

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE 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, )  
)  
\_\_\_\_\_ )

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**AMENDED DISCLOSURE STATEMENT TO ACCOMPANY FIRST AMENDED  
CHAPTER 11 PLAN OF LIQUIDATION OF BANK OF AMERICA, N.A.  
FOR RIVER WEST PLAZA-CHICAGO, LLC D/B/A JOFFCO SQUARE**

**DATED JUNE 9, 2010**

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**IMPORTANT DATES**

- Date by which objections to Confirmation of the Plan must be Filed and served: July 16, 2010.
- Hearing on Confirmation of the Plan: 9:30 a.m., C.D.T., July 30, 2010.

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LaSalle Bank National Association**

**PLEASE READ THIS IMPORTANT INFORMATION FIRST**

Bank of America, N.A. ("Bank of America"), successor by merger to LaSalle Bank National Association ("LaSalle"), files this disclosure statement ("Bank Disclosure Statement") pursuant to Bankruptcy Code section 1125, Rule 3016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3016-1 of the Local Rules for the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") in conjunction with its First Amended Chapter 11 Plan of Liquidation (the "Bank Plan") for River West Plaza-Chicago, LLC D/B/A Joffco Square ("Debtor"), filed with the Bankruptcy Court. **All capitalized terms not defined herein shall have the definition set forth in the Bank Plan.**

Two separate plans of reorganization have been proposed for the Debtor's bankruptcy estate - (1) the Bank Plan, submitted by Bank of America and (2) the Third Modified Plan of Reorganization, submitted by the Debtor (the "Third Plan," collectively with the Bank Plan, the "Plans"). Both Bank of America and the Debtor are soliciting acceptances with respect to the Bank Plan and the Third Plan respectively. A copy of the Bank Plan is enclosed herewith as **Exhibit A**, while a copy of the Third Plan accompanies the Debtor's Disclosure Statement With Respect to the Third Amended Plan of Reorganization ("Debtor Disclosure Statement").

This solicitation is conducted in order to obtain sufficient acceptances to enable the Bankruptcy Court to confirm one of the Plans pursuant to the provisions of Bankruptcy Code section 1129. As set forth in the Summary of Voting Procedures below, classes of Claims that are entitled to vote on the Plans will vote separately with respect to each Plan. However, the Bankruptcy Court can only confirm one plan.

The purpose of the Bank Disclosure Statement is to set forth: (a) the history of the Debtor, its business, and its Chapter 11 Case; (b) information concerning the Bank Plan and Bank of America's position with respect to the Third Plan; (c) information for the Holders of Claims and Equity Interests regarding their rights under the Bank Plan and Bank of America's position with respect to the likely treatment of Allowed Claims against the Debtor under the Third Plan; and (d) information to assist the Bankruptcy Court in determining whether any or all of the Plans comply with the provisions of chapter 11 of the Bankruptcy Code and whether one of the Plans should be confirmed.

On June 9, 2010, the Bankruptcy Court: (i) approved this Bank Disclosure Statement, in accordance with Bankruptcy Code section 1125, as containing "adequate information" to enable a typical holder of a Claim or Equity Interest (each, a "Holder" and collectively, the "Holders" as defined in the Bank Plan) in the Debtor to make an informed judgment as to whether to vote to accept or reject the Bank Plan; and (ii) authorized its use in connection with the solicitation of votes (the "Solicitation") with respect to the Bank Plan. **This Bank Disclosure Statement is not intended to replace a careful and detailed review and analysis of the Bank Plan by each Holder, but instead is intended only to aid and supplement that review. Any description of the Bank Plan is a summary only. Holders and other parties-in-interest are cautioned to review the Bank Plan and any related attachments in their entirety for a full understanding of the provisions of the Bank Plan.** This Bank Disclosure Statement is qualified in its entirety by reference to the full text of the Bank Plan and the exhibits and attachments to each of the Bank Plan. If any inconsistency exists between the terms of the Bank Plan and this Bank Disclosure Statement, the terms and provisions of the Bank Plan shall control.

Bank of America recognizes that the Debtor disagrees with certain of the contentions set forth in this Summary.

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I.  
**SUMMARY**

The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on December 7, 2009 (the "Petition Date" in the Bank Plan) in the Bankruptcy Court (the "Chapter 11 Case" under the Bank Plan). On May 25, 2010, Bank of America filed the Bank Plan and this Bank Disclosure Statement with the Bankruptcy Court. On June 9, 2010, the Bankruptcy Court approved the Bank Disclosure Statement.

Although the Chapter 11 Case will affect the rights of Bank of America, as the Debtor's prepetition senior secured lender, and the Holders of equity interests in the debtor, the Bank Plan will not affect the Debtor's critical business relations, including all Holders of Allowed General Unsecured Claims.

Under the Bank Plan, Bank of America, which holds an Allowed Secured Claim of over \$26 million, has agreed to accept title to that certain real property located at 555 West Roosevelt Road, Chicago, Illinois, including the 95,000 square-foot shopping mall located thereon ("Joffco Square") and all improvements located therein (collectively the "Real Property" under the Bank Plan). Bank of America, through its designee, will accept title to the Real Property in full satisfaction of a substantial portion of its Allowed Secured Claim. Prior to the Petition Date, Bank of America provided a \$27 million loan (the "2008 Loan") to the Debtor secured by the Real Property. Cushman & Wakefield, one of the largest fully integrated real estate valuation and consulting organizations in the world,<sup>1</sup> recently completed an appraisal of the Real Property and determined that the Real Property, in its current condition, is worth \$22,274,129. For purposes of the Bank Plan, Bank of America has agreed to accept the Real Property in satisfaction of its Secured Claim under Bankruptcy Code section 506(a), which Claim is referred to as the "Bank Secured Claim" under the Bank Plan. On the Effective Date of the Bank Plan, the Debtor will transfer the Real Property to Bank of America's designee, Quality Properties Asset Management Company, an Illinois corporation ("QPAM" under the Bank Plan), which will hold title to the Real Property in satisfaction of the Bank Secured Claim.

Based on the current appraised value, Bank of America's remaining claim against the Debtor, which is treated as an Unsecured Claim pursuant to Bankruptcy Code section 506(a) and is referred to as the "Bank Deficiency Claim" under the Bank Plan, is approximately \$3,883,873 plus the Carve-Out. As part of the priority of distribution established under the Bankruptcy Code, Bank of America, with respect to the Bank Deficiency Claim, would normally be entitled to share equally in any distributions from the Debtor's remaining assets to Holders of General Unsecured Claims. Here, other than the Real Property, the Debtor's remaining assets are expected to include certain claims and causes of action of the Debtor against third parties (the "Causes of Action" under the Bank Plan). Without additional funds, the Debtor's remaining assets are not expected to be sufficient to pay all Holders of Claims (including Administrative Claims and General Unsecured Claims).

To provide a **one hundred (100%) percent recovery** to all Holders of Allowed Claims, Bank of America has agreed both to: (1) subordinate the Bank Deficiency Claim to all other Allowed Claims against the Debtor; and (2) provide additional sufficient funds (the "Carve-Out" under the Bank Plan) in excess of the Debtor's cash-on-hand to provide a **one hundred percent (100%) distribution** to all Holders of Allowed General Unsecured Claims against the Debtor. Therefore, all Holders of Allowed Claims (excluding Bank of America as the Holder of the Bank Deficiency Claim) will be **paid-in-full** under the Bank Plan. Under the Bank Plan, Bank of America will be entitled to add the aggregate amount of the Carve-Out to its Bank Deficiency Claim.

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<sup>1</sup> See <http://www.cushwake.com/>.



To administer payments to Holders after confirmation, the Bank Plan provides for the formation of a liquidating trust (the “Trust” under the Bank Plan). An individual designated by Bank of America and approved by the Bankruptcy Court will act as the trustee (the “Trustee” under the Bank Plan) of the Trust. The Trustee, on behalf of the Trust, will retain the right to pursue all Causes of Action. Bank of America, to recover on its Deficiency Claim and its funding of the Carve-Out, will be able to recover from the proceeds of any Causes of Action pursued by the Trustee.

After confirmation of the Bank Plan, QPAM will take possession and control of and hire a third-party to manage the Real Property. **Other than professionals (like outside counsel), QPAM and the Real Property manager will use reasonable efforts to continue to do business with the same third-party vendors that provided service and were utilized by the Debtor with respect to the Real Property prior to the Petition Date.** Bank of America expects that the Real Property will operate in much the same manner as it did prior to the Debtor’s bankruptcy filing with the same existing tenants (subject to the Bankruptcy Court approving the assumption and assignment of the leases under the Bank Plan). Bank of America and/or QPAM reserve the right, however, to sell the Real Property to a third-party after confirmation of the Bank Plan.

#### A. Purpose of the Bank Disclosure Statement

The purpose of this Bank Disclosure Statement is to provide Holders with adequate information about the Bank Plan to enable each Holder to make an informed judgment on the merits of the Bank Plan. This Bank Disclosure Statement does not replace the Bank Plan and therefore Holders are urged to carefully read both the Bank Plan and this Bank Disclosure Statement and to consult with counsel concerning the impact that these documents will have upon each Holder’s legal rights.

Bank of America submits this Bank Disclosure Statement to all known Holders of Claims and Equity Interests of the Debtor whose Claims or Equity Interests are affected under the Bank Plan. The purpose of this Bank Disclosure Statement is to present all information necessary to satisfy the requirements of the Bankruptcy Code and to enable Holders to make and form prudent decisions in exercising their rights to accept or reject the Bank Plan. By approving this Bank Disclosure Statement, the Bankruptcy Court will neither recommend acceptance nor rejection of the Bank Plan. The hearing on the Bank Disclosure Statement is to determine whether the Bank Disclosure Statement contains “adequate information” as that term is defined in Bankruptcy Code section 1125(a)(1), and approval is not tantamount to a decision on the merits of the Bank Plan.

#### B. Source of Information Contained in the Bank Disclosure Statement

Holders are encouraged to read and carefully consider the matters described in this Bank Disclosure Statement, paying careful attention to the summary of the Bank Plan and the risks of the Bank Plan. Prior to voting on the Bank Plan, each Holder of a Claim should consult such Holder’s attorney, accountant, tax advisor, and financial advisor as to the effect of the Bank Plan on such Holder, including, without limitation, the tax effects of the Bank Plan. In making a voting decision, each Holder must rely on the Holder’s own examination of the Debtor and the terms of the Bank Plan, including the merits and risks involved.

The statements and information about the Debtor, including financial information, financial projections, and information regarding Claims or Equity Interests contained in this Bank Disclosure Statement, have been prepared from information provided by the Debtor and its advisors. No statement or information concerning the Debtor (particularly as to financial condition or with respect to distributions to be made under the Bank Plan) or its assets, properties, or businesses that is given for the purpose of soliciting acceptances of any of the Bank Plan is authorized, other than as set forth in this Disclosure Statement. The information contained in this Bank Disclosure Statement has not been subject to audit by independent certified public accountants. The books and records of the Debtor are not warranted or represented to be complete and historically accurate.

Nothing contained herein shall constitute an admission of any fact or liability by any party, be admissible in any proceeding involving the Debtor or any other party, be deemed evidence of the tax or other legal consequences or effects of the Bank Plan, or be construed as a representation of Bank of America.

**C. Explanation of the Chapter 11 Case and the Bank Plan Confirmation Process**

The Bank Plan sets forth the means for satisfying Claims against the Debtor under Chapter 11 of the Bankruptcy Code. Chapter 11 does not require that each Holder of a Claim against the Debtor vote in favor of a plan in order for a Bankruptcy Court to confirm a plan. The Bank Plan must be accepted, however, by the Holders of at least one “impaired” Class without considering claims of an “insider” within the meaning of the Bankruptcy Code. A Holder of an Impaired Claim, as defined in Bankruptcy Code section 1124, or Equity Interest is entitled to vote to accept or reject the Bank Plan if such Claim or Equity Interest has been allowed under Bankruptcy Code section 502. In order for an impaired Class to be deemed to have accepted a plan, a majority number of Holders and two-thirds in dollar amount of the total Allowed Claims actually voting in the Class must vote in favor of the Bank Plan. These requirements will be satisfied by Bank of America’s vote in favor of the Bank Plan as all other Classes of Claims are unimpaired.

Even if all Classes of Claims and Equity Interests accept the Bank Plan, the Court may not confirm it under certain circumstances. Bankruptcy Code section 1129 sets forth the requirements for confirmation. Among other things, that section requires that the Bank Plan be in the best interest of Holders and Equity Interests and that the value to be distributed to Holders and Equity Interests be not less than the value those parties would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court may confirm the Bank Plan even though less than all of the Classes of impaired Claims or Equity Interests accept it, so long as one Class of impaired Claims (excluding insider Claims) accepts the Bank Plan. Confirmation of the Bank Plan over the objection of one or more Classes or Claims or Equity Interests is generally referred to as *Cramdown*. The circumstances under which the Court may confirm the Bank Plan over the objection of a Class of Claims or Equity Interests are set forth in Bankruptcy Code section 1129(b). The Bank Plan may be crammed-down, if, in addition to satisfying the usual requirements of Bankruptcy Code section 1129, it (1) does not discriminate unfairly, and (2) is fair and equitable with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Bank Plan. *See* 11 U.S.C. § 1129(b).

