

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
)
DIKA-HOMEWOOD, LLC,) Case No. 15-04801
) Chapter 11
an Illinois Limited Liability Company,) Judge Pamela S. Hollis
)
Debtor/Debtor-in-Possession.)

DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT

DEBTOR'S COUNSEL:

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DIKA-HOMEWOOD, LLC. Debtor/Debtor-in-Possession herein (“Debtor”), by and through its Attorneys, submits its First Amended Disclosure Statement (“Disclosure Statement”) pursuant to Section 1125 of the Bankruptcy Code and in conjunction with its First Amended Plan of Reorganization (“Plan”). A copy of the Plan is attached to this Disclosure Statement as **Exhibit A.**¹

INTRODUCTION

On February 13, 2015, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code (“Petition Date”). Subsequently, on February 13, 2015, an affiliate of the Debtor, Dika-Matteson, LLC (“Dika-Matteson”), filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. That case is also pending before this court, Case no. 15-4804.

The Debtor is operating its business and managing its financial affairs as Debtor-in-Possession. No trustee, examiner or committee of unsecured creditors has been appointed to serve in this reorganization case.

The Debtor is an Illinois limited liability company that is the owner and operator of a 48,342 square foot commercial/retail shopping center located at 17715 S. Halsted Street, Homewood, Illinois 60430 (“Homewood Property”). Currently the center is 72.45% occupied.

Dika-Matteson is an Illinois limited liability company that is the owner and operator of an approximate 25,857 square feet of commercial/retail shopping center space located at 4730 W.

¹Capitalized terms not defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

Lincoln Highway, Matteson, Illinois 60443 (“Matteson Property”). Currently, that center is 82.64% occupied.

The Debtor is the proponent of the Plan. The Plan provides for distributions to the holders of Allowed Claims from funds realized by the Debtor from refinancing and from continued operation of the Debtor’s business as well as from existing cash deposits and cash resources of the Debtor.

**SUMMARY OF TREATMENT OF CLAIMS
AND INTERESTS UNDER THE PLAN**

The Plan has one (1) category of Administrative Claims, one (1) category of Tax Claims, six (6) Classes of creditors (Classes 1 through 6) and one (1) Class of Interests (Class 7). These Claims and Interests, and the treatment thereof, under the Plan consist of the following:

Administrative Claims²

Administrative Claims are provided for in Article IV, Section 4.1 of the Plan, are unimpaired under the Plan and primarily consist of Allowed Claims comprised of fees and expenses of Debtor’s Counsel and other professionals retained pursuant to orders entered by the Bankruptcy Court. These fees and expenses are projected as follows:

<u>Professional</u>	<u>Amount</u> ³
Crane, Heyman, Simon, Welch & Clar Debtor’s Counsel	\$100,000.00
Sarnoff and Baccash Debtor’s Special Counsel	\$7,600.00

The amounts projected to professionals holding Allowed Administrative Claims are in addition to amounts previously paid as a pre-petition retainer to Debtor’s Counsel and fees paid as

²Since the Debtor’s Chapter 11 Case was commenced as a voluntary proceeding, no claims under Sections 507(a)(3) and 502(f) of the Bankruptcy Code exist.

³ These amounts are merely the Debtor’s estimate and are, therefore, subject to change. In the event of a contested Confirmation hearing, Administrative Claims of professionals will significantly increase.

allowed by the Bankruptcy Court. The amounts previously paid to Debtor's Counsel are as follows:

<u>Professional</u>	<u>Amount Previously Paid</u>	<u>Basis for Prior Payment</u>
Crane, Heyman, Simon, Welch & Clar Debtor's Counsel	\$36,178.00 ⁴	Pre-Petition Retainer
Sarnoff and Baccash Debtor's Special Counsel	\$2,940.00	Tax Refund

No professional shall be paid unless and until the Bankruptcy Court has entered appropriate Orders allowing the compensation and reimbursement of expenses requested by such professionals.

Also included in this category of Administrative Claims are post-petition trade payables. Under the Plan, post-petition trade payables will be paid in the ordinary course of business pursuant to the credit terms existing at the time the Claim was incurred.

Other than post-petition trade payables, all Administrative Claims, to the extent allowed, will be paid in full in cash on the Effective Date or as soon as practicable thereafter (and in the case of professionals, after allowance by the Bankruptcy Court) or as agreed to by the holder of each Allowed Administrative Claim. The source of funds for payment of such Administrative Claims will be the cash resources of the Debtor or such other cash as may be generated by the Debtor from the operation of its business in the ordinary course.

