of the amounts recovered by the Plan Administrator of EGM, if any, from the prosecution of Avoidance Actions or other Causes of Action of EG I and EGM, net of fees and expenses associated with prosecuting such action. The Plan Administrator shall make distributions to the holder of the Mezzanine Loan Claim from such proceeds as and when the Plan Administrator deems appropriate, after

² “**Mezzanine Loan Claim**” means the Claim of the Mezzanine Lender arising under or relating to the Mezzanine Loan.

consultation with the Mezzanine Lender. The rights to such proceeds shall be nontransferable except to an affiliate, or by will, intestate succession, or operation of law; and

- (iii) the remainder of the Disputed Claims Reserve after all Disputed Claims against EG I has been liquidated and paid, if applicable, in accordance with the terms hereof.

INSTRUCTIONS FOR COMPLETING THE BALLOT

This Ballot is submitted to you to solicit your vote to accept or reject the Plan. The terms of the Plan are described in the Disclosure Statement, including all exhibits thereto. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

To have your vote counted, you must complete, sign, and return this Ballot so that it is actually received by the Voting Agent no later than the Voting Deadline of 5:00 p.m. (Prevailing Eastern Time) on October 18, 2021, unless such time is extended by the Debtors. The Ballot must be delivered to the Voting Agent in the following manner:

By e-mail to:

DRCVote@DonlinRecano.com with a reference
to “Evergreen Ballot” in the subject line

The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant, (ii) any ballot cast by a Person that does not hold a Claim in Class 2, (iii) any unsigned Ballot, (iv) any ballot that does not contain an original signature; and (v) any Ballot transmitted to the Voting Agent by telecopy, facsimile, or other means of electronic transmission (other than by e-mail to DRCVote@DonlinRecano.com with a reference to “Evergreen Ballot” in the subject line) or by mail or other means of physical delivery. An otherwise properly completed, executed, and timely returned Ballot that does not indicate acceptance or rejection of the Plan, or that indicates both acceptance and rejection of the Plan, will not be counted in determining the acceptance or rejection of the Plan.

To properly complete the Ballot, you must follow the procedures described below:

- m. Make sure that the information contained in Item 1 is correct;
- n. If you have a Claim against EGM in Class 2 (Mezzanine Loan Claim), cast one vote to accept or reject the Plan by checking the appropriate box in Item 2;
- o. **Make sure to read the information regarding the Releases in Item 3. Holders of Claims who accept the Plan are automatically deemed to have consented to the release provisions in Section 12.6(b) of the Plan.**

- p. If you are completing this Ballot on behalf of another entity, indicate your relationship with such entity and the capacity in which you are signing on the appropriate line in Item 4. By submitting the Ballot you are certifying that you have authority to so act and agree to provide documents evidencing such authority upon request (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act);
- q. If you hold Claims in other Classes you may receive more than one Ballot. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for such Class of Claims in accordance with the instructions on that Ballot. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you receive;
- r. If more than one timely, properly completed Ballot is received, only the last properly completed Ballot received by the Voting Agent will be counted, unless the holder of the Claim receives Bankruptcy Court approval otherwise;
- s. If you believe that you have received the wrong Ballot, please contact the Voting Agent immediately;
- t. Provide your name, mailing address, and any remaining information requested;
- u. Sign and date your Ballot; and
- v. Return your Ballot with an original signature to the Voting Agent. For the avoidance of doubt, a Ballot submitted by the E-Ballot platform shall be deemed to bear an original signature.

No Ballot shall constitute or be deemed a proof of Claim or an assertion of Claim.

In the event that (i) the Debtors revoke or withdraw the Plan or (ii) the Confirmation Order is not entered or consummation of the Plan does not occur, this Ballot shall automatically be null and void and deemed withdrawn without any requirement of affirmative action by or notice to you.

IF YOU (I) HAVE ANY QUESTIONS REGARDING THIS BALLOT, (II) DID NOT RECEIVE A RETURN ENVELOPE WITH YOUR BALLOT, (III) DID NOT RECEIVE A COPY OF THE DISCLOSURE STATEMENT OR PLAN, OR (IV) NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT AT (800) 283-2519 (DOMESTIC TOLL-FREE) OR (212) 771-1128 (INTERNATIONAL), OR BY E-MAILING EGINFO@DONLINRECANO.COM WITH A REFERENCE TO "EVERGREEN" IN THE SUBJECT LINE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

PLEASE COMPLETE THE FOLLOWING:

Item 1. Amount of Class 2 Claim against EGM (Mezzanine Loan Claim). For purposes of voting to accept or reject the Plan, the undersigned certifies that as of August 19, 2021, the undersigned is the holder of the Class 2 Claim against EGM (Mezzanine Loan Claim) against the Debtors listed below in the amount set forth below.

