

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

In re:

T-L BRYWOOD LLC,

Debtor/Debtor-in-Possession.

Case No. 13-21804

Chapter 11

Judge J. Philip Klingeberger

**DISCLOSURE STATEMENT ACCOMPANYING  
PLAN OF REORGANIZATION FOR T-L BRYWOOD, LLC PROPOSED BY  
RCG-KC BRYWOOD, LLC, THE DEBTOR'S SENIOR SECURED CREDITOR**

---

David J. Fischer  
Phillip W. Nelson  
LOCKE LORD LLP  
225 West Wacker Drive  
Chicago, Illinois 60606  
Telephone: 312-201-2000  
Facsimile: 312-201-2555  
david.fischer@lockelord.com  
phillip.nelson@lockelord.com  
*Counsel for RCG-KC Brywood, LLC*

Dated: April 3, 2015

## TABLE OF CONTENTS

	Page
ARTICLE 1. INTRODUCTION .....	1
1.1 Introduction.....	1
1.2 Purpose of this RCG Disclosure Statement .....	1
1.3 Voting on the Plan .....	2
1.4 RCG Plan Confirmation, Acceptance, and Cram Down Option .....	3
1.5 The Confirmation Hearing.....	3
1.6 Qualifications on Contents of this RCG Disclosure Statement .....	3
ARTICLE 2. SUMMARY OF PLAN, INCLUDING THE RCG PLAN’S CLASSIFICATION AND TREATMENT OF CLAIMS .....	4
ARTICLE 3. HISTORICAL BACKGROUND TO THE RCG PLAN AND SIGNIFICANT POST-PETITION ACTIVITIES .....	6
3.1 General.....	6
3.2 The Case.....	7
ARTICLE 4. SUMMARY OF THE PLAN .....	9
4.1 Summary of Distributions under the Plan.....	9
4.2 Plan as a Settlement .....	12
ARTICLE 5. MEANS OF EXECUTION OF THE RCG PLAN .....	12
5.1 Corporate Action and the Reorganized Debtor.....	12
5.2 Funding by RCG .....	12
5.3 Vesting of Assets .....	13
5.4 Causes of Action .....	13
5.5 General Claims Distribution Mechanics .....	13
5.6 Withholding Taxes.....	14
5.7 Exemption from Certain Transfer Taxes .....	14
5.8 Setoffs and Recoupments.....	14
5.9 Insurance Preservation .....	15
5.10 Releases, Injunctions and Related Provisions.....	15
5.11 Retention of Jurisdiction .....	17
5.12 Objections to Claims.....	17
5.13 Executory Contracts and Unexpired Leases .....	17
5.14 Conditions Precedent to Confirmation of the RCG Plan .....	18

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 6. CONFIRMATION OF THE PLAN.....	18
6.1 Acceptance of the Plan; Cram Down.....	18
6.2 Confirmation Hearing and Objections .....	18
6.3 Confirmation .....	19
6.4 Plan Consummation .....	21
ARTICLE 7. CERTAIN RISK FACTORS TO BE CONSIDERED .....	21
7.1 Amendments, Modification or Withdrawal of the Plan.....	21
7.2 Failure to Consummate the Plan .....	22
7.3 Alternative Chapter 11 Plans May Be Proposed.....	22
ARTICLE 8. RECOMMENDATION AND CONCLUSION.....	22

## ARTICLE 1.

### INTRODUCTION

#### 1.1 Introduction.

RCG-KC Brywood (“**RCG**” or the “**Proponent**”) submits this disclosure statement (the “**RCG Disclosure Statement**”) pursuant to Section 1125 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3016(b) in connection with the solicitation of votes with respect to the Plan of Reorganization for T-L Brywood, LLC (the “**Debtor**”) proposed by RCG (the “**RCG Plan**”).<sup>1</sup> A copy of the RCG Plan<sup>2</sup> is attached to this RCG Disclosure Statement as **Exhibit 1**.

The RCG Plan provides for the reorganization of the Debtor through, among other things, a substantial cash infusion from RCG, the Debtor’s largest secured creditor and its prepetition lender, in exchange for a cancellation of all current Equity Interests in the Debtor and the issuance of shares in the Reorganized Debtor in favor of RCG. RCG, as proponent of the RCG Plan, believes that the RCG Plan provides better treatment for creditors of the Debtor than would be obtained either in a liquidation or approval of the Debtors’ First Amended Joint Plan of Reorganization (the “**Debtors’ Plan**”).<sup>3</sup>

Because RCG has agreed to make substantial payments to all stakeholders — other than existing equity — the Plan provides greater and quicker distributions of available cash to unsecured creditors of the Debtor than creditors would receive in either a liquidation of the Debtor or consummation of the Debtors’ Plan. In addition, RCG has agreed, in accordance with the RCG Plan, to convert its unsecured deficiency claim to equity in the Reorganized Debtor. **Accordingly, RCG recommends that creditors vote to approve the Plan.**

#### 1.2 Purpose of this RCG Disclosure Statement.

This RCG Disclosure Statement is intended to provide holders of Claims of all Classes entitled to vote on the RCG Plan with adequate information about the RCG Plan so as to permit them to make an informed judgment when voting to accept or reject the RCG Plan.

**THE APPROVAL OF THIS RCG DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION DOES NOT CONSTITUTE A RECOMMENDATION BY THE BANKRUPTCY COURT AS TO ACCEPTANCE OR REJECTION OF THE PLAN OR ASSURE THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

---

<sup>1</sup> For the avoidance of doubt, any reference to the “Plan” or the “RCG Plan” shall mean RCG’s Plan attached as Exhibit 1 as may be amended or modified from time to time. All reference to the “Debtor’s Plan” shall mean the Debtors’ First Amended Joint Plan of Reorganization.

<sup>2</sup> All capitalized terms used in this RCG Disclosure Statement that are not otherwise defined herein shall have the meaning ascribed to them in the RCG Plan.

<sup>3</sup> The Debtors’ Plan is a joint plan proposed by five (5) affiliated entities all currently in bankruptcy.

### 1.3 Voting on the Plan.

Together with this RCG Disclosure Statement, Ballots are being delivered to holders of Claims in Classes 1, 2, 4, 5, and 6. Only a party entitled to vote on the RCG Plan may cast a Ballot. Holders of Claims for which there will be no RCG Plan distribution are deemed to have rejected the RCG Plan. Furthermore, pursuant to section 1129(a)(10) of the Bankruptcy Code, acceptances of the Plan by insiders are not considered in determining whether a class of Claims has accepted the Plan and, accordingly, Holders of Class 7 Insider Claims will not be solicited for acceptances of the Plan. To ascertain whether or not your Claim is in the Class entitled to vote, please consult Article 2 of this RCG Disclosure Statement.

A Claim to which an objection has been filed and remains unresolved is a Disputed Claim. Holders of Disputed Claims are permitted to vote such Claims as if such Claims were Allowed at the time voting on the RCG Plan commences.

