

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re

Chapter 11

FOUNTAIN SQUARE II, LTD.,

Case No. 8:10-bk-11419-CPM

Debtor.

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**TAMPA FS II, LLC'S FIRST AMENDED DISCLOSURE STATEMENT  
FOR PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE  
UNITED STATES BANKRUPTCY CODE FOR FOUNTAIN SQUARE II, LTD.**

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Tampa, Florida  
Dated: November 19, 2010

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON TAMPA FS II, LLC'S ("TAMPA FS" OR "PLAN PROPONENT") FIRST AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE FOR FOUNTAIN SQUARE II, LTD. DATED AS OF NOVEMBER 19, 2010 (AS FURTHER AMENDED FROM TIME TO TIME, THE "PLAN"), AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE PLAN PROPONENT OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN FOUNTAIN SQUARE II, LTD. ("DEBTOR" OR "FOUNTAIN SQUARE").

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

THE DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF, WHICH IS INCLUDED AS EXHIBIT 1 HERETO. EACH CREDITOR AND HOLDER OF AN EQUITY INTEREST SHOULD READ, CONSIDER AND CAREFULLY ANALYZE THE TERMS AND PROVISIONS OF THE PLAN.

THE PLAN PROPONENT BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS.

NO PERSON IS AUTHORIZED BY THE PLAN PROPONENT IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO OR INCORPORATED BY REFERENCE OR REFERRED TO HEREIN, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE PLAN PROPONENT. SUCH ADDITIONAL REPRESENTATIONS SHOULD BE REPORTED TO COUNSEL FOR THE PLAN PROPONENT, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR ACTION AS MAY BE DEEMED APPROPRIATE. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY CIRCUMSTANCES, IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. THIS DISCLOSURE STATEMENT IS DATED AS OF NOVEMBER 19, 2010 AND CREDITORS AND HOLDERS OF EQUITY INTERESTS ARE ENCOURAGED TO

REVIEW THE BANKRUPTCY DOCKET IN THE REORGANIZATION CASE IN ORDER TO APPRISE THEMSELVES OF EVENTS WHICH OCCUR BETWEEN THE DATE OF THIS DISCLOSURE STATEMENT AND THE DATE OF THE CONFIRMATION HEARING.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THIS DISCLOSURE STATEMENT AND IN THE ACCOMPANYING PLAN CONCERNING THE HISTORY OF THE DEBTOR'S BUSINESS, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTOR, THE FUTURE FINANCIAL PERFORMANCE OF TAMPA FS, TRANSACTIONS TO WHICH THE DEBTOR WAS OR IS PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON SECURED CREDITORS, UNSECURED CREDITORS OR HOLDERS OF EQUITY INTERESTS ARE ATTRIBUTABLE EXCLUSIVELY TO THE PLAN PROPONENT AND NOT TO ANY OTHER PARTY. NONE OF THE ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS RETAINED BY THE PLAN PROPONENT MAKES ANY REPRESENTATIONS CONCERNING SUCH INFORMATION.

THE PLAN PROPONENT HAS ATTEMPTED TO PRESENT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT ACCURATELY AND FAIRLY. THE ASSUMPTIONS UNDERLYING THE ANTICIPATION OF FUTURE EVENTS CONTAINED IN THIS DISCLOSURE STATEMENT REPRESENT AN ESTIMATE BY THE PLAN PROPONENT, BUT BECAUSE THESE ARE ONLY ASSUMPTIONS OR PREDICTIONS OF FUTURE EVENTS (MOST OF WHICH ARE BEYOND THE PLAN PROPONENT'S CONTROL), THERE CAN BE NO ASSURANCE THAT THE EVENTS WILL OCCUR.

ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS THAT ARE ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THE ENTIRE DISCLOSURE STATEMENT FURNISHED TO THEM (INCLUDING THE PLAN ATTACHED AS EXHIBIT 1 HERETO OR THE SUMMARY OF THE PLAN CONTAINED HEREIN) AND THE MATTERS DESCRIBED IN THIS DISCLOSURE STATEMENT,

IF NECESSARY, THE PLAN PROPONENT (1) MAY SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN WITH RESPECT TO THAT CLASS UNDER THE BANKRUPTCY CODE'S "CRAMDOWN" PROVISIONS AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO SUCH REQUIREMENTS OR (2) MAY OTHERWISE MODIFY OR WITHDRAW THE PLAN.

THE REQUIREMENTS FOR CONFIRMATION, INCLUDING THE VOTE OF IMPAIRED CLASSES OF CLAIMS AND EQUITY INTERESTS TO ACCEPT THE PLAN AND CERTAIN OF THE STATUTORY FINDINGS THAT MUST BE MADE BY THE BANKRUPTCY COURT, ARE SET FORTH IN THE SECTION OF THIS DISCLOSURE STATEMENT TITLED "CONFIRMATION OF THE PLAN."

