

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

In re:

Case No. 10-20733-BKC-AJC

HARBOUR EAST DEVELOPMENT, LTD

Chapter 11

Debtor.

\_\_\_\_\_/

**FIRST AMENDED DISCLOSURE STATEMENT RELATING TO DEBTOR'S  
SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF  
THE BANKRUPTCY CODE**

**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.**

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Dated: December 15, 2010

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## I. INTRODUCTION

Harbour East Development, Ltd. (“HED” or the “Debtor”), as the debtor and debtor-in-possession, is soliciting acceptances of a chapter 11 plan of reorganization (the “Plan of Reorganization” or “Plan”) attached as Exhibit 1 to this Disclosure Statement. This solicitation is being conducted at this time to obtain sufficient votes to enable the Plan of Reorganization to be confirmed by the Bankruptcy Court. Capitalized terms used in this Disclosure Statement but not defined herein have the meanings ascribed to such terms in the Plan.

Attached as exhibits to this Disclosure Statement are copies of the following documents:

The Plan of Reorganization (Exhibit 1);

Historical Financial Information (Exhibit 2);

Liquidation Analysis (Exhibit 3);

Projections and Assumptions (Exhibit 4);

Claims Analysis (Exhibit 5);

EWM Marketing Plan (Exhibit 6);

CBRE COM (Exhibit 7)

**WHO IS ENTITLED TO VOTE:** Pursuant to the Disclosure Statement Order, the holders of Real Estate Tax Secured Claims (Class 2), Northern Trust/NBV Secured Construction Loan Claims (Class 3), Egozi Secured Subrogation Claim (Class 4), Whirlpool Secured Claim (Class 5), Revuelta Vega Leon Secured Claim (Class 6), Purchaser Deposit Secured Claims (Class 7), Association Secured Claim (Class 8), Purchaser Contract Litigation Attorney Secured Claim (Class 9), Northern Trust/NBV Unsecured Claim (Class 10), General Unsecured Claims (Class 11), and Egozi Unsecured Claim (Class 12 ) are entitled to vote on the Plan. A ballot for the acceptance or rejection of the Plan is enclosed with the Disclosure Statement submitted to the holders of claims in these classes that are entitled to vote. Holders of Old Limited Partnership Equity Interests (Class 13) Old General Partnership Equity Interests (Class 14) are deemed to reject the Plan and are not entitled to vote.

**THE DEBTOR RECOMMENDS THAT CREDITORS ENTITLED TO VOTE CLAIMS IN CLASS 2, CLASS 3, CLASS 4 CLASS 5, CLASS 6, CLASS 7, CLASS 8, CLASS 9, CLASS 10, CLASS 11, AND CLASS 12, VOTE TO ACCEPT THE PLAN.** The Debtor’s legal advisors are BAUCH & MICHAELS, LLC and GENOVESE JOBLOVE & BATTISTA, P.A. They may be reached at:

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The following table summarizes the treatment of Claims and Equity Interests under the Plan. For a complete explanation, please refer to the discussion in section VI below, entitled "THE PLAN OF REORGANIZATION" and to the Plan itself.

**IRS CIRCULAR 230 NOTICE:** TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.



**II.**  
**SUMMARY OF CLASSIFICATION AND TREATMENT**  
**OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN<sup>1</sup>**

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
--	Administrative Expense Claims	Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to less favorable treatment, the Reorganized Debtors shall pay Allowed Administrative Expense Claims in full in Cash on or as soon as reasonably practicable after the later of the Effective Date, the date allowed or the date due in the ordinary course.	\$500,000	100%
1	Priority Non-Tax Claims	Not impaired; except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, such Allowed Claims shall be paid in full in Cash on or as soon as reasonably practicable after the later of the Effective Date, the date allowed or the date due in the ordinary course, provided however that to the extent that a Holder's Allowed Priority Non-Tax Claim is comprised of a Purchaser Deposit Secured Claim (Class 7), the Allowed Priority Non-Tax Claim shall be paid and deemed satisfied from the Holder's Escrow Deposit.	\$0-\$21,000	100%

<sup>1</sup> This table is only a summary of the classification and treatment of claims and equity interests under the Plan and all conditions thereto. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of claims and equity interests.

<sup>2</sup> The amounts set forth herein are the Debtor's estimates; the actual amounts will depend upon the final reconciliation and resolution of all Administrative Expenses and Claims.

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
2	Real Estate Tax Secured Claims	<p>Impaired; except to the extent that a holder of an Allowed Real Estate Tax Secured Claim agrees to less favorable treatment, the Debtor shall pay the Holder of the Allowed Real Estate Tax Secured Claim 100% of the principal amount, together with interest at the statutory rate, with respect to all Condominium Units owned by the Debtor as of January 1, 2010, with the exception of any unit or units sold during 2010 for which the purchaser assumed responsibility for paying 2010 taxes, when such Claims become due and payable as follows: (1) to the extent of available cash contained in any Real Estate Tax Escrow authorized under this Plan or any Cash Collateral Order; (2) to the extent of any deficiency in the Real Estate Tax Escrow, then all of the Net Sale Proceeds of each Condominium Unit of the first, and successive if necessary, closing of sales of each Condominium Unit following the date when such Claims become due and payable, the balance due the Holder with respect to such Claim, then due and owing. The tax liens securing payment of the Allowed Real Estate Tax Secured Claims shall remain in effect until such tax obligations are satisfied. The treatment above is not applicable to ad valorem taxes owed from 2011 forward, said taxes which are administrative expenses to be paid in the ordinary course. The Class 2 Claimant shall issue refunds to the Debtor in the event that challenges to the Miami-Dade County Property Appraiser's assessments result in valuation reductions<sup>4</sup>, subject to the Property Appraiser's right to challenge such reductions pursuant to Florida law.</p>	\$442,000	100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
3	Northern Trust/NBV Secured Construction Loan Claims	<p>Impaired; except to the extent that a holder of an Allowed Northern Trust/NBV Secured Construction Loan Claim agrees to a less favorable treatment or that such Claim is determined subordinate to the Egozi Secured Subrogation Claim (Claim 4), the holder of the Allowed Secured Construction Loan Claim will receive quarterly interest payments on the balance of outstanding principal of its Allowed Secured Claim at the Secured Claim Cram Down Rate and will receive principal payments of approximately \$250,000-500,000 from the proceeds of each sale of a Condominium Unit until its Allowed Class 3 Claim is paid in full. Depending upon the ultimate determination of the amount of the secured claim and unsecured claims, the outcome of the Debtor's anticipated motion to designate NBV's claims for voting purposes and the determination of the priority of the subordinated portion of the claims, NBV may be elect to waive its unsecured claim and treat its claim as fully secured pursuant to Section 1111(b) of the Bankruptcy Code. If NBV makes such election, it would be entitled to receive payment in the aggregate total of the Allowed Amount of its secured and unsecured claims, but it would only be entitled to interest on the actual secured amount of its claim. NBV objects to the Debtor's continuing designation of the Claim as Northern Trust/NBV, because NBV claims to be the sole owner of the Claim. Debtor contends that the designation is appropriate because NBV is bound by Northern Trust's inequitable conduct, NBV has agreed not to settle the claim unless it secures a general</p>	<p>\$5 - \$8 million (NBV estimates that the amount of the actual secured claim is approximately \$11,100,000.) If the Bankruptcy Court determines that NBV's claim is of a higher value, the Debtor would be obligated to pay interest on the higher amount. This could reduce the amount of distributions to other creditors.</p>	100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
4	Egozi Secured Subrogation Claim	Impaired; except to the extent that a holder of the Egozi Secured Subrogation Claim agrees to a less favorable treatment or that such Claim is determined subordinate and not subrogated to NBV's Secured Construction Loan Claim (Claim 3), the holder of the Egozi Secured Subrogation Claim will receive payments on the balance of outstanding principal of its Allowed Secured Claim at the Secured Claim Cram Down Rate (as defined in the Plan at ¶ 1.75) and will receive principal payments from the proceeds of each sale of a Condominium Unit in the amount of \$250,000, until its claim has been paid in full.	\$0-\$3 million	0-100%
5	Whirlpool Secured Claim	Impaired; to the extent that the Bankruptcy Court determines the Class 5 Claim has priority over the Class 3 and 4 Claims with respect to the Holder's Collateral, the Debtor shall pay the Holder of the Class 5 claim 100% of principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of Condominium Units, that include a sale of Holder's Collateral; (2) upon each sale of a Condominium Unit that includes a sale of Holder's Collateral, the Debtor shall pay the Holder (a) accrued interest to the date of the closing; and (b) principal, both to the extent of the allocation of the purchase price assigned to Holder's	\$0-\$27,000	100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
		Collateral. The Holder shall retain its lien on its Collateral until such time as each item of its Collateral is sold and title is transferred to the purchasers. Upon the sale of Holder's Collateral, the Holder's lien shall attach to the all cash proceeds of sale and the sale of such Collateral shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on its remaining Collateral until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 5 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 claim and Class 4 claim and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 5 Claim shall be treated for all purposes as Class 11 General Unsecured Claim. Debtor has obtained a judgment avoiding Whirlpool's security interest and preserving such interest for the benefit of the estate. Therefore, the Class 5 Claim will be treated as a Class 11 Claim.		
6	Revuelta Vega Leon Secured Claim	Impaired; to the extent that the Bankruptcy Court determines the Class 6 Claim has priority over the Class 3 and 4 Claims, the Debtor shall pay the Holder of the Class 6 claim 100% of principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1)	\$0-\$106,000	100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
		<p>interest shall be payable from the Net Proceeds of Sale of Condominium Units; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing and (b) principal, to the extent cash remains available up to an amount equal to the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to the purchasers. Upon the sale of any particular Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on the remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 6 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 6 shall be treated for all purposes as Class 11 General Unsecured Claim.</p>		
7	Purchaser Deposit Secured Claims	Impaired; as soon as reasonably practicable on the later of the Effective Date or the entry of a Final	\$0-\$750,000	0-100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
		<p>Order allowing such Claim, the Debtor shall pay to each Holder of an Allowed Purchaser Deposit Secured Claim:(a) cash in the amount of the principal balance and accrued interest thereon of the Escrow Funds of the Holder on deposit with the Escrow Agent and (b) to the extent the Bankruptcy Court determines any lien arising under Section 365 of the Bankruptcy Code securing such a Class 7 Claim has priority over the other Allowed Secured Claims against the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement, or is otherwise an Allowed Secured Claim, the Debtor shall pay the Holder of the Class 7 Claim all principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of the Condominium Unit securing such Claim; (2) upon the sale of the Condominium Unit securing such Claim, the Debtor shall pay the Holder (a) accrued interest to the date of the closing and (b) principal, to the extent cash remains available. The Holder shall retain its lien on the Condominium Unit until such time as the Condominium Unit is sold and title is transferred to individual purchasers. Upon the sale of the Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and</p>		

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
		<p>sale of such Condominium Unit shall be free and clear of the Holder's lien. To the extent that the Class 7 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims with respect to the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 7 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.</p>		



Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
8	Association Secured Claim	<p>Impaired; to the extent the Bankruptcy Court determines the Class 8 Claim has priority over the Class 3 and 4 Claims with respect to the Net Proceeds of Sale of Condominium Units with respect to a particular Condominium Unit, then to the extent of such priority, the Debtor shall pay the Holder of the Class 8 Claim all principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon each sale of a Condominium Unit, (a) accrued interest to the date of the closing and (b) principal, to the extent of the priority. The Holder shall retain its lien on each Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to purchasers. Upon the sale of any Condominium Units, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's lien. The Holder shall retain its separate liens on all remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 8 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 8 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.</p>	\$100,000 – \$314,188	100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
9	Purchaser Contract Litigation Attorney Secured Claim	Impaired; to the extent the Bankruptcy Court determines the Class 9 Claim has priority over the Class 3 and 4 Claims with respect to Escrow Funds or judgment or settlement recoveries that are the subject of a Purchase and Sale Agreement in connection with which the Holder provided legal services to the Debtor, the Debtor shall pay the Holder of the Class 9 Claim 100% of the principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon the entry of Final Order determining that the Debtor is entitled to particular Escrow Funds or judgment or settlement recoveries, cash in the amount of the principal balance of the Class 9 Claim and accrued interest thereon. To the extent that the Class 9 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 9 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.	\$40,000	100%
10	Northern Trust/NBV Unsecured Claim	Impaired; to the extent that Holder of the Class 10 claim is determined by Final Order to hold an Allowed Unsecured Claim that the Holder has not waived, been subordinated by Final Order of the Bankruptcy Court pursuant to Section 510, or otherwise limited to the actual amount paid for	\$0-\$7.6 million	50-100%

Class	Type of Claim or Equity Interest	Treatment	Estimated Allowed Amount <sup>2</sup>	Approximate Percentage Recovery
		the Claim by the Holder, then the Class 10 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.		
11	General Unsecured Claims	Impaired; on or as soon as reasonably practicable after the Effective Date, or the date that is ten (10) days after the date such claim is Allowed (whichever is later), each Holder of an Allowed General Unsecured Claim, shall receive the Holders of Allowed Class 11 Claims up to 100% of the principal amount and accrued interest thereon at the Unsecured Cram Down Rate from the General Unsecured Claim Distribution Reserve.	\$485,000	20-100%
12	Egozi Unsecured Claim	Impaired; on the Effective Date, the Debtor shall issue and deliver the New General Partnership Interest and New Limited Partnership Interest to the Holder or his nominees in full satisfaction of his Class 12 Claim.	\$660,000	100%
13	Old Limited Partnership Equity Interests	Impaired; on the Effective Date the Old Limited Partnership Equity Interests will be cancelled; no distribution.	N/A	N/A
14	Old General Partnership Equity Interests	Impaired; on the Effective Date the Old General Partnership Equity Interests will be cancelled; no distribution.	N/A	N/A

#### A. Summary of Voting Procedures

If you are entitled to vote to accept or reject the Plan, a ballot is enclosed for voting purposes. If you hold claims in more than one class and you are entitled to vote claims in more than one class, you will receive separate ballots, which must be used for each separate

class of claims. Please vote and return your ballot(s) in accordance with the instructions set forth herein.

TO BE COUNTED, YOUR VOTE INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BALLOT, AND MUST BE ACTUALLY RECEIVED BY THE DEBTOR'S VOTING AGENT, NO LATER THAN 4:00 P.M., PREVAILING EASTERN TIME, ON [ \_\_\_\_\_ ], 2011 (THE "VOTING DEADLINE"). PLEASE RETURN YOUR PROPERLY COMPLETED BALLOT TO THE VOTING AGENT VIA FACSIMILE, EMAIL, FIRST CLASS MAIL OR OTHER REPUTABLE COURIER SERVICE AT THE FOLLOWING ADDRESS:

GENOVESE JOBLOVE & BATTISTA, P.A.  
Attn: Michael Schuster  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
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BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED.

ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT DOES NOT INDICATE EITHER ACCEPTANCE OR REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN. ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT INDICATES BOTH ACCEPTANCE AND REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN. **BALLOTS SHOULD NOT BE DELIVERED DIRECTLY TO THE DEBTOR, THE COURT, THE COMMITTEE, THE PREPETITION AGENT, OR ANY OTHER PLAN PROPONENT.**

If you are a holder of a Claim entitled to vote on the Plan and did not receive a ballot, received a damaged ballot, or lost your ballot, or if you have any questions concerning the procedures for voting on the Plan, please contact:

GENOVESE JOBLOVE & BATTISTA, P.A.  
Attn: Michael Schuster  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
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SUMMARIES OF CERTAIN PROVISIONS OF DOCUMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND

ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE DOCUMENT, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH DOCUMENT.

**IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF ANY OF THE FOURTEEN CLASSES OF CLAIMS DESCRIBED ABOVE:**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot, and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received before the Voting Deadline by the Debtor's counsel:

GENOVESE JOBLOVE & BATTISTA, P.A.  
Attn: Michael Schuster  
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Any voter that has delivered a valid ballot may withdraw its vote by delivering a written notice of withdrawal to the Debtor's counsel before the Voting Deadline.

Any holder that has delivered a valid ballot may change its vote by delivering to the Debtor's counsel a properly completed subsequent ballot so as to be received before the Voting Deadline.

For detailed voting instructions, see the instructions on your ballot. For a further discussion of voting on the Plan, see Article VIII below, entitled "VOTING PROCEDURES AND REQUIREMENTS."

**B. Overview of Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself and all economic parties in interest. In addition to permitting rehabilitation of a debtor, chapter 11 promotes equality of treatment of similarly situated claims and similarly situated equity interests with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the bankruptcy

court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor of, or holder of an equity interest in, a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefore the obligations specified under the confirmed plan.

To solicit acceptances of a proposed plan, however, section 1126 of the Bankruptcy Code requires a debtor and any other plan proponents to conduct such solicitation, pursuant to a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The Debtor is submitting this Disclosure Statement in accordance with the Disclosure Statement Order and the requirements of sections 1125 and 1126 of the Bankruptcy Code.

### III. DESCRIPTION OF THE BUSINESS

#### A. Partnership Structure

The Debtor is a limited partnership organized and existing under the laws of the State of Florida. The general partner of the Debtor is Harbour Development, LC, a Florida limited liability company. The manager/member of the general partner is Mario Egozi (“Egozi”). The Debtor has 15 limited partners. The limited partners contributed \$3,500,000 in capital to the Debtor, which the Debtor used to pay expenses in connection with the operation of its business and the construction of the Property.

#### B. Description of the CIELO Project

The Debtor is the developer and owner of the luxury residential condominium development known as CIELO on the Bay (“CIELO” or the “Property”) located at 7935 East Drive, North Bay Village, Florida. CIELO contains 35 residential condominium units (the “Condominium Units”). Condominium Units range in size from 1,840 square feet to 1,900 square feet and are configured as two-bedroom, three-bedroom, and penthouse units.<sup>3</sup> The Condominium Units are either designer ready unfinished, or developer finished for rental or sale and feature expansive views of the Miami Beach skyline and Biscayne Bay. As of the Petition Date, the Debtor owned 32 of the Condominium Units. (Unless otherwise provided, “Condominium Units” refers to the condominium units owned by the Debtor.)

CIELO includes a fitness center, a swimming pool, a community room, and other similar upscale amenities. The building also offers computerized security and safety systems and an indoor parking garage. CIELO is a true condominium as opposed to a rental style building. It has private elevators, unit size and floor plans that are suitable for “home replacement,” and the Property otherwise has the characteristic of a condominium as opposed to a built for rental project.

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<sup>3</sup> CIELO contains one 4-bedroom unit of 3,704 square feet, which is combination of 2 units.

### C. Status of the CIELO Project

As of the Petition Date, the Debtor had closed on the sale of 3 units in CIELO. Since the Petition Date, the Debtor has been working towards closing on the sale of additional Condominium Units and continues to actively market the remaining Condominium Units. Because of the depressed values in the condominium market and the inability of purchasers to obtain financing to close, the Debtor has leased and is seeking to lease additional Condominium Units to well-qualified lessees to generate cash flow to cover operating expenses, Association assessments and real estate taxes. Debtor believes that the interim leasing and controlled sale of Condominium Units over a 5-year period is the best plan for maximizing the value of the estate.

### D. Prepetition Indebtedness<sup>4</sup>

#### 1. Priority Non-Tax Claims (Class 1)

Certain of the contract purchasers may assert priority claims pursuant to Section 507 of the Bankruptcy Code. The priority portion of these claims is limited to \$2,600 per purchaser. A more complete discussion of contract purchaser claims is set forth below.

#### 2. Real Estate Taxing Authority's Secured Claim (Class 2)

The Miami-Dade Tax Collector ("Taxing Authority") has filed a claim against the estate for 2010 real estate taxes in the amount of \$442,203.79. Under applicable nonbankruptcy law, the real estate tax claim became a lien upon the Condominium Units on January 1, 2010. The real estate taxes first become payable on September 1, 2010, and may be paid without penalty until April 30, 2011. The lien securing the Taxing Authority claim generally has priority over all other encumbrances against the Property. The Debtor is currently challenging the Taxing Authority's assessed amount of the Project before the Value Adjustment Board. In November 2010, Debtor made a good faith payment of approximately \$360,000, as authorized under the Cash Collateral Orders, to the Taxing Authority.

#### 3. Construction Mortgage Debt to Northern Trust/7935 NBV Secured Claim (Class 3) and Unsecured Claim (Class 10)

On or about December 28, 2005, Northern Trust Bank of Florida, N.A. ("Northern Trust") made a commitment to loan (the "Construction Loan" or "Construction Loan Agreement") to the Debtor in the principal amount of \$16,900,000. To secure the Construction Loan, the Debtor executed a mortgage (the "Mortgage"), dated December 28, 2005, in favor of Northern Trust in the principal amount of \$16,900,000, evidenced by a

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<sup>4</sup> The foregoing summary of the Debtor's prepetition indebtedness is provided for information purposes only and shall not constitute an admission, waiver or estoppel concerning the extent, validity and/or priority of any Claims, or otherwise; the Debtor reserves and retains any and all rights and remedies held in that regard. Furthermore, all figures are rounded and approximated. Unless indicated otherwise, all figures are based upon estimates of indebtedness owed as of the Petition Date.



promissory note (the “Note”) of the same date. Notwithstanding that the Construction Loan Agreement and the Mortgage granted Northern Trust security interests in the Debtor’s personal property and other assets, Northern Trust failed to perfect its security interests in the Debtor’s personal property, including the Condominium Purchase and Sale Agreements and the Escrow Deposits related thereto. Egozi executed a personal guaranty of the Construction Loan. Northern Trust sold a 50% participation in the Construction Loan to an Illinois based affiliate bank.

Northern Trust had for many years served as a trustee and financial advisor to Egozi and his family. Egozi confided in and regularly sought Northern Trust’s advice on financial decisions for the Debtor and himself, including the viability of the CIELO development. Shortly after the Construction Loan closed in December 2005, Northern Trust’s staff economist began expressing concerns regarding a potential collapse of the United States housing market. In addition, an intramural dispute arose between various factions in Northern Trust regarding the risk status of the Construction Loan. Northern Trust expressed concern that Egozi’s personal assets, many of which were held in trusts administered by Northern Trust, were not available to pay Northern Trust’s claim. In an effort to enhance its position, and in violation of its fiduciary duty to Egozi, Northern Trust devised a plan and scheme to encourage Egozi to pledge his personal assets to secure additional loans to the Debtor to complete the Project thereby enhancing the value of Northern Trust’s collateral at the expense of Egozi. In connection with this scheme, Northern Trust representatives regularly invited Egozi to lunch in its private dining room and represented to Egozi that “we are partners in this project.” Northern Trust did not disclose its internal conclusions with respect to the housing market, that it was downgrading the Construction Loan, that Egozi should not have pledged his personal assets to enhance Northern Trust’s collateral position, and that Northern Trust was advancing its own interests at the expense of Egozi and the Debtor. Pursuant to Northern Trust’s recommendation, the Debtor subsequently obtained from Northern Trust additional advances (“Additional Advances”) under a Line of Credit Agreement in the aggregate principal amount of \$2,100,000, increasing the total aggregate amount of indebtedness to \$19,000,000, and Egozi pledged various investment accounts managed by Northern Trust to secure these additional loans.

The Construction Loan, Mortgage, and related documents (collectively “Construction Loan Documents”) were amended by execution of the following amendments and modifications:

- (a) Amended Construction Loan Agreement on March 14, 2007;
- (b) Second Amendment to Construction Loan Agreement on August 5, 2008;
- (c) Third Amendment to Construction Loan Agreement on December 28, 2008;  
and,
- (d) Fourth Amendment to Construction Loan Agreement on February 27, 2009.



Northern Trust also violated its duties to the Debtor and Egozi by assigning an inexperienced bank officer to administer the Construction Loan, delaying payouts on draw requests and insisting on amendments to the Condominium Declaration that it had previously approved, all of which led to increased costs and the loss of sales and closings at the Property.

In April 2009, the Construction Loan matured. Thereafter, the Debtor and Northern Trust negotiated the terms of a forbearance agreement. Simultaneously, Northern Trust commissioned several appraisals of the Property and explored various options for the Construction Loan and the Property, including the sale of the Construction Loan, the interim leasing and sellout of the Condominium Units over a 3-year period. Northern Trust retained CBRE Advisors, a national real estate advisory and brokerage firm to market the Construction Loan. CBRE prepared a Confidential Offering Memorandum ("COM") which contained a detailed analysis of the Property and its prospects.

Negotiations between Northern Trust and the Debtor and Egozi regarding a forbearance agreement terminated when Northern Trust refused to consent to a long-term forbearance and demanded a release and waiver of the Debtor and Egozi's claims and defenses. Thereafter, Northern Trust decided to sell the Construction Loan and distance itself from the Debtor, Egozi and the Property.

CBRE's COM recommended, *inter alia*, that the owner of the project lease all of the unsold Condominium Units in the Property during 2010 and began a controlled sell out of the Unsold Condominium Units over the following 3 years. CBRE concluded that such a plan could generate upward of \$23 million in gross proceeds.

During this course of its marketing efforts, Northern Trust repeatedly violated its duties to the Debtor and Egozi by, *inter alia*, disclosing confidential financial information, restricting the Debtor's access to cash needed to complete and maintain the Property, objecting to the ongoing leasing of Condominium Units in the Property and otherwise breaching its obligations to place the interests of its beneficiaries ahead of its own interests.

In November 2009, Northern Trust offset approximately \$3,000,000 in Egozi's investment accounts under its management, and applied the same to pay the Additional Advances in full and reduce the balance of the Construction Loan.

On or about December 30, 2009, Northern Trust assigned to NBV all of Northern Trust's right, title, interest and benefit to, in and under the Construction Loan Documents. NBV's claim is subject to all claims and defenses of the Debtor and Egozi, including claims for equitable subordination and limitation of the claim to the amount paid because it was acquired in a transaction with a defalcating fiduciary.

In consideration of the assignment of the Construction loan, NBV paid Northern Trust \$8,750,000. NBV also agreed that it would not enter into any settlement agreement with the Debtor and Egozi, under which NBV did not receive 100% payment of principal and default interest, unless it procured a general release from the Debtor and Egozi in favor of Northern Trust. NBV also obtained a limited indemnification agreement from Northern Trust with respect to claims that might be asserted against it as a result of Northern Trust's

conduct. Similar to Northern Trust, NBV failed to perfect its security interests in the Debtor's personal property, including the appliances at the Property, the Condominium Purchase Agreement and the Escrow Deposits.

NBV has filed a claim in the amount of \$15,598,530.54 relating to the Construction Loan. As of the Petition Date, and through the date of the hearing on NBV's motion to dismiss on August 18, 2010, described hereafter, NBV maintained that the Property had a fair market value of \$8,000,000. In connection with its objection to the Disclosure Statement filed on October 28, 2010, NBV asserted that the value of the property securing its claims is \$11,100,000.<sup>5</sup> Therefore, pursuant to Section 506(a) of the Bankruptcy Code, only approximately \$8,000,000-11,100,000 of NBV's claim could be secured by a first priority Mortgage lien on the Property and the remaining balance of NBV's claim is unsecured. The secured portion of the claim is subject to increase or decrease depending upon the Bankruptcy Court's determination of the value of the Property at the time of the Confirmation hearing, including whether the value of the Property should be reduced by construction completion costs, the value of personal property in which NBV failed to perfect a security interest and Section 506(c) surcharge claims. The amount of the secured claim will also vary depending upon the outcome of the Debtor's objection to NBV's claim and the subordination adversary proceeding. If the Bankruptcy Court fixes a higher valuation for NBV's claim, the Debtor would be obligated to pay interest on the higher amount under the Plan. This could reduce the distribution otherwise available to other creditors under the Plan.

NBV objects to the Debtor's continuing designation of the Claim as Northern Trust/NBV, because NBV claims to be the sole owner of the Claim. Debtor contends that the designation is appropriate because NBV is bound by Northern Trust's inequitable conduct; NBV has agreed not to settle the claim unless it secures a general release for Northern Trust from the Debtor and Egozi and the NBV and the Debtor have mutual indemnification obligations. NBV further disputes the Debtor's characterization in this section and will contest the Debtor's efforts to limit the amount of its claim.

To the extent that NBV is determined to hold an Allowed Claim the amount of which exceeds the value of the property in which it holds a valid and perfected interest, NBV will hold a Class 10 unsecured claim. NBV may be entitled to waive its unsecured claim and treat its entire claim as being fully secured if it satisfies the requirements of Section 111(b) of the Bankruptcy Code and implementing rules. In such case, it would be entitled to receive aggregate payments under the Plan equal to the amount of its claim, but would only be entitled to interest on the actual secured portion of the claim. Such an election could reduce the amount of assets available for distribution to other creditors.

#### **4. Egozi's Secured Subrogation Claim (Class 4) and Unsecured Claim (Class 12)**

Egozi has filed two claims against the estate: (1) a secured claim in the amount of \$3,041,884.80, relating to the Northern Trust's setoff and application of his investment

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<sup>5</sup> The Debtor cannot determine whether NBV's new valuation of the property includes property with respect to which it failed to perfect a security interest or Unit 501, which closed on October 15, 2010.

accounts to the Construction Loan, which is potentially secured by the Property because Egozi is subrogated to Northern Trust's Mortgage and the Debtor and Egozi intend to seek the equitable subordination of NBV's Mortgage claim; and (2) an unsecured claim for loans made to the Debtor primarily to pay operating expenses and construction costs in the amount of \$660,090. As discussed above, Northern Trust served as a financial advisor for Egozi and his family for over 25 years prior to making the Construction Loan to the Debtor. In violation of its fiduciary duty and in furtherance of its own interest at the direct expense of Egozi, Northern Trust advised Egozi to pledge his personal exempt investment funds and trust assets to Northern Trust in exchange for Northern Trust's lending the Debtor the Additional Advances that the Debtor needed to complete the construction of the Property. Prior to selling and assigning the Construction Loan Documents to NBV, Northern Trust seized \$3,000,000 of Egozi's investment funds and trust assets and applied them to pay the Additional Advance and reduce the balance of the Construction Loan. Egozi's claim against the Debtor is subrogated to Northern Trust/NBV's secured claim.<sup>6</sup> Furthermore, to the extent that Egozi was damaged by Northern Trust's breach of its fiduciary duty (approximately \$3,000,000), Northern Trust/NBV's claims may be determined to be subordinate to Egozi's Secured Subrogation Claim. Consequently, \$3,000,000 of Egozi's \$3,660,000 claim against the Debtor may be secured by the Property. The remaining \$660,000 of Egozi's claim, which relate to general loans to the Debtor is likely unsecured. NBV disputes the characterization in this Section. NBV contends that the Debtor has no standing to assert a claim for equitable subordination and Egozi cannot state a claim for equitable subrogation under controlling Eleventh Circuit precedent. NBV intends to object to Egozi's alleged subrogation claim and unsecured claim on the grounds that such claims are disguised equity contributions and should be subordinated to all debts on such basis.

#### **5. Whirlpool Claim (Class 5)**

Whirlpool Corporation has filed a claim for \$27,521.70 and asserts a security interest in certain appliances delivered to the Property and installed in certain Condominium Units. NBV and the Debtor believe that Whirlpool Corporation's perfected security interest may have lapsed or been otherwise released.

#### **6. The Architect Claim (Class 6)**

As of the Petition Date, Revuelta Vega Leon, the Debtor's architect, asserted a claim of \$106,000, which it contended was secured by a mechanic's lien recorded against the Property. Pursuant to applicable non-bankruptcy law, NBV's Mortgage lien may be superior in priority to this mechanic's lien. In addition, the architect failed to file a claim against the bankruptcy estate by the bar date, and therefore may have no claim in the event that the Bankruptcy Court determines that its mechanic's lien claim is not actually secured by the Property. NBV contends that the Class 6 Claim must be disallowed because the value of the Property is less

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<sup>6</sup> The Debtor has filed an adversary complaint (case no. \_\_\_\_\_) seeking a determination of the amount validity and priority of NBV's claim vis-a-vis Egozi's claim.

than senior interests in the Property and the Class 6 claimant failed to file a proof of claim by the bar date.

