

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
www.flsb.uscourts.gov

In re

Chapter 11

BAINBRIDGE SHOPPING CENTER II,  
LLC

Case No. 10-19383-BKC-EPK

Debtor.

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**FIRST AMENDED PLAN OF REORGANIZATION**

November 9, 2010

By: /s/ Arthur J. Spector  
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Bainbridge Shopping Center II, LLC proposes the following amended Chapter 11 plan pursuant to section 1121(a) of the Bankruptcy Code:

**ARTICLE I**

**DEFINITIONS**

As used in this Plan, the following terms have the meanings specified below, unless the context requires otherwise:

1.1 Administrative Expense Claim: any cost or expense of administration of the Chapter 11 Case arising or allowable under section 503(b) of the Bankruptcy Code including, any compensation or reimbursement of expenses to the extent arising or allowable under sections 330 and 331 of the Bankruptcy Code and any fees or charges assessed against the Debtor's estate under section 1930 of title 28 of the United States Code.

1.2 Allowed Administrative Expense Claim: an Administrative Expense Claim that is, becomes or has become, an Allowed Claim, including any administrative expenses incurred in the ordinary course of business pursuant to 11 U.S.C. § 503(b)(1)(A).

1.3 Allowed Claims: Claims against the Debtor, proof of which was filed on or before the Bar Date, in this Chapter 11 Case (the dates designated by the Bankruptcy Court as the last date for filing proofs of claim in connection with this Chapter 11 Case), or as otherwise provided under the Plan or, if no proof of claim was filed, any Claim that has been or hereafter is listed in the schedules of liabilities or amendments thereof filed by the Debtor as liquidated in amount and not disputed or contingent and one as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has not been sustained

by order of the Bankruptcy Court, or otherwise allowed by order of the Bankruptcy Court. Unless otherwise specified in this Plan, “Allowed Claim” shall not include interest on the principal amount of such Claim from and after the Petition Date.

1.4 Allowed General Unsecured Claim: a General Claim that is, becomes or has become, an Allowed Claim.

1.5 Allowed Secured Claim: a Secured Claim that is, becomes or has become, an Allowed Claim.

1.6 Ballot: the form or forms that will be distributed to holders of Claims, together with a Disclosure Statement pursuant to section 1125 of the Bankruptcy Code, as applicable to this Chapter 11 Case and in connection with the Debtor’s solicitation of acceptances of the Plan.

1.7 Bankruptcy Code: Title 11 of the United States Code as in effect on the Confirmation Date.

1.8 Bankruptcy Court: the United States Bankruptcy Court for the Southern District of Florida having jurisdiction over this Chapter 11 Case.

1.9 Bankruptcy Rules: the Federal Rules of Bankruptcy Procedure, as amended, as applicable to the Chapter 11 Case and as in effect on the Confirmation Date.

1.10 Bar Date: the date established by the Bankruptcy Court as the last day upon which Claim(s) or requests for allowance and payment of Administrative Expense Claims were to be filed.

1.11 Business Day: any day other than a Saturday, Sunday or a day on which the banking institutions in the State of Florida are not required to be open.

1.12 Chapter 11 Case: the case filed on the Petition Date by the Debtor under chapter 11 of the Bankruptcy Code, being case no. 10-19383-BKC-EPK.

1.13 Claim: any right to payment from the Debtor arising on or before the Confirmation Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.14 Confirmation Date: the date upon which the Bankruptcy Court enters an order confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

1.15 Creditor: any Entity that is the holder of (i) a Claim against the Debtor that arose on or before the Petition Date, or (ii) a Claim against the Debtor's estate of the kind specified in sections 502(g), 502(h), 502(i) or 503(b) of the Bankruptcy Code.

1.16 Debtor: Bainbridge Shopping Center II, LLC, an Ohio limited liability company.

1.17 Disputed Claim: any Claim (i) that is scheduled by the Debtor as disputed, contingent or unliquidated and for which no proof of claim has been filed; or (ii) proof of which has been filed with the Bankruptcy Court, and an objection to the allowance thereof, in whole or in part, has been or is interposed prior to the final date provided under this Plan for the filing of such objections (or thereafter pursuant to an order of the Bankruptcy Court) and which objection has not been settled or determined by a Final Order; or (iii) not scheduled as disputed, contingent or unliquidated, or proof of which was not required to be filed by the Bar Date, but to which the Debtor or any Creditor has interposed an objection by such date as required by the Plan, the Bankruptcy Code or order of the Court.

