

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:

COMMERCIAL CAPITAL, INC.

Debtor.

Case No. 09-17238 MER
Chapter 11

**DISCLOSURE STATEMENT FOR TRUSTEE'S PLAN OF LIQUIDATION
DATED APRIL 30, 2013**

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ATTORNEYS FOR CHAPTER 11
TRUSTEE

I. INTRODUCTION

A. THE BANKRUPTCY CASE

i. *Overview.* The CCI Trustee has filed his Plan of Liquidation dated the same date as this Disclosure Statement (the “Plan.”). The Plan contemplates that the Debtor will liquidated and secured and unsecured creditors will be paid with the proceeds of this liquidation. This Disclosure Statement is being furnished in connection with the solicitation of acceptances of the Plan. A copy of the Plan is being transmitted contemporaneously with this Disclosure Statement.

ii. *Purpose of Disclosure Statement.* The purpose of this Disclosure Statement is to provide parties entitled to vote with a description of the Plan and other information to aid them in making an informed decision as to whether to accept the Plan. A copy of the Plan and a ballot for acceptance or rejection of the Plan accompanies this Disclosure Statement.

THE DISCLOSURE STATEMENT CONTAINS A BRIEF SUMMARY OF THE PLAN. HOWEVER, THE SUMMARY IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH PARTY ENTITLED TO VOTE IS URGED TO READ THE PLAN IN FULL AND CONSULT WITH COUNSEL AND BUSINESS AND TAX ADVISORS. STATEMENTS REGARDING THE PLAN ARE SUBJECT TO AND QUALIFIED BY THE EXPRESS TERMS OF THE PLAN ITSELF IN ALL RESPECTS.

NO REPRESENTATIONS CONCERNING THE PLAN OR THE DEBTOR ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN WHAT IS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED ON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. COURT APPROVAL OF THE ADEQUACY OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE APPROVAL OF THE PLAN.

iii. *Manner and Purpose of Voting.* Under the Bankruptcy Code (the “Code”), creditors holding Allowed Claims which are in an impaired class under the Plan are entitled to vote to accept or reject the Plan. The Code requires that at least two-thirds in amount and more than one-half in number of the Allowed Claims voting in each impaired class of creditors must vote to accept the Plan in order for it to be accepted by that class. In order for interest holders to accept the Plan, at least two-thirds of the voting interest holders must accept the Plan. In the event the Plan is not accepted by an impaired class of creditors or interest holders, the Court may, nevertheless, confirm the Plan if it finds that certain requirements for confirmation under the Code are met. See “ACCEPTANCE OF THE PLAN AND CONFIRMATION” for a more complete explanation of the approval process.

iv. *Defined Terms.* Capitalized terms used in this Disclosure Statement and which are not otherwise defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan and the Code.

B. SUMMARY OF PLAN AND DISCLOSURE STATEMENT

i. *The Plan of Liquidation.*

Summary of Classification And Treatment of Claims and Interests Under the Plan

<u>Class Description</u>	<u>Estimated Claims</u>	<u>Impaired</u>	<u>Statement</u>
Class 1 Priority Claims	0	No	Paid in full on Effective Date.
Class 2 Secured Claims	0	No	Secured claims shall retain all rights and liens.
Class 3- General Unsecured Creditors	\$25-35 million	Yes	Pro Rata share of net cash available for distribution.
Class 4- Interest Holder	N/A	Yes	Stock Extinguished.

ii. *Estimated Distributions.* The claims filed against the CCI Estate at one point totaled over \$9.8 billion. Since his appointment, the CCI Trustee has been able to resolve, negotiate, settle or litigate to resolution many of the larger claims asserted against the CCI Estate. Presently, the claims against the CCI Estate total less than \$65 million. The CCI Trustee anticipates that the amount of allowed claims will eventually re-reduce to a total of approximately \$25 million to \$35 million. The CCI Trustee currently holds \$947,231 (as of March 31, 2013) as property of the CCI Estate. There's one remaining material asset of the CCI Estate. This claim has recently been settled and is the subject of a motion to approve the settlement filed with the Court on _____, 2013, Docket #____). This asset is a claim of CCI against a Lloyd's of London insurance policy as further described in section II.D, pp 10-11 of this Disclosure Statement and will result in the payment of \$450,000 to the estate.

The CCI Trustee estimates that the fees and costs necessary to satisfy the remaining administrative claims herein and to close the CCI Estate will total \$150,000.00. In addition the CCI Trustee has not yet been paid his trustee's fees for administering the CCI Estate. The CCI Trustee could be entitled a fee under the Bankruptcy Code \$125,000. The CCI Trustee has agreed to cap his fee for work through the Effective Date of the Plan an amount of \$50,000. As a result, the CCI Trustee estimates that there will be approximately \$1,200,000.00 available for distribution to unsecured creditors holding Allowed Unsecured Claims. These Allowed Unsecured Claims are estimated to total somewhere between \$25 million - \$35 million. This will result in a 3-4.5% dividend on Allowed Unsecured Claims herein.

iii. *Tax Consequences.* The Debtor is a corporation and is subject to the payment of income taxes. However, because of the Debtor's significant net operating loss, it is not anticipated that confirmation of the Plan will have any adverse income tax consequences to the Debtor. Creditors and the interest holder may be subject to significant federal, state and local tax consequences as a result of the Plan. Because the transactions contemplated by the

Plan are complex and the tax consequences to each creditor may vary based on their individual circumstances, creditors are urged to consult their own tax advisors. See “CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.”

iv. *Alternatives to the Plan.* The Debtor, or with Court approval, any other party in interest, may file an alternative chapter 11 plan. If no chapter 11 plan is confirmed, the bankruptcy case could be dismissed and creditors would be entitled to pursue their claims against the Debtor. Alternatively, the bankruptcy case could be converted to chapter 7, under which the Debtor's assets could conceivably be liquidated. However, because substantially all of the Debtor's assets have been liquidated, a conversion to chapter 7 would not bring additional monies to the estate and it may lead to significant delays. See “ALTERNATIVES TO THE PLAN.”

v. *Confirmation of the Plan.* A prerequisite to confirmation of the Plan is the acceptance of the Plan by each class of claims that is impaired by the Plan. A class of impaired claims will be deemed to have accepted the Plan if a majority in number and two-thirds in dollar amount of the allowed claims of the class that actually vote have voted to accept the Plan. If confirmed, the Plan will be binding on all holders of claims and interests including holders that did not vote or holders that voted against the Plan. In addition, the Court may, under certain circumstances, and at the request of the Debtor, confirm the Plan despite the failure of one or more impaired classes of claims to accept the Plan.

