

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

---

In re:

RIVERHEAD PARK CORP.  
  
Debtor.

---

Chapter 11  
Case No. 09-78152-reg

**DISCLOSURE STATEMENT TO  
ACCOMPANY DEBTOR'S PLAN OF  
REORGANIZATION**

Riverhead Park Corp., (hereinafter referred to as "Riverhead" or "Debtor") Debtor and Debtor-In-Possession herein, respectfully submits this disclosure statement to all known holders of claims and interests in order to solicit acceptances or rejections of the Debtor's proposed plan of reorganization ("Plan").

**ARTICLE I**

**Description of Disclosure Statement**

The purpose of this disclosure statement is to provide the creditors and interest holders of the Debtor with adequate information to enable them to make an informed decision whether to vote to accept or reject the Plan. A plan of reorganization is the document that contains the formal statement of what the various creditors and interested parties will receive, how they are to receive it, and what will become of the Debtor. If a plan of reorganization is confirmed by the Bankruptcy Court, it will become binding on the Debtor, all creditors and interested parties.

Creditors have the right to cast an affirmative or negative vote as to the Plan if they are impaired. There are impaired classes in this Plan since the debtor may be not paying all claims in full. Thus, there will be voting on confirmation of the plan. Accompanying this disclosure statement is a copy of the Plan.

This disclosure statement has been approved by United States Bankruptcy Judge Robert E. Grossman as containing adequate information to enable creditors to make an informed decision on the Amended Plan at the confirmation hearing. Although this disclosure statement has been approved by the Bankruptcy Court, the approval does not mean that the Plan is recommended by the Bankruptcy Court. An official creditors' committee has not been appointed in this case.

What follows is a brief description of (i) the Debtor, both before and during the bankruptcy case, (ii) a description and analysis of the plan, including the projected timing and percentage of the payments to creditors and other interested parties, and finally (iii) an analysis of the alternatives to the Plan.

NO REPRESENTATIONS CONCERNING THE DEBTOR, ITS OPERATIONS OR THE VALUE OF ITS PROPERTY ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OTHER THAN AS CONTAINED IN THE DISCLOSURE STATEMENT OR PLAN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, HAROLD M. SOMER, PC, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE DEEMED NECESSARY AND APPROPRIATE. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN WHICH MAY ONLY BE SOUGHT AFTER THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. ACCORDINGLY, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE.

APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT BY THE COURT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN. THE COURT DOES NOT RENDER ANY OPINION AS TO WHETHER THE PLAN SHOULD BE ACCEPTED OR REJECTED BY CREDITORS OR EQUITY INTEREST HOLDERS.

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN AS WELL AS CERTAIN FINANCIAL INFORMATION WITH RESPECT TO THE DEBTOR. WHILE THE DEBTOR BELIEVES THIS SUMMARY AND THE FINANCIAL INFORMATION TO BE FAIR AND ACCURATE, SUCH SUMMARY DOES NOT PURPORT TO BE COMPLETE AND IS QUALIFIED IN ITS ENTIRETY BY THE ORIGINAL DOCUMENT.

## ARTICLE II

### **General Background Information About The Debtor**

---

Riverhead Park Corp. was formed April 26, 2002 under the laws of the State of New York for the purpose of purchasing, owning, development, leasing, management and sale of real property. The shareholders, officers and directors are Laurence Oxman and Stanley Blumenstein.

The Debtor owns nearly 13 acres of unimproved commercial real property located at Old Country Road, Riverhead, New York.

The mortgage was re-financed on July 26, 2007 through 54 LLC and Parlex Investors LLC, the current mortgagees, in the principal sum of \$5,000,000.00 with interest at 13% per annum. The term of the loan was for 12 months with payments of interest only. The mortgage matured on August 1, 2008.

Being unable to satisfy the obligation, a mortgage foreclosure action was commenced in the Supreme Court of the State of New York, Suffolk County, under Index No. 43265/2008. A judgment of foreclosure and sale was issued August 13, 2009.

Attempts were made to resolve the matter with the mortgagee through a forbearance or modification of the loan. As the parties were unable to reach an agreement, the instant petition was filed on the October 27, 2009 to stay the foreclosure sale scheduled for October 28, 2009.

