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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Chapter 11
Case No. 11-15624 (REG)

261 EAST 78 REALTY CORPORATION,

Debtor.

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**DEBTOR'S' FIRST AMENDED DISCLOSURE STATEMENT UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

261 East 78 Realty Corporation (the "Debtor") hereby proposes the following First Amended Disclosure Statement pursuant to Section 1125(b) of Title 11, United States Code, §§ 101 et seq. (the "Bankruptcy Code") and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), in connection with its First Amended Plan of Reorganization dated November 15, 2013 (the "Plan") to all known holders of claims against or interests in the Debtor in order to adequately disclose information deemed to be material, important and necessary for the Debtor's creditors to make a reasonably informed judgment about the Debtor's Plan. A copy of the Plan is attached hereto as **Exhibit "A."** All capitalized terms used but not defined in this Disclosure Statement shall have the respective meanings ascribed to them in the Plan unless otherwise noted.

The Bankruptcy Court has scheduled the hearing on confirmation of the Plan for January __, 2014 at 9:45 a.m. Under Section 1126(b) of the Bankruptcy Code, only Classes of Claims that are "impaired" under the Plan, as defined by Section 1124 of the Bankruptcy Code, are entitled to vote on the Plan. **Holders of Claims in Class 1 are not required to vote on the Plan and are conclusively presumed to have accepted the Plan. Holders of Claims in Classes 2 and 3 are impaired, inasmuch as they will receive a lesser amount on account of their Claims than they would be entitled to under applicable non-bankruptcy law. A Class is impaired if its legal, contractual or equitable rights are materially altered or reduced. This means that a creditor or class whose rights are impaired will receive less than they would have received, and at a later date, than they would have in the absence of an insolvency proceeding. Accordingly, Holders of Claims in Classes 2 and 3 are entitled to vote. Pursuant to Section 1126 of the Bankruptcy Code, the Plan must be accepted by more than one half in number and two-thirds in amount of at least one class of impaired creditors of those voting in order for the Plan to be confirmed. Holders of Interests in Class 4 are impaired and are deemed to reject the Plan.**

NO REPRESENTATIONS CONCERNING THE DEBTOR IS AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS WHICH ARE OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED UPON BY YOU, AND ANY SUCH REPRESENTATIONS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, ONE NORTH LEXINGTON AVENUE, WHITE PLAINS, NY 10601, ATTENTION: JONATHAN S. PASTERNAK, ESQ., WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. FOR THE FOREGOING REASON, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH GREAT EFFORTS HAVE BEEN MADE TO BE ACCURATE.

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN. WHILE THE EQUITY HOLDERS BELIEVE THAT THE SUMMARY IS FAIR AND ACCURATE, SUCH SUMMARY IS QUALIFIED TO THE EXTENT THAT IT DOES NOT SET FORTH THE ENTIRE TEXT OF THE PLAN. REFERENCE IS HEREBY MADE TO THE PLAN FOR A COMPLETE STATEMENT OF THE TERMS AND PROVISIONS THEREOF. **IF ANY INCONSISTENCIES EXIST BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL CONTROL.**

THE STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE MADE AS

OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED IN THIS DISCLOSURE STATEMENT. THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN ANY FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE HEREOF.

AMENDMENTS TO THE PLAN THAT DO NOT MATERIALLY AND/OR ADVERSELY CHANGE THE TREATMENT OF CLASSES MAY BE MADE TO THE PLAN PRIOR TO CONFIRMATION. SUCH AMENDMENTS MAY BE APPROVED BY THE COURT AT THE CONFIRMATION HEARING WITHOUT ENTITLING MEMBERS OF ANY CLASSES WHOSE TREATMENT IS NOT ADVERSELY CHANGED TO WITHDRAW ANY VOTES TO ACCEPT OR REJECT THE PLAN.

THE COURT HAS APPROVED THIS DISCLOSURE STATEMENT BY ORDER DATED DECEMBER __, 2013 AS CONTAINING ADEQUATE INFORMATION UNDER THE PARTICULAR CIRCUMSTANCES OF THIS CASE. APPROVAL OF THE DISCLOSURE STATEMENT, HOWEVER, IS NOT TO BE CONSTRUED AS AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT. CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT WILL BE CONSIDERED AT A HEARING TO BE SCHEDULED ON THE PLAN. CREDITORS ARE URGED TO CONSULT WITH EACH OTHER AND THEIR COUNSEL REGARDING THE PLAN. Accompanying this Disclosure Statement are copies of the following documents (**Exhibits A, B and C):**

**A. The Plan And Exhibits;**
**B. Current Valuation of the Debtor's Real Property; and**
**C. Plan Distribution Analysis.**

## II. BACKGROUND OF THE CASE

### A. Historical Background of the Debtor

History of the Debtor

The Debtor was incorporated in 2007 in the State of New York. It was founded by Lee Moncho, who is the sole shareholder, for the single purpose of acquiring two townhouses, demolishing them, and constructing a new medical office building on the Upper East Side of Manhattan.

History of Acquisition

261 and 263 East 78th Street, New York, NY (the "Property") were two side by side 14foot wide townhouses. Lee Moncho acquired 261 East 78th Street for a total cost of $3,537,968 including the purchase price of $3,350,000 in June 2006. This was funded with owner's cash and the proceeds of a mortgage loan of $2,503,242.63. 263 East 78th Street was acquired for a purchase price of $3,500,000.

A combination of the lack of available medical office space on the Upper East Side, the proximity of several hospitals and the amount of work required to renovate the existing townhouses made the best use of the available land and buildable square feet, a new, ground up, medical office building. Lee Moncho engaged a commercial mortgage broker who secured a $10 million construction loan from Broadway Bank ("Broadway"), a small community Bank in Chicago. $586,026 was added in soft costs in cash by Lee Moncho, which included among other things, architectural services, surveys, zoning analysis and pre-construction services.

In April 2007, the $10 million construction and acquisition loan was closed with Broadway. The loan paid off the outstanding note on 261 East 78th Street, acquired 263 East 78th Street for a purchase price of $3,500,000 and created a hard cost construction reserve of $3,800,000. In addition to other closing costs, an interest reserve fund was created to fund the interest payments for one year.

In addition to the $10,000,000 construction loan, an additional loan was obtained from Hermes Capital LLC ("Hermes"). Hermes is owned by the same family who owned Broadway and was operated from the same offices as Broadway. Originally, an $11,000,000 loan had been sought, and at Broadway's suggestion, the loan was split into a $10,000,000 first mortgage with Broadway and a $1,000,000 second mortgage with Hermes. The second mortgage was secured by the property, not by the stock of the debtor corporation.

Construction of the Building

A series of design flaws and delays in submitting plans to the Building Department meant that demolition could not commence until much later than anticipated. Demolition began in July 2007 and was completed by August 2007. Due to design flaws, the plans had to be amended several times. This included completely changing the elevator system and changing the foundation system twice. Each change resulted in delays to the new building permit being issued by the Building Department. The new building permit was not issued until July 2008. While the new building permit was not issued until July 2008, there were demolition and foundation permits issued prior to that, so at least some work could be done, but there was a lot of time wasted (the Debtor is suing the architect, but the delays proved to be very disruptive). The numerous design changes also increased the budget substantially.

Once the New Building Permit was issued, construction proceeded well, but there were further design flaws that required changes that caused further delays and expense. Notably, there were changes to among other things, the foundation walls, to the waterproofing, to the fire pumps required, to stand pipes and to the HVAC systems. These changes all came after the permit had been issued, and each change stalled the construction process. However, by June of 2009, the core and shell was very near completion. Leasing had commenced and plans were being made to build out tenant spaces. A new Architect was hired to design the Tenant spaces. A few last items were required in the tenant spaces that completed the core and shell. Leases were signed by tenants, plans were drawn up and approved by the tenants and the Building Department. Broadway was to approve the tenant improvements and the funding of those improvements to the general contractor. Broadway, however, declined to approve three separate leases or the associated tenant improvements until April of 2010, shortly before it failed and was taken over by the FDIC.

Once Broadway had failed and MB Financial Bank, N.A. ("MB") had taken over Broadway and the loan at the end of April 2010, in succeeding ten weeks until the maturity of the loan at the end of June 2010, the core and shell were completed with one tenant space completed and the two others partially completed.

Due to MB declaring a loan default and starting foreclosure proceedings in July 2010, funding stopped. However, based on, inter alia, the establishment of an escrow account specifically to pay the general contractor, the contractor continued to build out the tenant spaces and completed the two remaining spaces by the end of August 2010.

Following the maturity of the loan and immediately upon commencing foreclosure proceedings, MB applied for the emergency appointment of a receiver. This resulted in the agreed upon appointment of a Temporary Project Manager. The purpose of the Temporary Project Manager ("TPM") was to oversee the finishing of the tenant improvements and to finish construction of the core and shell.

Finishing construction of the core and shell consisted of little more than finishing the installation of the boiler which had been delayed by lack of funding, and connecting the gas. The TPM estimated that all of the work including the administrative costs of getting the temporary certificate of occupancy ("TCO") should have cost $35,000 and taken 6-8 weeks to obtain. Once the Debtor filed for Chapter 11, the receiver, the TPM and the building manager turned over possession and control of the Property to the Debtor and the Debtor resumed the process of getting a TCO, which was finally issued in early April 2012. Since that time, the Debtor has completed several repairs to the base building, executed several service and maintenance agreements, installed signage and installed security and access control systems. It also leased a previously empty floor and supervised the build out of that floor by the tenant. It also leased out the lower level of the building and has recently built out that space out from existing cash flow. That space is generating an additional $4,500 per month in income upon occupancy as per the lease. There are still two empty floors awaiting leasing. They will be built out to suit tenant requirements as soon as leases are confirmed.

History of the Broadway Loan

Despite the delays and cost overruns, the demand for medical office space remained high and Broadway was initially cooperative. It was in everybody's best interest to persevere and

complete the project. The initial $10 million construction loan and $1 million Hermes loan were one year loans and matured in April 2008. Due to the delays from the architectural problems, by the first maturity date, the site was still a hole in the ground, and there was still no new building permit. Broadway made a series of short loan extensions and by June 2009, the core and shell of the building was almost complete.

Due to the financial collapse in 2008 and specifically due to the fact that banks did not want to lend to doctors as they previously had, prospective tenants could no longer borrow effectively to build out their spaces. The market changed, and it became necessary to provide a work letter and to provide custom built spaces to new tenants.

In June 2009, Broadway agreed to extend the loan for one year to June 30, 2010 and to add funds to provide tenant improvements and to fund the interest payments on the loan until maturity. Approximately $1.5 million was added to the loan to fund tenant improvements, and approximately $1 million was added to fund interest reserves and other closing costs.

Despite the economic landscape, and due in part to the ability to offer custom built out spaces, the Debtor was fortunately able to achieve above market rents due to the location and use of the building. As rents were plummeting in every other location and sector, rents were secured as budgeted in 2006-7 or even above. The funding of the Tenant improvements was conditional upon leasing, and leases were secured. However, Broadway did not approve funding or leases in as timely a manner as the Debtor had hoped.