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## **INDEX TO EXHIBITS**

- Exhibit 1      TPP Tampa FS II, LLC's First Amended Plan of Reorganization under  
Chapter 11 of the United States Bankruptcy Code for Fountain Square II, Ltd.
- Exhibit 2      Liquidation Analysis as of December 31, 2010

**DISCLOSURE STATEMENT  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE**

**INTRODUCTION**

TAMPA FS II, LLC , a secured creditor of Fountain Square II, Ltd., as Debtor in Possession, has filed with the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the “**Bankruptcy Court**”), its First Amended Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code for Fountain Square II, Ltd. dated as of November 19, 2010 (as amended from time to time, the “**Plan**”). The Plan Proponent’s First Amended Disclosure Statement dated as of November 19, 2010 (the “**Disclosure Statement**”) is submitted pursuant to § 1125 of the Bankruptcy Code, 11 U.S.C. § 101, et. seq. (the “**Bankruptcy Code**”). The hearing on Confirmation of the Plan is scheduled for December 16, 2010 at 1:30 p.m.

This Disclosure Statement has been conditionally approved by the Bankruptcy Court in accordance with § 1125(b) of the Bankruptcy Code. Conditional approval of this Disclosure Statement by the Bankruptcy Court and the transmittal of this Disclosure Statement do not, however, constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan or final approval of the adequacy of the Disclosure Statement and should not be interpreted as being a recommendation by the Bankruptcy Court either to accept or reject the Plan.

IN THE OPINION OF THE PLAN PROPONENT, AS DESCRIBED BELOW, THE TREATMENT OF CLAIMS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF FOUNTAIN SQUARE. ACCORDINGLY, THE PLAN PROPONENT BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS.

Accompanying or included as exhibits to this Disclosure Statement are copies of the following:

- (a) the Plan, included as Exhibit 1 to this Disclosure Statement;
- (b) Liquidation Analysis as of December 31, 2010, included as Exhibit 2 to this Disclosure Statement; and
- (c) the Bankruptcy Court’s order conditionally approving the Disclosure Statement dated November 17, 2010 (the “**Disclosure Statement Approval Order**”).

## PURPOSE OF THIS DISCLOSURE STATEMENT

The purpose of this Disclosure Statement is to provide the Holders of Claims and Equity Interests with adequate information about the Plan. This information includes, among other things, (a) a summary of the Plan and an explanation of how the Plan will function, including the means of implementing and funding the Plan, (b) general information about the history and business of Fountain Square prior to the Petition Date and the events leading to the filing of the Reorganization Case, and (c) a brief summary of significant events which have occurred to date in the Reorganization Case.

This Disclosure Statement contains important information about the Plan. All Holders of Claims and Equity Interests are encouraged to review carefully this Disclosure Statement.

Unless otherwise defined herein, all capitalized terms used in this Disclosure Statement have the meanings ascribed to them in the Plan. Any term used in the Plan or herein that is not defined in the Plan or herein and that is used in the Bankruptcy Code, the Bankruptcy Rules or the Local Rules of the Bankruptcy Court has the meaning assigned to that term in the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, as the case may be. **IF THERE IS ANY CONFLICT BETWEEN THE DEFINITIONS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE DEFINITIONS CONTAINED IN THE PLAN, THE DEFINITIONS CONTAINED IN THE PLAN SHALL CONTROL.**

## VOTING INSTRUCTIONS

### Who May Vote

Only the Holders of Claims and Equity Interests which are deemed “Allowed” under the Bankruptcy Code and which are “Impaired” under the terms and provisions of the Plan are permitted to vote to accept or reject the Plan. As will be explained below, as structured by the Plan, no votes are necessary in order to confirm the Plan. **ACCORDINGLY, NO BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED.**

### Confirmation Hearing and Objections to Confirmation

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for December 16, 2010 at 1:30 p.m. (the “**Confirmation Hearing**”), at the United States Bankruptcy Court, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, which may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing.

Any objection to Confirmation of the Plan must be filed and served in accordance with the Disclosure Statement Approval Order. Pursuant to the Disclosure Statement Approval Order, any such objection must be filed with the Bankruptcy Court and served on



the Plan Proponent, the Plan Proponent's bankruptcy counsel, Fountain Square, Fountain Square's bankruptcy counsel, and the United States Trustee at the addresses set forth therein, so as to be actually received on or before 4:30 p.m. (Eastern Standard Time) on December 9, 2010.

## **SUMMARY OF THE PLAN**

### **Introduction**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize and/or liquidate its business for the benefit of itself and its creditors and stockholders. The formulation of a plan is the principal objective of a Chapter 11 case. In general, a Chapter 11 plan (i) divides claims and equity interests into separate classes, (ii) specifies the property that each class is to receive under such plan, and (iii) contains other provisions necessary to the reorganization and/or liquidation of the debtor. Chapter 11 does not require each holder of a claim or equity interest to vote in favor of the plan in order for the Bankruptcy Court to confirm the plan. However, a plan must be accepted by the holders of at least one impaired class of claims without considering the votes of "insiders" within the meaning of the Bankruptcy Code.