Claim Amount: \$[_____]

Item 2. Vote on the Plan. The undersigned holder of a Class 2 Claim against EGM (Mezzanine Loan Claim) in the amount set forth in Item 1 above hereby votes to:

Check one box only: ☐ Accept the Plan

 ☐ Reject the Plan

PLEASE TAKE NOTE THAT IF YOU SUBMIT THIS BALLOT TO THE VOTING AGENT AND EITHER: (I) FAIL TO INDICATE WHETHER YOU ARE ACCEPTING OR REJECTING THE PLAN OR (II) CHECK BOTH BOXES INDICATING THAT YOU ARE BOTH ACCEPTING AND REJECTING THE PLAN, YOUR BALLOT WILL NOT BE COUNTED IN DETERMINING THE ACCEPTANCE OR REJECTION OF THE PLAN.

Item 3. Releases.

PURSUANT TO THE PLAN, IF YOU RETURN A BALLOT AND VOTE TO ACCEPT THE PLAN, YOU ARE AUTOMATICALLY DEEMED TO HAVE CONSENTED TO THE RELEASE PROVISIONS IN SECTION 12.6(b) OF THE PLAN.

IMPORTANT INFORMATION REGARDING THE RELEASES IN THE PLAN:

Section 12.5 of the Plan contains the following provision:

12.5. *Injunction.*

(b) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim extinguished, discharged, or released pursuant to the Plan, provided, however, the foregoing shall not enjoin or prevent any party from taking any action to enforce any rights or obligations granted pursuant to the Plan.

(c) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Plan Administrator and a holder of a Claim against or Interest in the Debtors, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against, or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action against the Debtors that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtors or the Post-Effective Debtors, or against property or interests in property of any of the Debtors or the Post-Effective Debtors, except as contemplated or Allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(d) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan will be deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in this Section 12.5.

(e) The injunctions in this Section 12.5 shall extend to any successors of the Debtors (including the Post-Effective Debtors), and their respective property and interests in property.

Section 12.6(b) of the Plan contains the following provision:

(f) **Third-Party Releases.**

As of the Effective Date, except (i) for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remain in effect or become effective after the Effective Date; (ii) defend against any objections to Claims that may be asserted under the Plan; or (iii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions made by the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law,

as such law may be extended or integrated after the Effective Date, the Released Parties shall be deemed released and discharged by:

- (i) the holders of Claims who vote to accept the Plan;
- (ii) the Series E Notes Trustee;
- (iii) the Mezzanine Lender;
- (iv) the DIP Lender;
- (v) each of the other Released Parties; and

(vi) with respect to any Entity in the foregoing clauses (i) through (v), such Entity's (x) predecessors, successors, and assigns, (y) subsidiaries, affiliates, managed accounts or funds, managed or controlled by such Entity, and (z) all Persons entitled to assert Claims through or on behalf of such Entities with respect to the matters for which the releasing Entities are providing releases.

in each case, from any and all Claims, Interests, or Causes of Action whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or arising from, in whole or in part, the Debtors, the restructuring, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, the Purchase Agreement, the Sale Transaction, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Plan (including the Plan Supplement), the RSA, the Definitive Documents, the Sale Documents, the Mezzanine Loan, the EG I Secured First Lien Loan and related documents, the Series E Deed of Trust, the Series E Notes, the DIP Order, the DIP Documents, the Cash Collateral Orders, or any related agreements, instruments, or other documents, the solicitation of votes with respect to the Plan, in all of the foregoing cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing in this Section 12.6(b) shall be construed to release the Released Parties from any gross negligence, willful misconduct, or fraud as determined by a Final Order. The Persons and Entities in (i) through (vi) of this Section 12.6(b) shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 12.6(b) against each of the Released Parties.