Under the Plan, any United States Trustee fees shall be paid as said fees come due, until the Chapter 11 case is closed, dismissed or converted.

Tax Claims

The Plan has a specific provision for the payment of taxes which are of the type entitled to priority under Section 507(a)(8) of the Bankruptcy Code (Article IV, Section 4.2 of the Plan). The Plan provides that to the extent any Tax Claim is allowed, such Tax Claim shall be paid in

⁴Debtor's Counsel's fees were allowed in the amount of \$61,131.52, less application of the pre-petition retainer, on January 7, 2016. As of the filing of this Disclosure Statement the balance of those allowed fees in the amount of \$24,953.52 have not been paid.

full, in cash inclusive of interest at the applicable statutory interest rate, in equal monthly payments, starting on the Effective Date through February 12, 2020, unless the holder thereof agrees to a different treatment. This treatment of Allowed Tax Claims is meant to comply with the requirements of Section 1129(a)(9)(C) of the Bankruptcy Code. The Debtor believes that there are no Allowed Tax Claims.

The Secured Allowed Claim of Sand Capital

The holder of the secured Allowed Class 1 Claim, Sand Capital VI, LLC (“Sand Capital”), pursuant to a sale and transfer of the loan from CW Capital Asset Management, as Special Servicer on behalf of U.S. Bank National Association, as Trustee, successor to Wells Fargo Bank, N.A. as Trustee for the registered Holders of Wachovia Bank Commercial Mortgage Pass-Through Certificates, Series 2005-C16. TS&-E Grantor Trust, is unimpaired under the Plan, and as provided by Article V, Section 5.1 of the Plan, will be paid from the proceeds of the refinancing of the Homewood Property.

Sand Capital has filed a proof of claim in the amount of \$5,110,747.87, which fails to delineate the amounts of its secured claim and its unsecured claim.⁵ The actual allowed amount of the secured Class 1 Claim will be determined pursuant to further order of the Bankruptcy Court entered in conjunction with a valuation hearing, or by a consensual agreement between Sand Capital and the Debtor. For purposes of the Plan, the Allowed Class 1 Claim is estimated by the Debtor as being equal to the value of Sand Capital’s purported collateral,⁶ totaling approximately \$4,181,102.80, consisting of the \$3,800,000 valuation of the Homewood Property, less outstanding pre-petition real estate taxes in the approximate amount of \$206,312.35, plus the cash deposits held by the Debtor in the approximate amount of \$587,415.10 as of April 30, 2016.

⁵Sand Capital has provided a September 1, 2015 appraisal for the Homewood Property, asserting a value for that property in the amount of \$3,800,000.00. The Debtor has agreed for purposes of the Plan and Disclosure Statement, for cash flow projections purposes only, with the value of the Homewood Property pursuant to that appraisal.

⁶Sand Capital asserts a lien on the Homewood Property and on the cash deposits of the Debtor.

A. **Application of Post Petition Payments:** Payments received during the Chapter 11 case by Sand Capital pursuant to Section 362(d)(3) of the Bankruptcy Code, shall be applied to principal since the value of the claim of Sand Capital exceeds the value of the Homewood Property.⁷

B. **Treatment:** In full satisfaction, settlement, release, and discharge of and in exchange for the Allowed Class 1 Claim:

The holder of the Allowed Class 1 Claim shall receive and/or retain:

- i. Its liens on the real and personal property owned by the Debtor, to the same extent and with the same validity, enforceability, perfection and priority as it had on the Petition Date and as may have been acquired by Sand Capital or determined during the course of this Chapter 11 Case pursuant to orders entered by the Bankruptcy Court, until the Allowed Class 1 Claim is paid in full;
- ii. Payment in full of its allowed secured claim on the Effective Date from the proceeds of the refinancing of the Homewood Property by the Debtor. The Debtor has negotiated with a lender and has received a commitment for a loan of \$5,000,000.00, with interest set at ten percent (10%), based on a 30 year amortization, with interest only payments for twelve (12) months and a balloon payment of the full principal amount after twelve (12) months.

C. **Other Provisions:**

1. The Debtor, at its sole and exclusive option, may accelerate payments to the holder of the Allowed Class 1 Claim. All unaccrued interest shall be deemed waived and no penalty, charge or prepayment penalty shall be chargeable to the Debtor in the event that the Debtor elects to accelerate payments.