The following summary of the Plan addresses only certain provisions of the Plan. As a summary, it is qualified in its entirety by reference to the Plan itself and the documents which are referred to therein as being filed prior to Confirmation, including the Plan Documents. The Plan and the documents referred to therein shall control and, upon Confirmation and the Effective Date, bind the Plan Proponent, the Debtor, all of Fountain Square's Creditors and Holders of Equity Interests and other parties in interest except as expressly set forth in the Plan. TO THE EXTENT THAT THE TERMS OF THIS DISCLOSURE STATEMENT VARY OR CONFLICT WITH THE TERMS OF THE PLAN, THE TERMS OF THE PLAN SHALL CONTROL.

By way of background, this Chapter 11 case was commenced on May 13, 2010 (the "**Petition Date**"). Since that time, Fountain Square has operated its business as a Debtor in Possession. Fountain Square is the owner of a four-story, Class A office building complex of approximately 134,065 square feet located at 4925 Independence Parkway, Tampa, Florida 33634 (the "**Office Building**"). The Office Building is in an office park with all necessary parking and amenities available, including on-site delicatessen and fitness facilities.

### **Classification of Claims and Equity Interests**

Section 1123 of the Bankruptcy Code provides that a plan of reorganization classify the claims of a debtor's creditors and interests of a debtor's equity holders. The Plan divides the Claims and Equity Interests into six (6) Classes.

Under the Plan, Claims against and Interests in Fountain Square are divided into Classes. Certain unclassified Claims, including Administrative and Priority Tax Claims, will receive payment in Cash either on the Distribution Date, as such claims are liquidated, or as agreed with the Holders of such Claim. All other Claims and Interests are classified into six Classes as summarized below. The classification and treatment for all Classes are described in more detail under Article 3 “Designation of Classes of Claims.”

#### Summary of Classes and Impairment Under the Plan

Class	Impaired/Unimpaired; Entitlement to Vote
Class 1 - Other Priority Claims	Unimpaired - Deemed to have accepted the Plan and not entitled to vote
Class 2 - Secured Claim of Tampa FS II, LLC	Impaired - Deemed to have accepted and voted in favor of the Plan
Class 3 - Other Secured Claims	Unimpaired - Deemed to have accepted the Plan and not entitled to vote
Class 4 - General Unsecured Claims	Unimpaired - Deemed to have accepted the Plan and not entitled to vote
Class 5 - Tampa FS II, LLC Deficiency Claim	Impaired - Deemed to have accepted and voted in favor of the Plan
Class 6 - Equity Interests	Impaired - Deemed to have rejected the Plan and not entitled to vote

The Plan Proponent believes that it has classified all Claims and Equity Interests in compliance with the provisions of § 1122 of the Bankruptcy Code. However, it is possible that a Holder of a Claim or another interested party may challenge the classification of Claims and Equity Interests contained in the Plan and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In such event, it is the present intent of the Plan Proponent, to the extent permitted by the Bankruptcy Court, to make such reasonable modifications of the classifications under the Plan to provide for whatever classification might be required by the Bankruptcy Court for Confirmation and to use the Plan acceptances received in this solicitation for the purpose of obtaining the approval of the Class or Classes of which the accepting Holder is ultimately deemed to be a member. Any such reclassification could adversely affect the Class in which such Holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required of that Class for approval of the Plan. A reclassification of Claims after approval of the Disclosure Statement might necessitate a resolicitation of acceptances or rejections of the Plan.

#### Summary of Plan Distributions

Set forth below is a summary of each Class of Claims and Equity Interests and the expected distributions under the Plan to Holders of Allowed Claims against Fountain Square. Any estimates of Claims set forth in this Disclosure Statement are approximate.

The Holders of Administrative Claims are entitled to be paid in full under a plan of reorganization pursuant to the Bankruptcy Code. The Administrative Claims consist mainly of certain Postpetition operating expenses incurred by Fountain Square and fees and costs of Professionals. Holders of Allowed Administrative Claims will be paid (a) on the Distribution Date, an amount, in Cash, by Tampa FS equal to the Allowed Amount of its Administrative Claim, in accordance with § 1129(a)(9)(A) of the Bankruptcy Code, (b) under such other terms as may be agreed upon by both the Holder of such Allowed Administrative Claim and Tampa FS, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

The Holders of Priority Tax Claims are also entitled to payment in full under a plan of reorganization pursuant to the Bankruptcy Code. On the Distribution Date, Tampa FS will pay each Holder of an Allowed Priority Tax Claim an amount in Cash equal to the Allowed Amount of such Claim.