For purposes of seeking cramdown, should that alternative be necessary, Bank of America reserves the right to modify or vary the treatment of any Class, as provided in the Bank Plan. Confirmation of the Bank Plan is binding upon the Debtor, all Holders, and all other parties-in-interest, regardless of whether or not they have accepted the Bank Plan.

Only one of the competing Plans may be confirmed. If the Court should determine that both the Bank Plan and the Debtor Plan meet all requisite requirements for confirmation under the Bankruptcy Code, the Court will decide which of the competing Plans will confirmed.

**D. Procedure for Filing Proof of Claim and Proof of Interest**

The General Bar Date for filing a Proof of Claim or Proof of Interest is set for July 18, 2010. If a Holder is listed in the Debtor’s Schedules of Assets and Liabilities as holding non-contingent, liquidated and undisputed Claims in an amount certain, that Holder was not required to file a Proof of Claim and may therefore have elected not to file such a Proof of Claim. The Debtor’s Schedules of Assets and Liabilities are on file at the Bankruptcy Court and are available for inspection during regular business hours.

**E. Treatment of Executory Contracts and Unexpired Leases**

The Debtor will assume and assign certain executory contracts and unexpired leases to QPAM, as the legal owner and holder of title to the Real Property after the Effective Date. Bank of America, in the Plan Supplement, will designate those executory contracts and unexpired leases in a schedule (the “Contract/Lease Schedule” under the Bank Plan) to be assumed by and assigned to QPAM and will provide notice to all counterparties to any agreement identified in the Contract/Lease Schedule within fourteen (14) days after the Confirmation Hearing. Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (a) the amount of any cure payments; (b) the ability of QPAM to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code section 365) under the contract or lease to be assumed; or (c) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

Except as otherwise provided in the Plan, effective immediately prior to the Effective Date, the Debtor shall be deemed to have rejected any executory contract or unexpired lease that is not listed in the Contract/Lease Schedule. All proofs of Claims with respect to Claims arising from the rejection of such agreements, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims arising from the rejection of an executory contract or unexpired lease not filed within such time will be forever barred from assertion against the Debtor, its Estate, the Trust, the Real Property, and the Trust Assets unless otherwise ordered by the Bankruptcy Court or provided in the Plan.

**F. Confirming and Consummating the Bank Plan**

It shall be a condition to Confirmation of the Bank Plan that all provisions, terms and conditions of the Bank Plan are approved in the Confirmation Order, in form and substance reasonably satisfactory to Bank of America. In addition, certain other conditions contained in the Bank Plan shall have been satisfied or waived pursuant to Article 4 of the Bank Plan.

Following Confirmation, the Bank Plan will be consummated on the date selected by Bank of America, after consultation with the Trustee and the Debtor, that is one or more Business Days after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect and (b) all conditions to consummation of the Bank Plan have been (i) satisfied or (ii) waived (the “Effective Date” under the Bank Plan). Distributions will be made on or as soon after the Effective Date as practicable. It shall be a condition to Consummation of the Bank Plan that the certain conditions contained in the Bank Plan shall have been satisfied or waived pursuant to the provisions of Article 8 of the Bank Plan.

**G. Risk Factors**

Prior to deciding whether and how to vote on the Bank Plan, each Holder of Impaired Claims should consider carefully all of the information in this Bank Disclosure Statement, especially the Risk Factors described in Section X hereof.

Bank of America recognizes that the Debtor disagrees with certain of the contentions set forth in this Article I.

II.  
**VOTING INSTRUCTIONS**

The Bank Plan divides the Claims of Holders and Equity Interests into three (3) classes, including subclasses. Only classes of Holders with claims or interests impaired under the Bank Plan are entitled to vote on a plan. Generally, and subject to the specific provisions of the Bankruptcy Code, this includes Holders whose Claims or Equity Interests, under the Bank plan, may be modified in terms of principal, interest, length of time for payment, or a combination of the above. Each Holder in a Class that is not impaired under the Bank Plan is conclusively presumed to have accepted the Bank Plan, and solicitation of the acceptances from the Holders of such Claims is not required and will not be undertaken. As all Classes of Claims other than Bank of America are unimpaired under the Bank Plan, Bank of America will be the only Holder of a Claim voting on the Bank Plan.

**A. Unimpaired Classes**

Claims in Class 1 and part of Class 2 are not impaired under the Bank Plan. Pursuant to Bankruptcy Code section 1126(f), Claim Holders within Class 1 and part of Class 2 are conclusively presumed to have accepted the Bank Plan, and therefore, are not entitled to vote to accept or reject the Bank Plan.

**B. Impaired Voting Classes**

Bank of America's Claim in Class 2 is impaired under the Bank Plan, and therefore, Bank of America is entitled to vote to accept or reject the Bank Plan.

**C. Impaired Non-Voting Class**

Interests in Class 3 are deemed to have rejected the Bank Plan by virtue of Bankruptcy Code section 1126(g) and are not entitled to vote to accept or reject the Bank Plan.

**D. Voting**

Bank of America may vote on acceptance or rejection by completing, dating and signing the ballot, after the Court approves this Bank Disclosure Statement, and returning it to the Clerk of the Bankruptcy Court at the following address:

CLERK OF THE BANKRUPTCY COURT  
DIRKSEN FEDERAL BUILDING  
219 S. DEARBORN ST. - ROOM 713  
CHICAGO, IL 60604

IN ORDER FOR THE BALLOT BE COUNTED, THE CLERK OF THE BANKRUPTCY COURT MUST RECEIVE THE BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE BANK PLAN PRIOR TO THE VOTING DEADLINE WHICH IS 4:30 P.M., CENTRAL TIME, ON July 12, 2010.

III.  
**KEY TERMS OF THE BANK PLAN**

**THE FOLLOWING SECTIONS SUMMARIZE CERTAIN KEY INFORMATION CONTAINED IN THE BANK PLAN. THIS SUMMARY REFERS TO, AND IS QUALIFIED IN ITS ENTIRETY BY, REFERENCE TO THE BANK PLAN. THE TERMS OF THE BANK PLAN WILL GOVERN IN THE EVENT ANY INCONSISTENCY ARISES BETWEEN THIS SUMMARY AND THE BANK PLAN.**

**THE COURT HAS NOT YET CONFIRMED THE BANK PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE BANK PLAN DO NOT YET BIND ANY PERSON OR ENTITY. IF THE BANKRUPTCY COURT DOES CONFIRM THE BANK PLAN, HOWEVER, THEN IT WILL BIND ALL CLAIM AND EQUITY INTEREST HOLDERS.**

**A. Bank Plan Summary**

- |   |   |
|---|---|
| <b>Treatment of Unimpaired Claims</b>     | <p>The Debtor will transfer and Bank of America will receive title to the Real Property in full satisfaction of the Bank Secured Claim.</p> <p>All Allowed Claims against the Debtor, including all (1) Administrative Claims; (2) Professional Fee Claims; (3) all Priority Tax Claims; (4) pre-confirmation U.S. Trustee fees and post-confirmation U.S. Trustee Fees up to and including the quarter in which the Effective Date occurs; (5) Secured Claims other than the Bank Secured Claim; and (6) General Unsecured Claims, will be <b>paid in full</b> from the Debtor's cash-on-hand and the Carve-out.</p> |
| <b>Treatment of Impaired Claims</b>       | <p>Bank of America will receive distributions from the Trust on account of the Bank Deficiency Claim. The only funds available to pay the Bank Deficiency Claim are expected to be the proceeds of Causes of Action retained, prosecuted, and settled (with the consent of Bank of America) by the Trustee on behalf of the Trust.</p> <p>Equity Interests are cancelled.</p>   |
| <b>Release Provisions</b>                 | <p>In consideration of the Carve-Out and other contributions made by Bank of America to the Debtor, the Debtor will provide a general release of all claims and causes of action it may have against Bank of America.</p>   |
| <b>Other Key Proposed Plan Provisions</b> | <p>To administer the payments under the Bank Plan to the Holders and to hold, prosecute, and resolve Causes of Action, the Bank Plan provides for the formation of the Trust and the appointment of a Trustee (subject to the approval of the Bankruptcy Court).</p> <p>QPAM will hold title to and assume control of and will hire a third-party to manage the Real Property. QPAM is expected to maintain existing relations with most of the Debtor's existing vendors that service the Real Property and Joffco Square while QPAM markets and sells the Real Property.</p>  |

**Valuation Assumption**

The value of the Real Property is assumed to be \$22,274,129 based on the appraisal conducted by Cushman & Wakefield. To the extent the Bankruptcy Court determines at confirmation that the Real Property is worth a different amount (either more or less than \$22,274,129), the amount of the Bank Secured Claim and the Bank Deficiency Claim will be adjusted accordingly. **However**, the final value assigned to the Real Property by the Bankruptcy Court **will not** affect the Distributions to be provided to the Holders of Allowed Claims (other than with respect to the Bank Deficiency Claim) under the Plan.

**B. Treatment of Claims**

Under the Bank Plan, Claims against and Equity Interests in the Debtor are divided into Classes. Certain unclassified Claims, including Administrative Claims, and Priority Tax Claims, will receive payment in Cash either on the Effective Date, or as promptly thereafter as each such Claims are liquidated, or in installments over time as permitted by the Bankruptcy Code or as agreed with the Holders of such Claims. All other Claims and all Interests are classified into Classes for each Debtor and will receive the distributions and recoveries (if any) described in the Bank Plan.

**C. Analysis of Treatment of Claims**

After consideration of (1) the proposed distributions under the Third Plan and (2) the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including: (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee; (b) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail; and (c) substantial increases in claims which would be satisfied on a priority basis, **BANK OF AMERICA HAS DETERMINED, THAT CONFIRMATION OF THE BANK PLAN WILL PROVIDE EACH HOLDER WITH A RECOVERY THAT IS: (i) GREATER THAN OR EQUAL TO WHAT IT WOULD RECEIVE UNDER THE THIRD PLAN; AND (ii) NOT LESS THAN IT WOULD RECEIVE PURSUANT TO A LIQUIDATION OF THE DEBTOR UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.**

**To assist Holders in evaluating the competing Plans versus a Chapter 7 liquidation, Bank of America has prepared the following Plan Comparison Chart showing its analysis of the aggregate recoveries for each Class of creditors under the two Plans and a Chapter 7 liquidation. This chart shows the aggregate recoveries under the Plans and demonstrates that the Bank Plan will provide all Holders of Allowed Claims against the Debtor, other than Bank of America with respect to the Bank Deficiency Claim, a 100% Distribution and payment-in-full. In contrast, as described below, the Third Plan will likely result in recoveries of less than 100% to the Holders of Allowed Claims.**

**Finally, the timing of payment under the Bank Plan will be significantly expedited when compared to the Third Plan. Under the Third Plan, the Debtor proposes to pay Holders of Allowed General Unsecured Claims in two installments over time, within ninety (90) days and one hundred eighty (180) days of the Third Plan’s effective date. Under the Bank Plan, a one hundred percent (100%) distribution will be made shortly after the Effective Date.**

**Bank of America urges Holders to carefully consider this analysis in deciding how they cast their votes with respect to the Plans.**

Class/Type of Claim or Equity Interest	Projected Claims / Interests <sup>1</sup>	Treatment of Class Under Bank Plan	Projected Recovery Under Bank Plan	Projected Recovery Under Third Plan <sup>2</sup>	Projected Recovery in Chapter 7 Liquidation
Administrative Claims	\$400,000 <sup>3</sup>	Paid in full from the Debtor's cash on hand and the Carve-Out.	100%	100%	0%
Priority Tax Claims	\$0	Paid in full from the Debtor's cash on hand and the Carve-Out.	100%	100%	100%
Class 1 - Bank Secured Claim	\$22,274,000	Deemed paid in full as a result of the transfer of the Real Property.	100%	100%	85% <sup>4</sup>
Class 1 – Other Secured Claims	\$0	Paid in full from the Debtor's cash on hand and the Carve-Out.	100%	100%	0%
Class 2 - Allowed General Unsecured Claims	\$328,366	Paid in full from the Debtor's cash on hand and the Carve-Out.	100%	62% or more <sup>5</sup>	0%
Class 2 - Bank Deficiency Claim <sup>6</sup>	\$3,883,873 plus Carve-Out	Subordinated and entitled to Distributions from the Trust after payment of all other Allowed Claims.	Unknown	62%	0%
Class 3 - Equity Interests	\$0	Cancelled.	0%	0% <sup>7</sup>	0%

**Notes:**

1. In the table above, the amounts in the column entitled “Projected Claims/Interests” represent estimated amounts outstanding on the Petition Date, based on the Debtors’ schedules and statements of Financial Affairs, as amended from time to time.
2. The range of projected recoveries is predicated in part on the Bankruptcy Court determining that the Bankruptcy Court determines that the value of the Real Property is equal to \$22,274,129 based on the appraisal conducted by Cushman & Wakefield. *See* Section IV, D hereof, “Summary of Debtor Assets.”
3. Other than Professional Fee Claims, the Debtor has paid all Administrative Claims as they have become due under the Plan by utilizing Bank of America’s cash collateral under orders entered by the Bankruptcy Court. Bank of America has estimated Professional Fee Claims to be equal to the subordinated loan in an amount up to \$400,000.00 extended by two members of the Debtor, Amy Joffe and Melissa Norris, as unsecured credit constituting an administrative priority expense claim under Bankruptcy Code sections 364(b) and 503(b)(1), as authorized by that certain Order of the Court entered on January 6, 2010. [Dkt. No. 46.]
4. Estimated recovery based on Bank of America recovering the full appraised value of the Real Property in a foreclosure or other sale outside of bankruptcy.
5. Based on the Cushman appraisal, Bank of America estimates that Holders of Allowed General Unsecured Claims would receive a payment corresponding to 31% of the Allowed amount of their Claims three (3) months after the Effective Date and an additional payment of equal to 31% of the allowed Claim three (3) months thereafter.
6. Bank of America has not included the amount of the Carve-Out in the amount of the Bank Deficiency Claim for purposes of the calculation of recoveries under the Bank Plan, the Third Plan, or a Chapter 7 liquidation. As of the date of this Bank Disclosure Statement, Bank of America cannot estimate its recovery under the Bank Plan and will need to conduct additional discovery as to the value of potential Causes of Action.
7. While the Holders of the Debtor’s existing Equity Interests receive no distributions under the Third Plan, they still maintain their ownership in and control of the Debtor and the Real Property under the Third Plan. Bank of America submits that this treatment violates the absolute priority rule under Bankruptcy Code section 1129(b).

