

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
RIVER WEST PLAZA-CHICAGO, LLC,)	Case No. 09-46258
d/b/a JOFFCO SQUARE,)	
)	Honorable Eugene R. Wedoff
Debtor.)	
)	

**DISCLOSURE STATEMENT
WITH RESPECT TO
DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION**

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d/b/a Joffco Square

Dated: February 17, 2010

I.
INTRODUCTION

On December 7, 2009, River West Plaza-Chicago, LLC, d/b/a Joffco Square (the "Debtor") filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

The purpose of this Disclosure Statement is to provide the Debtor's Creditors with sufficient information about the Debtor's Second Amended Plan of Reorganization (the "Plan") to enable the Creditors to make an informed judgment about the merits of the Plan. The information contained in this Disclosure Statement relies on the Debtor's internal financial records for accuracy and has not been the subject of a certified audit. In addition, the final amounts of Allowed Claims¹ contained in this Disclosure Statement remain subject to adjustment when and as the process of objection to and allowance of claims advances toward completion.

Local Bankruptcy Rule 3016-1 requires that the Debtor file a summary of the Plan (the "Summary") that sets forth the nature of the Plan and includes a clear description of the exact proposed treatment of each Class of Creditors, showing total dollar amounts and timing of payments to be made under the plan and all sources and amounts of funding thereof, as well as plainly identifying all classes of creditors, the composition of each class (as to number and type of creditors), the amount of claims (specifying any that are known to be disputed and how they will be treated under the plan), and the amount (dollar and/or percentages) to go to each Class. Accordingly, the Debtor submits the following Summary:

II.
SUMMARY OF THE DEBTOR'S PLAN

Plan:	Debtor's Second Amended Plan of Reorganization
Debtor:	River West Plaza-Chicago, LLC, d/b/a Joffco Square
Plan Proponent:	River West Plaza-Chicago, LLC, d/b/a Joffco Square
General Purpose:	The Plan contemplates the transfer of all of the Debtor's remaining assets to the Reorganized Debtor for the implementation of the Plan, the treatment of Creditors under the Plan and the reorganization and continuation of the Debtor's business by the Reorganized Debtor.
Funding and Financing:	The Plan will be funded by and through the reorganization of the Debtor pursuant to the terms of the Plan.

¹ All capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Plan.

Summary of Treatment of Classes of Claims

The Plan provides:

(1) for payment in full of all Administrative Claims and Priority Claims;

(2) for the granting to Holders of Class 1 Claims of, *inter alia*, the Replacement Loan Agreement, the Replacement Secured Note, the Replacement Mortgage, and the Replacement Assignment of Rents and Leases, the payment in full of its Claims in five (5) years as set forth in the Replacement Secured Note and the other treatment of the Lender provided in Section 4.3 of the Plan. To the extent that the Class 1 Claim of the Lender is deemed to be partially secured and partially undersecured, on the Effective Date, the Holder of Class 1 Claims shall receive the treatment set forth in Section 4.3(a) of the Plan only to the extent that such Claim is deemed a Secured Claim. With respect to the remaining portion of such Claim that is deemed to be an Unsecured Claim, the Holder of Class 1 Claims shall receive the treatment set forth in Section 4.7 of the Plan, including the granting of the Unsecured Deficiency Note;

(3) the Holders of Allowed Class 2 and Class 3 Claims shall receive payment in full of such Claims, plus the Legal Rate per annum accrued from the Petition Date through the “date of payment,” which shall be the later of (a) sixty (60) days after the Effective Date, and (b) five (5) business days after the date on which the Claim becomes an Allowed Claim;

(4) Holders of Class 4 Debtor Interests shall not receive or retain any interest, property or other consideration under this Plan on account of their Class 4 Interests, which shall be deemed to be extinguished on the Effective Date; and

(5) Holders of Allowed Class 5 Claims, to the extent Section 4.7 of the Plan is applicable, shall receive on the Effective Date the Unsecured Deficiency Note in the form set forth in Exhibit H attached to the Plan.

Effective Date:

The Plan shall become effective when each of the following conditions has been satisfied: (1) the

Bankruptcy Court shall have entered the Confirmation Order; (2) the Confirmation Order shall have become a Final Order; (3) the Lender and the Reorganized Debtor shall have entered into and delivered to the Lender (a) the Replacement Secured Note, (b) the Replacement Mortgage, (c) the Replacement Loan Agreement, (d) the Replacement Assignment of Rents and Leases, and, if applicable, (e) the Unsecured Deficiency Note; (4) the Holders of the Insider Loan Claims shall have entered into and delivered to the Lender the Insider Loan Subordination Agreement; and (5) all other actions and documents necessary to implement this Plan as of the Effective Date shall have been effected or duly executed and delivered. Unless the Effective Date is rescheduled at the election of the Debtor, the satisfaction of conditions (1) through (5) above shall take place within five (5) Business Days after the entry of the Confirmation Order.

Voting:

Holders of Class 1, Class 2, Class 3 and Class 5 (if applicable) Claims are entitled to vote on the Plan. Those Creditors entitled to vote on the Plan should complete the Ballot accompanying this Disclosure Statement and Plan and return it to the Clerk's Office, United States Bankruptcy Court, Eastern Division, 219 South Dearborn Street, 7th Floor, Chicago, IL 60604. Ballots must be received on or before **March 22, 2010** at 4:30 p.m. Central Daylight Time. Only those Ballots returned on a timely basis will be counted in determining whether a particular Class of Creditors has accepted or rejected the Plan. A Class of Claims has accepted the Plan if two-thirds in amount and more than one-half in number have voted to accept the Plan.

If you have any questions concerning voting procedures, did not receive a Ballot, or if your Ballot is damaged or lost, please contact counsel to the Debtor: David L. Kane, Meltzer, Purtill & Stelle LLC, 300 South Wacker Drive, Suite 3500, Chicago, IL 60606; Telephone: (312) 461-4325; dkane@mpslaw.com

Objections:

All objections to the adequacy of the Disclosure Statement or Confirmation of the Plan must be in writing, state the basis for the objection, be filed with the Bankruptcy Court, and be served upon the following parties so as to be received by their

respective counsel not later than **March 22, 2010**² at 4:30 p.m. (CDT):

Counsel to the Debtor: Meltzer, Purtil & Stelle LLC, 300 South Wacker Drive, Suite 3500, Chicago, IL 60606 (Attn: Forrest B. Lammiman and David L. Kane);

The Office of the United States Trustee: 219 South Dearborn Street, Chicago, IL 60604 (Attn: Cameron Gulden); and

Counsel to the Lender: Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, IL 60603 (Attn: Gus A. Paloian and Jason J. DeJonker).