For a Ballot to be counted for voting on the Plan, such Ballot must be received no later than **[5:00 P.M.] (prevailing Central Time) on [\_\_\_\_\_], 2015** (the “**Voting Deadline**”) at the following address:

Clerk of the Court  
United States Bankruptcy Court  
for the Northern District of Indiana  
Room 2200  
5400 Federal Plaza  
Hammond, Indiana 46320

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE COMPLETED IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND MAILED TO THE ADDRESS ABOVE SO AS TO BE RECEIVED NO LATER THAN THE VOTING DEADLINE. BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED UNLESS THE BANKRUPTCY COURT DIRECTS OTHERWISE.**

If you are a holder of a Claim entitled to vote on the RCG Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning voting procedures, please contact counsel to RCG, Phillip W. Nelson of Locke Lord LLP, at (312) 201-2000, or via email at [phillip.nelson@lockelord.com](mailto:phillip.nelson@lockelord.com).

Before voting, each holder of a Claim entitled to vote on the RCG Plan should read the pertinent portions of this RCG Disclosure Statement and its Exhibits, including the RCG Plan itself, as well as the instructions accompanying the Ballot. This RCG Disclosure Statement and the accompanying notice and Ballot are the only documents authorized by the Bankruptcy Court to be used in connection with the solicitation of votes to accept or reject the RCG Plan. **Your vote on the RCG Plan is important.**

#### **1.4 RCG Plan Confirmation, Acceptance, and Cram Down Option.**

Except as otherwise set forth below, for the RCG Plan to be confirmed, it must be accepted by each Class of Claims whose rights are impaired by the RCG Plan. Under the Bankruptcy Code, a Class of Claims is deemed to have accepted the RCG Plan if the RCG Plan is timely accepted by creditors in such Class holding at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that were timely voted.

However, as discussed in Section 6.3(c), even if the requisite acceptance of the RCG Plan by any impaired Class is not obtained through such voting, the Bankruptcy Court still may confirm the RCG Plan in limited circumstances.

#### **1.5 The Confirmation Hearing.**

The Bankruptcy Court has scheduled a hearing on confirmation of the RCG Plan for [\_\_\_\_], 2015 at [\_\_\_\_] [\_\_\_\_].m. in Suite 3800 at the Bankruptcy Court, 5400 Federal Plaza, Hammond, Indiana 46320 (the “*Confirmation Hearing*”). Any objection to confirmation must be in writing and filed and served on counsel to RCG, Locke Lord LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: David J. Fischer, Esq., with a copy to the United States Trustee for the Northern District of Indiana, Attention: Jennifer Prokop, Esq., 100 East Wayne Street, Suite 555, South Bend, Indiana 46601, so that such objections are received by [\_\_\_\_], 2015, in accordance with the procedure described in the notice accompanying this RCG Disclosure Statement.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Bankruptcy Code’s requirements for Plan confirmation have been satisfied. RCG believes the Plan satisfies all such applicable requirements.

#### **1.6 Qualifications on Contents of this RCG Disclosure Statement.**

**LIKE THE DEBTOR’S PLAN, THE FINANCIAL INFORMATION SET FORTH IN THE RCG PLAN AND THIS RCG DISCLOSURE STATEMENT IS PRIMARILY BASED ON INFORMATION PROVIDED BY THE DEBTOR AND ITS MANAGEMENT. RCG IS RELYING UPON THE ACCURACY OF THE INFORMATION PROVIDED BY THE DEBTOR AND HAS NOT INDEPENDENTLY VERIFIED THE INFORMATION PROVIDED BY THE DEBTOR.**

**OTHER THAN AS SET FORTH IN THIS RCG DISCLOSURE STATEMENT, NO REPRESENTATION CONCERNING RCG OR THE RCG PLAN HAS BEEN AUTHORIZED OR SHOULD BE RELIED UPON BY ANY HOLDER OF A CLAIM. THIS RCG DISCLOSURE STATEMENT AND ITS EXHIBITS, INCLUDING THE RCG PLAN, MAY NOT BE RELIED UPON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING WHETHER TO ACCEPT OR REJECT THE RCG PLAN. RCG HAS SOUGHT TO ENSURE SUCH INFORMATION IS ACCURATE IN ALL MATERIAL RESPECTS AND DOES NOT BELIEVE SUCH INFORMATION CONTAINS ANY MATERIAL INACCURACIES.**

This RCG Disclosure Statement contains projected financial information and certain other forward-looking statements, all of which are based on various estimates and assumptions and will not be updated to reflect events occurring after the date hereof. Such information and statements are subject to inherent uncertainties including, among others, those described herein. Consequently, actual events, circumstances, effects and results might vary significantly from those included in or contemplated by such forward-looking statements. Consequently, the forward-looking statements contained herein should not be regarded as representations by RCG or any other person that the projected financial conditions or distributions can or will be achieved.

## ARTICLE 2.

### **SUMMARY OF PLAN, INCLUDING THE RCG PLAN'S CLASSIFICATION AND TREATMENT OF CLAIMS**

The RCG Plan contemplates an infusion of capital by RCG in order to make substantial payments to unsecured claim classes, including insiders, and the cancellation of Debtor's securities in exchange for New Equity Interests. Thus, if the RCG Plan is approved, on the Effective Date, all secured creditors (with the exception of RCG) will be paid in full and unsecured creditors will receive the right to significant Distributions on account of their Allowed Claims. Also, RCG and the Insiders shall receive equity in the Reorganized Debtor and the Debtor's Equity Interests shall be cancelled. There are eight Classes contemplated by the Plan: three unclassified classes, the RCG Secured Claim, the RCG Unsecured Deficiency Claim, the Jackson County Secured Claim, General Unsecured Claims, the Planet Fitness Claim, the Mesirow Note Claim, Insider Claims and Equity Interests. The classification and treatment of the Claims are as follows:

Class	Claims	Treatment	Status	Voting Rights	Estimated Aggregate Allowed Amount	Projected Recovery
Unclassified	Professional Compensation Claims	Paid in full on later of sixty days from the Effective Date, or the date on which it becomes an Allowed Claim	Unimpaired	N/A	N/A	N/A
Unclassified	Priority Tax Claims	Paid in full on later of the Effective Date, or the date on which it becomes an Allowed Claim	Unimpaired	N/A	N/A	N/A

Class	Claims	Treatment	Status	Voting Rights	Estimated Aggregate Allowed Amount	Projected Recovery
Unclassified	U.S. Trustee Fees	Paid in full as soon as reasonably practicable after the Effective Date	Unimpaired	N/A	N/A	N/A
Class 1	RCG Secured Claim	Paid in full no later than five (5) years after the Effective Date.	Impaired	Yes, entitled to vote	\$8.35 million	100%
Class 2	RCG Unsecured Deficiency Claim	100% of the New Equity Interests in the Reorganized Debtor	Impaired	No, deemed to reject	\$3.91 million	12.79%
Class 3	Jackson County Secured Claim	To receive Cash equal to the unpaid portion of the Jackson County Secured Claim	Unimpaired	No, deemed to accept	\$85,000	100%
Class 4	General Unsecured Claims	To receive Cash equal to the unpaid portion of the Face Value of General Unsecured Claim	Impaired	Yes, entitled to vote	\$135,000	100%
Class 5	Planet Fitness Claim	To receive rent reduction of \$200,000 to be divided into 12 monthly installment credits against rent obligations.	Impaired	Yes, entitled to vote	\$200,000	100%
Class 6	Mesirow Note Claim	As soon as reasonably practicable after the Effective Date, \$600,000 in Cash	Impaired	Yes, entitled to vote	\$1 million	60%
Class 7	Insider Claims	To receive the New Insider Notes on the Effective Date, consisting of an amount equal 50% of the Allowed amount of the Insider Claims	Impaired	No, votes will not be counted to determine if an impaired class has	\$1 million	50%



