

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

|                                  |   |               |
|----------------------------------|---|---------------|
| IN RE:                           | § |               |
|                                  | § |               |
| GARY PHILLIPS CONSTRUCTION, LLC, | § | No. 10-53097  |
|                                  | § | Chapter 11    |
| Debtor.                          | § | Judge Parsons |

**SECOND AMENDED DISCLOSURE STATEMENT**

The debtor is a Tennessee limited liability company. The Debtor's business is property development for resale and/or rental along with home construction for resale and/or rental. The Debtor started business in 2006 and Gary Phillips is the sole member of the LLC.

The primary reasons for the Debtor filing a Chapter 11 Reorganization Petition is what many analysts have described as the largest credit crunch since the Great Depression. The building industry has been affected by both the banking crisis on developers and builders and the tightening of credit for potential buyers. Home sales dropped precipitously and this has affected the debtor (even though it has had sales during this reorganization, those sales are far below the rate prior to 2008).

There were several major reasons for the Debtor filing its Chapter 11 Petition including the major changes in the local and national banking environment and regulations which posed severe obstacles for developers and investors globally;

- 1) As a partial result of the above, the Debtor began to receive demand letters and letters declaring the Debtor's loans in default as well as the threats of immediate foreclosure from Regions Bank.
- 2) The Debtor had ongoing construction projects that had "significant" available loan dollars to continue and complete the development of subdivision improvements and new construction housing which for the most part were under contract or near completion. Several banks on their own action just closed the loan(s) and demanded

the debtor to move the balance to a new creditor or pay the balance in full immediately.

- 3) The Debtor continued to finish some of these housing projects with their own personal and working capital funds, and thereafter at closing was demanded “net proceeds”. This changed banking behavior quickly absorbed any and all working capital as well as personal cash.
- 4) The Debtor had reached a point of insolvency and was unable to pay bills as they became due as shown by its past due priority tax obligations on property taxes and \$440,989.33 in past due unsecured creditor obligations.
- 5) The Debtor had several construction and development loans with various Creditors. Regarding Regions Bank, the Debtor had construction loans for housing construction and development loans for subdivision development with loan funds in excess of well over \$1,000,000. Regions ceased funding new loans and the Debtor, with its own funds, tried to finish its projects as several of the new construction houses were under contract.
- 6) Regarding First Tennessee Bank, the Debtor had one subdivision development loan with a builder line of credit. As similar to Regions Bank, the Debtor’s banker was removed and loans were assigned to a new credit officer. Shortly after this transfer, the Bank closed the builder line of credit and the subdivision loan was placed on interest only payments and no further funding of the project provided. This project was very burdensome to the Debtor as the project development business plan was completely changed by the Creditor in mid stream.
- 7) Regarding Citizens Bank, the Debtor had one condominium development loan with a builder line of credit. At the time of filing, the Debtor had completed 2 buildings

consisting of 12 units, of which, 4 units had closed. At the closing of the 4 units, Citizens Bank demanded net proceeds at each sale. Furthermore, Citizens Bank applied the majority of the net proceeds to the development loan rather than the line of credit therefore not allowing more units to be built.

Since filing Chapter 11, the Debtor had been operating under loan and security agreements with Citizens Bank, Commercial Bank, First Bank and Trust, First Tennessee Bank, Regions Bank, Tri-Summit Bank, Bank of Tennessee, and TruPoint Bank which held liens on the Debtor's properties as described herein. On June 3, 2011 the Court granted the Motion for Relief from the Automatic Stay filed on behalf of First Tennessee Bank.

