

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE COURT FOR DISSEMINATION. UNTIL APPROVED, IT SHOULD NOT BE RELIED UPON BY ANY PERSON OR ENTITY, NOR MAY IT BE USED IN CONNECTION WITH ANY SOLICITATION OF VOTES.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

DBSI INC., ET AL.¹,

Debtors.

Chapter 11

Case No. 08-12687 (PJW)

(Jointly Administered)

In re:

FLORISSANT MARKET PLACE
ACQUISITION LLC,

Debtor.

Chapter 11

Case No. 09-10081 (PJW)

**DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE
BANKRUPTCY CODE WITH RESPECT TO FLORISSANT MARKET
PLACE ACQUISITION LLC'S CHAPTER 11 PLAN OF REORGANIZATION**

PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THIS PLAN OF REORGANIZATION. THE PLAN PROPONENT BELIEVES THAT THIS PLAN OF REORGANIZATION IS IN THE BEST INTEREST OF THE CREDITORS AND THAT THE PLAN IS FAIR AND EQUITABLE. THE PLAN PROPONENT URGES THAT THE VOTER ACCEPT THE PLAN.

¹ The last four digits of DBSI Inc.'s federal tax identification number are 5037. The mailing address for DBSI Inc. is 12426 West Explorer Drive, Suite 220, Boise, Idaho 83713.



081268711020900000000002

Dated: February 8, 2011

GIBBONS P.C.

Natasha Songonuga (Bar No. 5391)
1000 N. West Street, Suite 1200
Wilmington, DE 19801-1058
T (302) 295-4875
F (302) 295-4876
E-mail: nsongonuga@gibbonslaw.com

- and -

Mark B. Conlan (admitted *pro hac vice*)
One Gateway Center
Newark, NJ 07102-5310
E-mail: mconlan@gibbonslaw.com
T (973) 596-4500
F (973) 596-0545

*Attorneys for Conrad Myers as the Liquidating Trustee
for the DBSI Real Estate Liquidating Trust*

I INTRODUCTION

This disclosure statement (as the same may be amended, the “Disclosure Statement”) pursuant to Section 1125 of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 3016(b), is transmitted in connection with the solicitation of votes (the “Solicitation”) with respect to Florissant Market Place Acquisition LLC’s (the “Debtor”) Chapter 11 Plan Of Reorganization dated _____, 2011 (the “Plan”). A copy of the Plan is attached to this Disclosure Statement as Exhibit A.

On January 9, 2009, the Debtor commenced a bankruptcy case by filing a voluntary chapter 11 petition under the Bankruptcy Code. Chapter 11 of the Bankruptcy Code allows the Debtor, and under some circumstances, creditors and other parties in interest, to propose a plan of reorganization (“Plan”). The Plan may provide for the Debtor to reorganize by continuing to operate and to restructure its pre-petition debt. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. No materials other than the Disclosure Statement and any exhibits and schedules attached thereto or referenced therein have been authorized by the Debtor or the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

The Plan is a consensual plan between the Debtor and its pre-petition secured lender Wells Fargo Bank, National Association, as successor in interest to Wachovia Financial Services, Inc. (“Lender” or “Wachovia”). The Plan provides for the satisfaction of Claims against and Interests in the Debtor through a restructuring of the Debtor’s pre-petition loan secured by a shopping center and related development known as Florissant Market Place, located at 8182 and 8200 N. Lindbergh Boulevard, Florissant, Missouri (the “Property”).

A. Purpose of Disclosure Statement

The purpose of the Disclosure Statement is to provide the Holders of Claims against, and Interests in, the Debtor with adequate information to make an informed judgment regarding whether they should vote to accept or reject the Plan. This information includes, among other things, (i) an operational overview and the history of the Debtor and its business; (ii) a summary of the Chapter 11 Case and significant events leading to the bankruptcy filing; (iii) an explanation of the Plan, (iv) a summary of procedures and voting requirements necessary for confirmation of the Plan; and (v) a summary of what Holders of Claims and Interests will receive under the Plan. This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you. Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

B. Disclaimers

THE DISCLOSURE STATEMENT IS PRESENTED TO HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 1125 OF THE BANKRUPTCY CODE. SECTION 1125

OF THE BANKRUPTCY CODE REQUIRES THAT A DISCLOSURE STATEMENT PROVIDE INFORMATION SUFFICIENT TO ENABLE A HYPOTHETICAL AND REASONABLE INVESTOR TO MAKE AN INFORMED JUDGMENT WHETHER TO ACCEPT OR REJECT A PLAN. THE DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN THAT DESCRIBED ABOVE. THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE FINANCIAL OR LEGAL ADVICE. CREDITORS AND INTEREST HOLDERS OF THE DEBTOR SHOULD CONSULT THEIR OWN ADVISORS IF THEY HAVE QUESTIONS ABOUT THE PLAN OR THE DISCLOSURE STATEMENT.

WHILE THE DISCLOSURE STATEMENT DESCRIBES CERTAIN BACKGROUND MATTERS AND THE MATERIAL TERMS OF THE PLAN, IT IS INTENDED AS A SUMMARY DOCUMENT ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ATTACHED TO THE PLAN AND THIS DISCLOSURE STATEMENT. SIMILARLY, DESCRIPTIONS IN THIS DISCLOSURE STATEMENT OF PLEADINGS, ORDERS, AND PROCEEDINGS IN THE CHAPTER 11 CASE ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE RELEVANT DOCKET ITEMS. YOU SHOULD READ THE PLAN AND THE EXHIBITS TO OBTAIN A FULL UNDERSTANDING OF THEIR PROVISIONS. ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT AND THE EXHIBITS AND SCHEDULES ATTACHED TO THE DISCLOSURE STATEMENT, AS WELL AS ANY DOCKET ITEMS FROM THE CHAPTER 11 CASE, ARE AVAILABLE FOR INSPECTION DURING REGULAR BUSINESS HOURS AT THE OFFICE OF THE CLERK OF THE BANKRUPTCY COURT, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 5TH FLOOR, 824 MARKET STREET, WILMINGTON, DELAWARE 19801. IN ADDITION, COPIES MAY BE OBTAINED FOR A CHARGE THROUGH DELAWARE DOCUMENT RETRIEVAL, 230 NORTH MARKET STREET, P.O. BOX 27, WILMINGTON, DELAWARE 19801, (302) 658-9971, OR VIEWED ON THE INTERNET AT THE BANKRUPTCY COURT'S WEBSITE ([HTTP://WWW.DEB.USCOURTS.GOV](http://www.deb.uscourts.gov)) BY FOLLOWING THE DIRECTIONS FOR ACCESSING THE ECF SYSTEM ON SUCH WEBSITE. COPIES ARE ALSO AVAILABLE FREE OF CHARGE ON KURTZMAN CARSON CONSULTANTS' DEDICATED WEB PAGE RELATED TO THIS CASE ([HTTP://WWW.KCCLLC.NET/DBSI](http://www.kccllc.net/dbsi)).

THE STATEMENTS AND INFORMATION CONCERNING THE DEBTOR AND THE PLAN SET FORTH IN THE DISCLOSURE STATEMENT CONSTITUTE THE ONLY STATEMENTS OR INFORMATION CONCERNING SUCH MATTERS THAT HAVE BEEN APPROVED BY THE BANKRUPTCY COURT FOR THE PURPOSE OF SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. NEITHER DELIVERY OF THE DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN WILL UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE THE

DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED. THE DEBTOR ASSUMES NO DUTY TO UPDATE OR SUPPLEMENT THE DISCLOSURES CONTAINED HEREIN AND DOES NOT INTEND TO UPDATE OR SUPPLEMENT THE DISCLOSURES, EXCEPT TO THE EXTENT, IF ANY, NECESSARY AT THE HEARING ON CONFIRMATION OF THE PLAN.

THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN. CERTAIN OF THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THERE CAN BE NO ASSURANCE THAT ANY FORECASTED OR PROJECTED RESULTS CONTAINED HEREIN WILL BE REALIZED, AND ACTUAL RESULTS MAY VARY FROM THOSE SHOWN HEREIN, POSSIBLY BY MATERIAL AMOUNTS.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE DISCLOSURE STATEMENT. PURSUANT TO THE PLAN, ANY SECURITIES ISSUED TO ANY PARTY UNDER, PURSUANT TO, OR IN EFFECTUATING THE PLAN, AND THE OFFERING AND ISSUANCE THEREOF BY ANY PARTY, ARE EXEMPT FROM SECTION 5 OF THE SECURITIES ACT OF 1933, IF APPLICABLE, AND FROM ANY STATE OR FEDERAL SECURITIES LAWS REQUIRING REGISTRATION FOR THE OFFER OR SALE OF A SECURITY OR REGISTRATION OR LICENSING OF AN ISSUER OR UNDERWRITER OF, OR BROKER OR DEALER IN, A SECURITY, AND OTHERWISE ENJOY ALL EXEMPTIONS AVAILABLE FOR DISTRIBUTIONS OF SECURITIES UNDER A PLAN IN ACCORDANCE WITH ALL APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, SECTION 1145 OF THE BANKRUPTCY CODE.

THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT, INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR AND THE OTHER INFORMATION CONTAINED HEREIN, OR IN THE EXHIBITS, HAVE NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET FORTH HEREIN.

THE DISCLOSURE STATEMENT IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR AND INTEREST HOLDER SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THIS SOLICITATION, THE PLAN OR THE TRANSACTIONS CONTEMPLATED THEREBY.

C. Confirmation Procedures

(i) Time and Place of the Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing (the “Confirmation Hearing”) with respect to the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of Section 1129 of the Bankruptcy Code are met. By motion dated February __, 2011, the Debtor sought entry of an Order setting an expedited and consolidated hearing on the adequacy of Disclosure Statement and confirmation of the Plan (the “Consolidated Motion”)[Docket No. __]. By Order dated February __, 2011, the Bankruptcy Court granted the relief requested in the Consolidated Motion and scheduled the Confirmation Hearing as well as the hearing on the adequacy of the Disclosure Statement for ____, 2011 at ____ a.m. (Prevailing Eastern Time) before the Honorable Peter J. Walsh, United States Bankruptcy Court, District of Delaware, 824 Market Street, 6th Floor, Courtroom #2 Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice other than an announcement of the adjourned date made at the Confirmation Hearing.

Any Objections to confirmation of the Plan must be made in writing and Filed with the Clerk of the Bankruptcy Court and served upon the following on or before 4:00 p.m. (Prevailing Eastern Time) on ____, 2011:

Gibbons P.C.

Attorneys for the DBSI Real Estate Liquidating Trustee

1000 N. West Street, Suite 1200
Wilmington, DE 19801-1058
Attn: Natasha M. Songonuga, Esq.
and
One Gateway Center
Newark, NJ 07102-5310
Attn: Mark B. Conlan, Esq.

MOORE & VAN ALLEN PLLC

Attorneys for Wachovia Bank
100 North Tryon Street, 47th Floor
Charlotte, North Carolina 28202
Attn: David S. Walls, Esq.

Office of the United States Trustee

844 King St.
Suite 2207
Wilmington, DE 19801
Attn: Richard Schepacarter, Esq.

D. Voting Procedures and Requirements

(i) Ballots and Deadline For Voting For or Against the Plan

Accompanying this Disclosure Statement is a Ballot for acceptance or rejection of the Plan. Your Claims may be classified in multiple classes. When you vote and return your Ballot, please indicate the Class or Classes in which your Claims are classified by marking the appropriate space provided on your Ballot for such purpose. In accordance with the Order dated February __, 2011[Docket No. __] granting the relief requested in the

Consolidation Motion, Ballots for the acceptance or rejection of the Plan shall take place at the conclusion of the hearing on the adequacy of the Disclosure Statement (the “Voting Deadline”) in the event that the Bankruptcy Court approves the Disclosure Statement. Ballots not actually received by the Voting Deadline may not be counted, and Ballots that do not indicate either an acceptance or rejection of the Plan will be deemed to constitute an acceptance of the Plan.

It is important for all Creditors that are entitled to vote on the Plan to exercise their right to vote to accept or reject the Plan. Even if you do not vote to accept the Plan, you may be bound by the Plan if it is accepted by the requisite Holders of Claims and confirmed by the Bankruptcy Court.

(ii) *Parties in Interest Entitled to Vote*

Any Holder of a Claim against the Debtor whose Claim has not been Disallowed previously by the Bankruptcy Court, is entitled to vote to accept or reject the Plan if such Claim is impaired under the Plan and either (a) such Holder’s Claim has been scheduled by the Debtor and is not scheduled as disputed, contingent or unliquidated, or (b) such Holder has filed a proof of Claim which is not Disputed before the Bar Date. Any Claim to which an objection has been filed is not entitled to vote unless the Bankruptcy Court, upon application of the Holder to whose Claim an objection has been made, temporarily allows such Claim in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Bankruptcy Court on or before the Voting Deadline. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

(iii) *Definition of Impairment*

Pursuant to section 1124 of the Bankruptcy Code, a class of claims is impaired under a plan unless, with respect to each claim of such class, the plan:

- (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest, or
- (2) Regardless of contractual provision or applicable law which permits acceleration after default, the plan cures any such default that occurred before or after the commencement of the case, reinstates the maturity of such claim or interest as such maturity existed before such default, compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder.

(iv) *Classes Impaired under the Plan*

The Claims in Class 1 (Priority Non-Tax Claims), to the extent Allowed, are not impaired and, therefore, are deemed to have accepted the Plan. The Claims in Class 2 (Unsecured Claims), to the extent Allowed, are impaired and are entitled to vote to accept or reject the Plan.

The Claims in Class 3 (Pre-Petition Lender Claims), to the extent Allowed, are impaired and are entitled to vote to accept or reject the Plan.

The Claims in Class 4 (Interest Claims) are unimpaired and are therefore, not entitled to vote to accept or reject the Plan.

II

OVERVIEW OF THE DEBTOR'S OPERATIONS

A. Description and History of the Debtor's Business

The factual background regarding the Debtor, including its business operations, its capital and debt structure, the events leading to the filing of the Chapter 11 Case and significant events during the Chapter 11 Case, is set forth in detail in the disclosure statement(s) approved by the Bankruptcy Court on August 18, 2010 in these jointly-administered chapter 11 cases ("Confirmed Debtors' Disclosure Statement") [Docket No. 5705] for the *Second Amended Joint Plan of Liquidation Filed By the Chapter 11 Trustee and the Official Committee of Unsecured Creditors* [Docket No. 5699] (the "Confirmed Debtors' Plan") dated August 17, 2010 that was confirmed by Order of the Bankruptcy Court dated October 26, 2010 ("Confirmed Debtors' Confirmation Order") [Docket No. 5924] and is only briefly summarized herein.

Under the Confirmed Debtor's Plan the DBSI Real Estate Liquidating Trust was created to, among other things, liquidate the assets of certain of the Confirmed Debtors, which assets include the Debtor's ownership interests in the Property and the Claim of DBSI 2008 Notes Corporation against the Debtor. Conrad Myers was appointed to act as trustee (the "Trustee") of the DBSI Real Estate Liquidating Trust in accordance with the terms of the Confirmed Debtors' Plan, the Confirmed Debtors' Confirmation Order, and the DBSI Real Estate Liquidating Trust Agreement.

On December 15, 2010, the Bankruptcy Court entered an Order, which among other things, discharged and relieved the Chapter 11 Trustee of all duties with respect to the Debtor's Chapter 11 Case and vested complete authority for the administration of the Debtor's Chapter 11 Case in the Trustee, including, but not limited to, the filing of a plan of reorganization in the Debtor's Chapter 11 Case [Docket No. 6972].

B. The Debtor's Pre-Petition Secured Debt

The Debtor is obligated to the Lender pursuant to (i) that certain Loan Agreement (the "Original Loan Agreement"), dated as of June 27, 2008, among the Debtor as the borrower, Wachovia Financial Services, Inc. as the lender (and predecessor in interest to the Lender), and DBSI Florissant Market Place Leaseco LLC, as the master tenant; and (ii) that certain ISDA Master Agreement (the "Swap Agreement"), dated June 4, 2008, between Florissant and Wachovia Bank, National Association. Under the Original Loan Agreement, the Lender extended a term loan in the original principal amount of \$11,180,000 to the Debtor, which the Debtor used to acquire the Property. Under the Swap Agreement, the Debtor sought to hedge against the risk of interest rates applicable to the term loan moving higher and incurred certain payment obligations to the Lender to mitigate such risk. The obligations of the Debtor under the

Original Loan Agreement and the Swap Agreement shall be referred to together as the “Obligations.”

The Obligations are secured pursuant to (i) that certain Future Advance Deed of Trust, Security Agreement and Fixture Filing, dated as of June 27, 2008 (the “Deed of Trust”), made by the Debtor in favor of the Lender and recorded as Document No. 00644 in Book 17932 at Page 1849 in the public registry of St. Louis County, Missouri, and (ii) that certain Assignment of Rents and Leases, dated as of June 27, 2008 (the “Assignment of Rents”), made by the Debtor in favor of the Lender and recorded as document 00645 in Book 17932 at Page 1886 in the public registry of St. Louis County, Missouri. The Deed of Trust created a valid, perfected and first priority lien against the Property. By virtue of the Deed of Trust and the Assignment of Rents, all rents and profits arising from the Property constitute the “cash collateral” of the Lender within the meaning of Section 363(a) of the Bankruptcy Code.

After the Debtor entered into the Original Loan Agreement and acquired the Property, subject to the Deed of Trust and Assignment of Rents, the Debtor sold undivided tenant-in-common interests, aggregating approximately 24.6% of the undivided interests in the Property, to certain unrelated special purpose entities (the “TIC Investors”). The interests of the TIC Investors in the Property are subject to the lien created by the Deed of Trust and to the Assignment of Rents. An agreement by which each TIC Investor assumes its pro rata share of the term loan and by which the Debtor is released from a portion of the term loan corresponding to the shares assumed by such TIC Investor was executed by each TIC Investor (collectively, the “Agreements”). The Debtor executed one out of five of the Agreements and the Lender did not execute any of the Agreements. The Lender asserts that the Debtor remains liable for the entire outstanding balance of the term loan and the other Obligations.

C. Significant Events During the Bankruptcy Case

(i) *The Stay Relief Motion*

On January 15, 2009, the Wachovia filed a motion for relief from stay [Docket No. 1145] with respect to the Property. At the time that Wachovia filed its motion for relief from stay, it was not aware that the Debtor had filed a separate bankruptcy petition. Wachovia’s relief from stay motion recognized the bankruptcy filing by DBSI Florissant Market Place Leaseco LLC (“Florissant Leaseco”), which was the master-lessee with respect to the Property, and its need for relief from stay to pursue its remedies against the Property.

Thereafter, on February 4, 2009, the Bankruptcy Court entered an order (the “Prior Order”) [Docket No. 1684] granting Wachovia relief from the automatic stay to pursue its remedies against the Property. The Prior Order does not specify whether such relief applied only to the stay imposed with respect to Florissant LeaseCo or also to the stay imposed with respect to the Debtor.

Florissant Leaseco’s interest in the master lease was rejected pursuant to the Bankruptcy Court’s *Omnibus Order (I) Approving Certain Option #1B and Option #2 Transactions, Subject to Final Document; (II) Providing for Rejection of Master Lease, Subleases and Executory Contracts Effective as of January 30, 2009 for Any Such Transaction that is Not Fully*

Documented on or before February 13, 2009; (III) Establishing Procedures for Resolving Disputed Cure Claims, entered on or about February 5, 2009, and all of Florissant Leaseco's rights and interests in the subleases relating to the Property were assigned to the owners of the TIC interests in the Property.

On or about October 1, 2009, Wachovia commenced foreclosure proceedings against the Property in St. Louis County, Missouri, and subsequently provided notice of the sale of the Property to the Chapter 11 Trustee and each of the TIC Investors. Wachovia asserted that the Prior Order was effective in granting it relief from stay with respect to the Property as a whole, providing relief from the stay arising from both Florissant Leaseco's and the Debtor's bankruptcy cases. The Chapter 11 Trustee asserted that the Prior Order only sought and was only effective in granting Wachovia relief from stay with respect to the Florissant LeaseCo bankruptcy case not the Debtor's.

As a compromise and settlement of their disputes concerning the foreclosure proceedings and the use of Cash Collateral (as defined in section 363(a) of the Bankruptcy Code), the Chapter 11 Trustee and Wachovia entered into a settlement agreement and consent order (the "Settlement Agreement"), which was approved by the Bankruptcy Court by Order dated February 22, 2010 (the "Settlement Order") [Docket No. 5193].

(ii) *The Debtor's Use of Cash Collateral*

On February 1, 2010 the Chapter 11 Trustee filed a *Motion for Entry of Stipulated Settlement Agreement and Consent Order Pursuant to Sections 361, 363, 503(b) and 507(b) of the Bankruptcy Code and Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing Use of Cash Collateral and Approving Compromise Governing Enforcement of Remedies* (the "[Docket No. 5140], seeking authorization to use cash collateral of Wachovia, providing Wachovia with adequate protection and approving a compromise and settlement between the Chapter 11 Trustee and Wachovia. As noted above, on February 22, 2010, the Bankruptcy Court entered the Settlement Order approving the Settlement Agreement.

Under the terms of the Settlement Agreement, Wachovia agreed to cancel the foreclosure proceedings against the Property and forbear from initiating any subsequent foreclosure proceedings against the Property during the Forbearance Period, with the Forbearance Period being defined as the period from November 23, 2009 through the earlier of (i) April 30, 2010 and (ii) the occurrence of a Termination Event, as that term is defined in the Settlement Agreement. The parties also agreed that the Chapter 11 Trustee's time to move for relief with respect to the Prior Order pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024 was tolled through and including April 30, 2010.

The Settlement Agreement also provided, among other things, for the Chapter 11 Trustee's and the Debtor's use of Cash Collateral in the ordinary course of business and in accordance with a monthly budget to be supplied by the Debtor to Wachovia.

By Orders dated June 9, 2010 (Docket No. 5517), July 30, 2010 (Docket No. 5641), December 6, 2010 (Docket No. 6903) and February 3, 2011 (Docket No. 7100), the Bankruptcy Court approved the *Stipulations Extending Forbearance Period and Trustee's Time to Move for*

Relief with Respect to Court's Order Dated February 4, 2009 Granting Wachovia Bank, National Association Relief from the Automatic Stay entered into by the parties, which, among, other things, extended the Forbearance Period to March 15, 2011.

III

SUMMARY OF THE PLAN

A. Overview of the Plan

The following is a brief summary of certain provisions of the Plan. This summary does not purport to be complete, and Creditors are urged to read the Plan in full.

The Plan recognizes that the Debtor own approximately 75.3% of the undivided tenant-in-common interests in the Property, with the remaining undivided interests being owned by the TIC Investors. The Plan provides that the Reorganized Debtor and the TIC Investors will continue to own their respective interests in the Property and will continue to engage a property manager to operate the Property, with the long-term objective of marketing and selling the Property in an orderly manner to maximize the return for the Debtor's estate and for the TIC Investors.

The Plan also recognizes that the Lender has a first priority perfected deed of trust against the entire Property, encumbering the interests of both the Debtor and the TIC Investors. The Plan provides that the allowed claim of the Lender shall be restructured and repaid on or before July 1, 2013, based on a 30-year amortization and a market-based interest rate, as more particularly described in Exhibit "B" to the Plan. The Plan also provides that the Reorganized Debtor shall establish with the Lender various accounts for operating expenses, taxes, capital expenditures and other items, to be funded from the cash flow from the Property. To the extent that monthly cash flow from the Property exceeds the amount necessary for debt service and the funding of these reserves, the excess cash flow will be retained by the Lender as amortizing payments of its restructured loan.

With respect to holders of Allowed Unsecured Claims, the Plan provides that such holders shall receive their pro rata share of the Reorganized Debtor's interest in the proceeds from the sale of the Property, after the satisfaction in full of the Lender's restructured Loan. Holders of Allowed Interests shall retain their membership interests in the Debtor but shall not receive any payment or distribution on account of such Interests unless and until the Lender's restructured loan and all Allowed Unsecured Claims have been paid in full.

The Plan contemplates that it will become effective in stages. Upon confirmation and finalization of all of the restated loan documents, the Plan Effective Date shall occur and the Plan shall become binding on the Debtor and all parties in interest. Upon the Reorganized Debtor's satisfaction of specific conditions precedent to the restructuring of the Lender's Claim (which conditions resemble typical conditions precedent for closing a real estate loan), then the Restructure Effective Date shall occur and the Lender's loan shall be reinstated upon the terms set forth in the Plan and the related loan documents. If the Reorganized Debtor fails to satisfy the requisite conditions to restructuring the Lender's loan, then the Lender may pursue its state law remedies against the Property or may require the Reorganized Debtor to pursue an auction of the entire Property pursuant to the procedures set forth in Exhibit "A" to the Plan. In addition, in the event that the Reorganized Debtor and TIC Investors have not obtained a binding contract to sell the Property on or before January 31, 2013 for an amount in excess of the outstanding balance of the Lender's Loan, then the Reorganized Debtor shall initiate an auction of the Property in accordance with the procedures set forth in Exhibit "A" to the Plan.

IV

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTEREST

The Plan classifies Claims and Interests into four (4) Classes, and also provides for payment of Allowed Administrative Expenses and Priority Tax Claims. For each Class, the Plan states whether the Claims are impaired and whether Holders of the Claims will receive various types of distributions under the Plan. The Classes and payments to be made and treatment proposed to be accorded to Allowed Claims of each Class under the Plan are summarized and described below. After Confirmation and upon the occurrence of the Plan Effective Date, the Plan binds the Debtor and all creditors, whether or not such creditor has accepted the Plan, and the Debtor shall be discharged of liability for the payment of debts to the extent authorized under the Bankruptcy Code.

Certain types of claims are not placed into voting classes. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code.

A. Unclassified Claims

As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims shall not be classified for the purposes of voting or receiving distributions under this Plan. They are not considered Impaired and they do not vote on the Plan because they are automatically entitled to the specific treatment provided for them in the Bankruptcy Code. As such, all such Claims shall be treated separately as unclassified Claims on the terms set forth in Article III of the Plan and summarized below.