Class	Claims	Treatment	Status	Voting Rights	Estimated Aggregate Allowed Amount	Projected Recovery
				accepted		
Class 8	Equity Interests	No distribution.	Impaired	No, deemed to reject	N/A	0%

### ARTICLE 3.

#### **HISTORICAL BACKGROUND TO THE RCG PLAN AND SIGNIFICANT POST-PETITION ACTIVITIES**

##### **3.1 General.**

The Debtor is a Delaware limited liability company that owns a commercial shopping center located in Kansas City, Missouri known as the “Brywood Centre.” The Debtor was formed for the purpose of acquiring, owning, operating and redeveloping the Brywood Centre. Brywood Centre is built on 25.65 acres of land and currently is improved with three buildings totaling 182,914 square feet. As of the Petition Date, Brywood Centre had an occupancy rate of approximately eighty percent (80%).

Tri-Land Kansas City Investors, LLC (“*Investors*”), is the Debtor’s member. Investors is a Delaware limited liability company formed for the purpose of being the sole member of the Debtor. Tri-Land Properties, an entity affiliated with the Debtor, acts as property manager, exclusive leasing agent, developer of new tenant space and redevelopment of existing space, and exclusive agent for the sale of Brywood Centre pursuant to a Management and Development Agreement entered into between the parties.

The Debtor’s operational and profitability problems principally are the result of the economic downturn in real estate over the last several years, coupled with its high cost to develop the Brywood Centre and current leasing rates.

Prior to commencing these proceedings, the Debtor borrowed \$13,950,000.00 from the PrivateBank & Trust Co. under a certain Promissory Note dated as of December 7, 2009 (as amended from time to time, the “*Note*”). As security for the Note, the Debtor granted PrivateBank a Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement, dated as of December 7, 2009 and recorded on December 14, 2009 as Document No. 2009E0125351 with the Jackson County Recorder of Deeds (the “*Mortgage*”), which encumbers the property. RCG is the successor by assignment to The PrivateBank & Trust Company. Throughout the Case, with RCG’s consent, the Bankruptcy Court has entered orders permitting the Debtor to use RCG’s cash collateral, including the rents.

### 3.2 The Case.

On March 12, 2012, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois. The Case is designated as a single asset real estate case within the meaning of sections 101(51)(B) and 362(d)(3) of the Bankruptcy Code. The Debtor has failed to make a single payment to RCG since approximately July of 2013. RCG claims that it was and remains entitled to adequate protection payments based on the precipitous drop in collateral value, and that RCG has an administrative claim for those payments pursuant to 11 U.S.C §§ 503(b) and 507. The Debtor does not agree.

On February 1, 2013, various of the Debtor's affiliates filed voluntary petitions under chapter 11 of the Bankruptcy Code. On May 14, 2013, at the Debtor's request, the Case was transferred to the United States Bankruptcy Court for the Northern District of Indiana.

On May 23, 2013, the Debtor filed the *Debtors' Joint Plan of Reorganization* (the "**Debtors' Plan**") [Dkt. No. 84] with affiliated debtors T-L Conyers LLC, T-L Smyrna LLC, T-L Cherokee South LLC and T-L Village Green LLC. The Debtors' Plan was predicated, in part, upon the "deemed" substantive consolidation of the Debtor with the foregoing entities for plan purposes, including distributions to creditors. RCG objected to the Debtors' Plan.

Following a hearing on the propriety of the "deemed" substantive consolidation provisions in the Debtors' Plan, on October 7, 2013, the Bankruptcy Court entered the *Memorandum of Decision and Order Concerning Creditor's Objection to the "Deemed Substantive Consolidation" Provisions of the Debtor's Proposed Chapter 11 Plan* (the "**Opinion**") [Dkt. No. 217] sustaining RCG's objection and that of another secured lender in one of the affiliated cases, finding that the Debtors' Plan was not confirmable, and permitting the Debtor to file an amended plan. On October 16, 2013, the Debtor filed a *Notice of Appeal* of the Opinion [Dkt. No. 226] (the "**Appeal**"). Pursuant to an *Agreed Stipulation of Dismissal* between the Debtor and RCG, the Appeal was dismissed without prejudice on June 27, 2014.

Meanwhile, on April 25, 2014, the Debtor filed the *Debtors' First Amended Joint Plan of Reorganization* [Dkt. No. 314]. On October 30, 2014, the Bankruptcy Court entered the *Order Regarding Further Proceedings with respect to Disclosure Statement(s)/Chapter 11 Plan(s) and Valuation of Secured Claims* [Dkt. No. 367], among other things, (i) suspending further proceedings on disclosure statements and plans filed in the Case and in affiliated debtors' cases, (ii) providing procedures for valuation of RCG's Secured Claim, and (iii) scheduling an evidentiary hearing in connection with such valuation.

On January 26, 2015, the Court entered the *Agreed Order Re: can valuation Hearing and RCG-KC Brywood, LLC's Motion for Relief from Automatic Stay and Supplement Thereto* [Dkt. No. 396], which, among other things, resolved disputes between RCG and the Debtor regarding valuation of the Brywood Centre by setting the value at \$8,350,000 for the purposes of this Case.

On January 29, 2015, the Debtors' counsel, Crane, Heyman, Simon, Welch & Clar ("**Crane Heyman**"), filed the *Motion for First Allowance of In room Compensation and*

*Reimbursement of Expenses to Debtor's counsel and for Related Relief* [Dkt. No. 400] (the "**Crane Heyman Fee Application**"), and the Debtor's "special counsel", Burke, Warren, MacKay & Serritella PC ("**Burke Warren**") submitted the *Motion for First Allowance of Interim Compensation to Debtor's Special Counsel and for Related Relief* [Dkt. No. 398] (the "**Burke Warren Fee Application**").

The Crane Heyman Fee Application for seeks allowance of \$288,127.50 in fees and \$4,932.46 in expenses for the period from February 25, 2012 through September 30, 2014. Crane Heyman proposes that the allowed fees and expenses will be paid in part by applying a \$75,000 pre-petition retainer, with the rest to come from the Debtor's cash on hand. If all of the Crane Heyman fees and expenses are allowed, this would reduce the Debtor's cash on hand by \$218,059.96.

The Burke Warren Fee Application seeks allowance of \$77,489.55 in fees for the period from March 13, 2012 through October 9, 2014. Burke Warren proposes that the allowed fees will be paid in part by applying a \$50,000 prepetition retainer, with the rest to come from the Debtor's cash on hand. If all of the Burke Warren fees are allowed, this would reduce the Debtor's cash on hand by \$27,489.55.