#### **7. Purchaser Deposit Claims (Class 7)**

Prior to and during construction of CIELO, the Debtor entered into contracts with purchasers on 14 Condominium Units. Pursuant to those contracts, each purchaser deposited 20% of the applicable purchase price with the Debtor. The Debtor used fifty percent (50%) of each deposit to pay hard costs of construction of the Property and held the remaining deposit in escrow to be disbursed at closing. As of the Petition Date, the Debtor had received a total of \$2,600,000 in deposits from purchasers. The Debtor has declared a number of these purchasers to be in default. On August 6, 2010 the Bankruptcy Court authorized the Escrow Agent to turn over the deposits of 6 purchasers (the aggregate sum of \$550,855) to the Debtor because the purchasers were in default and had forfeited their deposits. This ruling suggests that \$1,100,000 of Purchaser Deposit Claims were therefore disallowed. Presently, the Debtor owes \$1,500,000 to 8 purchasers (each, hereinafter referred to as a "Purchaser") based upon their respective purchase deposits. Due to the fact that half of each Purchaser's deposit was used to construct CIELO and the other half was maintained in escrow, each Purchaser's claim is split equally between two distinct categories: unsecured deposit claims and secured deposit claims. NBV contends that, to the extent unsecured, the Purchaser Deposit claims are priority claims pursuant to section 507(a)(7) to the extent of \$2,425 and otherwise Class 11 general unsecured claims. NBV contends that, to the extent secured, the Purchaser Deposit claims are secured by property that is not property of the estate and therefore should not be administered under the Plan, or alternatively, that such claims are not impaired.

##### **7a. Unsecured Purchaser Deposit Claims (Class 11)**

Pursuant to the purchase contracts, the Debtor used 50% (\$750,000) of each Purchaser deposit to construct CIELO. Therefore, Purchasers may potentially have \$750,000 in unsecured claims against the Debtor based upon the portion (50%) of the deposit that the Debtor spent to construct CIELO.

##### **7b. Purchaser Deposit Claims Potentially Secured by the Escrowed Deposits (Class 7)**

Pursuant to the purchase contracts, the Debtor has maintained 50% (\$750,000) (the "Escrowed Deposits") of the deposits in escrow. Therefore, the Purchasers' claims against the Debtor based upon unreturned deposits may be secured, in whole or in part, by the \$750,000 Escrowed Deposits.

#### **8. Condominium Association Secured Claim \$100,000-314,188 (Class 8)**

Cielo on the Bay Condominium Association (the "Condo Association") has filed a claim for \$314,188, which is comprised of unpaid assessments accrued and due as of the Petition Date. The Debtor believes that upon final reconciliation that the Association's claim

may be substantially reduced. The Association has also filed an unliquidated claim relating to construction defects and warranty, and claims related to the Debtor's management of the Association prior to turnover with respect to the Project. These later claims will be treated as Class 11 general unsecured claims for purposes of the Plan. NBV contends that the Condo Association claim is unsecured and should be classified as a Class 11 claim, because (a) the Condo Association did not file a claim of lien and (b) the mortgage was recorded prior to the Declaration of Condominium. NBV also contends that the Condo Association's priority is limited to 6 months of assessments or 1% of the mortgage debt pursuant to Florida Statute Section 718.116 and the Plan should be amended to provide for the payment of such amount from the closing of each sale of a Condominium Unit. Debtor contends that the Condo Association's priority now extends to one year's assessments and that Plan provides for payment of such amounts to the extent of their priority from each closing of a Condominium Unit.

#### **9. Purchaser Contract Litigation Attorneys' Fees (Class 9)**

The Debtor owes attorneys' fees of \$40,000 to its attorneys who represented it in connection with the Deposit Litigation Cases (defined below in section E). The attorneys may be entitled to assert a retaining lien against the Debtor's books and files and a charging lien against the proceeds of the Deposit Litigation Cases, including without limitation the Escrowed Deposits. NBV contends that the Purchaser Contract Litigation Attorney's are unsecured creditors and should be classified in Class 11.

#### **10. General Unsecured Debts (Class 11)**

In addition to the claims that are ultimately determined to be unsecured claims described above, the Debtor owes \$3,000 in unsecured claims to an accounting firm.

### **E. Pre-Petition Contract and Foreclosure Litigation**

As of the Petition Date, the Debtor was a party to 3 pending cases involving Purchasers seeking return of escrowed deposits based upon alleged defaults by the Debtor (the "Deposit Litigation Cases"), filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County Florida (the "State Court"). These actions were stayed by the commencement of the bankruptcy case.

NBV filed a foreclosure proceeding in the State Court, Case No. 2010-02180-CA-25 (the "Foreclosure Action"). The Debtor and Egozi filed an answer asserting defenses based upon Northern breach of fiduciary duty and unreasonable failure to consent to sales and leasing of condominium units in the project. Whirlpool Corporation filed a counterclaim seeking to collect on its claim secured by the appliances that it installed at the Property. This action was stayed by the commencement of the bankruptcy case.

The plaintiff in one of the Deposit Litigation Cases (*Reza Rahimzadegan v. Harbour East Development, Ltd., et al.*, Case No 09-6319) obtained an order from the bankruptcy court

lifting the automatic stay with respect to his particular Deposit Litigation Case pending in the State Court. The order lifting the stay permits Reza Rahimzadegan to prosecute such case while the bankruptcy is pending. On October 1, 2010, the Bankruptcy Court approved the Debtor and Rahimzadegan settlement of this claim.

#### **F. Post-Petition Litigation**

On September 10, 2010 the Debtor filed an adversary to determine the amount, validity, and priority of any security interest that NBV may have in the Escrowed Deposits. The Debtor contends that Northern Trust and NBV failed to perfect their security interest in the Escrowed Deposits by failing to file a UCC-1 financing statement and failing to obtain control over the deposit account holding the Escrowed Deposits, and because certain amounts due under the purchase and sale agreement are not proceeds of the Property. This adversary also seeks to determine the amount, validity and priority of any lien that NBV and Whirlpool Corporation may have on the appliances and other personal property installed at the Property. The Debtor believes that the Bankruptcy Court will determine that the estate has a prior interest in all of these assets that will be available for payment of administrative expenses and the claims of general creditors. On December 3, 2010, the Bankruptcy Court entered an Agreed Judgment avoiding Whirlpool's security interest and preserving such interest for the estate. A copy of this Adversary complaint is available upon request to the Debtor's counsel and is generally available on the Bankruptcy Court's website.

On October 25, 2010, two Purchasers, Cuellar and Milano, filed an adversary proceeding seeking a determination that they were entitled to rescind their purchase agreements and obtain a refund of their earnest money deposits. On November 23, 2010, the Debtor filed its answer and counterclaim seeking a declaration that the agreements are enforceable, that the purchasers are in default and that the deposits be turned over to the Debtor. The Debtor believes that it will prevail on its claims but will continue to seek a compromise with these Purchasers before trial. A copy of this Adversary complaint is available upon request to the Debtor's counsel and is generally available on the Bankruptcy Court's website.

On \_\_\_\_\_, the Debtor filed an objection to the claim of Purchaser Traverso and a counterclaim seeking a declaration that the purchase agreement is enforceable, that the purchasers are in default and that the deposits be turned over to the Debtor. The Debtor believes that it will prevail on its claims but will continue to seek a compromise with this Purchaser before trial.

On \_\_\_\_\_, the Debtor filed an adversary complaint against Purchasers Garcia seeking a declaration that the agreement is enforceable, that the Purchasers are in default and that the deposits be turned over to the Debtor. The Debtor believes that it will prevail on its claims but will continue to seek a compromise with these Purchasers before trial.

On December 3, 2010, the Florida circuit court entered a judgment in favor of certain contract purchasers constituting Section 718.202(2) of the Florida Statutes. *Saltzman v. BCRE*



*Brickell, LLC*, Case No. 09-50954. Debtor understands that the parties to this action have agreed to pursue a direct appeal to the state appellate court. Although the Bankruptcy Court is only bound by decisions of the Florida Supreme Court on matters of state law, an adverse decision in the appellate court would likely be persuasive. If the Purchaser's prevail on this issue, the estate would lose its interest in the earnest money deposits and would subject to the estate to substantial claims for the portion of the deposits that the Debtor used to construct the Project. Debtor will continue to monitor these proceeding and will pursue contrary argument before the Bankruptcy Court.

On December 15, 2010 the Debtor filed an adversary proceeding ("Subordination Action") seeking to disallow a substantial portion of NBV's Claim and subordinate \$3,000,000 of NBV's Claim to Egozi's Claim. The Debtor is also seeking to limit NBV's claim to the \$8,750,000 it paid to Northern Trust, reduce the claim by all interest and other fees paid to Northern Trust, approximately \$2,000,000 and reduce the claim for damages incurred on account of Northern Trust and NBV's breach of the Loan Agreements, including in particular the interference with the Debtor's leasing efforts (approximately \$2,000,000) and its interference with the closing of the sale of a Condominium Unit to Garcia. The Debtor is also separately challenging NBV's standing in these proceedings based on its parent entities' activities in supporting the Castro government by engaging in significant development and ownership of resort properties in Cuba in the late 1990s through at least 2005. The Debtor contends that NBV and its principals are not authorized to do business in the United States and that the Northern Trust's assignment of the Construction Loan to NBV is invalid based upon NBV and its affiliates association and support for Cuban government agencies, which have designated as "terrorist organizations" by the United States Department of Treasury Office of Foreign Asset Control. The Debtor believes it will ultimately prevail in the Subordination Action, if litigated to final judgment. If the Debtor is successful in reducing the amount of NBV's claim based primarily upon Northern Trust's misconduct, distribution to other creditors may be substantially enhanced. A copy of this Adversary complaint is available upon request to the Debtor's counsel and is generally available on the Bankruptcy Court's website.

#### IV.

#### KEY EVENTS LEADING TO THE COMMENCEMENT OF THE REORGANIZATION CASE

##### A. The Decline in the Real Estate Market

The Debtor filed Chapter 11 because of (a) the declining real estate market, (b) its inability to reduce condominium prices in response to these changing market conditions, and (c) its inability, due to circumstances beyond its control, to renew, repay, or refinance its secured mortgage debt owed on the Construction Loan (Northern Trust, predecessor in interest to NBV), which matured in April 2009. The Debtor believes that the current impaired real estate market actually dates back to 2005. The decline was exacerbated by both government and market product that created easy money and an artificial demand for

residential real estate by encouraging speculative purchases which in turn lead to more speculative developments. The acute collapse occurred in the summer of 2007 with the subprime meltdown and spread to the general market with the financial crisis and the onset of the "Great Recession" in the Fall of 2008. In the past 2 years, potential purchasers of condominiums at CIELO have sought significant purchase price reductions due to market conditions. Because Northern Trust and NBV have refused to grant the Debtor relief from minimum lien release price covenants in the Construction Loan Agreement, the Debtor has been stymied from generating significantly more closings at realistic market levels. Consequently, many of the purchasers that paid 20% pre-construction deposits have cancelled their purchase agreements rather than pay the prices demanded by Northern Trust and NBV. Had the Debtor been able to reduce purchase prices as market conditions deteriorated, the Debtor believes that it would have been able to repay all or a substantial portion of the Construction Loan.

#### **B. The Debtor's Business Plan**

The Debtor is optimistic about its long-term economic prospects. The Debtor's principal asset consists of the 31 unsold Condominium Units in CIELO. NBV contends that the value of the Property is approximately \$8-11.1 million, based upon an \$8 million bulk sale appraisal obtained by NBV in April 2010 and apparently an internal analysis conducted in October 2010. In December of 2009, NBV's consultant estimated that the value of the Northern Trust claim was in excess of \$10 million and that under a worst case scenario the sale of the Condominium Units would generate in excess of \$20 million in proceeds over a shorter time frame than that projected by CBRE. The Debtor believes that traditional appraisals are a less than reliable method of determining value in the current market, because none of the traditional assumptions underlying traditional appraisal methodology are present in the current market. The Debtor has performed its own valuation of its assets and believes that the leasing and sale of the assets under its plan will generate gross proceeds of approximately \$21million. The Debtor based its determination of future cash flows on historical information regarding post recovery from real estate market collapses, the CBRE COM analysis, the Integra appraisal, Esslinger Wooton Maxwell Realtors, Inc.'s ("EWM") market surveys and current market experience, and general review of economic forecast and real estate market analysis. EWM has prepared a marketing plan formulated to maximize the value of the Property (See Exhibit 6). The Debtor proposes to continue to lease Condominium Units to qualified tenants while simultaneously marketing and selling the Condominium Units and financing the sale of such Condominium Units until such time as third party financing becomes more readily available to purchasers. Although the Debtor is assuming that third party financing will not be available for purposes of its projections. Debtor has, however, working with EWM, Morningside Mortgage and several banks regarding arranging for financing for prospective purchasers. Thus, the Debtor anticipates that some of the Condominium Units will be sold for cash and with financing provided by third party sources.



Continued successful execution of its strategy combined with the restructuring proposed in the Plan will enable the Debtor to thrive in the near and long term for the benefit of all economic parties in interest.

## V. THE REORGANIZATION CASE

### A. The Post-Petition Sale of Condominium Units

On April 22, 2010, the Debtor filed its *Debtor's Motion For Order (I) Authorizing The Sale Of Pending Sale Condominium Units Pursuant To 11 U.S.C. § 363 Free And Clear Of All Liens, Claims, And Encumbrances, And (II) Establishing Procedures For Future Sales Of Condominium Units* [Docket No. 9], seeking authority to close on the sale of two Condominium Units, as well as seeking authority to continue to actively market the remaining Condominium Units. On May 17, 2010, NBV filed a Preliminary Objection to the Motion. [Docket No. 48]. On May 20, 2010, the bankruptcy court conducted a hearing on the Motion and the Objection pursuant to which the Court authorized the closing of the sale of Unit 501, but denied the Debtor's remaining requests for relief without prejudice.

On June 24, 2010, the Debtor filed an amended Motion to Establish Procedures for the Offering for Sale of Condominium Units, the Offering of Seller Financing with Respect to Such Sales, Granting Adequate Protection with Respect to the Interest of Holders of Secured Claims and Providing Certain Bid Protection and Break-Up Fees in the Event of a Credit Bid by Secured Parties. [Docket No. 85]. On June 29, 2010, NBV filed its response in opposition to the motion. On July 20, 2010, the Court entered an order granting in part and denying in part the Debtor's motion, ruling that it would consider each proposed sale independently when presented by the Debtor for court approval.

On July 30, 2010, NBV filed a motion [Docket No. 151] to reconsider the July 20, 2010 order. On August 6, 2010, the Debtor filed its response [Docket No. 156] in opposition to the motion to reconsider. On September 16, 2010, the Court entered an order providing that the Condominium Units can be sold for less than minimum lien release price covenants in the Construction Loan Agreement only with the consent of parties in interest asserting an interest in the specific Condominium Unit and that the Debtor may accept Purchase Money Mortgages only with the consent of parties in interest asserting an interest in the specific Condominium Unit. Debtor contends that Sections 363(f) and 1129 authorize the sale of the Condominium Units free and clear of all interests even over the objection of parties with interests therein. Debtor will also contend that its dispute relating to the validity, priority and extent of NBV's liens on the Condominium Units provides an alternative basis for the Bankruptcy Court to authorize the sale free and clear. The Debtor will seek the Bankruptcy Court's determination of this issue at the confirmation hearing.

On August 31, 2010, the Debtor filed a motion to approve the sale of Unit 802 for \$650,000. This motion seeks authority to sell the Unit 802, free and clear of liens and to

extend purchase money financing to the purchaser. The Debtor withdrew this Motion without prejudice because NBV refused to consent to the sale with purchase money financing. The prospective purchaser remains interested in purchasing Unit 802, provided that the Debtor accepts purchase money financing and the Debtor may seek authority to sell it at a later date. If NBV continues to refuse to consent to this sale and the Debtor suffers an adverse result in the *Saltzman v. BCRE Brickell, LLC*, litigation this purchaser may assert a right to rescission and may seek to cancel his contract and recover his deposit.

On October 15, 2010, the sale of Unit 501 closed. The Debtor made a provisional payment of approximately \$530,000 to NBV from the proceeds of the sale.

#### **B. The Debtor's Use of Cash Collateral**

Despite bona fide issues relating to the validity of NBV's security interests, the Debtor sought Court approval of its use of cash collateral consisting primarily rents from tenants and the Defaulted Deposit Escrow. The Debtor failed to reach an agreement with NBV on other than minimal operating expenses. NBV continued to object to the Debtor's use of cash collateral to complete certain capital projects that NBV's own appraiser and engineer suggested were reasonable and necessary, would enhance the value of the Property and were essential to an effective sales and leasing program for the Condominium Units. Because of NBV's ongoing recalcitrance, the Debtor sought and the Bankruptcy Court set an evidentiary hearing on the Debtor's *Motion to Establish Procedures for the Offering for Sale of Condominium Units, the Offering of Seller Financing with Respect to Such Sales, Granting Adequate Protection with Respect to the Interest of Holders of Secured Claims and Providing Certain Bid Protection and Break-Up Fees in the Event of a Credit Bid by Secured Parties*. Prior to the commencement of the hearing, the Debtor and NBV reached agreement on the Debtor's use of cash collateral for an additional 4 months, which agreement include a number of capital projects that the Debtor had been seeking to complete.

On June 2, 2010, the Bankruptcy Court entered the *Interim Order (I) Authorizing, in Part, the Use of Cash Collateral Pursuant to Pursuant to 11 U.S.C. §363(c)(2), and (II) Settling Further Hearing* [Docket No. 73], as amended by the second, third, fourth, fifth interim orders entered on July 8, 2010, July 22, 2010, October 5, 2010 and December 13, 2010, respectively [Docket Nos. 117, 141, 244 and \_\_\_].

#### **C. The NBV Motions to Dismiss**

On June 18, 2010, NBV filed a Motion to Dismiss (the "Motion to Dismiss") [Docket No. 80], seeking, among other things, the entry of an order (i) dismissing the Debtor's Chapter 11 Case pursuant to section 1112(b) of the Bankruptcy Code for cause, alleging that the Case was filed in bad faith or (ii) in the alternative, seeking (a) relief from the automatic stay under section 362(d) of the Bankruptcy Code to permit NBV to pursue the Foreclosure Action, and (b) adequate protection to NBV.

On August 6, 2010, the Debtor filed its response to the Motion to Dismiss, respectively [Docket No. 156]. On August 20, 2010, the Court entered an agreed order granting, in part, the Motion to Dismiss [Docket No. 165], which provided for relief from the automatic stay for NBV to continue to prosecute its foreclosure action against the Property through a foreclosure judgment, and authorized NBV to seek further stay relief to proceed to a foreclosure sale.

On November 11, 2010, NBV filed a second Motion to Dismiss arguing that the Plan is not confirmable. The Debtor filed a response opposing the second Motion to Dismiss because NBV has failed to demonstrate "cause" for dismissal. Debtor will argue that the Plan will provide a greater return to creditors particularly given the avoidance and subordination powers available to the Debtor under the Bankruptcy Code.

#### **D. The Brokerage Agreement and Marketing Plan**

On July 22, 2010, the Court entered an order authorizing the employment and retention of EWM (Esslinger Wooton Maxwell Realtors, Inc.) as the Debtor's exclusive sales and marketing agent and real estate broker. The Debtor and EWM have developed a marketing plan. The Debtor and EWM are staging a major promotional event at the Property which coincides with the annual Art Basel show. The Debtor has completed and furnished two new model units and EWM has launched an aggressive internet and print marketing campaign for the Property.

#### **E. The Leasing Motions**

Consistent with market realities and the plan proposed in the CBRE COM, the Debtor has sought to lease Condominium Units in the Property. On May 27, 2010, the Debtor entered a lease for Unit 1104. On June 2, 2010, NBV filed a Motion to Annul the lease. On June 8, 2010, the Debtor filed its response. On June 8, 2010, the Motion was argued before the Court. On June 25, 2010, NBV withdrew its Motion and the Debtor has continued to collect rent from the Unit 1104 tenant.

On August 18, 2010, the Debtor filed a Motion to authorize two additional leases. NBV consented to one of the lease but objected to the second lease and the Debtor's general plan to lease Condominium Units in the Project pending sale. On September 24, 2010, the Debtor and NBV presented evidence to the Bankruptcy Court. NBV failed to present any credible evidence that the leasing program would diminish the value of the Property or that it was otherwise not an appropriate exercise of the Debtor's business judgment. The Motion is currently under advisement with the Bankruptcy Court. Debtor and the estate have continued to suffer damages in the form of lost rental income as a result of NBV's refusal to consent to the leasing of Condominium Units. Debtor contends that NBV has continued to object to the Debtor's leasing of Condominium Units as part of its effort to defeat the Plan.

**F. Bar Date**

The Court set August 23, 2010 as the deadline to file proofs of claim in this Case. As of the bar date 18 claims had been filed in the aggregate sum of \$21,794,886.88. The Debtor estimated that the final Allowed Amount of claims against the estate will be less than the filed amounts.

**VI.  
THE PLAN OF REORGANIZATION**

**A. Introduction**

The Plan provides for a restructuring of the Debtor's financial obligations. The Debtor believes that the proposed restructuring will provide the Debtor with the necessary liquidity to compete effectively in today's business environment.

The Debtor also believes, and will demonstrate to the Bankruptcy Court, that under the Plan, creditors will receive substantially more value than they would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The following is a general discussion of the provisions of the Plan. The Plan is attached as Exhibit 1 to this Disclosure Statement. In the event of any discrepancies, the terms of the Plan will govern.

**B. Plan Funding**

The Plan will be funded by the Debtor using forfeited Purchaser Escrow Deposits, income from rental of Condominium Units, net proceeds from sales of Condominium Units, and the conversion of the Egozi unsecured claim into equity interest in the Reorganized Debtor.

**C. Classification and Treatment of Claims and Equity Interests Under the Plan of Reorganization**

One of the key concepts under the Bankruptcy Code is that only claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an "allowed" claim or "allowed" equity interest simply means that the Debtor agrees, or in the event of a dispute, that the Bankruptcy Court determines, that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the Debtor. By operation of sections 1111(a), 501(a) and 502(a) of the Bankruptcy Code, a claim or interest that appears in the schedules filed by the Debtor and is not identified as disputed, contingent, or unliquidated, is deemed "allowed" unless a party in interest objects. Additionally, section 502(a) of the Bankruptcy Code provides that a timely filed proof of claim or equity interest is deemed "allowed" (regardless of the Debtor's schedules) unless the debtor or other party in interest objects. Section 502(b) of the Bankruptcy Code specifies certain claims that may not be "allowed" in bankruptcy even if

a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damage claims in excess of specified amounts, late filed claims, and contingent claims for contribution and reimbursement.

The Bankruptcy Code requires that, for purposes of treatment and voting, a chapter 11 plan divides the different claims against, and equity interests in, a debtor into separate classes based upon their legal nature. Claims of a substantially similar legal nature are usually classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the "claims" and "equity interests" themselves, rather than their holders, are classified.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as "impaired" (affected by the plan) or "unimpaired" (unaffected by the plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the plan, and the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code. Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless the plan (i) does not alter the legal, equitable and contractual rights of the holders or (ii) irrespective of the holders' acceleration rights, cures all defaults (other than those arising from the debtor's insolvency, the commencement of the case or nonperformance of a nonmonetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable and contractual rights. In most cases, this means that the holder of an unimpaired claim will receive on the later of the consummation date or the date on which amounts owing are actually due and payable, payment in full, in Cash, with post petition interest to the extent appropriate and provided for under the governing agreement (or if there is no agreement, under applicable nonbankruptcy law), and the remainder of the debtor's obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than its right to accelerate the debtor's obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor's case not been commenced. Pursuant to section 1126(f) of the Bankruptcy Code, holders of unimpaired claims or interests are "conclusively presumed" to have accepted the plan. Accordingly, their votes are not solicited. Under the Plan, the Holders of Class 1 (Priority Non-Tax Claims) are unimpaired and conclusively presumed to accept the Plan.

Under certain circumstances, a class of claims or equity interests may be deemed to reject a plan of reorganization. For example, a class is deemed to reject a plan of reorganization under section 1126(g) of the Bankruptcy Code if the holders of claims or interests in such class do not receive or retain property under the plan on account of their claims or equity interests. Under this provision of the Bankruptcy Code, the holders of equity

interests in Class 13 (Old Limited Partnership Equity Interests) and Class 14 (Old General Partnership Equity Interests) are deemed to reject the Plan because they receive no distribution and retain no property interest under the Plan. Because Class 13 (Old Limited Partnership Equity Interests) and Class 14 (Old General Partnership Equity Interests) are deemed to reject the Plan, the Debtor is required to demonstrate that the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to such classes. Among these are the requirements that the plan be “fair and equitable” with respect to, and not “discriminate unfairly” against, the claims and equity interests in such class. For a more detailed description of the requirements for confirmation, see section IX.B below, entitled “CONFIRMATION OF THE PLAN OF REORGANIZATION – Requirements for Confirmation of the Plan of Reorganization.”

Consistent with these requirements, the Plan divides the Allowed Claims against, and Allowed Equity Interests in the Debtor into the following classes:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Priority Non-Tax Claims	Unimpaired	No
Class 2	Real Estate Tax Secured Claims	Impaired	Yes
Class 3	Northern Trust/NBV Secured Construction Loan Claims	Impaired	Yes
Class 4	Egozi Secured Subrogation Claim	Impaired	Yes
Class 5	Whirlpool Secured Claim	Impaired	Yes
Class 6	Revuelta Vega Leon Secured Claim	Impaired	Yes
Class 7	Purchaser Deposit Secured Claims	Impaired	Yes
Class 8	Association Secured Claim	Impaired	Yes
Class 9	Purchaser Contract Litigation Attorney Secured Claim	Impaired	Yes
Class 10	Northern Trust/NBV Unsecured Claim	Impaired	Yes
Class 11	General Unsecured Claims	Impaired	Yes
Class 12	Egozi Unsecured Claim	Impaired	Yes
Class 13	Old Limited Partnership Equity Interests	Impaired	No, deemed to reject
Class 14	Old General Partnership Equity Interests	Impaired	No, deemed to reject

**1. Unclassified**

**a. Administrative Expense Claims**

Administrative Expenses are the actual and necessary costs and expenses of the Debtor’s Case that are allowed under sections 503(b), 507(a)(1) and 507(b) of the Bankruptcy Code. Such expenses will include, but are not limited to, amounts owed to vendors providing goods and services to the Debtor during the chapter 11 cases and tax obligations incurred after the Petition Date. Other Administrative Expenses include the actual, reasonable, and necessary professional fees and expenses of the Debtor and incurred during the pendency of



the Case. The Debtor estimates that total administrative expenses relating to professionals will not exceed \$500,000.

Except to the extent that a Holder of an Allowed Administrative Expense agrees to a less favorable treatment, and except as provided in this section, as soon as reasonably practicable on or after the Effective Date, the Reorganized Debtor shall pay Cash in an amount equal to such Allowed Administrative Expense to each Holder of an Allowed Administrative Expense; *provided, however*, that Allowed Administrative Expenses representing liabilities incurred in the ordinary course of business by the Debtor, shall be assumed and paid by the Reorganized Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

All Persons seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code shall (i) file, on or before the deadline specified in Local Rule 2016-1(c)(1), their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (ii) be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court (A) upon the later of (1) the Effective Date and (2) the date on which the order that deemed such Administrative Expense Allowed becomes a Final Order or (B) upon such other terms as may be mutually agreed upon by such Holder and the Reorganized Debtor. The Reorganized Debtor is authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course without the need for Bankruptcy Court approval.

#### **b. Priority Tax Claims**

Priority Tax Claims essentially consist of unsecured claims of federal and state governmental authorities for the kinds of taxes specified in section 507(a)(8) of the Bankruptcy Code, such as certain income taxes, property taxes, excise taxes, and employment and withholding taxes. These unsecured claims are given a statutory priority in right of payment. The Debtor estimates that on the Effective Date, the Allowed amounts of such claims will aggregate approximately \$0.

With respect to any Priority Tax Claims not paid pursuant to prior Bankruptcy Court order, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, commencing on as soon as reasonably practicable on or after the Effective Date, and continuing over a period not exceeding five (5) years after the Petition Date, Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with simple interest at the Applicable Rate, subject to the sole option of the Debtor or Reorganized Debtor to prepay the entire amount of the Allowed Priority Tax Claim at any time without

penalty. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

## **2. Classified**

The Plan provides for the treatment of each class of claims or interests as outlined below.

### **Class 1 - Priority Non-Tax Claims - (*Not Impaired; Not Entitled to Vote.*)**

Priority Non-Tax Claims include certain claims that are granted priority in payment under section 507(a) of the Bankruptcy Code, including certain wage, salary and other compensation obligations to employees of the Debtor up to a statutory cap of \$10,950 per employee, and Purchasers with unsecured claims based upon deposits paid to the Debtor pre-petition up to a statutory cap of \$2,600 pursuant to Section 507(a)(7). The Debtor estimates that on the Effective Date, the allowed amount of such claims will aggregate between \$0 and \$20,800.

Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, such Allowed Claims shall be paid in full in Cash on or as soon as reasonably practicable after the later of the Effective Date, the date allowed or the date due in the ordinary course, provided, however, that to the extent that a Holder's Allowed Priority Non-Tax Claim is comprised of a Purchaser Deposit Secured Claim (Class 7), the Allowed Priority Non-Tax Claim shall be paid and deemed satisfied from the Holder's Escrow Deposit.

### **Class 2 - Real Estate Tax Secured Claims - (*Impaired; Entitled to Vote.*)**

Class 2 consists of Allowed Real Estate Tax Secured Claims, which are claims of the local property Taxing Authority (Miami-Dade Tax Collector). The Debtor estimates that on the Effective Date, the Allowed amount of Allowed Real Estate Tax Secured Claims will aggregate approximately \$442,000.

Except to the extent that a holder of an Allowed Real Estate Tax Secured Claim agrees to less favorable treatment, the Debtor shall pay the Holder of the Allowed Real Estate Tax Secured Claims 100% of the principal amount, together with interest at the statutory rate, with respect to all Condominium Units owned by the Debtor as of January 1, 2010, with the exception of any units sold during 2010 for which the purchaser assumed responsibility for paying 2010 taxes, when such Claims become due and payable as follows: (1) to the extent of available cash contained in any Real Estate Tax Escrow authorized under this Plan or any Cash Collateral Order; (2) to the extent of any deficiency in the Real Estate Tax Escrow, then from the Net Sale Proceeds of each Condominium Unit of the first, and successive if necessary, closing of sales of each Condominium Unit following the date when such Claims become due and payable, the balance due the Holder with respect to such Claim, then due and owing. The tax liens securing payment of the Allowed Real Estate Tax Secured Claims shall remain in effect



until such tax obligations are satisfied. The treatment above is not applicable to ad valorem taxes owed from 2011 forward, said taxes which are administrative expenses to be paid in the ordinary course. The Debtor's challenge to the assessed amount of 2010 real estate taxes is presently pending before the Value Adjustment Board.

The Class 2 Claimant shall issue refunds to the Debtor in the event that challenges to the Miami-Dade County Property Appraiser's assessments result in valuation reductions, subject to the Property Appraiser's right to challenge such reductions pursuant to Florida law. Pursuant to the Fourth Interim Cash Collateral Order, the Debtor must make a good faith payment toward the Class 2 claim in November 2010.

