

Presentment Date and Time: July 23, 2021 at 11:00 a.m. (Eastern Time)

Objection Deadline: July 22, 2021 at 4:00 p.m. (Eastern Time)

Hearing Date and Time (Only if Objections Filed): To Be Announced

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Attorneys for the Plan Administrator

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

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In re	: Chapter 11
	:
OLD MARKET GROUP HOLDINGS	:
CORP., et al.,	: Case No. 20-10161 (JLG)
	:
Debtors.¹	: Jointly Administered
	:
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**NOTICE OF PRESENTMENT OF
STIPULATION, AGREEMENT AND ORDER
GRANTING LIMITED RELIEF FROM PLAN INJUNCTION**

PLEASE TAKE NOTICE that Old Market Group Holdings Corp. (f/k/a Fairway Group Holdings Corp.) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), will present the attached stipulation, agreement and order granting limited relief from plan injunction (the “**Stipulation**”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Old Market Bakery LLC (4129); Old Market Broadway LLC (8591); Old Market Chelsea LLC (0288); Old Market Construction Group, LLC (2741); Old Market Douglaston LLC (2650); Old Market East 86th Street LLC (3822); Old Market eCommerce LLC (3081); Old Market Georgetowne LLC (9609); Old Market Greenwich Street LLC (6422); Old Market Central Services LLC (7843); Old Market Group Plainview LLC (8643); Old Market Hudson Yards LLC (9331); Old Market Kips Bay LLC (0791); Old Market Store LLC (9240); Old Old Market Pelham LLC (3119); Old Market Pelham Wines & Spirits LLC (3141); Old Market Red Hook LLC (8813); Old Market Stamford LLC (0738); Old Market Stamford Wines & Spirits LLC (3021); Old Market Staten Island LLC (1732); Old Market Uptown LLC (8719); and Old Market Westbury LLC (6240). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Old Market Community Foundation Inc., a charitable organization, owned by Old Market Group Holdings Corp., is not a debtor in these proceedings.

to the Honorable James L. Garrity, Jr., United States Bankruptcy Judge for the Southern District of New York, for signature on **July 23, 2021 at 11:00 a.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “**Objections**”) to the Stipulation shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), shall be filed with the Bankruptcy Court (i) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with two single-sided hard copies delivered to the Judge’s Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399, the Bankruptcy Rules, and the Local Rules, so as to be filed and served upon (a) the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Sunny Singh, Esq.); (b) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Greg Zipes, Esq. and Paul Schwartzberg, Esq.); (c) the attorneys for the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017 (Attn.: Bradford J. Sandler, Esq., Robert J. Feinstein, Esq., and Shirley S. Cho, Esq.); and (d) counsel to the Ad Hoc Group and DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: W. Austin Jowers, Esq., and Michael R. Handler, Esq.); by no later than **July 22, 2021 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the attached stipulation, the Debtors may, on or after the Objection

Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that any objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

Dated: July 15, 2021
New York, New York

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

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In re	:
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OLD MARKET GROUP HOLDINGS	:
CORP., et al.,	:
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Debtors.¹	:
	:
	:
-----X	

Chapter 11

Case No. 20-10161 (JLG)

