

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>,

Case No. 10-27573-AJC  
Chapter 11

Debtor.

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**LEXI NORTH BAY, LLC'S DISCLOSURE STATEMENT**

Lexi North Bay, LLC ("Lexi North Bay"), a party in interest holding secured and unsecured claims against the bankruptcy estate of Lexi Development Company, Inc. (the "Debtor" or the "Estate") under chapter 11 of Title 11 of the United States Code, files its Disclosure Statement ("***Disclosure Statement***") in support of its proposed Plan of Liquidation ("***Plan***" or "***Plan of Liquidation***").

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## INTRODUCTION AND REPRESENTATIONS

THIS DISCLOSURE STATEMENT (THE “DISCLOSURE STATEMENT”) MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON LEXI NORTH BAY’S PLAN OF LIQUIDATION UNDER CHAPTER 11 OF TITLE 11, UNITED STATES CODE DATED DECEMBER 9, 2015 (AS IT MAY BE AMENDED, THE “PLAN”), AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING LEXI NORTH BAY OR ANY OTHER PARTY OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE OWNERSHIP OF THE DEBTOR.

ALL CREDITORS AND HOLDERS OF INTERESTS THAT MAY BE ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THE ENTIRE DISCLOSURE STATEMENT FURNISHED TO THEM AND THE MATTERS DESCRIBED IN THIS DISCLOSURE STATEMENT PRIOR TO SUBMITTING A BALLOT PURSUANT TO THIS SOLICITATION. THE DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF. EACH CREDITOR AND HOLDER OF AN OWNERSHIP INTEREST SHOULD READ, CONSIDER AND CAREFULLY ANALYZE THE TERMS AND PROVISIONS OF THE PLAN.

LEXI NORTH BAY CONTENDS THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS. THE TREATMENT OF CLAIMS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTOR. ACCORDINGLY, LEXI NORTH BAY BELIEVES THAT CONFIRMATION OF THE PLAN OF LIQUIDATION IS IN THE BEST INTERESTS OF THE CREDITORS AND RECOMMENDS THAT CREDITORS VOTE TO ACCEPT THE PLAN.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. IN ADDITION, THE DISCLOSURE STATEMENT AND THE PLAN HAVE NOT BEEN REQUIRED TO BE PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW.

NO PERSON IS AUTHORIZED BY LEXI NORTH BAY IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO OR THE ACCOMPANYING DOCUMENTS INCORPORATED

BY REFERENCE OR REFERRED TO HEREIN, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY LEXI NORTH BAY. SUCH ADDITIONAL REPRESENTATIONS SHOULD BE REPORTED TO BANKRUPTCY COUNSEL FOR LEXI NORTH BAY, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR ACTION AS MAY BE DEEMED APPROPRIATE. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. THIS DISCLOSURE STATEMENT IS DATED AS OF DECEMBER, 2015 AND CREDITORS, AND HOLDERS OF INTERESTS ARE ENCOURAGED TO REVIEW THE DOCKET IN THE BANKRUPTCY CASE IN ORDER TO APPRISE THEMSELVES OF EVENTS WHICH OCCUR BETWEEN THE DATE OF THIS DISCLOSURE STATEMENT AND THE DATE OF THE CONFIRMATION HEARING.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THIS DISCLOSURE STATEMENT AND IN THE ACCOMPANYING PLAN CONCERNING THE HISTORY OF THE DEBTOR'S BUSINESS, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTOR, TRANSACTIONS TO WHICH THE DEBTOR WAS OR IS A PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON HOLDERS OF CLAIMS AGAINST AND INTEREST IN THE DEBTORS ARE ATTRIBUTABLE EXCLUSIVELY TO THE DEBTORS AND NOT TO ANY OTHER PARTY. NONE OF THE ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS RETAINED BY LEXI NORTH BAY MAKE ANY REPRESENTATIONS CONCERNING SUCH INFORMATION.

IN THE EVENT THAT ANY IMPAIRED CLASS OF CLAIMS OR INTERESTS VOTES TO REJECT THE PLAN, (1) LEXI NORTH BAY SEEKS TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN WITH RESPECT TO THAT CLASS UNDER THE BANKRUPTCY CODE'S "CRAMDOW" PROVISIONS AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO SUCH REQUIREMENTS, OR (2) THE PLAN MAY BE OTHERWISE MODIFIED OR WITHDRAWN.