It is important that you exercise your right to vote to accept or reject the Plan. A ballot, together with instructions for voting, accompanies this Disclosure Statement. You should read the ballot carefully and follow the instructions. For detailed information regarding acceptance and confirmation of the Plan and the voting process see, “ACCEPTANCE OF THE PLAN AND CONFIRMATION,” “VOTING INSTRUCTIONS AND PROCEDURES,” and “ADDITIONAL INFORMATION.”

II. THE DEBTOR

A. INTRODUCTION AND BACKGROUND

On April 22, 2009, Commercial Capital, Inc. (“CCI”) filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”) in Case No. 09-17238-MER (the “CCI Case”). On April 24, 2009, CCI Funding I, LLC (“CCIF”) (a wholly owned subsidiary of CCI) filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court in Case No. 09-17437-MER (the “CCIF Case”).

On or about June 5, 2009, an official committee of unsecured creditors was appointed in the CCI case (the “CCI Committee”). On October 14, 2009, the Debtor and the CCI Committee stipulated to the appointment of a chapter 11 trustee for the Debtor. Simon E. Rodriguez, Esq. (“Rodriguez”) was appointed the interim chapter 11 trustee for CCI and his appointment was approved by order of the Bankruptcy Court dated October 27, 2009.

On October 27, 2009, the CCI Committee filed a request for an election of chapter 11 trustee pursuant to 11 U.S.C. § 1104(b). On November 25, 2009, the chapter 11 trustee appointed in the CCIF case (the “CCIF Trustee”) commenced Adversary Proceeding #09-1739 in the Bankruptcy Court (the “CCIF Adversary Proceeding”) by filing a complaint (the “Complaint”) against Rodriguez and the CCI Committee seeking a declaratory judgment and turnover of property of the CCIF estate, as more fully set forth below.

On December 7, 2009, the Office of the United States Trustee (“UST”) conducted a creditors’ meeting to elect a chapter 11 trustee in the CCI Case. At the election, each ballot was cast for James T. Markus and the UST subsequently appointed Mr. Markus as chapter 11 trustee for CCI. On December 11, 2009, the Court entered its order approving the appointment of James T. Markus as the chapter 11 trustee for the CCI bankruptcy estate (the “CCI Trustee”).

Since his appointment, the CCI Trustee, with the assistance of his legal counsel, Markus Williams Young & Zimmermann, LLC (“MWYZ”) has litigated and settled the CCIF Adversary Proceeding, resulting in a recovery for the CCI Estate of approximately \$2.2 million plus a waiver of claims exceeding \$100 million. The CCI Trustee has also resolved many other disputes, claims and actions asserted and pending against CCI and its property resulting in more than \$1 million in additional recovery. The two primary assets of the CCI estate were litigation claims. The first claim was against CCIF and its lender WestLB AG, New York Branch (“WestLB”) and which claims were asserted and pursued by the CCI Trustee in the CCIF Adversary Proceeding. The second claim was against American Family Mutual Insurance Company. Both of these claims are further described below.

B. THE CCIF ADVERSARY PROCEEDING

Prior to filing their respective bankruptcy petitions, CCI and CCIF were engaged in the business of commercial real estate lending, construction lending and loan servicing. Financing for CCIF’s real estate lending business was provided by WestLB pursuant to a Credit and Security Agreement dated as of January 5, 2007 (the “Credit Agreement”) between WestLB as lender and agent, CCIF as borrower and Wells Fargo Bank, National Association (“Wells Fargo”) as custodian.

Prior to the filing of its bankruptcy petition, CCI made in excess of sixty commercial real estate loans fifty-four of which remained outstanding as of the CCI Petition Date (collectively, the “Mortgage Loans”). The Mortgage Loans and related guaranties of certain of the Mortgage Loans are secured by deeds of trust or mortgages encumbering various parcels of real property located in Colorado, Texas, California, New Mexico, Arizona and Ohio (collectively, the “Mortgage Loan Collateral”). The CCIF Trustee asserted in the CCIF Adversary Proceeding brought against the CCI Trustee the following:

- (a) CCI sold the Mortgage Loans to CCIF as true sales pursuant to a purchase and sale agreement dated as of January 5, 2007 (the “Purchase Agreement”) between CCI and CCIF.
- (b) The Mortgage Loans acquired by CCIF, together with other property, were pledged by CCIF to WestLB as collateral for its obligations to WestLB

under the Credit Agreement, and that CCI retained the responsibility for servicing the Mortgage Loans and administering the related real estate owned properties pursuant to a servicing agreement dated as of January 5, 2007 (the “Servicing Agreement”) between CCI as servicer, CCIF as owner, Wells Fargo as back-up servicer, and WestLB as agent.

