

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

THE CYPRESS OF TAMPA LLC,  
and THE CYPRESS OF TAMPA II LLC,

Debtors.

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Chapter 11

Case No. 8:12-bk-17518-KRM [Lead Case]

Case No. 8:12-bk-17520-KRM

(Jointly Administered Cases)

**JOINT DISCLOSURE STATEMENT IN CONNECTION WITH  
JOINT PLAN OF LIQUIDATION OF  
THE CYPRESS OF TAMPA LLC AND  
THE CYPRESS OF TAMPA II LLC**

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Date: February 18, 2013

THIS JOINT DISCLOSURE STATEMENT **HAS NOT** BEEN CONDITIONALLY APPROVED BY THE BANKRUPTCY COURT. THE HEARING TO CONSIDER THE ADEQUACY OF THIS JOINT DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION PURSUANT TO SECTION 1129 OF THE BANKRUPTCY CODE **IS CURRENTLY SCHEDULED FOR \_\_\_\_\_, 2013 AT \_\_\_\_M. EASTERN TIME.** THE DEBTORS RESERVE THE RIGHT TO MODIFY AND SUPPLEMENT THIS JOINT DISCLOSURE STATEMENT AND THE ACCOMPANYING JOINT PLAN OF LIQUIDATION UP TO AND INCLUDING THE TIME OF CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION. THE DEBTORS **ARE NOT** CURRENTLY SOLICITING VOTES ON THE JOINT PLAN OF LIQUIDATION.

**DISCLAIMER**

THE INFORMATION CONTAINED IN THIS *JOINT DISCLOSURE STATEMENT IN CONNECTION WITH JOINT PLAN OF LIQUIDATION OF THE CYPRESS OF TAMPA LLC AND THE CYPRESS OF TAMPA II LLC* (THE "DISCLOSURE STATEMENT") IS PROVIDED FOR PURPOSES OF SOLICITING VOTES ON THE *JOINT PLAN OF LIQUIDATION OF THE CYPRESS OF TAMPA LLC AND THE CYPRESS OF TAMPA II LLC* (THE "PLAN"). THE INFORMATION MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR SOLICITATION OF VOTES ON THE PLAN.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE STATED, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT WILL BE CORRECT AT ANY TIME AFTERWARDS.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING SECURITIES OR CLAIMS AGAINST THE CYPRESS OF TAMPA LLC OR THE CYPRESS OF TAMPA II LLC., SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN THE CYPRESS OF TAMPA LLC OR THE CYPRESS OF TAMPA II LLC, OR ANY OF THE DEBTORS-IN-POSSESSION IN THESE CASES.

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## I. PRELIMINARY STATEMENT

This *Joint Disclosure Statement in Connection with Joint Plan of Liquidation of The Cypress of Tampa LLC and The Cypress of Tampa II LLC* (the “Disclosure Statement”) is submitted by The Cypress of Tampa LLC (“Cypress I”) and The Cypress of Tampa II LLC (“Cypress II”) (collectively, the “Debtors”) pursuant to Section 1125 of the Bankruptcy Code in connection with the *Joint Plan of Liquidation of The Cypress of Tampa LLC and The Cypress of Tampa II LLC.*, dated as of February 18, 2013 (the “Plan”), proposed by the Debtors in their efforts to reorganize under Chapter 11 of the Bankruptcy Code. A copy of the Plan is attached as **Exhibit “A.”** For purposes hereof, all capitalized terms used in this Disclosure Statement, and not otherwise separately defined herein, shall have the same meanings as such terms have in the Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms.

The Plan essentially proposes a consensual “giveback” to Cypress Retail Holdings, LLC (“CRH”) of the Transferred Property in exchange for CRH providing (a) full satisfaction of all of CRH’s Claims against the Debtors and their respective Estates as well as the assumption of certain liabilities, (b) a “pot” of money derived from the Carve-Out of CRH’s Cash Collateral in the amount of One Hundred Thousand Dollars (\$100,000.00) from which Distributions to certain Administrative Claimants and other Unsecured Creditors (i.e. Unsecured Creditors other than CRH and certain Insiders of the Debtors) shall be made, and (c) a complete release of any and all Claims and Causes of Action among CRH, the Debtors, and the Insiders. Additionally, the Plan includes a “non-debtor release” of the Insiders by all other Creditors in exchange for a waiver of the Insiders’ rights to Distributions under the Plan, which will significantly increase the Pro Rata Share other Unsecured Creditors will receive under the Plan.

The Plan also contemplates that the Debtors may, prior to or through Confirmation, substantively consolidate their Bankruptcy Cases for the purposes of future reporting, voting, and making Distributions under the Plan. Substantive consolidation would also resolve various convoluted Intercompany Claims and maximize the recovery of Unsecured Creditors as more specifically described below. After Confirmation, a Distribution Agent will liquidate assets and made Distributions pursuant to the Plan from a Distribution Fund created upon Confirmation.

## II. PURPOSE OF THE DISCLOSURE STATEMENT

This Disclosure Statement sets forth certain information regarding (a) the Debtors’ pre-petition and post-petition operating and financial history, (b) their reasons for seeking protection and reorganization under Chapter 11, (c) significant events that have occurred and steps taken during the Bankruptcy Cases to facilitate the Debtors’ reorganization, (d) discussions reflecting the Debtors’ anticipated operations and financing upon their successful emergence from Chapter 11 showing how the Plan may be consummated, (e) a “liquidation analysis” demonstrating the recoveries if the Debtors were liquidated in a Chapter 7 instead of through the Plan, (f) various possible Federal tax consequences, and (g) estimates of the total administrative costs and expenses that may be incurred in connection with the Bankruptcy Cases. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan and procedures for resolutions of Claims

against the Debtors and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the Confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

By Order dated February \_\_, 2013, the Bankruptcy Court has conditionally approved this Disclosure Statement as containing information of a kind, and in sufficient detail, adequate to enable a hypothetical reasonable investor typical of the Holders of Claims and Equity Interests in the Classes entitled to vote pursuant to the Plan to make an informed judgment whether to accept or reject the Plan.

**CONDITIONAL APPROVAL OF THIS DISCLOSURE STATEMENT, IF GRANTED, DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

**NO USE OF THE STATEMENTS OR INFORMATION CONCERNING THE DEBTORS (PARTICULARLY AS TO FUTURE BUSINESS, RESULTS OF OPERATIONS OR FINANCIAL CONDITION, OR WITH RESPECT TO DISTRIBUTIONS TO BE MADE UNDER THE PLAN) OR ANY OF THEIR ASSETS, VALUATIONS, PROPERTIES, OR BUSINESSES THAT IS GIVEN FOR THE PURPOSE OF SOLICITING ACCEPTANCE OF THE PLAN IS AUTHORIZED, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE STATEMENTS AND THE FINANCIAL INFORMATION OF THE DEBTORS, INCLUDING ALL FINANCIAL ASSUMPTIONS AND INFORMATION REGARDING CLAIMS OR EQUITY INTERESTS CONTAINED HEREIN, HAVE BEEN PREPARED FROM DOCUMENTS AND INFORMATION PREPARED BY THE DEBTORS OR PROVIDED TO THE DEBTORS' PROFESSIONALS BY THE DEBTORS. THE DEBTORS HAVE NOT TAKEN ANY INDEPENDENT ACTION TO VERIFY THE ACCURACY OR COMPLETENESS OF SUCH STATEMENTS AND INFORMATION AND EXPRESSLY DISCLAIM ANY REPRESENTATION CONCERNING THE ACCURACY OR COMPLETENESS THEREOF.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN INFERENCE THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED EVIDENCE OF THE TAX OR OTHER LEGAL**

**CONSEQUENCES OR EFFECTS OF THE REORGANIZATION OF THE DEBTORS. CERTAIN INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, BY ITS NATURE, IS A FORECAST OF FUTURE EVENTS AND, THEREFORE, INCLUDES ESTIMATES AND ASSUMPTIONS, WHICH MAY PROVE TO BE WRONG, OR WHICH MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS.**

**EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT SUCH HOLDER'S ATTORNEY AND ACCOUNTANT AS TO THE EFFECT OF THE PLAN ON SUCH HOLDER INCLUDING, BUT NOT LIMITED TO, THE TAX EFFECTS OF THE PLAN.**

**IT IS OF THE UTMOST IMPORTANCE TO THE DEBTORS THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN BY COMPLETING AND SIGNING THE BALLOT ENCLOSED HERewith AND FILING IT WITH THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA, 801 NORTH FLORIDA AVENUE, TAMPA, FLORIDA 33602, ON OR BEFORE 4:00 P.M. EASTERN TIME ON [REDACTED], 2013.**

**THE DEBTORS BELIEVE THAT IT IS IN THE BEST INTERESTS OF ALL PARTIES TO VOTE TO ACCEPT THE PLAN BECAUSE THE PLAN FAIRLY AND EQUITABLY TREATS ALL HOLDERS OF CLAIMS BY PROVIDING THE EARLIEST POSSIBLE AND MAXIMUM RECOVERY TO SUCH HOLDERS.**

### **III. THE CHAPTER 11 PROCESS**

#### **A. Explanation of the Reorganization Process.**

Chapter 11 of the Bankruptcy Code contemplates the formulation of a plan and outlines how a debtor's debts will be paid. Formulation of a plan is the principal purpose of a Chapter 11 case and sets forth the means by which claims against, and interests in, a debtor will be satisfied. After a plan has been filed, it must be accepted by holders of claims against, or interests in, the debtor. Section 1125 of the Bankruptcy Code requires full disclosure of various matters before solicitation of acceptances of a Chapter 11 plan. This Disclosure Statement is presented to Holders of Claims and Equity Interests to satisfy the disclosure requirements of Section 1125 of the Bankruptcy Code.

#### **B. Approval of Disclosure Statement.**

On [REDACTED], 2013, the Bankruptcy Court entered its *Order Conditionally Approving Disclosure Statement, Fixing Time to File Objections to the Disclosure Statement, Fixing Time to File Applications for Administrative Expenses, Setting Hearing on Confirmation of the Plan, and Setting Deadlines with Respect to Confirmation Hearing* (Doc. No. [REDACTED]) (the "Disclosure Statement Order"). Pursuant to the Disclosure Statement Order, the Bankruptcy Court has conditionally approved the Disclosure Statement as containing "adequate information" (i.e., information of a kind and in sufficient detail to enable a hypothetical reasonable creditor typical of the Holders of Claims and Equity Interests to make an informed judgment whether to accept

the Plan). However, this conditional approval is subject to objections to this Disclosure Statement (if any) which will be considered by the Bankruptcy Court, together with Confirmation of the Plan, at a combined hearing on \_\_\_\_\_, 2013 at \_\_\_\_\_m. Eastern Time.

**C. Voting Procedures.**

(1) Persons Entitled to Vote. Pursuant to the provisions of the Bankruptcy Code, only classes of Claims and Equity Interests that are Impaired under the terms and provisions of the Plan are entitled to vote to accept or reject the Plan. Furthermore, if a Class of Claims or Equity Interests is not entitled to receive any Distribution under the Plan, such Class is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Holders of Disputed Claims are not entitled to vote on the Plan unless the Bankruptcy Court, upon motion of such Holder, enters an Estimation Order which temporarily allows the Claim in the Estimated Amount for purposes of voting to accept or reject the Plan.

(2) Voting Instructions.

(i) **Ballots.** In voting for or against the Plan, please use only the ballot or ballots sent to you with this Disclosure Statement. If you have Claims or Equity Interests in more than one Class, you may receive multiple ballots. **IF YOU RECEIVE MORE THAN ONE BALLOT, YOU SHOULD ASSUME THAT EACH BALLOT IS FOR A SEPARATE CLAIM OR EQUITY INTEREST AND YOU SHOULD COMPLETE AND RETURN ALL BALLOTS.**

(ii) **Returning Ballots.** **YOU SHOULD COMPLETE AND SIGN EACH ENCLOSED BALLOT AND FILE IT WITH THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA, 801 NORTH FLORIDA AVENUE, TAMPA, FLORIDA 33602, ON OR BEFORE 4:00 P.M., EASTERN TIME ON \_\_\_\_\_, 2013. IN ORDER TO BE COUNTED, BALLOTS MUST BE FILED WITH THE BANKRUPTCY COURT ON OR BEFORE THAT TIME. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTORS THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN.**

(iii) **Incomplete or Irregular Ballots.** Ballots which fail to designate the Class to which they apply shall be counted, subject only to contrary determinations by the Bankruptcy Court, in the Class determined by the Debtors. **BALLOTS THAT ARE NOT SIGNED AND BALLOTS THAT ARE SIGNED BUT NOT EXPRESSLY VOTED EITHER FOR ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**D. Confirmation.**

(1) Confirmation Requirements. For a debtor's plan to be confirmed, Chapter 11 requires that a requisite number of votes be cast in favor of the plan. However, Chapter 11 does not require that every holder of a claim or equity interest vote in favor of the plan for it to be confirmed by the Bankruptcy Court. For any class of impaired claims to accept the plan,

Section 1126(c) of the Bankruptcy Code requires that claimants who hold a majority in number and at least two-thirds (2/3) in the amount of the allowed claims in such class that actually vote on the plan must vote to accept the plan. For a class of impaired equity interests to accept the plan, Section 1126(d) of the Bankruptcy Code requires that holders of at least two-thirds (2/3) in amount of the allowed equity interests in such class that actually vote on the plan must vote to accept the plan.

Even if all classes of claims and equity interests accept a plan, Section 1129 of the Bankruptcy Code requires that the Bankruptcy Court find, among other things, that the plan is in the best interests of holders of claims and equity interests. Section 1129 generally requires that the value to be distributed to holders of claims and equity interests may not be less than such parties would receive if the debtors were to be liquidated under Chapter 7 of the Bankruptcy Code.

(2) Cramdown. Pursuant to Section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm a plan even though less than all of the classes of claims and equity interests accept it. Confirmation of a plan over the objection of one or more impaired classes of claims or equity interests is generally referred to as a “cramdown.” For a plan to be confirmed over the objection of an impaired class of claims or equity interests, the debtors must show that 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.

If any Impaired Class of Claims fails to accept the Plan by the requisite majority, the Debtors reserve the right to request that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code, on the basis that the Plan is fair and equitable, does not discriminate unfairly with respect to any non-accepting Impaired Class and provides to the Holders of Claims in each Impaired Class property of a value, as of the Effective Date, equal to the Allowed Amount of such Claims, or that any Holder of a Claim or Equity Interest that is junior to such Claims shall not receive or retain any property on account of such junior Claim or Equity Interest.

(3) Confirmation Hearing. The Bankruptcy Court shall set a Confirmation Hearing with respect to the Plan. Each party-in-interest will receive, either with this Disclosure Statement or separately, the Bankruptcy Court’s notice of the hearing on Confirmation of the Plan. The Confirmation Hearing may be adjourned, from time to time, by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjournment thereof.

(4) Feasibility of the Plan. The terms proposed by the Debtors for the treatment of Allowed Claims and Allowed Equity Interests under the Plan are based upon, among other things, the assessment by the Debtors of the relative priority afforded to various Claims and Equity Interests under the Bankruptcy Code. **WHILE THERE CAN BE NO ASSURANCE THAT THE PLAN, IF CONFIRMED, WILL BE SUCCESSFUL THE DEBTORS BELIEVE THE PLAN PROVIDES FOR THE GREATEST AND EARLIEST RECOVERIES FOR ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS.**



(5) Effect of Confirmation. Confirmation makes the Plan binding upon the Debtors, all Holders of Claims and Equity Interests, and other parties-in-interest, regardless of whether or not it has been accepted by them.

**E. Procedure for Filing Proofs of Claim and Proofs of Equity Interest.**

(1) Bar Dates.

(i) **General Bar Date for Claims.** The deadline for Proofs of Claim to have been filed in the Debtors' Bankruptcy Cases was February 4, 2013 (the "General Claims Bar Date"). **IF A CLAIM WAS LISTED IN THE SCHEDULES FILED BY THE DEBTORS AND NOT DESIGNATED AS EITHER (1) CONTINGENT, (2) UNLIQUIDATED, (3) DISPUTED, OR (4) OF AN AMOUNT OF "\$0.00," "\_\_\_\_\_", OR "UNKNOWN," A PROOF OF CLAIM NEED NOT HAVE BEEN FILED.** Both the Schedules and the registers listing Proofs of Claim that were filed on or before the applicable General Claims Bar Dates are on file at the Bankruptcy Court and are open for inspection during regular Bankruptcy Court hours.

(ii) **Administrative Claims Bar Date.** The Disclosure Statement Order or other Order of the Bankruptcy Court will establish a bar date or deadline for the filing of all Applications for Allowance of Administrative Expense Claims (the "Administrative Claims Bar Date"). The Debtors and any other party-in-interest will have approximately thirty (30) days after the Administrative Claims Bar Date to review and object to such Administrative Expense Claims before a hearing for determination of such Claims is held by the Bankruptcy Court.

(2) Executory Contracts and Unexpired Leases. Unless otherwise ordered by separate Order of the Bankruptcy Court, parties to Executory Contracts or unexpired leases that are rejected by the Debtors under the Plan must file any Claims for damages resulting from such rejection within thirty (30) calendar days after the Confirmation Date. Parties to Executory Contracts or unexpired leases that were or may be rejected by the Debtors by motion or otherwise before Confirmation must file Proofs of Claim for any rejection damages in accordance with the Bankruptcy Court's Order with respect to such rejection.

**IV. INFORMATION REGARDING THE DEBTOR**

**A. Overview and History of the Debtors.**

The Debtors are Florida limited liability companies that own and operate contiguous parcels of real property comprising an approximately 111,000 square foot (+/-) retail space (the "Retail Space"), pad sites (the "Pad Sites"), and outparcels of vacant land (the "Outparcels") located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida. Together, the Retail Space, Pad Sites, and the Outparcels comprise approximately sixty (60) acres collectively known as The Cypress (the "Property"). The Debtors' income is primarily rental income resulting from Cypress I's operation of the Retail Space. That income also funds the minimal expenses of Cypress II until the various Outparcels are sold. The commercial tenants at the Retail Space include, for example, L.A. Fitness and Sweet Bay.

In 2004, the Debtors (as co-borrowers) obtained a loan from First National Bank of Florida (“FNBF”) in the original amount of \$10,400,000.00 (the “Loan”) in connection with the Debtors’ purchase of the vacant land ultimately used for Retail Space, Pad Sites, and Outparcels. In 2005, the Debtors obtained a future advance for predevelopment and closing costs, bringing the total principal amount borrowed at that time to \$11,500,000.00. In connection with the Loan, Cypress I and Cypress II also executed in favor of FNBF a Mortgage, an Assignment of Rents, Leases, Contracts, Accounts Receivable, Accounts and Deposit Accounts, Collateral Assignment of Voting & Developer’s Rights, and a UCC Financing Statement in favor of FNBF. The individual and corporate members of Cypress I and Cypress II executed limited guaranties in connection with the Loan (collectively, with all other related documents, the “Loan Documents”).