On February 19, 2015, RCG filed objections to both the Crane Heyman Fee Application, seeking disallowance of \$176,577.50 of Crane Heyman's requested fees (Dkt. No. 409, the "**Crane Heyman Fee Application Objection**") and the Burke Warren Fee Application, seeking disallowance of \$50,676.50 of Burke Warren's requested fees (Dkt. No. 410, the "**Burke Warren Fee Application Objection**" and, together with the Crane Heyman Fee Application Objection, the "**Fee Application Objections**").

RCG has agreed to the partial interim allowance to Crane Heyman of \$111,550.00 in fees and \$4,932.46, which represent the portion of the Crane Heyman Fee Application to which RCG has not objected. The Court has scheduled a evidentiary hearing on the Objections for May 13, 2015. Crane Heyman and Burke Warren's replies to the Objections are due by April 13, 2015. The parties have until May 8, 2015 to complete discovery in connection with the Objections and the evidentiary hearing.

**For the reasons more fully set forth in RCG's Request for Final Hearing and Renewed Motion for Stay Relief [Dkt. No. 331] filed on July 31, 2014, as well as in the Objections, RCG believes that the Debtor's Joint Plan: (a) is not feasible, as it does not provide adequate means to accomplish the restructuring described in the plan; and (b) fails to satisfy requirements of the Bankruptcy Code, and therefore cannot be confirmed over RCG's objection. On the other hand, the RCG Plan: (a) provides adequate means for its implementation, including a \$500,000 cash infusion from RCG; (b) satisfies all the requirements of the Bankruptcy Code and can be confirmed; and (c) will pay creditors more and faster than the Debtor's Joint Plan. Accordingly, the RCG Plan is superior.**

## **ARTICLE 4.**

### **SUMMARY OF THE PLAN**

#### **4.1 Summary of Distributions under the Plan.**

##### **(a) Treatment of Unclassified Claims.**

The Bankruptcy Code does not require classification of certain priority claims against a debtor. In the Plan, such unclassified Claims include Professional Compensation Claims. Their RCG Plan treatment is set forth below.

##### **(1) Certain Administrative Claims.**

Under the RCG Plan, Professional Compensation Claims include any Claim for payment of fees, costs or expenses of professionals retained in the Case of the kind specified in section 507(a) of the Bankruptcy Code.

A Professional Compensation Claim for which a final fee application has been properly filed and served shall be payable by RCG to the extent approved by a final order of the Bankruptcy Court. Each holder of a Professional Compensation Claim shall be required to submit to the Debtor and RCG at least ten (10) business days prior to the Confirmation Date an estimate of the portion of its Professional Compensation Claim in connection with this Case that will have accrued prior to and including the Confirmation Date, but that have not yet been included in a monthly fee statement or interim fee application previously submitted to the Bankruptcy Court. In addition, along with the estimate provided pursuant to the preceding sentence, each holder of a Professional Compensation Claim shall provide to the Debtor and RCG a statement of all amounts previously approved by the Bankruptcy Court but not yet paid.

On the Effective Date, RCG will place into an escrow account an amount sufficient to satisfy the face amount of all Professional Compensation Claims in full. RCG shall have sixty (60) days from the Effective Date to object or otherwise challenge any Professional Compensation Claim. On the later of (a) sixty days from the Effective Date unless an objection to the Claim is pending, or (b) the date on which a Professional Compensation Claim becomes an Allowed Claim, each such Allowed Professional Compensation Claim shall receive Cash equal to the unpaid portion of such Allowed Professional Compensation Claim.

##### **(2) Priority Tax Claims.**

Priority Tax Claims include any Claim by a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code. RCG estimates that Allowed Priority Tax Claims will aggregate \$50,000, which estimate is subject to adjustment prior to the Confirmation Date.

On the later of (a) the Effective Date, unless an objection to the Claim is pending, or (b) the date on which a Priority Tax Claim becomes an Allowed Claim, each such Allowed Priority Tax Claim, if any, shall receive Cash in an amount equal to the unpaid portion of such Priority Tax Claim.

**(3) Claims for U.S. Trustee Fees.**

On or as soon as reasonably practicable after the Effective Date, any unpaid U.S. Trustee fees then due shall be paid in full. Any U.S. Trustee fees due thereafter shall be paid upon the entry of a final decree closing the Case, or a Bankruptcy Court order converting or dismissing the Case, as the case may be.

**(b) Treatment of Classified Claims.**

The following describes the RCG Plan's classification of the remaining Claims and the treatment of Allowed Claims in such Classes:

**(1) Class 1 RCG Secured Claims.**

In full and final satisfaction, settlement, release, and discharge of the RCG Secured Claim, the holder of the RCG Secured Claim will receive payment in full in Cash of the on paid portion of the RCG Secured Claim on a date that is no later than five (5) years after the Effective Date; provided, however, that until the RCG Secured Claim is paid in full in Cash: (a) the prepetition security interest securing the RCG Secured Claim will remain in place and will continue with respect to substantially all of the Reorganized Debtor's assets; (b) the Reorganized Debtor shall continue to make scheduled, monthly interest payments to RCG on the RCG Secured Claim that the prepetition, non-default rate.

Class 1 is Impaired and entitled to vote to accept or reject the RCG Plan.

**(2) Class 2 RCG Unsecured Deficiency Claim.**

On the Effective Date, RCG, or any designee named by RCG, shall receive, in full and final satisfaction, settlement, release and discharge of such RCG Unsecured Deficiency Claim, one hundred percent (100%) of the New Equity Interests in the Reorganized Debtor.

Class 2 is Impaired and entitled to vote to accept or reject the RCG Plan.

**(3) Class 3 Jackson County Secured Claim.**

On or as reasonably practicable after the Effective Date, the holder of the Jackson County Secured Claim shall receive Cash equal to the unpaid portion of such Jackson County Secured Claim. The Jackson County Secured Claim also may be paid on such other terms as may be agreed to between the holder of such Jackson County Secured Claim and RCG.

Class 3 is Unimpaired and is deemed to vote to accept the RCG Plan.

**(4) Class 4 General Unsecured Claims.**

Class 4 consists of holders of General Unsecured Claims. On or as reasonably practicable after the Effective Date, each holder of an Allowed Class 4 General Unsecured Claim shall receive Cash equal to the unpaid portion of the Face Value of such General Unsecured Claim.

Class 4 is Impaired and entitled to vote to accept or reject the RCG Plan.

**(5) Class 5 Planet Fitness Claim.**

In lieu of a Cash Distribution under the RCG Plan, the holder of the Planet Fitness Claim shall receive a reduction in rent in the amount of \$200,000, to be divided into twelve (12) monthly installment credits, due to the Reorganized Debtor pursuant to the Lease for Brywood Centre Kansas City, Missouri dated August 2, 2011 by and between the Debtor and PFKC, Inc., and any amendments or supplements thereto, which lease shall be assumed by the Reorganized Debtor as of the Effective Date.

Class 5 is Impaired and entitled to vote to accept or reject the RCG Plan.

**(6) Class 6 Mesirow Note Claim.**

On or as reasonably practicable after the Effective Date, the holder of the Allowed Mesirow Note Claim shall receive Cash equal to six hundred thousand dollars (\$600,000.00).

Class 6 is Impaired and entitled to vote to accept or reject the RCG Plan.