Cramdown:

In the event that a Class of Creditors rejects the Plan and one impaired class of Creditors votes to accept the Plan, the Plan Proponents reserve the right to seek Confirmation under Section 1129(b) of the Bankruptcy Code.

Combined Disclosure Statement and Confirmation Hearing:

The combined hearing on the adequacy of this Disclosure Statement and Confirmation of the Plan will commence on **March 30, 2010 at 10:30 a.m.** The confirmation hearing will be held before the Honorable Eugene R. Wedoff, Courtroom 744, 219 South Dearborn Street, Chicago, Illinois.

Additional Information:

Requests for information regarding the Plan or the Disclosure Statement should be directed to the counsel for the Debtor: David L. Kane, Meltzer, Purtil & Stelle LLC, 300 South Wacker Drive, Suite 3500, Chicago, IL 60606; (312) 461-4325; dkane@mpslaw.com

The Debtor submits that the above Summary meets the requirements of the Bankruptcy Code and applicable Local Bankruptcy Rule 3016-1. After reviewing the Plan and Disclosure Statement, you should vote on the Plan. In reaching your decision to accept the Plan, you should not rely on any representation other than those contained in this Disclosure Statement. As a Creditor, your vote is important. As specified in the above Summary, the Bankruptcy Court can confirm the Plan if the holders of two-thirds in amount and more than one-half in number of claims in each impaired class vote to accept the Plan. To vote on the Plan, each Creditor entitled

² Any objections of Bank of America, N.A. ("Lender") to the Debtor's Disclosure Statement or Plan must be filed and served by March 15, 2010 at 4:30 p.m. (CDT) so that they are actually received by Debtor's counsel and the U.S. Trustee by such date and time.

to vote must complete the enclosed Ballot and return it to counsel to the Debtor at the address specified in this Summary.

The Debtor believes that the Plan affords Creditors the largest recovery possible (payment in full of all Allowed Claims plus interest) under the circumstances. ***The Debtor believes that acceptance of the Plan is in the best interests of Creditors and recommends acceptance of the Plan.***

III. BACKGROUND

The Debtor is an Illinois limited liability company, with its principal office located at 5 Revere Drive, Suite 200, Northbrook, Illinois 60062. The membership interests in the Debtor are held as follows: Amy Joffe: 44%; Melissa Norris: 44%; and Leon Joffe: 12%. The Manager of the Debtor is Amy Joffe. Mrs. Joffe runs the Debtor with primary assistance from the Debtor's Vice President of Finance, Virginia Wolfe, and its Financial Analyst, Daniel Treisman.

The Debtor acquired the property at 555 West Roosevelt Road, Chicago, Illinois (the "Property") in 2003 and has since developed a 95,000 square foot, five-story shopping center on the Property which includes 323 internal parking spaces (the "Center" or "Joffco Square"). All of the Debtor's assets are related to or derive from the Center and the Debtor does not own any other property.

Joffco Square is approximately 83% leased and all tenants are in possession of their premises and are paying rent at the rates required under their leases. The largest tenant, Best Buy, occupies approximately 45,000 square feet under a lease which extends until January, 2024, with multiple renewal options thereafter. Rent is fixed on the Best Buy lease through 2014, and then increases for successive five (5) year periods. Bed Bath & Beyond, the other primary tenant, occupies approximately 27,482 square feet of the second floor of the Center under a lease which extends until January, 2018, with multiple renewal options thereafter. Rent is fixed on the Bed Bath & Beyond lease during the initial ten (10) year term which concludes in 2018. Bed Bath & Beyond has the obligation to pay additional percentage rent up to \$250,000 to the extent that its annual sales exceed \$7,500,000. As of the Petition Date, Bed Bath & Beyond has not met these minimum sales figures. Best Buy, Bed Bath & Beyond and CorePower Yoga (which is the third retail tenant) each is obligated to pay its proportionate share of real estate taxes and operating expenses. In addition, a cell tower is located on the roof of Center under a lease which expires in February 2013.

The remaining 17% of usable space at Joffco Square (the "Available Space") has not yet been leased and has not yet been built out for tenant use. As of the Petition Date, the Debtor has engaged in preliminary discussions with Bed Bath & Beyond about leasing a portion of the Available Space, but no agreement has been concluded. Completion of the Available Space will require expenditure of additional funds for leasing commissions and tenant improvements.

The Debtor initially financed the acquisition and construction of the Center with a loan from LaSalle National Bank ("LaSalle") in the amount of \$28,000,000 (the "Initial Loan"). The proceeds of the Initial Loan were to be disbursed as construction progressed, with LaSalle and

the Debtor each paying a portion of the construction costs. In July, 2008, the Initial Loan was refinanced by Bank of America, N.A., as successor in interest to LaSalle ("Lender"), with a replacement loan in the amount of \$27,000,000 (the "2008 Loan").

The 2008 Loan is evidenced in part by a certain Construction Loan Agreement dated as of July 29, 2008 (the "Loan Agreement"), pursuant to which the Debtor has received financial accommodations and incurred additional obligations, including without limitation, obligations for payment or reimbursement of certain of the Lender's fees, costs and expenses. The 2008 Loan bears interest at a floating rate based on LIBOR plus 2%, which as of the day preceding the Petition Date resulted in an effective rate of 2.25%. As part of the 2008 Loan, the Lender reduced its obligation to fund construction costs by \$1,000,000 and required that the Debtor's principals contribute an additional upfront cash "Equity Requirement" of \$6,094,657. In order to satisfy this requirement, two of the Debtor's members, Ms. Joffe and Ms. Norris, each made interest-bearing unsecured loans to the Debtor in the principal amount of approximately \$3,000,000. In exchange for such equity infusion and reduction of its own funding obligation, the Lender agreed only to a fifteen-month extension of the term of the 2008 Loan, to November 1, 2009.

The 2008 Loan is secured in part by a first mortgage on the Property and a limited Guaranty of Payment and Completion executed by Leon Joffe, a minority interest holder in the Debtor. The Debtor's obligations under the Loan Agreement ("Obligations") are further secured by security interests and liens in and against of the assets of the Debtor in favor of the Lender (the "Prepetition Collateral").

The Debtor further acknowledges that the Obligations and the security interests and liens in and against the Prepetition Collateral securing the Obligations are evidenced by certain loan, security and other collateral agreements between Lender and the Debtor, including a certain promissory note executed by the Debtor in favor of the Lender, and other agreements, documents, guaranties and instruments entered into, delivered or otherwise related to the Obligations and the Prepetition Collateral (collectively with the Loan Agreement, the "Loan Documents").

