

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Chapter 11

FISHERMAN'S WHARF OF VENICE, INC.,
JPKJ, LLC, and
JMT PARTNERS,

Case No.: 8:10-bk-10694-CED
Case No.: 8:10-bk-10698-CED
Case No.: 8:10-bk-10699-CED
(Jointly Administered in
Case No: 8:10-bk-10694-CED

Debtors.

**THIRD AMENDED DISCLOSURE STATEMENT WITH RESPECT TO JOINT
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED
STATES BANKRUPTCY CODE FOR FISHERMAN'S WHARF OF VENICE,
INC., JPKJ, LLC, AND JMT PARTNERS DATED AS OF DECEMBER 31, 2010**

ARTICLE 1

(INTRODUCTION)

This Disclosure Statement is submitted by Fisherman's Wharf of Venice, Inc., a Florida corporation, JPKJ, LLC, a Florida limited liability company, and JMT Partners, a Florida partnership (collectively, the "**Debtors**"), pursuant to Section 1125 of the Bankruptcy Code in connection with the Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Fisherman's Wharf of Venice, Inc., JPKJ, LLC, and JMT Partners Dated as of December 31, 2010 (the "**Plan**"), proposed by the Debtors in their Reorganization Cases under Chapter 11 of the Bankruptcy Code. For purposes hereof, all capitalized terms used in this Disclosure Statement, and not otherwise separately defined herein, shall have the meanings ascribed to such terms in the Plan.

For the Plan to be confirmed, each impaired Class of Claims and Interests is given the opportunity to vote to accept or reject the Plan, except, however, for those Classes which will not receive any distribution under the Plan and which are, therefore, considered to have rejected the Plan. With regard to the impaired Classes which vote on the Plan, the Plan will be deemed accepted by a Class of impaired Claims if the Plan is accepted by holders of Claims of such Class actually voting on the Plan who hold at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the total Allowed Claims of such Class. The Plan will be deemed accepted by a Class of impaired Interests if it is accepted by the members actually voting on the Plan who hold at least two-thirds

(2/3) in amount of the total Allowed Interests voted. Only those members of a Class who vote to accept or reject the Plan will be counted for voting purposes.

If any impaired Class of Claims or Interests does not accept the Plan, pursuant to Section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may still confirm the Plan at the request of the Debtors if, among other things, as to each impaired Class which has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” The Debtors believe that the Plan affords fair and equitable treatment for all Allowed Claims and Interests. If one or more of the impaired Classes of Claims or Interests votes to reject the Plan, the Debtors may request that the Bankruptcy Court confirm the Plan by application of the “cramdown” procedures available under Section 1129(b) of the Bankruptcy Code. However, there can be no assurance that the Debtors will be able to use the cramdown provisions of the Bankruptcy Code for Confirmation of the Plan. Any modification of the Plan necessary to effect a cramdown may result in a different treatment of Claims and Interests than those currently afforded in the Plan, which, as to any Claim or Interest, may be less favorable, and distributions to holders of Claims and Interests may be delayed.

ARTICLE 2

THE REORGANIZATION CASE

2.1 History of the Debtors and Factors Precipitating the Reorganization Cases

Fisherman’s Wharf of Venice, Inc. owns and operates a restaurant (the “**Restaurant**”) located at 509 Tamiami Trail N., Venice, Florida and a marina located on the inter-coastal waterway adjacent to the Restaurant (the “**Marina**”). The Marina currently has (a) 8 deep water boat slips being leased (b) 32 deep water boat slips which are ready to be leased, but are currently unoccupied pending the issuance of a final certificate of approval by the County of Sarasota, and (c) 17 dockage and boat slips that have been purchased by the Debtor, but not installed in the inter-coastal waterway. .

JPKJ, LLC owns real property (unimproved land) adjacent to the Restaurant and the Marina owned by Fisherman’s Wharf of Venice, Inc. JMT Partners owns real property (including improved land) adjacent to the Restaurant and the Marina owned by Fisherman’s Wharf of Venice, Inc.