In 2005, both of the Debtors executed a Notice of Future Advance and Modification Agreement in favor of Fifth Third Bank, as apparent successor by merger to First National Bank of Florida (“Fifth Third”). In June 2006, Fifth Third apparently assigned the Loan Documents to Regions Bank (“Regions Bank”). In 2006 and 2007, the Debtors executed Notices of Future Advance and Modification Agreement in favor of Regions Bank for construction of the Retail Space and improvements (such as engineering, access, utilities, and environmental work) of the Outparcels, which increased the total principal amount due under the Loan Documents at that point to \$34,885,000.00. In 2009, the Debtors executed a Loan Modification Agreement and Mortgage Modification Agreement in favor of Regions Bank to extend the maturity date for the Loan. During that time, the Debtors made payments to Regions Bank and reduced the outstanding balance of the Loan.

In 2010, the Debtors executed another Amendment to Loan Agreement and Mortgage Modification Agreement in favor of Regions Bank, which further extended the maturity date for the Loan. Through the 2010 modifications, for reasons not fully understood by the Debtors, Regions Bank bifurcated the note into two renewal notes in the principal amounts of \$21,205,808.70 (“Note 1”) and \$8,820,400.00 (“Note 2”) (collectively, the “Notes”). Although the Loan Documents (as modified) were executed by both Debtors, the Notes appear to have been bifurcated so that Note 1 was equal to the value of the portion of the Property that belongs to Cypress I, and Note 2 was equal to the value of the portion of the Property that belongs to Cypress II.

On October 12, 2011, Regions Bank and RAM Development Company (“RAM”) apparently entered into a Sale and Assignment Agreement that provided for the sale of the Loan and the Loan Documents from Regions Bank to a designee of RAM. The Debtors believe that RAM’s affiliate, RAM Realty Service Associates III, LLC, is the manager of the designee that ultimately acquired the Loan and Loan Documents, CRH.

Specifically, on December 27, 2011, The Debtor had been informed that RAM and CRH entered into an Assignment and Assumption of Sale and Assignment Agreement, which assigned to CRH the aforementioned Sale and Assignment Agreement between Regions Bank and RAM. The Debtors were informed that Regions Bank endorsed and assigned Note 1 and Note 2 to CRH pursuant to two separate Allonges dated December 29, 2011, which were attached to the separate Notes. In December 2011, immediately subsequent to the assignment of the Notes from Regions Bank to CRH, and pursuant to an Assignment of Security Instruments, the Debtors have been

informed that CRH endorsed and assigned the Notes to Wells Fargo Bank, N.A. (“Wells Fargo”) pursuant to two separate Allonges dated December 29, 2011, which were also attached to the respective Notes. The transaction between CRH and Wells Fargo is governed by a December 29, 2011 Purchase and Repurchase Agreement and Security Contract which provides that Wells Fargo owns the Notes and Loan Documents and that CRH holds an exclusive revocable license to service the Loan, including the negotiation with the borrowers under the Loan, subject to the consent of Wells Fargo.

At all times material, CRH was the servicer obligated to Wells Fargo to, among other things, enforce the rights and obligations of Wells Fargo as the owner of Note 1 and Note 2, any related mortgages, security instruments, guarantees, and other related loan documents issued in connection with Note 1 and Note 2. CRH has acknowledged that it has full power and authority to enter into and be bound by any settlement negotiations and/or transactional documents for and on behalf of Wells Fargo. As such, Debtors have treated CRH under the Plan as the Holder of any and all Claims arising out of or related to the Loan and Loan Documents.

On March 12, 2012, CRH initiated an action for foreclosure on the Property and its security interests, and for judgment on the Notes and Loan Documents. That foreclosure case is pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (Case No. 12-CA-003911) (the “State Court Action”). In the State Court Action, CRH alleged that it remained the “holder of Note 1 and Note 2 and is authorized and obligated to pursue the claims stated herein for the benefit of Wells Fargo.” The Debtors have identified that, in addition to the interests of CRH, other parties may claim certain liens and interests in the Property including, without limitation, those reflected in **Exhibit “B”** to this Disclosure Statement (collectively, the “Encumbrances”).

Prior to the Petition Date, the Debtors historically employed United American Realty Corp. (“United”) as property manager for the Property. As disclosed in the Bankruptcy Cases, Gordon Comer is involved in the ownership and operation of both United and the Debtors. Currently, United manages the day-to-day operations of the Property (in addition to many other large scale commercial retail centers). United has historically paid the ordinary operating expenses of the Property and necessary capital improvements from the rents it collects on behalf of the Debtors. However, in connection with the State Court Action, CRH had initiated foreclosure efforts that, if successful, would have sequestered the rents collected from tenants and ultimately lead to business disruption and possibly foreclosure of the Property. As such, the Debtors filed for Chapter 11 protection on November 20, 2012.

**B. Significant Events in the Bankruptcy Cases.**

(1) Cypress I and Cypress II’s Filing.

Since November 20, 2012, Cypress I and Cypress II have operated their businesses and managed their assets as debtors-in-possession of their respective Estates under Sections 1107 and 1108 of the Bankruptcy Code. To ensure the continuation of normal business operations and preserve the value of the businesses, the Bankruptcy Court authorized Cypress I and Cypress II

to continue their business activities. Cypress I has continued to use United, to collect rent, and to pay orderly operating expenses pursuant to Bankruptcy Court approval.

The Debtors filed several papers throughout the first weeks of their Bankruptcy Cases with the Bankruptcy Court seeking relief through what are often termed “first day motions.” First day motions are generally intended to ease and facilitate the transition between a debtor’s pre-petition and post-petition business operations. The first day motions filed and Orders obtained in the Bankruptcy Cases were typical of orders entered in corporate Chapter 11 cases in this jurisdiction, and requested and authorized, among other things:

- use of property that may be “Cash Collateral”;
- the continued employment of United under its pre-petition management agreement;
- the Debtors’ retention of Jennis & Bowen, P.L. as counsel; and
- the Debtors’ provision of “adequate assurance” to utility service providers in order to prohibit certain utility providers from discontinuing service to the Debtors on account of pre-petition invoices.

(2) Negotiations with CRH

Since the commencement of the Debtors’ Bankruptcy Cases, the Debtors and CRH have attempted to resolve Cash Collateral issues and the ultimate disposition of the Property. The successful result of these negotiations is evidenced by the *Debtors’ Motion for Order Authorizing and Approving Plan Support Agreement* (Doc. No. 64) (the “Motion to Compromise”). The Motion to Compromise includes a “Plan Support Agreement” that (1) provides for the consensual use of Cash Collateral for the duration of these Bankruptcy Cases and (2) provides the framework for the Plan and Disclosure Statement that, if filed by the Debtors, would have the consent and support of CRH. The Debtors believe the consensual resolution of the Cash Collateral issues and the various other disputes resolved by a consensual Plan provide the best chance of an expeditious recovery for all Creditors.

**V. MEANS FOR EXECUTION OF PLAN**

**A. Plan Funding**

The Plan will be funded primarily through the satisfaction of CRH’s claims through a surrender of the Transferred Property (free and clear of the Encumbrances except as otherwise reflected in the Motion to Compromise and its attachments), plus Distributions that will be funded through a consensual Carve-Out of \$100,000.00 from CRH’s Cash Collateral. The Carve-Out will be used to pay the Holders of certain Allowed Administrative Expense Claims and Priority Claims, and then General Unsecured Claims. Pursuant to the Plan, CRH has also agreed to be responsible for certain costs, such as unpaid real and personal property taxes, related to the proposed transactions that would otherwise be Claims against the Estates. Following Confirmation and the occurrence of the Effective Date, the Distribution Agent (initially, Gordon Comer) will administer the Distribution Fund and will make payments under the Plan, net of any reasonable costs of administering the Distribution Fund (such as Statutory Fees, reasonable compensation to the Distribution Agent, and any legal fees incurred by the Distribution Agent). The Distribution Agent shall not undertake any responsibility to object to or make Distributions

on account of Claims that do not affect the Distribution Fund. In addition to being funded by the Carve-Out, the Distribution Fund may also be funded from the net recoveries from Causes of Action, including the liquidation of certain promissory notes receivable identified in Schedule B, Item 16 of the Debtors' respective Schedules (excluding, however, any Intercompany Loans among the Debtors, which will likely be reconciled through substantive consolidation, discussed below).

## **B. Substantive Consolidation**

At this time, the Debtors believe that limited substantive consolidation for purposes of Distributions upon Confirmation of the Plan may be in the best interest of all Holders of Claims and Equity Interests. Substantive consolidation is an equitable remedy that the Bankruptcy Court may order. In general, substantive consolidation can affect creditor recovery because it pools the assets and liabilities of entities with different debt-to-asset ratios. The Debtors reserve the right to withdraw the request for substantive consolidation at any time prior to the conclusion of the Confirmation Hearing.

Relevant issues the Debtors are considering in deciding whether to seek substantive consolidation at Confirmation are the following: (a) whether the elements necessary to obtain an Order of substantive consolidation are satisfied in the Bankruptcy Cases; (b) the value of the Debtors' Estates on an individual and a consolidated basis, and the proper method of determining such value; (c) whether the Estate of each Debtor should be treated separately for purposes of making payments to Holders of Claims; (d) whether it is possible to attribute particular Claims asserted in the Bankruptcy Cases to a specific Debtor; (e) the value to be accorded to loans and/or other Claims of one Debtor in favor of another Debtor; (f) the strength of the relative rights and positions of the different Classes of Unsecured Claims with respect to disputes over substantive consolidation; (g) the amount and priority of Intercompany Claims; and (h) the potential voidability of certain intercompany transfers based, but not limited, on the cross-collateralization of certain of the Debtors' Property to secure loans.

The Intercompany Claims include Debtors' and Guarantors' indemnification and contribution claims against each other. Moreover, the Intercompany Claims include countless transfers and transactions between Cypress I and Cypress II due to their different (but intertwined) business models. To sort and account for these Intercompany Claims would impose in unnecessary burdens and expenses that would deplete the Estates, especially when substantive consolidation would more easily remedy those issues.

If pursued, the substantive consolidation of the Debtors' Estates pursuant to the Plan shall, in and of itself, not result in the merger or otherwise affect the separate legal existence of each Debtor. The consolidation shall not (a) impair the validity or enforceability with respect to assumed Executory Contracts or unexpired leases; (b) affect valid, enforceable, and unavoidable Liens that would not otherwise be terminated under the Plan, except for Liens that secure a Claim that is eliminated by virtue of the Plan and Liens against Collateral that are extinguished by virtue of the Plan; (c) have the effect of creating a Claim in a Class different from the Class in which a Claim would have been placed in the absence of substantive consolidation; or (d) affect the obligation of each of the Debtors, pursuant to Section 1930 of Title 28 of the United States

Code, to pay quarterly fees to the Office of the United States Trustee through the Confirmation Date.

**VI. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN**

Under the Plan, the Debtors have established the various Classes of Creditors and Equity Interest Holders pursuant to Section 1122 of the Bankruptcy Code. The Plan places the various Claims and Equity Interests in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class or the treatment of such Claims or Equity Interests is substantially similar. Pursuant to the Bankruptcy Code, the Debtors have not classified Administrative Expense Claims and Priority Tax Claims under the Plan. Holders of other Claims and Equity Interests are classified in the Plan as follows:

<b>Class</b>	<b>Description</b>	<b>Status</b>	<b>Entitled to Vote</b>
Class 1	Secured Tax Claims	Unimpaired	No
Class 2	Secured Claim of CRH	Impaired	Yes
Class 3	Priority Claims	Impaired	Yes
Class 4	Personal Injury Claims	Impaired	Yes
Class 5	General Unsecured Claims	Impaired	Yes
Class 6	Equity Interests	Impaired	No

The Debtors believe these classifications do not discriminate unfairly. Claims in each Class are substantially similar to each other, separate classifications are based on the nature of the respective Claims and Equity Interests, and the classifications are justified under the Bankruptcy Code and applicable law. The table below summarizes the treatment of the Claims and Equity Interests under the Plan.

Any estimated Claim amounts are calculated as closely as possible to the date of this Disclosure Statement. For certain unclassified Claims, as well as Classes of Claims, the actual amounts of Allowed Claims could materially exceed or could be materially less than the estimated amounts shown in the table that follows. The Debtors have not yet fully analyzed all Proofs of Claim filed in the Bankruptcy Cases to determine whether the amounts stated in such Proofs of Claim are accurate. The estimated Claim amounts set forth below are consolidated amounts based upon the Debtors' review of their books and records and of certain Proofs of Claim, and may include estimates of a number of Claims that are Contingent, Disputed, and/or unliquidated.

<u>Unclassified Claims</u> (Administrative	Pursuant to the Bankruptcy Code, neither Holders of Administrative Expense Claims nor Holders of Allowed Priority Tax Claims are entitled
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<p>Expenses and Priority Tax Claims)</p> <p>(Amount estimated at \$60,000 after applying pre-petition retainers)</p>	<p>to vote on the Plan and such Claims need not be classified.</p> <p>Post-petition Administrative Expense Claims arising in the ordinary course of the Debtors' business operations shall be paid in full from the Debtors' cash on hand immediately prior to the Effective Date (the "<u>Effective Date Cash</u>"). Allowed Administrative Expense Claims of Debtors' counsel, for U.S. Trustee fees, and the fees of other bankruptcy professionals (collectively "<u>Professional Fee Claims</u>") shall be paid in full from the Carve-Out in accordance with the priority scheme established by the Bankruptcy Code.</p> <p>CRH shall assume all liability and shall be solely responsible for paying Allowed Priority Tax Claims. Allowed Priority Tax Claims shall be paid, at CRH's election, either (1) in full (without post-petition interest or penalties) from the Debtors' Effective Date Cash, or (2) after the Effective Date in compliance with Section 1129(a)(9)(C) of the Bankruptcy Code, or (3) as otherwise agreed among CRH and the Holder(s) of such Claims.</p>
<p><u>Class 1 – Secured Tax Claims</u></p> <p>(Amount estimated at \$80,000)</p>	<p>Allowed Secured Claims of Governmental Units shall, at CRH's election, be paid either (1) in Cash, in full, from the Debtors' Effective Date Cash or (2) by CRH after the Effective Date in compliance with Section 1129(a)(9)(D) of the Bankruptcy Code, or (3) as otherwise agreed with the Holder(s) of such Claims. To the extent not paid in full, such Governmental Units shall retain their Liens encumbering the Property and any other collateral encumbered by a valid, enforceable, and perfected Lien.</p> <p>Class 1 is Unimpaired and Holders of such Claims are not entitled to vote on the Plan.</p>
<p><u>Class 2 – Secured Claim of CRH</u></p> <p>(Amount estimated between \$28,000,000 and \$31,000,000 based on "fair market" valuations of collateral)</p>	<p>On the Effective Date, the Allowed Secured Claim of CRH shall be conclusively established, and irrevocably stipulated and agreed by the Debtors, Insiders, and CRH, to be the value of the Transferred Property to be conveyed to CRH on the Effective Date (the "<u>Effective Date Loan Amount</u>"). The Effective Date Loan Amount shall be fully paid and satisfied through that surrender of the Transferred Property.</p> <p>To effectuate the conveyance of the Transferred Property on the Effective Date, the Debtors shall deliver to CRH one or more Deeds in Lieu of Foreclosure and additional documents reasonably necessary to evidence the conveyance of the Transferred Property to CRH (collectively, the "<u>Closing Documents</u>") free and clear of all Liens, claims, and encumbrances (other than the encumbrances on account of CRH's Liens, tax liens, easements, and similar matters of record). Unless otherwise agreed in writing by the Debtors, CRH, and the Insiders, delivery of the Closing Documents and the Net Cash to CRH on the Effective Date shall constitute a full and complete satisfaction of any and all Claims of CRH against the Debtors and CRH shall have no deficiency or other Unsecured Claims against the Debtors. If the Bankruptcy Court determines, or the parties agree in writing, that a Deficiency Claim exists in favor of CRH, then CRH shall waive its right to Distribution and has agreed in the Motion to Compromise to vote the</p>

full amount of that Deficiency Claim in favor of the Plan. The Debtors shall retain their interest in any Causes of Action and promissory note receivables owed to the Debtors.

CRH shall provide the Carve-Out to be deposited in the Distribution Fund from its Cash Collateral, which shall then be used exclusively to pay Allowed Professional Fee Claims, Statutory Fees, Allowed Priority Claims (other than Priority Tax Claims), and (after payment of amounts needed for the administration of the Distribution Fund) any remaining balance shall be used to pay Allowed Class 5 General Unsecured Claims on a Pro Rata basis.

On the Effective Date, the Debtors, Guarantors, and CRH shall execute and deliver mutual general releases which fully release and discharge the other(s) from any and all claims, charges, lawsuits, or causes of action of any kind or nature that they may have against the others (including CRH's claims against the Insiders relating to liability on guarantees).

The Effective Date of the Plan and the closing of the transactions contemplated by the Plan (the "Closing") shall occur as soon as reasonably practical following entry of the Confirmation Order. Regardless of whether the Plan is confirmed, if Closing does not occur on or before one hundred twenty (120) days following the filing date of the Debtors' Plan and Disclosure Statement, the transactions in the Plan Support Agreement (specifically including payment of the Carve-Out and execution and delivery of the mutual general releases) shall nevertheless be consummated on that date. Conveyance of the Transferred Property to CRH, however, shall occur later through a Friendly Foreclosure or as mutually agreed in writing by the CRH, the Debtors, and the Guarantors. The parties may also mutually agree to extend the 120-day period in which the Closing is to occur.

The conveyance of the Transferred Property to CRH shall not be subject to any stamp or similar tax to the fullest extent permissible under the Bankruptcy Code.