On June 10, 2011 the Court granted the Motion for Relief from Stay filed on behalf of First Bank and Trust ("FB&T"). This property consisted of 6 condos in the subdivision The Villas at the Old Mill. These condos were transferred from Gary Phillips and Karla Phillips to Gary Phillips Construction LLC by deed January 21, 2009. The Deed of Trust and Assignment of Rents were in the name of Gary Phillips Construction LLC, Gary Phillips and Karla Phillips. At the time the petition was filed, the debtor believed the FB&T property to have significant equity. Since the filing, the debtor realized the economy was not getting stronger and there was no equity in the property. Similar properties on this existing development were being foreclosed by other lenders with the effect of destroying values for the debtor's and other owners' properties. These foreclosed properties were not related to the debtor, its principals, or any other entity owned by the principals. Post petition, three (3) units that were constructed by the debtor with the same unit floor layout/design with numerous material upgrades including full basement (unlike the subject VOM units on slab) have been sold in an open market range from \$98,000 to \$152,500.00 (same floorplan but different development). The debtor was not the owner and seller of these units. Based upon these sales, there was no equity in the six condos for which relief was granted..

FB&T's Motion stated that it had no adequate protection, specifically there was no equity in the property, and the rent/lease proceeds were insufficient to service the debt and absolute. The Motion also addressed that such property was not necessary for an effective reorganization. In response to the Creditor's Motion for relief of stay, the debtor filed an objection on 5/17/2011 on the belief that the property had equity. No other objections were filed by the secured creditors, unsecured creditors or the trustee. However, prior to the hearing, the debtor had no proof that in 2011 the property had any equity and agreed to the Motion being granted. FB&T agreed to provide future funding to Northeast Tennessee Investments, Inc. ("NETI") contingent upon granting relief of stay and assumption of this loan. Upon the advice and consent of counsel the property was transferred. Furthermore, the counsel for the creditor which also wrote the motion for relief of stay, closed the transaction and certified title. The property was already serving as collateral to First Bank and Trust and actually had no value to transfer. FB&T received no additional collateral.

The Debtor has previously disclosed the relationship with Northeast Tennessee Investments, Inc. As stated in the 341 Meeting and again on April 13, 2011, at a 2004 Exam, Gary Phillips is a principal of both entities and they operate from the same address. NETI is owned by Gary and Karla Phillips. It is a Tennessee corporation that owns and develops real estate.

NETI purchased from the debtor the six condos on which FB&T sought stay relief. The consideration is that NETI assumed the full obligation of the FB&T loan. NETI still owns the condos and rents them as was being done prior to the stay modification. The rent does not cover the note payment (just as it did not cover the payment when the debtor owned them). NETI uses the proceeds from its other developments to cover the shortfall on the condos.

Northeast Tennessee Investments, Inc. is the owner of several properties including the property at 410 Brookside, and 20, 26, 30, 34, 38 and 42 Grist Mill Court. NETI purchased several properties

that day, including 410 Brookside from a foreclosure sale that was conducted by counsel for Regions Bank. The initial building permit was pulled in the name of the debtor and remained with the property. Shortly after the foreclosure purchase, NETI finished the house and sold it in the open real estate market for a good profit. NETI also pulled building permits in the GPC LLC name and constructed a six unit building at The Villas at the Old Mill. This has been normal practice for the qualifying agent, the principal of the debtor, Gary Phillips for years. Furthermore, the principal of the debtor contacted the State of Tennessee General Licensing Board shortly after the filing to see if this was appropriate practice for the qualifying agent. However, to resolve any issue that any person may have going forward, the principal of the debtor, Gary Phillips has already furnished the appropriate information to the State of Tennessee General Contractors Licensing Board for additional licenses. The State of Tennessee General Contractors Licensing Board will now allow several licenses from the qualifying agent.

NETI has paid all the permits, material and labor costs via the NETI checking account and no presumably received payments have been made to the Debtor or its principal. Furthermore, no funds, bonuses, allowances or payments have been made to the members of NETI before, during and after the sale of these units. However the members of NETI have been compensated for marketing costs and real estate commission fees.

The debtor abandoned its interest in the FB&T secured condos as they were depleting the estate.

On June 19, 2012, the Court granted Relief from the Automatic Stay filed on behalf of Citizens Bank and the property was conveyed by Deed in Lieu of Foreclosure. The Debtor had significant time and working capital resource applied to this project. However, the debtor, Gary Phillips, and Citizens Bank settlement also benefited other creditors in this case that may hold personal guarantees on principals of this debtor. By removing this obligation from the debtor's principal, Gary Phillips will

have more capital available to fund this reorganization, if needed. The Court granted the Motion of Relief from Stay filed in October 2011, on behalf of Regions Bank. The Debtor had significant time and working capital resources applied to these projects as well.