Bank of America recognizes that the Debtor disagrees with certain of the contentions contained in Article III.

IV.  
**GENERAL INFORMATION**

**A. Overview of Chapter 11.**

Chapter 11 is the principal commercial or business chapter of the Bankruptcy Code. Chapter 11 authorizes the liquidation or reorganization of a debtor and also requires any distributions to stakeholders promote equality of treatment for similarly situated creditors and similarly situated equity interest holders.

Commencing a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession.” The principal objective of a chapter 11 case is to consummate a Chapter 11 plan. A Chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a Chapter 11 plan by a bankruptcy court binds a debtor, any issuer of securities thereunder, any person acquiring property under the plan and any creditor or equity interest holder of that debtor to the terms of the plan.

In order to solicit acceptances of a proposed plan, however, Bankruptcy Code section 1125 requires a debtor and any other plan proponents to transmit to a holder of a claim or interest with respect to such claim or interest the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the bankruptcy court as containing adequate information. This Bank Disclosure Statement is intended to comply with Bankruptcy Code section 1125.

**B. The Debtor’s History.**

Bank of America understands that the Debtor disagrees with certain of the facts and contentions set forth in this section. For a recitation of the background and facts from the Debtor’s perspective, please consult the Debtor Disclosure Statement served herewith.

1. General Information.

The Debtor is an Illinois limited liability company, with its principal office located at 5 Revere Drive, Suite 200, Northbrook, Illinois 60062 (“Headquarters”). The Debtor’s sole asset is the Real Property. The Debtor acquired the Real Property in 2003 and began to develop the Real Property in 2006. Utilizing the Initial Loan (defined below) and the 2008 Loan, the Debtor eventually developed and constructed Joffco Square, which includes three hundred twenty-three (323) internal parking spaces.

2. The Debtor’s Business and Operations at Joffco Square.

At this time, the Debtor has entered into commercial leases with (a) Best Buy, (b) Bed Bath and Beyond, and (c) CorePower Yoga. In addition, the Debtor leases roof space for use as a cellular tower. Under the Bank Plan and as part of the transfer of the Real Property, QPAM will assume the existing commercial leases, meaning that Joffco Square will continue to operate in substantially the same manner as it did prior to the Petition Date. QPAM is also expected to assume some or all of the Debtor’s executory contracts with those parties that provide real property services and related to Joffco Square.

Approximately seventeen percent (17%) of the leasable space at Joffco Square remains vacant and has not yet been built-out for tenant use (the “Vacant Space”). Bank of America believes the Debtor lacks the necessary capital or the ability to obtain financing to fund any build-out construction of the Vacant Space in



order to deliver it to a prospective tenant. Despite the high vacancy rate, the Debtor incurs additional costs in order to have its Headquarters located in an offsite location.

### C. **Capital Structure and Assets.**

The Debtor's primary debt obligations comprise, in order of priority: Bank of America's Secured Claim and claims from trade vendors resulting from the Debtor's pre-Petition Date operation of the Real Property. As more fully described below, the Debtors are subject to the following debt obligations as of the Petition Date:

#### 1. Bank of America's Secured Claim.

The Debtor initially obtained a loan from LaSalle, the predecessor to Bank of America, in the amount of \$28,000,000 (the "Initial Loan") to finance the acquisition of Property and construction of Joffco Square. In July, 2008, Bank of America, as successor by merger to LaSalle, refinanced the Initial Loan with the 2008 Loan in the original principal amount of \$27,000,000. The 2008 Loan is evidenced in part by a certain Construction Loan Agreement dated as of July 29, 2008 (the "Loan Agreement"). The 2008 Loan is secured, in part, by a first mortgage and assignment of rents and leases on the Real Property and a limited Guaranty of Payment and Completion executed by Leon Joffe ("Guaranty"). Bank of America possesses security interests and liens in and against substantially all of the assets of the Debtor, including a lien on future rents (the "Prepetition Collateral").

The 2008 Loan matured on November 1, 2009, at which time the Debtor defaulted on its obligations to repay the 2008 Loan. The Debtor then, without prior notice to Bank of America, commenced this bankruptcy proceeding on December 7, 2009. As of that time, the Debtor owed Bank of America \$26,158,001.60 in outstanding principal attributable to the 2008 Loan, and \$72,983.10 in pre-bankruptcy interest and fees, for a total amount of \$26,230,984.70 (the "Obligations"). The Debtor has previously acknowledged (including in its Third Plan) the validity of the Obligations and the security interests and liens in and against the Prepetition Collateral securing the Obligations.

#### 2. Other Prepetition Obligations.

Aside from approximately the \$328,366 in unsecured claims outstanding as of the Petition Date (based on the Debtor's bankruptcy schedules), unliquidated contract rejection damages, and any known or unknown claims arising from litigation proceedings and any other unknown claims, Bank of America does not believe that the Debtor has incurred any other significant debt. Bank of America expects the Allowed General Unsecured Claims against the Debtor to be less than the aggregate amount set forth in the Debtor's bankruptcy schedules.

#### 3. Summary of The Debtor's Assets.

Substantially all of the Debtor's assets are subject to Bank of America's security interests. These assets include: (1) the Real Property, which is valued by Bank of America under the Bank Plan at \$22,274,129 based upon an as-is appraisal by Cushman & Wakefield; (2) bank accounts, cash and cash equivalents reported by the Debtor to total \$777,116.02 in its April monthly operating report [Dkt. No. 198]; (3) accounts, accounts receivable, lease and contract rights to payment; (4) leases of space at Joffco Square to the Debtor's tenants; (5) equipment and furniture; (6) certain general intangibles and other rights to payment; and (7) Causes of Action.

**D. Equity Structure and Management.**

1. Ownership of The Debtor.

The following individuals hold the Equity Interests (the Debtor is member-owned) in the Debtor: (1) Amy Joffe (“A. Joffe”): 44%; (2) her sister, Melissa Norris: 44%; and (3) her husband, Leon Joffe (“L. Joffe”): 12%. Before the Petition Date, A. Joffe allegedly took on management responsibilities for the Debtor from her husband L. Joffe, ultimately assuming the role of Manager. With respect to the manager of the Debtor, Bank of America contests the transfer to and assumption by A. Joffe and her qualifications to serve as the Debtor’s manager.

2. Pre-Petition Date Equity Contributions from A. Joffe and Ms. Norris to the Debtor.

In connection with and required under the 2008 Loan, A. Joffe and Ms. Norris each made an equity contribution (collectively, the “Equity Contribution”) of approximately \$3,000,000 (totaling to \$6,094,657) to fund a portion of the construction of Joffco Square. On information and belief,

- A. Joffe and Ms. Norris obtained sufficient funds to make the Equity Contribution through personal loans obtained from J.P. Morgan Chase Bank (“Chase”) in the original principal amount of \$6,000,000 (the “Insider Personal Loans”);
- The Equity Contribution was listed as equity in the Debtor’s pre-Petition Date financial statements, tax returns, and in funding statements provided to Bank of America under the 2008 Loan;
- Prior to the Petition Date, the Debtor nonetheless made interest payments to Chase for the benefit of A. Joffe and Ms. Norris to meet their personal obligations on the Insider Personal Loans; and
- These transfers are recoverable by the Debtor for the benefit of its creditors (including Bank of America) as preferential or fraudulent transfers.

Investigation with respect to the Equity Contribution and any payments made by the Debtor to Chase and/or A. Joffe and Ms. Norris in conjunction with the Equity Contribution continues.

3. Management and Employees.

To manage its single property, the Debtor, through Zale Administrative Services, LLC (“Zale”), employs: (i) an onsite property manager, that it pays more than \$80,000 per year; (ii) a Vice President of Finance, Virginia Wolfe, who works part-time and is paid an annual salary of \$48,000; (iii) a Financial Analyst, Daniel Treisman, who receives an annual salary of \$95,000; and (iv) A. Joffe as its Manager and President, who will be paid an annual of salary of \$135,000 - \$150,000 under the Third Plan. On information and belief, the property manager is the only employee who works onsite at the Debtor’s location on a part-time basis.

On information and belief, A. Joffe is one of the owners of Zale, which also operates out of the Debtor’s Headquarters pursuant to an oral agreement with the Debtor. On information and belief, the Debtor has historically paid Zale \$75,000.00 per year for administrative and payroll services despite the fact that the Debtor pays the salaries of all employees and managers, as well as the rent for the shared Headquarters. On information and belief, the Debtor’s employees also perform services for a related entity in which A. Joffe and Ms. Norris possess ownership interests, Joffco Plaza, LLC. Joffco Plaza owns commercial property across the street from Joffco Square. On information and belief, there is no written agreement between the Debtor and Joffco Plaza, LLC requiring compensation to be paid to the Debtor for use of its employees’ services and Joffco

Plaza does not compensate the Debtor (or compensate it fully) for services performed on behalf of Joffco Plaza by such employees.

Bank of America recognizes that the Debtor disagrees with certain of the contentions contained in Article IV.

V.

**THE CHAPTER 11 CASES**

As noted above, the Debtor filed for Chapter 11 bankruptcy relief on December 9, 2009.

**A. The Debtor's Prior Plans and Confirmation Process.**

Shortly after filing for bankruptcy relief, the Debtor filed its first Chapter 11 Plan of Reorganization. [Dkt. No. 14.] On January 29, 2010, the Debtor filed its First Modified Chapter 11 Plan of Reorganization. [Dkt. No. 60.] On February 16, 2010, Bank of America filed a Motion to Dismiss the Debtor's Case (the "Motion to Dismiss"). [Dkt. No. 75.] The Debtor responded by filing its Second Modified Chapter 11 Plan (the "Second Plan"). [Dkt. No. 78.] Thereafter, Bank of America filed its Objection to the Debtor's Second Plan (the "Plan Objection"). [Dkt. No. 109.]

In the Second Plan, the Debtor sought to recast the Equity Contribution as unsecured loans so that, on information and belief, the Debtor could pay interest and principal to Chase for the benefit of A. Joffe and Ms. Norris in the future and protect interest payments made to Chase prior to the Petition Date. In addition, under the Second Plan, the Debtor proposed to grant A. Joffe and Ms. Norris one hundred percent (100%) of the Debtor's equity interests for *only* \$50,000 each. Based on A. Joffe's testimony, the \$50,000 in consideration was the maximum that either A. Joffe or Ms. Norris could afford, and the Debtor admitted that it did not seek to market these membership interests to third parties for purchase. The Second Plan also included broad releases, including with respect to avoidance actions, for the benefit of, *inter alia*, A. Joffe and Ms. Norris. Finally, the Debtor's treatment of Bank of America's Allowed Secured Claim and its Prepetition Collateral violated numerous provisions of the Bankruptcy Code. In its Plan Objection, Bank of America raised several other objections to the Second Plan.

The Debtor, in response, argued that the Second Plan was confirmable and requested that the Bankruptcy Court hold a two-day confirmation hearing and trial on March 30 and March 31, 2010 (the "Initial Confirmation Hearing"). On April 7, 2010, after the Initial Confirmation Hearing and with respect to the Second Plan, the Bankruptcy Court sustained the Plan Objection and denied confirmation of the Second Plan, holding that:

- Bank of America's Secured Claim exceeded the value of the Real Property and the Debtor could not impair Bank of America's valid lien on future rents;
- the Second Plan was not feasible because (a) the Debtor did not have any reasonable or likely prospects for the leasing the Vacant Space and (b) the Debtor lacked the funds necessary to lease the Vacant Space; and
- the Debtor could not recast or treat the Equity Contribution as unsecured debt for the benefit of A. Joffe and Ms. Norris and the proposed insider releases were improper;

Based upon these rulings, the Court also concluded that the Debtor could not propose a confirmable plan and dismissed the Debtor's bankruptcy case. [Dkt. No. 167, 168.] Because these findings allowed the Court to

reach the ultimate issues (*i.e.*, whether (i) the Second Plan was confirmable and (ii) the Chapter 11 Case should be dismissed), the Court did not need to and thus did not address numerous other objections raised by Bank of America in the Plan Objection.