2. Upon completion of the payments under the Plan to Sand Capital on account of the Allowed Class 1 Claim, all of the liens, security interests and Claims of Sand Capital shall be deemed released and discharged, including any claims on guaranties, unless otherwise provided by the Plan. Once the Allowed Class 1 Claim is paid in full as required by

⁷The Debtor has made monthly payments, pursuant to Bankruptcy Code §362(d)(3), during the pendency of this Chapter 11 case, totaling \$194,457.06 as of the filing of this Amended Disclosure Statement.

the Plan, Sand Capital shall prepare and file any and all documents that may be reasonably necessary to effectuate the termination of such liens and security interests. The Court shall retain jurisdiction should Sand Capital fail to reasonably comply with this provision. Any right of any party under Section 506(c) of the Bankruptcy Code as against the holder of the Allowed Class 1 Claim or its collateral shall be preserved and shall survive Confirmation of the Plan.

3. This Plan shall supersede and replace the terms and conditions of the loan documents establishing the Allowed Class 1 Claim to the extent the loan documents are inconsistent with this Plan.

4. The holder of the Allowed Class 1 Claim shall only be entitled to the reimbursement of reasonable attorneys' and professionals' fees and costs arising after Confirmation in the event that the Debtor is in material default of the payments required under the Plan on account of the Allowed Class 1 Claim (which default remains uncured after ten (10) days of the actual receipt of written notice to the Debtor and Debtor's Counsel from the holder of the Allowed Class 1 Claim as required by the Plan) and in the further event that the underlying note provides for such fees. In the event of a material default by the Debtor under the Plan with respect to the payment of the Allowed Class 1 Claim, the holder of the Allowed Class 1 Claim shall provide written notice of such default as required by the underlying loan documents and to the Debtor by transmitting such default notice by first class mail and telefax to the Debtor to the attention of Marshall N. Dickler, 85 W. Algonquin, Suite 420, Arlington Heights, Illinois 60005 and in the same manner to Debtor's Counsel, Thomas W. Goedert, Crane, Heyman, Simon, Welch & Clar, 135 S. LaSalle St., Suite 3705, Chicago, Illinois 60603.

Real Estate Tax Claims

The Cook County Treasurer, or such other governmental entity, is the holder of the Allowed Class 2 Claim. The Allowed Class 2 Claim consists of accrued and unpaid Real Estate Tax Claims relating to the Homewood Property. Under the Plan, Allowed Class 2 Claims are impaired and are provided for in Article VI, Section 6.1 of the Plan. It is believed that there is currently due for pre-petition real estate taxes and penalties, the approximate amount of \$206,312.35. The holder of the Allowed Class 2 Claim shall retain any and all liens it has on the Homewood Property and shall be paid with interest and penalties, to the extent required, in equal quarterly installment payments with the final payment due no later than February 12, 2020, unless the holder thereof agrees to a different treatment. The quarterly payments will commence on the first day of the first month of the first calendar quarter following the Effective Date, with the following payments due on the first day of the first month of each calendar quarter thereafter.

Accrued post-petition real estate taxes that become due and payable will be paid in the ordinary course when said real estate taxes come due, out of the funds held on deposit by the Debtor regarding the post-petition real estate taxes and from other cash on hand.

Security Deposit Claims

Tenants at the Homewood Property may have provided security deposits to the Debtor in conjunction with their leases with the Debtor. The Plan has a specific provision relating to these Claims for security deposits (Article V, Section 5.2 of the Plan). These Class 3 Claims are unimpaired under the Plan.

In full satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed Claim in Class 3, each holder of an Allowed Tenant Claim shall be paid in full in cash to the extent required by the underlying lease between the Debtor and the Class 3 Claim holder. The Debtor shall timely perform all obligations due from it under the terms of the underlying leases.

General Unsecured Creditors

General Unsecured Creditors, are the holders of Allowed Class 4 Claims and are impaired under the Plan. The Debtor estimates that the aggregate amount of Allowed Class 4 Claims is approximately \$110,517.66. The treatment of the Allowed Class 4 Claims is set forth in Article VI, Section 6.2 of the Plan. Under the Plan, the holders of Allowed Class 4 Claims shall be paid, in full, with payments to be made on a quarterly basis commencing on the first day of the first month of the first calendar quarter following the Effective Date, the following payments due on the first day of the first month of each calendar quarter thereafter, from the cash on hand of the Debtor and from cash generated from the continuing operations of the Debtor.