The Miami-Dade County Property Appraiser reserves his right to seek review pursuant to Florida law of Value Adjustment Board reductions of 2009 and subsequent years' assessments of the taxed real or personal property, and the Debtor and the Transferee (as the proposed subsequent owner of Condominium Units) acknowledge that should the Property Appraiser seek to exercise this right, that the owner of the subject taxed property at the time of the final resolution of the challenge shall be responsible for any taxes owed as a result, and that the payment of said taxes shall be secured by statutory liens attaching to said property pursuant to Florida law. Likewise, individual purchasers of Condominium Units, as well as the Secured Lenders, shall be on notice that there may be a dispute regarding the 2009 or subsequent year's assessment of the property, and such purchaser shall bear the responsibility of providing for payment of any taxes ultimately owed. Further, all Condominium Units sold or transferred pursuant to this Plan shall be sold or transferred subject to ad valorem tax liens and any sale proceedings under the jurisdiction of the Bankruptcy Court or in accordance with this Plan shall so specify.

**Class 3 - Northern Trust/NBV Secured Construction Loan Claim -  
(Impaired; Entitled to Vote.)**

Class 3 consists of the Allowed Northern Trust/NBV Secured Construction Loan Claim. The Debtor estimates that on the Effective Date, the Allowed amount of such claim will aggregate approximately \$8 million based on NBV's appraisal and the positions it asserted in connection with its Motion to Dismiss and its opposition to the Leasing Motion. NBV now contends that the value of the property securing its claim is approximately \$11,100,000.) NBV may elect to waive its Class 10 unsecured claim and have its entire claim amount treated as secured pursuant to Section 1111(b). In such case, NBV would be entitled to receive aggregate payments equal to the full Allowed Amount of its claim under the Plan. NBV's ability to make the election and the impact of the election upon the rights of other creditors will be dependent upon the ultimate Allowed Amount of its claims, whether a portion of its otherwise Allowed Secured Claim is bifurcated and subordinated, thereby making it ineligible to elect fully secured treatment.

Prior to the determination of the priority of the Class 3 and Class 4 Claims, and until such time as the Holder has received \$5,000,000, the Debtor shall pay the Holder of the Class

3 claim 100% of the principal amount, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate (as defined in the Plan at ¶ 1.75), in deferred cash payments as follows: (1) interest shall be payable not less than quarterly, if not earlier paid from the Interest Reserve, Net Proceeds of Sale of Condominium Units, Net Rental Income, or Net Purchase Money Principal and Interest Income; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing; (b) principal, in cash or by transfer of the Condominium Unit purchaser's Purchase Money Mortgage in an amount not to exceed the Wholesale Value (as defined in the Plan at ¶ 1.81), of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as a particular Condominium Unit is sold and title is transferred to the purchasers, or the Holder has received the full principal amount of its claim and accrued interest thereon. Upon the sale of any particular Condominium Unit, the Holder's lien shall attach to all cash and other proceeds of sale, including Purchase Money Mortgages and all future payments due thereunder, and the sale of each such Condominium Unit shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on the remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. If the Holder has received \$5,000,000 and the Bankruptcy Court has not determined the priority of the Class 3 and Class 4 claims by Final Order, then the Debtor shall pay all additional amounts otherwise due the Holder of the Class 3 claim into the Disputed Secured Claim Reserve until such time as a Final Order is entered. If the Class 4 Claim is determined to have priority over the Class 3 Claim, the Debtor shall pay the Class 4 Claim, to the extent of its priority, any payments otherwise due the Class 3 Claim, until such Class 4 Claim is paid in full and thereafter will resume payments to the Class 3 Claim. Any remaining amount due the Holder shall be finally due and payable on the Final Maturity Date. Except as provided in Section 5.5 of the Plan, the existing Construction Loan and Mortgage covenants shall be cancelled. Except to the extent inconsistent with the Plan, the non-monetary covenants of the Mortgage shall survive and shall continue to secure the Class 3 claim.

**Class 4 - Egozi Secured Subrogation Claim - (*Impaired; Entitled to Vote.*)**

Class 4 consists of the Allowed Egozi Secured Subrogation Claim. The Debtor estimates that on the Effective Date, the Allowed amount of such claim will be approximately \$3 million.

Except to the extent that a holder of the Egozi Secured Subrogation Claim agrees to a less favorable treatment and to the extent the Bankruptcy Court determines the Class 4 Claim has priority over the Class 3 Claim or that it is otherwise determined to be an Allowed Secured Claim, the Debtor shall pay the Holder of the Class 4 claim 100% of the principal amount, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable not less than quarterly if not earlier paid from the Interest Reserve, Net Proceeds of Sale of Condominium Units, Net Rental Income, or Net Purchase Money Principal and Interest Income; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder

(a) accrued interest to the date of the closing (b) principal, to the extent cash remains available up to an amount not to exceed the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as a particular Condominium Unit is sold and title is transferred to individual purchasers. Upon the sale of any Condominium Unit, the Holder's lien shall attach to the all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's liens, provide that the Holder shall retain its lien on the remaining unsold Condominium Units. The Holder shall retain its lien on all remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 4 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 claim and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 4 shall be treated for all purposes as a Class 11 General Unsecured Claim.

#### **Class 5 - Whirlpool Secured Claim (*Impaired; Entitled to Vote.*)**

Class 5 consists of the Allowed Whirlpool Secured Claim, which arose pursuant to Whirlpool Corporation supplying appliances to certain Condominium Units. The Debtor estimates that on the Effective Date, the Allowed amount of such claim will be approximately \$27,000.

Except to the extent that a holder of the Allowed Whirlpool Secured Claim agrees to a less favorable treatment and to the extent the Bankruptcy Court determines the Class 5 Claim has priority over the Class 3 and 4 Claims with respect to the Holder's Collateral, the Debtor shall pay the Holder of the Class 5 claim 100% of principal, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of Condominium Units, that include a sale of the Holder's Collateral; (2) upon each sale of a Condominium Unit that includes a sale of the Holder's Collateral, the Debtor shall pay the Holder (a) accrued interest to the date of the closing; and (b) principal, both to the extent of the allocation of the purchase price assigned to the Holder's Collateral. The Holder shall retain its lien on its Collateral until such time as each item of its Collateral is sold and title is transferred to the purchasers. Upon the sale of Holder's Collateral, the Holder's lien shall attach to the all cash proceeds of sale and the sale of such Collateral shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on its remaining Collateral until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 5 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 claim and Class 4 claim and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 5 shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 6 – Revuelta Vega Leon Secured Claim - (*Impaired; Entitled to Vote.*)**

Class 6 consists of the Allowed Revuelta Vega Leon Secured Claim. Revuelta Vega Leon was the Debtor's architect and the claim arises from architectural services that Revuelta Vega Leon provided to the Debtor pre-petition. The Debtor estimates that on the Effective Date, the Allowed amount of such claim will aggregate approximately \$106,000.

Except to the extent that a holder of the Allowed Revuelta Vega Leon Secured Claim agrees to a less favorable treatment and to the extent the Bankruptcy Court determines the Class 6 Claim has priority over the Class 3 and 4 Claims, the Debtor shall pay the Holder of the Class 6 claim 100% of principal, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of Condominium Units; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing (b) principal, to the extent cash remains available up to an amount equal to the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to the purchasers. Upon the sale of any particular Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on the remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 6 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 6 shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 7 – Secured Purchaser Deposit Claims - (*Impaired; Entitled to Vote.*)**

Class 7 consists of Allowed Secured Purchaser Deposit Claims, which are based on claims of Purchasers who deposited funds with the Debtor to be held in an escrow account pending closing. The Debtor estimates that on the Effective Date, the amount of Allowed Class 7 Claims will aggregate between \$0 and \$750,000.

Except to the extent that a holder of the Secured Purchaser Deposit Claim agrees to a less favorable treatment, as soon as reasonably practicable on the later of the Effective Date or the entry of a Final Order allowing such Claim, the Debtor shall pay to each Holder of an Allowed Secured Purchaser Deposit Claim: (a) cash in the amount of the principal balance and accrued interest thereon of the Escrow Funds of the Holder on deposit with the Escrow Agent and (b) to the extent the Bankruptcy Court determines any lien arising under section 365 of the Bankruptcy Code securing such a Class 7 Claim has priority over the other Allowed Secured Claims against the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement, or is otherwise an Allowed Secured Claim, the Debtor shall pay the Holder of the Class 7 claim all principal, as determined in accordance with section

506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of the Condominium Unit securing such Claim; (2) upon the sale of the Condominium Unit securing such Claim, the Debtor shall pay the Holder (a) accrued interest to the date of the closing and (b) principal, to the extent cash remains available. The Holder shall retain its lien on the Condominium Unit until such time as the Condominium Unit is sold and title is transferred to individual purchasers. Upon the sale of the Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's lien. To the extent that the Class 7 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims with respect to the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 7 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 8 – Association Secured Claim - (*Impaired; Entitled to Vote.*)**

Class 8 consists of the Association Secured Claim, which consists of the Cielo on the Bay Condominium Association's claim for unpaid assessments owed to it by the Debtor based upon the Debtor's ownership of the unsold Condominium Units. The Debtor estimates that on the Effective Date, the amount of Allowed Class 8 Claims will aggregate approximately \$100,000 to \$314,188.

Except to the extent that a holder of the Association Secured Claim agrees to a less favorable treatment and to the extent the Bankruptcy Court determines the Class 8 Claim has priority over the Class 3 and 4 Claims with respect to the Net Proceeds of Sale of Condominium Units with respect to a particular Condominium Unit, then to the extent of such priority, the Debtor shall pay the Holder of the Class 8 Claim all principal, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon each sale of a Condominium Unit, (a) accrued interest to the date of the closing and (b) principal, to the extent of the priority. The Holder shall retain its lien on each Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to purchasers. Upon the sale of any Condominium Units, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's lien. The Holder shall retain its separate liens on all remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 8 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 8 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 9 - Purchaser Contract Litigation Attorney Secured Claim -  
(Impaired; Entitled to Vote.)**

Class 9 consists of the Purchaser Contract Litigation Attorney Secured Claim, which consists of the claims of the Debtor's attorneys who represented the Debtor in the Deposit Litigation Cases pre-petition. The attorneys may be entitled to a retaining lien on the Debtor's books and records involved in the Deposit Litigation Cases and a charging lien on any proceeds of the Deposit Litigation Cases, including, without limitation, distributions of the Escrowed Deposits. The amount, priority and validity of the attorneys' lien are matters to be determined by the Bankruptcy Court. The Debtor estimates that on the Effective Date, the amount of Allowed Class 9 Claims will aggregate approximately \$40,000.

Except to the extent that a holder of the Purchaser Contract Litigation Attorney Secured Claim agrees to a less favorable treatment and to the extent the Bankruptcy Court determines the Class 9 Claim has priority over the Class 3 and 4 Claims with respect to Escrow Funds or judgment or settlement recoveries that are the subject of a Purchase and Sale Agreement in connection with which the Holder provided legal services to the Debtor, the Debtor shall pay the Holder of the Class 9 Claim 100% of the principal, as determined in accordance with section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon the entry of Final Order determining that the Debtor is entitled to particular Escrow Funds or judgment or settlement recoveries, cash in the amount of the principal balance of the Class 9 Claim and accrued interest thereon. To the extent that the Class 9 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 9 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 10 - Northern Trust/NBV Unsecured Claim - (Impaired; Entitled to  
Vote.)**

Class 10 consists of the Northern Trust/NBV Unsecured Claim, which consists of any portion of NBV's Allowed Claim that may exceed the value of the Property, as determined by the Bankruptcy Court, as of the Effective Date. The Debtor estimates that on the Effective Date, the amount of Allowed Class 10 Claims will aggregate between \$0 and \$7,600,000.

To the extent that Holder of the Class 10 claim is determined by Final Order to hold an Allowed Unsecured Claim that the Holder has not waived, been subordinated by Final Order of the Bankruptcy Court pursuant to section 510, or otherwise limited to the actual amount paid for the Claim by the Holder, then the Class 10 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.

**Class 11 - General Unsecured Claims - (Impaired; Entitled to Vote.)**

Class 11 consists of the General Unsecured Claim, which consists of debts that the Debtor owes to its accountants and Purchasers who deposited funds with the Debtor. The



Debtor estimates that on the Effective Date, the amount of Allowed Class 11 Claims will aggregate approximately \$485,000.

**Class 12 – Egozi Unsecured Claims - (*Impaired; Entitled to Vote.*)**

Class 12 consists of the Egozi Unsecured Claim in the amount of \$660,000, which consists of debts that the Debtor owes to Egozi arising from loans that Egozi made to the Debtor and other funds that Egozi advanced on behalf of the Debtor. On the Effective Date, the Debtor shall issue and deliver the New General Partnership Interest and New Limited Partnership Interest to the Class 12 Holder or his nominees in full satisfaction of his Class 12 Claim.

**Class 13 – Old Limited Partnership Equity Interests - (*Impaired; Not Entitled to Vote.*)**

Class 13 consists of the Limited Partnership Equity Interests held by the Debtor's limited partners. On the Effective Date, the Old Limited Partnership Equity Interests shall be cancelled and the Holders of Old Limited Partnership Equity Interests shall not be entitled to, and shall not receive or retain, any property or interest in the Debtor on account of such Old Limited Partnership Equity Interests. On the Effective Date, all obligations of the Debtor to Holders of Old Limited Partnership Equity Interests shall be completely discharged.

**Class 14 – Old General Partnership Equity Interest - (*Impaired; Not Entitled to Vote.*)**

Class 14 consists of the General Partnership Equity Interests held by the Debtor's general partners. On the Effective Date, the Old General Partnership Equity Interest shall be cancelled and the Holders of Old General Partnership Equity Interest shall not be entitled to, and shall not receive or retain, any property or interest in the Debtor on account of such Old General Partnership Equity Interest. On the Effective Date, all obligations of the Debtor to Holders of Old General Partnership Equity Interests shall be completely discharged.

**D. Means of Implementing the Plan**

**1. Operation of Rental Units at the Property**

The Debtor shall continue to operate certain of the Condominium Units as a rental pool for purposes of generating Net Rental Income to pay the operating expenses of the Debtor, fund distributions to Holders and create any Real Estate Tax Escrow authorized under this Plan, until such time as the Debtor closes on the sale of all of the Condominium Units. NBV has objected to the Debtor's leasing program. Debtor will seek to reduce NBV's claim to the extent of the damages caused the Debtor and the estate caused by NBV and Northern Trust's unreasonable failure to consent and interference with the leasing program. Debtor estimates that this amount may exceed \$2 million.



**2. Sale and Purchase Money Financing of Condominium Units.**

Except to the extent inconsistent with the Plan, the Reorganized Debtor shall continue to market, sell and offer Purchase Money Mortgages with respect to ongoing sales of the Condominium Units at the Property, for the purpose of generating Net Proceeds of Sale of Condominium Units and Net Purchase Money Principal and Interest Income to pay operating expenses of the Debtor and to fund distributions to Holders, until such time as the Debtor closes on the sale of all of the Condominium Units. NBV objects to the Debtor's sale of Condominium Units at below the release prices set forth in the Construction Loan Agreement. Debtor contends that the Bankruptcy Court may authorize such sales and will seek authority to complete such sales in connection with confirmation.

**3. General Unsecured Creditor Reserve.**

After payment of operating expenses, Administrative Expenses, Allowed Priority and Allowed Secured Claims in accordance with this Plan, the Reorganized Debtor shall deposit all remaining Net Rental Income, Net Purchase Money Principal and Interest Income, and Net Proceeds of Sale of Condominium Units into an Unsecured Creditor Distribution Reserve at least annually. Upon each General Unsecured Claim Distribution Date, as determined by the Reorganized Debtor, but not less than 30 days after each anniversary of the Confirmation Date, or the date that is ten (10) days after the date such claim is Allowed by Final Order, Debtor shall pay Holders of an Allowed General Unsecured Claim, their Ratable Proportion of the General Unsecured Claim Cash Distribution. NBV contends that no payments may be made to Unsecured Creditors until its Allowed Secured Claim is paid in full.

**4. Conversion of Claims to New Partnership Units and Gift Distribution to Holders of Old Limited Partnership Equity Interests.**

This Plan will be further implemented by exchange of Egozi's Class 12 Unsecured Claim for the new General Partnership Interest and New Limited Partnership Interest, without the need for any further partnership action, and without any further action by Holders of the Old General Partnership Equity Interests and the Old Limited Partnership Equity Interests. Egozi shall gift the New General Partnership Interest to the General Partner and shall gift a Ratable Proportion of the New Limited Partnership Interest to the Holders of the Old Limited Partnership Equity Interests. NBV contends that this provision violates the absolute priority rule by providing for distribution to holders of interests prior to the payment in full of all senior claims.

**5 Cancellation of Existing Securities and Agreements.**

On the Effective Date, all agreements, documents and instruments relating to the Allowed Secured Claims, Old General Partnership Equity Interests, and all Old Limited Partnership Equity Interests shall be cancelled; *provided, however*, that the Mortgage shall

continue in effect and shall secure the Reorganized Debtor's obligation to the Holders of the Class 3 Claim and Class 4 Claim pursuant to the Plan.

## **6 Legal Form and Governance.**

(a) New Organizational Documents. The Debtor shall be deemed to have adopted its respective New Organizational Documents effective as of the Effective Date. On the Effective Date, or as soon thereafter as practicable, the Debtor shall file the applicable New Organizational Documents as required or deemed appropriate, with the appropriate Persons in the applicable jurisdiction of organization. The New Organizational Documents shall provide for the New General Partnership Units and Limited Partnership, among other things as deemed necessary, advisable or appropriate by the Debtor. Except to the extent amended or restated by applicable New Organizational Documents, the Debtor's Existing Organizational Documents will remain in full force and effect after the Effective Date.

(b) Manager of the General Partner of the Reorganized Debtor. On the Effective Date, the operation of the Reorganized Debtor shall become the general responsibility of its General Partner, subject to, and in accordance with, its New Organizational Documents or Existing Organizational Documents. The initial Manager of the General Partner of the Reorganized Debtor is Mario Egozi.

(c) Authorization. On the Effective Date, the adoption of the New Organizational Documents shall be authorized and approved in all respects, to be effective as of the Effective Date, without further action under applicable law, regulation, order, or rule, including without limitation, any action by the partners of the Debtor or the partners of the Reorganized Debtor. On the Effective Date, the cancellation and termination of all Old General Partnership Equity Interest and Old Limited Partnership Equity Interest, the authorization and issuance of the New General Partnership Equity Interest and the New Limited Partnership Interests, and all other matters provided in this Plan involving the legal structure or governance of the Reorganized Debtor shall be deemed to have occurred, been authorized, and be in effect from and after the Effective Date, without further action under applicable law, regulation, order, or rule, including, without limitation, any action by the partners of the Debtor or the Reorganized Debtor.

## **E. Securities Law and Tax Matters**

### **1. Exemption from Securities Laws.**

The issuance of the New General Partnership Interest and New Limited Partnership Interests (to the extent such interests constitute "securities" pursuant to this Plan shall be exempt from any securities laws registration requirements pursuant to section 1145 of the Bankruptcy Code.

The Debtor makes no representations concerning the right of any person to transfer any securities to be distributed pursuant to the Plan.

**2. Exemption from Transfer Taxes.**

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

**3. Expedited Tax Determination.**

The Debtor and the Reorganized Debtor may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtor for any and all taxable periods (or portions thereof) ending before or after the Petition Date through, and including, the Effective Date.

**F. Plan Provisions Governing Distribution**

**1. Date of Distributions**

Unless otherwise provided herein, any distributions to be made hereunder shall be made on the Effective Date, the General Unsecured Claim Distribution Date, or as soon as practicable thereafter and deemed made on the Effective Date. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**2. Distributions Concerning Disputed Unsecured Claims**

(a) **Disputed Secured Claim Reserve.** From and after the Effective Date, all Cash to be distributed on account of any Disputed Secured Claims, when and if such Disputed Secured Claims become Allowed, (a) will be maintained by and in the name of the Disbursing Agent in the Disputed Secured Claim Reserve, and will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims and, to the extent that all Disputed Secured Claims are not Allowed in full, such Cash shall be returned to the Reorganized Debtor for distribution in accordance with this Plan, (b) will be accounted for separately and (c) will not constitute property of the Reorganized Debtor except as provided in this Plan.

(b) **Reserved Amount.** The amount of Cash to be deposited in the Disputed Secured Claim Reserve shall be calculated as if each Disputed Secured Claim were an Allowed

Claim in its Face Amount, such that the Reserved amount shall include the Cash that such Holder of such Disputed Secured Claim would have received if such Claim were Allowed at its Face Amount.

(c) **Recourse.** Each Holder of a Disputed Secured Claim will have recourse only to the undistributed Cash held in the Disputed Secured Claim Reserve for satisfaction of the distributions to which Holders of Disputed Secured Claims are entitled under this Plan, and not to the Reorganized Debtor, its property or any assets previously distributed on account of any Allowed Claim.

### **3. Distributions Concerning Disputed General Unsecured Claims.**

(a) **Disputed General Unsecured Claims Reserve.** From and after the Effective Date, all Cash to be distributed on account of any Disputed General Unsecured Claims, when and if such Disputed General Unsecured Claims become Allowed, (a) will be maintained by and in the name of the Disbursing Agent in the Disputed General Unsecured Claim Reserve, and will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims and, to the extent that all Disputed General Unsecured Claims are not Allowed in full, for the benefit of Holders of Allowed General Unsecured Claims in accordance with Article VI of this Plan, (b) will be accounted for separately and (c) will not constitute property of the Reorganized Debtor except as provided in Article VI of this Plan.

(b) **Reserved Amount.** The amount of Cash to be deposited in the Disputed General Unsecured Claim Reserve shall be calculated as if each Disputed General Unsecured Claim were an Allowed Claim in its Face Amount, such that the Reserved amount shall include the aggregate Ratable Proportion of Cash that such Disputed General Unsecured Claims would receive if they were Allowed in their Face Amount.

(c) **Recourse.** Each Holder of a Disputed General Unsecured Claim will have recourse only to the undistributed Cash held in the Disputed General Unsecured Claim Reserve for satisfaction of the distributions to which Holders of Disputed General Unsecured Claims are entitled under this Plan, and not to the Reorganized Debtor, its property or any assets previously distributed on account of any Allowed Claim.

### **4. Disbursing Agent**

All distributions under this Plan shall be made by the Debtor as Disbursing Agent or such other entity designated by the Debtor as a Disbursing Agent on the Effective Date, which Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

### **5. Rights and Powers of Disbursing Agent**

(a) **Powers of the Disbursing Agent.** The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary

to perform its duties under this Plan, (ii) make all distributions contemplated hereby, (iii) employ professionals to represent it with respect to its responsibilities, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

(b) **Expenses Incurred on or After the Effective Date.** Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtor.

## **6. Delivery of Distributions**

Subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, as applicable, unless the Debtor or Reorganized Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim or interest by such Holder that contains an address for such Holder different from the address reflected for such Holder on the Schedules. In the event that any distribution to any Holder is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder, but no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of one year from the Effective Date or 6 months after such Claim is Allowed. After such date, all unclaimed property or interest in property shall revert to the Reorganized Debtor, and the Claim of any other Holder to such property or interest in property shall be discharged and forever barred.

## **7. Manner of Payment**

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. All distributions of Cash or the New Limited Partnership and New General Partnership Interests to the creditors of the Debtor under this Plan shall be made by, or on behalf of, the Debtor.

## **8. Setoffs and Recoupment**

The Debtor may, but shall not be required to, set off against, or recoup from, any Claim and the payments to be made pursuant to this Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor may have against the claimant, but neither the

failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any such claim it may have against such claimant.

**9. Allocation of Plan Distributions Between Principal and Interest**

Except as otherwise provided herein, to the extent that any Allowed Claim entitled to a distribution under this Plan consists of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

**10. De Minimis Distributions and Donation of Remaining General Unsecured Claim Cash Distribution Less Than \$1,000.00**

No distribution of less than One Thousand Dollars (\$1,000.00) shall be made to any Holder of an Allowed Claim. Such undistributed amount will be retained by the Disbursing Agent to be distributed pro rata at the time of final distributions to Holders of Claims in accordance with the Plan.

**11. Withholding and Reporting Requirements**

In connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Article VI(f) of the Plan.

**G. Procedures for Treating Disputed Claims**

**1. Objections**

Except as otherwise provided herein, as of the Effective Date, objections to, and requests for estimation of, Claims may be filed and prosecuted by the Reorganized Debtor, or such parties in interest as may be authorized by the Bankruptcy Court. Such objections and requests for estimation shall be served on the respective claimant and filed with the



Bankruptcy Court on or before the latest of (a) the deadline established under Local Rule 3007-I(B)(I), (b) one-hundred twenty (120) days after a proof of Claim has been filed with the Bankruptcy Court, (c) sixty (60) days after an application for allowance of an Administrative Expense has been filed with the Bankruptcy Court in the Case, or (d) with respect to certain Claims identified prior to the Confirmation Date by the Debtor, such other date as may be fixed by the Bankruptcy Court.

## **2. No Distributions Pending Allowance**

Notwithstanding any other provision hereof, if any portion of a Claim is disputed, no payment or distribution provided hereunder shall be made on account of the disputed portion of such Claim unless and until such Disputed Claim becomes Allowed. In lieu of distributions under this Plan to Holders of Disputed Secured Claims and Disputed General Unsecured Claims, the Disputed Claim Reserves will be established on the Effective Date to hold property for the benefit of these Claim Holders.

## **3. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of this Plan. As soon as practicable after the date of a Final Order allowing any Disputed Claim, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under this Plan. Any amounts that remain in any the Disputed General Unsecured Claim Reserve following resolution and payment of all Disputed General Unsecured Claims shall be distributed to the Holders of Allowed General Unsecured Claims in their respective Ratable Proportions.

## **H. Provisions Governing Executory Contracts and Unexpired Leases**

### **1. Treatment**

Except as otherwise provided herein, including in Article VI(H)(2) (Purchase and Sale Agreements) and Article VI(K)(5) (Indemnification Obligations), in the Confirmation Order or in any contract, instrument, release, indenture, or other agreement, or document entered into in connection with this Plan, as of the Effective Date the Debtor shall be deemed to have rejected each pre-petition executory contract and unexpired lease to which it is a party, unless such contract or lease (a) was previously assumed or rejected by the Debtor, (b) previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to assume filed on or before the Confirmation Date, or (d) is described in the Plan Addendum, as an executory contract or unexpired lease to be assumed. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.



Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

## **2. Purchase and Sale Agreements**

Except and to the extent previously assumed pursuant to an order of the Bankruptcy Court entered on or before the Confirmation Date, all Purchase and Sale Agreements deemed executory contracts assumable by the Debtor pursuant to section 365(a) of the Bankruptcy Code, shall be deemed assumed pursuant to the Confirmation Order and shall be enforceable by the Debtor according to their terms.

## **3. Cure Payments**

Any monetary amounts by which any executory contract or unexpired lease to be assumed hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor. If there is a dispute regarding (i) the nature or amount of any Cure, (ii) the ability of the Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be.

## **4. Rejection Damage Claims**

Proofs of all Claims arising out of the rejection of executory contracts and unexpired leases pursuant to this Plan shall be filed with the Bankruptcy Court claim and served upon the Debtor and its counsel not later than thirty (30) days after the earlier of (a) the date on which notice of the occurrence of the Effective Date has been served and (b) the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims not filed within such time shall be forever barred from being asserted against the Debtor, its Estate, the Reorganized Debtor, and their respective properties and interests.

## **I. Conditions Precedent to Confirmation**

The Plan shall not be confirmed unless and until the following conditions have been satisfied or waived: (a) The Confirmation Order has been entered on the docket by the Clerk

of the Bankruptcy Court; and (b) the form of the Plan, Plan Addendum, and the Confirmation Order have been approved by the Debtor.

**J. Conditions Precedent to Effectiveness**

The Effective Date shall not occur and this Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with Article IX of this Plan:

(a) The Confirmation Order becomes a Final Order.

(b) The New General Partnership Equity Interest has been distributed to Egozi and transferred to the General Partner (NBV will object to this distribution as previously discussed);

(c) All actions and all agreements, instruments, or other documents necessary to implement the terms and provisions of this Plan, including those actions identified in Article V of this Plan, are effected or executed and delivered, as applicable; and

(d) All authorizations, consents, and regulatory approvals, if any, required by the Debtor in connection with the consummation of this Plan are obtained and not revoked.

**1. Waiver of Conditions.**

Each of the conditions precedent in Article VI(I) and (J) hereof may be waived, in whole or in part by the Debtor. Any such waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action.

**2. Satisfaction or Failure of Conditions.**

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtor determines that one of the conditions precedent set forth in Article VI(I) and (J) hereof cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Debtor shall file a notice that the Plan has not become effective with the Bankruptcy Court and the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this Section, this Plan shall be null and void in all respects, and nothing contained in this Plan shall constitute a waiver or release of any Claims against the Debtor or the allowance of any Claim as an Allowed Claim.

**K. Effect of Confirmation**

**1. Revesting of Assets**

On the Effective Date, the Debtor, its properties and interests in property, and its operations shall vest in the Reorganized Debtor. From and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the terms and conditions of this Plan. As provided in Article VI(K)(8) hereof, the Reorganized Debtor shall retain Estate Causes of Action, other than those released in Article VI(K)(8) hereof.

**2. Binding Effect**

Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of this Plan shall bind any Holder of a Claim against, or Equity Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under this Plan, whether or not such Holder has accepted this Plan, and whether or not such Holder is entitled to a distribution under this Plan.

**3. Discharge of the Debtor**

Except to the extent otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan and the treatment of all Claims against or Equity Interests in the Debtor hereunder shall be in exchange for and in complete satisfaction, discharge, and release of all debts of, Claims against, and Equity Interests in, the Debtor of any nature whatsoever, known or unknown, including, without limitation, any interest accrued or expenses incurred thereon from and after the Petition Date, or against its Estate, the Reorganized Debtor, or its properties or interests in property.

Except as otherwise provided herein or in the Confirmation Order, upon the Effective Date, all Claims against and Equity Interests in the Debtor shall be satisfied, discharged and released in full exchange for the consideration, if any, provided hereunder. Except as otherwise provided herein or in the Confirmation Order, all Persons shall be precluded from asserting against the Debtor or the Reorganized Debtor or its properties or interests in property including the Property, any other Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

**4. Term of Injunctions or Stays**

(a) Except as otherwise expressly provided herein or in the Confirmation Order, all Persons who have held, hold or may hold Claims or Equity Interests will be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Debtor or Reorganized Debtor, or its Affiliates or

Representatives, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property of the Debtor or Reorganized Debtor, including the Property, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, and (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due to the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property of the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest.

(b) Unless otherwise provided in the Confirmation Order, all injunctions or stays arising under or entered during the Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until and after the Effective Date. NBV objects to the injunctive provisions because it contends that neither Egozi nor any other entity has made a “substantial contribution” as required applicable law.

## 5. Indemnification Obligations

The Debtor’s obligations under the Partnership Indemnities to indemnify any Indemnified Person with respect to Claims arising prior to the Effective Date will be deemed and treated as executory contracts that are assumed by the Reorganized Debtor pursuant to this Plan and sections 365 and 1123(b) of the Bankruptcy Code as of the Effective Date and the occurrence of the Effective Date shall be the only condition necessary to such assumption and all requirements for Cure and/or adequate assurance of future performance under section 365 for such assumption shall be deemed satisfied (the “Assumed Partnership Indemnities”).