**B. The Third Plan.**

On April 15, 2010, the Debtor filed its Third Plan and a motion to vacate dismissal of the bankruptcy case (“Motion to Vacate”). [Dkt. No. 174, 175.] The Debtor also requested that the Court reinstate the Debtor’s exclusive right to file and solicit votes on a Chapter 11 plan (“Exclusive Period”), which had expired on April 6, 2010 pursuant to Bankruptcy Code section 1121. Over the objection of Bank of America, the Court granted the Debtor’s Motion to Vacate and reinstated the Debtor’s bankruptcy case. However, the Court declined to reinstate the Exclusive Period, thereby allowing Bank of America to file the Bank Plan. The Court will hear the competing Bank Plan and the Debtor Plan at a joint confirmation hearing scheduled to commence on July 30, 2010.

In the Third Plan, A. Joffe and Ms. Norris, along with their father, Edward Zale, are proposing to purchase equity interests in the Reorganized Debtor for a combined \$1,800,000.00. A. Joffe and Ms. Norris each propose a contribution of \$720,000 toward this purchase. A. Joffe and Ms. Norris make this proposal despite their prior testimony that they could only afford a combined \$100,000 purchase price. As described above, the Debtor is also proposing to pay A. Joffe an annual salary of \$135,000 that later increases to \$150,000, instead of the \$5,000 annual salary proposed under the Second Plan. Bank of America’s specific objections to the Third Plan are set forth below.

Bank of America recognizes that the Debtor disagrees with certain of the contentions contained in Article V.

VI.

**BANK OF AMERICA’S POSITION REGARDING THE THIRD PLAN**

As described in detail in Section V.A. of this Bank Disclosure Statement, Bank of America has previously objected to confirmation of the Debtor’s Second Plan, and the Bankruptcy Court previously denied confirmation of the Second Plan. Like the Second Plan, Bank of America believes that the Debtor’s Third Plan is unconfirmable for a number of reasons, including, *inter alia*:

1. Bank of America asserts that the Debtor’s Third Plan proposes to: (a) cramdown the Third Plan over Bank of America’s objection; (b) pay Bank of America’s Class 1 Secured Claim in a balloon payment on March 1, 2015; and (c) pay a below-market interest rate under the Replacement Secured Note.
2. Bank of America asserts that the Third Plan provides for repayment of equity contributions before full satisfaction of senior claims.
3. Bank of America asserts that to repay Bank of America’s Class 1 Secured Claim at maturity, the Third Plan requires the Debtor to sell or refinance of Joffco Square. The Debtor provides no support for its conclusion that it will be able to re-sell Joffco Square or obtain such financing. Without such financing, the Debtor will not be able to make all proposed payments under the Third Plan.
4. Bank of America asserts that the Third Plan includes non-consensual exculpation and releases of various non-debtor parties, including the Debtor’s equity owners, employees, and officers. Bank of America contends that these express waivers and releases of avoidance actions are intended, among other things, to

insulate A. Joffe and Ms. Norris from Avoidance Claims related to payment of interest in connection with the Insider Personal Loans.

5. Bank of America asserts that the Debtor filed for bankruptcy protection in an attempt to favor its existing equity owners to the detriment of Bank of America. Under the Third Plan, Bank of America asserts that the Debtor continues to favor its existing equity owners to the detriment of Bank of America.

Bank of America reserves the right to assert additional objections to the Third Plan following discovery and the submission of expert reports and to the extent the Debtor modifies or amends the Third Plan.

Bank of America understands that the Debtor disagrees with these contentions and asserts that the Debtor's Third Plan meets all of the requirements of the Bankruptcy Code, is confirmable, and provides the maximum consideration of any of the proposed Plans.

VII.  
**RECOMMENDATION OF BANK OF AMERICA FOR  
CONFIRMATION OF THE BANK PLAN**

Bank of America believes that the Bank Plan is in the best interests of all Holders of Claims. In Bank of America's opinion, the Bank Plan is preferable to any of the alternatives described herein because: (a) it provides for a larger distribution to Holders of Allowed Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code; and (b) provides for a greater distribution (in a more timely fashion) to all Holders of General Unsecured Claims than would be available under the Debtor's Third Plan, particularly if the Bankruptcy Code's "absolute priority" rule were strictly enforced. The "absolute priority" rule provides, in pertinent part, that senior classes of claims will be satisfied in full before junior classes receive any distribution. In addition, any alternative other than confirmation of the Bank Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Claims.

**BANK OF AMERICA THEREFORE RECOMMENDS THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED, TIMELY SUBMIT BALLOTS VOTING AGAINST THE THIRD PLAN.**

Bank of America understands that the Debtor disagrees with these contentions and Bank of America's recommendation.

VIII.  
**SUMMARY OF BANK PLAN.**

**A. Purpose and Effect of the Plan**

The Bank Plan's primary purpose is to (1) effectuate a transfer of the title to the Real Property to Bank of America in full satisfaction of the Bank Secured Claim, (2) provide for Bank of America to fund the Trust with the Carve-Out and for the Debtor to transfer its remaining assets (including all cash-on-hand, which is subject to Bank of America's security interest, and Causes of Action) to the Trust for the benefit of the Holders of Allowed Claims against the Debtor, (3) provide for the Trust to distribute all cash-on-hand, including the Carve-Out, to Holders of Allowed Claims, with the Bank to subordinate its Bank Deficiency Claim to the Holders of all other Allowed Claims, and (4) allow the Trustee on behalf of the Trust to pursue Causes of Action for the benefit of Bank of America as the remaining Holder of an Allowed Claim (i.e., the Bank

Deficiency Claim). As described above, all Holders of Allowed Claims (other than Bank of America with respect to the Bank Deficiency Claim) will be **paid in full** from the Debtor's cash-on-hand and the Carve-out.

**B. Summary of Classified Claims and Equity Interest**

1. Unclassified Claims.

(a) Administrative Claims Bar Date.

All requests for payment of Administrative Claims and applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon the Trustee and Bank of America at least fourteen days prior to the Confirmation Hearing or by such earlier deadline as may apply to such Administrative Claim pursuant to an earlier order of the Bankruptcy Court. Professional Fee Claims incurred during the fourteen days prior to Confirmation Hearing and through the Confirmation Date shall be filed with the Bankruptcy Court and served upon the Trustee and Bank of America within fourteen days after the Confirmation Date. Except as provided herein, any Administrative Claim or Professional Fee Claim for which an application or request for payment is not filed within such time period shall be discharged and forever barred.

(b) Treatment of Administrative Claims, including Professional Fee Claims.

Allowed Administrative Claims and Professional Fee Claims incurred through the Confirmation Date shall be completely and fully satisfied by payment in Cash from the Debtor or the Trust after the Effective Date, with any such payment to be made on the later of the Effective Date or the Allowance Date except as provided otherwise in the Bank Plan and to the extent that any Claimant holding an Allowed Administrative Claim or Allowed Professional Fee Claim agrees to treatment different than that proposed under the Bank Plan.

(c) Treatment of Priority Tax Claims.

Allowed Priority Tax Claims shall be completely and fully satisfied by payment of Cash from the Debtor or the Trust after the Effective Date, with any such payment to be made on the later of the Effective Date or the Allowance Date.

(d) U. S. Trustee Fees.

Notwithstanding any other provisions of the Bank Plan to the contrary, the United States Trustee shall be paid the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days of the entry of the Order confirming this Plan ("U.S. Trustee Fees"), for pre-confirmation periods in Cash from the Debtor or the Trust after the Effective Date. In addition, the U.S. Trustee Fees for post-confirmation periods up and including the period in which the Effective Date occurs shall be paid in Cash from the Debtor or the Trust after the Effective Date. Lastly, the Trustee shall timely pay the U.S. Trustee Fees for all subsequent post-confirmation periods based upon all post-confirmation disbursements made by the Trustee, until the earlier of the closing of this Chapter 11 Case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an order by the Bankruptcy Court dismissing this Case or converting this Case to another chapter under the Bankruptcy Code, and the Trustee shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

(e) Treatment of Non-Construction Litigation Claims.

The Non-Construction Litigation Claims shall remain subject to the automatic stay provided under Bankruptcy Code section 362(a) through the Effective Date, or such other time as the Bankruptcy Court may

direct. Thereafter, the action in which Non-Construction Litigation Claims are pending may recommence in its existing state court venue, and the foregoing Claims shall not be discharged pursuant to this Plan, but shall be Unimpaired and, to the extent necessary, paid from the Trust.

2. Provisions For Treatment Of Allowed Claims And Interests; Voting.

Class	Status	Voting Rights
Class 1 (Secured Claims)	Unimpaired	Not entitled to vote
Class 2 (Unsecured Claims)	Holders of General Unsecured Claims are Unimpaired under the Bank Plan, while Bank of America, with respect to the Bank Deficiency Claim, is deemed Impaired.	Unimpaired Holders will not be entitled to vote; Impaired Holders will be entitled to vote.
Class 3 (Interests)	Impaired	Not entitled to vote

The timing and procedures for all distributions specified in this section are governed by Bank Plan Articles 5 and 10 of the Bank Plan. The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, confirmation and distribution, pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

(a) Class 1 - Allowed Secured Claims.

Allowed Secured Claims in Class 1 shall receive the following treatment:

- *Bank Secured Claim.* Bank of America shall be deemed to have an Allowed Secured Claim in the amount of \$22,274,129 or such other amount as determined by the Bankruptcy Court. Upon transfer of the Real Property to QPAM pursuant to Section 4.2 of the Bank Plan, Bank of America’s Allowed Secured Claim shall be deemed satisfied as a result of the transfer of the Real Property, subject to Bank of America’s rights to pursue the Guaranty and all other remedies with respect to the Bank Deficiency Claim (as described below).
- *Other Secured Claims.* Allowed Other Secured Claims, including any Allowed Mechanic’s Lien Claims, shall receive payment in Cash in accordance with applicable state law Lien priorities from the Debtor or the Trust on or before the later of (a) the Effective Date or as soon as reasonably practicable thereafter, (b) the Allowance Date, and (c) the date that such Claim would be paid in accordance with any terms and conditions of any agreements or understandings relating thereto between the Debtor and the Holder of such Claim.

Claims in Class 1 are Unimpaired under the Bank Plan. Pursuant to Bankruptcy Code section 1126(f), Claimants within Class 1 are conclusively presumed to have accepted the Bank Plan, and therefore are not entitled to vote to accept or reject the Bank Plan.

(b) Class 2 - Allowed Unsecured Claims.

Allowed Unsecured Claims in Class 2 shall receive the following treatment:

- *Allowed General Unsecured Claims.* Each Allowed General Unsecured Claim in Class 2 shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Claim,

Cash in the Allowed amount of such Claim (without interest) on or before the later of (a) the Effective Date or as soon as reasonably practicable thereafter, (b) the Allowance Date, and (c) the date that such Claim would be paid in accordance with any terms and conditions of any agreements or understandings relating thereto between the Debtor and the Holder of such Claim.

- *Bank Deficiency Claim.* Bank of America shall be deemed to have an Allowed Unsecured Claim in an amount equal to \$3,883,873 (or such other amount as determined by the Bankruptcy Court) plus the Carve-Out. The Bank Deficiency Claim shall not be subject to objection, disallowance, or subordination, except that Bank of America hereby agrees to subordinate its rights to receive a *Pro Rata* Distribution from the Trust on account of the Bank Deficiency Claim to all other Allowed Claims. The right of Bank of America to assert the full amount of the Bank Deficiency Claim in any other proceeding in state or federal court for any and all causes of action Bank of America may possess, including but not limited to causes of action for indemnification and/or enforcement of any guarantee, against any third party shall not be waived, altered, or in any way prejudiced by payment of the Carve-Out or the subordination of Bank of America's right to receive *Pro Rata* Distributions from the Trust. After payment of all other Allowed Claims, the Bank Deficiency Claim shall be paid from, *inter alia*, recoveries by the Trust and the Trustee from all Trust Assets, including, *inter alia*, Causes of Action.

Pursuant to Bankruptcy Code section 1126(f), Holders of Allowed General Unsecured Claims within Class 2 are Unimpaired, conclusively presumed to have accepted the Bank Plan, and therefore are not entitled to vote to accept or reject the Bank Plan. Bank of America with respect to the Bank Deficiency Claim is Impaired under the Bank Plan. Bank of America shall be entitled to vote the full amount of the Bank Deficiency Claim with respect to the Bank Plan.

(c) Class 3 - Interests in the Debtor.

Allowed Class 3 Interests shall receive no distribution under the Bank Plan and shall retain no property whatsoever under the Bank Plan. Class 3 is deemed to have rejected the Bank Plan by virtue of Bankruptcy Code section 1126(g) and is not entitled to vote to accept or reject the Bank Plan.

**C. Executory Contracts.**

Executory Contracts entered into by the Debtor prior to the Petition Date, shall be treated as follows:

1. Treatment of Executory Contracts and Unexpired Leases To Be Assumed And Assigned To QPAM.

(a) Assumption and Cure of Executory Contracts and Unexpired Leases.

On the Effective Date, all executory contracts and unexpired leases of the Debtor identified on a Schedule set forth in the Bank Plan Supplement (as it may be filed and amended prior to the Confirmation Date, the "**Contract/Lease Schedule**"), in form and substance reasonably acceptable to Bank of America and QPAM, are hereby deemed assumed and assigned to QPAM in accordance with the provisions and requirements of Bankruptcy Code sections 365 and 1123. Each executory contract and unexpired lease assumed and/or assigned pursuant to this Bank Plan Article III (or pursuant to other Bankruptcy Court order) shall remain in full force and effect and be fully enforceable in accordance with its terms, except as modified by the provisions of the Bank Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable law.