Sand Capital Deficiency Claim

Sand Capital's purported unsecured deficiency claim is a Class 5 Claim and is unimpaired under the Plan. The Debtor estimates the Class 5 Claim is approximately \$735,188.01. This is calculated by subtracting from the total claim the secured claim and the payments made pursuant to §362(d)(3) during the pendency of this case. The treatment of this Claim is set forth in Article VI, Section 6.3. In full satisfaction, settlement, release and discharge of the Allowed Class 5 Claim, the holder of the Allowed Class 5 Claim shall be paid in full on the Effective Date from proceeds from the refinancing of the Homewood Property.

Voluntarily Subordinated Claims

Class Six (6) Claims Described Herein Are Impaired under the Plan. To assure feasibility of the Plan, Debtor has obtained the consent of certain creditors⁸ to voluntarily defer payments of their claims until all claims are paid in full including Unclassified Claims, and Classes 1 through 5. Upon satisfaction of this provision, Debtor shall satisfy payment of Class Six as funds in full, in sixteen (16) equal payments beginning on the first day of the first month of the first calendar quarter following the final payment to Class 4 creditors with payments to be

⁸Dika-Matteson, LLC; Dika-Lakeview, LLC & Dika-Windmill, LLC. The approximate total amount of those claims is \$255,500.00.

made on a quarterly basis or the first day of the first month of each calendar quarter thereafter, from the cash on hand of the Debtor and from cash generated from the continuing operations of the Debtor. This consent is conditional upon confirmation of the Plan and compliance with the terms therein. This consent is not binding for any purpose other than provided herein.

Equity Interests

The members of the Debtor, Marshall N. Dickler and Larry P. Kanar (“Members”), are the holders of Allowed Class 7 Interests. Class 7 Interests are unimpaired under the Plan. Under Article V, Section 5.3 of the Plan, the Member shall retain their Interests in the Debtor. The Members reserve their right to make a contribution or loan to the Debtor to fund any payments under the Plan. To demonstrate the ability of the Members to make a contribution, the Members assert that they are entitled to a fifty percent (50%) share of \$11,883,000.00, which is currently held in escrow, pending a ruling by the Circuit Court of Cook County, Illinois in a pending lawsuit. To the extent necessary, the Members may contribute or loan funds they are due from the escrowed money to the Debtor to fund Plan payments. Upon confirmation the Court shall enter an order enjoining all parties to this bankruptcy case from taking any action to collect any claim they may have against the Members, either through guaranties or otherwise, unless and until the Debtor materially defaults on a material provision of the Plan and fails to cure the default under the provisions of this Plan.

Claims Objections

Except as otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan, the Debtor shall file any and all objections to the allowance of Claims or Interests on or within one hundred and twenty (120) days of Confirmation of this Plan unless extended by Order of the Bankruptcy Court. Cause shall not be a requirement for an extension of this deadline.

PURPOSE OF DISCLOSURE STATEMENT

This Disclosure Statement is provided to all of the known holders of Claims against and Interests in the Debtor who are entitled to vote their acceptance or rejection of the Plan. The

purpose of this Disclosure Statement is to provide such information as would enable a hypothetical, reasonable investor, typical of the holder of Claims and Interests which are impaired under the Plan, to make an informed judgment about the Plan.

The information contained in this Disclosure Statement has been submitted by the Debtor unless specifically stated to be from other sources. No representations concerning the Debtor or this Plan, other than those set forth in this Disclosure Statement, have been authorized by the Debtor. The Debtor believes that all of the information contained in this Disclosure Statement is accurate. However, the Debtor is unable to warrant that there are no inaccuracies.

Under the Bankruptcy Code, a Class of Claims is considered to have accepted the Plan if both a majority in number and two-thirds (2/3) of the dollar amount of those actually voting vote to accept the Plan. Notwithstanding any provision of the Bankruptcy Code, the Claims of those who do not vote will be deemed acceptances and will be counted in determining whether the requisite statutory majority in number and dollar amount have voted for acceptance. Acceptance by the statutory majority will bind the minority who dissent and those who fail to vote.