The Debtor in its efforts to reorganize participated in an on-going review of costs including the terms and conditions of contracts, salaries and other overhead reductions. The Debtor currently has no direct employees but contracts with approximately 100 individuals and/or companies. The debtor will not have as many projects as in the past and focus on completing those lots and developments currently in the pipeline before starting several projects at once.

In order to minimize disruption of Debtor's business and operations and permit it to meet its expenses, the Debtor currently is operating under an Order Authorizing Use of Cash Collateral.

- 1) During the post petition time period the debtor has used the cash collateral to finish the majority of new construction homes and reduce the loan balances significantly. TruPoint Bank provided post petition financing for the balance of vacant lots in the subdivision known as Cardinal Forest – Phase I. This post petition funding was tailored to the same commitment that the Debtor and Creditor agreed upon prior to the negative turn of events. Through these post petition funds, the Debtor has finished and sold eight homes within Cardinal Forest. In addition to this funding agreement, the debtor has now paid the Cardinal Forest Development A/D Loan down from the initial balance of \$380,000.00 to \$0.00. This A/D loan balance pay down was performed by executing lots releases at approximately \$25,333.33 each, which included 15 new construction housing starts. Furthermore with the approval of this plan the debtor will continue the new construction housing starts for 3 new homes in Phase I Cardinal Forest.

During the post petition time period, TriSummit Bank chose not to provide new funding other than \$78,000.00 for 952 Allison Road.. However, at the time of filing the debtor had four (4) houses under construction and on the market. Since the time of filing, the debtor has used cash collateral to finish and sale three (3) of the four (4) homes reducing the total debt from to \$676,800.00 down to \$247,200.00. That was a 64% reduction of total loan funds.

During the post petition time period, Regions Bank chose not to provide new funding. However, at the time of filing the Debtor had several new construction homes under construction and under contract or on the market to sell. Since the time of filing, the Debtor has closed on two homes. Since Regions Bank received Relief from Stay and foreclosed on the homes in Meadows Brook subdivision, the foreclosed homes have now been finished and sold. The subdivision once again has life and the neighborhood has a very respectable appearance with more new construction starts in the near future.

Citizens Bank chose not to provide new funding during the post petition time period as well. The Debtor did procure contract(s) during the post petition time period and/or executed a 0% vacancy rate for the development.

The Debtor has created 15 classes of creditors in its plan. All classes are impaired. Those classes are:

Class 1 – Taxing authorities.

Class 2 – Secured bank creditors –

2(A) – Commercial Bank

2(B) – TriSummit Bank

2(C) - TruPoint Bank

2(D) – Bank of Tennessee

2(E) – First Bank and Trust

2(F) – Regions Bank.

Class 3 – Unsecured trade creditors owed more than \$10,000.00.

Class 4 - Unsecured trade creditors owed less than \$10,000.00

Class 5 – Executory contracts (De Lagen Landen)

Class 6 – Administrative claims – impaired

Class 7 – Insider unsecured claims – impaired

Class 8 – Unsecured priority claims.

Class 9 - Secured administrative claim of the Plymouth Rock HOA.

Class 10 – Unsecured claim of Arthur S. Roberts d/b/a Country-Aire Construction.

Class One members are the local taxing authorities. Their claims will be paid in two parts. The first part will consist of the real property tax claims \$10,629.20. Those claims will be paid in equal monthly installments over a 60 month period at 6% interest. Payments shall commence forty five days following confirmation. The second part of the payment will be as real property is sold. Those taxes on the particular real property being sold will be paid upon sale of that property. The debtor will delineate on each check written the amounts to be applied by the taxing authorities on each property.