1.18 Disputed Priority Claim: any Priority Claim that is, becomes, or has become a Disputed Claim.

1.19 Effective Date: the later of: (i) the date the order of the Bankruptcy Court confirming the Plan shall have become a Final Order or, if such date is not a Business Day, the next succeeding Business Day, notwithstanding any pending appeal in respect of the Plan, unless in conjunction with any appeal the effect of the order confirming the Plan is stayed by a court order; and (ii) the date on which the Modified Loan Documents are fully executed and effective.

1.20 Entity: an individual person, a corporation, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, governmental unit or any political subdivision thereof.

1.21 Equity Interest: a membership interest in the Debtor, a limited liability company.

1.22 Estate: the estate created upon the commencement of the Debtor's case pursuant to section 541 of the Bankruptcy Code.

1.23 Final Order: an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari or seek reargument or rehearing has expired and as to which no appeal, reargument, petition for certiorari or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner satisfactory to the Debtor or, if an appeal, reargument, certiorari or rehearing thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

1.24 General Claim: any Claim other than a Priority Claim, Administrative Expense Claim or Secured Claim.

1.25 Insider: has the meaning ascribed to the term “insider” within section 101(31) of the Bankruptcy Code, and specifically includes any entity in which John R. McGill or a member of his immediate family or a trust in which he or any member of his family is a trustee, but explicitly excludes MJM Property Management and Development, LLC.

1.26 Modified Loan Documents: The modified loan documents entered into by and between the Reorganized Bainbridge, the Noteholder, John R. McGill as guarantor, Bainbridge Shopping Center Manager II, Inc., and McGill Real Estate Holdings, LLC, as evidenced by a modification agreement (the “Modification Agreement”), which will modify the Loan Documents. The execution of the Modification Agreement by all parties thereto is a condition precedent to the Effective Date of this Plan. To the extent anything in this Plan is inconsistent with the Modified Loan Documents, the Modified Loan Documents shall be controlling.

1.27 Noteholder: Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Trustee for the holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-PWR 18, as evidenced by a certain Assignment of Open-End Mortgage and Other Loan Documents, recorded on August 19, 2008 with the Recorder’s Office of Geauga County, Ohio as Instrument No. 200800783739.

1.28 Original Loan Documents: The original loan documents entered into by and between the Debtor and U.S. Bank, N.A. as original lender (the “Original Lender”), on or about November 1, 2007, including a Loan Agreement; a Secured Promissory Note (the “Note”); an Open-End Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement,

securing the Debtor's property generally described as the Marketplace at Four Corners shopping center in the vicinity of Aurora, Ohio; an Environmental Indemnity; a Guaranty given by John R. McGill; a Collection Account Agreement and an Assignment of Management Agreement and Subordination of Management Fees Agreement; and other ancillary loan documents. The Debtor also provided the Original Lender with UCC-1 financing statements evidencing the Original Lender's security interest in certain property more fully described in the financing statements.

1.29 Petition Date: April 11, 2010, the date upon which the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code.

1.30 Plan: this Plan of Reorganization, either in its present form or as altered, amended or modified from time to time.

1.31 Priority Claim: any Claim, other than an Administrative Expense Claim, a Secured Claim or a General Unsecured Claim, that arises under section 507(a) of the Bankruptcy Code.

1.32 Property: has the meaning ascribed to the term "property of the estate" within section 541 of the Bankruptcy Code.

1.33 Recovery Rights: any and all causes of action, claims, obligations, suits, debts, judgments and demands, whether in law or in equity, that are property of the Debtor and/or of the Estate whether directly, indirectly or derivatively as of the Effective Date, including without limitation the right to prosecute, compromise, determine not to compromise and entitlement to proceeds. No Recovery Right is released in any manner affected under this Plan regardless of whether any party against whom a Recovery Right may be asserted votes in favor of the Plan. Notwithstanding the foregoing, as of the Effective Date hereof, the Debtor shall be deemed to

have released any and all Recovery Rights against the Noteholder, the Master Servicer, the Special Servicer and all related entities, affiliates and professionals.