## 6. Exculpation

As of the Confirmation Date, the Debtor and its Affiliates and Representatives shall be deemed to have solicited acceptances of this Plan of Reorganization in good faith and in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The Debtor, the Reorganized Debtor, and the Disbursing Agent, and each of their respective Affiliates and Representatives shall have no liability to any Holder of any Claim or Equity Interest or any other Person for any act or omission taken or not taken in good faith in connection with, or arising out of, the Case, the Disclosure Statement, this Plan, the solicitation of votes for and the pursuit of confirmation of this Plan, the offer and issuance of any securities under this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for willful misconduct or gross negligence as determined by a Final Order and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

## 7. Releases

For good and valuable consideration, including, but not limited to, the distributions to be made under the Plan and the acceptance of the terms hereof effective as of the Effective Date, each Releasee is hereby released by all of the creditors of the Debtor, all Persons who have held, hold or may hold any Claim or Equity Interest, all other Persons, the Debtor, the Estate, and the Reorganized Debtor from any and all claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, directly or indirectly arising from or related to the Debtor, existing as of the Effective Date or thereafter arising, in law, at equity, or otherwise, that any of the creditors of the Debtor, any Persons who have held, hold or may hold any Claim or Equity Interest, any other Persons, the Debtor, the Estate or the Reorganized Debtor would have been legally entitled to assert in its own right (whether individually or collectively) or that any creditors of the Debtor, any Persons who have held, hold or may hold any Claim or Equity Interest, or any other Person would have been legally entitled to assert on behalf of the Debtor or the Estate or the Reorganized Debtor, based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, including without limitation, claims, actions, and causes of action arising from actions taken or not taken in good faith in connection with the Case, the Plan, the Construction Loan Agreement, Mortgage, the Guarantees, all agreements, documents and instruments relating to the Old General Partnership Interests, all Old Limited Partnership Interests, and the restructuring of the Debtor and other transaction contemplated by this Plan; *provided, however*, that nothing herein shall be deemed to release any rights, claims, or interests that any such party may be receiving or retaining pursuant to the Plan on or after the Effective Date. All Persons shall be precluded and permanently enjoined from asserting against the Releasees, and their respective assets and properties, any and all claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities whatsoever which are released under this Article VI(K)(7). Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

## 8. Causes of Action

Effective as of the Effective Date, Estate Causes of Action, including all preference or other avoidance action claims and actions of the Debtor, including, but not limited to, those arising under chapter 5 of the Bankruptcy Code, shall be retained by the Reorganized Debtor.

## L. Retention of Jurisdiction

The Bankruptcy Court shall have exclusive jurisdiction of all matters, except as expressly noted herein, arising out of, or related to, the Case and this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims including any Administrative Expenses resulting therefrom;

(b) To determine any and all adversary proceedings, applications, and contested matters that are pending on the Effective Date;

(c) To ensure that distributions to Holders of Allowed Administrative Expenses and Allowed Claims are accomplished as provided herein;

(d) To hear and determine any timely objections to, or requests for estimation of, Administrative Expenses or proofs of claims, including, without limitation, any objections to the classification of any Administrative Expense, Claim or Equity Interest, and to allow or disallow any Disputed Administrative Expense or Disputed Claim, in whole or in part;

(e) To resolve disputes as to the ownership of any Administrative Expense, Claim or Equity Interest;

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

(g) To issue such orders in aid of execution of this Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

(h) To consider any amendments to or modifications of this Plan, or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) To hear and determine all applications of retained professionals under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;

(j) To hear and determine disputes or issues arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, any transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing, or any settlement approved by the Bankruptcy Court;

(k) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtor prior to the Effective Date, or request by the Reorganized Debtor after the Effective Date, for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

(l) To hear any other matter not inconsistent with the Bankruptcy Code;

(m) To hear and determine all disputes involving the existence, scope, and nature of the discharges, releases and injunctions granted under this Plan, the Confirmation Order, or the Bankruptcy Code;

(n) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any Person with the consummation or implementation of this Plan;

(o) To enter a final decree closing the Case; and

(p) To hear any claim, matter or chose in action, whether or not it has been commenced prior to the Effective Date, that the Debtor or Reorganized Debtor may prosecute, including any Estate Causes of Action which has not been liquidated prior to the Effective Date, including, without limitation, an action to foreclose any Purchase Money Mortgage held by the Reorganized Debtor.

## **M. Miscellaneous Provisions**

### **1. Payment of Statutory Fees**

All fees payable under section 1930, chapter 123, title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All such fees that arise after the Effective Date shall be paid by the Reorganized Debtor. The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), through Confirmation, within ten (10) business days of entry of the Confirmation Order. The Reorganized Debtor shall file with the Court post-confirmation Quarterly Operating Reports and pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements, until the earlier of the closing of this case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an Order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code.

### **2. Modification of Plan**

The Plan may be modified by the Debtor, in accordance with section 1127 of the Bankruptcy Code.

### **3. Revocation of Plan**

The Debtor reserves the right, at any time prior to the entry of the Confirmation Order, to revoke and withdraw the Plan.

### **4. Severability of Plan Provisions**

In the event that prior to the Confirmation Date, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted.



Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

**5. Governing Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to this Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to the principles of conflict of laws.

**6. Compliance with Tax Requirements**

In connection with the consummation of this Plan, any party issuing any instrument or making any distribution under this Plan, including any party described in Article VI(F) above, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under this Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under this Plan has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**7. Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**8. Notices.**

All notices, requests, and demands to or upon the Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Harbour East Development, Ltd.  
c/o Mario Egozi  
7935 East Drive  
North Bay Village, FL 33141

- and-

Paul M. Bauch, Esq.  
BAUCH & MICHAELS, LLC  
53 W. Jackson Boulevard, Suite 1115  
Chicago, Illinois 60604  
Telephone: (312) 588-5000  
Facsimile: (312) 427-5709  
Florida Bar No. 363677

- and-

Michael L. Schuster, Esq.  
GENOVESE JOBLOVE & BATTISTA, P.A.  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
Telephone: (305) 349-2300  
Facsimile : (305) 349-2310  
Florida Bar No. 57119

## **9. Filing or Execution of Additional Documents.**

On or before the Effective Date, and without the need for any further order or authority, the Debtor or Reorganized Debtor shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to the Debtor or Reorganized Debtor as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

## **VII.**

### **CERTAIN FACTORS AFFECTING THE DEBTOR**

#### **A. Certain Bankruptcy Law Considerations**

##### **1. Risk of Non-Confirmation of the Plan of Reorganization**

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes.

## **2. Non-Consensual Confirmation**

In the event any impaired class of claims or equity interests does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the Plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the Plan, the bankruptcy court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. Because Class 13 (Old Limited Partnership Equity Interests) and Class 14 (Old General Partnership Equity Interests) are deemed to have rejected the Plan, these requirements must be satisfied with respect to Class 6. The Debtor believes that the Plan satisfies these requirements; however, there can be no guarantee that the Bankruptcy Court will make such a finding.

## **3. Risk of Non-Occurrence of the Effective Date**

Although the Debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing.

## **4. Risk Relating to NBV Election and Valuation of Allowed Secured Claim**

To the extent that NBV is entitled to elect to waive its unsecured claim and treat its claim as fully secured, NBV would be entitled to receive aggregate payments under the Plan equal to the allowed amount of its claim. Depending upon the Bankruptcy Court's determination of the allowed amount of the NBV claim, such an election could adversely impact distributions that other creditors are likely to receive under the Plan. The Bankruptcy Court's determination of the value of the Allowed Amount of NBV's Secured Claim could also adversely impact distributions that other creditors are likely to receive under the Plan, because it could increase the Debtor's interest expense under the Plan.

## **B. Additional Factors to Be Considered**

### **1. The Debtor Has No Duty to Update**

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtor has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

### **2. No Representations Outside of This Disclosure Statement Are Authorized**

No representations concerning or related to the Debtor, the Reorganization Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your

acceptance, or rejection, of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

**3. Projections and Other Forward Looking Statements Are Not Assured, and Actual Results Will Vary**

Certain of the information contained in this Disclosure Statement is, by nature, forward looking, and contains estimates and assumptions which might ultimately prove to be incorrect, and contains projections which may be materially different from actual future experiences. There are uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various classes that might be allowed.

**4. Claims Could Be More Than Projected**

The Allowed amount of Claims in each class could be significantly more than projected, which, in turn, could cause the value of distributions to be reduced substantially. If Administrative Expenses, Priority Non-Tax Claims, Real Estate Tax Secured Claims, Northern Trust/NBV Secured Construction Loan Claims, Egozi Secured Subrogation Claim, Whirlpool Secured Claim, Revuelta Vega Leon Secured Claim, Purchaser Deposit Secured Claims, Association Secured Claim, and/or Purchaser Contract Litigation Attorney Secured Claim exceed projections, it may impair the value of the General Unsecured Claim Cash Distribution to be made to the holders of Allowed Class 11 General Unsecured Claims.

**5. No Legal or Tax Advice Is Provided to You by This Disclosure Statement**

The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each creditor or Equity Interest holder should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Equity Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

**6. No Admissions Made**

Nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Equity Interests.

**7. Business Factors and Competitive Conditions**

**a. General Economic Conditions**

The Debtor believes that the general economic conditions of the United States economy will be stable and most likely improve over the next several years. The stability and improvement of economic conditions is subject to many factors outside the Debtor's control, including interest rates, inflation, unemployment rates, consumer spending, war, terrorism and other such factors. Any one of these or other economic factors could have a significant impact on the operating performance of the Reorganized Debtor.

**b. Business Factors**

The Debtor believes that it will succeed in implementing and executing its business plan and operational restructuring for benefits of all constituencies. However, there are risks that the goals of the Debtor's going-forward business plan and operational restructuring strategy will not be achieved. In such event, the Debtor may be forced to sell all or parts of its assets, develop and implement further restructuring plans not contemplated herein or become subject to further insolvency proceedings.

**c. Competitive Conditions**

In addition to uncertain economic and business conditions, the Reorganized Debtor will likely face competitive pressures. The Reorganized Debtor's anticipated operating performance may be impacted by these and other unpredictable activities by competitors.

**d. Other Factors**

Other factors that holders of Claims should consider are potential regulatory and legal developments that may impact the Reorganized Debtor. Although these and other such factors are beyond the Debtor's control and cannot be determined in advance, they could have a significant impact on the Reorganized Debtor's operating performance.

**8. Lack of Trading Market**

It is not contemplated that the New Limited Partnership Interests and the New General Partnership Interest (the "1145 Securities") will be registered under the Securities Act or the Securities Exchange Act of 1934 as of the Effective Date nor is it contemplated that the 1145 Securities will be listed on a national securities exchange or the NASDAQ market system. Accordingly, it is not contemplated that there will be any trading market for such 1145 Securities and there can be no assurance that a holder of any of the 1145 Securities will be able to sell such interests in the future or as to the price at which any such sale may occur.

**9. Restrictions on Transfer**

Holders of 1145 Securities issued under the Plan will be unable freely to transfer or to sell their securities except pursuant to (i) an effective registration of such securities under the Securities Act and under equivalent state securities or “blue sky” laws or (ii) pursuant to an available exemption from registration requirements.

**C. Certain Tax Matters**

For a summary of certain federal income tax consequences of the Plan to holders of claims and equity interests and to the Debtor, see Article XII below, entitled “CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.”

**VIII.  
VOTING PROCEDURES AND REQUIREMENTS**

**A. Voting Deadline**

IT IS IMPORTANT THAT THE HOLDERS OF CLAIMS IN CLASS 1 (PRIORITY NON-TAX CLAIMS), CLASS 2 (REAL ESTATE TAX SECURED CLAIMS), CLASS 3 (NORTHERN TRUST/NBV SECURED CONSTRUCTION LOAN CLAIMS), CLASS 4 (EGOZI SECURED SUBROGATION CLAIM), CLASS 5 (WHIRLPOOL SECURED CLAIM), CLASS 6 (REVUELTA VEGA LEON SECURED CLAIM), CLASS 7 (PURCHASER DEPOSIT SECURED CLAIMS), CLASS 8 (ASSOCIATION SECURED CLAIM), CLASS 9 (PURCHASER CONTRACT LITIGATION ATTORNEY SECURED CLAIM), CLASS 10 (NORTHERN TRUST/NBV UNSECURED CLAIM), CLASS 11 (GENERAL UNSECURED CLAIMS), AND CLASS 12 (EGOZI UNSECURED CLAIM), TIMELY EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN OF REORGANIZATION. ALL KNOWN HOLDERS ENTITLED TO VOTE ON THE PLAN HAVE BEEN SENT A BALLOT TOGETHER WITH THIS DISCLOSURE STATEMENT. SUCH HOLDERS SHOULD READ THE BALLOT CAREFULLY AND FOLLOW THE INSTRUCTIONS CONTAINED THEREIN. PLEASE USE ONLY THE BALLOT THAT ACCOMPANIES THIS DISCLOSURE STATEMENT.

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW BEFORE THE VOTING DEADLINE OF 4:00 P.M., EASTERN TIME, ON                     , 2011.

IF A BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE DEBTOR’S VOTING AGENT AT THE NUMBER SET FORTH BELOW.

ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN.

ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN.

FAXED COPIES OF BALLOTS WILL NOT BE ACCEPTED.

IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT DEBTOR'S COUNSEL AT:

Michael L. Schuster, Esq.  
GENOVESE JOBLOVE & BATTISTA, P.A.  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
Telephone: (305) 349-2300  
Facsimile : (305) 349-2310

Additional copies of this Disclosure Statement are available upon request made to the Debtor's counsel, at the address set forth immediately above.

**B. Holders of Claims Entitled to Vote**

Class 2 Real Estate Tax Secured Claims, Class 3 Northern Trust/NBV Secured Construction Loan Claims, Class 4 Egozi Secured Subrogation Claim, Class 5 Whirlpool Secured Claim, Class 6 Revuelta Vega Leon Secured Claim, Class 7 Purchaser Deposit Secured Claims, Class 8 Association Secured Claim, Class 9 Purchaser Contract Litigation Attorney Secured Claim, Class 10 Northern Trust/NBV Unsecured Claim, Class 11 General Unsecured Claims, and Class 12 Egozi Unsecured Claim are the only classes of Claims under the Plan that are impaired and entitled to vote to accept or reject the Plan.

Each holder of an Allowed Claim in Class 2 Real Estate Tax Secured Claims, Class 3 Northern Trust/NBV Secured Construction Loan Claims, Class 4 Egozi Secured Subrogation Claim, Class 5 Whirlpool Secured Claim, Class 6 Revuelta Vega Leon Secured Claim, Class 7 Purchaser Deposit Secured Claims, Class 8 Association Secured Claim, Class 9 Purchaser Contract Litigation Attorney Secured Claim, Class 10 Northern Trust/NBV Unsecured Claim, Class 11 General Unsecured Claims, and Class 12 Egozi unsecured Claim, entitled to vote, may vote to accept or reject the Plan.

**C. Vote Required for Acceptance by a Class**

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims occurs when holders of at least two-thirds in dollar amount and more than one half in number of the allowed claims of that class that cast ballots for acceptance or rejection of the Plan of reorganization vote to accept the Plan. Thus, acceptance of Class 2 Real Estate Tax Secured Claims, Class 3 Northern Trust/NBV Secured Construction Loan Claims, Class 4 Egozi Secured Subrogation Claim, Class 5 Whirlpool Secured Claim, Class 6 Revuelta Vega



Leon Secured Claim, Class 7 Purchaser Deposit Secured Claims, Class 8 Association Secured Claim, Class 9 Purchaser Contract Litigation Attorney Secured Claim, Class 10 Northern Trust/NBV Unsecured Claim, Class 11 General Unsecured Claims, and Class 12 Egozi Unsecured Claim will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the Claims in the respective class that cast their ballots vote in favor of acceptance.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

**D. Voting Procedures**

**1. Holders of Class 1 Priority Non-Tax Claims**

Holders of Allowed Priority Non-Tax Claims as of the Record Date are unimpaired and not permitted to vote.

**2. Holder of Class 2 Real Estate Tax Secured Claims**

The holder of the Allowed Real Estate Tax Secured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**3. Holder of Class 3 Northern Trust/NBV Secured Construction Loan Claims**

The holder of the Allowed Northern Trust/NBV Secured Construction Loan Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**4. Holder of Class 4 Egozi Secured Subrogation Claim**

The holder of the Allowed Egozi Secured Subrogation Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**5. Holder of Class 5 Whirlpool Secured Claim**

The holder of the Allowed Whirlpool Secured Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**6. Holder of Class 6 Revuelta Vega Leon Secured Claim**

The holder of the Allowed Revuelta Vega Leon Secured Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**7. Holder of Class 7 Purchaser Deposit Secured Claims**

The holder of the Allowed Purchaser Deposit Secured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**8. Holder of Class 8 Association Secured Claim**

The holder of the Allowed Association Secured Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**9. Holder of Class 9 Purchaser Contract Litigation Attorney Secured Claim**

The holder of the Allowed Purchaser Contract Litigation Attorney Secured Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**10. Holder of Class 10 Northern Trust/NBV Unsecured Claim**

The holder of the Allowed Northern Trust/NBV Unsecured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**11. Holder of Class 11 General Unsecured Claims**

The holders of the Allowed General Unsecured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**12. Holder of Class 12 Egozi Unsecured Claim**

The holders of the Allowed Egozi Unsecured Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to

the Debtor's Counsel so that they are received by the Debtor's Counsel before the Voting Deadline.

**IX.**  
**CONFIRMATION OF THE PLAN OF REORGANIZATION**

**A. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a plan of reorganization. As set forth in the Disclosure Statement Order, the Bankruptcy Court has scheduled the confirmation hearing for \_\_\_\_\_, 2011. The confirmation hearing 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 or any subsequent adjourned confirmation hearing.

Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of claims or interests held or asserted by the objector against the Debtor's estate or property, the basis for the objection and the specific grounds therefore, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon: (i) BAUCH & MICHAELS, LLC 53 W. Jackson Boulevard, Suite 1115 Chicago, Illinois 60604 Tel: (312) 588-5000 Fax: (312) 427-5709 (attention Paul M. Bauch, Esq.) (attorneys for the Debtor); (ii) GENOVESE JOBLOVE & BATTISTA, P.A. 100 Southeast Second Street, Suite 4400 Miami, Florida 33131 Telephone: (305) 349-2300 Facsimile : (305) 349-2310 (attention Michael L. Schuster, Esq.) (Attorneys for the Debtor); (iii) the Office of the United States Trustee, Southern District of Florida, 51 S.W. 1<sup>st</sup> Ave., Suite 1204, Miami, FL 33130 so as to be received no later than 4:00 p.m. (Eastern Time) on \_\_\_\_\_ 2011

Objections to confirmation of the Plan of Reorganization are governed by Bankruptcy Rule 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**B. Requirements for Confirmation of the Plan of Reorganization**

**1. Requirements of Section 1129(a) of the Bankruptcy Code**

**a. General Requirements**

At the confirmation hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied:

(1) The Plan complies with the applicable provisions of the Bankruptcy Code.

(2) The Debtor has complied with the applicable provisions of the Bankruptcy Code.

(3) The Plan has been proposed in good faith and not by any means proscribed by law.

(4) Any payment made or promised by the Debtor or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Reorganization Case, or in connection with the Plan and incident to the Reorganization Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

(5) The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan of Reorganization, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity holders and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider. With respect to each class of claims or equity interests, each holder of an impaired claim or impaired equity interest either has accepted the Plan or will receive or retain under the Plan on account of such holder's claim or equity interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.

(6) Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (discussed below), each class of claims or equity interests has either accepted the Plan or is not impaired under the Plan.

(7) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that administrative expenses and priority claims other than priority tax claims will be paid in full on the Effective Date and that priority tax claims will receive on account of such claims deferred Cash payments, over a period not exceeding six years after the date of assessment of such claims, of a value, as of the Effective Date, equal to the allowed amount of such claims.

(8) At least one class of impaired claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim in such class.

(9) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor

under the Plan, unless such liquidation or reorganization is proposed in the Plan. See discussion of “Feasibility” below.

**b. Best Interests Test**

As described above, the Bankruptcy Code requires that each holder of an impaired claim or equity interest either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

The first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor’s assets and properties in the context of a chapter 7 liquidation case. The gross amount of cash available would be the sum of the proceeds from the disposition of the Debtor’s assets and the cash held by the Debtor at the time of the commencement of the chapter 7 case. The next step is to reduce that total by the amount of any claims secured by such assets, the costs and expenses of the liquidation, and such additional administrative expenses and priority claims that may result from the termination of the Debtor’s business and the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code (see discussion below). Finally, taking into account the time necessary to accomplish the liquidation, the present value of such allocations may be compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The Debtor’s costs of liquidation under chapter 7 would include the fees payable to a chapter 7 trustee in bankruptcy, as well as those that might be payable to attorneys and other professionals that such a trustee may engage, plus any unpaid expenses incurred by the Debtor during the chapter 11 case and allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals, and costs and expenses of members of any statutory committee of unsecured creditors appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code and any other committee so appointed. Moreover, the deficiency claims of the Secured Lenders, would not be waived in a chapter 7 liquidation, and additional claims would arise by reason of the breach or rejection of obligations incurred and executory contracts or leases entered into by the Debtor both prior to, and during the pendency of, the chapter 11 case.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 priority and unsecured claims. Under the absolute priority rule, no junior creditor would receive any distribution until all senior creditors are paid in full, with interest, and no equity holder receives any distribution until all creditors are paid in full, with interest.

The Debtor believes that in a chapter 7 case, holders of Old Limited Partnership Equity Interests and Old General Partnership Equity Interest would receive no distributions of property. Accordingly, the Plan satisfies the rule of absolute priority.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in a chapter 11 case, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail and (iii) substantial increases in claims which would be satisfied on a priority basis, the Debtor has determined that confirmation of the Plan will provide each creditor and equity holder with a recovery that is not less than it would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Moreover, the Debtor believes that the value of any distributions from the liquidation proceeds to each class of allowed claims in a chapter 7 case would be the same or less than the value of distributions under the Plan because such distributions in a chapter 7 case may not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for a year or more after the completion of such liquidation in order to resolve the claims and prepare for distributions. In the event litigation were necessary to resolve claims asserted in the chapter 7 case, the delay could be further prolonged and administrative expenses further increased.

**The Debtor’s liquidation analysis is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of the assets of the Debtor. The analysis is based upon a number of significant assumptions which are described. The liquidation analysis does not purport to be a valuation of the Debtor’s assets and is not necessarily indicative of the values that may be realized in an actual liquidation.**

### **c. Liquidation Analysis**

The Debtor’s chapter 7 liquidation analysis and assumptions are set forth in Exhibit 3 to this Disclosure Statement. The Liquidation Analysis demonstrates that under an orderly liquidation, the estimated gross liquidation proceeds would be in the range of approximately \$6.7 to \$9.2 million. As of September 2, 2010, the secured claims are expected to total approximately \$8 to \$12.6 million (including principal, interest, and other costs).

Following the payment of between approximately \$900,000 and \$1,300,000 in liquidation costs, which includes administrative expenses pursuant to 503(b), approximately \$5,800,000 to \$7,900,000 would remain in assets available for distribution (using the low end and high end of liquidation costs and recovery estimates). Even using the high end of the recovery estimates, liquidation would only recover 60% of the value of secured claims. Under this liquidation scenario, depending on the bankruptcy Court’s determination of the priority of the secured claims, only three creditors would receive any proceeds based upon their

Allowed Secured Claims: the taxing authority (100%); Cielo on the Bay Condominium Association (100%); and NBV (65%). This analysis demonstrates that there would be no assets left for any recovery to holders of other Allowed Secured Claims and Allowed Unsecured Claims.

**d. Feasibility**

The Bankruptcy Code requires a debtor to demonstrate that confirmation of a plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor unless so provided by the plan of reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its financial obligations as contemplated thereunder. Based upon its analysis, the Debtor believes that it will be able to make all payments required to be made pursuant to the Plan and that it will need no further financial reorganization. The Debtor's projections are set forth in Exhibit 4 to this Disclosure Statement.

**2. Requirements of Section 1129(b) of the Bankruptcy Code**

The Bankruptcy Court may confirm the Plan over the rejection or deemed rejection of the Plan by a class of claims or equity interests if the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such class.

**a. No Unfair Discrimination**

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under a plan of reorganization. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair."

**b. Fair and Equitable Test**

This test applies to classes of different priority (e.g., unsecured versus secured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. As to the dissenting class, the test sets different standards, depending on the type of claims or interests in such class.

**c. Secured Claims**

Each holder of an impaired secured claim either (i) retains its liens on the property (or if sold, on the proceeds thereof) to the extent of the allowed amount of its secured claim and receives deferred Cash payments having a value, as of the effective date of the Plan, of at least the allowed amount of such claim or (ii) receives the "indubitable equivalent" of its allowed secured claim.



**d. Unsecured Claims**

Either (i) each holder of an impaired unsecured claim receives or retains under the Plan property of a value equal to the amount of its allowed unsecured claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive or retain any property under the Plan of reorganization.

**e. Equity Interests**

Either (i) each equity interest holder will receive or retain under the Plan of reorganization property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such stock and (b) the value of the stock, or (ii) the holders of interests that are junior to the equity interests of the dissenting class will not receive or retain any property under the Plan of reorganization.

The Debtor believes the Plan will satisfy both the “no unfair discrimination” requirement and the “fair and equitable” requirement notwithstanding that Class 13 Old Limited Partnership Equity Interests and Class 14 Old General Partnership Equity Interest are deemed to reject the Plan, because as to Class 13 and Class 14, there is no class of equal priority receiving more favorable treatment and no class that is junior to such a dissenting class will receive or retain any property on account of the claims or equity interests in such class.

**X.  
FINANCIAL INFORMATION**

The consolidated pro forma unaudited balance sheets for each of the two fiscal years ended 2008 and 2009 of the Debtor are contained in Exhibit 2 to this Disclosure Statement, and the full text of which is incorporated herein by reference. This financial information is provided to permit the holders of claims and equity interests to better understand the Debtor’s historical business performance and the impact of the Case on the Debtor’s business.

**XI.  
ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF  
THE PLAN OF REORGANIZATION**

If the Plan is not confirmed and consummated, the alternatives to the Plan include (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code and (ii) an alternative chapter 11 plan of reorganization.

**A. Liquidation Under Chapter 7**

If no plan can be confirmed, the Debtor’s chapter 11 case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. In a chapter 7 liquidation, the Debtor believes that there would be

no distribution to the holders of Administrative Expense Claims, General Unsecured Claims, or the holders of Equity Interests.

A discussion of the effects that a chapter 7 liquidation would have on the recovery of holders of claims and equity interests and the Debtor's liquidation analysis are set forth in Article IX(B)(1)(b) above, entitled "CONFIRMATION OF THE PLAN OF REORGANIZATION -- Requirements for Confirmation of the Plan of Reorganization -- Requirements of Section 1129(a) of the Bankruptcy Code -- Best Interests Test." The Debtor believes that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Plan – and likely no distributions to any creditors other than the secured creditors – because of (a) the loss of any all going concern value (since the Debtor could not continue to operate), (b) the likelihood that the assets of the Debtor would have to be sold or otherwise disposed of in a less orderly fashion over a shorter period of time, (c) additional administrative expenses involved in the appointment of a trustee and (d) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations.

#### **B. Alternative Plan of Reorganization**

If the Plan is not confirmed the Debtor or any other party in interest could attempt to formulate a different chapter 11 plan of reorganization. Such a plan of reorganization might involve either a reorganization and continuation of the Debtor's business or an orderly liquidation of its assets. With respect to an alternative plan, the Debtor has explored various alternatives in connection with the formulation and development of the Plan. The Debtor believes that the Plan, as described herein, enables creditors and equity holders to realize the most value under the circumstances. In a liquidation after Confirmation, the Debtor's assets might be sold in an orderly fashion over a more extended period than in a liquidation under chapter 7, possibly resulting in somewhat greater (but indeterminate) recoveries than would be obtained in chapter 7. Further, if a trustee were not appointed, because such appointment is not required in a chapter 11 case, the expenses for professional fees would most likely be lower than those incurred in a chapter 7 case; though any savings may be reduced by the costs of professionals such as investment bankers if such were utilized. Although preferable to a chapter 7 liquidation, the Debtor believes that any alternative liquidation under chapter 11 is a much less attractive alternative to creditors and equity holders than the Plan because of the greater return provided by the Plan.

## **XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and to the holders of Class 11 General Unsecured Claims. The following summary does not address the U.S. federal income tax consequences to holders whose Claims are unimpaired or otherwise may be entitled to payment in full in Cash under the Plan (e.g., Administrative Expense Claims, Priority Non-

Tax Claims, and other secured claims), or holders of Old Limited Partnership Equity Interests and the Old General Partnership Equity Interest that are extinguished without a distribution in exchange therefore.

The following summary is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the "IRS"), all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary generally does not address foreign, state or local tax consequences of the Plan, nor does it address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, persons not holding their Claims as capital assets, financial institutions, tax-exempt organizations, persons holding Claims who are not the original holders of those Claims or who acquired such Claims at an acquisition premium, and persons who have claimed a bad debt deduction in respect of any Claims).

*Accordingly, the following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim.*

*IRS Circular 230 Notice: To ensure compliance with IRS Circular 230, holders of Claims and Equity Interests are hereby notified that: (A) any discussion of federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by holders of Claims or Equity Interests for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtor of the transactions or matters addressed herein; and (c) holders of Claims and Equity Interests should seek advice based on their particular circumstances from an independent tax advisor.*

#### **A. Consequences to Holders of Class 11 Claims**

Pursuant to the Plan, the holders of Allowed General Unsecured Claims (Class 11) will receive a Cash distribution in satisfaction and discharge of their Claims. The following discussion does not necessarily apply to holders who have Claims in more than one class relating to the same underlying obligation. Such holders should consult their tax advisors regarding the effect of such dual status obligations on the federal income tax consequences of the Plan to them.

In general, each holder of an Allowed General Unsecured Claim, should recognize gain or loss in an amount equal to the difference between (1) the amount of Cash received by the holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (2) the holder's adjusted tax basis in its Claim (other than any basis attributable to accrued but unpaid interest). Pursuant to the Plan, distributions to any holder of an Allowed General Unsecured Claim will be allocated first to the original principal amount of such Claim as determined for federal income tax purposes and then, to the extent the consideration exceeds such amount, to any portion of such Claim representing accrued original issue discount ("OID") or accrued but unpaid interest.

However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received by a holder of debt is received in satisfaction of accrued interest or OID during its holding period, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, a holder will generally recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full. Each holder is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of losses realized in respect of Allowed General Unsecured Claims for federal income tax purposes.

Where gain or loss is recognized by a holder of an Allowed General Unsecured Claim the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was originally issued at a discount or a premium, whether the Claim was acquired at a market discount, and whether and to what extent the holder previously had claimed a bad debt deduction in respect of that Claim.

## **B. Information Reporting and Withholding**

All distributions to holders of Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of

transactions in which the taxpayer participated, including, among other types of transactions, the following: (1) certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds; and (2) certain transactions in which the taxpayer's book-tax differences exceed a specified threshold in any tax year. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

*The foregoing summary has been provided for informational purposes only. All holders of Claims receiving a distribution under the Plan are urged to consult their tax advisors concerning the federal, state, local and foreign tax consequences applicable under the Plan.*

### XIII. CONCLUSION

The Debtor believes that confirmation and implementation of the Plan is in the best interests of all creditors, and urge holders of impaired Claims in Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10, Class 11, and Class 12 to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than 4:00 p.m. (Eastern Time) on the Voting Deadline.