(b) Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.



Any monetary cure amounts by which each executory contract and unexpired lease to be assumed pursuant to the Bank Plan is in default shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by payment of the cure amount in Cash on the later of (a) the Effective Date (or as soon as practicable thereafter), (b) as due in the ordinary course of business or (c) on such other terms as Bank of America (or QPAM) and the non-Debtor counterparties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (x) the amount of any cure payments, (y) the ability of Bank of America (or QPAM) to provide "adequate assurance of future performance" (within the meaning of Bankruptcy Code section 365) under the contract or lease to be assumed or assigned, or (z) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

2. Rejection of Other Executory Contracts And Unexpired Leases.

All Executory Contracts not otherwise assumed, assumed and assigned, or rejected pursuant to Bankruptcy Code section 365 prior to the Effective Date shall be deemed rejected as of the Effective Date.

3. Approval of Assumption and Assignment or Rejection.

Entry of the Confirmation Order shall constitute the approval, pursuant to Bankruptcy Code sections 363(b), (f) and (m) and 365(a) and (f), of the assumption and assignment or rejection of all Executory Contracts.

4. Rejection Claims.

Except as the Bankruptcy Court established in the Rejection Order, or unless the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules establish an earlier deadline with regard to the rejection of particular Executory Contracts, any Claims arising out of the rejection of Executory Contracts pursuant to Section 3.1 must be filed with the Bankruptcy Court and served upon the Debtor, the Trustee, and Bank of America no later than thirty days after entry of the Confirmation Order. Any Claims not filed within the time set forth in the Rejection Order or as provided above, are, or will be, forever barred and will not receive any distributions under the Bank Plan. All Claims arising from the rejection of an Executory Contract shall be treated as a Class 2 General Unsecured Claim.

**D. Means For Execution Of The Bank Plan.**

1. The Effective Date.

The Effective Date shall be the business day designated in writing by the Trustee and Bank of America on which: (a) the Closing of the transactions required and contemplated under Sections 4.2 and 8.2 of the Bank Plan shall have taken place; and (b) each condition to the occurrence of the Effective Date has been satisfied or waived by the applicable party pursuant to Section 8.3 of the Bank Plan.

2. Transactions at or Before Effective Date.

The following shall occur after the Confirmation Date, but at or before the Effective Date and shall be effective as of the Effective Date.

(a) Transfer of Real Property.

On the Effective Date, the Debtor shall convey and transfer all interests in the Real Property, free and clear of all Encumbrances, to QPAM, as the designee of Bank of America, by signing and delivering to QPAM

such deeds, bills of sale, assignments and other conveyance documents as Bank of America or QPAM reasonably requests.

(b) Transfer of Property to Trust.

On the Effective Date, the Debtor shall convey and transfer to the Trustee, on behalf of the Trust, all interests in Trust Assets, free and clear of all Encumbrances, by signing and delivering to the Trustee such deeds, bills of sale, assignments and other conveyance documents as the Trustee reasonably requests.

(c) Carve-Out.

Bank of America shall contribute to the Estate or the Trust an amount equal to the Aggregate Payment Amount less (i) the Available Cash and (ii) any amounts paid by the Debtor to the Holder of an Allowed Claim after the Petition Date and before the Confirmation Date that satisfied, in whole or in part, such Allowed Claim. The amount contributed by Bank of America to the Estate or the Trust pursuant to this Section 4.2.3(a) shall be referred to as the "Carve-Out" under the Bank Plan.

To the extent excess funds remain from the Carve-Out after payment of all Allowed Claims, the Trustee, on behalf of the Trust, shall transfer all remaining proceeds to Bank of America, which shall apply such proceeds to the balance of the Bank Deficiency Claim.

Notwithstanding anything to contrary contained in this Section 4.2.3, payment of the Carve-Out and/or subordination of Bank of America's right to receive *Pro Rata* Distributions from the Trust as set forth in Section 4.2.3 of the Bank Plan shall not preclude or in any way prejudice Bank of America from asserting the full amount of the Bank Deficiency Claim in any other proceeding initiated in either state or federal court for any and all causes of action Bank of America may possess, including but not limited to causes of action for indemnification and/or enforcement of any guaranty, against any third party unless specifically provided otherwise in the Bank Plan.

3. Execution of the Trust Agreement; Purpose of the Trust.

The Trust Agreement shall be executed by all necessary parties thereto. The Trust is established for the purpose of satisfying Claims by liquidating the Trust Assets and such Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. No business activities will be conducted by the Trust other than those associated with or related to the liquidation of the Trust Assets. The purpose of the Trust is to provide a mechanism for the liquidation of the Trust Assets and to distribute the proceeds of the liquidation to (collectively, the "**Beneficiaries**"): (a) the holders of all Allowed Claims, and (b) after payment in full to the holders of all other Allowed Claims, Bank of America, as the holder of the Bank Deficiency Claim.

All payments pursuant to Section 4.2.4 shall be net of all expenses, charges, liabilities, and obligations of the Trust, which will be treated as Allowed Claims, in accordance with the terms of the Bank Plan.

It is intended that the Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Treasury Regulations. All parties hereto shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code (including, §§ 61(12), 483, 1001, 1012, and 1274). All parties hereto shall treat the transfers in trust as if all the transferred assets, including all the Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code as the grantors of the Trust and the owners of the Trust. All income of the Trust shall be taxed directly to its

Beneficiaries (except to the extent the IRS is a Beneficiary). The Trustee shall file returns for the Trust as a grantor trust pursuant to Section 1.671-4(a) or (b) of the Treasury Regulations.

The parties hereto, including the Trustee and the Beneficiaries, shall value the Property transferred to the Trust consistently and such valuations shall be used for all federal income tax purposes. The Beneficiaries (except to the extent the IRS is a Beneficiary) shall be responsible for payment of any taxes due with respect to the operations of the Trust. The Trust shall terminate on the date which is the fifth anniversary of its establishment unless sooner terminated, or unless its termination date is extended by the Bankruptcy Court as provided in the Trust Agreement. During its existence, the Trust shall not receive or retain Cash or Cash equivalents in excess of a reasonable amount necessary to meet Claims and contingent liabilities (including Disputed Claims) or to maintain the value of the Trust Assets during liquidation.

The Trust shall distribute to the Beneficiaries all its net income and all the net proceeds from the liquidation of Trust Assets, less such net income or net proceeds reasonably necessary to maintain the value of the Trust Assets or to meet Claims or contingent liabilities (including Disputed Claims). The Trustee shall use his/her continuing best efforts to dispose of the Trust Assets, make timely Distributions, and shall not unduly prolong the duration of the Trust.

4. Dissolution of Debtor.

On the Effective Date, or as soon thereafter as is practicable, the Trustee shall file articles of dissolution dissolving the Debtor in accordance with applicable law. The Confirmation Order shall provide that the Trustee is an authorized signatory to execute on behalf of the Debtor any and all documents to accomplish such dissolution.

5. Execution of Documents and Corporate Action.

The Trustee will deliver all documents including, *inter alia*, the conveyance documents, and perform all actions reasonably contemplated with respect to implementation of the Bank Plan and the transfer of the Real Property to Bank of America and the Property to the Trust. The Trustee will be designated the authorized representative to execute on behalf of the Debtor, in a representative capacity and not individually, any documents or instruments to be executed by the Debtor on and after the Effective Date in order to consummate the Bank Plan.

6. Designation of Trustee and Terms of Compensation.

No later than five (5) days prior to the commencement of the Confirmation Hearing, Bank of America shall nominate the initial Trustee. As of the Effective Date, the Trustee shall be approved to serve in accordance with Trust Agreement. For purposes of performing his or her duties and fulfilling his or her obligations under the Trust Agreement and the Bank Plan, the Trustee shall be deemed to be a "party in interest" within the meaning of Bankruptcy Code section 1109(b). The Trustee shall be the "administrator" of the Trust as that term is used in Treas. Reg. Section 1.468B-2(k)(3). As consideration for the Trustee's services, the Trustee shall receive the compensation set forth in the Trust Agreement.

7. Good Faith.

Confirmation of the Bank Plan shall constitute a finding that: (a) the Bank Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code, and (b) all solicitations of acceptances or rejections of the Bank Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

8. Trust Authority to Prosecute Causes of Action.

Pursuant to Bankruptcy Code section 1123(b)(3)(B), the Trust shall have full and exclusive authority without need for any further court approval, but subject to the terms of the Trust Agreement and the written consent of Bank of America, to prosecute all Causes of Action transferred to the Trust by the Trustee on behalf of the Debtor. The Trustee may commence or continue, in any appropriate court or tribunal, any suit or other proceeding for the enforcement of such causes of action, and, if deemed appropriate by the Trustee and Bank of America, to compromise or settle such litigation.

All such causes of action shall remain the property of the Trust post-Effective Date and, if pursued and any recovery is ultimately realized, the proceeds of any such recovery would ultimately become Trust Assets and disbursed pursuant to the terms of the Bank Plan and Trust Agreement.

Notwithstanding the foregoing, no Avoidance Actions shall be brought against (a) Bank of America, and (b) solely with respect to Avoidance Actions under Bankruptcy Code section 547(b)(4)(a) (*i.e.*, ninety (90) day actions to recover preferential transfers), Holders of Allowed Claims that receive Distributions or otherwise treated under this Plan that (i) are not insiders of the Debtor within the meaning of Bankruptcy Code section 101(31) and (ii) supplied the Debtor prior to the Petition Date with goods and services in the ordinary course of their business. For avoidance of doubt, Avoidance Actions do not include rights to setoff under Bankruptcy Code section 553.

9. Officers and Directors After Effective Date.

On the Effective Date, any remaining managers or officers of the Debtor shall be deemed to have resigned, except for the Trustee who shall be authorized to take all actions reasonable and necessary to ensure that the Debtor is dissolved. In the event the Trustee is unable or unwilling to ensure that the Debtor is dissolved, the Trustee shall be authorized to serve as a member and/or a manager of the Debtor.

10. Waiver of Federal Rule of Bankruptcy Procedure 3020(e).

The Confirmation Order shall include (a) a finding that Fed. R. Bankr. P. 3020(e) shall not apply to the Confirmation Order and (b) authorization for the consummation of the Bank Plan and the transactions contemplated by the Bank Plan immediately after entry of the Confirmation Order. Bank of America recognizes that the Debtor disagrees with and may oppose such relief.

**E. General Provisions Governing Distributions By Debtor Prior To Effective Date.**

1. Applicability of Bank Plan Article 5.

Bank Plan Article 5 shall only apply to Distributions to Claimants made by the Debtor prior to the Effective Date. Distributions made by the Trust are governed by the Trust Agreement.

2. Place and Manner of Payments or Distributions.

Should the Debtor make Distributions to the holders of Allowed Claims prior to the Effective Date, such Distributions shall be delivered by either: (a) mail to the Claimant at the address of such Claimant as listed in the Schedules, or listed on any Proof of Claim filed by the Claimant; or (b) by mail to such other address or by wire transfer to the destination that such Claimant shall have specified for payment purposes in a written notice to the Debtor and filed with the Bankruptcy Court.

3. Undeliverable Distributions.

If a Distribution to any Claimant is returned as undeliverable, the Debtor shall use reasonable efforts to determine such Claimant's current address and no further Distributions shall be made to such Claimant until a current address is obtained by the Debtor or the Trustee (after the Effective Date).

4. Treatment of Unclaimed or Undeliverable Distributions.

If any Claimant entitled to Distributions from the Debtor cannot be located prior to the Effective Date, then, subject to the provisions of this Section 5.4, such Distribution shall be transferred to the Trust and, in the case of Cash, held in an interest-bearing account or fund maintained by the Trustee for purposes of holding such Distributions. Any Distribution that is unclaimed shall revert to the Trust after ninety days from the date the Distribution was sent to Claimant, shall be deemed to be part of the Estate Assets, and shall be distributed to remaining Claimants in accordance with the terms of this Plan.

5. Tax I.D. Number Required.

Each Claimant shall have an affirmative duty to provide the Debtor with its Federal Tax Identification Number. In lieu of backup withholding, the Debtor may suspend Distribution to any Claimant that has not provided its Federal Tax Identification Number or Social Security Number, as the case may be. Any such Distributions that remain suspended as of the Effective Date shall be transferred to the Trust and held in an interest-bearing account or fund maintained by the Trustee pending receipt by the Trustee of such information if deemed necessary by the Trustee.

**F. Discharge, Release And Extinguishment Of Liens, Claims, Interests, And Encumbrances.**

1. No Discharge of Debtor.

As a Chapter 11 plan of liquidation, the Debtor shall not be discharged under Bankruptcy Code section 1141 nor shall this Plan release or discharge claims against any other Person, including but not limited to guarantors of obligations of the Debtor except as specifically provided otherwise in Section 6.3 of this Plan.

2. Limitation on Fiduciary Liability of Trustee.

Only holders of Allowed Class 2 General Unsecured Claims and other Allowed Claims shall be beneficiaries of the Trust.