The new loan in 2009 also included an extension agreement. The extension agreement provided for a 3 year extension of the loan from June 30, 2010 to June 30, 2013. This was an option exercisable by the Debtor subject to certain conditions precedent to extend the loan in the

event that the lending landscape had not improved by the time of maturity. The Debtor was unable to meet the conditions and the option to extend the loan beyond June 30, 2010 was not exercised.

In January of 2010, Broadway entered into a consent order with the FDIC and the Illinois Division of Banking. On April 23, 2010 Broadway failed and was taken over by the FDIC who subsequently sold all its deposits and most of its assets to MB.

Valuation of the Property.

The valuation of the majority of income producing buildings is a function of Net Operating income (NOI). That factor changes due to multiple situations such as lease length and maturities, if leases are below or above market rent, interest rates and many other reasons. As the market changes so does the multiple of NOI to establish value, but it is NOI that drives all valuation equations.

When the project was started in 2007, an appraisal and projection were completed by Cushman & Wakefield ("C&W"). That projection forecast rents, operating expenses and taxes and came up with a projected value of $18 million. C&W Forecast $1,264,488 in Annual Effective Gross Revenue, $95,000 in Annual Operating Costs and $150,000 in Real Estate Taxes resulting in a forecast annual NOI of $1,019,488. This resulted in a forecast value of $17,730,226 based on a CAP rate of 5.75% which was rounded up to $18,000,000.

Based on the current rental levels achieved, with the two empty floors conservatively pro forma as per the occupied floors, Gross revenue would be $1,224,000 with Effective Gross Revenue being $1,162,800. If one applied the same Operating Expenses, Taxes and CAP Rate, the Property would have a value of $15,962,000. However, due to increased tax assessments by

the City of New York, which the Debtor is challenging (but which receiver did not challenge during her time in control of the Property), the annual real estate taxes are not $150,000 as projected but instead are $323,000 for 2012/3. This means that an extra $173,000 is taken off of the Net Operating Income. At a 5.75% CAP rate that decreases the valuation by over $3,000,000. The taxes alone reduce the value of the building to below $13,000,000.

MB had Cushman and Wakefield do another appraisal in June 2010. That survey used, in essence, the same figures as the initial projection, except the income projections had been cut to actual income, but the operating income and taxes had been left alone. However, now an 8% CAP rate was used. The difference between a 5.75% CAP rate and an 8% CAP rate reduces the value from $15,962,000 to $11,500,000 and that did not even factor in the new taxes. Current taxes in that valuation model establish a stabilized value of below $9,300,000. However, the building is not fully leased and is not stabilized and requires no less than $500,000 in tenant improvements for at least 2 additional floors. **The Debtor therefore believes that the current fair market value as of today is approximately $8,900,000.**

Status of Tenancies.

Current tenancies are in monthly rent as follows:

6/F - $21,606
5/F - $17,500 (Net effective $11,000 + short term lease expires on 4/30/13)
2/F - $17,500
1/F - $8,531
L/L - $4,500
3/F - Vacant
4/F - Vacant

| | | |
|---|---|---|
| Total Monthly Rent - $63,137 | Annualized - | $757,644 |
| Current Monthly Expenses - $8,000 | Annualized - | $96,000 |
| | RE Taxes - | $321,387 |
| | NOI | $340,257 |

Funding Need for Remaining Tenant improvements/Build Outs

There is currently interest in the two empty floors, but due to the fact that any medical tenant would be contributing heavily to a build out in addition to the work letter, most prospective tenants are waiting to see the outcome of the Debtor's Chapter 11 case. To build out a floor costs $300,000-$350,000 per floor including architectural, engineering and filing fees and costs.

The fifth floor has been built out to a very high standard by the current short term tenant who is a high end condominium developer for use as a sales model. While a new tenant for the 5th floor would require some modifications, it would not need to be built out from scratch. A tenant improvement package for the 5th Floor would only be in the region of $100,000.

The lower level build out is currently being paid for from existing cash flow. There is approximately $25,000 left to pay, which the Debtor expects to be able to pay over the next 1-2 months.

With approximately $500,000, the Debtor can build out the two empty floors, modify the 5th floor and pay the leasing commissions for the new tenants for three floors. The excessive real estate taxes have now been protested, and the tax certiorari legal fees would be paid from savings.

With $500,000 in additional financing, the projected rent roll would be:

6/F - $21,606
5/F - $17,500
2/F - $17,500
1/F - $8,531
L/L - $4,500
3/F - $17,000
4/F - $17,000

| | | |
|---|---|---|
| Total Monthly Rent - $103,637 | Annualized - | $1,243,644 |
| Current Monthly Expenses - $8,000 | Annualized - | $96,000 |
| | RE Taxes - | $221,000 |
| | NOI | $926,644 |

Disputes with Lenders.[1]

1. History with Broadway

In June 2009, Broadway agreed to extend the term of the loan to June 30, 2010 and to add funds to enable the tenant improvements required. The disbursement of these funds was conditional on leasing. There was also a provision for a further extension in the event that the Debtor could not find financing to refinance the construction loan due to the lending landscape at the time. The extension provision had certain benchmarks that had to be met to be extended, which were in essence that there should be enough leasing income to cover debt service. That loan closed in September 2009.

Almost immediately, the Debtor secured three leases and began the process of preparing the plans to perform the landlord's work to enable the tenants to occupy. Those three leases alone would have satisfied the conditions to exercise the extension agreement.

At the time the loan modification and extension agreement closed in September 2009, Central Consulting & Contracting Inc., the general contractor ("GC") for the Property, was already two or three pay applications behind. Broadway paid the GC only 75% of what it was then owed and told the GC that it would be paid the balance over the next 9 months. This caused a delay in the completion of the construction.

Due to design flaws, the foundation system had to be changed twice. It was the GC that finally got the right system for the building and solved the numerous problems that came up.

1 The following sections of the Debtor's First Amended Disclosure Statement entitled "Disputes with Lenders," "The Receivership," and "Events Resulting in the Bankruptcy," set forth certain factual allegations that are solely those of the Debtor and/or its principal, Lee Moncho. The statements made in these sections, as well as throughout this First Amended Disclosure Statement, have not been established or adjudicated by any court or tribunal and have not been accepted, admitted, adopted or acquiesced to by any other party, including the Receiver, the TPM or MB. MB disputes material portions of the allegations set forth in these sections and elsewhere in this

Although over budget and behind schedule, both of those situations would have been far worse without the cooperation of the GC.

While the Debtor had leases that needed approving in late 2009, the most critical step was getting the plans approved by Broadway to build out the tenant spaces, and the funds approved to pay for that, even though they were in construction reserves with Broadway specifically designated for that purpose. While the tenants were anxiously pressing to see how their spaces had come along, their spaces sat empty with no work being done as the contractor sat and waited for funds and approvals from Broadway. The project had come to a standstill.

In January of 2010, Broadway entered into a consent order with the FDIC and the Illinois Banking Division. The consent order directed Broadway to raise an ever increasing amount of money to replenish capital and loss reserves or face closure. Simultaneously, the Illinois State Treasurer and Broadway Bank's CEO's brother, Alexi Giannoulias, was running for the Senate seat vacated by President Obama. The combination of an election run and the imminent failure of Broadway, which was owned by the Giannoulias Family, resulted in a media frenzy.

Broadway would ultimately fail on April 23, 2010. Immediately after Broadway failed, the GC stopped work and locked the site up.

2. Transition to MB

The Debtor had to notify MB 10 days in advance of the June 30, 2010 maturity date if it wished to exercise its extension agreement. Thirteen days before the maturity date, on June 17, 2010, the Debtor was sent a default notice. The next business day after maturity, MB advised the Debtor's attorney that it would be foreclosing and seeking the emergency appointment of a

Receiver. The Debtor's attorneys argued in State Court that, inter alia, the appointment of a receiver was unnecessary.

In the next couple of weeks, the parties agreed that a Temporary Project Manager ("TPM") would be appointed to carry out the remainder of the work required to complete the construction of the core and shell, in lieu of appointing a receiver.

Eventually, a TPM was proposed, and a stipulated agreement was entered into which in essence provided that MB would pay the TPM to complete construction and obtain a TCO.

Shortly after the stipulated agreement, MB made a motion to appoint a Receiver before any work had been done. At that hearing, MB stated that the TPM had come to the conclusion that there was roughly $35,000 worth of work to be completed and that a TCO would take 6-8 weeks to obtain.

The Receivership

Despite the fact that the TPM had recommended paying the existing contractor to complete the very small amount of work remaining, the Receiver superseded the appointment of a General Contractor, and the appointment of the subcontractors.

The TPM who was now the new GC with new subcontractors, instead of applying for new permits, allegedly decided to fraudulently post copies of fake permits or permits issued to the previous contractors for unrelated work. The TPM failed to realize that the Debtor's GC had withdrawn and that in fact there was a Stop Work Order on the building. This caused an avalanche of violations, fines and situations that required time and money to defend and resolve. The TPM was advised over and over again that he needed to supply a simple affidavit to the NYFD in order to get the Fire Alarm inspection signed off. The inspection had already been

approved by Broadway and the inspection had taken place. The inspection had been passed conditional on a few simple matters.

The most damaging thing the Receiver did from a financial point of view was her failure to act with regard to filing an income and expense report for the building and her failure to protest the uncontested real estate taxes being assessed on the Property. The Debtor requested the Receiver by email and by registered mail to file the real estate tax income and expense reports and to protest the taxes, an essential thing to do when there is a newly constructed building. The Debtor told the Receiver that it had retained a tax certiorari law firm on contingency and that at no cost to herself, all she had to do was supply the information and authorize a protest of the taxes. The Debtor reminded the Receiver multiple times as the deadline neared. She failed to act. The real estate taxes were extraordinarily high at the time due to the fact they had not been protested as follows:

Tax Year 2009/10 - $58,426
Tax Year 2010/11 - $206,442
Tax Year 2011/12 - $233,109
Tax Year 2012/13 - $318,173

The real taxes should only currently be about $100,000 per year. For 2013 they are approximately $318,173. Not only is that an unreasonably high number, it literally swallows up all the cash flow, and any increases will now not be transitioned in from a lower base. The most drastic effect though is that the real estate taxes directly reduce the net operating income ("NOI") of the building, and the value of the building is usually calculated as a multiple of NOI. At a 6% CAP rate, those taxes alone devalue the building by $4,333,000.

Events Resulting In The Bankruptcy

During the State Court foreclosure proceedings, the Debtor alleged, and MB disputed, that there had been a wrongful default and, as such, the foreclosure was premature. On August 2, 2011, MB filed a motion for summary judgment in the foreclosure action, which the State Court granted by order dated October 25, 2011. Thereafter, on December 6, 2011, the Debtor commenced this case by filing a voluntary chapter 11 petition.

*The Chapter 11 Case*

After filing for Chapter 11 on December 6, 2011, the Debtor informed the Receiver that she was discharged of her duties and got the elevator company in immediately to secure the elevators and figure out how to get them back into safe, working order. Inexplicably, the Receiver refused to turnover possession of the building and told the security guard to remain and deny the Debtor access.

