

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

LEXI DEVELOPMENT COMPANY, INC.<sup>1</sup>,  
Debtor.

Case No. 10-27573-AJC  
Chapter 11

**DEBTOR'S DISCLOSURE STATEMENT**

Lexi Development Company, Inc., the Debtor under chapter 11 of Title 11 of the United States Code, files its Disclosure Statement ("*Disclosure Statement*") in support of its Plan of Reorganization ("*Plan*" or "*Plan of Reorganization*").

**NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ITS ACCEPTANCE.**

**ALL CREDITORS AND INTEREST HOLDERS ARE HEREBY ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS HERETO AND OTHER DOCUMENTS REFERENCED AS FILED WITH THE COURT PRIOR TO OR CONCURRENT WITH THE FILING OF THIS DISCLOSURE STATEMENT. SUBSEQUENT TO THE DATE HEREOF, THERE CAN BE NO ASSURANCE MADE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN ARE MATERIALLY ACCURATE; OR (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.**

**AFTER THE EFFECTIVE DATE OF THE PLAN, A PORTION OF CERTAIN DISTRIBUTIONS UNDER THE PLAN MAY BE SUBJECT TO SUBSTANTIAL DELAYS FOR CREDITORS AND INTEREST HOLDERS WHOSE CLAIMS AND INTERESTS ARE CLASSIFIED IN CLASSES THAT CONTAIN CONTESTED CLAIMS OR INTERESTS. ALSO, THERE ARE NO ASSURANCES AS TO THE PERCENTAGE OF DISTRIBUTIONS TO GENERAL UNSECURED CREDITORS WHOSE CLAIMS ARE CLASSIFIED IN CLASSES THAT CONTAIN CONTESTED**

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<sup>1</sup>The Debtor's current mailing address is 7301 SW 57 Ct, Ste 565, South Miami, FL 33143. The last four digits of the Debtor's tax identification number are 1551.

**CLAIMS. THE AMOUNT OF ANY DISTRIBUTION MAY VARY SUBSTANTIALLY DEPENDING UPON THE TOTAL AMOUNT OF ALLOWED GENERAL UNSECURED CLAIMS AND ALLOWED EXECUTORY CONTRACT REJECTION CLAIMS.**

**THIS DISCLOSURE STATEMENT HAS BEEN REQUIRED TO BE PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN. NOTHING CONTAINED HEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE REORGANIZATION OF THE DEBTOR ON HOLDERS OF CLAIMS OR INTERESTS. AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER CLAIMS AND CAUSES OF ACTIONS OR THREATENED ACTIONS AGAINST THIRD PARTIES, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.**

**THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTOR AND HAS NOT BEEN SUBJECT TO INDEPENDENT REVIEW OR TO CERTIFIED AUDIT. THE DEBTOR HAS MADE EVERY EFFORT TO ENSURE THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE; HOWEVER, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THIS INFORMATION IS WITHOUT ANY INACCURACY.**

**ARTICLE I.**  
**INTRODUCTION AND REPRESENTATIONS**

**A. Introduction and Summary of Plan**

The Debtor has prepared and is disseminating this Disclosure Statement to holders of claims against it for the purpose of soliciting acceptance of its Plan of Reorganization. The Debtor believes this Disclosure Statement contains the information that is material, important and necessary for its creditors to arrive at an informed decision in exercising their right to vote for the Plan. A copy of the Plan accompanies this Disclosure Statement as Exhibit A. For a class of claims to accept the Plan, acceptances must be filed by at least 2/3 in amount and more than 1/2 in number of the Allowed Claims for such claims that actually vote on the Plan. A failure to vote on the Plan does not constitute either an acceptance or rejection of the Plan.

As discussed in greater detail below, the Plan contemplates that the Debtor will continue its efforts to develop, market and sell the Project.

## **B. Representations**

NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN REVIEWED OR PASSED UPON BY AN ACCOUNTANT. THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY ALTHOUGH ALL SUCH INFORMATION IS ACCURATE TO THE DEBTOR'S BEST KNOWLEDGE, INFORMATION AND BELIEF. THE COURT HAS NOT VERIFIED THE ACCURACY OF THE INFORMATION CONTAINED HEREIN, AND THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR APPROVES THE PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE, IT IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS AND INTEREST HOLDERS TO MAKE INFORMED DECISIONS WHETHER TO APPROVE OR REJECT THE PLAN.

## **C. Defined Terms**

Most words or phrases used in this Disclosure Statement shall have their usual and customary meanings. The words or phrases when used in the context of the Plan and Disclosure Statement with initial capital letters shall have definitions set forth in the Plan. Unless otherwise defined, the terms used in this Disclosure Statement shall have the same meaning as in the Bankruptcy Code or Rules.

## **D. Holders of Claims Entitled to Vote**

Pursuant to the Bankruptcy Code, only holders of Allowed Claims or equity interests in classes of claims or interests that are impaired under a plan and that will receive distributions under the Plan are entitled to vote to accept or reject the Plan. Under applicable bankruptcy law, any proof of claim filed by an alleged creditor is presumed to be an Allowed Claim until such time as the Debtor (or another party in interest) objects to such a claim. In the event of an objection to a filed claim, **a claimant is not permitted to vote on the Debtor's proposed plan until such time as the claim is temporarily allowed by the Bankruptcy Court for voting purposes. In this regard, the burden is on the claimant to have an objected claim temporarily allowed and the Debtor strongly recommends that parties with claims subject to an objection seek legal counsel to discuss their eligibility to vote.** Classes of claims or interests in which the holders of claims or interests will not receive or retain any property under the Plan are deemed to have rejected the Plan and are not entitled to vote on the Plan; classes of claims or interests in which the holders of claims or interests are unimpaired under the Plan are

deemed to have accepted the Plan and are not entitled to vote on the Plan. Under the Plan Classes 1, 2, 3, 4, 5, 6, 7 and 8 are impaired. Holders of Allowed Claims under one or more of such Classes are entitled to vote on the Plan.

#### **E. Cramdown**

If all of the applicable requirements of section 1129(a) of the Bankruptcy Code, other than subparagraph 8 thereof, are determined by the Bankruptcy Court to have been satisfied with respect to the Plan, then the Debtor may seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. For purposes of seeking confirmation of the Plan under section 1129(b), the Debtor reserves the right to modify or vary the terms of the Plan or the treatment of the Claims or interests of those Classes that rejected the Plan so as to comply with the requirements of section 1129(b).

### **ARTICLE II. BACKGROUND INFORMATION**

#### **A. The Debtor and Summary of Reasons for Filing Petition**

The Debtor is a Florida corporation which owns and is developing a 164 unit, 19 story, mixed-use residential and retail bayview condominium development located at 1700 Kennedy Causeway, North Bay Village, Florida, known as "The Lexi" ("*Property*"). As of November 12, 2010, closings on 121 of the 164 residential units have already occurred. Of the 43 remaining units, 22 are rented and generating income which, along with the sales proceeds, funds the Debtor's operations. Despite operating within one of the worst, if not the worst, real estate markets in South Florida history, the Debtor has been extremely successful in selling units in the Property. Of the 32 condominium units sold in the North Bay Village area in excess of \$300,000 in the past 18 months, 16 were units located in the Property and sold by the Debtor. The Property also has 2 commercial units consisting of ground floor retail and an outparcel. One portion of the retail space is rented to the Mario the Baker Restaurant, which is currently operating and open for business. Further, the City of North Bay Village has signed a lease to utilize 7,000+ square feet of the retail space as its brand new City Hall. The permits for the new City Hall have been obtained and the build-out work is nearing completion with anticipated occupancy scheduled for December 2010. The Lexi is known as one of, if not the, premier building in North Bay Village, and that reputation will only be enhanced by the continued unit sales and retail tenants, including the new City Hall. The Property is located in Miami-Dade County, with a street address of 1700 Kennedy Causeway, North Bay Village, Florida, and is owned by the Debtor.