- (c) The CCIF Trustee was entitled to a declaration that pursuant to the Purchase Agreement, CCI sold all of the Mortgage Loans to CCIF and that they are property of the CCIF estate.
- (d) CCI held bare legal title to the Mortgage Loans solely in its capacity as servicer and agent for CCIF and that CCI had no beneficial interests in any of the Mortgage Loans.
- (e) In order to perfect a security interest granted under the Purchase Agreement, CCIF filed a UCC-1 financing statement with the Colorado Secretary of State listing CCI as Debtor, CCIF as a Secured Party, and WestLB as Assignee Secured Party, and listing the Mortgage Loans and related property as collateral.
- (f) CCIF pledged the Mortgage Loans to WestLB as security for the repayment of amounts borrowed by CCIF under the Credit Agreement.
- (g) In order to perfect the security interest granted to WestLB under the Credit Agreement, WestLB filed a UCC financing statement with the Delaware Secretary of State, listing CCIF as Debtor and WestLB as Secured Party, and listing the Mortgage Loans and related property as Collateral.

On January 29, 2010, the CCI Trustee filed an answer, affirmative defenses and counterclaims (the “Answer and Counterclaims”) in response to the complaint (“Complaint”) brought by the CCIF Trustee. The Answer and Counterclaims sought a judgment, inter alia, avoiding all of the transfers of Mortgage Loans from CCI to CCIF and a declaration that CCI is the true owner of the Mortgage Loans. The issues raised in the Complaint and the issues raised in the CCI Trustee’s Answer and Counterclaims concerned the ownership and turnover of the Mortgage Loans and therefore directly impacted any and all rights and interests of WestLB in the Mortgage Loans. On February 8, 2010, the parties to the Adversary Proceeding stipulated and agreed that (i) WestLB would be permitted to intervene in the Adversary Proceeding, (ii) CCI Trustee Markus would be substituted for defendant Rodriguez as the CCI Chapter 11 Trustee, and (iii) the CCI Committee would be dismissed as a defendant in the Adversary Proceeding.

On March 10, 2010, WestLB and the CCIF Trustee filed a second amended complaint in which WestLB and the CCIF Trustee sought judgment, inter alia, declaring that CCIF is the true owner of the Mortgage Loans and ordering the CCI Trustee to turnover to the CCIF Trustee the Mortgage Loans (including all notes) and all other assets sold pursuant to the Purchase Agreement. Prior to February 16, 2011, sixteen of the Mortgage Loans were foreclosed (the “Foreclosed Loans”). In addition, pending foreclosure proceedings were commenced against

seven of the Mortgage Loans (the “Pending Foreclosure Loans”). In the CCIF Adversary Proceeding, WestLB and the CCIF Trustee, on the one hand, and the CCI Trustee, on the other hand, each asserted competing ownership interests in the following assets, among others:

- (a) Proceeds of the following bank accounts held by the CCI Trustee:
 - (i) Account No. 760083000959 at KeyBank in the approximate amount of \$1.275 million (the “Monroe Proceeds Account”), which contains the proceeds of the sale of a parcel of real property securing one of the Mortgage Loans, located in the City and County of Denver, Colorado (the “Monroe Property”).
 - (ii) Account No. 760083000363 at KeyBank in the approximate amount of \$950,000 (the “Babcock Proceeds Account”), which contains the proceeds of the sale of a parcel of real property securing one of the Mortgage Loans, located in the Fort Worth, Tarrant County, Texas (the “Babcock Fort Worth Property”).
 - (iii) Account Nos. 760081000118 and 760083000355 at KeyBank in the approximate amounts of \$60,000 and \$625,000, respectively, which contain the moneys transferred from Rodriguez, as interim CCI Chapter 11 Trustee, to the CCI Trustee (the “General CCI Trustee Account”. together with the Monroe Proceeds Account and the Babcock Proceeds Account, the “Disputed Bank Accounts”).
- (b) The following properties securing individual Mortgage Loans:
 - (i) A parcel of real property located in Plano, Collin County, Texas (the “Babcock Plano Property”).
 - (ii) A parcel of real property located in Ouray, Ouray County, Colorado (the “Sloan Ouray Property”).

(The Sloan Ouray Property and the Babcock Plano Property are referred to as the “Disputed Properties”).

- (c) The remaining Mortgage Loans and the related Mortgage Loan Collateral.

Following extensive discovery, litigation and pretrial motions, the parties to the Adversary Proceeding eventually entered into a Settlement Agreement (“Settlement Agreement”) and the parties thereto filed a Motion to Approve the Settlement Agreement (the “Motion to Approve”) (Docket No. 803).

The purpose and intent of the Settlement Agreement was to fully and finally (i) compromise and resolve the CCIF Adversary Proceeding and all claims asserted therein, including, but not limited to, all claims relating to the Disputed Bank Accounts, the Disputed Properties, the Mortgage Loans and the Mortgage Loan Collateral and (ii) issue and exchange mutual releases.

Six objections to the Motion to Approve the Settlement Agreement were filed. MWYZ and counsel for the CCIF Trustee, successfully negotiated the resolution of all but one objection, the resolution of which required a detailed evidentiary hearing before the Bankruptcy Court. Ultimately, the CCI Estate, CCIF and WestLB prevailed and the Court entered an Order approving the Settlement Agreement, resulting in a recovery for the CCI Estate of approximately \$2.2 million plus a waiver of claims exceeding \$100 million.

C. UNIVERSITY/AMERICAN FAMILY FEDERAL CASE

The second piece of litigation from which the CCI Trustee derived a substantial recovery was an action involving American Family Insurance Company. The American Family litigation involved a dispute relating to the payment of insurance proceeds on real property located at 5301 S. University Boulevard, Englewood, Colorado (hereafter called the "University Property"). CCI held a promissory note and third deed of trust on the University Property dating from approximately late 2005. On November 6, 2008, the University Property was the subject of a fire resulting in complete destruction of all improvements on the University Property. Before its bankruptcy case, CCI filed a claim with American Family for approximately \$4 million.

In January 2011, an attorney for American Family contacted counsel for the CCI Trustee. She explained that she had recently attended a scheduling conference in a case captioned *American Family v. Denver Haslam, et al.* in the United States District Court for the District of Colorado and was required by the magistrate to determine the position of CCI relative to the litigation.