The Bankruptcy Court ruled in January, 2012 that the Receiver was to turnover possession of the building to the Debtor, denying MB's motion to dismiss the Chapter 11 case and excuse compliance with turnover of the building from the Receiver.

Once the Debtor regained control of the building, it entered into rent commencement agreements with the tenants and immediately set about repairing the damages caused and getting the TCO.

At the onset of the Chapter 11 Case, as set forth above, MB immediately filed motions to dismiss the Chapter 11 case, lift the automatic stay and keep the Receiver in place. MB also opposed the Debtor's request to use cash collateral. By order dated January 19, 2012, MB's motion to dismiss the chapter 11 case was denied without prejudice, its motion to continue the

receivership was denied and its motion for relief from the automatic stay was adjourned without date.

The Chapter 11 case progressed, and the Debtor was allowed to make the building safe, complete the repairs, install the items to bring the building back to somewhere near its potential. The tenants agreed to commence paying rent, and the Debtor obtained the TCO in the Spring of 2012.

Even though the estate had some income with which to perform the repairs, the estate was still crippled by the excessive real estate taxes. These taxes and the new escalated taxes due in July 2012 were absorbing all the Debtor's cash flow. In addition there were all the violations and fines incurred by the TPM which had not been paid.

In one instance, a violation could not be argued because the Receiver and her Attorney had appeared at the ECB so many times to have the violation adjourned that it had been marked final. That violation cost $2,500 as well as many appearance fees.

However, the Debtor managed to pay the real estate taxes and perform the repairs. The Debtor established garbage removal, paid the utilities, repaired the elevators, performed all the inspections required, cleared the violations, put in a superintendent/building manager and installed the security systems and access control systems. The Debtor signed a lease for the lower level and managed to sign a short term lease for an empty floor to a condominium project on the same block that needed a sales office. The condominium project agreed to do their own build out for a reduced rent and to even provide a doorman for the building.

The Debtor could not use its previous GC to build out the lower level tenant space since he was a creditor with a filed mechanics' lien, and as much as he was sympathetic to the Debtor's

plight, had still not been paid over $1,000,000 in outstanding charges. The Debtor was forced to find another contractor and managed to negotiate terms with them where the Debtor could pay them over time out of available cash flow.

Despite significant effort, the Debtor has been unable to get DIP financing to finish tenant build outs and improvements. The Debtor was paying for the lower level improvements from existing cash flow, but without DIP or Plan Financing, the two remaining unimproved floors can not be finished and leased out.

Despite all these setbacks and obstacles, today, the Debtor has a building that is safe, compliant with all applicable laws and regulations, with performing tenants and with very high levels of interest in leasing the remaining two floors. It has informal offers for the remaining floors, but those prospective tenants are waiting to see the outcome of the bankruptcy, as in many cases the lease requires heavy investment by the tenant in tenant improvements. The leases are therefore sidelined until the Chapter 11 case can be resolved.

The Debtor's Objection to MB's Standing

The first issue that arose in the Bankruptcy was MB's standing to assert a claim against the Debtor. MB has admitted that it does not possess certain of the original notes. The Debtor argued that without possession or legal ownership of the note, MB had no standing to assert a claim, secured, unsecured or otherwise, against the Debtor or its estate under New York law.

On March 9, 2012, the Debtor commenced an adversary proceeding in the Bankruptcy Court against MB (Adv. Proc. No. 12-01118 (REG)), seeking a judgment expunging MB's proof of claim and determining that MB failed to establish that it holds a valid lien upon the Property (the "Standing Adversary Proceeding").

On March 18, 2013, the Bankruptcy Court entered an order (the "Summary Judgment Order") granting MB partial summary judgment in the Standing Adversary Proceeding and determining that it has standing as a secured creditor to pursue its claim against the Debtor, subject to a requirement that MB post a bond or other financial equivalent in the amount of double the amount of MB's claim as asserted in its proof of claim. By order dated July 17, 2013, upon MB's motion to reargue, the Bankruptcy Court reaffirmed MB's standing as a secured creditor and vacated that portion of the Summary Judgment Order requiring MB to post a bond or other financial equivalent. In lieu of a bond, the Bankruptcy Court set a supplemental claims bar date of October 21, 2013 with regard to any person or entity other than MB who may be in possession of or who may claim an ownership interest under one or more of the Notes. No party filed a claim by the supplemental bar date, and MB is, therefore, deemed to have Allowed Class 2 and 3 Claims under the Plan, to be treated in accordance with the MB Settlement Agreement as further discussed below.

The Debtor's Lender Liability Action Against MB

On January 2, 2013, the Debtor filed Adversary Proceeding No. 13-01000 (the "Lender Liability Action") against MB, alleging various claims against MB arising out of alleged lender liability related acts. MB initially moved to dismiss the complaint, after which the debtor amended its complaint. On July 17, 2013, MB filed an answer to the amended complaint, essentially denying all of the allegations contained therein. The matter was set down for discovery and is currently in the discovery stage.

Mediation and Settlement Between the Debtor and MB

As it became clear that the Debtor's prior filed Plan of Reorganization and Chapter 11 case on the whole could not be resolved or proceed without a full adjudication of the Lender Liability Action, and in further light of escalating professional fees further jeopardizing the administrative solvency of the Debtor's estate, and the Debtor's attempts to reach a global settlement with MB having failed to date, the Debtor requested that the Court appoint a mediator.

On July 11, 2013, the Court signed an endorsed order directing the parties to go to mediation while permitting the continuation of the Lender Liability Action. The parties selected Hon. Melanie Cyganowski as mediator and the parties prepared for and attended mediation, including a ten (10) hour session on September 10, 2013.

The mediation resulted in a global settlement between MB and the Debtor which resolves all outstanding litigation and paves the way for the Debtor to seek confirmation of its First Amended Plan. The MB Settlement Agreement, a copy of which is annexed to the Plan as Exhibit "A', can be summarized as follows:

i. *Satisfaction of Allowed Class 2 Claim by the Debtor*. MB shall have an Allowed Class 2 Secured Claim in the amount of $10,700,000.00, and an Allowed Class 3 General Unsecured Claim in the minimum amount of $6,974,827.28, provided that MB's Allowed Class 2 Secured Claim shall increase to $11,000,000.00 ("Increased Allowed Class 2 Claim") in the event that its Class 2 Claim is not satisfied by the Debtor (or the Plan Funder on behalf of the Debtor) within 120 days after the execution date of the MB Settlement Agreement (the "120-Day Deadline"), which Increased Allowed Class 2 Claim shall be paid in full from the proceeds of a Public Sale of the Property within 150 days (the "150-Day Deadline") after the execution of the MB Settlement Agreement implemented pursuant to the Plan. In the event that $10,700,000.00 is not actually received by MB on or before the 120 Day Deadline or $11,000,000.00 is not actually received by MB on or before the 150 Day Deadline, MB Financial will receive title to the Property pursuant to a Public Sale, free and clear of any Claims, Liens, interests or encumbrances of any kind, on the 150-Day Deadline or as promptly thereafter as is practicable.

ii. The Debtor shall obtain the entry of a Final Confirmation Order, consistent with the MB Settlement Agreement and in form and substance reasonably satisfactory to MB, within 90 days after the execution of the MB Settlement Agreement. In the event that such a Final Confirmation Order confirming this Plan is not entered by the Bankruptcy Court within 90 days after the execution of the MB Settlement Agreement, upon five-days' notice served on the Debtor and creditors and filed with the Bankruptcy Court, MB shall be entitled to relief from the automatic stay, without further order of the Bankruptcy Court, to resume its foreclosure action with respect to the Property (the "Foreclosure Action") in the Supreme Court of the State of New York State, County of New York.

iii. *Public Sale Scenario*. In the event that the Debtor (or the Plan Funder on its behalf) fails to pay MB $10.7 million in satisfaction of its Allowed Class 2 Secured Claim before the expiration of the 120-Day Deadline, the Debtor shall conduct a public auction of the Property (the "Public Sale") on or before 140 days after the execution of the Settlement Agreement with a closing to occur on or before the 150-Day Deadline. Following the 120 Day Deadline and during the Public Sale process, MB's Allowed Class 2 Secured Claim shall increase to $11,000,000 and MB shall have an absolute right to credit bid its Allowed Class 2 Secured Claim up to the amount of $11,000,000. Following the 120-Day Deadline, the Debtor may not terminate the Public Sale by satisfying MB's Allowed Class 2 Secured Claim in cash through a refinancing. MB's credit bid in the Public Sale shall be subject to higher and better cash bids made by bidders with the financial wherewithal to close by the 150-Day Deadline, provided that any such competing bids are subject to payment of a 10% deposit and a minimum overbid (above $11,000,000) equal to the sum of (A) all outstanding real property taxes due with respect to the Property, if any (B) Allowed Administrative Expense Claims and (C) all sale closing costs, including any broker's commission, if applicable, such that the net sale proceeds available to pay MB shall be at least $11,000,000. ("Qualifying Bids"). In the event that the Debtor is unable to consummate a refinancing and pay MB $10.7 million on or before the 120-Day Deadline or MB does not receive $11 million on or before the 150-Day Deadline from the proceeds of a sale of the Property to a third party that submitted a Qualified Bid on or before the bid deadline (to be at least 2 business days before the date of the Public Sale), MB shall receive title to the Property, free and clear of any claims, interests, liens or encumbrances, in consideration of its credit bid, on the 150-Day Deadline. If a Qualified Bid is not received before the bid deadline, the Debtor shall be obligated to execute and deliver all documents of assignment and transfer reasonably requested by MB to convey it title to the Property such that a closing can occur on the 150-Day Deadline and MB shall make a $85,000 payment to the Debtor's estate on account of U.S. Trustee fees and Allowed Administrative Expense Claims. In the event that a Qualified Bid is received before the bid deadline, but the successful bidder fails to close by the 150-Day Deadline, then the Debtor shall be obligated to promptly proceed with a closing of a sale of the Property to MB as soon as possible after the 150-Day Deadline or earlier if the Debtor has prior notice that the

successful bidder will not close on the sale by the 150-Day Deadline.

iv. Subject to the occurrence of the Effective Date, MB agrees to waive its right to receive any distribution on account of its Allowed Class 3 General Unsecured Claim, provided, however, that MB shall retain all of its rights under its subordination agreement with Hermes Capital, LLC.

v. In the event that the Debtor fails to perform any of its obligations under the MB Settlement Agreement, MB's duty to perform, and any releases and waivers granted by it, thereunder shall be terminated but the releases, waivers and acknowledgements provided to MB by the Debtor and Lee Moncho shall survive and remain enforceable by MB. If MB obtains stay relief pursuant to the terms of the MB Settlement Agreement or otherwise and resumes the Foreclosure Action, the Debtor shall have no continuing rights to satisfy its obligations to MB Financial for less than the full amount of its debt under the Loan Documents after the expiration of the 120-Day Deadline.

The MB Settlement Agreement therefore permits the Debtor to satisfy MB's claim in a reduced amount and, in the event the Debtor fails to satisfy MB's claim within the time frame imposed under the MB Settlement Agreement, a public auction sale shall ensue, with MB entitled to assert a credit bid claim in an amount which is still substantially less than its total Claims of $17,674,827.28.