(i) ***Administrative Claims.*** Except to the extent that a Holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided for in the Plan, each Allowed Administrative Claim, if any, shall be paid on the later of (a) the Plan Effective Date, (b) the date on which its Administrative Claim becomes Allowed, or (c) the date on which its Administrative Claim becomes payable under any agreement relating thereto. Each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim against the Debtor, Cash equal to the unpaid portion of such Administrative Claim; provided, however, that any Allowed Administrative Claim (x) incurred post-petition by the Chapter 11 Trustee or the Debtor in the ordinary course of businesses or (y) arising pursuant to one or more post-petition agreements or transactions entered into by the Debtor or the Chapter 11 Trustee with Bankruptcy Court approval, including, but not limited to, the Property Management Agreement, shall be paid or performed in accordance with the terms and conditions of the particular transaction(s) and any agreement(s) relating thereto, or as otherwise agreed by the Reorganized Debtor, on the one hand, and the Holder of such Administrative Claim, on the other. The Holder of an Allowed Administrative Claim shall not be entitled to, and shall not be paid, any interest, penalty, or premium thereon, and any interest, penalty, or premium asserted with respect to any Administrative Claim shall be deemed Disallowed and expunged without the need for any further Order of the Bankruptcy Court.

(a) *Time for Filing Administrative Claims.* The Holder of any Administrative Claim that is incurred or accrued after the Commencement Date, other than (i) a Professional Fee Claim, (ii) an Allowed Administrative Claim, or (iii) governmental claim pursuant to Bankruptcy Code 503(b)(1)(D), shall be required to file and serve on all parties required to receive such notice an Administrative Claim request on or before the Administrative Claim Bar Date.

(b) *Allowance of Administrative Claims.* An Administrative Claim with respect to which notice has been properly filed pursuant to subparagraph 3.1(b) of the Plan shall become an Allowed Administrative Claim if no objection is Filed by the Administrative Claim Objection Deadline. If a timely objection is filed, the Administrative Claim shall become an Allowed Administrative Claim only to the extent Allowed by a Final Order. An Administrative Claim that is a Professional Fee Claim, and with respect to which a Fee Application has been properly filed and served pursuant to the Plan, shall become an Allowed Administrative Claim only to the extent Allowed by a Final Order.

(c) *Payment of Allowed Administrative Claims.* Except to the extent that a Holder of an Allowed Administrative Claim has been paid prior to the Plan Effective Date, or agrees to a different treatment, each Holder of an Allowed Administrative Claim other than a Professional Fee Claim, if any, shall be paid in Cash from the Carve-Out Reserve equal to the Allowed amount of such Administrative Claim, within fifteen (15) days after the Plan Effective Date, or the date that such Administrative Claim becomes an Allowed Administrative Claim, whichever is later, in full satisfaction, release and discharge of and exchange for such Administrative Claim. Except for Professional Fee Claims and U.S. Trustee fees, the Trustee is not aware of any unpaid Administrative Claims.

(ii) *Payment of Professional Fee Claims.* Except to the extent that such Holder has been paid prior to the Plan Effective Date, or agrees to a different treatment, each Holder of an Allowed Professional Fee Claim for services rendered and expenses incurred through the Plan Effective Date shall be paid the Allowed amount of such Professional Fee Claim in Cash from the Carve-Out Reserve within fifteen (15) days after the Plan Effective Date or the date that such Professional Fee Claim is Allowed by a Final Order of the Bankruptcy Court, whichever is later, in full satisfaction, release and discharge of and exchange for such Professional Fee Claim.

(iii) *Priority Tax Claims.* Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date, or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim, if any, in full satisfaction, release and discharge of and exchange for such Claim, shall be paid in Cash from the Carve-Out Reserve in amount equal to the amount of such Allowed Priority Tax Claim, together with interest thereon at the rate provided in 11 U.S.C. § 511 from the Commencement Date through the date such Claim is paid in full. Notwithstanding the foregoing, any penalty arising with respect to or in connection with an Allowed Priority Tax Claim shall be treated as a Class 2 Unsecured Claim against the Debtor. The Trustee is not aware of any unpaid Priority Tax Claims.

(iv) *U.S. Trustee Fees.* The Reorganized Debtor shall be responsible for timely payment of U. S. Trustee quarterly fees incurred in the Chapter 11 Case pursuant to 28 U.S.C. § 1930(a)(6). Any fees due as of the most recent quarterly invoice prior to the Confirmation Date will be paid in full in Cash from the Carve-Out Reserve within thirty (30) days after the

Plan Effective Date. After the Plan Effective Date, the Reorganized Debtor shall pay U.S. Trustee quarterly fees as they accrue until the Chapter 11 Case is closed by the Bankruptcy Court. The Trustee shall serve on the U.S. Trustee a quarterly financial report for each quarter (or portion thereof) that the Chapter 11 Case remains open.

B. Classified Claims and Interests

The following describes the Plan's classification of those Claims against, and Interests in, the Debtor required to be classified under the Bankruptcy Code:

(i) *Class 1 - Priority Non-Tax Claims*

Class 1 is comprised of Allowed Claims that would be entitled to a priority under Section 507(a) of the Bankruptcy Code other than a Priority Tax Claim or an Administrative Claim. The Trustee is not aware of any unpaid Priority Non-Tax Claims.

Under the Plan, each Holder of an Allowed Class 1 Priority Non-Tax Claim shall be paid in full the amount of such Allowed Class 1 Claim in Cash on the Plan Effective Date, or as soon thereafter as practicable, or upon such other terms as may be agreed upon between the Holder of such Allowed Class 1 Claim and the Debtor. Such payment shall be made from the Carve Out Reserve.

Class 1 Priority Claims are Unimpaired by the Plan and Holders of Class 1 Priority Claims, if any, are deemed to have accepted the Plan, and therefore, are not entitled to vote to accept or reject the Plan.

(ii) *Class 2 - Unsecured Claims*

Class 2 is comprised of all Allowed Unsecured Claims, if any, including Deficiency Claims, if any. The Debtor is not aware of any unpaid, undisputed Unsecured Claims other than the Unsecured Claim of Confirmed Debtor 2008 DBSI Notes Corporation, described in the Schedules, in the amount of \$648,247.00, the Holder of which is an Affiliate of the Debtor.

Under the Plan, no payment or other Distribution shall be made in respect of or on account of any Unsecured Claims until the Reinstated Loan Obligations have been satisfied and repaid in full and in Cash. Each Holder of an Allowed Unsecured Claim shall receive its Pro Rata Distribution, if any, from either the Reorganized Debtor's sale of its undivided interest in the Property, or the Reorganized Debtor's refinancing of the Reinstated Loan Obligations, in each case after (i) payment in full of all costs and expenses of such sale and (ii) payment in full of the Reinstated Loan Obligations. In the event that either the sale of the Debtor's interest in the Property or the refinancing of the Reinstated Loan Obligations generates insufficient cash proceeds for the payment of a Distribution on account of Unsecured Claims, then no Distribution shall be made in respect thereof under the Plan or otherwise.

Class 2 Unsecured Claims are Impaired by the Plan and Holders of Class 2 Unsecured Claims, if any, are entitled to vote to accept or reject the Plan.

(iii) Class 3 - Pre-Petition Lender Claims

Class 3 is comprised of the Pre-Petition Lender Claims. Under the Plan: (i) the Pre-Petition Lender Claims shall be Allowed as of the Plan Effective Date in the amount of \$11,667,000², and are not subject to any offset, defense, counterclaim, reduction, or credit of any kind whatsoever; (ii) the Pre-Petition Lender Claims shall be treated as Secured Claims; (iii) the Liens and security interests created pursuant to the Deed of Trust shall remain in full force and effect from and after the Plan Effective Date and shall continue to secure the Pre-Petition Lender Claims until the occurrence of the Restructure Effective Date, whereupon such Liens and security interests shall secure the Reinstated Term Note and the other Reinstated Loan Obligations, encumbering the entirety of the Property, including without limitation the undivided interests in the Property held by the Debtor and/or the Reorganized Debtor as well as the undivided interest in the Property held by the TIC Investors; (iv) the assignments, rights and interests conveyed by the Assignment of Rents shall remain in full force and effect from and after the Plan Effective Date and shall continue to secure the Pre-Petition Lender Claims until the occurrence of the Restructure Effective Date, whereupon the Assignment of Rents shall secure the Reinstated Term Note and the other Reinstated Loan Obligations, encumbering the entirety of the Property, including without limitation the undivided interests in the Property held by the Debtor and/or the Reorganized Debtor as well as the undivided interests in the Property held by the TIC Investors; and (v) on the Restructure Effective Date, the Reorganized Debtor shall execute and deliver to the Lender, on account of and in satisfaction of the Pre-Petition Lender Claims, the Reinstated Loan Documents and all such other documents, instruments and agreements which are conditions precedent to the Restructure Effective Date as set forth in Section 9.1 of the Plan. All Liens, security interests, charges, encumbrances and rights of setoff held by the Lender securing the repayment of the Pre-Petition Lender Claims shall remain in full force and effect upon the Confirmation of the Plan.

In the event that the Restructure Effective Date does not occur within 30 Business Days after the Confirmation Date, then the provisions of Section 9.3 of the Plan shall govern the rights of the Lender and the Reorganized Debtor.

The Pre-Petition Lender Claims in Class 3 are Impaired by the Plan and the Lender is entitled to vote to accept or reject the Plan.

(iv) Class 4 - Allowed Interests

Class 4 is comprised of all outstanding Interests in the Debtor. Under the Plan, the Allowed Interests shall remain in full force and effect in accordance with their terms and the legal, equitable, and contractual rights to which such Allowed Interests are entitled shall remain unaltered; provided, however, notwithstanding the foregoing, no Distributions of Cash, cash equivalents, or any other property or Assets of the Debtor or Reorganized Debtor shall be made on account of or in respect of the Allowed Interests unless and until the Class 3 Claims and the Class 2 Claims have been paid in full and in Cash.

² It is anticipated that by the Restructure Effective Date, this Allowed amount of the Pre-Petition Lender Claim shall be reduced by approximately, \$297,436.15, representing excess funds held by the Lender in the Existing Reserve that are not otherwise required to fund the reserves established under the Plan.

Holders of Interest in Class 4 are Unimpaired by the Plan and are not entitled to vote on the Plan.

V

MEANS FOR EXECUTION OF PLAN

A. Vesting of Assets

The Plan provides that upon the Plan Effective Date, pursuant to Section 1141(b) and (c) of the Bankruptcy Code, all Assets and property of the Debtor's Estate shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges, encumbrances or other interests, except as otherwise expressly provided in the Plan. From the Plan Effective Date until the Restructure Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the restrictions imposed in the Confirmation Order. From and after the Restructure Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the restrictions in the Reinstated Loan Documents and the Confirmation Order.

B. Retention of Liens and Encumbrances on the Property and Assets

Under the Plan, upon the Plan Effective Date, the Liens securing the Pre-Petition Lender Claims shall continue in full force and effect, and shall be (and shall be deemed) valid, enforceable, perfected and unavoidable Liens. Such Liens shall be subject in priority only to any Liens against the Property, if any, which are valid, perfected, enforceable and unavoidable and where were otherwise senior in priority to the Liens of the Lender as of the Commencement Date. From the Plan Effective Date until the Restructure Effective Date, the Liens in favor of the Lender shall secure the repayment of the Pre-Petition Lender Claims. Upon the occurrence of the Restructure Effective Date, the Liens in favor of the Lender shall secure the Reinstated Loan Obligations. Without limiting the generality of the foregoing, by operation of the Plan, the Lender shall have a first priority perfected Lien on all deposit accounts and investments of the Reorganized Debtor, wherever located, and whether in possession and control of the Reorganized Debtor, the Property Manager, or any other Person, and perfection of the Lender's Lien thereon shall be automatically effective upon the entry of the Confirmation Order without the necessity of any filing or the execution of any deposit account control agreements. The Lender shall be authorized, but not required, to file or record financing statements, notices of liens and other similar instruments or documents to evidence its Lien on the Reorganized Debtor's Assets.

C. Limited Liability Company Action

The Plan provides that upon the Plan Effective Date, all matters provided for and actions contemplated under the Plan that would otherwise require approval of the Holder of the Interests, managers or officers of the Debtor, or the Reorganized Debtor, shall be deemed authorized and approved in all respects, including, but not limited to the execution and delivery of the Reinstated Loan Documents. Upon the Plan Effective Date, the Trustee and the officers of the Reorganized Debtor shall be authorized and directed to issue, execute and deliver all agreements,

documents, securities and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan).

D. Establishment of the Carve Out Reserve

Under the Plan, upon the Plan Effective Date, the Reorganized Debtor shall deposit, from the available Cash generated by the Property, funds equal in amount to the \$30,000 Carve-Out Amount into an interest-bearing segregated deposit account (the “Carve Out Reserve”), titled in the name of the Reorganized Debtor, for purposes of paying the Allowed Professional Fee Claims, any other Allowed Administrative Claims, and the statutory fees due to the U.S. Trustee. The Lender shall retain a Lien on the Carve Out Reserve, but such Lien shall be subordinated to the prior payment of the Allowed Professional Fee Claims, other Allowed Administrative Claims, and the statutory fees payable to the U.S. Trustee.

E. Sale of the Property

Pursuant to section 4.5 of the Plan, from and after the Restructure Effective Date, the Reorganized Debtor shall, in collaboration with the TIC Investors, seek to market and sell the Property in a commercially reasonable manner consistent with the objective of maximizing the value of the Property within the relevant timeframe. The Reorganized Debtor shall be authorized to engage real estate brokers or other professionals to assist in the marketing and sale of the Property, without the need for any approval, authorization or consent (except for any consents required pursuant to the Reinstated Loan Documents). The Reorganized Debtor shall provide the TIC Investors and the Lender copies of all written offers which it or its agents receive from third parties for the purchase or other acquisition of the Property.

In the event that (i) the Reorganized Debtor and TIC Investors have not entered into a binding and unconditional contract to sell their respective interests in the Property on or before January 31, 2013, such contract being in form and substance satisfactory to the Lender, or (ii) the Reorganized Debtor has not entered into a binding and unconditional contract to sell its undivided interest in the Property on or before January 31, 2013 for an amount in excess of the outstanding Reinstated Loan Obligations, such contract being in form and substance satisfactory to the Lender, and if the Reinstated Loan Obligations remain outstanding, then the Reorganized Debtor shall initiate an auction of the Property in its entirety pursuant to Section 363(h) of the Bankruptcy Code, following the Auction Procedures, with the auction of the Property occurring no later than July 1, 2013. Such sale of the Property pursuant to Section 363(h) of the Bankruptcy Code shall be authorized by the Confirmation Order and by operation of the Plan and shall not be subject to or require further notice or hearing before the Bankruptcy Court or any further Order of the Bankruptcy Court, except as provided in the auction procedures set forth as Exhibit “A” to the Plan.

F. Management of the Property

Pursuant to section 4.6 of the Plan, following the Plan Effective Date, TIC Properties Management, LLC (the “Property Manager”) shall continue to manage the Property in accordance with that certain Property and Asset Management Agreement, dated as of March 16, 2009, by and among the Debtor, the TIC Investors, and the Property Manager, establishing

certain rights and obligations with respect to the Property Manager's management and administration of the Property (the "Property Management Agreement"); provided, however, to the extent that the Property Management Agreement conflicts with the terms of any of the Reinstated Loan Documents, including without limitation the cash management agreement to be executed on the Restructure Effective Date by and among the Reorganized Debtor, the Lender and the Property Manager, then the terms of the Reinstated Loan Documents shall control and the terms of the Property Management Agreement shall be deemed to be amended to conform to the terms of the applicable Reinstated Loan Documents.

G. No Distributions to TIC Investors

Section 4.8 of the Plan provides that notwithstanding any other term or condition of this Plan, neither the Debtor nor the Reorganized Debtor shall make any payments or distributions of any kind or nature to the TIC Investors from any Assets or property of the Debtor or the Reorganized Debtor, or any proceeds of the Property (including without limitation any Cash, rents, profits or other proceeds arising directly or indirectly from the Property), unless and until the Pre-Petition Lender Claims and the Reinstated Loan Obligations, as applicable, are fully paid in Cash and the Liens arising from the Deed of Trust and Assignment of Rents have been satisfied, discharged, and released of record.

VI **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption/Rejection of Executory Contracts and Unexpired Leases

(i) *Executory Contracts*

All executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed assumed by the Debtor as of the Plan Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Plan Effective Date, (ii) as to which a motion for approval of the assumption, assumption, and assignment, or rejection has been filed and served prior to the Confirmation Date, or (iii) that is specifically designated as a contract or lease to be assumed or rejected on Schedule 5.1 hereof or in the Plan Supplement. The listing of a contract or other agreement for assumption or rejection on Schedule 5.1 or in the Plan Supplement shall not constitute an admission by the Debtor or the Reorganized Debtor that such contract or document is an executory contract or an unexpired lease or that the Debtor or Reorganized Debtor have any liability thereunder.

(ii) *Insurance Policies*

Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by Order of the Bankruptcy Court, all of the Debtor's insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts under the Plan and shall be assumed pursuant to the Plan, effective as of the Plan Effective Date. To the extent the insurance policies are determined not to be executory contracts, they shall remain in full force and effect in accordance with their terms and shall be treated as unimpaired (as

defined in section 1124 of the Bankruptcy Code), including without limitation for purposes of payment of Claims for retrospective premiums, deductibles, and self-insurance retentions.

The Reorganized Debtor shall perform the obligations under the insurance policies, whether they are treated as executory or non-executory. The Plan shall not, and is not intended to, modify any of the rights or obligations of insurers or the Debtor under any of the insurance policies. Notwithstanding any other provision of the Plan and anything supervening or preemptory, the Reorganized Debtor shall be, and intend to remain, bound by all of the terms, conditions, limitations and/or exclusions contained in the insurance policies, which shall continue in full force and effect. Notwithstanding anything contained in the Plan to the contrary, to the extent that there is an inconsistency between the insurance policies and any provision of the Plan, the terms of the insurance policies shall control. No provision of the Plan shall (i) expand or alter any insurance coverage under any of the insurance policies, or shall be deemed to create any insurance coverage that does not otherwise exist, if at all, under the terms of the insurance policies, (ii) create any direct right of action against insurers that did not otherwise exist, and/or (iii) be construed as an acknowledgment either that the insurance policies cover or otherwise apply to any Claims or that any Claims are eligible for payment under any of the insurance policies.

B. Rejection Claims Bar Date

All proofs of claim with respect to claims arising from the rejection of an executory contract must be filed with the Bankruptcy Court within the later of (i) the date of service of notice of the Confirmation Date, (ii) notice of modification to Schedule 5.1 to the Plan or the Plan Supplement (solely with respect to the party directly affected by such modification), or (iii) the date of service of notice of such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults (solely with respect to the party directly affected by such modification). Any such claims, proofs of which are not filed timely, will be barred forever from assertion.

VII PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Disputed Claims

No payment or other distributions will be made to Holders of Claims unless and until such Claims are Allowed Claims pursuant to a Final Order. To the extent that a Disputed Claim becomes an Allowed Claim, the Reorganized Debtor shall distribute to the holder of such Claim the property distributable with respect to such Claim as soon as practicable after the later of (i) the date such Distribution is required for the applicable Class of such Claim, (ii) the date that the Order of the Bankruptcy Court allowing such Claim becomes a Final Order, (iii) the date on which any objection to such Disputed Claim has been withdrawn, or (iv) the date on which such Disputed Claim has been settled, compromised or otherwise resolved. To the extent that all or any portion of a Disputed Claim is disallowed, then the holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed.

B. Objections to Claims

Except as otherwise extended or ordered by the Bankruptcy Court, any objections to Claims must be filed no later than the Claims Objection Deadline. An objection to a Claim will be deemed properly served on the Holder thereof if service is effected by any of the following methods: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for a claimant is unknown, by first class mail, postage prepaid, on the signatory on the proof of Claim or other representative identified on the proof of Claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of the claimant or Interest Holder in the Chapter 11 Case.

C. *Settlement of Disputed Claims*

From and after the Plan Effective Date, the Reorganized Debtor shall have authority to settle any Disputed Claim, provided that the Allowed Amount of the Disputed Claim does not exceed \$5,000, without the necessity of notice and Bankruptcy Court approval. Any settlement of a Disputed Claim which requires allowance in an amount in excess of \$5,000 shall be subject to notice and Bankruptcy Court approval, unless ordered otherwise by the Bankruptcy Court upon separate motion and notice in the Bankruptcy Case.

D. *No Interest Pending Allowance*

To the extent that a Disputed Claim becomes an Allowed Claim after the Plan Effective Date, the holder of such Claim shall not be entitled to any interest thereon from the Plan Effective Date to the date such Claim becomes Allowed.

VIII

**CONDITIONS PRECEDENT TO EFFECTIVE DATE; REVOCATION,
WITHDRAWAL, OR NON-CONSUMMATION OF THE PLAN**

A. *Conditions Precedent to Plan Effective Date*

Pursuant to the Plan, the Plan Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full on or before March 15, 2011, or waived in accordance with Section 7.2 of the Plan:

- (1) The Confirmation Order, in form and substance acceptable to the Plan Proponent and the Lender, shall have been entered and shall not be subject to any stay or injunction;
- (2) All documents, agreements and instruments comprising the Plan Supplement shall have been Filed by the Plan Proponent in final form prior to the Confirmation Date and agreed to, in form and content, by the Lender;
- (3) The Debtor shall have sufficient Cash on hand (exclusive of any reserves or other funds held by the Lender) to fund the Carve-Out Reserve, and the Carve-Out Amount shall be sufficient in amount to pay all existing and anticipated Allowed Administrative Claims, Professional Fee Claims and Priority Claims; and

(4) The Debtor and the Lender shall have agreed on the terms of a budget detailing the projected income, operating expenses, capital expenditures, and other items relative to the Property for the calendar year 2011.

B. Waiver of Conditions

Each of the conditions precedent set forth above and in section 7.1 of the Plan may be waived in whole or in part by the Debtor, subject to the Lender's consent to any such waiver. Any such waiver may be effected at any time, without notice or leave or order of the Bankruptcy Court and without formal action.

C. Effective of Confirmation and Plan Effective Date

(i) *Binding Effect*

Upon the occurrence of the Plan Effective Date, this Plan shall be binding upon, and inure to the benefit of, the Debtor, the Trustee, all holders of Claims and Interests, and their respective successors and assigns.

(ii) *Vesting of Assets*

Upon the occurrence of the Plan Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the property of the Debtor's Estate shall vest in the Reorganized Debtor free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided herein, or in the Confirmation Order. Subject to the terms of the Plan and Confirmation Order, upon the Plan Effective Date, the Reorganized Debtor may operate its business and may use, acquire, and dispose of property and prosecute, compromise or settle any Claims (including any Administrative Claims) without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order.

(iii) *Property Free and Clear*

Except as otherwise provided in the Plan, or the Confirmation Order, all Assets that shall vest in the Reorganized Debtor shall be free and clear of all Claims, Interests, Liens, charges or other encumbrances of Creditors and Interest Holders. Following the Plan Effective Date, the Reorganized Debtor may transfer and dispose of any such Assets free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules and without further approval of the Bankruptcy Court or notice to Creditors, except as may otherwise be required under the Plan or the Confirmation Order.

(iv) *Injunctions or Stays*

Pursuant to Section 8.4 of the Plan, unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Plan Effective Date and the date indicated in the order providing for such injunction or stay. Pursuant to the Confirmation Order, all Holders of Claims or Equity

Interests and other parties in interest, including without limitation, the TIC Investors, and officers, members, managers, equity holders, and employees of the Debtor and Reorganized Debtor, if any, along with their respective present or former employees, agents, officers, directors, managers, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

(v) *Exculpation*

Subject to the occurrence of the Plan Effective Date, none of the Debtor, the Chapter 11 Trustee, the Trustee, the Creditors' Committee and its members, the Lender, or their respective directors, managers, officers, employees, partners, members, agents, representatives, accountants, financial advisors, investment bankers, or attorneys (but solely in their capacities as such) shall have or incur any liability for any Claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, or arising out of, the Chapter 11 Case, the formulation, dissemination, confirmation, consummation, or administration of this Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Case, this Plan, or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing shall not affect the liability of any Person that would otherwise result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, actual fraud, or criminal conduct, or intentional unauthorized misuse of confidential information that causes damages.

(vi) *Releases by Holders of Claims and Equity Interests*

Pursuant to the Plan, effective as of the Confirmation Date, but subject to the occurrence of the Plan Effective Date, and in consideration of compromises integral to the Plan, each holder of a Claim or Equity Interest that votes to accept the Plan (or is deemed to accept the Plan) shall be deemed to release, unconditionally and forever, the Lender, the Chapter 11 Trustee, the DBSI Real Estate Liquidating Trust, the Trustee, the Creditors' Committee and its members, and each of their respective present and former members, officers, directors, managers, agents, financial advisors, attorneys, employees, equity holders, parent corporations, subsidiaries, partners, affiliates, and representatives from any and all claims or Causes of Action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtor, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such Holder, the business or contractual arrangements between the Debtor and such Holder, any restructuring of such Claim or equity prior to the Petition Date, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; provided, that the foregoing shall not operate as a waiver of or release from any Causes of Action arising out of the willful misconduct, gross negligence, actual fraud, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages of any such Person or Entity.

(vii) *Releases by Debtor and Estate Representatives*

Effective as of the Confirmation Date but subject to the occurrence of the Plan Effective Date, and in consideration of the compromises integral to the Plan, the Debtor, the Reorganized Debtor, and the DBSI Real Estate Liquidating Trust shall release and be deemed to release, unconditionally and forever, each of (a) the Chapter 11 Trustee, the Trustee, the Creditors' Committee and its members (in their capacity as such), and (b) the Lender and its respective present and former directors, managers, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives from any and all Claims or Causes of Action that exist as of the Plan Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtor (prior to or after the Commencement Date), the business or contractual arrangements and transactions between the Debtor and any such Person or Entity, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; provided, that the foregoing shall not operate as a waiver of or release from any Causes of Action arising out of the gross negligence, fraud, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages of any such Person or Entity.

