

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

In re:

NORTH BAY VILLAGE, LLC

**Case No.: 9:10-bk-03090-ALP
Chapter 11 Case**

Debtor.

_____ /

**THIRD¹ AMENDED DISCLOSURE STATEMENT IN
SUPPORT OF NORTH BAY VILLAGE, LLC'S,
CHAPTER 11 PLAN OF REORGANIZATION, DATED MAY 13, 2010**

I. INTRODUCTION

This is the Third Amended Disclosure Statement (the "Disclosure Statement") in the Chapter 11 case of North Bay Village, LLC. This Disclosure Statement contains information about the Debtor and describes North Bay Village, LLC's, Second Amended Chapter 11 Plan of Reorganization, Dated May 13, 2010 (the "Plan"). ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

A. Purpose of this Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and

¹ Originally amended only so as to correct the identity of the Debtor's managing member. This Third Amended Disclosure Statement addresses the treatment of Classes 3 and 4 only.

- The effect of confirmation of the Plan.

Be sure to read the Plan as well as this Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights. All terms used herein shall have the meaning set forth herein or, if not defined herein, shall have the meaning set forth in the definitions section of the Plan. A copy of the Plan is attached hereto as **Exhibit “A”**.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to approve this Disclosure Statement and confirm the Plan will take place on October 7, 2010, at 10:30 a.m., at the United States Courthouse, 2110 First Street, Ft. Myers, Florida 33901.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Hugo S. deBeaubien, Esq., 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida, 33602. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must have been received by September 24, 2010 in order to be counted.

3. *Deadline For Objecting to the Adequacy of the Disclosure Statement and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must have been filed no later than September 30, 2010.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Hugo S. deBeaubien, Esq., at Shumaker, Loop & Kendrick, LLP, 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida, 33602; Tel.: 813-221-7425; Email: bdebeaubien@slk-law.com.

C. Disclaimer

The Court has not yet approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. This Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan.

II. BACKGROUND

A. Description and History of the Debtor's Business

The Debtor, North Bay Village, LLC ("Debtor" or "North Bay," as appropriate), was formed on or about October 9, 2002, as a Florida Limited Liability Company and North Bay Village-MM, Inc., is its managing member. North Bay was formed as a single purpose entity to acquire, operate, lease and liquidate real estate. North Bay, along with its co-tenant, CKS Investment Company, LLP ("CKS"), a Minnesota Limited Liability Partnership, acquired property located at 26381 S. Tamiami Trail, Bonita Springs, Florida 34134, as tenants in common by warranty deed dated July 1, 2003 ("Property").

Prior to the acquisition of the Property, on or about June 26, 2003, North Bay and CKS entered into a Cotenancy and Agency Agreement with recently formed Craven-Shaffer-North Bay Village, LLC ("Craven Shaffer North Bay") in order for Craven Shaffer North Bay to act as North Bay and CKS' agent with respect to the Property. Similarly, in anticipation of the acquisition of the Property, while it was under contract, on or about February 4, 2003, Craven Shaffer North Bay in turn entered into a management agreement with Pelican Bay Construction and Management Services, LLC ("Pelican Bay") and Grand Bay Properties, LLC ("Grand Bay") to provide development, management, operation, maintenance and brokerage services to North Bay and CKS with respect to the Property.

Through Craven Shaffer North Bay, Pelican Bay and Grand Bay, the Property is covered by an agency agreement, its construction was completed and its Property is managed by entities in which James A. Nashman holds an interest. Mr. Nashman currently oversees leasing, maintenance and operations of the Property. North Bay and CKS currently lease the Property to a number of both local and national tenants. A schedule setting forth the Debtor's list of current tenants is attached hereto as **Exhibit "B"**. North Bay filed its Chapter 11 Petition on February 12, 2010 ("Petition Date").

B. Insiders of the Debtor

The Debtor has five members, each of whose interest in the Debtor is set forth below. The Debtor does not pay any of its insiders a salary, nor has it made any distributions to its insiders in the past year. The Debtor's Equity Security Holders are:

Nashman Holdings, LLLP (45.7875%)
Gulf Sands Commercial Development, LLLP (45.7875%)
Keith Jennings (4.95%)
Steve Bracci (2.475%)
North Bay Village-MM, Inc. (1%)

C. Management of the Debtor Before and During the Bankruptcy

During the two years prior to the date on which the bankruptcy petition was filed, the manager in control of the Debtor has been James A. Nashman, by and through his interest in managing member North Bay Village-MM, Inc.