The Holders of Priority Claims are also entitled to be paid in full under a plan of reorganization pursuant to the Bankruptcy Code. The Plan Proponent believes there are no Priority Claims of any significance. If there are Priority Claims, the Plan provides that each Holder of an Allowed Priority Claim will be paid (a) on the Distribution Date, an amount, in Cash, by Tampa FS equal to the Allowed Amount of its Priority Claim, in accordance with § 1129(a)(9)(B) of the Bankruptcy Code, (b) under such other terms as may be agreed upon by both the Holder of such Allowed Priority Claim and Tampa FS, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

The Plan Proponent has separately classified other Secured Claims, although the Plan Proponent does not believe there are any such Claims. The Plan leaves the rights of such Creditors Unimpaired.

The Plan provides that the Secured Claim of Tampa FS and the BB&T Mortgage (now held by Tampa FS) be satisfied by conveying the Debtor's assets and Assumed Contracts to Tampa FS, who will own and operate the Property and Office Building, and be responsible for paying Allow Claims as provided by the Plan.

The Plan provides that Allowed General Unsecured Claims will be paid in full in Cash on the Distribution Date, plus interest at the rate of five percent (5%) per annum from the Petition Date. The Plan Proponent agreement to pay all Allowed General Unsecured Claims in full is conditioned upon the Bankruptcy Court's refusal to allow Chase Bankcard Services, Inc. to file a Claim in the amount of \$323,657.20 after the bar Date (*see* discussion *infra*). If this Claim is allowed to be filed, the Plan is deemed withdrawn.

On the Effective Date, all Equity Interests in Fountain Square will be canceled and extinguished, and each Holder of Equity Interests shall not receive or retain any property or interest in Property on account of its Class 6 Equity Interests.

## **Treatment of Executory Contracts and Unexpired Leases**

Pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between Fountain Square and any Person or Entity shall be deemed assumed by the Debtor and assigned to Tampa FS, including contracts that have been assumed pursuant to an order of the Bankruptcy Court entered before the Effective Date or as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date (collectively, the “**Assumed Contracts**”). All executory contracts and unexpired leases that exist between Fountain Square and any Person or Entity that (a) have been rejected pursuant to an order of the Bankruptcy Court entered before the Effective Date, (b) is the subject of a motion to reject filed on or before the Effective Date or (c) is listed on the schedule of rejected contracts attached as Exhibit “A” to the Plan, are considered rejected contracts (collectively, the “**Rejected Contracts**”). The Plan shall not constitute an admission by the Plan Proponent that such document is an executory contract or an unexpired lease or that the Debtor or the Plan Proponent has any liability thereunder.

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Rejected Contracts, (ii) the assumption by the Debtor and the assignment to Tampa FS of all the Debtor’s rights in the Assumed Contracts pursuant to §§ 365(a) and 1123(b)(2), and (iii) the extension of time, pursuant to §§ 365(d)(4) of the Bankruptcy Code, within which Tampa FS may assume, assume and assign, or reject the unexpired leases specified in the Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases.

Any Claim for damages arising by reason of the rejection of any executory contract or unexpired lease must be filed with the Bankruptcy Court on or before the bar date for rejection damage Claims in respect of such rejected executory contract or unexpired lease and served upon the Plan Proponent or such Claim shall be forever barred and unenforceable against Tampa FS. Such Claims, once fixed and liquidated by the Bankruptcy Court and determined to be Allowed Claims, shall be Class 4 Allowed General Unsecured Claims. Any such Claims that become Disputed Claims shall be Class 4 Disputed General Unsecured Claims for purposes of administration of distributions under the Class 4 Allowed Unsecured Claims. The Plan and any other order of the Bankruptcy Court providing for the rejection or assumption of an executory contract or unexpired lease shall constitute adequate and sufficient notice to Persons or Entities which may assert a Claim for damages from the rejection of an executory contract or unexpired lease of the bar date for filing a Claim in connection therewith.

## **Release, Discharge, Limitation of Liability, and Injunction Provisions under the Plan**

**The Plan contains detailed discharge, limitation of liability, release and injunction provisions for the benefit of Fountain Square, Tampa FS, and other parties. In addition, the Plan provides for the complete and unconditional discharge, to the**

**fullest extent permitted by law, of any and all Debts and Claims of any nature whatsoever against and Equity Interests in Fountain Square that arose on or before the Effective Date. Set forth below is a summary of these provisions.**