(viii) *Limitation on Exculpation and Releases*

Nothing in sections 8.5, 8.6, or 8.7 of the Plan shall: (i) be construed to release or exculpate any Entity from actual fraud, malpractice, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages; (ii) limit the liability of the Professionals of the Debtor, the Trustee, the Chapter 11 Trustee or the Creditors' Committee to their respective clients pursuant to the relevant provisions of the Code of Professional Responsibility; or (iii) act as an exculpation or release of any Claims or Causes of Action arising from or related to the Confirmed Debtors' chapter 11 cases or the Consolidated Non-Debtors (as such term is defined in the Confirmed Debtors' Plan).

(ix) *Good Faith*

Confirmation of the Plan shall constitute a finding that: (i) the Plan has been proposed by the Debtor in good faith and in compliance with applicable provisions of the Bankruptcy Code; (ii) is in furtherance of and complaint with the Debtor's fiduciary duties; and (iii) all Persons' solicitations of acceptances or rejections of the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

D. *Conditions Precedent to Restructure Effective Date*

The Restructure Effective Date shall not occur until:

- (1) the occurrence of the Plan Effective Date prior to March 15, 2011;
- (2) the Confirmation Order shall have become a Final Order and be in form and substance satisfactory to the Lender;
- (3) the Reorganized Debtor's execution and delivery to the Lender of the Reinstated Loan Agreement, the Reinstated Term Note, the Cash Management Agreement, and each of the other related agreements, instruments, and documents

comprising or related to the Reinstated Loan Documents, each in form and substance satisfactory to the Lender;

(4) the Reorganized Debtor's having Cash on hand, either in its direct possession or in the possession of the Property Manager for the benefit of the Reorganized Debtor, of not less than \$70,000 (exclusive of the Carve Out Amount and other reserves held by the Lender);

(5) all of the representations, warranties and covenants contained in the Reinstated Loan Agreement and the other Reinstated Loan Documents shall be true and correct in all material respects;

(6) the Reorganized Debtor shall have caused the Property Manager to execute and deliver to the Lender an agreement acknowledging the Lender's rights under the Reinstated Loan Documents and agreeing, among other things, to continue to serve as Property Manager with respect to the Property upon the occurrence of an event of default under the Reinstated Loan Agreement, such agreement to be in form and substance satisfactory to the Lender;

(7) the Lender's satisfactory review of leases or subleases in effect with respect to the Property and evidence that each of such leases or subleases is properly executed and binding between the Reorganized Debtor and the TIC Investors, on the one hand, as their respective interests appear, and each of the individual tenants at the Property, on the other;

(8) copies of the organization documents of the Reorganized Debtor certified to be true and complete as of a recent date by the appropriate Governmental Authority of the State of Delaware, and certified by a secretary or assistant secretary of the Reorganized Debtor to be true and correct as of the Restructure Effective Date;

(9) good standing certificates of the Reorganized Debtor in (A) the State of Delaware and (B) in the State of Missouri;

(10) the Lender's satisfactory review of search of Uniform Commercial Code filings, judgment liens, tax liens and other filings against all or a portion of the Property;

(11) duly executed deposit account control agreements requested by the Lender with respect to any deposit accounts of the Reorganized Debtor or deposit accounts of the Property Manager holding Cash proceeds derived from the Property;

(12) endorsements of the title insurance policies with respect to the Property, bringing down the coverage under such policy to the Restructure Effective Date and confirming coverage issued by the title insurance company reasonably acceptable to the Lender, assuring the Lender that the Deed of Trust continues to create a valid and enforceable first priority mortgage lien on the Property, free and clear of all defects and encumbrances except for those permitted under the Reinstated Loan Agreement, which policies shall otherwise be in form and substance reasonably satisfactory to the Lender;

- (13) receipt by the Lender of copies of insurance policies or certificates of insurance of the Reorganized Debtor evidencing liability and casualty insurance meeting the requirements set forth in the Reinstated Loan Documents or otherwise satisfactory to the Lender, including, but not limited to, naming the Lender as an additional insured (in the case of liability insurance) and loss payee or mortgagee (in the case of hazard insurance);
- (14) receipt by the Lender of estoppel certificates from each of the tenants at the Property, such certificates to be in form and substance satisfactory to the Lender;
- (15) the Reorganized Debtor shall be in compliance with all of the terms and conditions of the Plan and the Confirmation Order; and
- (16) no event or condition shall exist which would constitute an Event of Default under any of the Reinstated Loan Documents after notice or lapse of time or both.

E. Effect of Restructure Effective Date

Upon the occurrence of the Restructure Effective Date, (a) the Reinstated Loan Documents shall become valid, binding and effective between the Lender and the Reorganized Debtor, and their respective successors and assigns; (b) the Pre-Petition Lender Claims shall be restated upon the terms and conditions set forth in the Reinstated Loan Documents and shall be due and payable as set forth therein; and (c) the Deed of Trust and the Assignment of Leases, and all other Liens held by the Lender upon all Assets of the Debtor or Reorganized Debtor, shall continue in full force and effect to secure the Reinstated Loan Obligations, without the necessity of any filing, recording or other means of perfection with respect to such Liens. Upon the occurrence of the Restructure Effective Date, the Reorganized Debtor shall File a notice with the Bankruptcy Court stating that the Restructure Effective Date has occurred and serve such notice on all Holders of Claims and Interests as well as the TIC Investors.

F. Failure of Restructure Effective Date

If the Restructure Effective Date has not occurred by within 30 Business Days after the Confirmation Date, or such later date agreed to in writing by the Lender, then, by operation of the Plan and the Confirmation Order, the Lender shall have immediate relief from the automatic stay of Section 362 of the Bankruptcy Code, and any other injunction or stay in effect with respect to the Reorganized Debtor or the Property, to enforce its remedies against the Property and any Collateral securing its Claims without further hearing before or Order of the Bankruptcy Court, such remedies to include, without limitation, the initiation, pursuit and completion of foreclosure with respect to the Property, seeking and obtaining the appointment of a receiver with respect to the Property, and exercising its rights of setoff or recoupment of any kind with respect to any deposit accounts, reserve accounts or similar accounts holding Collateral securing its Claims. Without limiting the generality of the foregoing, upon the failure of the Restructure Effective Date, by operation of the Plan and the Confirmation Order, the Lender shall not be stayed or enjoined from exercising its remedies against the Property and any other Collateral by

the conversion of the Chapter 11 Case to one administered under Chapter 7 of the Bankruptcy Code or otherwise.

In the alternative, at the election of the Lender upon written notice to the Reorganized Debtor (such notice being referred to herein as the “Lender Sale Notice” and the date of delivery of such notice to the Reorganized Debtor as the “Notice Delivery Date”), if the Restructure Effective Date has not occurred within 30 Business Days after the Confirmation Date, or such later date agreed to in writing by the Lender, then the Reorganized Debtor shall initiate an auction of the Property in its entirety pursuant to Section 363(h) of the Bankruptcy Code, following the Auction Procedures, with the auction of the Property occurring no later than sixty (60) days after the Notice Delivery Date. Such sale of the Property pursuant to Section 363(h) of the Bankruptcy Code shall be authorized by the Confirmation Order and by operation of the Plan and shall not be subject to or require further notice or hearing before the Bankruptcy Court or any further Order of the Bankruptcy Court except as specified in the Auction Procedures with respect to confirming the successful bidder for such sale. The Lender shall be entitled to credit bid all or any portion of its Pre-Petition Lender Claims at any such auction. To the extent that the TIC Investors, or any of them, qualifies as a Qualified Bidder (as defined in the Auction Procedures), they shall be permitted to bid, in Cash, at any such auction.

IX

ADMINISTRATIVE PROVISIONS

A. Retention of Jurisdiction

Article X of the Plan provides that, on or after the Confirmation Date, and notwithstanding the entry of the Confirmation Order or occurrence of the Plan Effective Date and the Restructure Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of the Chapter 11 Case and all matters arising under, arising out of, or related to the Chapter 11 Case and the Plan, to the fullest extent permitted by law, including, among other things, jurisdiction:

- (1) to hear non-core proceedings related to the Chapter 11 Case, including, without limitations, matters concerning the interpretation, implementation, consummation, execution, or administration of the Plan;
- (2) over motions to assume, reject, or assume and assign executory contracts or unexpired leases, and the allowance or disallowance of any Claims resulting therefrom;
- (3) over disputes concerning the ownership of Claims or Interests;
- (4) over disputes concerning the distribution or retention of consideration under the Plan;
- (6) over proceedings to determine the extent, validity, and/or priority of any Lien asserted against property of the Debtor, its Estate, or property abandoned or transferred by the Debtor, the Chapter 11 Trustee, the Estate, or the Trustee;

- (7) over proceedings to determine the amount, if any, of interest to be paid to Holders of Allowed Unsecured Claims if any Allowed Unsecured Claims are paid in full pursuant to the terms of the Plan;
- (9) to consider and approve modifications of or amendments to the Plan, to cure any defects or omissions or to reconcile any inconsistencies in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (10) to issue orders in aid of execution, implementation, or consummation of the Plan;
- (11) over disputes arising from or relating to the Plan, the Confirmation Order, or any agreements, documents, or instruments executed in connection therewith;
- (12) over conflicts and disputes between the DBSI Liquidating Trustee, the DBSI Liquidating Trust, and Holders of Claims or Interests; and
- (13) to enter a Final Decree closing the Chapter 11 Case.

B. Miscellaneous

(i) *Effectuating Documents and Further Transactions*

The Trustee and the Reorganized Debtor are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

(ii) *Tax Exemption*

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

(iii) *Expedited Tax Determination*

The Debtor is authorized to request an expedited determination of taxes under Sections 346, 505(b) and 1146(b) of the Bankruptcy Code for any and all taxable periods (or portions thereof) ending after the Commencement Date through, and including, the Plan Effective Date.

(iv) *Final Order*

Except as otherwise expressly provided herein, any requirement in the Plan for a Final Order may be waived by the Debtor in consultation with the Lender upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any Order that is not a Final Order.

(v) *Setoff and Recoupment Rights Preserved*

Except as otherwise provided in the Plan, the Debtor may exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made or account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the Holder of such Allowed Claim. Setoff is an equitable right that allows parties to cancel or offset mutual debts to each other by asserting the amounts owed, subtracting one from the other, and paying only the balance. Setoff avoids what has been called the “absurdity of making A pay B when B owes A.”

In the context of the Plan, recoupment is the right of the Debtor to have an Allowed Claim reduced by reason of some claim the Debtor has against the Holder of the Allowed Claim arising out of the very transaction giving rise to the Claim.

Although the Debtor has discretion to exercise the right of setoff or recoupment, neither the failure to effect a setoff or recoupment nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any such claims, rights and causes of action that the Debtor may possess against such Holder.

(vi) *Post-Confirmation Date Professional Fees and Expenses*

From and after the Plan Effective Date, the Reorganized Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of Professionals thereafter incurred by the Reorganized Debtor after the Plan Effective Date.

(vii) *Plan Supplement*

A draft form of each of the Reinstated Loan Documents and other appropriate documents shall be contained in the Plan Supplement and Filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the last date by which Holders of impaired Claims may vote to accept or reject the Plan. Upon its Filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Copies of the Plan Supplement may also be obtained upon written request from counsel for the Trustee.

(viii) *Notices*

Any notice, request, or demand required or permitted to be given to the Debtor, the Reorganized Debtor, or the Trustee in connection with the Plan shall be (a) in writing, (b) served by certified mail, return receipt requested, hand delivery, (iii) overnight delivery, (iv) first class mail, or (v) fax transmission, and (c) deemed to have been given or made when actually delivered or received addressed as follows:

- to the Trustee:

Mark B. Conlan, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310

with copies to:

Conrad Myers
Myers & Co.
6327 SW Capitol Highway
Suite 222
Portland, OR 97201

(ix) *Amendments and Modifications*

Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Plan Proponent at any time prior to the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment of Holders of Claims or Equity Interests under the Plan, the Debtor may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan, but no amendments, modifications or revisions may be made to the Plan absent the consent of the Lender.

(x) *Revocation or Withdrawal of the Plan*

The Debtor reserves the right to revoke or withdraw the Plan prior to the Plan Effective Date. If the Debtor takes such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims against or Equity Interests in the Debtor, any claims or rights of the Debtor against any other Person, or to prejudice in any manner the rights of the Debtor or any other Person in any further proceedings involving the Debtor.

(xi) *Substantial Consummation*

The Plan shall be not deemed to be substantially consummated under Sections 1101 and 1127(b) of the Bankruptcy Code unless and until (a) the Reinstated Loan Obligations have fully repaid in Cash through either the sale of the Property or the refinancing of such Obligations, and (b) the Distributions contemplated to be made to the Holders of Allowed Unsecured Claims under the Plan have been fully and finally paid by the Reorganized Debtor.

(xii) *Governing Law*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule or document in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri, without giving effect to the principles of conflict of laws thereof.

(xiii) *Binding Effect*

The Plan shall be binding upon and inure to the benefit of the DBSI Real Estate Liquidating Trust, the Reorganized Debtor, the Trustee, the Holders of Allowed Claims and Equity Interests, and their respective successors and assigns.

(xiv) *No Admissions*

Notwithstanding anything contained in the Plan to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor with respect to any matter therein, including, without limitation, liability on any Claim or the propriety of a Claim's classification.

(xv) *Non-Consensual Confirmation*

Pursuant to the "cramdown" provisions of Section 1129 of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan if at least one Impaired Class of Claims has accepted the Plan (with such acceptance being determined without including the acceptance of any "insider" in such Class) and, as to each Impaired Class of Claims against or Interests in the Debtor that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Impaired Class.

X

TAX CONSEQUENCES OF PLAN

SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO THE TAX ISSUES DISCUSSED BELOW. THEREFORE, EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL OR OTHER TAX CONSEQUENCES OF THE PLAN. NO RULINGS HAVE BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. ALL CREDITORS ARE URGED TO CAREFULLY REVIEW THE TAX DISCLOSURE PROVIDED HEREIN.

The following are the tax consequences that the Plan will have on the Debtor's tax liability:

A. Holders of Claims - Generally

The tax consequences of the Plan to a Holder of a Claim that receives consideration under the Plan will depend, in part, on the type of consideration received in exchange for the Claim, whether the Holder is a resident of the United States for tax purposes, whether the Holder reports income on the accrual or cash basis method, and whether the Holder receives distributions under the Plan in more than one taxable year. Holders of Claims are strongly advised to consult their tax advisors with respect to the tax treatment of their particular Claims under the Plan.

If under the Plan, a Holder of a Claim simply maintains such Holder's contractual rights against the Debtor such that any modifications under the Plan would not constitute a significant modification of the Claim, no deemed taxable exchange of the original obligation for a modified

obligation would be triggered. Thus, unless a Holder of a Claim receives a new Claim that differs “materially either in kind or extent” from its existing position, the exchange will not be recognized for federal income tax purposes. Treas. Regs. §§1.1001-1(a) and 1.1001-3(b). A Holder of a Claim that under the Plan receives in respect of its Claim an amount that is less than the Holder’s tax basis in such Claim may be entitled, in the year of a receipt or in an earlier year, to a bad debt deduction under IRC section 166. A Holder of a Claim otherwise satisfying the requirements for a bad debt deduction pursuant to IRC section 166 will be entitled to a deduction with respect to such Claim only if (i) such Holder is a corporation or (ii) such Claim constituted a debt created or acquired (as the case may be) in connection with a trade or business of such Holder, or a debt the loss from the worthlessness of which is incurred in such Holder’s trade or business.

A Holder of a Claim that has previously recognized a loss or deduction in respect of its Claim may be required to include in its gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder’s adjusted basis in such Claim. In general, payments in respect of the principal amount of any post-petition debt will not be includable in the Holder’s income for federal income tax purposes. However, to the extent that a Holder (i) has previously claimed a deduction for worthlessness in respect of such Claim, (ii) has a tax basis for its Claim less than the principal amount, or (iii) holds its Claim other than as a result of lending the principal amount thereof to the Debtor, such a Holder may realize taxable income and should consult with its own tax advisor as to the proper tax treatment of the receipt of such payments. A Holder generally will recognize ordinary income to the extent that a payment is allocated to interest, provided that such interest has not been included previously in the Holder’s income for tax purposes under such Holder’s method of accounting.

B. Unclassified Claims

(i) **Administrative Claims.** Because, under the Plan, Holders of Ordinary Course Administrative Claims will be paid the full Allowed Amount of such Claims, the Plan will not generate any independent federal income tax consequences to such Holders. The tax consequences to such a Holder upon receipt of payment pursuant to the Plan will be identical to the tax consequences that would have occurred had those Holders simply collected such amounts from the respective Debtor in due course.

(ii) **Priority Tax Claims.** In part because Holders of Priority Tax Claims are generally governmental authorities that are not subject to federal income tax, there should be no federal income tax consequences to such Holders as a result of Confirmation of the Plan.

C. Classified Claims and Interests

- (i) **Class 2 Claims (Priority Non-Tax Claims).** Because each Holder of an Allowed Priority Non-Tax Claim will be paid the Allowed Amount of such Claim in full, there should be no federal income tax consequences to the Holders of Class 1 Claims as a result of Confirmation of the Plan.
- (ii) **Class 2 Claims (Unsecured Claims).** Because each Holder of an Allowed Class 2 Claim may not receive 100% of the Allowed Amount of such Claim, Holders of

Class 2 Claims will likely not recognize ordinary income upon receipt of payments pursuant to the Plan to the extent the payments does not exceed the claimant's tax basis in their Claims (if any, and adjusted to reflect any losses or deductions previously taken in respect of such Claims).

- (iii) Class 3 (Pre-Petition Lender Claim). Because Holders of Class 3 Impaired Claims will only receive repayment of the outstanding debt on the pre-petition loan, there should be no federal income tax consequences to the Holders of Class 3 Claims as a result of Confirmation of the Plan.
- (iv) Class 4 (Interests). Because the shareholders of the Debtor will retain their Interests under the Plan, there should be no federal income tax consequences to the Holders of Interests in the Debtor as a result of Confirmation of the Plan.

THE FOREGOING IS A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN COULD BE COMPLEX AND, IN MANY AREAS, UNCERTAIN. THEREFORE, EACH HOLDER OF A CLAIM IS STRONGLY URGED NOT TO RELY ON THE FOREGOING AND TO CONSULT HIS OR HER OWN TAX ADVISOR REGARDING SUCH CONSEQUENCES.

I **RISK FACTORS**

Holders of Claims against the Debtor should read and consider carefully the factors set forth below, as well as the other information set forth in the Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

A. Non-Confirmation of the Plan

Even if all Impaired Classes accept or could be deemed to have accepted the Plan, the Plan may not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things: (a) that the Confirmation of the Plan not be followed by a need for further liquidation or reorganization; (b) that the value of Distributions to dissenting Holders not be less than the value of Distributions to such Holders if the Debtor was liquidated under chapter 7 of the Bankruptcy Code; and (c) that the Plan and the Debtor otherwise comply with the applicable provisions of the Bankruptcy Code. Although the Debtor believes that the Plan will meet all applicable tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications will not necessitate the re-solicitation of votes. If objections are asserted to the Plan, the resolution of any such objections through litigation or otherwise may require delay and additional expense of a degree that cannot be predicted at this time.

B. Non-Occurrence or Delayed Occurrence of the Plan Effective Date and the Restructure Effective Date

Although the Debtor believes that the Plan Effective Date will occur after the Confirmation Date and the Restructure Effective Date will occur after the Plan Effective Date following satisfaction of any applicable conditions precedent, as applicable, there can be no assurance as to the timing of the Plan Effective Date and/or the Restructure Effective Date. Any delay in Confirmation and effectiveness of the Plan could result in, among other things, loss of the Debtor's interest in the Property and increased Administrative Claims. These or any other negative effects of delays in Confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court.

II

REQUIREMENTS FOR CONFIRMATION

The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court must make a series of findings concerning the Plan and the Plan Proponent, including that (i) the Plan has classified Claims in a permissible manner; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Plan Proponent has complied with applicable provisions of the Bankruptcy Code; (iv) the Plan Proponent has proposed the Plan in good faith and not by any means forbidden by law; (v) the disclosure required by Section 1125 of the Bankruptcy Code has been made; (vi) the Plan has been accepted by the requisite votes of Creditors or Interest Holders in each class (except to the extent that cramdown is available under Section 1129(b) of the Bankruptcy Code); (vii) the Plan is feasible and confirmation is not likely to be followed by further financial restructuring of the Reorganized Debtor; (viii) the Plan is in the "best interests" of all Holders of Claims or Interests in an Impaired class; and (ix) all fees and expenses payable under 28 U.S.C. Section 1930, as determined by the Bankruptcy Court at the hearing on confirmation, have been paid or the Plan provides for the payment of such fees on the Effective Date. The Debtor believes that the Plan satisfies all the requirements for confirmation.

A. Classification of Claims

Section 1122 of the Bankruptcy Code requires the Plan to place a Claim in a particular Class only if such Claim is substantially similar to the other Claims in such class. The Plan creates separate classes to deal respectively with priority claims, secured claims and unsecured claims. The Plan Proponent believes the Plan's classifications place substantially similar Claims in the same class and, thus, meet the requirements of section 1122 of the Bankruptcy Code.

B. Voting and Acceptance of the Plan

As a condition to confirmation of the Plan, the Bankruptcy Code requires each class of "impaired" Claims entitled to vote on the Plan to vote to accept the Plan. The Bankruptcy Code defines acceptance of a plan by a class of Creditors as acceptance by Holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) number of those claims actually voting. Holders of Claims who fail to vote will not be counted as either accepting or rejecting the Plan. A vote, moreover, may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that it was not made or solicited in good faith.

Classes of claims that are not "impaired" under a plan of orderly liquidation are conclusively presumed to have accepted the plan and, therefore, are not entitled to vote. Classes

of claims that receive no distribution under a plan are conclusively presumed to have rejected the plan and are not entitled to vote.

C. Best Interests Test

The “best interests” of creditors test requires that each Holder of a Claim receive or retain under the Plan property of a value that is not less than the value such Holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. To determine what members of each impaired Class of Claims would receive if the Debtor were liquidated, the Bankruptcy Court must determine the dollar amount that a liquidation of the Debtor’s assets would generate in the context of a Chapter 7 liquidation sale. The amount available for satisfaction of Claims would consist of the proceeds resulting from the sale, reduced by the Claims of secured creditors, to the extent of the value of their collateral, and the costs and expenses of the liquidation.

Annexed as Exhibit “B” hereto is a liquidation analysis prepared by the _____, reflecting a greater distribution to creditors pursuant to the Plan than creditors would receive in a hypothetical Chapter 7 case. Based upon the liquidation analysis, the Debtor submits that the sale of the Property in an orderly manner over a period of approximately two (2) years, as proposed under the Plan, is more beneficial to the Holders of Claims than a forced liquidation under chapter 7 because the Plan allows the Property to be sold over a period of time taking into account marketplace conditions and efficiencies of scale in order to maximize that asset. Additionally, conversion to chapter 7 would eliminate potential distribution to creditors other than the Lender, as the Lender would simply foreclose on the Property.

D. Financial Feasibility Test

In order to confirm a plan, the Bankruptcy Code requires the Bankruptcy Court to find that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”). Thus, for a plan to meet the Feasibility Test, the Bankruptcy Court must find that there is a reasonable likelihood that the reorganized debtor will possess the working capital and other resources necessary to meet its obligations under the plan. Because the Plan provides for the Lender to retain the Property if the Debtor fails to meet its obligations under the Plan, and the Property is the only significant asset of the Debtor, no further financial reorganization of the Debtor will be possible, and because the Estates will be able to satisfy all Administrative, Secured and Priority Claims in accordance with the requirements of the Bankruptcy Code, the Plan Proponent believes that the Plan meets the feasibility requirement.

E. The Fair and Equitable Test

If any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan despite such non-acceptance under the “cram down” provisions set forth in Section 1129(b) of the Bankruptcy Code. To obtain such confirmation, the Plan Proponent must show, among other things, that the Plan “does not discriminate unfairly” against and is “fair and equitable” with respect to each impaired Class of Claims that has rejected the Plan.

Under section 1129(b) of the Bankruptcy Code, a plan is “fair and equitable” to a class if, among other things, the plan provides: (a) with respect to secured claims, that each Holder of a claim included in the rejecting class will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interest, that the Holder of any claim or equity interest that is junior to the claims or equity interest of such class will not receive or retain on account of such junior claim or equity interest any property at all unless the senior class is paid in full. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are similar to those of the dissenting class and if no class receives more than it is entitled to receive on account of its claim or interest.

F. Other Requirements of Section 1129

The Plan Proponent believes that the Plan meets all the other technical requirements of section 1129 of the Bankruptcy Code, including that the Plan has been proposed in good faith.

THE PLAN PROPONENT SHALL SEEK CONFIRMATION OF THE PLAN IF LESS THAN THE REQUISITE AMOUNTS OF CLAIMS OR INTERESTS IN ANY ONE OR MORE CLASSES VOTE TO ACCEPT THE PLAN.

Dated: February 8, 2011

GIBBONS P.C.

Natasha Songonuga (Bar No. 5391)
1000 N. West Street, Suite 1200
Wilmington, DE 19801-1058
T (302) 295-4875
F (302) 295-4876
E-mail: nsongonuga@gibbonslaw.com

- and -

Mark B. Conlan (admitted *pro hac vice*)
One Gateway Center
Newark, NJ 07102-5310
E-mail: mconlan@gibbonslaw.com
T (973) 596-4500
F (973) 596-0545

*Attorneys for Conrad Myers as the Liquidating Trustee
for the DBSI Real Estate Liquidating Trust*

EXHIBIT A

**FLORISSANT MARKET PLACE ACQUISITION LLC'S PLAN OF
REORGANIZATION**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

DBSI INC., ET AL.¹,

Debtors.

Chapter 11

Case No. 08-12687 (PJW)

(Jointly Administered)

In re:

FLORISSANT MARKET PLACE
ACQUISITION LLC,

Debtor.

Chapter 11

Case No. 09-10081 (PJW)

**FLORISSANT MARKET PLACE ACQUISITION LLC'S PLAN OF
REORGANIZATION**

¹ The last four digits of DBSI Inc.'s federal tax identification number are 5037. The mailing address for DBSI Inc. is 12426 West Explorer Drive, Suite 220, Boise, Idaho 83713.