The Manager of the Debtor during the Debtor's Chapter 11 case has been James A. Nashman, by and through his interest in managing member North Bay Village-MM, Inc.

After the Effective Date of the Order confirming the Plan, the manager of the Reorganized Debtor will be James A. Nashman, by and through his interest in managing member North Bay Village-MM, Inc.

D. Events Leading to Chapter 11 Filing

Following prior debt structures, on or about September 14, 2006, North Bay and CKS executed a Consolidated Renewal Promissory Note in the amount of \$23,500,000.00, in favor of CWCaptial LLC ("CWCaptial") ("Nonrecourse Note"). Similarly, on or about September 14, 2006, North Bay and CKS executed an Assignment of Leases and Rents with respect to the Property, in favor of CWCaptial ("Assignment of Rents"). Consistent with the Nonrecourse Note and the Assignment of Rents, on or about September 14, 2006, North Bay and CKS executed an Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents and Security Agreement with respect to the Property, in favor of CWCaptial ("Mortgage").

CWCaptial assigned its Mortgage to Wells Fargo, in its capacity as Trustee. Later, on or about April 4, 2009, Wells Fargo Bank, N.A., in its Capacity as Trustee for the Registered Holders of Cobalt CMBS Commercial Mortgage Trust 2006-C1, Commercial Mortgage Pass-Through Certificates, Series 2006-C1 assigned ("Assignment"), among other documents, the Nonrecourse Note, Assignment of Rents and Mortgage to Bank of America, N.A., in its Capacity as Trustee for the Registered Holders of Cobalt CMBS Commercial Mortgage Trust 2006-C1, Commercial Mortgage Pass-Through Certificates, Series 2006-C1 ("Assignee"). CWCaptial continues to act as the loan servicer for the Assignee.

In light of market conditions in Southwest Florida, the status of the commercial real estate market and overall business conditions in both Florida and throughout the United States, a number of tenants have had to shutter business operations in their lease locations at the Property and a number of tenants have remained in their lease locations at the Property but do not pay rent on a regular basis. As a direct result, rent rolls and associated income to the Debtor have declined markedly. With the decline in rental income, the value of the Property has also declined considerably. As a result, the approximate \$23,342,895.21 balance due the Assignee greatly overshadows the current value of the Property. Accordingly, the current debt load cannot be supported by either the Debtor's income and cash flow or its value and the Assignee is substantially undersecured.

In the months leading up to the Petition Date, the Debtor engaged in substantial negotiations with the Assignee to explore a voluntary write-down of the principal indebtedness due, a short sale of the subject Property or some other restructuring of the associated indebtedness. During such negotiations, and without warning, the Assignee discontinued communications with the Debtor as well as with its professionals and, a week prior to the Petition Date, the Assignee filed a state circuit court action to foreclose the Mortgage and to appoint a receiver ("State Court Action"). Given the nonrecourse nature of the Nonrecourse Note and Mortgage, no deficiency claims were pursued by the Assignee. As of the Petition Date, process had not been served on the Debtor and no hearings had been set in the State Court Action.

If the Debtor chose not to defend the State Court Action or to file its petition in this Court, the Assignee would like prosecute the State Court Action toward displacing the Debtor and associated agents and foreclosing out its interests in the Property. Alternatively, by filing the instant case, the Debtor enjoys an opportunity to value the Property, determine the Assignee's allowed secured claim, restructure the Nonrecourse Note and Mortgage or sell the Property, pay any allowed priority and unsecured claims of other creditors and allow the current tenants the opportunity to continue use, occupancy and the level of operational service they have enjoyed to date.