1.34 Reorganized Bainbridge: Bainbridge Shopping Center II, LLC on or after the Effective Date.

1.35 Secured Claim: a claim that is secured by a valid lien on property of the Debtor.

1.36 Ultimately Allowed Claim: any Disputed Claim that becomes an Allowed Claim.

1.37 The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Plan as a whole and not to any particular articles, sections, subsections or clauses contained in this Plan. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

2.1 Claims and Equity Interests. All Claims or Equity Interests of whatever nature, whether or not scheduled, liquidated or unliquidated, absolute or contingent, including all Claims arising from the ownership of an Equity Interest of the Debtor, are hereby classified as follows:

- a) Administrative Expense Claims and Non-Classified Priority Claims
- b) Class 1 – Secured Claim of the Noteholder
- c) Class 2 – General Unsecured Claims
- d) Class 3 – Unsecured Claims of Insiders
- e) Class 4 – Equity Interests

**ARTICLE III**

**PROVISIONS FOR TREATMENT OF  
CLAIMS AND EQUITY INTERESTS**

3.1 Administrative Expense Claims and Non-Classified Priority Claims. Each holder of an Allowed Administrative Expense Claim (with the exception of professionals employed pursuant to 11 U.S.C. § 327, who will be paid 100% of the amount allowed by the Bankruptcy Court upon application to the Bankruptcy Court by the Bar Date for the filing of such applications), shall be paid 100% of its Allowed Administrative Expense Claim by the Reorganized Bainbridge, on or after the Confirmation Date in cash, without interest, on the later of (a) the Confirmation Date or as soon thereafter as is practicable, or (b) as soon as practicable after the date on which such Allowed Administrative Expense Claim becomes due and payable pursuant to the terms thereof, the agreement upon which such Allowed Administrative Expense Claim is based, or any applicable Final Order; or in such amount, on such other date and upon such other terms as may be contained in a Final Order or as agreed upon between the holder of such Allowed Administrative Expense Claim and the Reorganized Bainbridge. All Allowed Administrative Expense Claims shall be paid in full not later than the Effective Date.

Notwithstanding the immediately preceding paragraph, Allowed Administrative Expense Claims for goods sold or services rendered representing liabilities incurred by the Debtor in the ordinary course of business during this Chapter 11 Case, involving trade or vendor claims, served or asserted prior to the Bar Date, shall be paid by the Debtor in the ordinary course of its business in accordance with the terms and conditions of any agreement relating thereto. Notwithstanding the foregoing, the holder of an Allowed Administrative Expense Claim may receive such other less favorable treatment as may be agreed upon by the claimant and the Debtor.

3.2 Secured Claim of the Noteholder (Class 1). Upon the Effective Date, the Modified Loan Documents will be in effect, which are substantially similar to the Original Loan Documents, including that, pursuant to the Modified Loan Documents, on the Effective Date, control over the lockbox account (the “Operations Reserve Account”) shall remain with the Master Servicer, but with the exception of the following:

(a) The Modified Loan Documents will provide that, despite defaults existing under the Original Loan Documents as of the Effective Date, the Reorganized Bainbridge shall be returned to a non-default status. All late payment penalties and default interest accrued under the Original Loan Documents shall continue to be accrued under the Modified Loan Documents, and shall be forgiven if the Reorganized Bainbridge fully satisfies its obligations under the Modified Loan Documents. If the Reorganized Bainbridge defaults under the Modified Loan Documents, such late payment penalties and default interest shall become due and payable.

(b) Pursuant to the terms of the Modified Loan Documents:

(i) On December 1, 2010, January 1, 2011 and February 1, 2011, the Reorganized Bainbridge will pay the Noteholder an amount equal to the principal and interest on the Note, plus tax and insurance reserves due under the Modified Loan Documents; and

(ii) Commencing on March 1, 2011 and continuing until November 1, 2017 (the “Maturity Date”), the Reorganized Bainbridge will pay the Noteholder the full monthly amount due under the Modified Loan Documents, including amounts due for principal and interest under the Note, plus tax, insurance and tenant improvement reserves and any other amounts due under the Modified Loan Documents (collectively, with the amounts due for principal and interest, the “Full Monthly Payment”), with adjustment for whatever the actual cost of taxes and insurance may be at the relevant time;

(c) As described in the Modified Loan Documents, on the Effective Date, the funds projected to be in the Operations Reserve Account held by the master servicer are approximately \$507,550.14 (the “Operations Reserve Funds”).