**(7) Class 7 Insider Claims.**

Each holder of an Insider Claim that is finally Allowed by the Bankruptcy Court after resolution of all objections thereto shall receive, in full satisfaction, settlement, release and discharge of such Allowed Class 7 Insider Claims, their pro rata share of the New Insider Notes.

Class 7 is Impaired under the RCG Plan. Pursuant to section 1129(a)(10) of the Bankruptcy Code, acceptances of the Plan by insiders are not considered in determining whether a class of Claims has accepted the Plan and, accordingly, Holders of Class 7 Insider Claims will not be solicited for acceptances of the Plan.

**(8) Class 8 Equity Interests.**

Existing Equity Interests shall be cancelled and shall not receive or retain any Distribution under this RCG Plan.

Class 8 is Impaired and is deemed to vote to reject the RCG Plan.

**4.2 Plan as a Settlement.**

Pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123, and in consideration for the classifications, distributions, and other benefits provided under the RCG Plan, the provisions of the RCG Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the RCG Plan whether known or unknown, foreseen or unforeseen, asserted or unasserted, by or against any Released party or holder of a Claim, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises and settlements, and all other compromises and



settlements provided for in the RCG Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor and its Estate, creditors, and other parties-in-interest, and are fair, equitable and within the range of reasonableness. The provisions of the RCG Plan, including, without limitation, the release, injunction, exculpation, and compromise provisions, are mutually dependent and non-severable.

**THE FOREGOING IS A SUMMARY OF THE RCG PLAN AND IS QUALIFIED IN ITS ENTIRETY BY THE RCG PLAN. CREDITORS ARE URGED TO READ RELEVANT PORTIONS OF THE RCG PLAN IN FULL AS THE RCG PLAN REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BETWEEN THE DEBTOR AND EACH CREDITOR.**

## **ARTICLE 5.**

### **MEANS OF EXECUTION OF THE RCG PLAN**

#### **5.1 Corporate Action and the Reorganized Debtor.**

The RCG Plan provides that, on the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any property, right, liability, duty or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (d) all other actions that the Reorganized Debtor determines are necessary or appropriate.

#### **5.2 Funding by RCG.**

All Cash necessary for RCG to make payments of Cash pursuant to the RCG Plan shall be obtained from the following sources: (a) the Debtor's Cash on hand, which shall be transferred to RCG on the Effective Date, (b) \$500,000 to be provided by RCG on the Effective Date, and (c) proceeds from Causes of Action.

#### **5.3 Vesting of Assets.**

On the Effective Date, all property of the Estate shall vest in the Reorganized Debtor free and clear of all liens, Claims, encumbrances, charges and other interests. From and after the Effective Date, the Reorganized Debtor may operate the Debtor's business pursuant to the terms of the RCG Plan and may use, acquire and dispose of property free and clear of any restrictions imposed by the Bankruptcy Code.

## 5.4 Causes of Action.

As of the Effective Date, any and all Causes of Action that are pending, that have accrued or that are accruing to the Debtor or the Estate shall vest in the Reorganized Debtor and the Reorganized Debtor shall retain all of the Causes of Action of the Debtor and its Estate, including, without limitation, fraudulent transfer and preferential transfer claims under Chapter 5 of the Bankruptcy Code. RCG shall have the authority and standing to prosecute such Causes of Action on behalf of and for the benefit of the Estate and the Debtor's creditors, including the authority to compromise, discontinue, abandon or dismiss any or all such Causes of Action without Bankruptcy Court approval.

Proceeds of such Causes of Action, if any, shall be distributed as follows: (a) first, to RCG, to reimburse it for the \$500,000 New Equity Contribution provided to the Estate on the Effective Date to fund this RCG Plan, and (b) then, to holders of Allowed Claims in accordance with the RCG Plan. Confirmation of the RCG Plan does not release any Cause of Action, and the Confirmation Order shall not have any res judicata or collateral estoppel effect on RCG's prosecution of any Cause of Action.

## 5.5 General Claims Distribution Mechanics.

(a) Estimates. Any estimates of Claims or their respective recoveries set forth in this RCG Disclosure Statement may vary from the final amounts of Claims Allowed by the Bankruptcy Court.

(b) Distributions Only on Allowed Claims. Notwithstanding anything in the RCG Plan to the contrary, no Distribution shall be made on account of a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

(c) No Recourse. No holder of a Claim shall have recourse to RCG other than regarding enforcement of rights or Distributions under the RCG Plan.

(d) Method of Cash Distributions. Any Cash payment to be made pursuant to the RCG Plan will be in U.S. dollars and may be made by draft, check or wire transfer, in the sole discretion of RCG, or as otherwise required or provided in any relevant agreement or applicable law.

(e) No Distributions on Non-Business Days. Any Distribution due on a day other than a Business Day may be made, without interest, on the next Business Day.

(f) Unclaimed Property. RCG shall hold any unclaimed property for the benefit of the holder of the Claim entitled thereto under the RCG Plan. At the end of ninety (90) days following the relevant Distribution, the holders of Allowed Claims to that point entitled to the Distribution held pursuant to the RCG Plan shall be deemed to have forfeited such Distribution, whereupon all right, title and interest in and to such Distribution shall immediately and irrevocably be retained by RCG for redistribution in accordance with the RCG Plan, and such holders shall cease to be entitled thereto. RCG shall have no obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Debtor's books and records, proofs of Claim filed against the Debtor or relevant registers maintained for such Claims.



(g) Distribution Minimum. RCG shall not be obligated to make a Distribution of less than \$20.00 in Cash.

(h) Creditor Information. Each holder of an Allowed Claim shall be required to provide to RCG with (i) written notice of any change of address; and (ii) such holder's federal identification number. No Distribution shall be required to be made absent receipt by RCG of such information.

## **5.6 Withholding Taxes.**

Any federal or state withholding taxes or other amounts required to be withheld under applicable law shall be deducted and withheld from any Distributions. All holders of Allowed Claims shall be required to provide any information necessary to effect the withholding of such taxes. Notwithstanding the foregoing, each holder of an Allowed Claim that is to receive a Distribution under the RCG Plan shall have the sole and exclusive responsibility to satisfy and pay any tax obligations imposed on such holder by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution.

## **5.7 Exemption from Certain Transfer Taxes.**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from the Debtor to any Person pursuant to the RCG Plan in the United States of America shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local government officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation of any of the documents referred to herein without the payment of any such tax or governmental assessment.

## **5.8 Setoffs and Recoupments.**

Except as otherwise provided in the RCG Plan, RCG may, but shall not be required to, set off, counterclaim or recoup against any Claim and the payments or other Distributions to be made pursuant to the RCG Plan in respect of the Claim, claims of any nature that the Estate may have – which claims will all be transferred to RCG on the Effective Date – against the holder of the Claim, but neither the failure to do so nor the allowance of any Claim under the RCG Plan shall constitute a waiver or release by RCG of any claim that the Estate may have against the holder. Setoffs, counterclaims or recoupments arising from events after the Petition Date shall reduce the payouts under any Allowed Claim dollar for dollar. Setoffs, counterclaims or recoupments arising from pre-petition events shall reduce the payout amount of the Allowed Claim proportionately with reduction in the Allowed Claim. If a setoff, counterclaim or recoupment asserted by RCG exceeds the amount of any Claim, the holder of the Claim shall not be entitled to any Distribution under the RCG Plan, and the Reorganized Debtor reserves its right to recover any excess setoff, counterclaim or recoupment from the holder of such Claim.