*Discharge of Claims*

Except as otherwise expressly provided in the Plan or in the Confirmation Order, the Confirmation Order shall operate as a discharge, pursuant to § 1141(d) of the Bankruptcy Code, to the fullest extent permitted by applicable law, as of the Effective Date, of Fountain Square and Tampa FS from any and all Debts of, Claims of any nature whatsoever against and Equity Interests in Fountain Square that arose at any time prior to the Effective Date, including any and all Claims for principal and interest, whether accrued before, on or after the Petition Date. Without limiting the generality of the foregoing, on the Effective Date, Fountain Square and Tampa FS, and their respective successors or assigns, shall be discharged from any Claim or Debt that arose prior to the Effective Date and from any and all Debts of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such Debt was filed pursuant to § 501 of the Bankruptcy Code, (b) a Claim based on such Debt is an Allowed Claim pursuant to § 502 of the Bankruptcy Code, or (c) the Holder of a Claim based on such Debt has voted to accept the Plan. As of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons and Entities, including all Holders of a Claim or Equity Interest, shall be forever precluded and permanently enjoined to the fullest extent permitted by applicable law from asserting directly or indirectly against Fountain Square or Tampa FS, or any of their respective successors and assigns, or the assets or Properties of any of them, any other or further Claims, Debts, rights, causes of action, remedies, Liabilities or Equity Interests based upon any act, omission, document, instrument, transaction, event, or other activity of any kind or nature that occurred prior to the Effective Date or that occurs in connection with implementation of the Plan, including any action or proceeding which may be brought pursuant to the Securities Act or the Exchange Act, and the Confirmation Order shall contain appropriate injunctive language to that effect. In accordance with the foregoing, except as otherwise expressly provided in the Plan or in the Confirmation Order, the Confirmation Order shall be a judicial determination of the discharge or termination of all such Claims and other Debts and Liabilities against, or Equity Interests in, Fountain Square, pursuant to §§ 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against Fountain Square, at any time, to the extent that such judgment relates to a discharged or terminated Claim, Liability, Debt or Equity Interest. Notwithstanding the foregoing, Tampa FS shall remain obligated to make payments to Holders of Allowed Claims as required pursuant to the Plan.

*Exculpation from Liability*

Tampa FS, the Debtor, and their respective directors, officers, employees, agents, representatives, shall neither have nor incur any liability whatsoever to any Person or Entity for any act taken or omitted to be taken in good faith in connection with or related to the

formulation, preparation, dissemination, implementation or confirmation of the Plan, the Disclosure Statement, any Plan Document, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the Reorganization Case; provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of any such party. These rights are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that Tampa FS, the Debtor, and their respective agents have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation.

#### *General Injunction*

**Pursuant to §§ 105, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, Liability or Equity Interest that is discharged or terminated pursuant to the terms of the Plan are and shall be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such discharged or terminated Claims, Debts, Liabilities, or Equity Interests, other than actions brought to enforce any rights or obligations under the Plan or the Plan Documents: (a) commencing or continuing in any manner any action or other proceeding against Fountain Square, Tampa FS, or their respective Properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against Fountain Square, Tampa FS, or their respective Properties; (c) creating, perfecting or enforcing any Lien or encumbrance against Fountain Square, Tampa FS, or their respective Properties; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to Fountain Square or Tampa FS; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Fountain Square and Tampa FS shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation.**

#### *Term of Certain Injunctions and Automatic Stay*

All injunctions or automatic stays provided for in the Reorganization Case pursuant to §§ 105, 362 or other applicable provisions of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. With respect to all lawsuits pending in courts in any jurisdiction (other than the Bankruptcy Court) that seek to establish Fountain Square's liability on Prepetition Claims asserted therein and that are stayed pursuant to § 362 of the Bankruptcy Code, such lawsuits shall be deemed dismissed as of the Effective Date, unless Tampa FS with respect to Claims

to be satisfied by them, elect to have Tampa FS's liability established by such other courts, and any pending motions seeking relief from the automatic stay for purposes of continuing any such lawsuits in such other courts shall be deemed denied as of the Effective Date, and the automatic stay shall continue in effect, unless Tampa FS, elects to have the automatic stay lifted and to have Fountain Square's liability established by such other courts; and the Prepetition Claims at issue in such lawsuits shall be determined and either Allowed or disallowed in whole or in part by the Bankruptcy Court pursuant to the applicable provisions of the Plan, unless otherwise elected by Tampa FS, as provided in the Plan. Any preliminary or permanent injunction entered by the Bankruptcy Court shall continue in full force and effect following the Confirmation Date and the Final Decree Date, unless otherwise ordered by the Bankruptcy Court.

#### *No Liability for Tax Claims*

Unless a taxing Governmental Authority has asserted a Claim against Fountain Square before the Bar Date or Administrative Claims Bar Date established therefore, no Claim of such Governmental Authority shall be Allowed against Fountain Square or Tampa FS for taxes, penalties, interest, additions to tax or other charges arising out of (i) the failure, if any, of Fountain Square, or any other Person or Entity to have paid tax or to have filed any tax return (including any income tax return or franchise tax return) in or for any prior year or period or (ii) an audit of any return for a period before the Petition Date.

#### *Regulatory or Enforcement Actions*

Nothing in the Plan shall restrict any federal government regulatory agency from pursuing any regulatory or police enforcement action against Fountain Square, Tampa FS, or their respective successors or assigns; provided, however, that any such agency may not pursue any action or proceeding of any type to recover monetary claims, damages or penalties against Fountain Square, Tampa FS, or their respective successors or assigns, for an act or omission occurring prior to the Effective Date, including any such action or proceeding which may be brought pursuant to the Securities Act or the Exchange Act.

