

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

IN RE:

NNN LENOX PARK 9, LLC

CASE NO. 13-21936-PJD  
CHAPTER 11

DEBTOR.

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DISCLOSURE STATEMENT TO PLAN OF REORGANIZATION

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**EXHIBITS**

- A. Debtor’s Plan of Reorganization
- B. Debtor’s December 31, 2012/January 2013 Monthly Operating Report
- C. Projected Cash Flow and Budget Through 2013
- D. Ballot

**Summary of Nature of the Plan Pursuant to  
Local Bankruptcy Rule 3016-1**

The Plan of Reorganization (the “Plan”) is filed by the debtor and debtor in possession, NNN Lenox Park 9, LLC (the “Debtor”). The Plan provides for the “roll-up” of the tenant-in-common (a “TIC”) interests of thirty-three single purpose limited liability companies, including the Debtor (collectively, the “TICs”), in improved real property located in Memphis, Tennessee, into membership interests in a single limited liability company. This Disclosure Statement provides information as required under 11 U.S.C. § 1125 related to the Plan, including, but not limited to, details on voting, confirmation, distributions and claim determinations within the Plan.

The Claims against the Debtor consist of:

- Administrative Expense Claims
- The secured claim of the Shelby County Trustee in the amount of \$165,026.00
- USB<sup>1</sup> Secured Claim – the secured Claim of USB determined to be \$7,500,000.00 pursuant to 11 U.S.C. § 506.
- General Unsecured Claims – all unsecured claims other than deficiency claim of USB, and including potential Claims from the Rejected Contracts. It is divided into Class 3A and 3B.
- USB Deficiency Claim – the unsecured claim of USB determined to be \$9,717,529.00.
- TIC Claims – the allowed Claims and Interests of the TIC owners, other than the Debtor.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

The following table summarizes the classes of Claims and Interests and the treatment of each Class under the Plan.

<b>Class</b>	<b>Class Composition</b>	<b>No. of Claimants (Approx.)</b>	<b>Amount of Claims (Approx.)</b>	<b>Amount and Timing of Distributions</b>	<b>Impaired or Unimpaired</b>
Unclassified	Administrative Claims	Unknown	Unknown	Allowed Claims to be paid in full, as soon as practicable after the Effective Date	Not applicable
1	Shelby County Trustee	\$165,026.00		Class 1 will be paid in sixty (60) equal monthly installments from the Effective Date.	
2	USB	1	\$7,500,000	Monthly payments of interest and principal beginning on the tenth day of the month after the Effective Date with the balance to be paid in full on the Balloon Date.	Impaired
3	General Unsecured Claims	22	\$1,150,396	Allowed 3A Claims to be paid fifty percent (50%) within twelve (12) months of the Effective Date and the other fifty percent (50%) within twenty-four (24) months of the Effective Date. Allowed Class 3B Claims will be paid ninety percent (90%) within 90 days of the Effective Date.	Impaired
4	Unsecured Claim of USB	1	\$9,717,529	Allowed Claim will be paid the balance of 65% of the Allowed Claim.	Impaired

Class	Class Composition	No. of Claimants (Approx.)	Amount of Claims (Approx.)	Amount and Timing of Distributions	Impaired or Unimpaired
5	Non-Debtor TIC Unsecured Claims and Interests	32	\$	Allowed Claims will receive general limited liability company membership interests in the Reorganized Debtor consistent with the proportion of their interests in the Property prior to the Effective Date.	Impaired
6	Interests	1	N/A	The Holder of Interests shall receive general limited liability company membership interests in the Reorganized Debtor in exchange for new value	Impaired

The Plan provides for payment to the holders of Claims for Classes 2 through 6 in an amount greater than the amount such claimants would receive in a liquidation of the Debtor's assets under chapter 7 of the Bankruptcy Code. The Debtor believes that the holders Class 3, 4, 5 and 6 Claims would receive no dividend in a chapter 7 liquidation.

A copy of the Plan is attached to this Disclosure Statement as **Exhibit A**

**I. INTRODUCTION**

On December 4, 2012, (the "Petition Date"), NNN Lenox Park 9, LLC (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of Indiana—New Albany Division. The case was transferred to the United States Bankruptcy Court for the Western District of Tennessee, Western Division (the "Bankruptcy Court"). As required by § 1125 of the Code, the Debtor submits this Disclosure Statement for the Bankruptcy Court's approval, along with the Plan dated March 4, 2013. The Plan is hereby submitted to the Court for approval and distribution to holders of claims or interests with respect to the Debtor and its assets.

A copy of the Plan accompanies this Disclosure Statement as Exhibit A. The purpose of the Disclosure Statement is to provide holders of claims and interest with adequate information about the Debtor and the Plan to enable them to make an informed judgment about acceptance or rejection of the Plan. Pursuant to the provisions of the Bankruptcy Code and in conjunction with the confirmation process for the proposed Plan, the Debtor has prepared and filed this Disclosure Statement (the "Disclosure Statement") designed to contain:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan....

11 U.S.C. § 1125(a)(1). The provisions of this Disclosure Statement include a summary of the events which caused the filing of the chapter 11 petition, a summary of the significant events that have taken place during the Chapter 11 Case, an analysis of the terms of the Plan and the means for implementing the Plan. Unless otherwise defined herein, all of the capitalized terms used in

the Disclosure Statement are defined in the Plan, and the definitions contained therein are applicable in this Disclosure Statement.

This Disclosure Statement should be read in its entirety prior to voting on the Plan. No solicitation of votes will be made except pursuant to this Disclosure Statement. Therefore, for purposes of voting on the Plan, parties in interest should not rely on any information relating to the Debtor other than the information contained in this Disclosure Statement. You are urged to study the Plan in full and to consult with your own legal and financial advisors about the Plan and its impact, including but not limited to possible tax consequences, upon your legal rights. Please read the Disclosure Statement carefully before voting on the Plan.