Prior to and during the pendency of the petition, the Debtor continued to operate and market the property for sale, rental, joint venture or development purposes. In this economy, there was very little, if any serious interest.

The Debtor obtained an appraisal in December 2008 with a value of the property at \$12,300,000.00 The mortgagee obtained an appraisal after the filing of the petition showing a value of \$5,542,000.00. The parties agreed it would be in their best interests to work together and have a real estate broker retained to market the property on a national level and to conduct an auction in the hopes of maximizing the return.

As will be more fully described, the Debtor is selling its real property as part of the plan of reorganization. It is hoping to generate funds to satisfy the mortgage obligation, real estate taxes and the costs of sale and thereafter have sufficient funds remaining for payment of the other claims.

By Order dated April 1, 2010, the court approved the retention of David R. Maltz & Co., Inc. as the real estate broker upon the terms and conditions contained in the retention agreement. Pursuant to the Maltz agreement, the mortgagee advanced \$15,000.00 to cover the cost of marketing. It is anticipated that the property will be sold by auction on May 26, 2010. Pursuant to Section 363(k) of the Bankruptcy Code, the mortgagee has the right to credit bid the amount it is due, inclusive of the money it advanced for marketing the sale, and take title if there are no bids sufficiently in excess of the payoff to create the funds for the plan. Annexed hereto is a copy of the Maltz agreement which provides for the scenarios other than a sale through the auction and the commission to be paid. There are other provisions in the event the auction sale should be cancelled prior to the sale date.

Prior to the filing, there was litigation pending, criminal and civil, between the Town of Riverhead and the Debtor and its officers as follows:

- a) Town of Riverhead v. Riverhead Park Corp. and Larry Oxman, Supreme Court, Suffolk County, Index No. 25539/2004: An action seeking injunctive relief regarding the clearing and restoration of trees from the real property. A motion to dismiss the action for lack of capacity, brought post-petition, is pending.
- b) People v. Larry Oxman and Riverhead Park Corp.: Criminal proceeding in connection with numerous citations issued in 2004 and 2005 based upon alleged violations of the town code regarding the clearing of trees from the real property.

- c) Riverhead Park, Corp., Stanley Blumenstein and Laurence Oxman v. Phillip Cardinale, Town of Riverhead: Action pending in United States District Court, Eastern District of New York under case No. 07-CV-04133-ADS-ARL for violations of civil rights arising from illegal conduct by the town and town officials in response to permitted activity.

The court has approved the retention of special litigation counsel to handle these matters on behalf of the Debtor.

The various matters with the Town of Riverhead are still pending. Should the Town be successful in obtaining any monetary awards against the Debtor, said awards will constitute unsecured claims.

Should the Debtor be successful in its federal action, then any monetary award will be used to offset any claim the Town of Riverhead may have and monies recovered used to fund the plan of reorganization in the event the net proceeds from the sale of the Debtor's real property are insufficient to pay the claims. Any remaining funds will be paid to the shareholders on account of their interests.

### **ARTICLE III**

#### **Description of the Plan**

THE FOLLOWING IS A SUMMARY OF THE PROVISIONS OF THE PLAN, AND ACCORDINGLY, IT IS NOT AS COMPLETE AS THE FULL TEXT OF THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT. THE PLAN ITSELF SHOULD BE READ IN ITS ENTIRETY.

Articles IX and XI of this disclosure statement describe the Debtor's cash flow and its position as to creditors ability to recover monies on account of their claims.

A. Funding Sources: It is anticipated that the funds for payment under the plan will come from the sale of the real property with the closing to take place after fourteen (14) days subsequent to the order of confirmation becoming final and non-appealable. If the sale proceeds, if any, be insufficient to fund the plan in its entirety, then it is possible that other funds will come from any recovery due the Debtor arising from the litigation in federal court against the Town of Riverhead and the other defendants as describe in Article II.

B. Organization of the Plan and Distribution to Claimants: The Plan is organized into articles. Article I contains the definitions of items that are used in this Plan. The Debtor has attempted to make the definitions correspond to those in the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure or general bankruptcy practice. Article II classifies the claims of creditors, including the holders of administration expenses, and interests of equity security holders. Administration expenses are essentially the costs of conducting the Chapter 11 case, including the fees and expenses of professionals related to the case.