THE REQUIREMENTS FOR CONFIRMATION, INCLUDING THE VOTE OF IMPAIRED CLASSES OF CLAIMS AND INTERESTS TO ACCEPT THE PLAN AND CERTAIN OF THE STATUTORY FINDINGS THAT MUST BE MADE BY THE BANKRUPTCY COURT, ARE SET FORTH IN THE SECTION OF THIS DISCLOSURE STATEMENT ENTITLED "VOTING ON AND CONFIRMATION OF THE PLAN."

### BACKGROUND INFORMATION

A. **Summary of the Debtor's Reasons for Filing Petition:** The Debtor is a Florida corporation which owns 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" (the "*Property*" or the "*Subject Property*"). As of January 18, 2012, the

Debtor had closed on sales of 138 of the 164 residential units. Since that date the 26 remaining units were either sold or are still being held for sale. The Subject Property also has 2 commercial units consisting of ground floor retail and an outparcel. The Subject 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 Subject Property is subject to liens and encumbrances in favor of the Debtor's creditors. The amounts owed to the Debtor's secured creditors exceed the value of the Subject Property. Under any scenario, the unsecured creditors of this Estate can expect to receive no distributions if the secured creditors are paid in full.

**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, Chalet & 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 deadline to comply with 11 U.S.C. §362(d)(3) has **EXPIRED**.

**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**") 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 Subject Property which allowed for the Debtor to use North Bay's cash collateral to fund the Debtor's operations ("**Rental Income**"). The value of the Subject Property is exceeded by the amount owed to North Bay and other lienholders against the Subject Property.

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 on December 14, 2010, the Court entered the Order Granting Lexi North Bay, LLC's Motion to Remand [ECF No. 25]. The Foreclosure Action remains 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. 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.

**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 provided that the Debtor was authorized to undertake the following procedures with respect to the future sales of unsold units:

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.

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.

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.

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:** The Debtor's authority to use cash collateral has **EXPIRED**.

**H. DIP Reports:** As required under the Bankruptcy Code, the Debtor filed its Debtor-In-Possession Monthly Operating Reports. All DIP Reports are available on PACER for review by parties in interest.

**I. Assumption and Rejection of Executory Contracts and Unexpired Leases:** Any remaining Purchase and Sale Agreements which are not assumed or rejected prior to confirmation will be deemed rejected pursuant to the terms set forth in this Disclosure Statement and the Plan following confirmation.

**J. Debtor's Exclusivity:** The Debtor's exclusivity to file a Plan and Disclosure Statement has **EXPIRED**.

**K. Condominium Association:** The Lexi Condominium Association, Inc. ("**Association**") was incorporated on July 26, 2007. Turnover of the Condominium Association to the other unit owners occurred on March 30, 2011, pursuant to the Court's Order Granting Motion for Order Authorizing Turnover [ECF No. 117].

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.

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

**L. Adversary Proceedings:** 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. Discovery, including depositions, is still ongoing, and the case has not yet been set for trial. All pending motions for summary judgment were recently denied by the Bankruptcy Court and the parties were ordered to proceed to trial. The confirmation of this Plan shall be res judicata as to all issues pending in the Lien Adversary Proceeding. To the extent that any claims of the Debtor in the Lien Adversary Proceeding constitute an asset of the Estate, then such asset shall be transferred to Lexi North Bay at the Closing as hereinafter defined.

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



## **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

### **M. Administrative Claims:**

**Professional fees:** Professional claiming entitlement to fees and costs shall be required to file fee applications and shall be paid only following the entry of an order of this Court determining the reasonableness thereof. Applications for professional fees and costs that are approved by final order of the Bankruptcy Court shall be paid out of whatever funds are held by the Estate at the time of the final approval of such fees and costs.

**United States Trustee Fees:** The Disbursing Agent 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 Disbursing Agent 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 post-confirmation disbursements made by the Disbursing Agent, 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 Disbursing Agent 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.

**Time for Filing Administrative Claims:** Failure to timely file an Administrative Claim will result in such claim being forever barred and discharged unless otherwise ordered by the Court. This requirement shall not apply to post-petition ad valorem taxes..

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

**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 on the later of the Effective date or within ten (10) days any such claims are

determined to be Allowed. Professionals who may be entitled to reimbursement for the allowance of fees and expenses from the Estate 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 and such payments shall be made only out of the funds remaining in the Estate at the time that such applications for fees and costs are approved by final order of the Bankruptcy Court.