The Debtor filed this Chapter 11 proceeding as a result of the consequences associated with one of the worst economic and real estate downturns in history, as well as a complete seizure of the credit markets. Further, the Debtor was forced to address and defend against the efforts of an opportunistic note purchaser attempting to obtain the Property from the Debtor through litigation. Via the Debtor's Chapter 11 proceeding, the Debtor intends to effectively and

efficiently reorganize, and to continue to develop, market, sell and rent units located in the Property, which will result in the preservation of its business as a going concern and the maximization of funds available for distribution for all of the Debtor's creditors and equity holders.

## **B. The Bankruptcy Case**

On June 23, 2010 ("**Petition Date**"), the Debtor filed a Voluntary Petition for relief under chapter 11 of the United States Bankruptcy Code [ECF No. 1]. The Debtor continues to manage and operate its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been sought or appointed.

On July 1, 2010, the Debtor filed its Case Management Summary.

On July 1, 2010, the Debtor filed its application to employ Peter D. Russin, Esquire, and the law firm of Meland Russin & Budwick, P.A. ("**MRB**") [ECF No. 15], which was approved on an interim basis on July 13, 2010 [ECF No. 30]. A final order was entered on August 20, 2010 [ECF No. 55].

On July 1, 2010, the Debtor also filed its application to employ Gary L. Brown, Esquire, and the law firm of Eisinger, Brown, Lewis, Frankel, Chaiet & Krut P.A. as Special Counsel for Certain real estate closings [ECF No. 20], which was approved on an interim basis on July 13, 2010 [ECF No. 32]. A final order was entered on August 20, 2010 [ECF No. 56].

The 341 Meeting of Creditors was held on July 23, 2010 [ECF No. 8]. The United States Trustee docketed a notice of non-appointment of a committee of unsecured creditors pursuant to 11 U.S.C § 1102.

The Debtor's bankruptcy case is a single asset real estate case. The Debtor's initial deadline to comply with 11 U.S.C. §362(d)(3) was September 21, 2010, which was extended to November 5, 2010 pursuant to Court Order [ECF No. 66], and then further extended to November 15, 2010 pursuant to Court Order [ECF No. 77].

## **C. Claims Bar Date**

On June 25, 2010, the Bankruptcy Court set a deadline requiring anyone holding or asserting a claim against the Debtor to file a proof of claim on or before October 21, 2010 (the "**Claims Bar Date**") [ECF No. 8].

## **D. Prepetition Foreclosure Litigation Filed by Lexi North Bay, LLC**

Prior to the filing of this bankruptcy case, the Debtor was involved in foreclosure litigation in State Court (the "**Foreclosure Action**") filed by Lexi North Bay, LLC ("**North Bay**"), which upon information and belief, is an entity owned and controlled by RAM Real Estate ("**RAM**"), an investor and lender. RAM describes itself on its website,

([www.ramrealestate.com](http://www.ramrealestate.com)), as a company that is aggressively pursuing the acquisition, development and redevelopment of commercial, multi-family communities and mixed-use real estate throughout the Southeast. Upon information and belief, RAM, through North Bay, purchased the Debtor's original construction loan from a consortium of banks led by Regions Bank ("**Regions**"). The Debtor's original loan for the project was \$56,875,000, which through unit sales has now been reduced to \$8,392,845, not including asserted default rate interest, which the Debtor disputes. The Debtor believes it has viable defenses to the North Bay foreclosure action and has asserted counter-claims, including damage claims, against North Bay. During the pendency of the foreclosure action, the Debtor has sold and closed 23 residential units and paid North Bay \$7,126,852 on the loan on gross sales of \$8,409,400. The Debtor also arranged for the new City Hall lease which will eventually generate \$14,183 per month starting in the fourth quarter of 2010. Further, pre-petition and pursuant to an Order in the State Court foreclosure action, the Debtor and North Bay reached an agreement on the use of the rental income generated at the Property which allows for the Debtor to use North Bay's cash collateral to fund the Debtor's operations ("**Rental Income**"). The value of the Property is well in excess of the amount allegedly owed to North Bay, including any asserted default interest, and thus a significant equity cushion exists.

On the Petition Date, the Debtor and Scott and Amy Greenwald (also defendants in the Foreclosure Action) jointly removed the Foreclosure Action to this Court, where it was assigned Adversary Proceeding Case Number 10-03254-AJC. On July 14, 2010, North Bay filed a motion to remand the Foreclosure Action to State Court. The Debtor filed a response in opposition to this motion on August 18, 2010, to which Scott and Amy Greenwald filed a joinder on the same date. North Bay filed a reply in support of its motion on August 30, 2010. The motion to remand was heard by the Court on September 20, 2010 and the Court's ruling is pending.

#### **E. Mezzanine Lender: Great Florida Bank**

The Debtor's mezzanine lender, Great Florida Bank ("**GFB**"), is an unsecured creditor with an \$8,000,000 claim. GFB funded the mezzanine loans originally provided to the Debtor by Allan and Jill Greenwald, the parents of Scott Greenwald, the Debtor's principal. The mezzanine loans were provided in two portions: \$6,000,000 in 2005 and \$2,000,000 in 2008. At the time the loans were made, Allan and Jill Greenwald assigned all of their interests and rights in the loans to GFB. GFB has been the party in interest with regards to such loans from their inception. Pre-petition, GFB and the Debtor conducted lengthy settlement negotiations (which also included other properties and parties in addition to the Debtor and the Property), and have reached a global resolution which provides a significant benefit to the Debtor. In the event the Debtor pays \$4,000,000 to GFB (representing one-half of the \$8,000,000 obligation), GFB has agreed to waive and extinguish the remaining \$4,000,000 obligation, subject to additional future payments as negotiated between the parties. The Debtor is confident that through its efforts and its continued management of the Property it can generate enough income from sales to meet that obligation and benefit from the settlement, which will provide the best chance to maximize the return for the Debtor's creditors and equity interests. In addition, GFB has filed a state court



action against North Bay (i) asserting, among other things, breach of contract, which, if successful, will result in GFB receiving the opportunity to cure any alleged default by the Debtor under the North Bay loan, or acquire the North Bay Loan, possibly becoming the Debtor's secured lender in place of North Bay; and (ii) seeking the imposition of an equitable lien on the Property. This action is based on North Bay's failure to provide notice to GFB of an alleged default, thereby depriving GFB of its negotiated for rights, which has a direct impact on the Debtor. As the identity and status of the Debtor's secured lender is critical to the Debtor and its estate, on September 9, 2010, the Debtor filed its *Complaint to Determine the Validity, Priority and Extent of Liens ("Lien Adversary Proceeding")* [ECF No. 1 in Case No. 10-03582-AJC], which is ongoing before the Court. The Lien Adversary Proceeding seeks a determination of the validity, priority, and extent of North Bay's and GFB's conflicting asserted liens over the Property. The Debtor filed a motion to consolidate the Lien Adversary Proceeding with the Foreclosure Action on September 9, 2010. On September 16, 2010, Great Florida Bank filed a Joinder in the motion to consolidate [ECF No. 22]. On September 16, 2010, North Bay filed its response in opposition to the motion to consolidate [ECF No. 23]. This motion to consolidate is pending before the Court.

By filing this bankruptcy case, which includes the Lien Adversary Proceeding, the Debtor has provided a consolidated forum in which all of these inter-related issues directly affecting the administration of the Debtor's bankruptcy estate can be addressed. In addition, the bankruptcy affords the Debtor and creditors a convenient and efficient forum to resolve issues associated with the sale of the units as they arise.

#### **F. Purchase and Sale Agreements and Closings**

On July 1, 2010, the Debtor filed its Debtor's Emergency Motion for (I) Order Authorizing the Sale of Residential Condominium Units Pursuant to 11 U.S.C. 363, Free and Clear of All Liens, Claims and Encumbrances and (II) Establishing Procedures for Future Sales of Condominium Units [ECF No. 13], which was granted by Court Order dated July 30, 2010 [ECF No. 42].