In April 2009 American Family commenced the litigation as a declaratory judgment action to determine the rights of certain parties in the insurance policy issued by American Family on the University Property. CCI was named as a defendant as it held a third deed of trust on the University Property. The banks holding the first and second deeds of trust were also named defendants in this action. These banks claimed to have superior rights to the insurance proceeds ahead of CCI. However, CCI was the only named loss payee on the insurance policy. As a result of CCI's bankruptcy filing on April 22, 2009, the US District Court action brought by American Family against CCI was stayed. Notwithstanding the stay, the other parties to the litigation continued the litigation including substantial discovery, pretrial dispositive motions, and were prepared to go to trial in January 2011 when it was determined that the case could not proceed to trial without CCI.

After the initial conversation with the attorney for American Family, counsel for CCI reviewed the pleadings filed in US District Court action; reviewed the litigation files relating to Denver Haslam; reviewed the loan files on the University Property; interviewed various CCI employees and officers relating to the transaction between CCI and Haslam; and performed legal research relating to the rights of CCI in the insurance policy. Counsel for CCI determined that CCI had a claim against the insurance policy. After making this determination, counsel for CCI then initiated communications with the counsel representing the various parties in the US District Court litigation. Attempts to settle the claims held by CCI against the insurance policy did not result in any settlement proposals favorable to the CCI estate.

The CCI Trustee then determined that it would be in the estate's best interest to pursue its claim against the insurance policy in the US District Court litigation. Negotiations with the parties in the US District Court litigation ensued. Counsel for CCI attempted to resolve the issues relating to relief from the automatic stay in the bankruptcy case, but American Family, while desiring to obtain relief from the automatic stay to pursue the declaratory judgment action against CCI, was unwilling to agree to allow CCI to file respective pleadings and dispositive motions in the US District Court litigation against American Family. Thus, the parties could not reach an agreement on relief from stay. At approximately the same time, the US District Court Judge issued an order stating that the case would proceed to trial on April 18, 2011 for a two-week jury trial. Emergency motions were filed in the bankruptcy court to allow the US District Court case to proceed to trial.

Because the CCI Trustee was faced with protecting the estate's interest in the insurance policy, the CCI Trustee requested MWYZ to begin preparation for the upcoming two-week jury trial. This required MWYZ to review the discovery that had taken place in the US District Court litigation. Approximately 25 depositions and well over 1000 exhibits were reviewed by MWYZ. Substantial legal research was conducted. Furthermore, MWYZ prepared initial pleadings including an Answer, Cross-claims, and Counterclaims. Additionally, because the CCI Trustee was concerned that the US District Court would proceed to trial without adequate consideration of CCI's legal position relating to its claim as loss payee on the insurance policy, MWYZ prepared an initial motion for summary judgment relating to that issue. When the parties were unable to obtain a stipulation for relief from stay, American Family filed an emergency motion in US District Court litigation to stay the trial pending the obtaining of relief from stay in the bankruptcy case. In light of the automatic stay in the CCI Case, the US District Court issued an order staying the trial until relief from stay in the CCI Case was obtained by the parties. Denver Haslam filed a motion for relief from the automatic stay and CCI Trustee's counsel negotiated an appropriate form of conditional order for relief from stay with Haslam; however, American Family objected to the form of conditional order for relief from stay. On May 24, 2011 the bankruptcy court over ruled the objection of American Family and the stay was lifted.

On January 25, 2012, American Family and the insured owner of the University Property, Denver Haslam, filed a motion to dismiss claims between American Family and Denver Haslam based on a settlement between Denver Haslam and American Family. That settlement included the recitals by Denver Haslam that the insurance policy on the University Property was void *ab initio*. The settlement between Denver Haslam and American Family drastically changed the direction of the American Family litigation. American Family immediately took the position that because of the settlement with Denver Haslam, the insurance policy on the University Property was void *ab initio* thereby voiding any interest that the Banks or the CCI Estate had in the insurance policy. The CCI Trustee disputed this position taken by American Family.

Shortly following the Haslam Settlement described above, the CCI Trustee along with the other parties to the case participated in two all day mediation sessions. These mediation sessions led to numerous settlement discussions between and among the parties which eventually led to a global resolution of the claims asserted in the University action. These settlements resulted in a \$1 million payment being made to the CCI estate by American Family.

Fall River Valley Communities ("FRVC") a claimant herein and a party to the University action objected to this settlement between and among the parties in the University action. However, the CCI Trustee was also able to resolve the FRVC objection and all the claims asserted against the CCI estate by the FRVC parties, which claims totaled in excess of \$100,000,000.00. FRVC's objection to the settlement with American Family and its claims against the estate herein have been withdrawn in exchange for a payment by the CCI Estate of \$90,000.

D. OTHER POSSIBLE RECOVERIES

1. CCI is the owner of a Mortgage Impairment/Mortgagee's Errors & Omissions Insurance Policy underwritten by Lloyds London (the "Lloyd's Policy"). The Lloyds Policy insures CCI against loss to its mortgage interest in the University Property as further described in the Lloyd's Policy. The issuer/underwriter of the Lloyd's Policy (the "Underwriters") has been placed on notice of claims by CCI under the Lloyd's Policy as a result of losses suffered by CCI from the fire at the University Property. The Coverage provided to CCI under the Lloyd's Policy covered losses up to \$5,000,000

Several pieces of correspondence have been exchanged between counsel for CCI and counsel for the Insurance Company regarding the claims made by CCI under the Lloyds Policy. To the knowledge of the CCI Trustee, the last piece of correspondence from counsel for the Insurance Company (dated February 29, 2009) asserted that CCI's claims under the Lloyds Policy were premature and not yet ripe for resolution until such time as CCI's claims against the insurance policy issued by American Family had been resolved. As further described in the Lloyd's Policy, CCI is insured against losses to its mortgage interest in the University Property: (a) occasioned by reason of the non-existence or inadequacy of other insurance(s) or (b) in the event CCI is unable to collect the loss wholly or partially under such other insurance(s) for any reason not caused or contributed to by dishonesty of the part of CCI, its officers or employees. The CCI Trustee has agreed with the timing position taken by counsel for the Insurance Company. In other words, resolution of CCI's claims against the American Family insurance policy needed to be resolved before claims under the Lloyd's Policy became ripe for adjudication.