Section 12.7 of the Plan contains the following provision:

12.7. *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and

liability for any conduct occurring on or after the Petition Date in connection with or arising out of the filing and administration of the Chapter 11 Cases, the postpetition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security or Asset of the Debtors; the negotiation and pursuit of the DIP Facility, the Cash Collateral Orders, the Disclosure Statement, the RSA, the Purchase Agreement, the Sale Transaction, including the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, and consummation thereof, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the DIP Documents; the Cash Collateral Orders; the administration of the Plan or the property to be distributed under the Plan; or the transactions in furtherance of any of the foregoing; except for acts or omissions of an Exculpated Party that constitute gross negligence, fraud, or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

Item 4. Acknowledgements and Certification. By signing this Ballot, the undersigned acknowledges receipt of the Disclosure Statement, including the Plan and all other exhibits thereto. The undersigned certifies that (i) it is the holder of the Class 2 Claim against EGM (Mezzanine Loan Claim) identified in Item 1 above; and (ii) it has full power and authority to vote to accept or reject the Plan. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Print or Type Name of Claimant:

Signature:

Name of Signatory (if different than claimant):

If by Authorized Agent, Title of Agent:

Street Address:

City, State, Zip Code:

Telephone Number:

E-mail Address:

Date Completed:

Exhibit F

Notice of Non-Voting Status

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

-----	X	
	:	
In re	:	Chapter 11
	:	
EVERGREEN GARDENS MEZZ LLC, et al.,	:	Case No. 21-10335 (MG)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	X	

**NOTICE OF NON-VOTING STATUS TO UNIMPAIRED CLASSES PRESUMED TO
ACCEPT, DEEMED TO REJECT, OR OTHERWISE NOT ENTITLED TO VOTE ON
THE DEBTORS' JOINT CHAPTER 11 PLAN**

On February 22, 2021, Evergreen Gardens Mezz LLC (“EGM”) commenced a case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). On September 14, 2021 (the “**Subsidiary Debtor Petition Date**”), Evergreen Gardens I LLC (“EG I”) and Evergreen Gardens II LLC (“EG II” and, together with EG I, the “**Subsidiary Debtors**” and, together with EGM, the “**Debtors**”) filed with the Bankruptcy Court voluntary cases under chapter 11 of the Bankruptcy Code. Contemporaneously with the filing of the Subsidiary Debtors’ chapter 11 cases, the Debtors filed the *Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Plan**”),² and the *Disclosure Statement for Joint Chapter 11 Plan of Evergreen Gardens I LLC, Evergreen Gardens II LLC, and Evergreen Gardens Mezz LLC*, dated September 13, 2021 (as it may be amended, modified, or supplemented from time to time, and together with all exhibits and schedules thereto, the “**Disclosure Statement**”) pursuant to sections 1125 and 1126(b) of the Bankruptcy Code.

The Plan seeks to implement a sale of substantially all of the Subsidiary Debtors’ assets, comprised of the two residential real estate complexes (referred to as the Denizen X and the Denizen Y), for approximately \$506 million pursuant to the terms of a signed purchase and sale agreement with an affiliate of Atlas Capital Group (the “**Purchaser**”). Proceeds from the sale are to be allocated under the Plan according to the following allocation (the “**Agreed Proportions**”): 50.75% of the sale proceeds to EG I, on account of the Denizen X (the “**EG I Sale Proceeds**”), and 49.25% of the sale proceeds to EG II, on account of the Denizen Y (the “**EG II Sale Proceeds**”). The Plan provides for the following treatment of the Debtors’ creditors and interest holders:

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Evergreen Gardens Mezz LLC (0416); Evergreen Gardens I LLC (2211); and Evergreen Gardens II LLC (6782). The Debtors’ principal offices are located at 199 Lee Avenue, Suite 693, Brooklyn, New York 11211.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan.

You are receiving this notice (“Notice of Non-Voting Status”) because, according to the Debtors’ books and records, you may be a holder of a Claim(s) in one or more of the following classes that is not entitled to vote on the Plan pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code:

EG I Non-Voting Classes: Class 1 (Priority Non-Tax Claims), Class 2 (JPM Secured Claim), Class 3 (Other Secured Claims), Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims), and Class 6 (Equity Interests) (collectively, the “EG I Non-Voting Classes”).