The Plan, a copy of which is attached hereto as Exhibit A, is incorporated in and made a part of this Disclosure Statement. This overview and any summary contained herein are qualified in their entirety by the more detailed information contained in this Disclosure Statement and in the Plan.

The Debtor is furnishing this Disclosure Statement and ballots to holders of claims in impaired classes, pursuant to the requirements of § 1125 of the Bankruptcy Code and Rule 3017 of the Federal Rules of Bankruptcy Procedure ("FRBP" or "Bankruptcy Rules"). Under § 1122 of the Bankruptcy Code, substantially similar claims are placed in classes. Under § 101(5) of the Bankruptcy Code, a "claim" means a right to payment or a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. Generally, in the context of voting for confirmation of a plan of reorganization, a claim or interest is deemed impaired unless one of three conditions is met, namely, (i) the legal, equitable, and contractual rights of the holder are left unaltered by the Plan; (ii) the Plan provides for curing defaults occurring before or after commencement of the case; or, (iii) the holder receives cash for the allowed amount of its claim or for the fixed redemption price or liquidated value of its interest.



Unimpaired claims are more specifically defined in § 1124 of the Bankruptcy Code. This Disclosure Statement and the Plan identifies the classes and whether these classes are deemed impaired or unimpaired under the Plan.

A holder of a claim or interest in an impaired class is entitled to vote to accept or reject the Plan if such claim or interest has been allowed pursuant to § 502 of the Bankruptcy Code or temporarily allowed for voting pursuant to FRBP 3018.

**YOUR VOTE IS IMPORTANT.** Confirmation of the Plan and implementation of the proposed provisions and transactions under the Plan depends upon receipt of a sufficient number of votes in favor of the Plan. If the Debtor has received a sufficient number of votes in favor of the Plan upon expiration of the solicitation period, the Debtor intends to seek confirmation of the Plan.

**The Plan sets forth the proposed treatment of each class of Claims and Interests. This Introduction and any summary contained herein is intended as an aid in understanding the Plan and should not be used as a substitute for careful review of this Disclosure Statement and the Plan. Again, you are urged to study this Disclosure Statement and the Plan in full and to consult with your own legal and financial advisors about the Plan and its impact, including but not limited to possible tax consequences, upon your legal rights.**

**No representations concerning the Debtor, particularly as to Debtor's financial condition, or the value of their property, are authorized by Debtor except as set forth in this Disclosure Statement. Although great effort has been made by Debtor to be accurate, the information contained herein or appended hereto as exhibits, has not been subject to a certified audit. Therefore, the Debtor is unable to warrant or represent that the information contained herein is without any inaccuracy.**

Furthermore, while any dividend or distribution offered to any person or entity pursuant to the Plan may not meet the reader's understanding of the definition of "securities," such dividend may be deemed a "security" pursuant to federal or state securities laws. Accordingly, the Plan should be evaluated in much the same manner as the purchase of a security would be evaluated. The advice and assistance of competent professionals should be sought.

The Court has set \_\_\_\_\_, 2013, at \_\_:\_\_ .m., in Courtroom 630, in the United States Bankruptcy Court for the Western District of Tennessee, Western Division, at 200 Jefferson Avenue, 6<sup>th</sup> Floor, Memphis, Tennessee, for a hearing on confirmation of the Plan.

**THE HOLDERS OF CLAIMS MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING THE ACCOMPANYING BALLOT. TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED, EXECUTED AND FILED OR RECEIVED BY THE CLERK FOR THE BANKRUPTCY COURT BY 4:00 P.M. ON APRIL \_\_, 2013, AT THE FOLLOWING ADDRESS:**

Mr. Jed G. Weintraub  
Clerk of the U.S. Bankruptcy Court  
U.S. Bankruptcy Court  
200 Jefferson Avenue, Suite 410  
Memphis, Tennessee 38103

**YOU ARE URGED TO RETURN YOUR BALLOTS SOONER, IF POSSIBLE. UNLESS YOUR BALLOT IS PROPERLY COMPLETED AND RECEIVED BY THE BANKRUPTCY CLERK BY SUCH DATE AND TIME, YOUR VOTE WILL NOT BE COUNTED.**

Pursuant to the Bankruptcy Code, the Court may not confirm the Plan pursuant to 11 U.S.C. § 1129(a) unless it receives the acceptance of more than one-half of the voting claimants in each impaired class who hold at least two-thirds in dollar amount of the claims voting in that class. If one or more classes fail to accept the Plan, the Debtor nonetheless intends to ask the Court to confirm the Plan by invoking the provisions of 11 U.S.C. § 1129(b), which provide that the court may confirm a plan even though one or more of the classes of claims or interests fail to vote to accept the plan, so long as the plan meets certain requirements.

**READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO**

**KNOW ABOUT:**

- (1) Who can vote or object to the Plan;
- (2) The treatment of your claim (*i.e.*, what your claim will receive if the Court confirms the Plan) and how this treatment compares to the alternatives;
- (3) The history of the Debtor and significant events during the bankruptcy;
- (4) What the Court will consider in deciding whether to confirm the Plan;
- (5) The impact of confirmation; and
- (6) Whether the Plan is feasible.

This Disclosure Statement cannot tell you everything about your rights. You should consult your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you.

**II. EVENTS LEADING UP TO THE CHAPTER 11 FILING**

To facilitate the tax-free exchanges pursuant to 26 U.S.C. § 1031, starting in the early 2000s, parties started creating real estate syndication networks. These syndication networks were designed to own real property and were structured as tenancy-in-common interests. The use of the tenant in common structure allows the individual owners of the tenants in common to use section 1031 of the Internal Revenue Code (“IRC”) for financial planning purposes. Section 1031 of the IRC permits a “like kind” exchange, which provides for the gains from the sale of property to be deferred by an adjustment in the tax basis of a newly acquired property. See 26 U.S.C. § 1031(a)(1). The IRC currently does not provide such “like kind” exchange benefits when property is owned by limited liability companies or partnership because those ownership interests are in personal property. The Internal Revenue Service permits a maximum of thirty-five (35) co-tenants in the ownership of real property. Rev. Rul. 2002-22, 2002 WL 417295.

