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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**PRIUM SPOKANE BUILDINGS,
L.L.C.,**

Debtor.

No. **10-06952-FLK11**
Chapter **11**

SECOND AMENDED DISCLOSURE STATEMENT

January 15, 2013

Propounded by Prium Spokane Buildings, L.L.C.

DAVIDSON BACKMAN MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL LIMITED LIABILITY COMPANY

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1 SECTION 1. **INTRODUCTION.**

2 1.1 **ADEQUATE INFORMATION.**

3 This Second Amended Disclosure Statement (the "Disclosure Statement") is
4 presented with respect to the Chapter 11 case of Prium Spokane Buildings, L.L.C.
5 ("Prium Spokane"). Prium Spokane filed a Petition for Relief under Chapter 11 of
6 the Bankruptcy Code (the "Code") on December 16, 2010 (the "Petition Date"),
7 and has been a Debtor In Possession since the time of filing. This Disclosure
8 Statement is prepared by Prium Spokane and is submitted on its behalf. Prium
9 Spokane filed a Plan of Reorganization on November 29, 2011, a First Amended
10 Plan of Reorganization on November 8, 2012, and a Second Amended Plan of
11 Reorganization (the "Plan") concurrently herewith, Prium Spokane is the
12 Proponent of that Plan.
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16 This Disclosure Statement has been prepared pursuant to Section 1125 of
17 the Code, which prohibits solicitation of acceptance or rejection of a Plan of
18 Reorganization until interested parties are provided with a written Disclosure
19 Statement that has been approved by the Court as containing adequate
20 information. Such information must be of a kind, and in sufficient detail, to
21 enable a hypothetical reasonable investor typical of each affected class of
22 creditors to make an informed judgment about the Plan. The Court, after
23 allowing interested parties an opportunity to be heard, has determined that
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1 Prium Spokane has complied with the requirements of Section 1125, and has
2 found that this Disclosure Statement contains adequate information.

3 This Disclosure Statement should be considered in its entirety. The
4 information contained in this Disclosure Statement is representative of the affairs
5 of Prium Spokane as of the date of its submission to the Court. As there may be
6 events that have occurred subsequent to the submission of the Disclosure
7 Statement, Prium Spokane cannot warrant that no material changes have
8 occurred since the filing of this Disclosure Statement.
9

10 Other than this Disclosure Statement, the Court has authorized no
11 representations concerning present or future operations of Prium Spokane, the
12 financial condition of Prium Spokane, or the analysis of benefits offered under the
13 Plan. Any unauthorized information that is contrary to the provisions of the
14 Disclosure Statement should be disregarded.
15

16 The valuations contained in this Disclosure Statement, unless noted, have
17 been determined without the assistance of professional appraisers, and have been
18 based primarily upon information supplied by Prium Spokane. The information
19 contained in this Disclosure Statement has not been subject to audit, and the
20 approval of this Disclosure Statement by the Court does not constitute an
21 endorsement by the Court of the Plan, or a guarantee that the information
22 contained herein is complete or accurate.
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1 1.2 DEFINITIONS.

2 For the purposes of the Disclosure Statement and Plan, the following
3 capitalized terms shall be defined as set forth below:
4

5 ADMINISTRATIVE EXPENSE: Any cost or expense of administration
6 incurred in connection with the Prium Spokane Bankruptcy Case of a kind
7 specified in section 503(b) of the Bankruptcy Code including, but not limited to,
8 those type of expenses referred to in sections 507(a)(2) of the Bankruptcy Code
9 and including, without limitation, any actual and necessary costs and expenses
10 of preserving Prium Spokane's Estate, incurred after the Petition Date and prior
11 to the Effective Date, any indebtedness or obligation incurred or assumed by
12 Prium Spokane, as debtors-in-possession, in connection with the conduct of its
13 business, all compensation for legal or other services and reimbursement of costs
14 and expenses allowed under sections 330(a) or 331 of the Bankruptcy Code or
15 otherwise pursuant to Court order, all costs of making distributions and all fees
16 and charges assessed against the Prium Spokane Estate under Chapter 123, Title
17 28, United States Code.

18 ALLOWED ADMINISTRATIVE EXPENSE: All or that portion of any
19 Administrative Expense that either has been allowed by a Final Order or has not
20 been objected to on, or before, the Effective Date or such other date set by order
21 of the Court and all periods in which to file objections to the Administrative
22 Expense have expired.

23 ALLOWED CLAIM: A claim (a) for which a Proof of Claim has been filed with
24 the Court within the time fixed by the Court, or (b) which is scheduled in the list
25 of creditors prepared and filed with the Court by Prium Spokane and is not listed
as disputed, contingent, or unliquidated as to amount: in either case as to which
no objections to the allowance thereof had been filed, or as to which a final order
or judgment has been entered allowing said claim.

ALLOWED SECURED CLAIM: An Allowed Claim secured by a lien, security
interest, or other charge against or interest in property in which Prium Spokane
has an interest.

BANKRUPTCY CASE: The Chapter 11 proceedings of Prium Spokane under
Case No. 10-06952-FLK11.

1 BANKRUPTCY ESTATE: The bankruptcy estate of Prium Spokane pursuant
2 to section 541 of the Bankruptcy Code.

3 CLAIM: Any right to payment, or right to an equitable remedy for breach of
4 performance if such breach gives rise to a right to payment, whether or not such
5 right to payment or right to an equitable remedy is reduced to judgment, whether
6 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
7 undisputed, legal, equitable, secured, or unsecured.

8 CLASS: Any class into which Allowed Claims or Allowed Interests are
9 classified pursuant to Section 4.2 of this Disclosure Statement.

10 CODE: The Bankruptcy Code, 11 USC 101 et seq. and any amendments
11 thereof.

12 CONFIRMATION DATE: The date upon which the Order of Confirmation
13 becomes a Final Order.

14 CONFIRMATION ORDER: The order entered by the Court confirming the
15 Plan in accordance with the provisions of Chapter 11 of the Code, which order is
16 no longer subject to appeal and as to which no appeal is pending.

17 COURT: The United States Bankruptcy Court for the Eastern District of
18 Washington, in which this Chapter 11 case is pending.

19 DEBTOR: Prium Spokane is the Debtor in these Chapter 11 proceedings.

20 DISALLOWED CLAIM: Any Claim or portion thereof that has been
21 disallowed by a Final Order.

22 DISCLOSURE STATEMENT: This Disclosure Statement submitted by Prium
23 Spokane, as modified or amended, that (a) relates to the Plan and contains that
24 information which is required under section 1125(a)(1) of the Bankruptcy Code
25 and (b) is approved by the Court under section 1125(b) of the Bankruptcy Code.

DISPUTED CLAIM: (a) Any Claim or portion of a Claim or Existing Equity
Interest (other than an Allowed Claim) which is scheduled by Prium Spokane as
disputed, contingent, or unliquidated, or (b) a Claim or Equity Interest which has
been filed pursuant to section 501(a) of the Bankruptcy Code as unliquidated or
contingent, or (c) a Claim or Existing Equity Interest which has been filed

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1 pursuant to section 501(a) of the Bankruptcy Code and as to which an objection
2 to the allowance thereof has been interposed within the time limitation fixed by
3 the Bankruptcy Code, by an order of the Court or by the Plan which objection has
not been settled or determined, in whole or in part, by a Final Order.

4 *EFFECTIVE DATE:* If the Order Confirming the Plan is not appealed, and no
5 motion for reconsideration or similar relief is pending, the Effective Date shall be
6 the fifteenth day after the Confirmation Date. If the Order Confirming the Plan of
7 Reorganization is appealed, or a motion for reconsideration or similar relief is
pending, the Effective Date shall be fifteen (15) days after the Order Confirming
the Plan becomes a Final Order.