**N. Secured Claims:**

**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 all accrued and unpaid real property taxes for the Subject Property (the “MDCTC Claim”). MDCTC filed Claim No. 1 in the amount of \$1,567,542.21. The claim has been substantially reduced by payments made from Unit sales. The MDCTC Claim will continue to be paid out of Unit closings as they occur, and to the extent of its claim that remains after the Subject Property is transferred to Lexi North Bay, then and in that event, Class 1 will retain a lien against the Subject Property for the remaining amounts for which it is owed and such lien shall retain the same lien priority as it held as of the date of the filing of the Debtor’s bankruptcy petition. Lexi North Bay may elect to pay the Allowed Secured Claim of Class 1 at the Closing defined hereinafter.

The Class 1 Claim of MDCTC is impaired under the Plan.

**Allowed Secured Claim of Lexi North Bay, LLC (Class 2):** Class 2 consists of the Allowed Secured Claim of Lexi North Bay, LLC (“*North Bay*”). 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.

Pursuant to this Plan of liquidation, the Subject Property and all other assets of the Estate shall be transferred to Lexi North Bay at a closing (the “Closing”) to be held on the Effective Date of this Plan. Lexi North Bay holds an Allowed Secured Claim against the Subject Property, the cash, including cash collateral of the Estate, and all other assets including the Lien Adversary Proceeding. Lexi North Bay has filed a motion to prohibit any further use by the Debtor of cash collateral and to direct the Debtor to turn over all cash, including cash collateral to Lexi North Bay. Lexi North Bay shall hold a Class 6 unsecured claim for the difference between the gross amount of its claim less the value of the collateral transferred to it at the Closing. The gross amount of the claim of Lexi North Bay shall include any amounts paid to Allowed Secured Claimants and General Unsecured Claimants at Closing.

The Class 2 Claim of Lexi North Bay is impaired under the Plan.

**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 will continue to be paid out of Unit closings to the same extent as such Claim was being paid prior to confirmation of this Plan, and to the extent of its claim that remains after the Subject Property is transferred to Lexi North Bay, then and in that event, Class 3 will retain a lien against the Subject Property for the remaining amounts for which it is owed and such lien shall retain the same lien priority as it held as of the date of the filing of the Debtor's bankruptcy petition. Any deficiency shall be treated as an Allowed Class 6 Claim. Class 3 is impaired by the Plan. Lexi North Bay may elect to pay the Allowed Secured Claim of Class 3 at the Closing.

**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. 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. In the event that Units that are subject to an Allowed Class 4 Claim are sold prior to the transfer of the Subject Property to Lexi North Bay at the Closing, then the lien that was attached to the particular Unit will remain attached such Unit. If the Purchase and Sale Agreements are not rejected then there will be no holders of Allowed Class 4 Claims.

Any Allowed Class 4 Claims deficiencies shall be treated as Allowed Class 6 Claims. Class 4 Claims are impaired.

**O. 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.

**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.

**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.

**Claimants Whose Purchase and Sale Agreement(s) are Rejected:** 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.

**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.

**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.

**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.

Class 5 Claims are impaired.

**P. 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). It is not anticipated that any funds will be available for distribution to Class 6 Claims. Lexi North Bay may elect to pay some portion of the Allowed General Unsecured Claims of Class 6 at the Closing. Class 6 Claims are impaired.

**Q. 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 is subordinate to all other Classes due to its insider relationship with the Debtor.

Class 7 consists of the Allowed Unsecured Claim of Great Florida Bank. It is not anticipated that any funds will be available for distribution to Class 7 Claims. Class 7 is impaired.

**R. Allowed Unsecured Claim of Scott Greenwald (Class 8):** Class 8 consists of the Allowed Unsecured Claim of Scott Greenwald [Proof of Claim No. 6]. It is not anticipated that any funds will be available for distribution to Class 8 Claims. Class 8 is impaired.

**S. Equity Interests (Class 9):** Class 9 consists of the interests of the equity owners in the Debtor. It is not anticipated that any funds will be available for distribution to Class 9 Claims. Class 9 is impaired.

**T. Section 1146 Exemption.**

Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, distribution, transfer or exchange of any security or the making, delivery or recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan or any Plan Document (including documents associated with the sale of units by Lexi North Bay or its designee following the Effective Date and Closing), or the revesting, transfer or sale of any real or personal Property of, by or in the Debtor pursuant to, in implementation of or as contemplated by the Plan or any Plan Document, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and hereby are, directed to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**U. Effectuating Documents; Further Transactions.**

The Debtor shall be authorized and directed to execute, deliver, file or record such contracts, instruments, deeds, releases, mortgages and other agreements or documents, and take such actions as may be necessary or appropriate, to effectuate and further evidence the terms and conditions of the Plan or to otherwise comply with applicable law.