With these networks, the owners of TIC interests were usually single purpose limited liability companies that individually owned an interest in a parcel of real estate. Accordingly, an ownership interest of a tenant in common contains significant differences from ownership interests in other business entity forms, such as limited partnerships or limited liability companies. Each of the thirty-three TICs is entitled to the undivided possession or right to possession of the Property. See In re Sturman, 222 B.R. 694, 709 (Bankr. S.D.N.Y. 1998). Unlike a partnership or limited liability company, where each member owns an interest in personal property, the TICs own an interest in the Property. Therefore, regardless of each TIC's percentage of ownership, each has an equal right to possession and an undivided interest in the entire Property.

#### **A. TIC Formation**

In the instant case, the TICs' formation involved a "sponsor". See Rev. Proc. 2002-22, 2002 WL 417295. NNN Lenox Park, LLC was responsible for acquiring the Property, packaging the other thirty-two co-ownership interests in the Property for sale and arranging for the financing of the Property. Id. In this capacity, NNN Lenox Park, LLC was the "sponsor" of the TICs ("TIC 0"). TIC 0 also retained a 6.12% interest in the Property. The manager of TIC 0 was Triple Net Properties Realty, Inc. ("TNP").

The Debtor is one of the TICs. Patrick William Kelley and Pamela Kelley (the "Kelley's") owns the Interests in the Debtor from their home in New Albany, Indiana. The other TICs differ in name just by the number after "NNN Lenox Park" (i.e., NNN Lenox Park 1, LLC; NNN Lenox Park 3, LLC) and the percentage interest owned in the entire Property. The Debtor was created to hold a 2.795% interest in the entire Property.

Before selling the Property to the TICs, TIC 0 purchased the Property from an unrelated party for \$23.5million in January 2007. Next, TIC 0 sold it to the TICs for a total investment of

\$29.32 Million. In the process, the TICs became subject to the acquisition secured financing provided originally by LaSalle Bank National Association . The secured debt, in the principal amount of \$17.5 million, was a ten (10) year loan (secured by the Property) intended to mature on February 1, 2017 (the “Secured Debt”). The Secured Debt was structured with interest-only payments for the first five (5) years at the rate of 6.10% per annum, with principal and interest payments due for the next sixty (60) months until maturity. . USB 2007-C33, LLC (“USB”), by a series of assignments, is now servicing and administering the Secured Debt. CWCcapital Asset Management, LLC is the Special Servicer.

**B. The Property**

The Property consists of a two four-story Class A office buildings containing approximately 193,092 square feet on 14.52 acres located in Memphis Tennessee. Building A is located at 3175 Lenox Park Boulevard and contains 96,274 square feet; it was built in 1996. Building B is located at 6625 Lenox Park Boulevard and contains 96,755 square feet. It was built one year after Building A. Buildings A & B are two of seven buildings located in the Lenox Park Office Park. There are approximately 853 surface parking spaces which provide approximately 5.27 which provides approximately 5.27 spaces per 1,000 square feet.

**C. Economic Downturn and Foreclosure Proceeding**

After the 2007 acquisition, in a story that is now all too familiar, the value and occupancy of the Property declined. The Property continued to decline in value until 2012. In 2007, at the time of the TICs’ acquisition, the Property had a occupancy rate of 98%, but it is now approximately 61%. The commercial real estate market in Memphis, Tennessee, is slowly starting to recover.

For all of these reasons, the effective rental rate of the Property has dropped. Prior to the Petition Date, between August 2012 and December 2012, twenty-eight (28) of the TICs, including

the Debtor, engaged Breakwater Equity Partners (“Breakwater”) to negotiate a settled workout or restructuring of the Property. Pursuant to the engagement, Breakwater will receive a “success fee” of fifteen percent (15%) or ninety percent (90%) of the engaged TIC’s equity in the Property depending on the TIC’s election at the time of engagement and after successful completion of a debt restructuring.

On June 27,,2012, USB notified the TICs that certain amounts due under the Secured Debt were past due and unpaid. USB then instituted an action in Chancery Court of Shelby County, Tennessee, requesting appointment of a Receiver, injunctive relief and other equitable and legal relief. . By virtue of the Agreed Order Appointing Receiver and Granting Injunctive Relief on August 7, 2012, Commercial Advisors Asset Services, LLC was appointed Receiver (“Receiver”). Prior to the institution of the receivership, TNP, and now its successor by merger Daymark Realty Advisors (“Daymark”), was appointed the asset manager. Daymark has asserted a claim of \$985,379.83 which is disputed. The Receiver currently remains in the possession of the Project.

The TICs, both debtor and non-debtor, were notified of a non-judicial foreclosure sale pursuant to the Notice of Substitute Trustee’s Sale. (the “Foreclosure Proceeding”). The Foreclosure Proceeding was set for December 7, 2012. The Debtor filed its petition for relief on December 4, 2012.

**D. Property Management and Termination of Daymark**

The TICs’ collective ownership of the Property is controlled by a Tenants In Common Agreement (the “TIC Agreement”). In June 2007, the thirty-three separate limited liability companies entered into and executed the TIC Agreement. The TIC Agreement establishes the relationship between the thirty-three TICs and for the management of the Property. The TIC Agreement provides that any individual tenant in common has the authority to terminate a property manager or asset manager. The unanimous consent of the TICs is required to hire a

new property manager or asset manager. Prior to the Receiver, Daymark acted as property manager. It has asserted a claim of \$985,379.73 pursuant to notice given February 25, 2013. In its notice, Daymark asserted its intention to remove the Property from Daymark's bulk property insurance policy. The Debtor has been informed that the Receiver has obtained coverage. Since the appointment of the Receiver, Daymark has been removed as property manager. FameCo has tentatively been selected to manage the Property after confirmation of the Plan.