Classes 2(A) through (E) consists of the debtor's secured creditors –

A) Commercial Bank;

B) TriSummit Bank;

C) TruPoint Bank;

D) Bank of Tennessee; and

E) First Bank and Trust

F) Regions Bank



These creditors will be paid as follows:

Commercial Bank will be paid as real estate is sold or restructured via new financing. It is currently owed approximately \$465,000. This sum will be recalculated as of the confirmation date pursuant to 11 USC 506(b) as Commercial Bank is fully secured. The loan will be paid in interest only payments for two years. Interest is 4.5%. The debtor projects sales of lots and tracts over the next 48 to 60 months to exceed \$500,000.00 based upon current market conditions, new pricing, and new marketing efforts that will be executed by the DIP, and the creditor funding new construction starts. The release price for the lots is \$28,000.00. The undeveloped portion of the Commercial Bank collateral will only be released when paid in full or otherwise negotiated.

The debtor will apply to and work with Commercial Bank to attempt to reach an agreement to provide financing for several lots within Allison Hills subdivision. With plan approval, the Debtor will yield \$39,000.00 for positive cash flow for the lot purchases within the first 12 months of the plan. A copy of the case flow plan is attached hereto as Exhibit II.

The debtor and creditor will reserve their right and continue with the option of restructuring other real estate assets and paying off the balance of all current loans. This option is designed such that new and current banking regulations may address that this is the best scenario for both business entities.

The debtor wishes to make it clear that Commercial Bank is under no obligation to make any new loan to the debtor. However, the debtor is hopeful it can reach an agreement with it in order to insure the overall success of its Plan of Reorganization. Should Commercial Bank not provide new financing, that will not make the debtor unable to reorganize.

TriSummit Bank will be paid as real estate is sold. As of January 31, 2013, it is owed \$248,597.22 for 11 vacant lots and \$286,226.80 for the 952 Allison Road new construction house. The amounts owing consist of principal, interest, and other items allowable under Code section 506(b) as of

January 31, 2013. The debtor projects sales of one house and 11 lots over the next 24 months to exceed \$500,000.00 based upon current market conditions, new pricing, and marketing efforts that will be in place now and moving forward. TriSummit shall release the 952 Allison Road house for \$286,226.80 plus any additional interest and other 506(b) items incurred on loan #0898 after January 31, 2013. Should the house not be sold by June 30, 2013, the stay/permanent injunction shall be modified to permit TriSummit to foreclose on the property. The Debtor has one (1) construction task which is a final paving coat within Phase III and this development is 100% complete. The estimated construction costs for completion of this subdivision is approximately \$11,000.00 and the bid is current within this time period. The 11 subdivision lots remaining will each have a release price of \$22,600.00 plus any additional interest and other 506(b) items incurred on loan #0852 after January 31, 2013. Should any lots not sold within two years from the date of confirmation, the stay/permanent injunction shall be modified to permit TriSummit to foreclose on the remaining lots. The debtor and TriSummit will reserve their right and continue with the option of restructuring other real estate assets and paying off the balance of all current loans. The debtor wishes to make it clear that TriSummit is under no obligation to make any new loan to the debtor. However, the debtor is hopeful it can reach an agreement with it in order to insure the overall success of its Plan of Reorganization. Should TriSummit not provide new financing that will not make the debtor unable to reorganize.

TruPoint Bank will be paid as real estate is sold. The debtor projects sales of the three (3) existing houses that are currently on the rental program or lease/purchase, and the five (5) new under construction houses over the next 1 to 60 months to be approximately \$1,590,200.00. This accounting is based upon current market conditions, recent sales comparisons, marketing efforts that will be put in place by the DIP, and the creditor funding new construction starts. The Debtor can expect approximately \$383,947.28 of net cash flow on the sell of these houses. A copy of the cash flow plan is attached hereto as Exhibit IV.

In efforts to continue the growth of this subdivision, the debtor has agreed upon new construction financing on terms satisfactory to the debtor and TruPoint Bank. The new loan will be for new construction houses that will sell within the range of \$160,000 to \$220,000.00. The new construction loan will be assessed at 80% of the appraisal value plus the lot release of approximately \$27,777.33. At closing of this loan, and within 30 days of the effective date, the A/D lot development loan will be paid in full. The single family new construction homes located on lots 2A, 5B, 18D and 10 will have a separate deeds of trust with the same terms as below. The construction of these new homes on lots 2A, 5B, and 10 will start immediately after the new loan is closed. The construction of the home on lot 18D is on going and is under contract for full price with no loan required, and should close on or before April 1, 2013.