## **5.9 Insurance Preservation.**

Nothing contained in the RCG Plan, including any releases, shall diminish or impair the enforceability of any policies of insurance that cover claims against the Debtor or any other person.

## **5.10 Releases, Injunctions and Related Provisions.**

### **(a) Satisfaction of Claims.**

The treatment provided for Allowed Claims pursuant to the RCG Plan shall be in full and final satisfaction, settlement, release, and discharge of such Claims.

### **(b) Discharge and Injunction.**

Confirmation of the RCG Plan will operate to discharge the Claims against the Debtor and RCG. In particular, as of the Effective Date, in consideration for the obligations of the Debtor, the Reorganized Debtor and RCG under the RCG Plan, each holder of a Claim shall be deemed to have forever released and waived all Claims, demands, debts, rights, causes of action, remedies or liabilities against the Debtor and RCG. Except as otherwise provided by the RCG Plan, as of the Effective Date, all Persons that hold Claims shall be permanently enjoined from taking any of the following actions against the Debtor, RCG and their respective attorneys, accountants, financial advisors, agents and other professionals, on account of any Claim: (i) commencing or continuing in any manner any action or other proceeding respecting a Claim; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order respecting a Claim; (iii) creating, perfecting or enforcing any lien or encumbrance respecting a Claim; (iv) asserting a right of setoff, subrogation or recoupment of any kind respecting a Claim, RCG, the Debtor's assets or other property of the Estate; and (v) commencing or continuing any action that does not comply with or is inconsistent with the RCG Plan.

### **(c) Releases by Claim Holders.**

The RCG Plan is the sole means for resolving, paying or otherwise dealing with Claims. To that end, except as expressly provided in the RCG Plan, at all times on and after the Effective Date, through and including the date of entry of a Final Decree closing the Case, all persons who have been, are or may be holders of Claims against RCG and/or the Debtor arising prior to the Effective Date shall be enjoined from taking any of the following actions against or affecting RCG, the Debtor, its Estate or its property, including the Assets, with respect to such Claims (other than actions brought to enforce any rights or obligations under the RCG Plan):

- (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against RCG, the Debtor or its Estate, including, without limitation, all suits, actions and proceedings that are pending as of the Effective Date, except upon consent of RCG;

- (ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against RCG, the Debtor, its Estates or Assets;
- (iii) asserting any right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due RCG, the Debtor, its Estate or Assets; and
- (iv) proceeding in any manner in any place whatsoever against the Debtor, its Estate or Assets that does not conform to or comply with the provisions of the RCG Plan.

**(d) Releases by the Debtor.**

Except as otherwise specifically provided in the RCG Plan, for good and valuable consideration, including the funding by RCG to facilitate the provisions contemplated by the RCG Plan, on and after the Effective Date, RCG is hereby expressly, unconditionally, irrevocably and generally released, acquitted and discharged by the Debtor and the Estate from any and all actions, Claims, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereinafter arising, in law, equity, contract, tort or otherwise, by statute or otherwise, that the Debtor or the Estate, or on behalf of the holder of any Claim, arising in whole or in part from the Case including, without limitation, the events preceding the filing of the Case, the formation, negotiation and funding of the RCG Plan and the RCG Disclosure Statement, or other occurrence relating to the Debtor taking place on or before the Confirmation Date of the RCG Plan, other than Claims or liabilities arising out of or relating to any act or omission of RCG unknown to the Debtor as of the Petition Date that constitutes willful misconduct, fraud or gross negligence, in each case as determined by final order of a court of competent jurisdiction.

**(e) Exculpation.**

Except to the extent arising from willful misconduct or gross negligence, any and all Claims, liabilities, Causes of Action, rights, damages, costs and obligations held by any party against the Debtor, RCG and their respective attorneys, accountants, financial advisors, agents and other professionals, and their officers, directors and employees, if any, whether known or unknown, matured or contingent, liquidated or unliquidated, existing, arising or accruing, arising between the Petition Date and the Effective Date and related to the administration of the Case or the formulation, negotiation, prosecution or implementation of the RCG Plan or the RCG Disclosure Statement to be filed in connection therewith, or the dissemination of and solicitation of votes for the RCG Plan, shall be deemed fully waived, barred, released and discharged in all respects, except as to rights, obligations, duties, claims and responsibilities preserved, created or established by the terms of the RCG Plan. The RCG Plan and the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, debts, rights, causes of action or liabilities released in the RCG Plan.

### **5.11 Retention of Jurisdiction.**

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under and related to the Case including, without limitation, the following purposes: (a) hearing and determining objections to Claims, including, without limitation, Professional Compensation Claims, (b) effectuating the terms of the RCG Plan and enforcing the Confirmation Order; (c) determining applications for allowance of compensation and reimbursement of expenses in connection with services rendered through the Effective Date; (d) determining motions for assumption, assignment or rejection of executory contracts and unexpired leases; (e) considering motions, adversary proceedings and contested matters pending as of the Effective Date; (f) modifying any provision of the RCG Plan to the full extent permitted by the Bankruptcy Code; and (g) enforcing all orders, judgments, injunctions and rulings entered in connection with the Case.

### **5.12 Objections to Claims.**

Through and including the Post-Effective Date Claim Objection Deadline, RCG shall have the sole authority to object to (a) any liabilities listed on the Debtor's schedules, and (b) any Claim otherwise timely filed in the Case.

### **5.13 Executory Contracts and Unexpired Leases.**

#### **(a) List of Executory Contracts and Unexpired Leases.**

Twenty-one (21) days prior to the Confirmation Hearing, the Debtor shall provide to RCG a list of executory contracts and unexpired leases by and among the Debtor and any counterparty, or entered into on behalf or for the benefit of the Debtor and the counterparty that are to be rejected pursuant to the RCG Plan. Upon receipt of such list, RCG, in its sole discretion, may determine to assume such executory contract or unexpired lease and have such contract or lease assigned to the Reorganized Debtor in accordance with the RCG Plan.

All executory contracts and unexpired leases not expressly assumed or rejected (a) in the RCG Plan, (b) by order of the Bankruptcy Court entered prior to the Confirmation Date, or (c) by RCG at any time after the filing of the RCG Plan but prior to the Confirmation hearing, shall be deemed rejected as of the Confirmation Date.