### **III. SUMMARY OF SIGNIFICANT EVENTS DURING THE BANKRUPTCY**

#### **A. Bankruptcy Proceedings**

Since the filing of the Chapter 11 Case, the Debtor opened a debtor-in-possession account to handle any estate financial business, and filed all required schedules of assets, liabilities and financial transactions. The Debtor also employed Tucker & Hestler, LLC as its bankruptcy counsel, and the Court approved that application [Docket 88]. The Tucker and Hester attorneys actively involved were Jeffrey M. Hester and Nicolette Mendenhall. The Court also approved the employment of Mubeen Aliniyee and Highpoint Management Solutions, LLC ("Highpoint") as its financial consultant. The estate representatives attended the meeting of creditors held pursuant to 11 U.S.C. § 341(a). Subsequent to the transfer of venue, the Debtor has made application to approve the employment of Steven N. Douglass and Harris Shelton Hanover Walsh, PLLC as counsel.

#### **1. The Motion to Transfer**

On December 10, 2012, USB filed the Motion for Out-of-District Transfer of Case to Western District of Tennessee [Docket 26]. On February 1, 2013, the Bankruptcy Court entered an Order on Motion to Transfer Venue [Docket 69]. Since transfer, the Bankruptcy Court has set a case management status conference and "reset" several matters for hearing on March 26, 2013, including USB's Motion to Dismiss.

Since the Petition Date, at least twenty-four (24) of the co-tenant, non-debtor TICs have obtained counsel and appeared in the Chapter 11 Case (collectively, the “Participating TICs”).

2. USB’s Motion to Dismiss

On December 10, 2012, USB filed a Motion to Dismiss Case as to Non-Debtor Affiliates [Docket 27] (the “USB Motion”). The USB sought to dismiss the case in order to continue the Foreclosure Proceeding against all of the non-Debtor TICs.

On January 23, 2013, the Debtor filed an Objection the USB Motion [Docket 5738] and an Amended Objection [Docket 57] (the “Response”). The Debtor’s response focused on the significant impact the USB Motion would have on the Debtor’s estate and ability to reorganize and restructure the Property.

3. USB’s Motion for Relief from the Automatic Stay

On March 4, 2013, USB filed its Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. 362(d) (the “Stay Motion”) [Docket 102]. The Debtor has filed an objection [Docket \_\_\_ ] and will oppose the Stay Motion. **B. Current Financial Condition**

The Debtor has not had to make any independent expenditure for operation of the Property. A copy of the Debtor’s Monthly Operating Reports for December, January and February are attached as **Exhibit B**.

Under the Plan, the Reorganized Debtor will supplement the Property’s cash flow with an additional cash contribution of at least \$250,000 (the “New Value Contribution”). This contribution assumes the Lender still maintains the \$2 million reserve fund for leasing commissions and tenant improvement. The New Value Contribution will be supplied from non-Debtor parties, including Breakwater and some or all of the non-Debtor TICs or their interest holders, in exchange for preferred equity in the Reorganized Debtor. The Reorganized Debtor will use the New Value Contribution to satisfy Allowed Administrative Claims and Class 3



Claims, and to provide reserves for the Property to ensure that all Claims are paid even if the net operational profits of the Property cannot do so. The parties contributing the New Value Contribution will have preferred equity in the Reorganized Debtor in proportion to their contribution of the New Value Contribution.

The New Value Contribution and the rents from the Property will be used over a ten (10) year period to pay the operational and related expenses of the Property (including improving and repairing it to better its income-production ability), and to service the payments required under the Plan. At the end of that period, the Property will either be refinanced or sold outright to complete the payment in full of USB's remaining secured claim and 65% of USB's deficiency claim.

#### **C. Assets and Secured Liabilities**

The Debtor's primary asset is its tenancy-in-common ownership of 2.795% of the Property. As of the Effective Date, in return for both the satisfaction of their Class 5 Claims and the cancellation of their ownership interests in the Property, the TIC owners, including those holding Class 5 Interests in the Debtor, will receive general limited liability company membership interests in the Reorganized Debtor consistent with the proportion of their interests in the Property prior to the Effective Date. For example, if a TIC owns 10% of the Property prior to the Effective Date, then that TIC would own 10% of the general membership interests in the Reorganized Debtor. The general membership interests in the Reorganized Debtor will retain no management responsibilities or authority except as described below.

The Debtor has two secured liabilities in the amount of \$165,026 to the Shelby County Trustee and \$7.5 million to USB.

#### **IV. THE PLAN OF REORGANIZATION**

**The following summary of the principal provisions of the Plan is qualified in its**

**entirety by reference to the provisions of the Plan, a copy of which is annexed to this Disclosure Statement as "Exhibit A" and which is incorporated herein by reference. This summary should not be used as a substitute for actually studying the Plan itself.**

**A. General Background**

A "creditor" is defined in the Bankruptcy Code, as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor". The term "claim" is defined in the Bankruptcy Code as a "right to payment . . . [or a] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment . . . ." The term "interest" is not defined in the Bankruptcy Code but is used to describe proprietary rights, which in corporate cases such as these means the common stock of the Debtor.

On December 4, 2012, the Debtor filed schedules of its creditors as of the Petition Date. Thereafter, the schedules and statement of affairs were completed on January 14, 2013. Some of the creditors identified on Debtor's schedules have been listed as holding contingent, unliquidated, disputed, or undetermined claims. Any references in this Disclosure Statement or the accompanying Plan to any such contingent, unliquidated, disputed, or undetermined claim or a creditor holding such a claim shall not be construed or deemed as an admission of the validity, enforceability, or amount of any such claims.

Generally, a chapter 11 plan (i) divides claims and interests into classes, (ii) specifies the property or treatment each class will receive under the plan, and (iii) otherwise provides for the adjustment of liabilities of the debtor.

Under a chapter 11 plan, "claims" and "interests" are classified rather than classifying "creditors" and "equity security holders" because a creditor or equity security holder may have various claims or interests which fall into more than one classification. For example, a secured creditor may be undersecured, and under §506(a) of the Bankruptcy Code that creditor's claim

would be treated as secured to the extent of the value of the security and unsecured as to the remainder of the claim. Each creditor or equity security holder then votes his or her claim or interest to accept or reject the plan of reorganization.