Dated: December 15, 2010

Respectfully submitted,

HARBOUR EAST DEVELOPMENT, LTD.

By: /s/ Paul M. Bauch, Esq.

By: /s/ Michael L. Schuster, Esq.

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# EXHIBIT 1

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.com](http://www.flsb.uscourts.com)

In re:

Case No. 10-20733-BKC-AJC

HARBOUR EAST DEVELOPMENT, LTD

Chapter 11

Debtor.

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**DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION**

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Dated: December 15, 2010



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**PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Harbour East Development, Ltd. (the “HED” or the “Debtor”), as the debtor and debtor in possession hereby proposes the following chapter 11 plan of reorganization, pursuant to section 1121(a) of the Bankruptcy Code:

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

A. Definitions.

The following terms used herein shall have the respective meanings defined below:

- 1.1 *Administrative Expense* means any right to payment constituting a cost or expense of administration of the Case that is Allowed under sections 503(b), 507(a)(l), and 507(b) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtor’s Estate, (b) any actual and necessary costs and expenses of operating the Debtor’s business, (c) any indebtedness or obligations incurred or assumed by the Debtor during the Case, (d) any compensation for professional services rendered and reimbursement of expenses incurred, to the extent Allowed by Final Order under section 330 or 503 of the Bankruptcy Code, (e) all fees and charges assessed against the Estate under section 1930 of title 28 of the United States Code, and (f) cure payments for executory contracts and unexpired leases that are assumed under section 365 of the Bankruptcy Code.
- 1.2 *Affiliate* (i) with respect to the Debtor, has the meaning set forth in section 101(2) of the Bankruptcy Code, and (ii) with respect to any Person (including, without limitation, the Debtor) means another Person who controls, is controlled by, or is under common control with, such Person.
- 1.3 *Allowed* means (i) with reference to any Claim, (a) any Claim against the Debtor, which has been listed by the Debtor in its Schedules (as such Schedules may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1007) as liquidated in amount and not disputed or contingent as to liability and for which no proof of Claim has been filed, (b) any Claim as to which the liability of the Debtor and the amount thereof are determined by a Final Order, or (c) any Claim against the Debtor allowed pursuant to this Plan, and (ii) with reference to any Claim or Administrative Expense, (a) any Claim or Administrative Expense that is the subject of a timely filed proof of Claim or request for an Administrative Expense as to which no objection to allowance or request for estimation has been interposed on or before the applicable period of limitation fixed by Section 7.1 of this Plan or otherwise ordered by the Bankruptcy Court, or as to which any objection or request for

estimation has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder, (b) any Claim or Administrative Expense expressly allowed under this Plan, or (c) any Claim or Administrative Expense allowed under section 502, 503, or 1111 of the Bankruptcy Code. Unless otherwise specified in this Plan or ordered by the Bankruptcy Court, “Allowed Claim” or “Allowed Administrative Expense” shall not include interest on such Claim or Administrative Expense from and after the Petition Date.

- 1.4 *Association* means the CIELO on the Bay Condominium Association, Inc., a Florida not-for-profit corporation.
- 1.5 *Assumed Partnership Indemnities* shall have the meaning set forth in Section 10.5 hereof.
- 1.6 *Assumed Purchase and Sale Agreements* mean all Prepetition Purchase and Sale Agreements that are not rejected in accordance with 11 U.S.C. § 365.
- 1.7 *Bankruptcy Code* means title 11, United States Code, as amended from time to time, as applicable to the Case.
- 1.8 *Bankruptcy Court* means the United States Bankruptcy Court for the Southern District of Florida, Miami Division.
- 1.9 *Bankruptcy Rules* means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075, title 28, United States Code, as amended from time to time, as applicable to the Case, and any Local Rules of the Bankruptcy Court.
- 1.10 *Business Day* means any day other than a Saturday, a Sunday, or any other day which is a court or legal holiday observed in the United States of America or the State of Florida.
- 1.11 *Case* means this case commenced by the Debtor in the Bankruptcy Court on the Petition Date under chapter 11 of the Bankruptcy Code.
- 1.12 *Cash* means “dollars” and cash equivalents of the United States of America.
- 1.13 *Cash Collateral Order* means the *Interim Order (I) Authorizing, in Part, the Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2) and (II) Setting Further Hearing* [Docket No. 74], as amended by the second, third and fourth interim orders entered on June 6, 2010, July 8 2010, July 22, 2010, and October 5, 2010, respectively [Docket Nos. 117, 141, and 244].
- 1.14 *Claim* means a “claim” as defined in section 101(5) of the Bankruptcy Code.
- 1.15 *Condominium Unit* means any one of the condominium units created under the Declaration.
- 1.16 *Collateral* means the property that secures a particular Holder’s Allowed Secured Claim.

- 1.17 **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on its docket.
- 1.18 **Confirmation Hearing** means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.
- 1.19 **Confirmation Order** means the order or orders of the Bankruptcy Court confirming this Plan.
- 1.20 **Construction Loan Agreement** means that certain Construction Loan Agreement dated as of December 28, 2005 (as subsequently amended), and in effect among the Northern Trust Bank, Debtor, and Egozi and all other agreements, instruments, or documents executed by the Debtor in relation thereto, as the same may have been further amended or modified from time to time prior to the Petition Date.
- 1.21 **Construction Loan Claims** means any and all unpaid principal, accrued and unpaid interest, which have not been waived, unpaid fees and attorneys' fees, and any other charges, amounts and costs owing, accrued, accruing or chargeable in respect of the Debtor's obligations pursuant to the Construction Loan Agreement through the Effective Date, including, without limitation, term loans, advances and/or financial accommodations provided to or for the benefit of the Debtor.
- 1.22 **Cure** means the payment of Cash by the Debtor, or the distribution of other property (as the parties may agree or the Bankruptcy Court may order), as necessary to (i) cure a default by the Debtor under an executory contract or unexpired lease of the Debtor and (ii) permit the Debtor to assume such executory contract or unexpired lease under section 365 of the Bankruptcy Code.
- 1.23 **Declaration** means the declaration of condominium dated January 13, 2009 and recorded as document CFN 2009R002605, as amended, that submitted the Property to the condominium form of ownership and created the Association.
- 1.24 **Disbursing Agent** means any Person (including the Debtor if it acts in such capacity) in its capacity as a disbursing agent under Sections 6.3 and 6.4 hereof.
- 1.25 **Disclosure Statement** means that certain disclosure statement relating to this Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, Rule 3017 of the Bankruptcy Rules and Rule 3017-1 of the Local Rules.
- 1.26 **Disclosure Statement Order** means the order issued by the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code.

- 1.27 *Disputed* means a Claim, Equity Interest, or Administrative Expense (a) to the extent neither Allowed nor disallowed under this Plan or a Final Order nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code, or (b) which has been or hereafter is listed by the Debtor on its Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement of the parties or a Final Order, or (c) as to which the Debtor or any other party in interest has interposed a timely objection and/or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order, or (d) which arises in connection with an executory contract which, as of the Confirmation Date, has not yet been assumed by the Debtor, and therefore such contract is deemed rejected pursuant to Section 8.1 of this Plan.
- 1.28 *Disputed General Unsecured Claim Reserve* means the reserve established pursuant to Section 6.3 of this Plan for Disputed General Unsecured Claims.
- 1.29 *Disputed Secured Claim Reserve* means the reserve established pursuant to Section 6.2 of this Plan for Disputed claims.
- 1.30 *Effective Date* means a Business Day selected by the Debtor, and specified in a notice sent by the Debtor to all parties in interest, on which (a) no stay of the Confirmation Order is in effect and (b) the conditions precedent to the effectiveness of this Plan specified in Section 9.2 of this Plan shall have been satisfied or waived as provided in Section 9.3.
- 1.31 *Equity Contribution* means the conversion of Egozi's Class 12 unsecured claim into the New General Partnership and New Limited Partnership Interests.
- 1.32 *Equity Interest* means the general partnership interest, limited partnership interests, or other equity security or ownership interest in the Debtor, including all rights, interests, and Claims against the Debtor or its respective Affiliates or Representatives (including Claims for fraud, misrepresentation, rescission, reimbursement, contribution, or damages) arising under, or in connection with, or in any way related to (i) all agreements, including partnership agreements, entered into by the Debtor or its respective Affiliates or Representatives in connection with the issuance of such security or any related transactions or (ii) the purchase or sale of such security or any related transactions.
- 1.33 *Escrow Agent* means Blass & Frankel, P.C. in its capacity as escrow agent in connection with the Purchase and Sale Agreements pursuant to an Escrow Agreement dated as of April 22, 2005.
- 1.34 *Escrow Funds* means segregated funds held by the Escrow Agent as of the Petition Date for the benefit of the Holders of the Purchaser Deposit Claims.



- 1.35 *Estate* means the estate of the Debtor created under section 541 of the Bankruptcy Code.
- 1.36 *Estate Causes of Action* means all claims and causes of action of the Debtor against third parties arising under Chapter 5 of the Bankruptcy Code, or under related federal or state statutes or common law, including fraudulent transfer laws.
- 1.37 *Existing Organizational Documents* means the Debtor's limited partnership certificate of formation, or other charter documents legally forming and/or organizing the Debtor, and the Debtor's limited partnership agreements, all as amended and/or restated up to, and in existence as of, the time immediately prior to the Effective Date. Except to the extent amended or restated by applicable New Organizational Documents, such Existing Organizational Documents will remain in full force and effect.
- 1.38 *Face Amount* means either (i) the full stated amount claimed by the Holder of such Claim in any proof of Claim filed by the bar date established by the Bankruptcy Court or otherwise deemed timely filed under applicable law, if the proof of Claim specifies only a liquidated amount; or (ii) if no proof of Claim has been filed by the bar date or has otherwise been deemed timely filed under applicable law or if the proof of Claim specifies an unliquidated amount, the amount of the Claim (a) acknowledged by the Debtor or Reorganized Debtor in any objection to such Claim or in the Schedules as an undisputed, non-contingent and liquidated Claim, (b) estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, or (c) proposed by the Debtor or established by the Reorganized Debtor following the Effective Date.
- 1.39 *Final Maturity Date* means the sixth anniversary of the Effective Date.
- 1.40 *Final Order* means an order or judgment of a court of competent jurisdiction, which has been entered on the docket maintained by the clerk of such court, and which has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; *provided, however*, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

- 1.41 *General Partner* means Harbour East Development, LC, a Florida limited liability company.
- 1.42 *General Unsecured Claim* means any Claim that arose or accrued prior to the Petition Date that is not an Administrative Expense, Priority Tax Claim, Priority Non-Tax Claim, or Secured Claim, including, without limitation, Claims arising from the rejection of an unexpired lease or executory contract pursuant to this Plan or other Final Order of the Bankruptcy Court, and the Holders of Secured Claims, that are determined not to have any value pursuant to Section 506(a), except to the extent such Claims are separately classified as Unsecured Claims under the Plan.
- 1.43 *General Unsecured Claim Distributions* means Cash distributed to Holders of General Unsecured Claims under the Plan.
- 1.44 *Guarantees* means those certain guarantees of the Debtor's obligations under the Construction Loan Agreement executed by Mario Egozi.
- 1.45 *Holder* means a Person that holds a beneficial interest in a Claim or Equity Interest against the Debtor.
- 1.46 *Indemnified Person* means any general or limited partner, manager, agent, Representative or employee of the Debtor or any of its Affiliates who was a manager, agent, Representative or employee of the Debtor or any of its Affiliates before, on or after the Petition Date, and any general or limited partner, manager, agent, Representative or employee of the Reorganized Debtor or any of its Affiliates after the Effective Date.
- 1.47 *Interest Reserve* means a reserve established by the Debtor for the payment of interest due any Holder of an Allowed Secured Claim pursuant to section 362(d)(3)(B) of the Bankruptcy Code or the Plan.
- 1.48 *Lien* has the meaning set forth in section 101(37) of the Bankruptcy Code.
- 1.49 *Local Rules* means Local Rules of the United States Bankruptcy Court for the Southern District of Florida.
- 1.50 *Mortgage* means the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated December 28, 2005 executed by the Debtor in favor of Northern Trust.
- 1.51 *New Limited Partnership Interests* means the limited partnership units of Reorganized Debtor to be issued pursuant hereto.
- 1.52 *New Organizational Documents* means any amended and/or restated organizational documents of the Reorganized Debtor.
- 1.53 *Net Proceeds of Sale of Condominium Units* means the cash proceeds received by the Debtor upon the closing of the sale of Condominium Units in the Property after credits and prorations due the buyer and the payment of all

direct closing costs, including closing attorneys' fees, title charges, and transfer taxes, if applicable.

- 1.54 *Net Purchase Money Principal and Interest Income* means cash received by the Debtor in payment of principal and interest on any Purchase Money Mortgage retained by the Debtor in connection with the sale of any Condominium Unit.
- 1.55 *Net Rental Income* means cash received from any tenant under a lease or occupancy agreement relating to an unsold Condominium Unit in the Property, less direct expense of the Condominium Unit paid by the Debtor, including Association Assessments, Real Estate Taxes, maintenance and repairs and any other expense incurred by the Debtor in the operation of the Condominium Unit.
- 1.56 *Old Equity Interests* means all the Equity Interests in the Debtor existing immediately prior to the Effective Date.
- 1.57 *Partnership Indemnities* means any obligation of the Debtor pursuant to the Debtor's or the Reorganized Debtor's, pre-Effective Date or post-Effective Date limited partnership agreement (including, without limitation any New Organizational Documents), agreements, contracts or under any statute or common law arising at any time before the Effective Date to indemnify any former, present and future partners, managers, agents, employees and/or Representatives of (i) the Debtor or any Affiliates of the Debtor, or (ii) any Person serving in such capacity at the Debtor's request.
- 1.58 *Person* means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof, or any other form of legal entity.
- 1.59 *Petition Date* means April 22, 2010, the date on which the Debtor commenced its Case.
- 1.60 *Plan* means this Plan of Reorganization, including, without limitation, the Plan Addendum, the exhibits and schedules hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.
- 1.61 *Plan Addendum* means the addendum to this Plan, containing certain documents relevant to the implementation of this Plan, including, but not limited to the disclosure of the manger of the general partner of the Reorganized Debtor, the list of executory contracts and unexpired leases to be assumed pursuant to this Plan, and forms of the New Partnership Interests, and New Organizational Documents. The Plan Addendum and the documents contained therein shall be filed with the Bankruptcy Court no later than ten (10) Business Days before the deadline for voting to accept or reject this Plan,

provided that the documents included therein may thereafter be amended and supplemented prior to execution.

- 1.62 **Purchase and Sale Agreements** mean agreements entered into prior to the Petition Date between the Debtor, as seller and any Person, as buyer, whereby the Debtor agreed to sell certain Condominium Units at the Property.
- 1.63 **Purchase Money Mortgage** means any promissory note and mortgage executed and delivered by a purchaser of a Condominium Unit in favor of the Debtor in connection with the Debtor's sale of such Condominium Unit to Purchaser, which secures a portion of the purchase price not otherwise paid at closing.
- 1.64 **Purchaser Deposits** means deposits delivered before the Petition Date by customers and held by the Escrow Agent in connection with a Purchase and Sale Agreement.
- 1.65 **Purchaser Deposit Claims** means Claims arising under Purchase and Sale Agreements, other than Purchase and Sale Agreements assumed pursuant to Section 8.2 of this Plan.
- 1.66 **Priority Non-Tax Claim** means any unsecured Claim entitled to priority in payment as specified in section 507(a)(3)-(7) or (a)(9)-(10) of the Bankruptcy Code.
- 1.67 **Priority Tax Claim** means any unsecured Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.
- 1.68 **Property** means the Debtor's residential condominium development known as CIELO on the Bay Condominium located at 7935 East Drive, North Bay Village, Florida 33131.
- 1.69 **Ratable Proportion** means, with reference to any distribution on account of any Allowed Claim in any class or classes, as applicable, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of Allowed Claims (plus Disputed Claims until disallowed) in the same class or classes, as applicable.
- 1.70 **Releasee** means each of (a) the general and limited partners of the Debtor as of the Effective Date of the Plan or at any time subsequent to the Effective Date of the Plan, and (b) each of their respective Representatives and Affiliates.
- 1.71 **Reorganized Debtor** means the Debtor, on and after the Effective Date.
- 1.72 **Representatives** means, with respect to any particular Person, such Person's present, former or future officers, directors, employees, consultants, members, managers, partners, principals, agents, advisors (including any attorneys, financial advisors, investment bankers, and other professionals retained by such Persons), Affiliates, funds under management, and representatives.

- 1.73 *Schedules* means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtor under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms, as such schedules and statements have been or may be supplemented or amended through the Confirmation Date pursuant to Bankruptcy Rule 1007.
- 1.74 *Secured Claim* means a Claim secured by a Lien on the Debtor's property, which is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law, but solely to the extent deemed secured by section 506(a) and (b) of the Bankruptcy Code, or a Claim that is subject to setoff under section 553 of the Bankruptcy Code.
- 1.75 *Secured Claim Cram Down Rate* means the greater of (i) LIBOR plus two and one-half percent (2.5%), or (ii) the rate determined by the Bankruptcy Court as sufficient to satisfy the standard of Section 1129(b)(2)(A)(i)(II).
- 1.76 *Secured Construction Loan Claims* means all Secured Claims arising under or in connection with the Construction Loan Agreement including, without limitation, all principal, interests, costs, fees and charges arising thereunder, solely to the extent of the value of the collateral securing such Secured Claims.
- 1.77 *Secured Purchaser Deposit Claims* means those certain Purchaser Deposit Claims that are found in whole or in part by Final Order or by agreement with the Debtor or the Reorganized Debtor to be Secured Claims.
- 1.78 *Tax Code* means the Internal Revenue Code of 1986, as amended.
- 1.79 *U.S. Trustee* means the United States Trustee appointed under section 581, title 28, United States Code to serve in the Southern District of Florida.
- 1.80 *Unsecured Claim Cram Down Rate* means the greater of (i) LIBOR plus 5 percent (5%), or (ii) the rate determined by the Bankruptcy Court as sufficient to satisfy the standard of Section 1129(b)(2)(B)(i).
- 1.81 *Wholesale Value of Condominium Unit* means the value of each Condominium Unit on a square foot or average unit basis as of the Effective Date as determined by the Bankruptcy Court, such that payment of such amount, less Section 506(c) expenses, accrued real estate taxes, real estate taxes previously paid with unencumbered assets, and customary closing credits, results in the holder of any Allowed Secured Claim receiving the indubitable equivalent of the interest.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section, article, schedule or exhibit references in this Plan are to the respective section in, article of, or schedule or exhibit to, this Plan or the Plan Supplement, as the same may be amended, waived or modified from time to time. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained in this Plan. A

term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

## ARTICLE II

### PROVISIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### 2.1 *Administrative Expenses.*

Except to the extent that a Holder of an Allowed Administrative Expense agrees to a less favorable treatment, and except as provided in this Section 2.1 of this Plan, as soon as reasonably practicable on or after the Effective Date, the Reorganized Debtor shall pay Cash in an amount equal to such Allowed Administrative Expense to each Holder of an Allowed Administrative Expense; *provided, however*, that Allowed Administrative Expenses representing liabilities incurred in the ordinary course of business by the Debtor, shall be assumed and paid by the Reorganized Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

#### 2.2 *Professional Compensation and Reimbursement Claims.*

All Persons seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code shall (i) file, on or before the deadline specified in Local Rule 2016-1(c)(1), their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (ii) be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court (A) upon the later of (1) the Effective Date and (2) the date on which the order that deemed such Administrative Expense Allowed becomes a Final Order or (B) upon such other terms as may be mutually agreed upon by such Holder and the Reorganized Debtor. The Reorganized Debtor is authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course without the need for Bankruptcy Court approval.

#### 2.3 *Priority Tax Claims.*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, commencing as soon as reasonably practicable on or after the Effective Date, and continuing over a period not exceeding five (5) years after the Petition Date, Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with simple interest at



the Applicable Rate, subject to the sole option of the Debtor or Reorganized Debtor to prepay the entire amount of the Allowed Priority Tax Claim at any time without penalty. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

### ARTICLE III

#### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS, IMPAIRMENT AND VOTING

The categories of Claims and Equity Interests, other than Administrative Expenses and Priority Tax Claims, are classified for all purposes, including voting, confirmation, and distribution pursuant to this Plan, as follows:

Class	Designation	Impairment	Entitled to Vote
Class 1	Priority Non-Tax Claims	Unimpaired	No
Class 2	Real Estate Tax Secured Claims	Impaired	Yes
Class 3	Northern Trust/NBV Secured Construction Loan Claims	Impaired	Yes
Class 4	Egozi Secured Subrogation Claim	Impaired	Yes
Class 5	Whirlpool Secured Claim	Impaired	Yes
Class 6	Revuelta Vega Leon Secured Claim	Impaired	Yes
Class 7	Purchaser Deposit Secured Claims	Impaired	Yes
Class 8	Association Secured Claim	Impaired	Yes
Class 9	Purchaser Contract Litigation Attorney Secured Claim	Impaired	Yes
Class 10	Northern Trust/NBV Unsecured Claim	Impaired	Yes
Class 11	General Unsecured Claims	Impaired	Yes
Class 12	Egozi Unsecured Claim	Impaired	Yes
Class 13	Old Limited Partnership Equity Interests	Impaired	No
Class 14	Old General Partnership Equity Interest	Impaired	No

### ARTICLE IV

#### PROVISIONS FOR TREATMENT OF CLAIMS AND EQUITY INTERESTS

Claims and Equity Interests shall receive the treatment set forth below.

##### *4.1 Priority Non-Tax Claims (Class 1).*

With respect to any Allowed Priority Non-Tax Claims not paid pursuant to a prior Final Order, as soon as reasonably practicable on or after the Effective Date or the date that is ten (10) days after the date such claim is Allowed, and except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each Allowed Priority Non-Tax Claim shall be paid in full in cash in accordance with the priorities set forth in



section 507 of the Bankruptcy Code, provided that to the extent such priority is based on Section 507(7) and the Holder of the Claim is also the Holder of a Purchaser Deposit Secured Claim, such priority claim shall be paid and deemed satisfied from the Holder's Escrow Deposit, and the balance of the non-priority portion of the claim shall be treated for all purposes as a Class 7 Claim. (All Allowed Priority Non-Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business.).

#### *4.2 Real Estate Tax Secured Claims (Class 2).*

The Debtor shall pay the Holder of the Class 2 Claims 100% of the principal amount, together with interest at the statutory rate, with respect to all Condominium Units owned by the Debtor when such Claims become due and payable as follows: (1) to the extent of available cash contained in any Real Estate Tax Escrow authorized under this Plan or any Cash Collateral Order; (2) to the extent of any deficiency in the Real Estate Tax Escrow, then from the Net Sale Proceeds of each Condominium Unit of the first, and successive if necessary, closing of sales of each Condominium Unit following the date when such Claims become due and payable, the balance due the Holder with respect to such Claim, then due and owing.

#### *4.3 Northern Trust/NBV Secured Construction Loan Claims (Class 3).*

Prior to the determination of the priority of the Class 3 and Class 4 Claims, and until such time as the Holder has received \$5,000,000, the Debtor shall pay the Holder of the Class 3 Claim 100% of the principal amount, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable not less than quarterly, if not earlier paid from the Interest Reserve, Net Proceeds of Sale of Condominium Units, Net Rental Income, or Net Purchase Money Principal and Interest Income; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing; (b) principal, in cash or by transfer of the Condominium Unit purchaser's Purchase Money Mortgage in an amount not to exceed the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as a particular Condominium Unit is sold and title is transferred to the purchasers, or the Holder has received the full principal amount of its claim and accrued interest thereon. Upon the sale of any particular Condominium Unit, the Holder's lien shall attach to all cash and other proceeds of sale, including Purchase Money Mortgages and all future payments due thereunder, and the sale of each such Condominium Unit shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on the remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. If the Holder has received \$5,000,000 and the Bankruptcy Court has not determined the priority of the Class 3 and Class 4 Claims by Final Order, then Debtor shall pay all additional amounts otherwise due the Holder of the Class 3 Claim into the Disputed Secured Claim Reserve until such time as a Final Order is entered. If the Class 4 Claim is determined to have priority over the Class 3

Claim, the Debtor shall pay the Class 4 Claim, to the extent of its priority, any payments otherwise due the Class 3 Claim, until such Class 4 Claim is paid in full and thereafter will resume payments to the Class 3 Claim. Any remaining amount due the Holder shall be finally due and payable on the Final Maturity Date. To the extent not inconsistent with this Plan, and to the extent that they remain applicable, the covenants contained in the Construction Loan Agreement shall remain in full force and effect.

#### *4.4 Egozi Secured Subrogation Claim (Class 4).*

To the extent the Bankruptcy Court determines the Class 4 Claim has priority over the Class 3 Claim or that it is otherwise determined to be an Allowed Secured Claim, the Debtor shall pay the Holder of the Class 4 Claim 100% of the principal amount, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable not less than quarterly if not earlier paid from the Interest Reserve, Net Proceeds of Sale of Condominium Units, Net Rental Income, or Net Purchase Money Principal and Interest Income; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing (b) principal, to the extent cash remains available up to an amount not to exceed the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as a particular Condominium Unit is sold and title is transferred to individual purchasers. Upon the sale of any Condominium Unit, the Holder's lien shall attach to the all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's liens, provide that the Holder shall retain its lien on the remaining unsold Condominium Units. The Holder shall retain its lien on all remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 4 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 Claim and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 4 shall be treated for all purposes as a Class 11 General Unsecured Claim.

#### *4.5 Whirlpool Secured Claim (Class 5).*

To the extent the Bankruptcy Court determines the Class 5 Claim has priority over the Class 3 and 4 Claims with respect to the Holder's Collateral, the Debtor shall pay the Holder of the Class 5 Claim 100% of principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of Condominium Units, that include a sale of Holder's Collateral; (2) upon each sale of a Condominium Unit that includes a sale of Holder's Collateral, the Debtor shall pay the Holder (a) accrued interest to the date of the closing; and (b) principal, both to the extent of the allocation of the purchase price assigned to Holder's Collateral. The Holder shall retain its lien on its Collateral until such time as each item of its Collateral is sold and title is transferred

to the purchasers. Upon the sale of Holder's Collateral, the Holder's lien shall attach to the all cash proceeds of sale and the sale of such Collateral shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on its remaining Collateral until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 5 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 Claim and Class 4 Claim and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 5 shall be treated for all purposes as Class 11 General Unsecured Claim.

#### *4.6 Revuelta Vega Leon Secured Claim (Class 6).*

To the extent the Bankruptcy Court determines the Class 6 Claim has priority over the Class 3 and 4 Claims, the Debtor shall pay the Holder of the Class 6 Claim 100% of principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of Condominium Units; (2) upon each sale of a Condominium Unit, the Debtor shall pay the Holder (a) accrued interest to the date of the closing (b) principal, to the extent cash remains available up to an amount equal to the Wholesale Value of the Condominium Unit. The Holder shall retain its lien on each individual Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to the purchasers. Upon the sale of any particular Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's liens, provided that the Holder shall retain its lien on the remaining unsold Condominium Units until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 6 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 Claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 6 shall be treated for all purposes as Class 11 General Unsecured Claim.

#### *4.7 Purchaser Deposit Secured Claims (Class 7).*

As soon as reasonably practicable on the later of the Effective Date or the entry of a Final Order allowing such Claim, the Debtor shall pay to each Holder of an Allowed Secured Purchaser Deposit Claim: (a) cash in the amount of the principal balance and accrued interest thereon of the Escrow Funds of the Holder on deposit with the Escrow Agent and (b) to the extent the Bankruptcy Court determines any lien arising under Section 365 of the Bankruptcy Code securing such a Class 7 Claim has priority over the other Allowed Secured Claims against the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement, or is otherwise an Allowed Secured Claim, the Debtor shall pay the Holder of the Class 7 Claim all principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: (1) interest shall be payable from the Net Proceeds of Sale of the Condominium Unit securing such Claim; (2) upon the sale of the Condominium Unit securing such Claim, the Debtor

shall pay the Holder (a) accrued interest to the date of the closing and (b) principal, to the extent cash remains available. The Holder shall retain its lien on the Condominium Unit until such time as the Condominium Unit is sold and title is transferred to individual purchasers. Upon the sale of the Condominium Unit, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's lien. To the extent that the Class 7 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 Claims with respect to the Condominium Unit that was the subject of the Holder's Purchase and Sale Agreement and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 7 shall be treated for all purposes as Class 11 General Unsecured Claim.

#### 4.8 *Association Secured Claim (Class 8).*

To the extent the Bankruptcy Court determines the Class 8 Claim has priority over the Class 3 and 4 Claims with respect to the Net Proceeds of Sale of Condominium Units with respect to a particular Condominium Unit, then to the extent of such priority, the Debtor shall pay the Holder of the Class 8 Claim all principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon each sale of a Condominium Unit, (a) accrued interest to the date of the closing and (b) principal, to the extent of the priority. The Holder shall retain its lien on each Condominium Unit until such time as each of the Condominium Units is sold and title is transferred to purchasers. Upon the sale of any Condominium Units, the Holder's lien shall attach to all cash and other proceeds, including Purchase Money Mortgages and all future payments due thereunder, and sale of such Condominium Unit shall be free and clear of the Holder's lien. The Holder shall retain its separate liens on all remaining unsold Condominium Unit until the Holder has received 100% of the principal amount of its claim together with accrued interest on the outstanding principal balance. To the extent that the Class 8 Claim is determined by the Bankruptcy Court not to have priority over the Class 3 and 4 Claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 8 shall be treated for all purposes as Class 11 General Unsecured Claim.

#### 4.9 *Purchaser Contract Litigation Attorney Secured Claim (Class 9).*

To the extent the Bankruptcy Court determines the Class 9 Claim has priority over the Class 3 and 4 Claims with respect to Escrow Funds or judgment or settlement recoveries that are the subject of a Purchase and Sale Agreement in connection with which the Holder provided legal services to the Debtor, the Debtor shall pay the Holder of the Class 9 Claim 100% of the principal, as determined in accordance with Section 506(a), and accrued interest thereon at the Secured Claim Cram Down Rate, in deferred cash payments as follows: upon the entry of Final Order determining that the Debtor is entitled to particular Escrow Funds or judgment or settlement recoveries, cash in the amount of the principal balance of the Class 9 Claim and accrued interest thereon. To the extent that the Class 9 Claim is determined by

the Bankruptcy Court not to have priority over the Class 3 and 4 Claims and the Claim is otherwise determined not to be an Allowed Secured Claim, then the Class 9 shall be treated for all purposes as Class 11 General Unsecured Claim.

*4.10 Northern Trust/NBV Unsecured Claim (Class 10).*

To the extent that Holder of the Class 10 Claim is determined by Final Order to hold an Allowed Unsecured Claim that the Holder has not waived, been subordinated by Final Order of the Bankruptcy Court pursuant to Section 510, or otherwise limited to the actual amount paid for the Claim by the Holder, then the Class 10 Claim shall be treated for all purposes as Class 11 General Unsecured Claim.

*4.11 General Unsecured Claims (Class 11).*

The Debtor shall pay Holders of Allowed Class 11 Claims up to 100% of the principal amount and accrued interest thereon at the Unsecured Cram Down Rate from the General Unsecured Claim Distribution Reserve.

*4.12 Egozi Unsecured Claim (Class 12).*

On the Effective Date, the Debtor shall issue and deliver the New General Partnership Interest and New Limited Partnership Interest to the Holder or his nominees in full satisfaction of his Class 12 Claim.

*4.13 Old Limited Partnership Equity Interests (Class 13).*

On the Effective Date, the Old Limited Partnership Equity Interests shall be cancelled and the Holders of Old Limited Partnership Equity Interests shall not be entitled to, and shall not receive or retain, any property or interest in the Debtor on account of such Old Limited Partnership Equity Interests. On the Effective Date, all obligations of the Debtor to Holders of Old Limited Partnership Equity Interests shall be completely discharged.

*4.14 Old General Partnership Equity Interests (Class 14).*

On the Effective Date, the Old General Partnership Equity Interest shall be cancelled and the Holders of General Partnership Equity Interest shall not be entitled to, and shall not receive or retain, any property or interest in the Debtor on account of such Old General Partnership Equity Interest. On the Effective Date, all obligations of the Debtor to Holders of Old General Partnership Equity Interests shall be completely discharged.

*4.15 Cram Down/Confirmation.*

If any impaired class of Claims entitled to vote shall not accept this Plan by the requisite majority provided in section 1126(c) of the Bankruptcy Code, the Debtor requests that the Bankruptcy Court confirm this Plan under section 1129(b) of the Bankruptcy Code. With respect to the impaired classes of Old Limited Partnership Equity Interests (Class 13)

and Old General Partnership Equity Interest (Class 14) that are deemed to reject this Plan, the Debtor shall request that the Bankruptcy Court confirm this Plan pursuant to section 1129(b) of the Bankruptcy Code.

## ARTICLE V

### MEANS OF IMPLEMENTATION

#### *5.1 Operation of Rental Units at the Property*

The Debtor shall continue to operate certain of the Condominium Units as a rental pool for purposes of generating Net Rental Income to pay the operating expenses of the Debtor and to fund distributions to Holders, until such time as the Debtor closes on the sale of all of the Condominium Units.

#### *5.2 Sale and Purchase Money Financing of Condominium Units.*

Except to the extent inconsistent with the Plan, the Reorganized Debtor shall continue to market, sell and offer Purchase Money Mortgages with respect to ongoing sales of the Condominium Units at the Property, for the purpose of generating Net Proceeds of Sale of Condominium Units and Net Purchase Money Principal and Interest Income to pay operating expenses of the Debtor and to fund distributions to Holders, until such time as the Debtor closes on the sale of all of the Condominium Units.

#### *5.3 General Unsecured Creditor Reserve.*

After payment of operating expenses, Administrative Expenses, Allowed Priority and Allowed Secured Claims in accordance with this Plan, the Reorganized Debtor shall deposit all remaining Net Rental Income, Net Purchase Money Principal and Interest Income, and Net Proceeds of Sale of Condominium Units into an Unsecured Creditor Distribution Reserve at least annually. Upon each General Unsecured Claim Distribution Date, as determined by the Reorganized Debtor, but no less than 30 days after each anniversary of the Confirmation Date, or the date that is ten (10) days after the date such claim is Allowed by Final Order, Debtor shall pay Holders of an Allowed General Unsecured Claim, their Ratable Proportion of the General Unsecured Claim Cash Distribution

#### *5.4 Conversion of Claims to New Partnership Units and Gift Distribution to Holders of Old Limited Partnership Equity Interests.*

This Plan will be further implemented by exchange of Egozi's Class 12 Unsecured Claim for the new General Partnership Interest and New Limited Partnership Interest, without the need for any further partnership action and without any further action by Holders of the Old General Partnership Equity Interests and the Old Limited Partnership Equity Interests. Egozi shall gift the New General Partnership Interest to the General Partner and shall gift a Ratable Proportion of the New Limited Partnership Interest to the Holders of the Old Limited Partnership Equity Interests.



*5.5 Cancellation of Existing Securities and Agreements.*

On the Effective Date, all agreements, documents and instruments relating to the Allowed Secured Claims, Old General Partnership Equity Interests, and all Old Limited Partnership Equity Interests shall be cancelled; *provided, however*, that except to the extent inconsistent with the Plan, the non-monetary covenants of the Mortgage shall continue in effect and shall secure the Reorganized Debtor's obligation to the Holders of the Class 3 Claim and Class 4 Claim pursuant to the Plan.

*5.6 Legal Form and Governance.*

(a) **New Organizational Documents.** The Debtor shall be deemed to have adopted its respective New Organizational Documents effective as of the Effective Date. On the Effective Date, or as soon thereafter as practicable, the Debtor shall file the applicable New Organizational Documents as required or deemed appropriate, with the appropriate Persons in the applicable jurisdiction of organization. The New Organizational Documents shall provide for the New General Partnership Units and Limited Partnership, among other things as deemed necessary, advisable or appropriate by the Debtor. Except to the extent amended or restated by applicable New Organizational Documents, the Debtor's Existing Organizational Documents will remain in full force and effect after the Effective Date.

(b) **Manager of the General Partner of the Reorganized Debtor.** On the Effective Date, the operation of the Reorganized Debtor shall become the general responsibility of its General Partner, subject to, and in accordance with, its New Organizational Documents or Existing Organizational Documents. The initial Manager of the General Partner of the Reorganized Debtor is Mario Egozi.

(c) **Authorization.** On the Effective Date, the adoption of the New Organizational Documents shall be authorized and approved in all respects, to be effective as of the Effective Date, case without further action under applicable law, regulation, order, or rule, including without limitation, any action by the partners of the Debtor or the partners of the Reorganized Debtor. On the Effective Date, the cancellation and termination of all Old General Partnership Equity Interest and Old Limited Partnership Equity Interest, the authorization and issuance of the New General Partnership Equity Interest and the New Limited Partnership Interests, and all other matters provided in this Plan involving the legal structure or governance of the Reorganized Debtor shall be deemed to have occurred, been authorized, and be in effect from and after the Effective Date, without further action under applicable law, regulation, order, or rule, including, without limitation, any action by the partners of the Debtor or the Reorganized Debtor.

*5.7 Exemption from Securities Laws.*

The issuance of the New General Partnership Interest and New Limited Partnership Interests (to the extent such interests constitute "securities") pursuant to this Plan shall be



exempt from any securities laws registration requirements pursuant to Section 1145 of the Bankruptcy Code.

*5.8 Exemption from Transfer Taxes.*

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

*5.9 Expedited Tax Determination.*

The Debtor and the Reorganized Debtor may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtor for any and all taxable periods (or portions thereof) ending before or after the Petition Date through, and including, the Effective Date.

## ARTICLE VI

### PROVISIONS GOVERNING DISTRIBUTIONS

*6.1 Date of Distributions.*

Unless otherwise provided herein, any distributions to be made hereunder shall be made on the Effective Date, the General Unsecured Claim Distribution Date, or as soon as practicable thereafter and deemed made on the Effective Date. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

*6.2 Distribution Concerning Disputed Secured Claims.*

(a) Disputed Secured Claim Reserve. From and after the Effective Date, all Cash to be distributed on account of any Disputed Secured Claims, when and if such Disputed Secured Claims become Allowed, (a) will be maintained by and in the name of the Disbursing Agent in the Disputed Secured Claim Reserve, and will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims and, to the extent that all Disputed Secured Claims are not Allowed in full, such Cash shall be returned to the Reorganized Debtor for distribution in accordance with this Plan, (b) will be accounted for

separately and (c) will not constitute property of the Reorganized Debtor except as provided in this Plan.

(b) **Reserved Amount.** The amount of Cash to be deposited in the Disputed Secured Claim Reserve shall be calculated as if each Disputed Secured Claim were an Allowed Claim in its Face Amount, such that the Reserved amount shall include the Cash that such Holder of such Disputed Secured Claim would have received if such Claim were Allowed at its Face Amount.

(c) **Recourse.** Each Holder of a Disputed Secured Claim will have recourse only to the undistributed Cash held in the Disputed Secured Claim Reserve for satisfaction of the distributions to which Holders of Disputed Secured Claims are entitled under this Plan, and not to the Reorganized Debtor, its property or any assets previously distributed on account of any Allowed Claim.

### *6.3 Distributions Concerning Disputed General Unsecured Claims.*

(a) **Disputed General Unsecured Claims Reserve.** From and after the Effective Date, all Cash to be distributed on account of any Disputed General Unsecured Claims, when and if such Disputed General Unsecured Claims become Allowed, (a) will be maintained by and in the name of the Disbursing Agent in the Disputed General Unsecured Claim Reserve, and will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims and, to the extent that all Disputed General Unsecured Claims are not Allowed in full, for the benefit of Holders of Allowed General Unsecured Claims in accordance with Section 7.3 of this Plan, (b) will be accounted for separately and (c) will not constitute property of the Reorganized Debtor except as provided in Section 7.3 of this Plan.

(b) **Reserved Amount.** The amount of Cash to be deposited in the Disputed General Unsecured Claim Reserve shall be calculated as if each Disputed General Unsecured Claim were an Allowed Claim in its Face Amount, such that the Reserved amount shall include the aggregate Ratable Proportion of Cash that such Disputed General Unsecured Claims would receive if they were Allowed in their Face Amount.

(c) **Recourse.** Each Holder of a Disputed General Unsecured Claim will have recourse only to the undistributed Cash held in the Disputed General Unsecured Claim Reserve for satisfaction of the distributions to which Holders of Disputed General Unsecured Claims are entitled under this Plan, and not to the Reorganized Debtor, its property or any assets previously distributed on account of any Allowed Claim.

### *6.4 Disbursing Agent.*

All distributions under this Plan shall be made by the Debtor as Disbursing Agent or such other entity designated by the Debtor as a Disbursing Agent on the Effective Date, which Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

6.5 *Rights and Powers of Disbursing Agent.*

(a) Powers of the Disbursing Agent. The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under this Plan, (ii) make all distributions contemplated hereby, (iii) employ professionals to represent it with respect to its responsibilities, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

(b) Expenses Incurred on or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtor.

6.6 *Delivery of Distributions.*

Record Address. Subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, as applicable, unless the Debtor or Reorganized Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim or interest by such Holder that contains an address for such Holder different from the address reflected for such Holder on the Schedules. In the event that any distribution to any Holder is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder, but no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of one year from the Effective Date or 6 months after such Claim is Allowed. After such date, all unclaimed property or interest in property shall revert to Reorganized Debtor, and the Claim of any other Holder to such property or interest in property shall be discharged and forever barred.

6.7 *Manner of Payment.*

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. All distributions of Cash or the New Limited Partnership and New General Partnership Interests to the creditors of the Debtor under this Plan shall be made by, or on behalf of, the Debtor.

*6.8 Setoffs and Recoupment.*

The Debtor may, but shall not be required to, set off against, or recoup from, any Claim and the payments to be made pursuant to this Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any such claim it may have against such claimant.

*6.9 Allocation of Plan Distributions Between Principal and Interest.*

Except as otherwise provided herein, to the extent that any Allowed Claim entitled to a distribution under this Plan consists of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

*6.10 De Minimis Distributions and Donation of Remaining General Unsecured Claim Cash Distribution Less Than \$1,000.00.*

No distribution of less than One Thousand Dollars (\$1,000.00) shall be made to any Holder of an Allowed Claim. Such undistributed amount will be retained by the Disbursing Agent to be distributed pro rata at the time of final distributions to Holders of Claims in accordance with the Plan.

*6.11 Withholding and Reporting Requirements.*

In connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Section 6.5(a) of the Plan.

## ARTICLE VII

### PROCEDURES FOR TREATING DISPUTED CLAIMS UNDER PLAN OF REORGANIZATION

#### 7.1 *Objections.*

Except as otherwise provided herein, as of the Effective Date, objections to, and requests for estimation of, Claims may be filed and prosecuted by the Reorganized Debtor, or such other party in interest as may be appointed by the Bankruptcy Court. Such objections and requests for estimation shall be served on the respective claimant and filed with the Bankruptcy Court on or before the latest of (a) the deadline established under Local Rule 3007-I(B)(I), (b) one-hundred eighty (180) days after a proof of Claim has been filed with the Bankruptcy Court, (c) sixty (60) days after an application for allowance of an Administrative Expense has been filed with the Bankruptcy Court in the Case, or (d) with respect to certain Claims identified prior to the Confirmation Date by the Debtor, such other date as may be fixed by the Bankruptcy Court.

#### 7.2 *No Distributions Pending Allowance.*

Notwithstanding any other provision hereof, if any portion of a Claim is Disputed, no payment or distribution provided hereunder shall be made on account of the disputed portion of such Claim unless and until such Disputed Claim becomes Allowed. In lieu of distributions under this Plan to Holders of Disputed Secured Claims and Disputed General Unsecured Claims, the Disputed Claim Reserves will be established on the Effective Date to hold property for the benefit of these Claim Holders.

#### 7.3 *Distributions After Allowance.*

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of this Plan. As soon as practicable after the date of a Final Order allowing any Disputed Claim, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under this Plan. Any amounts that remain in any the Disputed General Unsecured Claim Reserve following resolution and payment of all Disputed General Unsecured Claims shall be distributed to the Holders of Allowed General Unsecured Claims in their respective Ratable Proportions.

## ARTICLE VIII

### EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 8.1 *Treatment.*

Except as otherwise provided herein, including in Section 8.2 (Purchase and Sale Agreements) and Section 10.5 (Indemnification Obligations), in the Confirmation Order or in

any contract, instrument, release, indenture, or other agreement, or document entered into in connection with this Plan, as of the Effective Date the Debtor shall be deemed to have rejected each pre-petition executory contract and unexpired lease to which it is a party, unless such contract or lease (a) was previously assumed or rejected by the Debtor, (b) previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to assume filed on or before the Confirmation Date, or (d) is described in the Plan Addendum, as an executory contract or unexpired lease to be assumed. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

#### 8.2 *Purchase and Sale Agreements.*

Except and to the extent previously assumed pursuant to an order of the Bankruptcy Court entered on or before the Confirmation Date, all Purchase and Sale Agreements deemed executory contracts assumable by the Debtor pursuant to section 365(a) of the Bankruptcy Code, shall be deemed assumed pursuant to the Confirmation Order and shall be enforceable by the Debtor according to their terms.

#### 8.3 *Cure Payments.*

Any monetary amounts by which any executory contract or unexpired lease to be assumed hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor. If there is a dispute regarding (i) the nature or amount of any Cure, (ii) the ability of the Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be.

#### 8.4 *Rejection Damages Claims.*

Proofs of all Claims arising out of the rejection of executory contracts and unexpired leases pursuant to this Plan shall be filed with the Bankruptcy Court, claim, and served upon

the Debtor and its counsel not later than thirty (30) days after the earlier of (a) the date on which notice of the occurrence of the Effective Date has been served and (b) the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims not filed within such time shall be forever barred from being asserted against the Debtor, its Estate, the Reorganized Debtor, and their respective properties and interests.

## ARTICLE IX

### CONDITIONS PRECEDENT TO CONSUMMATION DATE

#### *9.1 Conditions Precedent to Confirmation.*

The Plan shall not be confirmed unless and until the following conditions have been satisfied or waived: (a) The Confirmation Order has been entered on the docket by the Clerk of the Bankruptcy Court; and (b) the form of the Plan, Plan Addendum, and the Confirmation Order have been approved by the Debtor.

#### *9.2 Conditions Precedent to Effectiveness.*

The Effective Date shall not occur and this Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with Article IX of this Plan:

(a) The Confirmation Order becomes a Final Order.

(b) The New General Partnership Equity Interest has been distributed to Egozi and transferred to the General Partner;

(c) All actions and all agreements, instruments, or other documents necessary to implement the terms and provisions of this Plan, including those actions identified in Article V of this Plan, are effected or executed and delivered, as applicable; and

(d) All authorizations, consents, and regulatory approvals, if any, required by the Debtor in connection with the consummation of this Plan are obtained and not revoked.

#### *9.3 Waiver of Conditions.*

Each of the conditions precedent in Section 9.2 hereof may be waived, in whole or in part by the Debtor. Any such waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action.

#### *9.4 Satisfaction or Failure of Conditions.*

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtor determines that one of the



conditions precedent set forth in Section 9.2 hereof cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Debtor shall file a notice that the Plan has not become effective with the Bankruptcy Court and the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this Section, this Plan shall be null and void in all respects, and nothing contained in this Plan shall constitute a waiver or release of any Claims against the Debtor or the allowance of any Claim as an Allowed Claim.

## ARTICLE X

### EFFECT OF CONFIRMATION

#### *10.1 Revesting of Assets.*

On the Effective Date, the Debtor, its properties and interests in property, and its operations shall vest in the Reorganized Debtor. From and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property, subject to the terms and conditions of this Plan. As provided in Section 10.8 hereof, the Reorganized Debtor shall retain Estate Causes of Action, other than those released in Section 10.8 hereof.

#### *10.2 Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of this Plan shall bind any Holder of a Claim against, or Equity Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under this Plan, whether or not such Holder has accepted this Plan, and whether or not such Holder is entitled to a distribution under this Plan.

#### *10.3 Discharge of Debtor.*

Except to the extent otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan and the treatment of all Claims against or Equity Interests in the Debtor hereunder shall be in exchange for and in complete satisfaction, discharge, and release of all debts of, Claims against, and Equity Interests in, the Debtor of any nature whatsoever, known or unknown, including, without limitation, any interest accrued or expenses incurred thereon from and after the Petition Date, or against its Estate, the Reorganized Debtor, or its properties or interests in property.

Except as otherwise provided herein or in the Confirmation Order, upon the Effective Date, all Claims against and Equity Interests in the Debtor shall be satisfied, discharged and released in full exchange for the consideration, if any, provided hereunder. Except as otherwise provided herein or in the Confirmation Order, all Persons shall be precluded from asserting against the Debtor or the Reorganized Debtor or its properties or interests in

property including the Property, any other Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

#### *10.4 Term of Injunctions or Stays.*

(a) Except as otherwise expressly provided herein or in the Confirmation Order, all Persons who have held, hold or may hold Claims or Equity Interests will be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Debtor or Reorganized Debtor, or its Affiliates or Representatives, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property of the Debtor or Reorganized Debtor, including the Property, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, and (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due to the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property of the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest.

(b) Unless otherwise provided in the Confirmation Order, all injunctions or stays arising under or entered during the Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until and after the Effective Date.

#### *10.5 Indemnification Obligations.*

The Debtor's obligations under the Partnership Indemnities to indemnify any Indemnified Person with respect to Claims arising prior to the Effective Date will be deemed and treated as executory contracts that are assumed by the Reorganized Debtor pursuant to this Plan and sections 365 and 1123(b) of the Bankruptcy Code as of the Effective Date and the occurrence of the Effective Date shall be the only condition necessary to such assumption and all requirements for Cure and/or adequate assurance of future performance under section 365 for such assumption shall be deemed satisfied (the "Assumed Partnership Indemnities").

#### *10.6 Exculpation.*

As of the Confirmation Date, the Debtor and its Affiliates and Representatives shall be deemed to have solicited acceptances of this Plan of Reorganization in good faith and in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The Debtor, the Reorganized Debtor, and the Disbursing Agent, and each of their respective Affiliates and Representatives shall have no liability to any Holder of any Claim or Equity Interest or any other Person for any act or omission taken or not taken in good faith in

connection with, or arising out of, the Case, the Disclosure Statement, this Plan, the solicitation of votes for and the pursuit of confirmation of this Plan, the offer and issuance of any securities under this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for willful misconduct or gross negligence as determined by a Final Order and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

#### *10.7 Releases.*

For good and valuable consideration, including, but not limited to, the distributions to be made under the Plan and the acceptance of the terms hereof effective as of the Effective Date, each Releasee is hereby released by all of the creditors of the Debtor, all Persons who have held, hold or may hold any Claim or Equity Interest, all other Persons, the Debtor, the Estate, and the Reorganized Debtor from any and all claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, directly or indirectly arising from or related to the Debtor, existing as of the Effective Date or thereafter arising, in law, at equity, or otherwise, that any of the creditors of the Debtor, any Persons who have held, hold or may hold any Claim or Equity Interest, any other Persons, the Debtor, the Estate or the Reorganized Debtor would have been legally entitled to assert in its own right (whether individually or collectively) or that any creditors of the Debtor, any Persons who have held, hold or may hold any Claim or Equity Interest, or any other Person would have been legally entitled to assert on behalf of the Debtor or the Estate or the Reorganized Debtor, based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, including without limitation, claims, actions, and causes of action arising from actions taken or not taken in good faith in connection with the Case, the Plan, the Construction Loan Agreement, Mortgage, the Guarantees, all agreements, documents and instruments relating to the Old General Partnership Interests, all Old Limited Partnership Interests, and the restructuring of the Debtor and other transaction contemplated by this Plan; *provided, however*, that nothing herein shall be deemed to release any rights, claims, or interests that any such party may be receiving or retaining pursuant to the Plan on or after the Effective Date. All Persons shall be precluded and permanently enjoined from asserting against the Releasees, and their respective assets and properties, any and all claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities whatsoever which are released under this Section 10.7. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

#### *10.8 Retained Causes of Action*

Effective as of the Effective Date, Estate Causes of Action, including all preference or other avoidance action claims and actions of the Debtor, including, but not limited to, those arising under chapter 5 of the Bankruptcy Code, shall be retained by the Reorganized Debtor.

## ARTICLE XI

### RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters, except as expressly noted herein, arising out of, or related to, the Case and this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims including any Administrative Expenses resulting therefrom;

(b) To determine any and all adversary proceedings, applications, and contested matters that are pending on the Effective Date;

(c) To ensure that distributions to Holders of Allowed Administrative Expenses and Allowed Claims are accomplished as provided herein;

(d) To hear and determine any timely objections to, or requests for estimation of, Administrative Expenses or proofs of claims, including, without limitation, any objections to the classification of any Administrative Expense, Claim or Equity Interest, and to allow or disallow any Disputed Administrative Expense or Disputed Claim, in whole or in part;

(e) To resolve disputes as to the ownership of any Administrative Expense, Claim or Equity Interest;

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

(g) To issue such orders in aid of execution of this Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

(h) To consider any amendments to or modifications of this Plan, or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) To hear and determine all applications of retained professionals under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;

(j) To hear and determine disputes or issues arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, any transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing, or any settlement approved by the Bankruptcy Court;

(k) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without

limitation, any request by the Debtor prior to the Effective Date, or request by the Reorganized Debtor after the Effective Date, for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

(l) To hear any other matter not inconsistent with the Bankruptcy Code;

(m) To hear and determine all disputes involving the existence, scope, and nature of the discharges, releases and injunctions granted under this Plan, the Confirmation Order, or the Bankruptcy Code;

(n) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any Person with the consummation or implementation of this Plan;

(o) To enter a final decree closing the Case; and

(p) To hear any claim, matter or chose in action, whether or not it has been commenced prior to the Effective Date, that the Debtor or Reorganized Debtor may prosecute, including any Estate Causes of Action which has not been liquidated prior to the Effective Date, including, without limitation, an action to foreclose any Purchase Money Mortgage held by the Reorganized Debtor.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

#### *12.1 Payment of Statutory Fees.*

All fees payable under section 1930, chapter 123, title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All such fees that arise after the Effective Date shall be paid by the Reorganized Debtor. The obligation of the Reorganized Debtor to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code shall continue until such time as the Case is Closed, dismissed or converted.

#### *12.2 Modification of Plan.*

The Plan may be modified by the Debtor, in accordance with section 1127 of the Bankruptcy Code.

#### *12.3 Revocation of Plan.*

The Debtor reserves the right at any time prior to the entry of the Confirmation Order, to revoke and withdraw this Plan.

#### *12.4 Severability of Plan Provisions.*

In the event that, prior to the Confirmation Date, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court

shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted.

Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

*12.5 Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to this Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to the principles of conflict of laws.

*12.6 Compliance with Tax Requirements.*

In connection with the consummation of this Plan, any party issuing any instrument or making any distribution under this Plan, including any party described in Section 6.2 above, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under this Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under this Plan has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

*12.7 Computation of Time.*

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

*12.8 Notices.*

All notices, requests, and demands to or upon the Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein,

shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Harbour East Development, Ltd.  
c/o Mario Egozi  
7935 East Drive  
North Bay Village, FL 33141

- and-

Paul M. Bauch, Esq.  
BAUCH & MICHAELS, LLC  
53 W. Jackson Boulevard, Suite 1115  
Chicago, Illinois 60604  
Tel: (312) 588-5000  
Fax: (312) 427-5709  
Florida Bar No. 363677

- and -

Michael L. Schuster, Esq.  
GENOVESE JOBLOVE & BATTISTA, P.A.  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
Telephone: (305) 349-2300  
Facsimile : (305) 349-2310  
Florida Bar No. 57119

*12.9 Filing or Execution of Additional Documents.*

On or before the Effective Date, and without the need for any further order or authority, the Debtor or Reorganized Debtor shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to the Debtor or Reorganized Debtor as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Dated: December 15, 2010

HARBOUR EAST DEVELOPMENT, LTD.

By: /s/ Paul M. Bauch, Esq.

By: /s/ Michael L. Schuster, Esq.



## **EXHIBIT 2**

## HARBOUR EAST DEVELOPMENT, LTD

Balance Sheet  
as of

	12/31/2008	12/31/2009	4/22/2010
<b>ASSETS</b>			
<b>Current assets:</b>			
Cash	18,681	2,308	18,519
Marketing materials on hand	3,000	3,000	3,000
<b>Total current assets</b>	<b>21,681</b>	<b>5,308</b>	<b>21,519</b>
<b>Fixed assets:</b>			
Units Available for Sale/Rent	-	22,817,973	22,817,973
Office Furniture & Equipment	8,741	8,741	8,741
Capital Expenditures - Rental Units	-	55,367	71,366
Less accumulated depreciation	(6,267)	(240,775)	(319,705)
	-	-	-
<b>Total fixed assets</b>	<b>2,474</b>	<b>22,641,306</b>	<b>22,578,374</b>
<b>Other assets:</b>			
Capitalized Marketing	19,705	-	-
Capitalized Loan Costs	348,191	-	-
Capitalized Interest	1,534,832	-	-
Capitalized Property Taxes	355,278	-	-
Capitalized Construction Hard Costs	16,054,094	-	-
Capitalized Soft Costs	1,505,245	-	-
Capitalized Land Cost	3,420,929	-	-
Deposits	9,051	9,051	9,051
Frankel IOTA Account	-	4,622	4,622
Funds Held in Escrow	1,817,660	1,385,258	1,387,058
<b>Total other assets</b>	<b>25,064,985</b>	<b>1,398,932</b>	<b>1,400,731</b>
<b>Total assets</b>	<b>25,089,140</b>	<b>24,045,545</b>	<b>24,000,624</b>
<b>LIABILITIES &amp; OWNER'S EQUITY</b>			
<b>Current liabilities:</b>			
Accounts Payable	-	15,103	15,103
Loans from General Partner	310,437	3,667,180	3,667,180
Customer Deposits	3,583,460	2,687,860	2,687,860
Rental Deposits & Pre-paid Rents	-	25,800	13,100
Accrued Property Taxes - 2010	-	-	99,000
Due to Revuelta Vega Leon	-	106,000	106,000
Due to Whirlpool Corp	-	28,521	28,521
Due to Cielo Condominium	-	109,760	223,048
<b>Total current liabilities</b>	<b>3,893,897</b>	<b>6,640,224</b>	<b>6,839,812</b>
<b>Long-term liabilities:</b>			
Construction Loan #1	15,755,266	14,048,177	14,048,177
Construction Loan #2	2,030,935	(0)	(0)
<b>Total long-term liabilities</b>	<b>17,786,201</b>	<b>14,048,177</b>	<b>14,048,177</b>
<b>Owner's equity:</b>			
Current Year Profit (Loss)	8,646	(51,898)	(244,509)
Partners' Capital Accounts	3,400,396	3,409,042	3,357,144
<b>Total owner's equity</b>	<b>3,409,042</b>	<b>3,357,144</b>	<b>3,112,635</b>
<b>Total liabilities and owner's equity</b>	<b>25,089,140</b>	<b>24,045,545</b>	<b>24,000,624</b>

## **EXHIBIT 3**

**Harbour East Development, Ltd.**  
**Case No: 10-20733-BKC-AJC**  
**Disclosure Statement for Plan of Reorganization**  
**Liquidation Analysis as of September 1, 2010**

	Notes	Book Value as of 9/1/10	Liquidation Value			
			Low		High	
			\$	%	\$	%
Cash and Cash Equivalents	1	\$ 560,855	\$ 476,727	85%	\$ 560,855	100%
Accounts Receivable	2	2,100	-	0%	2,100	100%
Prepaid Expenses	3	1,150	-	0%	1,150	100%
Escrow Security Deposits	4	837,584	209,396	25%	628,188	75%
Real Property	5	22,889,339	6,000,000	26%	8,000,000	35%
Furniture & Fixtures	6	100,000	10,000	10%	80,000	80%
<b>Gross Liquidation Proceeds</b>		<b>\$ 24,391,028</b>	<b>\$ 6,696,123</b>		<b>\$ 9,272,293</b>	
<b>Less: Wind-down Costs</b>						
Cost Associated with Liquidation	7		\$ (600,000)		\$ (800,000)	
Trustee Fees	8		(200,884)		(278,169)	
Professional Fees	9		(100,000)		(250,000)	
<b>Total Liquidation Costs</b>			<b>\$ (900,884)</b>		<b>\$ (1,328,169)</b>	
<b>Net Liquidation Proceeds Available</b>			<u>\$ 5,795,239</u>		<u>\$ 7,944,124</u>	
		Estimated Claims	Projected Recovery			
			Low		High	
			\$	%	\$	%
<b>Net Liquidation Proceeds Available for Secured Debt</b>						
Real Estate Tax Secured Claims	10	442,203.79	442,204	100%	442,204	100%
Association Secured Claim (Class 8)	11	258,441.08	258,441	100%	258,441	100%
Northern Trust/NBV Secured Construction Loan Claim (Class 3)	12	8,000,000.00	5,094,594	64%	7,243,480	91%
Egozi Secured Subrogation Claim (Class 4)	13	3,041,884.80	-	0%	-	0%
Whirlpool Secured Claim (Class 5)	14	27,521.70	-	0%	-	0%
Revuelta Vega Leon Secured Claim (Class 6)	15	106,000.00	-	0%	-	0%
Purchaser Deposit Secured Claims (Class 7)	16	752,900.00	-	0%	-	0%
Purchaser Contract Litigation Attorney Secured Claim (Class 9)	17	39,786.80	-	0%	-	0%
<b>Net Liquidation Proceeds Available for Administrative and Priority Claims</b>						
Administrative Claims	18	300,000.00	-	0%	-	0%
Priority Non-Tax Claims (Class 1)	19	7,800.00	-	0%	-	0%
<b>Net Liquidation Proceeds Available for Unsecured Claims</b>						
Northern Trust/NBV Unsecured Claim (Class 10)	20	7,598,530.54	-	0%	-	0%
General Unsecured Claims (Class 11)	21	486,503.17	-	0%	-	0%
Egozi Unsecured Claim (Class 12)	22	660,090.00	-	0%	-	0%
<b>Net Liquidation Proceeds Available for Equity Interests</b>						
Old Limited Partnership Equity Interests (Class 13)		-	-	0%	-	0%
Old General Partnership Equity Interest (Class 14)		-	-	0%	-	0%

**Notes to Liquidation Analysis**

1. Based on current cash on hand in Debtor accounts including defaulted deposits turned over. The Liquidation Analysis assumes that operations during the liquidation period will not generate additional cash available for distribution except for the disposition of non-cash assets. The low estimate assumes that cash will be used to fund operations of the property through a sale date. The high estimate contemplates that operations will generate additional cash on a go-forward basis, sufficient enough to sustain future operations and therefore, current cash balances are assumed to be 100% recoverable.
2. Accounts receivable based on current value of delinquent rental payments.
3. Post-petition amounts held on deposit with utility companies. Amount excludes pre-paid insurance. The policy is paid through December 2010. It is assumed that a sale of the property would not occur prior to that date and therefore, the policy would not be terminated early and no amounts would be due.
4. Amount as of July 31, 2010 bank statement less \$550,855 turned over to the estate in August, 2010 per DE# 153. Includes deposits held for pending sales on units 501 and 802.
5. High liquidation value based on appraisal report provided by Lender.
6. Includes model unit furnishings, office equipment and appliances in 12 units. Low liquidation estimate assumes appliances sold as stand alone units. High value contemplates items sold in place with real property.
7. Liquidation costs include the cost to market the property for sale and related closing costs. Total costs estimated at 10% of liquidation value of real property.
8. Chapter 7 Trustee fees include those fees associated with the appointment of a chapter 7 trustee in accordance with section 363 of the Bankruptcy Code. Trustee fees are calculated based on the total liquidation value of the Debtor assets.
9. Chapter 7 professional fees include any legal and accounting fees expected to be incurred during the liquidation period that are not already deducted from the liquidation values.
10. Per amended claim #3-2 filed by Miami-Dade Tax Collector
11. Per F.S. 718.116, the Association may be entitled to a secured claim of up to one year of assessments. Any deficiency between this amount and the total filed claim of the Association (Claim #7-1) is included as an unsecured claim.
12. As of the Petition Date, NBV maintained that the Property had a fair market value of \$8,000,000. Therefore, pursuant to Section 506(a) of the Bankruptcy Code, only approximately \$8,000,000 of NBV's claim could be secured by a first priority Mortgage lien on the Property and the remaining \$8,000,000 of NBV's claim is most likely unsecured. The secured portion of the claim is subject to increase or decrease depending upon the bankruptcy court's determination of the value of the Property at the time of the Confirmation hearing, including whether the value of the Property should be reduced by construction completion costs, the value of personal property in which NBV failed to perfect a security interest and Section 506(c) surcharge claims.
13. Per claim # 10-1. Further to Note 12 above, Northern Trust/NBV's claims may be determined to be subordinate to Egozi's Secured Subrogation Claim. Consequently, \$3,000,000 of Egozi's \$3,660,000 claim against the Debtor may be secured by the Property.
14. Per claim # 2-1.
15. Based on scheduled amount per assertion from Debtor's architect that he has a \$106,000 claim contended to be secured by a mechanic's lien. Pursuant to applicable non-bankruptcy law, NBV's Mortgage lien may be superior in priority to this mechanics lien. In addition, the architect failed to file a claim against the bankruptcy estate by the bar date, and therefore may have no claim in the event that the Bankruptcy Court determines that its mechanic's lien claim is not actually secured by the Property.
16. Presently, the Debtor may owe monies to 8 purchasers based upon their respective purchase deposits. Half of each Purchaser's deposit was used to construct CIELO and the other half is currently held in escrow. As such, purchasers may only be entitled to a secured deposit claim, in whole or in part, to the extent of the portion of their deposit that is held as part of the Escrowed Deposits.
17. Per claims #7-1 and 17-1 which are claims of Debtor's attorneys who represented the Debtor in Deposit Litigation Cases pre-petition.
18. The amount consists of actual and estimated claims of Court-approved Debtor professionals incurred and unpaid through the Effective Date.
19. Portion of purchaser deposit claims entitled to priority where a proof of claim was filed and claimant asserted a priority claim.
20. This claim consists of any portion of NBV's claim that is not satisfied by liquidation of the collateral securing the indebtedness.
21. Based on a scheduled and filed claims. Amount excludes monies that may be due to the Association for related to warranty claims which are currently contingent/unliquidated.
22. Per claim # 9-1.

# **EXHIBIT 4**

**Harbour East Development, Ltd.**

Case #: 10-20733-BKC-AJC

**6 Year Plan Budget****USD (\$Actual)**

	Budget 2011	Budget 2012	Budget 2013	Budget 2014	Budget 2015	Budget 2016	Budget Total
Beginning Cash Balance	\$ 200,000	\$ 108,198	\$ 561,588	\$ 2,763,670	\$ 4,420,863	\$ 7,568,205	\$ 200,000
Rental Revenue <sup>(1)</sup>	449,280	449,280	280,800	140,400	-	-	1,319,760
Net Sale Proceeds <sup>(2)</sup>	574,469	1,663,350	4,324,625	3,730,050	5,091,480	-	15,383,974
Defaulted escrow deposits and accrued interest <sup>(3)</sup>	370,900	-	-	-	-	-	370,900
Mortgage Payments (Principle and Interest) <sup>(4)</sup>	111,022	196,921	196,921	196,921	196,921	85,899	984,603
Mortgage Balloon Payment <sup>(5)</sup>	-	-	-	-	-	2,807,104	2,807,104
<b>Total Receipts</b>	<b>\$ 1,505,671</b>	<b>\$ 2,309,551</b>	<b>\$ 4,802,346</b>	<b>\$ 4,067,371</b>	<b>\$ 5,288,401</b>	<b>\$ 2,893,003</b>	<b>\$ 20,866,341</b>
<b>Disbursements:</b>							
Operating Expenses							
Bank Fees	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300	1,800
Condo Association Assessments	221,840	179,298	150,902	100,401	50,231	-	702,671
Filing Fees	200	200	200	200	200	200	1,200
Marketing and Promotion	2,000	2,000	2,000	2,000	2,000	-	10,000
Office Expenses	3,000	3,000	3,000	3,000	3,000	1,800	16,800
Insurance Reserve	10,000	10,000	10,000	10,000	10,000	10,000	60,000
Postage and Delivery	1,800	1,800	1,800	1,800	1,800	500	9,500
Property Taxes <sup>(6)</sup>	491,840	204,914	151,788	83,483	-	-	932,025
Rental Commission	5,000	5,000	2,500	2,500	-	-	15,000
Repairs & Maintenance	10,000	10,000	7,500	7,500	5,000	-	40,000
Telephone	1,800	1,800	1,800	1,800	1,800	-	9,000
Utilities	10,000	7,500	6,500	5,000	5,000	-	30,500
Website	500	500	500	500	500	-	2,500
<b>Total Operating Expenses</b>	<b>\$ 758,280</b>	<b>\$ 426,312</b>	<b>\$ 338,790</b>	<b>\$ 218,485</b>	<b>\$ 76,331</b>	<b>\$ 12,800</b>	<b>\$ 1,830,996</b>
Non-Operating Expenses							
Professional fees <sup>(7)</sup>	100,000	100,000	100,000	100,000	50,000	50,000	500,000
Principal Payments to NBV <sup>(8)</sup>	574,469	1,000,000	1,750,000	1,750,000	1,750,000	832,031	7,656,500
Interest Payments to NBV <sup>(9)</sup>	-	141,607	155,586	103,086	50,586	12,480	463,345
Quarterly US Trustee Fees	19,500	19,500	19,500	19,500	19,500	19,500	117,000
<b>Total Non-Operating Expenses</b>	<b>\$ 693,969</b>	<b>\$ 1,261,107</b>	<b>\$ 2,025,086</b>	<b>\$ 1,972,586</b>	<b>\$ 1,870,086</b>	<b>\$ 914,012</b>	<b>\$ 8,736,845</b>
<b>Total Operating and Non-Operating Expenses</b>	<b>\$ 1,452,248</b>	<b>\$ 1,687,418</b>	<b>\$ 2,363,876</b>	<b>\$ 2,191,070</b>	<b>\$ 1,946,417</b>	<b>\$ 926,812</b>	<b>\$ 10,567,842</b>
10% Contingency Reserve <sup>(10)</sup>	\$ 145,225	\$ 168,742	\$ 236,388	\$ 219,107	\$ 194,642	\$ 92,681	\$ 1,056,784
<b>Total Disbursements</b>	<b>\$ 1,597,473</b>	<b>\$ 1,856,160</b>	<b>\$ 2,600,263</b>	<b>\$ 2,410,178</b>	<b>\$ 2,141,059</b>	<b>\$ 1,019,493</b>	<b>\$ 11,624,626</b>
Net Change in Cash	\$ (91,802)	\$ 453,390	\$ 2,202,082	\$ 1,657,193	\$ 3,147,342	\$ 1,873,510	\$ 9,241,715
Ending Cash Balance	\$ 108,198	\$ 561,588	\$ 2,763,670	\$ 4,420,863	\$ 7,568,205	\$ 9,441,715	\$ 9,441,715

**Notes**

<sup>(1)</sup> Estimated rental receipts factoring in a 10% reduction for temporary vacancies and/or bad debt expense. Average rental rate set at \$2,600 per unit. Budget contemplates that 16 units to be rented in years 2011 and 2012, 10 to be rented in 2013 and 5 in 2014.

<sup>(2)</sup> Represents net cash to estate after payment of closing costs and upgrade costs. Proceeds in 2011 are based on the assumption that seller financing is extended on sales.

<sup>(3)</sup> Based on an estimate that 50% of the gross escrow deposits held (excluding those related to 501 and 802) will be realized and the estate will be the beneficiary of accrued interest remaining in the account.

<sup>(4)</sup> Yearly cash received from principal and interest payments from seller financed sales.

<sup>(5)</sup> Gross principal payment remaining at end of 5 years resulting from seller financed sales.

<sup>(6)</sup> Based on an estimate of assessed values of remaining unsold units at year end. 2011 amount includes estimated taxes due for 2010 and 2011. The Debtor is evaluating options for an appeal of assessed value which, if successful, would result in a reduction of 2010 property tax liability.

<sup>(7)</sup> Amount includes allocation for the payment of \$300,000 in pre-effective date professional administrative claims and an estimated \$200,000 of additional professional fees over the term of the plan. The inclusion of this line item herein does not constitute a waiver by the holders of any allowed administrative expense claim of the right to demand payment in full of such administrative expense claim as a condition to the effectiveness of the Debtor's Plan of Reorganization.

<sup>(8)</sup> Based on the payments of \$250,000 per closing. Where seller financing is extended, the payment to NBV will equal the net proceeds to the estate. It is proposed that in 2010, \$343,500 will be paid to NBV from sale proceeds. Therefore, per the budget, principal payments made through 2016 will total \$8,000,000.

<sup>(9)</sup> Calculated monthly based on estimated principal remaining after sale of units and pay down per note 6 at a rate of LIBOR plus 2.5%. In 2010, it is projected that NBV will receive an interest reserve payment of \$280,000. Accordingly, this pre-paid expense will reduce the amount of interest the Debtor will need to pay during 2011 and 2012. Once \$280,000 in accrued interest is reached, the Debtor will begin making regular interest payments.

<sup>(10)</sup> To be used as needed. The contingency accounts for increases in estimated expenses and reductions in projected sales prices.



# **EXHIBIT 5**

Claims Analysis for Disclosure Statement

Schedules

Schedule	Creditor	Consideration	Contingent		Scheduled Amount	Amount Paid	Adjust Scheduled /POC Filed	Adjusted Schedule
			Unliquidated	Disputed				
D	7935 NBV LLC	Mortgage on Real Property	x	x	14,048,177.00	-	(14,048,177.00)	-
D	Cielo on the Bay Condo Association	Condominium Assesment	x	x	Unknown	-	-	-
D	Mario Egozi	As Subrogee to Northern Trust Bank	x	x	3,500,000.00	-	(3,500,000.00)	-
D	Revuelta Vega Leon	Mechanic's Lien for Architectural Services	x	x	106,000.00	-	-	106,000.00
D	Whirlpool Corporation	PMSI	x		28,521.00	-	(28,521.00)	-
E	Billy Bean (Unit 504)	Residential Lease Security Deposit	x		2,600.00	(2,600.00)	-	-
E	Ray Rodriguez (Unit 1504)	Residential Lease Security Deposit	x		2,900.00	-	(2,900.00)	-
E	Scott Dearden (Unit 1203)	Residential Lease Security Deposit	x		2,300.00	-	(2,300.00)	-
E	Zobieda Rothstein	Residential Lease Security Deposit	x		2,900.00	-	(2,900.00)	-
F	All Florida Pool	Services Rendered	x	x	Unknown	-	-	-
F	AT&T	Services Rendered	x	x	Unknown	-	-	-
F	Atlantic Broadband Cable	Services Rendered	x	x	Unknown	-	-	-
F	Azael Pousa	Services Rendered			105.00	-	-	105.00
F	Blass & Frankel, PA	Services Rendered	x	x	Unknown	-	-	-
F	Carlos Silon	Services Rendered	x	x	Unknown	-	-	-
F	Cielo 10A-LLC (Unit 1001)	Breach of Contract	x	x	Unknown	-	-	-
F	Cielo 11-D LLC (Unit 1104)	Breach of Contract	x	x	Unknown	-	-	-
F	Cielo 12A LLC (Unit 1201)	Breach of Contract	x	x	Unknown	-	-	-
F	Cielo on the Bay 14D LLC (Unit 1404)	Breach of Contract	x	x	Unknown	-	-	-
F	Cielo on the Bay Condo Association	Condominium Assesments	x	x	Unknown	-	-	-
F	DK Phillips, Attorneys at Law	Services Rendered			9,718.00	-	(9,718.00)	-
F	Eco Simplista	Services Rendered	x	x	Unknown	-	-	-
F	Engineering Systems	Services Rendered	x	x	Unknown	-	-	-
F	Felipe Sanchez	Services Rendered	x	x	Unknown	-	-	-
F	Fernando Giaquinta	Services Rendered	x	x	Unknown	-	-	-
F	Florida Power and Light	Services Rendered			Unknown	-	-	-
F	FPTS Tax Consulting	Services Rendered			1,580.00	-	-	1,580.00
F	Juan Mauricio Cuellar (Unit 1203)	Breach of Contract	x	x	Unknown	0	-	-
F	Kent Harrison Robbins	Services Rendered	x	x	Unknown	0	-	-
F	Kramer and Associates	Services Rendered			3,700.00	0	(3,700.00)	-
F	Mark Traverso (Unit 1003/1004)	Breach of Contract	x	x	Unknown	0	-	-
F	North Bay Village	Services Rendered	x	x	Unknown	-	-	-
F	Osvaldo and Albert Garcia (Unit 804)	Breach of Contract	x	x	Unknown	-	-	-
F	Per W. Nylen and Cheryl L. Nylen	Warranty Claims	x	x	Unknown	-	-	-
F	Power Depot	Goods Provided	x	x	Unknown	-	-	-
F	Reza Rahimzadegan (Unit 1502)	Breach of Contract	x	x	Unknown	0	-	-
F	Thysenkrupp	Services Rendered	x	x	Unknown	-	-	-
F	White Investment Group, Inc	Warranty Claims	x	x	Unknown	-	-	-
	Miami-Dade Tax Collector				-	-	-	-
	James Milana (Unit 1204)				-	-	-	-
	Mario Egozi				-	-	-	-
	Juan and Jenny Espinosa (Unit PH-4)				-	-	-	-
	Cielo by the Bay Condo Association				-	-	-	-
	Correnty (Unit 501)				-	-	-	-
	Paul Kempinski (Unit 802)				-	-	-	-

<b>BY BANKRUPTCY SCHEDULE</b>	17,682,698.00
D SECURED CLAIMS	10,700.00
E UNSECURED PRIORITY CLAIMS	15,103.00
F UNSECURED NONPRIORITY CLAIMS	<u>\$ 17,708,501.00</u>

Claims Analysis for Disclosure Statement

Proof of Claim

Schedule	Creditor	Claim #	Basis for Claim	Category (Filed As)	Claim Amt per PoC	PoC	Adjusted PoC
						Adjustment **	
D	7935 NBV LLC	6-1	Mortgage on Real Property	Secured	15,598,530.54		15,598,530.54
D	Cielo on the Bay Condo Association	12-1	Condo Assessments	Secured	314,188.00		314,188.00
D	Mario Egozi	10-1	Loans (Subrogation of Loans)	Secured	3,041,884.80		3,041,884.80
D	Revuelta Vega Leon	N/A					-
D	Whirlpool Corporation	2-1	Goods Provided	Secured	27,521.70		27,521.70
E	Billy Bean (Unit 504)	N/A					-
E	Ray Rodriguez (Unit 1504)	N/A					-
E	Scott Dearden (Unit 1203)	N/A					-
E	Zobieda Rothstein	N/A					-
F	All Florida Pool	N/A					-
F	AT&T	N/A					-
F	Atlantic Broadband Cable	N/A					-
F	Azael Pousa	N/A					-
F	Blass & Frankel, PA	N/A					-
F	Carlos Silon	N/A					-
F	Cielo 10A-LLC (Unit 1001)	16-1	Breach of Contract	Unsecured	229,555.00	(229,555.00)	-
F	Cielo 11-D LLC (Unit 1104)	15-1	Breach of Contract	Unsecured	224,555.00	(224,555.00)	-
F	Cielo 12A LLC (Unit 1201)	N/A					-
F	Cielo on the Bay 14D LLC (Unit 1404)	14-1	Breach of Contract	Unsecured	153,200.00		153,200.00
F	Cielo on the Bay Condo Association	N/A					-
F	DK Phillips, Attorneys at Law	7-1		Unsecured	10,021.93		10,021.93
F	Eco Simplista	N/A					-
F	Engineering Systems	N/A					-
F	Felipe Sanchez	N/A					-
F	Fernando Giaquinta	N/A					-
F	Florida Power and Light	N/A					-
F	FPTS Tax Consulting	N/A					-
F	Juan Mauricio Cuellar (Unit 1203)	5-1	Breach of Contract	Secured	170,000.00		170,000.00
F	Kent Harrison Robbins	17-1	Services Rendered	Unsecured	29,764.87		29,764.87
F	Kramer and Associates	1-1	Services Rendered	Unsecured	3,071.25		3,071.25
F	Mark Traverso (Unit 1003/1004)	18-1	Breach of Contract	Unsecured	381,800.00		381,800.00
F	North Bay Village	N/A					-
F	Osvaldo and Albert Garcia (Unit 804)	N/A				80,200.00	80,200.00
F	Per W. Nylen and Cheryl L. Nylen	N/A					-
F	Power Depot	N/A					-
F	Reza Rahimzadegan (Unit 1502)	8-1	Breach of Contract	Unsecured	81,500.00		81,500.00
F	Thysenkrupp	N/A					-
F	White Investment Group, Inc	N/A					-
	Miami-Dade Tax Collector	3-2	Property Taxes	Secured	442,203.79		442,203.79
	James Milana (Unit 1204)	4-1	Breach of Contract	Unsecured	147,000.00		147,000.00
	Mario Egozi	9-1	Loans	Unsecured	660,090.00		660,090.00
	Juan and Jenny Espinosa (Unit PH-4)	11-1	Breach of Contract	Priority	280,000.00	(280,000.00)	-
	Cielo by the Bay Condo Association	13-1	Warranty Claims	Unsecured	-		-
	Correnty (Unit 501)	N/A	Breach of Contract			79,000.00	79,000.00
	Paul Kempinski (Unit 802)	N/A	Breach of Contract			94,000.00	94,000.00
							-

Notes

\*\* The Debtor has declared a number of purchasers with deposits to be in default. On August 6, 2010 the Bankruptcy Court authorized the Escrow Agent to turnover the deposits of 6 purchasers to the Debtor because the purchasers were default and had forfeited their deposits. This ruling suggests these Purchaser Deposit Claims were therefore disallowed. As such, to the extent a purchaser with a defaulted deposit has filed a claim, the claim has been reduced to \$0. Purchasers with deposits currently held in escrow may have secured claims to the extent of the monies held. Where a proof of claim has not been filed, an adjustment has been made to account for the possibility of a secured claim.

Claims Analysis for Disclosure Statement

Final Claims Allocation By Class

		Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9	Class 10	Class 11	Class 12	
Schedule	Creditor	Reconciled (PoC or Scheduled Claim)	Priority Non-Tax Claims	Real Estate Tax Secured Claims	Northern Trust/NBV Secured Construction Loan Claim	Egozi Secured Subrogation Claim	Whirlpool Secured Claim	Reuelta Vega Leon Secured Claim	Purchaser Deposit Secured Claims	Association Secured Claim	Purchaser Contract Litigation Attorney Secured Claim	Northern Trust/NBV Unsecured Claim	General Unsecured Claims	Egozi Unsecured Claim
D	7935 NBV LLC	15,598,530.54			8,000,000.00							7,598,530.54		
D	Cielo on the Bay Condo Association	314,188.00								258,441.08			55,746.92	
D	Mario Egozi	3,041,884.80				3,041,884.80								
D	Reuelta Vega Leon	106,000.00						106,000.00						
D	Whirlpool Corporation	27,521.70					27,521.70							
E	Billy Bean (Unit 504)	-												
E	Ray Rodriguez (Unit 1504)	-												
E	Scott Dearden (Unit 1203)	-												
E	Zobieda Rothstein	-												
F	All Florida Pool	-												
F	AT&T	-												
F	Atlantic Broadband Cable	-												
F	Azael Pousa	105.00											105.00	
F	Blass & Frankel, PA	-												
F	Carlos Silon	-												
F	Cielo 10A-LLC (Unit 1001)	-												
F	Cielo 11-D LLC (Unit 1104)	-												
F	Cielo 12A LLC (Unit 1201)	-												
F	Cielo on the Bay 14D LLC (Unit 1404)	153,200.00	2,600.00						74,000.00				76,600.00	
F	Cielo on the Bay Condo Association	-												
F	DK Phillips, Attorneys at Law	10,021.93								10,021.93				
F	Eco Simplista	-												
F	Engineering Systems	-												
F	Felipe Sanchez	-												
F	Fernando Giaquinta	-												
F	Florida Power and Light	-												
F	FPTS Tax Consulting	1,580.00											1,580.00	
F	Juan Mauricio Cuellar (Unit 1203)	170,000.00	2,600.00						82,400.00				85,000.00	
F	Kent Harrison Robbins	29,764.87								29,764.87				
F	Kramer and Associates	3,071.25											3,071.25	
F	Mark Traverso (Unit 1003/1004)	381,800.00	2,600.00						188,300.00				190,900.00	
F	North Bay Village	-												
F	Osvaldo and Albert Garcia (Unit 804)	80,200.00							80,200.00					
F	Per W. Nylen and Cheryl L. Nylen	-												
F	Power Depot	-												
F	Reza Rahimzadegan (Unit 1502)	81,500.00							81,500.00					
F	Thysenkrupp	-												
F	White Investment Group, Inc	-												
	Miami-Dade Tax Collector	442,203.79		442,203.79										
	James Milana (Unit 1204)	147,000.00							73,500.00				73,500.00	
	Mario Egozi	660,090.00												660,090.00
	Juan and Jenny Espinosa (Unit PH-4)	-												
	Cielo by the Bay Condo Association	-												
	Correnty (Unit 501)	79,000.00							79,000.00					
	Paul Kempinski (Unit 802)	94,000.00							94,000.00					
		\$ 21,421,661.88	\$ 7,800.00	\$ 442,203.79	\$ 8,000,000.00	\$ 3,041,884.80	\$ 27,521.70	\$ 106,000.00	\$ 752,900.00	\$ 258,441.08	\$ 39,786.80	\$ 7,598,530.54	\$ 486,503.17	\$ 660,090.00

# **EXHIBIT 6**

# CIELO-EWM MARKETING PLAN

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## General

Position the project in the niche market of boutique condominiums. Promote the unique and inherent qualities of the building separating it into another class. CIELO's high-end floor plans, home replacement size, and off-resort feel differentiate it from the "utility box" and the investor rental scheme buildings. CIELO amenities and low association assessments relative to the larger resort projects provides it a significant advantage over larger overhead burdened projects.

## Location

Capitalize on the central location between Miami and Miami Beach and the proximity to the Upper East Side and Design District on the west and Bal Harbor and South Beach on the east. Capture North county sales from Aventura and Sunny Isles by offering Harbor Island as alternate "north" location. Transport the Miami Beach buyer with the small scale intimacy and maximum ocean and waterway views.

## Leasing, Pricing and Sales Strategy

Debtor will initially emphasize sales of lower floors through an incentive pricing structure. The Debtor intends to sell a maximum of 5 units at the incentive prices. The Debtor projects that it will recover discounts on the early sales through higher prices on the sales of the remaining units. Debtor will seek to lease the more valuable lanai and upper floors until the project qualifies for external financing and the market recovery achieves further gains. Although all units shall be offered for sale, the Debtor will offer the lanai and upper floors at the higher target prices. The Debtors objective is to maintain prices at higher levels so as not to undercut prior buyers and impair future appraisals. The strategic offering of a limited number of units at incentive and higher prices is designed to avoid reflecting on the MLS that the project is "unsold" and to avoid the perception that the project is in distress.

Debtor and EWM will maintain data on "comparable" projects in the Miami area to substantiate pricing of units. In addition, in order to distinguish sales in inferior projects in the North Bay Village submarket, Debtor and EWM will also maintain data on comparable price spreads between neighboring project in the same submarket where one project is superior in price to the neighboring project to support premium pricing for CIELO, *i.e.*, Santa Maria/Skyline; Murano/Grande-Murano, Palm Bay Tower/Palm Bay.

### Advertising

EWM will include the project its normal MLS, web based and newspaper programs. See attached. Debtor and EWM will also seek to maximize the exposure of the project through direct marketing and events. Debtor and EWM are seeking to offer certain units as temporary gallery space for the 2010 Art Basil. The Debtor and EWM believe that this targeted approach to marketing will generate a higher realization rate on advertising dollars.

### Capital Projects

The Debtor and EWM believe that is critical that the capital projects be completed so that the the building does not look distressed or incomplete. This includes in particularly the completion of the Marina so that the actual project conforms to the representations in the Condominium Declaration. The Debtor and EWM also believe that it is important to finish several additional units and to fully furnish the model units. The Debtor believes that the finishing of the units will promote their sale and that the costs of the finishes will be recovered through enhanced sale prices. EWM believes that a majority of buyers are looking for turnkey product that is finished and ready to occupy. As discussed below, the Debtor believes that this creates an opportunity for addition profit on the sales.

### Upgrades and Design Services

Debtor intends to offer interior design services through its principal Mario Egozi. Mr. Egozi is assembling an upgrade package for the units that will provide for a choice of floor finishes, color selection and painting or coordinated wall coverings, window treatments, kitchen and bath cabinetry and appliance upgrades, and exterior balcony and patio finishes. Debtor will sell the upgrades as a rider to the standard sales contract and will fund construction with purchaser deposits.



ESTHER PERCAL  
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[www.esterpercel.com](http://www.esterpercel.com)

Ideal weather, luxurious residences, and my intuitive knowledge of the market is the essence of my success. For over 30 years, I have matched up unique properties with home buyers from around the globe. I work hard to ensure I understand my client's specific needs and objectives in order to introduce them to their perfect home.

My personal sales team consists of Lety Rios, my Office Manager and Assistant, who has been working with me for over 10 years, and Robert Evangelista, who assists with property showings and all aspects of client relations, follow-up and negotiations. Robert has been a Realtor for over 15 years.

"The purchase of your dream home should be an intimate and joyful activity. I pride myself in the immense success that I have achieved in building and cultivating relationships in my 34 plus years of experience in the Luxury Residential Real Estate market in South Florida."

We are available 24/7 to assist clients, answer calls, reply to emails, show and sell properties. That and our vast market knowledge is why we have been a top producing team in EWM Realtors since 1998.

#### EXPERIENCE

##### - 34 Years of Real Estate Experience

- 1998-Present. Vice President of EWM Realtors. Specializing in the sale of high end luxury residential condominiums and opulent waterfront homes. Sales Volume exceeding \$25,000,000 per year. I've been a top producing agent in EWM Realtors since 1998.
- 1995. Broker/Owner of Gerard International Realty, a company specializing in luxury residential real estate, including homes and condominiums. I sold my company to EWM Realtors in 1998. In 2004, EWM then sold itself to Home Services of America, an affiliate of Warren Buffett's Berkshire-Hathaway.
- 1989-1995. Broker-Associate with Wimbish Realty, Inc. I was the Top Seller and Top Producer throughout my six year tenure. Specializing in the sales and marketing of luxury single family homes and condominium in South Florida, with a primary focus on Miami Beach.
- 1985-1989. Director of Sales, South Point Towers, then South Beach's most sought after address. Managed initial offering of this 208 unit building through private offering which satisfied lenders' 50% pre-construction sales requirement within 3 months. In spite of the many problems that the project experienced due to changing of developers, bad press, lack

of financing and construction uncertainties, I held buyers through effective and patient customer service and saw the project through completion with just 10 units left to sell.

- 1984-1986. Broker/Owner of three brokerage offices purchased from major developer Cheezem and Associates identified below with (\*). Profitability of the offices and market control attracted Fortune International Realty which purchased the offices in 1986.
- 1978-1984. Sales Director, Cheezem and Associates. Managed four sales and rental offices throughout the Brickell Avenue area. Responsible for the management of the Sales staff made up of 12 Associates, 6 Office Staff as well as developing and executing the marketing strategy in developer sales:
  - o 2 Offices at Brickell Place Condominium: managed developer sales, general sales, rentals and property management. (\*)
  - o Brickell Key Tower 1 Building: managed developer sales, resales, and rentals.
  - o 444 Brickell Avenue: managed sales of luxury residential properties in Coral Gables, Coconut Grove and Brickell Avenue areas.
- 1976-1978. Office Manager, Cheezem and Associates, developer and property manager of major condominiums in Brickell Avenue area: managed all matters related to property management and office administration.

**PATRICK M. O'CONNELL**

**Senior Vice President - Esslinger Wooten Maxwell Realtors, Inc.**

Director of New Development Sales

355 Alhambra Circle Ste. 950 Coral Gables, Florida 33134

Phone: 305-960-2560 • Email: oconnell.p@ewm.com

Since 2002, EWM Realtors' Development Division has managed the marketing and sales of 22 residential condominium and town home developments throughout South Florida. From the ocean front Blue/Green Diamonds project on Miami Beach to Downtown Dadeland in the Miami suburbs, we have successfully sold and closed over 2,500 units for local and national development companies and lenders with a sales volume exceeding \$800,000,000.

EWM's team approach to Development Sales provides consistent coverage and a seamless experience for buyers. Our international affiliations with Christies, Luxury Portfolio and Mayfair International, provides marketing outlets unmatched by other South Florida Brokers. We have far reaching relationships through our 650 full time Real Estate Agents.

Our affiliated mortgage company, HomeServices Lending, LLC A Wells Fargo Joint Venture, our title company, EWMTitle and EWMInsurance complete our menu of services for condo buyers in South Florida. We also provide FNMA and FHA approval services for all of our development customers.

**Recent Development Clients:** MDM USA, Fairfield Residential, Roger Development, Goldman Sachs, Dayco Development, Falcon Development, Urban Development 1, Southwest Properties.

**Education and Licensing**

Associate of Arts ~ Miami-Dade College	1990
Bachelor of Fine Arts ~ Florida International University, New World School of the Arts	1992
Florida Real Estate Salesperson License	1997
Florida Real Estate Broker License	2000

**Civic and Industry Involvement**

Vice-President Center Coconut Grove Neighborhood Association	1999-2001
Graduate Leadership Miami	2000
Active Member Greater Ft. Lauderdale Chamber of Commerce	2002-2006
Professional Development Committee Chair ~ Realtor Association of Miami-Dade	2002
MLS Committee Chair ~ Realtor Association of Miami-Dade	2003-2005
Member, Board of Directors ~ Realtor Association of Miami-Dade	2005-2006
Member, Board of Directors ~ Florida Association of Realtors	2005-2008



www.ewm.com

## About EWM Realtors

### Our History



Since 1964, **Esslinger • Wooten • Maxwell, Inc., Realtors®**, better known as "EWM Realtors®", is part of a larger family of affiliated companies: HomeServices Lending, EWM Title, and EWM Insurance. EWM has 10 offices and 650+ associates and employees in Miami-Dade and Broward counties. We all share a love of life in South Florida and are dedicated to improving the fine reputation established by our founders, Anna Mae Esslinger, Dodie Wooten, and Arline Maxwell.

EWM's full-service capabilities extend beyond residential <sup>of</sup> real estate to include commercial and business brokerage, relocation (individual to corporate groups), and a development services division that works with developers of new condominium projects in the complex sales and marketing process of bringing a project to life. Offering a complete line services, EWM will take you from searching to closing with the confidence that comes from working with trusted professionals. Understanding and meeting the needs of new residents and their families is a hallmark of our service and our success. We never forget, our company was built one deal at a time.

Widely regarded as the leader in market knowledge and personal service in South Florida real estate, in 2003, EWM became a part of the HomeServices of America, Inc.™ family and extended our mortgage outreach with an affiliation with Wells Fargo Home Mortgage.



www.ewm.com

## Sales Associates



Qualified, informed, meticulous, you can be confident in the level of service you will receive from an EWM Real Estate Professional. We use the latest tools and technologies so you can be confident in our expertise. We also want you to be comfortable when making your real estate transaction. Reflecting the diversity that is South Florida, EWM Associates communicate in over a dozen languages:



### Search for a Real Estate Professional

- American Sign Language**
- 普通话/普通話 (Chinese)**
- čeština (Czech)**
- français (French)**
- Deutsch (German)**
- עברית, (Hebrew)**
- magyar nyelv (Hungarian)**
- italiano (Italian)**
- lietuvių kalba (Lithuanian)**
- język polski (Polish)**
- português (Portuguese)**
- limba română (Romanian)**
- ruskiy yazyk (Russian)**
- slovenčina (Slovak)**
- slovenlan (South Slavic)**
- svenska (Swedish)**
- y español ¡claro! (and Spanish, of course!)**



www.ewm.com

## EWM Branch Offices

Stop in and see us. Whether you're looking to invest in, buy, or sell a property, please feel free to call or drop by any of our branch offices for help. An EWM Associate is always available to find answers to your real estate questions. There's bound to be an EWM location convenient to your neighborhood . . . We're everywhere you need us.

**Alhambra**  
355 Alhambra Circle, Suite 950  
Coral Gables, FL 33134  
305-960-2500  
305-960-5200 FAX

**Aventura**  
2750 NE 185th Street, Suite 101  
Aventura, FL 33180  
305-329-4900  
305-937-2510 FAX

**Brickell**  
901 South Miami Drive, Suite 215  
Miami, FL 33130-3043  
305-329-7600  
305-960-5285 FAX

**Coconut Grove**  
3560 Main Highway  
Miami, FL 33133-5904  
305-960-5300  
305-445-2224 FAX

**Coral Gables-South Miami**  
550 South Dixie Highway  
Coral Gables, FL 33146-2701  
305-960-2400  
305-662-5646 FAX

**Key Biscayne**  
644 Crandon Boulevard  
Key Biscayne, FL 33149-2008  
305-960-5350  
305-361-0602 FAX

**Las Olas**  
1700 East Las Olas Boulevard, Suite 103  
Fort Lauderdale, FL 33301-2466  
954-306-7400  
954-764-7707 FAX

**Miami Beach**  
419 Arthur Godfrey Road  
Miami Beach, FL 33140-3503  
305-674-4000  
305-672-1499 FAX

**Pinecrest-Palmetto Bay**  
12651 South Dixie Highway, Suite 102  
Pinecrest, FL 33156-5955  
305-960-2600  
305-378-9239 FAX

**Weston Town Center**  
2000 Main Street  
Weston, FL 33326-3691  
954-306-7200  
954-515-0200 FAX



[www.ewm.com](http://www.ewm.com)

## EWM's Latest Developments



*Puerta de Palmas*  
LUXURY CONDOS/TOWNHOMES • CORAL GABLES, FL



### Puerta de Palmas

One and two bedroom condos and townhomes at the Douglas entrance to Coral Gables - outstanding floor plans and amenities - leased units available for investors. Starting from the **\$230's**.

888 Douglas Road  
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By Appointment

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[www.puertadepalmas.com](http://www.puertadepalmas.com)





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ONE



## One Village Place

Coral Gables Premier New Address  
2 bedroom/2 bath units from **\$295,000**

4100 Salzedo Street  
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On site sales office open  
Mon - Sat 11am - 6pm  
Sun 12pm - 5pm

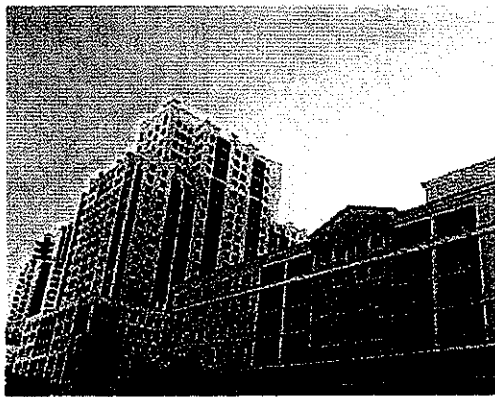
305-446-2326 Telephone

[www.villageplacecondos.com](http://www.villageplacecondos.com)



[www.ewm.com](http://www.ewm.com)

## TOSCANO



### Toscano

One, two and three bedroom condos, town homes, and Penthouses.  
Prices starting at **\$199,000**

7350 SW 89 Street  
Miami, Fl. 33156

Sales Center Open Seven Days  
Mon - Sat 10am - 6pm  
Sun 12pm - 6pm

305-670-3540 Telephone

[www.toscanocondos.com](http://www.toscanocondos.com)



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# met 1

M I A M I



## Met 1

Downtown Miami's New Landmark  
1,2 & 3 Bedroom condos and lofts  
Units for rent and for sale

300 S. Biscayne Blvd.  
Miami, FL. 33131

On site sales/leasing office open daily  
Mon - Sat 10am - 6pm  
Sun 12pm - 5pm

305-960-9990 Telephone

[www.metropolitanmiami.com](http://www.metropolitanmiami.com)



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## DOWNTOWN DADELAND

A VILLAGE WITHIN A CITY



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1,2 and 3 Bedroom condos starting from the **\$170's**

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Miami, Fl. 33156

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Sat & Sun 12pm - 5pm

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[www.ewm.com](http://www.ewm.com)

*Cynergi*



## Cynergi

In the Wynwood Arts District  
Urban loft units for lease from **\$960**

2700 N. Miami Ave.  
Miami, Fl. 33137

Leasing office open seven days

305-573-6768 Telephone

[www.cynergilife.com](http://www.cynergilife.com)



[www.ewm.com](http://www.ewm.com)



## Capri South Beach

1445 16 Street  
Miami Beach, FL 33139

On site sales office open  
Mon-Sat 10am – 6pm  
Sun By Appointment Only

305-674-4022 Telephone



[www.ewm.com](http://www.ewm.com)

## **EWM's Sold Developments and Conversions over the last 10 years**

**Grand Tower Panama  
Panama City, Panama**

**Blue/Green Diamonds  
4775-4779 Collins Avenue  
Miami Beach, Florida 33141**

**100 Andalusia  
100 Andalusia Avenue  
Coral Gables, Florida 33134**

**The Marquesa at Pembroke Pines  
131 Southwest 117th Avenue  
Pembroke Pines, FL 33025-4915**

**Paragon Plantation  
781 North Pine Island Road  
Plantation, FL 33324-1305**

**Coral Pointe  
675 N.W. 85th Court  
Miami, FL 33126-6840**

**The Palms of Pinecrest  
8950 S.W. 69 Court  
Pinecrest, FL 33156**

**Silver Palms  
7403 S.W. 82nd Street  
Miami, FL**

**Sunwood  
4600 S.W. 67 Avenue  
Miami, FL 33155**

**Monterey Gardens  
8617 S.W. 68th Court  
Miami, FL 33143-7899**

**Wellington Manor  
10805 S.W. 88th Street  
Miami, FL 33176-1399**

**Ibiza Village  
7743 S.W. 99 Street  
Miami, FL 33156**





## Thank You For Considering EWM

[www.ewm.com](http://www.ewm.com)

Since our founding in 1964, Esslinger-Wooten-Maxwell, Realtors<sup>®</sup>, has evolved into one of the largest real estate firms in America.

As a wholly owned subsidiary of *HomeServices of America, Inc.*, the second largest real estate company in the U.S., and an affiliate of *Berkshire Hathaway*, EWM is part of a well-established and highly respected residential real estate organization whose sole focus is to meet your specific needs.

At EWM we offer the full array of home buying and selling services, including mortgage, title closing, and insurance services, all through our wholly owned affiliates, HomeServices Lending, an affiliate of Wells Fargo; EWM Title; and EWM Insurance.

When our three founders established EWM in 1964, their goal was to provide hands-on service to each and every client. They understood that real estate is a person-to-person business.

While many things have changed since 1964, one thing has not – the customer's desire to deal with top professionals who can assist them with their every real estate need.

That's why you have my commitment to provide you with personalized, professional real estate services. Understanding your needs, and providing the services to meet those needs, is our fundamental philosophy.

I thank you for the opportunity to introduce EWM and our services to you. And while our reach is broad and services expansive, our focus is narrow – to provide you with the tools and expertise to successfully manage your real estate needs!

I very much look forward to exceeding your expectations!

Sincerely,

<b>MARKETING PROGRAM</b>
--------------------------

Detailed below is the marketing strategy and promotion for your properties. I also personally receive numerous requests from the press for interviews that always lead to valuable opportunities to promote my properties. Wherever possible your properties would also receive the benefit of that added exposure. We will do the following:

- COLOR BROCHURES/POSTCARDS** – We will professionally photograph your property and a color brochure will be sent through a mass mailing to promote your property to area residents as well as the realtor community.
- VIRTUAL TOUR** – A virtual tour of the property will be conducted and placed in our personal website, homestore.com, homeseekers.com, and ewm.com.
- BROKER'S OPEN HOUSE** – A catered lunch will be held to expose the property to the real estate brokerage community.
- EWM MONTHLY MAILER** – Your property will be featured in our open house mailer that reaches 90,000 South Florida Dade and Broward residents and select condominiums.
- EWM ELITE MAILER** Elite Mailer is targeted to homes 18,000 South Florida Select residences. All homes advertised in this Elite Mailer are for homes \$2M and up.
- INTERNET MARKETING** – Your property will appear in our state of the art website, [www.esterpercal.com](http://www.esterpercal.com), as well as in leading real estates websites such as:
 

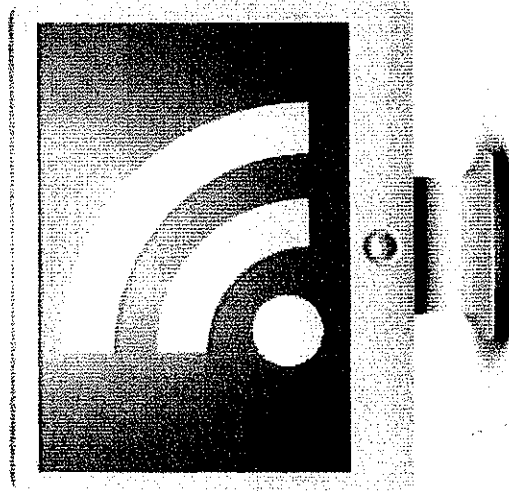
<a href="http://www.christiesgreatestates.com">www.christiesgreatestates.com</a>	<a href="http://www.ewm.com">www.ewm.com</a>	<a href="http://www.realtor.com">www.realtor.com</a>
<a href="http://www.mayfairoffice.co.uk">www.mayfairoffice.co.uk</a>	<a href="http://www.luxuryportfolio.com">www.luxuryportfolio.com</a>	<a href="http://www.trulia.com">www.trulia.com</a> <a href="http://www.homeservices.com">www.homeservices.com</a>
<a href="http://www.Telegraph.co.uk">www.Telegraph.co.uk</a>	<a href="http://www.Countrylife.co.uk">www.Countrylife.co.uk</a>	
- LISTINGS** – The property will be listed in the Miami Beach Association of Realtors, Multiple Listing Service and the Dade County Multiple Listing Service, which encompasses five Board of Realtors in Dade County.
- ADVERTISING** – Exposure through EWM inventory advertisement publications. Broker will pay for periodic placement of advertisements available through EWM advertising campaign, in publications such as The Miami Herald, EWM Mailer, Miami Today.
- MIAMI HERALD** -
  - o EWM Full Colored Page Display - The Sunday Home and Design Section of the Miami Herald is distributed to over 431,654 households in addition to concession stand sales
  - o Sunday Home and Design EWM Elite Page - The Sunday Real Estate Guide is distributed to over 431,654 homes in addition to concession stand sales.
  - o Front Cover of the Miami Herald, South Florida Home Section "Jewel Box" – Saturday Edition- The Miami Herald, is circulated to over 431,654 homes in addition to concession stand sales.
  - o Neighbors Section - The Neighbors Section of the Miami Herald is circulated to over 22,784 homes. Circulation includes the Miami Beach, Fisher Island, North Bay Village, Surfside, and Golden Beach area in addition to concession stands sales.
- MIAMI TODAY NEWSPAPER** – When available, and at Broker's discretion, Broker will run a 10" X 6" Black and White ad in the Miami Today Newspaper.
- CHRISTIE'S GREAT ESTATES** Through an exclusive system of advertising, marketing, and listing tools, Christie's Great Estates provides access to a worldwide audience. Properties are showcased in *Christie's Great Estates* magazine, which is published four times a year; in custom-designed property brochures distributed worldwide; on the Christie's Great Estates Web site, and in *Christie's Magazine* and other highly regarded international publications.
- EMAIL BLAST** – Broker will sent out Email Blasts to over 7,500 email addresses advising of
- ADVERTISING PLACEMENTS** – Additional advisement placements will include, email blast, and website exposure through d data Feed Sites in place as part of EWM Marketing Campaign including but not limited to, Realtor.com, Trulia.com, Zillow.com, Homeseekers.com, Home Finder Miami Herald.com, EWM.com, EstherPercal.com, Mayfair International.com, Luxury Portfolio.com and others
- OPEN HOUSE** Broker will hold occasional Open Houses and other promotional events on site to expose and promote the Project
- ON SITE SALES ASSOCIATES** - Broker will open the sales office Saturdays and Sundays for a minimum of 3 hours. At least one agent assigned to the onsite "Project Sales Team" will be "on call." The project contact phone number forwarded to the "on call" agent's cell phone. The "on call" agent will be available to speak with prospects and show or make appointments to show the Unsold Units.

I will be glad to discuss any marketing ideas you have. I always welcome and explore any possibilities to accomplish the goal of selling your home.



online advertising resources

# direct data feed



**EWM DOES IT FOR YOU!**

...ALL YOUR LISTINGS

...ALL THE TIME

...ANYTIME

**EWM.COM**

**FRONTDOOR.COM**

**SUNSENTINEL.COM**

**LUXURYPORTFOLIO.COM**

**RELOHOMESearch.COM**

**LUXURYREALESTATE.COM**

**TRULIA.COM**

**REALTOR.COM**

**HOMEFINDER.COM**

**MIAMIHERALD.COM**

**CHRISTIESGREATESTATES.COM**

**MAYFAIRINTERNATIONALREALTY.COM**

See the overall advertising list for guidelines



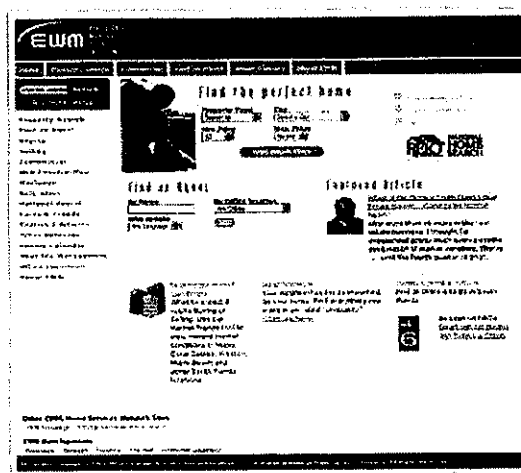
Internet

www.ewm.com

EWM.com, is state-of-the-art and has become a mainstay for individuals looking to buy and sell homes. It is overall one of the real estate industry's most comprehensive web sites. With over 50,000 visitors per month – we cover the globe with our site. The National Association of Realtors surveyed home buyers and found that 80% of home buyers begin their real estate search on the internet. With such an ever increasing number of people searching for their homes on-line, EWM provides each of our customers with exposure to a broad range of on-line solutions, including 360 degree virtual tours, an easy to maneuver search engine, multiple pictures on many listings and our very popular and exclusive Facts & Trends reports.

Through EWM, your property will also be found on national and international real estate sites such as realtor.com; mayfairinternationalrealty.com, luxuryportfolio.com, broadening the reach of buyers from around the world who are looking to relocate to our area.

The bottom line is with our finely honed on-line marketing tactics, your potential buyer may be literally a click away.



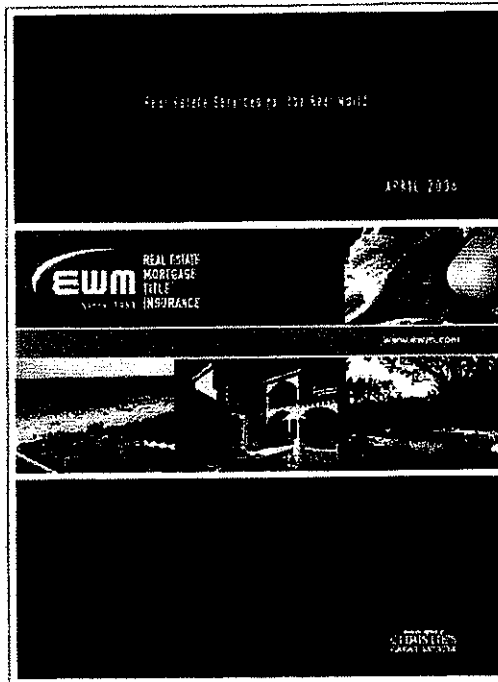


## Monthly Mailer

[www.ewm.com](http://www.ewm.com)

EWM's Monthly Mailer is distributed to an extremely targeted audience throughout Miami-Dade and Broward Counties. More than 100,000 of these mailers are sent with each distribution, different versions for each county. The Monthly Mailer is a proprietary EWM product, and one of the company's most successful marketing tools.

As the area's only residential real estate firm with a commitment to such an upscale mailer, residents in our targeted areas have grown accustomed to not only expecting, but downright anticipating this piece, one of the industry's most recognized and successful marketing vehicles.



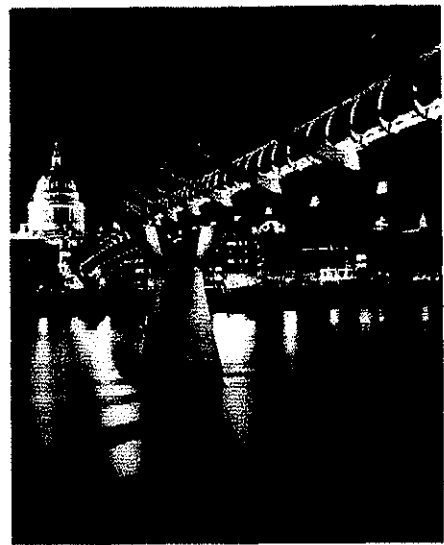


[www.ewm.com](http://www.ewm.com)

Recognizing that Europeans account for nearly 60% of Florida homes purchased, EWM sought to further its reach into this extremely important market. To that end, EWM has aligned itself with the London-based brokerage firm, Mayfair International Realty (MIR). In operation for over ten years, Mayfair International markets high end properties to an affluent and international demographic.

Mayfair International is located in the heart of Mayfair, a few short steps from Grosvenor Square, the site of the United States Embassy. Mayfair is the most exclusive address in the United Kingdom, equivalent to Fifth Avenue in Manhattan, Worth Avenue in Palm Beach, or Rodeo Drive in Beverley Hills.

This alliance gives EWM projects a distinct competitive advantage in marketing to prospects throughout the UK with an interest in Florida properties.





EXCLUSIVE EWM TEXT APP

if you were out and about

and you wanted to find a nearby

home  
apartment  
condo

for  
sale  
rent

and you didn't want to wait  
more than a few seconds for details  
about what's available

you could simply

text

to... 595559

and voilà

within seconds address

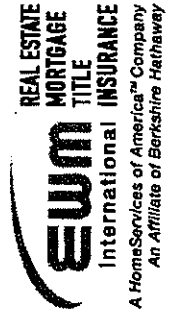
price  
bedrooms

: baths

and more...



any cell phone  
anywhere



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every available property  
in South Florida



MIAMI BEACH & THE BEACHES AVENTURA BISCAYNE PARK NORTH MIAMI BISCAYNE GARDENS NORTH MIAMI BEACH HIGHLAND LAKES

# NEIGHBORS

SUNDAY, MAY 16, 2010 | EDITOR: TERE FIGUERAS NEGRETE | 305-376-3556 | MiamiHerald.com/Neighbors

The Miami Herald

## OVERNIGHT

Given hand to the year's Honorable Mentor award winners from the class of 2010

PAGE 12

ILLUSTRATION BY JAMES H. HARRIS

NANCY KATCHELOR

### NORTH MIAMI BEACH

The outcry over entry raises for council members has caused them to reconsider their move. 3

### NORTH BAY VILLAGE

The city marks its 95 years Sunday at a park named after council member and mayor emeritus Paul Vogel. 6

### MIAMI BOUGH

City council OKs approval of plan to build a new park. 14

MIAMI HERALD

305 903 28 50

DATE: 12/15/2010 10:20:00

NEWS: 12/15/2010 10:20:00

Page No.  
Page Count

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### SURFSIDE IT'S NO CARNIVAL; IT'S AN ANNIVERSARY

Barbecues, vintage cars, stilt walkers, military vehicles, clowns, a marching band, ponies and more await those attending the Town of Surfside's 75th Anniversary Parade and Beach BBQ from 5 p.m. to 7 p.m. Sunday.

The parade begins at 91st Street and Dickens Avenue and will head east along 91st Street toward Abbott Avenue, then south along Abbott toward 90th Street, then east again to end at the beach.

The grand marshal is former mayor Marion Portman, the only female mayor in Surfside's history. A barbecue follows from 4-7 p.m. at the beach

side of the Surf Club, 501 Collins Ave. Free food and beverages for Surfside residents.

For more information, call 305-961-1063 or visit [www.townofsurfside.com](http://www.townofsurfside.com).

### MIAMI BEACH GET THE LATEST ON COLLINS CANAL PARK

The Collins Park Neighborhood Association will hold a membership meeting from 6:30-8:30 p.m. Tuesday at the Gansevoort Miami Beach, 2377 Collins Ave.

Commissioner Jorge Exposito will be the guest speaker, and public works representatives will discuss the new linear park to be built along the Collins Canal. Refreshments will be served. For additional

information, call Ray Escobedo at 305-771-5633.

### MIAMI BEACH PARKING METER FUNDS FIGHT HOMELESSNESS

In an effort to fight homelessness, the city of Miami Beach will dedicate a special parking meter in front of City Hall at 5:30 p.m. Tuesday at 17011 NE 19th Ave.

The meter, designed by South Florida artist Romero Britto, will accumulate money to be collected by the Miami-Dade County Homeless Trust.

For more information, visit [www.nmbfl.com](http://www.nmbfl.com).

### SUNNY ISLES BEACH ALL INVITED TO ROCK AT BEACH CONCERT

Relax to the rock 'n' roll

ones of the Magic City Band at the city of Sunny Isles Beach Sunny Serenade Concert, 7:30-9 p.m. Wednesday at Samson Oceanfront Park, 17425 Collins Ave. Food and drinks are available for purchase.

Free and open to the public. For more information, call 305-792-1706.

### MIAMI BEACH CONCERNS ON TUNNEL PROJECT ADDRESSED

With Miami Beach officials voicing concern over the imminent Port of Miami Tunnel project, residents and stakeholders will have a chance to see the project themselves this week.

A team working on the \$1 billion project is hosting two meetings to give a


project overview and construction updates.

The meeting for residents is Monday, and the meeting for business interests is Wednesday. Both meetings begin 6 p.m. in the commissioner chambers, 1700 Convention Center Dr.

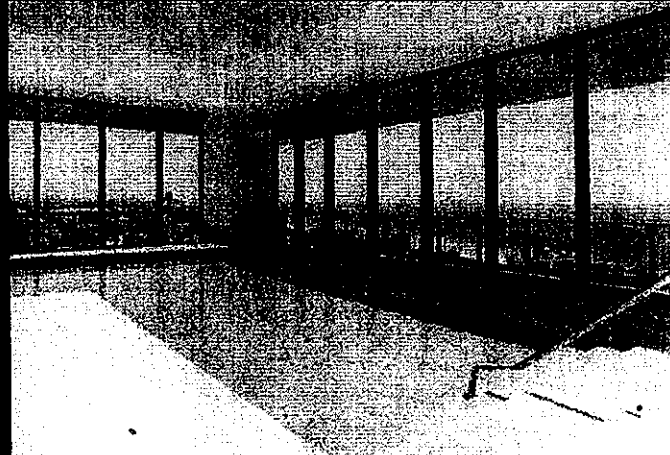
### NORTH MIAMI BISCAYNE LANDING IMPACT ASSESSMENT

Representatives from Solar Mountain, the group likely to take over the Biscayne Landing property will take part in a community forum to discuss the economic impact of the project for the city of North Miami.

The forum takes place 7:30 p.m. Tuesday at the Griffing Center, 12291 Griffing Blvd.



# Apogee Penthouse




800 South Pointe Drive, Miami Beach

**ESTHER PERCAL, SENIOR VICE PRESIDENT**  
 419 Arthur Godfrey Rd. • Miami Beach  
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## words to live by.

"buildings, we have come to realize, are much more than just a structure... they shelter dreams as well as people" *Paul Klee*





# elite

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<p><b>Balf Harbour</b> 270 Bal Bay Drive Audrey Ross 305 960 2575 www.mlsrealty.com</p>	<p><b>Coconut Grove</b> 3450 Palmetto Avenue Carole Smith 305 710 1010 www.competehome.com</p>	<p><b>Coral Gables</b> 13684 Deering Bay Drive Dea Cliton 305 608 7993</p>
<p><b>Golden Beach</b> 203 Ocean Blvd Nelson Gonzalez 305 874 4040 www.nelsongonzalez.com</p>	<p><b>Golden Beach</b> 277 Ocean Blvd Nelson Gonzalez 305 874 4040 www.nelsongonzalez.com</p>	<p><b>Key Biscayne</b> 330 Harbor Drive Audrey Ross 305 960 2575 www.mlsrealty.com</p>
<p><b>Miami Beach</b> 800 S Foster Drive #11A Esther Percal 305 874 4022 www.estherpercal.com</p>	<p><b>Miami Beach</b> 3245 Poinsett Drive Esther Percal 305 874 4022 www.estherpercal.com</p>	<p><b>Miami Beach</b> 1833 W 24 Street Esther Percal 305 874 4022 www.estherpercal.com</p>
<p><b>Miami Beach</b> 214 W Five Aho Drive Nelson Gonzalez 305 874 4040 www.nelsongonzalez.com</p>	<p><b>Pinecrest</b> 8454 SW 102 Street Jo Ann Foster 305 778 5555 www.uniquesouthmiami.com</p>	<p><b>Waterfront</b> 8670 Sunrise Place Ashley Cusack 305 788 8845 www.mlsrealty.com</p>

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south Florida's lifestyle  
picture these...  
under \$2,000,000

<p><b>coral gables</b></p> <p>OPEN SUN 1-4 254 BRITAIN AV. Coral Gables, FL 33134. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Nelson Gonzalez, 305 874 4040.</p>	<p><b>coconut grove</b></p> <p>OPEN SUN 12:30 - 2:00 3445 BROADWAY, Coconut Grove, FL 33133. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>	<p><b>davie</b></p> <p>STUNNING HOME 1100 W. BIRCHWOOD DR. Davie, FL 33317. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>	<p><b>hollywood</b></p> <p>UNIQUE COMMERCIAL 1000 W. BIRCHWOOD DR. Hollywood, FL 33021. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>
<p><b>miami shores</b></p> <p>100-CELESTIAL 100 CELESTIAL AV. Miami Shores, FL 33154. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>	<p><b>miami shores</b></p> <p>100-CELESTIAL 100 CELESTIAL AV. Miami Shores, FL 33154. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>	<p><b>pinecrest</b></p> <p>KEY WEST STYLE 1100 W. BIRCHWOOD DR. Pinecrest, FL 33156. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>	<p><b>waterfront</b></p> <p>OPEN SUN 1-3 100 CELESTIAL AV. Miami Shores, FL 33154. 1000 sq ft. 3 bedrooms, 2.5 baths, pool, garage, large master room. \$1,495,000. Call Jo Ann Foster, 305 778 5555.</p>

# MIAMI TODAY

WWW.MIAMITODAYNEWS.COM

WEEK OF THURSDAY, JULY 15, 2010

## EWM finds top partner in Christie's Great Estates

When it comes to selling luxury homes and condominiums, Esslinger-Wooten-Maxwell Realtors® (EWM), a HomeServices of America Company, which is an affiliate of Berkshire Hathaway, has an ally that's hard to beat. For the past decade, EWM has been the area's exclusive affiliate for the Christie's Great Estates International Network of top-tier firms.

How successful is that partnership? The numbers tell the story.

"EWM closes on a \$1 million-plus home every 36 hours," says Ron Shuffield, CEO of the 46-year old South Florida brokerage.

"That ranks us No. 1 in Miami-Dade County for this segment of the market."

In addition, he says, EWM Realtors is also No. 1 countywide in the number of residential sales in excess of \$2 million and \$3 million, positioning it at the head of the pack in all three categories.

Moreover, he says, the million-dollar-plus residential market is gaining in strength.

"In March through May 2010," Mr. Shuffield says, "Miami-Dade sales were 65% greater than they were in the same time period last year. High-end sales today are greater than

this criterion, as opposed to only 44% of Sotheby's.

"As the online numbers reflect, Christie's is the multi-million dollar home leader," Mr. Shuffield says.

And the public has taken note: the numbers show that 52% of those visiting Christie's web site are international, compared to 34% at Sotheby's.

In addition, Mr. Shuffield says, EWM luxury listings are featured in *Christie's Great Estates* magazine, 70,000 copies of which are distributed quarterly in 60 nations, in addition to being sold internationally at newsstands. Individual property brochures are distributed in 350 cities in 57 countries, and Christie's media specialists are in regular contact with journalists around the world.

"Christie's has been an integral part of our success through the years," Mr. Shuffield says. "Our affiliation with them — along with our own 46-year reputation in this high-end market and our seasoned associates who specialize in luxury properties — provides us with a unique international luxury real estate marketing platform, setting us apart from our competition."

Details: [www.ewm.com](http://www.ewm.com);  
[christiesgreatestates.com](http://christiesgreatestates.com).



Photo by Maureen Usher

"EWM closes on a \$1 million-plus home every 36 hours," said Ron Shuffield, top rank for the market segment.

they have been since 2005." Mr. Shuffield says. "Christie's Christie's Great Estates, a has 34,000 associates operating wholly owned subsidiary of Christie's Auction House, To put that in perspective, founded in London in 1766, gives EWM global coverage second to none.

"Our affiliation with Christie's immediately gives our listings a presence all over the world," has 10,000 associates.

"Properties priced above \$3 million account for more than a third of Christie's online listings," Mr. Shuffield says. "Only 13% of Sotheby's online listings are in this class."

Drop down to listings above the \$1 million mark, and the gulf is even greater: 88% of Christie's online listings meet