Absent the settlement, the Debtor would be mired in endless and administratively crushing litigation with no certainty of success. The other Creditors of the estate would be in jeopardy of zero distribution in the event that MB's entire claim were Allowed as a Secured Claim.

The MB Settlement Agreement gives the Debtor an opportunity to satisfy MB's Secured Claim at a significant discount and make a meaningful distribution to its other creditors as provided for under the Plan. Even if the Debtor is unsuccessful in satisfying the MB Allowed Class 2 Secured Claim under the 120 Deadline, the creditors will still have an opportunity to

receive a distribution from a sale auction process. Absent the MB Settlement Agreement, it is likely that creditors would receive no distribution under any other scenario. Accordingly, the Debtor submits that the MB Settlement Agreement is reasonable, necessary and in the best interests of all Creditors.

**B. Current Valuation of the Property.** Annexed hereto as Exhibit "B" is a current valuation of the Property in the reconciled amount of $8,900,000. MB values the Property at between approximately $11,000,000 and $13,000,000. Based upon said valuation, only MB's Class 2 Claim is Secured, and all other claims of Creditors, including the deficiency Claims of Hermes (subordinate, unsecured mortgage) and Central Consulting and Contracting, Inc. (unsecured mechanics' lien) in accordance with section 506(a) of the Bankruptcy Code, are Class 3 Unsecured Claims under the Plan.

**3. The Chapter 11 Case**

On December 6, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and the management of its business affairs as a Debtor-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

**Employment of the Debtor's Professionals**

On December 20, 2011, the Bankruptcy Court entered an order authorizing the retention and employment of Shaked & Posner as attorneys for the Debtor. The Shaked firm was relieved as counsel to the Debtor and substituted by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP by Order dated January 23, 2013. On March 9, 2012, the Court entered an order authorizing the Debtor to employ Georgoulis & Associates, PLLC as special litigation counsel to the Debtor.

On May 2, 2012, the Court entered an order authorizing the Debtor to employ Newhouse & Shey as special real estate counsel. On May 4, 2012, the Court entered an order authorizing the Debtor to employ NRT NY LLC d/b/a Corcoran Group as exclusive leasing agent to the Debtor. On June 12, 2012, the Bankruptcy Court entered an order authorizing the Debtor to retain Marcus & Pollack, L.L.P. as special tax certiorari counsel.

**Filing of Schedules of Assets and Liabilities and Statement of Financial Affairs**

On December 6, 2011 the Debtor filed its Schedules of Assets and Liabilities, together with its Statement of Financial Affairs (collectively, the "Schedules"). The Debtor's Schedules are available on the Bankruptcy Court's website: www.nysb.uscourts.gov.

**Establishment of a Claims Bar Date and Claims Process**

Pursuant to an order of the Bankruptcy Court dated December 16, 2011 ("Bar Date Order"), February 3, 2012 was established as the last date by which creditors may file proofs of claim in the Chapter 11 Case, except as otherwise provided in the Bar Date Order.

**Post Petition Operations**

The Debtor has continued to operate the Property and has paid all post-petition expenses from the Debtor's cash flow.

**Administrative Bar Date**

No administrative bar date has yet been set.

## III. THE PLAN OF REORGANIZATION

THE FOLLOWING IS A BRIEF SUMMARY OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN, A COPY OF WHICH IS ANNEXED HERETO AS **EXHIBIT "A."** THIS SUMMARY SHOULD NOT BE RELIED ON FOR VOTING PURPOSES. CREDITORS ARE URGED TO CONSULT WITH THEIR COUNSEL AND WITH EACH OTHER IN ORDER TO FULLY UNDERSTAND THE PLAN AND EXHIBITS ATTACHED TO IT. THE PLAN IS COMPLEX INASMUCH AS IT REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BY THE DEBTOR, AND AN INTELLIGENT JUDGMENT CONCERNING SUCH PLAN CANNOT BE MADE WITHOUT UNDERSTANDING IT.

### A. General

In general, a Chapter 11 plan of reorganization must (i) divide Claims and equity interests into separate categories and classes, (ii) specify the treatment that each category and class is to receive under such plan, and (iii) contain other provisions necessary to implement the reorganization of a debtor. A Chapter 11 plan may specify that the legal, equitable, and contractual rights of the holders of Claims or equity interests in certain classes are to remain unchanged by the reorganization effected by the plan. Such classes are referred to as "unimpaired" and, because of such favorable treatment, are deemed to vote to accept the plan. Accordingly, it is not necessary to solicit votes from holder of Claims in such "unimpaired" classes. Pursuant to Section 1124(1) of the Bankruptcy Code, a class of claims or interests is "impaired," and entitled to vote on a plan, unless the plan "leaves unaltered the legal, equitable,

and contractual rights to which such claim or interest entitles the holder of such claim or interest."

Under the Plan, Holder of Claims and Interests in Class 1 are "unimpaired," and thus, are deemed to vote to accept the Plan. Holder of Claims and Interests in Classes 2, 3, 4 and 5 are impaired, inasmuch as they will receive a lesser amount on account of their Claims than they would be entitled to under applicable law. A Class is impaired if its legal, contractual or equitable rights are materially altered or reduced. This means that a creditor or class whose rights are impaired will receive less than they would have received, and at a later date, than they would have in the absence of an insolvency proceeding. Accordingly, holders of Claims in Classes 2 and 3 entitled to vote. Pursuant to Section 1126 of the Bankruptcy Code, the Plan must be accepted by more than one half in number and two-thirds in amount of at least one class of impaired creditors of those voting in order for the Plan to be confirmed.

**B. Classification and Treatment of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization shall classify the claims and equity interests of a debtor's creditors and equity interest holders. In compliance with Section 1122, the Plan divides the holders of Claims and Equity into six categories and four classes, and sets forth the treatment offered to each class.[2] These Classes take into account the differing nature and priority of Claims against the Debtor.

The Plan segregates the various Claims against, and Equity Interests in the Debtor into

[2] A Debtor or other plan proponent is required under Section 1122 of the Bankruptcy Code to classify the claims and interests of its creditors and interest holders into classes containing claims and interests that are substantially similar to the other claims or interests in such class. While the Equity Holders believe that its classification of all Claims and Equity Interests is in compliance with the provisions of Section 1122 of the Bankruptcy Code, it is possible that a holder of a Claim or Equity Interest may challenge the Debtor's classification scheme and the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In such event, it is

Unclassified Category 1 General Administrative Expense Claims, Unclassified Category 2 Allowed Professional Fees, Unclassified Category 3 U.S. Trustee's Fees, Unclassified Category 4 Priority Tax Claims, Unclassified Category 5 20-Day Vendor Claims (the Debtor does not believe there are any such claims), Class 1 Non-Tax Priority Claims (the Debtor does not believe there are any such claims), Class 2 Secured Claim, Class 3 General Unsecured Claims, and Class 4 Equity Interests. The order of distribution as set forth in the Plan and as described below is in accordance with the priorities set forth in the Code and applicable State Law.

| Class | Status |
|---|---|
| Class 1 – Non-Tax Priority Claims | Unimpaired – deemed to accept the Plan, and therefore, not entitled to vote |
| Class 2 – MB Financial Bank, N.A. | Impaired – entitled to vote |
| Class 3 – General Unsecured Claims | Impaired – entitled to vote |
| Class 4 – Interest holders | Impaired – deemed to reject the Plan, and therefore, not entitled to vote |

Set forth below is a summary of the Plan's treatment of the various categories and Classes of Claims and Equity Interests. This summary is qualified in its entirety by the full text of the Plan. In the event of an inconsistency between the Plan and the description contained herein, the terms of the Plan shall govern. The Plan is complicated and substantial. Time should be allowed for its analysis; consultation with a legal and/or financial advisor is recommended and should be considered.

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the present intent of the Debtor, to the extent permitted by the Bankruptcy Court, to modify the Plan to provide for whatever reasonable classification might be required by the Bankruptcy Court for Confirmation.

**1. Unclassified Categories of Claims – Administrative Expense Claims and Obligations**

Administrative Expense Claims and Obligations include costs incurred in the operation of the Debtor's business after the Petition Date, the fees and expense of Professionals retained by the Debtor, and any statutory committee appointed to serve in the Chapter 11 cases. Administrative Expense Claims and Obligations are unimpaired under the Plan, and accordingly, such Claimants are deemed to accept the Plan.

(a) Category 1 – Administrative Expense Claims

General Administrative Expense Claims include claimants who have filed an Administrative Proof of Claim for the actual and necessary costs and expenses incurred during the Chapter 11 case prior to the Administrative Bar Date. Under the Plan, all General Administrative Expense Claims shall be paid in full, in Cash, in such amounts as (a) are Allowed by the Bankruptcy Court upon the later of the Effective Date, (b) the date upon which there is a Final Order allowing such Administrative Expense Claim or any other date specified in such Order, or (c) as may be agreed upon between the holder of such Administrative Expense Claim and the Debtor. The Debtor estimates the Administrative Expense Claims to be $0, as the Debtor's operational expenses are continuously paid in the ordinary course.

(b) Category 2 –Allowed Professional Fees

All entities seeking an award by the Bankruptcy Court of professional fees, or of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under Sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code ("Professional Fee Claims") (a) shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred

through the Confirmation Date within the time proscribed by the Court so that such application can be considered for allowance at the Confirmation Hearing, and (b) if granted, such an award by the Bankruptcy Court shall be paid in full from the Plan Fund Account in such amounts as allowed by the Bankruptcy Court (i) on the later of the Effective Date or the date such Administrative Professional Fee Claim becomes Allowed, (ii) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Professional Fee Claim and the Debtor or, on and after the Effective Date, the Reorganized Debtor, or (iii) in accordance with the terms of any applicable administrative procedures order entered by the Bankruptcy Court. All Administrative Professional Fees for services rendered in connection with the Chapter 11 Cases and the Plan after the Confirmation Date, including, without limitation, those relating to the occurrence of the Effective Date and the resolution of Disputed Claims, shall be paid by the Disbursing Agent from the $25,000 reserve portion of the Plan Fund Account upon receipt of an invoice therefore, without the need for further Bankruptcy Court authorization or entry of a Final Order. If the Reorganized Debtor and any Professional Person cannot agree on the amount of post-Confirmation Date fees and expenses to be paid to such Professional Person, such amount shall be determined by the Bankruptcy Court.

Allowed Administrative Professional Fees are estimated, as of the Confirmation Date, to consist of the following:

DelBello Donnellan Weingarten, et al. - $180,000

Cohen Segalis, et al. - $520,000

Newhouse & Shey - $10,000

Marcus & Pollack, LLP - $15,000

TOTAL - $725,000

(c) Category 3 – United States Trustee's Fees

Under the Plan, all United States Trustee statutory fees arising under 28 U.S.C. § 1930(a)(6) shall be paid in full, in Cash, in such amount as they are incurred in the ordinary course of business by the Debtor. The Debtor shall be responsible, through the entry of a final decree closing the case for the payment of United States Trustee quarterly fees, and pursuant to 31 U.S.C. §3717, any interest assessed on unpaid Chapter 11 quarterly fees charged, assessed at the interest rate in effect as determined by the Treasury Department at the charges become past due, however if payment of the full principal amount is received within thirty (30) days of the date of the notice of initial interest assessment, the interest assessed with be waived. The Debtor estimates unpaid United States Trustee fees through Confirmation to be $0.00.