During the pendency of the Bankruptcy Cases and until the Effective Date (or conveyance of the Transferred Property as otherwise contemplated in the Plan Support Agreement) (the "Interim Period"), the Debtors shall continue to operate the Property in the normal course of business and subject to the Cash Collateral Orders(s), as amended. The Debtors have agreed to make only those expenditures in compliance with the Cash Collateral Orders and extraordinary expenses that are necessary to maintain and operate the Property, with the consent of CRH and the Bankruptcy Court. In the event the conveyance of the Transferred Property occurs by virtue of a Friendly Foreclosure, then the Debtors shall continue to operate the Property in the normal course of business (including the Debtors' continued use and compensation of United as its property manager) for up to a maximum of 210 days after the date of filing the Plan and Disclosure Statement, at which time CRH shall accept delivery of and immediately record the Deed in Lieu of Foreclosure and the Debtors and the Debtors' property management company will have no further obligations regarding the Property. CRH



	<p>has agreed that neither the Debtors nor United will be liable to CRH for any Claims arising out of their continued operation of the business during the Interim Period unless as the result of bad faith and willful misconduct or gross negligence</p> <p>Class 2 is Impaired and Holders of such Claims are entitled to vote on the Plan.</p>
<p><u>Class 3 – Priority Claims</u></p> <p>(Amount estimated at \$0.00)</p>	<p>Allowed Priority Claims shall be paid on the Effective Date in full, in Cash, from the Carve-Out in full satisfaction, settlement, release, extinguishment, and discharge of such Claim or as may otherwise be agreed upon by the Holder of the Claim and the Debtors. If a Claim arising under Bankruptcy Code Section 503(b)(9) is Allowed as a Priority Claim (or, more appropriately, an Administrative Expense), it shall be paid in full on the Effective Date, solely from the Effective Date Cash.</p> <p>Class 3 is Impaired and Holders of such Claims are entitled to vote on the Plan.</p>
<p><u>Class 4 – Personal Injury Claims</u></p> <p>(Amount estimated at \$0.00)</p>	<p>Personal Injury Claims shall be paid, if at all, solely from the proceeds of any available insurance policy and, CRH shall not be responsible for any deductible or other expenses related to addressing, insuring, or otherwise disposing of such Claim. Creditors holding such Claims shall not be entitled to participate in any Distributions funded from the Carve-Out and shall not be accounted for as part of the Disputed Claims Reserve.</p> <p>Class 4 is Impaired and Holders of such Claims are entitled to vote on the Plan.</p>
<p><u>Class 5 – General Unsecured Claims</u></p> <p>(Amount estimated at \$509,000 for all Non-Insiders and at \$1,392,000 for Insiders)</p>	<p>General Unsecured Claims shall be paid on a Pro Rata basis from the Distribution Fund. CRH and the Insiders (provided the releases in their favor contemplated in the Plan are approved upon Confirmation) shall, upon the Effective Date, be deemed to waive any right to Distribution on account of any of their respective Unsecured Claims against the Debtors. Notwithstanding the foregoing, CRH and the Insiders shall retain the right to vote any such Claims in their full amounts to the extent otherwise permitted by the Bankruptcy Code.</p> <p>Class 5 is Impaired and Holders of such Claims are entitled to vote on the Plan.</p>
<p><u>Class 6 – Equity Interests</u></p>	<p>All existing Equity Interests in the Debtors shall remain in effect for the sole purpose of winding up the Debtors' affairs immediately following the Effective Date, to the limited extent necessary; provided, however, that upon Confirmation, the Distribution Agent shall have sole and exclusive authority to fulfill the duties and obligations after the Effective Date regarding the administration of the Distribution Fund. After the Debtors' affairs have been wound up, all existing Equity Interests in the Debtors, however denominated, shall be cancelled and Holders of such Equity Interests will not receive or retain any Property on account of such Equity Interests. Under the Bankruptcy Code, Class 6 is deemed to have rejected the Plan.</p>

**VII. CLAIMS ALLOWANCE AND PAYMENT, EXECUTORY CONTRACTS,  
REVESTING OF ASSETS**

**A. Allowed Claims, Distribution Rights, and Objections to Claims.**

(1) Allowance Requirement

Only Holders of Allowed Claims are entitled to receive Distributions under the Plan. An Allowed Administrative Expense Claim is all or any portion of an Administrative Expense Claim (a) that has been Allowed, or adjudicated in favor of the Holder by estimation or liquidation, by a Final Order, or (b) that was incurred by the Debtors in the ordinary course of business during the Bankruptcy Cases.

An Allowed Claim (other than an Administrative Expense Claim) is such Claim or any portion thereof (a) that has been Allowed, or adjudicated in favor of the Holder by estimation or liquidation, by a Final Order, or (b) as to which (i) no Proof of Claim has been filed with the Bankruptcy Court, and (ii) the liquidated and non-Contingent amount of which is included in the Schedules, other than a Claim that is included in the Schedules at zero, in an unknown amount, or as Disputed, or (c) for which a Proof of Claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court, or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code, or any Order of the Bankruptcy Court, or (ii) any objection to its allowance has been settled, withdrawn, or denied by a Final Order, or (d) that is expressly allowed in a liquidated amount in the Plan.

In no event will those Administrative Expense Claims or those other Claims subject to disallowance under Section 502(d) of the Bankruptcy Code be deemed to be Allowed Claims.

(2) Interest on Claims; Dividends; Attorneys' Fees

Post-petition interest, costs, and attorneys' fees will not accrue or be paid on Claims, and no Holder of a Claim will be entitled to interest, costs, or attorneys' fees accruing on or after the Petition Date on any Claim or Equity Interest.

(3) Making of Distributions

The Distribution Agent, following the Effective Date, shall be responsible for Distributions being made from the Distribution Fund pursuant to the Plan. The Distribution Fund is intended to be treated as a qualified settlement fund under applicable provisions of the Internal Revenue Code. The Debtors and Distribution Agent may, in the exercise of their business judgment, elect to enter into such additional documents or instruments to create and govern the Distribution Fund in accordance with the Plan. Unless otherwise ordered by the Bankruptcy Court, Distributions to Holders of Allowed Claims will be made by the Distribution Agent (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses reflected in the Schedules if no Proof of Claim has been filed, or (c) at the addresses

set forth in any written notices of address change delivered to the Debtors or the Distribution Agent after the date of any related Proof of Claim, or after the date of the Schedules if no Proof of Claim was filed. Distributions may be made on one or more Distribution Dates with the Initial Distribution Date to occur on the Effective Date, or as soon thereafter as reasonably practical (taking into account the time needed to liquidate assets and/or determine the Allowed Amount of various Claims).

If any Holder's Distribution is returned as undeliverable ("Unclaimed Property"), a reasonable effort will be made to determine the current address of such Holder, but no further Distributions to such Holder will be made unless and until the Distribution Agent is notified of such Holder's then current address, at which time all missed Distributions will be made to such Holder, without interest. Unless otherwise agreed by the Distribution Agent, amounts with respect to undeliverable Distributions made by the Distribution Agent will be returned to and for the benefit of the Distribution Fund.

All Claims for undeliverable Distributions must be made within the later of ninety (90) days after the Effective Date or ninety (90) days after Distribution is made to such Holder; after which date all such Unclaimed Property will revert to the Distribution Fund free of any restrictions thereon and the Claims of any Holder or successor to such Holder with respect to such property will be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

(4) Means of Cash Payment

The Plan provides that Cash payments made pursuant to the Plan will be in U.S. funds, by the means agreed to by the payor and the payee, including by check and/or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the payor will determine in its sole discretion.

(5) Fractional Distributions

The Plan provides that notwithstanding any other provision of the Plan to the contrary, no payment of fractional cents will be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made will reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

(6) De Minimis Distributions

The Plan provides that notwithstanding anything to the contrary contained in the Plan, the Distribution Agent will not be required to distribute, and will not distribute, Cash to the Holder of any Allowed Claim if the amount of Cash to be distributed on account of such Claim is less than five dollars (\$5.00). Any Holder of an Allowed Claim on account of which the amount of Cash or other Property to be distributed is less than five dollars (\$5.00) will have such Claim discharged and will be forever barred from asserting such Claim against the Debtors, the Distribution Agent, CRH, or the Property. Any Cash not distributed pursuant to this provision

will be the property of the Debtors, free of any Liens, Claims, Equity Interests, or restrictions thereon.

(7) Reserves for Disputed Claims; Distributions on Account Thereof

The Plan contemplates the establishment and maintenance of a Disputed Claims Reserve on account of any Claims that are Disputed Claims as of the Effective Date. To the extent a Disputed Claim (if Allowed) is the responsibility of CRH under the Plan, CRH shall fund the Disputed Claims Reserve with the appropriate amount, which amount will (1) be disbursed to the Claimant to the extent such Claim is ultimately Allowed or (2) given back to CRH to the extent such Disputed Claim is ultimately Disallowed. No payments or Distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim or, if less than the entire Claim is a Disputed Claim, on account of the portion of a Claim that is Disputed.

The Distribution Agent will, on one or more Distribution Dates, make Distributions on account of any Disputed Claim that has become an Allowed Claim. Such Distributions will be made pursuant to the provisions of the Plan governing the applicable Class. Such Distributions will be based solely upon the amount of the Distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

(8) Objection Procedures

All objections to Claims, other than Claims that are deemed to be Disputed Claims, must be filed and served on the Holders of such Claims by the applicable deadlines established by the Bankruptcy Court. The Debtor expect that, in accordance with Federal Rules of Bankruptcy Procedure 3020-1(c), Objections to Claims (other than Administrative Expense Claims), shall need to be filed on the later of thirty (30) days after the Effective Date, or (b) thirty (30) days after the applicable Proof of Claim is filed. If an objection has not been filed to a Proof of Claim or a scheduled Claim by the applicable deadline, unless such Proof of Claim asserts a Claim that is deemed to be a Disputed Claim, the Claim to which the Proof of Claim or scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier.

(9) Estimation of Contingent or Unliquidated Claims

The Debtors or the Distribution Agent may, at any time, request that the Bankruptcy Court estimate any Contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code, regardless of whether the Debtors or the Distribution Agent have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as applicable and as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures

are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanisms.

(10) Impact of Disputed Claims on Unsecured Claims Recovery

The Debtors may seek one or more Final Orders of the Bankruptcy Court disallowing certain Claims. However, to protect the rights of Holders of such Disputed Claims, the Plan proposes to establish a Disputed Claims Reserve. The Debtors or Distribution Agent may seek to determine a maximum potentially allowable amount for all Disputed Claims, obtaining Orders of the Bankruptcy Court where necessary to estimate or fix the maximum amount. It would be the Debtors' expectation that many of the Disputed Claims will be disallowed in whole or part, and that the funds placed in the Disputed Claims Reserve on their account will not be distributed to the Holders of such Claims and the funds reallocated to other uses.

(11) Maximum Distributions for Claims

No Holder of a Claim will receive a recovery that is valued as of the Effective Date to exceed one hundred percent (100%) of such Holder's Allowed Claim. Likewise, no Holder of a Claim shall receive a recovery that exceeds one hundred percent (100%) of such Holder's Allowed Claim as of the Effective Date resulting from a decrease in the amount of Administrative Expense Claims, Priority Claims, and Secured Claims as determined on the Effective Date and/or an increase in the amount of Cash available to the Debtors to satisfy such Claims as determined on the Effective Date.

(12) Reservation of Rights Regarding Claims

Except as otherwise explicitly provided in the Plan, nothing will affect the Debtors' or the Distribution Agent's rights and defenses, both legal and equitable, with respect to any Claims including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of Set-Off or recoupment.

**B. Disposition of Executory Contracts and Unexpired Tenant Leases**

The Plan provides for the deemed acceptance of all unexpired Executory Contracts and other unexpired leases (including Tenant Leases, if any) and the simultaneous assignment of the same to CRH or its designee on the Effective Date (subject to the occurrence of the Effective Date) unless such Tenant Leases (a) have been rejected by any Debtor with the Bankruptcy Court's approval on or prior to the Confirmation Date, and (b) are the subject of a pending motion to reject on the Effective Date. The Plan shall constitute a motion to assume and assign to CRH such Executory Contracts and unexpired Tenant Leases. Entry of the Confirmation Order shall constitute approval of such assumptions and assignment. Notwithstanding anything herein to the contrary, the Debtors may seek to reject certain Executory Contracts and unexpired leases that may be identified in a motion (or similar notification) to reject the same pending on the Confirmation Date. Any Executory Contract or unexpired lease that is treated otherwise under the Plan shall not be subject to this treatment.

(1) Rejection Damages Bar Date for Rejections Pursuant to Plan

If the rejection of an Executory Contract or unexpired lease pursuant to the Plan or otherwise results in a Claim, then such Claim will be forever barred and will not be enforceable against the Debtors or Distribution Fund unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel to the Debtors within thirty (30) days after the notice of entry of the Confirmation Order, or as the Bankruptcy Court otherwise directs. The foregoing applies only to Claims arising from the rejection of an Executory Contract or unexpired lease; any other Claims held by a party to a rejected Executory Contract or unexpired lease will have been evidenced by a Proof of Claim filed by earlier applicable bar dates or will be barred and unenforceable. The Debtors reserve all rights regarding defenses, setoffs, and counterclaims (including, without limitation, defenses available under Bankruptcy Code Section 502(a)(6)).

(2) Cure with Respect to Assumed Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or unexpired lease to be assumed pursuant to the Plan is in default will be satisfied, under Section 365(b)(1) of the Bankruptcy Code, by Cure. To the extent an assumed Executory Contract or unexpired lease is assigned to a third party (such as CRH), such third party shall be solely and fully responsible for satisfaction of the Cure requirements under Section 365(b). If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of any assignee to provide “adequate assurance of future performance” (within the meaning of Section 365 of the Bankruptcy Code) under the Executory Contract or unexpired lease to be assumed, or (c) any other matter pertaining to assumption, Cure will occur following the entry of a Final Order by the Bankruptcy Court resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided however, that the Debtors (or the Distribution Agent, if applicable) will be authorized to reject any Executory Contract or unexpired lease to the extent the Debtors, in the exercise of their sound business judgment and consultation with the proper assignee, conclude that the amount of the Cure obligation, as determined by such Final Order, renders assumption of such Executory Contract or unexpired lease (including Tenant Leases) unfavorable. **THE DEBTORS DO NOT BELIEVE ANY CURE IS REQUIRED WITH RESPECT TO ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT WILL BE ASSUMED.**

## VIII. POST-CONSUMMATION CORPORATE STRUCTURE, MANAGEMENT, OPERATION, AND DISCHARGE INJUNCTIONS

### A. Continued Corporate Existence

The Plan provides that the Debtors will remain in existence in accordance with the applicable laws in the respective jurisdictions in which they are incorporated in order to manage the appointment of the Distribution Agent, maintain the normal business affairs of the Debtors until the Transferred Property is conveyed to CRH, to convey the Transferred Property to CRH pursuant to the Plan, and to wind up the business affairs of the Debtors.

**B. Discharge and Discharge Injunction**

Confirmation of the Plan effects a discharge of all Claims against the Debtors. As set forth in the Plan, except as otherwise provided therein or in the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of all Claims of any nature whatsoever against the Debtors or any of their assets or Property and, regardless of whether any Property will have been abandoned by Order of the Bankruptcy Court, retained, or distributed pursuant to the Plan on account of such Claims, upon the Effective Date, the Debtors will be deemed discharged and released under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in Section 502 of the Bankruptcy Code, whether or not (i) a Proof of Claim based upon such debt is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under Section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been Disallowed by Order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan.

Under the Plan, as of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons will be precluded from asserting against the Debtors, directly or indirectly, any other or further Claims, debts, rights, Causes of Action, claims for relief, liabilities, or Equity Interests relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order will be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtors pursuant to Sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

In furtherance of the discharge of Claims, the Plan provides that, except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim or other debt or liability that is discharged or an Equity Interest or other right of an Equity Security Holder that is terminated pursuant to the terms of the Plan, are permanently enjoined from taking any of the following actions against the Debtors and their Property on account of any such discharged Claims, debts, or liabilities: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or Order; (c) creating, perfecting, or enforcing any Lien or encumbrance; (d) asserting a Set-Off, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; or (e) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.

(1) Discharge of Claims and Non-Debtor Releases.

**IN ADDITION TO THE CONSENSUAL RELEASES AMONG CRH, THE DEBTORS, AND THE INSIDERS CONTEMPLATED IN THE PLAN, THE PLAN AND**

THE CONFIRMATION ORDER SHALL ACT AS A DISCHARGE AND RELEASE OF THE INSIDERS (THE “RELEASED PARTIES”) FROM ANY CLAIMS, LIABILITIES, AND OBLIGATIONS ARISING IN CONNECTION WITH THE DEBTORS’ PRE-PETITION BUSINESS OPERATIONS INCLUDING, WITHOUT LIMITATION, ANY GUARANTY OF ANY OBLIGATION OR DEBT OF THE DEBTORS OR LIABILITY ARISING FROM A POSITION AS AN OFFICER OR DIRECTOR OF THE DEBTORS (THE “INSIDER CLAIMS”). UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE RELEASE AND DISCHARGE OF THE RELEASED PARTIES UNDER THE PLAN IS IN CONSIDERATION OF AND CONDITIONED UPON THE RELEASED PARTIES PROVIDING THE CONSIDERATION FOR SUCH A RELEASE IN THE FORM OF WAIVING THEIR RESPECTIVE RIGHTS TO DISTRIBUTION FOR THE PURPOSES OF INCREASING THE DISTRIBUTION AMOUNT AVAILABLE TO OTHER CLAIM HOLDERS (THE “CONTRIBUTIONS”). IN THE EVENT THE NON-DEBTOR RELEASES ARE NOT APPROVED UPON CONFIRMATION, THE RELEASED PARTIES SHALL NOT BE DEEMED TO WAIVE ANY RIGHTS TO DISTRIBUTIONS AND SHALL PARTICIPATE FULLY IN DISTRIBUTIONS UNDER THE PLAN ON ACCOUNT OF THEIR RESPECTIVE ALLOWED CLAIMS AND EQUITY INTERESTS. WITHOUT LIMITING THE GENERALITY OF AND SUBJECT TO THE FOREGOING, ON THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE DISCHARGED FROM ANY INSIDER CLAIMS WHETHER OR NOT (A) A PROOF OF CLAIM BASED ON SUCH INSIDER CLAIM WAS FILED PURSUANT TO SECTION 501 OF THE BANKRUPTCY CODE, (B) AN INSIDER CLAIM IS AN ALLOWED CLAIM PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE, (C) THE HOLDER OF AN INSIDER CLAIM HAS VOTED TO ACCEPT THE PLAN, OR (D) ANY LEGAL ACTION HAD BEEN COMMENCED AS OF THE CONFIRMATION DATE ON ACCOUNT OF SUCH INSIDER CLAIM AGAINST THE DEBTORS OR THE RELEASED PARTIES. AS OF THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES SHALL BE FOREVER PRECLUDED AND PERMANENTLY ENJOINED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FROM ASSERTING, DIRECTLY OR INDIRECTLY, AGAINST THE RELEASED PARTIES OR THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER CLAIMS, DEBTS, RIGHTS, CAUSES OF ACTION, REMEDIES, OR LIABILITIES BASED UPON ANY ACT, OMISSION, DOCUMENT, INSTRUMENT, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT CONSTITUTES AN INSIDER CLAIM OR THAT OCCURS IN CONNECTION WITH IMPLEMENTATION OF THE PLAN AND THE CONFIRMATION ORDER SHALL CONTAIN APPROPRIATE INJUNCTIVE LANGUAGE TO THAT EFFECT. IN ACCORDANCE WITH THE FOREGOING, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL SUCH INSIDER CLAIMS AND OTHER DEBTS AND LIABILITIES AGAINST THE RELEASED PARTIES, AND SUCH DISCHARGE SHALL VOID ANY JUDGMENT OBTAINED AGAINST THE RELEASED PARTIES, AT ANY TIME, TO THE EXTENT THAT SUCH JUDGMENT RELATES TO A DISCHARGED INSIDER CLAIM. THE FOREGOING RELEASE AND DISCHARGE SHALL NOT APPLY TO (1) CLAIMS OR CAUSES OF ACTION THAT ARISE FROM OBLIGATIONS OR RIGHTS CREATED UNDER OR IN CONNECTION WITH THE PLAN OR ANY AGREEMENT PROVIDED



**FOR OR CONTEMPLATED IN THE PLAN, OR (2) ANY CLAIMS ON ACCOUNT OF RECEIVABLES DUE ON ACCOUNT OF PROMISSORY NOTES IN FAVOR OF THE DEBTORS FROM PERSONS OR ENTITIES THAT ARE (OR ARE AFFILIATED WITH) THE RELEASED PARTIES.**

(2) Rule 3016(c) Declaration

In accordance with the requirements of Federal Rule of Bankruptcy Procedure 3016(c), the Plan operates to specifically release the Released Parties from all Claims and enjoins certain actions in connection with such release. Such releases and injunctions cover the Released Parties, whose Contributions are so critical to the Plan that without them, the Plan would fail in that (i) the Distributions to “non-Insider” creditors would otherwise be *de minimis* and (ii) the Claims of Insiders against the Debtors would likely increase. The Debtors believe that without the protections of such injunctions and the release, they would be unable to consummate a Plan that provided for meaningful Distributions to Creditors. The releases and injunctions apply to all Creditors of the Debtors whose Claims against the Debtors were guaranteed by the Released Parties or who may otherwise assert that the Released Parties are liable for some or all of such Claims.