The foregoing is only a general summary of the discharge, limitation of liability, release and injunction provisions of the Plan. For a complete understanding of the terms and conditions of these essential Plan provisions, each holder of a Claim against or Equity Interest in Fountain Square is encouraged to read the Plan in its entirety. If you have any uncertainty regarding the scope of these discharge, limitation of liability, release or injunction provisions, you should be aware that the language of the Plan controls over the language of the Disclosure Statement.

## **GENERAL INFORMATION**

### **Company Overview**

Fountain Square is a limited partnership formed in 2006. The General Partner is Fountain Square II, GP, Inc., which owns one-tenth of one percent of the partnership interest in the Debtor. The Limited Partners are James Whittier Lewis, Jr. Irrevocable Trust and Richard Christopher Lewis Irrevocable Trust, which owns the remaining 99.9% of the limited partnership interest in the Debtor.

Fountain Square owns the Office Building, which is in an attractive office park with all the necessary parking and amenities available, including on-site deli and fitness facilities. The Office Building is presently approximately 73% occupied. In addition to the Office Building, the Debtor has rights to garage parking adjacent to the Office Building, which is utilized for the benefit of all tenants.

### **Events Leading to Chapter 11 Case**

Fountain Square acquired the Office Building using a loan in the original amount of \$16,060,000 from Capmark Finance, Inc., with a future advance clause of \$4,040,000. The loan was assumed by Colonial Bank, N.A. (“**Colonial Bank**”), in September 2007, with an outstanding balance of \$19,303,528. Colonial Bank provided a refinancing which included a future advance clause of \$5,696,472, for a total commitment of \$25,000,000 of which \$23,828,000 has been funded.

On or about August 14, 2009, Branch Banking and Trust Company (“**BB&T**”) acquired the Colonial Bank loan to Fountain Square by assignment from the Federal Deposit Insurance Company. At that time, the loan had matured, effective June 17, 2009.

Fountain Square was unable to refinance the loan at maturity with either Colonial Bank, BB&T, or another financial institution. As a result of the matured mortgage, BB&T began foreclosure proceedings, and the Debtor, with no funds to invest in securing new tenants and a deteriorated economy, sought relief under Chapter 11 of the Bankruptcy Code on May 13, 2010.

### **Events During the Chapter 11 Case**

From and after the Petition Date, Fountain Square continued to operate its business and manage its property as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

Fountain Square sought and obtained permission to retain the law firm of Stichter, Riedel, Blain & Prosser, P.A. and the accounting firm of Kingery & Krauss, P.A.



Fountain Square sought and obtained authority to use cash collateral that was subject to the security interests of BB&T and, in connection therewith, agreed to pay BB&T \$85,000 per month as adequate protection and to deposit into certain accounts income from the Office Building (collectively, the “**Cash Collateral Account**”).

Fountain Square sought and obtained approval to retain the management services of The Bayshore Company, which is owned by James and Beth Lewis. Mr. Lewis is the President of the General Partner of the Debtor and President of that management company.

### **Tampa FS’s Acquisition of the BB&T Mortgage Documents**

On or about October 8, 2010, TPP Loan Acquisition I, LLC, an affiliate of Tampa FS, purchased the BB&T Note, the BB&T Mortgage, and related documents held by BB&T (the “**BB&T Mortgage Documents**”) and succeeded to its right thereunder. On or about October 12, 2010, TPP Loan Acquisition I, LLC assigned those documents to Tampa FS. Tampa FS and TPP Loan Acquisition I, LLC, are affiliates of TriGate Capital, LLC (“**TriGate**”), a best of class real estate investment firm that was founded in 2007 by three seasoned real estate executives who, prior to the formation of TriGate, were successful senior lenders of prominent financial institutions in real estate funds. Each of the founders has over 20 years of real estate investment and operating experience in various facets of the real estate industry. Based in Dallas, TriGate manages an institutional-backed investment fund, TriGate Property Partners, and has full discretion to invest the fund’s capital in attractive real estate opportunities. In total, TriGate directs and manages over \$200 million of equity capital across numerous real estate investments.

The principals of TriGate have deep and varied experience with the real estate business. Through prior investment management, operating, and investment banking activities related to real estate companies and assets, they have expertise in (a) structuring, financing, and managing real estate and operating company investments, (b) real estate debt securities and workouts, (c) international investments, and (d) real estate operations, development, redevelopment, and asset management.

Over the past three years, TriGate has invested capital in a variety of markets and property types across the nation. Markets in which the firm has invested include Chicago, Boston, Tampa, Greenville (SC), Dallas, San Diego, and Fresno. Property types include suburban office, industrial, retail, and hotel.

TriGate arranged for the purchase of the BB&T Mortgage Documents with the intention of owning the Office Building. At the time it purchased the BB&T Mortgage Documents, it was aware that the exclusive time for the Debtor to file a plan of reorganization had terminated.