On September 21, 2009, Stephen A. Witzer, as Trustee u/a/d February 7, 1985, David C. Freund, as Trustee u/a/d August 11, 1993, Paecia S. Weinsten, Trustee u/a/d March 7, 1991, Donna J. Dooley, and William A. Dooley, IRA (collectively, “**Witzer**” or the “**Lenders**”) filed a lawsuit against the Debtors seeking damages and foreclosure based on certain promissory notes and mortgages on real property in Venice, Florida (the “**Lawsuit**”).

On October 30, 2009, the Debtors and Lenders entered into a Mediated Settlement Agreement (the “**Settlement Agreement**”). The Debtors assert that the

Settlement Agreement is a distinct contract, separate from the loan agreements and notes giving rise to the initial dispute. The parties agreed that the Mediated Settlement Agreement “represents the full and complete agreement of the parties hereto relative to the matters addressed herein and may not be modified or altered except by an instrument in writing signed by all the parties hereto.” Pursuant to its terms, the Settlement Agreement settled the disputes at issue in the Lawsuit.

Pursuant to paragraph one of the Settlement Agreement, the Debtors agreed to pay \$50,000 and the Lenders agreed to loan up to a maximum of \$800,000 (the “**Loan**”) to (a) satisfy amounts due to the Florida Department of Revenue for past due sales taxes, (b) satisfy amounts due to the Internal Revenue Service for past due payroll taxes, (c) satisfy amounts due to Sarasota County for past due real estate taxes, (d) pay the necessary expenses to get final approval to operate the current unoccupied boat slips, and (e) pay certain other expenses listed in the Settlement Agreement. The Debtors paid the \$50,000 to the Lenders and, despite the Debtors’ numerous demands for the Lenders to make the Loan, the Lenders did not make the Loan as required by the Settlement Agreement.

The Debtors filed their Chapter 11 cases, in part, to address a tax warrant filed by the Florida Department of Revenue related to unpaid sales taxes and a notice of a tax deed sale arising from unpaid property taxes. If the Lenders had made the Loan as required by the Settlement Agreement, such sales taxes and property taxes would have been paid from the proceeds of the Loan. The Debtors have claims for damages resulting from the Lenders’ alleged breach of contract to lend money for the purpose of discharging encumbrances on real property (the Debtors being unable to procure the money elsewhere) for the amount of the loss of the Debtors’ equities in the real estate.

Pursuant to the Settlement Agreement, the parties agreed to cooperate with one another to prepare commercially reasonable instruments and documents necessary to effectuate the payment obligations of the Debtors under the Settlement Agreement. The Lenders and Debtors have not entered into such agreements necessary to effectuate the payment obligations of the Debtors under the Settlement Agreement. However, in anticipation that the parties would enter into such loan documents, the Debtors paid the Lenders \$80,500 in interest payments on loan documents that still do not exist.

Pursuant to paragraph one of the Settlement Agreement, the Lenders agreed that “The Plaintiff will not foreclose.” Moreover, the Debtors and the Lenders agreed that a sale of the property would be the *only* remedy upon default:

Upon default of any of the terms and conditions of all documents, the Defendant[s] shall be permitted to sell the property for six months. If the property is not sold, after six months, the Defendant will obtain one appraisal and the Plaintiff will obtain one appraisal. If

the appraisals are within 10 percent – the two appraisals shall be blended and the property will be sold with a mutually agreeable realtor. If the appraisals are not within 10 percent, the two appraisers will select a third appraiser. The property will be marketed by a mutually agreeable realtor and the purchase price shall be reduced ten percent every three months. If the purchase price equals the amount of the debt the Defendants agree to sign a deed in lieu to the Plaintiff. (emphasis added).

Nevertheless, the Lenders sought the appointment of a receiver rather than comply with the default provisions contained in the Settlement Agreement. As such, in the Lawsuit and by order dated May 3, 2010, the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida appointed a receiver for the Debtors. The appointment of a receiver contributed to the Debtors' decision to file for bankruptcy.

