

Eric A. Liepins  
ERIC A. LIEPINS, P.C.  
12770 Coit Road  
Suite 1100  
Dallas, Texas 75251  
Ph. (972) 991-5591  
Fax (972) 991-5788

ATTORNEYS FOR DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE	§	
	§	
BNC FRANCES WAY, LP	§	CASE NO. 12-32154-11
	§	
	§	
	§	CHAPTER 11
DEBTOR	§	

AMENDED DISCLOSURE STATEMENT OF BNC FRANCES WAY, LP PURSUANT TO  
SECTION 1125  
OF THE BANKRUPTCY CODE DATED JUNE 29, 2012

**TO: ALL PARTIES-IN-INTEREST, THEIR ATTORNEYS OF RECORD AND TO THE  
HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

**I**  
**INTRODUCTION**

**Identity of the Debtors**

BNC Frances Way, LP (“Debtor”) is a Texas Limited Partnership which filed a voluntary Chapter 11 case in the United States Bankruptcy Court for the Northern District of Texas Dallas Division (“Court”) on April 2, 2012. Debtor owns an 200 unit apartment complex in Richardson, Texas known as Frances Way Villas (the “Property”). Debtor purposes to restructure the current indebtedness and continue its operations of the Property and to provide a dividend to the unsecured creditors of the Debtor.

### **Purpose of Disclosure Statement; Source of Information**

Debtor submits this Disclosure Statement (“Disclosure Statement”) pursuant to Section 1125 of the Code to all known Claimants of Debtor for the purpose of disclosing that information which the Court has determined is material, important, and necessary for Creditors of Debtor in order to arrive at an intelligent, reasonably informed decision in exercising the right to vote for acceptance or rejection of the Debtor’s Amended Plan of Reorganization dated June 29, 2012 (“Plan”). This Disclosure Statement describes the operations of the Debtor contemplated under the Plan. You are urged to study the Plan in full and to consult with your counsel about the Plan and its impact upon your legal rights. Any accounting information contained herein has been provided by the Debtor.

### **Explanation of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Code. Pursuant to Chapter 11, a debtor is authorized to reorganize its business for its own benefit and that of its creditors and equity interest holders. Formulation of a plan of reorganization is the principal purpose of a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in the debtor. After a plan of reorganization has been filed, it must be accepted by holders of claims against, or interests in, the debtor. Section 1125 of the Code requires full disclosure before solicitation of acceptances of a plan of reorganization. This Disclosure Statement is presented to Claimants to satisfy the requirements of Section 1125 of the Code.

### **Explanation of the Process of Confirmation**

Even if all Classes of Claims accept the Plan, its confirmation may be refused by the Court. Section 1129 of the Code sets forth the requirements for confirmation and, among other things, requires that a plan of reorganization be in the best interests of Claimants. It generally requires that the value to be distributed to Claimants may not be less than the value such parties would receive if the debtor were liquidated under Chapter 7 of the Code.

Acceptance of the plan by the Creditors and Equity Interest Holders is important. In order for the plan to be accepted by each class of claims, the creditors that hold at least two thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims actually voting on the plan in such class must vote for the plan and the equity interest holders that hold at least two-thirds (2/3) in amount of the allowed interests actually voting on the plan in such class must vote for the plan. Chapter 11 of the Code does not require that each holder of a claim against, or interest in, the debtor vote in favor of the plan in order for it to be confirmed by the Court. The plan, however, must be accepted by: (i) at least the holder of one (1) class of claims by a majority in number and two-thirds (2/3) in amount of those claims of such class actually voting; or (ii) at least the holders of one (1) class of allowed interests by two-thirds (2/3) in amount of the allowed interests of such class actually voting.

The Court may confirm the plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code.

Confirmation of the plan discharges the debtors from all of their pre-confirmation debts and liabilities except as expressly provided for in the plan and Section 1141(d) of the Code. Confirmation makes the plan binding upon the debtors and all claimants, equity interest holders and other parties-in-interest, regardless of whether or not they have accepted the plan.

### **Voting Procedures**

**Unimpaired Class.** Claimants in Class 1 and 6 are not impaired under the Plan. Such Classes are deemed to have accepted the Plan.

**Impaired Classes.** The Class 2 through 5, Claimants are impaired as defined by Section 1124 of the Code. The Debtor is seeking the acceptance of the Plan by Claimants in Classes 2 through 5. Each holder of an Allowed Claim in Classes 2 through 5 may vote on the Plan by completing, dating and signing the ballot sent to each holder and filing the ballot as set forth below.