#### **(b) Cure Amounts.**

Except to the extent that different treatment has been agreed to by a counterparty to an executory contract or unexpired lease, within seven (7) days of the Confirmation Hearing, RCG shall file and serve with the Bankruptcy Court a list of cure amounts associated with executory contracts and unexpired leases to be assumed and provide notice to the counterparty by overnight courier. Any party that fails to object to the cure amount associated with such executory contract or unexpired lease shall forever be barred, estopped and enjoined from disputing the cure amount and asserting a Claim against the Debtor or Reorganized Debtor arising under section 365 of the Bankruptcy Code. Should a party object to the cure amount, the cure payment shall be made following entry of a Final Order resolving the dispute. RCG, acting for and on behalf of the Debtor, reserves its right to reject any executory contract or unexpired

lease subject to a dispute regarding the cure amount until such time as a Final Order is entered resolving the dispute

**(c) Bar Date for Rejection Damages Claims.**

If the rejection of an executory contract or unexpired lease pursuant to the RCG Plan results in damages to the counterparty of such contract or lease, the holder of the Claim arising out of the rejection of such contract or lease must file a proof of Claim with respect to such amounts with the Bankruptcy Court no later than thirty (30) days after service of notice of the Effective Date, which notice prominently shall state that such executory contracts and unexpired leases have been rejected. If a proof of Claim for such rejection damages is not filed within thirty (30) days after service of notice of the Effective Date, such counterparty shall be forever barred from asserting a Claim for such damages.

**5.14 Conditions Precedent to Confirmation of the RCG Plan.**

Confirmation of the RCG Plan is subject to entry of the Confirmation Order, which shall be in form and substance satisfactory to RCG.

**ARTICLE 6.**

**CONFIRMATION OF THE PLAN**

**6.1 Acceptance of the Plan; Cram Down.**

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the allowed claims of that class that have voted or are deemed to have voted to accept or reject a plan. Classes 1, 2, 4, 5, and 6 are impaired under the RCG Plan and are entitled to vote to accept or reject the RCG Plan. If some or all Classes vote to reject the RCG Plan, RCG may, in its discretion, seek confirmation of the RCG Plan.

**6.2 Confirmation Hearing and Objections.**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing to consider confirmation of the RCG Plan. Accompanying this RCG Disclosure Statement is notice of the date and time fixed by the Bankruptcy Court for the Confirmation Hearing and for filing and serving objections to confirmation of the RCG Plan.

**ANY OBJECTIONS TO CONFIRMATION OF THE RCG PLAN MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED IN ACCORDANCE WITH APPLICABLE BANKRUPTCY RULES AND PROCEDURES ESTABLISHED BY THE BANKRUPTCY COURT.**

**6.3 Confirmation.**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied with respect to the

RCG Plan. If so, the Bankruptcy Court will enter an order confirming the RCG Plan. While RCG believes that all of these detailed legal requirements will be satisfied prior to the Confirmation Hearing, you should consult your legal advisors concerning such requirements.

**(a) Bankruptcy Code Compliance; Classification of Claims.**

Section 1123 of the Bankruptcy Code provides that a Chapter 11 plan must classify claims against a debtor. Under section 1122 of the Bankruptcy Code, a Chapter 11 plan may classify claims only into classes containing claims that are substantially similar to the other claims in the same class. The RCG Plan designates eight classes of Claims. RCG believes that the RCG Plan meets the classification requirements of the Bankruptcy Code. However, a holder of a Claim may challenge the classification of Claims, and the Bankruptcy Court could determine that a different classification is required for the RCG Plan to be confirmed. In such event, RCG would seek to modify the RCG Plan to provide for whatever classification might be required by the Bankruptcy Court and to use the acceptances received, to the extent permitted by the Bankruptcy Court, the Bankruptcy Code and the Bankruptcy Rules, to demonstrate acceptance by the affected Class or Classes. Any such reclassification could affect a Class' acceptance of the RCG Plan by changing the composition of such Class and the required vote for acceptance of the RCG Plan and potentially require a resolicitation of votes on the RCG Plan.

**(b) Best Interests of Creditors and Liquidation Analysis.**

With respect to each impaired Class of Claims, confirmation of the RCG Plan requires that each holder of a Claim (i) has accepted the RCG Plan; or (ii) would receive or retain under the RCG Plan property of a value that is not less than the value such holder would receive if the Debtor was to liquidate under Chapter 7 of the Bankruptcy Code. This often is referred to as the "best interests of creditors" test. Class 3 will be deemed to have accepted the RCG Plan. Classes 7 and 8, the Insider Claims and Equity Interests, respectively, are deemed to reject the Plan. Thus, the best interests test is relevant to Classes 1, 2, 4, 5, and 6.

Accordingly, RCG has prepared the liquidation analysis attached hereto as **Exhibit 2** (the "**Liquidation Analysis**"). The Liquidation Analysis assumes that the Case would be converted to a case under Chapter 7 of the Bankruptcy Code, and a trustee appointed. The Liquidation Analysis also assumes that the Chapter 7 trustee would immediately begin the process of liquidating the Debtor's assets, including selling the Property pursuant to section 363 of the Bankruptcy Code, engaging in efforts to collect on the Debtor's existing accounts receivable, and realizing value on account of the Debtor's Avoidance Actions, if any. The Liquidation also assumes certain costs associated with the Chapter 7 trustee's efforts.

As set forth in the liquidation analysis attached to this RCG Disclosure Statement as **Exhibit 2**, holders of Claims will receive a greater recovery under the RCG Plan than would a Chapter 7 liquidation. Indeed, under the RCG Plan, RCG will infuse capital to make Distributions to holders of Allowed Claims, but in a Chapter 7 liquidation, holders of Secured Claims, including RCG, would receive substantially all of the Debtor's Assets, leaving little to nothing available for Distribution to unsecured claims.



In addition, under the RCG Plan, RCG will make Distributions to holders of Allowed Claims. Because a Chapter 7 liquidation requires the appointment of a bankruptcy trustee, conversion of the Case to a case under Chapter 7 of the Bankruptcy Code likely would result in substantial additional expenses and delay in liquidation of the Assets.

Ultimately, as demonstrated in the liquidation analysis attached hereto as **Exhibit 2**, the RCG Plan will result in a greater percentage recovery to creditors of the Debtor than would a liquidation under Chapter 7 of the Bankruptcy Code. Accordingly, the Plan is in the “best interests” of each creditor in such Class even if such creditor does not accept the Plan.

**(c) Acceptance by All Impaired Classes; Request for Confirmation Without Acceptance by All Impaired Classes / Cram Down.**

As previously set forth, Classes 1, 2, 4, 5, and 6 are impaired under the RCG Plan, and only Classes 1, 2, 4, 5, and 6 are entitled to vote to accept or reject the RCG Plan. Class 3 is unimpaired and, therefore, conclusively presumed to have voted to accept the RCG Plan. Class 7 is Impaired under the RCG Plan. However, pursuant to section 1129(a)(10) of the Bankruptcy Code, acceptances of the Plan by insiders are not considered in determining whether a class of Claims has accepted the Plan and, accordingly, Holders of Class 7 Insider Claims will not be solicited for acceptances of the Plan. Finally, Class 8 is impaired under the RCG Plan but deemed to have rejected the plan because Holders of Class 8 Equity Interests will receive no distribution under the RCG Plan on account of such Equity Interests.

Section 1129(b) of the Bankruptcy Code permits a bankruptcy court to confirm a plan not accepted by all impaired classes if such plan has been accepted by at least one class of impaired claims. RCG reserves the right to seek confirmation of the RCG Plan pursuant to section 1129(b). Section 1129(b) provides that, notwithstanding the failure of an impaired class to accept a Chapter 11 plan, the plan still may be confirmed through a procedure commonly known as “cram-down,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” respecting each class of claims impaired that did not accept the plan. The condition that a plan be “fair and equitable” with respect to a non-accepting class of unsecured claims includes the requirement that either (i) such class receive or retain property under the plan of a value as of the effective date of the plan equal to the allowed amount of such claim; or (ii) no class junior to the non-accepting class will receive a distribution under the plan. A Class of equity interests may be crammed down if the RCG Plan does not discriminate unfairly against that Class and no junior interest is to receive or retain anything under the RCG Plan on account of such junior interest.