(i) The purpose of the Operations Reserve Account is to provide funds to cover operational shortfalls in the event that any such shortfalls arise such that the Reorganized Bainbridge is unable to make the Full Monthly Payment, and is limited solely to use for operational shortfalls. As set forth in the Modified Loan Documents, if the Operations Reserve Account does not have sufficient funds to cover the Full Monthly Payment, the Reorganized Bainbridge is not excused from making such Full Monthly Payment (and the failure of the Reorganized Bainbridge to make the Full Monthly Payment shall be an event of default under the Modified Loan Documents).

(ii) Pursuant to the Modified Loan Documents, excess cash flow on a monthly basis shall be forwarded to the Master Servicer for deposit in the Operations Reserve Account upon the Effective Date of this Plan. Beginning on the later of April 1, 2012 or when the Operations Reserve Account exceeds \$150,000 (the “Maximum Balance”), all additional funds shall be applied by the Master Servicer against the remaining prepetition and postpetition arrearages, which as of the Effective Date are estimated to be \$2,743,800.00. Any arrearage that may still be owing as of the Maturity Date, or such earlier time as the loan comes due, shall be added to the principal balance, without interest thereon. Notwithstanding the foregoing, and only in accordance with the Modification Agreement and the loan documents, excess cash flow may be redirected from payments on the arrearages to use by the Reorganized Bainbridge for tenant improvements and real estate commissions.

(d) The Modified Loan Documents shall provide that the Noteholder's reasonable prepetition and postpetition attorneys' fees and expenses incurred in relation to this Chapter 11 Case shall be paid from the Operations Reserve Account within 30 days after the Effective Date of the Plan.

(e) The Modified Loan Documents shall include a pledge of the equity interests of Reorganized Bainbridge by its equity holders, Bainbridge Shopping Center Manager II, Inc. and McGill Real Estate Holdings, LLC, to the Noteholder, as additional security for the revised loan.

(f) The balance due as of the Maturity Date will be computed pursuant to the terms of the Modified Loan Documents.

3.3 General Unsecured Claims (Class 2). The Reorganized Bainbridge shall pay all Allowed Claims in this Class in cash in full, but without postpetition interest, in 12 equal monthly payments commencing 90 days after the Effective Date, in full satisfaction of the Claims.

3.4 Insiders' Claims (Class 3). The Reorganized Bainbridge shall pay no distribution to Insiders and their Claims shall continue and not be discharged.

3.5 Equity Interests (Class 4). Class 4 consists of the member interests held by the equity security holders of the Debtor. Class 4 Equity Interests are unimpaired. Class 4 Equity Interests of the Debtor will not be extinguished and holders of such Equity Interests will retain their interests in the Reorganized Bainbridge.

**ARTICLE IV**

**IDENTIFICATION OF CLAIMS AND  
EQUITY INTERESTS IMPAIRED BY THE PLAN**

4.1 Classes Impaired by the Plan. The Claims in Classes 1 and 2 are impaired and the holders of such Claims are entitled to vote to accept or reject this Plan.

4.2 Unimpaired Classes. The Unclassified Administrative and Unclassified Priority Claims are unimpaired under the Plan and the holders of such Claims are not entitled to vote on the Plan. Also, the Insider Claims and the Equity Interests in Classes 3 and 4 are unimpaired under the Plan and the holders of such Claims and Equity Interests are not entitled to vote on the Plan.

**ARTICLE V**

**PROVISIONS FOR ADMINISTRATION AND DISTRIBUTIONS**

5.1 General Overview.

The general structure of the Plan involves the Reorganized Bainbridge completing the tenant improvements already commenced, and leasing up the presently unoccupied locations within the shopping center. From the increased cash flow derived from the additional tenants, the Reorganized Bainbridge will be able to make all payments under the Plan.

5.2 Vesting of Assets in the Reorganized Bainbridge.

Except as otherwise provided in this Plan, all property of the estate will vest in the Reorganized Bainbridge free and clear of any and all liens, debts, obligations, Claims, liabilities, and all other interests of every kind and nature.

On the Effective Date and pursuant to the Order confirming the Plan, the Reorganized Bainbridge will be vested in all Recovery Rights, including, but not limited to, causes of action and claims for relief on account and in respect of the provisions of sections 362, 510, 542, 544,

545, 547, 548, 549, 550, and 553 of the Code and any causes of action or claims for relief existing under state or federal law. Pursuant to, among other authority, section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Bainbridge shall have the power, authority and standing to prosecute, compromise or otherwise resolve such Recovery Rights, with all proceeds derived therefrom to become property of the Reorganized Bainbridge and distributed in accordance with the Plan.