(d) Category 4 – Priority Tax Claims

Allowed Priority Tax Claims pursuant to Section 507(a)(8) of the Bankruptcy Code, including any real estate tax or administrative claims of the City of New York, shall be paid over a period of five (5) years from the date of assessment as allowed by 11 U.S.C. §1129(a)(9)(C) or paid in full in cash on the Effective Date in full and final satisfaction of its claims as against the

Debtor and any of its officers and owners. The Debtor estimates the Allowed Priority Tax Claims to be $0.00.

(e) Category 5 – 20-Day Vendor Claims

The Debtor does not believe there are any 20-Day Vendor Claims.

**2. Classified Categories of Claims**

Pursuant to Section 1124 of the Bankruptcy Code, a class of claims or equity interests is impaired unless the legal, equitable, and contractual rights of the holders of Claims or equity interests in such class are not modified or altered. Holders of Allowed Claims and Interest in impaired classes are entitled to vote on a debtor's plan of reorganization. Under the Debtor's Plan, Class 1 is unimpaired and deemed to vote to accept the Plan. Holders of Class 2, 3 and 4 Claims are impaired and entitled to vote on the Plan. Holders of Interests in Class 5 are unimpaired and are deemed to accept the Plan.

Classified Claims

(a) Class 1: Class 1 consists of all Allowed Non-Tax Priority Claims. The Debtor shall pay to Holders of Class 1 Claims the amount of their Allowed Claim in full and in cash on the Effective Date, in full and final satisfaction of its claims as against the Debtor and any of its officers and owners. Class 1 Claims are not impaired under the Plan, are not entitled to vote on the Plan, and are deemed to accept the Plan. Allowed Class 1 Claims total approximately $0.

(b) Class 2: Class 2 consists of the Allowed Secured Claim of MB in accordance with the MB Settlement Agreement and shall be treated as follows:

(i) *Satisfaction of Allowed Class 2 Claim by the Debtor*. MB shall have an Allowed Class 2 Secured Claim in the amount of $10,700,000.00, and an Allowed Class 3 General Unsecured Claim in the minimum amount of $6,974,827.28, *provided that* MB's Allowed Class 2 Secured Claim shall

increase to $11,000,000.00 ("Increased Allowed Class 2 Claim") in the event that its Class 2 Claim is not satisfied by the Debtor (or the Plan Funder on behalf of the Debtor) within 120 days after the execution date of the MB Settlement Agreement (the "120-Day Deadline"), which Increased Allowed Class 2 Claim shall be paid in full from the proceeds of a Public Sale of the Property within 150 days (the "150-Day Deadline") after the execution of the MB Settlement Agreement implemented pursuant to Section 4.3 of the Plan. In the event that $10,700,000.00 is not actually received by MB on or before the 120 Day Deadline or $11,000,000.00 is not actually received by MB on or before the 150 Day Deadline, MB Financial will receive title to the Property pursuant to a Public Sale, free and clear of any Claims, Liens, interests or encumbrances of any kind, on the 150-Day Deadline or as promptly thereafter as is practicable as further provided in Section 4.3 of the Plan.

(ii) The Debtor shall obtain the entry of a Final Confirmation Order, consistent with the MB Settlement Agreement and in form and substance reasonably satisfactory to MB, within 90 days after the execution of the MB Settlement Agreement. In the event that such a Final Confirmation Order confirming this Plan is not entered by the Bankruptcy Court within 90 days after the execution of the MB Settlement Agreement, upon five-days' notice served on the Debtor and creditors and filed with the Bankruptcy Court, MB shall be entitled to relief from the automatic stay, without further order of the Bankruptcy Court, to resume its foreclosure action with respect to the Property (the "Foreclosure Action") in the Supreme Court of the State of New York State, County of New York.

(iii) Subject to the occurrence of the Effective Date, MB waives its right to receive any distribution on account of its Allowed Class 3 General Unsecured Claim, provided, however, that MB shall retain all of its rights under its subordination agreement with Hermes Capital, LLC.

(iv) In the event that the Debtor fails to perform any of its obligations under the MB Settlement Agreement, MB's duty to perform, and any releases and waivers granted by it, thereunder shall be terminated but the releases, waivers and acknowledgements provided to MB by the Debtor and Lee Moncho shall survive and remain enforceable by MB. If MB obtains stay relief pursuant to the terms of the MB Settlement Agreement or otherwise and resumes the Foreclosure Action, the Debtor shall have no continuing rights to satisfy its obligations to MB Financial for less than the full amount of its debt under the Loan Documents after the expiration of the 120-Day Deadline.

Class 2 is impaired pursuant to Section 1124 of the Bankruptcy Code.

(c) Class 3: Class 3 consists of the claims of Allowed Unsecured Creditors, including (a) any Claims of Hermes, if Allowed[3], (b) and Claims of Central Consulting & Contracting, Inc., if Allowed and (c) the Allowed Class 3 Claim of MB in the amount of $6,974,827.28. Class 3 Claims, excluding any possible Allowed deficiency Claim of Hermes, total approximately $9,100,000. However, for distribution (and not voting) purposes, Allowed Class 3 Claims, without Hermes, currently total approximately $2,100,000, and, including Hermes, Class 3 Claims for distribution purposes total approximately $5,735,000. Class 3 Claims shall be treated as follows:

The holders of Class 3 Claims, other than MB, who, subject to occurrence of the Effective Date, shall waive its right to distribution (but not to vote) on account of its Class 3 Claim, shall each receive, upon the final allowance of all Class 3 Claims, a Pro Rata distribution from Plan Fund Account after payment in full of all Allowed Administrative Expense Claims, Allowed Professional Fee Claims, United States Trustee Fees, and Allowed Priority Claims, in full and final satisfaction of any and all liens, mortgages, encumbrances, interests or Claims of any kind, including but not limited to (a) the disputed mortgage lien and Claim held by Hermes and (b) the mechanics' lien and Claim filed by Central Consulting & Contracting, Inc.

An estimated Distribution Analysis for Class 3 claimholders is annexed hereto as Exhibit "C".

Class 3 is impaired pursuant to Section 1124 of the Bankruptcy Code.

(d) Class 4: Class 4 consists of the claims of holders of equity interests in the Debtor, Lee Moncho is the 100% holder of the Class 4 Interests. Class 4 Interests shall be canceled upon the

3 The Debtor intends to object to *any* Allowed Claim for Hermes, since Hermes is not entitled to receive any distribution under the express terms of its Subordination Agreement with MB in light of MB not receiving full

Effective Date of the Plan and shall receive no distribution on account of Class 4 Interests. Class 4 Equity Interest holders are impaired pursuant to Section 1124 of the Code and are deemed to reject the Plan.

(e) Retiree Benefits

The Debtor has never funded or maintained any retiree benefit plans, funds or programs as defined in Section 1114 of the Bankruptcy Code, for the purpose or providing or reimbursing payments for retired employees or their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund or program (through the purchase of insurance or otherwise). Accordingly, the Plan does not make provisions to pay any such benefits under Section 1129(a)(13) of the Bankruptcy Code.

## C. Acceptance or Rejection of the Plan

### 1. Voting Classes

Each Holder of an Allowed Claim in Classes 2 and 3 shall be entitled to vote to accept or reject the Plan.

### 2. Acceptance By Impaired Classes of Claims

Classes 2 and 3 shall have accepted the Plan if (i) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-third in amount of the Allowed Claims actually voting in such class have voted accept the Plan and (ii) more than one-half in number of the Holders (other than any Holder designated under Section 1126(c) of the Bankruptcy Code) of such Allowed Claims actually voting in such class have voted to accept the Plan. Alternatively, the Plan may be confirmed under 11 U.S.C. §1129(b)(2)(A) as to the Class 2,

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payment of its Claims under the Plan.

3 or 4 creditors, or under 11 U.S.C. §1129(b)(2)(B) as to the Class 5 Interest holders.

**3. Presumed Acceptance/Rejection of the Plan**

Class 1 is unimpaired under the Plan and therefore are deemed to accept the Plan under Section 1126(f) of the Bankruptcy Code. Class 4 is impaired under the Plan and is deemed to reject the Plan.

**D. Miscellaneous Plan Provisions**

**1. Resolution Of Disputed Claims & Reserves**

(a) Objections. An objection to the allowance of a Claim shall be in writing and may be filed with the Bankruptcy Court by the Debtor or any other party in interest at any time on or before the Effective Date, or within such other time period as may be fixed by the Bankruptcy Court. Notwithstanding the foregoing, the Debtor shall file any and all objections to Claims no later than sixty (60) days after the Effective Date.

(b) Amendment of Claims. A Claim may be amended prior to the Effective Date only as agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be amended as agreed upon by the holder thereof and the Debtor to decrease, but not increase, the face amount thereof.

(c) Reserve for Disputed Claims. The Debtor shall reserve for account of each holder of a Disputed Claim that property which would otherwise be distributable to such holder on such date were such Disputed Claim an Allowed Claim on the Effective Date, or such other property as the holder of such Disputed Claim and the Debtor may agree upon. The property so reserved for the holder, to the extent such Disputed Claim is allowed, and only after such

Disputed Claim becomes a subsequently Allowed Claim, shall thereafter be distributed to such holder.

(d) Claims Estimation. The Debtor may, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code, regardless of whether or not the Debtor has previously objected to such Claim, and the Bankruptcy Court retains jurisdiction to estimate any Claim at any time, including, without limitation, during litigation concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount constitutes either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim.

(e) Distributions to Holders of Subsequently Allowed Claims. Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the Debtor shall, within ten (10) days after an Order resolving the Disputed Claim becomes a final Order and non-appealable, distribute to such holder with respect to such subsequently Allowed Claim that amount, in cash, from the cash held in reserve for such holder and, to the extent such reserve is insufficient, from any other source of cash otherwise available to the Debtor, equal to that amount of cash which would have been distributed to such holder from the Effective Date through such distribution date had such holder's subsequently Allowed Claim been an Allowed Claim on the Effective Date. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed Amount of its Claim, regardless of when distribution thereon is

made to or received by such holder. If any amount of the Class 2 claim holder's Disputed Claim is subsequently Allowed, it shall not be paid in cash but shall be added to the Allowed Class 2 Claim and paid in accordance with Section 3.2(b) of the Plan.

(f) Disputes Regarding Rights to Payments or Distribution. In the event of any dispute between and among Claimants (including the entity or entities asserting the right to receive the disputed payment or distribution) as to the right of any entity to receive or retain any payment or distribution to be made to such entity under this Plan, the Debtor may, in lieu of making such payment or distribution to such entity, remit the disputed portion of the Claim into an escrow account or to a distribution as ordered by a court of competent jurisdiction as the interested parties to such dispute may otherwise agree among themselves. Notwithstanding anything to the contrary, the Debtor shall make distributions on account of the undisputed portion of a Claim to such Claimants.