Dated: February 8, 2011

GIBBONS P.C.

Natasha Songonuga (Bar No. 5391)

1000 N. West Street, Suite 1200

Wilmington, DE 19801-1058

T (302) 295-4875

F (302) 295-4876

E-mail: nsongonuga@gibbonslaw.com

- and -

Karen A. Giannelli (admitted *pro hac vice*)

Mark B. Conlan (admitted *pro hac vice*)

One Gateway Center

Newark, NJ 07102-5310

E-mail: kgiannelli@gibbonslaw.com

E-mail: mconlan@gibbonslaw.com

T (973) 596-4500

F (973) 596-0545

- and -

Jeffrey S. Berkowitz (admitted *pro hac vice*)

One Pennsylvania Plaza, 37th Floor

New York, NY 10119

E-mail: jberkowitz@gibbons.com

T (212) 613-2000

F (212) 290-2018

*Attorneys for Conrad Myers as the Liquidating Trustee
for the DBSI Real Estate Liquidating Trust*

TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION	1
A. Rules of Construction	1
B. Defined Terms	1
1.1 <i>Administrative Claim</i>	1
1.2 <i>Administrative Claim Bar Date</i>	1
1.3 <i>Administrative Claim Objection Deadline</i>	1
1.4 <i>Affiliate</i>	1
1.5 <i>Allowed</i>	1
1.6 <i>Assets</i>	2
1.7 <i>Assignment of Rents and Leases</i>	2
1.8 <i>Auction Procedures</i>	2
1.9 <i>[Intentionally omitted.]</i>	2
1.10 <i>Ballot</i>	2
1.11 <i>Bankruptcy Code</i>	2
1.12 <i>Bankruptcy Court</i>	2
1.13 <i>Bankruptcy Rules</i>	2
1.14 <i>Bar Date</i>	3
1.15 <i>Business Day</i>	3
1.16 <i>Carve Out Amount</i>	3
1.17 <i>Cash</i>	3
1.18 <i>Cash Management Agreement</i>	3
1.19 <i>Causes of Action</i>	3
1.20 <i>Chapter 11 Case</i>	3
1.21 <i>Chapter 11 Trustee</i>	3
1.22 <i>Claim</i>	4
1.23 <i>Claims and Noticing Agent</i>	4
1.24 <i>Claims Objection Deadline</i>	4
1.25 <i>Class</i>	4
1.26 <i>Collateral</i>	4
1.27 <i>Commencement Date</i>	4
1.28 <i>Confirmation</i>	4
1.29 <i>Confirmation Date</i>	4
1.30 <i>Confirmation Hearing</i>	4
1.31 <i>Confirmation Order</i>	4
1.32 <i>Confirmed Debtors</i>	4
1.33 <i>Confirmed Debtors' Plan</i>	5
1.34 <i>Cramdown Plan</i>	5
1.35 <i>Creditor</i>	5
1.36 <i>Creditors Committee</i>	5
1.37 <i>DBSI</i>	5
1.38 <i>DBSI Real Estate Liquidating Trust</i>	5
1.39 <i>DBSI Real Estate Liquidating Trust Agreement</i>	5
1.40 <i>DBSI Real Estate Liquidating Trust Professionals</i>	5
1.41 <i>DBSI Real Estate Liquidating Trustee</i>	5

1.42	<i>Debtor</i>	5
1.43	<i>Deed of Trust</i>	5
1.44	<i>Deficiency Claim</i>	6
1.45	<i>Disallowed</i>	6
1.46	<i>Disputed</i>	6
1.47	<i>Distribution</i>	6
1.48	<i>Entity</i>	6
1.49	<i>Estate</i>	6
1.50	<i>Estate Representative</i>	6
1.51	<i>Executory Contract</i>	6
1.52	<i>Existing Reserve</i>	7
1.53	<i>Exhibit</i>	7
1.54	<i>Fee Application</i>	7
1.55	<i>File, Filed or Filing</i>	7
1.56	<i>Final Decree</i>	7
1.57	<i>Final Order</i>	7
1.58	<i>Holder</i>	7
1.59	<i>Impaired</i>	7
1.60	<i>Intercreditor Agreement</i>	7
1.61	<i>Interest</i>	7
1.62	<i>IRC</i>	8
1.63	<i>Lender</i>	8
1.64	<i>Lien</i>	8
1.65	<i>Local Rules</i>	8
1.66	<i>M&I Bank</i>	8
1.67	<i>Order</i>	8
1.68	<i>Person</i>	8
1.69	<i>Plan</i>	8
1.70	<i>Plan Effective Date</i>	8
1.71	<i>Plan Proponent</i>	8
1.72	<i>Plan Supplement</i>	8
1.73	<i>Pre-Petition Lender Claims</i>	9
1.74	<i>Pre-Petition Loan Agreement</i>	9
1.75	<i>Priority Claim</i>	9
1.76	<i>Priority Tax Claim</i>	9
1.77	<i>Professional</i>	9
1.78	<i>Professional Fee Claim</i>	9
1.79	<i>Proof of Claim</i>	9
1.80	<i>Property</i>	9
1.81	<i>Property Manager</i>	9
1.82	<i>Property Management Agreement</i>	9
1.83	<i>Pro Rata</i>	9
1.84	<i>Reinstated Loan Agreement</i>	10
1.85	<i>Reinstated Loan Documents</i>	10
1.86	<i>Reorganized Debtor</i>	10
1.87	<i>Restructure Effective Date</i>	10

1.88	<i>Scheduled</i>	10
1.89	<i>Schedules</i>	10
1.90	<i>Secured Claim</i>	10
1.91	<i>Secured Tax Claim</i>	10
1.92	<i>Swap Agreement</i>	10
1.93	<i>Taxes</i>	10
1.94	<i>TIC Investors</i>	11
1.95	<i>Trustee</i>	11
1.96	<i>Unimpaired</i>	11
1.97	<i>Unsecured Claim</i>	11
1.98	<i>U.S. Trustee</i>	11
1.99	<i>Voting Deadline</i>	11
C.	Rules of Interpretation	11
D.	Time Periods	11
E.	Exhibits and Schedules	12
ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS		12
ARTICLE III TREATMENT OF CLAIMS AND INTERESTS		12
3.1	<i>Administrative Claims and Certain Priority Claims</i>	12
(a)	<i>Administrative Claims</i>	12
(b)	<i>Time for Filing Administrative Claims</i>	13
(c)	<i>Allowance of Administrative Claims</i>	13
(d)	<i>Payment of Allowed Administrative Claims</i>	13
(e)	<i>Payment of Professional Fee Claims</i>	13
(f)	<i>Priority Tax Claims</i>	13
(g)	<i>U.S. Trustee Fees</i>	14
3.2	<i>Class 1 - Priority Claims</i>	14
(a)	<i>Description</i>	14
(b)	<i>Treatment</i>	14
(c)	<i>Impairment and Voting</i>	14
3.3	<i>Class 2 - Unsecured Claims</i>	14
(a)	<i>Description</i>	14
(b)	<i>Treatment</i>	14
(c)	<i>Impairment and Voting</i>	15
3.4	<i>Class 3 - Pre-Petition Lender Claims</i>	15
(a)	<i>Description</i>	15
(b)	<i>Treatment</i>	15
(c)	<i>Impairment and Voting</i>	15
3.5	<i>Class 4 - Allowed Interests</i>	16
(a)	<i>Description</i>	16
(b)	<i>Treatment</i>	16
(c)	<i>Impairment and Voting</i>	16
3.6	<i>Nonconsensual Confirmation</i>	16
ARTICLE IV MEANS FOR EXECUTION OF PLAN		16
4.1	<i>Vesting of Assets</i>	16

4.2	<i>Liens and Encumbrances on the Property and Assets</i>	16
4.3	<i>Limited Liability Company Action</i>	17
4.4	<i>Carve Out Reserve</i>	17
4.5	<i>Sale of the Property</i>	17
4.6	<i>Management of the Property</i>	18
4.7	<i>No Impairment of Intercreditor Agreement</i>	18
4.8	<i>No Distributions to TIC Investors</i>	18
4.9	<i>Application of Existing Reserves</i>	18
ARTICLE V EXECUTORY CONTRACTS		19
5.1	<i>Assumption or Rejection of Executory Contracts and Unexpired Leases</i> ..	19
5.2	<i>Effect of Confirmation Order on Executory Contracts</i>	19
5.3	<i>Inclusive of Amendments, Modifications and Supplements</i>	19
5.4	<i>Filing of Assumption Notice</i>	19
5.5	<i>Bar Date for Rejection Claims</i>	20
5.6	<i>Insurance Policies</i>	20
ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS		21
6.1	<i>Objection Deadline</i>	21
6.2	<i>No Payment Pending Allowance</i>	21
6.3	<i>Distributions After Allowance</i>	21
6.4	<i>Post-Confirmation Amendments to Proofs of Claims</i>	21
6.5	<i>Settlement of Disputed Claims</i>	21
6.6	<i>No Interest Pending Allowance</i>	22
ARTICLE VII CONDITIONS PRECEDENT TO PLAN EFFECTIVE DATE		22
7.1	<i>Conditions Precedent to Plan Effective Date</i>	22
7.2	<i>Waiver of Conditions</i>	22
ARTICLE VIII EFFECT OF CONFIRMATION AND PLAN EFFECTIVE DATE		22
8.1	<i>Binding Effect</i>	22
8.2	<i>Vesting of Assets</i>	23
8.3	<i>Discharge of Claims</i>	23
8.4	<i>Injunctions or Stays</i>	23
8.5	<i>Exculpation</i>	23
8.6	<i>Releases by Holders of Claims and Equity Interests</i>	24
8.7	<i>Releases by Debtor and Estate Representatives</i>	24
8.8	<i>Limitation on Exculpation and Releases</i>	25
ARTICLE IX CONDITIONS PRECEDENT TO THE RESTRUCTURE EFFECTIVE DATE ..		25
9.1	<i>Restructure Effective Date</i>	25
9.2	<i>Effect of Restructure Effective Date</i>	26
9.3	<i>Failure of Restructure Effective Date</i>	27

ARTICLE X RETENTION OF JURISDICTION	28
ARTICLE XI MISCELLANEOUS PROVISIONS.....	29
11.1 <i>Effectuating Documents and Further Transactions</i>	29
11.2 <i>Exemption from Transfer Taxes</i>	30
11.3 <i>Expedited Tax Determination</i>	30
11.4 <i>Payment of Statutory Fees</i>	30
11.5 <i>Post-Confirmation Date Professional Fees and Expenses</i>	30
11.6 <i>Plan Supplement</i>	30
11.7 <i>General Notices</i>	30
11.8 <i>Substantial Consummation</i>	31
11.9 <i>Amendments or Modifications of the Plan</i>	31
11.10 <i>Revocation or Withdrawal of the Plan</i>	31
11.11 <i>Governing Law</i>	31
11.12 <i>Binding Effect</i>	31
11.13 <i>Exhibits and Schedules</i>	31
11.14 <i>Time</i>	31
11.15 <i>Section Headings</i>	32

Debtor Florissant Market Place Acquisition LLC hereby proposes the following chapter 11 plan pursuant to Section 1121(c) of the Bankruptcy Code.

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

A. Rules of Construction.

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined herein shall have the meanings assigned to them in this Article I of the Plan. Any term used in the Plan that is not defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular number, and the masculine gender shall include the feminine and the feminine gender shall include the masculine.

B. Defined Terms.

1.1 ***Administrative Claim*** means any Claim constituting a cost or expense of administration of the Chapter 11 Case allowed and entitled to priority under Sections 503, 507(a)(2) and/or 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation, any post-petition tax claims, any actual and necessary expenses of preserving the Estate of the Debtor, any actual and necessary expenses of operating the business of the Debtor, any actual and necessary costs and expenses of administration and implementation of the Plan, any indebtedness or obligations incurred or assumed by or on behalf of the Debtor during the Chapter 11 Case, any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order, and any fees or charges assessed against the Estate of the Debtor under 28 U.S.C. § 1930.

1.2 ***Administrative Claim Bar Date*** means the deadline for filing proofs of or requests for payment of Administrative Claims, which shall be 30 days after the Plan Effective Date, unless otherwise ordered by the Bankruptcy Court.

1.3 ***Administrative Claim Objection Deadline*** means, as applicable, (a) the first Business Day that is at least 30 days after the Administrative Claims Bar Date or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtor with notice to the Lender.

1.4 ***Affiliate*** shall have the meaning set forth in Section 101(2) of the Bankruptcy Code.

1.5 ***Allowed*** when used with respect to a Claim against the Debtor or property of the Debtor, means a Claim that is not a Disallowed Claim and: (a) which has been listed on the Schedules of the Debtor as other than disputed, contingent or unliquidated and as to which no proof of Claim or objection has been timely Filed; (b) as to which a proof of Claim has been

timely Filed, or deemed timely Filed by order of the Bankruptcy Court, and either (i) no objection thereto has been timely Filed, and no application, motion, complaint or provision to subordinate or otherwise limit recovery has been made (a “*Claim Objection*”) or (ii) the time to File a Claim Objection has expired and the Claim has been allowed (but only to the extent allowed) by a Final Order of the Bankruptcy Court; (c) which has been allowed under the provisions of this Plan; (d) which is a Professional Claim for which a fee award amount has been approved by Final Order of the Bankruptcy Court; or (e) which is allowed pursuant to any stipulation of amount and nature of Claim executed by the Trustee and Holder of the Claim on or after the Effective Date. To the extent the term “Allowed” is used in the Plan with respect to a specified Class of Claims or an unclassified category of Claims (*i.e.*, “Allowed [Class designation/unclassified Claim category] Claim”), the resulting phrase shall mean an Allowed Claim of the specified Class or unclassified category of Claims.

1.6 ***Assets*** means any and all property of the Debtor or its Estate of every kind and character, wherever located, whether real or personal, tangible or intangible, and including, without limitation: (i) Cash (including, without limitation, the residual balance of any reserves established under this Plan), (ii) the Property, (iii) Causes of Action, (iv) stock, membership, partnership, or beneficial interests in any Entity, or other person, (v) such assets as specifically identified elsewhere in the Plan; and (vi) all files, books, records and rents, issues, profits and proceeds relating to the foregoing.

1.7 ***Assignment of Rents and Leases*** means that certain Assignment of Rents and Leases, made by the Debtor in favor of the Lender, dated as of June 27, 2008 and recorded as document 00645 in Book 17932 at Page 1886 in the public registry of St. Louis County, Missouri, together with any amendment, modification or supplement thereof.

1.8 ***Auction Procedures*** mean those procedures for the sale of the Property in its entirety pursuant to a public auction, as such procedures are summarized on Exhibit “A” hereto.

1.9 ***[Intentionally omitted.]***

1.10 ***Ballot*** means the ballot or ballots, the form of which has been approved by the Bankruptcy Court, provided to each Holder of a Claim entitled to vote to accept or reject this Plan.

1.11 ***Bankruptcy Code*** means title 11 of the United States Code, Sections 101-1532, as now in effect or as hereafter amended, and applicable to the Debtor’s Chapter 11 Case.

1.12 ***Bankruptcy Court*** means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Debtor’s case.

1.13 ***Bankruptcy Rules*** means, as the context requires, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, and/or the local bankruptcy rules for the Bankruptcy Court, and/or the Federal Rules of Civil Procedure, in each case as now in effect or as the same may from time to time hereafter be amended and as applicable to this Chapter 11 Case.

1.14 **Bar Date** means June 4, 2009, the date established by the Bankruptcy Court as the last date for filing proofs of claim against the Debtor, pursuant to the Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 3206]. The Plan does not affect or extend any date established by any other Order and the earliest date applicable to the filing or assertion of any Claim shall govern and control.

1.15 **Business Day** means any day that is not a Saturday, a Sunday or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

1.16 **Carve Out Amount** shall mean the sum of \$30,000 in Cash, derived from the Property and its operations, which shall be used to pay Allowed Administrative Expenses, including, without limitation, Professional Fee Claims against the Debtor or its Estate, as well as the statutory fees due and owing to the U.S. Trustee, and Allowed Priority Claims.

1.17 **Cash** means cash or cash equivalents, including but not limited to, wire transfers, checks and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

1.18 **Cash Management Agreement** means that certain Cash Management Agreement to be executed on the Restructure Effective Date by and among the Reorganized Debtor, the Lender and the Property Manager. The Cash Management Agreement shall be included in the Plan Supplement.

1.19 **Causes of Action** means, except as provided otherwise in the Plan, the Confirmed Debtors’ Plan, the Confirmation Order or any document, instrument, release or other agreement entered into in connection with the Plan, any and all claims, rights of action, proceedings, choses in action, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, controversies, variances, trespasses, damages, judgments, third-party claims, counterclaims and cross claims, whether in law or in equity, including, but not limited to, under the Bankruptcy Code, whether known or unknown, matured, unmatured, disputed, undisputed, direct, indirect, secured or unsecured, derivative, or otherwise and whether asserted or unasserted, held by the (a) Debtor, (b) its Estate, (c) any Creditor or holder of an Interest against the Estate, (d) any Entity whose assets or the ownership interests of which were transferred to the DBSI Real Estate Liquidating Trust, including without limitation, any action that is or may be pending on the Effective Date or instituted by the Trustee after the Effective Date against any Person; provided, however, that Causes of Action shall not include any Claims or causes of action of the Debtor that were released under the Confirmed Debtors’ Plan, if any.

1.20 **Chapter 11 Case** means the case under Chapter 11 of the Bankruptcy Code commenced by the Debtor on January 9, 2009, Case No. 09-10081 (PJW) and jointly administered under Case No. 08-12687 (PJW).

1.21 **Chapter 11 Trustee** means James R. Zazzali duly appointed as the chapter 11 trustee for the Debtor and the Confirmed Debtors, among others, pursuant to the Bankruptcy

Court's orders directing the appointment of a chapter 11 trustee [Docket No. 4240] and approving the appointment of James R. Zazzali as chapter 11 trustee [Docket No. 4330].

1.22 ***Claim*** means "claim" as such term is defined in Section 101(5) of the Bankruptcy Code.

1.23 ***Claims and Noticing Agent*** means Kurtzman Carson Consultants LLC.

1.24 ***Claims Objection Deadline*** means the last day for filing objections to Claims, other than Administrative Claims and Professional Fee Claims, which day shall be the later of (a) thirty (30) days after the Plan Effective Date or (b) such other date as the Bankruptcy Court may order. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; provided that any hearing on any such motion is held on or before the date that is no more than thirty (30) days after the Claims Objection Deadline. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court's entry of an order denying the motion to extend the Claims Objection Deadline.

1.25 ***Class*** means a category of Claims or Interests as set forth in Article II of the Plan.

1.26 ***Collateral*** means any property or interest in property of the Debtor's Estate which is subject to a Lien, charge or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or encumbrance is not subject to avoidance under the Bankruptcy Code.

1.27 ***Commencement Date*** means January 9, 2009, the date on which the Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code initiating the Chapter 11 Case.

1.28 ***Confirmation*** means entry by the Bankruptcy Court of the Confirmation Order.

1.29 ***Confirmation Date*** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court docket in the jointly administered Chapter 11 Case.

1.30 ***Confirmation Hearing*** means the hearing before the Bankruptcy Court pursuant to Section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.31 ***Confirmation Order*** means the order entered by the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code, as such order may be amended, modified or supplemented.

1.32 ***Confirmed Debtors*** means certain Affiliates of the Debtor which are subject to the terms of the Confirmed Debtors' Plan

1.33 **Confirmed Debtors' Plan** means the Second Amended Joint Chapter 11 Plan of Liquidation [Docket No. 5699], dated August 17, 2010, in the Confirmed Debtors' jointly administered bankruptcy cases that was confirmed by Order of the Bankruptcy Court dated October 26, 2010 [Docket No. 5924].

1.34 **Cramdown Plan** means the Plan if confirmed by the Bankruptcy Court pursuant to Section 1129(b) of the Bankruptcy Code.

1.35 **Creditor** means "creditor" as defined in Section 101(10) of the Bankruptcy Code and shall refer to any Holder of a Claim against the Debtor or Holder of any Claim against property of the Debtor as defined in Section 102(2) of the Bankruptcy Code.

1.36 **Creditors Committee** means the official statutory committee of Holders of Unsecured Claims appointed in the bankruptcy cases of DBSI and the Confirmed Debtors, and in this Chapter 11 Case.

1.37 **DBSI** means DBSI Inc.

1.38 **DBSI Real Estate Liquidating Trust** means the trust created pursuant to the DBSI Real Estate Liquidating Trust Agreement.

1.39 **DBSI Real Estate Liquidating Trust Agreement** means the agreement executed as of the effective date of the Confirmed Debtors' Plan establishing the DBSI Real Estate Liquidating Trust pursuant to the Confirmed Debtors' Plan.

1.40 **DBSI Real Estate Liquidating Trust Professionals** means the DBSI Real Estate Liquidating Trustee, counsel to the DBSI Real Estate Liquidating Trustee and such other Professionals retained by the DBSI Real Estate Liquidating Trustee to assist in the administration and all other duties of the DBSI Real Estate Liquidating Trust.

1.41 **DBSI Real Estate Liquidating Trustee** means the Person appointed to act as trustee of the DBSI Real Estate Liquidating Trust in accordance with the terms of the Confirmed Debtors' Plan, the order confirming the Confirmed Debtors' Plan, and the DBSI Real Estate Liquidating Trust Agreement, and any successor appointed in accordance with the terms of the DBSI Real Estate Liquidating Trust Agreement.

1.42 **Debtor** means Florissant Market Place Acquisition LLC, a Delaware limited liability company.

1.43 **Deed of Trust** means that certain Future Advance Deed of Trust, Security Agreement and Fixture Filing, dated as of June 27, 2008, made by the Debtor in favor of the Lender and recorded as Document no. 00644 in Book 17932 at Page 1849 in the public registry of St. Louis County, Missouri, together with any amendment, restatement, or supplement thereof.

1.44 **Deficiency Claim** means, with respect to a Claim that is partially secured by a Lien on, or security interest in, property of the Debtor, or that has the benefit of partial rights of setoff under Section 553 of the Bankruptcy Code, the amount by which the Allowed amount of such Claim exceeds the value of the property of the Debtor securing such Claim or the amount subject to setoff, as applicable, as determined by the Bankruptcy Court pursuant to Sections 506(a), 553, and/or 1129(b)(2)(A)(i)(II) of the Bankruptcy Code.

1.45 **Disallowed** when used with respect to a Claim against the Debtor or property of the Debtor, means a Claim or any portion thereof that (i) has been disallowed by Final Order, (ii) is Scheduled as zero or as contingent, disputed, or unliquidated and, in either instance, as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or this Plan, (iii) is not Scheduled and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or this Plan, (iv) has been withdrawn by agreement of the Debtor and the Holder thereof, (v) has been withdrawn by the Holder thereof; (vi) is disallowed under the Plan; or (vii) is the subject of a Proof of Claim or request for payment of an Administrative Claim, or is Scheduled, and such Claim is a Disputed Claim, but only during such time as it remains a Disputed Claim.

1.46 **Disputed** when used with respect to a Claim against the Debtor or property of the Debtor, means a Claim (including any Administrative Claim) to the extent that: (a) the allowance of such Claim is the subject of an objection, adversary proceeding, appeal or motion to estimate that has been timely Filed by a party in interest and which objection, appeal or motion has not been determined by a Final Order. To the extent the term “Disputed” is used in the Plan with respect to a specified Class of Claims or an unclassified category of Claims (i.e. “Disputed [Class designation/unclassified Claim category] Claim”), the resulting phrase shall mean a Disputed Claim of the specified Class or unclassified category of Claims.

1.47 **Distribution** means any distribution pursuant to the Plan to Holders of Allowed Claims.

1.48 **Entity** means an “entity” as defined in Section 101(15) of the Bankruptcy Code.

1.49 **Estate** means, as the context requires, (i) when used in reference to time periods prior to the Plan Effective Date, the estate created in the Chapter 11 Case for the Debtor pursuant to Section 541 of the Bankruptcy Code, and (ii) when used in reference to time periods subsequent to (and including) the Plan Effective Date, the Assets that are held and distributable to holders of Allowed Claims.

1.50 **Estate Representative** means the DBSI Real Estate Liquidating Trustee.

1.51 **Executory Contract** means any executory contract or unexpired lease subject to Section 365 of the Bankruptcy Code between the Debtor and any other Person.

1.52 **Existing Reserve** means the reserve held by the Lender under that certain *Stipulated Settlement and Consent Order Pursuant to Sections 361, 362, 503(b) and 507(b) of the Bankruptcy Code and Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing Use of Cash Collateral and Approving Compromise Governing the Enforcement of Remedies*, entered and approved by the Court on or about February 1, 2010.

1.53 **Exhibit** means an exhibit annexed to either this Plan or any of the documents included within the Plan Supplement.

1.54 **Fee Application** means an application Filed with the Bankruptcy Court in accordance with the Bankruptcy Code and Bankruptcy Rules for payment of a Professional Fee Claim.

1.55 **File, Filed or Filing** means properly and timely file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case, as reflected on the official docket of the Bankruptcy Court for the Chapter 11 Case, and served on Persons, as such filing and service are required pursuant to the Bankruptcy Code, Bankruptcy Rules and/or order of the Bankruptcy Court.

1.56 **Final Decree** means the decree contemplated under Bankruptcy Rule 3022.

1.57 **Final Order** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been Filed, has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, or the time to take any further appeal, petition for certiorari, or move for new trial, reargument or rehearing shall have expired.

1.58 **Holder** means an Entity holding a Claim or Interest, or any authorized agent thereof.

1.59 **Impaired** means when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is “impaired” within the meaning of Section 1124 of the Bankruptcy Code.

1.60 **Intercreditor Agreement** means that certain Intercreditor Agreement by and between the Lender and M&I Bank, dated as of June 27, 2008, as amended or restated from time to time.