8 *FINAL ORDER:* An order or judgment of a court, the implementation,
9 operation or effect of which has not been reversed, stayed, modified, or amended
10 and as to which order or judgment (or any revision, modification, or amendment
11 thereof) the time to appeal or seek review or rehearing or writ of certiorari has
12 expired and as to which no appeal or petition for review or rehearing or certiorari
has been taken or is pending.

13 *INTERESTS:* The equity interests of the members of Prium Spokane in
14 Prium Spokane.

15 *PLAN:* The Plan as may be amended or modified from time to time and the
16 exhibits and schedules annexed thereto or referred to therein, as such may be
modified from time to time.

17 *PRO RATA:* With respect to a distribution to any holder of an Allowed Claim
18 or interest in a given class, the amount of such distribution shall be calculated by
19 multiplying the total amount available for distribution by a factor, the numerator
20 of which is said holder's Allowed Claim or interest, and the denominator of which
is the aggregate of the Allowed Claims or interest of that class.

21 *REORGANIZED DEBTOR:* Prium Spokane following the Effective Date.

22 *SECURED CLAIM:* All or that portion of any Claim that is secured by a valid
23 perfected lien on property of Prium Spokane, to the extent of the value of the
24 interest of the holder of such Claim in such property, as determined by agreement
25 between Prium Spokane and the holder of such Secured Claim or by the Court by
a Final Order pursuant to section 506(a) of the Bankruptcy Code, together with
such interest (including, where applicable, interest accrued on and after the

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1 Petition Date), fees, costs and charges as may be allowed by such agreement or by
2 the Court under section 506(b) of the Bankruptcy Code.

3 UNSECURED CLAIM: Any Claim to the extent the same is not secured by
4 property of the Estate or entitled to a priority under section 507(a)(1) - (8) of the
5 Bankruptcy Code, such as a Priority Claim, a Priority Tax Claim, or an
6 Administrative Expense.

6 1.3 CONFIRMATION OF PLAN.

7 Creditors holding Allowed Claims in this proceeding are entitled to vote for
8 or against acceptance of the Plan that accompanies this Disclosure Statement.
9 Acceptance of the Plan by creditors is important. To gain confirmation, it is
10 generally required that creditors holding at least two-thirds in amount and more
11 than one-half in number of Allowed Claims of each Class of creditors vote for
12 acceptance of the Plan. To obtain confirmation of the Plan, the Proponents will be
13 required to demonstrate that the Plan is in the best interests of creditors, and
14 meets the fair and equitable standards of Section 1129(b) of the Bankruptcy
15 Code.
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18 Ballots have been provided to all known holders of Claims, including
19 Claims as to which objections have been filed, or Claims which were listed as
20 contingent, unliquidated, or disputed. Only holders of Allowed Claims, or Claims
21 that are deemed allowed, are entitled to vote on the Plan. A Claim as to which an
22 objection has been filed is not considered an Allowed Claim unless or until the
23 Court rules unfavorably on that objection. Accordingly, although the holders of
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1 disputed Claims will receive ballots, these votes will not be counted unless the
2 Court temporarily allows that Claim for purposes of voting on the Plan. The
3 Disclosure Statement and Plan may refer specifically to certain Claims or
4 Interests. Such references are not an admission by the Proponent of the nature,
5 extent, or allowability of any such Claims.
6

7 The Court is required to enter a series of findings as part of Plan
8 confirmation, including findings: (1) that the Plan has classified creditor Claims
9 and shareholder Interests as required by law; (2) that the contents of the Plan
10 comply with the technical requirements of Chapter 11 of the Bankruptcy Code;
11 (3) that the Plan has been proposed in good faith; and (4) all disclosures made
12 regarding the Plan have been as required, and have included information
13 regarding all payments made or promised in connection with the Plan, as well as
14 the identity, affiliations, and compensation to all insiders.
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17 **SECTION 2. HISTORY.**

18 2.1 GENERAL BACKGROUND PRIOR TO CHAPTER 11 FILING. Prium
19 Spokane was formed in July 31, 2006 as a Washington limited liability company
20 by Prium Companies, LLC ("Prium Companies"), which is a real estate investment
21 entity that holds multiple commercial properties throughout Washington.
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1 **The Intervest Note and First Position Deed of Trust**

2 In September of 2006, Prium Spokane purchased the Wells Fargo Center,
3 from Spokane Acquisitions, L.L.C. and Walt Worthy and Karen Worthy, together
4 with an adjoining parking garage located south of the building, and a parking lot
5 located further south past an adjacent railroad viaduct (the "Parking Lot"). The
6 purchase was financed through a loan in the amount of \$25,575,000.00 (the
7 "Intervest Loan") from Intervest-Mortgage Investment Company ("Intervest"), as
8 evidenced by a Promissory Note dated September 8, 2006 (the "Intervest Note").
9 The Intervest Loan was secured by a first position Deed of Trust, Assignment of
10 Rents, Security Agreement and Fixture Filing (the "Intervest of Deed of Trust")
11 against the Wells Fargo Center, executed by Prium Spokane on or about
12 September 8, 2006. Sterling Savings Bank ("Sterling") is the assignee of Intervest,
13 and is now the owner and holder of the Intervest Note and Intervest Deed of
14 Trust.
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19 **The Mastro Note and Second Position Deed of Trust**

20 On January 31, 2008, Prium Spokane borrowed \$11,477,757.93 from
21 Michael R. Mastro ("Mastro"), evidenced by a Promissory Note (the "\$11.4M Note")
22 and secured by a second position Deed of Trust (the "Mastro Deed of Trust")
23 against Parcels 1 and 2 of the Wells Fargo Center. Mastro subsequently assigned
24 the \$11.4M Note and the Mastro Deed of Trust to Wells Fargo Bank, National
25

1 Association ("Wells Fargo") as collateral for the repayment of unrelated
2 obligations, as set forth in a Forbearance and Release Agreement dated
3 December 22, 2008. Pursuant to that Forbearance and Release Agreement,
4 Mastro executed a Confession of Judgment and agreed to pay Wells Fargo certain
5 payments to resolve pending litigation to enforce a defaulted Revolving Line of
6 Credit Note payable to Wells Fargo in the amount of \$2,000,000.00, plus interest,
7 default interest, and attorneys' fees and costs.
8

9
10 Mastro again assigned the Mastro Deed of Trust to Terry Durst ("Durst") for
11 collateral purposes only pursuant to a Partial Assignment of Deed of Trust
12 recorded on April 10, 2009. On July 10, 2009, Durst re-assigned the Mastro
13 Deed of Trust back to Mastro. Mastro again assigned the Mastro Deed of Trust to
14 Durst pursuant to a Partial Assignment of Deed of Trust recorded on July 15,
15 2009. A final assignment of the Mastro Deed of Trust was recorded from Wells
16 Fargo Bank to Glenn Davis ("Davis") and Jeffrey Silesky ("Silesky") on July 9,
17 2010 in accordance with the terms of an Agreement For Non-Recourse
18 Assignment Of Forbearance Documents dated May 26, 2010, whereunder Wells
19 Fargo sold and assigned all right, title, and interest in the Forbearance and
20 Release Agreement to Davis and Silesky. Davis and Silesky have collected
21 nothing under the Forbearance and Release Agreement, and claim a balance due
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1 thereunder of \$405,557.35 as of August 3, 2012, in addition to attorneys' fees
2 and costs that exceed \$100,000.00.