Further, on August 30, 2010, the Court entered an Order Establishing Procedures for Future Sales of Condominium Units [ECF No. 59], which provides that the Debtor is authorized to undertake the following procedures with respect to the future sales of unsold units:

- a. Periodically, the Debtor shall provide to (a) North Bay (b) counsel to any statutory committee, and (c) any other party asserting a lien against the Debtor (collectively, the "Sales Notice Parties") a list (the "List") of unsold units as to which a purchase and sale agreement has been received by the Debtor, which List shall set forth the proposed gross cash sale prices offered by the prospective purchaser and the total net sales proceeds generated from the sale.

- b. Any Sales Notice Party objecting to the proposed sales price of any unsold unit on the list must provide written notice of the objection to undersigned counsel for the Debtor within ten days of receipt of the List.
- c. If the Debtor does not receive an objection to the proposed sale described on the List within such ten-day period, the Debtor may proceed to close the sale of each unsold unit described on the List for a price equal to or greater than the gross sale price listed on the List, free and clear of all liens, claims and encumbrances. The Debtor shall remit the net sales proceeds to North Bay in accordance with the cash collateral order or an agreement between North Bay and the Debtor. The Debtor may pay any and all normal and customary costs of closing, including brokerage commissions, and any real estate taxes owed. The Debtor will promptly file with the Court a Certificate of No Objection as to the relevant units and serve such Certificate on the Sales Notice Parties.
- d. If any Sales Notice Party timely serves a written objection to the proposed sales price of any unsold unit, the Debtor shall file a motion seeking a resolution of such dispute.

#### **G. The Use of Cash Collateral**

On July 1, 2010, the Debtor filed its Emergency Motion Pursuant to 11 U.S.C. §§ 361, 362, 363 and 552 and Fed. R. Bankr. P. 4001 and 9014, for an Interim and Final Order Authorizing the Use of Cash Collateral and Granting Adequate Protection [ECF No. 12], which was granted on an interim basis on August 3, 2010 [ECF No. 44], as amended on August 9, 2010 [ECF No. 51]. On September 20, 2010, the Debtor moved to extend the interim use of cash collateral through December 29, 2010. On November 10, 2010, the Court entered the Order (I) Granting Agreed *Ore Tenus* Motion for Continued Interim Approval of Use of Cash Collateral; (II) Granting Adequate Protection; and (III) Scheduling a Final Hearing [ECF No. 80] authorizing the Debtor to use North Bay's Cash Collateral from the Debtor's Income for an interim period through December 29, 2010.

#### **H. DIP Reports**

As required under the Bankruptcy Code, the Debtor files its Debtor-In-Possession Monthly Operating Reports. All DIP Reports are available for review by parties in interest.

#### **I. Assumption and Rejection of Executory Contracts and Unexpired Leases**

The Debtor may ultimately assume Purchase and Sale Agreements, as may be modified by addendum, or reject such Purchase and Sale Agreements. A determination of whether to assume or reject such agreements will be analyzed and determined on a case-by-case basis. All Purchase and Sale Agreements which have not been specifically rejected will be deemed



assumed pursuant to the terms set forth in this Disclosure Statement and the Plan. All other executory contracts and unexpired leases which have not been specifically assumed or rejected shall be deemed rejected pursuant to the terms set forth in this Disclosure Statement and the Plan.

**J. Debtor's Exclusivity**

The Debtor's exclusive period to file its plan expires on November 15, 2010, and the deadline for the Debtor to solicit acceptances of the Plan is through and including Confirmation. The Debtor's Plan and Disclosure Statement have been filed within its exclusive period.

Note: The Debtor has obtained FHA approval for the Property which enables greater opportunities for purchaser financing. As a result and due to FHA financing guidelines and continued unit sales from the rental pool, the Residential Rental Income has declined. North Bay has consented to the reduced Residential Rental Income as reflected in the cash collateral order.

**K. Marketing Plan**

Scott Greenwald, President of the Debtor, has successfully procured purchasers of Units and has continued to single handedly market and sell Units. Although he could be entitled to be paid for these actions, Mr. Greenwald is receiving zero compensation or commissions for these efforts and has undertaken them solely to benefit the estate and its creditors. To date, Mr. Greenwald is responsible for selling and closing 30 Units.

Scott Greenwald and Jerome Miller provide on-site property management. The Lexi is a full service building and all services, including landscaping and pool service, are being provided on a regular and uninterrupted basis. These efforts assist in presenting the Project as operating and viable, and greatly assist in the overall presentation and marketing and sales efforts.

**L. Condominium Association**

The Lexi Condominium Association, Inc. ("**Association**") was incorporated on July 26, 2007. The Continental Group provides management for the Association.

The Association filed Claim No. 10 as a secured claim for its alleged statutory lien granted pursuant to Chapter 718, Florida Statutes, as well as the lien rights contained in the Declaration of Condominium in the amount of \$368,293.67.

Further, the Association filed Claim No. 11 as an unsecured claim as contingent and unliquidated to the extent the Association has any claims against the Debtor, which include, without limitation, construction and management issues, warranty claims, construction defects, the completion of construction, including improvements.

**M. Commercial Rental Space**

Neal Property Management Inc. provides management for the Commercial Rental Space.

**N. Adversary Proceedings**

As set forth above, on September 9, 2010, the Debtor filed the Lien Adversary Proceeding seeking a determination of the validity, priority, and extent of North Bay's and GFB's conflicting asserted liens over the Property. The Debtor filed a motion to consolidate the Lien Adversary Proceeding with the Foreclosure Action on September 9, 2010. This motion was set for hearing on September 20, 2010, which has been continued pending the Court's ruling on the Motion to Remand Foreclosure Action.

No other adversary proceedings have been filed in this bankruptcy proceeding.

**ARTICLE III.  
CHAPTER 11 PLAN**

THE FOLLOWING IS A SUMMARY OF THE PLAN. THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED HERETO AS EXHIBIT "A." IF THERE IS ANY INCONSISTENCY BETWEEN THE DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS. THIS SUMMARY ONLY HIGHLIGHTS SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, CREATE A THOROUGH UNDERSTANDING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS

**A. Administrative Claims.**

**1. Professional fees:** At this time the Debtor does not know the amount of attorneys' fees and costs that will ultimately be sought by the Debtor's attorneys, MRB. As of November 15, 2010, MRB billed approximately \$195,000 in fees and costs and will be filing a fee application. (The attorneys' fees and costs and other professional fees shall be paid in full on the Effective Date of the Plan or as otherwise agreed between the Debtor and each administrative claimant. The Cash Collateral Order provides that "[t]he administrative priority for the 507(b) Claim granted hereunder shall be subordinate only to (i) fees payable pursuant to 28 U.S.C. §1930(a)(6); and (ii) the payment of accrued and unpaid professional fees and expenses allowed by the Court of the Debtor's counsel, Meland Russin & Budwick, P.A., after first applying any prepetition retainer received, awarded by the Court.

The Debtor reserves the right to retain an accountant and special litigation or tax appeal counsel, if required.

**2. United States Trustee Fees:** The Debtor shall pay the U.S. Trustee the appropriate sums required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days of the Effective Date, for pre-confirmation periods. The Debtor shall further pay the U.S. Trustee the appropriate sums required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Debtor, respectively, until the earlier of the closing of this case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an Order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code. After the Confirmation Date, the Debtor shall file a quarterly Post-Confirmation Operating Report which shall include, among other things, all payments made under the Plan and payments made in the ordinary course of business. The Post-Confirmation Operating Report shall be filed quarterly until the Court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy.

**3. Time for filing Administrative Claims:** Failure to timely file and Administrative Claim will result in such claim being forever barred and discharged unless otherwise ordered by the Court.

**4. Approval of Administrative Claims:** All Administrative Claims are subject to allowance by the Bankruptcy Court and its determination of the reasonableness of the amounts; any party in interest can object to any claim for administrative fees and expenses.

**5. Payment of Allowed Administrative Claims:** The holders of Allowed Administrative Claims shall receive, on account of such claims, cash in the amount of such claims (i) on the later of the Effective date or within ten (10) days any such claims are determined to be Allowed or (ii) at the option of the Debtor, in accordance with the ordinary business terms of payment of such claims. Professionals employed at the expense of the estate of the Debtor and entities who may be entitled to reimbursement for the allowance of fees and expenses from the estate of the Debtor pursuant to §503(b) of the Bankruptcy Code, shall receive cash in the amount awarded to such professionals and entities at such times and only in accordance with the final order entered pursuant to §330 or §503 of the Bankruptcy Code.