(g) Setoff. In accordance with Section 553 of the Bankruptcy Code and applicable non-bankruptcy law, the Plan on account of such Claim at any time before the Final Distribution is made on account of such Claim, the Claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder constitutes a waiver or release by the Debtor as a debtor, debtor-in-possession, or a reorganized debtor of any such Claims, rights, and causes of action that the Debtor may possess against such holder.

(h) Claims Procedures Not Exclusive. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Confirmation Date, Claims which have been estimated may

subsequently be compromised, settled, withdrawn, or otherwise resolved without further order of the Bankruptcy Court.

**2. Unclaimed Property**

Except as otherwise provided herein, in the event any Claimant fails to claim any distribution within six (6) months from the date of such distribution, such Claimant shall forfeit all rights thereto, and to any and all future payments, and thereafter the Claim for which such cash was distributed shall be treated as a disallowed Claim. In this regard, distributions to Claimants entitled thereto shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court or if no proof of claim is filed, on the Schedules filed by the Debtor or to such other address as may be designated by a Creditor. The Disbursing Agent, Debtor and Reorganized Debtor shall use their collective best efforts to obtain current addresses for all Claimants. The Disbursing Agent shall notify the Debtor and the Trustee of all returned distributions. All unclaimed cash shall be returned to the Reorganized Debtor.

**3. Injunctions**

Except as otherwise expressly provided in the Plan, any and all entities who have held, hold or may hold Claims or Interests against or in the Debtor shall, as of the Effective Date, be enjoined from:

(a) commencing, conducting, or continuing, in any manner, any suit, action, or other proceeding of any kind (including, without limitation, in any judicial, arbitral, administrative or other forum) against the Debtor arising out of any act or omission of the Debtor;

(b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collection or otherwise recovering by any manner or means, whether directly or

indirectly, or any judgment, award, decree, or order against the Debtor with regard to such entities' Claim against the Debtor;

(c) creating, perfecting or otherwise enforcing, in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the property of the Debtor, or any successor-in-interest to the Debtor;

(d) asserting any set off, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtor, the property of the Debtor, or any successor-in-interest to the Debtor; and

(e) acting in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

**4. Exculpation**

**Subject to the occurrence of the Effective Date, neither the Debtor, the Reorganized Debtor, the Plan Funder nor any of their respective members, officers, directors, general partners, managing agents, owners, or employees (acting in such capacity) nor any professional person employed by the Debtor or the Reorganized Debtor, shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with this Chapter 11 Case or the Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute and may be submitted as a complete defense to any claim or liability satisfied, discharged and released pursuant to**

**Article 8 of the Plan; provided, however, that nothing in the Plan shall, or shall be deemed to, release the Debtor, Reorganized Debtor or Plan Funder from, or exculpate the Debtor, Reorganized Debtor or Plan Funder with respect to, their respective obligations or covenants arising pursuant to the Plan from willful misconduct, gross negligence, breach of fiduciary duty, breach of contract, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. If the Plan is confirmed containing releases of liability as to the Debtor, the Reorganized Debtor and the Plan Funder, Creditors will be unable to pursue any claims that are discharged under the Plan, but Creditors can pursue claims against the Debtor, the Reorganized Debtor or the Plan Funder that may arise in the future, or pursuant to the Plan. For the avoidance of doubt, nothing herein shall exculpate, excuse or release the Debtor, the Reorganized Debtor, Lee Moncho or any other party from any of their obligations set forth in the Plan, the Confirmation Order or the MB Settlement Agreement. Any such liability against the Debtor's professionals will not be limited to their respective clients contrary to the requirement of DR 6-102 of the Code of Professional Responsibility.**

**5. Full and Final Satisfaction**

Pursuant to the Plan, all payments and all distributions shall be in full and final satisfaction, settlement, release and discharge of all Claims and Equity Interests, except as otherwise provided in the Plan.

**6. Amendment, Modification, Withdrawal or Revocation of the Plan.**

The Debtor reserves the right, in accordance with the Bankruptcy Code, to amend or modify the Plan prior to the entry of the Confirmation Order. After the Confirmation Order is

entered, the Debtor may, subject to order of the Bankruptcy Court, and in accordance with Section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

The Debtor may withdraw or revoke the Plan at any time prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date does not occur, the Plan will be null and void. In such event, nothing contained in the Plan will constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

**7. Retention of Jurisdiction**

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) to hear and determine any and all objections to the allowance of any Claims or any controversies as to the classification of any Claims, provided that only the Debtor may file objections to Claims;

(b) to hear and determine any and all applications by Professionals for compensation and reimbursement of expenses;

(c) to hear and determine any and all pending applications for the rejection and disaffirmance of executory contracts and unexpired leases, and fix and allow any Claims resulting therefrom;

(d) to liquidate any Disputed Claim;

(e) to enforce the provisions of the Plan, including the injunction, exculpation and releases provided for in the Plan;

(f) to enable the Debtor to prosecute any and all proceedings which have been or may be brought prior to the Effective Date to set aside liens or encumbrances and to recover any transfers, assets, properties, or damages to which the Debtor may be entitled under applicable provisions of the Bankruptcy Code or an federal, state, or local laws;

(g) to correct any defect, cure an omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out its purpose and the intent of the Plan; and

(h) to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code.

**8. Contracts and Unexpired Leases**

Any contract that is executory, in whole or in part, to which the Debtor are a party and which has not been rejected pursuant to Section 365 and 1123 of the Bankruptcy Code during the pendency of Chapter 11 case, shall be deemed assumed and assigned to the Plan Funder or, if applicable, the successful bidder in a Public Sale of the Property, as of the Effective Date.

**9. Post-Confirmation Fees, Final Decree**

The reasonable compensation and out-of-pocket expenses incurred post-Confirmation by professionals retained by the Debtor or the Trustee during this Chapter 11 Case shall be paid by the Reorganized Debtor within ten (10) days upon presentation of invoices for such post-petition

professional services. All disputes concerning post-confirmation fees and expenses shall be subject to Bankruptcy Court jurisdiction.

A final decree shall be entered as soon as practicable after distributions have commenced under the Plan.

**10. Continuation of Bankruptcy Stays**

All stays provided for in the Chapter 11 Case under Section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**11. Revesting of Assets**

On the Effective Date, provided the Effective Date occurs on or before the 120-Day Deadline, title to and possession of any and all property of the Estate, real or personal, shall be re-vested in the Reorganized Debtor and transferred to the Plan Funder free and clear of all Liens, Claims, interests and encumbrances of any kind, subject to and except as otherwise provided in the Plan. In the event of a Public Sale, on the Effective Date, title to the Property shall be transferred to the successful bidder and all proceeds of the Public Sale, if any, less the $11,000,000.00 to be immediately distributed to MB on account of its Increased Allowed Class 2 Claim on the Effective Date, shall be re-vested in the Reorganized Debtor for distribution in accordance with the terms of the Plan.

**12. Treatment of Equity Interests in Debtor**

Under the Plan, all Class 5 Interests in the Debtor will be canceled. The equity in the Reorganized Debtor will be issued to the Plan Funder.

**13. Conditions to Effective Date of the Plan**

The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived pursuant to Section 10.2 of the Plan:

(a) the Confirmation Order shall have been entered by the Bankruptcy Court and shall have become a Final Order;

(b) MB shall have received (i) $10,700,000.00 in Cash from the Debtor (or the Plan Funder on its behalf) on or before the 120-Day Deadline (as defined in Section 3.2(b)(i) of the Plan) on account of its Allowed Class 2 Claim, (ii) $11,000,000.00 in Cash on or before the 150-Day Deadline (as defined in Section 3.2(b)(i) of the Plan) from the proceeds of the Public Sale on account of its Increased Allowed Class 2 Claim, or (iii) title to the Property free and clear of any Liens, Claims, interests or encumbrances; and

(c) all actions, other documents and agreements necessary to implement the Plan shall have been effected or executed and delivered.

The MB Settlement Agreement shall continue to be effective in accordance with its terms regardless of whether the Effective Date has occurred or ever occurs. Nothing in the Plan shall prejudice the rights of MB to compel the Debtor's specific performance of its obligations under the Plan or the MB Settlement Agreement, including by means of seeking an order of the Bankruptcy Court directing same, at any time.

## IV. PLAN CONFIRMATION AND EXECUTION

The following is a brief summary of the provisions of the Bankruptcy Code respecting acceptance and confirmation of a plan of reorganization. Holders of Claims and Equity Interests are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys.

**Means For Execution.** Provided a transaction with the Plan Funder closes on or before the 120-Day Deadline, the Plan will be funded by the Plan Funder through the Plan Funding Account in accordance with the terms set forth in the Plan Term Sheet annexed to the Plan as Exhibit "B".

The Plan Term Sheet provides, in substance, as follows:

***Transfer of Real Property Under Plan.*** On or within 10 days the Effective Date, the Plan Funder, owned by Samuel Sprei[4] ("Sprei") 50% and Karen Moncho, wife of Lee Moncho, 50%, shall acquire, subject to, inter alia, payment of the Plan Funding Price (as defined below) all right, title and interest in and to the Property, in "as is, where is" condition, free and clear of all liens, claims and encumbrances of any kind and exempt from any transfer taxes as provided under Section 1146(a) of the Bankruptcy Code. The acquisition will take place pursuant to the Plan to be confirmed by the Bankruptcy Court with closing to occur on or within 10 days after the effective date of the Plan. The Effective Date shall occur no later than January 25, 2014 (the "Effective Date").

***Plan Funding Price.*** The Plan funding price ("Funding Price") will consist of three components:

(1) $10,700,000, representing the amount required to satisfy the Class 2 Allowed Secured Claim of MB, payable on or before the Effective Date. Plan Funder shall be entitled, although not required, to pay the $10,700,000 to MB at any time prior to the Effective Date in exchange for an assignment of MB's mortgage and loan documents;

(2) a cash payment in a total amount of $1,500,000 ("Cash Amount"), for payment of Administrative, Priority and Class 3 Unsecured Claims in accordance with the Plan, payable on the Effective Date; and

4 Mr. Sprei has no connection to the Debtor, its insiders or the estate at large.

(3) A commitment to fund up to an additional $500,000 ("TI Funds") for remaining tenant buildout and improvements and related fees (architectural/filing fees/engineering, etc.). In the event not all of the TI Funds are used, they shall be made available for any future improvements, repairs or lease renewals. Formal draw and requisition procedures to be implemented.

***Good Faith Deposit.*** The Plan Funder has placed in escrow with Debtor's counsel, DelBello Donnellan, Et Al. the sum of $200,000 ("Deposit") to be refundable in the event that the Plan is not confirmed on or before January 11, 2014. In the event that the Plan is confirmed by January 11, 2014, the Deposit shall be used towards the Funding Price. In the event, however, that the Plan Funder shall fail to fully fund the Plan as set forth above, the Deposit shall be forfeited as liquidated damages to the Debtor.