During the course of the lending relationship with the Lender and its predecessor LaSalle, the Debtor has met all of its obligations under the original loan and the 2008 Loan, including the timely payment of all interest due. The Debtor had never been in default under the 2008 Loan. In addition, Joffco Square is cash flow positive and generates enough monthly income for the Debtor to pay all monthly overhead and operating expenses as they become due. Moreover, the income generated at Joffco Square is sufficient to cover all monthly interest payments to the Lender under the Debtor's proposed Plan.

The 2008 Loan matured on November 1, 2009, and the Debtor acknowledges that it has not met the required debt service coverage ratio necessary to extend the 2008 Loan. The Debtor further acknowledges that, as of the opening of business on the Petition Date, the aggregate total of the Obligations outstanding under the 2008 Loan is \$26,158,002. As of the Petition Date, the Debtor's aggregate assets total approximately \$27,000,000 and the Debtor's liabilities total

approximately \$32,500,000, including certain subordinated notes aggregating \$6,000,000 in principal amount in favor of two of the members of the Debtor.³

The Debtor faces profitability challenges which are principally due to the sharp and prolonged decline in the Chicago area retail industry. Indeed, retail vacancies have generally increased and leasing has slowed. The steep decline in residential home sales has also led to somewhat slower than expected growth in the neighborhoods surrounding the Property. The Debtor is confident, however, that the recent and ongoing recovery in the Roosevelt Road and University of Illinois-Chicago neighborhood surrounding Joffco Square will continue, resulting in an enhanced customer base and thus in increased sales and revenue. In addition, Joffco Square's anchor tenants, Best Buy and Bed Bath & Beyond, are consistently performance category leaders nationally; moreover, these anchor tenants are performing quite well in their operations at Joffco Square. Finally, completion and leasing of the Available Space will result in substantial additional income generated by the Center.

IV. THE DEBTOR'S ESTATE

The assets in the Debtor's Estate include, but are not limited to: (a) Joffco Square; (b) bank accounts, cash and cash equivalents; (c) accounts, accounts receivable, lease and contract rights to payment; (d) leases of space at Joffco Square to the Debtor's tenants, *i.e.*, Best Buy, Bed Bath & Beyond, and CorePower Yoga; (e) the Available Space to be improved and leased; (f) equipment and furniture; (g) certain general intangibles and other rights to payment; and (h) Causes of Action. Most remaining assets of the Debtor are subject to the Lender's security interests.

V. FUNDING THE PLAN

As set forth in more detail in the 3-Year Cash Flow and Budget Projection attached hereto as **Exhibit D**, the Debtor intends to fund all payments due or owing under the Plan from revenue generated by its ongoing business operations. Joffco Square is cash flow positive and generates enough monthly income for the Debtor to pay all payment due under the Plan, in addition to monthly overhead and operating expenses as they become due. The income generated at Joffco Square is sufficient to cover all monthly interest payments to the Lender under the Debtor's proposed Plan. In addition, two of the Debtor's members, Mrs. Joffe and Ms. Norris, will provide up to \$400,000 in subordinated unsecured financing toward the payment of the Debtor's Chapter 11 professional fees.

The Reorganized Debtor intends to further reduce administrative overhead and payroll expenses following the Effective Date of the Plan. As set forth in the 3-Year Cash Flow and

³ The Debtor's estimated liabilities include \$6,000,000 payable pursuant to subordinated notes to two of the Debtor's members, Amy Joffe and Melissa Norris. These subordinated notes represent repayment of funds Mrs. Joffe and Mrs. Norris provided to the Debtor in connection with and were a requirement for the Lender's renewal of the loan in late July 2008. Under the Debtor's proposed Plan, such members are willing to subordinate these notes to the Lender.

Budget Projection attached hereto as **Exhibit D**, the Reorganized Debtor intends to reduce its administrative overhead and payroll costs by nearly forty-five percent (45%) on an annualized basis going forward. In addition, Mrs. Joffe and Mrs. Norris will each contribute \$50,000 to the Reorganized Debtor for their membership interests in the Reorganized Debtor. These funds shall be held in an escrow account to be used as needed to cure any defaults under the Replacement Secured Note, with any remaining balance of such reserve fund to become general funds of the Reorganized Debtor or to be returned to Mrs. Joffe and Mrs. Norris (as they may direct) following payment in full of all amounts owed under the Replacement Secured Note, and, if applicable, the Unsecured Deficiency Note.

VI.
CLASSES OF CLAIMS AND THEIR
TREATMENT AND DISTRIBUTIONS UNDER THE DEBTOR'S PLAN

The Plan will become effective on the Effective Date. **Exhibit A** hereto titled "Summary of Proposed Distributions" summarizes the proposed distributions under the Plan to each Class of Creditors and Equity Holders.

A. **Administrative Claims, Priority Claims and Non-Construction Litigation Claims.** The Plan provides for the payment in full, or on such other terms as may be agreed upon by such Holder and the Debtor, of all Allowed Administrative Claims on (i) the tenth (10th) Business Day following the later of (b) the Effective Date or (b) the date on which such Claim becomes due, or (ii) as otherwise agreed between the Holder of such Claim and the Debtor.

The Plan also provides that on the tenth (10th) Business Day following the later of (i) the Effective Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim at the election of the Debtor made on or prior to the Effective Date (a) Cash equal to the amount of such Allowed Priority Tax Claim and (b) such other treatment as to which the Debtor and the Holder of such Allowed Priority Tax Claim shall agree upon in writing.

The Plan also provides for the payment in full, or on such other terms as may be agreed upon by such Holder and the Debtor, of all Allowed Priority Claims (other than Priority Real Estate Tax Claims) on the tenth (10th) Business Day following the later of (i) the Effective Date if such Priority Claim is an Allowed Priority Claim as of the Effective Date, or (ii) the date on which such Priority Claim becomes an Allowed Priority Claim.

The Plan defines Non-Construction Litigation Claims as the claims against the Debtor brought by the plaintiff in *Frank Schwab v. Zale Group, Inc., River West Plaza-Chicago, L.L.C., Joffco Development, L.L.C., and Leon Joffe*, Case No. 2008 L 12043, pending before the Circuit Court of Cook County, Law Division. The Plan provides that Non-Construction Litigation Claims shall remain subject to the automatic stay provided under § 362(a) of the Bankruptcy Code through the Effective Date, or such other time as the Court may direct. Thereafter, the action in which the Non-Construction Litigation Claims are pending may recommence in its

existing state court venue, and the Claims shall not be discharged under the Plan, but shall be Unimpaired.