1.61 **Interest** means an “equity security” as defined in Section 101(16) of the Bankruptcy Code and includes any legal, equitable, or contractual rights arising from any share or other instrument evidencing an ownership in the Debtor, whether or not transferable or

denominated “stock” or any similar security, and any partnership, membership interest, beneficial interest, warrants, options, or other rights to purchase or acquire any equity interest, or the right to payment or compensation based on such interest. All Interests in the Debtor were transferred to the DBSI Real Estate Liquidating Trust pursuant to the Confirmed Debtors’ Plan and the DBSI Real Estate Liquidating Trust Agreement.

1.62 **IRC** means the Internal Revenue Code of 1986, as amended.

1.63 **Lender** means Wells Fargo Bank, National Association, as successor in interest to Wachovia Financial Services, Inc., together with its successors and assigns.

1.64 **Lien** means any mortgage, lien, pledge, security interest or other charge or encumbrance of any kind in, upon, or affecting any Asset of the Debtor as contemplated by Section 101(37) of the Bankruptcy Code.

1.65 **Local Rules** means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.66 **M&I Bank** means M&I Marshall & Ilsley Bank, together with its successors and assigns, as the holder of a pledge of the membership interests in the Debtor and a party to the Intercreditor Agreement.

1.67 **Order** means any order entered by the Bankruptcy Court in connection with the Chapter 11 Case.

1.68 **Person** means any individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government or any political subdivision thereof, or other Entity.

1.69 **Plan** means this Chapter 11 Plan of Reorganization, including the exhibits and all supplements, appendices and/or schedules hereto, either in its current form or as the same may be altered, amended, or modified from time to time in accordance with the provisions hereof or of the Bankruptcy Code and the Bankruptcy Rules.

1.70 **Plan Effective Date** means the Business Day on which this Plan becomes effective as provided in Article VII hereof.

1.71 **Plan Proponent** means the Debtor.

1.72 **Plan Supplement** means the document (as may be amended, modified or supplemented with the consent of the Lender) containing the forms of the Reinstated Loan Documents, each in form and substance reasonably satisfactory to the Lender. The Plan Proponent shall file the Plan Supplement with the Bankruptcy Court on or before five (5) Business Days prior to the date upon which the Confirmation Hearing is scheduled.

1.73 ***Pre-Petition Lender Claims*** means all Claims arising under the Pre-Petition Loan Agreement, and any loan or collateral documents, instruments or agreements related thereto, and any and all Claims arising out of the Swap Agreement.

1.74 ***Pre-Petition Loan Agreement*** means that certain Loan Agreement, dated as of June 27, 2008, by and among Florissant Market Place Acquisition LLC, as the borrower, DBSI Florissant Market Place Leaseco LLC, as the master tenant, and the Lender.

1.75 ***Priority Claim*** means a Claim to the extent that it is of the kind described in, and entitled to priority under Sections 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

1.76 ***Priority Tax Claim*** means a Claim of a governmental unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

1.77 ***Professional*** means any professional employed or to be compensated pursuant to Sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

1.78 ***Professional Fee Claim*** means a Claim of a Professional for compensation for services and/or reimbursement of expenses pursuant to Sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 Case.

1.79 ***Proof of Claim*** means a proof of claim filed in the Chapter 11 Case pursuant to Section 501 of the Bankruptcy Code and/or pursuant to any Order, together with supporting documents.

1.80 ***Property*** means the real property, improvements, and fixtures commonly known as Florissant Marketplace, 8182 and 8200 N. Lindbergh Blvd., Florissant, Missouri, together with all personal property owned by the Debtor and located thereon, all intangible property owned by the Debtor and used in connection therewith, and all proceeds of any of the foregoing.

1.81 ***Property Manager*** means TIC Properties Management, LLC, and any successor manager of the Property selected by the Debtor with the consent of the Lender. TIC Properties Management, LLC manages the Property pursuant to the Property Management Agreement.

1.82 ***Property Management Agreement*** means that certain Property and Asset Management Agreement, dated as of March 16, 2009, by and among the Debtor, the TIC Investors, and the Property Manager, establishing certain rights and obligations with respect to the Property Manager's management and administration of the Property.

1.83 ***Pro Rata*** means proportionately so that, with respect to a Claim, the ratio of (a)(i) the amount of property distributed on account of such Claim to (ii) the Allowed amount of the Claim, is the same as the ratio of (b)(i) the amount of property distributed on account of all Allowed Claims in the Classes entitled to share in the applicable distribution to (ii) the amount of all Allowed Claims in such Classes included in such distribution.

1.84 ***Reinstated Loan Agreement*** means the Amended and Restated Loan Agreement, dated as of the Restructure Effective Date, by and between the Reorganized Debtor and the Lender, pursuant to which the Pre-Petition Lender Claims are restructured for repayment by the Reorganized Debtor in accordance with this Plan.

1.85 ***Reinstated Loan Documents*** mean all documents, instruments and agreements memorializing the Reinstated Loan Obligations, including without limitation (a) the Reinstated Loan Agreement, (b) the Reinstated Term Note, and (c) the Cash Management Agreement, together with the Deed of Trust and the Assignment of Rents.

1.86 ***Reorganized Debtor*** means the Debtor from and after the Plan Effective Date.

1.87 ***Restructure Effective Date*** means the Business Day upon which all of the conditions set forth in Section 9.1 hereof have been satisfied (or waived by the Lender), upon which date the Pre-Petition Lender Claims shall be reinstated, by operation of the Plan, into the Reinstated Loan Obligations and evidenced by the Reinstated Loan Agreement, the Reinstated Term Note, and the related loan documents.

1.88 ***Scheduled*** means, with respect to any Claim, the status, priority and amount, if any, of such Claim as set forth in the Schedules.

1.89 ***Schedules*** means the Debtor's schedules of assets and liabilities Filed with the clerk of the Bankruptcy Court pursuant to pursuant to Section 521(a) of the Bankruptcy Code and Bankruptcy Rule 1007, as they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

1.90 ***Secured Claim*** means a Claim against the Debtor (a) that is secured by a valid, perfected, and unavoidable Lien on Collateral, or (b) that has the benefit of rights of setoff under Section 553 or Section 560 of the Bankruptcy Code against Assets of the Debtor, in each case to the extent of value of the Collateral or to the extent of the amount subject to setoff, as applicable, which value shall be determined by the Bankruptcy Court pursuant to Sections 506(a), 553, and/or 1129(b)(2)(A) of the Bankruptcy Code, as applicable.

1.91 ***Secured Tax Claim*** means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under Section 507(a)(8) of the Bankruptcy Code.

1.92 ***Swap Agreement*** means that certain ISDA Master Agreement, dated as of June 4, 2008, by and between Wachovia Bank National Association and the Debtor.

1.93 ***Taxes*** means any and all taxes, levies, imposts, assessments, or other charges of whatever nature imposed at any time by a Governmental Unit or by any political subdivision or taxing authority thereof or therein and all interest, penalties, or similar liabilities with respect thereto.

1.94 **TIC Investors** means those certain five (5) tenant-in-common investors who purchased undivided interests in the Property prior to the Commencement Date. The TIC Investors own in the aggregate approximately 24.6% of the undivided tenant-in-common interests in the Property. Each of the TIC Investors is a special purpose limited liability company organized under the laws of the State of Delaware for the sole purpose of acquiring its respective tenant-in-common interest in the Property. The interests of the TIC Investors in the Property are subject and subordinate to the Liens held by the Lender securing the Pre-Petition Lender Claims.

1.95 **Trustee** means DBSI Real Estate Liquidating Trustee.

1.96 **Unimpaired** means, when used in reference to a Claim or Interest, a Claim or Interest that is not Impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.97 **Unsecured Claim** means any Claim against the Debtor that is not a Secured Claim, Administrative Claim, Priority Tax Claim, Priority Claim or Miscellaneous Secured Claim, provided that Unsecured Claims shall include, without limitation, any Deficiency Claim.

1.98 **U.S. Trustee** means the Office of the United States Trustee for Region III.

1.99 **Voting Deadline** means the date and time, as fixed by an order of the Bankruptcy Court, by which all Ballots to accept or reject the Plan must be received in order to be counted.

C. Rules of Interpretation.

For purposes of the Plan: (a) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (b) any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit, as it may have been or may be amended, modified or supplemented; (c) unless otherwise specified, all references in the Plan to Articles, Sections, Schedules and Exhibits are references to Articles, Sections, Schedules and Exhibits of or to the Plan; (d) the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (e) captions and headings to Articles and Sections are inserted for ease of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (f) unless otherwise specified, the term “including” is intended to be illustrative and not exhaustive, and shall be construed as “including, but not limited to” whenever possible; and (g) the rules of construction set forth in Section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

D. Time Periods.

In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply. If any act under this Plan is required to be made or performed on a date that is not a Business Day, then the performance of

such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

E. Exhibits and Schedules.

All Exhibits and Schedules to the Plan (including, without limitation, the Plan Supplement) are hereby incorporated by reference and made part of this Plan as if set forth fully herein.

ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS

As required by the Bankruptcy Code, this Plan places all Claims (other than Administrative Claims, Professional Fee Claims, Priority Tax Claims, and U.S. Trustee Fees) and Interests into various Classes according to their right to priority in distribution and other relative rights. A Claim is classified within a particular Class only to the extent that the Claim qualifies under the description of that Class. This Plan specifies whether each Class of Claims or Interests is Impaired or Unimpaired, and this Plan sets forth the treatment which each Class will receive. Each Holder of an Allowed Claim in an Impaired Class that is entitled to vote pursuant to the Plan shall be entitled to vote to accept or reject the Plan. The Claims and Interests are classified as follows:

1. Class 1--Priority Claims.
2. Class 2--Unsecured Claims.
3. Class 3--Secured Claim of the Lender.
4. Class 4--Interests.

ARTICLE III TREATMENT OF CLAIMS AND INTERESTS

3.1 *Administrative Claims and Certain Priority Claims*

(a) *Administrative Claims.* Except to the extent that a Holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided for in the Plan, each Allowed Administrative Claim, if any, shall be paid on the later of (a) the Plan Effective Date, (b) the date on which its Administrative Claim becomes Allowed, or (c) the date on which its Administrative Claim becomes payable under any agreement relating thereto. Each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim against the Debtor, Cash equal to the unpaid portion of such Administrative Claim; provided, however, that any Allowed Administrative Claim (x) incurred post-petition by the Chapter 11 Trustee or the Debtor in the ordinary course of businesses or (y) arising pursuant to one or more post-petition agreements or transactions entered into by the Debtor or the Chapter 11 Trustee with Bankruptcy Court approval, including, but not limited to, the Property Management Agreement, shall be paid

or performed in accordance with the terms and conditions of the particular transaction(s) and any agreement(s) relating thereto, or as otherwise agreed by the Trustee, on the one hand, and the Holder of such Administrative Claim, on the other. The Holder of an Allowed Administrative Claim shall not be entitled to, and shall not be paid, any interest, penalty, or premium thereon, and any interest, penalty, or premium asserted with respect to any Administrative Claim shall be deemed Disallowed and expunged without the need for any further Order of the Bankruptcy Court.

(b) *Time for Filing Administrative Claims.* The Holder of any Administrative Claim that is incurred or accrued after the Commencement Date, other than (i) a Professional Fee Claim, (ii) an Allowed Administrative Claim, or (iii) governmental claim pursuant to Bankruptcy Code 503(b)(1)(D), shall be required to file and serve on all parties required to receive such notice an Administrative Claim request on or before the Administrative Claim Bar Date.

(c) *Allowance of Administrative Claims.* An Administrative Claim with respect to which notice has been properly filed pursuant to subparagraph 3.1(b) of the Plan shall become an Allowed Administrative Claim if no objection is by the Administrative Claim Objection Deadline. If a timely objection is Filed, the Administrative Claim shall become an Allowed Administrative Claim only to the extent Allowed by a Final Order. An Administrative Claim that is a Professional Fee Claim, and with respect to which a Fee Application has been properly filed and served, shall become an Allowed Administrative Claim only to the extent Allowed by a Final Order.

(d) *Payment of Allowed Administrative Claims.* Except to the extent that a Holder of an Allowed Administrative Claim has been paid prior to the Plan Effective Date, or agrees to a different treatment, each Holder of an Allowed Administrative Claim other than a Professional Fee Claim, if any, shall be paid in Cash from the Carve-Out Reserve equal to the Allowed amount of such Administrative Claim, within fifteen (15) days after the Plan Effective Date, or Allowance date, whichever is later, in full satisfaction, release and discharge of and exchange for such Administrative Claim. Except for Professional Fee Claims and U.S. Trustee fees, the Trustee is not aware of any unpaid Administrative Claims.

(e) *Payment of Professional Fee Claims.* Except to the extent that such Holder has been paid prior to the Plan Effective Date, or agrees to a different treatment, each Holder of an Allowed Professional Fee Claim for services rendered and expenses incurred through the Plan Effective Date shall be paid the Allowed amount of such Professional Fee Claim in Cash from the Carve-Out Reserve within fifteen (15) days after the Plan Effective Date or the date that such Professional Fee Claim is Allowed by Final Order of the Bankruptcy Court, whichever is later, in full satisfaction, release and discharge of and exchange for such Professional Fee Claim.

(f) *Priority Tax Claims.* Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date, or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim, if any, in full satisfaction, release and discharge of and exchange for such Claim, shall be paid in Cash from the Carve-Out Reserve in amount equal to the amount of such Allowed Priority Tax Claim, together with interest thereon at the

rate provided in 11 U.S.C. § 511 from the Commencement Date through the date such Claim is paid in full. Notwithstanding the foregoing, any penalty arising with respect to or in connection with an Allowed Priority Tax Claim shall be treated as a Class 2 Unsecured Claim against the Debtor. The Trustee is not aware of any unpaid Priority Tax Claims.

(g) *U.S. Trustee Fees.* The Reorganized Debtor shall be responsible for timely payment of U. S. Trustee quarterly fees incurred in the Chapter 11 Case pursuant to 28 U.S.C. § 1930(a)(6). Any fees due as of the most recent quarterly invoice prior to the Confirmation Date will be paid in full in Cash from the Carve-Out Reserve within thirty (30) days after the Plan Effective Date. After the Plan Effective Date, the Reorganized Debtor shall pay U. S. Trustee quarterly fees as they accrue until the Chapter 11 Case is closed by the Bankruptcy Court. The Trustee shall serve on the U. S. Trustee a quarterly financial report for each quarter (or portion thereof) that the Chapter 11 Case remains open.

3.2 *Class 1 - Priority Claims.*

(a) *Description.* Class 1 is comprised of Allowed Claims that would be entitled to a priority under section 507(a) of the Bankruptcy Code other than a Priority Tax Claim or an Administrative Claim. The Trustee is not aware of any unpaid Priority Claims.

(b) *Treatment.* Each Holder of an Allowed Class 1 Priority Claim shall be paid in full the amount of such Allowed Class 1 Claim in Cash on the Plan Effective Date, or as soon thereafter as practicable, or upon such other terms as may be agreed upon between the Holder of such Allowed Class 1 Claim and the Debtor. Such payment shall be made from the Carve Out Reserve.

(c) *Impairment and Voting.* Class 1 Priority Claims are Unimpaired by the Plan and Holders of Class 1 Priority Claims, if any, are deemed to have accepted the Plan, and therefore, are not entitled to vote to accept or reject the Plan.

3.3 *Class 2 - Unsecured Claims.*

(a) *Description.* Class 2 is comprised of all Allowed Unsecured Claims, if any, including Deficiency Claims, if any. The Trustee is not aware of any unpaid, undisputed Unsecured Claims other than the Unsecured Claim of Confirmed Debtor 2008 DBSI Notes Corporation, described in the Schedules, in the amount of \$648,247.00, the Holder of which is an Affiliate of the Debtor.

(b) *Treatment.* No payment or other Distribution shall be made in respect of or on account of any Unsecured Claims until the Reinstated Loan Obligations have been satisfied and repaid in full and in Cash. Each Holder of an Allowed Unsecured Claim shall receive its Pro Rata Distribution, if any, from either the Reorganized Debtor's sale of its undivided interest in the Property, or the Reorganized Debtor's refinancing of the Reinstated Loan Obligations, in each case after (i) payment in full of all costs and expenses of such sale or refinancing, and (ii) payment in full of the Reinstated Loan Obligations. In the event that either the sale of the Debtor's interest in the Property or the refinancing of the Reinstated Loan Obligations generates

insufficient cash proceeds for the payment of a Distribution on account of Unsecured Claims, then no Distribution shall be made in respect thereof under the Plan or otherwise.

(c) *Impairment and Voting.* Class 2 Unsecured Claims are Impaired by the Plan and Holders of Class 2 Unsecured Claims, if any, are entitled to vote to accept or reject the Plan.

3.4 *Class 3 - Pre-Petition Lender Claims.*

(a) *Description.* Class 3 is comprised of the Pre-Petition Lender Claims.

(b) *Treatment:* (i) the Pre-Petition Lender Claims shall be Allowed as of the Plan Effective Date in the amount of \$11,667,000, and are not subject to any offset, defense, counterclaim, reduction, or credit of any kind whatsoever; (ii) the Pre-Petition Lender Claims shall be treated as Secured Claims. All Liens, security interests, charges, encumbrances and rights of setoff held by the Lender securing the repayment of the Pre-Petition Lender Claims shall remain in full force and effect upon the Confirmation of the Plan. Without limiting the foregoing, the Lender's Liens on the Property and the other Collateral securing the Pre-Petition Lender Claims shall be, and are deemed, valid, perfected, enforceable, and unavoidable. The Lender's Liens on the Property are of first priority and are not junior to any other Lien; (iii) the Liens and security interests created pursuant to the Deed of Trust shall remain in full force and effect from and after the Plan Effective Date and shall continue to secure the Pre-Petition Lender Claims until the occurrence of the Restructure Effective Date, whereupon such Liens and security interests shall automatically secure the Reinstated Term Note and the other Reinstated Loan Obligations, encumbering the entirety of the Property, including without limitation the undivided interests in the Property held by the Debtor and/or the Reorganized Debtor as well as the undivided interests in the Property held by the TIC Investors; (iv) the assignments, rights and interests conveyed by the Assignment of Rents and Leases shall remain in full force and effect from and after the Plan Effective Date and shall continue to secure the Pre-Petition Lender Claims until the occurrence of the Restructure Effective Date, whereupon the Assignment of Rents and Leases shall automatically secure the Reinstated Term Note and the other Reinstated Loan Obligations, encumbering the entirety of the Property, including without limitation the undivided interests in the Property held by the Debtor and/or the Reorganized Debtor as well as the undivided interests in the Property held by the TIC Investors; and (v) on the Restructure Effective Date, the Reorganized Debtor shall execute and deliver to the Lender, on account of and in satisfaction of the Pre-Petition Lender Claims, the Reinstated Loan Documents and all such other documents, instruments and agreements which are conditions precedent to the Restructure Effective Date as set forth in Section 9.1 hereof. The terms of the Reinstated Term Note and the Restated Loan Agreement are summarized in the term sheet attached hereto as Exhibit "B". In the event that the Restructure Effective Date does not occur within 30 Business Days after the Confirmation Date, then the provisions of Section 9.3 hereof shall govern the rights of the Lender and the Reorganized Debtor.

(c) *Impairment and Voting.* The Pre-Petition Lender Claims in Class 3 are Impaired by the Plan and the Lender is entitled to vote to accept or reject the Plan.

3.5 *Class 4 - Allowed Interests.*

(a) *Description.* All outstanding Interests in the Debtor are included in this Class.

(b) *Treatment.* The Allowed Interests shall remain in full force and effect in accordance with their terms and the legal, equitable, and contractual rights to which such Allowed Interests are entitled shall remain unaltered; provided, however, notwithstanding the foregoing, no Distributions of Cash, cash equivalents, or any other property or Assets of the Debtor or Reorganized Debtor shall be made on account of or in respect of the Allowed Interests unless and until the Allowed Class 3 Claims and the Allowed Class 2 Claims have been paid in full and in Cash.

(c) *Impairment and Voting.* The Class 4 Allowed Interests are Unimpaired by the Plan and are not entitled to vote on the Plan.

3.6 *Nonconsensual Confirmation.* If any Impaired Class fails to accept this Plan, the Plan Proponent intends to request that the Bankruptcy Court confirm this Plan as a Cramdown Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to such Class; provided, however, if the Lender does not accept the Plan, the Plan Proponent shall not pursue a Cramdown Plan as the Plan would not meet the requirements of Section 1129(a)(10) of the Bankruptcy Code.

**ARTICLE IV
MEANS FOR EXECUTION OF PLAN**

4.1 *Vesting of Assets.* Upon the Plan Effective Date, pursuant to Section 1141(b) and (c) of the Bankruptcy Code, all Assets and property of the Debtor's Estate shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges, encumbrances or other interests, except as otherwise expressly provided in the Plan. From the Plan Effective Date until the Restructure Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the restrictions imposed in the Confirmation Order. From and after the Restructure Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the restrictions in the Reinstated Loan Documents and the Confirmation Order.

4.2 *Liens and Encumbrances on the Property and Assets.* Upon the Plan Effective Date, the Liens securing the Pre-Petition Lender Claims shall continue in full force and effect, and shall be (and shall be deemed) valid, enforceable, perfected and unavoidable Liens. Such Liens shall be subject in priority only to any Liens against the Property, if any, which are valid, perfected, enforceable and unavoidable and where were otherwise senior in priority to the Liens of the Lender as of the Commencement Date. From the Plan Effective Date until the Restructure Effective Date, the Liens in favor of the Lender shall secure the repayment of the Pre-Petition Lender Claims. Upon the occurrence of the Restructure Effective Date, the Liens in favor of the Lender shall secure the Reinstated Loan Obligations. Without limiting the generality of the foregoing, by operation of the Plan, the Lender shall have a first priority perfected Lien on all

deposit accounts and investments of the Reorganized Debtor, wherever located, and whether in possession and control of the Reorganized Debtor, the Property Manager, or any other Person, and perfection of the Lender's Lien thereon shall be automatically effective upon the entry of the Confirmation Order without the necessity of any filing or the execution of any deposit account control agreements. The Lender shall be authorized, but not required, to file or record financing statements, notices of liens and other similar instruments or documents to evidence its Lien on the Reorganized Debtor's Assets.

4.3 *Limited Liability Company Action.* Upon the Plan Effective Date, all matters provided for and actions contemplated under the Plan that would otherwise require approval of the Holder of the Interests, managers or officers of the Debtor, or the Reorganized Debtor, shall be deemed authorized and approved in all respects, including, but not limited to the execution and delivery of the Reinstated Loan Documents. Upon the Plan Effective Date, the Trustee shall be authorized and directed to issue, execute and deliver all agreements, documents, securities and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan).

4.4 *Carve Out Reserve.* Upon the Plan Effective Date, the Reorganized Debtor shall deposit, from the available Cash generated by the Property, funds equal in amount to the Carve-Out Amount into an interest-bearing segregated deposit account (the "Carve Out Reserve"), titled in the name of the Reorganized Debtor, for purposes of paying the Allowed Professional Fee Claims, any other Allowed Administrative Claims, the statutory fees due to the U.S. Trustee, and Allowed Priority Claims. The Lender shall retain a Lien on the Carve Out Reserve, but such Lien shall be subordinated to the prior payment of the Allowed Professional Fee Claims, other Allowed Administrative Claims, the statutory fees payable to the U.S. Trustee, and Allowed Priority Claims.

4.5 *Sale of the Property.* (a) From and after the Restructure Effective Date, the Reorganized Debtor shall, in collaboration with the TIC Investors, seek to market and sell the Property in a commercially reasonable manner consistent with the objective of maximizing the value of the Property within the relevant timeframe. The Reorganized Debtor shall be authorized to engage real estate brokers or other professionals to assist in the marketing and sale of the Property, without the need for any approval, authorization or consent (except for any consents required pursuant to the Reinstated Loan Documents). The Reorganized Debtor shall provide the TIC Investors and the Lender copies of all written offers which it or its agents receive from third parties for the purchase or other acquisition of the Property.

(b) In the event that (i) the Reorganized Debtor and TIC Investors have not entered into a binding and unconditional contract to sell their respective interests in the Property on or before January 31, 2013, such contract being in form and substance satisfactory to the Lender, or (ii) the Reorganized Debtor has not entered into a binding and unconditional contract to sell its undivided interest in the Property on or before January 31, 2013 for an amount in excess of the outstanding Reinstated Loan Obligations, such contract being in form and substance satisfactory to the Lender, and if the Reinstated Loan Obligations remain outstanding, then the Reorganized Debtor shall initiate an auction of the Property in its entirety pursuant to Section 363(h) of the Bankruptcy Code, following the Auction Procedures, with the auction of

the Property occurring no later than July 1, 2013. Such sale of the Property pursuant to Section 363(h) of the Bankruptcy Code shall be authorized by the Confirmation Order and by operation of the Plan and shall not be subject to or require further notice or hearing before the Bankruptcy Court or any further Order of the Bankruptcy Court except as specified in the Auction Procedures with respect to the Bankruptcy Court's Order confirming the successful bidder for such sale. The Lender shall be entitled to credit bid all or any portion of the Reinstated Loan Obligations at any such auction. To the extent that the TIC Investors, or any of them, qualifies as a Qualified Bidder (as defined in the Auction Procedures), they shall be permitted to bid, in Cash, at any such auction.

4.6 *Management of the Property.* Following the Plan Effective Date, the Property Manager shall continue to manage the Property in accordance with the Property Management Agreement; provided, however, to the extent that the Property Management Agreement conflicts with the terms of any of the Reinstated Loan Documents, including without limitation the Cash Management Agreement, then the terms of the Reinstated Loan Documents shall control and the terms of the Property Management Agreement shall be deemed to be amended to conform to the terms of the applicable Reinstated Loan Documents.

4.7 *No Impairment of Intercreditor Agreement.* The Confirmation of the Plan, the occurrence of the Plan Effective Date, and the occurrence of the Restructure Effective Date shall not impair or limit the effectiveness of the Intercreditor Agreement, or any of its terms or provisions, and such Intercreditor Agreement shall remain enforceable pursuant to Section 510(a) of the Bankruptcy Code.