The Plan requires that the holders of Allowed Claims in Classes 2, 4 and 6 vote on Confirmation of the Plan. Ballots must be filed by _____, 2016 and objections to confirmation of the Plan must be filed by _____, 2016 with the Clerk of the United States Bankruptcy Court, 219 S. Dearborn, Chicago, Illinois 60604. The Bankruptcy Court shall conduct a hearing on confirmation of the Plan on _____, 2016 at _____ a.m.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A SOLICITATION OF ACCEPTANCES OF A PLAN OF REORGANIZATION. ACCEPTANCES MAY NOT BE SOLICITED UNLESS AND UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE COURT.

HISTORY AND BACKGROUND

The Debtor was formed under the laws of the State of Illinois on or about December 12, 2003, by its respective Members, Marshall N. Dickler and Larry P. Kanar.

Homewood Property is comprised of approximately nine (9) units of retail shopping center space. In 2014, the Debtor generated gross income from operations in the approximate amount of \$840,984.00. However, the Debtor's loan from the purported predecessor of Sand Capital came due in 2014 and due to the general economic problems facing the country, particularly in real estate, including vacancies at the shopping center, the Debtor was unable to obtain financing to pay off the loan. To date, there has been no determination made as to the value of the Homewood Property by the Court.

Prior to the Petition Date, the Debtor attempted to engage the purported predecessor of Sand Capital in a discussion to restructure the underlying mortgage indebtedness. Sand Capital purportedly purchased the loan shortly after the filing of this Chapter 11 case. The Debtor has also attempted to engage Sand Capital in discussions regarding restructuring the purported underlying mortgage indebtedness. Sand Capital, as well as its purported predecessor, were not responsive to these attempts. Eventually, the purported predecessor to Sand Capital chose to litigate rather than renegotiate and restructure the mortgage indebtedness. In order to protect the Homewood Property and preserve value for the benefit of all creditors, the Debtor commenced this Chapter 11 case in February, 2015.

POST-PETITION ACTIVITIES

The continued administration of this Chapter 11 case has been primarily predicated upon the entry of Cash Collateral Orders entered by the Bankruptcy Court. The Cash Collateral Orders established the framework for the continued operation of the Debtor's businesses and the terms under which the Debtor could use the cash and cash equivalents that serve as purported collateral to Sand Capital. After the entry of the Cash Collateral Orders, the Debtor has continued to operate.

The Debtor has been making monthly interest payments to Sand Capital as required by Section 362(d)(3) of the Bankruptcy Code in order to preserve the automatic stay in this Chapter

11 Case. The amount of each of these monthly interest payments is approximately \$13,889.79 per month. The Debtor calculated the amount of these monthly payments by applying the contractual interest rate of 5.32% to the value of the Homewood Property, which was believed to be \$3,133,035.90. The Debtor expressly reserved its rights when making these payments to Sand Capital. The Debtor has reviewed Sand Capital's appraisal and has agreed for purposes of the Plan and the Disclosure Statement, for cash flow projection purposes only, with the value of the Homewood Property pursuant to that appraisal.

On December 30, 2015, Sand Capital filed a Motion for Summary Judgment, which seeks, *inter alia*, modification of the automatic stay to allow it to attempt to foreclose on the Homewood Property. The Debtor has opposed that motion.

The Debtor's focus has always been on implementing an exit strategy from this Chapter 11 case that would provide a mechanism for creditors, including Sand Capital, to be paid. In furtherance of this effort, the Debtor attempted to engage Sand Capital, a competitor who obtained its rights post-petition with notice and knowledge of the pending Chapter 11 case, in negotiations over a resolution of its purported claim. The Debtor and Sand Capital have been unable to reach an agreement. Despite the failure to agree with Sand Capital on its purported claim or on a consensual plan, the Debtor has filed a confirmable Plan that will successfully conclude this Chapter 11 case.

OTHER ASPECTS OF THE PLAN

The Debtor shall be the disbursing agent charged with making the payments required under the Plan to the holders of Allowed Claims. Management of the Debtor will remain unchanged after Confirmation. Furthermore, the Debtor shall continue to employ an agent for the management and leasing of the Homewood Property and said agent shall be paid by the Debtor for such services in the same manner that agents have historically been paid by the Debtor.