**IX. PREFERENCES, FRAUDULENT CONVEYANCES, AND OTHER CAUSES OF ACTION**

Under the Plan, all Claims, rights of action, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any Person (“Causes of Action”) are retained by the Debtors after Confirmation of the Plan and transferred to the Distribution Fund upon the Effective Date. The Debtors may also elect, prior to Confirmation, to pursue litigation against any Person (and/or any related guarantees) arising out of a debt to the Debtors. The Plan provides that except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan, in accordance with Section 1123(b) of the Bankruptcy Code, on the Effective Date, the Debtors will retain all of the respective Causes of Action that the Debtors may hold against any Person.

Causes of Action include potential Avoidance Actions. The deadline for commencing these actions is two (2) years after the Petition Date. A decision with respect to whether to pursue such actions will be made by the Distribution Agent prior to the expiration of that deadline. All Creditors and other parties who received potentially preferential payments are advised that such payments are subject to possible avoidance in proceedings to be commenced by the Debtors.

No Creditor or other party should vote for the Plan or otherwise rely on the Confirmation of the Plan or the entry of the Confirmation Order in order to obtain, or on the belief that they will obtain, any defense to any Causes of Action. No Creditor or other party should act or refrain from acting on the belief that it will obtain any defense to any Cause of Action. Additionally, the Plan does not, and is not intended to, release any Causes of Action or objections to Claims, and all such rights are specifically reserved in favor of the Debtors. Creditors are advised that legal rights, claims, and rights of action the Debtors may have against them, if they exist, are retained

under the Plan for prosecution unless expressly released. As such, Creditors are cautioned not to rely on (a) the absence of the listing of any legal right, claim, or right of action against a particular Creditor in the Disclosure Statement, the Plan, or the Schedules or (b) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtors do not possess or do not intend to prosecute a particular Claim or Cause of Action if a particular Creditor votes to accept the Plan. It is the express intention of the Plan to preserve rights, claims, and rights of action of the Debtors, whether now known or unknown, for the benefit of the Estates and the Debtors' Creditors. A Cause of Action shall not, under any circumstances, be waived as a result of the failure of the Debtors to describe such Cause of Action with specificity in the Plan or the Disclosure Statement.

## **X. RISK FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND ANY SUPPLEMENTS TO THIS DISCLOSURE STATEMENT) PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

### **A. General Bankruptcy Risk Factors**

The Debtors cannot assure that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, the Debtors cannot assure that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of a Claim or Equity Interest might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any statutory requirements for Confirmation had not been met.

### **B. Uncertainty of Plan Assumptions**

The Plan is based on numerous assumptions, including Confirmation and consummation of the Plan in accordance with its terms; many of which will be beyond the control of the Debtors, and some or all of which may not materialize.

## **XI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

### **A. General**

The tax consequences of the Plan to the Debtors and to Holders of Claims and Equity Interests are discussed below. This discussion of the federal income tax consequences of the Plan under U.S. federal income tax law, including the Internal Revenue Code of 1986, as amended (the "IRC" or "Tax Code"), is provided for informational purposes only. While this discussion addresses certain of the material tax consequences of the Plan, it is not a complete

discussion of all such consequences and is subject to substantial uncertainties. Moreover, the consequences to Holders of Claims and Equity Interests may be affected by matters not discussed below (including, without limitation, special rules applicable to certain types of taxpayers holding non-vested stock or otherwise subject to special rules, nonresident aliens, life insurance companies, and tax-exempt organizations) and by such Holders' particular tax situations. In addition, this discussion does not address any state, local, or foreign tax considerations that may be applicable to particular Holders.

**THE DEBTORS' BANKRUPTCY COUNSEL HAS NO TAX EXPERTISE AND HAS NOT RESEARCHED OR ANALYZED TAX CONSEQUENCES RESULTING FROM THE PLAN. HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES.**

**B. Certain U.S. Federal Income Tax Consequences to Holders of Claims and Equity Interests**

(1) Consequences to Holders of Secured Claims.

The following discussion assumes that each Holder of an Allowed Secured Claim holds such Claim as a "capital asset" within the meaning of Section 1221 of the IRC. If an Allowed Secured Claim is paid in full, the Holder should recognize a capital gain or loss (which capital gain or loss would be a long-term capital gain or loss to the extent that the Holder has held the debt instrument underlying its Claim for more than one (1) year) in an amount equal to the amount of Cash received over the Holder's adjusted basis in the debt instrument(s) underlying its Allowed Secured Claim. To the extent that a portion of the Cash received represents accrued but unpaid interest that the Holder has not already taken into income, the Holder may recognize ordinary interest income.

(2) Consequences to Holders of Priority Claims.

To the extent that the Holder of an Allowed Priority Claim receives a Distribution under the Plan, such Holder should recognize such Distribution as ordinary income and submit the appropriate withholdings based on that Holder's particular circumstances. The Debtors shall make any appropriate withholdings from such Distributions.

(3) Consequences to Holders of Unsecured Claims.

To the extent the Holder of an Allowed General Unsecured Claim receives less than full payment on account of such Claim, the Holder of such Claim may be entitled to assert a bad debt deduction or worthless security deduction with respect to such Allowed Unsecured Claim.

To the extent that any amount received by a Holder of an Allowed Unsecured Claim under the Plan is attributable to accrued but unpaid interest and such amount has not previously been included in the Holder's gross income, such amount should be taxable to the Holder as ordinary interest income. Conversely, a Holder of an Allowed Unsecured Claim may be able to

recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any accrued interest on the debt instruments constituting such Claim was previously included in the Holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point.

(4) Consequences to Holders of Equity Interests.

The Debtors are corporations and Equity Interests shall be cancelled under the Plan. This may create a capital loss for the Holders of Equity Interests, depending on the individual situation of each representative Holder of Equity Interests in the Debtors.

**C. Certain U.S. Federal Income Tax Consequences of the Plan to the Debtors**

(1) Cancellation of Indebtedness Income.

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness income ("COD Income") realized during the taxable year, which generally includes the amount of principal debt discharged and any interest that has been previously accrued and deducted for tax purposes but remains unpaid at the time the indebtedness is discharged.

It is likely that the Debtors will realize a significant amount of COD Income upon the consummation of the Plan. However, the Debtors will not be required to include COD Income in gross income because the indebtedness will be discharged while the Debtors are under the jurisdiction of a court in a Title 11 case. Instead, the Debtors will be required to reduce Tax Attributes by the amount of the COD Income realized.

(2) Limitation on NOL Carry Forwards and Other Tax Attributes.

The amount of the Debtors' NOL carryovers will likely be significantly reduced or eliminated as a result of the reduction of Tax Attributes described above.

(3) Tax Consequences of Distribution Fund.

The Distribution Fund is intended to qualify as a Qualified Settlement Trust pursuant to Internal Revenue Code Section 468B. For federal income tax purposes, it is intended that the Distribution Fund be classified as a liquidating trust under Section 301.7701-4 of the Procedure and Administration Regulations and that such trust is owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries (i.e., Holders of Allowed Claims) be treated as if they had received a Distribution of an undivided interest in the Distribution Fund and then contributed such interests to the Distribution Fund.

**D. Backup Withholding and Reporting**

The Distribution Agent will withhold all amounts required by law to be withheld from payments subject to federal taxes, if any, and will comply with all applicable reporting requirements of the IRC.

**E. IRS Circular 230 Notice**

Any tax advice contained in this Disclosure Statement (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the IRC, or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

**XII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS**

**A. Feasibility of the Plan**

In connection with Confirmation of the Plan, the Bankruptcy Court will be required to determine that the Plan is feasible pursuant to Section 1129(a)(11) of the Bankruptcy Code, which means that the Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors.

The Debtors believe that the Plan is feasible as to the Allowed Secured Claims by the surrender of the Debtors' Transferred Property. Further the Debtors believe that the payment of Administrative Expense Claims and Priority Claims through the Carve-Out and other recoveries of the Distribution Fund, Holders of General Unsecured Claims, will receive some recovery where one would otherwise not be available. As such, the Plan is feasible and provides for the best possible recovery to all of the Debtors' creditors.

Accordingly, the Debtors believe that the Plan complies with the financial feasibility standard of Section 1129(a)(11) of the Bankruptcy Code. The Debtors may update or otherwise revise these assumptions, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events.

**B. Liquidation Analysis**

Even if a plan is accepted by each class of creditors and equity security holders, in order to confirm a plan of reorganization, the Bankruptcy Court must independently determine that the plan is in the best interests of all classes of creditors and equity security holders impaired by the plan. The "best interests" test requires that the Bankruptcy Court find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide such members a recovery that has a value at least equal to the value of the distribution that each such member would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code.

To calculate what members of each impaired class of creditors and equity security holders would receive if a debtor were liquidated, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the debtor's assets if its Chapter 11 case were converted to a Chapter 7 case under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the Debtors' assets by a Chapter 7 trustee.

The Debtors believe that a Chapter 7 liquidation would result in recoveries substantially less than the recoveries expected to be received pursuant to the Plan and that these reduced

recoveries would be received at a much later time. The Debtors have attached as **Exhibit “C”** a Liquidation Analysis assuming three hypothetical Chapter 7 liquidation cases in which a court-appointed trustee liquidates the companies’ assets pursuant to a forced liquidation. The Liquidation Analysis shows that in the event of a conversion to Chapter 7, neither of the Debtors would have sufficient funds to pay Unsecured Claims.

The Liquidation Analysis is based on a number of estimates and assumptions, which, while considered reasonable, are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of the Debtors or any Chapter 7 trustee. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized if the Debtors were, in fact, to undergo such a Chapter 7 liquidation, and actual results could vary materially from those shown here. In addition, any liquidation would necessarily take place in the future under circumstances which presently cannot be predicted. Accordingly, if the Debtors’ Estates were in fact liquidated, the actual liquidation proceeds could be materially lower or higher than the amounts set forth below and no representation or warranty can be or is being made with respect to the actual proceeds that could be received in a Chapter 7 liquidation.

### **XIII. SUMMARY, RECOMMENDATION, AND CONCLUSION**

The Plan provides for an orderly and prompt Distribution to Holders of Allowed Claims and the satisfaction of all asserted Claims and Equity Interests. In the opinion of the Debtors, the Plan provides for a larger Distribution to the Debtors’ Creditors than would otherwise result in liquidation under Chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller Distributions to Holders of Allowed Claims than proposed under the Plan.

***Accordingly, the Debtors recommend that Holders of Claims entitled to vote on the Plan support Confirmation of the Plan and vote to accept the Plan.***

Dated: February 18, 2013

**THE CYPRESS OF TAMPA, LLC  
THE CYPRESS OF TAMPA II, LLC**

By:     /s/ Gordon Comer      
Title:     Manager

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

THE CYPRESS OF TAMPA LLC,  
and THE CYPRESS OF TAMPA II LLC,

Debtors.

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Chapter 11

Case No. 8:12-bk-17518-KRM [Lead Case]

Case No. 8:12-bk-17520-KRM

(Jointly Administered Cases)

**JOINT PLAN OF LIQUIDATION OF  
THE CYPRESS OF TAMPA LLC AND  
THE CYPRESS OF TAMPA II LLC**

Chad S. Bowen

Florida Bar No. 0138290

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Florida Bar No. 0071848

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Counsel to the Debtors and

Debtors-in-Possession

Date: February 18, 2013

THIS JOINT PLAN HAS NOT BEEN CONFIRMED BY THE BANKRUPTCY COURT. A HEARING TO CONSIDER THE CONFIRMATION OF THIS JOINT PLAN PURSUANT TO SECTION 1129 OF THE BANKRUPTCY CODE WILL BE SCHEDULED BY SEPARATE ORDER OF THE BANKRUPTCY COURT. THE DEBTORS RESERVE THE RIGHT TO MODIFY OR SUPPLEMENT THIS JOINT PLAN AND THE ACCOMPANYING JOINT DISCLOSURE STATEMENT UP TO AND INCLUDING THE TIME OF CONFIRMATION OF THE JOINT PLAN. THE DEBTORS **ARE NOT** CURRENTLY SOLICITING VOTES ON THE JOINT PLAN.

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## **INTRODUCTION**

The Cypress of Tampa LLC (“Cypress I”) and The Cypress of Tampa II LLC (“Cypress II”) (collectively, the “Debtors”), propose the following joint plan of liquidation (as may be amended from time to time, and including all addenda, exhibits, schedules, and other attachments hereto, as any of the same may be amended from time to time, all of which are incorporated herein by reference, the “Plan”), pursuant to the provisions of Chapter 11 of the Bankruptcy Code (defined in Section 1.10 below).

For a discussion of the Debtors’ history, business, operations, assets, and liabilities and for a summary and analysis of the Plan, reference should be made to the *Joint Disclosure Statement in Connection with the Joint Plan of Liquidation of The Cypress of Tampa LLC and The Cypress of Tampa II LLC*, dated as of February 18, 2013 (the “Disclosure Statement”). All Creditors and Holders of Equity Interests are encouraged to read the Disclosure Statement and the Plan carefully.

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in the Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined in the Plan but that is defined in the Bankruptcy Code or Bankruptcy Rules (as such terms are hereinafter defined) shall have the meaning ascribed to such term in the Bankruptcy Code or Bankruptcy Rules. The rules of construction set forth in Section 102 of the Bankruptcy Code shall apply in interpreting the Plan.

1.1 “Administrative Expense” means (a) any cost or expense of administration of the Bankruptcy Case under Sections 503(b) or 507(a)(2) of the Bankruptcy Code, to the extent the party claiming any such Administrative Expense files an application or other Bankruptcy Court-approved pleading seeking such expense in the Bankruptcy Case on or before the applicable Administrative Expense Claims Bar Date or other applicable deadline established by the Bankruptcy Court

1.2 “Administrative Expense Claim” means any Allowed Claim for the payment of any Administrative Expense.

1.3 “Administrative Expense Claims Bar Date” means, unless otherwise ordered by the Bankruptcy Court, the day established by the Federal Rules of Bankruptcy Procedure as the last day for filing an application or other Bankruptcy Court-approved pleading for an Administrative Expense Claim.

1.4 “Affiliate” shall have the meaning ascribed to such term in Section 101(2) of the Bankruptcy Code.

1.5 “Allowed” means and includes, with respect to any Claim or Equity Interest, (a) any Claim (other than a Disputed Claim) or Equity Interest, proof of which was timely filed or,

by Order of the Bankruptcy Court, was not required to be filed or (b) any Claim (other than a Disputed Claim) or Equity Interest that is listed in the Schedules as liquidated in the amount and not disputed or not Contingent, and, in each such case in (a) and (b) herein, as to which either (i) no objection to the allowance thereof has been or may be filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or (ii) the Claim or Equity Interest has been Allowed by a Final Order of the Bankruptcy Court (but only to the extent so Allowed).

1.6 “Allowed Amount” means the dollar amount in which a Claim is Allowed; provided, however, that the Allowed Amount of a Claim shall not exceed the Estimated Amount of such Claim as determined pursuant to an Estimation Order. No amount shall be Allowed for or on account of punitive damages, penalties, or post-petition interest on account of any Claim except as otherwise expressly specified in the Plan or provided by Final Order of the Bankruptcy Court.

1.7 “Avoid” means to obtain the relief provided under Section 541, 542, 543, 544, 547, 548, 549, 550, or 553 of the Bankruptcy Code.

1.8 “Avoidance Action” means a Cause of Action which any Debtor may assert under Section 541, 542, 543, 544, 547, 548, 549, 550, or 553 of the Bankruptcy Code.

1.9 “Bankruptcy Cases” means the above-captioned Chapter 11 cases for the Debtors that were filed on the Petition Date.

1.10 “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 1101 *et seq.*, as in effect on the Petition Date, together with all amendments and modifications to the extent applicable to the Bankruptcy Case.

1.11 “Bankruptcy Court” means either the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, having jurisdiction over the Bankruptcy Case or, to the extent the reference is withdrawn, the District Court.

1.12 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as applicable to the Bankruptcy Case, together with all amendments and modifications to the extent applicable to the Bankruptcy Case.

1.13 “Business Day” means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).

1.14 “Carve-Out” means a “pot” of money derived from a carve-out of CRH’s cash collateral in the amount of One Hundred Thousand Dollars (\$100,000.00) that shall be deposited into the Distribution Fund and used to make Distributions pursuant to this Plan.