***Refinance of the Property.*** Upon full leasing of the Property, or earlier at the option of Plan Funder, the Plan Funder will borrow up to $10 million and grant a mortgage on the Property. Plan Funder will obtain a loan at the then prevailing bank rate. In the event that a bridge loan is required, Plan Funder will be responsible for the interest rate spread between a commercial bank loan and such bridge loan. Plan Funder and Sprei shall be solely responsible to provide any guarantees, interest reserves or debt service until new $10 million mortgage is obtained by the Plan Funder.

***Post-Effective Date Management of The Property by Lee Moncho.*** Plan Funder shall pay a management fee of 4% of gross income which will be split 3% Lee Moncho and 1% Sprei – Moncho will operate the Property with Sprei having accounting/management oversight.

***Plan Funding.*** The Funding Price shall be used for the following Debtor obligations under the Plan:

| ***Claim*** | ***Fixed or Estimated Payment*** |
|---|---|
| Allowed Chapter 11 Professional Claims | $725,000[5] |
| Priority Tax Claims | $0.00 |
| Class 2 Allowed Secured Claim of MB | $10,700,000 |
| General Unsecured Claims | Up to $750,000[6] |
| Post-Confirmation Professional Fee Reserve | $25,000 |

5 Estimated as of 12/1/13. In event total Chapter 11 professional fees exceed $725,000, distribution to general unsecured claims will be reduced dollar for dollar.

6 Debtor estimates General Unsecured Claims to aggregate approximately $3,500,000. The Plan would distribute, depending on final amount of Chapter 11 Professional Claims, up to $750,000 to holders of allowed general unsecured claims on a pro rata basis, to be reduced dollar for dollar by amount of Chapter 11 Professional fees in excess of $725,000.

***Means for Execution.*** Pursuant to the Plan Term Sheet, the Plan will be funded by amounts made available by (i) the Plan Funder, of which $1,500,000 shall be deposited in the Plan Fund Account and $10,700,000.00 shall be distributed to MB on account of its Allowed Class 2 Claim or (ii) the net proceeds of a Public Sale of the Property conducted pursuant to Section 4.3 of the Plan, of which $11,000,000.00 shall be distributed to MB on account of its Allowed Class 2 Claim and the balance shall be used to make payments due under the Plan. In exchange for funding the Plan, upon the Effective Date (provided the Effective Date occurs on or before the 120-Day Deadline), the Property, all Executory Contracts shall be conveyed, transferred and/or assigned, as applicable, to the Plan Funder, free and clear of all Liens, Claims, encumbrances and interests of any kind pursuant to Sections 363(b), 363(f), 365 and 1146(a) of the Bankruptcy Code. In the event MB is the successful bidder in a Public Sale of the Property, pursuant to Section 4.3 of the Plan, and obtains title to the Property, free and clear of all Liens, Claims, encumbrances and interests of any kind pursuant to Sections 363(b), 363(f), 365 and 1146(a) of the Bankruptcy Code, MB shall make a payment in the amount of $85,000 to the Estate (the "MB Plan Contribution") to fund the Debtor's payment of U.S. Trustee Fees and, to the extent of remaining funds, General Administrative Expense Claims and Administrative Professional Fee Claims.

***Plan Funder Transaction.*** Provided that the Effective Date occurs on or before the 120-Day Deadline (such that MB receives $10,700.000.00 in Cash from the Debtor or the Plan Funder on or before the 120-Day Deadline), the following provisions shall govern the transfer of the Property to the Plan Funder:

(b) *Transfer of Title to Property.* On the Effective Date, the Debtor shall irrevocably transfer, assign and convey, by warranty deed (the "Deed"), to the Plan Funder, all of its right, title and interest in and to the Property free and clear of any and all liens, claims, security interests, encumbrances, rights or interests of any kind or nature whatsoever, including any liability for any local, federal or state stamp or similar tax. The transfer, assignment and conveyance of the Property to the Plan Funder shall be approved by the Bankruptcy Court as an absolute and irrevocable sale of the Property which the Debtor shall be deemed to have made to the Plan Funder for fair consideration and reasonably equivalent value. Provided the Effective Date occurs on or before the 120-Day Deadline, from and after the Effective Date, the Plan Funder shall be vested with ownership, management and control of the Property; and the Debtor, each of its members, general and limited partners, if any, and all agents, employees and affiliates of the Debtor shall have no further right, title and/or interest in and to the Property.

(c) *Deliveries at Closing*. The Debtor, or to the extent not in possession of the Debtor, Lee Moncho, shall deliver to the Plan Funder on the Effective Date the following:

(i) The Deed, conveying the Property to the Plan Funder as provided in this Plan. The Deed shall be duly executed and acknowledged by the Debtor and the Plan Funder and shall be in form for recording.

(ii) Any tax return required in connection with any New York City Real Property Transfer Tax, New York State Real Estate Transfer Tax, and any other transfer taxes payable by reason of the conveyance of the Property by the Debtor to the Plan Funder. Each such tax return shall be duly executed by the Debtor and Plan Funder and acknowledged, sworn to or affirmed by the Debtor and the Plan Funder before a notary public, where appropriate.

(iii) A bill of sale, conveying and transferring to the Plan Funder all right, title and interest of the Debtor, if any, in and to all articles of personal property that are included in this sale pursuant to the Plan, executed by the Debtor, in the form reasonably acceptable to the Plan Funder.

(iv) A Real Property Transfer Report (Form RP-5217NYC) in proper form for submission (the "Transfer Report"). The Transfer Report shall be duly executed by the Debtor and the Plan Funder.

(v) A certification of non-foreign status, duly signed by the Debtor, in the form required by Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder.

(vi) Such instruments, agreements or other documents as may be necessary or convenient in order to effectuate any of the provisions of the Plan, or requested by the Plan Funder or the title company insuring the Plan Funder's title to consummate the transactions contemplated herein, or to confirm any of the provisions of this Plan, which shall be executed and, if and to the extent appropriate or required, acknowledged or sworn to or affirmed by the Debtor before a notary public.

(vii) Any transferable leases, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Property by governmental and quasi-governmental authorities having jurisdiction.

(viii) All keys or key cards and alarm codes to, and all combinations to, any locks on, all entrance doors to, and any equipment and utility rooms located in, the Property, if any, appropriately tagged for identification.

(ix) An affidavit of compliance with smoke detector/alarm installation.

(x) Any construction warranties, construction plans, as-built plans, and any other documents relating to the construction of the Property.

(c) *Public Sale Scenario.* In the event that the Debtor (or the Plan Funder on its behalf) fails to pay MB $10,700,000.00 in satisfaction of its Allowed Class 2 Secured Claim before the expiration of the 120-Day Deadline, the Debtor shall conduct a public auction of the Property (the "Public Sale") on or before 140 days after the execution of the MB Settlement Agreement with a closing to occur on or before the 150-Day Deadline and the following provisions shall apply:

(d) *Increased Allowed Class 2 Claim and Right to Credit Bid.* Following the 120 Day Deadline and during the Public Sale process, MB's Allowed Class 2 Secured Claim shall

increase to $11,000,000 and MB shall have an absolute right to credit bid its Allowed Class 2 Secured Claim up to the amount of $11,000,000.

(e) *Termination of Plan Funder Transaction*. Following the 120-Day Deadline, the Debtor may not terminate the Public Sale by satisfying MB's Allowed Class 2 Secured Claim in cash through a refinancing and a transfer of the Property to the Plan Funder pursuant to Section 4.2 shall not proceed, *provided, however*, that the Plan Funder may participate in the Public Sale by submitting a Qualifying Bid (as defined below).

(f) *Qualifying Bids.* MB's credit bid in the Public Sale shall be subject to higher and better cash bids made by bidders with the financial wherewithal to close by the 150-Day Deadline, provided that any such competing bids are subject to payment of a 10% deposit and a minimum overbid (above $11,000,000) (the "Minimum Overbid") equal to the sum of (A) all outstanding real property taxes due with respect to the Property, if any (B) Allowed General Administrative Expense Claims and Allowed Administrative Professional Fee Claims and (C) all sale closing costs, including any broker's commission, if applicable, such that the net sale proceeds available to pay MB shall be at least $11,000,000 (each a "Qualifying Bid").

(g) *Notice of Public Sale.* The Debtor shall serve notice of the Public Sale and the amount of the Minimum Overbid in the manner required by Bankruptcy Rule 6004(a) no later than fifteen (15) days before the date set by the Debtor as the deadline to submit bids during the Public Sale (the "Bid Deadline"). The Bid Deadline shall be at least 2 business days before the date of the Public Sale. The Debtor shall otherwise comply with Bankruptcy Rule 6004 in conducting the Public Sale.

(h) *Sale of Property to MB.* In the event that the Debtor is unable to consummate a

refinancing and pay MB $10.7 million on or before the 120-Day Deadline or MB does not receive $11 million on or before the 150-Day Deadline from the proceeds of a sale of the Property to a third party that submitted a Qualifying Bid on or before the Bid Deadline, MB shall receive title to the Property, free and clear of all Liens, Claims, encumbrances and interests of any kind pursuant to Sections 363(b), 363(f), 365 and 1146(a) of the Bankruptcy Code, in consideration of its credit bid, on the 150-Day Deadline and MB shall make the MB Plan Contribution as instructed by the Disbursing Agent. If a Qualified Bid is not received before the Bid Deadline, the Debtor shall be obligated to execute and deliver all documents of assignment and transfer reasonably requested by MB, including, without limitation, those documents set forth in Section 4.2(b) of the Plan, to convey it title to the Property such that a closing can occur on the 150-Day Deadline. In the event that a Qualified Bid is received before the Bid Deadline, but the successful bidder fails to close by the 150-Day Deadline, then the Debtor shall be obligated to promptly proceed with a closing of a sale of the Property to MB (in the same manner as set forth in the preceding sentence) as soon as practicable after the 150-Day Deadline or earlier if the Debtor has prior notice that the successful bidder will not close on the sale by the 150-Day Deadline.

**Requirements For Confirmation of Plan.** This Disclosure Statement is provided in connection with the solicitation of acceptances of the Plan. The Bankruptcy Code defines acceptance of a plan or reorganization by a class of Claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the allowed Claims of that class that have actually voted or are deemed to have voted to accept or reject a plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a class of interests as

acceptance by at least two-thirds in amount of the allowed interests of that class that have actually voted or are deemed to have voted to accept or reject a plan. The Bankruptcy Court will confirm the Plan only if it finds that all of the requirements of Section 1129(a) or (b) of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan (i) is accepted by all impaired Classes of Claims and Interests or, if rejected or deemed rejected by an impaired Class, (ii) with respect to a class of secured creditors, allows said creditors to retain their lien and receive the indubitable equivalent of their interest in the Estate's interest in property on which they have a lien; (iii) "does not discriminate unfairly" and is "fair and equitable" as to each rejecting class; (iv) is feasible; and (v) is in the "best interest" of Creditors and Interest Holders impaired under the Plan.