## **B. Secured Claims**

### **1. Allowed Secured Claim of Miami-Dade County Tax Collector (Class 1):**

Class 1 consists of the Allowed Secured Claim of The Miami-Dade County Tax Collector (the "MDCTC"), plus statutory interest, for unpaid real property taxes for 2008 and 2009 (the "MDCTC Claim"). MDCTC filed Claim No. 1 in the amount of \$1,567,542.21, which includes estimated taxes for 2010 and taxes for Units which have not been sold. The MDCTC Claim will continue to be paid out of Unit closings as they occur. The Class 1 Claim is impaired under the Plan.

**2. Allowed Secured Claim of Great Florida Bank or Lexi North Bay, LLC (Class 2):**

Class 2 consists of the Allowed Secured Claim of Great Florida Bank or Lexi North Bay, LLC ("**North Bay**"), to be determined by a final, non-appealable order in the Lien Adversary Proceeding.

North Bay filed Claim No. 9 asserting \$16,012,468.53 due plus interest, 25 % default interest, fees and costs as of the Petition Date, which amounts the Debtor disputes. The Debtor calculates that as of the date of this Disclosure Statement, the Secured Claim has been reduced to \$8,392,845, not including default rate interest, which the Debtor disputes.

In the event that North Bay has an Allowed Secured Claim, such Class 2 Claim shall be paid to North Bay at note rate interest of thirty (30) day LIBOR plus 275 basis points, from the Rental Income and the Net Sales Proceeds from the closings on the Units pursuant to priority and after any senior liens are paid in full. North Bay shall be paid in full, including note rate interest, from the Net Sales Proceeds and the Rental Income, within three (3) years from the Effective Date, in accordance with and as set forth in the projections attached as Exhibit C., which also provide for the payment of all operating expenses and real estate taxes owed. In order to meet the projections and pay this Secured Claim, and all other claims as described herein, the holder of the Allowed Secured Claim shall release any lien on the Units in connection with a sale at the net prices to the holder of the Allowed Secured Claim as set forth in the attached Exhibit C. North Bay shall retain a lien securing its Allowed Class 2 Claim until such Allowed Class 2 Claim is paid in full. To the extent that the Rental Income and the Net Sales Proceeds are insufficient to pay the Allowed Class 2 Claim, any deficiency shall be treated as an Allowed Class 6 Claim, pursuant to the terms set forth in the Plan. The Debtor reserves the right to object to, settle, compromise or adjust by mediation, arbitration or otherwise the Allowed Class 2 Claim. Class 2 is impaired by the Plan.

In the event that Great Florida Bank has an Allowed Secured Claim, such Class 2 Claim shall be paid to Great Florida Bank at note rate interest of thirty (30) day LIBOR plus 275 basis points, from the Rental Income and the Net Sales Proceeds from the closings on the Units pursuant to priority and after any senior liens are paid in full. Great Florida Bank shall be paid in full, including note rate interest, from the Net Sales Proceeds and the Rental Income, within three (3) years from the Effective Date in accordance with and as set forth in the projections attached as Exhibit C, which also provide for the payment of all operating expenses and real estate taxes owed. In order to meet the projections and pay this Secured Claim, and all other claims as described herein, the holder of the Allowed Secured Claim shall release any lien on the Units in connection with a sale at the net prices to the holder of the Allowed Secured Claim as set forth in the attached Exhibit C. Great Florida Bank shall retain a lien securing its Allowed Class 2 Claim until such Allowed Class 2 Claim is paid in full. To the extent that the Rental Income and the Net Sales Proceeds are insufficient to pay the Allowed Class 2 Claim, any deficiency shall be treated as an Allowed Class 6 Claim, pursuant to the terms set forth in the Plan. The Debtor

reserves the right to object to, settle, compromise or adjust by mediation, arbitration or otherwise the Allowed Class 2 Claim. Class 2 is impaired by the Plan.

### **3. Allowed Secured Claim of Lexi Condominium Association (Class 3):**

Class 3 consists of the Allowed Secured Claim of the Lexi Condominium Association, Inc. (the "Association") (the "Association Claim"). The Association filed Claim No. 10 for its alleged statutory lien granted pursuant to Chapter 718, Florida Statutes, as well as the lien rights contained in the Declaration of Condominium in the amount of \$368,293.67. Further, the Association filed Claim No. 11 as an unsecured claim as contingent and unliquidated to the extent the Association has any claims against the Debtor, which include, without limitation, construction and management issues, warranty claims, construction defects, the completion of construction, including improvements. Any Class 3 Claim shall be paid to the Association from the Rental Income and the Net Sales Proceeds on the closings on the Units after all Class 1 and 2 Claims are paid in full. The Association shall be paid in full within three and one half (3 ½) years from the Effective Date as set forth on the attached Exhibit C. The Association shall retain any lien securing its Allowed Class 3 Claim until such Allowed Class 3 Claim is paid in full. To the extent that the Rental Income and the Net Sales Proceeds are insufficient to pay the Allowed Class 3 Claim, any deficiency shall be treated as an Allowed Class 6 Claim, pursuant to the terms set forth in the Plan. The Debtor reserves the right to object to, settle, compromise or adjust by mediation, arbitration or otherwise the Allowed Class 3 Claim. Class 3 is impaired by the Plan.

### **4. Allowed 11 U.S.C. § 365(j) Claims (Class 4):**

Class 4 consists of all Allowed 11 U.S.C. § 365(j) Claims. Section § 365(j) of the Bankruptcy Code limits any lien rights of a purchaser whose contract has been rejected under Section 365 to that portion of the purchase price the purchaser has paid. Thus, the holders of Allowed 11 U.S.C. § 365(j) claims maintain a lien limited to the extent of their paid (but used) deposit against their particular Unit upon Court approval of such rejection. The Debtor does not know when any particular Unit relating to each individual deposit will be sold, only that all Units owned by the Debtor that are subject to the Allowed Class 4 Claims will be ultimately sold. When each Unit owned by the Debtor that is subject to an Allowed Class 4 Claim is sold, the lien that was attached to the particular Unit will attach to the Debtor's interest in the Net Sales Proceeds resulting from the sale of the Unit. The Debtor does not know whether it will reject any of the Purchase and Sale Agreements. If the Debtor does not anticipate rejecting any of the Purchase and Sale Agreements, there will be no holders of Allowed Class 4 Claims.

Holders of Allowed Class 4 Claims shall retain their lien securing their Allowed Class 4 Claim until such Allowed Class 4 Claim is paid in full. Such Class 4 Claimants shall be paid in full from the Net Sales Proceeds from the sale of their particular Unit after Classes 1, 2 and 3 have been paid in full. To the extent that the Net Sales Proceeds are insufficient to pay any Allowed Class 4 Claims, any deficiency shall be treated as an Allowed Class 6 Claim, pursuant to the terms set forth in the Plan. The Debtor reserves the right to object to, settle, compromise

or adjust by mediation, arbitration or otherwise the Allowed Class 4 Claim. Class 4 Claims are impaired.

**C. Allowed Priority Deposit Claims (Class 5):**

Class 5 is comprised of the holders of Allowed Priority Deposit Claims. Section § 507(a)(7) of the Bankruptcy Code establishes a priority for “allowed unsecured claims of **individuals**, to the extent of \$2,600.00 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, . . . of property, for the personal, family or household use of such individuals, that were not delivered or provided.” This would apply both to the deposit of a leased rental Unit or a deposit for the purchase and sale of a Unit.

**i. Claimants Who Close and Purchase Unit(s)**

In the event that the holders of Allowed Priority Deposit Claims close on their respective unit(s), they shall not receive a distribution under the Plan and shall receive a credit at the closing for the total of their deposits at closing.