1.15 “Cash” means lawful currency of the United States of America and its equivalents.

1.16 “Cash Collateral” shall have the meaning ascribed in Section 363(a) of the Bankruptcy Code.

1.17 “Cash Collateral Order” means one or more interim and/or Final Orders of the Bankruptcy Court pursuant to which the Debtors were authorized to use Property that constitutes Cash Collateral.

1.18 “Cause(s) of Action” means any and all of the Debtors’ or the Estates’ actions, claims, demands, rights, defenses, counterclaims, suits, and causes of action, whether known or unknown, in law, equity, or otherwise, not released by the Plan, including (a) all Avoidance Actions; and (b) any and all other claims or rights of the Debtors of any value whatsoever, at law or in equity, against any Creditor or other third party.

1.19 “Claim” shall have the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code.

1.20 “Class” means a category of Holders of Claims or Equity Interests as set forth in Article 3 of the Plan.

1.21 “Confirmation” or “Confirmation of the Plan” means the entry by the Bankruptcy Court of the Confirmation Order.

1.22 “Confirmation Date” means the date on which the Confirmation Order becomes a Final Order.

1.23 “Confirmation Hearing” means the hearing(s) which shall be held before the Bankruptcy Court in which the Debtors shall seek Confirmation of the Plan.

1.24 “Confirmation Order” means the Order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

1.25 “Contingent” means a right that has not accrued and that is dependent upon a future event or events that have or have not occurred and may never occur.

1.26 “Creditor” shall have the meaning ascribed to such term in Section 101(10) of the Bankruptcy Code and shall refer to any Holder of a Claim against the Debtors or Holder of any Claim against Property of the Debtors as set forth in Section 102(2) of the Bankruptcy Code.

1.27 “CRH” means Cypress Retail Holdings, LLC (or its designee or assignee), as the sole Holder of any and all Claims arising under the CRH Loan Documents, pursuant to an assignment of the CRH Loan Documents by Regions Bank to CRH.

1.28 “CRH Collateral” means any property or interest in property of the Debtors or their respective Estates that is subject to a Lien to secure payment of the CRH Loans to the extent (a) such Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid or unperfected under the Bankruptcy Code or applicable law and (b) such Lien continues in property of the Debtors acquired after the Petition Date as provided under Section 552(b)(2) of the Bankruptcy Code.

1.29 “CRH Loans” or “FNBF Loans” means certain pre-petition loans that were originally between the Debtors and First National Bank of Florida, which are evidenced by the CRH Loan Documents.

1.30 “CRH Loan Documents” or “Loan Documents” means those documents evidencing the CRH Loans including, without limitation, mortgages, security agreements, promissory notes, guarantees and other instruments executed by the Debtors and/or the Guarantors, that were originally made in favor of FNBF, and which were ultimately acquired by CRH, all as may have been amended, supplemented, or modified from time to time.

1.31 “Debtors” means The Cypress of Tampa LLC and/or The Cypress of Tampa II LLC, as context requires.

1.32 “Debtors-In-Possession” means the Debtors in their respective capacities, and with the status and rights conferred by Sections 1107 and 1108 of the Bankruptcy Code.

1.33 “Deficiency” or “Deficiency Claim” means any Unsecured Claim arising from an agreement or a determination that the value of any property securing an Allowed Claim is less than the total amount of the Allowed Claim secured by such property.

1.34 “Disallowed” shall mean, with respect to any Claim or Equity Interest, or portion thereof, which (a) has been disallowed, in whole or part, by a Final Order of the Bankruptcy Court; (b) has been withdrawn by agreement of the Debtors and the Holder thereof, in whole or in part; (c) has been withdrawn unilaterally, in whole or in part, by the Holder thereof; (d) if listed in the Schedules in an amount of “\$0.00”, “Unknown”, “\_\_\_” or identified as disputed, Contingent, or unliquidated and in respect of which a Proof of Claim has not been timely filed or deemed timely filed pursuant to a Final Order of the Bankruptcy Court; (e) has been reclassified, expunged, subordinated, or estimated to the extent that such reclassification, expungement, subordination, or estimation results in a reduction in the listed amount of any Proof of Claim or Proof of Equity Interest; or (f) is evidenced by a Proof of Claim or a Proof of Equity Interest which has been filed but as to which such Proof of Claim or Proof of Equity Interest was not timely or properly filed. In each case, a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

1.35 “Disclosure Statement” means the Disclosure Statement (including all annexes, exhibits, and schedules attached thereto or referenced therein), as such Disclosure Statement may be amended or modified from time to time for Plan approval, whether conditional or final, by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

1.36 “Disclosure Statement Hearing Order” means one or more Orders of the Bankruptcy Court approving the Disclosure Statement as containing “adequate information,” as being otherwise in accordance with Section 1125 of the Bankruptcy Code, and scheduling such deadlines, hearings, and addressing other matters as the Bankruptcy Court may deem appropriate.

1.37 “Disputed Claim” means a Claim that has not been Allowed by a Final Order of the Bankruptcy Court as to which (a) a Proof of Claim has been filed with the Bankruptcy Court,

or is deemed filed under applicable law or Order of the Bankruptcy Court and (b) an objection to the allowance thereof has been or may be filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court and any such objection has not been (i) withdrawn, (ii) overruled or denied in whole or part by a Final Order of the Bankruptcy Court, or (iii) granted in whole or part by a Final Order of the Bankruptcy Court, and a Claim shall also be considered a Disputed Claim, whether or not an objection has been or may be filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, if (A) any corresponding Claim has been scheduled in the Schedules as disputed, Contingent, or unliquidated or (B) such Claim is reflected as unliquidated or Contingent in the Proof of Claim filed in respect thereof.

1.38 “Disputed Claims Reserve” means the reserve of Cash (either as part of or separate from the Distribution Fund, as determined by the Distribution Agent) to be established on and maintained following the Effective Date by the Distribution Agent in an amount the Distribution Agent deems sufficient to satisfy payments on account of any Disputed Claims that have not been withdrawn or determined as of the Effective Date (and any subsequent Distribution Date(s), if applicable).

1.39 “Distribution” means the Distribution in accordance with this Plan of Cash or other Property, as the case may be.

1.40 “Distribution Agent” means the Person that will administer the Distribution Fund, which shall initially be Gordon W. Comer upon the Effective Date, unless another Person is earlier appointed by the Debtors and approved by the Bankruptcy Court.

1.41 “Distribution Date” means, as context requires, the date the Distribution Agent shall make payments under this Plan which shall be (a) the Effective Date, or such date as soon thereafter as reasonably practical, taking into consideration the time needed to obtain any necessary determinations relating to allowance of Claims, or (b) such other later dates upon which Distributions of Property are to occur under the Plan.

1.42 “Distribution Fund” means the segregated account created by the Debtors after entry of the Confirmation Order and occurrence of the Effective Date consisting of the balance of the Carve-Out after payment of amounts to be paid on the Effective Date, any retained Causes of Action, and any other assets that are not part of the Transferred Property, which shall be treated for all purposes as a post-confirmation settlement fund qualified under Section 468B of the Internal Revenue Code, with the Distribution Agent as its trustee and Creditors holding Allowed Claims as its beneficiaries.

1.43 “District Court” means the United States District Court for the Middle District of Florida, or the unit thereof having jurisdiction over the matter in question.

1.44 “Effective Date” means, and shall occur on, either (i) the first (1st) Business Day that is fifteen (15) days following the entry of the Confirmation Order and upon which all of the conditions to occurrence of the Effective Date contained in Section 9 of the Plan have been satisfied, or (ii) such earlier date as agreed by the parties in the event the fourteen (14) day stay of the effectiveness of the Confirmation Order is waived pursuant to Rule 3020(e).

1.45 “Effective Date Cash” means the amount of cash-on-hand held by the Debtors immediately prior to the Effective Date (i.e. immediately prior to surrendering the Transferred Property to CRH pursuant to Section 4.2 of this Plan), which shall include the balance of deposits held by the Debtors in connection with the Tenant Leases.

1.46 “Effective Date Loan Amount” means the total amount of all the debt under the CRH Loan Documents as well as any other amounts that are or may become due thereunder, and any other amounts that are or could be the subject of the State Court Action.

1.47 “Entity” has the meaning ascribed in Section 101(15) of the Bankruptcy Code.

1.48 “Equity Interest(s)” means any Equity Interest in the Debtors held by the Members.

1.49 “Estate” means the Estate created pursuant to Section 541 of the Bankruptcy Code.

1.50 “Estimated Amount” means the amount at which the Bankruptcy Court or, where required by applicable law, the District Court, estimates any Claim against a Debtor which is Contingent, unliquidated or disputed, for the purpose of: (a) allowance under Section 502(c) of the Bankruptcy Code or (b) assisting the Bankruptcy Court in making the findings required for Confirmation of the Plan pursuant to Section 1129(a)(7)(A)(ii) and (a)(11) and, if necessary, Section 1129(b)(1) and (2) of the Bankruptcy Code.

1.51 “Estimation Order” means an Order of the Bankruptcy Court or, where required by applicable law, the District Court, that determines the Estimated Amount of a Claim against the Debtors.

1.52 “Executory Contract” means any contract in which a Debtor is a lessor, conveyance agreement, settlement agreement, indemnification agreement, hold harmless agreement, release, indenture, or any other agreement that existed as of the Petition Date between a Debtor and another person(s).

1.53 “Fifth Third” means Fifth Third Bank, as apparent successor by merger to FNBF.

1.54 “Final Order” means an Order, the implementation, operation, or effect of which has not been stayed and as to which Order (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing or writ of certiorari has expired and as to which no appeal or petition for review or rehearing or certiorari has been taken and is pending.

1.55 “FNBF” means First National Bank of Florida.

1.56 “Friendly Foreclosure” means a process that may be employed after the Effective Date at the election of CRH and the Debtors (as an alternative to effecting the conveyance of the Transferred Property to CRH as otherwise contemplated in Section 4.2 of the Plan) by which CRH would instead exercise solely its *in rem* remedies to foreclose on the Transferred Property, with the consent of the Debtors and the Guarantors, through the State Court Action



1.57 “Governmental Unit” means any foreign, provincial, federal, state, local, or municipal (a) government, (b) governmental agency, (c) governmental commissions, (d) governmental department, (e) governmental bureau, (f) governmental ministry, and/or (g) governmental entity.

1.58 “Guarantors” means the Persons or Entities who executed guarantees of obligations of the Debtors in favor of any of the Debtors’ Creditors, including without limitation Gordon Meyer, J. Harold Chastain, Barbara M. Chastain, Chastain Cypress, LLC, Gordon W. Comer, Kathleen T. Comer, United American Realty Corporation, Acquivest Corporation, and/or Kathleen Comer as Trustee of the Amended and Restated C Trust.

1.59 “Holder” means an Entity holding a Claim or Equity Interest.

1.60 “Impaired” means Impaired within the definition of Section 1124 of the Bankruptcy Code.

1.61 “Insiders” means all Members and Guarantors of the Debtors, regardless of whether such Persons are “insiders” as defined in Section 101(31) of the Bankruptcy Code.

1.62 “Intercompany Claim” means any and all Claims between the Debtors, whether based on loans, advances, indemnification, or otherwise.

1.63 “Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; except that a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, or 549 of the Bankruptcy Code shall not constitute a Lien.

1.64 “Members” means Acquivest Corporation, Chastain Cypress, LLC, Gordon & Marjorie Meyer, Scott G. & Marsha Meyer, Todd R. & Erin P. Meyer, Derrick Comer, Bernard Ruekberg, Trustee, Gordon W. Comer, and Mark Smedley and any other Holder of an Allowed Class 6 Equity Interest in either of the Debtors.

1.65 “Net Cash” means the balance of the Effective Date Cash that shall be paid to CRH pursuant to Section 4.2 of the Plan, after payment (or deposit into the Disputed Claims Reserve, if applicable) of amounts sufficient to fully satisfy the (a) OCB Claims, (b) Section 503(b)(9) Claims, (c) tax claims accruing through the Effective Date, including any Priority Tax Claims that CRH elects to pay from the Effective Date Cash, and (d) the Carve-Out to be retained by the Debtors pursuant to the Plan. The Net Cash shall include any and all security deposits the Debtors hold as of the Effective Date by, for, or on account of tenants pursuant to the Tenant Leases.

1.66 “OCB Claims” means post-petition Administrative Expense Claims arising in the ordinary course of the Debtors’ business operations and incurred in conformity with the budget(s) approved by the Bankruptcy Court in one or more Cash Collateral Orders.

1.67 “Order” means an order or judgment of a court.

1.68 “Outparcels” means the vacant and improved outparcels of land located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida and which are contiguous to the Retail Space.

1.69 “Pad Sites” means the three vacant and improved parcels of land located within the parking lot for the Retail Space located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida.

1.70 “Parties in Possession” means any Person that possesses, occupies, or controls, whether directly or indirectly, any portion of the Property including, without limitation, the Transferred Property.

1.71 “Person” means any person, individual, partnership, corporation, limited liability company, joint venture company, association or other entity of whatever kind, whether or not for profit, including, but not limited to, any “person” as such term is defined in Section 101(41) of the Bankruptcy Code, but excluding any Governmental Unit.

1.72 “Petition Date” means November 20, 2012.

1.73 “Plan” means this Chapter 11 plan, either in its present form or as it may be altered, amended, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

1.74 “Plan Documents” means any documents, attachments, and exhibits, as the same may be amended, modified, or supplemented from time to time, that the Debtors determine may aid or be necessary in confirming and/or effectuating the Plan, which documents, attachments, and exhibits may be filed by the Debtors with the Bankruptcy Court on or before the Confirmation Hearing and shall be deemed part of this Plan and/or the Disclosure Statement, as applicable.

1.75 “Plan Support Agreement” means that agreement executed by the Debtor and CRH on or about February 14, 2013 and filed in connection with a motion to compromise controversies pursuant to Federal Rule of Bankruptcy Procedure 9019 that, subject to Bankruptcy Court approval, (i) describes the framework of this Plan and (ii) resolves disputes relating to the use of Cash Collateral for the duration of the Bankruptcy Cases.

1.76 “Priority Claim” means any Claim (other than an Administrative Claim or a Priority Tax Claim) to the extent such Claim is entitled to a priority in payment under Section 507(a) of the Bankruptcy Code.

1.77 “Priority Tax Claim” means any Claim to the extent that such Claim is entitled to a priority in payment under Section 507(a)(8) of the Bankruptcy Code.

1.78 “Pro Rata” or “Pro Rata Share” means the same proportion or ratio that an Allowed Claim in a particular Class bears to the total amount of all Allowed Claims in such Class or Classes as provided under the Plan.

1.79 “Professional” means a Person retained or to be compensated pursuant to Sections 326, 327, 328, 330, 503(b)(2) or (4), 1103 or 1107(b) of the Bankruptcy Code.

1.80 “Professional Fees” or “Professional Fee Claims” means those fees and Administrative Expenses claimed by Professionals retained by the Debtors through a Bankruptcy Court Order pursuant to Sections 330, 331 and/or 503 of the Bankruptcy Code, and unpaid as of the Confirmation Date.

1.81 “Proof of Claim” means any Proof of Claim filed with the Bankruptcy Court with respect to the Debtors pursuant to Bankruptcy Rule 3001 or 3002.

1.82 “Proof of Equity Interest” means any Proof of Equity Interest filed with the Bankruptcy Court with respect to the Debtors pursuant to Bankruptcy Rule 3002.

1.83 “Property” means the real property composed of the Retail Space, the Pad Sites, and the Outparcels and collectively known as “The Cypress,” and located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida, any related improvements and entitlements owned by the Debtors that are not considered personal property, and any personal property solely related to the operation of the Property.

1.84 “Regions Bank” means Regions Bank, as apparent assignee of the Loan Documents from Fifth Third.

1.85 “Reorganized Debtors” means the Debtors (or if a corporate merger is consummated by Confirmation, the surviving Debtors) on or after the Effective Date pursuant to the Plan.

1.86 “Retail Space” means the approximately 111,000 square foot retail space located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida.

1.87 “Schedules” means the Schedules and Statements filed by the Debtors with the Bankruptcy Court in the Bankruptcy Case pursuant to Bankruptcy Rule 1007, as they may be amended or supplemented from time to time.

1.88 “Section 503(b)(9) Claim” means any timely filed Administrative Expense Claim for the unpaid value of any goods (but not for the value of any services) actually received by the Debtors within twenty (20) days prior to the Petition Date if sold to the Debtors in the ordinary course of business of the Debtors which the Bankruptcy Court Allows pursuant to Section 503(b)(9) of the Bankruptcy Code.

1.89 “Secured Claim” means any Claim that is (a) secured in whole or part, as of the Petition Date, by a Lien which Lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, or (b) subject to setoff under Section 553 of the Bankruptcy Code, but only to the extent of the value of the Property securing any such Claim, or to the extent of the amount subject to setoff, as the case may be.

1.90 “Setoff” means any right of a Creditor to offset a mutual debt owing by such Creditor and any right of the corresponding Debtors to offset a mutual debt owing by a Debtor to a Creditor against a Claim of that Debtors, including, without limitation, such rights under Section 553 of the Bankruptcy Code.

1.91 “State Court Action” means that action for foreclosure on the Property and for judgment on the promissory notes and other Loan Documents, which case is pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (Case No. 12-CA-003911).

1.92 “Statutory Fees” means any fees or charges assessed against the Debtors’ Estates under Section 1930, Chapter 12 of Title 28 of the United States Code.

1.93 “Tenant Leases” means any lease of any portion of the Debtors’ Property existing as of the Effective Date.

1.94 “Transferred Property” means the assets the Debtors shall transfer to CRH pursuant to this Plan in full satisfaction of CRH’s Claims against the Debtors and the Guarantors, which shall be composed of (i) the Retail Space, (ii) the Pad Sites, (iii) the Outparcels, (iv) personal property owned by the Debtors and used in the operation of the Retail Space, Pad Sites, or Outparcels, and (v) the Net Cash. Without limiting the generality of any other provision of the Plan, specifically excluded from the Transferred Property shall be the Debtors’ retained interests in the Carve-Out, the Causes of Action, and any promissory note receivables owed to either of the Debtors.

1.95 “Unimpaired” means any Claim that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.96 “Unsecured Claim” means any Claim that is neither secured nor entitled to priority under the Bankruptcy Code or a Final Order of the Bankruptcy Court, including, but not limited to: (a) any Claim arising from the rejection of an executory contract or unexpired lease under Section 365 of the Bankruptcy Code and (b) any portion of a Claim that is a Deficiency Claim, or to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to Section 506(a) of the Bankruptcy Code.