E. Significant Events During the Bankruptcy Case

Following the filing of the Chapter 11 Petition along with the Schedules and Statement of Financial Affairs, the Debtor filed its Emergency Motion to Use Cash Collateral (Doc. 2) ("Cash Collateral Motion"), its Motion to Value Collateral of Registered Holders of Cobalt CMBS Commercial Mortgage Trust 2006-C1 Commercial Mortgage Pass-Through Certificates, Series 2006-C1, Bank of America as Trustee (Doc. 29) and its Amended Motion to Value Collateral of CWC Capital LLC (Doc. 38) (collectively "Motion to Value"). The Debtor completed its Meeting of Creditors and the Office of the United States Trustee concluded the same. The Court granted the Cash Collateral Motion and a form of Order is expected to be entered by this Court in the near future. As for the Motion to Value, the Debtor and the Secured Lender each engaged their own appraisers and ultimately agreed on a value for the Property of \$10,200,000.00. Owing to a substantial change in circumstances since the time of the Debtor and CWC Capital's appraisals, the

Debtor has recently filed its Supplemental Motion to Value Collateral (Doc. __); through litigation on the Supplemental Motion to Value and applicable provisions of the Bankruptcy Code, the Secured Lender's entire claim is expected to be dramatically reduced to an amount consistent with the value of the property and the ability of the Debtor to service the debt. Confirmation of the Plan is expected to occur in conjunction with such a valuation.

F. Projected Recovery of Avoidable Transfers

The Debtor intends to pursue preference, fraudulent conveyance, and other avoidance actions, to the extent such claims exist.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are as follows:

Real Property located at 26381 S. Tamiami Trail, Bonita Springs, Florida 34134 has a current fair market value of approximately \$5,000,000.00 to \$8,000,000.00, far below the Secured Lender's asserted secured claim. The Secured Lender claims the Debtor is indebted on a mortgage for this Property in an amount exceeding \$23,000,000.00.

The Debtor holds approximately \$750,000.00 in cash assets (\$300,000.00 of which will be paid to the Secured Lender), approximately \$100,000.00 in accounts receivable, reserve accounts totaling approximately \$255,000.00, and physical personal property in the approximate amount of \$1,151.00.

III. SUMMARY OF THE CHAPTER 11 PLAN AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Chapter 11 Plan?

As required by Chapter 11 of Title 11 of the United States Code (the “Code”), the Plan places Creditors and Equity Security Holders in various classes and describes the treatment each class will receive on account of their . The Plan also provides whether each class of Claims or Equity Security Holders is impaired or unimpaired. Unimpaired classes will receive payment in full on their allowed claim amounts. Impaired classes will receive either payment in full under circumstances less advantageous than previously agreed upon between the claim holder and the Debtor or pro rata payment of their allowed claim amounts. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan and will be paid on terms set forth in the Plan, as confirmed.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code.

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Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case which are allowed pursuant to § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the petition date of February 12, 2010 ("Petition Date"). The Bankruptcy Code requires that all administrative expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	Unknown	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, not yet approved by the Court. Shumaker, Loop & Kendrick, LLP—Counsel for the Debtor	\$150,000.00	Paid in full on the Effective Date of the Plan, or according to separate written agreement, or according to Court Order if such fees have not been approved by the Court on the effective date of the Plan
Armalavage & Associates, Inc.—Appraiser	\$30,000.00	
Berkowitz, Dick, Pollack & Brant--Accountants	\$20,000.00	
Clerk's Office Fees	Unknown	Paid in full on the effective date of the Plan
Other administrative expenses	Unknown	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	Unknown	Paid in full on the effective date of the Plan
TOTAL	\$200,000.00	

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding five (5) years from the order of relief.

The Debtor anticipates that there will be no § 507(a)(8) priority tax claims, or, to the extent any such claims are filed, they will be in an amount below \$1,000.00. In the event any such priority tax claims are filed, they will be paid in full on the effective date of the Plan.