**ii. Claimants Whose Purchase and Sale Agreement(s) Have Been Properly Terminated**

In the event it is adjudicated by the Court that a purchaser is entitled to a return of its deposit, or if the purchaser has properly terminated its Purchase and Sale Agreement, the purchaser shall be entitled to the return of the portion of its deposit currently held in escrow. The balance of the deposit claim shall be treated as an Allowed General Unsecured Claim (Class 6), as described below.

**iii. Claimants Whose Purchase and Sale Agreement(s) are Rejected by the Debtor**

In the event that the holders of Allowed Priority Deposit Claims are subject to an Order approving the rejection of their respective Purchase and Sale Agreement(s), then those claimants shall be refunded all deposits on hand at the time of rejection, shall have an Allowed 11 U.S.C. § 365(j) Claim for the balance of such deposits, which balance shall be paid as a Class 3 Claim, and shall also have the right to file a proof of claim within the time specified by Court Order with the Bankruptcy Court for “rejection damages” pursuant to section 365 of the Bankruptcy Code. If Allowed, such rejection damage claim would be an Allowed General Unsecured Claim treated under Class 6.



**iv. Claimants Who Breached or Defaulted Under Their Purchase and Sale Agreement**

In the event a purchaser breached or defaulted under their Purchase and Sale Agreement, the Debtor is entitled to retain the purchaser's entire deposit and the purchaser shall have no claim against the Debtor.

**v. Claimants Who Perform Fully Under a Lease for a Unit**

In the event a lessee to a Lease for a Unit fully performs, once the Lease is terminated claimant shall receive a refund of any security deposit in accordance with the terms of the specific lease agreement.

**vi. Claimants Who Default Under a Lease for a Unit**

In the event a lessee to a Lease for a Unit defaults under the Lease, claimant shall forfeit any security deposit and be liable for any statutory damages as set forth in the specific lease agreement.

The Debtor reserves the right to object to, settle, compromise or adjust by mediation, arbitration or otherwise the Allowed Class 5 Claims. Class 5 Claims are impaired.

**D. Allowed General Unsecured Claims (Class 6):**

Class 6 consists of all of the Debtor's Allowed General Unsecured Claims excluding the Allowed Unsecured Claim of Great Florida Bank (Class 7) and the Allowed Unsecured Claim of Scott Greenwald (Class 8). All holders of Allowed General Unsecured Claims shall be paid from Rental Income and the Net Sales Proceeds generated by the sale or liquidation of the Debtor's Assets and any Third Party Litigation Claims, including without limitation, the sale of the Units of the Property, in accordance with and as set forth on Exhibit C, in full, within three and one half (3 ½ ) years from the Effective Date, only after the Allowed Class 2, Allowed Class 3, Allowed Class 4, and Allowed Class 5 Claims have been paid in full. In the event there are insufficient funds to pay all of the Debtor's Allowed General Unsecured Claims in full, then a first and final *pro rata* distribution shall be made. Class 6 Claims are impaired.

**E. Allowed Unsecured Claim of Great Florida Bank (Class 7):**

GFB filed Claim number 7 asserting \$8,000,000, plus fees and costs, and a claim to all rights as lender under the original loan made by Regions Bank to the Debtor.

Class 7 consists of the Allowed Unsecured Claim of Great Florida Bank. To the extent GFB is not granted an equitable lien against the Debtor, the Allowed Claim of Great

Florida Bank shall be paid from Rental Income and the Net Sales Proceeds generated by the sale or liquidation of the Debtor's Assets and any Third Party Litigation Claims, including without limitation, the sale of the Units of the Property, in accordance with and as set forth on Exhibit C, totaling \$4,000,000 in full, including note rate interest at thirty (30) day LIBOR plus 275 basis points, within four and one half (4 ½) years from the Effective Date, only after the Allowed Class 2, Allowed Class 3, Allowed Class 4, Allowed Class 5, and Allowed Class 6 Claims have been paid in full. Class 7 Claims are impaired.

Then if, and only if, the Allowed Unsecured Claim of GFB is paid the total sum of \$4,000,000 and there are any additional sales proceeds, after payment to Scott Greenwald from the first \$500,000 from such additional sales proceeds<sup>2</sup>, GFB shall be paid 25% of the next \$4 million additional sales proceeds as those sales occur. The total distribution to GFB from its percentage of the \$4,000,000 of additional sales proceeds shall not exceed \$1,000,000.

**F. Allowed Unsecured Claim of Scott Greenwald (Class 8):**

Class 8 consists of the Allowed Unsecured Claim of Scott Greenwald [Proof of Claim No. 6]. The Allowed Claim of Scott Greenwald shall be paid from Sales Proceeds generated by the sale or liquidation of its Assets and any Third Party Litigation Claims, including without limitation, the sale of the Units of the Property, totaling \$789,363 within five (5) years from the Effective Date, only after the Allowed Class 2, Allowed Class 3, Allowed Class 4, Allowed Class 5, Allowed Class 6, and Allowed Class 7 Claims have been paid in full. Class 8 Claims are impaired.

**G. Equity Interests (Class 9):**

If, and only if, the Allowed Unsecured Claim of Great Florida Bank is paid \$4,000,000 and there are additional sales proceeds, Scott Greenwald shall be paid the first \$500,000 from such additional sales proceeds. Thereafter, any additional sales proceeds up to \$4,000,000 shall be paid 75% to the allowed equity interests and 25% to Great Florida Bank.

Class 9 consists of all holders of allowed equity interests in the Debtor. All Class 9 Equity Interests shall revert in the Reorganized Debtor on the Effective Date. The holders of allowed equity interests shall retain their equity interests for the sole purpose of governing the Reorganized Debtor and each holder of an allowed Class 9 equity interest shall not receive any consideration on account of such interest. If the Bankruptcy Court determines that the retention of equity interests in the Debtor by the holders of allowed Class 9 equity interests violates the absolutely priority rule, then the equity interests shall be not be retained, shall not revert in the Reorganized Debtor, and shall be cancelled. In such case, the holders of Class 9 equity interests will continue to govern the Reorganized Debtor pursuant to an Order of this Court confirming the Plan.

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<sup>2</sup> This \$500,000 is part of Scott Greenwald's unsecured claim as set forth in paragraph F below.

**ARTICLE IV.**  
**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**A. Source and Application of Funds Upon Confirmation**

The Plan is a plan of reorganization. The Debtor's principal sources of revenue are comprised of the Rental Income and the Net Sales Proceeds generated by the sale or liquidation of its Assets and any Third Party Litigation Claims, including without limitation, the sale of the Units of the Property in accordance with and as set forth on the attached Exhibit C. Prior to the Effective Date, the Debtor, and following the Effective Date, the Reorganized Debtor shall (i) work to determine the best methods for marketing, advertising and selling the available Units, and (ii) shall prosecute the Third Party Litigation claims, if any.

The Plan provides that all Closings on the sales of Units shall be free and clear of liens, claims, encumbrances and interests with liens, claims, encumbrances and interests attaching to the proceeds of such sales. The Allowed Claims shall be paid pursuant to the terms set forth above.

**B. Prosecution of Third Party Litigation Claims**

The Debtor's Plan will also be implemented through the prosecution of claims against third parties, if any. On the Effective Date, the Reorganized Debtor shall be authorized, except as provided for in the Plan, to commence and prosecute any and all third party litigation claims that arose before, on or after the Petition Date. Proceeds, if any, realized from any third party litigation claims shall be added to Available Cash. The Third Party Litigation claims to be prosecuted may include breach of contract, lender liability and damage claims against North Bay and/or Regions Bank ("Regions"), acting for itself and as administrative agent and collateral agent for Banco Popular North America ("Banco Popular"), Bank Midwest, N.A. ("Bank Midwest"), First Charter Bank ("First Charter"), and Fifth Third Bank ("Fifth Third") ("*Participant Lenders*").

The Debtor reserves its right to prosecute claims against North Bay and Regions and the other Participant Lenders for all causes of action arising out of their involvement with the loan to the Debtor.