## **ARTICLE 2**

### **TREATMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

#### **2.1 Administrative Expense Claims.**

OCB Claims and Allowed Section 503(b)(9) Claims shall be paid in Cash and in full on or before the Effective Date from the Debtors’ Effective Date Cash. Allowed Professional Fee Claims, Statutory Fees, and any other Allowed Administrative Expense Claims shall not be paid from the Effective Date Cash, but shall instead be paid in full on the Effective Date from the Carve-Out in accordance with the priority scheme established by the Bankruptcy Code.

2.2 Priority Tax Claims.

Upon Confirmation of the Plan, CRH shall assume liability, and shall be solely responsible, for paying any Allowed Priority Tax Claims. Allowed Priority Tax Claims shall be paid, at CRH's election, either (i) on the Effective Date, in Cash, (without post-petition interest or penalties) to the extent of available Effective Date Cash, (ii) by CRH after the Effective Date in compliance with Section 1129(a)(9)(C) or Section 1129(a)(9)(D) of the Bankruptcy Code, or (iii) as otherwise agreed among CRH and the Holder(s) of such Allowed Priority Tax Claims.

**ARTICLE 3**  
**CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

Claims other than Allowed Administrative Expense Claims and Allowed Priority Tax Claims are classified for all purposes pursuant to this Plan as follows:

3.1 Class 1 – Secured Tax Claims.

Class 1 consists of the Allowed Secured Claims of Governmental Units (including Persons claiming by, through, or under a Governmental Unit) and any other Person or Entity that holds an Allowed Secured Claim that does (or may) encumber the Property in connection with unpaid taxes, which are secured by an unavoidable Lien on the Property against which the taxes were assessed.

3.2 Class 2 – Secured Claim of CRH.

Class 2 consists of the Allowed Secured Claim of CRH arising in connection with the CRH Loans, to the extent secured by a Lien in Property of the Debtors.

3.3 Class 3 – Priority Claims

Class 3 consists of Allowed Claims entitled to priority under Section 507 of the Bankruptcy Code, other than Priority Tax Claims.

3.4 Class 4 – Personal Injury Claims.

Class 4 consists of any Claims arising out of a personal injury or wrongful death, if any, that occurred on the Property and for which the Debtors are or may be judged liable.

3.5 Class 5 – General Unsecured Claims.

Class 5 consists of the Unsecured Claims not otherwise classified by the Plan and shall include, without limitation, any Intercompany Claims, Deficiency, Claims arising before the Petition Date against the Debtors in any way related to the Tenant Leases, and Claims arising under Section 365 of the Bankruptcy Code from the rejection of Executory Contracts and unexpired leases.

3.6 Class 6 – Equity Interests in the Debtors.

Class 6 consists of all existing Equity Interests in the Debtors, regardless of how denominated.

3.7 Extent of Classification. A Claim is placed in a particular Class only to the extent such Claim falls within the description of that Class and only to the extent such Claim has not been paid, released, or otherwise satisfied prior to the Effective Date. A Claim may be, and is, classified in other Classes to the extent any portion of the Claim falls within the description of such other Classes.

**ARTICLE 4**  
**TREATMENT OF ALLOWED CLAIMS AND ALLOWED EQUITY INTERESTS**

The Allowed Claims and Allowed Equity Interests, as classified in Article 3 of this Plan, shall be satisfied in the manner set forth in this Article 4. The treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Equity Interests pursuant to the Plan shall be in full satisfaction, settlement, release, extinguishment, and discharge of their respective Allowed Claims and Allowed Equity Interests.

4.1 Class 1 - Secured Tax Claims.

4.1.1 **Treatment.**

Allowed Class 1 Claims shall, at CRH's election, either (i) be paid in Cash, in full, from the Debtors' Effective Date Cash, or (ii) be paid by CRH after the Effective Date in compliance with Section 1129(a)(9)(D) of the Bankruptcy Code, or (iii) be paid as otherwise agreed among CRH and the Holder of such Claim. To the extent not paid in full on the Effective Date (or as soon thereafter as an asserted Class 1 Claim becomes an Allowed Class 1 Claim), then Holders of Allowed Class 1 Claims shall retain any Lien(s) encumbering the Property that secure such Claims(s).

4.1.2 **Impairment and Voting.**

Class 1 is Unimpaired under the Plan and the Holder of a Class 1 Claim is not entitled to vote to accept or reject the Plan.

4.2 Class 2 – Secured Claim of CRH

4.2.1 **Determination of Secured Status.**

Class 2 Claims arising in connection with the CRH Loans shall, as of the Effective Date, be deemed an Allowed Secured Claim that is fully secured by the Transferred Property.

#### 4.2.2 Treatment.

On the Effective Date, the Allowed Class 2 Secured Claim of CRH shall be conclusively established to be equal to the Effective Date Loan Amount. The Effective Date Loan Amount shall be fully paid and satisfied through a conveyance of the Transferred Property to the Holder of the Class 2 Claim, as more specifically described below:

*Surrender of Real Property:* On the Effective Date, pursuant to the confirmed Plan, the Debtors shall execute and deliver to CRH (or its designee) one or more Deeds in Lieu of Foreclosure (collectively, the “Deed”) conveying to it the Retail Property, the Pad Sites, and the Outparcels free and clear of all Liens, claims, and encumbrances (other than the encumbrances on account of CRH’s Loans, tax liens, easements, and similar matters of record), including those identified on **Exhibit “A”** to this Plan. Additionally, the Deed shall contain a “no-merger clause” reasonably acceptable to CRH that ensures CRH’s retained Liens in the Transferred Property shall not be merged into or extinguished by any such Deed.

*Additional Documents:* On the Effective Date (a) the Debtors will deliver to CRH (or its designee) such documents of conveyance as are reasonably necessary to consummate the transactions contemplated in this Plan. All documentation required in Section 4.2, together with the Deed, are hereinafter collectively referred to as the “Closing Documents.”

*Surrender of Net Cash:* On the Effective Date, the Debtors shall surrender to CRH the Net Cash.

*Stipulation Regarding Value:* As part of a global compromise of their disputes evidenced by the State Court Action and otherwise, unless otherwise agreed by all parties in a subsequent writing, the Debtors, Insiders, and CRH irrevocably stipulate and agree that upon Confirmation, as of the Effective Date (i) the value of the Property surrendered to CRH under the Plan, plus (ii) the amount of the Net Cash surrendered under the Plan, shall collectively be equal to the Effective Date Loan Amount.

*Deficiency Claim.* Unless otherwise agreed in writing by the Debtors, CRH, and the Insiders, the execution and delivery of the Closing Documents to CRH, along with the tender to CRH of the Net Cash on the Effective Date, shall constitute a full and complete satisfaction of any and all Claims of CRH against the Debtors and as such, CRH shall have no Deficiency Claim or other Unsecured Claims against the Debtors. In the event it is subsequently agreed in writing by the Debtors, CRH, and the Insiders that CRH holds an Unsecured Deficiency Claim, CRH has agreed to (i) waive its right to receive any Distribution on account of such Claim and (ii) to also vote any such Unsecured Claim in favor of the Plan.

*Carve-Out:* The Carve-Out shall be for the benefit of the Debtors' Estates' and shall be used exclusively to pay Allowed Professional Fee Claims, Statutory Fees, Allowed Class 3 Priority Claims (other than Priority Tax Claims), and Allowed Class 5 General Unsecured Claims.

*Releases:* On the Effective Date, the Debtors and Guarantors on one hand, and CRH on the other hand, shall be deemed to fully release and discharge the other(s) from any and all claims, charges, lawsuits, or causes of action of any kind or nature that they may have against the others (including CRH's claims against any Members and Guarantors relating to liability on guarantees), and shall execute one or more mutual general releases to further memorialize the same.

*Closing.* The Effective Date of the Plan and the closing of the transactions contemplated by the Plan (the "Closing") shall occur as soon as reasonably practical following Confirmation of the Plan. To the extent provided in the Confirmation Order, the Confirmation Order shall be immediately effective upon its entry. In any event, regardless of whether the Plan has been confirmed or not, if such a Closing does not occur on or before the first Business Day that is at least one hundred twenty (120) days following the filing date of the Debtors' Plan and Disclosure Statement, then the transactions contemplated herein (to specifically include the payment of the Carve-Out to the Debtors, and the execution and delivery of the mutual general releases among CRH, the Debtors, and the Insiders) shall nevertheless be consummated on that date and the conveyance of the Transferred Property shall unless otherwise agreed thereafter occur through a Friendly Foreclosure in accordance with the Plan Support Agreement. The parties may also mutually agree to extend the 120-day period within which the Closing is to occur to allow for Confirmation of the Plan.

*Stamp Taxes.* In accordance with Section 1146 of the Bankruptcy Code, the Transferred Property shall not be subject to any stamp or similar taxes.

*Continued Operations:* In accordance with the Plan Support Agreement, during the pendency of the Bankruptcy Cases and until the Effective Date (the "Interim Period"), the Debtors shall continue to operate the Property in the normal course of business (including, without limitation, the continued use and compensation of the Debtors' property management company), subject to the Cash Collateral Order(s) and/or CRH's consent. In the event a Friendly Foreclosure is used, the Debtors shall continue to operate the Property in the normal course of business (including, without limitation, the continued use and compensation of the Debtors' property management company), for up to a maximum of two hundred ten (210) days after the date of filing the Debtors' Plan and Disclosure Statement, at which point CRH will accept delivery of and immediately record the Deed in Lieu of Foreclosure and the Debtors (and the Debtors' property



management company) shall have no further obligations under the Plan regarding the Property. Until title to the Transferred Property transfers to CRH as contemplated herein, neither the Debtors, the property management company, nor any officers, owners, directors, or representatives of them shall be liable to CRH for any acts or omissions in connection with the operation of the Property that are made in good faith and in the absence of willful misconduct or gross negligence.

**4.2.3 Impairment and Voting.**

Class 2 is Impaired under the Plan and the Holder of the Class 2 Claim is entitled to vote to accept or reject the Plan.

**4.3 Class 3 – Priority Claims**

**4.3.1 Treatment.**

Allowed Claims entitled to priority under Section 507 of the Bankruptcy Code, if any, shall be paid in full (a) in Cash from the Carve-Out in full satisfaction, settlement, release, extinguishment, and discharge of such Claim on the Effective Date to the extent required under the Bankruptcy Code, or (b) upon such other terms as may be agreed upon by the Holder of the Claim and the Debtors.

**4.3.2 Impairment and Voting.**

Class 3 is Unimpaired under the Plan and the Holder of a Class 3 Claim is not entitled to accept or reject the Plan.

**4.4 Class 4 – Personal Injury Claims.**

**4.4.1 Treatment.**

Any Allowed Claims arising out of personal injury that occurred on the Property prior to the Effective Date and for which the Debtors are or may be adjudicated liable shall be paid, if at all, solely from the proceeds of any available insurance policy and CRH shall not be responsible for any deductible or other expenses related to addressing, insuring, or otherwise disposing of such Claim. Creditors holding such Allowed Personal Injury Claims shall not be entitled to participate in any Distributions funded from the Carve-Out. As such, no such Claims shall be accounted for as part of the Disputed Claims Reserve.

**4.4.2 Impairment and Voting.**

Class 4 is Impaired under the Plan and the Holder of a Class 4 Claim is entitled to vote to accept or reject the Plan.

4.5 Class 5 - General Unsecured Claims.

4.5.1 **Treatment.**

General Unsecured Claims shall be paid on a Pro Rata basis from the balance of any Cash in the Distribution Fund, after payment of any costs of administering the Distribution Fund (which may include a fee to the Distribution Agent and related attorney's fees) and Distribution on account of Claims with higher priority.

4.5.2 **Calculation of Pro Rata Share.**

In calculating the Pro Rata Share to be paid to the Holder of an Allowed Class 5 Unsecured Claim, such Pro Rata Share shall be based on a fraction, the numerator of which shall be the Allowed Amount of such Holder's Class 5 Claim and the denominator of which shall be the total amount of Allowed Class 5 Claims. In calculating the aforementioned denominator for purposes of Distributions, the amount of the Disputed Claims Reserve shall be included. In calculating the aforementioned denominator for purposes of Distributions, excluded from such calculation shall be (i) the amount of the CRH's Deficiency Claim, if any, and (ii) the amount of any Unsecured Claims held by Creditors who are also Insiders of the Debtor, to the extent those parties waive their respective right to Distributions under this Plan in consideration of the treatment provided herein

4.5.3 **Deficiency Claim Treatment.**

CRH and the Insiders shall, upon the Effective Date, be deemed to waive any right to any Distribution on account of any of their respective Claims against the Debtors. Notwithstanding the foregoing, (i) the Insiders shall only be deemed to waive their respective Claims to the extent the releases of them, as contemplated in Section 6.5 of this Plan, are approved upon entry of a Final Confirmation Order, and (ii) in all events CRH and the Insiders shall retain the right to vote any such Claims in their full amounts to the extent otherwise permitted by the Bankruptcy Code.

4.5.4 **Impairment and Voting.**

Class 5 is Impaired under the Plan and the Holder of a Class 5 Claim is entitled to vote to accept or reject the Plan.

4.6 Class 6 – Equity Interests.

4.6.1 **Treatment.**

All existing Equity Interests in the Debtors shall remain in effect for the sole purpose of winding up the Debtors' affairs immediately following the Effective Date; provided, however that upon Confirmation, the Distribution Agent shall have sole and exclusive authority to fulfill the duties and obligations after the Effective Date regarding the administration of the Distribution Fund. After the Debtors' affairs have been wound up, all existing Equity Interests in the Debtors, however denominated, shall be cancelled

and Holders of such Equity Interests will not receive or retain any property on account of such Equity Interests.

#### 4.6.2 **Impairment and Voting.**

Class 6 is Impaired under the Plan and the Holder of a Class 6 Claim is deemed to have rejected the Plan pursuant to Bankruptcy Code Section 1126(g).

### **ARTICLE 5 MEANS FOR EXECUTION OF PLAN**

#### 5.1 General Settlement of All Claims.

As discussed in the Disclosure Statement and as otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. All Distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

#### 5.2 Substantive Consolidation.

Unless the Debtors expressly elect prior to or at the Confirmation Hearing to the contrary and for the reasons described in the Disclosure Statement, upon Confirmation the Debtors' respective Estates shall be substantively consolidated for purposes of Distributions under the Plan.

#### 5.3 Transfer of Property.

As set forth more specifically in Article 4 of the Plan, the Debtors will effectuate the Plan by fully satisfying the Class 2 Claims through a conveyance of the Transferred Property as set forth in Section 4.2.

#### 5.4 Creation and Administration of the Distribution Fund.

The creation of the Distribution Fund shall be deemed to occur on the Effective Date without any further action by any party. The Distribution Fund shall be a distinct legal entity from the Debtors, and is intended to qualify as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B. By virtue of the Plan and entry of the Confirmation Order, as of the Effective Date, the Debtors shall be deemed to transfer, assign, and deliver all of the Estates' right, title, and interest in and to all retained assets that exist on and after the Effective Date. The Distribution Agent, acting as the duly authorized representative of the Distribution Fund, will administer, identify, recover, and attempt to liquidate, for the benefit of Creditors, assets of the Estates as of the Effective Date (including the identification and prosecution of any Causes of Action), objecting to Claims and other claims administration activities, and making Distributions called for under the Plan. Notwithstanding the foregoing, the Distribution Agent shall have no obligation or duty to liquidate assets, object to Claims against the Debtors, or take other action that does not directly affect the amount of the Cash in the Distribution Fund, or the amount of

Distributions from the Distribution Fund. The Distribution Agent may allocate and reserve a portion of the Distribution Fund in anticipation of costs and expenses associated with administering the Distribution Fund.

5.5 Plan Funding.

On and after the Effective Date, the Distribution Agent shall (i) liquidate retained assets of the Debtors, and (ii) make payments to Holders of certain Allowed Administrative Claims, Statutory Fees, Allowed Priority Claims, and Allowed Unsecured Claims as contemplated under Article 4 of the Plan first from the Carve-Out, and on later Distribution Dates (as the Distribution Agent deems appropriate) based on the timing and net amount of any subsequent recoveries.

5.6 Management of the Debtors.

On or after the Effective Date, the business and affairs of the Debtors shall be managed by the Members and managers of the Debtors for the sole and limited purposes of taking action in order to comply with the terms of the Plan and winding up any business affairs of the Debtors, as provided in the Debtors' operating agreement, other organizational documents, or applicable law.

5.7 Continued Corporate Existence.

The Debtors will continue to exist after the Effective Date for the limited purposes of taking action in order to comply with the terms of the Plan, overseeing the management and operation of the Property until such time as the conveyance of the Transferred Property occurs, and winding up the Debtors' business affairs.

5.8 Corporate Action.

All matters provided for under the Plan and/or the Plan Documents involving the organizational structure of the Debtors or action to be taken by, or required of, the Debtors and the Distribution Agent shall be deemed authorized and approved in all respects upon entry of the Confirmation Order.

5.9 Payments of Claims and Equity Interests.

Distributions of Property to be made by the Distribution Agent pursuant to the Plan shall be made in Cash, by check, or by wire transfer.

5.10 Addresses for Distributions to Holders of Allowed Claims.

Unless otherwise provided in the Plan, the Plan Documents, or a Final Order of the Bankruptcy Court, Distributions to be made under the Plan to Holders of Allowed Claims shall be made by first class United States mail, postage prepaid to: (a) the latest mailing address set forth in a Proof of Claim timely filed with the Bankruptcy Court by or on behalf of such Holders or (b) if no such Proof of Claim has been timely filed, the mailing address set forth in the Schedules. Neither the Debtors nor the Distribution Agent shall be required to make any other effort to locate or ascertain the address of the Holder of any Claim.

5.11 Disputed Claims.

5.11.1 **Objection Deadline.**

As soon as practicable, but in no event later than thirty (30) calendar days after the Confirmation Date, unless otherwise ordered by the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court and served upon the Holders thereof and the United States Trustee for the Middle District of Florida.

5.11.2 **Prosecution of Objections.**

On and after the Effective Date, the Distribution Agent shall have the authority to file objections, litigate to judgment, settle, or withdraw objections to Disputed Claims.

5.11.3 **Establishment and Maintenance of Reserve for Disputed Claims.**

The Distribution Agent shall maintain the Disputed Claims Reserve (either in a separate account or in the same account with the Distribution Fund) in an amount equal to the aggregate of any distributable amounts of Cash to which Holders of Disputed Claims would then be entitled under this Plan if such Disputed Claims were Allowed Claims in the amount of such Disputed Claim, or in such amount as may be estimated by the Bankruptcy Court. The Distribution Agent may, at any time and regardless of whether an objection to the Disputed Claim has been brought, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of Disputed Claims pursuant to Section 502(c) of the Bankruptcy Code, in which event the amounts so estimated, fixed or liquidated shall be deemed the Allowed amounts of such Claims for purposes of establishing the appropriate reserves or Distributions under this Plan. In lieu of estimating, fixing, or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claim (singularly or in the aggregate), or such amount may be fixed by an agreement in writing by and between the Debtors and the Holder of a Disputed Claim.