Given the resolution and settlement of the disputes with American Family, the CCI Trustee and counsel for the Underwriters issuing the Lloyd's Policy recently undertook active settlement discussions. As a result, resolution of CCI's claims under the Insurance Policy has been reached.

The CCI Trustee believed the Insurance Policy provides up to \$5 million of coverage to CCI for the losses suffered by CCI as a result of the fire at the University Property. At the time the Insurance Policy was issued, the CCI Trustee believed that the University Property had a value of at least \$6 million. Underwriters disputes this position and instead asserts that at best the University Property had a value of no more than \$3,500,000 on the date of the fire, which Underwriters claims is the relevant date for determining the amount of the loss covered by the Insurance Policy. Among other things, Underwriters also asserts that CCI suffered no losses as a result of the fire at the University Property because its third deed of trust interest in the University Property at the time of the fire had an economic value of \$0. More

specifically, Underwriters alleges that the two deeds of trusts ahead of CCI on the University Property had amounts outstanding in excess of the value of the University Property at the time of the fire. Therefore, CCI's third deed of trust on the University Property had no value. The CCI Trustee disputed Underwriters' interpretation of the Insurance Policy and the value placed on CCI's third deed of trust.

The CCI Trustee and their Underwriters have recently executed a settlement agreement whereby the Underwriters have agreed to pay the CCI Estate the amount of \$450,000.00 and the parties have agreed to exchange mutual releases. As further described in the motion filed with the Bankruptcy Court to approve this settlement, the CCI Trustee believes the settlement is in the best interests of creditors and the CCI Estate and outweighs the likely benefit to be derived from any litigation against the Underwriters.

2. The estate has brought a number of avoidance actions which continue to be presented to the CCI Trustee. It is unclear as to the likelihood of the matters, however, the CCI Trustee believes they may provide for a modest increase in available funds for the creditor.

III. DESCRIPTION OF THE PLAN OF LIQUIDATION

THE FOLLOWING IS ONLY A SUMMARY OF THE PLAN. THIS SUMMARY IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. THE SUMMARY IS SUBJECT TO AND QUALIFIED BY THE TERMS OF THE PLAN IN ALL RESPECTS. ALL CAPITALIZED TERMS USED IN THIS SECTION III AND NOT DEFINED HEREIN SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.

A. INTRODUCTION

The Plan contemplates that the Debtor will be liquidated and the claims of creditors will generally be paid in the order of their priority under the Bankruptcy Code.

B. CLASSIFICATION OF CLAIMS AND DISTRIBUTION TO CLASSES

The Plan creates 4 classes of creditors and interest holders and two unclassified groups of creditors. The classes created by the Plan are as follows:

- Class 1: All Allowed Priority Claims.
- Class 2: Allowed Secured Claims.
- Class 3: All Allowed Unsecured Claims not otherwise classified pursuant to the Plan.
- Class 4: All Allowed Equity Interests.

A summary of the classes of creditors and the treatment of each class is as follows:

- i. *Unclassified Claims*. Under the Plan, two types of claims are not classified. The first type of claims which are not classified are Administrative Expenses.

Administrative Expenses generally consist of the actual, necessary costs and expenses of preserving the Debtor's estate, taxes incurred after the petition date, and compensation due to professionals employed by the CCI Trustee.

The second type of unclassified claims are Tax Claims. Tax Claims are defined by the Plan as Allowed Claims entitled to priority under Section 507(a)(8) of the Code.

(1) *Administrative Expenses.* Administrative Expenses will be paid in cash on the Effective Date, except that professional fees and other fees and expenses subject to Court approval will be paid only following approval by the Court. Currently there is only one administrative expense that is expected.

(2) *Tax Claims.* Only claims which are entitled to priority under Section 507(a)(8) of the Code constitute Tax Claims under the Plan. The taxes consist of amounts claimed by the Internal Revenue Service and the State of Colorado. The Tax Claims, if any, are expected to be *di minimus*. The holders of Tax Claims will receive on the Effective Date, at the election of the CCI Trustee either (i) cash equal to the amounts of Allowed Tax Claims; or (ii) regular installment payments in cash over a period commencing on the Effective Date and ending not later than five years after the Petition Date. The payments to holders of Tax Claims shall be at least as favorable as the treatment of Class 3 claims. The total value of the payments to the holders of Tax Claims, as of the Effective Date, will be at least the Allowed Amount of the Tax Claims.

The Tax Claims are not entitled to vote.

ii. *Class 1 -- Priority Claims.* All claims entitled to priority under Section 507(a) of the Code, other than Tax Claims and Administrative Expenses, are classified as "Priority Claims" in Class 1. The Plan provides that all priority claims will be paid on the Effective Date in cash. The CCI Trustee does not believe any Priority Claims exist.

Class 1 is unimpaired and is not entitled to a vote.

iii. *Class 2 -- Secured Claims.* Each holder of an allowed secured claim shall retain its legal, equitable and contractual rights with respect to its lien on property of the Estate and may exercise its legal, equitable and contractual rights with respect to such property.