Tampa FS reviewed the claims filed in the Reorganization Case and determined that it would be able to fund a plan of reorganization that would cancel the Equity Interests in the Debtor and pay all Allowed Claims in full. It therefore decided to file this Plan and

represented to the Bankruptcy Court at a status conference on October 25, 2010, that it would do so.

### **The Chase Late Claim**

On or about October 25, 2010, Chase Bankcard Services, Inc. (“Chase”) filed a Claim in the amount of \$323,657.20 and filed a motion to allow its claim to be filed notwithstanding it was filed after the Bar Date established by the Bankruptcy Court (the “Chase Motion”). Tampa FS filed an objection to this motion and it anticipates that the Debtor will as well.

**IT IS EXTREMELY IMPORTANT TO NOTE THAT THIS PLAN AND ITS PROMISE TO PAY ALL ALLOWED CLAIMS IN FULL IS CONDITIONED UPON THE BANKRUPTCY COURT’S DENYING THE CHASE MOTION. IF THAT MOTION IS NOT DENIED AND THE CHASE LATE CLAIM IS ALLOWED, THE PLAN PROPONENT WILL WITHDRAW THE PLAN WITHOUT PREJUDICE TO ITS RIGHT TO FILE ANOTHER PLAN OR NOT FILE A PLAN AT ALL AND SIMPLY FORECLOSE ON THE BB&T MORTGAGE. THE BANKRUPTCY COURT HAS SCHEDULED A PRELIMINARY HEARING ON THE CHASE MOTION FOR DECEMBER 16, 2010 AT 1:30 P.M.**

### **Management of the Office Building**

Once the Office Building is owned by Tampa FS, Tower Realty Asset Management, Inc. and Tower Realty Partners, Inc. will be the Property Manager and Leasing Agent, respectively. Property management fees are calculated to be 3% of Gross Rents. Certain other costs including account and on-site personnel will be reimbursed by Tampa FS.

### **Objections to Claims Against Fountain Square**

Unless otherwise ordered by the Bankruptcy Court, and except as to any late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases, if any, all objections to Claims shall be filed with the Bankruptcy Court on or before sixty (60) days following the Effective Date (unless such period is extended by the Bankruptcy Court upon motion of the Plan Propoent), and the Confirmation Order shall contain appropriate language to that effect. Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of (a) thirty (30) days following the Effective Date or (b) the date sixty (60) days after Fountain Square, or the Plan Proponent, as the case may be, received actual notice of the filing of such Claim.

### **Retention of Jurisdiction**

The Plan provides for the retention of jurisdiction by the Bankruptcy Court following the Effective Date to, among other things, determine all disputes relating to Claims, Equity Interests and other issues presented by or arising under the Plan. The Bankruptcy Court will

also retain jurisdiction under the Plan for any actions brought in connection with the implementation and consummation of the Plan and the transactions contemplated thereby. See Article 10 of the Plan.

### **Conclusion**

Tampa FS believes that the Plan is in the best interests of all Creditors. In the event of a liquidation of Fountain Square's assets under Chapter 7 of the Bankruptcy Code, Tampa FS believes the distribution to Unsecured Creditors would be substantially less than under the Plan and probably nothing. For these reasons, Tampa FS urges that the Plan be accepted.

## **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

### **General**

**HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

**TAMPA FS'S GENERAL BANKRUPTCY COUNSEL HAS NO TAX EXPERTISE AND HAS NOT RESEARCHED OR ANALYZED TAX CONSEQUENCES RESULTING FROM THE PLAN.**

## **CONFIRMATION OF THE PLAN**

### **Confirmation and Acceptance by All Impaired Classes**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan if all of the requirements of Bankruptcy Code § 1129 are met. Among the requirements for confirmation of a plan are that the plan be accepted by all impaired classes of claims and equity interests, and satisfaction of the matters described below.

#### *Feasibility*

A plan may be confirmed only if it is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. Tampa FS believes that it will be able to perform its obligations under the Plan without further financial reorganization.

The Plan basically provides for payment to Holders of Allowed Claims, including contingent, unliquidated, undetermined, and Disputed Claims to the extent they become Allowed Claims, in the order of their priority. The Plan further authorizes and directs the

Plan Proponent to take all actions to satisfy all Claims and to implement the Plan. Accordingly, Tampa FS believes that the Plan is per se feasible.

#### *Best Interests Standard*

The Bankruptcy Code requires that the Plan meet the “best interest” test, which requires that members of a Class must receive or retain under the Plan, property having a value not less than the amount which the Class members would have received or retained if Fountain Square was liquidated under Chapter 7 on the same date. Tampa FS believes that distributions to all Classes of Claims in accordance with the terms of the Plan would greatly exceed the net distribution that would otherwise take place in Chapter 7.

#### **Confirmation Without Acceptance by All Impaired Classes**

If one or more of the Impaired Classes of Claims or Equity Interests does not accept the Plan, the Plan may nevertheless be confirmed and be binding upon the non-accepting Impaired Class under the “cram-down” provisions of the Bankruptcy Code, if the Plan does not “discriminate unfairly” and is “fair and equitable” to the non-accepting Impaired Classes under the Plan.