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

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Class	Description	Impairment	Treatment
Class 3	<p>Secured claim of: Bank of America, N.A., in its Capacity as Trustee for the Registered Holders of Cobalt CMBS Commercial Mortgage Trust 2006-C1, Commercial Mortgage Pass-Through Certificates, Series 2006- C1</p> <p>Collateral description =Real property located at 26381 S. Tamiami Trail, Bonita Springs, Florida 34134</p> <p>Priority of lien = First</p>	Unimpaired	<p>The Property constituting Secured Lender's collateral will be valued, whether by stipulation between the Debtor-in-Possession and Secured Lender, or by Order of the Bankruptcy Court.</p> <p>That value shall constitute the amount of principal due to Secured Lender, as of the Petition Date, pursuant to the terms of the Promissory Note and Mortgage executed by the Debtor in favor of Secured Lender ("Principal"). Secured Lender will receive payment in full on that Principal, net of any post-petition payments made to Secured Lender between the Petition Date and the Effective Date, which will reduce the Principal to the net principal ("Net Principal").</p> <p>As of the Effective Date, the Reorganized Debtor will repay the Net Principal pursuant to the terms and conditions of the Promissory Note and Mortgage executed by the Debtor in favor of Secured Lender, leaving unaltered the legal, equitable and contractual rights governing the repayment of the Net Principal due. Such payments will be made in accord with the terms and conditions of the Promissory Note and Mortgage executed by the Debtor in favor of the Secured Lender amortizing such amount over a term of thirty (30) years at the contract rate of interest in the annual amount of 6.034% per annum.. Repayment of the Net Principal shall commence on the Initial Distribution Date, and then be made monthly in accordance with the terms and conditions of the Promissory Note and Mortgage executed by the Debtor in favor of Secured Lender. The amount of the Net Principal then remaining on October 1, 2016 shall be paid in full on that date as the obligation will balloon in accord with the terms and conditions of the Promissory Note and Mortgage executed by the Debtor in favor of Secured Lender. The Debtor shall not be liable for any amounts to Secured Lender over and above the Net Principal described hereinabove.</p> <p>Similarly, as the result of the nonrecourse nature of the loan owed to the Secured Creditor, the Guarantors shall not be liable for any amounts to Secured Lender over and above the repayment of the Net Principal, as outlined above. Any claims against the Guarantors, other than Freida R. Lauer ("F. Lauer") shall be stayed indefinitely as long as timely payments are made on the Net Principal on the Initial Distribution Date and monthly until the Final Distribution Date, minus any post-petition payments to Secured Lender, which shall be paid in full by the Reorganized Debtor as provided herein. The guaranty claims against F. Lauer shall be released pursuant to the terms and provisions below.</p>

2. *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
Class 4	General Unsecured Class	Unimpaired	Unsecured creditors holding Allowed Claims will be paid in full as of the Effective Date of this Plan, or as soon as is practicable thereafter, from Estate Assets. Any Disputed Claims or Claims for which an objection has been interposed shall have its proportionate quarterly distributions disbursed into a segregated escrow account pending the resolution of the claim objection.

3. *Class of Lessee Depositors*

Lessee Depositors are current tenants of the Debtor for whom the Debtor is holding a security deposit.

The following chart sets forth the Plan's proposed treatment of the class of Lessee Depositors:

Class #	Description	Impairment	Treatment
Class 5	Lessee Depositors	Unimpaired	Lessee Depositors, tenants on the Property who hold leases on portions of the Property, will have their leases assumed as of the Effective Date of the Plan through confirmation of the Plan and their lease deposits will be transferred into a post-confirmation segregated account utilized solely to hold lease deposits.

4. *Class of Executory Contract Holders*

Executory Contract Holders are parties who are in an executory contract with the Debtor.

The following chart sets forth the Plan's proposed treatment of the class[es] of Executory Contract Holders:

Class #	Description	Impairment	Treatment
Class 6	Executory Contract Holders	Unimpaired	Holders of other Executory Contracts will have their contracts assumed or rejected prior to confirmation of the Plan. To the extent such contracts are assumed, the Debtor will provide for a prompt cure of any defaults in accord with 11 U.S.C. § 365. To the extent such contracts are rejected, the holders of such contracts will be permitted thirty (30) days time to file any contract rejection damages claims notwithstanding the expiration of the Bar Date. Any executory Contract which has neither been assumed nor rejected, as of Confirmation of the Plan, will be deemed rejected by and through the act of Confirmation of the Plan.

5. *Class of Equity Security Holders*

Equity Security Holders are parties who hold an ownership interest in the Debtor. In a limited liability company, the members of the LLC are Equity Security Holders.

The following chart sets forth the Plan's proposed treatment of the class of Equity Security Holders:

Class #	Description	Impairment	Treatment
Class 7	Equity Security Holders	Impaired	Equity Security Holders shall receive a distribution of membership interests in the Reorganized Debtor consistent with their current Equity Security holdings. No distributions of monies shall be made to the Equity Security Holders in any month unless and until both (i) all periodic operating expenses and (ii) required Distributions outlined herein have been paid and are current as of the time such a proposed Distribution is to be made to any of the Equity Security Holders.