**B. Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims have not been classified. Holders of Administrative Expense Claims do not have a right to vote to accept or reject the Plan. However, Administrative Expense Claims are identified in this Disclosure Statement and the accompanying Plan, and their treatment is described, to promote "enabl[ing] a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan[.]"

1. Administrative Expenses

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed pursuant to 11 U.S.C. § 507(a)(1). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

No claimant has agreed otherwise, except as specified herein. As of this date, the Debtor's estate is not subject to any unpaid administrative liabilities, other than: (1) quarterly fees for the Office of the United States Trustee for the current quarter and which have not come due yet (and shall be paid when due); and (2) any allowed, unpaid claims of the bankruptcy counsel for the Debtor. After the entry of the Confirmation Order, Arnstein & Lehr LLP will apply to the Court for final approval of its fees pursuant to 11 U.S.C. § 330. To the extent that any compensation is awarded in excess of the prepetition retainer, Harris Shelton will accept payment as cash is available after the satisfaction of any and all other Plan obligations then immediately due. Payment in full should occur within three (3) months after the Effective Date.

**C. Classification of Claims and Interests**

The Plan proposes six (6) classes of Claims and Interests for purposes of voting on the Plan and making distributions thereunder, namely:

- Class 1 - Shelby County Trustee Secured Claim
- Class 2 – USB Secured Claim
- Class 3 – General Unsecured Claims
- Class 4 – USB Unsecured Claim
- Class 5 – Non-Debtor TIC Claims and Interests
- Class 6 – Interests

**D. Treatment of Classified Claims and Interests**

1. Class 1 - Shelby County Trustee Secured Claim

Class 1 consists of the allowed secured claim of the Shelby County Trustee. It will be paid in sixty (60) equal monthly installments withstanding interest from the Effective Date. Class 1 is impaired.

2. Class 2 – USB Secured Claim

Class 2 consists of the allowed Secured Claim of USB, which is equal in value to the value of the Property as a whole, which has an estimated stabilized value to be \$7.5 million (subject to an appraisal being completed) and to be determined by the Court at or prior to the confirmation of this Plan. This claim is based upon the bifurcation of USB's pre-petition claim pursuant to 11 U.S.C. §506(a).

This claim will accrue simple interest on its unpaid balance at the rate of 4.5% per annum. It will be paid through monthly payments of interest and principal amortized over ten (10) years and beginning on the tenth day of the month after the Effective Date. All payments will be made by the tenth (10<sup>th</sup>) Business Day of that month. The interest to be paid and the monthly payment amount may be adjusted by the Court in the Confirmation Order if and to the extent that the Court determines that it is required under 11 U.S.C. §§ 1129(a)-(b). USB will retain its existing lien against the Property to secure payment of the allowed Class 2 Claim. The

Class 1 Claim will balloon and be fully due and payable one hundred twenty (120) months from the Effective Date, to the extent that it has not been paid in full prior to that date (120 months from the Effective Date is the "Balloon Date"). On the Balloon Date, if the Class 2 Claim has not been paid in full, USB will receive the balance of the Class 2 Claim. Class 2 is impaired.

3. Class 3 – General Unsecured Claims

Class 3 consists of the General Unsecured Creditors under this Plan. The Class 3 Claims total approximately \$1,150,396.00, not including any Allowed Claims from the Rejected Contracts as defined herein, and are primarily those of utility and trade vendor creditors related to the operation of the Property. Class 3 is divided into two sets, Class 3A and Class 3B. Any Allowed Rejection Claims shall become part of Class 3A. Class 3A claims will be paid 100% of their allowed claim within twenty-four (24) months of the Effective Date. The Reorganized Debtor will pay fifty percent (50%) of the allowed Class 3 Claims within twelve (12) months of the Effective Date and the other fifty percent (50%) within twenty-four (24) months of the Effective Date. Class 3B Claims will receive 90% of their claim within ninety (90) days of the Effective Date. Class 3 is impaired.

4. Class 4 – USB Unsecured Claim

Class 4 consists of the unsecured claim of USB, based upon the bifurcation of USB's pre-petition claim pursuant to 11 U.S.C. § 506(a). The amount of this Claim will be the total allowed value of USB's Claim against the Debtor, less the \$7.5 million allocated to treatment under Class 1. USB will be paid 65% of its Class 4 Claim. Class 3 is impaired.

5. Class 5 – Non-Debtor TIC Claims and Interests

Class 5 consists of all allowed unsecured claims against the Debtor which are the claims and Interests of the other, non-Debtor TICs, the co-owners of the Property and limited liability companies jointly and severally liable on Class 1, Class 2, Class 3, and Class 4 Claims, either

those arising before the Effective Date or those which arise under this Plan in exchange for their Interests in the Property. On the Effective Date, Class 5 Claims will be deemed satisfied, as discussed below. Class 5 is impaired.

6. Class 6 – Interests

Class 6 consists of the equity Interests in the Debtor, including that Interest held as of the Petition Date and all such Interests acquired thereafter through the Effective Date. Class 6 equity Interests will be cancelled.

**V. MEANS FOR IMPLEMENTING THE PLAN OF REORGANIZATION**

**A. Funding for the Plan; Structure of Reorganized Debtor**

The monthly payments due on account of the allowed Claims will be made from the net operational profits (positive cash flow) of the entire Property, after allowance for operational expenses (vendor costs, taxes) and reserves (to cover extraordinary repairs). Attached as **Exhibit C** is the projected cash flow and anticipated income and expenses, including plan payments, over the life of the Plan. The Reorganized Debtor will supplement the cash flow with an additional cash contribution of at least \$250,000, in satisfaction of the requirements of *Bank of Am. Nat 'l Trust & Sav. Ass 'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999), in "new value" cash (the "New Value Contribution"). The New Value Contribution will be supplied from non-Debtor parties, including Breakwater and some or all of the non-Debtor TICs or their interest holders, in exchange for preferred equity in the Reorganized Debtor. The Reorganized Debtor will use the New Value Contribution to satisfy Allowed Administrative Claims and Class 3 Claims, and to provide reserves for the Property to ensure that all Claims are paid even if the net operational profits of the Property cannot do so. The parties contributing the New Value Contribution will have preferred equity in the Reorganized Debtor in proportion to their contribution of the New Value Contribution.

