

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

IN RE:

INVESTORS CAPITAL PARTNERS II, LP

CASE NO. 12-11675
CHAPTER 11

DEBTOR IN POSSESSION

**DISCLOSURE STATEMENT FOR DEBTOR'S
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE
UNITED STATES BANKRUPTCY CODE**

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ T. Kent Barber, Esq.

Laura Day DelCotto, Esq.

200 North Upper Street

Lexington, KY 40507

Telephone: (859) 231-5800

Facsimile: (859) 281-1179

kbarber@dlgfirm.com

ldelcotto@dlgfirm.com

COUNSEL FOR DEBTOR AND
DEBTOR IN POSSESSION

Dated: March 19, 2013

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
I.	PRELIMINARY STATEMENTS AND DISCLAIMERS.....	1
	1.1 Introduction.....	1
	1.2 Debtor’s Preliminary Statement.....	2
	1.3 Disclaimers	2
II.	NOTICES AND DEADLINES.....	3
	2.1 Voting Deadline	3
	2.2 Date of Confirmation Hearing	4
	2.3 Deadline to Object to Confirmation of the Plan	4
	2.4 Deadline to Object to Claims.....	4
	2.5 Requests for Copies of Disclosure Statement and Plan	4
III.	GENERAL INFORMATION ABOUT THE DEBTOR	4
	3.1 Formation and Historical Background.....	4
	3.2 Debtor’s Business Operations.....	5
	3.3 Debtor’s Prepetition Assets and Liabilities.....	5
	3.4 Debtor’s Postpetition Liabilities	6
	3.5 Current Litigation involving the Debtor	6
IV.	CERTAIN EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASES.....	6
	4.1 Precipitating Factors	6
	4.2 Prepetition Restructuring Efforts	7
V.	COMMENCEMENT OF EVENTS IN THE CHAPTER 11 CASE	7
	5.1 Commencement of Case	7
	5.2 Retention of Professionals	7
	5.3 Cash Collateral/Adequate Protection/Financing.....	7
	5.4 Contracts and Leases.....	7
	5.5 Plan Formulation Process	7
VI.	OVERVIEW OF DEBTOR’S PLAN OF REORGANIZATION	7
	6.1 General Summary	8
	6.2 Debtor’s Recommendation	8
	6.3 Description of Certain Key Plan Terms.....	8
	6.4 General Summary of Plan Treatment of Unclassified Claims.....	11
	6.5 General Summary of Plan Treatment of Classified Claims.....	13
	6.6 Bar Date for Deficiency Balance Claims.....	16
	6.7 Plan Implementation	16

VII.	RISK FACTORS	16
	7.1 Risks of Non-Confirmation.....	16
	7.2 Risks of Non-Consensual Confirmation	16
	7.3 Risks of Delays in Confirmation.....	16
	7.4 Risks of Shut-Down of Operations	17
III.	PLAN CONFIRMATION	18
	8.1 Generally.....	18
	8.2 Voting Requirements for Confirmation under Bankruptcy Code.....	19
	8.3 General Requirements for Confirmation under the Bankruptcy Code	21
	8.4 Confirmation	22
	8.5 Alternatives to Confirmation	24
IX.	CERTAIN FEDERAL TAX CONSEQUENCES	24
	9.1 General.....	24
	9.2 Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally.....	25
	9.3 Certain U.S. Federal Income Tax Consequences to the Debtor	26
X.	ADDITIONAL INFORMATION, RECOMMENDATIONS, AND CONCLUSION	27
	10.1 Additional Information	27
	10.2 Recommendations and Conclusion.....	27

EXHIBIT A – Five Year Projections

EXHIBIT B – Executory Contracts and Unexpired Leases

EXHIBIT C – Allowed Unsecured Claims

EXHIBIT D – Chapter 7 Liquidation Analysis

EXHIBIT E – Longhunters Plat

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

IN RE:

INVESTORS CAPITAL PARTNERS II, LP

CASE NO. 12-11675
CHAPTER 11

DEBTOR IN POSSESSION

**DISCLOSURE STATEMENT FOR DEBTOR'S
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE
UNITED STATES BANKRUPTCY CODE**

Comes Investors Capital Partners II, LP (the "Debtor"), as Debtor and Debtor in possession in the above-captioned bankruptcy case, and pursuant to 11 U.S.C. § 1125 and Fed. R. Bankr. P. 3016, hereby submits the following Disclosure Statement (the "Disclosure Statement") to provide holders of Claims against and Interests in the Debtor with adequate information in order to allow them to make an informed decision regarding their rights to vote on the Debtor's proposed Plan of Reorganization (the "Plan") filed contemporaneously herewith.

ARTICLE I

PRELIMINARY STATEMENTS AND DISCLAIMERS

1.1 **Introduction.** The Debtor is seeking approval of its Plan of Reorganization. The confirmation of a plan is the overriding purpose of a Chapter 11 case. Although referred to as a "plan of reorganization," a plan may provide for anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of assets. In either event, upon confirmation of a plan, the plan becomes binding on the debtor and all of its creditors and other parties in interest, and the obligations owed by the debtor to those parties are substituted for those outlined in the confirmed plan. In this Bankruptcy Case,¹ the Plan contemplates a restructuring of the Debtor's business in order to continue the Debtor as a going-concern operation and to maximize the value of the ultimate recoveries of all Creditors.

To assist all known Creditors, Interest Holders and other parties in interest of the Debtor with their review of the Plan, the Debtor provides this Disclosure Statement to all such parties for the purpose of disclosing all information that the Debtor has deemed material, important, and necessary to the parties' ability to make a reasonably informed decision regarding their rights to vote on the Plan. By an Order of the United States Bankruptcy Court for the Western District of

¹ All capitalized terms used in this Disclosure Statement and not otherwise specifically defined herein have the meanings given to them in the Plan. As used in this Disclosure Statement, any other terms defined in the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), shall have the meanings given to them in the Bankruptcy Code, unless the context clearly requires otherwise.

Kentucky entered on _____ [ECF No. ____], this Disclosure Statement has been approved as containing “adequate information” in accordance with 11 U.S.C. § 1125. The Bankruptcy Code defines “adequate information” as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical investor of the relevant class to make an informed judgment about the plan” 11 U.S.C. § 1125(a)(1).

All Creditors, Interest Holders and Parties in Interest are encouraged to read and carefully consider this entire Disclosure Statement and to refer to the Plan during their review. THE PROVISIONS CONTAINED IN THE PLAN CONTROL OVER ANY STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.

1.2 **Debtor’s Preliminary Statement.** The Debtor believes that the Plan is in the best interests of all Creditors. As a Creditor, your vote on the Plan is important. All Creditors entitled to vote are urged to vote in favor of the Plan. A summary of the voting instructions is set forth in Section 8.2 herein, and more detailed instructions are contained on the ballots distributed to each Creditor entitled to vote on the Plan. ***For your vote to be counted, your ballot must be duly completed, executed, and received by 5:00 p.m. Eastern Standard Time, on _____, 2013 (the “Voting Deadline”), unless the Voting Deadline has been extended by the Debtor in writing prior to that time.***

The Plan will be confirmed by the Bankruptcy Court if it is accepted by the holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Creditors’ Claims in each class voting on the Plan. The Debtor has requested that the Bankruptcy Court adopt a presumption that if no holder of a Claim or Equity Interest in a Class of Claims or Equity Interests eligible to vote in a particular Class timely submits a ballot to accept or reject the Plan, then the applicable Class will be deemed to have accepted the Plan. Accordingly, if you do not wish such a presumption with respect to any Class for which you hold Claims or Equity Interests to become effective, you should timely submit a ballot accepting or rejecting the Plan for any such Class. However, the provisions of 11 U.S.C. § 1129(b) may be invoked by the Debtor if necessary in order to obtain confirmation of the Plan. These provisions permit confirmation even though a class or classes reject the Plan, if the Bankruptcy Court finds that the Plan provides fair and equitable treatment for the rejecting class.

1.3 **Disclaimers.**

1.3.1 **Legal Effect of Statements Contained Herein.** The information contained in this Disclosure Statement—including, but not limited to, the information regarding the Debtor’s history, business and operations, the Debtor’s financial information, and the Debtor’s liquidation analysis—is included solely for the limited purpose of soliciting acceptances of the Plan. This information shall not be construed as an admission of any fact or liability, stipulation, or waiver by the Debtor in any contested matter, adversary proceeding, or other action or threatened action involving the Debtor, but rather as statements made in the course of settlement negotiations. Further, this information shall not be admissible in any non-bankruptcy proceeding involving the Debtor, nor shall it be construed to be conclusive advice on the tax or other legal effects of the Plan as to Creditors of the Debtor; provided,

however, that in the event that the Debtor defaults under the Plan, the Disclosure Statement may be admissible in a proceeding relating to such default for the purpose of establishing the existence of such default.

1.3.2 **No Other Representations Authorized Except as Provided Herein.** All representations contained herein are those of the Debtor. No other person is authorized by the Debtor to give any information or to make any representation other than as contained in this Disclosure Statement, the Plan, and the exhibits attached thereto, incorporated by reference, or referred to herein. If any such information is given or representations are made, such information or representations *may not be relied upon* as having been authorized by the Debtor. Further, any representations or inducements made to secure acceptance of the Plan which are *other than* as contained in this Disclosure Statement *should not be relied upon* by any person.

1.3.3 **No Involvement of Independent Public Accountant.** To the Debtor's knowledge, no information contained in this Disclosure Statement has been prepared by an independent public accountant, except as specifically noted.

1.3.4 **Forward-Looking Statements.** This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtor and projections about future events and financial trends affecting the financial conditions of the Debtor's business. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect," and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described in Article VII herein. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtor does not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

Neither the Plan nor this Disclosure Statement have attempted to forecast consequences which follow from a general rejection of the Plan, although an attempt is made herein to state the consequences of a liquidation of the Debtor.

1.3.5 **Effect of Representation by Counsel.** The Debtor is represented by the law firm of DelCotto Law Group PLLC, 200 North Upper Street, Lexington, Kentucky 40507. DelCotto Law Group has not expressed an opinion on any information set forth herein and has no actual knowledge of any information that would conflict with any information contained in the Plan or in this Disclosure Statement.

ARTICLE II

NOTICES AND DEADLINES

2.1 **Voting Deadline.** For your vote to accept or reject the Plan to be counted, you must: (1) complete all required information on the ballot; (2) execute the ballot; and (3) return the completed ballot to the Debtor's counsel at DelCotto Law Group PLLC, c/o Linda Conner,

200 North Upper Street, Lexington, Kentucky 40507 so that it is *received by 5:00 p.m., Eastern Standard Time, on the Voting Deadline, _____, 2013*. Any failure to follow the voting instructions included with the ballot or to return a properly completed ballot so that it is received by the Voting Deadline may disqualify your ballot and your vote.

2.2 **Date of Confirmation Hearing.** A hearing to consider the confirmation of the Plan will be held before the United States Bankruptcy Court for the Western District of Kentucky, _____, _____, Kentucky ____, on _____, 2013 at the hour of _____.m., Eastern Standard Time. Whether or not you expect to be present at the Confirmation Hearing, you are urged to fill in, date, sign, and promptly return your ballot to the Debtor's counsel by the Voting Deadline.

2.3 **Deadline to Object to Confirmation of the Plan.** Objections, if any, to confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of the party; (c) state with particularity the basis and nature of any objection; and (d) be filed with the Court and served so that they are *received no later than 5:00 p.m., Eastern Standard Time, on _____, 2013* by the U.S. Trustee and the Debtor's counsel.

2.4 **Deadline to Object to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the secured status of any claim, shall be filed on or before ninety (90) days following the Effective Date, or forty five (45) days following the filing of any Claim, whichever is later, without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

2.5 **Requests for Copies of Disclosure Statement and Plan.** Requests for copies of the Disclosure Statement and the Plan by parties in interest may be made in writing to the Debtor's counsel by mail at DelCotto Law Group PLLC, c/o Linda Conner, 200 North Upper Street, Lexington, Kentucky 40507, or by email to lconner@dlgfir.com. Please call Ms. Conner at (859) 231-5800 with any questions.

ARTICLE III

GENERAL INFORMATION ABOUT THE DEBTOR

3.1 **Formation and Historical Background.** The Debtor is a Tennessee limited partnership with its principal assets in Barren County, Kentucky. The Debtor was formed on September 24, 2004. On March 31, 2005, the Debtor, a limited partnership, and Investors Capital Fund Services II, LLC executed an Amended and Restated Agreement of Limited Partnership of Investors Capital Partners II. Investors Capital Fund Services II, LLC is the general partner of the Debtor and is responsible for the management of the Debtor. In addition to capital raised from individual limited partners, the Debtor borrowed certain amounts from PBI Bank, Inc. ("PBI"). The loans from PBI were one year notes and in September, 2012, PBI

informed the Debtor that the loans would not be renewed and made demand for payment in full of all amounts owed to PBI. PBI attempted to foreclose against the assets of the Debtor, and the Debtor was unable to reach agreements with PBI that would allow the Debtor to reorganize its debts in an orderly manner; thus, the Debtor had little option except for the development of a plan to reorganize operations and restructure debts for the benefit of all creditors and parties in interest. On December 19, 2012 the Debtor filed its voluntary petition for relief with this Court under Chapter 11 of the United States Bankruptcy Code. The Debtor is operating its business managing as Debtor and Debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3.2 **Debtor's Business Operations.** The Debtor owns an approximately thirty-five acre commercial development near Glasgow, Kentucky, known as Longhunters Square². The property is home to a Marquee Cinema complex, a Dollar Tree and an Aaron's Rents locations, and also consists of seven parcels of undeveloped land. The leases expire on November, 2018 (Marquee Cinema); December, 2017 (Dollar Tree); and July, 2013 (Aaron's Rents). The total monthly received from tenants is approximately \$47,000. The Debtor is currently in negotiations regarding the extension of the terms of several of the leases. Additionally, certain parties have expressed an interest to the Debtor in leasing some of the Debtor's space. The Debtor's monthly operating expenses, including taxes, insurance, maintenance, and utilities are approximately \$5,100. In addition to the space currently leased, there is also approximately 7,000 of unfinished interior space that has not been completed for tenant use in addition to a large parcel of undeveloped raw land.

3.3 **Debtor's Prepetition Assets and Liabilities.** The following subsections provide a summary of the Debtor's primary Assets and Liabilities according to the Debtor's books and records and its Bankruptcy Schedules. This summary does *not* take into consideration all of the Proofs of Claim filed herein. The Asset values contained herein and/or in the Debtor's Schedules are based on the Debtor's best estimates of market values or historic book values on the Petition Date and may *not*, and in all likelihood *do not*, accurately reflect liquidation values or what value may ultimately be obtained for these assets.³ ***Holders of Claims are encouraged to review the Schedules and related Amendments for a complete listing of the Debtor's Assets and Liabilities.***

3.3.1 **Prepetition Assets.** As of the Petition Date, the estimated values of the Debtor's hard Assets totaled approximately \$11,203,864.20, which amount is comprised of the real and personal properties of the Debtor. *See* Debtor's Schedules [ECF No. 33, p.14]. The Debtor's estimates of the fair market value are based on the Debtor's knowledge of the industry.

3.3.2 **Overview of Total Prepetition Liabilities.** As of the Petition Date, the Debtor's estimated prepetition liabilities totaled \$12,315,926.48, which consists of (a) secured claims totaling \$10,283,446.46, (b) priority unsecured claims totaling \$0.00, and (c) unsecured claims totaling \$2,032,240.02. *See* Schedules D, E and F [ECF No. 33, p.14] and related proofs of claim.

² A plat of the Debtor's property is attached hereto as **Exhibit E**.

³ *See* Section 8.3.1 of this Disclosure Statement and **Exhibit D** attached hereto for the Debtor's Liquidation Analysis.

3.3.3 **Summary of Prepetition Secured Liabilities.** A brief summary of the Debtor's estimated and outstanding secured liabilities as of the Petition Date is provided in Section 6.5 below.

3.3.4 **Additional Information about Prepetition Assets and Liabilities.** For more detail regarding the Debtor's prepetition Assets and Liabilities, *see* the Debtor's Schedules filed in the Bankruptcy Case [ECF No. 33].

3.4 **Debtor's Postpetition Liabilities.**

3.4.1 **Professional Fees.**

(a) **DelCotto Law Group PLLC.** As set forth more fully in Section 5.2.1 below, the Debtor has been authorized to employ DelCotto Law Group PLLC ("DLG") as its counsel in the Bankruptcy Case. DLG estimates that its postpetition, pre-Confirmation Date representation of the Debtor will total approximately \$25,000.00.

3.5 **Current Litigation involving the Debtor.** As of the Petition Date, the Debtor was involved in one state court action. A summary of this action and the Debtor's projected outcome of same is as follows:

3.5.1 **PBI Bank, Inc. lawsuit.** The case of *PBI Bank, Inc. vs. Investors Capital Partners II, LP, et al.* (the "PBI Bank Suit") was commenced on June 22, 2012 in the Circuit Court for Barren County, Kentucky, Case No. 12-CI-00715. This suit arose after the Debtor's debt obligations to PBI matured and PBI refused to renew the Debtor's loans with PBI and commenced a foreclosure action.

ARTICLE IV

CERTAIN EVENTS LEADING UP TO THE COMMENCEMENT OF THE DEBTOR'S CHAPTER 11 CASE

4.1 **Precipitating Factors.** The Debtor's bank lender, PBI, began foreclosure proceedings against the assets of the Debtor after debt obligations matured and were not renewed. The Debtor was unable to reach agreement with its lender that would allow the Debtor to reorganize its debts in an orderly manner and maximize values. The Debtor sought bankruptcy relief in order to develop a plan to reorganize operations and restructure debts, and/or to conduct marketing for an orderly sale, for the benefit of all creditors and parties in interest.

4.2 **Prepetition Restructuring Efforts.** The Debtor sought to resolve the PBI debts prior to the Petition Date; however, PBI refused to engage in fruitful discussions regarding its debts.

ARTICLE V

COMMENCEMENT OF EVENTS IN THE CHAPTER 11 CASE

5.1 Commencement of Case.

5.1.1 Petition Date. On December 19, 2012, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and thereby commenced the Bankruptcy Case.

5.2 Retention of Professionals.

5.2.1 Retention of Debtor's Counsel. Pursuant to the Order entered on January 25, 2013 [ECF No. 41], the Debtor was authorized to employ DLG as its counsel in the Bankruptcy Case. DLG has represented the Debtor in the Bankruptcy Case since that date and continues to do so.

5.3 Cash Collateral/Adequate Protection/Financing. The Debtor has filed no request for use of cash collateral. On February 22, 2013, the Debtor filed its Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Unsecured Postpetition Financing; (II) Granting Administrative Expense Status to the Postpetition Lenders; and (III) Scheduling a Final Hearing [ECF No. 44]

5.4 Contracts and Leases. The Debtor has not yet requested that the Court authorize it to assume or reject its executory contracts and unexpired leases set forth on its Schedule G [ECF No. 33]. The Debtor proposes to accept its unexpired leases with Dollar Tree Stores, Inc., Kimberly Dale, Inc. and Marquee Cinemas, Inc.

5.5 Plan Formulation Process. The Debtor communicated with its major secured lender PBI Bank during the Bankruptcy Case; however, the Debtor has not discussed the details of its Plan with PBI Bank.

The Debtor has worked diligently to prepare a plan of reorganization that is fair and equitable among all of its creditors and parties in interest. The Debtor submits that the Plan filed with the Court and attached hereto represents the product of these efforts and provides the best possible recovery for all creditors.

ARTICLE VI

OVERVIEW OF THE DEBTOR'S PLAN OF REORGANIZATION

6.1 General Summary. The Plan contemplates the continued business operations of the Debtor and the payment of all Allowed Claims to the extent possible over a period of time from future income and revenue. In general, all Claims will be paid to the greatest extent possible from the additional capital contributed by the holders of Equity Interest and a portion of net profits for 5 years after the Effective Date of the Plan.

Upon confirmation of the Plan, the rents generated from the Reorganized Debtor's property, which are currently being collected by PBI will be transmitted to the Reorganized Debtor to be used to pay operating expenses, debt expenses, and other expenses contemplated in the Plan. PBI will no longer collect the rents from the Reorganized Debtor's property and will ensure that any rents received are promptly transmitted to the Reorganized Debtor. To the extent that the revenues from the Reorganized Debtor's property are insufficient to pay operating expenses, debt expenses, and other expenses contemplated in the Plan, limited partners of the Debtor will infuse sufficient funds to pay such expenses.

As set forth in the Debtor's five-year financial projections, attached hereto as **Exhibit A**, in the first eighteen (18) to twenty-four (24) months of the plan, the Reorganized Debtor will make interest only payments to its Secured Creditors. The Reorganized Debtor will use cash flow from this time period to make tenant improvements to the approximately 7,000 square feet of unfinished space. Such improvements will allow the Reorganized Debtor to rent out currently vacant space and increase its cash flow. The currently leased space will also be improved to entice currently existing tenants to renew and/or extend their leases.

The Debtor also intends to market and sell certain parcels of improved land to third parties. As set forth in the Debtor's five-year financial projections, the sale of the improved land is anticipated to commence in February, 2015. The proceeds of the sales will either (i) be used to develop the existing property so that it is ready for sale or (ii) be turned over to the Debtor's secured creditors, subject to the terms of the Plan.

6.2 **Debtor's Recommendation.** The Debtor believes that the Plan is in the best interests of all its constituencies and will permit the maximum recovery possible for all classes of Claims, greater than any possible recovery in a Chapter 7 or other liquidation setting.

6.3 **Description of Certain Key Plan Terms.** The Debtor provides this general summary and description of what it believes to be certain of the key terms of the Plan. This is not a full and complete description of everything contained in the Plan but of various general and specific Plan provisions. THE PLAN AND THE EXACT LANGUAGE THEREIN CONTROL OVER THIS GENERAL DESCRIPTION AND SHOULD BE REVIEWED CAREFULLY.

6.3.1 **Continued Existence of the Debtor.** The Plan provides for the Debtor to continue to operate post-Confirmation as the "Reorganized Debtor" in the ordinary course of its business, receiving ongoing income from its operations and a capital contribution from its limited partners in order to fund Plan payments to its Creditors.

6.3.2 **Funding the Plan.** The Reorganized Debtor will fund the Plan payments to Creditors in the ordinary course and according to the Plan treatment terms from post-Confirmation net profits, the capital contribution from the limited partners, as well as from any net proceeds from post-Confirmation sales. As of the Effective Date, and as long as the Reorganized Debtor continues operations, the Reorganized Debtor shall have the right to collect and use all of its revenues for operations, provided however, that a portion of the remaining "Net Cash Flow" each month shall be segregated and held solely for funding Plan payments.

6.3.3 **Vesting of the Debtor's Assets.** At the Confirmation Date, all Assets of the Debtor and the Estate, including all Avoidance Actions and Causes of Action (if any) will revert in and remain with the Reorganized Debtor, free and clear of all liens, claims, interests and encumbrances, except for those liens specifically provided for in the Plan. If the Reorganized Debtor liquidates any of its assets which remain subject to a lien post-Confirmation, then it will seek the consent of any creditor holding a lien upon the particular Asset. If the secured creditors and the Reorganized Debtor can not agree to the terms for a private, ordinary-course sale, then the Reorganized Debtor may seek authority for any such sale from this Court. The Reorganized Debtor and its Assets will remain subject to the jurisdiction of this Court until the Bankruptcy Case is closed or dismissed.

6.3.4 **Post-Confirmation Liabilities of the Reorganized Debtor.** The Reorganized Debtor will not have any prepetition liabilities except those expressly assumed and/or addressed under the Plan. The Reorganized Debtor will be responsible for all ongoing business expenses and payments due and owing or contemplated under the Plan.

6.3.5 **Injunctions.** Except as may be otherwise provided in the final and entered Confirmation Order, the Plan provides generally that the entry of the Confirmation Order will constitute an **injunction** against all Persons from taking any actions to commence or continue any action or proceeding that arose before the Effective Date against or affecting the Debtor, the Estate, or the Assets, **and against any guarantor or other person who might be obligated on any Claim along with the Reorganized Debtor**, so long as the Reorganized Debtor is in compliance with the Plan provisions. That is to say, no party in interest may take any steps to collect or otherwise proceed on its claim against any person, so long as the Reorganized Debtor is performing and in compliance with the Plan as confirmed. No guarantor is being released, but no party can pursue any such person so long as the Reorganized Debtor is in Plan compliance.

6.3.6 **Term of Injunction for any Claim not Treated and Allowed in the Plan.** Except as may be otherwise provided in the final Confirmation Order, the Plan provides that the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released or modified pursuant to the Plan, except for the treatment as provided for in the Plan.

6.3.7 **Discharge of Claims.** The Plan provides that the payments, distributions and other treatment provided in respect to each Allowed Claim in the Plan shall be in complete satisfaction of such Allowed Claim, and said Claim shall be discharged in accordance with the provisions of 11 U.S.C. § 1141. The Confirmation Order shall discharge the Debtor from all Claims and other debts that arose before the Confirmation Date and all debts of the kind specified in 11 U.S.C. §§ 502(g), 502(h) or 502(i), whether or not: (i) a Claim based on such debt is allowed pursuant to 11 U.S.C. § 502, or (ii) the holder of a Claim based on such debt has accepted the Plan.

6.3.8 **Objections to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the priority/type of status of any Claim, shall be filed on or before ninety (90) days following the Effective Date, or forty-five (45) days following the filing of any Claim, whichever is later, without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007.

6.3.9 **Valuation of Secured Claims.** Under 11 U.S.C. § 506, a secured creditor has a “secured claim” to the extent of such creditor’s interest in a Debtor’s interest in the collateral, and an unsecured claim for the balance, if any. The “allowed” amount of the creditor’s secured claim will be the lesser of value of the creditor’s interest in the Debtor’s interest in the property as determined under 11 U.S.C. § 506, or the allowed amount of the creditor’s claim. Under the Plan, if any dispute over valuation occurs with any Secured Creditor, the Debtor reserve the right to request that the Court determine the value of the Creditor’s interest in the collateral which secures the Creditor’s Claim. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

6.3.10 **Procedure for Contingent and Unliquidated Claims.** The Plan provides that Creditors holding contingent or unliquidated Claims shall have sixty (60) days from the Confirmation Date to file a motion or adversary action with the Court to have their Claim allowed. Upon the allowance of a contingent or unliquidated Claim, the Plan provides that said Claim shall be entitled to distribution under the Plan consistent with the treatment of other Claims in the Class in which the contingent or unliquidated Claim is ultimately allowed. The contingent or unliquidated Claim of any Creditor who fails to initiate timely action pursuant to this provision for the allowance of its Claim shall have its Claim disallowed and be forever barred from seeking any recovery from the Reorganized Debtor, the Estate, or the Assets. A chart indicating which Claims the Debtor believes are Contingent and Unliquidated is attached hereto as **Exhibit C.**

6.3.11 **Executory Contracts and Unexpired Leases.**

(a) **Generally.** Under the Plan, the Debtor reserves the right to apply to the Court at any time prior to Confirmation for authority to assume, assign, or reject any Executory Contracts and Unexpired Leases in whole or in part as provided in 11 U.S.C. §§ 365 and 1123. As explained in Section 5.5, the Debtor has not yet requested that the Court authorize it to assume or reject any of its Executory Contract or Unexpired Leases. The Debtor intends to file motion(s) to assume or reject its various Executory Contracts and Leases on or before the Confirmation Date.

The Plan further provides that all remaining Executory Contracts and Unexpired Leases which the Debtor has not moved to assume, assign, or reject on or before the Confirmation Date shall be deemed rejected as of said date (the “Rejection Date”); provided, however, that any such motions requests, proceedings, or actions to seek to assume or reject, or to determine Allowed Cure Claims, pending at the Confirmation Date shall be continued until determined by Final Order of the Bankruptcy Court. A chart describing the Debtor’s Executory Contracts and Unexpired Leases is attached hereto as **Exhibit B.**

(b) **Bar Date for Rejection Damages Claims.** The Plan provides that any proof of claim which any third party has with respect to the rejection of any Unexpired Lease or Executory Contract must be filed no later than thirty (30) days after the later of: (i) entry of a Final Order of this Court authorizing such rejection, or (ii) the Rejection Date. Any such Claim for rejection damages shall be treated as a Class 3 Unsecured Claim.

6.3.12 **Causes of Action.** The Plan provides that at the Confirmation Date, all Assets of the Debtor and its Estate, including all Avoidance Actions or other Causes of Action (if any), will revert in and remain with the Reorganized Debtor. The Debtor has conducted a preliminary analysis of potential Avoidance Actions and has determined that most transferees have valid defenses. However, the Debtor reserves its right to bring such an Avoidance Action or other Cause of Action (if any) prior to or following the Confirmation Date if it subsequently determines otherwise.

6.4 **General Summary of Plan Treatment of Unclassified Claims.** *The Plan provisions control over the following generalized summary.*

6.4.1 **Administrative Claims.**

(a) **Ordinary Course Administrative Claims.** The Plan provides that all Allowed Administrative Claims arising from obligations incurred by the Debtor in the ordinary course of its business prior to the Confirmation Date, including Administrative Trade Claims, will be paid and performed by the Reorganized Debtor in the ordinary course of its business in accordance with the terms of any agreements governing, instruments evidencing, or other documents relating to such transactions. The Debtor believes that all “ordinary course” Claims are generally current.

(b) **DIP Lenders’ Administrative Claims.** The Plan provides for the repayment of Allowed DIP Lenders’ Claims arising from loans from limited partners of the Debtor to the Debtor in various amounts. The Debtor sought approval of the DIP Loans on February 22, 2013 [ECF No. 44]. The Allowed DIP Lenders’ Claims will be paid after the payment of priority claims, but before the payment of unsecured claims. The Debtor intends to pay the DIP Lenders’ Allowed Administrative Claim in full provided, however, the Debtor and each respective DIP Lender may agree to increase or decrease the payments made to the DIP Lender as Debtor’s cash flow permits or requires as long as such increase or decrease does not affect the payment to any other class of creditors.

The DIP Lenders acknowledge and agree that their Allowed Administrative Claim is not being paid in accordance with the Bankruptcy Code and is not being paid at the same time as other Allowed Administrative Claims. The DIP Lenders’ acknowledge that some payments to prepetition priority or unsecured claims may be made prior to the payment in full of the DIP Lenders’ Allowed Administrative Claim.

(c) **Other Allowed Administrative Claims.** The Plan states that all other holders of Allowed Administrative Claims, including, but not limited to Professional

Claims and any other 11 U.S.C. § 503(b)(9) Allowed Claims, if any, shall be paid in full, over time, in equal monthly or quarterly payments. All Professionals shall retain their respective carve-out rights as provided for by final Orders of the Court. At present, the Debtor does not anticipate that there will be any other Allowed Administrative Claims, beyond those of Allowed Administrative Claims for Professional fees and expenses.

6.4.2 **Bar Date for Administrative Claims.** The Plan provides certain time deadlines for certain administrative claimants to seek application for allowance and should be closely reviewed, as any untimely-filed claim might be disallowed.

6.4.3 **Post-Confirmation Professional Claims.** Post-Confirmation Date Professional Claims will not require Bankruptcy Court approval and will be paid post-Confirmation in the ordinary course from the Reorganized Debtor's business operations.

6.4.4 **United States Trustee Fees.** The Plan provides that all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date of the Plan. Following Confirmation, the Reorganized Debtor's obligation to pay United States Trustee fees shall continue until the Bankruptcy Case is converted, dismissed, or closed, whichever occurs first, and said fees will be paid by the Reorganized Debtor in the ordinary course as they are incurred, with all fees to be paid before the Bankruptcy Case may be closed. The Reorganized Debtor shall also timely file and serve all reports required by the U.S. Trustee.

6.4.5 **Priority Tax Claims.** As set forth more fully in the Plan, unless otherwise agreed by the holder of a Priority Tax Claim and the Reorganized Debtor, each governmental unit which is the holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Allowed Priority Tax Claim, deferred cash payments totaling the Allowed amount of such Claim over a period not exceeding five (5) years from the Petition Date, as required by the Bankruptcy Code. Payments will be made in available amounts in year one of the Plan Term, and thereafter beginning in year 2, in equal quarterly installments of principal, and simple interest accruing from the Effective Date at the current rate of interest required by law on the unpaid portion of each Allowed Priority Tax Claim (or upon such other terms determined by the Bankruptcy Court to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claims). No payments will be made on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim. The Reorganized Debtor will have the right and discretion to pay any Allowed Priority Tax Claim, or any remaining balance of such Priority Tax Claim, in full, at any time on or after the Effective Date, without premium or penalty and without further order of the Court if cash is available to do so. The Debtor is unaware of any such Claims of this type.

6.4.6 **Other Allowed Priority Non-Tax Claims.** Under the Plan, as soon as practicable after the later of the Effective Date and the date the Claim becomes an Allowed Claim, each holder of an Allowed Priority Non-Tax Claim against a Reorganized Debtor will receive in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Non-Tax Claim a Distribution from the Reorganized Debtor: (i) in Cash equal to the unpaid portion of such Allowed Priority Non-Tax Claim against Debtor, or (ii) in such

amounts and on such other terms as may be agreed between the holder of the Allowed Priority Non-Tax Claim and the Reorganized Debtor, or (iii) in accordance with the terms of the particular agreement under which such Priority Non-Tax Claim arose. The Debtor is unaware of any such Claims of this type.

6.5 **General Summary of Plan Treatment of Classified Claims.** *The Plan provisions control over the following generalized summary.*

6.5.1 **Class 1: Allowed Secured Claims of PBI Bank, Inc..** Class 1 consists of the Allowed Secured Claims of PBI Bank, Inc. ("PBI"), valued at \$9,477,482 as of the Petition Date, plus interest at the rate set forth below, less all payments received before the Effective Date and applied to principal. The Allowed Secured Claim of PBI shall be paid in three separate loans, as follows:

(a) **PBI Loan 1.** The PBI Loan 1 shall be in the amount of \$3,692,167.10 and is comprised of that certain \$3,000,000 amended and restated loan with an original maturity date of October 2, 2012 and \$692,167.10, which represents the proceeds transmitted to the Debtor as a result of a PBI loan to Investors Equity Holdings, LLC. The PBI Loan 1 will be paid in full over time, and PBI will retain its liens securing the PBI Loan 1 until paid in full or until the collateral securing the Class 1 Claims is sold under the terms of the Plan, with the liens to attach to the proceeds of any such post-Confirmation sales. All rents and proceeds arising from PBI's collateral shall revert to the Reorganized Debtor. Pursuant to the Debtor's financial projections, attached as **Exhibit A** to the Disclosure Statement, the Reorganized Debtor will use a portion of the proceeds realized from post-Confirmation sales to fund improvements to the Debtor's property. The PBI Loan 1 will be repaid through monthly principal and interest payments for a term of thirty (30) years and shall accrue interest at a per annum rate of 3.25% from the Effective Date until paid in full; however, the Reorganized Debtor shall pay interest only, at a rate of 3.25% for eighteen (18) months. Monthly principal and interest payments shall commence in November, 2014.

(b) **PBI Loan 2.** The PBI Loan 2 shall be in the amount of \$1,061,400 and is comprised of the amounts of the Class 1 Claim that the Debtor has attributed to undeveloped outparcels. The PBI Loan 2 will be paid in full over time, and PBI will retain its liens securing the PBI Loan 2 until paid in full or until the collateral securing the Class 1 Claims is sold under the terms of the Plan, with the liens to attach to the proceeds of any such post-Confirmation sales. All rents and proceeds arising from PBI's collateral shall revert to the Reorganized Debtor. Pursuant to the Debtor's financial projections, attached as **Exhibit A** to the Disclosure Statement, the Reorganized Debtor will use a portion of the proceeds realized from post-Confirmation sales to fund improvements to the Debtor's property. The PBI Loan 2 will be repaid through monthly principal and interest payments for a term of thirty (30) years and shall accrue interest at a per annum rate of 3.25% from the Effective Date until paid in full; however, the Reorganized Debtor shall pay interest only, at a rate of 3.25% for eighteen (18) months. Monthly principal and interest payments shall commence in November, 2014.

(c) **PBI Loan 3.** The PBI Loan 3 shall be in the amount of \$4,949,414 and is comprised of the amounts of the Class 1 Claim that the Debtor has attributed to 20 acres of

undeveloped raw land, which the Debtor anticipates to sell in June, 2014. The PBI Loan 3 will be paid in full over time, and PBI will retain its liens securing the PBI Loan 3 until paid in full or until the collateral securing the Class 1 Claims is sold under the terms of the Plan, with the liens to attach to the proceeds of any such post-Confirmation sales. All rents and proceeds arising from PBI's collateral shall revert to the Reorganized Debtor. Pursuant to the Debtor's financial projections, attached as **Exhibit A** to the Disclosure Statement, the Reorganized Debtor will use a portion of the proceeds realized from post-Confirmation sales to fund improvements to the Debtor's property. The PBI Loan 3 will be repaid through monthly principal and interest payments for a term of thirty (30) years and shall accrue interest at a per annum rate of 3.25% from the Effective Date until paid in full; however, the Debtor shall pay interest only, at a rate of 3.25% for eighteen (18) months. Monthly principal payments shall commence when the Debtor sells the 20 acres of undeveloped raw land, which the Debtor estimates will take place in November, 2014.

(d) Provisions applicable to entire Class 1 Claim. Within five (5) days following the entry of the Confirmation Order, PBI shall turnover to the Reorganized Debtor all funds held in escrow account #####5802 which represent the rents collected by PBI from the Debtor's property. The Plan further requires that PBI shall provide the Reorganized Debtor with an accounting detailing the then-outstanding amount of the Class 1 Claim and indicating how all prepetition and postpetition payments have been applied to the Claim within fourteen (14) days following the entry of the Confirmation Order. Payments on the Class 1 Claim will begin on the 15th day of the month after the Effective Date and will continue to become due on the 15th day of the month thereafter until the Class 1 Claim is paid in full; provided, however, that PBI has provided the Reorganized Debtor with a specific accounting as required herein, and if no such accounting has been provided, payments on the Class 1 Claim will begin fifteen (15) days after PBI provides the Reorganized Debtor such an accounting. Any remaining claim of PBI not treated herein shall be transferred to and become a Class 4 Unsecured Claim. The Class 1 Claim is Impaired.

6.5.2 Class 2: Allowed Secured Claim of Alliance Corp. Class 2 consists of the Allowed Secured Claim of Alliance Corp. ("Alliance"), valued at \$732,632.46, as of the Petition Date, plus interest at the rate set forth below, less all payments received before the Effective Date and applied to principal. The Class 2 Claim will be paid in full over time, and Alliance will retain its liens securing the Class 2 Claim until paid in full or until the collateral securing the Class 2 Claim is sold under the terms of the Plan, with the liens to attach to the proceeds of any such post-Confirmation sales. The Class 2 Claim will be repaid through monthly principal and interest payments for a term of thirty (30) years and shall accrue interest at a per annum rate of 3.25% from the Effective Date until paid in full; however, the Reorganized Debtor shall pay interest only, at a rate of 3.25% for eighteen (18) months. Monthly principal and interest payments shall commence in November, 2014. Any remaining claim of Alliance not treated herein shall be transferred to and become a Class 4 Unsecured Claim. The Class 2 Claim is Impaired.

6.5.3 Class 3: Allowed Secured Claim of Barren County PVA. Class 3 consists of the Allowed Secured Claim of the Barren County PVA, valued at \$53,652, as of the Petition Date, plus statutory interest, which arises as a result of a statutory lien for past due taxes

on the Debtor's real property in Barren County, Kentucky. The Barren County PVA claim shall be paid in monthly installments over one year, beginning in the month after the Effective Date. Upon repayment in full, Barren County PVA shall release its statutory liens securing the Class 3 Claim. The Class 3 Claim is Impaired.

6.5.4 **Class 4: Allowed Unsecured Claims.** Class 4 consists of the Allowed Unsecured Claims against the Debtor other than Secured Claims, unclassified Claims, Cure Claims, Priority Claims and Priority Tax Claims. Each holder of an Allowed Claim in Class 4 shall receive its distribution equal to its *pro rata* share of Net Cash Flow. The Reorganized Debtor shall deposit in a separate escrow account the monthly sum from the Net Cash Flow beginning with the first full month after the Effective Date for the purpose of paying Class 4 Allowed Unsecured Claims. The Reorganized Debtor estimates the total amount available to unsecured creditors over the duration of the plan to be \$158,549, pursuant to the Debtor's five year financial projections, **Exhibit A** to the Disclosure Statement). Distributions shall be made annually, beginning on May 1st of the first year after all unclassified Claims, Cure Claims, Priority Claims and Priority Tax Claims are paid in full. The Class 4 Claims will be paid to the greatest extent possible over time without interest; however, there are not guarantees that holders of an Allowed Unsecured Claim will receive any distribution on account of their claim. The Class 4 Claims are Impaired. A chart describing the Allowed Unsecured Claims is attached hereto as **Exhibit C**.

6.5.5 **Class 5: Equity Interests in the Debtor.** Class 5 consists of those Persons holding equity or membership Interests in the Debtor. The Debtor is a for-profit Tennessee limited partnership. As set forth in the Plan projections and the disclosure statement, holders of interests ("Equity Holders") in the Debtor who so elect, will make a capital contribution in the minimum amount of \$38,775 which shall be distributed pursuant to the terms of the Debtor's Plan. The Interests in the Debtor will remain unimpaired by Confirmation of the Debtor's Plan, so long as the Plan is approved by the Bankruptcy Court and in accordance with the Bankruptcy Code. There will be no dividends, distributions or any other payments to or on account of the Equity Interests until all Plan payments have been completed. The Class 5 Claims are Impaired.

6.5.6 **Class 6: Allowed Other Secured Claims.** Class 6 shall consist of all other Secured Claims, if any, excluding the Class 1- 3 Allowed Secured Claims. In satisfaction of the Allowed Secured Claim of any Class 6 Creditor, if any, the Debtor shall, on the Effective Date, or such other date as may be agreed on, at the Debtor's option, either: (i) surrender the collateral to the Creditor to allow it to liquidate said collateral at its discretion; or (ii) pay the amount of such Allowed Secured Claim to the Class 6 Creditor over time under the life of the Plan. Any Allowed Claim for a deficiency balance shall be a Class 6 Claim. The Class 6 Claims are impaired.

6.6 **Bar Date for Deficiency Balance Claims.** The Plan provides that any creditor that asserts a Deficiency Balance Claim following the sale of its collateral shall file a Proof of Claim (or amended Proof of Claim if a claim was previously filed) with the Bankruptcy Court evidencing the nature and amount of the Deficiency Balance Claim within thirty (30) days of the Effective Date, or within thirty (30) days of the sale of its collateral, whichever is later. Any

Deficiency Balance Claims that are not filed within the appropriate 30-day period will be deemed waived and forever barred under the Plan.

6.7 **Plan Implementation**

6.7.1 **Parties Responsible for Implementation of the Plan.** Upon confirmation, the Plan provides that James E. Himelrick, Jr., acting as President of General Partner of the Reorganized Debtor will continue to manage said Debtor's operations, subject to the terms of the Plan. Mr. Himelrick will have the authority to take all actions desirable in his business judgment to continue the operations of the Reorganized Debtor, including implementation of the Plan and administration of the Debtor's Estate. The Reorganized Debtor will pay all United States Trustee fees and will file all post-Confirmation reports required by the United States Trustee's Office. The Reorganized Debtor will also file the necessary final reports and will request to close the Bankruptcy Case as soon as practicable after plan payments have begun.

6.7.2 **Means of Implementation.** In addition to the limited partners' capital contribution, the Debtor will continue to operate post-Confirmation as the Reorganized Debtor in the ordinary course of business, receiving ongoing income from its operations, and using all income to pay their customary operating expenses and necessary capital expenditures and Plan payments. The Debtor has projected and assumed income growth through a conservatively-projected growth in its business and refinements and improvements in their internal business operations.

6.7.3 **Continued Engagement of Professionals.** The Reorganized Debtor shall continue the engagement of DelCotto Law Group PLLC and such other professionals as may be necessary for the purposes of rendering services in connection with implementing the Plan, resolving Claims, and performing routine post-Confirmation Chapter 11 administration, such as final reporting and moving to have the case closed upon Plan completion. Post-Confirmation, any professional services will not require Court approval.

ARTICLE VII

RISK FACTORS

7.1 **Risks of Non-Confirmation.** Even if all impaired classes accept or could be deemed to have accepted the Plan, the Plan may not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things: (a) that the confirmation of a plan not be followed by a need for further liquidation or reorganization; (b) that the value of distributions to dissenting holders not be less than the value of Distributions to such holders if the debtor was liquidated under Chapter 7 of the Bankruptcy Code; and (c) that the plan and the debtor otherwise comply with the applicable provisions of the Bankruptcy Code. Although the Debtor believes that the Plan will meet all applicable tests and that it has proposed a confirmable Plan (with the consent of certain Administrative Claimants) there can be no assurance that the Bankruptcy Court will reach the same conclusion.

If no Plan can be confirmed, the Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate the Debtor's Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that Confirmation is preferable to Chapter 7 liquidation because the Plan maximizes the distributions to all Classes of Creditors, and any alternative to Confirmation would result in substantial delays and potentially lesser recoveries as persons unfamiliar with the Debtor's Assets would assume administration of the case. It is projected that only the secured creditors would have any recovery in any type of liquidation, and even this recovery could be substantially less, since the Debtor's rolling stock could be left at various locations throughout the country or an "auction" sale could produce lower results than any going concern, ordinary course sale.

7.2 **Risks of Non-Consensual Confirmation.** Pursuant to the "cramdown" provisions of 11 U.S.C. § 1129, the Bankruptcy Court can confirm the Plan at the Debtor's request if at least one impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any "insider" in such Class) and, with respect 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 impaired Classes. In accordance with 11 U.S.C. § 1129(a)(8) and (b), the Debtor will request Confirmation of the Plan without the acceptance of all impaired Classes entitled to vote.

IF NO HOLDERS OF CLAIMS OR EQUITY INTERESTS ELIGIBLE TO VOTE IN A PARTICULAR CLASS VOTE TO ACCEPT OR REJECT THE PLAN, THE PLAN SHALL BE DEEMED ACCEPTED BY THE HOLDERS OF SUCH CLAIMS OR EQUITY INTERESTS IN SUCH CLASS.

The Debtor reserves the right to modify the terms of the Plan as necessary for Confirmation without the acceptance of all impaired Claims. Such modification could result in less favorable treatment for any non-accepting Classes than the treatment currently provided for in the Plan. Such less favorable treatment could include a distribution of property of a lesser value than that currently provided for in the Plan or no distribution of property whatsoever.

7.3 **Risks of Delays in Confirmation.** Any delay in Confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims or contested fights with secured creditors. These or any other negative effects of delays in Confirmation of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court.

7.4 **Risks of Shut Down of Operations.** In its business judgment, the Debtor has determined that maintaining and reorganizing its business operations pursuant to the Plan will provide a much better return for all parties in interest. Due to the nature of the Debtor's business, a majority of their assets are worth much more as part of a going concern than they are if sold on a piecemeal basis. As a result, if the Debtor was forced to discontinue its business operations, all of its Creditors stand to receive far smaller distributions, if any, in satisfaction of their Claims than they would if the Debtor's business continue operating.

ARTICLE VIII

PLAN CONFIRMATION

8.1 **Generally.** To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that the:

- (1) Plan has classified Claims and Interests in a permissible manner;
- (2) Plan complies with the applicable provisions of the Bankruptcy Code;
- (3) Debtor complies with the applicable provisions of the Bankruptcy Code;
- (4) Debtor, as proponent of the Plan, has proposed the Plan in good faith and not by any means forbidden by law;
- (5) disclosure required by 11 U.S.C. § 1125 has been made;
- (6) Plan has been accepted by the requisite votes of creditors and equity interest holders (except to the extent that cramdown is available under 11 U.S.C. § 1129(b));
- (7) Plan is feasible;
- (8) Plan is in the “best interests” of all holders of Claims or Interests in an impaired Class by providing to creditors or interest holders, on account of such Claims or Interests, property of value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a Chapter 7 liquidation unless each holder of a Claim or Interest in such Class has accepted the Plan;
- (9) fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date;
- (10) Plan provides for the continuation after the Effective Date of all retiree benefits, as defined in 11 U.S.C. § 1114, at the level established at any time prior to Confirmation pursuant to 11 U.S.C. §§ 1114(e)(1)(B) or 1114(g), for the duration of the period that the applicable Debtor has obligated itself to provide such benefits; and

- (11) disclosures required under 11 U.S.C. § 1129(a)(5) concerning the identity and affiliations of persons who will serve as officers, directors, and voting trustees of the successors to the Debtor has been made.

8.2 **Voting Requirements for Confirmation under the Bankruptcy Code.**

8.2.1 **General Voting Information.**

PLEASE CAREFULLY FOLLOW ALL OF THE INSTRUCTIONS CONTAINED ON THE BALLOT PROVIDED TO YOU. ALL BALLOTS MUST BE COMPLETED AND RETURNED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED.

TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE DEADLINE SET BY THE COURT AND AT THE ADDRESS SET FORTH ON YOUR BALLOT. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTOR THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE DEBTOR OR ITS COUNSEL.

IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, IF YOU HOLD MULTIPLE GENERAL UNSECURED CLAIMS, OR UNDER CERTAIN OTHER CIRCUMSTANCES, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN, AND RETURN EACH BALLOT YOU RECEIVE.

ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED, PURSUANT TO THE BANKRUPTCY CODE, BASED UPON THE BALLOTS OF THE CREDITORS HOLDING ALLOWED CLAIMS THAT *ACTUALLY VOTE* ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT CLAIMANTS EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.

IF NO HOLDERS OF CLAIMS OR EQUITY INTERESTS ELIGIBLE TO VOTE IN A PARTICULAR CLASS VOTE TO ACCEPT OR REJECT THE PLAN, THE PLAN SHALL BE DEEMED ACCEPTED BY THE HOLDERS OF SUCH CLAIMS OR EQUITY INTERESTS IN SUCH CLASS.

IF ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN: (A) THE DEBTOR MAY SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN UNDER THE CRAMDOWN PROVISIONS OF 11 U.S.C. § 1129(b) AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO THE STANDARDS OF SUCH SECTION; OR (B) THE PLAN MAY BE MODIFIED OR WITHDRAWN WITH RESPECT TO A PARTICULAR CREDITOR, OR (C) THE PLAN MAY BE WITHDRAWN IN ITS ENTIRETY. *See Section 7.2.*

8.2.2 Classes Entitled to Vote on the Plan.

(a) **Generally.** Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are “impaired” under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interests that are not impaired are *not* entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan unless such Class otherwise indicates acceptance. *The classification of Claims and Interests under the Plan is summarized, together with an indication of whether each Class of Claims or Interests is impaired, in Section 6.5.*

(b) **Contested and Unliquidated Claims.** Contested, disputed, contingent, and/or unliquidated Claims are *not* entitled to vote to accept or reject the Plan. If your Claim has been estimated for voting purposes by Court Order, you will be allowed to vote your Claim in the amount estimated by said Order. If ballots are erroneously sent to a Creditor not entitled to vote, then the ballot will not be counted in the calculation of the Creditors voting to accept or reject the Plan. If you are a Creditor holding a contested or disputed claim, you may ask the Court to have your Claim temporarily allowed for the purpose of voting pursuant to Fed. R. Bankr. P. 3018.

8.2.3 Voting Procedures and Requirements.

(a) **Ballots and Voting.** Creditors holding Allowed Claims entitled to vote on the Plan will be sent a ballot, together with instructions for voting, with this Disclosure Statement. Creditors should read the ballot carefully and follow the instructions contained therein. In voting to accept or reject the Plan, you must use *only* the ballot sent to you with this Disclosure Statement. Creditors entitled to vote must complete, sign, and return their ballots to counsel for the Debtor on or before the Voting Deadline. Fed. R. Bankr. P. 3018(a) permits a Creditor, for cause, to petition the Court to permit it to change or withdraw its vote on a plan. Any such petition must be made before the Confirmation Hearing, unless otherwise permitted by the Court. The Debtor will present the results of the voting to the Bankruptcy Court at the Confirmation Hearing.

(i) **Lost or Damaged Ballots.** If you are entitled to vote and you did not receive a ballot, received a damaged ballot, or lost your ballot, please contact Linda Conner at DelCotto Law Group PLLC at (859) 231-5800 or lconner@dlgfirm.com. Also, this Disclosure Statement, the Plan, and all of the related Exhibits and Schedules are available upon request to any party in interest by contacting the Debtor’s counsel.

(ii) **Effective Transmittal of Ballots.** Votes cannot be transmitted orally or by facsimile. Accordingly, you are urged to return your

signed and completed ballot by hand delivery, overnight service, email, or regular U.S. mail, promptly.

(b) **Requirements for Class Acceptance.** As a condition of Confirmation, the Bankruptcy Code requires that each class of Claims that is impaired vote to accept the Plan, subject to the exception of 11 U.S.C. § 1129(b), which still requires one class of Claims that is impaired to have voted to accept the Plan. A class of Claims accepts the Plan if: (i) holders of at least two-thirds in the total dollar amount of Allowed Claims in that class, and (ii) a majority in number of holders of Claims in that class vote to accept the Plan.

IF NO HOLDERS OF CLAIMS OR EQUITY INTERESTS ELIGIBLE TO VOTE IN A PARTICULAR CLASS VOTE TO ACCEPT OR REJECT THE PLAN, THE PLAN SHALL BE DEEMED ACCEPTED BY THE HOLDERS OF SUCH CLAIMS OR EQUITY INTERESTS IN SUCH CLASS.

8.3 **General Requirements for Confirmation under the Bankruptcy Code.**

8.3.1 **Best Interests of Creditors/Liquidation Analysis.** Notwithstanding acceptance of the Plan by each impaired Class, to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the “best interests” test requires that the Bankruptcy Court find that the Plan provides to each member of such impaired Class a recovery on account of the member’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the applicable Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each impaired Class of Claims or Interests would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Chapter 11 Bankruptcy Case was converted to a Chapter 7 case under the Bankruptcy Code and the Debtor’s Assets were liquidated by a Chapter 7 trustee (the “Liquidation Value”). The Liquidation Value would consist of the net proceeds from the disposition of the assets of the Debtor, augmented by any cash held by the Debtor.

The Liquidation Value available to holders of Unsecured Claims and Interests would be reduced by, among other things: (a) the Claims of secured creditors to the extent of the value of their collateral; (b) the costs, fees, and expenses of the liquidation, as well as other administrative expenses of the Debtor’s Chapter 7 cases; (c) unpaid Administrative Claims of the Chapter 11 case; and (d) Priority Claims and Priority Tax Claims. The Debtor’s costs of liquidation in Chapter 7 would include the compensation of a trustee, as well as of counsel and of other professionals retained by a trustee, asset disposition expenses, applicable taxes, litigation costs, claims arising from the operation of the Debtor during the pendency of the Chapter 7 cases, and all unpaid Administrative Claims incurred by the Debtor during the Chapter 11 cases that are allowed in the Chapter 7 cases. The liquidation itself would likely accelerate the payment of certain Priority Claims and Priority Tax Claims that would otherwise be payable in

the ordinary course of business. These Priority Claims and Priority Tax Claims would be paid to the extent possible out of the net liquidation proceeds, after payment of Secured Claims, before the balance would be made available to pay Unsecured Claims or to make any distribution in respect of Interests. The Debtor believes that the liquidation also would generate an increase in Unsecured Claims, such as rejection damages Claims, and Tax and other governmental Claims.

The information contained in **Exhibit D** attached hereto provides a summary of the Liquidation Values of the Debtor's Assets, assuming a hypothetical Chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the Debtor's Assets.

In summary, the Debtor believes that Chapter 7 liquidation of the Debtor would result in diminution in the value to be realized by holders of Claims, as compared to the proposed distributions under the Plan, because of, among other factors: (a) the negative impact of conversion to a Chapter 7 case and subsequent expedited liquidation on the Debtor's lessees; (b) additional costs and expenses involved in the appointment of trustees, attorneys, accountants, and other professionals to assist such trustees in the Chapter 7 cases; and (c) additional expenses and Claims, some of which would be entitled to priority in payment, that would arise by reason of a liquidation. Consequently, the Debtor believes that the Plan will provide a greater ultimate return to holders of Claims than a Chapter 7 liquidation.

8.3.2 **Feasibility of Plan.** Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation of the Debtor or any successor to the Debtor, or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the Plan. Based on the Debtor's analysis, the Reorganized Debtor will have sufficient assets and business operations to accomplish its tasks under the Plan. Therefore, the Debtor believes that its reorganization pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.⁴

8.3.3 **Compliance with Applicable Provisions of the Bankruptcy Code.** Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtor has considered each of these issues in the development of the Plan and believes that the Plan complies with all provisions of the Bankruptcy Code.

8.4 **Confirmation.**

8.4.1 **Confirmation Hearing.** The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtor has fulfilled the Confirmation requirements of 11 U.S.C. § 1129. The Confirmation Hearing has been or will be scheduled by Order of the Court and you will or have received notice of the hearing by separate notice/order. If you have any questions concerning the hearing, please contact the undersigned counsel.

⁴ The Debtor is still obtaining information from creditors concerning current claim amounts and related information. Once the Debtor receives this necessary information, an exhibit containing the Debtor's financial projections over the five-year plan term will be attached to the final Disclosure Statement that is mailed to all creditors and parties in interest in this Bankruptcy Case.

8.4.2 **Objections to Confirmation.** Any objection to Confirmation must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount of the Claim or Interest held by the objector. Any such objections must be filed and served upon the persons designated in the notice of the Confirmation Hearing and in the manner and by the deadline described therein.

8.4.3 **Methods of Confirmation.**

(a) **Confirmation Based on Plan Acceptance.** A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and a majority in number of claims of that class vote to accept the plan. Only those holders of claims who actually vote (and are entitled to vote) to accept or to reject a plan count in this tabulation. In addition to this voting requirement, 11 U.S.C. § 1129 requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan otherwise be found to be in the best interests of each holder of a claim or interest in an impaired class by the Bankruptcy Court.