**V. Retention of Jurisdiction.**

The Plan provides for the retention of jurisdiction by the Bankruptcy Court following the Effective date to, among other things, determine all disputes relating to Claims, Equity Interests and other issues presented by or arising under the Plan. The Bankruptcy Court will also retain jurisdiction under the Plan for any actions brought in connection with the implementation and consummation of the Plan and the transactions contemplated thereby.

**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN****W. General Overview of the Plan.**

The general structure of the liquidating Plan proposed by Lexi North Bay involves the transfer of all assets of the Estate, including but not limited to the Subject Property, to Lexi North Bay at the Closing, which shall occur as of the Effective Date of this Plan.

Under the Plan, the following transactions are contemplated to occur at the Closing to be held on the Effective Date:

- 1) The Debtor will transfer all assets of the Estate, including the Subject Property, to Lexi North Bay free and clear of any and all liens, claims and encumbrances, other than any liens which had lien priority or superiority to

the lien positions of Lexi North Bay as of the date of the filing of the Debtor's bankruptcy petition;

- 2) Any lien holders against the Subject Property or any other assets of the Debtor that have priority over the liens of Lexi North Bay shall retain their liens post-confirmation in the same priority as existed on the date of the filing of the petition;
- 3) Lexi North Bay shall retain the right to pay the Allowed Secured Claimants holding liens against the Subject Property or other assets of the Debtor that have priority over the liens of Lexi North Bay at Closing;
- 4) Lexi North Bay shall retain the right to pay at Closing some portion of the Allowed Unsecured Claims of Classes 3, 4, 5 and 6 in an amount to be determined at the sole discretion of Lexi North Bay;
- 5) The Order confirming the Plan shall operate to appoint Lexi North Bay as the Disbursing Agent to take over control and responsibility for the Subject Property;
- 6) The Disbursing Agent shall take possession and control over all cash and other assets related to the Subject Property as of the Effective Date; and
- 7) The Disbursing Agent shall pay any claims, such as claims of professionals that are allowed by final order of the Bankruptcy Court, to the extent that any unencumbered funds exist in the Estate's bank accounts as of the Effective Date.

**X. Rights of Liens Holders With Priority Over the Liens of Lexi North Bay.**

In the event and to the extent of the existence of any liens that are determined to have priority over the liens of Lexi North Bay, then such lien holders will retain their lien priorities and the transfer of the assets of the Estate, including the Subject Property to Lexi North Bay shall be deemed to have been made *subject to* the existence of such liens. Alternatively, Lexi North Bay may elect at the Closing to pay such Allowed Secured Claims from Estate funds which are subject to its liens or out of its own funds.

**Y. Rights of Liens Holders Subordinate to the Liens of Lexi North Bay.**

In the event and to the extent of the existence of any liens against the Estate's assets, including the Subject Property, which are subordinate to the liens of Lexi North Bay, the transfer of the assets of the Estate, including but not limited to the Subject Property shall be made free and clear of any such liens and any such liens, claims, encumbrances or other interests.

**Z. Cash Collateral.**

The Debtor's authorization to use cash collateral has expired and Lexi North Bay asserts a first priority security interest in all cash collateral of the Estate. Lexi North Bay intends to seek

an order of the Bankruptcy Court directing that all cash, including cash collateral, be turned over to Lexi North Bay pursuant to its lien. All cash, including cash collateral, or the rights to receive cash, that are turned over to Lexi North Bay shall be free and clear of any liens, claims, encumbrances or interests of any creditor of this Bankruptcy Estate and Lexi North Bay shall have no obligation to return any such funds to the Estate for any reason.

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**AA. Rejection of Executory Contracts and Unexpired Leases; Exceptions:** EXCEPT FOR THOSE EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT ARE EXPRESSLY ASSUMED ON OR BEFORE THE DATE OF THE CONFIRMATION HEARING, ALL PURCHASE AND SALE AGREEMENTS AND LEASE AGREEMENTS FOR RESIDENTIAL UNITS WILL BE DEEMED REJECTED PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE ON THE EFFECTIVE DATE.

**BB. 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 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 estate or the Subject Property 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.**

**CC. 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 6) under the Plan.

### **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 LEXI NORTH BAY 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.**

### **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 Estate by a duly appointed or elected chapter 7 trustee. In the event of a liquidation under chapter 7 the following is likely to occur:

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;

No additional market value will be realized for the Debtor's assets;

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;

Lexi North Bay estimates that the unsecured creditors of the Estate would suffer further costs and delays in the event of the conversion of this case to a Chapter 7 proceeding, but without such unsecured creditors receiving any distributions. Therefore, it is in the creditors' best interest to vote for the Plan since a conversion to a Chapter 7 proceeding would result in further costs and delays with lesser return.