3
4 As a result of the above transactions, Davis and Silesky assert a first right
5 to the proceeds of the \$11.4M Note, which is unpaid, and in default. That claim
6 competes for payment with the claim of James F. Rigby ("Rigby"), solely as
7 Trustee for the Bankruptcy Estate of Michael R. Mastro (pending in the United
8 States Bankruptcy Court for the Western District of Washington, Case No. 09-
9 16841-MLB (the "Mastro Bankruptcy Case")), who filed a Proof of Claim on
10 March 15, 2011 in the amount of \$11,477,757.93 (the "Rigby Claim") as a
11 secured claim based on the same \$11.4M Note and the Mastro Deed of Trust.
12

13 The Rigby Claim alleged that the assignments of the \$11.4M Note and the
14 Mastro Deed of Trust from Wells Fargo to Davis and Silesky, and from Mastro to
15 Durst, were avoidable, as neither Davis and Silesky, nor Durst, filed a UCC-1
16 financing statement to properly perfect their claimed security interest in the
17 \$11.4M Note, or ever had possession of the Mastro Note. The Rigby Claim
18 asserted:
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21 Because the assignments were for security purposes, or were not
22 valid and/or are otherwise avoidable by the Mastro Bankruptcy
23 trustee, the bankruptcy estate of Michael R. Mastro either still owns
24 the \$11,477,757.93 Note or is entitled to avoid the various transfers
25 of the Note to Durst, Davis and Silesky for the benefit of the Mastro
bankruptcy estate. The only possible exception is the \$300,000, if
any, that is still owing on the Wells Fargo forbearance obligation
assigned by Wells Fargo to Davis.

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1 The Rigby Claim was disputed. Pursuant to the terms of Interest-
2 Mortgage Investment Company's Order Granting Relief From Stay And
3 Abandonment (the "Abandonment Order") entered on March 26, 2010 in the
4 Mastro Bankruptcy Case [*Docket No. 1110*], the Bankruptcy Court concluded that
5 Mastro did not have an equity interest in the Property. The Abandonment Order
6 further provided:
7

8 This Order shall be binding on all parties in interest in this
9 bankruptcy proceeding, including without limitation any trustee,
10 committee or Debtor in possession, and binding in the event of
11 conversion of this case to another chapter of the Bankruptcy Code,
12 dismissal and reopening of this case, or the filing of another case by
13 the Debtor involving the real and personal property collateral
14 described herein.

15 . . .

16 The Chapter 7 Trustee is hereby ordered, and does by this Order
17 abandon all its interest, if any, in the Property and the Mastro Deed of
18 Trust.

19 Based on the Abandonment Order, Prium Spokane believed that the
20 Chapter 7 Trustee should be collaterally estopped from asserting that the Mastro
21 bankruptcy estate had any interest in the property or the Mastro Deed of Trust.
22 Even if the Chapter 7 Trustee were not estopped, the Mastro Deed of Trust is
23 undersecured, and any allowance thereof should remain subject to the
24 satisfaction of the underlying liability to Wells Fargo, as assigned to Davis and
25 Silesky.

1 The Rigby avoidance claims were also at issue in adversary proceedings
2 that were commenced in the Mastro Bankruptcy Case through the filing of a
3 Complaint To Avoid Transfers Under Bankruptcy Code Sections 544, 547, 548,
4 549, 550, 551 and RCW 19.40 et seq. against Terry Durst, Diana L. Durst, The
5 Durst Living Trust, The Destiny Patricia Durst Irrevocable Trust, The John L.
6 Durst Living Trust, Silesky, Francine R. Gaillour (“Gaillour”), and Davis, under
7 Adversary Case No. 11-01801-MLB seeking to avoid alleged transfers of Mastro's
8 property to or for the benefit of those parties. As relevant to the Prium Spokane
9 Chapter 11 case, Rigby asserted that “the various assignments or attempted
10 assignments of an interest to Terry Durst in the approximately \$11.4 million Note
11 and Deed of Trust relating to the Wells Fargo Center Building in Spokane and the
12 further assignments and/or transfers of interests in that obligation by Durst and
13 or Mastro to Glenn Davis and Jeffery Silesky and/or their spouses” are avoidable.
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17 On or about June 11, 2012, a Settlement Agreement was executed by and
18 among Rigby, Davis, Theresa Eslit, Silesky, and Gaillour. To the extent relevant
19 to these proceedings, the Settlement Agreement provided for the assignment of
20 the \$11.4M Note to Rigby, together with the \$6.85M Note referenced below. The
21 Settlement Agreement further provided for Davis, Theresa Eslit, Silesky, and
22 Gaillour to retain the security interest of Wells Fargo in the \$11.4M Note. The
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1 Settlement Agreement was approved in the Mastro Bankruptcy Case on July 5,
2 2012.

3 **The Durst Note and Third Position Deed of Trust**

4
5 In February of 2009, Prium Spokane executed a Promissory Note in the
6 amount (the “\$6.85M Note”) that was listed on the Schedule of Assets and
7 Liabilities filed herein at Schedule D - Creditors Holding Secured Claims, showing
8 Davis, Silesky, and Gaillour as assignees of the \$6.85M Note and a Third Deed of
9 Trust against the Property. As the claim of Davis, Silesky, and Gaillour was not
10 scheduled as disputed, contingent, or unliquidated, a prima facie claim in the
11 amount of \$6,850,000.00 was created in their favor.
12

13 It was determined during the course of these proceedings that the \$11.4M
14 Note referenced above had been amended on December 4, 2008 by a First
15 Amendment To Promissory Note (the “First Amendment”) that extended the term
16 of the Mastro Note from January 31, 2009 to January 31, 2010, and stated the
17 existing balance as \$11,611,554.92. A Second Amendment To Promissory Note
18 (the “Second Amendment”) was executed by Prium Spokane and Mastro on
19 December 31, 2008 that, in effect, restated the Mastro Note (including accrued
20 interest) as two separate instruments by reducing the stated principal balance of
21 the Mastro Note to \$5,775,757.00, while requiring the execution of the \$6.85M
22 Note.
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1 On July 6, 2009, Prium Spokane, Mastro, Davis, Silesky, Gaillour, and Tom
2 Price executed a Business Agreement (the "Business Agreement") that set forth
3 further agreements of those parties regarding the Mastro Note, which was stated
4 at \$11,477,757.93, while also referencing the notes (sic) of Davis, Silesky, and
5 Gaillour in the approximate balance of \$6,000,000.00. Prium Spokane and
6 Mastro then executed a Third Amendment To Promissory Note (the "Third
7 Amendment") on that same date which stated that the principal balance of the
8 Mastro Note would be \$11,644,520.00, and stated: "[t]his addendum replaces any
9 and all previous addendums in writing or verbally as of the date this addendum is
10 signed."
11 signed."

12
13 As a result of these transactions, the \$6.85M Note was of no further force
14 and effect. On June 15, 2012, Prium Spokane filed an Objection To Prima Facie
15 Claim Of Davis, Silesky And Gaillour, And Notice Of Right To Object with respect
16 to the prima facie \$6.85M claim. On July 26, 2012, the Court entered an order
17 disallowing that claim.
18

19 **Condominium Conversion and Sale to INHS**

20
21 In 2009, Inland Northwest Health Services ("INHS"), a major tenant of the
22 Wells Fargo Center, and a lessee of most of the available spaces in the adjoining
23 parking garage, held an option to purchase a portion of the Wells Fargo Building
24 that required the conversion of the building to office condominiums. However,
25

1 past due real property taxes were required to be brought current at the time of
2 conversion, and Prium Spokane lacked the necessary funds to make that
3 payment. On July 8, 2009, to facilitate the condominium conversion, Davis and
4 Silesky loaned \$480,000.00 to Hyun J. Um and Thomas Price, the principals of
5 Prium Companies, to partially fund the payment of those real property taxes,
6 together with other expenses that were payable prior to the conversion.
7

8 On July 9, 2009, the conversion of the Wells Fargo Center to office
9 condominiums was completed through the recording of a Declaration and
10 Covenants, Conditions and Restrictions and Reservations (the "CC&Rs") for 601
11 Spokane Office, a Condominium. Thirty-six (36) separate office condominium
12 units were created, and a portion of the ground floor and all of floors 2, 4, 5, 6,
13 and 12 were sold to INHS, together with the Parking Lot, while the parking garage
14 remained under the ownership of Prium Companies. The \$480,000.00 loan from
15 Davis and Silesky to Hyun J. Um and Thomas Price was repaid at the closing of
16 the sale to INHS, as agreed.
17

18 Since the sale to INHS, Prium Spokane continued to own all of the
19 remaining office condominium units for lease to third parties, including Units 1,
20 3, 101, 301, 701, 801, 901, 1001, 1101, 1301, 1401, 1501, 1601, and 1701,
21 together with additional rentable space in the basement of the Wells Fargo
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1 Center, an undivided interest in the common elements and limited common
2 elements, and the adjoining parking garage (collectively, the "Property").