5.11.4 **Distributions Upon Allowance of Disputed Claims.**

The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall receive Distributions from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such Distributions shall be made, without interest, in accordance with this Plan based upon the Distributions that would have been made to such Holder under this Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No Holder of a Disputed Claim shall have any Claim against the Distribution Fund, Distribution Agent, or Debtors with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no Holder of a Disputed Claim shall have any right to Distribution on such Disputed Claim except as provided in this Section, and then only to the extent of available Cash in the Distribution Fund.

**5.11.5 Withholding of Taxes.**

The Distribution Agent shall withhold from any Property distributed under the Plan any Property which must be withheld for foreign, federal, state, or local taxes payable with respect thereto or payable by the Person entitled to such Property to the extent required by applicable law.

**5.12 Unclaimed Property.**

Any Cash or other Property to be distributed under the Plan that remains unclaimed or otherwise not deliverable to the Person or Governmental Unit entitled thereto (including any non-negotiated checks) as of the later of (a) one (1) year after the Confirmation Date or (b) one hundred twenty (120) calendar days after the Distributions shall become vested in the Distribution Fund and applied toward the funding of the Plan. In such event, such Person's or Governmental Unit's Claim shall no longer be deemed to be Allowed, and such Person or Governmental Unit shall be deemed to have waived its rights to such payments or Distributions under the Plan pursuant to Section 1143 of the Bankruptcy Code and shall have no further Claim in respect of such Distribution and shall not participate in any further Distributions under the Plan with respect to such Claim.

**5.13 Exoneration and Reliance.**

Neither the Debtors nor the Distribution Agent shall be liable to any Holder of a Claim or Equity Interest or other party with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken during the period from the Petition Date to the Effective Date in connection with: (a) the management or operation of the Debtors or the Debtors' Collateral; (b) the implementation of any of the transactions provided for, or contemplated in, the Plan or the Plan Documents; or (c) the administration of the Plan or Property to be distributed pursuant to the Plan and the Plan Documents, other than for willful misconduct or gross negligence. In any action, suit, or proceeding by any Holder of a Claim or Equity Interest or other party in interest contesting any action by, or non-action of, against the Debtors or the Distribution Agent as not being in good faith, the reasonable attorneys' fees and costs of the prevailing party shall be paid by the losing party.

**5.14 Effectuating Documents and Further Transactions.**

The executive officers of the Debtors shall be authorized to execute, deliver, file, and/or record such contracts, instruments, releases, indentures, and other agreements or documents and take or direct such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**ARTICLE 6  
EFFECTS OF PLAN CONFIRMATION**

**6.1 Discharge and Injunction.**

Except as otherwise explicitly provided in this Plan, Confirmation of the Plan shall discharge the Debtors from (i) all Claims against the Debtors or their Property (including, but not

limited to, Claims based upon any act or omission, transaction, or other activity or security instrument or other agreement of any kind or nature occurring, arising, or existing prior to entry of the Confirmation Order or arising from any pre-Confirmation conduct, act, or omission of the Debtors), (ii) liabilities of the Debtors or their Property (including, but not limited to, any liability of a kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code), (iii) all Liens on any Property of the Debtors, (iv) obligations of the Debtors or their Property, and Equity Interests in the Debtors or the Property of the Debtors, whether known to, unknown, or knowable by the Holder thereof, either directly or derivatively through the Debtors, against successors and assigns of the Debtors, based on the same subject matter as any Claim or Equity Interest, in each case regardless of whether or not a Proof of Claim or Proof of Equity Interest was filed, whether or not Allowed and whether or not the Holder of the Claim or Equity Interest voted on or accepted the Plan. Except for the obligations expressly imposed by the Plan, the Distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, extinguishment, and termination of all such Claims against, liabilities of, Liens on, obligations of, and Equity Interests in the Debtors and/or Property of the Debtors. In addition, the Confirmation Order shall operate as a general adjudication and resolution with prejudice, as of the Effective Date, of all pending legal proceedings against the Debtors and their Property, as well as any proceedings not yet instituted against the Debtors or their Property, except as otherwise provided in the Plan.

As provided in Section 524 of the Bankruptcy Code, the discharge provided herein operates as an injunction against, among other things, the assertion of any Claim, Lien, or Equity Interest or the commencement of legal action or process against the Debtors or against the property of the Debtors.

Furthermore, but in no way limited to the generality of the foregoing discharge and injunction, except for the obligations expressly imposed by the Plan, any Person or Governmental Unit accepting any Distribution pursuant to the Plan shall be presumed conclusively to have released the Debtors and successors and assigns of the Debtors, from any cause of action based on the same subject matter as the Claim or Equity Interest on which the Distribution is received. This release shall be enforceable as a matter of contract against any Person or Governmental Unit that acquires any Distribution pursuant to the Plan.

#### 6.2 No Liability for Tax Claims.

Unless a taxing authority has asserted a Claim against any Debtors before the bar date or as Allowed under the Bankruptcy Code, no Claim of such authority shall be Allowed against the Debtors for taxes, penalties, and/or interest arising out of the failure, if any, of any Debtors to have filed any tax return, including, but not limited to, any income tax return in any prior year or arising out of an audit of any return for a period before the Petition Date.

#### 6.3 Retention and Enforcement of Claims or Equity Interests.

Unless otherwise released by the terms of the Plan, any rights or Causes of Action or objection to any Claim under any theory of law, including, without limitation, under the Bankruptcy Code, accruing to the Debtors shall become the property of the Debtors pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code upon Confirmation of this Plan and entry of the

Confirmation Order, and shall be transferred to the Distribution Fund upon the occurrence of the Effective Date. Confirmation of this Plan and entry of the Confirmation Order shall not (a) constitute an adjudication of any Causes of Action or Claim the Debtors may have against any parties, whether known or unknown, asserted or unasserted, contingent or unliquidated, or of the validity of any Claim against any Debtors regardless of whether such party accepts or rejects this Plan or has filed a Proof of Claim in any Bankruptcy Case; (b) act as *res judicata* or collateral estoppel with respect to any Causes of Action or other claims of the Debtors; (c) otherwise have any preclusive effect with respect to a Claim or Cause of Action that any Debtors have or may have prior to the Effective Date.

After Confirmation, the Distribution Agent, in its sole discretion, shall be entitled to pursue, compromise, or abandon any and all of the Causes of Action and objections to Claims. Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, on or after the Effective Date, the Distribution Agent may appoint, with the Bankruptcy Court's approval, a representative to retain and enforce any Claim or Cause of Action preserved pursuant to this Section of the Plan.

#### 6.4 Release of All Causes of Action Between Insiders and CRH.

Upon entry of the Confirmation Order, the Holder of the Class 2 Claim on the one hand and the Debtors and Insiders on the other hand, shall be deemed to have consensually and mutually released each other, from any and all claims whether known or unknown arising out of or in any way relating to the CRH Loan, except for those continuing obligations specifically contemplated by the Plan, if any. Upon the occurrence of the Effective Date, the Holder of the Class 2 Claim on one hand and the Debtors and Insiders on the other hand shall be deemed to have consensually and mutually released each other from any and all Claims whether known or unknown arising out of or in any way relating to the CRH Loan, the Property, or the operation of the Debtors' business.

#### 6.5 Discharge of Claims and Non-Debtor Releases

**IN ADDITION TO THE CONSENSUAL RELEASES AMONG CRH, THE DEBTORS, AND THE INSIDERS CONTEMPLATED IN THIS PLAN, THIS PLAN AND THE CONFIRMATION ORDER SHALL ACT AS A DISCHARGE AND RELEASE OF THE GUARANTORS OF THE CRH LOAN AND THE MEMBERS OF THE DEBTORS (SOME OF WHICH ARE ALSO GUARANTORS) (THE "RELEASED PARTIES") FROM ANY CLAIMS, LIABILITIES, AND OBLIGATIONS ARISING IN CONNECTION WITH THE DEBTOR'S PRE-PETITION BUSINESS OPERATIONS, INCLUDING, WITHOUT LIMITATION, ANY GUARANTY OF ANY OBLIGATION OR DEBT OF THE DEBTORS OR LIABILITY ARISING FROM A POSITION AS AN OFFICER OR DIRECTOR OF THE DEBTORS (THE "INSIDER CLAIMS"). IN CERTAIN INSTANCES, SUCH RELEASES ARE WITH THE CONSENT OF THE AFFECTED CREDITOR (LIKE CRH) AS SET FORTH IN THE PLAN. UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE RELEASE AND DISCHARGE OF THE RELEASED PARTIES UNDER THE PLAN IS IN CONSIDERATION OF AND CONDITIONED UPON THE RELEASED PARTIES PROVIDING THE CONSIDERATION FOR SUCH A RELEASE IN THE FORM OF WAIVING THEIR RESPECTIVE RIGHTS TO DISTRIBUTION FOR THE PURPOSES**



**OF INCREASING THE DISTRIBUTION AMOUNT AVAILABLE TO OTHER CLAIM HOLDERS (THE “CONTRIBUTIONS”). TO THE EXTENT THE NON-DEBTOR RELEASES ARE NOT APPROVED UPON ENTRY OF THE CONFIRMATION ORDER, THE RESPECTIVE RELEASED PARTIES SHALL BE DEEMED NOT TO HAVE WAIVED THEIR RIGHT TO RECEIVE DISTRIBUTIONS UNDER THE PLAN AND SHALL PARTICIPATE FULLY IN DISTRIBUTIONS UNDER THE PLAN ON ACCOUNT OF THEIR RESPECTIVE ALLOWED CLAIMS AND/OR EQUITY INTERESTS. WITHOUT LIMITING THE GENERALITY OF AND SUBJECT TO THE FOREGOING, ON THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE DISCHARGED FROM ANY INSIDER CLAIMS WHETHER OR NOT (A) A PROOF OF CLAIM BASED ON SUCH INSIDER CLAIM WAS FILED PURSUANT TO SECTION 501 OF THE BANKRUPTCY CODE, (B) AN INSIDER CLAIM IS AN ALLOWED CLAIM PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE, (C) THE HOLDER OF AN INSIDER CLAIM HAS VOTED TO ACCEPT THE PLAN, OR (D) ANY LEGAL ACTION HAD BEEN COMMENCED AS OF THE CONFIRMATION DATE ON ACCOUNT OF SUCH INSIDER CLAIM AGAINST THE DEBTORS OR THE RELEASED PARTIES. AS OF THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES, INCLUDING ALL HOLDERS OF AN INSIDER CLAIM SHALL BE FOREVER PRECLUDED AND PERMANENTLY ENJOINED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FROM ASSERTING, DIRECTLY OR INDIRECTLY, AGAINST THE RELEASED PARTIES OR THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER CLAIMS, DEBTS, RIGHTS, CAUSES OF ACTION, REMEDIES, OR LIABILITIES BASED UPON ANY ACT, OMISSION, DOCUMENT, INSTRUMENT, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT CONSTITUTES AN INSIDER CLAIM OR THAT OCCURS IN CONNECTION WITH IMPLEMENTATION OF THE PLAN AND THE CONFIRMATION ORDER SHALL CONTAIN APPROPRIATE INJUNCTIVE LANGUAGE TO THAT EFFECT. IN ACCORDANCE WITH THE FOREGOING, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL SUCH INSIDER CLAIMS AND OTHER DEBTS AND LIABILITIES AGAINST THE RELEASED PARTIES, AND SUCH DISCHARGE SHALL VOID ANY JUDGMENT OBTAINED AGAINST THE RELEASED PARTIES, AT ANY TIME, TO THE EXTENT THAT SUCH JUDGMENT RELATES TO A DISCHARGED INSIDER CLAIM. THE FOREGOING RELEASE AND DISCHARGE SHALL NOT APPLY TO CLAIMS OR CAUSES OF ACTION THAT ARISE FROM OBLIGATIONS OR RIGHTS CREATED UNDER OR IN CONNECTION WITH THE PLAN OR ANY AGREEMENT PROVIDED FOR OR CONTEMPLATED IN THE PLAN. NOTWITHSTANDING ANYTHING IN THIS PLAN TO THE CONTRARY, THIS RELEASE IN NO WAY RELEASES OR WAIVES THE DEBTORS’ CLAIMS ARISING OUT OF PROMISSORY NOTES OR RECEIVABLES THAT THEY MAY HAVE AGAINST INSIDERS OR AFFILIATES OF INSIDERS.**

**ARTICLE 7**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 Assumption and Rejection of Executory Contracts and Unexpired Leases.

7.1.1 **Assumption.**

Any Executory Contracts or unexpired leases including all Tenant Leases that (a) have not been rejected by the Debtors with the Bankruptcy Court's approval on or prior to the Confirmation Date, and (b) are not the subject of a pending motion to reject on the Confirmation Date, shall, as of the Confirmation Date (subject to the occurrence of the Effective Date), be deemed to have been assumed by the Debtors subject to Sections 7.1.2 and 7.2 below and immediately assigned to CRH. The Plan shall constitute a motion to assume and assign to Debtors such Executory Contracts and unexpired leases. Entry of the Confirmation Order shall constitute approval of such assumptions and assignment.

7.1.2 **Rejection.**

Notwithstanding anything herein to the contrary, the Debtors may seek to reject certain Executory Contracts and unexpired leases that will be identified in a motion to reject the same pending on the Confirmation Date.

7.1.3 **Reservation.**

Notwithstanding anything herein to the contrary, this Section 7.1 shall not apply to any Executory Contract or unexpired lease that is specifically treated otherwise under the Plan.

7.2 Cure.

Any monetary default under any Executory Contract or unexpired lease to be assumed hereunder shall be satisfied solely by CRH pursuant to Section 365(b)(1) of the Bankruptcy Code (the "Cure"), in one of the following ways: (a) by payment of the default amount in Cash from the Effective Date Cash on the Effective Date; (b) on such other terms as agreed to by the CRH and the counter parties to such Executory Contract or unexpired lease; or (c) as determined by Final Order of the Bankruptcy Court. In the event of a dispute regarding (i) the amount of any Cure payments, or (ii) any other matter pertaining to assumption, the Cure payments required by Section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption. In no event shall the Debtors or the Distribution Fund (including, without limitation, the funds comprising the Carve-Out) be liable to pay the amount of or perform any Cure under any assumed contract or lease.

7.3 Damages Upon Rejection.

The Bankruptcy Court shall determine the dollar amount, if any, of the Claim of any Person or Governmental Unit seeking damages by reason of the rejection of any Executory Contract or unexpired lease; provided, however, that such Person or Governmental Unit files a

Proof of Claim with the Bankruptcy Court before the earlier of thirty (30) calendar days following the Confirmation Date or as provided under separate Orders of the Bankruptcy Court. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order (subject to Section 502(a)(6) and all other avoidable defenses), such Claim shall become, and shall be treated for all purposes under the Plan as an Allowed General Unsecured Claim. The Plan shall constitute notice to Persons and Governmental Units that may assert a Claim for damages from the rejection of an Executory Contract or unexpired lease of the bar date for filing a Proof of Claim in connection therewith; provided, however, that the Debtors shall have no obligation to notify such Persons and Governmental Units that the Confirmation Date has occurred.

## **ARTICLE 8**

### **EFFECTUATION AND SUPERVISION OF THE PLAN**

#### **8.1 Jurisdiction.**

Until the Bankruptcy Case is closed, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction that is permissible, including that necessary to ensure that the purposes and intent of the Plan are carried out and to hear and determine all Claims that could have been brought before the entry of the Confirmation Order. Except as otherwise provided in the Plan, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against the Debtors and to adjudicate and enforce all Causes of Action that may exist on behalf of the Debtors. Nothing contained herein shall prevent the Distribution Agent from taking such action as may be necessary to enforce or prosecute any Cause of Action that the Debtors have or may have and that may not have been enforced or prosecuted by the Debtors, which Cause of Action shall survive Confirmation of the Plan and shall not be affected thereby except as specifically provided herein. The Distribution Agent reserves the right to and may seek to administer the Bankruptcy Cases prior to final resolution of all activities necessary to fully and finally administer the Distribution Fund.

#### **8.2 General Retention.**

Following Confirmation of the Plan, the Bankruptcy Court shall also retain jurisdiction for the purposes of classifying any Claim, re-examining Claims that have been Allowed for purposes of voting and determining such objections as may be filed with the Bankruptcy Court with respect to any Claim. The failure by the Debtors to object to or examine any Claim for the purposes of voting shall not be deemed a waiver of the rights of the Debtors to object to or re-examine such Claim, in whole or in part.

#### **8.3 Specific Purposes.**

8.3.1 To modify the Plan after Confirmation, pursuant to the Bankruptcy Rules and the Bankruptcy Code;

8.3.2 To correct any defect, cure any omission or reconcile any inconsistency in the Plan, the Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance under the Plan, the Plan Documents, and any other documents related thereto in the event the Effective Date does not occur as provided herein, so that the

intended effect of the Plan, the Plan Documents, and such other documents may be substantially realized thereby;

8.3.3 To assure the performance by the Distribution Agent of its obligations to make Distributions under the Plan and the Plan Documents;

8.3.4 To enforce and interpret the terms and conditions of the Plan and the Plan Documents;

8.3.5 To enter such Orders including, but not limited to, injunctions as are necessary to enforce the title, rights, and powers of the Distribution Agent;

8.3.6 To enforce and interpret the terms and conditions of the Plan Documents including those relating to conveying the Transferred Property;

8.3.7 To hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to the Debtors or the Estate arising prior to the Effective Date or relating to the period of administration of the Bankruptcy Case;

8.3.8 To hear and determine all applications of compensation of professionals and reimbursement of expenses under Sections 330, 331, or 503(b) of the Bankruptcy Code including those of the Distribution Agent (and any agents or representatives) and professionals required to wind up the affairs of the Debtors;

8.3.9 To hear and determine any causes of action arising during the period from the Petition Date through the Effective Date, or in any way related to the Plan or the transactions contemplated hereby, against the Debtors, or its officers, directors, stockholders, members, attorneys, financial advisors, representatives, and/or agents;

8.3.10 To determine any and all motions pending on Confirmation for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

8.3.11 To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

8.3.12 To consider and act on the compromise and settlement of any Claim against or Equity Interest in the Debtors or the Estate;

8.3.13 To determine all questions and disputes regarding title to the assets of the Debtors or its Estate;

8.3.14 To consider, determine, and act on any dispute arising out of or in connection with the Discharge and Injunction;

8.3.15 To consider, determine, and act on any dispute arising out of or in connection with the discharge of claims and non-debtor releases;

8.3.16 To enter such Orders as are necessary to implement and enforce any other Orders entered in the Bankruptcy Case; and

8.3.17 To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code.

**ARTICLE 9**  
**CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS**

9.1 Conditions to Confirmation.

Confirmation of the Plan shall not occur unless each of the following conditions has been satisfied or has been waived in a writing executed by the Debtors. These Confirmation conditions are as follows:

9.1.1 **Disclosure Statement.**

The Bankruptcy Court shall have approved the Disclosure Statement in a Final Order.