All of the creditors and interest holders of EG I are unimpaired and holders of allowed claims and interests will be paid in full under the Plan. Accordingly, each of the classes of creditors and interest holders of EG I are, pursuant to section 1126(f) of the Bankruptcy Code, presumed to accept the Plan, are not entitled to vote on the Plan and, therefore, the Debtors are not soliciting their votes on the Plan.

EG II Non-Voting Classes: Class 1 (Priority Non-Tax Claims), Class 3 (Other Secured Claims), Class 4 (Convenience Claims), Class 6 (Intercompany Claims), and Class 7 (Equity Interests) (collectively, the “EG II Non-Voting Classes”).

Holders of Claims against EG II in Classes 1 (Priority Non-Tax Claims), 3 (Other Secured Claims), and 4 (Convenience Claims) are unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, these classes are presumed to have accepted the Plan. Holders of Claims in Classes 6 and 7 will not receive or retain any property under the Plan and, pursuant to section 1126(g) of the Bankruptcy Code, are deemed to reject the Plan. The holders of Claims in the EG II Non-Voting Classes are not entitled to vote on the Plan and, therefore, the Debtors are not soliciting their votes on the Plan.

EGM Non-Voting Classes: Class 1 (Priority Non-Tax Claims) and Class 3 (Equity Interests) (collectively, the “EGM Non-Voting Classes” and, together with the EG I Non-Voting Classes and the EG II Non-Voting Classes, the “Non-Voting Classes”).

To the extent there are any Class 1 Claims (Priority Non-Tax Claims) against EGM, those claims will be unimpaired and holders of allowed claims will be paid in full. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, this class is presumed to have accepted the Plan. The holder of the Equity Interests in Class 7 will not receive or retain any property under the Plan and, pursuant to section 1126(g) of the Bankruptcy Code, is deemed to reject the Plan. The holders of Claims in the EGM Non-Voting Classes are not entitled to vote on the Plan and, therefore, the Debtors are not soliciting their votes on the Plan.

The Plan and Disclosure Statement may be obtained (a) by written request to the Debtors’ Claims and Noticing Agent, Donlin Recano & Company, Inc. at the following address: 6201 15th Avenue, Brooklyn, NY 11219; (b) by phone at (800) 283-2519 (toll free) and (212) 771-1128 (international); (c) by e-mail to eginfo@donlinrecano.com; (d) by accessing the Debtors’ case website at <https://www.donlinrecano.com/eg>; (e) through the Bankruptcy Court’s website www.nysb.uscourts.gov; or (f) at the office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004, between 9:00am – 4:00pm (Prevailing Eastern Time).

The Combined Hearing to consider, among other things, the adequacy of the Disclosure Statement, the Solicitation Procedures, and confirmation of the Plan will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in courtroom 523 of the United States Bankruptcy Court, One Bowling Green, New York, NY 10004, on _____, 2021 at ____ (Prevailing Eastern Time). The Combined Hearing may be adjourned from time to time without further notice other than an announcement

of the adjourned date or dates in open court or at the Combined Hearing and notice of such adjourned date(s) will be available on the case website free of charge at <https://www.donlinrecano.com/eg>.

Any objections to the approval of the Disclosure Statement, the Solicitation Procedures, and/or confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection; (d) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (e) be filed with the Bankruptcy Court (i) by registered users of the Bankruptcy Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable; and (f) be served in accordance with General Order M-399 **no later than 5 p.m. (Prevailing Eastern Time) on October 18, 2021** (the "**Objection Deadline**"), on the following parties: (i) the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Jacqueline Marcus, Esq., and Matthew P. Goren, Esq.); (ii) counsel to the Series E Notes Trustee, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Michael Friedman, Esq., Stephen R. Tetro II, Esq., and Aaron Krieger, Esq.); (iii) counsel to the Mezzanine Lender, Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein, Esq., and Kizzy L. Jarashow, Esq.); (iv) counsel to the Purchaser, Thompson Hine LLP, 335 Madison Avenue, 12th Floor, New York, New York 10017 (Attn: John Bae, Esq. and Jonathan S. Hawkins, Esq.); (v) counsel to JPMorgan Chase Bank, N.A., as Mortgage Lender to EG I, Fried, Frank, Harris, Shriver & Jacobson LLP, 1 New York Plaza, New York, New York 10014 (Attn: Gary Kaplan, Esq. and Michael Barker, Esq.); and (vi) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Andrea B. Schwartz, Esq. and Shara Cornell, Esq.).