**1. Claims against Professionals including Construction Professionals, Engineers and Architects**

Prior to the Petition Date, the Debtor retained construction professionals, architects, engineers and other professionals. Debtor believes that these professionals may be liable for claims arising from their services to the Project which claims include, but are not limited to, breach of contract and negligence, including patent and latent defects. All of these claims are specifically preserved and maintained by the Debtor. To the extent that any of these entities have filed proofs of claim against the Debtor, Debtor intends to object to these claims

where appropriate. In addition, Debtor disputes the values of the services provided by certain professionals and believes claims for professional negligence may exist. The Debtor is continuing its investigation of any and all claims which the Debtor may have against third parties.

The Debtor reserves its right to prosecute claims against Moss and Associates and any subcontractors, and Gopman Consulting Engineers for all causes of action arising out of their involvement with the Project including but not limited to breach of contract and professional negligence and for any patent and latent defects.

## **2. Claims Against Purchasers that have Defaulted, or may Default, on Purchase Contracts**

Pursuant to the terms and conditions of the real estate contracts that purchasers executed in conjunction with the sale of Units in the Project, in the event that a purchaser breaches the contract by defaulting on such purchaser's obligation, the Debtor may be pursuing these claims against the purchasers. The actions may seek recovery of, among other things, damages in connection with certain purchaser breaches of their respective Purchase and Sale Agreements. These potential tenants are: Lexi 2001, Isaac Sleilatt, Samer Barazi, Salvatore Polizzi and Joseph Pisano. The Debtor reserves its right to prosecute against them all causes of action arising out of such parties involvement with the Project including but not limited to breach of contract.

## **3. Preference Claims, Avoidance Actions and Insider Claims**

Within ninety (90) days prior to the Petition Date, the Debtor made payments to creditors and other parties. A list of payments to Debtor's creditors within ninety days prior to the Petition Date is included in the Debtor's Statement of Financial Affairs. Many of the recipients of payments may have defenses to the Estate's causes of action and/or the pursuit of such claims may not be economically feasible due to the amount of the payments at issue. The Debtor is continuing its investigation of any and all third party litigation claims, including but not limited to preference claims, avoidance actions, and insider claims under bankruptcy law, which the Debtor may have against third parties, and specifically reserves all such claims.

## **C. Cancellation of Instruments and Other Documentation**

Except to the extent otherwise provided under the Plan, or the Confirmation Order, upon the Effective Date, all Prepetition agreements of the Debtor, credit agreements, Prepetition loan documents and Post-Petition loan documents to which the Debtor is a party, and all lien claims and other evidence of liens against the Debtor, shall be deemed to be cancelled and of no further force and effect, without any further action on the part of the Debtor. The holders of or parties to such cancelled instruments, agreements, and other documentation will have no remaining rights arising from or relating to such document or the cancellation thereof,

except the rights provided pursuant to the Plan and the Confirmation Order and any rights that, by the terms of the applicable agreement, survive the termination of such agreement.

**D. Revesting of Assets**

Except as otherwise provided in the Plan or Confirmation Order, title to all of the Debtor's Assets will revest in the Reorganized Debtor, free and clear of all claims and interests on the Effective Date. After the Effective Date the Reorganized Debtor may operate its respective property and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as otherwise provided in the Plan or Confirmation Order. As of the Effective Date, the Debtor's Estate will be free and clear of all claims and interest except as otherwise provided in the Plan or the Confirmation Order.

**E. Post-Confirmation Operations**

Following Confirmation, the Reorganized Debtor shall execute such documents and take such other actions as are necessary to make effective the transactions provided for in the Plan.

**F. Post-Confirmation Accounts**

The Debtor may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of the Plan consistent with the section 345 of the Bankruptcy Code and any orders of the Bankruptcy Court.

**G. Closing of the Chapter 11 Case**

Notwithstanding anything to the contrary in the Bankruptcy Rules or Local Rules providing for earlier closure of the chapter 11 case, when all Contested Claims against the Debtor have become Allowed Claims or Disallowed Claims, and all remaining Assets of the Debtor have been liquidated and converted into Available Cash (other than those Assets abandoned by the Debtor), and such Available Cash has been distributed in accordance with the Plan, or at such earlier time as the Reorganized Debtor deems appropriate, the Reorganized Debtor shall seek authority from the Bankruptcy Court to close the chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE V.**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases; Exceptions**

EXCEPT FOR THOSE EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT WILL BE THE SUBJECT OF MOTION(S) TO ASSUME OR REJECT TO BE FILED ON OR BEFORE THE DATE OF THE CONFIRMATION HEARING, ALL

PURCHASE AND SALE AGREEMENTS AND LEASE AGREEMENTS FOR RESIDENTIAL UNITS WILL BE DEEMED ASSUMED AND ALL OTHER EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR WILL BE REJECTED PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE ON THE EFFECTIVE DATE.

**B. Approval of Rejection; Rejection Damages Claims Bar Date**

The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejections of all the Debtor's executory contracts and unexpired leases that have not been assumed by the Debtor pursuant to Court Order. Any Claim for damages arising from any such rejection must be filed within 30 days from the date of service of the Confirmation Order or such Rejection Claim shall be forever barred, shall not be enforceable against the Debtor, its estate or any of their respective properties and shall receive no distribution under the Plan or otherwise on account of such Rejection Claim. **TO REITERATE, THE FAILURE TO TIMELY FILE EXECUTORY CONTRACT REJECTION CLAIMS SHALL BAR SUCH CLAIMS AND THE HOLDERS THEREOF SHALL NOT BE ENTITLED TO ANY DISTRIBUTIONS UNDER THE PLAN.**

**C. Treatment Under the Plan of Executory Contract Rejection Claims**

Unless otherwise ordered by the Bankruptcy Court, an Allowed Executory Contract Rejection Claim shall be treated as an Allowed General Unsecured Claim (i.e., Allowed Class 5) under the Plan.

**D. Section 1146 Exemption**

To the fullest extent permitted under section 1146(a) of the Bankruptcy Code, the execution, delivery or recording of an instrument of transfer made after the Plan is confirmed, or the transfer or sale of any real, personal or other Property by the Debtor, Trustee, or Reorganized Debtor made after the Plan is confirmed, shall be considered a transfer made after confirmation of the Plan and shall not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, mortgage recording tax, intangible tax or similar tax.

The execution, delivery or recording of an instrument of transfer made prior to the confirmation of the Plan, or the transfer or sale of any real, personal or other Property by the Debtor or Trustee made prior to confirmation of the Plan, shall be subject to all applicable transfer taxes.



**ARTICLE VI.**  
**TAX CONSEQUENCES**

**CERTAIN UNITED STATES FEDERAL  
INCOME TAX CONSIDERATIONS OF THE PLAN**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, CLAIMHOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY CLAIMHOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON CLAIMHOLDERS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) CLAIMHOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

A summary description of certain material US federal income tax consequences of the Plan is provided herewith. This description is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal consequences of the Plan for holders of Claims who are entitled to vote to accept or reject the Plan are described below. No opinion has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the IRS or any other tax authorities have been or will be sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any holder of a Claim. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of US federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended, the Treasury Regulations promulgated thereunder, judicial authorities, published positions of the IRS, and other applicable authorities, all as in effect on the date hereof and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the US federal income tax consequences of the Plan to special classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-exempt organizations, holders of Claims who are (or who hold their Claims through) pass-through entities, persons whose functional currency is not the United States dollar, foreign persons, dealers in securities or foreign currency, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive

sale (or conversion transaction). The following discussion assumes that holders of Claims hold their Claims as capital assets for United States federal income tax purposes. Furthermore, the following discussion does not address US federal taxes other than income taxes.

For purposes of the following discussion, a "US person" is any of the following:

- an individual who is a citizen or resident of the US;
- a corporation created or organized under the laws of the US or any state or political subdivision thereof;
- an estate, the income of which is subject to federal income taxation regardless of its source; or
- a trust that (a) is subject to the primary supervision of a US court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust, or (b) has a valid election in effect under applicable US Treasury regulations to be treated as a US person.