All single family new construction homes located on lots 2B, 2C, 3, and 18E will be placed on a principle and interest loan. The new terms of payment will be that on the Effective Date of the Plan the Bank loans will be paid at the interest rate of 5.0% fixed for a period of 36 months and amortized on 240 months. On the three (3) year anniversary of the Effective Date of the Plan, the loan will adjust based on an indexing factor of Prime rate as set forth in the Wall Street Journal plus 1.0% for this year and each year thereafter on the anniversary date of the Effective Date of the Plan. During the total term the loan will have a floor of 5.0% and a ceiling of 7.5% with a maximum change of 1% per year. The loan will mature in 10 years and the payment rate will amortized over 30 years. The Debtor plans to place these houses on the market for sale or rental as the existing rental agreement expires.

Bank of Tennessee has only one (1) property that is currently on the rental market. The property will remain on the market for sale and/or rental and will be paid off as the real estate is sold. The debtor projects sale of the one condo over the next 48 to 60 months not to exceed \$70,000.00 to

\$85,000.00 based upon current market conditions, new pricing, and the marketing effort that will be in place by the DIP. A copy of the cash flow plan is attached hereto as Exhibit V.

First Bank and Trust has a lien on 21 lots in The Village of Beechwood Meadows Subdivision. These real estate assets were voluntarily collateralized by the debtor and creditor well before the date of filing. The amount owed First Bank and Trust is approximately \$550,000.00. First Bank and Trust has continually funded as market demands have allowed. These lots have no equity. Upon conveyance out of the debtor, the debtor will have no further obligation to First Bank and Trust.

Regions Bank is secured by cash collateral. It will be paid its claim of approximately \$78,000.00 in 60 equal monthly payments of \$1,300.00 monthly on the 15<sup>th</sup> day of each month commencing 30 days from confirmation. Regions' unsecured claim will be treated in Class 3.

Regions will quitclaim its interest in Lot 2 Village at Beechwood in exchange for \$35,000.00. Lot 43 in Allison Hills Subdivision shall be released by payment of \$15,000.00 to Regions.Bank. After these transfers, Regions Bank estimates an owed amount of approximately \$900,000.00 and that being unsecured. This will be paid under Class 3.

Class 3 consists of the unsecured non-insider creditors listed on Exhibit VI and that are owed more than \$10,000.00. These creditors are owed approximately \$730,269.59. These claims shall receive 50% of the net profit of the debtor (after taxes) for five years immediately following the confirmation date of the plan. Commencing on the 45<sup>th</sup> day following the six month anniversary of the date of the order of confirmation, the debtor shall send a copy of its profit and loss statement to the each remaining member of Class 3. Should 50% of the debtor's net profit be greater than \$10,000.00 for the first six months of the plan, the debtor shall send a check to each member of the class in a pro-rata amount to its claim. Should 50% of the debtor's net profit for the six month period be less than \$10,000.00, instead of distributing said funds, the debtor shall place them in a segregated interest bearing account until the next six month accounting period and distribute the funds only when they

exceed \$10,000.00. The reason for not distributing if the amount is less than \$10,000.00 is to simply avoid the administrative expense of writing checks in nominal amounts. Net profit shall be defined as revenues less operating expenses. The debtor shall retain the other 50% to fund continuing operations. Alternatively, members of this Class may opt to accept \$5,000.00 120 days after confirmation and their claim shall be deemed to be paid in full. Class 3 members shall note on their ballot under which option they wish to accept or by subsequent letter to debtor's counsel. While not probable, it is always possible that the debtor may make enough profit over the life of the plan to pay the unsecured creditors as much as 75-100% of their claims. Just as the debtor's pro forma anticipates a profit there is certainly no guarantee of payment other than the \$5,000.00 payment to be selected as an option by the class members. Should a Class 3 not make an election, its payment will be based upon the payments over 60 months from the profits of the debtor.