3 **Other Matters Affecting The Property**

4
5 The Property, in addition to the Intervest Deed of Trust, the Mastro Deed of
6 Trust, and the Durst Deed of Trust, was subject to condominium assessments in
7 favor of 601 Spokane Condominium Association, as the owners association for
8 601 Spokane Office, a Condominium. The condominium assessments totaled
9 approximately \$48,312.00 per month, and were paid when due.

10
11 The Property was also subject to a mechanics and materialmen's lien in
12 favor of Specialty Construction Systems, Ltd. ("Specialty Construction") and a
13 mechanics and materialmen's lien in favor of Yost, Mooney and Pugh Contractors,
14 Inc. ("Yost, Mooney and Pugh"), arising from certain tenant improvements relating
15 to the office condominium that was leased to Shell Oil Company (the "Prium-Shell
16 Lease"). Specialty Construction and Yost, Mooney and Pugh each filed suit in the
17 Superior Court, State of Washington, County of Spokane, for money judgment
18 and lien foreclosure, under Case Nos. 10-2-01321-5 and 10-2-00131-4. An Order
19 Granting Joint Motion For Imposition Of Constructive Trust was entered in each
20 case on November 1, 2010, whereunder Specialty Construction and Yost, Mooney
21 and Pugh were each granted a constructive trust on the proceeds of the Prium-
22 Shell Lease until Yost, Mooney and Pugh and Specialty Construction were paid
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1 for the work performed. Shell Oil Company was ordered to make its monthly
2 lease payments into the Spokane County Superior Court Registry until Yost,
3 Mooney and Pugh and Specialty Construction were fully paid.
4

5 The Prium-Shell Lease was subject to a lien for unpaid commissions in
6 favor of Black Commercial, Inc. d/b/a NAI Black, recorded November 17, 2009 in
7 the amount of \$43,903.17. Pursuant to statute, the commission claim is a
8 personal property lien that attaches only against the Prium-Shell Lease proceeds.
9 That obligation is unpaid and in default.
10

11 The personal property was also subject to personal property security
12 interests that are evidenced by (1) a Financing Statement filed by Intervest on
13 September 22, 2006 that references rents, furniture, fixtures, and equipment as
14 well as other collateral, and (2) a Financing Statement filed by Equity Funding,
15 LLC on January 4, 2008 that also references rents, furniture, fixtures, and
16 equipment and other collateral. To the best knowledge and belief of Prium
17 Spokane, Equity Funding, LLC has been paid, but failed to terminate the above
18 Financing Statement.
19
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21 **The Davis and Silesky Business Agreement and Transactions**

22 In September of 2009, Davis and Silesky negotiated a Business Agreement
23 with Prium Spokane that required Prium Spokane to pay the Durst Note in
24 payments of \$62,791.67 per month, with any net cash from the Wells Fargo
25

1 Center to be paid against the Durst Note. That Business Agreement
2 acknowledged that the Durst Note had been assigned to Davis and Silesky for
3 security purposes. Concurrently with the execution of the Business Agreement,
4 Davis and Silesky loaned the sum of \$420,000.00 to Thomas Price, Hyun J. Um,
5 and CDC Commercial LLC I and II, with repayment to be made from an
6 Assignment of Lease and Supplement to Assignment of Lease relating to a lease
7 from CDC Commercial LLC I and II to the State of Washington for leased space at
8 670 Woodland Square, Lacey, Washington. The proceeds of the \$420,000.00 loan
9 were to be applied to bring the interest current on the Intervest Loan, as a basis
10 to extend said loan.
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13 The Business Agreement also provided for the transfer of fifty-one percent
14 (51%) of the membership interests in Prium Spokane from Prium Companies to
15 Davis, Silesky, and Gaillour. Davis and Silesky were appointed as the managing
16 members of Prium Spokane, and were granted the option to purchase the
17 remaining forty-nine percent (49%) interest in Prium Spokane. That option was
18 to be exercised, if at all, by forgiving payment of the Durst Note (the proceeds of
19 which belonged to Davis and Silesky). The option further provided that any sales
20 proceeds from the sale of the Property, after full payment of Sterling, would be
21 paid to Davis and Silesky as the parties holding a security interest in the Durst
22 Note.
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1 **Further Advances and Restructuring Efforts**

2 After executing the Business Agreement in September 2009, Davis and
3 Silesky learned that Thomas Price and Hyun J. Um were using Prium Spokane
4 rents for other Prium Companies instead of applying all rental proceeds to pay
5 Wells Fargo Center building assessments, with excess rents to be paid to Davis
6 and Silesky, as Thomas Price and Hyun J. Um had agreed to do pursuant to the
7 Business Agreement. In response thereto, on November 5, 2009, and in
8 recognition that as the new owners of fifty-one percent (51%) of Prium Spokane,
9 Davis and Silesky needed to arrange for payment of building expenses, including
10 debt service. Hyun J. Um and Thomas Price, as well as CDC Properties I and II
11 LLC by Prium Companies, Member, executed a Promissory Note in favor of Davis
12 and Silesky in the amount of \$253,228.00. Payment of this Promissory Note was
13 also secured by an assignment of the lease of 670 Woodland Square, and was
14 repayable with interest at twenty percent (20%) per annum, with an initial
15 payment of \$100,000.00 due on or before November 30, 2009, a second payment
16 of \$100,000.00 due on or before December 31, 2009, and the balance due and
17 payable on or before January 31, 2010.

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21
22 Davis and Silesky continued to work to resolve the management and
23 financial issues of the Property after signing the Business Agreement, and
24 continued to advance funds to pay interest on the Intervest Note. Davis and
25

1 Silesky initiated workout discussions with Intervest in October 2009, and offered
2 proposals for restructuring the Intervest Loan and rectifying problems with the
3 Property and the tenants, while providing Intervest with all financial information
4 that they had developed regarding the Property.
5

6 Davis and Silesky continued their attempts to negotiate a restructuring of
7 the Intervest Note, which remained in default. Those efforts were unsuccessful,
8 and Intervest commenced a non-judicial foreclosure of its Deed of Trust against
9 the Property, setting a foreclosure sale for December 17, 2010. To preserve the
10 Property for the benefit of all parties, Davis and Silesky caused Prium Spokane to
11 file these proceedings under Chapter 11 on December 16, 2010 (the "Petition
12 Date").
13

14 2.2 EVENTS FOLLOWING CHAPTER 11 FILING. The Chapter 11 filing
15 resulted in substantial relief for Prium Spokane. The trustee's sale of the
16 Property by Sterling was stayed, as were lien foreclosure actions by Yost, Mooney
17 and Pugh and Specialty Construction. Prium Spokane has operated as a Debtor
18 in Possession during the Chapter 11 case, with statutory authority to conduct
19 business in the ordinary course of business under the supervision of the Court.
20
21

22 a. Cash Collateral Stipulation. Shortly after the filing of the case,
23 Prium Spokane and Sterling entered into discussions regarding the use of lease
24 proceeds as cash collateral, among other matters. These discussions resulted in
25