3. Releases in Favor of Bank of America.

ON THE EFFECTIVE DATE, IN CONSIDERATION OF THE AGREEMENT OF BANK OF AMERICA TO CONTRIBUTE THE CARVE-OUT, BANK OF AMERICA AND EACH OF ITS DIRECTORS, EMPLOYEES, OFFICERS, PREDECESSORS, SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND REPRESENTATIVES (collectively, the "Bank Releasees" under the Bank Plan) SHALL BE RELEASED AND DISCHARGED OF ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, DEBTS, DAMAGES, OBLIGATIONS, COSTS, AND DEMANDS OF WHATEVER CHARACTER, NATURE, TYPE, OR DESCRIPTION, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH, THE DEBTOR, OR ITS CREDITORS MAY HAVE HAD, OR MAY NOW HAVE THAT RELATE IN ANY WAY TO THE DEBTOR, THE DEBTOR'S BANKRUPTCY CASE, THE CLASS 1 BANK OF AMERICA SECURED CLAIM OR THE BANK OF AMERICA DEFICIENCY CLAIM, EXCEPT FOR OBLIGATIONS EXPRESSLY CONTAINED IN THE PLAN; *PROVIDED, HOWEVER*, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FORGOING RELEASE, ANY

OTHER SECTION OF THE PLAN OR ANY OF THE OTHER PLAN EXHIBITS, THIS RELEASE SHALL NOT RELEASE (X) ANY OBLIGATION OF BANK OF AMERICA UNDER THE PLAN OR THE PLAN EXHIBITS, INCLUDING WITH RESPECT TO ANY OBLIGATION RELATING TO IMPLEMENTATION AND CONSUMMATION OF THE CARVE-OUT OR (Y) ACTS OR OMISSIONS THAT ARE THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Bank of America believes the releases set forth in the Bank Plan and in the Release Agreement are reasonable and appropriate given the extraordinary facts and circumstances of this Chapter 11 Case. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Section 6.3 of the Bank Plan and Plan Exhibit A, which includes by reference each of the related provisions and definitions contained in the Bank Plan, *and further*, shall constitute the Bankruptcy Court's finding that the releases set forth in Section 6.3 of the Bank Plan and Plan Exhibit A are: (a) in exchange for good and valuable consideration provided by the Bank Releasees, representing good faith settlement and compromise of the Claims released by the Debtor; (b) in the best interests of the Debtor and all Holders of Claims; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to the Debtor or any other Person acting on behalf of it asserting any Claim released by the releases set forth in Section 6.3 of the Bank Plan and Plan Exhibit A against any of the Bank Releasees or their respective property.

Any action brought against any party receiving a release hereunder or under Plan Exhibit A for any matter or thing related to the Chapter 11 Case or the Bank Plan must be brought in Bankruptcy Court.

Bank of America recognizes that the Debtor disagrees with and may oppose such relief.

4. Reservation of Rights.

Notwithstanding any other provision of the Bank Plan to the contrary, the release provision and the injunction set forth in Section 7.2 shall not serve to preclude the Trustee on behalf of the Trust or Bank of America from enforcing any provision of this Plan, any Plan exhibit and/or the Confirmation Order.

**G. Injunction Against Enforcement Of Pre-Confirmation Debt.**

1. Term of Certain Injunctions and Automatic Stay.

All of the injunctions and/or automatic stays provided for in or in connection with the Chapter 11 Case, whether pursuant to Bankruptcy Code section 105(a), 362(a), or any other provision of the Bankruptcy Code or other applicable law, in existence immediately prior to Confirmation shall remain in full force and effect until the injunctions set forth in Section 7.2 become effective, and thereafter if so provided by the Bank Plan, the Confirmation Order, or by their own terms. In addition, on and after Confirmation, Bank of America, the Trustee or the Debtor may seek such further orders as they may deem necessary to preserve the status quo during the time between Confirmation and the Effective Date.

2. Injunction Enjoining Certain Actions

Except as expressly provided herein, at all times on and after the Effective Date, the Debtor and all Persons who have been, are, or may be holders of Claims against or Equity Interests in the Debtor arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Property, including the Trust Assets:

- commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind arising before the Confirmation Date against the Debtor, its Estate, or the Property, including the Trust Assets (including, *inter alia*, all suits, actions, and proceedings that are pending as of the Effective Date, shall be deemed to be withdrawn or dismissed with prejudice) or the Real Property, including any suit, action or other proceeding which might affect the use or enjoyment of any Trust Asset or the Real Property;
- enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against the Debtor, its Estates, or the Property, including the Trust Assets or the Real Property relating to any obligation which arose prior to the Effective Date;
- creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien or Encumbrance against the Debtor, its Estates, or the Property, including the Trust Assets or the Real Property;
- asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due the Debtor, its Estates, or the Property, including the Trust Assets or the Real Property; and
- proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Bank Plan.

This injunction shall become effective on the Effective Date and shall continue in effect at all times thereafter. Notwithstanding anything to the contrary contained in the Bank Plan, all actions in the nature of those to be enjoined by this injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

#### H. **Conditions To Effective Date.**

##### 1. Conditions to Confirmation.

Confirmation of the Bank Plan shall not occur unless the Bankruptcy Court shall have made specific findings and/or conclusions of law, each of which shall be expressly set forth in the Confirmation Order, in a form acceptable to Bank of America, including findings and/or conclusions of law to the effect that the Bank Plan satisfies each of the requirements for Confirmation contained in Bankruptcy Code section 1129, is the result of good faith and arm's length negotiations, and is otherwise fair, equitable, and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and other federal or state law to the extent applicable.

##### 2. Conditions to the Effective Date.

Notwithstanding any other provision of the Bank Plan, the Bank Plan exhibits and/or the Confirmation Order, the Effective Date of the Bank Plan shall not occur unless and until each of the following conditions has been satisfied or waived in accordance with Section 8.3 below:

- The Confirmation Order shall have been entered on or before August 31, 2010.
- The Bank Plan exhibits necessary or appropriate to implement the Bank Plan shall be acceptable to Bank of America and shall have been executed, delivered and, where applicable, filed with the appropriate governmental authorities; all conditions precedent to the effectiveness of each of such Plan exhibits shall

have been satisfied or waived by the respective parties thereto; and the Bank Plan exhibits shall be in full force and effect.

- The Trust shall have been established.
- The Confirmation Order shall be entered by the Bankruptcy Court and not stayed.
- All deliveries or payments required to be made pursuant to the Bank Plan by the Effective Date shall have been made or waived by the party for whose benefit such delivery is intended. All authorizations, consent and regulatory approvals required, if any, in connection with the consummation of the Bank Plan shall have been obtained, and all actions, documents, and agreements necessary to implement the Bank Plan shall have been effected or executed.
- The Trustee shall have sufficient Cash to pay all amounts required by the Bank Plan to be paid on the Effective Date.

3. Waiver of Conditions.

Each of the conditions set forth in Bank Plan Article 8 above may be waived in whole or in part by Bank of America. The failure of Bank of America to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

4. Effect of Failure of Conditions; Order Denying Confirmation.

In the event that the Effective Date does not occur within six months following entry of the Confirmation Order, upon notification submitted by Bank of America to the Bankruptcy Court: (a) the Confirmation Order shall be vacated, (b) no distributions under the Bank Plan shall be made, (c) the Debtor and all Holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) the Debtor's obligations with respect to the Claims and Equity Interests shall remain unchanged (except to the extent of any payments made after entry of the Confirmation Order but prior to the Effective Date) and nothing contained in the Bank Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

If an order denying confirmation of the Bank Plan is entered by the Bankruptcy Court, then the Bank Plan shall be null and void in all respects, and nothing contained in the Bank Plan shall (a) constitute a waiver or release of any Claims against or Equity Interests in the Debtor, (b) prejudice in any manner the rights of the Holder of any Claim against, or Equity Interest in, the Debtor, (c) prejudice in any manner any right, remedy or Claim of the Debtor, or (d) be deemed an admission against interest by Bank of America.

5. Confirmation of Plan Over Dissenting Class.

In the event at least one Impaired Class of Claims votes to accept the Bank Plan (and at least one Impaired Class either votes to reject the Bank Plan or is deemed to have rejected the Bank Plan), Bank of America shall request that the Bankruptcy Court confirm the Bank Plan under Bankruptcy Code section 1129(b).



**I. Provisions For The Resolution Of Objections To Proofs Of Claim.**

1. Right to Object to Claims.

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Trustee, Bank of America or any other party in interest shall have the right to make and file objections to Proofs of Claim or other applications or motions for allowance and payment of Claims, for distribution purposes, at any time on or before thirty (30) calendar days after the later of (a) the Effective Date and (b) the date on which such Claim was filed with the Bankruptcy Court unless no Proof of Claim, application or motion is required to be filed pursuant to Bankruptcy Rule 3002, the Bank Plan, or any order of the Bankruptcy Court; *provided, however*, that (i) the deadline may be extended by the Bankruptcy Court on motion by the Trustee, Bank of America or any other party in interest, as applicable, and (ii) none of the Trustee, Bank of America or any other party in interest may file an objection to any Claim Allowed by the Bank Plan. In addition, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Trustee, Bank of America or any other party in interest shall have the right to make and file objections to Administrative Claims or to object to any Claim specified in the Schedules, at any time on or before thirty (30) calendar days after the later of (A) the Effective Date or (B) the date on which such Claim or motion or application seeking allowance of any such Administrative Claim was filed with the Bankruptcy Court unless no such motion for allowance or payment of such Administrative Claim or Proof of Claim is required to be filed under the Bankruptcy Code, the Bankruptcy Rules, the Bank Plan, or any order of the Bankruptcy Court; *provided, however*, that (x) this deadline may be extended by the Bankruptcy Court on motion by the Trustee, Bank of America or any other party in interest and (y) none of the Trustee, Bank of America or any other party in interest may file an objection to an Administrative Claim or Claim specified in the Schedules that is Allowed by the Bank Plan.

2. Deadline for Responding to Claim Objections.

A Claimant whose Claim has been objected to in accordance with Section 9.1, must file with the Court and serve upon the parties identified in Section 12.1 a response to such claim objection within 15 days after service of any objection to its Claim. Failure to file such a response within the 15-day time period shall be cause for the Bankruptcy Court to enter a default judgment against the non-responding Claimant and to thereby grant the relief requested in the Claim objection.

3. Estimation of Claims.

After the Effective Date, the Trustee may request the Bankruptcy Court to estimate any Claim for purposes of Allowance pursuant to Bankruptcy Code section 502(c).

4. Disallowance of Improperly Filed Claims for Distribution Purposes.

Subject to Bankruptcy Code section 502(j) and Bankruptcy Rules 3008 and 9006, any Claim for which the filing of a Proof of Claim, application or motion with the Bankruptcy Court is required under the terms of the Bankruptcy Code, the Bankruptcy Rules, any order of the Bankruptcy Court (including one providing for a Bar Date) or the Bank Plan will be disallowed for distribution purposes if and to the extent that such Proof of Claim (or other filing) is not timely and properly made.

5. No Distributions Pending Allowance.

Notwithstanding any other provision of the Bank Plan, if a Claim or any portion of a Claim is a Disputed Claim, no payment or distribution shall be made on account of such Disputed Claim, unless and until such Disputed Claim becomes an Allowed Claim.

6. Distributions After Allowance.

Payments and distributions to each holder of a Claim that is Disputed, or that is not Allowed, to the extent that such Claim ultimately becomes Allowed, shall be made in accordance with the provisions of the Bank Plan governing the Class of Claims in which such Claim is classified. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Debtor or the Trustee shall distribute to the holder of such Claim any payment or property that would have been distributed to such holder if the Claim had been Allowed as of the Effective Date (or such other date on which such distribution would have been made).

J. **General Provisions Relating To Reserves Prior To Effective Date.**

1. Applicability of Bank Plan Article 10.

Bank Plan Article 10 shall apply only to Distributions to Claimants made by the Debtor. Provisions relating to Disputed Claims administered by the Trust are set forth in the Trust Agreement.

2. Distributions on Allowed Claims Only.

Distributions made by the Debtor under the Bank Plan shall be made only to the holders of Allowed Claims. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive the consideration otherwise provided to such Claimant under the Bank Plan.

3. Establishment of Disputed Claims Reserve.

The Debtor shall deposit the Distributions reserved for the holders of Disputed Claims in a reserve fund called the Disputed Claims Reserve. The Debtor shall hold the Disputed Claims Reserve in trust for the benefit of the holders of Allowed Claims whose Distributions are unclaimed and the holders of Disputed Claims pending determination of their entitlement thereto under the terms of the Bank Plan. When a Disputed Claim becomes an Allowed Claim, the Debtor shall release and deliver the Distributions reserved for such Allowed Claims from the Disputed Claims Reserve, together with any earned interest attributable to such Distribution. On the Effective Date, the Debtor shall transfer any funds held in the Disputed Claims Reserve to the Trust.

K. **Retention Of Jurisdiction.**

1. Jurisdiction.

Until the Chapter 11 Case is closed pursuant to Bankruptcy Code section 350, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction permissible, including that necessary to ensure that the purposes and intent of the Bank Plan are carried out. Except as otherwise provided in the Bank Plan, the Bank Plan exhibits and/or the Confirmation Order, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Equity Interests in the Debtor, and to adjudicate and enforce all other Causes of Action which may exist on behalf of the Debtor. Nothing contained herein shall prevent the Trustee or the Trust from taking such action as may be necessary in the enforcement of any Cause of Action which the Trust have or may have and which may not have been enforced or prosecuted by the Debtor, which Cause of Action shall survive Confirmation and shall not be affected thereby except as specifically provided in the Bank Plan, the Bank Plan exhibits, and/or the Confirmation Order.