(i) **Administrative Claims.** Administrative Claims, as designated in the Plan, include the unpaid costs and expenses that the Debtor has incurred in connection with this Chapter 11 Case, such as previously unpaid attorneys', accountants', and financial advisor fees subject to allowance by the Bankruptcy Court. Interim payments of 90% of such professionals' fees, and 100% of their expenses should have been previously paid by the Debtor prior to the Confirmation Hearing. Additional payment of professional fees approved by the Bankruptcy Court will be made as soon as practicable after the Bankruptcy Court allows such claims.

The Allowed Administrative Claims for the Debtor's Professionals to the extent remaining unpaid on the Effective Date, are not anticipated to exceed the aggregate of approximately \$400,000, net of any amounts paid by the Debtor to such Professionals prior to the Effective Date. These fees may be lower if the Debtor and its Lender are able to reach agreement regarding the Lender's treatment under the Plan.

The estimated unpaid professional fees that will be remaining to be paid to the Debtor's Professionals as of the Effective Date may include approximately: (a) \$300,000.00 to the Debtor's chapter 11 counsel, Meltzer, Purtill & Stelle, LLC; (b) \$30,000.00 to the appraiser for the Debtor, Zimmerman Real Estate Group, Ltd., if necessary; and (c) \$70,000.00 to an expert witness and consultant, if necessary, to assist the Debtor and its counsel in any disputes regarding use of cash collateral, confirmation of the Debtor's Plan, or other matters.

(ii) **Priority Claims.** On the tenth (10th) Business Day following the later of (i) the Effective Date if such Priority Claim is an Allowed Priority Claim as of the Effective Date or (ii) the date on which such Priority Claim becomes an Allowed Priority Claim, each Holder of an Allowed Priority Claim shall receive in full satisfaction, settlement and release of and in exchange for such Allowed Priority Claim at the election of the Debtor made on or prior to the Effective Date (a) Cash equal to the amount of such Allowed Priority Claim; and (b) such other treatment as to which the Debtor and the Holder of such Allowed Priority Claim agree upon in writing.

(iii) **Priority Tax Claims.** Priority Tax Claims, if any, shall pass through the Chapter 11 Case Unimpaired and shall be paid in the ordinary course when due.

B. Classification of Claims; Numbers and Amounts of Claims; Distributions and Other Treatment. The Plan divides the claims against and interests in the Debtor into separate classes of claims including one class of secured claims, two classes of unsecured claims and one class of Member Interests, each of which will receive different treatment under the Plan in accordance with the Bankruptcy Code. A claim or interest will receive a distribution under the Plan only to the extent it is an "Allowed Claim." An Allowed Claim is (a) any Claim or Administrative Claim, proof of which was Filed with the Bankruptcy Court on or before the applicable Bar Date, or which has been or hereafter is Scheduled by the Debtor as liquidated in amount and not disputed or contingent and which, in either case, is a Claim as to which no objection to the allowance thereof has been Filed within the applicable period of limitation (if any) for objection to Claims set forth in the Plan or as otherwise fixed by the Bankruptcy Court,

or as to which any objection has been determined by an order or judgment of the Court (allowing such Claim in whole or in part) that is no longer subject to appeal or certiorari proceedings, and as to which no appeal or certiorari proceeding is pending, or (b) a Claim or Administrative Claim that is allowed (i) in a Final Order or (ii) pursuant to the terms of the Plan. Any Distributions under the Plan to holders of Allowed Claims will be in full satisfaction of those Allowed Claims.

(i) **Treatment of Class 1 – Lender Secured Claims.** Class 1 Claims consist of all Lender Secured Claims. Lender Secured Claims means the Secured Claims of the Lender arising under the Lender Agreement and the documents, instruments and agreements related thereto. Class 1 Claims are Impaired. As of the Petition Date, the total amount of the Debtor's obligations to the Lender under the Loan Documents were approximately \$26,158,002. The Debtor's obligations under the Loan Documents are secured by security interests and liens in and against substantially all property of the Debtor's Estate in favor of the Lender, other than Avoidance Actions. Class 1 Claims are Impaired.

The Holders of Allowed Class 1 Claims will receive, on account of the Lender Secured Claims and in satisfaction thereof, the Replacement Loan Agreement, the Replacement Secured Note, the Replacement Mortgage, and the Replacement Assignment of Rents and Leases, each duly executed (and if appropriate, notarized) by the Reorganized Debtor and delivered to the Lender. The form of Replacement Loan Agreement, Replacement Secured Note, Replacement Mortgage, and Replacement Assignment of Rents and Leases are attached to the Plan as Exhibits A through D. The foregoing Plan documents provide, among other things, that the amount of \$26,158,002 shall be treated as fully secured, shall be paid to the Lender on or before May 1, 2015, and that interest shall be payable at the rate provided in the Replacement Secured Note. To the extent the Claim of the Lender is deemed to be oversecured, the principal amount of the Replacement Secured Note shall be increased to include the Lender's reasonable attorneys' fees and expenses incurred during the Chapter 11 Case. Negotiations with the Lender may result in modifications to the treatment proposed in the Plan, however, any such modifications will not affect the treatment of Class 2 Claims or Class 3 Claims set forth in the Plan.

To the extent that the Class 1 Claim of the Lender is deemed to be partially secured and partially undersecured, on the Effective Date, the Lender shall receive the treatment set forth above only to the extent that such Claim is deemed a Secured Claim. With respect to the remaining portion of such Claim that is deemed to be an Unsecured Claim, the Holder of Class 1 Claims shall also receive the treatment set forth below with respect to Class 5 Claims.

(ii) **Treatment of Class 2 Claims – Mechanic's Lien Claims.** Class 2 Claims shall consist of all Mechanic's Lien Claims. The Debtor estimates that there are 2 Holders of such Claims aggregating approximately \$230,000 as of the Petition Date. Class 2 Claims are Impaired. Each Holder of an Allowed Class 2 Claim shall receive payment of such Claims in full, plus the Legal Rate per annum accrued from the Petition Date through the date of payment. The date of payment to each Holder of an Allowed Class 2 Claim shall be the later of: (i) sixty (60) days after the Effective Date or (ii) five (5) business days after the date on which such Claim becomes an Allowed Claim.