Notwithstanding any provision or interpretation to the contrary, nothing in the Plan or the Confirmation Order, including the entry thereof, shall constitute or be deemed to constitute a release, waiver, impediment, relinquishment or bar, in whole or in part, of or to any Recovery Rights or any other claim, right or cause of action possessed by the Debtor prior to the Effective Date, nor to enter into settlements and compromises of any potential litigation. Moreover, they shall not have and are not intended to have any *res judicata* effect with respect to any prepetition claims and causes of action that are not otherwise treated under the Plan.

### 5.3 Control of the Reorganized Bainbridge

Following the Effective Date, the operation of the Reorganized Bainbridge will remain with the Debtor's current managing member, Bainbridge Shopping Center Manager II, Inc., and ultimately its principal, John R. McGill, and day-to-day management will be assigned to MJM Property Management and Development, LLC.

### 5.4 Disputed, Contingent and Unliquidated Claims.

a) Notwithstanding any other provision of the Plan, no cash or other property shall be distributed under the Plan on account of any Disputed Claim, whether or not such Claim(s) is disputed in part, only.

b) Objections to Claims and Equity Interests. Subject to further order of the Bankruptcy Court, the Reorganized Bainbridge may file objections to Claims with the Bankruptcy Court and shall serve such objections when and as required by the rules of the Court.

c) Procedure. Unless otherwise ordered by the Bankruptcy Court, the Reorganized Bainbridge may litigate the merits of each Disputed Claim until such dispute is either withdrawn, settled or determined by Final Order.

d) Disputed Claims. There shall be reserved by the Reorganized Bainbridge the amount of cash that would otherwise be distributed to the holder of such disputed expense or Claim, as if the full amount of such expense or Claim is deemed an Allowed Claim. Funds so reserved pursuant to this paragraph shall be held by the Reorganized Bainbridge in a separate interest-bearing account. Once a Disputed Administrative Expense, Disputed Priority Claim or Disputed General Unsecured Claim becomes an Ultimately Allowed Claim, in whole or in part, the cash reserved on account of such disputed claim shall be transferred to the general account and shall be distributed to such Creditor in the same proportion as other distributions to such class of creditors. Distributions to each holder of an Ultimately Allowed Claim shall be made in accordance with the provisions of this Plan. The distributions to be made to holders of Ultimately Allowed Claims shall be made as soon as practicable after the date that such Disputed Claim becomes an Allowed Claim unless the Reorganized Bainbridge determines that any such distributions cannot be made until all Claims in a given class become Ultimately Allowed Claims. The excess cash reserved for the payment of the disallowed portion of an Ultimately Allowed Claim, if any, shall be distributed under the terms of this Plan.

5.5 Delivery of Distributions. Distributions and deliveries to holders of Allowed Claims shall be made at the address of each such holder as set forth on the proofs of claim by

such holders in the space on such proof of claim identifying the name and address where notices shall be sent (or the last known addresses of such holders if no proof of claim is filed or if the Reorganized Bainbridge has been notified in writing of a change of address), except as otherwise provided in this Plan. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Reorganized Bainbridge is notified in writing by such holder within 90 days after the date of the mailing of the undeliverable distribution of such holder's then current address, at which time any missed distributions shall be made to such holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Reorganized Bainbridge until such distributions are claimed. All claims for undeliverable distributions shall be made within 90 days after the date of such distribution. Any amounts in respect of undeliverable distributions that remain unclaimed after the 90<sup>th</sup> day shall be forfeited to the Reorganized Bainbridge or to the holders of Equity Interests if the Claims have already been paid in conformance with provisions of this Plan.

5.6 Professional Fees and Expenses. Each person retained or requesting compensation in the Chapter 11 Case pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code shall be entitled to file an application for allowance of final compensation and reimbursement of expenses in this Chapter 11 Case within such time as the Bankruptcy Court shall order. Each person retained by the Reorganized Bainbridge to perform legal, accounting, consulting or advisory services for the Reorganized Bainbridge post-confirmation shall be paid for such services in accordance with the arrangements made by such person and the Reorganized Bainbridge, and subject to the Notice and Objection procedures set forth in section 6.1 hereof, without filing applications with the Bankruptcy Court or otherwise seeking approval of the Bankruptcy Court.