On the Effective Date, in return for both the satisfaction of their Class 5 Claims and the cancellation of their ownership interests in the Property, the TICs, including those holding Class 6 Interests in the Debtor, will receive general limited liability company membership interests in the Reorganized Debtor consistent with the proportion of their interests in the Property prior to the Effective Date. For example, if a TIC owns 10% of the Property prior to the Effective Date, then that TIC would own 10% of the general membership interests in the Reorganized Debtor. The general membership interests in the Reorganized Debtor will retain no management responsibilities or authority except as described below.

Over the term of the Plan, after ten years, the Property will either be refinanced (if possible) or sold (if necessary) to pay off any remaining Class 2 Claim owed to USB.<sup>2</sup> Surplus funds will then be applied against any outstanding Class 4 Claim for a cumulative payout to USB of \$1,150,396.

**B. Post-confirmation Management; Disbursing Agent**

Pursuant to 11 U.S.C. § 1123(b)(3), the Reorganized Debtor by a simple majority vote pursuant to the general membership interests of its members will designate a management team of three members (the "Managers"). The Managers shall have the right to assert for the estate any and all causes of action, post-confirmation, in accord with applicable law. All such causes of action and related legal, equitable and contractual rights and benefits, which are property of the Debtor's bankruptcy estate, including without limitation Avoidance Actions created pursuant to bankruptcy law, are vested in the Reorganized Debtor upon confirmation, and may be prosecuted and/or settled at the Managers' direction. The Managers will serve as the disbursing agent for the purpose of making all distributions provided for under the Plan. The Managers shall serve

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<sup>2</sup> The anticipated ability for the Reorganized Debtor to fund the Plan comes from the projected filling of vacant rental space and an increase in rental rates because of (1) a general area-wide recovery from recession; (2) the termination of the foreclosure proceeding brought by USB; and (3) that the Property will be much more attractive once it is no longer under a Receivership, connected to Daymark Realty Advisors and a debtor-in-possession.

without bond, and shall not receive any compensation for management and/or disbursement services rendered and expenses incurred pursuant to the Plan. The various duties of the Managers may be delegated to a new property manager or asset manager retained by the Reorganized Debtor upon the Effective Date.

**C. Risk Factors**

If the Property does not to operate as profitably or appreciate in value as is currently projected, the Reorganized Debtor would be hampered in its ability to make the monthly payments called for under the Plan on account of the Class 1 Claim, and to raise additional funds, through sale and/or refinancing, to pay off any remaining Plan obligations (primarily Class 1 and Class 4 Claims, as allowed). While the Debtor believes that the projections of future positive cash flow and appreciation are valid, especially when supported with the New Value Contribution, any projection of economic activity and value is, to some extent, speculative, and should be considered as an educated projection and not a guaranty.

**D. Executory Contracts and Unexpired Leases**

All unexpired leases and executory contracts not explicitly mentioned below are assumed. With regard to the other contracts, the TIC Agreement is rejected as of the Effective Date. The property management agreement with Daymark (the TNP Agreement) to the extent not rejected pre-petition is rejected as of the Effective Date. The TIC Agreement, and TNP Agreement are, individually, a "Rejected Contract," and, collectively, the "Rejected Contracts." **All parties to a Rejected Contract, shall file a proof of claim within thirty (30) days of the Effective Date (each a "Rejection Claim"). If a Rejection Claim is filed, the Reorganized Debtor shall file any objection to such Rejection Claim within sixty (60) days of the Effective Date or the Rejection Claim shall become an Allowed Claim and included as a Class 3 Claim.**



The Debtor anticipates that the Reorganized Debtor shall enter into the anticipated FameCo Agreement on the Effective Date to be effective immediately. As asset manager, Fameco will be responsible for, *inter alia*, the oversight of the Property Manager on behalf of the TICs, obtaining approval of all TIC owners when required, monitoring loan compliance and any property tax appeal, create property risk analysis and asset risk analysis, the preparation of financial analysis of current returns with suggestions for potential improvements, and the preparation and maintenance of a website to provide the TICs real-time access to information relating to the Property.

**E. Additional Plan Provisions**

1. Retention of Jurisdiction

Until the Chapter 11 Case is closed, the Court retains jurisdiction to ensure that the purpose and intent of this Plan are carried out, to hear and determine all Claims against the Debtor, and to enforce all causes of action which may exist on behalf of the Debtor or the Reorganized Debtor, over which the Court had or would have had jurisdiction prior to confirmation of the Plan. In addition, the Court retains jurisdiction to amend or modify the Plan to the extent and under the circumstances that the Court deems appropriate, as permitted by the Court and the Federal Rules of Bankruptcy Procedure.

Notwithstanding confirmation of the Plan or the occurrence of the Effective Date, the Court also retains jurisdiction for the following purposes:

- a. To hear and determine any dispute arising under the Plan or any disputes with respect to distributions made pursuant to the Plan;
- b. To adjudicate any adversary proceedings or contested matters that may be commenced or maintained by the Debtor or the Reorganized Debtor pursuant to the Case or the Plan, including, without limitation, any adversary proceeding or contested matter with respect to an Avoidance Action, proceedings to adjudicate the

allowance of Disputed Claims, and all controversies and issues arising from or related to any of the foregoing;

- c. To make such orders as are necessary or appropriate to carry out the provisions of the Plan;
- d. To make such other orders or give such direction as may be appropriate under Section 1142 of the Code;
- e. To adjudicate all Claim objections or estimations filed by the Debtor or the Reorganized Debtor, and to determine the Allowed amount of any Claims;
- f. To consider and order any amendments to the Plan as may be requested pursuant to the appropriate section of the Plan;
- g. To hear and determine all Rejection Claims arising from the rejection of Rejected Contracts;
- h. To hear and determine all applications or requests for payment of Administrative Claims, including fee applications or fee disputes involving the fee applications of professionals employed during the Chapter 11 Case for services rendered prior to confirmation of the Plan;
- i. To enforce all orders previously entered by the Court;
- j. To implement the provisions of the Plan and enter orders in aid of confirmation and consummation of the Plan, including such orders as may be requested by the Debtor or the Trust under the Plan; and
- k. To enter a final decree closing the Chapter 11 Case.