**Jointly Administered
(ECF No.)**

**STIPULATION, AGREEMENT AND ORDER
GRANTING LIMITED RELIEF FROM PLAN INJUNCTION**

This stipulation, agreement, and proposed order (the “**Stipulation, Agreement and Order**”) is entered into by and among the Plan Administrator for the Wind Down Estates of Old Market Group Holdings Corp. (f/k/a Fairway Group Holdings Corp.) and Old Market Bakery LLC (f/k/a Fairway Bakery LLC) (collectively, the “**Wind Down Estates**” or “**Old Market**”), and Jesus Fernandez (the “**Claimant**”). Old Market and the Claimant collectively are referred to in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Old Market Bakery LLC (4129); Old Market Broadway LLC (8591); Old Market Chelsea LLC (0288); Old Market Construction Group, LLC (2741); Old Market Douglaston LLC (2650); Old Market East 86th Street LLC (3822); Old Market eCommerce LLC (3081); Old Market Georgetowne LLC (9609); Old Market Greenwich Street LLC (6422); Old Market Central Services LLC (7843); Old Market Group Plainview LLC (8643); Old Market Hudson Yards LLC (9331); Old Market Kips Bay LLC (0791); Old Market Store LLC (9240); Old Market Paramus LLC (3338); Old Market Pelham LLC (3119); Old Market Pelham Wines & Spirits LLC (3141); Old Market Red Hook LLC (8813); Old Market Stamford LLC (0738); Old Market Stamford Wines & Spirits LLC (3021); Old Market Staten Island LLC (1732); Old Market Uptown LLC (8719); and Old Market Westbury LLC (6240). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Old Market Community Foundation Inc., a charitable organization, owned by Old Market Group Holdings Corp., is not a debtor in these proceedings.

this Stipulation, Agreement and Order as the “**Parties,**” and, each, as a “**Party.**” The Parties hereby stipulate and agree as follows:

RECITALS

A. On January 23, 2020 (the “**Commencement Date**”) the Wind Down Estates and certain of its affiliates (collectively, the “**Chapter 11 Entities**”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

B. On May 16, 2018 Claimant commenced an action that is currently pending in the Supreme Court of the State of New York County of Bronx, Index No. E21860/18 (the “**State Court Action**”) against the Old Market. The State Court Action involves claims asserted by the Claimant for alleged injuries as a result of a slip and fall that occurred on July 6, 2016 at the Wind Down Estates’ former distribution center, located at 400 Walnut Avenue, Bronx, NY 10454.

C. On September 24, 2020 the Wind Down Estates’ filed the *Joint Chapter 11 Plan of Old market Group Holdings Corp., and its Affiliated Debtors* (ECF No. 767) (the “**Plan**”).

D. On October 5, 2020, the Bankruptcy Court entered an order (ECF No. 806) confirming the Plan.

E. The Plan went effective on October 30, 2020. *See Notice of Occurrence of Effective Date* (ECF No. 843).

F. Section 10.5 of the Plan (the “**Plan Injunction**”) continues to generally enjoin actions prohibited by the Automatic Stay.

G. The Parties have agreed, subject to approval of the Bankruptcy Court, to modify the automatic stay (as defined in section 362(a) of the Bankruptcy Code) (the “**Automatic Stay**”)

pursuant to section 362 of the Bankruptcy Code and the Plan Injunction for the limited purpose and subject to the terms and conditions set forth below.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. This Stipulation, Agreement, and Order shall have no force or effect unless and until approved by order of the Bankruptcy Court (the “**Effective Date**”).

2. Upon the Effective Date, the Automatic Stay and Plan Injunction shall be modified to the extent necessary solely to permit the Claimant to continue the State Court Action against the Wind Down Estates solely to obtain recovery from insurance proceeds under the general liability policy issued by Axis Insurance Co. policy number MNP787460-16 (the “**Policy**” or the “**Insurer**”) and solely to the extent the Insurer has assumed the defense of the State Court Action, provided, that all other provisions of the Automatic Stay and Plan Injunction, including, without limitation, those provisions prohibiting the commencement or continuation of any other judicial proceedings against the Wind Down Estates or any of the other Chapter 11 Entities that was or could have been commenced prior to the Commencement Date, and those provisions prohibiting any act to collect, assess, or recover a claim that arose prior to the Commencement Date from the respective estates and/or assets or property of any of the Chapter 11 Entities (as defined in section 541 of the Bankruptcy Code), shall remain in full force and effect. For the avoidance of doubt, Claimant may continue the State Court Action with the Wind Down Estates as a named defendant, but should any allegations result in a judgment against Old Market, no such judgment shall be collectible against the assets of the Wind Down Estates.