IF NO HOLDERS OF CLAIMS OR EQUITY INTERESTS ELIGIBLE TO VOTE IN A PARTICULAR CLASS VOTE TO ACCEPT OR REJECT THE PLAN, THE PLAN SHALL BE DEEMED ACCEPTED BY THE HOLDERS OF SUCH CLAIMS OR EQUITY INTERESTS IN SUCH CLASS.

(b) **Confirmation through Cramdown.** The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, so long as at least one impaired class of claims has accepted it. These “cramdown” provisions are set forth in 11 U.S.C. § 1129(b). As indicated above, the Plan may be confirmed under the cramdown provisions if, in addition to satisfying the other requirements of 11 U.S.C. § 1129(a), it: (a) is “fair and equitable;” and (b) “does not discriminate unfairly” with respect to each Class of Claims or Interests that is impaired under, and has not accepted, the Plan. The “fair and equitable” standard, also known as the “absolute priority rule,” requires, among other things, that unless a dissenting class of unsecured claims or a class of interests with respect to a debtor receives full compensation for its allowed claims or allowed interests, no holder of allowed claims or interests with respect to such debtor in any junior class may receive or retain any property on account of such claims or interests. With respect to a dissenting class of secured claims, the “fair and equitable” standard requires, among other things, that holders either: (a) retain their liens and receive deferred cash payments with a value as of the effective date equal to the value of their interest in property of the Debtor’s estate; or (b) receive the indubitable equivalent of their secured claims. The “fair and equitable” standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims or allowed interests. The Debtor believes that, if necessary, the Plan may be crammed down over the dissent of certain Classes of Claims, in view of the treatment proposed for such Classes.

The requirement that the Plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Debtor does not believe that the Plan unfairly discriminates against any Class that may not accept or otherwise consent to the Plan. Subject to the conditions set forth in the

Plan, a determination by the Bankruptcy Court that the Plan, as it applies to any particular Debtor, is not confirmable pursuant to 11 U.S.C. § 1129 will not limit or affect: (a) the confirmability of the Plan as it applies to any other Debtor; or (b) the Debtor's ability to modify the Plan, as it applies to any particular Debtor, to satisfy the provisions of 11 U.S.C. § 1129(b).

8.5 **Alternatives to Confirmation.** If the Plan is not confirmed and consummated, the alternatives include preparation and presentation of an alternative plan of reorganization or a conversion of this case to one under Chapter 7 of the Bankruptcy Code. If the Court denies confirmation, the Debtor or any other party in interest could propose a different Plan. The Debtor believes such an alternative plan would result in less return to creditors than the distributions to creditors pursuant to the Plan. Before proposing the present Plan, the Debtor explored other alternatives. The Debtor believes not only that the Plan, as described herein, fairly adjusts the rights of various classes of Creditors and enables Creditors to realize the most possible under the circumstances, but also that rejection of the Plan in favor of some alternative arrangement will require, at the very least, an extensive and time-consuming process and will not result in a better recovery for any Class.

ARTICLE IX

CERTAIN FEDERAL TAX CONSEQUENCES

IRS Circular 230 Disclosure: To ensure compliance with requirement imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

9.1 **General.**

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS, JUDICIAL DECISIONS, AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION MAY HAVE RETROACTIVE EFFECT, WHICH MAY CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW. NO RULING HAS BEEN REQUESTED FROM THE IRS, NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT

ORGANIZATIONS, AND FOREIGN TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTOR. THIS DESCRIPTION DOES NOT DISCUSS THE POSSIBLE STATE TAX OR NON-U.S. TAX CONSEQUENCES THAT MIGHT APPLY TO THE DEBTOR OR TO HOLDERS OF CLAIMS.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

9.2 **Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally.** The federal income tax consequences of the implementation of the Plan to the holders of Allowed Claims will depend, among other things, on the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder receives distributions under the Plan in more than one taxable year, whether the holder's Claim is Allowed or disputed on the Effective Date, and whether the holder has taken a bad debt deduction or worthless security deduction with respect to its claim.

9.2.1 **Recognition of Gain or Loss.** In general, a holder of an Allowed Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim, less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim, and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized. The holder's amount realized generally will equal the sum of the cash and the fair market value of any other property received by the holder under the Plan on the Effective Date or a subsequent distribution date, less the amount (if any) treated as interest, as discussed below.

9.2.2 **Post-Effective Date Distributions.** Because certain holders of Allowed Claims, including Disputed Claims that ultimately become Allowed Claims, may receive cash distributions after the Effective Date, the imputed interest provisions of the Internal Revenue Code may apply and cause a portion of the subsequent distribution to be treated as interest. Additionally, because holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the holder may be deferred. All holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

9.2.3 **Receipt of Interest.** Holders of Allowed Claims will recognize ordinary income to the extent that they receive cash or property that is allocable to accrued but unpaid interest which the holder has not yet included in its income. If an Allowed Claim includes interest, and if the holder receives less than the amount of the Allowed Claim pursuant to the

Plan, the holder must allocate the Plan consideration between principal and interest. The holder may take the position that the amounts received pursuant to the Plan are allocable first to principal, up to the full amount of principal, and only then to interest. However, the proper allocation of Plan consideration between principal and interest is unclear, and holders of Allowed Claims should consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

9.2.4 **Bad Debt or Worthless Securities Deduction.** A holder who receives, in respect of an Allowed Claim, an amount less than the holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under 26 U.S.C. § 166(a) or a worthless securities deduction under 26 U.S.C. § 165(g). The rules governing the character, timing, and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

9.2.5 **Information Reporting and Withholding.** Under the Internal Revenue Code's backup withholding rules, the holder of an Allowed Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan, unless the holder comes within certain exempt categories (which generally include corporations) and, when required, either demonstrates that categorization or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

9.3 **Certain U.S. Federal Income Tax Consequences to the Debtor.** In the event that the Debtor sells any of its Assets, the Debtor will generally recognize a gain or loss on the sale of those Assets, equal to the difference between the amount realized on the sale and the adjusted tax basis of the Assets being sold. Additionally, if the Debtor conveys appreciated (or depreciated) property (i.e. property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of full recourse debt, the Debtor must recognize taxable gain or loss equal to the excess or shortfall, respectively, of such fair market value over that adjusted basis. This gain or loss may be ordinary income or loss, capital gain or loss, or a combination of each, and may be offset against any applicable net operating loss carry-forwards from previous tax years.

Further, the discharge of a recourse debt obligation by the Debtor in exchange for the Debtor's payment of cash and/or transfer of property with a fair market value that is less than the adjusted issue price of the debt obligation (as determined for U.S. federal income tax purposes) may give rise to cancellation of indebtedness ("COD") income. COD income must generally be

included in the Debtor's gross income, subject to certain statutory or judicial exceptions that may limit the amount of COD income required to be included. One such statutory exception applies to certain Debtor whose discharge of indebtedness is granted in a case brought under Title 11 of the United States Code (relating to bankruptcy), pursuant to a court-approved plan of reorganization. A related similar exception applies to taxpayers who receive a discharge of indebtedness while insolvent.

For the foregoing reasons, the precise amount of taxable gain or loss, COD income, or both that the Debtor may realize as a result of effectuation of the Plan cannot be determined until the date of the exchange.

ARTICLE X

ADDITIONAL INFORMATION, RECOMMENDATIONS, AND CONCLUSION

10.1 **Additional Information.** Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance, reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement. The Debtor will file all exhibits to the Plan with the Bankruptcy Court, and the exhibits also will be available upon request from the Debtor's counsel.

10.2 **Recommendations and Conclusion.** The materials provided in this Disclosure Statement are intended to assist you in reviewing the Plan in an informed manner. If the Plan is confirmed, you will be bound by the terms of the Plan. You are urged to study these materials and make such further inquiries as you may deem appropriate.

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtor urges all holders of Claims in voting Classes to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

Dated: March 19, 2013

Respectfully submitted,

INVESTORS CAPITAL PARTNERS II, LP

By: /s/ James E. Himelrick, Jr.
President of General Partner

Tendered by:

DELCOTTO LAW GROUP PLLC

/s/ T. Kent Barber, Esq.

KY Bar No. 92456

Laura Day DelCotto, Esq.

KY Bar No. 81763

200 North Upper Street

Lexington, KY 40507

Telephone: (859) 231-5800

Facsimile: (859) 281-1179

kbarber@dlgfirm.com

ldelcotto@dlgfirm.com

COUNSEL FOR DEBTOR AND

DEBTOR IN POSSESSION

Z:\Clients\Investors Entities\Pleadings\DS & Plan\ICP II DS VF 20130319.doc