#### *The Plan Does Not Discriminate Unfairly*

The Bankruptcy Code requirement that a plan not “discriminate unfairly” means that a dissenting class must be treated equally with respect to other classes of equal rank. Tampa FS believes that the Plan does not “discriminate unfairly” with respect to any Class of Claims or Equity Interests because no class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank.

#### *Fair and Equitable Standard*

The “fair and equitable” standard, also known as the “absolute priority rule,” requires that a dissenting class receive full compensation for its allowed claims or interests before any junior class receives any distribution. Tampa FS believes the Plan is fair and equitable to all Classes pursuant to this standard.

With respect to Impaired Classes of Equity Interests, Bankruptcy Code § 1129(b)(2)(C) provides that a plan is “fair and equitable” if it provides that (i) each stockholder receives or retains on account of its stockholder interest, property of a value equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest, or (ii) the holder of any interest that is junior to the interests of such class will not receive or retain any property under the plan. Tampa FS believes that the Plan meets these standards. Here under the Plan, provided Chase’s late filed Claim is not Allowed, all Allowed Claims other than those held by Tampa FS will be paid in full and Equity Interest will not retain their Interests.

Accordingly, Tampa FS believes that the Plan meets the requirements for Confirmation by the Bankruptcy Court.

### **Absolute Priority Rule**

The Bankruptcy Code and other applicable law establishes the priority for distribution of funds in bankruptcy cases. These priority provisions are sometimes referred to as the “absolute priority” rule. Normally, and subject to exceptions not relevant here, valid secured claims are first paid to the extent of the amount of the claim or the value of the claimant’s collateral (if less than the claim).

Any property in the bankruptcy estate, net of the valid secured claims described above, is first distributed to holders of priority claims, including (a) the costs of administering the bankruptcy case, including the cost of operating Fountain Square’s business during the Reorganization Case; (b) certain wage and benefit claims; and (c) certain tax claims. After payment of priority claims, unsecured creditors share pro rata in the remaining funds until paid in full. Equity holders (i.e., stockholders) are paid only after all creditors have been paid.

### **Non-Confirmation of the Plan**

If the Plan is not confirmed by the Bankruptcy Court, the Court may permit the filing of an amended plan, dismiss the case, or convert the case to Chapter 7. In a Chapter 7 case, Fountain Square’s assets would be sold or abandoned to Tampa FS and the General Unsecured Creditors most likely would receive nothing after the payment of all Secured Claims, costs of administration and the payment of priority claims.

The cost of distributing the Plan and this Disclosure Statement, as well as the costs, if any, of soliciting acceptances, will be borne by Tampa FS.

## **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed, the potential alternatives include (a) alternative plans under Chapter 11, (b) dismissal of the case, or (c) conversion of this case to a case under Chapter 7 of the Bankruptcy Code.

### **Alternative Plans of Reorganization**

If the Plan is not confirmed, Tampa FS, Fountain Square, subject to further determination by the Bankruptcy Court as to extensions of exclusivity under the Bankruptcy Code, or any other party in interest in the Reorganization Case could attempt to formulate and propose a different plan or plans. Such plans might involve an orderly liquidation of

assets. Tampa FS believes that the Plan will enable Creditors to be paid the maximum amount possible for their Allowed Claims.

### **Liquidation under Chapter 7 or Chapter 11**

If a plan is not confirmed, the Reorganization Case may be converted to a Chapter 7 liquidation case. In a Chapter 7 case, a trustee would be elected or appointed to liquidate the assets of Fountain Square to the extent that there is any equity in those assets. There will likely be no distribution in Chapter 7. The proceeds of the liquidation would be distributed to the Creditors and Holders of Equity Interests of Fountain Square in accordance with the priorities established by the Bankruptcy Code.

In general, Tampa FS believes that liquidation under Chapter 7 would result in diminution of the value of the interests of the Creditors because of (a) additional administrative expenses involved in the appointment of a trustee and attorneys, accountants and other professionals to assist such trustee; (b) additional expenses and claims, some of which might be entitled to priority, would rise by reason of the liquidation; (c) failure to realize the full value of Fountain Square's assets; and (d) the substantial delay which would elapse before Creditors would receive any distribution in respect of their Claims.

In a liquidation under Chapter 11, Fountain Square's assets would be sold in an orderly fashion over a more extended period of time than in liquidation under Chapter 7. Tampa FS believes that the Plan is superior to liquidation under Chapter 7 or Chapter 11.

### **SUMMARY, RECOMMENDATION AND CONCLUSION**

The Plan provides for an orderly and prompt distribution to Holders of Allowed Claims against Fountain Square. For the reasons set forth herein, Tampa FS believes that the Plan is in the best interests of all parties.

### **TAMPA FS II, LLC**

By: /s/ Jeffrey Yarckin  
Its: President