**(d) Feasibility.**

Section 1129(a)(11) provides that a Chapter 11 plan may be confirmed only if the Bankruptcy Court finds that the plan is feasible. A feasible plan is one that will not lead to a need for further reorganization or liquidation of the debtor, unless such reorganization or liquidation is proposed in the plan. The Plan proposes (i) the creation of a Reorganized Debtor to operate the Debtor’s Real Property; and (ii) the orderly distribution of the Assets.

RCG believes that the RCG Plan satisfies the feasibility requirement of the Bankruptcy Code. Initially, RCG has committed \$500,000 which, together with the Debtor's cash on hand, will enable the Reorganized Debtor and RCG to meet each of their RCG Plan-related obligations. Additionally, based on the conversion of debt to equity and the change in management proposed under the RCG Plan, it is unlikely that the Reorganized Debtor will have a need to reorganize or liquidate.

#### **6.4 Plan Consummation.**

The Plan will be consummated on the Effective Date. The target Effective Date is August 1, 2015. The Effective Date will occur on or about the first Business Day on which the conditions precedent to the effectiveness of the RCG Plan as set forth in the RCG Plan have been satisfied or waived pursuant to the RCG Plan.

### **ARTICLE 7.**

#### **CERTAIN RISK FACTORS TO BE CONSIDERED**

Set forth below are certain risk factors relevant to creditors. These factors should not be regarded as constituting the only risks relevant to the RCG Plan and its implementation.

#### **7.1 Amendments, Modification or Withdrawal of the Plan.**

Alterations, amendments or modifications to the RCG Plan may be proposed in writing by RCG at any time prior to the Confirmation Date, provided that the RCG Plan, as altered, amended or modified satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and RCG shall have complied with section 1125 of the Bankruptcy Code. RCG also reserves the right to make such modifications at or prior to the Confirmation Hearing as are necessary to permit the RCG Plan to be confirmed under section 1129 of the Bankruptcy Code. A holder of a Claim that has accepted the RCG Plan shall be deemed to have accepted the RCG Plan as altered, amended or modified, provided that the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

After the Confirmation Date and prior to the Effective Date, RCG may make technical adjustments and modifications to the RCG Plan without further order of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims.

RCG reserves the right to revoke or withdraw the RCG Plan at any time before entry of a Confirmation Order. In the event (a) RCG revokes or withdraws the RCG Plan at any time prior to the Confirmation Date, or (b) the Confirmation Order is not entered, the RCG Plan shall be deemed to be null and void. In such event, nothing contained in the RCG Plan or this RCG Disclosure Statement shall be deemed to constitute an admission of validity, waiver or release of any Claims by or against the Debtor or any person or to prejudice in any manner the rights of the Debtor or any person in any proceeding involving the Debtor.



## 7.2 Failure to Consummate the Plan.

There can be no assurance that the conditions to the Effective Date will be satisfied or waived. Accordingly, even if the RCG Plan is confirmed by the Bankruptcy Court, there can be no assurance that the RCG Plan will be consummated.

## 7.3 Alternative Chapter 11 Plans May Be Proposed.

Other parties in interest could seek authority from the Bankruptcy Court to propose an alternative Chapter 11 plan and indeed, the Debtor has filed its Joint Plan of Reorganization. According to RCG, the Debtor's Joint Plan is based on a theory of statutory substantive consolidation, yet each Debtor remains a separate entity for plan purposes. Thus, should any of the debtor's not meet the requirements of confirmation, the entire Joint Plan will likely fail. Furthermore, the Debtor's Joint Plan allocates all of the New Equity Interests to the Debtor's current equity holders and insiders without paying higher-priority unsecured claims in full. This violates the "absolute priority rule" prescribed by the Bankruptcy Code and, accordingly, the Debtor's Joint Plan cannot be confirmed over the objections of creditors, such as RCG, holding unsecured claims.

## ARTICLE 8.

### RECOMMENDATION AND CONCLUSION

For the reasons set forth in this RCG Disclosure Statement, RCG believes that the confirmation and implementation of the RCG Plan is preferable to all other alternatives. Therefore, RCG urges all holders of Classes 1, 2, 4, 5, and 6 Claims to vote to accept the RCG Plan.

Dated: April 3, 2015

Respectfully submitted,

**RCG-KC BRYWOOD LLC**, a Georgia limited liability company

By: **RCG Ventures Distressed Real Estate Opportunity Fund, LP**, a Georgia limited partnership  
Its: Sole Member and Manager

By: **RCG Ventures Fund II GP, LLC**, a Georgia limited liability company  
Its: Sole General Partner

By: \_\_\_\_\_  
Bradley R. Garner  
Its: Executive Vice President

**EXHIBIT 1**

**PLAN**

## **EXHIBIT 2**

### **LIQUIDATION ANALYSIS**

#### **I. Calculation of Net Estimated Proceeds Available for Allocation**

##### *Liquidation Proceeds*

Value of Real Estate (stipulated)	\$8,350,000.00
Cash on Hand (as of February 28, 2015)	\$887,305.00
Collectible Prepetition Receivables	\$27,323.92
Collection on Postpetition Receivables (less 25% discount for collectability)	\$283,951.46
Avoidance Action Collections	\$0.00
<i>Gross Proceeds</i>	<hr/> \$9,548,580.38

##### *Creditor Recovery Expenses*

Chapter 7 Trustee Fees (3% of gross proceeds)	\$286,457.41
Other Wind-Down Expenses	\$15,000.00
Professional Fees	\$30,000.00
<i>Total Post-Petition Administrative Expenses</i>	<hr/> \$331,457.41

*Net Estimated Proceeds Available for Allocation* \$9,217,122.97

#### **II. Allocation of New Estimated Proceeds to Secured Claims**

RCG Claim	\$12,260,000.00
Jackson County Tax Lien	\$85,000.00
<i>Total Secured Claims</i>	<hr/> \$12,345,000.00

*Net Estimated Proceeds After Secured Claims* \$0.00

#### **III. Allocation of Estimated Proceeds to Administrative, Priority, and Unsecured Claims**

##### *Administrative Claims*

Post-Petition Accounts Payable (as of February 28, 2015)	\$318,802.47
Chapter 11 Professional Claims	\$300,000.00
<i>Total Administrative Claims</i>	<hr/> \$618,802.47

*Net Estimated Proceeds After Administrative Claims* \$0.00

##### *General Unsecured Claims*

RCG Unsecured Deficiency Claim	\$2,711,419.62
General Unsecured Claims	\$135,000.00
Planet Fitness	\$200,000.00
Mesirow	\$1,000,000.00
Insider Claims	\$1,000,000.00
<i>Total General Unsecured Claims</i>	<hr/> \$5,046,419.62

*Estimated Recovery Percentage on Unsecured Claims* 0.0%