(iii) **Treatment of Class 3 Claims – General Unsecured Claims.** Class 3 Claims shall consist of all General Unsecured Claims other than Insider Loan Claims. The

Debtor estimates that there are 25 Holders of such Claims aggregating approximately \$80,000 as of the Petition Date. Class 4 Claims are Impaired. Holders of Allowed Class 4 Claims (other than Allowed Insider Loan Claims) shall receive payment in full of such Claims, plus the Legal Rate per annum accrued from the Petition date through the date of payment. The date of payment to each Holder of an Allowed Class 4 Claim shall be the later of: (i) sixty (60) days after the Effective Date or (ii) five (5) business days after the date on which such Claim becomes an Allowed Claim. Insider Loan Claims shall be subordinated in right of payment to other Holders of Allowed Class 3 Claims as provided in Section 6.5 of the Plan.

(iv) **Treatment of Class 4 Interests – Debtor Interests.** Class 4 Interests consist of all Debtor Interests. Class 4 Interests are Impaired. Holders of Class 4 Debtor Interests shall not receive or retain any interest, property or other consideration under this Plan on account of their Class 4 Interests, which shall be deemed to be extinguished on the Effective Date.

(v) **Treatment of Class 5 Claims – Lender Deficiency Claims.** Class 5 Claims shall consist of all Lender Deficiency Claims. The Debtor estimates that there may be 1 Holder of such Claims in an amount unknown as of the Petition Date. Class 5 Claims are Impaired. On the Effective Date, if applicable, Holders of Allowed Class 5 Claims shall receive the Unsecured Deficiency Note in the form attached as Exhibit H to the Plan. The Unsecured Deficiency Note shall be executed and delivered by the Reorganized Debtor to the Lender on the Effective Date in the original principal amount of \$26,158,002.00 less the amount of the Replacement Secured Note as modified by Section 4.3(b) of the Plan and less the aggregate amount any interest payments made to the Lender between the Petition Date and the Effective Date. The Unsecured Deficiency Note shall have a maturity date of on or about May 1, 2015.

VII.

THIS CHAPTER 11 PLAN OFFERS RECOVERIES TO CREDITORS THAT ARE HIGHER THAN IF THIS CASE WERE CONVERTED TO A CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

Recoveries to Creditors will be higher under the Plan than they would be if this Chapter 11 Case were converted to a Case under Chapter 7 of the Bankruptcy Code for three principal reasons.

First, it is likely that the net proceeds available for Distribution to Creditors generally will be higher under the Plan than if this Case was converted to a Case under Chapter 7 in light of the additional administrative costs of a Chapter 7 case and the reduced asset recoveries as estimated on Exhibit C hereto. Specifically, the Debtor estimates that the aggregate net recoveries under the Plan available for Creditors likely will equal one hundred percent (100%) plus interest on the total amount of Allowed Claims, whereas no estimated recoveries are anticipated beyond those due on account of Class 1 Claims in a Case under Chapter 7.

Second, under the Plan all Allowed Priority Claims shall be paid in full, thereby meeting the requirement of section 1129(a)(9) of the Bankruptcy Code that Holders of Allowed Priority Claims must be paid in full under the Plan unless they consent to different treatment. In contrast, if this Chapter 11 Case were converted to a Case under Chapter 7 of the Bankruptcy Code, it is

likely that such Holders of Allowed Priority Claims would receive nothing because the requirement of payment in full (or by Creditor consent) is a criterion for confirmation of a plan under Chapter 11, but is not applicable under Chapter 7. Under the Plan, the Debtor estimates that the distributions on account of Allowed Class 2 Claims and Class 3 Claims will be 100% of such Allowed Claims plus interest.

Third, under the Plan the Lender will receive payment in full of its Claims after five (5) years, with interest to be paid each month until all principal is paid in full on or before the maturity date of the balloon payment, in accordance with the Replacement Loan Agreement, the Replacement Note, the Replacement Secured Note, the Replacement Mortgage, the Replacement Assignment of Rents and Leases and the Unsecured Deficiency Note, if applicable. In the event of a near term conversion to a case under Chapter 7, however, it is unlikely that the Lender would receive full payment of the principal amount it is owed.

Thus, the Debtor submits that it is incontrovertible that the Plan provides more to Holders of certain Classes of Claims, and in any event not less than would be available to all Creditors if the Plan were not confirmed and this Chapter 11 Case instead was converted to be liquidated under Chapter 7 of the Bankruptcy Code. Pursuant to Local Rule 3016-1(1)(b), the Debtor's Liquidation Analysis is attached hereto as **Exhibit C**.

VIII. **SUMMARY OF OTHER PLAN PROVISIONS**

A. **Bar Date.** Unless otherwise set forth in the Plan or ordered by the Bankruptcy Court, the Bar Date for filing proofs of Claim, or of Interest, as the case may be, against the Debtor shall be the date forty (40) days after the Effective Date or a date otherwise fixed by the Court in its Order confirming the Plan. Any Person or Entity that is required to File a proof of Claim or of Interest and fails to timely File such proof of Claim or of Interest, as the case may be, shall be forever barred, estopped and enjoined from asserting such Claim or Interest or participating in Distributions under the Plan on account thereof.

B. **Causes of Action.** Section 6.8 of the Plan provides that, on the Effective Date, all of the rights of the Reorganized Debtor to commence and pursue any and all Avoidance Actions shall be waived, relinquished and released, except that all Avoidance Actions shall be vested in and retained by the Reorganized Debtor solely for purposes of setoff, counterclaim, third-party complaints, affirmative defense or other defensive purposes. The Plan further provides that the Debtor, on behalf of themselves and the Holders of Allowed Claims, will retain all Causes of Action that the Debtor had or had power to assert immediately prior to the Effective Date. Such Causes of Action (if any) will be deemed assigned to the Reorganized Debtor under the Plan, and the Reorganized Debtor may commence or continue in any appropriate court (including the Bankruptcy Court) or tribunal any suit or other proceeding for the enforcement of such Causes of Action. The Debtor does not currently believe, however, that they possess any Causes of Action having a value that is material to the viability or feasibility of the Plan.

C. **Executory Contracts and Unexpired Leases.** The Debtor shall assume the tenant leases listed on Exhibit G of the Plan as of the Effective Date, and shall cure any arrearages and breaches thereunder within sixty (60) days after the Effective Date. Within sixty

(60) days of the Effective Date, the Reorganized Debtor shall be authorized, without further order of the Bankruptcy Court, to assume or reject any of the executory contracts or unexpired leases set forth on Exhibit G to the Plan by giving thirty (30) days' prior written notice to the parties thereto, not later than the expiration of the foregoing 60-day period, by which such contract or lease shall be deemed assumed or rejected, as the case may be. The notice to the contract counterparty of any executory contract or unexpired lease to be assumed shall contain the Debtor's proposed cure amount for such contract or lease, which such cure amount shall be determined pursuant to agreement of the parties or by further order of the Court if no such agreement can be reached. Any rejection damages arising pursuant to a notice of rejection shall constitute Class 3 Claims. Except for the executory contracts and unexpired leases set forth on Exhibit G to the Plan, each executory contract or unexpired lease of the Debtor that has not expired by its own terms or been assumed prior to the Effective Date, shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Effective Date.