Sand Capital may be asserting Claims for reimbursement of fees and expenses paid to professionals that Sand Capital retained in this Chapter 11 case. To the extent that Sand Capital is asserting a Claim(s) for reimbursement from the Debtor for professionals retained in this Chapter

In case which Claims remain unresolved, Sand Capital shall file such Claims with the Clerk of the Bankruptcy Court with a full and complete itemization of services rendered and expenses incurred by each such professional within forty-five (45) days of Confirmation of the Plan. The Debtor shall have the right to object to any such Claim by the deadline set forth in Article XIV, Section 14.1 of the Plan and the Bankruptcy Court expressly reserves jurisdiction to hear any matters relating thereto. In the event that Sand Capital fails to timely file a Claim as set forth herein, such Claim shall be deemed waived, released and discharged, Sand Capital shall be barred from asserting such Claim and Sand Capital shall be entitled to no distribution or payment on account of such Claim.

Upon Confirmation of the Plan, the Debtor shall be revested with its assets, subject only to the terms and conditions of the Plan. The Debtor shall be entitled to continue to operate and manage its business and financial affairs without further order of the Bankruptcy Court, except as hereinafter set forth. Payments to creditors pursuant to the Plan will be made from existing cash deposits and from funds from continued business operations. Funds for the payment of Sand Capital's secured claim will be obtained from the refinancing of the Homewood Property. The Debtor will also use funds from operations to pay Claims. The Members reserve their right to make a contribution or loan to the Debtor to pay Claims or fund operations, should they so choose to do so.

Upon Confirmation, an injunction under Section 524 of the Bankruptcy Code shall arise to prevent any party from foreclosing its lien or security interest or otherwise enforcing its Claims against the Debtor and its assets in these bankruptcy cases except as authorized in the Plan. This injunction will remain in effect until all distributions under the Plan have been made.

The Plan is self-executing. The Debtor shall not be required to execute any newly created documents to effectuate the terms of the Plan. Upon payment as required by the Plan, any liens supporting such Claims shall be deemed released and discharged.

All executory contracts and unexpired leases which exist between the Debtor and any other party, whether such executory contract be in writing or oral, which have not been previously

assumed, assigned, rejected or otherwise terminated by the Debtor shall be assumed upon Confirmation of the Plan pursuant to Sections 365 and 1123(b)(2) of the Bankruptcy Code. Any and all Claims asserted by any party arising from the rejection of executory contracts and unexpired leases pursuant to the Plan must be filed on or within thirty (30) days following the rejection. Further, with respect to Claims for default relating to any unexpired lease or executory contract that is assumed pursuant to the Plan, any and all such Claims must also be filed on or within thirty (30) days following Confirmation. Allowed Claims emanating from the rejection of unexpired leases and executory contracts will be treated as Class 4 Claims. Allowed Claims for default emanating from the assumption of unexpired leases and executory contracts will be treated as Administrative Claims. Any person failing to file such a Claim within the time provided in the Plan shall be forever barred from asserting such Claim and shall not receive any distribution under the Plan. The provisions for assumption, assignment and rejection shall be equally applicable to executory contracts and unexpired leases of real and personal property.

The Bankruptcy Court shall retain jurisdiction for certain specified purposes. Any distribution under the Plan that remains unclaimed sixty (60) days after the distribution is made will become property of the Debtor, and will not be recouped in subsequent distributions. The Debtor will have the right to make any distribution to creditors earlier than required by the Plan. The Debtor shall have the right, power and authority after Confirmation of the Plan to commence any preference, fraudulent conveyance or other litigation it deems appropriate.⁹ The Bankruptcy Court shall retain jurisdiction for such litigation.

The provisions of the Plan shall bind all creditors, Interest holders and parties in interest. Except as expressly provided in the Plan or the Bankruptcy Code, no interest or penalties accruing on or after February 13, 2015, shall be paid on any Claim nor shall any creditor claiming any such interest or penalty be entitled to have its Claim for interest or penalty allowed for payment.

⁹ The Debtor has not completed an analysis of potential preference and fraudulent conveyance claims.

To the extent necessary, pursuant to Section 1129(b) of the Bankruptcy Code, the Debtor intends to request that the Bankruptcy Court confirm the Plan if all applicable requirements of Section 1129(a) of the Bankruptcy Code, other than Section 1129(a)(8), are met.

LIQUIDATION ANALYSIS

Failure of the Debtor to obtain Confirmation of the Plan could result in a forced liquidation or a conversion to a case under Chapter 7 of the Bankruptcy Code and immediate termination of the Debtor's business operations. Under the Plan, all creditors are being paid more than such creditors would receive in such liquidation. With respect to the Allowed Class 1 Claim, Sand Capital is being paid the value of its collateral.