2. General Retention.

Following Confirmation, the administration of the Chapter 11 Case will continue until entry of a decree pursuant to Bankruptcy Code section 350 closing this Chapter 11 Case. Moreover, the Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court. The Bankruptcy Court shall also retain jurisdiction for the purpose of classification of any Claim and the re-examination of Claims that have been Allowed for purposes of voting only, and the determination of such objections as may be filed with the Bankruptcy Court with respect to any such Claim. The failure by the Debtor or the Trustee to object to or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the right of Bank of America or the Trust, or any other interested party, as the case may be, to object to or re-examine such Claim in whole or in part.

3. Specific Purposes.

In addition to the foregoing, the Bankruptcy Court, even after the this Chapter 11 Case has been closed, shall have jurisdiction to the fullest extent of the law over all matters arising under, arising in, or relating to the Debtor's this Chapter 11 Case, including proceedings to:

- ensure that the Bank Plan is carried out;
- enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Bank Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Bank Plan or the Disclosure Statement;
- consider any modification of the Bank Plan under Bankruptcy Code section 1127;
- hear and determine all Claims, controversies, suits and disputes against Debtor to the extent permitted under 28 U.S.C. § 1334;
- allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- hear, determine, and adjudicate any litigation involving the Avoidance Actions or other claims or causes of action constituting Estate Property;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving Debtor that may be pending on or commenced after the Effective Date;
- resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Bank Plan or the Trust, or any Entity's obligations incurred in connection with the Bank Plan or the Trust, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;
- hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any and all subordination and similar agreements among various creditors pursuant to Bankruptcy Code section 510;
- hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;

- enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;
- enter an order concluding and terminating this Chapter 11 Case;
- correct any defect, cure any omission, or reconcile any inconsistency in the Bank Plan or the Confirmation Order;
- determine all questions and disputes regarding title to the Trust Assets and any other assets of Debtor;
- classify the Claims of any Claim holders and the treatment of these Claims under the Bank Plan, to re-examine Claims that may have been allowed for purposes of voting, and to determine objections that may be filed to any Claims;
- take any action described in the Bank Plan involving the post-confirmation Debtor;
- enter a final decree in the Chapter 11 Case as contemplated by Bankruptcy Rule 3022;
- enforce, by injunction or otherwise, the provisions set forth in the Bank Plan, the Trust, the Confirmation Order, any final decree, and any Final Order that provides for the adjudication of any issue by the Bankruptcy Court; and
- enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

4. Failure of Bankruptcy Court to Exercise Jurisdiction.

If the Bankruptcy Court abstains or exercises discretion not to hear any matter within the scope of its jurisdiction, nothing herein shall prohibit or limit the exercise of jurisdiction by any other tribunal of competent jurisdiction.

L. **General Provisions Of The Bank Plan.**

1. Notices.

All notices, requests and demands required or permitted hereunder, to be effective, shall solely be set forth in writing unless otherwise expressly provided in the Bank Plan, and shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**Bank of America**

**Seyfarth Shaw LLP**

Gus A. Paloian, Esq.

Jason J. DeJonker, Esq.

James B. Sowka, Esq.

131 S. Dearborn St., Suite 2400

Chicago, Illinois 60603

Tel: (312) 460-5000

Fax: (312) 460-7000

2. Dates.

The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Bank Plan, except as otherwise provided. If any payment or act under this Plan is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date.

3. Further Action; Exemptions.

Nothing contained in the Bank Plan shall prevent the Trustee and Bank of America from taking such actions as may be necessary to consummate the Bank Plan, even though such actions may not specifically be provided for within the Bank Plan. The Trustee and Bank of America, if and to the extent necessary, may seek such orders, judgments, injunctions, and rulings that it deems necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, the Bank Plan.

Pursuant to Bankruptcy Code section 1146(c), the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, this Plan or the re-vesting, transfer or sale of any real or Personal property of the Debtor pursuant to, in implementation of, or as contemplated by, this Plan, or the transfer of the Real Property to QPAM pursuant to this Plan, shall not and may not be taxed under any state or local law imposing a stamp tax, transfer tax, sales tax or similar tax or fee.

Confirmation of the Bank Plan shall constitute a determination, in accordance with Bankruptcy Code section 1145, that except with respect to an Entity that is an underwriter as defined in Bankruptcy Code section 1145(b), Section 5 of the Securities Act of 1933, as amended, and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, broker or dealer in, a security does not apply to the offer or sale under the Bank Plan of the Trust Assets or of the exchange of Claims against the Debtor for Claims against the Trust.

4. Attachments; Entire Agreement; Severability.

All attachments to the Bank Plan are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Bank Plan. All exhibits to the Bank Plan shall be filed with the Bankruptcy Court no later than ten days before the Confirmation Date or such other date as is agreed to by the Debtor and Bank of America.

The Bank Plan and all exhibits thereto set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents. No Entity shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter of the Bank Plan, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing. To the extent there is any inconsistency or ambiguity between any term or provision contained in the Bank Plan, on the one hand, and the Disclosure Statement, on the other, the terms and provisions of the Bank Plan shall control.

If any term or provision of this Plan is held by the Bankruptcy Court, prior to or at the time of Confirmation, to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan may, at the option of Bank of America,

remain in full force and effect and not be deemed affected. However, Bank of America reserves the right not to proceed to Confirmation or consummation of this Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

5. Plan Amendments.

Before the Confirmation Date, Bank of America may modify, amend or withdraw the Bank Plan, without approval of the Bankruptcy Court. After the Confirmation Date and subject to approval of Bank of America and the Bankruptcy Court, the Trustee may amend or modify the Bank Plan to remedy any defect or omission or reconcile any inconsistencies in the Bank Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Bank Plan and so long as it does not materially or adversely affect the rights set forth in the Bank Plan of creditors and other parties in interest. The Trustee reserves the right to modify the treatment of any Allowed Claim, as provided in Bankruptcy Code section 1123(a)(4), at any time after the Effective Date upon the consent of Bank of America and the holder of such Allowed Claim.

6. Binding Effect; No Waiver; Non-Debtor Waiver of Rights.

Upon occurrence of the Effective Date, the Bank Plan shall be binding on, and inure to the benefit of, the Debtor, the Trustee, Bank of America, and all holders of Claims and Equity Interests, and their respective successors and assigns, regardless of whether those parties voted to accept the Bank Plan.

Neither the failure of the Debtor to list a Claim in its Schedules, the failure of the Trustee on behalf of the Trust or Bank of America to object to any Claim or Equity Interest for purposes of voting, the failure of the Trustee on behalf of the Trust or Bank of America to object to a Claim, Administrative Claim or Equity Interest prior to the Confirmation Date or the Effective Date, the failure of the Trustee on behalf of the Trust or the Debtor to assert a Cause of Action prior to the Confirmation Date or the Effective Date, the absence of a Proof of Claim having been filed with respect to a Claim, Administrative Claim, Interest or Cause of Action other than a legally effective express waiver or release shall be deemed a waiver or release of the right of a Debtor or the Trustee on behalf of the Trust or Bank of America, before or after solicitation of votes on the Bank Plan or before or after, the Confirmation Date or the Effective Date to (a) object to or examine such Claim, Administrative Claim or Equity Interest, in whole or in part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any Cause of Action.

Non-Debtor parties shall have the right to voluntarily waive any rights, benefits or protections that are afforded to them under the provisions of the Bank Plan or any order issued in furtherance of the Bank Plan, and such waiver shall supersede such rights, benefits or protections. Any such waiver shall only be effective if such party expressly and specifically waives in writing one or more of such rights, benefits or protections.

7. Governing Law.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Bank Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois, without giving effect to any conflicts of law principles.

8. No Admissions.

Notwithstanding anything here and to the contrary, nothing contained in the Bank Plan shall be deemed as an admission by any Person with respect to any matter set forth herein.

9. Recordable Order.

Upon Confirmation of the Bank Plan, the Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications, or other supporting documents.

10. Setoffs.

Subject to the limitations provided in Bankruptcy Code section 553, the Debtor (or the Trustee after the Effective Date) may, but will not be required to, setoff against any Claim and the payments or other distributions to be made pursuant to the Bank Plan in respect of such Claim, claims of any nature whatsoever the Debtor (or the Trustee after the Effective Date) may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Bank Plan will constitute a waiver or release by the Debtor (or the Trustee after the Effective Date) of any such claim that the Debtor (or the Trustee after the Effective Date) may have against such holder.

11. Objections to Professional Fee Claims.

Objections to any application of Professional Fee Applications for compensation or reimbursement of expenses must be filed and served on the respective applicant and its counsel no later than the first Business Day following 10 calendar days (or such other period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was received.

12. Plan Supplement.

Identification of the initial Trustee, the Contract/Lease Schedule, and forms of documents and the agreements pertaining to the transfer of the Property from the Debtor to Bank of America shall be contained in the Bank Plan Supplement and filed at least fourteen (14) days prior to the Confirmation Hearing, or as reasonably soon thereafter as such documents become available. Upon its filing with the Bankruptcy Court, the Bank Plan Supplement may be inspected during normal Bankruptcy Court hours, **provided however**, that Bank of America shall give direct notice of the Contract/Lease Schedule to all counterparties to executory contracts and unexpired leases to be assumed and assigned to QPAM. Holders of Claims (other than counterparties to executory contracts and unexpired leases to be assumed and assigned to QPAM) may obtain a copy of the Bank Plan Supplement upon written request to counsel to Bank of America.

**M. Substantial Consummation.**

1. Substantial Consummation.

The Bank Plan shall be deemed substantially consummated immediately on the funding of the Carve-Out and the payment to all Holders of Allowed Claims.

2. Notice of Effective Date.

Promptly after occurrence of the Effective Date, the Trustee shall file with the clerk of the Bankruptcy Court a notice that the Bank Plan has become effective; *provided, however*, that the failure to file such notice shall not affect the effectiveness of the Bank Plan or the rights or substances obligations of any Entity hereunder.

3. Final Decree.

On substantial consummation, the Trustee may move for a final decree closing the Chapter 11 Case and requesting such other orders as may be necessary and appropriate.

Bank of America recognizes that the Debtor disagrees with certain of the contentions contained in Article VI.

IX.  
**CONFIRMATION PROCEDURES**

A. **The Confirmation Hearing.**

Bankruptcy Code section 1128 requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plans (the "Confirmation Hearing" in the Bank Plan). Bankruptcy Code section 1128(b) provides that any party-in-interest may object to confirmation of the Plans.

The Bankruptcy Court has scheduled the Confirmation Hearing for July 30, 2010, at 9:30 a.m. C.D.T., before the Honorable Eugene R. Wedoff, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Illinois, Courtroom 744, 219 South Dearborn Street, Chicago, IL 60604. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to confirmation of the Plans must be Filed with the Bankruptcy Court and served on or before July 16, 2010 in accordance with the Notice accompanying this Disclosure Statement. **THE BANKRUPTCY COURT WILL NOT CONSIDER OBJECTIONS TO CONFIRMATION UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE APPROVAL ORDER.** Objections to confirmation of the Plans must be served on the following parties:

Gus A. Paloian  
Jason J. DeJonker  
Seyfarth Shaw LLP  
131 South Dearborn Street, Suite 2400  
Chicago, Illinois 60603  
Facsimile: (312) 460-7000

Forrest B. Lammiman  
David L. Kane  
MELTZER, PURTILL & STELLE LLC  
300 South Wacker Drive, Suite 3500  
Chicago, Illinois 60606  
Facsimile: (312) 987-9854

**Attorneys for Bank of America, N.A., successor by  
merger to LaSalle Bank National Association**

**Attorneys for River West Plaza-Chicago, LLC  
d/b/a Joffco Square**

1. Statutory Requirements For Confirmation Of The Plan.

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of Bankruptcy Code section 1129 have been satisfied. Bank of America believe that the Bank Plan satisfies or will satisfy the applicable requirements, as follows:

- The Bank Plan complies with the applicable provisions of the Bankruptcy Code.
- Bank of America, as Plan proponent, will have complied with the applicable provisions of the Bankruptcy Code.



- The Bank Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Bank Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Bank Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (2) made before the Confirmation of the Bank Plan is reasonable; or (2) subject to the approval of the Bankruptcy Court as reasonable if it is to be fixed after the Confirmation of the Bank Plan.
- Either each Holder of an Impaired Claim or Equity Interest has accepted the Bank Plan, or will receive or retain under the Bank Plan on account of that Claim or Equity Interest, property of a value, as of the Effective Date of the Bank Plan, that is not less than the amount that the Holder would receive or retain if the Debtors were liquidated on that date under Chapter 7 of the Bankruptcy Code.
- Each Class of Claims or Equity Interests that is entitled to vote on the Bank Plan has either accepted the Bank Plan or is not Impaired under the Bank Plan, or the Bank Plan can be confirmed without the approval of each voting Class pursuant to Bankruptcy Code section 1129(b).
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Bank Plan provides that all Allowed Claims against the Debtor (other than the Bank Deficiency Claim) will be paid in full on the Effective Date, or as soon thereafter as practicable.
- At least one Class of Impaired Claims will accept the Bank Plan, determined without including any acceptance of the Bank Plan by any insider holding a Claim of that Class.
- Confirmation of the Bank Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successors thereto under the Bank Plan unless such a liquidation or reorganization is proposed in the Bank Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.