## **ARTICLE VI**

### **NOTICE AND OBJECTION PROCEDURES**

6.1 Notice and Objection Procedures. When the powers of the Reorganized Bainbridge set forth in this Plan are subject to these Notice and Objection Procedures, the Reorganized Bainbridge shall be required to give written notice by first class mail, postage prepaid, of the proposed action to the Office of the United States Trustee and such other Entities who, after the Confirmation Date, serve the Reorganized Bainbridge with a written request for such notice. If no objections are received by the Reorganized Bainbridge within ten days after mailing of the notices, then the Reorganized Bainbridge may proceed to take the action that is the subject of the notice. The Reorganized Bainbridge shall not proceed if an objection is received within the ten-day period, but shall, if an amicable resolution cannot be had between the parties, upon notice and hearing, have the authority to seek an order of the Bankruptcy Court approving the disposition or settlement, over the objection raised.

## **ARTICLE VII**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 Unexpired Leases and Executory Contracts. The Debtor assumes all of the leases at the shopping center and any and each of the following agreements with service providers: (i) S&M Landscaping; (ii) Reilly Sweeping, Inc.; (iii) S.A. Communale (for fire alarm monitoring); and (iv) Kowit & Passov Real Estate Group (broker services). The Debtor's defaults under the contracts with Kowit & Passov shall be cured through payments made to it pursuant to the provisions of Article 3 of this Plan. In addition to curing the defaults, if the nondebtor party provides adequate proof of having suffered a pecuniary loss due to the default, the amount of the allowed claim of such nondebtor party shall be increased to the extent of such loss and shall be

paid in full per the provisions of Article 3 of this Plan. The Reorganized Bainbridge may, if requested by the nondebtor party of a defaulted contract, reaffirm its commitment to future performance of the terms of the assumed contract and shall abide by such commitment.

## **ARTICLE VIII**

### **EFFECTS OF CONFIRMATION**

8.1 Binding Effect/Injunction.

a) Except as otherwise expressly provided in the Plan, on and after the Effective Date, the terms of the Plan bind all holders of Claims and Equity Interests, whether or not they accept the Plan.

b) Except as set forth herein, on and after the Confirmation Date, every holder of a Claim or Equity Interest shall be precluded and permanently enjoined from asserting against the Debtor, the Reorganized Bainbridge, the officers, directors or managers of the Reorganized Bainbridge, the respective professionals retained by the Debtor or Reorganized Bainbridge, pursuant to section 327 of the Code or their respective assets or properties, any further claim based on any document, instrument, judgment, award, order, act, omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

9.1 Bankruptcy Court to Retain Jurisdiction. The Property shall remain subject to the jurisdiction of the Bankruptcy Court until the Effective Date. Subsequent to the Effective Date, the Bankruptcy Court shall retain jurisdiction over such other matters as may be pending on the Effective Date or as may be set forth in the Confirmation Order, and shall retain jurisdiction to resolve any disputes arising under this Plan for which relief may be granted under the

Bankruptcy Code and the Bankruptcy Rules. Such matters include, *inter alia*, the following:

a) The classification of Claims of Creditors and Interest of Equity Interest holders and the determination of Claims and Equity Interests and objections thereto as may be filed;

b) The determination of all questions and disputes regarding the Property, and the determination of all causes of actions, controversies, disputes, or conflicts between the Debtor, the Reorganized Bainbridge, any Creditors, and any other parties, whether or not subject to a pending motion or action as of the Confirmation Date;

c) The correction of any defect, the curing of any omission, or the reconciliation of any inconsistencies in this Plan or in the Confirmation Order as may be necessary to carry out the purpose and intent of this Plan, either on notice or *ex parte*, as the Bankruptcy Court shall determine to be appropriate;

d) The modification of this Plan after confirmation pursuant to the Bankruptcy Rules and the Bankruptcy Code;

e) The enforcement and interpretation of the terms and provisions of this Plan;

f) The time period fixed for any act or thing under this Plan, on notice or *ex parte*, as the Bankruptcy Court shall determine to be appropriate;

g) The entry of any order or injunction necessary to enforce the right, title, interest and power of the Reorganized Bainbridge, and to impose such limitations, restrictions, terms and conditions on such right, title, interest and power as the Bankruptcy Court may deem necessary;

h) The entry of an order closing the Chapter 11 Case; and

i) The enforcement of any judgments entered or final stipulations reached and approved with respect to any avoidance actions instituted on behalf of the Debtor or the Reorganized Bainbridge, as the case may be.