3. As of the Effective Date, the Claimant hereby agrees to waive any right to recovery in the State Court Action against the Wind Down Estates, including but not limited to the GUC Recovery Trust and against the GUC Recovery Trustee (each as defined in the Plan), as well as any prepetition claim (as defined in section 101(5) of the Bankruptcy Code) that may be recoverable, and exclusively shall be limited to obtaining any recovery in the State Court Action from the proceeds of the Policy. As of the Effective Date, all proofs of claim filed by Claimant in the Wind Down Estates' chapter 11 case shall be deemed withdrawn.

4. As of the Effective Date, Claimant may bring or continue with claims against any named or unnamed individual or entity in the State Court Action, with the exception of Old Market and any of the other Chapter 11 Entities, without seeking further relief from the Bankruptcy Court. However, to the extent that any named or unnamed party in the State Court Action, who is not a Party to this Stipulation, Agreement and Order, brings a claim or cross claim against Old Market or any other of the Chapter 11 Entities, including but not limited to claims for indemnification or contribution, such party's claim or cross claim against Old Market and the other Chapter 11 Entities remains subject to the Automatic Stay and the Plan Injunction and such party must seek relief therefrom to proceed against Old Market or any of the other Chapter 11 Entities.

5. Nothing herein (i) alters, amends or otherwise modifies the terms and conditions of any insurance policies issued to the Wind Down Estates or of any related agreements; (ii) creates or permits a direct right of action by Claimant against the Wind Down Estate or the Chapter 11 Entities' insurers; (iii) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any allegedly applicable policy or to otherwise assert any defenses to coverage; or (iv) constitutes a determination or admission that coverage exists with respect to Claimant's claims.

6. All rights under Section 1542 of the California Civil Code, or any analogous state or federal law, are hereby expressly waived, if applicable, with respect to any of the claims, injuries, or damages described in this Stipulation, Agreement and Order. Section 1542 of the California Civil Code reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

7. Nothing contained herein shall be construed as a waiver by the Wind Down Estates’ or any other party in interest of their right to object to any and all proofs of claim relating to any State Court Action or any other pending prepetition action to which the Wind Down Estates or any of the other Chapter 11 Entities are a party that may be filed by Claimant in the chapter 11 cases of the Chapter 11 Entities.

8. The limited relief set forth herein shall not be construed as an admission of liability by the Wind Down Estates or any of the Chapter 11 Entities, or the Insurer, regarding any claim or cause of action arising from or in relation to the State Court Action or any other matter.

9. This Stipulation, Agreement, and Order shall constitute the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

10. The undersigned who executes this Stipulation, Agreement, and Order by or on behalf of each respective Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation, Agreement, and Order on behalf of such Party.

11. This Stipulation, Agreement, and Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument, and it shall constitute sufficient proof of this Stipulation, Agreement and Order to present any copies, electronic copies, or facsimiles signed by the Parties here to be charged.

12. This Stipulation, Agreement, and Order shall not be modified, altered, amended or vacated without the written consent of all Parties hereto or by further order of the Bankruptcy Court.

13. Notwithstanding the applicability of Bankruptcy Rule 4001(a)(3), the terms and provisions of this Stipulation, Agreement and Order immediately shall be effective and enforceable upon the Effective Date, and shall thereafter be binding upon the Parties hereto and their respective affiliates and successors.

14. This Stipulation, Agreement and Order shall be governed by, and construed in accordance with, the laws of the State of New York, except to the extent that the Bankruptcy Code applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

15. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation, Agreement and Order.

IN WITNESS WHEREOF, this Stipulation, Agreement and Order has been
executed and delivered as of the day and year first below written.

Dated: July 15, 2021

By: /s/ Sunny Singh
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Dated: July 15, 2021

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Attorneys for Claimant

Dated: _____, 2021
New York, New York

THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE