

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)
)
KM ASSOCIATES, LLC) **CASE NO.: 12-bk-20041**
Debtor .) **CHAPTER 11**

DISCLOSURE STATEMENT

**David M. Jecklin, Esquire
Gianola, Barnum, Wigal & London, L.C.
1714 Mileground
Morgantown, WV 26505
W.V. Bar No. 9678
(304) 291-6300
Fax (304) 291-6307**

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I. PURPOSE OF THE DISCLOSURE STATEMENT

The Debtor-in-Possession, KM Associates, LLC (the Debtor), prepared this Disclosure Statement to accompany the Plan of Reorganization (the Plan) filed concurrently with this Disclosure Statement. The purpose of this Disclosure Statement is to permit a hypothetical reasonable creditor, typical of the creditors whose votes are being solicited, to make an informed judgment whether to accept or reject the Plan.

A copy of the Plan is incorporated into the Disclosure Statement by reference. You should read the Plan and this Disclosure Statement in their entirety before voting on the Plan.

II. IMPORTANT NOTICE

THIS DISCLOSURE STATEMENT SUMMARIZES AND ALSO PROVIDES INFORMATION CONCERNING THE EVENTS LEADING UP TO THE DEBTOR'S SUBMISSION OF THE PLAN WHICH THE DEBTOR BELIEVES IS A DETERMINATION CONCERNING THE MERITS OF THE PLAN, BUT DOES NOT PURPORT TO BE A COMPLETE DESCRIPTION OF EACH PROVISION OF THE PLAN. CREDITORS AND PARTIES IN INTEREST ARE URGED, THEREFORE, TO READ THE PLAN IN ITS ENTIRETY. ANY CAPITALIZED TERMS USED IN THIS DISCLOSURE STATEMENT WHICH DEFINED HEREIN SHALL HAVE THE MEANINGS DESCRIBED TO THEM IN THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

III. VOTING

A. Who May Vote The Plan proposes several classes of claims. Only holders of claims that are undisputed, allowed and that have been identified as being "impaired" are entitled to vote on the Plan. "Impaired" is a specific legal concept that generally refers to claims being paid in some fashion other than according to pre-filing agreements or requirements. Members of the Classes 2, 3, 4, and 5 identified in the Plan are Impaired, and consequently may vote.

To the extent that Impaired Classes do not otherwise consent to the Plan, the Debtor intends to invoke the provision of 11 U.S.C. § 1129(b) to confirm the Plan notwithstanding the rejection by such classes and to demonstrate that the Plan satisfies the requirements for confirmation set forth in section 1129(b), including that the Plan does not discriminate unfairly and is fair and equitable with respect to each class of Claims that is impaired and has not accepted the Plan.

B. Voting Requirements for Acceptance of the Plan The Bankruptcy Code provides that the Plan will be deemed accepted by an Impaired Class of Claims if Creditors in that Class vote as follows: Creditors voting for the Plan in any Class must constitute (a) two-thirds of the dollars amount of the Allowed Claims in that Class; and (b) more than one-half of the number of Claim Holders in that Class.

As more specifically outlined in the Plan:

a) Class 1, Administrative Claims: Claim Holders are not entitled to vote on a Plan under the Bankruptcy Code;

1. b) Creditors in Class 2: Agsten Construction; Raynes & Sons Excavation, LLC; RC General Contractors; Robinson & Son Plumbing & Heating, Inc.; Rock Branch Mechanical; South Charleston Electric Company; and Tri-State Roofing & Sheet Metal Company involving pre-petition mechanics liens filed in The Circuit Court of Kanawha County, West Virginia are impaired and may vote. However these Creditors have consented to treatment described in the Plan by prior pre-petition agreement.

c) Creditors in Class 3: Citizens National Bank; CNB Bank; First United Bank & Trust; Merchants National Bank of Kittanning; Progressive Bank, NA; and Standard Bank PaSB (collectively the Lenders) are impaired and may vote;

d) Creditors in Class 4: All Unsecured Claims are impaired and may vote;

e) Creditors in Class 5: ERECT Fund II/Equity, ERECT Co-Participation Fund, and Highmark Specialty R/E Trust (collectively the ERECT Fund), Frank A. Baer, II, Lee O. Hill, Thomas E. Potter, and SAK, LLC are the holders of Equity Interests and are impaired, but have consented to their treatment under the Plan and will be presumed to have voted for the Plan unless they affirmatively vote against the Plan.

C. How to Vote A Ballot for Accepting or Rejecting Plan of Reorganization is included with this Disclosure Statement and Plan of Reorganization. After review of this document and any additional information deemed necessary, creditors should exercise their right to vote upon the Plan by filling in the necessary information on the ballot and returning by regular mail, hand delivery, Federal Express or other courier services to:

**David M. Jecklin, Esq.
1714 Mileground
Morgantown, WV 26505**

The ballot must be received on or before the day established by the Court, in order to be counted in the vote. Creditors may wish to contact independent counsel with respect to the Disclosure Statement and Plan of Reorganization and Creditor's rights before exercising their vote. You may be contacted by representatives of the Debtor with respect to your vote on the Plan.

IV. EVENTS LEADING TO FORMULATION OF THIS PLAN OF REORGANIZATION

On January 30, 2012, KM Associates, LLC filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of West Virginia as a Single Asset Real Estate case as defined under 11 U.S.C. §101 (51B).

On February 3, 2012, the Lenders filed a Motion for Relief from Stay and a Motion to

Prohibit Use of Cash Collateral.

On March 6, 2012, the Court entered an Agreed Order to Use Cash Collateral. In the Agreed Order the Debtor agreed to provide adequate protection payments to the Lenders and to submit the Plan no later than April 30, 2012. Accordingly, the Debtor is filing its Plan and this Disclosure Statement within the agreed time period.

A. STATUS OF THE DEBTOR AT FILING

Since 2007, the Debtor has owned real property known as the Shops at Kanawha Mall located at 5705 MacCorkle Avenue, Charleston, Kanawha County, West Virginia. (Principal Real Estate Asset). The Principal Real Estate Asset was encumbered by the secured debt of the Lenders. On November 30, 2011, a Forbearance Modification Agreement between the Debtors and the Lenders expired.

At all times before, during, and after the above-mentioned forbearance period the Debtor was engaged in serious good-faith negotiation with the Lenders involving the refinancing of the its' secured debt and an infusion of capital from a third-party investor to satisfy other creditor claims. However, on January 30, 2012, with a pending foreclosure date set for the Principal Real Estate Asset, and the Debtor and Lenders having not agreed to an additional forbearance period or a refinancing of the secured debt this case was filed in the Bankruptcy Court for the Southern District of West Virginia under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101, et. seq.

B. DEBT STRUCTURE

At filing, the Principal Asset Real Estate was encumbered by the Lenders holding secured claims that it places at \$21,434,420.00. Additionally, Agsten Construction; Raynes & Sons Excavation, LLC; RC General Contractors; Robinson & Son Plumbing &

Heating, Inc.; Rock Branch Mechanical; South Charleston Electric Company; and Tri-State Roofing & Sheet Metal Company had statutory liens against the Principal Real Estate Asset in the approximate amount of \$891,076.00 by virtue of a pre-petition mechanics liens filed in The Circuit Court of Kanawha County, West Virginia (Contractors' claims).

C. CONCEPT OF THE PLAN

The Debtor's plan of reorganization provides for the refinancing of the Lenders' secured debt on the Principal Real Estate Asset by the Debtor and third-party investor, The Summers Group. Based on multiple conversations with The Summers Group it is the Debtor's strong understanding that The Summers Group will also provide an immediate capital infusion to satisfy, in part or in full, the remaining Class of creditors' claims. Specifically, providing \$384,000.00 to fully satisfy the Contractors claims based on agreements between the Debtor and Contractors. Furthermore, providing \$450,000.00 to fully satisfy the Erect Fund, Frank A. Baer, II, Lee O. Hill, and Thomas E. Potter's claims based on agreements between the Debtor and the parties. The remainder of the capital infusion from The Summers Group will be utilized to satisfy the remaining creditors and provide for the continued development of the Principal Real Estate Asset.

Currently, the Debtor is negotiating an agreement for the refinancing of the secured debt between the Lenders, the Debtor, and The Summers Group, in Charleston, West Virginia. During recent discussions between the parties the refinancing of the secured debt centered on a principal of approximately \$17,000,000.00 at a 4.5% interest rate and a 25 year amortization.

V. THE PLAN

A copy of the Plan is incorporated by reference into this Statement.

VI. ALTERNATIVES TO THE PLAN

An alternative to the Plan is a forced liquidation sale in an "as is, where is" status. Generally, forced sales do not result in good returns for creditors of lower priority. A Chapter 7 Trustee would be handicapped in holding the property for a good, market driven sale. A Chapter 7 Trustee without liquidity would be frustrated in making continued insurance payments, taxes and the like while awaiting a suitable sale. Consequently, the Chapter 11 plan is believed superior to liquidation in Chapter 7.

RESPECTFULLY SUBMITTED,

s/ David M. Jecklin
David M. Jecklin, Esquire
Gianola, Barnum, Wigal & London, L.C.
1714 Mileground
Morgantown, WV 26505
W.V. Bar No. 9678

CERTIFICATE OF SERVICE

I, David M. Jecklin, certify that I served the Disclosure Statement on the following individuals at the addresses listed below, by placing e-mailing or by United States mail, postage prepaid, on this the 30th day of April 2012.

Agsten Construction
110 Wyoming Street
Charleston, WV 25302

Dollar Tree #006
500 Volvo Pkwy
Chesapeake, WV 23320

Applebees
601 Main Street, Ste 102
Hazard, KY 41701

Elder Beerman #206
2801 East Market Street
P.O. Box 2821
York, PA 17405

Associated Architects, Inc.
318 Lee Street W. Ste 200
Charleston, WV 25302

Electric Beach
Santon Vance Enterprises, LLC
P.O. Box 592
Winfield, WV 25213

Bailey and Wyant
P.O. Box 3710
Charleston, WV 25337

EmbroidMe
P.O. Box 84
Duck, WV 25063

Brewer and Company of WV, Inc.
3601 7th Avenue
Charleston, WV 25312

ERECT Co-Participation Fund
c/o Dave Mordan
P.O. Box 520
Johnstown, PA 15907

Charles M. Johnstone, Esq.
Johnstone & Gabhart, LLP
P.O. Box 313
Charleston, WV 25321

ERECT Fund II/Equity
c/o Dave Mordan
P.O. Box 520
Johnstown, PA 15907

Jamie F. Little, Esq.
Johnstone & Gabhart, LLP
P.O. Box 313
Charleston, WV 25321

First United Bank & Trust
P.O. Box 9
Oakland, MD 21550

China Buffet
158 Kanawha Mall
Charleston, WV 25387

Frank A. Baer, II
P.O. Box 2507
Charleston, WV 25329

Cingular Wireless AT&T
12555 Cingular Way
Alpharetta, GA 30004

Gabriel Brothers
55 Scott Avenue
Morgantown, WV 26505

Citizens National Bank
P.O. Box 1519
Elkins, WV 26241

CNB Bank
915 Menoher Blvd, Ste E
Johnstown, PA 15905

Dept. of Motor Vehicles
1317 Hansford Street
Charleston, WV 25301

Different Twist Pretzel
5005 Pequonia Drive
Elkview, WV 25071

Highmark Specialty R/E Trust
c/o Dave Mordan
P.O. Box 520
Johnstown, PA 15907

J.H.L. Masonry, Inc.
267 Rocky Step Road
Scott Depot, WV 25560

Jeff Ray Roofing and Sheet Metal, Inc.
P.O. Box 58094
Charleston, WV 25328

Charles R. Hughes
Bowles, Rice McDavid Graff & Love
600 Quarrier Street
Charleston, WV 25301