1 the execution of a Stipulation For Order Authorizing Use Of Cash Collateral (the
2 "Stipulation") that represented the agreement of Prium Spokane and Sterling for
3 the use of cash collateral on an interim and permanent basis pending the filing
4 and confirmation of a Plan, all in accordance with a consensual Cash Collateral
5 Budget and the financing documents and records attached thereto.
6

7 The Stipulation and the Cash Collateral Budget provided for Prium
8 Spokane to use cash collateral for payment of ordinary operating expenses, for
9 payment of administrative expenses, and for payment of interest to Sterling at the
10 rate of five percent (5%) per annum. The Stipulation also provided for Prium
11 Spokane to grant (1) a security interest to each entity with an interest in cash
12 collateral to the extent provided for under pre-petition security agreements or
13 applicable non-bankruptcy law, to extend to property of Prium Spokane acquired
14 before the Petition Date and to proceeds, products, rents, or profits of such
15 property acquired by Prium Spokane after the Petition Date, and (2) a lien upon
16 all post-petition collateral in favor of each entity with an interest in Cash
17 Collateral of the same priority, nature, and extent as held pre-petition by that
18 entity, in all proceeds thereof to secure any diminution in value of the Cash
19 Collateral after the Petition Date.
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23 The Stipulation also provided for the Property to remain under the
24 continued management of Black Realty Management, Inc. in accordance with a
25

1 Management Agreement dated as of December 21, 2009. The Sterling collateral
2 management account became the Prium Spokane debtor in possession account,
3 with withdrawals from that account made only to fund disbursements in
4 accordance with the Cash Collateral Budget, and deposited only to the property
5 management account maintained by Black Realty Management, Inc. at Sterling
6 for payment of specific items in accordance with the Cash Collateral Budget.
7 Additionally, subject only to Court approval, and standard underwriting criteria
8 for qualified tenants, Sterling agreed to provide market rate financing for the
9 construction of tenant improvements for new leases during the term of the
10 Stipulation.
11

12
13 b. Settlement of Contractor Lien Claims. On February 28, 2011,
14 Prium Spokane and Yost, Mooney and Pugh entered into a Settlement Agreement
15 that provided for settlement of the Yost, Mooney and Pugh claims, which totaled
16 \$340,929.45 as of February 1, 2011, for a cash payment of \$250,000.00. On that
17 same date, Prium Spokane and Specialty Construction entered into a Settlement
18 Agreement that provided for settlement of the Specialty Construction claims,
19 which totaled \$51,091.42 as of February 1, 2011, for a cash payment of
20 \$26,434.42. These settlements were approved by the Court, and were funded
21 through additional advances that were made by Sterling under a modification of
22 the Intervest Note and Deed of Trust that provided for an additional advance in
23
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25

1 the amount of \$276,434.42, and an extension of the maturity date of the
2 Intervest Note to June 30, 2011.

3 c. Motion To Dismiss Or Convert. The United States Trustee filed
4 a Notice Of And Motion To Dismiss Or Convert on September 22, 2011 (the
5 “Motion To Dismiss Or Convert”). Prium Spokane objected to the Motion To
6 Dismiss Or Convert based on the existence of unusual circumstances which
7 established that such actions would not be in the best interests of creditors and
8 the estate, the reasonable likelihood that a plan would be confirmed within a
9 reasonable period of time, the reasonable justification for the delay in filing a plan
10 of reorganization, and the prospect that a plan of reorganization could be
11 confirmed within a reasonable period of time.

12 d. Filing of Disclosure Statement and Plan of Reorganization, and
13 Negotiation of Settlement Agreement. Prium Spokane filed a Disclosure
14 Statement and Plan of Reorganization on November 29, 2011. In summary, the
15 Plan provided for Davis and Silesky to subordinate their claims arising from the
16 Mastro Note to the payment of all allowed general unsecured claims, and to
17 reconvey the Mastro Deed of Trust, contingent on the entry of an order
18 disallowing the Rigby Claim. Davis and Silesky would contribute the sum of
19 \$100,000.00 as a new capital contribution to Prium Spokane in exchange for all
20 New Membership Interests. The Sterling claim was to be paid in equal successive
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1 monthly payments, including interest at five percent (5%) per annum, with
2 payments based on a thirty (30) year amortization, and the entire balance of
3 principal and interest due at the end of ten (10) years.
4

5 Sterling and Rigby opposed the approval of the Disclosure Statement,
6 and it became apparent to Prium Spokane that attempts to confirm the Plan
7 would be prohibitively time-consuming and expensive, especially if Prium
8 Spokane were denied the use of cash collateral to fund the litigation over
9 confirmation. To attempt to reach resolution of the confirmation issues, Prium
10 Spokane and Sterling agreed to mediate treatment of the Sterling claim.
11

12 That mediation resulted in a settlement which acknowledged the
13 difficulties that Prium Spokane faced in moving forward with Plan confirmation
14 in the absence of available financing to pay the necessary costs of anticipated
15 renovations and construction of the improvements required to attract additional
16 tenants, and overcome creditor opposition to the Plan. A written Settlement And
17 Release Agreement (the "Settlement Agreement") was entered into on March 7,
18 2012, by and between Prium Spokane, Davis, Silesky, Gaillour, and Sterling,
19 that, among other matters, provided for (1) Sterling to be granted relief from the
20 automatic stay to recommence the foreclosure of the Deed of Trust against the
21 Property, (2) payment of pre-petition trade debt up to \$20,000.00, together with
22 all post-petition debt and administrative expenses accrued through dismissal,
23
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1 with ownership of the DIP Account to be transferred to Sterling, (3) Prium
2 Spokane's interest in the condominium association to be transferred to Sterling,
3 and (4) Davis and Silesky to receive the sum of \$400,000.00 upon conclusion of
4 the foreclosure for a release of their liens against the Property. Following
5 opposition from the United States Trustee (including the filing of a motion to
6 appoint a trustee) and opposition from Rigby, an Amendment To Settlement And
7 Release Agreement was executed that provided for the \$400,000.00 settlement
8 payment to be disbursed to Prium Spokane, and not to Davis and Silesky. The
9 Court approved the Settlement Agreement, as amended, on May 25, 2012, and
10 the motion to appoint a trustee was withdrawn.
11
12

13 Effective on or about June 30, 2012, Sterling sold the Prium
14 Spokane loan to INHS, subject to certain terms and conditions relating to the
15 performance of the Settlement Agreement by Sterling. INHS conducted the
16 foreclosure sale against the Property on August 17, 2012 (the "Foreclosure
17 Date"), and was the successful bidder at that sale.
18

19 Since the Foreclosure Date, Prium Spokane, Sterling, and INHS
20 have endeavored to implement the terms of the Settlement Agreement, as
21 amended. Sterling has paid the \$400,000.00 Settlement Payment to Prium
22 Spokane. Prium Spokane, Sterling, and INHS have also worked to identify
23
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25

1 accrued and unpaid administrative expenses through the Foreclosure Date, as
2 well as the accrued and unpaid post-petition debt through that date.