2.2 Marina Redevelopment.

The Debtors, John Konecnik (the Debtors' principal), the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("**Trustees**") and the Florida Department of Environmental Protection ("**Department**") entered into a Settlement Agreement dated June 21, 2001 (the "**Marina Development Agreement**"), which, among other things, provided that (a) the Debtors and John Konecnik would grant the Trustees a quitclaim deed in nine (9) acres of submerged land owned by the Debtors and John Konecnik, (b) the Trustees, by quit claim deed, would re-grant back to the Debtors five (5) of the nine (9) acres of submerged land (the "**Re-Granted Submerged Lands**"), (c) the Debtors would maintain dredge areas of submerged land near Harbor Lights Mobile Home Park (submerged land not owned or to be used by the Debtors), (d) the Debtors and John Konecnik would waive all claims to refunds of any and all lease payments previously paid to the Trustees for submerged lands owned by the Debtors and John Konecnik, and (e) the Debtors will fill in two basins at the request of the Department for water control purposes. In addition, numerous private parties had docks on the four (4) acres of submerged land to be granted to the Trustees (but not the Re-Granted Submerged Lands). As a result, the Debtors and John Konecnik would effectively surrender their right to collect rental revenue from such third parties.

A condition precedent to the effectiveness of the Marina Development Agreement was the issuance of a "Final Permit" which, among other matters, would authorize (a) the removal of existing docks with 67 boat slips, (b) construction of new docks with 57 boat slips on the Re-Granted Submerged Land, and (c) dredging activities on the Re-Granted Submerged Lands associated with the redevelopment of the Marina. The 67 boats slips to be removed by the Debtors were smaller than the boat slips being installed pursuant to the plan to redevelop the Marina. As defined in the Marina Development Agreement, "Final Permit" means "final agency action not subject to challenge or appeal in which the Department grants all of substantially all of the relief

requested by Fisherman's Wharf in the Permit Application without imposing unreasonable conditions on Fisherman's Wharf. If the Department does not issue the Final Permit to Fisherman's Wharf, then this Settlement Agreement shall be rendered null and void and the parties shall retain all rights and remedies at law and equity."

On or about August 4, 2004, (a) the Debtors and John Konecnik granted to the Trustees the nine (9) acres of submerged land, and the Trustees re-granted five (5) of the nine (9) acres back to the Debtors and John Konecnik, (b) the Trustee approved the Permit Application for development of the Marina on the Re-Granted Submerged Land, (c) the Debtors and John Konecnik waived their rights to receive a refund of lease payments paid to the Trustees for submerged lands that the Debtors owned, and (d) the Debtors and John Konecnik have not attempted to collect future rent revenue from numerous private parties on the submerged land previously owned by the Debtors or its affiliates. Prior to August 4, 2002, the Debtors (a) maintenance dredged areas of submerged land near Harbor Lights Mobile Home Park (that is not the Re-Granted Submerged Land), (b) dredged areas on the Re-Granted Submerged Land and incurred other expenses in preparation of the redevelopment of the Marina, (c) removed 67 boat slips at the marina generating approximately \$21,000 per month, (d) filled in the two basins for water control purposes, and (e) purchased the docks for the 57 boat slips as provided in the Final Permit, which docks alone cost the Debtors approximately \$1,000,000.

Although the Trustees granted a Final Permit to the Debtors, the Debtors complied with all of its obligations under the Marina Development Agreement, and the Debtors incurred substantially all expenses associated with the redevelopment of the Marina, the Debtors have not incurred the economic benefits of the re-development of the Marina and, today, 49 of the 57 boat slips approved by the Final Permit remain unoccupied and unrented. Sarasota County has blocked the occupancy of the remaining 49 boat slips because it claims that it has the authority to grant approval for the redevelopment of the Marina. If the 49 remaining boat slips were leased, such 49 boat slips would generate additional revenue of approximately \$382,000 per year.

The Debtors assert that the Trustees are the entity in the State of Florida authorized to hold title to submerged lands and grant approvals for dock construction on submerged lands owned by the State of Florida, and Sarasota County grants approvals for privately owned land in Sarasota County. The Debtors assert that Sarasota County has no authority to grant approvals for dock construction on submerged lands owned by the State of Florida.