Julia Chincheck, Esq.
Bowles, Rice McDavid Graff & Love
600 Quarrier Street
Charleston, WV 25301

Kanawha Co. Sheriff's Tax Office
409 Virginia St., E Rm. 120
Charleston, WV 25301

Kanawha County Circuit Court
111 Court Street
Charleston, WV 25301

Kims Dance and Fitness Studio
5707 MacCorkle Avenue SE
Charleston, WV 25304

Lee O Hill
300 Kanawha Blvd. E
Charleston, WV 25301

General Glass Company, Inc.
5797 MacCorkle Ave., South East
Charleston, WV 25304

Gianola, Barnum, Wigal & London
1714 Mileground
Morgantown, WV 26505

Marvin W. Masters, Esq.
Charles M. Love, Esq.
181 Summers Street
Charleston, WV 25301

Merchants Ntl Bk of Kittanning
P.O. Box 958
Kittanning, PA 16201

Mountaineer Gas Company
P.O. Box 362
Charleston, WV 25322

Nail Pizazz Luzury Nails
130 Kanawha Mall
Charleston, WV 25387

P&R Music, LLC
12115 MacCorkle Ave.
SE Charleston, WV 25315

Piro Pizzeria Angela Blough
5707 MacCorkle Ave. Ste 100
Charleston, WV 25315

Prizm Painting
4911 Dempsey Dr.
Charleston, WV 25313

Progressive Bank, NA
P.O. Box 6671
Wheeling, WV 26003

Radio Shack 014465-03
P.O. Box 961090 MS WF 5014
Fort Worth, TX 76161

Raynes and Sons Excavation, LLC
Rt. 62, Box 438
Eleanor, WV 25070

Rays Plastering
2398 County Road 1
South Point, OH 45680

Lowes
P.O. Box 530970
Atlanta, GA 30353

RC General Contractors
P.O. Box 6856
Charleston, WV 25362

Lumos Networks
P.O. Box 11171
Charleston, WV 25339

Regis
7201 Metro Boulevard
Minneapolis, MN 55439

Robinson & Son Plumbing & Heating, Inc.
P.O. Box 449
Scott Depot, WV 25560

Thomas E. Potter
P.O. Box 553
Charleston, WV 25322

Rock Branch Mechanical
132 Harris Drive
Poca, WV 25159

THV Holdings, LLC
5611 Fern Valley Road
P.O. Box 34749
Louisville, PA 40232

SAK, LLC
c/o Donald Simpson
239 Main Street, 5th Floor
Johnstown, PA 15901

Trabold Ventures, LLC
330 Basin Drive
Windber, PA 15963

South Charleston Electric Co.
P.O. Box 8494
South Charleston, WV 25303

Tri State Roofing & Sheet Metal Co.
7 Stone Street
Poca, WV 25159

Southern Candles and Gifts
3341 Snider Drive
Edwardsville, IL 62025

Waste Management of WV, Inc.
P.O. Box 13648
Philadelphia, PA 19101

Standard Bank PaSB
2640 Monroeville Blvd.
Monroeville, PA 15146

West Virginia Paving
2950 Charles Avenue
Dunbar, WV 25064

Thistle Financial Group, LLC
401 Depot Street
Latrobe, PA 15650

Wishing Well Coin Race
3901 Superior Avenue
Cleveland, OH 44114

s/ David M. Jecklin

David M. Jecklin, Esquire
W.V. Bar No. 9678
Gianola, Barnum, Wigal & London, L.C.
1714 Mileground
Morgantown, WV 26505
(304) 291-6300
Fax (304) 291-6307