Class 2 is unimpaired and is not entitled to vote.

iv. *Class 3- General Unsecured Claims.* Each holder of an Allowed Unsecured Claim shall be treated as a Class 3 claim and shall receive its Pro Rata share of all cash available for distribution by the Reorganized Debtor up to the full amount of each allowed Class 3 claim after satisfaction in full of the liquidation expenses, all allowed Administrative Expenses, all allowed Tax Claims, all allowed Priority Claims, all allowed Secured Claims. The distributions to claims filing within this class shall be made at such time and in such amounts as the CCI Trustee shall determine in his sole discretion.

Class 3 is impaired and is entitled to vote.

v. *Class 4 - Equity Interests.* The holder of Allowed Class 4 Interests shall receive no distributions of any kind and Interests held in the Debtor shall be deemed extinguished and cancelled.

Class 4 is not impaired and is not entitled to vote.

C. IMPLEMENTATION OF THE PLAN

Following the Effective Date, any remaining assets of the Debtor shall be liquidated.

On and after the Effective Date, the Reorganized Debtor acting by and through the CCI Trustee shall make the payments required by this Plan to the holders of Administrative Expenses, Priority Claims, Allowed Secured Claims, and Allowed Unsecured Claims. The Plan payments shall be in full and complete payment, settlement and satisfaction of all Claims against the Estate and the Debtor.

D. SUMMARY OF OTHER PLAN PROVISIONS

The following is a summary of certain other Plan provisions. This is only a summary and is not intended to take the place of the Plan. All descriptions herein are expressly subject to and qualified by the Plan.

i. *Continued Existence of the Debtor.* The Reorganized Debtor will continue to exist following the Effective Date.

ii. *Claims Resolution.* The Plan provides a procedure under which claims will be allowed or disallowed. A claim is deemed allowed unless a timely objection is filed. The Plan permits only the CCI Trustee to file objections to any claim and establishes various deadlines for the filing of objections to claims.

iii. *Executory Contracts.* In its schedules, the Debtor has listed a variety of executory contracts and unexpired leases. The Plan proposes that all executory contracts and unexpired leases not previously assumed will be rejected.

iv. *Modification of the Plan.* The Plan may be modified before or after the Confirmation Date, pursuant to Section 1127 of the Code.

v. *Retention of Jurisdiction.* Notwithstanding entry of the Confirmation Order, or the Effective Date having occurred, the Court, following Confirmation of the Plan, shall retain jurisdiction over the Plan and over the CCI Case and proceedings or other matters arising in or relating to the CCI Case or arising under the Code to the full extent permitted by law and to the full extent necessary to carry out the purposes of the Plan.

vi. *Management.* Following the Confirmation Date, the Reorganized Debtor will continue to be managed solely and exclusively by the CCI Trustee, as described above.

vii. *Payment of U.S. Trustee's Fees.* On the Effective Date of the Plan any quarterly fees that came due on or prior to the Effective Date will be paid as administrative expenses. Following the Effective Date, the Reorganized Debtor will continue to remit quarterly fees to the U.S. Trustee to the extent required by the 28 U.S.C. section 1930(b).

viii. *Final Decree.* The CCI Trustee will file a motion for entry of a final decree when the Plan has been fully administered. The CCI Trustee anticipates that he should be in a position to seek entry of the final decree within nine months following the Effective Date of the Plan.

IV. ACCEPTANCE OF THE PLAN AND CONFIRMATION

Under Section 1129(a) of the Code, the Court may confirm the Plan only if certain specific requirements have been met. Certain of the requirements for confirmation are dependent on the manner in which creditors and interest holders vote on the Plan. Other requirements are unrelated to the voting process.

A. CONFIRMATION REQUIREMENTS NOT RELATED TO VOTING

The requirements for confirmation of the Plan which are unrelated to voting include the following:

- i. That the contents of the Plan comply with the applicable provisions of the Code;
- ii. That the Plan proponent has complied with the applicable provisions of the Code;
- iii. That the Plan proponent has proposed the Plan in good faith and not by any means forbidden by law;
- iv. That all payments for services or for costs and expenses in connection with the bankruptcy case or the Plan have been approved by, or are subject to approval by, the Court as reasonable;
- v. That the Plan proponent has adequately disclosed the identity and affiliations of any individual proposed to serve as an officer, director or voting trustee of the Debtor or the Estate and the nature of any compensation to be paid such individual;
- vi. That any governmental regulatory commission with jurisdiction over rates of the Debtor, after confirmation of the Plan, has approved any rate change provided for in the Plan, or that such rate change is expressly conditioned on such approval;
- vii. That the Plan provides for continuation, after the Effective Date, of payment of all retiree benefits at certain specified levels; and

viii. That confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor, other than what is proposed in the Plan.

B. SATISFACTION OF NON VOLUNTARY REQUIREMENTS

The CCI Trustee believes that each of the above conditions has been met and will seek rulings from the Court to this effect at the confirmation hearing. The identity of the officers post-confirmation, rate regulation, retiree benefits and the need for further financial reorganization are discussed below:

i. *Identity of Officers Post-Confirmation.* Following the Effective Date, the Reorganized Debtor will continue to be managed by the CCI Trustee, as discussed above.

ii. *Retiree Benefits.* As a requirement for confirmation, the Code requires that all retiree benefits be paid at the level which existed prior to the Petition Date or at a rate established by the Court. The Debtor has no retiree benefits. Therefore, this requirement is not applicable.

iii. *No Further Financial Reorganization.* The Code requires the Court to find that confirmation of the Plan is not likely to be followed by the need for further reorganization of the Debtor or any successor, other than what is proposed in the Plan. This Plan contemplates and provides for the liquidation of the Debtor. Therefore, the CCI Trustee believes the Plan is feasible and it is unlikely that there would be any further need for further financial reorganization.