The Debtors assert that Sarasota County has denied the Debtors the value of their assets and revenues that would be generated for the Debtors by such assets, including rental of the boat slips. The actions of the County of Sarasota have caused the Debtors to suffer significant loss of revenues and damages, which has been a significant contributing factor to the Debtors being required to file for bankruptcy.

Sarasota County and the Trustees do not have dual authority to grant approval for development of the Marina. Although the Debtors believe that Sarasota County

has no authority to approve the development of the Marina, if Sarasota County is correct, then the Trustees and the Department did not have authority to grant the Final Permit and, pursuant to the express terms the Marina Development Agreement, the grant of the submerged lands to the State of Florida is null and void.

The Debtors intend to continue to seek Sarasota County approval for the dock construction. Alternatively, as set forth herein, to remedy the alleged violations regarding the existing docks (rather than contesting such alleged violations), the Debtors may remove 20 feet of dockage length at a cost of approximately \$50,000 which potentially may enable the Debtors to lease 32 additional boat slips that currently are unoccupied and unrented. It is anticipated that once leased, the additional 32 boat slips will generate additional revenue of approximately \$250,000 per year. This process would take approximately Sixty Days. Debtors are currently working with the new City of Venice Government for them to take back their dock permitting for the city of Venice. For the past seven years the government of Venice was for no growth even though they originally issued the dock permit, which should have the last permit needed to begin work in September 2002. The permit the City of Venice issued was for Fifty Seven docks just as the State of Florida and the Army Corp of Engineers issued. Due to the location of the property, being at the entrance of the City of Venice, the City of Venice would like to see it completed. Completion of the docks would not only provide an enhancement for the entrance, it would also added tax revenue income for the city. A request has been put in to the new Mayor, and should go before the new City Council shortly.

ARTICLE 3

TREATMENT OF ALLOWED CLAIMS AND ALLOWED INTERESTS

3.1 General. The Allowed Claims and Allowed Interests shall be satisfied in the manner set forth below. The treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Interests pursuant to the Plan shall be in full and final satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims and Allowed Interests (of any nature whatsoever).

3.2 Fisherman's Wharf of Venice, Inc., JPKJ, LLC, JMT Partners Claims and Interests:

(1) Class 1 – Claim of Stephen A. Witzer, Trustee. Class 1 consists of the Secured Claim of Stephen A. Witzer, Trustee, which may be disputed. However, the adequate protection payments currently being made are based upon an amount of \$8,207,080. This Creditor is fully secured. Each Debtor is jointly obligated under the Witzer debt and there is only one debt despite Witzer's filing of multiple identical Secured Claims. The Allowed Secured Witzer Claim will be collectively satisfied by each Debtor at 5.25% interest. The Creditor shall receive interest only payments for twenty-four (24) months in the approximate amount of \$36,000. Beginning in January 2013, the Creditor shall receive principal and interest payments for an additional

thirty-six (36) months in the approximate amount of \$55,300. At that time the Debtor shall renegotiate or refinance such debt.

(2) Class 2 – Claim of Bank of America, N.A. Class 2 consists of the Secured Claim of Bank of America, N.A. (Claim # 4 filed in the amount \$17,523.37, secured by a 2007 Hummer. The Allowed Secured Claim will be collectively satisfied by each Debtor at 5.25% interest, payments to begin thirty (30) days from the Effective date of the Plan.

(3) Class 3 - Claim of Ford Motor Credit Company, LLC. Class 3 consists of the Secured Claim of Ford Motor Credit Company, LLC. (Claim #12 filed in the amount of \$29,797.29, secured by a 2008 Ford F-250 SD King.) The Allowed Secured Claim will be collectively satisfied by each Debtor at 5.25% interest, payments to begin thirty (30) days from the Effective date of the Plan.

(4) Class 4 – Unsecured Claims. Class 4 consists of all General Unsecured Claims not otherwise classified. All Allowed Class 4 Unsecured Claims shall receive, Fifteen Percent (15%) of their Allowed Unsecured Claims, payments to begin thirty (30) days from the Effective date of the Plan unless otherwise negotiated.