3 The payment of those items, subject to Court approval of
4 administrative expenses, is expected to occur in accordance with the terms of a
5 proposed Stipulation For Funding Remaining Settlement Payment And
6 Establishing Reserve Account Pursuant To Settlement And Release Agreement,
7 As Amended that is being finalized among Prium Spokane, Sterling, and INHS,
8 providing for:
9

10
11 a. The sum of \$13,510.33 to be retained in the DIP Account for
12 payment of Administrative Expenses accrued through the Foreclosure
13 Date, with that sum to be reduced by any administrative expenses that
14 are approved and paid with Court approval.
15

16 b. The sum of \$2,274.45 to be retained in the DIP Account for
17 payment of United States Trustee Quarterly Fees that have accrued
18 through the Foreclosure Date.
19

20 c. The sum of \$2,941.29 to be retained in the DIP Account for
21 payment of Earthworks Recycling in the amount of \$150.00 and for
22 janitorial services in the amount of \$2,791.29, as post-petition trade debt
23 that remained unpaid through the Foreclosure Date. That sum will be
24 reduced to the extent that such trade debt is paid.
25

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1 d. The balance of the DIP Account remaining after reserving or
2 paying the above amounts, less the additional sum of \$20,000.00 for trade
3 debt, will be disbursed to Sterling pursuant to the Settlement Agreement.
4 Any sums that are reserved for Administrative Expenses will also be
5 disbursed to Sterling to the extent that such expenses are not subsequently
6 approved for payment.
7

8 e. The Stipulation would be executed with a reservation of all
9 rights of the parties to modify the same if required by the discovery of
10 additional items for payment, or by Order of the Court.
11

12
13 SECTION 3. **SUMMARY OF PLAN.**

14 In summary, the Plan provides for the following:

15 3.1 EFFECTIVE DATE TRANSACTIONS. On the Effective Date, or as
16 soon as practicable thereafter, the following events will occur:

17 a. Prium Spokane shall pay all allowed administrative expenses,
18 and shall establish a reserve for payment of administrative expenses that have
19 accrued through the Confirmation Date, but remain subject to allowance.
20

21 b. A dispute exists among Rigby, Davis and Silesky regarding the
22 interpretation, enforceability or implementation of the Settlement Agreement
23 among those parties that was approved in the Mastro Bankruptcy Case. On the
24 Effective Date, Prium Spokane shall (1) deposit the distribution payable with
25

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1 respect to the \$11.4M Note under Class 7 of the Plan with the Clerk of the United
2 States Bankruptcy Court for the Western District of Washington, and
3 (2) commence an action in interpleader pursuant to FRBP 7022 in the Mastro
4 Bankruptcy Case against Rigby, Davis and Silesky for those parties to adjudicate
5 their claims arising and related to the Settlement Agreement and the \$11.4M
6 Note.
7

8 c. Prium Spokane shall reject all executory contracts and
9 unexpired leases.
10

11 3.2 EXECUTORY CONTRACTS AND UNEXPIRED LEASES. Prium
12 Spokane, subject to Court approval, has the right to assume or reject executory
13 contracts or unexpired leases that were in effect at the Petition Date. All
14 executory contracts or unexpired leases of Prium Spokane shall be rejected.
15

16 3.3 EQUITY OWNERSHIP, GOVERNANCE AND COMPENSATION.

17 a. Equity Ownership. Prium Spokane was wholly owned by Prium
18 Companies until September of 2009. During that month, Davis, Silesky, and
19 Gaillour negotiated a Business Agreement with Prium Spokane which, among
20 other matters, provided for the transfer of fifty-one percent (51%) of the
21 membership interests in Prium Spokane from Prium Companies to Davis, Silesky,
22 and Gaillour. Davis and Silesky were granted the option to purchase the
23 remaining forty-nine percent (49%) interest in Prium Spokane, exercisable
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25

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1 through the forgiveness of the Durst Note by Prium Companies. The option
2 further provided that any sales proceeds from the sale of any portion of the
3 Property after Sterling was paid would be paid against the note payable to Durst.
4

5 As of May 3, 2011, Intervest, Sterling, Prium Companies, Prium
6 Tumwater Buildings, LLC, Chelsea Heights, LLC, Fountain Park, LLC, Hyun J.
7 Um, Jin S. Um, Thomas W. Price, and Patricia A. Price entered into a Settlement
8 Agreement in settlement of certain litigation filed by Prium Companies, Prium
9 Tumwater Buildings, LLC, and Chelsea Heights, LLC against Intervest and
10 Sterling in Pierce County Superior Court. That Settlement Agreement, to the
11 extent relevant herein, released Hyun J. Um, Jin S. Um, Thomas W. Price, and
12 Patricia A. Price from their guarantees of the indebtedness of Prium Spokane to
13 Sterling, and assigned the forty-nine percent (49%) interest of Prium Companies
14 in Prium Spokane to Intervest or its designee. Prium Companies, Hyun J. Um,
15 Jin S. Um, Thomas W. Price, and Patricia A. Price also agreed not to interfere or
16 interject in the bankruptcy proceedings of Prium Spokane.
17
18

19 b. Governance and Compensation. The September 2009
20 Business Agreement appointed Davis and Silesky as the managing members of
21 Prium Spokane. Davis and Silesky received an asset management fee of
22 \$5,000.00 per month through August of 2012.
23
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25

1 SECTION 4. TREATMENT OF CLAIMS & INTERESTS UNDER THE PLAN

2 4.1 UNCLASSIFIED OBLIGATIONS.

3 a. Administrative Expenses. Prium Spokane is subject to
4 administrative claims for legal and accounting services, together with other
5 claims which have been allowed by the Court as an expense of administration.
6 These administrative claims include the costs and expenses incurred in
7 connection with this reorganization, primarily relating to the fees of attorneys,
8 accountants, and other professionals employed by the estate. Payment of these
9 costs and expenses incurred through confirmation is subject to approval by the
10 Court. All requests for compensation and reimbursement of expenses are subject
11 to approval by the Court following notice to creditors and other parties in interest.

12 4.2 CLASSIFICATION OF CLAIMS & INTERESTS AND SUMMARY OF
13 TREATMENT UNDER THE PLAN.

14 Claims and Interests are classified for purposes of voting on the Plan.
15 Creditors or Interests within a class will be treated similarly under the Plan.

16 Class 1: Priority Non-Tax Claims. Class 1 includes all priority creditors
17 of Prium Spokane that hold Allowed Claims under 11 U.S.C. § 507, except
18 unsecured claims of governmental units as set forth in § 507(a)(7). Priority Non-
19 Tax Claims include claims for wages, salaries, and commissions to the extent
20 earned within sixty (60) days of filing, and claims for unpaid contributions to
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1 employee benefit plans, and claims of consumers for deposits that were paid for
2 goods or services that have not been delivered. Prium Spokane believes that no
3 creditors are entitled to treatment as a Priority Non-Tax Claim. Any such claims
4 that are allowed shall be paid in full at the Effective Date, or upon allowance,
5 whichever is later.
6

7 Class 2: Spokane County Treasurer. Class 2 consists only of the
8 allowed secured claim of the Spokane County Treasurer in the amount of
9 \$53,802.46, plus penalties and interest, secured by the Parking Garage. The
10 Class 2 claim arises from real property tax assessments, and constitutes a senior
11 lien against the Property. These obligations remain secured by the Parking
12 Garage following the Foreclosure Date. Prium Spokane is advised that the sale of
13 the Sterling loan to INHS included a provision for payment of these obligations by
14 INHS. Accordingly, no provision for payment of the Class 2 Claim is made under
15 the Plan. The Spokane County Treasurer shall retain its lien against the Parking
16 Garage until fully paid, and is impaired by the Plan.
17

18 Class 3: Sterling Savings Bank. Class 3 consisted only of the allowed
19 secured claim of Sterling in the amount of \$15,266,543.00, secured by a first
20 position deed of trust against the Property. The Sterling claim shall be paid and
21 satisfied in accordance with the Settlement Agreement. No provision for payment
22 of the Class 3 Claim is made under the Plan. Sterling is impaired by the Plan.
23
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1 Class 4: Rigby (Second Position Deed Of Trust Claim). Class 4 consists
2 only of the allowed undersecured claim of Rigby as the assignee of the \$11.4M
3 Note from Davis and Silesky. Rigby shall be entitled to treatment as a Class 7
4 general unsecured non-trade claim, with any distribution to remain subject to the
5 secured claim of Davis and Silesky as assignees of the Wells Fargo security
6 interest in the \$11.4M Note proceeds. Rigby is impaired by the Plan.
7