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

Lexi North Bay believes that the Plan satisfies all of the requirements for confirmation.

**DD. 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. Lexi North Bay 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. All Classes are impaired under the Plan. Lexi North Bay believes that at least one impaired class will vote to accept the Plan and “cramdown” will be successful, if necessary.

**EE. 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, Lexi North Bay believes that the Plan meets the Best Interests Test.

**FF. 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.” Lexi North Bay believes the Plan meets the classification requirements of the Code.

**GG. 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:

Kenneth G.M. Mather, Esquire  
Raymond V. Miller, Esquire  
Michael B. Green, Esquire  
Gunster, Yoakley & Stewart  
401 E. Jackson St.  
Suite 2500  
Tampa, Florida 33602  
(813) 222-6630

and  
 600 Brickell Avenue, Suite 3500  
 Miami, Florida 33131  
 (305) 376-6000

**HH. 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.

**II. 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*”). Since the Plan of Lexi North Bay provides for a liquidation of the assets of the Estate, the confirmation of Lexi North Bay’s Plan is not likely to be followed by a subsequent liquidation.

### **EFFECT OF THE PLAN ON CLAIMS AND INTERESTS**

**JJ. Discharge:**

**Discharge:** The Debtor will not receive a discharge.

**Injunction – General:** Claimants against the Debtor will not be enjoined against proceeding against the Debtor. However, all holders of Claims shall be enjoined from proceeding against Lexi North Bay or the Estate assets, including the Subject Property, that are transferred to Lexi North Bay.

**Exculpation:** Except as otherwise specifically provided in the Plan, Lexi North Bay, 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,. Further, with respect to Professionals, such exculpation shall not include or · release liability based on a breach of the standard of care imposed under any applicable rule of professional conduct or governing bar association. In all such instances and respects, such parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties arid responsibilities in connection with the Bankruptcy case and under the Plan.

**Nothing herein shall release Scott Greenwald and/or Amy Greenwald from their obligations under their personal guaranties of the indebtedness of Debtor to Lexi North Bay, LLC, and all claims upon such guaranties are expressly reserved.**

**Savings Clause:** If any release or discharge of a non-Debtor entity hereunder is ruled by the Court to be improper or ineffective, the Plan shall proceed to confirmation and be confirmed without that part found to be improper or ineffective.

### **FINAL REPORT**

At such time as all of the Distributions provided for under the Plan have been made, Lexi North Bay 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.

### **RETENTION OF JURISDICTION**

**KK. 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 Lexi North Bay 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 Estate under section 505 of the Bankruptcy Code, or otherwise to collect or recover on account of any claim or cause of action that Lexi North Bay may have;

5) 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;

6) 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;

7) 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;

8) 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;

9) 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;

10) 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;

11) 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;

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

13) 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;



14) 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;

15) 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;

16) 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;

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

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

19) 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.

### **MISCELLANEOUS PROVISIONS**

**LL. Binding Effect of Plan:** The provisions of the Plan, Confirmation Order and plan documents shall be binding upon and inure to the benefit of all parties in interest, 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. Confirmation of the Plan shall be res judicata as to all parties and all issues, known or unknown, in the Lien Adversary Proceeding.

**MM. Withdrawal of the Plan:** Lexi North Bay 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.

**NN. Modification of the Plan:** Lexi North Bay 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, Lexi North Bay 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.

**OO. 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.

**PP. 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.

**QQ. 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.

**RR. 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:

Kenneth G.M. Mather  
Gunster, Yoakley & Stewart  
401 E. Jackson St., Suite 2500  
Tampa, FL 33602  
(813) 222-6630  
[kmather@gunster.com](mailto:kmather@gunster.com)

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**RECOMMENDATION**

The Plan provides for an orderly and prompt distribution to Holders of Allowed Claims against the Estate. Lexi North Bay believes that the effort to maximize the return for Creditors in this case has been full and complete. Lexi North Bay further believes that the Plan is in the best interests of all Creditors, even though Unsecured Creditors will not be paid in full. In the event of a liquidation of the Estate's assets under Chapter 7 of the Bankruptcy Code, Lexi North Bay believes that there would be no distribution to Unsecured Creditors. For these reasons, Lexi North Bay asserts that the Plan is in the best interests of all Creditors and that the Plan be accepted.

Dated: January 13, 2016.

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Tampa, FL 33602  
(813) 222-6630; Fax: (813) 228-6739

and

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