Article III specifies the distribution to the classes of claims and interests, that is, whether a class will receive full payment of its claims and interest, and if not, the actual distribution and the timing of such distribution. Article IV specifies which classes are impaired under the Plan; Bankruptcy Code Section 1124 defines the term "impairment" as follows:

Except as provided in Section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan -

1. leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

2. notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default -

(a) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in Section 365(b)(2) of this title;

(b) reinstates the maturity of such claim or interest as such maturity existed before such default;

(c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Article V states that as there are classes of creditors who are impaired, there is a right to vote to accept or reject the Plan and thus the "cram-down" provisions pursuant to 11 U.S.C. §1129 are applicable. Article VI describes how funds will be generated to enable the Debtor to make the distributions contemplated under the Plan. Article VII provides that any transfer of realty be exempt from transfer taxes pursuant to Section 1146 of the Bankruptcy Code. Article VIII advises that there are no preferences or fraudulent conveyances. Article IX concerns the status of executory contracts not formally assumed or rejected as of the Confirmation Date. Article X deals with the indemnification of the Debtor's representatives. Article XI provides the mechanism for resolving disputed claims and how same affects the distribution process. Article XII provides certain negative



covenants made by the Debtor and events of default. Article XIII provides who is to receive all notices under the Plan. Article XIV contains the provisions that confirmation of the Plan discharges the Debtor. Article XV contains certain releases, waivers, terminations, contractual indemnifications and settlements of Debtor's claims. Article XVI provides for the continuation of the automatic stay post-confirmation. Article XVII states that the Bankruptcy Court will retain jurisdiction over the case for purposes of, including, but not limited to retaining an auctioneer, if necessary; in connection with the sale and until all distributions have been made.

## **ARTICLE IV**

### **Plan Treatment**

The following paragraphs will discuss the classification and the treatment of the five (5) classes together and will discuss each class in order.

The Debtor shall satisfy in full with statutory interest where applicable the allowed claims of the Administrative and Class I Creditors from the proceeds from the sale of the debtor's real property upon the later of the effective date of confirmation or the allowance of claim(s) by the Court.

Allowed Administration Expenses include the costs of administration, plus the fees and expenses of attorneys and other professionals retained in this case. Said Claims are entitled to priority under Sections 502(b), 503(b) and 507(a)(1) of the Bankruptcy Code. Creditors in this class will include the U.S. Trustee for unpaid quarterly fees; the Suffolk County Treasurer for possible real estate taxes that came due after the filing and have not yet been paid; Harold M. Somer, PC for legal fees and expenses incurred in representing the Debtor; Campanelli & Associates, P.C., special

litigation counsel to the Debtor, for legal fees and expenses incurred in representing the Debtor; real estate broker commission. It is anticipated that fees and expenses of Harold M. Somer, PC will approximate \$\_\_\_\_\_. Except for the real estate broker, whose commission will be paid from sale proceeds or as otherwise agreed in the retention agreement, and quarterly fees to the U.S. Trustee, there are no other anticipated additional professional fees and expenses or administrative expenses.

Typically, the Court will allow fees and expenses of professionals in a Chapter 11 proceeding upon application at or subsequent to confirmation.

Class I consists of all other priority claims, including claims of employees who performed services for the Debtor during a certain time period prior to the commencement of this proceeding and pre-Filing Date tax claims. Pursuant to Section 507(a)(3) of the Bankruptcy Code, employees are entitled to a third priority for wages earned within the ninety (90) days prior to bankruptcy up to a maximum of \$4,000 per employee. Wages in this context includes vacation and bonus pay; the wage claims will receive full payment under the Plan, upon allowance. There are no employees and thus no monies due and owing for wages. There are no known obligations to taxing authorities which were incurred prior to the commencement of this proceeding except for real estate taxes. If there are, the taxing authorities will be paid in full with interest.

These payments shall first be made to satisfy any and all trust fund taxes and then to satisfy any and all non-trust fund taxes. It is anticipated that there will be no creditors in this class. To the extent there are any, they will be paid first. This class is not impaired and thus not entitled to vote.