Nothing contained herein shall limit the Court's power to abstain or decline to exercise jurisdiction over any matter described above, and if the Court exercises such power, any such matter may be heard before any State or Federal Court which may otherwise have competent jurisdiction over such matter.

## 2. Retention and Assignment of Claims

Except as expressly provided to the contrary in this Plan, or any other contract, instrument, release, indenture or other agreement entered into in connection with this Plan, in accordance with Section 1123(b) of the Bankruptcy Code, all Claims and causes of action of the Debtor, including, but not limited to, Avoidance Actions, together with the proceeds thereof, are

reserved for, assigned to, and shall be and remain property of the Reorganized Debtor.

**F. Injunctions**

As of the Effective Date, until the Plan is fully performed and all assets have been distributed, abandoned or otherwise disposed of, all entities shall be enjoined from: (a) prosecuting any claim, demand, debt, right, cause of action, liability or interest against or with respect to the Debtor, the Reorganized Debtor or the Property which has been released, waived or terminated pursuant to this Plan; (b) enforcing, attaching, collecting or recovering in any manner, any judgment, award, decree or order against the Debtor, the Reorganized Debtor or the Property; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor or the Property; (d) commencing or continuing any action, in any manner or in any place, that does not comply with, or is inconsistent with, the provisions of the Plan, including the Foreclosure Proceeding; and (e) commencing or continuing, in any manner, any action or other proceeding against the Debtor, Reorganized Debtor or the Property.

**G. Changes in Rates Subject to Regulatory Commission Approval**

The Debtor is not subject to governmental regulatory commission approval of any rates charged.

**H. Tax Consequences of Plan**

The Debtor has not sought or obtained rulings from the Internal Revenue Service or any state or local taxing authority with respect to the tax consequences, if any, of the Plan and the transactions contemplated thereby. Debtor is a limited liability company and is taxed as a partnership and, therefore, does not incur any income tax liability that can adversely affect the amount of dividends to be paid under the Plan. The Plan may, however, affect the tax treatment of various claimants.

**CREDITORS AND HOLDERS OF INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE CONSEQUENCES TO THEM UNDER FEDERAL AND**

**APPLICABLE STATE AND LOCAL TAX LAWS OF THE CONSUMMATION OF THE PLAN.**

**VI. VOTING PROCEDURE**

**A. Voting Procedure and Ballots**

All votes to accept or reject the Plan must be cast using the accompanying Ballot attached as **Exhibit D** (the "Ballot"). The Ballot must: (a) be properly completed in accordance with the instructions thereon; (b) indicate the Claim Class under which the Ballot is being cast and whether the vote is cast to accept or reject the Plan; (c) be signed by the Creditor or the Creditor's authorized agent; and (d) be filed electronically or received by the Bankruptcy Clerk on or before the Voting Deadline at the address set forth below. Any Creditor holding a Claim in more than one Class that is entitled to vote on the Plan must cast a separate Ballot within each Class. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing, and should attach proper evidence of his or her authority to so act.

**ANY BALLOT NOT PROPERLY COMPLETED OR THAT IS NOT RECEIVED BEFORE THE VOTING DEADLINE WILL NOT BE COUNTED.**

**B. Voting Deadline**

The Court has fixed   :     .m. (C.S.T.) on \_\_\_\_\_, 2013 (the "Voting Deadline") as the date and time by which Ballots to accept or reject the Plan be filed electronically or received by the Bankruptcy Clerk at the following address:

Mr. Jed G. Weintraub  
Clerk of the U.S. Bankruptcy Court  
U.S. Bankruptcy Court  
200 Jefferson Avenue, Suite 410  
Memphis, Tennessee 38103

**UNLESS YOUR BALLOT IS PROPERLY COMPLETED AND RECEIVED BY THE BANKRUPTCY CLERK BY THE VOTING DEADLINE ABOVE, YOUR VOTE WILL**

**NOT BE COUNTED.**

**C. Withdrawal of Ballots or Changing Votes**

Pursuant to Federal Rule of Bankruptcy Procedure 3018(a), the Bankruptcy Court, after notice and a hearing, may permit a creditor or equity security holder to change or withdraw an acceptance or rejection for cause.

**VII. ACCEPTANCE AND CONFIRMATION OF PLAN**

As a condition to confirmation, the Bankruptcy Code requires that each impaired class of claims or interests accept the Plan, with the exceptions described below. The Bankruptcy Code defines acceptance of the plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims of that class. However, for purposes of this calculation, only claimants who actually vote to accept or reject the plan are counted. Holders of claims who fail to vote are not counted as either accepting or rejecting the Plan.

Classes of claims or interests that are not "impaired" under the Plan are deemed by the Bankruptcy Code to have accepted the Plan, and those classes are not entitled to cast Ballots. A class is "impaired" if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturities, or by payment in full in cash. In this Chapter 11 Case, all classes are impaired and are entitled to vote.