Net profit will be defined simply as the difference between gross sales minus the expenses of operations including taxes, interest, and depreciation. It is necessary for the debtor to retain no less than half the net profits in order to continue to fund the debtor's cash flow requirements and acquire new equipment necessary for the business and new building lots to continue building in order to fund this plan.

Class 4 consists of the unsecured non-insider creditors listed on Exhibit VII and that are owed less than \$10,000.00. These creditors are owed approximately \$60,719.74. This class shall receive 20% of its claim, not to exceed \$2,000.00, within three hundred and sixty days (360) days of the date of confirmation. Upon said payment, this Class shall receive no further payments.

Class 5 consists of De Lage Landen Financial Services which had an unsecured claim arising from the purchase of equipment and litigation. That claim has been resolved pursuant to a Settlement Agreement between the debtor, De Lage Landen, and Gary Phillips. The debtor filed a motion with the court seeking to approve the settlement and the Court approved the settlement at a

hearing on November 27, 2012. The debtor will not have to fund any part of it as Mr. Phillips is paying it. He has personally guaranteed the claim. De Lage Landen has already withdrawn its claim and objection in the case.

Class 6 are the administrative claims which consist of the United States Trustee, accountants, and counsel for the debtor and unsecured creditors committee. Their claims shall be paid in full within 30 days of the date of confirmation.

Class 7 is the principal of the debtor, Gary Phillips. He shall retain his interest in the debtor by providing new value to the debtor in terms of loan guarantees for new construction funding and capital injections that may be necessary to fund administrative claims after confirmation.. Gary Phillips will also continue to receive the \$1000.00 per week income for the duration of the plan., which has been previously approved by the Court to be paid during the pendency of this chapter 11.

Class 8 consists of the unsecured priority claims. These claims will be paid in full over a 25 month period at the rate of \$400.00 monthly. This sum shall be segregated and deposited into a special account for deposits and paid as the renters move out providing there is no set-off for rent or damages. The Little claim shall be paid from first monies deposited. The members of this class and the amounts owed to each member are as follows – Betty Little - \$2,625.00. The balance of her non-priority claim (\$1,375.00) will be paid pursuant to Class 4.

Josh White - \$1,200.00

Carlos Abarca - \$1,475.00

Robert Alworth - \$1,375.00

Barbara Marshall - \$1,200.00

Ryan Brunskill - \$1,075.00

Greg Randolph - \$1,200.00

Class 9 consists of the secured administrative claim of the Plymouth Rock HOA. The debtor owns one condo (Unit 518D) in this development. The administrative claim of \$4,279.28 represents HOA fees from the date of the bankruptcy petition through December 31, 2012. Those fees shall be paid within 30 days of confirmation. The pre-petition claim of \$4,775.03 will be paid in twelve equal monthly payments of \$397.92 commencing 45 days following confirmation. The debtor shall pay monthly assessments owing on this unit on a timely basis on the first of each month, commencing on January 1, 2013 in the amount of \$175.00 and continuing monthly thereafter on the first of each subsequent month. The Debtor recognizes that it has a contractual obligation to pay the assessments of the Plymouth Rock Condominium Association in such amounts as determined from time to time by the its board of directors.

Class 10 is the unsecured claim of Arthur S. Roberts, Jr., d/b/a Country Aire Construction (“Country Aire”). Country Aire now has a claim arising from a hearing on the debtor’s objection to its claim of \$68,782.60. See Doc. 650 and Doc. 687. Additional cost may have been incurred during the pendency of this chapter 11. The creditor will need to amend its proof of claim for those costs. The debtor reserves the right to object to any further amendments. Class 10 will be treated in the same fashion as Class 3. This claim is now on appeal in the state court system. The debtor will dismiss its appeal.