4.8 *No Distributions to TIC Investors.* Notwithstanding any other term or condition of this Plan, neither the Debtor nor the Reorganized Debtor shall make any payments or distributions of any kind or nature to the TIC Investors from any Assets or property of the Debtor or the Reorganized Debtor, or any proceeds of the Property (including without limitation any Cash, rents, profits or other proceeds arising directly or indirectly from the Property), unless and until the Pre-Petition Lender Claims and the Reinstated Loan Obligations, as applicable, are fully paid in Cash and the Liens arising from the Deed of Trust and Assignment of Rents and Leases have been satisfied, discharged, and released of record.

4.9 *Application of Existing Reserves.* Upon the Plan Effective Date, the Lender shall apply \$84,214.00 of the funds comprising the Existing Reserve to create reserves for the operation of the Property, as more particularly to be set forth in the Reinstated Loan Documents, and the remainder of the Existing Reserve shall be applied by the Lender to the Allowed Pre-Petition Lender Claim, in partial satisfaction thereof, and the remaining amount of the Allowed Pre-Petition Lender Claim shall equal the initial principal amount of the Reinstated Term Note, upon and subject to the occurrence of the Restructure Effective Date.

ARTICLE V EXECUTORY CONTRACTS

5.1 Assumption or Rejection of Executory Contracts and Unexpired Leases.

Pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed assumed by the Debtor as of the Plan Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered on or before the Plan Effective Date, (ii) as to which a motion for approval of the assumption, assumption, and assignment, or rejection has been filed and served prior to the Confirmation Date, or (iii) that is specifically designated as a contract or lease to be rejected on Schedule 5.1 hereof or in the Plan Supplement. The listing of a contract or other agreement for rejection on Schedule 5.1 or in the Plan Supplement shall not constitute an admission by the Debtor or the Reorganized Debtor that such contract or document is an executory contract or an unexpired lease or that the Debtor or Reorganized Debtor have any liability thereunder.

5.2 Effect of Confirmation Order on Executory Contracts.

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Plan Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Section 5.1 of the Plan, (ii) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Reorganized Debtor may assume, assume and assign, or reject the executory contracts and unexpired leases specified in Section 5.1 of the Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such executory contracts and unexpired leases and (iii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 5.1 of the Plan.

5.3 Inclusive of Amendments, Modifications and Supplements.

Unless otherwise specified, each executory contract and unexpired lease identified for assumption or rejection pursuant to this Article V shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease.

5.4 Filing of Assumption Notice.

Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Section 5.1 of the Plan, the Plan Proponent shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, at least 20 days prior to the Confirmation Hearing, file with the Bankruptcy

Court and serve by first class mail on each non-debtor party to such executory contracts or unexpired leases to be assumed pursuant to Section 5.1 of the Plan, a notice (the “Assumption Notice”), which shall list the cure amount as to each executory contract or unexpired lease to be assumed. The parties to such executory contracts or unexpired leases to be assumed shall have twenty (20) days from the date of service of the Assumption Notice to file and serve any objection to the cure amounts listed by the Plan Proponent. If there are any objections filed, the Bankruptcy Court shall hold a hearing on a date to be set by the Bankruptcy Court. Notwithstanding Section 5.1 of the Plan, the Debtor shall retain its rights to reject any of the executory contracts or unexpired leases that are subject to a dispute concerning amounts necessary to cure any defaults through the Plan Effective Date.

5.5 Bar Date for Rejection Claims.

In the event that the rejection of an executory contract or unexpired lease pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a timely filed proof of claim, shall be forever barred and shall not be enforceable against the Reorganized Debtor, or its properties or interests in property as agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon the Trustee and the Reorganized Debtor on or before the thirtieth (30th) day after the later of (i) the date of service of notice of the Confirmation Date, (ii) notice of modification to Schedule 5.1 or the Plan Supplement (solely with respect to the party directly affected by such modification), or (iii) the date of service of notice of such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults (solely with respect to the party directly affected by such modification).

5.6 Insurance Policies.

(a) Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by order of the Bankruptcy Court, all of the Debtor’s insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts under the Plan and shall be assumed pursuant to the Plan, effective as of the Plan Effective Date.

(b) To the extent the insurance policies are determined not to be executory contracts, they shall remain in full force and effect in accordance with their terms and shall be treated as unimpaired (as defined in section 1124 of the Bankruptcy Code), including without limitation for purposes of payment of Claims for retrospective premiums, deductibles, and self-insurance retentions.

(c) The Reorganized Debtor shall perform the obligations under the insurance policies, whether they are treated as executory or non-executory. The Plan shall not, and is not intended to, modify any of the rights or obligations of insurers or the Debtor under any of the insurance policies. Notwithstanding any other provision of the Plan and anything supervening or preemptory, the Reorganized Debtor shall be, and intend to remain, bound by all of the terms, conditions, limitations and/or exclusions contained in the insurance policies, which shall continue in full force and effect. Notwithstanding anything contained in the Plan to the contrary, to the extent that there is an inconsistency between the insurance policies and any provision of

the Plan, the terms of the insurance policies shall control. No provision of the Plan shall (i) expand or alter any insurance coverage under any of the insurance policies, or shall be deemed to create any insurance coverage that does not otherwise exist, if at all, under the terms of the insurance policies, (ii) create any direct right of action against insurers that did not otherwise exist, and/or (iii) be construed as an acknowledgment either that the insurance policies cover or otherwise apply to any Claims or that any Claims are eligible for payment under any of the insurance policies.

ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS

6.1 *Objection Deadline.* Except as otherwise extended or ordered by the Bankruptcy Court, any objections to Claims must be filed no later than the Claims Objection Deadline. An objection to a Claim will be deemed properly served on the Holder thereof if service is effected by any of the following methods: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for a claimant is unknown, by first class mail, postage prepaid, on the signatory on the proof of Claim or other representative identified on the proof of Claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of the claimant or Interest Holder in the Chapter 11 Case.

6.2 *No Payment Pending Allowance.* Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed, then no payment or distribution provided hereunder shall be made on account of any portion of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

6.3 *Distributions After Allowance.* To the extent that a Disputed Claim becomes an Allowed Claim, the Reorganized Debtor shall distribute to the holder of such Claim the property distributable with respect to such Claim as soon as practicable after the later of (i) the date such Distribution is required for the applicable Class of such Claim, (ii) the date that the Order of the Bankruptcy Court allowing such Claim becomes a Final Order, (iii) the date on which any objection to such Disputed Claim has been withdrawn, or (iv) the date on which such Disputed Claim has been settled, compromised or otherwise resolved. To the extent that all or any portion of a Disputed Claim is disallowed, then the holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed.

6.4 *Post-Confirmation Amendments to Proofs of Claims.* Except as otherwise provided in the Plan, following the Confirmation Date, a Claim may not be amended unless such amendment results in a decrease of the amount of the Claim, change in priority of the Claim to a lower priority under the Bankruptcy Code, or withdrawal of Claim, and any such unauthorized amendment shall be deemed null, void and of no force or effect.

6.5 *Settlement of Disputed Claims.* From and after the Plan Effective Date, the Reorganized Debtor shall have authority to settle any Disputed Claim, provided that the Allowed Amount of the Disputed Claim does not exceed \$5,000, without the necessity of notice and Bankruptcy Court approval. Any settlement of a Disputed Claim which requires allowance in an

amount in excess of \$5,000 shall be subject to notice and Bankruptcy Court approval, unless ordered otherwise by the Bankruptcy Court upon separate motion and notice in the Bankruptcy Case.

6.6 *No Interest Pending Allowance.* To the extent that a Disputed Claim becomes an Allowed Claim after the Plan Effective Date, the holder of such Claim shall not be entitled to any interest thereon from the Plan Effective Date to the date such Claim becomes Allowed.

ARTICLE VII CONDITIONS PRECEDENT TO PLAN EFFECTIVE DATE

7.1 *Conditions Precedent to Plan Effective Date.* The Plan Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full on or before March 15, 2011, or waived in accordance with Section 7.2 of the Plan:

(a) The Confirmation Order, in form and substance acceptable to the Plan Proponent and the Lender, shall have been entered and shall not be subject to any stay or injunction;

(b) All documents, agreements and instruments comprising the Plan Supplement shall have been Filed by the Plan Proponent in final form prior to the Confirmation Date and agreed to, in form and content, by the Lender;

(c) The Debtor shall have sufficient Cash on hand (exclusive of any reserves or other funds held by the Lender) to fund the Carve-Out Reserve, and the Carve-Out Amount shall be sufficient in amount to pay all existing and anticipated Allowed Administrative Claims, Professional Fee Claims, Priority Claims and statutory claims of the U.S. Trustee; and

(d) The Debtor and the Lender shall have agreed on the terms of a budget detailing the projected income, operating expenses, capital expenditures, and other items relative to the Property for the calendar year 2011.

7.2 *Waiver of Conditions.* Each of the conditions precedent in Section 7.1 may be waived in whole or in part by the Plan Proponent, subject to the Lender's consent to any such waiver. Any such waiver may be effected at any time, without notice or leave or order of the Bankruptcy Court and without formal action.

ARTICLE VIII EFFECT OF CONFIRMATION AND PLAN EFFECTIVE DATE

8.1 *Binding Effect.* Upon the occurrence of the Plan Effective Date, this Plan shall be binding upon, and inure to the benefit of, the Debtor, the Trustee, all holders of Claims and Interests, and their respective successors and assigns.

8.2 *Vesting of Assets.* Upon the occurrence of the Plan Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the property of the Debtor's Estate shall vest in the Debtor free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided herein, or in the Confirmation Order. Subject to the terms of the Plan and Confirmation Order, upon the Plan Effective Date, the Reorganized Debtor may operate its business and may use, acquire, and dispose of property and prosecute, compromise or settle any Claims (including any Administrative Claims) without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order.

8.3 *Discharge of Claims.* Except as provided herein, the rights afforded in and the payments and distributions to be made under the Plan shall be in exchange for and in complete satisfaction, discharge, release, termination, and cancellation of all existing debts, Claims and Equity Interests of any kind, nature, or description whatsoever, including any interest accrued on any Claims from and after the Commencement Date, against the Debtor or any of its Assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided herein, upon the Plan Effective Date, all existing Claims against the Debtor shall be, and shall be deemed to be, discharged, terminated, and cancelled, as applicable, and all Holders of Claims shall be precluded and enjoined from asserting against the Reorganized Debtor, its successors or assignees, or any of its assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Plan Effective Date, whether or not such holder has filed a proof of Claim, and whether or not the facts or legal bases therefor were known or existed prior to the Plan Effective Date. Notwithstanding the foregoing, upon the occurrence of the Plan Effective Date, the Pre-Petition Lender Claims shall not be discharged, released, terminated or cancelled in any manner or to any extent, but shall continue to remain in full force and effect, secured by the Liens in favor of the Lender created through the Deed of Trust, the Assignment of Rents, and the related documents. The Pre-Petition Lender Claims shall be reinstated as the Reinstated Loan Obligations upon, and subject to the occurrence of, the Restructure Effective Date.

8.4 *Injunctions or Stays.* Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Plan Effective Date and the date indicated in the order providing for such injunction or stay. Pursuant to the Confirmation Order, all Holders of Claims or Equity Interests and other parties in interest, including without limitation, the TIC Investors, and officers, members, managers, equity holders, and employees of the Debtor and Reorganized Debtor, if any, along with their respective present or former employees, agents, officers, directors, managers, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

8.5 *Exculpation.* Subject to the occurrence of the Plan Effective Date, none of the Debtor, the Chapter 11 Trustee, the Trustee, the Creditors' Committee and its members, the Lender, or their respective directors, managers, officers, employees, partners, members, agents, representatives, accountants, financial advisors, investment bankers, or attorneys (but solely in

their capacities as such) shall have or incur any liability for any Claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, or arising out of, the Chapter 11 Case, the formulation, dissemination, confirmation, consummation, or administration of this Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Case, this Plan, or any contract, instrument, document or other agreement related thereto; *provided, however*, that the foregoing shall not affect the liability of any Person that would otherwise result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, actual fraud, or criminal conduct, or intentional unauthorized misuse of confidential information that causes damages.

8.6 *Releases by Holders of Claims and Equity Interests.* Effective as of the Confirmation Date, but subject to the occurrence of the Plan Effective Date, and in consideration of compromises integral to the Plan, each holder of a Claim or Equity Interest that votes to accept the Plan (or is deemed to accept the Plan) shall be deemed to release, unconditionally and forever, the Lender, the Chapter 11 Trustee, the DBSI Real Estate Liquidating Trust, the Trustee, the Creditors' Committee, and each of their respective present and former members, officers, directors, managers, agents, financial advisors, attorneys, employees, equity holders, parent corporations, subsidiaries, partners, affiliates, and representatives from any and all claims or Causes of Action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtor, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such Holder, the business or contractual arrangements between the Debtor and such Holder, any restructuring of such Claim or equity prior to the Petition Date, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release from any Causes of Action arising out of the willful misconduct, gross negligence, actual fraud, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages of any such Person or Entity.

8.7 *Releases by Debtor and Estate Representatives.* Effective as of the Confirmation Date but subject to the occurrence of the Plan Effective Date, and in consideration of the compromises integral to the Plan, the Debtor, the Reorganized Debtor, and the DBSI Real Estate Liquidating Trust shall release and be deemed to release, unconditionally and forever, each of (a) the Chapter 11 Trustee, the Trustee, the Creditors' Committee and its members (in their capacity as such), and (b) the Lender and its respective present and former directors, managers, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives from any and all Claims or Causes of Action that exist as of the Plan Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtor (prior to or after the Commencement Date), the business or contractual arrangements and transactions between the Debtor and any such Person or Entity, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the Plan, the consummation thereof, the administration thereof, or the property to be distributed thereunder; *provided*, that the foregoing shall not operate as a waiver of or release

from any Causes of Action arising out of the gross negligence, fraud, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages of any such Person or Entity.

8.8 *Limitation on Exculpation and Releases.* Nothing in Sections 8.5, 8.6, or 8.7 of the Plan shall: (i) be construed to release or exculpate any Entity from actual fraud, malpractice, criminal conduct, or intentional unauthorized misuse of confidential information that causes damages; (ii) limit the liability of the Professionals of the Debtor, the Trustee, the Chapter 11 Trustee or the Creditors' Committee to their respective clients pursuant to the relevant provisions of the Code of Professional Responsibility; or (iii) act as an exculpation or release of any Claims or Causes of Action arising from or related to the Confirmed Debtors' chapter 11 cases or the Consolidated Non-Debtors (as such term is defined in the Confirmed Debtors' Plan).

ARTICLE IX

CONDITIONS PRECEDENT TO THE RESTRUCTURE EFFECTIVE DATE

9.1 *Restructure Effective Date.* The occurrence of the Restructure Effective Date is subject to:

- (a) the occurrence of the Plan Effective Date prior to March 15, 2011;
- (b) the Confirmation Order shall have become a Final Order and be in form and substance satisfactory to the Lender;
- (c) the Reorganized Debtor's execution and delivery to the Lender of the Reinstated Loan Agreement, the Reinstated Term Note, the Cash Management Agreement, and each of the other related agreements, instruments, and documents comprising or related to the Reinstated Loan Documents, each in form and substance satisfactory to the Lender;
- (d) the Reorganized Debtor's having Cash on hand, either in its direct possession or in the possession of the Property Manager for the benefit of the Reorganized Debtor, of not less than \$30,000 (exclusive of the Carve Out Amount and the Reserves (as defined in the Reinstated Loan Agreement));
- (e) all of the representations, warranties and covenants contained in the Reinstated Loan Agreement and the other Reinstated Loan Documents shall be true and correct in all material respects;
- (f) the Reorganized Debtor shall have caused the Property Manager to execute and deliver to the Lender an agreement acknowledging the Lender's rights under the Reinstated Loan Documents and agreeing, among other things, to continue to serve as Property Manager with respect to the Property upon the occurrence of an event of default under the Reinstated Loan Agreement, such agreement to be in form and substance satisfactory to the Lender;

(g) the Lender's satisfactory review of leases or subleases in effect with respect to the Property and evidence that each of such leases or subleases is properly executed and binding between the Reorganized Debtor and the TIC Investors, on the one hand, as their respective interests appear, and each of the individual tenants at the Property, on the other;

(h) copies of the organization documents of the Reorganized Debtor certified to be true and complete as of a recent date by the appropriate Governmental Authority of the State of Delaware, and certified by a secretary or assistant secretary of the Reorganized Debtor to be true and correct as of the Restructure Effective Date;

(i) good standing certificates of the Reorganized Debtor in (A) the State of Delaware and (B) in the State of Missouri;

(j) the Lender's satisfactory review of search of Uniform Commercial Code filings, judgment liens, tax liens and other filings against all or a portion of the Property;

(k) duly executed deposit account control agreements requested by the Lender with respect to any deposit accounts of the Reorganized Debtor or deposit accounts of the Property Manager holding Cash proceeds derived from the Property;

(l) endorsements of the title insurance policies with respect to the Property, bringing down the coverage under such policy to the Restructure Effective Date and confirming coverage issued by the title insurance company reasonably acceptable to the Lender, assuring the Lender that the Deed of Trust continues to create a valid and enforceable first priority mortgage lien on the Property, free and clear of all defects and encumbrances except for those permitted under the Reinstated Loan Agreement, which policies shall otherwise be in form and substance reasonably satisfactory to the Lender;

(m) receipt by the Lender of copies of insurance policies or certificates of insurance of the Reorganized Debtor evidencing liability and casualty insurance meeting the requirements set forth in the Reinstated Loan Documents or otherwise satisfactory to the Lender, including, but not limited to, naming the Lender as an additional insured (in the case of liability insurance) and loss payee or mortgagee (in the case of hazard insurance);

(n) receipt by the Lender of estoppel certificates from each of the tenants at the Property, such certificates to be in form and substance satisfactory to the Lender;

(o) the Reorganized Debtor shall be in compliance with all of the terms and conditions of the Plan and the Confirmation Order; and

(p) no event or condition shall exist which would constitute an Event of Default under any of the Reinstated Loan Documents after notice or lapse of time or both;

9.2 *Effect of Restructure Effective Date.* Upon the occurrence of the Restructure Effective Date, (a) the Reinstated Loan Documents shall become valid, binding and effective

between the Lender and the Reorganized Debtor, and their respective successors and assigns; (b) the Pre-Petition Lender Claims shall be restated upon the terms and conditions set forth in the Reinstated Loan Documents and shall be due and payable as set forth therein; and (c) the Deed of Trust and the Assignment of Leases, and all other Liens held by the Lender upon all Assets of the Debtor or Reorganized Debtor, shall continue in full force and effect to secure the Reinstated Loan Obligations, without the necessity of any filing, recording or other means of perfection with respect to such Liens. Upon the occurrence of the Restructure Effective Date, the Reorganized Debtor shall File a notice with the Bankruptcy Court stating that the Restructure Effective Date has occurred and serve such notice on all Holders of Claims and Interests as well as the TIC Investors.

9.3 *Failure of Restructure Effective Date.* (a) If the Restructure Effective Date has not occurred within 30 Business Days after the Confirmation Date, or such later date agreed to in writing by the Lender, then, by operation of the Plan and the Confirmation Order, the Lender shall have immediate relief from the automatic stay of Section 362 of the Bankruptcy Code, and any other injunction or stay in effect with respect to the Reorganized Debtor or the Property, to enforce its remedies against the Property and any Collateral securing its Claims without further hearing before or Order of the Bankruptcy Court, such remedies to include, without limitation, the initiation, pursuit and completion of foreclosure with respect to the Property, seeking and obtaining the appointment of a receiver with respect to the Property, and exercising its rights of setoff or recoupment of any kind with respect to any deposit accounts, reserve accounts or similar accounts holding Collateral securing its Claims. Without limiting the generality of the foregoing, upon the failure of the Restructure Effective Date, by operation of the Plan and the Confirmation Order, the Lender shall not be stayed or enjoined from exercising its remedies against the Property and any other Collateral by the conversion of the Chapter 11 Case to one administered under Chapter 7 of the Bankruptcy Code or otherwise.

(b) In the alternative, at the election of the Lender upon written notice to the Reorganized Debtor (such notice being referred to herein as the “Lender Sale Notice” and the date of delivery of such notice to the Reorganized Debtor as the “Notice Delivery Date”), if the Restructure Effective Date has not occurred within 30 Business Days after the Confirmation Date, or such later date agreed to in writing by the Lender, then the Reorganized Debtor shall initiate an auction of the Property in its entirety pursuant to Section 363(h) of the Bankruptcy Code, following the Auction Procedures, with the auction of the Property occurring no later than sixty (60) days after the Notice Delivery Date. Such sale of the Property pursuant to Section 363(h) of the Bankruptcy Code shall be authorized by the Confirmation Order and by operation of the Plan and shall not be subject to or require further notice or hearing before the Bankruptcy Court or any further Order of the Bankruptcy Court except as specified in the Auction Procedures with respect to confirming the successful bidder for such sale. The Lender shall be entitled to credit bid all or any portion of its Pre-Petition Lender Claims at any such auction. To the extent that the TIC Investors, or any of them, qualifies as a Qualified Bidder (as defined in the Auction Procedures), they shall be permitted to bid, in Cash, at any such auction.

ARTICLE X RETENTION OF JURISDICTION

Pursuant to sections 105, 1123(a)(5), and 1142(b) of the Bankruptcy Code, on or after the Confirmation Date, and notwithstanding the entry of the Confirmation Order or occurrence of the Plan Effective Date and the Restructure Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of the Chapter 11 Case and all matters arising under, arising out of, or related to the Chapter 11 Case and the Plan, to the fullest extent permitted by law, including, among other things, jurisdiction:

- (a) to hear non-core proceedings related to the Chapter 11 Case, including, without limitations, matters concerning the interpretation, implementation, consummation, execution, or administration of the Plan;
- (b) to hear and determine all Causes of Action by or on behalf of the Debtor and proceedings to recover Assets of the Estate, wherever located;
- (c) over motions to assume, reject, or assume and assign executory contracts or unexpired leases, and the allowance or disallowance of any Claims resulting therefrom;
- (d) over disputes concerning the ownership of Claims or Interests;
- (e) over disputes concerning the distribution or retention of consideration under the Plan;
- (f) over objections to Claims, motions to allow late-Filed Claims, and motions to estimate Claims;
- (g) over proceedings to determine the extent, validity, and/or priority of any Lien asserted against property of the Debtor, its Estate, or property abandoned or transferred by the Debtor, the Chapter 11 Trustee, the Estate, or the Trustee;
- (h) over proceedings to determine the amount, if any, of interest to be paid to Holders of Allowed Unsecured Claims if any Allowed Unsecured Claims are paid in full pursuant to the terms of the Plan;
- (i) over matters related to the Assets of the Estate; provided that except as otherwise provided in the Plan or the Confirmation Order, the Trustee shall have no obligation to obtain the approval or authorization of the Bankruptcy Court or File a report with the Bankruptcy Court concerning the sale, transfer, assignment or other disposition of Assets of the Estate; and provided further that the Trustee may seek orders of the Bankruptcy Court approving the sale, transfer, assignment or other disposition of Assets of the Estate as appropriate to facilitate such transactions;
- (j) over matters relating to the subordination of Claims or Interests;

(k) to enter and implement such orders as may be necessary or appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(l) to consider and approve modifications of or amendments to the Plan, to cure any defects or omissions or to reconcile any inconsistencies in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(m) to issue orders in aid of execution, implementation, or consummation of the Plan;

(n) over disputes arising from or relating to the Plan, the Confirmation Order, or any agreements, documents, or instruments executed in connection therewith;

(o) over requests for allowance and/or payment of Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code and any objections thereto;

(p) over all Fee Applications;

(q) over matters concerning state, local, or federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

(r) over conflicts and disputes between the Trustee, the Trust, and Holders of Claims or Interests;

(s) over matters concerning the Debtor's insurance policies, if any, including jurisdiction to re-impose the automatic stay or its applicable equivalent provided in the Plan;

(t) to issue injunctions, provide declaratory relief, or grant such other legal or equitable relief as may be necessary or appropriate to restrain interference with the Plan, the Debtor, its Estate or its property, the Professionals, or the Confirmation Order;

(u) to hear and determine all matters related to the winding up of the Debtor;

(v) to enter a Final Decree closing the Chapter 11 Case;

(w) to enforce all orders previously entered by the Bankruptcy Court; and

(x) over any and all other suits, adversary proceedings, motions, applications, and contested matters that may be commenced or maintained under to the Chapter 11 Case or the Plan.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 *Effectuating Documents and Further Transactions.* The Trustee and the Reorganized Debtor, as applicable, are authorized to execute, deliver, file, or record such

contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

11.2 *Exemption from Transfer Taxes.* Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

11.3 *Expedited Tax Determination.* The Trustee is authorized to request an expedited determination of taxes under Sections 346, 505(b) and 1146(b) of the Bankruptcy Code for any and all taxable periods (or portions thereof) ending after the Commencement Date through, and including, the Plan Effective Date.

11.4 *Payment of Statutory Fees.* On the Plan Effective Date, and thereafter as may be required, the Trustee shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

11.5 *Post-Confirmation Date Professional Fees and Expenses.* From and after the Plan Effective Date, the Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of Professionals thereafter incurred by the Reorganized Debtor after the Plan Effective Date.

11.6 *Plan Supplement.* A draft form of each of the Reinstated Loan Documents and other appropriate documents shall be contained in the Plan Supplement and Filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the last date by which Holders of impaired Claims may vote to accept or reject the Plan. Upon its Filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Copies of the Plan Supplement may also be obtained upon written request from counsel for the Trustee.

11.7 *General Notices.* Any notice, request, or demand required or permitted to be given to the Debtor, the Reorganized Debtor, or the Trustee in connection with the Plan shall be (a) in writing, (b) served by certified mail, return receipt requested, hand delivery, (iii) overnight delivery, (iv) first class mail, or (v) fax transmission, and (c) deemed to have been given or made when actually delivered or received addressed as follows:

- to the Trustee:

Mark B. Conlan, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310

with copies to:

Conrad Myers
Myers & Co.
6327 SW Capitol Highway
Suite 222
Portland, OR 97201

11.8 *Substantial Consummation.* The Plan shall be not deemed to be substantially consummated under Sections 1101 and 1127(b) of the Bankruptcy Code unless and until (a) the Reinstated Loan Obligations have fully repaid in Cash through either the sale of the Property or the refinancing of such Obligations, and (b) the Distributions contemplated to be made to the Holders of Allowed Unsecured Claims under the Plan have been fully and finally paid by the Reorganized Debtor.