9.2 Setoffs. The Debtor or the Reorganized Bainbridge, as the case may be, may, but shall not be required to set off against any Claim or the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever the Debtor or the Reorganized Bainbridge, as the case may be, has against the claimant, other than preference claims pursuant to section 547 of the Bankruptcy Code, if any (which may not be set off), but neither the failure to do so nor the allowance of any claim under the Plan shall constitute a waiver or release by the Reorganized Bainbridge, as the case may be, of any such claim the Debtor or the Reorganized Bainbridge may have against such claimant.

9.3 U.S. Trustee Fees. The Reorganized Bainbridge shall continue to pay all fees pursuant to 28 U.S.C. § 1930 to the extent required by law.

9.4 Amendments, Modifications to, and Revocation of this Plan. This Plan may be altered, amended or modified by the Debtor, with the consent of the Noteholder, before or after the Confirmation Date as provided in section 1127 of the Bankruptcy Code. The Debtor also reserves the right to revoke and withdraw this Plan prior to its Confirmation. If the Debtor revokes or withdraws this Plan, then this Plan shall be deemed null and void and nothing contained herein or therein shall be deemed to constitute a waiver or release of any claims by or against the Debtor or any other person or Entity, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

9.5 Cramdown. If all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than subparagraph (8) are determined by the Bankruptcy Court to have

been satisfied with respect to the Plan, the Debtor will then seek confirmation pursuant to section 1129(b) of the Code at the originally scheduled confirmation hearing.

9.6 Governing Law. Except as mandated by the Bankruptcy Code or Bankruptcy Rules as applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without giving effect to principles of conflicts of law, with the exception that issues involving the Original Loan Documents and/or the Modified Loan Documents, and the title to the Mortgaged Property shall be governed by the law of the State of Ohio, without giving effect to principles of conflicts of law.

9.7 Headings. The heading of articles, sections, paragraphs and subparagraphs in this Plan are inserted for convenience only and shall not affect the interpretation of any provision of this Plan.

9.8 Notices. Any notice or other communication hereunder shall be deemed to have been sufficiently given, for all purposes, if given by being deposited, postage prepaid, in a post office or letter box addressed to the Creditor at the address as shown on the records of the Debtor or the records of the Reorganized Bainbridge, at the address set forth hereinabove, with a copy to Debtor's counsel:

Arthur J. Spector, Esquire  
BERGER SINGERMAN, P.A.  
2650 N. Military Trail  
Suite 240  
Boca Raton, FL 33431  
Tel. (561) 241-9500  
Fax (561) 998-0028  
aspector@bergersingerman.com

Any notice of change of address must be in writing and shall be effective only upon receipt thereof. Any notice given by mail in accordance with this paragraph shall be deemed to be effective three days following its deposit in the mail.

9.9 Successors and Assigns. This Plan and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.10 Time. In computing any time periods described or allowed by this Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of the next succeeding day which is not one of these aforementioned days.

9.11 Severability. If any provision of this Plan is determined to be unenforceable after the Effective Date, the determination shall in no way limit or affect the enforceability and operative effect of any and all of the other provisions of this Plan.

Bainbridge Shopping Center II, LLC

By: \_\_\_\_\_  
John R. McGill  
Its President

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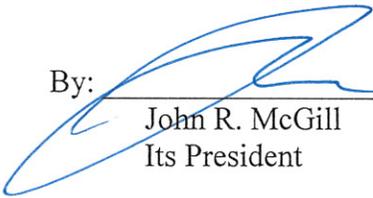
Any notice of change of address must be in writing and shall be effective only upon receipt thereof. Any notice given by mail in accordance with this paragraph shall be deemed to be effective three days following its deposit in the mail.

9.9 Successors and Assigns. This Plan and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.10 Time. In computing any time periods described or allowed by this Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of the next succeeding day which is not one of these aforementioned days.

9.11 Severability. If any provision of this Plan is determined to be unenforceable after the Effective Date, the determination shall in no way limit or affect the enforceability and operative effect of any and all of the other provisions of this Plan.

Bainbridge Shopping Center II, LLC

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