**Solicitation of Votes.** Each Holder of a Claim in Classes 2 and 3 have been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 5:00 p.m. (Eastern Standard Time) on January __, 2014, at the following address:

**DelBello Donnellan Weingarten Wise & Wiederkehr, LLP**
**One North Lexington Avenue**
**White Plains, NY 10601**
**Attn: Jonathan S. Pasternak, Esq.**

**TO BE COUNTED. YOUR BALLOT MUST BE ACTUALLY RECEIVED BY 5:00 P.M. (EASTERN STANDARD TIME) ON JANUARY __, 2014.**

Each Holder of an Allowed Claim in Classes 2 and 3 shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code.

All Holders of Class 1 Claims are deemed unimpaired under the Plan. The Holder of Class 4 Interests is deemed to reject the Plan. Such Holders are not entitled to vote on the Plan.

**D. Confirmation**

**1. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing of the Plan has been provided to all known holders of Claims and Equity Interests or their representatives along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent Confirmation Hearing. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the Plan has been accepted by the requisite majorities of each voting class; (ii) hear and determine all objections to the Plan and to confirmation of the Plan; (iii) determine whether the Plan meets the requirements of the Bankruptcy Code and has been proposed in good faith; and (iv) confirm or refuse to confirm the Plan.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, must conform with the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth

the name of the objectant, the nature and amount of Claims or Equity Interests held or asserted by the objectant against the Debtor's Estate or property, and the basis for the objection and the specific grounds in support thereof. Such objection must be filed with the Bankruptcy Court together with proof of service thereof, and served upon counsel to the Debtor, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq., so as to be received no later than the date and time designated in the notice of the Confirmation Hearing.

**2. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Debtor will request that the Bankruptcy Court determine that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If so, the Bankruptcy Court shall enter an order confirming the Plan. The applicable requirements of Section 1129 of the Bankruptcy Code are as follows:

(a) The Plan must comply with the applicable provisions of the Bankruptcy Code;

(b) The Debtor must have complied with the applicable provisions of the Bankruptcy Code;

(c) The Plan has been proposed in good faith and not by any means forbidden by law;

(d) Any payment made or promised to be made by the Debtor under the Plan for services or for costs and expenses in, or in connection with, this Chapter 11 case, or in connection with the Plan and incident to the Reorganization Case, has been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan is reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

(e) The Debtor has disclosed the identity and affiliation of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtor under the Plan. Moreover, the appointment to, or continuance in, such office of such individual, is consistent with the interests of holders of Claims and Equity Interests and with public policy, and the Debtor have disclosed the identity of any insider that the Reorganized Debtor will employ or retain, and the nature of any compensation for such insider.

(f) Feasibility and "Best Interest" Tests: The Bankruptcy Code requires that in order to confirm the Plan the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the "Feasibility Test"). For a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor is unlikely to face the need for liquidation or the need for further financial reorganization, unless same is provided for in the Plan. The Plan is feasible based on the Plan Funder payments under the Plan, and the Debtor will cease to operate on the Effective Date.

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the "Best Interest Test"). The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

To determine if the Plan is in the best interest of each class, the probable results of Chapter 7 liquidation must be compared with the results proposed under the Plan. The Debtor

believes that in the event of a Chapter 7 liquidation, , the conversion of the Debtor's case to a Chapter 7 proceeding would result in additional administrative expenses, i.e., trustee fees, commissions, and additional attorneys fees, all of which would diminish the ultimate distribution to Holders of Class 3 General Unsecured Claims. Furthermore, there would be a delay in the continued marshalling of the Debtor's assets including the pursuit of litigation which would cause a delay in the distribution to the creditors. Most importantly, in the event the Plan is not confirmed, MB would be entitled to assert its entire Claims, which almost double the current value of the Property, resulting in no distribution to other creditors of the estate in a liquidation scenario. Therefore, the Plan proposes to maximize the value of the assets in the most cost-efficient manner.

Feasibility. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless the Plan expressly provides for liquidation. The Plan is feasible based on the Plan Funding contemplated therein. Accordingly, the Plan is feasible within the meaning of the Bankruptcy Code.

(g) The Plan therefore satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the "best interest" and feasibility requirements. The Plan is "fair and equitable" and "does not discriminate unfairly". The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

**Plan Execution**

The Plan will be funded by the Plan Funder in accordance with the Plan and Plan Term Sheet, respectively.

**Financial Information**

(a) Debtor's Schedules of Assets and Liabilities. Schedules of the Debtor's assets and liabilities have been respectively filed with the Clerk of the Court and may be inspected by all interested parties.

The Estimated Amounts Required On Confirmation:

| | |
|---|---|
| Class 2 Secured Claim | $10,700,000 |
| General Administrative Expense Claims (Category 2) | At least $725,000 |
| Class 3 Unsecured Claims | Up to $750,000 |
| Post-Confirmation Professional Fee Reserve | $25,000 |
| **TOTAL** | **$12,200,000** |

(b) Liquidation Analysis. If this case were liquidated under Chapter 7 of the Bankruptcy Code as opposed to the means set forth herein, the Class 3 General Unsecured Claimants will receive no distribution. Under the Plan, the Class 3 Creditors are receiving, on the Effective Date, and assuming disallowance of the Hermes Claim, approximately 35% payment.

THE DEBTOR THEREFORE RECOMMENDS ACCEPTANCE OF THE PLAN. CREDITORS SHOULD ALSO CONSULT AMONG THEMSELVES AND THEIR COUNSEL IN DETERMINING WHETHER TO ACCEPT THE PLAN.

## V. POST-CONFIRMATION MATTERS

### A. Disbursement of Funds and Delivery of Distribution

The Disbursing Agent shall be DelBello Donnellan Weingarten Wise & Wiederkehr, LLP.

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of .50 or less and rounding up in the case of more than .50).

The Disbursing Agent shall establish a reserve from the Plan Fund Account necessary in order to satisfy post-confirmation fees and expenses of the Professionals and the Disbursing Agent, respectively up to the amount of $25,000.

### B. Unclaimed Cash

Except as otherwise provided herein, in the event any Claimant fails to claim any distribution within six (6) months from the date of such distribution, such Claimant shall forfeit all rights thereto, and to any and all future payments, and thereafter the Claim for which such cash was distributed shall be treated as a disallowed Claim. In this regard, distributions to Claimants entitled thereto shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court or if no proof of claim is filed, on the Schedules filed by the Debtor, as may have been amended from time to time, or to such other address as may be designated by a Creditor, such notification having been received at least two (2) weeks prior to a distribution so as to allow the Debtor adequate time to update their records. In the case of distributions to entities which are returned due to an incorrect, incomplete or out of date address,

the Debtor, in its sole discretion, shall take those steps deemed reasonable and appropriate to ascertain a correct or new address of any such entity. Nothing contained in the Plan or this Disclosure Statement will require the Debtor to attempt to locate any holder of an Allowed Claim. If after such reasonable and appropriate steps, a correct or new address cannot be found, then such entity shall forfeit all rights to such unclaimed distribution, which shall be deposited into the Plan Distribution Fund for redistribution to the Class 3 General Unsecured claimants.

**C. Avoidance and Recovery Actions**

As of and subject to the occurrence of the Effective Date, the Debtor and the Reorganized Debtor, for and on their respective behalves and respective Estates, will waive and release any of the Causes of Action under Sections 510, 544, 547, 548, 550 and 553 of the Bankruptcy Code. The Debtor believe, after a thorough investigation and review with its counsel, that there are no Causes of Action under Section 510, 544, 547, 548, 550 and 553 of the Bankruptcy Code that would provide a meaningful source of funds for the Debtor's estate.

**D. Events of Default.**

The occurrence of any of the following events shall constitute an event of default under the Plan ("Event of Default"):

(a) The failure of the Debtor to make any payment required to be made under the Plan, which failure shall have remained uncured for a period of ten (10) days after the date such payment is required to be made, unless the time for such payment has been extended in accordance with the Plan;

(b) The failure of the Debtor to comply with any of the covenants contained in the Plan, which failure shall remain uncured for a period of ten (10) days after the Debtor have received

written notice of such failure; or

(c) The failure of the Debtor or Lee Moncho to comply with any of the terms and provisions of the MB Settlement Agreement.

In the event that the Debtor defaults under the provisions of the Plan, and such default is not cured, then, at the option of any creditor or the United States Trustee, a motion may be filed with the Bankruptcy Court seeking an Order of the Bankruptcy Court compelling the Debtor to make such payment or act in a manner consistent with the provisions of the Plan or seeking the conversion this Chapter 11 Case to a Chapter 7 proceeding.

## VI. TAX CONSEQUENCES OF CONFIRMATION,

Confirmation may have federal income tax consequences for the Debtor and holders of Claims and Interests. The Debtor have not obtained and does not intend to request a ruling from the Internal Revenue Service (the "IRS"), nor have the Debtor obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors and holders of Interests are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim or Interest is strongly urged to consult with his or her own tax advisor regarding the

federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash and/or stock under this Plan.

**A. Tax Consequences to the Debtor.**

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

**B. Tax Consequences to Unsecured Creditors.**

An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

## VII. ALTERNATIVES TO THE PLAN AND CONSEQUENCES OF NOT CONFIRMING

Among the possible consequences if the Bankruptcy Court should not confirm the Plan are the following: (1) an alternative plan could be proposed or confirmed; or (2) the Chapter 11 Case could be converted to liquidation under Chapter 7 of the Bankruptcy Code.

### A. Alternative Plans

As previously mentioned, with respect to an alternative plan, the Debtor and its professional advisors have explored various alternative scenarios and believe that the Plan enables the holders of Claims to realize the maximum recovery under the circumstances. The Debtor believes that the Plan is the best plan that can be proposed and serves the best interest of the Debtor and other parties-in-interest.

### B. Chapter 7 Liquidation

The Debtor believes that if this Chapter 11 case was converted to Chapter 7 liquidation, the Class 3 General Unsecured Creditors would receive no distribution on account of their claims or at the very best, a minimal distribution and only after a likely delay in the marshaling of the Debtor's assets including the pursuit of litigation which would cause a delay in a distribution to creditors.

## VIII. RECOMMENDATION AND CONCLUSION

The Debtor and its professional advisors have analyzed different scenarios and believe that the Plan is preferable to a conversion to cases under Chapter 7 of the Bankruptcy Code. The Plan will provide greater recoveries than those available in liquidation to all holders of Claims. Any other alternative would cause significant delay and uncertainty, as well as substantial

administrative costs. If the Plan is not confirmed, the continuation of the bankruptcy proceeding is likely to have an immediate adverse impact, perhaps irreparable, on the Debtor's long term viability.

ACCORDINGLY, THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST RECOVERY POSSIBLE FOR CLAIMHOLDERS AND THE DEBTOR STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

THE FOREGOING IS A BRIEF SUMMARY OF THE PLAN AND SHOULD NOT BE RELIED ON FOR VOTING PURPOSES. THE PLAN REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BETWEEN THE DEBTOR AND ITS CREDITORS, AND SHOULD BE READ TOGETHER WITH THIS DISCLOSURE STATEMENT IN ORDER THAT AN INTELLIGENT AND INFORMED JUDGMENT CONCERNING THE PLAN CAN BE MADE.

Dated: New York, New York
November 15, 2013

2561 EAST 78 REALTY CORPORATION

By:/s/_____
Lee Moncho, President