C. THE VOTING PROCESS

i. *Requirements.* The Court must also make certain findings related to the voting process and the results of the voting. The requirements for confirmation of the Plan related to voting include the following:

- (a) At least one class of claims that is impaired under the Plan has accepted the Plan.
- (b) In the event a member of an impaired class has not accepted the Plan, the Court must find that confirmation of the Plan is in the “best interest” of that member's class.
- (c) That each impaired class has accepted the Plan. However, even if fewer than all impaired classes vote to accept the Plan, the Court may confirm the Plan under certain conditions. The voting process, the counting of votes, the “best interest” test and confirmation without acceptance by all impaired classes are discussed in greater detail below.

ii. *Parties Entitled to Vote.* All creditors and interest holders in an impaired class are entitled to vote to accept or reject the Plan. A class is impaired if the legal, equitable or contractual rights attaching to the claims are modified other than by the curing of default and restating maturities or by payment in full in cash. Under the Plan, all classes are entitled to vote, except Class 5, the equity holder.

iii. *The Classification of Claims and Interests is Proper.* The Code requires that a plan of reorganization place a creditor's claim or equity holder's interest only in a class with other claims or interests that are "substantially similar." The Debtor believes that the Plan's classification system meets the Code standard, and will ask the Court to approve the classification system.

iv. *Counting of Votes.* The Code defines acceptance of a Plan by a class of claimants as acceptance by holders of two-thirds in dollar amount and a majority in number of claims of that class. For the purpose of counting votes, only those claimants who actually vote to accept or reject the Plan are considered.

The Code defines acceptance of a Plan by a class of interests (equity holders) as acceptance of two-thirds of the number of shares. Again, only those shares which actually vote are considered in determining acceptance or rejection of the Plan.

D. ACCEPTANCE BY ONE IMPAIRED CLASS

In order to confirm the Plan, the Court must find that at least one class of impaired claims has accepted the Plan. In considering whether a creditor class has accepted the Plan the Court must exclude the votes of any insider.

E. BEST INTEREST TEST

Notwithstanding acceptance of the Plan by creditors and equity holders, if an impaired claimant or interest holder does not accept the Plan, the Court must independently determine that the Plan is in the best interest of the non-accepting claimants or interest holders. To meet this test, the Court must determine that each non-accepting claimant or interest holder will receive under the Plan, as of the Effective Date, property of a value at least equal to the value that each such claimant or holder would receive if the Debtor was liquidated under chapter 7 of the Code.

The CCI Trustee believes that the Plan satisfies the best interest test for the following reasons:

i. In a liquidation under chapter 7, a trustee would likely hire legal and accounting advisors to assist in the performance of the trustee's duties that would be paid by the estate. These fees and costs would be duplicative of the fees and costs already incurred by the estate, unless the chapter 7 trustee chose to retain the professionals currently employed by the CCI Trustee.

ii. In a liquidation under chapter 7, it is likely that any distribution to creditors could be substantially delayed while the new trustee reviewed and analyzed the matters already known to the CCI Trustee.

As a result, the CCI Trustee believes that his Plan satisfies the “best interest” test under the Code.

The CCI Trustee believes that after considering all of the foregoing factors, creditors and interest holders in all impaired classes will receive more under the Plan than they would receive in a chapter 7 liquidation. The CCI Trustee firmly believes that the Plan is in the best interest of each class of creditors and interest holders.

F. ACCEPTANCES OF THE PLAN BY EACH IMPAIRED CLASS

As a condition to confirmation, the Code requires that each impaired class accept the Plan. If each impaired class does not accept the Plan, the Court may confirm the Plan, under certain circumstances, under the “cram down” provisions. The confirmation of the Plan over the non-acceptance of an impaired class is discussed in the following section.

G. CONFIRMATION WITHOUT ACCEPTANCE BY ALL CLASSES

The “cram-down” provisions of the Code permit confirmation of a the Plan under certain circumstances even if the Plan is not accepted by all impaired classes.

If a class of secured claims rejects the Plan, the Plan may be confirmed so long as the Plan provides that: (1) the holder of the claim retains its liens and receives cash payments having a value equal to the secured claim; (2) the realization by the secured creditors of the “indubitable equivalent” of their secured claims; or (3) if the collateral is being sold free and clear of the secured claim, the lien of the secured creditor attaches to the proceeds of the sale, and the secured creditor is treated in a manner consistent with clauses (1) and (2).

If a class of unsecured claims rejects the Plan, the Plan may be confirmed so long as it provides that: (1) each holder of a claim included in the rejecting class receives or retains on account of that claim property that has a value as of the Effective Date equal to the allowed amount of such claim; or (2) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

V. ALTERNATIVES TO THE PLAN

If the Plan is not confirmed, the alternatives include: (1) dismissal of the pending chapter 11 case; (2) liquidation of the Debtor under chapter 7 of the Code; or (3) confirmation of an alternative chapter 11 plan.

A. DISMISSAL OF CHAPTER 11.

If no chapter 11 plan can be confirmed, the Debtor's bankruptcy case may be dismissed. In such a case, the assets of the Estate would revert in the Debtor and creditors would be entitled to pursue their claims against the Debtor.

B. LIQUIDATION UNDER CHAPTER 7.

Alternatively, if no chapter 11 plan can be confirmed, the CCI Case could be converted to chapter 7. A chapter 7 trustee would be elected or appointed to liquidate the Debtor's assets. Distribution to creditors would be made in accordance with the priorities established by the Code. See "ACCEPTANCE OF THE PLAN AND CONFIRMATION--BEST INTEREST TEST" for a more complete description of the possible consequences of a chapter 7 liquidation on the distributions to the various creditor and interest classes. The CCI Trustee does not believe that chapter 7 would be of any benefit to either secured or unsecured creditors because a liquidation would result in creditors receiving less than is proposed under the Plan.

C. OTHER PLANS.

Other parties in interest may propose alternative chapter 11 plans. No party has indicated any desire to propose a competing plan and the CCI Trustee thinks it unlikely that any alternative plan could be proposed that would be more beneficial to creditors than this Plan. Therefore, the Debtor does not view the "other plan" option as reasonable or likely.