The debtor abandoned any interest in the six condos that were secured by First Bank & Trust as they were depleting the estate. Should any creditor believe that the condos have equity, NETI has agreed to convey the condos upon the creditors assumption of the debt from FB&T holding the debtor and NETI harmless and FB&T’s agreement to said assumption. .

A copy of the debtor’s most recent monthly operating report is attached hereto as Exhibit I.

A liquidation analysis is relatively simple. Were the debtor to be liquidated, it is not expected that the real and personal property of the debtor would bring more than what is owed the

secured creditors in Class 2 except as set forth below. The value in the real property is in the debtor's ability to continue to build homes and add value to the real property. The debtor's equipment had a fair market value of approximately \$12,500.00 in December 2010 when the petition was filed. At liquidation today, its value would be less than \$4,000.00, if that much. There are 3 unencumbered lots in Allison Hills plus the lot to be released by debtor's previous counsel, Fred Leonard, with a liquidation value in today's market of \$88,000.00. The debtor owns one condo at Plymouth Rock. If forced to sell, there would be no equity available for unsecured creditors. The debtor at the time of filing the original plan had cash on hand of approximately \$44,777.28. The cash is all subject to the liens of creditors.

The debtor had substantial assets and debt at the time its petition was filed. The debtor's assets and the corresponding debt have been diminished over the course of the reorganization through a combination of asset sales, foreclosure after modification of the stay, and the turnover of property in exchange for cancellation of the debt securing the property. All of these conveyances have been approved by the court.

Thus, if the debtor's unencumbered assets were liquidated, the value realized from the sale would be approximately \$93,000.00 less the costs of liquidation.

Should the debtor be unable to comply with the terms of the plan, any creditor may give notice of default and move to convert the case to a chapter 7. The secured creditors shall retain their liens on any property and if there is a default in the plan, file a notice of default with the court. Should such a notice of default be filed, the debtor shall have ten (10) days to cure said default. If it fails to cure the default, the case may be converted after hearing on same. The secured creditor, after the cure period has passed, may proceed to pursue its remedies at law as to its collateral.

All litigation has run its course at this point. There are no potential claim objections or fraudulent conveyances or preferences.



Confirmation of the plan is in the best interest of all of the creditors. The “Great Recession” has had a major impact on the debtor’s business. However, it has had sales throughout the chapter 11 and the debtor sees the niche in which he builds as coming back. It strongly believes that this is a trend that will continue through 2012 and pick up in 2013 and following years.

A quarterly fee shall be paid to the United States trustee until a Final Decree is entered. The fee amount shall be in compliance with 28 U.S.C §1930(a)(6) of the U.S. Bankruptcy Court of the Eastern District of Tennessee. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed. It is anticipated the U.S. Trustee and counsel for the debtor will submit an agreed Final Decree. In accordance with Local Rule 2015-2 of the U.S. Bankruptcy Court of the Eastern District of Tennessee, the debtor will file verified monthly reports no later than the 15<sup>th</sup> day of each month until a Final Decree is entered. The only requirements that will need to be satisfied before the debtor can file an application for Final Decree shall be:

1. Confirmation Order has become final;
2. Payments proposed under the Plan have commenced.
3. There are no pending Motions, contested matters, or adversary proceedings.
4. All U.S. Trustee quarterly fees have been paid.

This Court shall retain jurisdiction over any and all matters arising from and/or under this plan including, but not limited to, any claims objections, equitable subordination claims, avoidance actions and subrogation claims as set out above.

It is anticipated that total professional fees for the debtor will not exceed \$55,000.00 for Hagood, Tarp & Cox, PLLC, and \$15,000.00 for Bearfield & Associates. Counsel for the unsecured creditors committee estimates his fees at \$45,000.00. Said counsel has agreed to reduce his fee to \$20,000.00. Fred Leonard has been paid \$25,000.00 to date and it is not anticipated that there will be further fees. Leonard shall release his lien on Lot 104 in the

Allison Hills development. These fees will be paid only after application to and approval by the Court. The U.S. Trustee fee will be paid within thirty (30) days of confirmation or as soon as practical.

**GARY PHILLIPS CONSTRUCTION, LLC**

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Its: Chief Manager

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