As used herein, the term "U.S. Holder" means a Claimholder that is a United States person, the term "non-U.S. person" means a person other than a United States person and the term "Non-U.S. Holder" means a Claimholder that is a non-U.S. person.

**Each holder of a Claim is strongly urged to consult its own tax advisor regarding the United States federal, state, local and any foreign tax consequences of the transactions described herein or in the Plan.**

#### **Certain United States Federal Income Tax Consequences to Holders of Claims**

Generally, these consequences (including the character, timing and amount of income, gain or loss recognized) will depend upon, among other things: (1) the manner in which a holder acquired a Claim; (2) the length of time the Claim has been held; (3) the holder's method of tax accounting; (4) whether the Claimholder has taken a bad debt deduction with respect to the Claim (or any portion of the Claim) in the current or prior years; and (5) (a) whether the Claim was acquired at a discount, (b) whether the Claimholder has previously included accrued but unpaid interest with respect to the Claim, (c) whether the Claim is an installment obligation for US federal income tax purposes and (d) whether the Claim constitutes a "security" for US federal income tax purposes. Therefore, holders of Claims should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequences to them of the transactions contemplated by the Plan.

#### **Allocation of Plan Distributions Between Principal and Interest**

The Plan provides that, to the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest on such indebtedness, such distribution will, to the extent permitted by applicable law, be allocated for

US federal income tax purposes to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. The Reorganized Debtor intends to take the position that any distributions made under the Plan with respect to an Allowed Claim will be allocated first to the principal amount of the Claim, with the excess over the principal amount being allocated to accrued but unpaid interest. However, current US federal income tax law is unclear on this point and no assurance can be given that the IRS will not challenge the Company's position.

### **Information Reporting and Backup Withholding**

Certain payments, including the distributions or payments in respect of Claims pursuant to the Plan, are generally subject to information reporting by the payor (here, the Disbursing Agent) to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the IRC's backup withholding rules, a Claimholder may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless the holder (1) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (2) provides a correct US taxpayer identification number and makes certain certifications under penalties of perjury. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Claimholder's US federal income tax liability, and such Claimholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a US federal income tax return).

### **Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE US FEDERAL, STATE, LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

## **ARTICLE VII. LIQUIDATION ALTERNATIVE**

As with any Plan, an alternative would be conversion of the chapter 11 case to a chapter 7 case and subsequent liquidation of the Debtor by a duly appointed or elected chapter 7 trustee. In the event of a liquidation under chapter 7 the following is likely to occur:

- (1) An additional tier of administrative expenses entitled to priority over general unsecured claims under § 507(1) of the Bankruptcy Code would be incurred. Such administrative expenses would include chapter 7 Trustee's commissions and fees to the chapter 7 Trustee's accountants, attorneys and other professionals likely to be retained by him/her for the purpose of liquidating the assets of the Debtor;
- (2) Substantially less than market value will be realized for the Debtor's assets;
- (3) Further claims would be asserted against the Debtor with respect to such matters as income and other taxes associated with the sale of the assets;
- (4) The Plan essentially provides that the Debtor's will develop, market and sell its real property, and thus continue the Debtor's business as a going concern without the additional expense incurred through the appointment of a trustee.

The Debtor estimates its Creditors would receive less of a distribution in the event of a liquidation of the Debtor's Assets by means other than that provided for in the Plan. Therefore, it is in the creditors' best interest to vote for the Plan since a liquidation would clearly result in creditors being paid less, if anything, upon liquidation other than set forth in the Plan. A Liquidation Analysis accompanies this Disclosure Statement as Exhibit "B."

#### **ARTICLE VIII.**

#### **ACCEPTANCE AND CONFIRMATION OF THE PLAN**

The Debtor believes that the Plan satisfies all of the requirements for confirmation.

##### **A. General Confirmation Requirements.**

Section 1129(a) of the Bankruptcy Code requires that a plan be proposed in good faith, that there be disclosed certain information regarding payment made or promised to be made to insiders, and that the plan comply with the applicable provisions of chapter 11. The Debtor believes that it has complied with these provisions. Section 1121(a) of the Bankruptcy Code also requires that at least one impaired class accept the plan and that confirmation of the plan will likely not be followed by the need for further financial reorganization. Classes 1, 2, 3,

4, 5, 6 and 7 are impaired under the Plan. The Debtor believes that such classes will vote to accept the Plan and if not, that “cramdown” will be successful.

**B. Best Interest Test.**

Each holder of a Claim or Interest in an impaired Class must either: (I) accept the Plan or (ii) receive or retain under the Plan cash or property of a value, as of the Effective Date of the Plan, that is not less than the value that the holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. The Bankruptcy Court will determine whether the Cash paid under the Plan to each Class equals or exceeds the value that would be allocated to the holders in a liquidation under chapter 7 of the Bankruptcy Code (the “Best Interest Test”). The Best Interest Test requires the Bankruptcy Court to find the Plan provides each member of each impaired Class a recovery having a value at least equal to that which each such Class member would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. As illustrated by the Liquidation Analysis, the Debtor believes that the Plan meets the Best Interests Test.

**C. Classification of Claims and Interests**

The Bankruptcy Code requires that a plan of reorganization place each creditor’s claim and each equity security holder’s interest in a class with other claims and interests that are “substantially similar.” The Debtor believes the Plan meets the classification requirements of the Code.

**D. Confirmation Hearing**

The Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing on the confirmation of the Plan. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made timely in writing, filed with the Bankruptcy Court and served upon the following parties:

Peter D. Russin, Esquire  
Joshua W. Dobin, Esquire  
Meland Russin & Budwick, P.A.  
Attorneys for the Debtor  
3000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, FL 33131-2385

**E. Voting**

Section 1129(a) of the Bankruptcy Code requires that each Class or Claims or Interests that is impaired under the Plan (subject to the “cramdown” exception described herein). A Class of Claims under the Plan accepts the Plan if the Plan is accepted by a class of creditors that hold at least two-thirds in amount and more than one-half in number of the Allowed Claims in the Class that actually vote on the Plan. A Class of Interests accepts the Plan if the Plan is accepted by holders of Interests that hold at least two-thirds in amount of the Allowed Interests in the Class that actually vote on the Plan. Holders of Claims or Interests that fail to vote are not counted as wither accepting or rejecting the Plan.

**F. Financial Feasibility**

The Bankruptcy Code requires that, in order to confirm a plan, the Court must find that confirmation of the Plan is not likely to be followed by liquidation of the need for further financial reorganization of the Debtor (“*Feasibility Test*”). For a Plan to meet the Feasibility Test, the Court must find that the Debtor’s Estate and the Reorganized Debtor will possess the capital and other resources necessary to meet their respective obligations under the Plan.

The Debtor believes that following confirmation of the Plan, the Debtor and the Reorganized Debtor will be able to perform their obligations under the Plan without the need for further liquidation or financial reorganization. The Debtor’s authorized use of North Bay's Cash Collateral, i.e., the Net Sales Proceeds, will be more than adequate to fund the Plan.

**ARTICLE IX.**  
**EFFECT OF THE PLAN ON CLAIMS AND INTERESTS**

**A. Discharge**

Commencing on the Effective Date, except as otherwise expressly provided, all holders of Claims shall be precluded forever from asserting against the Debtor’s estate, the Debtor or its Assets, any other or further liabilities, liens, obligation, claims or equity interest, arising or existing prior to the Effective Date, that were or could have been the subject of any Claim, whether or not Allowed. As of the Effective Date, the Debtor shall be discharged, released from and shall hold the Assets received or retained by and pursuant to the Plan, free and clear of all liabilities, liens, claims and obligations or other claims of any nature against the Debtor or its Estate, except those duties and obligations created by the Plan.

**B. Injunction**

**General**

In accordance with section 524 of the Bankruptcy Code, the discharge provided by this Article and section 1141 of the Bankruptcy Code, among other things, acts as a



permanent injunction against the commencement or continuation of any action, employment of process or act to collect, offset or recover the Claims or Interests against the Debtor.