The Debtor is seeking acceptance of the Plan by the (i) Allowed Tax Creditors; (ii) the Allowed Claims of Secured Creditors; and (iii) the Allowed Claims of the Unsecured Creditors.

Except to the extent permitted by the Bankruptcy Court pursuant to Rule 3018 of the Bankruptcy Rules, ballots that are received after the Voting Deadline will not be accepted or used by Debtor in connection with Debtor's request for confirmation of the Plan.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt) acceptance and revocation or withdrawal of ballots or master ballots will be determined by Debtor, whose determination will be final and binding.

For all Classes, the ballot must be returned to Eric A. Liepins, 12770 Coit Road, Suite 1100, Dallas, Texas 75251. In order to be counted, ballots must be **RECEIVED** no later than at the time and on the date stated on the ballot.

### **Best Interests of Creditors Test**

Section 1129(a)(7) of the Code requires that each impaired class of claims or interests accept the Plan or receive or retain under the Plan on account of such claim or interest, property of a value as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. If Section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the Plan, on account of such claim, property of a value, as of the Effective Date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims. In order for the Plan to be confirmed, the

Bankruptcy Court must determine that the Plan is in the best interests of the Debtor's creditors. Accordingly, the proposed Plan must provide the Debtor's creditors with more than they would receive in a Chapter 7 liquidation. It is anticipated that in a Chapter 7 liquidation, the Debtor's creditors, other than the secured creditors, would receive less than is provided for in this Plan. Accordingly, since the Plan proposes a substantial dividend to all creditors, such creditors are receiving more than they would receive in a Chapter 7 liquidation. Accordingly, the Plan satisfies the requirements of Section 1129(a)(7).

### **Cramdown**

The Court may confirm the Plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code.

## **II** **REPRESENTATIONS**

[Note: Paragraphs in brackets to be included after the Bankruptcy Court approves this Disclosure Statement.]

[This Disclosure Statement is provided pursuant to Section 1125 of the Code to all of the Debtor's known Creditors and other parties in interest in connection with the solicitation of acceptance of its Plan of Reorganization, as amended or modified. The purpose of this Disclosure Statement is to provide such information as will enable a hypothetical, reasonable investor, typical of the holders of Claims, to make an informed judgment in exercising its rights either to accept or reject the Plan. A copy of the Plan is attached hereto as **Exhibit "A"**.]

[After a hearing on notice, the Court approved this Disclosure Statement as containing information of the kind and in sufficient detail adequate to enable a hypothetical, reasonable investor typical of the classes being solicited to make an informed judgment about the Plan.]

The information contained in this Disclosure Statement has been derived from the **Debtors**, unless specifically stated to be from other sources.

**NO REPRESENTATIONS CONCERNING DEBTORS ARE AUTHORIZED BY DEBTOR OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. THE DEBTOR RECOMMENDS THAT ANY REPRESENTATION OR INDUCEMENT MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN WHICH IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN REACHING YOUR DECISION ON HOW TO VOTE ON THE PLAN. ANY REPRESENTATION OR INDUCEMENT MADE TO YOU NOT CONTAINED HEREIN SHOULD BE REPORTED TO THE ATTORNEYS FOR DEBTORS WHO SHALL**

**DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.**

**ANY BENEFITS OFFERED TO THE CREDITORS ACCORDING TO THE PLAN WHICH MAY CONSTITUTE "SECURITIES" HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL SECURITIES AND EXCHANGE COMMISSION ("SEC"), THE TEXAS SECURITIES BOARD, OR ANY OTHER RELEVANT GOVERNMENTAL AUTHORITY IN ANY STATE OF THE UNITED STATES. IN ADDITION, NEITHER THE SEC, NOR ANY OTHER GOVERNMENTAL AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATIONS TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. FOR THE FOREGOING REASON, AS WELL AS BECAUSE OF THE IMPOSSIBILITY OF MAKING ASSUMPTIONS, ESTIMATES AND PROJECTIONS INTO THE FUTURE WITH ACCURACY, DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT SUCH INFORMATION IS ACCURATE. THE APPROVAL BY THE COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE COURT OF THE PLAN OR GUARANTEE THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**DEBTOR BELIEVES THAT THE PLAN WILL PROVIDE CLAIMANTS WITH AN OPPORTUNITY ULTIMATELY TO RECEIVE MORE THAN THEY WOULD RECEIVE IN A LIQUIDATION OF THE DEBTORS ASSETS, AND SHOULD BE ACCEPTED. CONSEQUENTLY, DEBTORS URGE THAT CLAIMANTS VOTE FOR THE PLAN.**