VI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT AFFECT OR THAT MAY AFFECT THE HOLDERS OF ALLOWED CLAIMS AND INTERESTS. UNLESS OTHERWISE PROVIDED, THIS DISCUSSION DOES NOT ADDRESS THE PARTICULAR FEDERAL INCOME TAX CONSEQUENCES THAT MAY BE RELEVANT TO CERTAIN TYPES OF TAXPAYERS SUBJECT TO SPECIAL TREATMENT UNDER THE FEDERAL INCOME TAX LAWS, NOR DOES IT DISCUSS ANY ASPECTS OF STATE, LOCAL, FOREIGN OR OTHER TAX LAWS. THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE LAW. EXCEPT AS DESCRIBED HEREIN, THE DEBTOR HAS NOT APPLIED FOR OR OBTAINED FROM THE INTERNAL REVENUE SERVICE ANY RULINGS OR AGREEMENTS WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN REQUESTED OR OBTAINED BY THE DEBTOR OR THE CCI TRUSTEE WITH RESPECT THERETO. THERE CAN BE NO ASSURANCE THAT THE INTERNAL REVENUE SERVICE WILL NOT CHALLENGE CERTAIN OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX

ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX CONSEQUENCES OF THE PLAN.

A. TAX CONSEQUENCES TO CREDITORS

Generally, a creditor who receives cash or property in satisfaction of his Allowed Claim will recognize ordinary income to the extent that the amount received is allocable to interest that accrued while the claim was held by him (to the extent not previously taken into income by such person). In addition, such creditor will recognize gain or loss on the exchange equal to the difference between the creditor's tax basis in his Allowed Claim and the amount of consideration allocable thereto. The character of any recognized gain or loss will depend upon the status of the creditor, the nature of the Claim in his hands and his holding period. Each holder of a Claim is strongly urged to consult with his own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan. Among the issues the holder of a Claim may desire to consider, in addition to the issues discussed above, include the extent to which the creditor is entitled to a bad debt deduction or worthless securities loss, if any, as a result of the transactions contemplated by the Plan.

Under backup withholding rules, a holder of an Allowed Claim may be subject to backup withholding at the rate of 20 percent with respect to payments made pursuant to the Plan unless such holder (a) is a corporation or comes within certain other categories and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of failure to report all dividends and interest income.

CREDITORS OF THE DEBTOR, PARTICULARLY UNSECURED CREDITORS, ARE STRONGLY URGED TO CONSULT WITH THEIR OWN TAX ADVISORS WITH RESPECT TO THE FEDERAL AND STATE INCOME TAX CONSEQUENCES AS A RESULT OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND THE EFFECT OF SUCH TAX LIABILITY ON AMOUNTS, IF ANY, DISTRIBUTABLE TO THEM UNDER THE PLAN ON ACCOUNT OF ALLOWED CLAIMS.

VII. VOTING INSTRUCTIONS AND PROCEDURE

Ballots are being sent to all known holders of Allowed Claims, all disputed claims and the Interest Holder. Only holders of Allowed Claims (or claims which are deemed allowed or have been estimated by the Court) and the Interest Holders are entitled to vote on the Plan. A claim to which an objection has been filed is not an Allowed Claim unless and until the Court rules on the objection and any appeals which are finally determined. However, the Court may temporarily allow a claim or estimate its amount for the purpose of voting on the Plan. Unless authorized by the Court, disputed claims are not entitled to vote on the Plan.

A. VOTING BY BALLOT

Votes for or against the Plan may be cast only by completing, dating, signing and causing the ballot form accompanying this Disclosure Statement to be returned on or before _____, 2013. Holders of claims which are treated in more than one class must submit

separate ballots for each class. If a ballot is damaged or lost, you may obtain a new ballot from the Debtor's counsel at the address listed below in "ADDITIONAL INFORMATION—OTHER MATTERS."

You should return your ballot to the following address:

Markus Williams Young & Zimmermann, LLC
1700 Lincoln Street, Suite 4000
Denver, CO 80203
Telephone: (303) 830-0800
Facsimile: (303) 830-0809
Attention: John F. Young

B. ADDITIONAL INFORMATION NOT CONTAINED IN THE DISCLOSURE STATEMENT

This Disclosure Statement has been approved by the Court as containing "adequate information." Thus, this document contains sufficient information to permit the typical claimant or interest holder to make an informed judgment about the Plan. NO OTHER REPRESENTATIONS CONCERNING THE PLAN, THE DEBTOR OR THE CCI TRUSTEE ARE AUTHORIZED. ANY OTHER REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR VOTE, OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED UPON.

VIII. ADDITIONAL INFORMATION

A. CONFIRMATION HEARING AND OBJECTIONS TO CONFIRMATION

The Court will hold a hearing on confirmation of the Plan commencing _____, United States Bankruptcy Court, _____ Street, Denver, Colorado 80202. The hearing may be adjourned from time to time as announced in open court without further written notice.

Objections to confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on those parties set forth in the Order approving the Disclosure Statement no later than _____, 2013.

B. OTHER MATTERS

Additional copies of this Disclosure Statement may be obtained by written request addressed to counsel for the Debtor at the following address:

Markus Williams Young & Zimmermann, LLC
1700 Lincoln Street, Suite 4000
Denver, CO 80203
Telephone: (303) 830-0800
Facsimile: (303) 830-0809
Attention: John F. Young
jyoung@markuswilliams.com

IX. CONCLUSION

The CCI Trustee believes that acceptance of the Plan is in the best interest of each and every class of creditors and interest holders and strongly recommends that each creditor and interest holder vote to accept the Plan.

DATED this 30th day of April, 2013.

By: s/ James T. Markus
James T. Markus
Chapter 11 Trustee for Commercial Capital,
Inc.