**C. Savings Clause**

If any article, section, terms and/or subdivision of the Plan is ruled by the Bankruptcy Court to be improper or ineffective, or, if the Debtor decides to unilaterally remove any article, section, subsection, term, and/or provision of the Plan at the Confirmation Hearing, the Plan shall proceed to confirmation and be confirmed without the article(s), section(s), subsection(s), term(s), and/or provision(s) found to be improper or ineffective and/or unilaterally removed by the Debtor at the Confirmation Hearing.

**D. Stay**

Unless otherwise provided herein, all injunctions or stays provided for in the chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the entry of the final decree closing the chapter 11 Case.

**E. Exculpation**

Except as otherwise specifically provided in the Plan, the Debtor, its officers, directors, employees, representatives, attorneys, financial advisors, shareholders, stockholders, or agents, or affiliates, or any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, cause of action or liability to one another or to any holder of a Claim or an interest, or any other party in interest, or any of their respective officers, directors, shareholders, stockholders, employees, representatives, attorneys, financial advisors, or agents, or affiliates, or any of such parties' successors and assigns, for any act or omission in connection with, relating to, or arising out of, the chapter 11 Case, the pursuit of Confirmation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct, bad faith, breach of fiduciary duty or gross negligence, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**ARTICLE X.  
FINAL REPORT**

At such time as all of the Distributions provided for under the Plan have been made, the Reorganized Debtor shall file a final accounting with the Bankruptcy Court, together with the Final Report, and shall seek entry of a final decree closing the chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

**A. Exclusive Jurisdiction of Bankruptcy Court.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, from and after the Effective Date the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising out of, arising in or related to, the chapter 11 Case to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

1. interpret and enforce the provisions of the Plan and Confirmation Order;

2. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not contingent, disputed or unliquidated), including the compromise, settlement and resolution of any request for payment of any Administrative Claim or Priority Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the resolution of any dispute as to the treatment necessary to reinstate a Claim or Interest pursuant to the Plan, and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any objection to such Claim or Interest (to the extent permitted under applicable law);

3. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending before, on or after the Effective Date;

4. hear and determine motions, applications, adversary proceedings, contested matters and other litigated matters pending on, or filed or commenced on or after, the Effective Date, including proceedings with respect to the rights and claims of the Reorganized Debtor to recover property under chapter 5 of the Bankruptcy Code, to commence or prosecute any cause of action (including any avoidance action), to seek a determination of any tax liability of the Debtor or Estate under section 505 of the Bankruptcy Code, or otherwise to collect or recover on account of any claim or cause of action that the Reorganized Debtor may have;

5. hear and determine all disputes concerning the conduct of the Reorganized Debtor;

6. determine and resolve any matters related to the assumption, assumption and assignment, or rejection of any Executory Contract to which the Debtor is a party or with respect to which the Debtor or reorganized Debtor may be liable, and to hear, determine and, if necessary, liquidate any claims, including cure Claims, arising therefrom;

7. ensure that all payments and performance due under the Plan and the Plan Documents are accomplished as provided herein, and resolve any issues relating to distributions to holders of Allowed Claims pursuant to the provisions of the Plan and the Plan Documents;

8. construe, take any action and issue such orders consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all Plan documents, contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement, the Confirmation Order, for the maintenance of the integrity of the Plan and the Plan Documents;

9. determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan (and all Exhibits to the Plan), the Plan documents or the Confirmation Order, including the release and injunction provisions set forth in and contemplated by the Plan, the Plan documents or the Confirmation Order, or any Person's rights arising under or obligations incurred in connection therewith;

10. entertain, approve and confirm modifications of the Plan before, on or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, or modify the Disclosure Statement, the Confirmation Order or any Plan document, contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission, or reconcile any inconsistency in any Court order, the Plan, the Disclosure Statement, the Confirmation Order or any Plan document, contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code, and the Plan;

11. issue injunctions, enter, implement and enforce orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of the Plan or the Confirmation Order;

12. enter, implement and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

13. determine any other matters that may arise in connection with or relating to the Plan and Plan Documents, the Disclosure Statement, or the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan and Plan Documents, the Disclosure Statement, or the Confirmation Order, except as otherwise provided in the Plan;

14. hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

15. continue to enforce the automatic stay, and any other applicable stays or injunctions, through the date of entry of the final decree closing the chapter 11 Case;

16. hear and determine (A) disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order and/or the Plan documents, or (B) issues presented or arising under the Plan, the Confirmation Order and the Plan documents, including disputes among holders of claims and arising under agreements, documents or instruments executed in connection with the Plan, the Confirmation Order and/or the Plan documents;

17. shorten or extend, for cause, the time fixed for performance of any act or event under the Plan, the Confirmation Order and/or the Plan documents, on notice or ex parte, as the Bankruptcy Court shall determine to be appropriate;

18. enter any order, including injunctions, necessary to enforce the title, rights and powers of the Disbursing Agent, and to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the Bankruptcy Court may deem necessary;

19. review any action taken or not taken by the Disbursing Agent, and to appoint a successor Disbursing Agent, if necessary;

20. adjudicate any settlements pursuant to Bankruptcy Rule 9019, if required under the Plan and the Confirmation Order, and all other matters contained herein; and

21. enter a final decree closing the chapter 11 Case or converting the chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtor, the Estate, the Reorganized Debtor or the chapter 11 Case, this Article XIV shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter. Nothing in this Article XIII shall constitute a waiver by the United States of its rights to assert that the Bankruptcy Court lacks jurisdiction over any matter set forth in this Article XIII.

**ARTICLE XIV.**  
**MISCELLANEOUS PROVISIONS**

**A. Binding Effect of Plan**

The provisions of the Plan, Confirmation Order and plan documents shall be binding upon and inure to the benefit of the Debtor, the Estate, the Reorganized Debtor, any holder of any Claim or Interest treated herein or any Person named or referred to the Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan or the Confirmation Order.

**B. Withdrawal of the Plan**

The Debtor reserves the right, at any time prior to the substantial consummation (as that term is defined in section 1101(2) of the Bankruptcy Code) of the Plan, to revoke or withdraw the Plan. If the Plan is revoked or withdrawn or if the Confirmation Date does not occur, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims or interests by or against the Debtor or any other Person, constitute an admission of any fact or legal conclusion by the Debtor or any other Person, or to prejudice in any manner the rights of the Debtor or any other Person in any further proceedings involving the Debtor.

**C. Modification of the Plan**

Debtor reserves the right, in accordance with Bankruptcy Code Section 1127, to amend or modify the Plan in any manner necessary prior to entry of the Confirmation Order. After entry of the Confirmation Order, the Debtor may, in accordance with Bankruptcy Code: (1) amend or modify the Plan and documents related thereto in accordance with, and to the extent permitted by, section 1127(b) of Bankruptcy Code and Bankruptcy Rule 3019, or (2) remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**D. Business Days**

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**E. Severability of Plan Provisions**

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**F. Governing Law**

EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, INDENTURE OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN, INCLUDING, WITHOUT LIMITATION, THE PLAN DOCUMENTS, THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THE PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THE PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES THAT WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF FLORIDA OR THE UNITED STATES OF AMERICA.

**G. Notices**

Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) first class U.S. mail, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Peter D. Russin, Esquire and Joshua W. Dobin, Esquire  
Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3000, Miami, FL 33131-2385

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**ARTICLE XV.  
RECOMMENDATION**

The Debtor recommends that Creditors carefully consider and review this Disclosure Statement and the Plan. The Debtor believes that the Plan provides Creditors with the greatest possible value that could be realized on their Claims. There are several alternatives to confirmation of the Plan including liquidation of the Debtor under chapter 7 of the Bankruptcy Code, in which event the Debtor believes that Creditors would receive less than they will under the Plan.

For the reasons set forth above, the Debtor believes that the Distributions to each impaired Class under the Plan will be greater than distributions that might be received under a chapter 7 liquidation. The Debtor recommends that each Creditor vote to accept the Plan.

Dated: November 15, 2010.

Lexi Development Company, Inc.  
a Florida corporation

By: 

Scott A. Greenwald

Its: President

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