9.1.2 **Confirmation Order.**

The Bankruptcy Court shall have made such findings and determinations regarding the Plan as shall enable the entry of the Confirmation Order, and any other Order entered in conjunction therewith, in form and substance reasonably acceptable to CRH and the Debtors.

9.2 Conditions to Effectiveness.

The Effective Date shall occur on either (i) that day which is the first Business Day that is at least fifteen (15) days after the date of entry of the Confirmation Order or (ii) such earlier date as agreed by the Debtors and CRH so long as the stay of the effectiveness of the Confirmation Order contemplated in Rule 3020(e) has been waived by the Bankruptcy Court at the Confirmation Hearing. Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date of the Plan shall not occur unless and until each of the following conditions has been satisfied or has been waived in a writing executed by the Debtors:

9.2.1 **Final Confirmation Order.**

The Confirmation Order (and such related Orders) shall have become a Final Order or are immediately effective upon their entry due to the Bankruptcy Court's waiver of the stay under Rule 3020(e).

9.3 Waiver.

Notwithstanding any other provision of the Plan or the Confirmation Order, the Plan shall not be binding on any party in interest unless and until each of the foregoing conditions to

Confirmation and the Effective Date has occurred or has been waived in a writing executed by the Debtors and/or CRH, as applicable.

## **ARTICLE 10 ACCEPTANCE OR REJECTION OF PLAN**

### 10.1 Each Impaired Class Entitled to Vote Separately.

Each Impaired Class of Claims or Equity Interests receiving a Distribution under the Plan shall be entitled to vote separately to accept or reject the Plan. The Holders of Allowed Claims in the following Classes are entitled to vote: Classes 2, 4, and 5.

### 10.2 Class Acceptance Requirement.

Consistent with Section 1126(c) of the Bankruptcy Code, and except as provided in Section 1126(e) of the Bankruptcy Code, a Class of Claims shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in the amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

### 10.3 Cramdown.

If any Impaired Class of Claims fails to accept the Plan by the requisite majority, Debtors reserve the right to request that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code, on the basis that the Plan is fair and equitable, does not discriminate unfairly with respect to any non-accepting Impaired Class and provides to the Holders of Claims in each Impaired Class property of a value, as of the Effective Date, equal to the Allowed Amount of such Claims, or that any Holder of a Claim or Equity Interest that is junior to such Claims shall not receive or retain any property on account of such junior Claim or Equity Interest.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

### 11.1 Revocation of Plan.

Debtors reserve the right to revoke and withdraw the Plan at any time before the entry of the Confirmation Order.

### 11.2 Headings.

Headings are utilized in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

### 11.3 Due Authorization by Holders of Claims.

Each and every Holder of a Claim who elects to participate in the Distributions provided for herein warrants that such Holder is authorized to accept, in consideration of such Holder's

Claim against the Debtors, the Distributions provided for in the Plan and that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed, or obligations undertaken, by such Holder under the Plan.

11.4 Time.

In computing any period of time prescribed or allowed by the Plan, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

11.5 Transactions on Business Days.

If the Effective Date, or any other date on which a transaction may occur under the Plan, shall occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall occur instead on the next succeeding Business Day.

11.6 Payment on Distribution Dates.

Whenever any payment or Distribution to be made under the Plan shall be due on a day other than a Business Day, such payment or Distribution shall, instead, be made, without interest, on the next Business Day thereafter.

11.7 Fractional Dollars.

Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollars (rounding up in the case of \$0.50 or more and rounding down in the case of less than \$0.50).

11.8 Unclaimed or De Minimis Distributions.

If the Holder of an Allowed Claim fails to negotiate a check issued to such Holder within ninety (90) days of the date such check was issued, the amount of Cash attributable to such check will be deemed to be unclaimed, such Holder's Claim will no longer be deemed to be Allowed, and such Holder will be deemed to have no further Claim in respect of such check and will not participate in any further Distributions under the Plan. De minimis Distributions of Cash or Property having a value of less than five dollars (\$5.00) shall not be made.

If a Distribution pursuant to the Plan to any Holder of an Allowed Claim is returned to the Distribution Agent due to an incorrect or incomplete address for the Holder of such Allowed Claim, as to such Distribution, within ninety (90) days of the return of such Distribution the amount of Cash attributable to such Distribution will be deemed to be unclaimed and such Holder will be deemed to have no further Claim in respect of such Distribution and will not participate in any further Distributions under the Plan.

11.9 Modification of Payment Terms.

The Distribution Agent shall have the right to modify the treatment of any Allowed Claim, as provided in Section 1123(a)(4) of the Bankruptcy Code, at any time after the Effective Date upon the consent of the Person or Governmental Unit whose Allowed Claim treatment is being modified.

11.10 Entire Agreement.

The Plan, including all exhibits and annexes hereto, sets forth the entire agreement and undertakings relating to the subject matter herein and supersedes all prior discussions and documents. No Person or Governmental Unit shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter herein, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

11.11 Confirmation Order.

In addition to the requirements set forth in the Plan, the Confirmation Order shall also ratify all transactions consistent with the provisions of the Plan and the Plan Documents effected by the Debtors during the period commencing on the Petition Date and ending on the Effective Date.

11.12 Further Authorizations.

The Debtors, CRH, and the Distribution Agent, if and to the extent necessary, shall seek such Orders, judgments, injunctions, and/or rulings that may be required to carry out further the intentions and purposes of, and give full effect to the provisions of, the Plan.

11.13 Transfer Taxes.

The transfer of any Property pursuant to the Plan or the Plan Documents, or the making or delivery of an instrument of transfer under the Plan or the Plan Documents, shall not (and the Confirmation Order shall so provide) be taxed under any law imposing a stamp tax, transfer tax, and/or other similar tax, to the fullest extent permissible under Section 1146 of the Bankruptcy Code

11.14 Recordable Order.

The Confirmation Order shall be declared 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.

11.15 Governing Law.

Except to the extent that federal law (including, but not limited to, the Bankruptcy Code and the Bankruptcy Rules) is applicable, the rights and obligations arising under the Plan shall be



governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to the principles of conflicts of law thereof.

11.16 Severability.

Should the Bankruptcy Court determine, prior to the Confirmation Date, that any provision in the Plan is either illegal on its face or illegal as applied to any Claim or Equity Interest, such provision shall be unenforceable either as to all Holders of Claims or Equity Interests or as to the Holder of such Claim or Equity Interest as to which the provision is illegal, respectively. Such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

11.17 No Interest.

Except as expressly stated in the Plan or otherwise Allowed by Final Order of the Bankruptcy Court, no interest, penalty, or late charge arising after the Petition Date is to be Allowed on any Claim.

11.18 No Attorneys' Fees.

No attorneys' fees or costs shall be Allowed or paid with respect to any Claim except may be specifically Allowed under Section 506(b) of the Bankruptcy Code and by a Final Order of the Bankruptcy Court.

11.19 Consent to Jurisdiction.

Upon default under the Plan, the CRH and Distribution Agent consent to the jurisdiction of the unit of the United States District Court for the Middle District of Florida, Tampa Division, known as the Bankruptcy Court for that District, or any successor thereto, and agrees that it shall be the preferred forum for all proceedings relating to such default.

11.20 Setoffs.

Subject to the limitations provided in Section 553 of the Bankruptcy Code, the Distribution Agent may, but shall not be required to, setoff against any Claim and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever the Debtors may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim that the Debtors may have against such Holder.

11.21 Successors and Assigns.

The rights, duties, and obligations of any Person or Governmental Unit named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person or Governmental Unit.

11.22 Reservation.

If the Plan is not confirmed by the Bankruptcy Court for any reason, the rights of all parties in interest in the Bankruptcy Case shall be reserved in full. Furthermore, any concession reflected herein is made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Bankruptcy Case shall be bound or deemed prejudiced by any such Concession.

**ARTICLE 12  
MODIFICATION OF PLAN**

12.1 Modification of Plan.

Debtors may propose amendments to, or modifications of, the Plan under Section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date.

12.2 Notices.

All notices, requests, elections, or demands in connection with the Plan shall be in writing and shall be mailed by registered or certified mail, return receipt requested to:

If to the Debtors:

The Cypress of Tampa LLC  
The Cypress of Tampa II, LLC  
c/o Gordon Comer  
12570 Telecom Drive  
Tampa, FL 33607

With mandatory copies to:

Jennis & Bowen, P.L.  
400 North Ashley Drive  
Suite 2540  
Tampa, Florida 33602

Dated: February 18, 2013  
Tampa, Florida

Respectfully submitted,

**THE CYPRESS OF TAMPA, LLC  
THE CYPRESS OF TAMPA II, LLC**

By:     /s/ Gordon Comer      
Title:     Manager

**EXHIBIT "B"**

**NON-EXCLUSIVE LIST OF ENCUMBRANCES**

1. Taxes and assessments including those for the year 2013 and subsequent years, which are not yet due and payable.
2. Grazing Lease dated January 1, 9999, as modified and extended between Josephine Greco, Gilmore Dominguez, et al, as Lessor, and R.J. Nathe & Sons, Inc., as Lessee, with no option to purchase.
3. Grazing Lease dated December 12, 1996, as modified and extended between Josephine Greco, Gilmore Dominguez, et al, as Lessor, and Earl Diez, as Lessee, with no option to purchase.
4. Right of tenants under unrecorded leases.
5. Unrecorded Put/Call Agreement between Barbara M. Chastain, as Trustee of the Barbara Chastain Trust, under agreement dated May 7, 1998 and The Cypress of Tampa LLC, dated December 20, 2004, as subordinated in favor of the First National Bank of Florida.
6. Unrecorded Put/Call Agreement between Barbara M. Chastain, as Trustee of the Barbara Chastain Trust, under agreement dated May 7, 1998 and the Cypress of Tampa II LLC, dated December 20, 2004, as subordinated in favor of First National Bank of Florida.
7. Terms and conditions of the Lease by and between The Cypress of Tampa LLC, as landlord, and Kash N' Karry Food Stores, Inc., as Tenant, as evidenced by the Memorandum of Lease recorded February 7, 2008 in Official Records Book 18426, Page 78 and Official Records Book 18478, Page 157.
8. Terms and conditions of the Lease by and between The Cypress of Tampa LLC, as landlord, and L.A. Fitness International, LLC, as Tenant, as evidenced by that Memorandum of Lease recorded February 8, 2008 in Official Records Book 18429, Page 954.
9. Terms and conditions of the Short Form Lease by and between The Cypress of Tampa LLC, as Landlord, and VAM23 Shop, LLC d/b/a Nutri Shop, as Tenant, recorded August 26, 2011 in Official Records Book 20677, Page 134.

## EXHIBIT "C"

**The Cypress of Tampa and The Cypress of Tampa II**  
**Liquidation Analysis under Plan and Chapter 7 Liquidation**  
Estimated as of January 31, 2013

	Estimated Liquidation Value	Note #
<b><u>Estimated Proceeds - Encumbered Assets</u></b>		<b>1.</b>
DIP Account (Cash on Hand)	613,586.47	<b>2.</b>
Retail Property, Outparcels, and Pad Sites	19,883,500.00	<b>3.</b>
Accounts and Notes Recieveable	25,000.00	<b>4.</b>
Other Causes of Action	10,000.00	<b>5.</b>
<b>Total Proceeds From Encumbered Assets</b>	<b>20,532,086.47</b>	
<b><u>Secured Claims</u></b>		
Real and Personal Property Claims	80,000.00	<b>6.</b>
CRH Secured Claim	30,044,697.00	<b>7.</b>
<b>Total Amount of Secured Claims</b>	<b>30,124,697.00</b>	
<b>Estimated Deficiency on Secured Claims</b>	<b>(9,592,610.53)</b>	
<b><u>Estimated Priority and Administrative Expenses</u></b>		<b>8.</b>
Chapter 7 Trustee Fees Pursuant to 11 U.S.C. § 326	5,000.00	
Chapter 7 Trustee's Counsel (Estimated)	10,000.00	
Other Chapter 7 Administrative Expense Claims	-	
Chapter 11 Administrative Expense Claims	60,000.00	<b>9.</b>
<b>Proceeds Available for Unsecured Claims in Chapter 7</b>	<b>-</b>	

**The Cypress of Tampa and The Cypress of Tampa II  
Liquidation Analysis under Plan and Chapter 7 Liquidation  
Estimated as of January 31, 2013**

	Estimated Liquidation Value	Note #
<b>Carve-Out Funds</b>	<b>100,000.00</b>	
<b>Other Recoveries</b>	<b>50,000.00</b>	
Estimated Chapter 11 Administrative Claims	75,000.00	
Estimated Priority Claims	-	
Estimated Non-Insider Unsecured Claims	505,000.00	10.
<b><u>Plan Scenario</u></b>		
<b>Estimated Distribution Funds for Non-Insider Unsecured Claims</b>	<b>75,000.00</b>	
<b>Estimated Percent Recovery on Unsecured Claims</b>	<b>14.9%</b>	

## LIQUIDATION ANALYSIS FOR CYPRESS AND CYPRESS II

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### GENERAL NOTES APPLICABLE TO LIQUIDATION ANALYSIS

- A. This Liquidation Analysis was formulated based on information considered accurate as of January 31, 2012. This Liquidation Analysis is intended to quantify estimated recoveries that could be expected by creditors holding claims against the Debtors if the Plan were not confirmed and the Debtors' assets were instead liquidated by a Chapter 7 Trustee on the effective date of the Plan (assumed as of December 31, 2012). The column headed "Estimated Liquidation Value" represents the Debtors' estimate of the value that could be obtained, net of sales expenses, in a Chapter 7 liquidation where a Chapter 7 Trustee has the duty to convert the assets of the estate to cash as quickly as possible under 11 U.S.C. § 704(a)(1).
- B. This Liquidation Analysis is based upon a number of estimates and assumptions that, although developed and considered reasonable by the Debtors, are inherently subject to significant economic factors, market conditions, personal uncertainties, and contingencies beyond the control of the Debtors. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, there can be no assurance that the values reflected in this Liquidation Analysis would be realized if the Debtors' assets were to be liquidated and actual results could vary materially and adversely from those contained herein. The liquidation values represent the Debtors' best estimate of those values based on currently available information, and the Debtors reserve the right to modify this Liquidation Analysis based on additional information becoming available.
- C. This analysis assumes the conversion of the current Chapter 11 case to a Chapter 7 case with the liquidation or abandonment of the Debtors' assets by a Chapter 7 Trustee in a significantly abbreviated timeframe. In that event, a Chapter 7 Trustee would be appointed to administer the estate. The Chapter 7 Trustee is independent and would be entitled to make all of his or her own decisions regarding the liquidation of the estate's assets, the hiring of professionals, the pursuit of claims or litigation, the payment of or objection to claims, and the distribution of any ultimate dividend. The Trustee would also be required to perform duties, such as filing tax returns, that under the Plan will be undertaken by the Debtors. The Chapter 7 Trustee would be compensated from the liquidation of assets of the Chapter 7 estate as a first priority claim in accordance with the Bankruptcy Code. The estimated costs of such a hypothetical liquidation are generally contemplated in the "Estimated Liquidation Values" and are, in some instances, specifically described in the Notes that accompany this Liquidation Analysis.
- D. There can be no assurances made that all of the Debtors' assets will be completely liquidated during the shortened liquidation period in a Chapter 7. In many instances, the Chapter 7 Trustee may elect to simply abandon certain assets determined to have no value to the Debtors' bankruptcy estate.
- F. This Liquidation Analysis is without prejudice to the Debtors' ability to object to the characterization, amount, secured status or classification of any claim or asset, including but not limited to CRH, and is not to be deemed an admission or concession of any issue of fact or law.

**NOTES TO LIQUIDATION ANALYSIS:**

1. The Debtors believe that CRH will assert that virtually all of their assets are subject to its liens.
2. The DIP Account contains the cash on hand as of the Petition Date, plus rental income received since the Petition Date, less operating expenses.
3. The Debtors estimate the forced liquidation value of the Property in a quick sale by a Chapter 7 Trustee to be considerably less than fair market value and have estimated a 30% discount to the estimated "market value" of the Property.
4. The Debtors estimate that most of the accounts receivable are uncollectable as they are mostly over 90 days past due. The Debtors similarly estimate that most of the notes receivable are uncollectable in the event of a conversion to Chapter 7 (the largest note receivable is an obligation of Cypress II to Cypress).
5. The Debtors believe there may be certain Causes of Action that exist in connection with the notes receivables (and possibly other matters), but have not undertaken a definitive analysis to quantify these due to their speculative nature. The Debtors have estimated a recovery through a confirmed Plan of approximately one-third of the face amount of the outstanding notes receivable in a Chapter 11 scenario, and half of that reduced amount in a Chapter 7 scenario (due to increased time and effort that would be required of a Chapter 7 trustee not familiar with the Debtors' history in connection with these Causes of Action).
6. Outstanding property taxes owed to Hillsborough County would be paid first upon any sale of the Property and deducted from the sales proceeds, rather than being paid from the Effective Date Cash as provided under the Plan.
7. The Debtors estimate that CRH would receive all proceeds from a forced sale of the Property in a Chapter 7 liquidation (after payment of all property taxes), and would assert a secured claim on all Cash, Causes of Action and other personal property.
8. The Debtors estimate that even if all assets are not encumbered by CRH's lien, the residue of the estate would be subsumed by Chapter 7 and Chapter 11 Administrative Fees, making a distribution to Unsecured Claims even more remote. The Debtors have estimated these Chapter 7 Administrative Expenses, although these estimates are mere guesses.
9. These Administrative Expenses account for the estimated United States Trustee's quarterly fees through an additional two quarters, and for the Debtors' estimated professional and legal fees through confirmation of the Plan (after crediting any retainers).
10. The Insiders shall waive their right to a distribution (totaling \$1,380,000) under the Plan in consideration of the non-debtor releases to increase the total recovery to the other Unsecured Claims. This Claims waiver would not exist in a Chapter 7 scenario and would decrease the Pro Rata Distribution, if any, to all Unsecured Creditors.