**DEBTOR DOES WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS CORRECT, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT, AND EACH CREDITOR AND INTEREST HOLDER IS URGED TO CAREFULLY REVIEW THE PLAN PRIOR TO VOTING ON IT.**

### **III**

#### **FINANCIAL PICTURE OF THE DEBTORS**

##### **Financial History and Background of the Debtor**

The Debtor owns an 200 unit apartment complex in Richardson Texas. ("Property"). The Debtor has owned the Property since October 31, 2000. The Property consists of approximately 193,000 rental square feet. The Property has an average unit size of 968 square feet and an average rental of \$751 per month. The property is currently 94% occupied. The property is not in need of a major deferred maintenance and is in good repair.

The Debtor's secured creditor, JPMCC 2007-CIBC 19 Frances Way ("Lender") is owed approximately \$8,549,913. The Debtor has obtained a broker's option of value which valued the property at \$11,000,000. As a result of the economic slowdown, the Debtor temporarily had a decrease in occupancy, which caused the Debtor's fall behind on its note with the Lender and the parties were unable to reach an agreement to restructure the indebtedness. The Lender had posted the Property for foreclosure and this bankruptcy was filed to stop the foreclosure and restructure the indebtedness.

### **Post petition Operations and Major Events**

Upon the filing of this bankruptcy, the Debtor immediately sought and obtained permission from the Court and its Lender to continue operations. The Debtor and the lender entered into a Final Order authorizing Debtor to Use Cash Collateral and Granting Adequate Protection ("Order"). Pursuant to the terms of the order, The Debtor has been making adequate protection payments to Lender in the amount of approximately \$45,832 per month representing the monthly pre-petition payments. The Debtor is also escrowing the taxes and insurance for the Property. The Property is stable and maintains a 94% occupancy rate.

### **Future Income and Expenses Under the Plan**

Attached hereto as Exhibit "B" are projections of gross income, expenses and net operating income for the next five (5) years. It is the income projections which will be used to fund the Plan. The Debtor has prepared these projections based upon the current levels of occupancy and the anticipated level of occupancy over the next five years.

### **Ownership of the Debtor and Post -Petition Management**

The Debtor is a Texas Limited partnership. The ownership of the Debtor is Barry Nussbaum 24.18 % Gabriel Wisdom, 8.8854%, Barry Moores 58.4922% and Jack Zemer 8.6654%. Post Confirmation the Debtor shall continue to be owned by these parties in the same percentages.

The Debtor is currently managed by Barry S. Nussbaum Company, Inc., dba BNC Real Estate ("BNC"). The Debtor has filed an application to allow BNC to remain the management company during the pendency of this case. The Lender has filed an objection to that employment, and is the process of undertaking discovery to determine if it will continue with its objection to the employment of BNC.

After confirmation the Debtor intends to keep BNC has the management company of the Debtor.

IV.

**ANALYSIS AND VALUATION OF PROPERTY**

The Debtor owns an apartment complex in Richardson, Texas. The Debtor has a recent broker's opinion of value, which values the Property at \$11,000,000. Debtor believes that if the Property were to be liquidated in a forced sale the property would bring less, and would not cover all the secured creditor debt.

A liquidation analysis of the Debtor assets is attached hereto as **Exhibit "C"**.

V.

**SUMMARY OF PLAN OF REORGANIZATION**

The Reorganized Debtor will continue in business. The Plan will break the existing claims into 6 categories of Claimants. These claimants will receive cash payments over a period of time commencing upon the Effective Date.

**Satisfaction of Claims and Debts:** The treatment of and consideration to be received by holders of Allowed Claims or interests pursuant to this Articles 5 and 6 of the Plan shall be the sole and exclusive means for full settlement, release and discharge of their respective Claims, Debts, or interests. On the Confirmation Date, the Reorganized Debtor shall assume all duties, responsibilities and obligations for the implementation of this Plan.