8 Class 5: Jeffrey Kramer Johnson, Black Commercial Inc., d/b/a NAI
9 Black. Class 5 consists only of the allowed secured claim of Jeffrey Kramer
10 Johnson, Black Commercial Inc., d/b/a NAI Black in the approximate amount of
11 \$43,903.17 arising from the lease commission for the Prium-Shell Lease, secured
12 by a statutory lien under RCW 60.42 et seq. Jeffrey Kramer Johnson, Black
13 Commercial Inc. shall be entitled to treatment as a Class 7 general unsecured
14 non-trade claim. Jeffrey Kramer Johnson, Black Commercial Inc. is impaired by
15 the Plan.
16
17

18 Class 6: General Unsecured Trade Creditors. Class 6 consists only of
19 the allowed claims of General Unsecured Trade Creditors, as identified on the
20 Schedule of General Unsecured Trade Creditors attached hereto as Exhibit A.
21 Class 6 Creditors shall receive a total distribution in the sum of \$20,000.00 on
22 the Effective Date. Class 6 Creditors are impaired under the Plan.
23
24
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1 Class 7: General Unsecured Non-Trade Creditors. Class 7 consists only
2 of the allowed claims of General Unsecured Non-Trade Creditors, as identified on
3 the Schedule of General Unsecured Non-Trade Creditors attached hereto as
4 Exhibit B. On the Effective Date, Class 7 Creditors shall receive all funds of the
5 estate, after payment of (1) administrative expenses and the establishment of a
6 reserve for estimated administrative expenses through the closing of the case, not
7 to exceed \$5,000.00 (the "Administrative Reserve"), and (2) payment of the
8 Class 6 Creditors under the Plan. Class 7 creditors shall also receive the balance
9 of the Administrative Reserve, if any, that remains undisbursed following the
10 entry of a Final Decree. Class 7 Creditors are impaired under the Plan.

13 Class 8: Interests. Class 8 consists only of the holders of membership
14 interests in Prium Spokane, including Davis and Silesky as to a fifty-one percent
15 (51%) membership interest, and including Sterling as the putative holder of a
16 forty-nine percent (49%) membership interest. All Interests shall be cancelled on
17 the Effective Date. The holders of membership interests in Prium Spokane are
18 impaired under the Plan.

21 SECTION 5. **ANALYSIS OF RETURN UPON LIQUIDATION.**

22 The Court must find that the Plan provides each member of an impaired
23 class of claims or interests a distribution at least equal to a distribution that
24 would be made if the bankruptcy estate were liquidated under Chapter 7 of the
25

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1 Code. If the Plan yields a recovery greater than would be available under
2 Chapter 7, the Plan is deemed to be in the best interests of creditors. The Plan
3 must be in the best interests of creditors in order for the Court to confirm the
4 Plan, regardless of whether creditors have voted for acceptance.
5

6 The Court, in order to determine how much members of each impaired
7 class of unsecured creditors and equity security holders would receive if the
8 bankruptcy estate were liquidated, must first determine the total value of assets
9 which would be realized if this Chapter 11 case was converted to a proceeding
10 under Chapter 7, and the assets liquidated by a bankruptcy trustee. The
11 liquidation value of the company would be the estimate of monies received from
12 the sale of assets supplemented by cash on hand, collection of accounts
13 receivable, and projected proceeds from claims held against third parties. The
14 proceeds of liquidation would be reduced by the costs and expenses of
15 liquidation, as well as administrative expense claims and secured claims.
16
17

18 If the estate were liquidated under Chapter 7, costs would be incurred for
19 compensation of the trustee, as well as for professionals employed by the trustee,
20 including attorneys and accountants; for costs of sale and disposition of assets;
21 and by all unpaid expenses incurred by the bankruptcy estate during the
22 Chapter 11 proceedings (including claims for attorneys fees, accountants, unpaid
23 lease and license fees, or tax liabilities); and other expenses arising from the
24
25

1 operation during the Chapter 11 and Chapter 7 liquidations.

2 An Analysis of Liquidation is attached hereto as Exhibit C. The Plan is
3 intended to provide distributions to creditors that will be greater than what would
4 be made in the event of liquidation, considering the additional administrative
5 expenses that would be incurred if this case were converted to a Chapter 7 case.
6

7
8 **SECTION 6. CLAIMS RESOLUTION.**

9 6.1 CLAIM OBJECTIONS. Any objections to the allowance of a Claim, or
10 to the secured status thereof, must be filed within thirty (30) days of the Effective
11 Date.
12

13 6.2 DISTRIBUTIONS TO CREDITORS. Davidson Backman Medeiros
14 PLLC shall act as the disbursing agent for the purpose of making distributions
15 under the Plan. Davidson Backman Medeiros PLLC shall segregate and hold in
16 trust such distribution as would be made in payment of each disputed Claim if
17 that Claim were allowed. Such funds shall be held with respect to each disputed
18 Claim until that Claim is allowed or disallowed by appropriate order of the Court.
19 To the extent any disputed Claim is allowed, the disbursing agent will distribute
20 funds with respect to said Claim in such a manner as to pay said Claim on a Pro-
21 rata basis with other allowed Claims.
22
23

24 6.3 UNCLAIMED DISTRIBUTIONS. Unclaimed distributions, or
25 distributions which are not deliverable to the claimant by first class mail, shall be

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1 held in reserve in the same manner as distributions reserved for holders of
2 disputed Claims. These unclaimed distributions shall be held for a period of
3 one (1) year following the commencement of distributions to creditors of the same
4 class, after which time all unclaimed distributions shall be distributed to Prium
5 Spokane for redistribution to other holders of allowed claims.
6

7
8 SECTION 7. **MISCELLANEOUS**

9 7.1 **VESTING**. As of the Effective Date, all assets of Prium Spokane shall
10 vest in the Reorganized Prium Spokane, free and clear of all Claims and Interests
11 except to the extent set forth in the Plan or by Court Order.
12

13 7.2 **TAX CONSEQUENCES**. The discussion below summarizes only
14 certain of the federal income tax consequences associated with the Plan's
15 implementation, and does not attempt to comment on all aspects of the federal
16 income tax consequences associated with the Plan, or various facts or limitations
17 applicable to any particular creditor or member that may modify or alter the
18 consequences described herein. This discussion does not address state, local, or
19 foreign tax consequences, or the consequences of any federal tax other than
20 federal income tax.
21

22 Further, in light of continuous amendments to the Internal Revenue Code
23 of 1986, as amended, the regulations promulgated thereunder, existing judicial
24 decisions, and administrative rulings, no assurance can be given that legislative,
25

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1 judicial, or administrative changes will not be forthcoming that would affect the
2 accuracy of the discussion below. Any such changes could be material and could
3 be retroactive with respect to transactions that occurred prior to the enactment or
4 promulgation thereof. The tax consequences of certain aspects of the Plan may
5 be subject to judicial or administrative interpretations that differ from the
6 discussion below.
7

8 Prium Spokane believes that the implementation of the Plan will have no
9 material adverse tax impact on Prium Spokane, as it is a “pass through” entity,
10 and not liable for the payment of federal income tax.
11

12 The tax consequences of the Plan's implementation to a creditor will depend
13 on whether the creditor's present debt claim constitutes a “security” of Prium
14 Spokane for federal income tax purpose and the type of consideration received by
15 the creditor in exchange for its claim; whether the creditor reports income on the
16 cash or accrual method; whether the creditor receives consideration in more than
17 one tax year of the creditor; and whether all the consideration received by the
18 creditor is deemed to be received by that creditor in an integrated transaction.
19

20 Creditors and Interest Holders should consult with their own independent
21 tax advisors to determine any impact that the Plan may have upon their
22 particular circumstances. Prium Spokane does not represent that the tax
23 consequences contained herein are the only tax consequences of the Plan. No tax
24
25

1 opinion has been sought or will be obtained with respect to any tax consequences
2 of the Plan. This Disclosure Statement does not constitute and is not intended to
3 constitute either a tax opinion or tax advice to any person, and the summary
4 contained herein is provided for informational purposes only.
5

6 No ruling will be sought from the Internal Revenue Service and no opinion
7 of counsel has been or will be sought, with respect to any of the tax aspects of the
8 Plan. The discussion set forth above is for general information only, and does not
9 cover all aspects of federal income taxation that may be relevant. Each holder of
10 a claim or interest is urged to consult with their own accountant, attorney, or tax
11 advisor regarding the federal, state, local, and foreign tax consequences of the
12 Plan.
13

14 IRS Circular 230 Notice: To ensure compliance with requirements imposed
15 by the IRS, please be advised that any U.S. tax advice contained in this
16 Disclosure Statement (including any attachment) is not intended or written to be
17 used, and cannot be used, for the purpose of (1) avoiding penalties under the
18 Internal Revenue Code, or (2) promoting, marketing, or recommending to another
19 party any transaction or matter addressed herein.
20
21

22 7.3 LITIGATION.