11.9 *Amendments or Modifications of the Plan.* Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Plan Proponent at any time prior to the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment of Holders of Claims or Equity Interests under the Plan, the Trustee may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan, but no amendments, modifications or revisions may be made to the Plan absent the consent of the Lender.

11.10 *Revocation or Withdrawal of the Plan.* The Plan Proponent reserves the right to revoke or withdraw the Plan prior to the Plan Effective Date. If the Plan Proponent takes such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims against or Equity Interests in the Debtor, any claims or rights of the Debtor against any other Person, or to prejudice in any manner the rights of the Debtor or any other Person in any further proceedings involving the Debtor.

11.11 *Governing Law.* Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule or document in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri, without giving effect to the principles of conflict of laws thereof.

11.12 *Binding Effect.* The Plan shall be binding upon and inure to the benefit of the DBSI Real Estate Liquidating Trust, the Reorganized Debtor, the Trustee, the Holders of Allowed Claims and Equity Interests, and their respective successors and assigns.

11.13 *Exhibits and Schedules.* All exhibits and schedules to the Plan, including the Reinstated Loan Documents and the other documents contained in the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

11.14 *Time.* In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply. Time is of the essence with respect to the performance of the Plan.

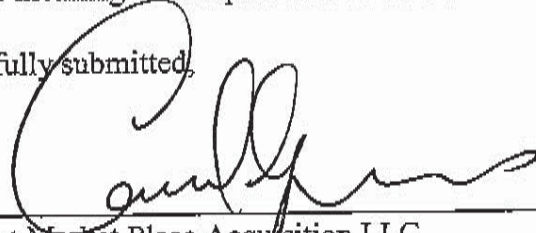
11.15 *Section Headings.* The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

Respectfully submitted,

Dated: February 8, 2011

~~Wilmington, DE~~

Boise, ID

A handwritten signature in dark ink, appearing to read 'Conrad Myers', is written over a horizontal line.

Florissant Market Place Acquisition LLC
By Conrad Myers as the Liquidating Trustee
for the DBSI Real Estate Liquidating Trust

EXHIBIT A
PROPOSED FORM OF AUCTION PROCEDURES

AUCTION PROCEDURES

Pursuant to the Plan of Reorganization (the “Plan”) by Florissant Market Place Acquisition LLC (the “Reorganized Debtor”), the Reorganized Debtor may be required, under certain circumstances, to auction certain real property, improvements and related assets located in Florissant, St. Louis County, Missouri (as more particularly described in Exhibit 1 hereto, the “Property”) for sale. The Plan seeks the approval of, among other things, the procedures (the “Auction Procedures”) by which the Reorganized Debtor may, as required by the Plan, conduct an auction (“Auction”) for the sale (the “Sale”) of the Property under section 363(h) of the Bankruptcy Code, including all undivided interests in the Property owned by any TIC Investors. The Sale will be consummated pursuant to the terms of a Purchase & Sale Agreement in substantial conformity with the form attached hereto as Exhibit 2 (the “Purchase & Sale Agreement”). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

The Auction Procedures will be presented for approval by the Bankruptcy Court at the Confirmation Hearing with respect to the Plan.

“AS IS, WHERE IS”

The Property shall be sold and transferred to the Successful Bidder on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Reorganized Debtor. The forms of Deeds to be delivered by the Reorganized Debtor is attached to the Purchase & Sale Agreement as Exhibit B.

PARTICIPATION REQUIREMENTS

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in purchasing the Property (a “Potential Bidder”) must first deliver to counsel for the Reorganized Debtor:

- (a) An executed confidentiality agreement substantially in the form and substance of Exhibit 3 attached hereto;
- (b) the most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of the Sale, (x) Financials of the Potential Bidder or such other form of financial disclosure, such materials being acceptable in form and content to the Reorganized Debtor; (y) the written commitment acceptable to the Reorganized Debtor of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the Sale; and (z) a detailed summary of the Potential Bidder’s qualifications and relevant experience. In the event that a Potential Bidder is unable to provide Financials or an unconditional financing commitment, the Reorganized Debtor, in consultation with the Lender, may accept such other information sufficient to demonstrate to

its satisfaction that such Potential Bidder has the financial wherewithal to consummate the Sale; and

- (c) written confirmation that the Potential Bidder is not an “insider” of the Reorganized Debtor, as that term is defined in section 101(31) of the Bankruptcy Code.

A “Qualified Bidder” is a Potential Bidder whose Financials or other information demonstrates the financial capability to consummate and perform obligations in connection with the Sale and which the Reorganized Debtor, in consultation with the Lender, determines is reasonably likely to make a bona fide offer and would be able to consummate the proposed Sale of the Property if selected as the Successful Bidder. It is understood that any Potential Bidder that subsequently becomes a Qualified Bidder shall, at its own expense, take any and all actions reasonably necessary to support its bid, including, but not limited to provision of any and all documents that may be requested by the Reorganized Debtor and work cooperatively with the Reorganized Debtor to obtain Court approval of the Sale. The Reorganized Debtor will promptly advise the Potential Bidder in writing of the determination whether or not the Potential Bidder is a Qualified Bidder.

Notwithstanding any other term or provision hereof, the Lender shall be deemed a Potential Bidder and a Qualified Bidder for all purposes in connection with these Auction Procedures.

OBTAINING DUE DILIGENCE ACCESS

Due diligence materials including a copy of the Purchase & Sale Agreement, title searches and surveys of the Property and other pertinent documents will be made available for inspection prior to the Bid Deadline only upon a Potential Bidder’s: (i) execution of an appropriate form of confidentiality agreement (to be provided by the Reorganized Debtor’s counsel), and (ii) delivery of satisfactory evidence to the Reorganized Debtor demonstrating such bidder’s committed and unconditional financing or other ability to close an all-cash transaction with no financing contingency. The due diligence materials will be made available during regular business hours or pursuant to arrangements made prior to the Bid Deadline with counsel for the Trustee: Mark B. Conlan, Esq., Gibbons P.C., One Gateway Center, Newark, NJ, 07102-5310, Tel: 973-596-4500, E-mail: mconlan@gibbonslaw.com.

BID DEADLINE

The deadline for submitting bids by a Qualified Bidder shall be at 4:00 p.m. (prevailing Eastern Time) on the date which is twenty (20) calendar days after the filing and service by the Reorganized Debtor of a notice (“Auction Notice”) specifying its implementation of these Auction Procedures, or such adjourned date as may be determined by the Reorganized Debtor with the consent of the Lender (the “Bid Deadline”). In addition to filing the Auction Notice with the Bankruptcy Court and serving it on all interested parties in the Bankruptcy Case, the Reorganized Debtor shall provide such Auction Notice to any other

Persons (including the TIC Investors) who have expressed an interest to the Reorganized Debtor in acquiring the Property.

Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid for the Property shall deliver written copies of its bid to: (i) Gibbons P.C., One Gateway Center, Newark, New Jersey 07102 (Attn: Mark B. Conlan, Esq.), counsel to the Reorganized Debtor; (ii) Moore & Van Allen PLLC, 100 North Tryon Street, 47th Floor, Charlotte, North Carolina 28202 (Attn: David S. Walls), counsel to the Lender; (iii) Archer & Greiner, P.C., 300 Delaware Avenue, Suite 1370, Wilmington, Delaware 19801 (Attn.: Charles J. Brown, III); and (iv) the Office of the United States Trustee, 844 King Street, Room 2313, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter) (collectively, the “Notice Parties”).

DUE DILIGENCE FROM BIDDERS

Each Qualified Bidder shall comply with all reasonable requests for additional information by the Reorganized Debtor, or its advisors, regarding such Qualified Bidder’s financial wherewithal to consummate and perform obligations in connection with the Sale. Failure by a Qualified Bidder to comply with requests for additional information may be a basis for the Reorganized Debtor to determine that a bid made by such Qualified Bidder is not a Qualified Bid.

BID REQUIREMENTS

A Qualified Bidder shall submit a written irrevocable offer to purchase the Property by the Bid Deadline. Additionally, a bid must:

1. Be a written offer on the Qualified Bidder’s letterhead (or, if on behalf of such bidder by its agent, including its legal counsel, then on Qualified Bidder’s legal counsel’s letterhead) for the purchase of the Property in Cash that must include: (i) the Qualified Bidder’s full name and address, (ii) the amount being offered, (iii) satisfactory evidence of committed unconditional financing or other ability to close with no financing contingency, (iv) a current financial statement and/or bank account statements, and (v) clean and “marked up” versions of the draft form of Purchase & Sale Agreement (a copy of which is attached hereto as Exhibit 2), with any proposed revisions thereto. Please note that only such modifications as are appropriate for a Qualified Bidder submitting an all-cash offer will be considered by the Reorganized Debtor. Only all-cash bids shall be accepted from Qualified Bidders other than the Lender; the Lender may submit a credit bid. The written offer must expressly state that if the Bidder is the Successful Bidder, it is ready, willing and able to execute the Purchase & Sale Agreement, as the same may be modified in the Reorganized Debtor’s discretion, in consultation with counsel for the Lender, and agrees to provide any other information that the Reorganized Debtor in its sole discretion may reasonably request.

2. Confirm that the offer shall remain open and irrevocable until the closing of a Sale to the Successful Bidder or the Next Highest Bidder (as defined herein);
3. Be accompanied by a good faith deposit in the amount of \$1,000,000 (the “Minimum Deposit”) in the form of a certified or bank check from a U.S. bank or by confirmed wire transfer (or other form acceptable to the Reorganized Debtor in its sole discretion) payable to the order of “Gibbons P.C., Attorney Trust Account.” All Deposits will be held in the attorney trust account of the Reorganized Debtor’s counsel pending the Sale Hearing and will be returned thereafter, except that the Reorganized Debtor shall transfer the Minimum Deposit of the Successful Bidder (as defined below) to the Escrow Holder (as defined below), which Minimum Deposit shall be applied to the Purchase Price at the Closing or as otherwise set forth herein;
4. In the case of a bid submitted by a real estate broker as agent for a Qualified Bidder, the broker must submit the required bid documents together with a letter of authorization on the Qualified Bidder’s corporate letterhead, executed by an authorized officer of the Qualified Bidder, stating that (i) Qualified Bidder exclusively authorizes broker to submit such offer on its behalf, and that a commission or fee of any type due and payable to such broker as a result of the Qualified Bidder’s purchase of the Property shall be paid solely by such bidder, and (ii) Qualified Bidder shall indemnify the Reorganized Debtor’s estate as to any broker’s fee or commission;
5. Include a commitment to consummate the Sale upon conclusion of the Sale Hearing;
6. Be on terms that are not materially more burdensome or conditional than the terms of the draft form of Purchase & Sale Agreement;
7. Not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
8. Pursuant to Del. Bankr. L. 6004-1(c)(2)(B), include written confirmation that the Qualified Bidder has not engaged in any collusion with respect to the bidding or the Sale; and
9. Fully disclose the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and the complete terms of any such participation, including a full disclosure of any connections to the Seller, or to DBSI, Inc., or their respective insiders.

A bid received from a Qualified Bidder and that meets the requirements set forth above will be considered a “Qualified Bid” if the Reorganized Debtor, in consultation with the Lender, believes that such bid would be consummated if selected as a Successful Bid (as defined herein). Notwithstanding the foregoing, any bid duly submitted by or on behalf of the Lender in writing,

committing to credit bid in a certain dollar amount for the Property, shall be deemed to constitute a Qualified Bid for all purposes in connection herewith, and to the extent that the Lender submits a credit bid as its Qualified Bid, then the Lender shall not be required to submit a Minimum Deposit in connection with such bid.

After the Bid Deadline, the Reorganized Debtor shall determine which Qualified Bid represents the then-highest or otherwise best bid (the "Initial Bid"). Prior to the commencement of the Auction, the Reorganized Debtor may distribute copies of the Initial Bid to each Qualified Bidder.

ASSUMPTIONS REGARDING QUALIFIED BIDS

Each Qualified Bidder (as defined below) shall be deemed to acknowledge that:

1. it had an opportunity to inspect and examine the Property and to review all pertinent documents with respect to the Property prior to making its offer, and that each such Qualified Bidder relied solely on that review and upon its own investigation and inspection of the Property in making its offer;
2. it is not relying upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise of the Reorganized Debtor, its agents and/or representatives; and
3. its bid is irrevocable until the earlier of (i) the Closing of the Sale, or (ii) entry of an Order by the Bankruptcy Court at the conclusion of the Sale Hearing.

AUCTION

If the Reorganized Debtor receives a Qualified Bid from more than one Qualified Bidder by the Bid Deadline, an auction (the "Auction") with respect to the Sale will take place on the date which is five (5) Business Days after the Bid Deadline, commencing at 10:00 a.m. (prevailing Eastern time) or such adjourned date as may be determined by the Reorganized Debtor with the consent of the Lender (the "Auction Date"), at the offices of the Reorganized Debtor's counsel, or such other place as the Reorganized Debtor may provide so long as such change is communicated reasonably in advance to all Qualified Bidders, and other invitees.

If an Auction is held, the following rules for its conduct (the "Auction Rules") shall be observed:

1. Only a Qualified Bidder who has submitted a Qualified Bid by the Bid Deadline will be eligible to participate at the Auction.
2. At the Auction, Qualified Bidders will be permitted to increase their bids. The bidding at the Auction shall start at the purchase price stated in the Initial Bid and

then continue in increments as determined by the Reorganized Debtor and announced at the commencement of the auction.

3. Each Qualified Bidder will be permitted a fair, but limited, amount of time (no more than fifteen minutes, unless otherwise agreed by the Reorganized Debtor) to respond to the previous bid at the Auction. Bidding at the Auction will continue until such time as the highest or otherwise best offer is determined in accordance with these Auction Procedures.
4. The Reorganized Debtor will, from time to time, advise Qualified Bidders participating in the Auction of the then highest or otherwise best bids.
5. The Auction may be adjourned by the Reorganized Debtor with the consent of the Lender. Reasonable notice of the time and place for the resumption of the Auction will be given to all Qualified Bidders and other invited parties.
6. Immediately prior to concluding the Auction, the Reorganized Debtor shall (a) review each Qualified Bid on the basis of its financial and contractual terms and the factors relevant to the Sale process and the best interests of the Reorganized Debtor's estates and creditors; (b) determine and identify the highest or otherwise best Qualified Bid (the "Successful Bid") and the Qualified Bidder submitting such bid (the "Successful Bidder"); (c) determine and identify the next highest or otherwise best Qualified Bid after the Successful Bid (the "Next Highest Bid") and the Qualified Bidder submitting such bid (the "Next Highest Bidder"); and (d) have the right to reject any and all bids.
7. Within one business day after the conclusion of the Auction, the Successful Bidder shall execute and deliver to the Trustee the final form of the agreed upon final Purchase & Sale Agreement.
8. Not later than one business day before the Closing Date, the Successful Bidder shall: (a) deliver to Escrow Holder under the Purchase & Sale Agreement: (the "Escrow Holder") a certified or U.S. bank check or wire transfer in an amount necessary to fund the balance of the Successful Bid; provided, however, in the event that the Lender shall be the Successful Bidder, then it shall deliver its original promissory note (or other instrument evidencing its claim) to the Escrow Holder.

Pursuant to Del. Bankr. L.R. 6004-1(c)(ii)(C) and (D), the Auction will be conducted openly and all creditors of the Reorganized Debtor are permitted to attend. A court reporter will provide a record of the Auction proceedings.

If only a single Qualified Bid is received by the Reorganized Debtor, then no Auction shall be conducted and the Qualified Bidder submitting such Bid shall be deemed to be the Successful Bidder and its Bid shall be deemed the Successful Bid.

ACCEPTANCE OF THE SUCCESSFUL BID

The Reorganized Debtor will present the results of the Auction to the Bankruptcy Court at the Sale Hearing (as defined below), at which certain findings will be sought from the Bankruptcy Court regarding the Auction Procedures and Auction, including, among other things, that (i) the Auction Procedures and Auction were conducted and the selection of the Successful Bidder was in accordance with these Auction Procedures, (ii) the Auction was fair in substance and procedure, and (iii) consummation of the Sale contemplated by the Successful Bid will provide the highest or otherwise best value for the Property and is in the best interests of the Reorganized Debtor's estate and its creditors.

If an Auction is held, the Reorganized Debtor shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid and the entry of an Order approving such Successful Bid. If no Auction is held, due to the submission of only a single Qualified Bid, then the Reorganized Debtor shall be deemed to have accepted such Qualified Bid only when definitive documentation has been executed in respect thereof.

Within one business day after the conclusion of the Auction, the Reorganized Debtor shall file and serve the statement memorializing the Auction results as required by Bankruptcy Rule 6004(0)(1). If no Auction is held, the Reorganized Debtor shall file and serve a statement indicating that no Auction occurred and summarizing the terms of the single Qualified Bid.

SALE HEARING

A hearing to consider approval of the Sale to the Successful Bidder will take place on the first available hearing date nearest the date which is twenty (20) days after the Bid Deadline, such hearing to be before the Bankruptcy Court, or such adjourned date as may be determined by the Reorganized Debtor and the Lender (the "Sale Hearing"). The Reorganized Debtor shall file a motion with the Bankruptcy Court on or before the date of the Bid Deadline for approval of the Sale at the Sale Hearing.

If (i) an Auction is held (ii) a Successful Bidder and Next Highest Bidder are selected, (iii) the Bankruptcy Court approves the Sale to the Successful Bidder, and (iv) the sale to such Successful Bidder is not consummated because of a breach or failure to perform on the part of such Successful Bidder, then the Reorganized Debtor shall be authorized to consummate the Sale to the Next Highest Bidder without further court order or notice to any other party. The Reorganized Debtor specifically reserves the right to seek all appropriate damages from a defaulting Successful Bidder or Next Highest Bidder.

RETURN OF MINIMUM DEPOSIT

Except as otherwise provided in this paragraph with respect to any Successful Bid and any Next Highest Bid, the Minimum Deposits of all Qualified Bidders required to submit such a

deposit under the Sale Procedures shall be returned upon or within three (3) business days after the entry of an order approving the Sale. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale and applied in accordance with the Successful Bid. The Minimum Deposit of the Next Highest Bidder with respect to the Property shall be returned upon or within three (3) business days after closing of the Sale to the Successful Bidder. If the Successful Bidder fails to close the Sale, such party's Minimum Deposit shall be forfeited to the Debtor's bankruptcy estate.

RESERVATION OF RIGHTS

The Reorganized Debtor reserves the right, in its reasonable discretion and in consultation with the Lender to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the highest and best bid and which is the next highest and best bid, (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Sale Procedures, or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Reorganized Debtor's estate; (v) impose additional terms and conditions with respect to all Potential Bidders, (vi) adjourn or cancel the Auction and/or Sale Hearing in open court without further notice but with the consent of the Lender; and (vii) modify the Sale Procedures as it may determine, with the consent of the Lender, to be in the best interests of the Reorganized Debtor's estate.

EXHIBITS

EXHIBIT 1 — PROPERTY DESCRIPTION

EXHIBIT 2 — DRAFT FORM OF PURCHASE & SALE AGREEMENT

EXHIBIT 3 — DRAFT FORM OF CONFIDENTIALITY AGREEMENT

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

Exhibit A

Legal Description

Parcel 1:

Lot 1A and Lot 1B of Florissant Market Place Plat 2, according to the plat thereof recorded in Plat Book 354 Page 821 of the St. Louis County Records.

Parcel 2:

Perpetual non-exclusive easements for vehicular access and ingress and egress, and for construction and maintenance of utility facilities, as set forth in the Reciprocal Easement Agreement recorded in Book 14157 Page 71.

Parcel 3:

Perpetual non-exclusive easements for construction and maintenance of utility facilities, as set forth in the Easements and Restriction Agreement recorded in Book 14327 page 1844 and in the Reciprocal Easement Agreement recorded in Book 14913 page 2217.

EXHIBIT 2

DRAFT FORM OF PURCHASE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between _____, a _____ ("Buyer") and Florissant Market Place Acquisition LLC ("Florissant"), for itself and on behalf of certain tenant-in-common investors (the "TIC Investors") of the Property (collectively, the "Seller"), pursuant to the Plan of Reorganization confirmed by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in the bankruptcy case of Florissant pending in the Bankruptcy Court and jointly administered under Case No. 08-12687 (PJW).

12. Definitions. As used in this Agreement, the following terms shall have the following meanings:

12.1 "Property" means:

(a) real property located in St. Louis County, Missouri, more particularly described on Exhibit "A," attached hereto and incorporated herein by reference ("Realty"); and

(b) all tangible and intangible personal property exclusively associated with the Realty and owned by Seller, including without limitation, warranties, guaranties, and other assurances of performance, governmental licenses, permits, and approvals, and water and irrigation rights of any kind, including without limitation stock in an irrigation company or district ("Personalty").

12.2 "Escrow Holder" means _____.

12.3 "Title Insurer" means _____.

12.4 "Effective Date" means the first date on which this Agreement has been signed by both Buyer and Seller.

12.5 "Closing" means such time as Escrow Holder is in receipt of all Seller's Closing Deliveries (as defined in Section 9.1 below) and Buyer's Closing Deliveries (as defined in Section 9.2 below) and is able to and does comply with Seller's and Buyer's Closing instructions. Closing shall occur as set forth in Section 6 below, unless otherwise agreed to in writing by each party hereto.

13. Purchase and Sale. In consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer Seller's interest in the Property, on the terms and conditions set forth in this Agreement.

14. Purchase Price. The purchase price for the Property is _____ and 00/00 Dollars (\$_____.00) ("Purchase Price").

14.1 Earnest Money. Buyer has previously deposited with Seller a bidding deposit in the sum of \$500,000.00 in cash or other immediately available funds (“Bidding Deposit”). Seller shall deposit with Escrow Holder on or before one (1) business day following the Effective Date, the Bidding Deposit currently being held by Seller (“Earnest Money”). Escrow Holder shall deposit the Earnest Money in an insured, interest-bearing account. The Earnest Money shall be applied to the Purchase Price for Buyer at Closing.

14.2 Refund of Earnest Money. The Earnest Money is non-refundable to Buyer, except in the event that Buyer terminates this Agreement as permitted under Sections 11.1, 12.3 or 15 below. If this Agreement is terminated by Buyer under Section 11.1, or 15 below, Escrow Holder shall continue to hold the Earnest Money until Escrow Holder has received consistent written instructions from Seller and Buyer regarding release of the Earnest Money. If this Agreement is terminated pursuant to any other provision of this Agreement, then Escrow Holder shall promptly release the Earnest Money to Seller without further instruction from any party hereto. The provisions of this Section 3.2, with respect to return of the Earnest Money, shall survive the termination of this Agreement.

14.3 Balance of Purchase Price. Subject to the terms and conditions set forth in this Agreement, not later than one business day before Closing, Buyer shall deposit with Escrow Holder the balance of the Purchase Price, less the Earnest Money, in cash or other immediately available funds.

15. Title Matters.

15.1 Title Report and Survey. Buyer acknowledges it has been provided, for informational and due diligence purposes only, a title report (“Title Report”) for an ALTA standard owner’s coverage title policy with respect to the Realty. It is not the intent of Seller to provide for the issuance of a title policy for this transaction. Buyer has also been provided the most recent survey of the Realty in Seller’s possession (“Survey”). The legal description in Seller’s vesting deed shall be the legal description used in the Deed (as defined in Section 9.1 below).

16. Due Diligence.

16.1 Due Diligence Review. Buyer acknowledges that it has conducted its due diligence review of the Property prior to the Effective Date and that Buyer shall have no rights to conduct any future due diligence review on the Property or terminate this Agreement except as specifically set forth hereafter.

16.2 Restrictions. Notwithstanding any other provision hereunder, if Buyer desires to enter onto the Realty prior to Closing, Buyer shall give Seller no less than 24 hour prior notice thereof. Neither Buyer nor its agents shall enter onto the Property without obtaining Seller’s prior written consent, in Seller’s sole discretion. If applicable, Buyer hereby covenants and agrees that its entrance to the Property shall not disturb or disrupt any other occupants or owners in the subdivision in which the Property is located. Buyer shall not conduct or cause to be conducted any physically intrusive investigation, examination or study of the Property without

obtaining Seller's prior written consent, in Seller's sole discretion and Buyer shall comply with all laws, ordinances, rules, and regulations applicable to the Property. Buyer and Buyer's representatives shall (a) maintain comprehensive general liability (occurrence) insurance in an amount of not less than \$1,000,000 covering any accident arising in connection with the presence of Buyer or its agents on the Property and the performance of any investigations, examinations or studies thereon, and shall deliver a certificate of insurance (in form and substance reasonably satisfactory to Seller), naming Seller as an additional insured thereunder, verifying the existence of such coverage to Seller prior to entry upon the Property; and (b) promptly pay when due any third party costs associated with its entry on to the Property. Buyer shall indemnify, defend, and hold Seller and the Property harmless from and against damage or loss to the Property, Seller or any neighboring property owner or personal injury caused by Buyer in connection with its entry on or about the Property pursuant to this Section 5. Buyer shall promptly repair and restore any damage for which it indemnifies Seller under this Section 5.2. The provisions of this Section 5.2 shall survive the termination of this Agreement or Closing and shall not merge into any deed delivered and accepted upon Closing.

17. Closing. Except as otherwise provided hereunder, Closing shall occur in escrow in the office of Escrow Holder on or before five (5) business days following the approval of the bankruptcy court as set forth in Section 12.3. Closing (including without limitation the disbursement of the Purchase Price to Seller) shall occur on or before 1:00 p.m. prevailing Eastern Time on the date of Closing. Possession of the Property shall be delivered by Seller to Buyer as of Closing.

18. Prorations.

18.1 Real Estate Taxes and Assessments. At or prior to Closing, Seller shall pay in full all real estate taxes and assessments for the Property due and payable as of the date of Closing. Real estate taxes and installments of assessments for the Property due and payable for the year of Closing shall be prorated as of the date of Closing, computed on the basis of the last available tax rate and valuation as shown on the tax duplicate. No adjustment to such proration shall be made after Closing.