Bank of America believes that: (a) the Bank Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (b) it has complied or will have complied with all of the requirements of chapter 11; and (c) the Bank Plan has been proposed in good faith. Bank of America understands that the Debtor disagrees with these contentions.

## 2. Best Interests of Holders Test/Liquidation Analysis.

Before the Bank Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Bank Plan provides, with respect to each Class, that each Holder of a Claim or Equity Interest in such Class either: (a) has accepted the Bank Plan; or (b) will receive or retain under the Bank Plan property of a value, as of the Effective Date, that is not less than the amount that such person would receive or retain if Debtors liquidated under chapter 7 of the Bankruptcy Code.

In chapter 7 liquidation cases, unsecured creditors and interest holders of a debtor are paid from available assets generally in the following order, with no junior Class receiving any payments until all amounts due to senior Classes have been paid fully or any such payment is provided for:

- Secured creditors (to the extent of the value of their collateral);
- Priority creditors;

- Unsecured creditors;
- Debt expressly subordinated by its terms or by order of the Bankruptcy Court; and
- Equity Interest Holders.

As described in more detail in the Liquidation Analysis set forth above, Bank of America believes that the value of any distributions in a chapter 7 case would be less than the value of distributions under the Bank Plan because, among other reasons, distributions in a chapter 7 case may not occur for a longer period of time, thereby reducing the present value of such distributions. In this regard, it is possible that distribution of the proceeds of a liquidation could be delayed for a period in order for a chapter 7 trustee and its professionals to become knowledgeable about the chapter 11 cases and the Claims against the Debtor. In addition, proceeds received in a chapter 7 liquidation are likely to be significantly discounted due to the distressed nature of the sale, and the fees and expenses of a chapter 7 trustee would likely exceed those of the Professionals retained by the Debtor (thereby further reducing Cash available for distribution).

### 3. Feasibility.

The Bankruptcy Code requires the Bankruptcy Court to find, as a condition to confirmation, that confirmation is not likely to be followed by the Debtor's liquidation or the need for further financial reorganization, unless that liquidation is contemplated by the Bank Plan. For purposes of showing that the Bank Plan meets this feasibility standard, Bank of America analyzed the likelihood that all Holders of Allowed Claims will receive the treatment and Distributions provided under the Bank Plan.

Bank of America believes that its commitment to fund the Carve-Out, coupled with the Debtor's available cash flow, will provide more than sufficient cash proceeds to afford a one-hundred percent (100%) Distribution to the Holders of all Allowed Claims (other than Bank of America). Bank of America is one of the world's largest financial institutions, serving individual consumers, small- and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. The company provides unmatched convenience in the United States, serving approximately 58 million consumer and small business relationships with more than 5,900 retail banking offices, more than 18,000 ATMs and award-winning online banking with nearly 30 million active users. Bank of America is among the world's leading wealth management companies and is a global leader in corporate and investment banking and trading across a broad range of asset classes, serving corporations, governments, institutions and individuals around the world. Bank of America offers industry-leading support to approximately 4 million small business owners through a suite of innovative, easy-to-use online products and services. The company serves clients in more than 150 countries. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

The Trust should have sufficient cash flow to pay and service all of its obligations under the Bank Plan. Accordingly, Bank of America believes that the Bank Plan complies with the financial feasibility standard of Bankruptcy Code section 1129(a)(11). Bank of America understands that the Debtor may disagree with these contentions.

### 4. Acceptance by Impaired Classes.

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each Class of Claims or Equity Interests that is impaired under the Bank Plan accept the Bank Plan. A Class that is not "impaired" under a plan of reorganization is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such Class is not required. A Class is "Impaired" unless the plan:

(1) leaves unaltered the legal, equitable and contractual rights to which the Claim or Equity Interest entitles the Holder of that Claim or Equity Interest; (2) cures any default and reinstates the original terms of the obligation; or (3) provides that, on the consummation date, the Holder of the Claim or Equity Interest receives Cash equal to the allowed amount of that Claim or, with respect to any interest, any fixed liquidation preference to which the interest Holder is entitled or any fixed price at which the debtor may redeem the security. Under the Bank Plan, only Bank of America, with respect to the Bank Deficiency Claim, is impaired and entitled to vote.

5. Confirmation Without Acceptance by All Impaired Classes.

Bankruptcy Code section 1129(b) allows a Bankruptcy Court to confirm a plan, even if all Impaired Classes entitled to vote on the plan have not accepted it, *provided that* the plan has been accepted by at least one Impaired Class of Claims. Bank of America, as the only impaired Holder of a Claim against the Debtor under the Bank Plan, will support its Bank Plan and vote to accept it. Holders of Interests in Class 3 are deemed to reject the Bank Plan and, therefore, Bank of America may attempt to confirm the plan pursuant to Bankruptcy Code section 1129(b).

Bankruptcy Code section 1129(b) states that, notwithstanding an Impaired Class's failure to accept a plan of reorganization, the plan shall be confirmed, at the plan proponent's request, in a procedure commonly known as "cram-down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is Impaired under, and has not accepted, the plan.

In general, a plan does not discriminate unfairly if it treats a class substantially equivalent to how other classes that have equal rank are treated. Courts will take into account a number of factors in determining whether a plan discriminates unfairly, including the effect of applicable subordination agreements between parties. Accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

The Bank Plan provides that if any Impaired Class rejects the Bank Plan, Bank of America reserves the right to seek to confirm the Bank Plan utilizing the "cram down" provisions of Bankruptcy Code section 1129(b). To the extent that any Impaired Class rejects the Bank Plan or is deemed to have rejected the Bank Plan, Bank of America will request confirmation of the Bank Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). Bank of America reserves the right to alter, amend, modify, revoke or withdraw the Bank Plan or any Plan Exhibit or Schedule, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

**B. Risk Factors.**

Prior to deciding whether and how to vote on the Bank Plan, each Holder of a Claim should consider carefully all of the information in this Disclosure Statement, and should particularly consider the Risk Factors described in Section X below.

**C. Identity of Persons to Contact for More Information.**

Any interested party desiring further information about the Bank Plan should contact: Jason J. DeJonker, Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603, Telephone: (312) 460-5000, [jdejonker@seyfarth.com](mailto:jdejonker@seyfarth.com).

Bank of America recognizes that the Debtor disagrees with certain of the contentions contained in this Article IX.

X.

**CERTAIN RISK FACTORS**  
**AFFECTING CONFIRMATION OF THE BANK PLAN**

**PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS ALL OTHER INFORMATION IN THIS BANK DISCLOSURE STATEMENT.**

- **Parties in Interest May Object To The Classification of Claims and Equity Interests Under The Bank Plan:** Bankruptcy Code section 1122 provides that a plan of reorganization may place a class or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. Bank of America believes that the classification of Claims and Equity Interests under the Bank Plan complies with the requirements set forth in the Bankruptcy Code . There can be no assurance, however, that the Bankruptcy Court will reach the same conclusion.
- **Risk of Non-Confirmation of the Bank Plan.** Although Bank of America believes that the Bank Plan will satisfy all requirements necessary for Confirmation, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Bank Plan will not be required for Confirmation or that such Modifications would not necessitate the re-solicitation of votes.
- **Bank of America May Not be Able to Secure Confirmation of the Bank Plan.** A non-accepting creditor or a Holder of an Equity Interest of the Debtors might challenge the adequacy of this Bank Disclosure Statement or could assert that the balloting procedures and results do not comply with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court were to determine that this Bank Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Bank Plan if it were to determine that any of the statutory requirements for confirmation had not been met, including a determination that the terms of the Bank Plan are not fair and equitable to non-accepting Classes. Bankruptcy Code section 1129 sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that a plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes, confirmation of the plan is not likely to be followed by a liquidation or a need for further financial reorganization, and the value of distributions to non-accepting Holders of Claims and interests within a particular class under the plan will not be less than the value of distributions that any such Holders would receive were the debtors to be liquidated under chapter 7 of the Bankruptcy Code.
- **Bank of America or Another Party In Interest May Object to the Amount or Classification of a Claim.** Except as otherwise provided in the Bank Plan, Bank of America, the Trustee on behalf of the Trust, and all parties-in-interest reserve the right to object to the amount or classification of any Claim or Equity Interest deemed Allowed under the Bank Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim or Equity Interest where such Claim or Equity Interest is subject to an objection. Any Holder of a Claim may not receive its specified share of the estimated distributions described in this Disclosure Statement.
- **Risk of Non-Occurrence of the Effective Date.** Although Bank of America believes that the Effective Date may occur as soon as fourteen (14) Business Days after the Confirmation Date, there can be no assurance as to such timing.

- **Contingencies Not to Affect Votes of Impaired Classes to Accept the Bank Plan.** The distributions available to Holders of Allowed Claims under the Bank Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Claims to be subordinated to other Claims. The occurrence of any and all such contingencies which could affect distributions available to Holders of Allowed Claims under the Bank Plan, however, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Bank Plan or require any sort of revote by the Impaired Classes.

## XI.

### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE BANK PLAN**

If the Bank Plan is not confirmed and consummated, the alternatives to the Bank Plan include: (1) the Third Plan proposed by the Debtor, (2) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; and (3) an alternative plan of reorganization proposed by the Debtor, the Bank, or another interested party. Bank of America understands that the Debtor may disagree with the contentions set forth in this Article XI.

#### **A. The Third Plan.**

For the reasons stated above, Bank of America believes that: (1) the Bank Plan will provide all Holders of Allowed Claims against the Debtor, other than Bank of America with respect to its deficiency claim, a 100% Distribution and payment-in-full while the Third Plan will likely result in recoveries of less than 100% to the Holders of Allowed Claims; and (2) the Bank Plan will provide faster payment of Allowed Claims than the Third Plan which provides for installment payments in the six (6) months following the Effective Date. Unlike the Bank Plan, Bank of America also contends that the Third Plan is not confirmable as a matter of law.

#### **B. Liquidation under Chapter 7.**

If the Bankruptcy Court does not confirm or determines that it cannot confirm a Chapter 11 plan, the Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of Holders of Claims and Equity Interests and the Bank of America's liquidation analysis is set forth in Section III.C. Bank of America believes that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Bank Plan because of: (1) the likelihood that the assets of the Debtors would have to be sold or otherwise disposed of in a less orderly fashion over a shorter period of time; (2) additional administrative expenses involved in the appointment of a trustee; and (3) additional expenses and claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations. In addition, Bank of America believes that no distributions will be made to any class junior to the Bank Secured Claim in a Chapter 7 liquidation.

#### **C. Alternative Plan of Reorganization.**

If the Bank Plan is not confirmed, Bank of America, the Debtor or any other party in interest could attempt to formulate a different plan. Such a plan might involve either a reorganization and continuation of the Debtor's business or an orderly liquidation of its assets. With respect to an alternative plan, Bank of America has explored various alternatives in connection with the formulation and development of the Bank Plan. Bank of America believes that the Bank Plan, as described herein, enables creditors to realize the most value under the circumstances.

XII.  
**MISCELLANEOUS PROVISIONS**

**A. Attachments; Entire Agreement.**

**All attachments to the Bank Disclosure Statement are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Bank Disclosure Statement.**

**B. Plan Amendments.**

Before the Confirmation Date, Bank of America may modify, amend or withdraw the Bank Plan, without approval of the Bankruptcy Court. After the Confirmation Date and subject to approval of Bank of America and the Bankruptcy Court, the Trustee may amend or modify the Bank Plan to remedy any defect or omission or reconcile any inconsistencies in the Bank Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Bank Plan and so long as it does not materially or adversely affect the rights set forth in the Plan of creditors and other parties in interest. The Trustee reserves the right to modify the treatment of any Allowed Claim, as provided in Bankruptcy Code section 1123(a)(4), at any time after the Effective Date upon the consent of Bank of America and the Holder of such Allowed Claim.

**C. Governing Law.**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Bank Disclosure Statement and Bank Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois, without giving effect to any conflicts of law principles.

**D. No Admissions.**

Notwithstanding anything here and to the contrary, nothing contained in the Bank Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

**[Intentionally Left Blank]**

XIII.  
**CONCLUSION AND RECOMMENDATION**

Bank of America believes the Bank Plan is in the best interests of all creditors and accordingly urges the Holders to vote to reject the Debtor's Third Plan.

Dated: June 9, 2010  
Chicago, Illinois

Respectfully Submitted:

BANK OF AMERICA, N.A., successor by merger  
to LaSalle Bank National Association

By: /s/ Jason J. DeJonker

Gus A. Paloian (6188186)  
Jason J. DeJonker (6272128)  
James B. Sowka (6291998)  
SEYFARTH SHAW LLP  
131 South Dearborn Street  
Chicago, Illinois 60603  
Telephone: (312) 460-5000  
Facsimile: (312) 460-7000

**Attorneys for the Bank of America, N.A., successor by merger  
to LaSalle Bank National Association**

**EXHIBITS**

**Exhibit A** First Amended Chapter 11 Plan of Liquidation of Bank of America, N.A. for River West Plaza-Chicago, LLC D/B/A Joffco Square