(5) Class 5 – Insider Claims. Class 5 consists of all Insider Claims. On the Effective Date, each Holder of an Allowed Insider Claim in Class 5 shall retain such Claim; provided, however, such Holder shall not be entitled to any distribution from the Reorganized Debtor on account of such Claim until and unless each Holder of an Allowed Claim in Classes 1 through 4 is satisfied in full as provided under this Plan.

(6) Class 6 – Equity Claims. Class 6 consists of the Equity Claim on John Konecnik. Mr. Konecnik shall retain his interest in the Debtor.

ARTICLE 4

TREATMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

4.1 Administrative Expense Claims. Each Holder of an Allowed Administrative Expense Claim (except any such Holder that agrees to different treatment) shall receive the Allowed Amount of such Holder's Allowed Administrative Expense Claim, without interest, in Cash, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, on the Distribution Date, unless such other treatment as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors.

4.2 Priority Tax Claims. Each Holder of an Allowed Priority Tax Claim (except any such Holder that agrees to different treatment) shall receive the Allowed Amount of such Holder's Allowed Priority Tax Claim, without post-petition interest or

penalty, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, on the Distribution Date, or in regular installment payments over a period not exceeding five years from the Petition Date of a total value, as of the Effective Date, equal to the Allowed Amount of such Claim. The obligations in respect of any Allowed Priority Tax Claim that is secured by a valid, perfected and enforceable Lien shall be collateralized by a continuation of the Lien underlying such Claim and such obligation shall be and become due and payable upon the sale or other disposition of the collateral thereof.

ARTICLE 5

LIQUIDATION ANALYSIS OF DEBTORS' ASSETS

5.1 An analysis of the Debtors' assets is attached hereto as Exhibit "A".

5.2 The Plan is based upon the Debtors' belief that liquidation the assets, would yield only minimal distribution, at best, to general unsecured creditors. Additionally, the priority and secured creditors would receive less than the contractual or legal obligations. The present management and ownership of the Debtors will be retained post-confirmation.

ARTICLE 6

SUMMARY OF DEBTORS' PLAN OF REORGANIZATION

The Debtors' Plan has been proposed in good faith and not by any means forbidden by law. It is based upon the Debtors' belief that a forced liquidation of the Debtors' property will result in a substantially smaller recovery to priority and secured creditors with little return to unsecured creditors.

The Debtors have proposed two options for the Plan of Reorganization. The first proposal is based on removing twenty (20) feet of existing dock which will satisfy Sarasota County's Code violation. This would allow for a total of forty (40) slips to be leased. See Exhibit B which is the Debtors' projected income over a five (5) year period with forty slips.

The second proposal which is in front of the County Commission is for allowing the original permitting issued by the City of Venice for the construction of fifty-seven (57) slips. See Exhibit C which is the Debtors' projected income over a five (5) year period with fifty-seven (57) slips. Based upon the representation of the newly elected Mayor of the City of Venice, who is striving to increase the City's growth, this proposal is likely to succeed. In looking at the projections of Exhibits B and C it appears that the income generated by the construction of fifty-seven (57) slips is less than the income generated by forty (40) slips in the first year. This is because of the additional expenses involved in the completion of the construction.

The projected income under either proposal may appear to be overstated and more than the Debtors generated in the past year. However, attached hereto as Exhibit "D", is a copy of the Historical Sales and Income for the Debtors for the time period January 1, 2006, through July 31, 2010 which shows that the average income and sales have been in the approximate amount of \$2.5 Million. Therefore, the projected income is completely in line with the historical data as the Debtors move forward.

Respectfully Submitted,

The Law Offices of Lynn Ramey

/s/ Lynn Ramey

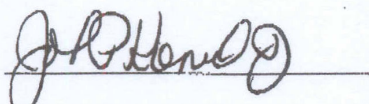
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December 31, 2010

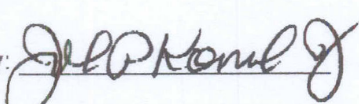
**FISHERMAN'S WHARF
OF VENICE, INC**

By: 
John P. Konecnik Jr., President

JPKJ, LLC

By: 
John P. Konecnik Jr., Manager

JMPT PARTNERS

By: 
John P. Konecnik Jr., Partner