D. Means of Implementing the Plan

1. *Source of Payments*

The Reorganized Debtor will continue to collect rent from its tenants pursuant to the terms of those lease agreements which are assumed through confirmation of the Plan and the operation of 11 U.S.C. 365. The Reorganized Debtor will also work to renew those leases which are set to expire during the life of the Plan. Further, the Reorganized Debtor will employ a marketing strategy in an effort to attract new tenants to currently vacant space, as well as any space which may subsequently become vacant, at the Property. All Distributions made under the Plan shall be funded from the above-described operations.

2. *Post-confirmation Management*

Following confirmation of the Plan, North Bay Village-MM, Inc., as the Reorganized Debtor's Managing Member, will be responsible for management of the Reorganized Debtor. Through North Bay Village-MM, Inc., James A. Nashman will monitor the day to day Operations of the Debtor and oversee Distributions and the pursuit of any avoidable transfer claims.

E. **Risk Factors**

Assuming that the Plan is confirmed, the Plan's success going forward depends almost entirely on a combination of the ability of the Property's current tenants to fulfill their lease obligations, and on the Reorganized Debtor's ability to attract new tenants to occupy vacant space in the Property and to manage existing rentals at the Property. Both of these variables depend, in turn, on the stability and recovery of the economy in and around Bonita Springs, the State of Florida generally, and the United States.

F. **Executory Contracts and Unexpired Leases**

The Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any.

If you object to the assumption of your unexpired lease or executory contract, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in the Plan, or the subject of a separately filed Motion to Assume or Reject, will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is Thirty (30) days after the rejection of any Lease or Contract, notwithstanding the Bar Date. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

G. Tax Consequences of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.

The Debtor is current on all of its tax obligations and does not anticipate any additional tax consequences related to its bankruptcy case or the implementation of the Plan.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmed, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity security interest holder at least as much as the creditor or equity security interest holder would receive in a Chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that the classes of secured creditor (Class 3), unsecured creditors (Class 4) and equity security interest holders (Class 7) are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that the other classes of claims are unimpaired and that holders of claims in these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline set by the Bankruptcy Court for filing a proof of claim in this case was April 28, 2010.

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity security interest has the right to vote only if it is in a class which is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity security interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for their claim in each different class.

B. **Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by cram down on non-accepting classes.

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Non-accepting Classes*

Even if one or more impaired classes reject the Plan, the Bankruptcy Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a cram-down plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and equitable toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a cramdown confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. **Liquidation Analysis**

To confirm the Plan, the Bankruptcy Court must find that all Creditors and Equity Interest Holders who do not accept the Plan will receive at least as much under the Plan as such Creditors and Equity Interest Holders would receive in a chapter 7 liquidation. A liquidation analysis, including a going concern analysis for comparison's sake, was attached to the Amended Disclosure Statement (Doc. 62) as **Exhibit "C"**.

D. Feasibility

The Court must find 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 any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Fund Plan*

The Debtor-in-Possession believes that it will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on that date and, further, that the Reorganized Debtor will generate sufficient Cash through Operations to fund the Plan during the Plan Distribution Period without having to utilize its additional cash on hand following the Effective Date. A projected budget for the Reorganized Debtor will be circulated at the confirmation hearing on October 7, 2010.

You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.

V. EFFECT OF CONFIRMATION OF PLAN

A. Binding Effect of Confirmation

In accordance with § 1141(a) of the Code, the provisions of a confirmed plan bind the Debtor, any entity issuing securities under the Plan, any entity acquiring property under the Plan, and any Creditor, equity security holder, or general partner in the Debtor, whether or not the Claim or Interest of such Creditor, equity security holder or general partner is impaired under the Plan and whether or not such Creditor, equity security holder or general partner has accepted the Plan.

B. Modification of Plan

The Debtor-in-Possession may modify the Plan at any time before confirmation of the Plan. However, if the Plan is modified, the Court may require a new disclosure statement and/or re-voting on the Plan.

The Debtor-in-Possession may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the Estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Reorganized Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Dated October 6, 2010

Respectfully submitted,

By: /s/ James A. Nashman

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President, North Bay Village-MM, Inc, in its capacity
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