IF YOU (I) HAVE ANY QUESTIONS REGARDING THIS NOTICE OF NON-VOTING STATUS, PLEASE CONTACT THE VOTING AGENT AT (800) 283-2519 (DOMESTIC TOLL-FREE) OR (212) 771-1128 (INTERNATIONAL), OR BY E-MAILING EGINFO@DONLINRECANO.COM WITH A REFERENCE TO "EVERGREEN" IN THE SUBJECT LINE. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

Please take notice that if the Plan is confirmed by the Bankruptcy Court, the provisions of the confirmed Plan, including the injunctions, exculpations and releases contained therein, will be binding on you, regardless of whether you are Impaired or not under the confirmed Plan.

IMPORTANT INFORMATION REGARDING THE RELEASES IN THE PLAN:

Section 12.5 of the Plan contains the following provision:

12.5. *Injunction.*

(b) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim extinguished, discharged, or released pursuant to the Plan, provided, however, the foregoing shall not enjoin or prevent any party from taking any action to enforce any rights or obligations granted pursuant to the Plan.

(c) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Plan Administrator and a holder of a Claim against or Interest in the Debtors, all Entities who have held, hold, or may hold Claims against or Interests in the Debtors (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against, or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action against the Debtors that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Post-Effective Debtors, or the property of any of the Debtors or the Post-Effective Debtors; (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtors or the Post-Effective Debtors, or against property or interests in property of any of the Debtors or the Post-Effective Debtors, except as contemplated or Allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(d) By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan will be deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in this Section 12.5.

(e) The injunctions in this Section 12.5 shall extend to any successors of the Debtors (including the Post-Effective Debtors), and their respective property and interests in property.

Section 12.6(b) of the Plan contains the following provision:

(f) **Third-Party Releases.**

As of the Effective Date, except (i) for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remain in effect or become effective after the Effective Date; (ii) defend against any objections to Claims that may be asserted under the Plan; or (iii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions made by the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, the Released Parties shall be deemed released and discharged by:

(i) the holders of Claims who vote to accept the Plan;

(ii) the Series E Notes Trustee;

(iii) the Mezzanine Lender;

(iv) the DIP Lender;

(v) each of the other Released Parties; and

(vi) with respect to any Entity in the foregoing clauses (i) through (v), such Entity's (x) predecessors, successors, and assigns, (y) subsidiaries, affiliates, managed accounts or funds, managed or controlled by such Entity, and (z) all Persons entitled to assert Claims through or on behalf of such Entities with respect to the matters for which the releasing Entities are providing releases.

in each case, from any and all Claims, Interests, or Causes of Action whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or arising from, in whole or in part, the Debtors, the restructuring, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, the Purchase Agreement, the Sale Transaction, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Plan (including the Plan Supplement), the RSA, the Definitive Documents, the Sale Documents, the Mezzanine Loan, the EG I Secured First Lien Loan and related documents, the Series E Deed of Trust, the Series E Notes, the DIP Order, the DIP Documents, the Cash Collateral Orders, or any related agreements, instruments, or other documents, the solicitation of votes with respect to the Plan, in all of the foregoing cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing in this Section 12.6(b) shall be construed to release the Released Parties from any gross negligence, willful misconduct, or fraud as determined by a Final Order. The Persons and Entities in (i) through (vi) of this Section 12.6(b) shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 12.6(b) against each of the Released Parties.

Section 12.7 of the Plan contains the following provision:

12.7. *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation,

suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any conduct occurring on or after the Petition Date in connection with or arising out of the filing and administration of the Chapter 11 Cases, the postpetition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security or Asset of the Debtors; the negotiation and pursuit of the DIP Facility, the Cash Collateral Orders, the Disclosure Statement, the RSA, the Purchase Agreement, the Sale Transaction, including the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, and consummation thereof, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the DIP Documents; the Cash Collateral Orders; the administration of the Plan or the property to be distributed under the Plan; or the transactions in furtherance of any of the foregoing; except for acts or omissions of an Exculpated Party that constitute gross negligence, fraud, or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

**YOU ARE ADVISED TO CAREFULLY REVIEW AND
CONSIDER THE PLAN, INCLUDING THE DISCHARGE,
INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS,
AS YOUR RIGHTS MAY BE AFFECTED.**