All contracts and leases entered into by the Debtor after the Petition Date and remaining in effect on the Effective Date shall be deemed assigned to the Reorganized Debtor on the Effective Date.

All proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases shall, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court, within thirty (30) days of the Effective Date, except that such Claims arising under Section 8.1 of the Plan shall be filed with the Bankruptcy Court within thirty (30) days after the date the related executory contract or unexpired lease is deemed rejected thereunder. Any such proof of Claim that is not timely filed shall be released, discharged and forever barred from assertion against the Debtor, its Estate or Property. All objections to such Claims shall be filed in accordance with Section 7.4 of the Plan.

D. **Disputed Claims.** Objections to Administrative Claims and all other Claims, including claims arising from the rejection of executory contracts and unexpired leases, must be Filed with the Bankruptcy Court and served no later than sixty (60) days after the Bar Date. This deadline, however, may be extended by the Bankruptcy Court upon motion of the Reorganized Debtor, without notice or a hearing. On and after the Effective Date (i) the Reorganized Debtor and any other party in interest may object to any Administrative Claims, and (ii) only the Reorganized Debtor may object to Claims other than Administrative Claims (including those Claims listed in the Debtor's Schedules but excluding any Claims deemed Allowed under the Plan). All such objections must be filed prior to the Claims Objection Deadline, and scheduled claims that are subject to any such objection shall not be deemed Allowed Claims pending resolution of the objection with respect thereto. Notwithstanding the foregoing, (x) the Bankruptcy Court shall overrule any objections to Claims that are deemed Allowed Claims under the Plan and (y) any proof of Claim Filed after the Bar Date will be automatically disallowed as a late Filed Claim, without any action by the Debtor, unless and until the party Filing such Claim obtains the written consent of the Debtor, or after the Effective Date, the Reorganized Debtor, to File such Claim late or obtains an order of the Bankruptcy Court upon notice to the Debtor that permits the late Filing of the Claim, in which event, the Debtor, or after the Effective Date, the Reorganized Debtor, shall have thirty (30) days from the date of such written consent or order to object to such Claim, which deadline may be extended with the written consent of the Holder of

such Claim or by the Bankruptcy Court upon motion of the Debtor, or after the Effective Date, the Reorganized Debtor, without notice or a hearing.

On and after the Effective Date, the Reorganized Debtor shall establish and maintain the Disputed Claim Reserve for all Disputed Claims. For purposes of establishing this reserve, Cash will be set aside in an appropriate deposit account equal to the amount that would have been distributed to the Holders of Disputed Claims in such Class had their Disputed Claims been deemed Allowed Claims on the Effective Date, or such other amount as may be approved by the Bankruptcy Court upon motion of the Reorganized Debtor. If, when, and to the extent any such Disputed Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Debtor to the Claimant. The balance of such Cash, if any remaining after all Disputed Claims have been resolved, shall be distributed Pro Rata to Holders of Claims entitled thereto in accordance with Article 4 of the Plan. No payments or Distributions will be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by final order of the Court.

E. **Unclaimed Disbursements.** Except with respect to property not distributed because such property is being held in a Disputed Claim Reserve, Distributions that are not claimed by the expiration of six (6) months from the later of the (a) Effective Date or (b) the date of final Distributions under the Plan will be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and will be disposed of pursuant to the Reorganized Debtor, and the Claims with respect to which such Distributions are to be made will automatically be canceled and extinguished. After the expiration of the six-month period referenced in the preceding sentence, the claim of any party to such Distributions will be discharged and forever barred, and the unclaimed property as well as further Distributions to the party will be Distributed to Holders of Allowed Claims as provided in the Plan. Nothing contained in the Plan requires the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

F. **Released Parties.** Released Parties means (a) the Debtor and (b) the Debtor's affiliates, managers, members, officers, directors, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other Professionals, in each case in their capacities as such; provided, however, that clause (b) shall not include managers, members, officers, directors, or employees of the Debtor who were no longer acting in such capacity on the Petition Date.

G. **Releases by the Debtor.** On and after the Effective Date, pursuant to 28 U.S.C. §1651 and sections 105, 1123(b)(3) and 1123(b)(6) of the Bankruptcy Code, and except as otherwise provided in this Plan or the Confirmation Order, the Released Parties are deemed released and discharged by the Debtor and its Estate from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or its Estate would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf the Holder of any Claim or Interest or other Entity, based on, relating to, or in any manner arising from, in whole or in part, (a) the Debtor, (b) the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, (c) any Claim or Interest that is treated in the Plan, (d) the business or contractual arrangements between the Debtor and any Released Party, or (e) the negotiation, formulation or preparation of the Plan and

Disclosure Statement, or related agreements, instruments, or other documents, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes a failure to perform the duty to act in good faith (to the extent such duty is imposed by applicable non-bankruptcy law) and where such failure to perform constitutes willful misconduct, gross negligence, or fraud. The release and discharge set forth herein is granted for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious emergence of the Debtor and the implementation of the Plan. Pursuant to Article 1 of this Plan, the Released Parties shall include (i) the Debtor and (ii) the Debtor's affiliates, managers, members, officers, directors, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other Professionals, in each case in their capacities as such and not in any other capacity.

H. **Releases by Holders of Claims.** Except as otherwise specifically provided in the Plan, on and after the Effective Date, Holders of Claims voting to accept the Plan and electing not to opt out of the release contained in this paragraph (which by definition, does not include Holders of Claims who are not entitled to vote in favor of or against the Plan), shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Debtor and the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or its Estate would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, (a) the Debtor, (b) the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, (c) any Claim or Interest that is treated in the Plan, (d) the business or contractual arrangements between the Debtor and any Released Party, or (e) the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes a failure to perform the duty to act in good faith (to the extent such duty is imposed by applicable non bankruptcy law) and where such failure to perform constitutes willful misconduct, gross negligence, or fraud.

I. **Injunction.** Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold, Claims or interests that have been released, compromised or are subject to exculpation pursuant to Article X of the Plan, are permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of, in connection with or with respect to any such Claims or interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of, in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication in a proof of Claim or interest or otherwise that such

Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, provided that, notwithstanding anything to the contrary herein, no such release is granted by this paragraph.