In determining whether the Plan has been accepted by the requisite number of Creditors, votes will be counted only with respect to Claims: (a) with respect to which the holder of a Claim has filed a proof of claim pursuant to 11 U.S.C. § 501 prior to the applicable time fixed by the Court; or (b) that are "deemed allowed" because the claims are listed in the Debtor's bankruptcy schedules and are not listed as contingent, unliquidated or disputed; and (c) which have not been disallowed, or disallowed for voting purposes, by the Court prior to the confirmation hearing. **THE BALLOT FORM PROVIDED WITH THIS DISCLOSURE STATEMENT IS NOT A PROOF OF CLAIM.**

This Plan may be confirmed even if it is not accepted by all impaired classes, as long as at least one impaired class of claims has voted to accept it. The Debtor will seek confirmation of the Plan pursuant to 11 U.S.C. § 1129(b) if the Plan is rejected by any impaired Class of Creditors. The process by which non-accepting classes are forced to be bound by the terms of the Plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the “cram down” of the Plan on non-accepting Classes of Claims or Interests: (1) if the Plan meets all consensual requirements except the voting requirements of 11 U.S.C. § 1129(a)(8); and (2) if the Plan (a) does not “discriminate unfairly” and (b) is “fair and equitable” toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

The Debtor will ask the Court to confirm this Plan by cramdown on impaired classes 1, 2, 3, 4 and 5 if any of these classes do not vote to accept the Plan. The Debtor expects that cramdown will be required with regard to Class 1 and Class 4, but not with regard to any other Class of Creditors or equity Interest holders.

The Court will set a hearing to determine whether the Plan has been accepted by the requisite number of holders of Claims and whether the other requirements for confirmation of the Plan have been satisfied. Each holder of a Claim or Interest will receive, either with this Disclosure Statement or separately, the Court's notice of hearing on confirmation of the Plan.

### **VIII. LIQUIDATION ANALYSIS**

Another confirmation requirement is the “Best Interests Test,” which requires a liquidation analysis. Under the Best Interests Test, if a claimant or interest holder of an impaired class does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, a debtor’s assets are usually sold by an appointed Chapter 7 trustee.

Secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest holders receive the balance that remains after all creditors are paid, if any.

For the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Debtor maintains that this requirement is met.

The Classes 1 and 2 Claim, projected to be paid in full, will retain its lien on the Property, which is equivalent in value (by definition) to the claim balance. If the Property is liquidated, then the Debtor, a “single-asset” entity, will not have any funds with which to make any payments to any other Classes. Class 2 would receive the value of the Property, in this case valued at \$7,500,000. None of the other classes would receive any payment. Any nominal cash assets would be absorbed through payment of allowed administrative and priority claims. The Plan thus satisfies the “best interests” test for all Creditors, including USB. Creditors will receive significantly greater value than it would under a Chapter 7 case: Class 1, 2 and 3 Claims will be paid in full; Class 4 will receive 65% of its allowed claim; and Class 5 and 6 holders will receive membership interests in the Reorganized Debtor in proportion to their prepetition TIC Interests in the Property.

#### **IX. FEASIBILITY**

For the Court to confirm the Plan, it must also be feasible. Feasibility means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further

financial reorganization, of the Debtor or the Reorganized Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough Cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Debtor maintains that this aspect of feasibility is satisfied. First, the Debtor will only be subject to the quarterly fees owed to the Office of the United States Trustee, and to the allowed fees and expenses of Harris Shelton. All additional amounts needed to satisfy any other Claims will come from the operations of the Property and the New Value Contribution. As such, the Debtor will have enough Cash to pay its Effective Date obligations.

Second, a feasibility analysis considers whether the Debtor will have enough Cash over the life of the Plan to make the required payments. The data stated in Exhibit C shows that (1) with the New Value Contribution, the Property will generate net revenues sufficient to make the monthly Plan payments due on account of all Claims; and (2) the Property will, over the life of the Plan, yield enough funds to fully satisfy the Plan payments to all classes as provided herein. The Debtor's financial projections show that the Reorganized Debtor will be able to make these payments. As such, the Debtor will be able to comply with its obligations under the Plan and the Plan is feasible.

**X. EFFECT OF PLAN CONFIRMATION**

**A. Discharge**

Under the Plan, the Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the greatest extent possible as specified in 11 U.S.C. § 1141, unless such liabilities are specified for treatment under the Plan, and then only to the extent of the treatment hereunder. Discharge will be entered with regard to each claim upon the



substantial consummation of the Plan.

**B. Modification of the Plan**

The Debtor may modify the Plan at any time prior to confirmation. The Debtor may modify the Plan at any time after confirmation and before substantial consummation, but only if circumstances warrant and after notice and a hearing. Once the Plan has been substantially consummated and the estate fully administered, as referred to in FRBP 3022, the Debtor may move the Court for entry of a final decree, the effect of which would be to close this bankruptcy case. After such closure, a party seeking any type of relief relating to a Plan provision may seek such relief in any court of competent jurisdiction.

**C. Quarterly Fees**

Quarterly fees accruing pursuant to 28 U.S.C. § 1930(a)(6) to date of confirmation shall be paid to the UST on or before the Effective Date. Quarterly fees accruing pursuant to 28 U.S.C. § 1930(a)(6) after confirmation shall be paid to the UST in accordance with 28 U.S.C. § 1930(a)(6) until entry of a final decree, or entry of an order of dismissal or conversion to chapter 7.

**XI. RECOMMENDATIONS AND CONCLUSION**

This Disclosure Statement, which must be read in conjunction with the Plan, contains a detailed summary of the history of the Debtor, the principal causes of the financial difficulties for the Property, a summary of the Plan, and a discussion of the process for confirming this Plan. Creditors and parties in interest are cautioned, however, that reference should be made to the Plan itself for a proper understanding and analysis of its terms and provisions. **ALL HOLDERS OF CLAIMS ARE URGED TO READ THE PLAN CAREFULLY.** The Debtor believes that the Plan is fair, equitable and reasonable. Accordingly, the Debtor urges holders of impaired claims to vote to accept the Plan by returning their properly completed ballots to the Bankruptcy

Clerk by \_:\_ .m., on \_\_\_\_\_, \_\_\_\_.

Respectfully submitted,  
NNN Lenox Park 9, LLC

/s/Steven N. Douglass

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