Class II consists of the claim held by 54 LLC and Parlex Investors LLC, the mortgagee, whose claim is secured by a mortgage lien on the real property owned by the Debtor. The Debtor

will pay the lien and advanced sale costs from the sale proceeds or transfer of title if the mortgagee is the purchaser at the sale. This class is not impaired and thus not entitled to vote.

Class III consists of the Suffolk County Treasurer for pre-petition real estate tax liens against the real property. The claim of \$92,187.16 will be paid in full at the time of the transfer of title to the property. This Class is not impaired under the plan and not entitled to vote.

Class IV consists of the general unsecured claim of Edward Bagley who may be paid less than 100%. This class may be impaired under the plan and entitled to vote.

Class V consists of the unsecured claim of the Town of Riverhead arising from the criminal proceeding in an amount not yet determined. If the Debtor is successful, no money will be due the Town. This class may be impaired and is entitled to vote. As no determination of liability has been rendered and fines assessed against the Debtor, the potential claim(s) will have to be estimated by agreement or after a motion in the bankruptcy court for a determination of said estimated claim.

Class VI consists of the interests of the shareholders. These parties shall retain their respective interests upon confirmation pending completion of the litigation with the Town of Riverhead. They shall only receive payment for the interests in the event all creditors receive a 100% distribution.

In order to maintain the status quo, the automatic stay will remain in place post-confirmation.

## **ARTICLE V**

### **Voting**

Article IV described that Classes IV and V are impaired under the plan and are entitled to vote to accept or reject the Plan. As there are impaired classes of claims, the "cram-down"

provisions of the Bankruptcy Code are applicable herein. Cram-down is unlikely here as there is intended to be a one hundred (100%) percent return to creditors.

## **ARTICLE VI**

### **Effective Date and Certain Definitions**

The second business day after the time to appeal from the Order of Confirmation has elapsed, whether or not an appeal is pending, shall be the effective date of the Plan. The Plan will be effective on that date if the Order of Confirmation has not been vacated, reversed, suspended or stayed by either the Bankruptcy Court or a Court of appellate jurisdiction.

## **ARTICLE VII**

### **Preferences and Fraudulent Conveyances**

There are no known preferences or fraudulent conveyances as defined in Sections 547 and 548 of the Bankruptcy Code.

## **ARTICLE VIII**

### **Discharge and release of obligations**

Personal guarantees of Laurence Oxman and Stanley Blumenstein shall be released and discharged.

## **ARTICLE IX**

### **The Debtor's Projections of Future Activity**

Projections are not required here as the Debtor was not operating a business and its intention is to sell the property pursuant to the Plan.

## ARTICLE X

### Federal Income Tax Consequences

The Debtor has not obtained rulings from the Internal Revenue Service ("IRS") with respect to any of these matters, and the opinion of the Debtor is not binding on the IRS.

CREDITORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE CONSEQUENCES TO THEM, UNDER FEDERAL AND APPLICABLE STATE AND LOCAL TAX LAWS, OF THE CONSUMMATION OF THE PLAN.

### Consequences to the Company

The Debtor may not recognize taxable income upon the sale under the Plan.

---

## ARTICLE XI

### Alternatives

The only alternative would be a dismissal of the case with the mortgagee conducting its foreclosure sale. The litigation with the Town of Riverhead would continue and any creditors paid with the possible award and/or surplus money from the sale.

## ARTICLE XII

### United States Trustee's Fees

\_\_\_\_\_ The Debtor shall be required to continue to pay to the Office of the United States Trustee quarterly fees until such time as the final decree is entered.

**ARTICLE XIII**

**Post-Confirmation Jurisdiction**

The Bankruptcy Court shall retain jurisdiction post-confirmation pending the completion of all of the litigation associated with the Town of Riverhead as the Debtor may be entitled to a monetary award which might be needed to fund the plan of reorganization.

Dated: May 21, 2010

RIVERHEAD PARK CORP.

/S/ Laurence Oxman

By: \_\_\_\_\_  
Laurence Oxman, Sec./Treas.

Dated: Westbury, New York  
May 24, 2010

HAROLD M..SOMER, PC  
Attorney for the Debtor

/S/ Harold M. Somer

By: \_\_\_\_\_  
HAROLD M. SOMER, ESQ.  
1025 Old Country Road, Ste. 404  
Westbury, New York 11590  
516 248-8962