J. **Exculpation.** Except as otherwise specifically provided in the Plan, no Released Party shall have or incur, and each Released Party is released and exculpated from any Claim, obligation, Cause of Action, or liability to one another or to any exculpating party for any Claim based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, except for gross negligence, willful misconduct, or fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Debtor and each of its affiliates, officers, directors, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other Professionals have, and upon the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to Distributions set forth pursuant to the Plan, and therefore are not, and on account of any such Distribution shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or any such Distribution made pursuant to the Plan.

K. **Discharge of Claims; Termination of Interests and Rights.** Except as otherwise provided in the Plan or the Confirmation Order, pursuant to Section 1141(d)(1) of the Bankruptcy Code, all Claims against the Debtor or the Reorganized Debtor arising before the entry of the Confirmation Order shall be discharged as of the Effective Date, regardless of whether the Holder of the Claim or any other Person filed a proof of Claim based on the debt, and whether or not a Claim is Allowed under section 502 of the Bankruptcy Code or whether the Holder of the Claim has accepted this Plan. Nonetheless, as of the Effective Date, the rights and interests of the members of the Debtor shall remain in full force and effect and shall not be terminated.

L. **Reservation of Rights.** Notwithstanding any term or provision thereof to the contrary, nothing contained in Sections 10.1 through 10.5 of the Plan shall be deemed to be a waiver or release of any of the rights or obligations of any of the Holders of Claims under the other terms and provisions of this Plan or the Confirmation Order.

M. **Term of Injunctions and Stays.** Unless otherwise provided herein or in the relevant orders applicable thereto, all injunctions or stays provided for in any adversary proceeding or the Chapter 11 Case and in effect on the Confirmation Date shall remain in full force and effect until the Effective Date, whereupon the discharge and permanent injunctions set forth in this Plan and in the Confirmation Order shall take effect.

N. **Compromises and Settlements.** After the Effective Date, the Reorganized Debtor may compromise and settle any Claims, or any claims against others, without further approval of the Bankruptcy Court.

O. **Retention of Claims Other Than Avoidance Actions.** The Plan provides that pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, but subject to any limitation in the Plan, the Debtor, on behalf of itself and the Holders of Allowed Claims, shall retain all Causes of Action (other than Avoidance Actions) that the Debtor had or had power to assert on the Effective Date, which Causes of Action shall be deemed assigned to the Reorganized Debtor as provided in the Plan, and the Reorganized Debtor may commence or continue in any appropriate court or tribunal (including the Bankruptcy Court) any suit or other proceeding for the enforcement of such Causes of Action. Except as otherwise provided in the Plan, on the Effective Date, all of the rights of the Reorganized Debtor to commence and pursue, as appropriate, any and all Avoidance Actions shall be waived, relinquished and released, except that all Avoidance Actions shall be vested in and retained by the Reorganized Debtor solely for purposes of setoff, counterclaim, third-party complaints, affirmative defense or any other defensive purposes. Notwithstanding the forgoing, the Debtor and Reorganized Debtor expressly reserve all rights, including, without limitation, any and all Avoidance Actions, related to the Non-Construction Litigation Claims.

P. **Payment of Statutory Fees.** The Plan provides that all fees payable pursuant to section 1930 of Title 28 of the United States Code shall be paid on the Effective Date or from assets of the Debtor when otherwise due.

Q. **Retention of Jurisdiction.** The Plan provides that following the Confirmation Date and until such time as all payments and Distributions required to be made and all other obligations required to be performed under the Plan have been made and performed by the Debtor initiated in the Bankruptcy Court are resolved, the Bankruptcy Court shall retain sole jurisdiction to the full extent that retention thereof is legally permissible, including, without limitation, for the following purposes:

(i) **Claims.** To determine the amount, allowability, allocability, classification, or priority of Claims against the Debtor, including (without limitation) rejection claims arising pursuant to section 502(g) of the Bankruptcy Code, upon motion or upon objection to any Claim by the Debtor or any other party in interest;

(ii) **Claims Estimation.** To estimate Claims for purposes of allowance pursuant to section 502(c) of the Bankruptcy Code, including (without limitation) estimation of Claims of customers asserting setoff or rights of recoupment against amounts owed to the Debtor;

(iii) **Injunctions, etc.** To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that

may be pending before the Bankruptcy Court in the Chapter 11 Case on or before the Effective Date with respect to any Person or Entity;

(iv) **Professional Fees.** To determine any and all applications for allowance of compensation and expense reimbursement of Professionals for periods before the Effective Date, as provided for in the Plan;

(v) **Certain Priority Claims.** To determine any Priority Tax Claims, Priority Claims, Administrative Claims or any requests for payment of Administrative Claims;

(vi) **Dispute Resolution.** To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and the making of Distributions thereunder, including, without limitation, any dispute concerning payment of Professional Fees and expenses;

(vii) **Unexpired Leases and Executory Contracts.** To determine any and all motions for or relating to the rejection, assumption, or assignment of executory contracts or unexpired leases, and to determine the allowance of any Claims resulting from the rejection of executory contracts and unexpired leases or cure Claims resulting from the assumption of executory contracts and unexpired leases;

(viii) **Claims Against the Lenders.** To determine any and all Claims of the Debtor against the Lender, including, without limitation, all surcharge Claims arising under section 506(c) of the Bankruptcy Code, if any;

(ix) **Actions.** To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted prior to the closing of the Chapter 11 Case, except any action in which the Debtor is a plaintiff in any state or federal court (other than the Bankruptcy Court) as of the Effective Date;

(x) **363 Sales.** To hear and determine motions by the Reorganized Debtor to sell assets of the Estate pursuant to section 363 of the Bankruptcy Code and all issues and contested matters relating thereto;

(xi) **General Matters.** To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order as may be authorized under provisions of the Bankruptcy Code;

(xii) **Plan Modification.** To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;

(xiii) **Deadlines.** To extend any deadline, timetable or timeline set forth in the Plan upon the filing of a motion by any party in interest;

(xiv) **Aid Consummation.** To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;

(xv) **Implementation of Confirmation Order.** To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated; and

(xvi) **Final Order.** To enter a Final Order confirming substantial consummation of the Plan and closing the Chapter 11 Case.