**Class 1 Claimants (Allowed Administrative Claims of Professionals and US Trustee)** are unimpaired and will be paid in cash and in full on the Effective Date of this Plan. Professional fees are subject to approval by the Court as reasonable. Debtor's attorney's fees approved by the Court and payable to the law firm of Eric A. Liepins, P.C. will be paid immediately following the later of Confirmation or approval by the Court out of the available cash. To the extent approved by the Court, Debtor will pay the balance of the allowed fees and expenses of the counsel for the Debtor over the retainer of \$10,000 received by counsel for the Debtor. Debtor do not expect these total fees to exceed \$25,000. This case will not be closed until all allowed Administrative Claims are paid in full unless otherwise agreed by the Debtor and the Claimant. Section 1930 fees shall be paid in full prior to the Effective Date. Debtor will make quarterly payments to the U.S. Trustee and maybe required to file post-confirmation operating reports until this case is closed. The Class 1 Claimants are not impaired under this Plan.

**Class 2 Claimants (Allowed Tax Creditor Claims)** are impaired and shall be satisfied as follows: The Allowed Amount of all Tax Creditor Claims shall be paid out of the revenue from the continued operations of the business or a use of cash returned to the Debtor as described in the Plan. The Tax Claim Creditors will be paid in full over a 60 month period from the Petition Date, commencing on the Effective Date, with interest at a rate of 12% per annum. The Debtor would

show the 2012 property taxes for Dallas county will be \$73,017.94 and for Richardson ISD the 2012 property tax amount will be \$85,495.19. These Ad Valorem Taxes will receive post-petition pre-confirmation interest at the state statutory rate of 1% per month and post-confirmation interest at the rate of 12% per annum. The monthly payment for the 2012 property taxes will be approximately \$3,600. The Taxing Authorities shall retain their liens, if any, to secure their Tax Claims until paid in full as called for by this Plan. The Class 2 Claimants are impaired under this Plan.

**Class 3 Claimants (Allowed Secured Claim of JPMCC 2007-CIBC 19 Frances Way, LLC)** is impaired and shall be satisfied as follows: On or about May 15, 2007, Debtor executed a Promissory Note in favor of JPMCC 2007- CIBC 19 Frances Way, LLC (“Lender”) in the original principal amount of \$7,500,000 (“Note”). The Note was secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement of even date and recorded of record in the Deed Records of Dallas County, Texas. (“Loan Documents”) . As of the Petition Date, Lender is owed approximately \$8,549,913.12. The value of the Property is \$11,000,000. The Debtor shall provide for an Allowed Secured Claim of Lender in the amount of \$8,549,913.12 payable with interest at the rate of 4.5% per annum. The Lender’s debt will be amortized over 300 monthly payments but will be payable commencing on the Effective Date in 59 equal monthly payments of \$47,526.64 and one payment on the 60<sup>th</sup> month after the Effective Date of all outstanding principal and interest. commencing on the Effective Date. Lender shall maintain its first lien position on the real and personal property of the Debtor. The Debtor shall have the right to pre-pay the Class 3 Claim without penalty. All other provisions of the existing Loan Documents will remain in full force and effect except has modified by this Plan. The Class 3 Claimant is impaired under the Plan.

**Class 4 Claimants (Allowed Unsecured Creditors of non-insiders)** are impaired under the Plan and shall be satisfied as follows: The Allowed Non-insider Unsecured Creditors shall be paid 100% of their Allowed Claim in 60 equal payments with interest at the rate of 5% per annum. The first payment shall be on the Effective Date payments shall be made monthly thereafter until payment in full. The Debtor believes based upon the books and records of the Debtor the total amount of class 4 claims will be \$110,000. The Class 4 Claimants are impaired under this Plan

**Class 5 (Unsecured Creditors of Insiders)** are impaired under the Plan and shall be satisfied as follows: The Allowed Claims of Insider Unsecured Creditors shall receive their pro rata portion of payments made by the Debtor into the Class 5 Creditors Pool, after payments to the class 2, 3 and 4 creditors have been completed. The Debtor shall make 60 equal monthly payments commencing on the after the completion of all payments required to be paid to the Class 2, 3 and 4 creditors of \$1,000 per month. The Debtor believes the class 5 class will consist of the claims of Barry S. Nessbaum Co., Watersong Apartments LP, and Dallas Bayou Bend, Ltd. The total amount of the Class 5 claims will be approximately \$600,000. The class 5 creditors will receive approximately 10% of their claims. The Class 5 Creditors are impaired under this Plan.

**Class 6 (Current Equity Holders)** are not impaired under the Plan and shall be satisfied as follows: The Current Equity Holders shall retain their current ownership interests. The Class 6 Equity Holders are not impaired by the Plan.