23 a. Preferential Transfers. Prium Spokane, as a Debtor in
24 Possession, is authorized to recover preferential payments to creditors that were
25

1 made prior to bankruptcy. Preferences are recoverable in accordance with
2 § 547(b) of the Bankruptcy Code, which allows recovery of a transfer of property
3 to or for the benefit of a creditor on account of an antecedent debt, made while
4 Prium Spokane was insolvent, made within ninety (90) days before the date of
5 filing, or one (1) year before the date of filing if the creditor was an insider, and
6 resulting in the creditor receiving more than would have been received under a
7 liquidation pursuant to Chapter 7 of the Bankruptcy Code. Preferences may not
8 be recovered to the extent that the transfer was intended to be a
9 contemporaneous exchange for new value, or if the payment was made in the
10 ordinary course of business. Prium Spokane has not identified any avoidable
11 preferential payments, but reserves the right to recover any such payments that
12 are identified. Any recoveries shall vest in the Reorganized Prium Spokane.
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16 b. Fraudulent Conveyances. Prium Spokane, as a Debtor in
17 Possession, also enjoys the rights and powers of a bankruptcy trustee with
18 respect to recovering transfers of property made prior to bankruptcy. Section 548
19 and 544 of the Bankruptcy Code authorize a bankruptcy trustee to utilize either
20 bankruptcy law or state law as a basis for recovering fraudulent transfers.
21 Generally, fraudulent transfers may be recovered if they were made with actual
22 intent to hinder, delay or defraud creditors, or if transfers of property are made
23 for less than a reasonably equivalent value, and Prium Spokane: 1) were insolvent
24
25

1 or became insolvent as a result of the transaction; or 2) were engaged in business
2 or was about to engage in a business transaction for which its remaining capital
3 was unreasonably insufficient; or 3) intended to incur or believed it would incur
4 debts beyond its ability to pay. Prium Spokane has not identified any avoidable
5 fraudulent transfers, but reserves the right to recover any such transfers that are
6 identified. Any recoveries shall vest in the Reorganized Prium Spokane.
7

8 c. Third Party Claims. Prium Spokane reserves the right to
9 recover any and all claims against third parties. All claims against third parties
10 shall vest in the Reorganized Prium Spokane.
11

12 7.4 U.S. TRUSTEE FEES AND REPORTS. Prium Spokane shall be
13 responsible for timely payment of fees incurred pursuant to 28 U.S.C. §
14 1930(a)(6). After confirmation, Prium Spokane shall serve on the United States
15 Trustee a monthly financial report for each month (or portion thereof) that the
16 case remains open. The monthly financial report shall include the following:
17

18 a. a statement of all disbursements made during the course of the
19 month, whether or not pursuant to the Plan;
20

21 b. a summary, by class, of amounts distributed or property
22 transferred to each recipient under the Plan, and an explanation of the failure to
23 make any distribution or transfers of property under the Plan.
24
25

1 7.5 SUBSTANTIAL CONSUMMATION. The Bankruptcy Code, at 11
2 U.S.C. § 1101(2), defines “substantial consummation” as:

3 a. transfer of all or substantially all of the property proposed by
4 the plan to be transferred;

5 b. assumption by the Debtor or by the successor to the Debtor
6 under the plan of the business or of the management of all or substantially all of
7 the property dealt with under the plan; and
8

9 c. commencement of the distribution under the Plan.
10

11 Upon substantial consummation, Prium Spokane shall certify the same to
12 the Court, and seek entry of a Final Decree closing this case. The Chapter 11
13 case shall be deemed to be substantially consummated pursuant to 11 U.S.C. §
14 1101(2) upon commencement of the distribution under the Plan, and upon full
15 payment of all administrative expenses, but in no event before the thirtieth day
16 after the Effective Date.
17

18 DATED this 15th day of January 2013.

19 DAVIDSON BACKMAN MEDEIROS PLLC
20

21 /s/ Barry W. Davidson

22 Barry W. Davidson, WSBA No. 07908
23 Attorney for Prium Spokane Buildings, L.L.C.
24 1550 Bank of America Financial Center
25 601 West Riverside Avenue
 Spokane, Washington 99201
 (509) 624-4600

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Approved:

PRIUM SPOKANE BUILDINGS, L.L.C.



Glenn R. Davis, Co-Manager

Exhibit A

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Exhibit A

General Unsecured Trade Creditors

Creditor	Claim Amount
ABM Janitorial Services	\$ 8,506.89
Camtek	\$ 4,135.34
Maintenance Solutions, Inc.	\$ 456.27
Rob's Demolition	\$ 494.59
Thinking Cap Communications & Design	\$ 1,893.54
Thornton & Sons Electric, Inc.	\$ 3,055.00
	<u>\$ 18,541.63</u>

Exhibit B

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Exhibit B

General Unsecured Non-Trade Creditors

<u>Creditor</u>	<u>Claim Amount</u>
Rigby, James F. (Trustee for Estate of Michael Mastro)	\$ 11,477,757.93
Jeffrey Kramer Johnson, Black Commercial Inc. d/b/a NAI Black	\$ 43,903.17

Exhibit C

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ASSETS:	Book Value:	Liquidation Value:
<u>Current Assets</u>		
Cash (Settlement Funds from Sterling Savings Bank)	\$ 400,000.00	\$ 400,000.00
Cash (Settlement Funds from Sterling Savings Bank for Pre-petition Trade Debt)	\$ 20,000.00	\$ 20,000.00
Cash (Holdback for property expenses, administration fees, etc.)	\$ 18,726.07	\$ 18,726.07
TOTAL Assets (Book Value)	\$ 438,726.07	
TOTAL Assets (Liquidation Value)		<u>\$ 438,726.07</u>
<u>ADMINISTRATIVE EXPENSES</u>		
Estimated Administrative Expenses Through Foreclosure Date (subject to allowance)		\$ 13,510.33
Estimated Administrative Expenses From Foreclosure Date through Confirmation Date		\$ 10,000.00
Chapter 7 Trustee Fees (estimated)		<u>\$ 5,000.00</u>
		<u>\$ 28,510.33</u>
Assets After Payment of Administrative Expenses		<u>\$ 410,215.74</u>
<u>SECURED LIABILITIES</u>		
None		\$ -
<u>PRE-PETITION LIABILITIES (NON-TRADE)</u>		
Rigby Claim (exclusive of accrued interest, charges, fees and costs)		\$ 11,477,757.93
Jeffrey Kramer Johnson, Black Commercial Inc., d/b/a NAI Black		\$ 43,903.17
PRE-PETITION LIABILITIES (TRADE)		<u>\$ 18,541.63</u>
TOTAL Liabilities		<u>\$ 11,540,202.73</u>
TOTAL ESTIMATED DIVIDEND FOR UNSECURED CREDITORS IN CHAPTER 7		\$ 0.04