IX. **CONFIRMATION AND ACCEPTANCE**

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of determinations concerning the Plan, including that: (i) the Plan has classified all claims in a permissible manner; (ii) the contents of the Plan comply with the technical requirements of chapter 11 of the Bankruptcy Code; (iii) the Debtor has proposed the Plan in good faith; and (iv) the Debtor's disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the Debtor's Chapter 11 Case. The Debtor believes that all of these conditions have been met or will be met and will seek rulings of the Bankruptcy Court to this effect at the hearing on confirmation of the Plan.

The Bankruptcy Code also requires that the Plan be accepted by the requisite votes of holders of claims, that the Plan be feasible, and that entry of a Confirmation Order, absent unanimity, be in the best interests of the holders in each impaired class of claims. To confirm the Plan, the Bankruptcy Court must make independent findings that all of these conditions are met, even if all classes of creditors accept the Plan by the requisite votes. The classification, feasibility, and acceptance conditions to confirmation are discussed below.

A. **Classification of Claims.** The Bankruptcy Code requires that the Plan place each claim or interest in a class with other claims or interests that are substantially similar. The Debtor believes that the Plan satisfies the Bankruptcy Code's standards for appropriate classification.

B. **Feasibility.** As a condition to Confirmation, the Bankruptcy Code generally requires that confirmation is not likely to be followed by a Chapter 7 liquidation or the need for further financial reorganization. This requirement is generally referred to as the feasibility test of section 1129(a)(11) of the Bankruptcy Code. The Debtor submits that the Plan is feasible and otherwise complies with section 1129(a)(11) of the Bankruptcy Code. The Debtor has prepared financial projections running through January 31, 2013 that evidence the feasibility of the Plan. Pursuant to Local Rule 3016-1(2)(a), the Debtor's Business Plan, including cash flow and budget projections, is attached hereto as **Exhibit D**.

C. **Acceptance.** As another condition to entry of a Confirmation Order, the Bankruptcy Code requires that each impaired class of claims or interests accepts the Plan. The Bankruptcy Code defines acceptance of the Plan by a class as acceptance by the holders of two-thirds in dollar amount and a majority in the number of claims in that class, but for this purpose only counts those who actually vote to accept or reject the Plan. Holders of Class 1, Class 2 and Class 3 Claims are Impaired Classes under the Plan and therefore are entitled to vote.

If any Impaired Class of Claims or Interests entitled to vote does not accept the Plan by the requisite majorities provided in sections 1126(c) or 1126(d) of the Bankruptcy Code, as

applicable, the Debtor reserves the right (i) to amend the Plan, (ii) to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or (iii) both to amend the Plan and to seek Confirmation of any amended plan pursuant to section 1129(b) of the Bankruptcy Code.

D. Alternatives, Best Interests of Creditors and Liquidation Analysis.

The only realistic alternative to the Plan is a liquidation of the Debtor's remaining assets through a conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code as described in the Liquidation Analysis set forth in **Exhibit C** hereto. The Debtor believes that such a conversion of this Case would result in a delayed distribution to creditors and a smaller percentage recovery for unsecured creditors than would be realized under the Plan, since, among other reasons, (a) a Chapter 7 case would needlessly impair the going concern value of the Debtor's business at Joffco Square; (b) this is a 100% payment Plan within which all creditors either will be paid in full on their Allowed Claims plus interest, or their Claims will be unimpaired; (c) a Chapter 7 trustee, not having been previously acquainted with the Case, would require additional time to learn the necessary details of the Case; and (d) the trustee's fees, and the fees of its own professionals would be payable ahead of the claims of the unsecured creditors pursuant to the provisions of the Bankruptcy Code. Thus, the Plan represents the best alternative for the unsecured creditors.

Moreover, the Plan is in the best interests of Creditors. The "best interests" test requires a finding that the Plan will provide to each member of each impaired Class of Claims and Interests property of a value, as of the Effective Date of the Plan, at least equal to the amount such Class member would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. The Plan provides a 100% recovery to impaired classes that is equal to or greater than the amount each Class member would receive as a result of liquidation under Chapter 7 of the Bankruptcy Code. In the event that the Debtor's Case was converted to a Chapter 7 liquidation, the additional costs arising from the appointment of a trustee completely unfamiliar with the Debtor's business and the proceedings in this Case would impose further administrative expenses upon the Estate, not limited to professional fees earned and expenses incurred by the trustee. Any proceeds realized from the liquidation by a Chapter 7 trustee would first be used to pay all costs and expenses incurred from and after the date of conversion to Chapter 7, including the trustee's fees and the fees of all professionals retained by such trustee.

Pursuant to section 326 of the Bankruptcy Code, the statutory Chapter 7 trustee fees shall not exceed 25% of the first \$5,000 disbursed, 10% on any amount disbursed in excess of \$5,000 but not in excess of \$50,000, 5% on any amount disbursed in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% on any amounts in excess of \$1,000,000. Due to this additional administrative cost and the other additional administrative expenses entailed by a conversion to Chapter 7, the Debtor believes that Creditors holding Unsecured Claims stand to receive more under the Plan than they would pursuant to a liquidation under Chapter 7 of the Bankruptcy Code.

Pursuant to Local Bankruptcy Rule 3016-1, the Debtor is required to provide a summary exhibit setting forth a Liquidation Analysis as if the Debtor's assets were liquidated under

Chapter 7 of the Bankruptcy Code. This summary is attached to this Disclosure Statement as **Exhibit C**.

X.
CONCLUSION AND RECOMMENDATION

The Debtor believes that confirmation and implementation of the Plan is preferable to any other alternative because it will result in the greatest recovery to Holders of all Claims. Other alternatives would involve significant delay, uncertainty, and substantial additional administrative costs. The Debtor therefore recommends voting to accept and confirm the Plan. Please fill out the enclosed Ballot and mail it in the enclosed addressed envelope in accordance with the instructions provided with the Ballot. Ballots must actually be received by March 22, 2010 at 4:30 p.m. (Central Standard Time).

Dated: February 17, 2010

Respectfully submitted,

**RIVER WEST PLAZA-CHICAGO, LLC, d/b/a
JOFFCO SQUARE**

By: /s/ Amy Joffe
Its: Manager

By: /s/ Forrest B. Lammiman
One of Its Attorneys

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DISCLOSURE STATEMENT
with respect to
DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION

LIST OF EXHIBITS

- Exhibit A:** Summary of Proposed Distributions
- Exhibit B:** Financial Statements:
- B1** – 2008 Final Statement
- B2** – 2009 Draft Statement
- Exhibit C:** Liquidation Analysis
- Exhibit D:** Cash Flow and Budget for Plan
- Exhibit E:** Officers & Directors of Reorganized Debtor; Insiders