ARTICLE VI  
**MECHANICS/IMPLEMENTATION OF PLAN**

The funds from continued operations will be used by the Debtor to maintain the Property and make Plan payments.

As specified in Section 1125(e) of the Bankruptcy Code, persons that solicit acceptances or rejections of this Plan and/or that participate in the offer, issuance, sale or purchase of securities offered or sold under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, are not liable on account of such solicitation or participation for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejection of this Plan or the offer, issuance, sale or purchase of securities.

**VII.**  
**FEASIBILITY OF PLAN**

The projections of the future operations are attached hereto as Exhibit "B". The Projections show that the Debtor will have sufficient cash flow to meet all the obligations under the Plan. Based upon the projections. Debtor believes the Plan to be feasible.

**VIII.**  
**RETENTION OF JURISDICTION**

The Bankruptcy Court's jurisdiction shall be retained under the Plan as set forth in Article XIV of the Plan.

This Plan shall be the sole and exclusive remedy for any Creditor of the Debtor dealt with herein, so long as Debtor is not in default under the Plan.

**IX.**  
**ALTERNATIVES TO DEBTOR'S PLAN**

If the Debtor's Plan is not confirmed, the Debtor's bankruptcy case may be converted to a case under Chapter 7 of the Code, in which case a trustee would be appointed to liquidate the assets of the Debtor for distribution to its Creditors in accordance with the priorities of the Code. Or in the alternative, the Lender may obtain relief for the automatic stay and be allowed to foreclosure on its interest. As set forth above, generally, a liquidation or forced sale yields a substantially lower amount. As set forth above, the Debtor believes the current value of the Property to be \$11,000,000, however at a forced sale it is unlikely the debtor will obtain any price in excess of the Lender's

claim. Either of these alternative would substantially decrease the likelihood that the unsecured creditors would receive any payments.

**X**  
**RISKS TO CREDITORS UNDER THE DEBTOR'S PLAN**

Claimants and Equity Interest Holders should be aware that there are a number of substantial risks involved in consummation of the Plan. The Plan contemplates that there will be excess funds to pay Creditor Claims. The major risk associated with the Plan, is the Debtor's ability to continue to attract quality tenants and to increase occupancy as contemplated by the Plan.

**XI.**  
**TAX CONSEQUENCES**

Implementation of the Plan may result in federal income tax consequences to holders of Claims, Equity Interest Holders, and to the Debtor. Tax consequences to a particular Creditor or Equity Interest Holder may depend on the particular circumstances or facts regarding the Claim of the Creditor or the interests of the Equity Interest Holder. In this case some of the Creditors will not be paid 100% of their claims and therefore may have tax consequences. **CLAIMANTS ARE URGED TO CONSULT THEIR OWN TAX ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO THEM UNDER FEDERAL AND APPLICABLE STATE AND LOCAL TAX LAWS.**

**XII.**  
**PENDING OR ANTICIPATED LITIGATION**

Debtor has evaluated potential claims which may be brought pursuant to the Bankruptcy Code or other laws. The Debtor does not believe any such claims could be pursued on behalf of the Debtor to benefit the estate. However, the Lender has requested that the Debtor pursue certain claims against BNC. A copy of such request is attached hereto as Exhibit "D". The Debtor does not believe those claims to be meritorious. The Lender is currently undertaking it own investigation as to whether it will seek Court approval to pursue claims against BNC.

Dated: June 29, 2012.

Respectfully submitted,

BNC Frances Way, LP

\_\_\_/s/ Barry S. Nussbaum\_

President of General Partner of the Debtor

EXHIBIT "C" LIQUIDATION ANALYSIS

ASSETS	Chapter 7	Chapter 11
REAL PROPERTY (including all property in the units)	8,500,000 <sup>1</sup>	11,000,000
Cash	40,000	40,000
LIABILITIES		
Administrative	25,000	25,000
Tax claims	150,000	150,000
Secured Claims	8,593,000	8,593,000
Unsecured Claims	692,000	110,000 <sup>2</sup>
Projected dividend to noninsider unsecured creditors	0%	100%

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<sup>1</sup> Debtor would show that at a foreclosure sale it is unlikely that the a bid higher than the amount owed to the lender would be realized.

<sup>2</sup>Under the Debtor's Plan the insider claims would not be paid until after all other creditors have been paid in full.