18.2 Other Income and Expenses. Except as otherwise provided hereunder, all other income and expenses associated with the Property payable to or by Seller shall be prorated as of Closing for the month in which Closing occurs to the extent that such income or expenses that shall be payable to or by Purchaser after Closing. Seller shall be credited with any income and charged with any expenses prorated hereunder before the date of Closing. Purchaser shall be credited with any income and charged with any expenses prorated hereunder for the day of Closing and thereafter.

19. Closing Costs. At Closing, in addition to the proration of any income and expenses to which the parties hereto have agreed herein, the parties shall pay the following costs:

19.1 Seller's Closing Costs. Seller shall pay:

(a) One half of Escrow Holder's fee; and

- (b) Seller's legal counsel fees.

19.2 Buyer's Closing Costs. Buyer shall pay:

- (a) One half of Escrow fees;
- (b) Buyer's legal counsel fees;
- (c) recording fees for sale documents;
- (d) any excise, transfer, sales, use or similar taxes resulting from the conveyance of the Property, or any portion thereof;
- (e) the cost of any survey obtained by Buyer;
- (f) the premium for any title policy and any endorsements thereto;
- (g) real estate commissions and finder's fees Buyer has agreed to pay herein, if any; and
- (h) any fees charged by Buyer's lender or other expenses incurred in connection with any loan obtained by Buyer to purchase the Property.

19.3 Other Closing Costs. Any other costs associated with Closing not specifically provided for herein shall be divided between Seller and Buyer in accordance with local custom and practice in the county in which the Realty is located.

20. Closing Deliveries.

20.1 Seller's Closing Deliveries. On or before the date of Closing, Seller shall deposit with Escrow Holder Seller's executed originals of the following documents ("Seller's Closing Deliveries") conforming to the terms and conditions of this Agreement:

- (a) a duly acknowledged and recordable quitclaim deed ("Deed"), in the form of Exhibit "B," attached hereto and incorporated herein by reference;
- (b) a duly executed bill of sale;
- (c) [a duly executed Affidavit of Property Value];
- (d) a duly executed affidavit of Seller stating that Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act of 1980;
- (e) Seller's Closing instructions, if any; and

(f) any other documents reasonably necessary to satisfy Seller's obligations under this Agreement.

20.2 Buyer's Closing Deliveries. On or before the date of Closing, Buyer shall deposit with Escrow Holder the funds and Buyer's executed originals of the following documents ("Buyer's Closing Deliveries") conforming to the terms and conditions of this Agreement:

- (a) the balance of the Purchase Price pursuant to Section 3 above;
- (b) [a duly executed Affidavit of Property Value];
- (c) Buyer's Closing instructions, if any; and

(d) any other documents reasonably necessary to satisfy Buyer's obligations under this Agreement, including without limitation, resolutions and/ or consents authorizing this transaction.

21. Conduct of Business. From the Effective Date until Closing, Seller shall not enter into any agreements materially affecting the Property without Buyer's prior consent thereto.

22. Default.

22.1 Seller's Default.

(a) Notwithstanding any provision otherwise provided in this Agreement to the contrary, upon Seller's uncured default or breach of any terms or conditions hereunder prior to Closing, Buyer may terminate its obligation to further perform under this Agreement by delivering notice thereof to Seller.

(b) As a condition precedent to the effective exercise of Buyer's option to terminate its obligation to further perform hereunder or take other action pursuant to this Section 11.1, Buyer shall give Seller notice of the alleged default or breach of Seller. Seller shall have a period of ten (10) business days following receipt of such notice to cure the alleged default or breach to Buyer's reasonable satisfaction, and to thereby cure the default or breach. Notwithstanding the foregoing, this Section 11.1 shall not extend the date of Closing.

22.2 Buyer's Default.

(a) Notwithstanding any provision in this Agreement to the contrary, if the sale and purchase of the Property contemplated by this Agreement is not consummated because of the Buyer's uncured breach or default of any terms or conditions hereunder, Seller as its sole and exclusive remedy may terminate this Agreement by delivering notice thereof to Buyer and retain any Earnest Money deposited with Escrow Holder as liquidated damages. The parties hereto expressly agree and acknowledge that Seller's actual damages in the event of a default by Buyer would be extremely difficult or impracticable to ascertain and that the amount of the Earnest Money represents the parties' reasonable estimate of such damages. The parties hereto

expressly agree and acknowledge that the payment of such amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. The provisions of this Section 11.2, with respect to refund of the Earnest Money, shall survive the termination of this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT AND, SPECIFICALLY, THIS SECTION 11.2(a), THE INDEMNITY OBLIGATIONS OF THE BUYER UNDER THIS CONTRACT ARE SEPARATE AND DISTINCT OBLIGATIONS OF THE BUYER THAT ARE NOT SUBJECT TO THE LIQUIDATED DAMAGE PROVISIONS CONTAINED IN THIS SECTION 11.2(a). FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, THE LIQUIDATED DAMAGE PROVISIONS OF THIS SECTION 11.2(a) WILL NOT ACT TO LIMIT THE AMOUNT OF DAMAGES RECOVERABLE BY SELLER AGAINST BUYER, OR RECOVERABLE BY SELLER AGAINST BUYER IF BUYER IMPROPERLY, NEGLIGENTLY, RECKLESSLY, OR INTENTIONALLY RECORDS A GROUNDLESS LIS PENDENS OR OTHER DOCUMENT OR INSTRUMENT THAT IMPAIRS OR COULD IMPAIR SELLER'S ABILITY TO SELL THE PROPERTY TO ANOTHER PURCHASER.

(b) As a condition precedent to the effective exercise of Seller's option to terminate this Agreement or take other action pursuant to this Section 11.2, Seller shall give Buyer notice of the alleged default or breach of Buyer. Buyer shall have a period of ten (10) business days following receipt of such notice to cure the alleged default or breach to Seller's reasonable satisfaction, and to thereby cure the default or breach. Notwithstanding the foregoing, this Section 11.2 shall not extend the date of Closing.

23. Seller's Representations. Seller hereby represents to Buyer, to Seller's actual knowledge, as follows:

23.1 Organization. Seller is validly organized and is in good standing under the laws of its state of organization.

23.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its respective terms. Pursuant to the order of the Bankruptcy Court, Florissant has the authority to execute and deliver this Agreement and the Deed for itself and on behalf of the TIC Investors, as their respective interests exist in the Property. Other than as set forth in Section 12.3 herein, Seller has full power and has been duly authorized to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by Seller hereunder. There are no actions, suits, proceedings, or investigations pending, or threatened against Seller, which question the validity or enforceability of the transaction contemplated herein. None of the execution, delivery, or performance of this Agreement by Seller, the consummation by Seller of the transaction contemplated hereby, consent, waiver, approval, license, or authorization of any person or public authority; (b) violates its governing organizational documents or any judgment, order, writ, injunction, or decree, statute, or regulation applicable to Seller; or (c) results in a breach of or default under, with or without the giving of notice or the passage of time or both, any mortgage, trust deed, license, indenture, or any other agreement or instrument to which Seller is a party.

23.3 Bankruptcy of Seller and Required Approvals. As set forth above, Seller is a debtor in a chapter 11 bankruptcy case filed in the United States Bankruptcy Court for the District of Delaware. A hearing to confirm the Auction results and approve the Sale is scheduled to be heard by the Bankruptcy Court on _____, 201_ at ____ p.m. Seller agrees to file whatever pleadings as are necessary to move the sale contemplated by this Agreement and shall be solely responsible for the expense and cost of such pleadings. If the Bankruptcy Court does not approve the Sale memorialized in this Agreement, then this Agreement shall be terminated and neither party shall have any further liability to the other party hereunder, except for those provisions that expressly survive termination of this Agreement. Such failure to approve the closing shall not constitute a default by Seller hereunder.

The foregoing representations of Seller set forth in this Section 12 are made as of the Effective Date and the date of Closing. Upon Closing, Buyer waives any breach of such representations disclosed to or known by Buyer.

24. Buyer's Representations. Buyer hereby represents to Seller, to Buyer's actual knowledge, as follows:

24.1 Organization. Buyer is validly organized and is in good standing under the laws of its state of organization.

24.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Buyer has full power and has been duly authorized to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by Buyer hereunder. There are no actions, suits, proceedings, or investigations pending, or threatened against Buyer, which question the validity or enforceability of the transaction contemplated herein. Except as otherwise set forth herein, none of the execution, delivery, or performance of this Agreement by Buyer, the consummation by Buyer of the transaction contemplated hereby, or the fulfillment of or compliance with the terms and conditions of this Agreement (a) requires the consent, waiver, approval, license, or authorization of any person or public authority; (b) violates its governing organizational documents or any judgment, order, writ, injunction, or decree statute, or regulation applicable to Buyer; or (c) results in a breach of or default under, with or without the giving of notice or the passage of time or both, any mortgage, trust deed, license, indenture, or any other agreement or instrument to which Buyer is a party.

The foregoing representations of Buyer set forth in this Section 13 are made as of the Effective Date and the date of Closing. Upon Closing, Seller waives any breach of such representations disclosed to or known by Seller.

25. PROPERTY SOLD "AS IS". THE PURCHASE AND SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON A STRICTLY "AS IS" "WHERE IS" BASIS, AS OF THE DATE OF CLOSING, AND SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW WITH RESPECT THERETO, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY,

MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO. SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY (ORAL OR WRITTEN) CONCERNING: (A) THE NATURE AND CONDITION OF THE PROPERTY AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES THAT BUYER ELECTS TO CONDUCT THEREON; (B) THE MANNER, CONSTRUCTION, CONDITION AND STATE OF REPAIR OR LACK OF REPAIR OF THE IMPROVEMENTS; (C) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY; AND (D) ANY OTHER MATTER WHATSOEVER. BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON AND THAT SELLER HEREBY DISCLAIMS AND RENOUNCES ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER. BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL OR PHYSICAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH, OR ARISING OUT OF, CERCLA, AS AMENDED BY SARA, AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME, RCRA, OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO, OR AFFECTING, THE PROPERTY [NOT APPLICABLE IN THE EVENT LENDER IS THE BUYER]. BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OF, OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE REALTY OR THE IMPROVEMENTS, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY, OR ON BEHALF OF, SELLER OR ITS AGENTS WITH RESPECT THERETO. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR

CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY [NOT APPLICABLE IF LENDER IS BUYER]. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS NOT RELYING UPON SELLER FOR ANY ADVICE OR INFORMATION REGARDING ANY TAX MATTERS, AND THAT BUYER HAS OBTAINED SUCH ADVICE AND INFORMATION FROM ITS OWN LEGAL COUNSEL OR ACCOUNTANT. BUYER ACKNOWLEDGES AND AGREES THAT SELLER MAY IDENTIFY THE PROPERTY AND DISCLOSE THE PURCHASE PRICE IN SELLER'S MARKETING MATERIALS AFTER CLOSING. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, RELEASES AND OTHER PROVISIONS CONTAINED IN THIS SECTION 14 WERE A MATERIAL FACTOR IN SELLER'S ACCEPTANCE OF THE PURCHASE PRICE AND THAT SELLER IS UNWILLING TO SELL THE PROPERTY TO BUYER UNLESS SELLER IS RELEASED AS EXPRESSLY SET FORTH ABOVE. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS, RELEASES AND OTHER PROVISIONS CONTAINED IN THIS SECTION 14, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF.

26. Condemnation. Notwithstanding any other provision hereunder, if prior to Closing any material portion of the Realty is taken by eminent domain, Seller shall give Buyer prompt written notice of any such taking and Buyer may terminate this Agreement by delivering notice thereof to Seller not later than five (5) business days following Buyer's receipt of Seller's notice (and Closing shall be extended by such period). If Buyer does not so terminate this Agreement, Buyer and Seller shall proceed to Closing pursuant to the terms of this Agreement, without reduction to the Purchase Price; provided, Seller, at Closing shall assign and turn over to Buyer any awards received by Seller with respect to such taking.

27. Brokers. The parties mutually agree and covenant that no brokerage commissions, finder's fees or similar commissions or fees shall be due or payable on account of this transaction. Each party hereto shall indemnify, protect, defend (with legal counsel acceptable to the other) and hold the other harmless from claims for such commissions or finder's fees or similar commissions or fees arising out of the actions of the indemnifying party, including without limitation attorney fees and costs, incurred in connection therewith or to enforce this indemnity. The provisions of this Section 16 shall survive the termination of this Agreement or Closing and shall not merge into any deed delivered and accepted upon Closing. Seller discloses, and Buyer acknowledges, that some affiliates or employees of Seller (or affiliates of Seller) are real estate licensees in the State of Idaho on inactive status.

28. Notices. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and delivered to the parties hereto by (a) hand-delivery, (b) established express delivery service that maintains delivery records, (c) certified or registered U.S. mail, postage prepaid, return receipt requested, or (d) facsimile or other electronic means provided such service is also sent contemporaneously in the manner set forth in subsection (b)

above, and shall be deemed duly given when delivered or when delivery is refused, at the following addresses, or at such other address as the parties hereto may designate pursuant to this Section 17. Any notice provided hereunder shall be contemporaneously delivered to Escrow Holder.

Seller:

FLORISSANT MARKET PLACE ACQUISITION LLC

Attention : _____

Telephone : _____

Facsimile : _____

Email : _____

With a registered copy to:

Gibbons P.C.

Attention: Mark B. Conlan, Esq.

One Gateway Center

Newark, NJ 07102-5310

Telephone: (973) 596-4500

Facsimile. (973) 596-0545

Email: mconlan@gibbonslaw.com

Buyer:

Attention: _____

Telephone: _____

Facsimile: _____

E- mail: _____

Escrow Holder:

Attention: _____

Telephone: _____

Facsimile: _____

Email: _____

29. Termination. In the event that this Agreement is terminated as permitted hereunder, any and all rights or obligations of Seller and Buyer hereunder shall terminate and be of no further force or effect, except as otherwise set forth herein. In the event that Seller terminates this Agreement by reason of a default of Buyer, Buyer shall pay any cancellation fees or costs charged by Escrow Holder and/or Title Insurer. If this Agreement is terminated for any other reason, Seller shall pay any such cancellation fees or costs.

30. Survival. Except as otherwise expressly provided herein, the provisions of this Agreement, the representations, warranties, and the indemnity agreements set forth herein shall not survive any termination of this Agreement or Closing and shall merge into any deed delivered upon Closing.

31. Successors and Assigns. Neither Seller nor Buyer shall assign its rights and/or obligations under this Agreement without the other party's prior written consent, which consent may be unreasonably withheld. Notwithstanding any assignment by Buyer permitted hereunder, Buyer shall not be released of its obligations hereunder. Subject to any restriction on transferability contained in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of each party hereto.

32. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

33. Waiver. The failure of a party hereto to insist upon strict performance of any of the terms set forth herein shall not be deemed a waiver of any rights or remedies that the party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms contained herein by the same or any other party.

34. Attorneys' Fees. If a party hereto commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party to be fixed by the court in the same action.

35. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior understandings, agreements, representations, and warranties, if any, with respect to such subject matter.

36. Amendment. This Agreement may only be amended and modified by a writing executed by Buyer and Seller.

37. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the state in which the Property is located.

38. Interpretation. Whenever the context so requires, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word “person” shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate, or any other entity. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Seller or Buyer. The words “herein,” “hereof,” “hereunder,” and other similar compounds of the word “here” when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section.
39. Headings. The headings of the various paragraphs of this Agreement have been inserted only for convenience and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement or be used in any manner in the interpretation of this Agreement.
40. Time is of Essence. Time is expressly made of the essence of all the provisions of this Agreement.
41. Dates of Performance. Whenever a date for an action required to be performed or any period of time set forth in this Agreement ends on a Saturday, Sunday, or federal holiday, then such date shall be extended to the following business day.
42. Further Assurances. Each party hereto shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.
43. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Agreement.
44. Authority. The officers or agents signing this Agreement on behalf of Buyer and Seller, respectively, each warrant that he or she is authorized to execute this Agreement on behalf of Buyer and Seller, respectively.
45. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of such parties shall be joint and several.
46. No Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.
47. Representation of Parties. Buyer acknowledges that none of the Seller or its Trustee, officers, employees, affiliates, advisors, legal counsel and accounts (collectively, “Seller Group”) represents Buyer in any way in connection with the purchase of the Property or any related agreements.

THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER TO PURCHASE OR SELL AND THE EXECUTION OF THIS AGREEMENT BY SELLER OR BUYER DOES NOT CONSTITUTE A BINDING CONTRACT UNTIL SUCH TIME AS THIS AGREEMENT HAS BEEN SIGNED BY AUTHORIZED OFFICERS OF BUYER AND SELLER AND DELIVERED TO BOTH BUYER AND SELLER. FOR PURPOSES OF THIS PARAGRAPH “DELIVERY” OR “DELIVERED” MAY INCLUDE DELIVERY OF THE AGREEMENT BY FACSIMILE TRANSMISSION OR OTHER ELECTRONIC MEANS.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the Effective Date.

SELLER:

BUYER:

FLORISSANT MARKET PLACE
ACQUISITION LLC, for itself and each of the
TIC Investors

a _____

By: _____

By: _____

Name: _____

Its: _____

Date: _____

Date: _____

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to accept this Agreement, serve as Escrow Holder hereunder and be bound by this Agreement in the performance of its duties as Escrow Holder; provided, that the undersigned shall have no obligations, liability or responsibility hereunder unless and until this Agreement, fully executed by the parties, has been delivered to the undersigned or any amendment to this Agreement unless and until the same shall be accepted by the undersigned in writing.

ESCROW HOLDER:

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF REALTY

Parcel 1:

Lot 1A and Lot 1B of Florissant Market Place Plat 2, according to the plat thereof recorded in Plat Book 354 Page 821 of the St. Louis County Records.

Parcel 2:

Perpetual non-exclusive easements for vehicular access and ingress and egress, and for construction and maintenance of utility facilities, as set forth in the Reciprocal Easement Agreement recorded in Book 14157 Page 71.

Parcel 3:

Perpetual non-exclusive easements for construction and maintenance of utility facilities, as set forth in the Easements and Restriction Agreement recorded in Book 14327 page 1844 and in the Reciprocal Easement Agreement recorded in Book 14913 page 2217.

EXHIBIT “B”

PROPOSED DEED

[To be added]

EXHIBIT A

Legal Description

Parcel 1:

Lot 1A and Lot 1B of Florissant Market Place Plat 2, according to the plat thereof recorded in Plat Book 354 Page 821 of the St. Louis County Records.

Parcel 2:

Perpetual non-exclusive easements for vehicular access and ingress and egress, and for construction and maintenance of utility facilities, as set forth in the Reciprocal Easement Agreement recorded in Book 14157 Page 71.

Parcel 3:

Perpetual non-exclusive easements for construction and maintenance of utility facilities, as set forth in the Easements and Restriction Agreement recorded in Book 14327 page 1844 and in the Reciprocal Easement Agreement recorded in Book 14913 page 2217.

EXHIBIT 3

DRAFT FORM OF CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is entered into this _____ day of _____, 2011 by and between _____ ("Recipient"), and Florissant Market Place Acquisition LLC (the "Seller"). Recipient and Seller are collectively referred to herein as the "Parties" and individually as a "Party."

W I T N E S S E T H:

WHEREAS, Seller is the owner of that certain real property and improvements located in Florissant, St. Louis County, Missouri, commonly known as Florissant Market Place, as more particularly described on Exhibit 1 hereto (the "Property").

WHEREAS, Seller and Recipient are considering entering into a sale transaction for the sale of the Property to Recipient (the "Transaction")

WHEREAS, in order to evaluate the transaction, it is anticipated that Seller will provide Recipient with certain confidential financial and business information relating to the Property as well as Seller's business operations.

WHEREAS, Seller desires to maintain the confidential nature of its financial and business information.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. In order to evaluate the Transaction, Seller agrees to provide business and financial information as reasonably requested by Recipient in connection with evaluation of the Transaction. All such information is herein referred to as the "Confidential Information" and shall include information maintained by Seller in any format, including, without limitation, computer files, papers, documents, contracts, letters, communications and other tangible and intangible media.

2. All Confidential Information supplied pursuant to this Agreement shall be held in strict confidence by the Recipient and shall be used by the Recipient solely for the purpose of evaluating the Transaction contemplated by the Parties. Confidential Information received by Recipient shall not be, directly or indirectly, disclosed to any third person, except for a Recipient's officers, agents, legal counsel, accountants, or lenders (collectively, "Recipient Representatives"); provided, however, that any Recipient Representatives shall be required to maintain all Confidential Information in strict confidence in accordance with this Agreement and Recipient shall be liable for any unauthorized disclosure of Confidential Information by its Recipient Representatives.

3. Recipient agrees that for a period of three (3) years it shall not, directly or indirectly, whether alone or in combination with any other person or persons or whether as a

stockholder, partner, sole proprietor, member, member, employee, independent contractor, investor or otherwise, utilize or profit in any way (except in connection with the Transaction, if consummated among the Parties) from the Confidential Information disclosed pursuant to this Agreement.

4. Upon request by Seller, Recipient, within two (2) business days after such request, shall return or cause the destruction of the original and all copies of any and all Confidential Information provided or produced pursuant to this Agreement.

5. No Party shall, without the prior written consent of the others, make any statement or public announcement with respect to the Parties' discussions and negotiations with respect to the Transaction. Nor shall any Party make any statement to any competitor, customer, or any other third person regarding the Transaction, the Confidential Information, or the Parties' discussions or negotiations with respect to the Transaction, except as may be necessary, in the opinion of their respective counsel, to comply with the requirements of any law, governmental order or regulation.

6. Recipient agrees that money damages may not be a sufficient remedy for any breach of this Agreement and Seller shall be entitled to specific performance, injunctive relief, other equitable relief as a remedy for such breach without the necessity for posting a bond. Such remedy shall be in addition to and not in lieu of all other remedies available at law or equity. In the event any arbitration or action is commenced to enforce any of the provisions of this Agreement, the Party prevailing therein by final award or judgment shall be entitled to recover attorneys' fees in addition to any other relief awarded.

7. Confidential Information shall not include information that (i) was or becomes generally known or available to the public other than as a result of disclosure by Recipient Representatives; (ii) was or becomes available to a Recipient or a Recipient Representative on a non-confidential basis from a source other than Seller, provided that such source is not known by the Recipient or Recipient Representative to be bound by a confidentiality agreement; or (iii) was, or in the future is, developed independently without reference to Confidential Information furnished by Seller.

8. No Party may assign its rights or obligations under this Agreement without obtaining the prior written consent of all other Parties hereto.

9. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, supersedes all existing agreements between the Parties with respect to such matters, and shall not be modified or amended except by a further written document signed by all Parties.

10. No provision hereof may be waived except by an agreement in writing signed by the waiving Party. Any waiver by any Party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a

waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

11. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

12. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement.

13. If any provision of this Agreement, or any part thereof, is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction for any reason whatsoever, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provisions unless so expressed herein. The invalid unenforceable provision shall be interpreted, if possible, so as to render it enforceable on a limited and reasonable basis.

14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the conflicts of law provisions thereof. Each Party hereto consents to the exclusive jurisdiction of the federal and state courts sitting in the State of Delaware with respect to any dispute under this Agreement applicable to agreements made and to be performed within such State.

15. Each of the Parties to this Agreement participated in the drafting of this Agreement and the interpretation of any ambiguity contained in this Agreement will not be affected by the claim that a particular Party drafted any provision hereof.

{Signature Page Follows}

IN WITNESS WHEREOF, Seller and Recipient have caused this Agreement to be executed as of the date first above-written.

Seller:

FLORISSANT MARKET PLACE ACQUISITION
LLC

By: _____

Name: _____

Title: _____

Recipient:

By: _____

Name: _____

Title: _____

EXHIBIT “B”

Indicative Term Sheet for Restructure of Pre-Petition Lender Claims

Amount	The outstanding loan balance under the Pre-Petition Loan Agreement (inclusive of all interest accruing after the Commencement Date, inclusive of one half of default interest, net of adequate protection payments, and all fees and expenses, including legal fees and expenses) plus the amount due under the terminated Swap Agreement (inclusive of applicable interest (except for default interest on the swap termination fee), fees and expenses), such amount to be determined as of the Restructure Effective Date.
Term	Maturity date of July 1, 2013
Interest Rate	LIBOR plus 300 bps, with LIBOR being the greater of (x) one-month LIBOR or (y) 3.0%
Amortization	30-year amortization
Cash Management	Reorganized Debtor shall establish a clearing account and lockbox with the Lender. Reorganized Debtor shall notify each tenant at the Property to remit all amounts due under leases at the Property directly to the lockbox or to wire such amounts directly into the clearing account. Collected balances in the clearing account will be transferred daily to an account controlled by the Lender. After payment of all scheduled monthly amounts required under the Reinstated Loan Documents (including debt service, reserves, escrows, operating expenses funded to the Property Manager per an approved budget, etc.), any funds remaining in the clearing account would be applied to the principal balance of the Reinstated Loan Obligations, in inverse order of maturities, on a monthly basis.
Reserves	The reserves currently held by the Lender pursuant to the Stipulated Settlement Agreement and Consent Order Pursuant to Sections 361, 363, 503(b) and 507(b) of the Bankruptcy Code and Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing Use of Cash Collateral and Approving Compromise Governing Enforcement of Remedies, originally dated February 1, 2010 and amended from time to time thereafter, shall be used to fund property level reserve accounts established under the Reinstated Loan Documents.

Covenants	The other affirmative and negative covenants contained in the Pre-Petition Loan Agreement shall be adopted and restated in the Reinstated Loan Agreement.
No TIC Distributions	No distributions shall be made by or on behalf of the Debtor or the Reorganized Debtor to any of the TIC Investors in respect of their respective interests in the Property.
No Prepayment Penalty	There shall be no prepayment penalty applied under the Reinstated Loan Agreement if the Property is sold or refinanced prior to the maturity date.

SCHEDULE 5.1
Executory Contracts

[to be added]

EXHIBIT B

LIQUIDATION ANALYSIS

[To be added]