Notably, as of December 31, 2015, the Debtor had approximately \$341,328.03 in cash on deposit in its Debtor-in-Possession account and \$267,087.07 in the post-petition real estate tax account, for a total of over \$608,415.00. Other than the cash and the Homewood Property which Sand Capital believes has a value of \$3,800,000.00, the Debtor has no other assets. Existing cash and further cash generated after Confirmation are to be used by the Debtor for payment of creditors' Claims under the Plan and for costs of operation of the Debtor's business after Confirmation of the Plan.

In the event of a forced liquidation, such as foreclosure by Sand Capital on its purported liens and security interests, any proceeds realized from the liquidation of the Debtor's assets would first be used to pay the costs of foreclosure. Once the costs of foreclosure have been paid, Secured, Administrative and Priority Claims would be paid. Only after making the above disbursements of liquidation proceeds could any distribution be made to general unsecured creditors. Typically, in the event of a foreclosure, no creditor other than the mortgage lender (and perhaps real estate tax claimants) would receive funds from the foreclosure. The Debtor asserts that such a result should be expected in a foreclosure of the Homewood Property.

Clearly, the dividend being paid to unsecured creditors, including the deficiency claim to Sand Capital, under the Plan represents substantially more than such unsecured creditors would

ever receive in a liquidation (which according to the above analysis is nothing). The same is also true for Sand Capital with respect to its Allowed Class 1 Claim if the foreclosure does not achieve a sale at full value of the Homewood Property. Furthermore, the existing trade debt to be paid according to ordinary business terms would also be included in the pool of Administrative Claims thereby substantially increasing the total dollar amount due Administrative Claimants in a liquidation and further reducing the likelihood of any funds being available for unsecured creditors. Also, the projected amount allowable for Administrative Claims, in the event of conversion, would further increase to account for the fees and costs attributable to a Chapter 7 Trustee and his administration or Sand Capital and the liquidation of its collateral.

Clearly, upon forced liquidation, Unsecured Creditors and Sand Capital's allowed deficiency claim would get nothing. Sand Capital would also receive less than that being paid under the Plan on its purported claim. Accordingly, the Plan offers all creditors including Sand Capital, substantially more than such creditors would receive in a liquidation.

IMPLEMENTATION OF THE PLAN

As discussed throughout this Disclosure Statement, distributions under the Plan shall be made from cash deposits existing at the time of Confirmation, the refinancing of the Homewood Property and from proceeds realized from the continued operation of the Debtor's business by the Debtor. The Debtor does not intend to liquidate any of its assets in order to make the payments required under the Plan. The Debtor will refinance the Homewood Property to pay Sand Capital's purported secured claim.

FEASIBILITY AND FAIRNESS OF PLAN

Attached to this Disclosure Statement as **Exhibit B** are income and expense reports pertaining to the Homewood Property since the filing of this Bankruptcy Case. The purpose of this Exhibit is to provide creditors with historical financial information concerning the Debtor's ability to make the payments required under the Plan. These income and expense reports were prepared by the Debtor and are based upon an analysis of actual business activity.

Attached to this Disclosure Statement as **Exhibit C** are income and expense projections pertaining to the Debtor's projected business activity for the years 2016-2020 with respect to the Homewood Property. These income and expense projections assume that the Bankruptcy Court will enter an order confirming the Plan on or about May 1, 2016. The purpose of this Exhibit is to provide creditors with projected financial information concerning the Debtor's ability to make the payments required under the Plan. These projections were prepared by the Debtor and are based upon an analysis of past business results and projected future business activity. These income and expense projections, coupled with the Debtor's available cash, establish that the Plan is feasible.

The income and expense projections represent reasonable calculations based upon historical progressions of the Debtor's business. These income and expense projections clearly reflect the Debtor's ability to perform under the proposed Plan. Furthermore, the Debtor's achievements during the course of this reorganization case further indicate that the Plan is feasible.

The Debtor believes that the Plan represents an opportunity for the holders of Allowed Claims including Sand Capital to receive substantially more than such claimants would receive in a forced liquidation. Given the conservative financial projections and the Debtor's past performance, the Plan is also fair.

RECOMMENDATION

The Debtor strongly recommends that those persons entitled to vote, vote to accept the Plan.

Respectfully submitted,
DIKA-HOMEWOOD, LLC, an Illinois
limited liability company, Debtor/Debtor-in-
Possession

By: /s/Thomas W. Goedert
One of Its Attorneys

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