

**REDLINE OF  
CREDITOR'S SECOND AMENDED DISCLOSURE STATEMENT  
SHOWING CHANGES FROM VERSION FILED  
ON AUGUST 15, 2012 [DOCKET NO. 255]  
TO VERSION FILED ON AUGUST 20, 2012 [DOCKET NO. 262]**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

IN RE: § CASE NO. 11-30901-HCM  
VEY FINANCE, LLC §  
DEBTOR § CHAPTER 11 CASE

**CREDITOR’S SECOND AMENDED DISCLOSURE STATEMENT**

Compass Bank (“Compass” or “Plan Proponent”), a creditor and party-in-interest in the above-captioned Chapter 11 Case of Vey Finance, LLC (“Debtor”), hereby proposes and files this Creditor’s Second Amended Disclosure Statement (“Disclosure Statement”).

I.

**INTRODUCTION**

1.01 Purpose of Disclosure Statement.

This Disclosure Statement has been prepared by Compass pursuant to the provisions of §1125 of Title 11 of the United States Code (“Bankruptcy Code”), which requires that there be submitted to holders of claims against the Debtor, a copy of a reorganization plan, or summary of such plan, and a written disclosure statement containing “adequate information” about the Debtor to enable the Creditors to make an intelligent, informed decision regarding the plan of reorganization.

Compass has complied with the requirements of §1125 of the Bankruptcy Code and the United States Bankruptcy Court for the Western District of Texas (the “Bankruptcy Court”) has approved the Disclosure Statement and authorized Compass to solicit acceptances and rejections of the “Creditor’s First Amended Liquidating Plan of Reorganization” (“Plan”), which was filed with the Bankruptcy Court on July 11, [2012, with modified versions of the Plan filed on August 15, 2012 and August 20, 2012.](#)

CAPITALIZED TERMS HEREIN, IF NOT DEFINED IN THIS DISCLOSURE STATEMENT, SHALL HAVE THE SAME MEANING AS DEFINED IN THE PLAN.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specifically set forth. The delivery of this Disclosure Statement and/or any exchange of rights made in connection herewith shall not, under any circumstances, create an implication that there has been no change in the facts set forth since the date hereof.

Any benefits offered to the Creditors according to the Plan which may constitute “securities” have not been approved or disapproved by the federal Securities and

Exchange Commission ("SEC"), the Texas Securities Board ("TSB"), or any other relevant government authority in any state of the United States. In addition, neither the SEC, TSB nor any other government authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon the merits of the Plan.

In accordance with §1124(d) of the Bankruptcy Code, this Disclosure Statement is exempted from the requirements of the securities laws of the United States, including the Securities Act of 1933 ("1933 Act") and the Securities Exchange Act of 1934 ("1934 Act") as well as the Blue Sky Laws of the State of Texas and the state securities laws of each state in which the Debtor transacts business.

**ALL OF THE INFORMATION IN THE DISCLOSURE STATEMENT IS BASED UPON COMPASS'S BEST INFORMATION AND BELIEF. NO REPRESENTATIONS CONCERNING THE DEBTOR, THE VALUE OF ITS PROPERTY, OR THE VALUE OF ANY BENEFITS OFFERED TO THE CREDITORS IN CONNECTION WITH THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THE DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THE PLAN BY THE CREDITORS WHICH ARE CONTRARY TO INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON IN VOTING ON THE PLAN, AND ANY SUCH REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR COMPASS, JASON B. BINFORD AND JOHN J. KANE AT KANE RUSSELL COLEMAN & LOGAN, PC, 1601 ELM STREET, SUITE 3700, DALLAS, TEXAS 78201, (214) 777-4200.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. CONSEQUENTLY, COMPASS IS UNABLE TO WARRANT OR REPRESENT THAT ALL THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**ALL CREDITORS ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT, TOGETHER WITH ALL EXHIBITS, IN ORDER TO PROVIDE THEM WITH ADEQUATE INFORMATION TO DECIDE WHETHER TO ACCEPT OR REJECT THE PLAN.**

1.02 Voting on and Confirmation of the Plan.

Creditors may vote with respect to the Plan by completing and mailing the enclosed ballot to Compass' counsel at the address set forth above. See INTRODUCTION, §1.01 Purpose of Disclosure Statement, supra at 1. A facsimile transmission of the ballot may be sent to the attention of Compass's counsel, with reference to the case name and number, at (214) 777-4299. All ballots must be received not later than September 24, 2012, at 5:00 p.m., **Central**

Standard Prevailing Mountain Time, or such ballots cannot be counted in voting on the Plan. Objections to confirmation of the Plan must be filed in writing no later than September 24, 2012 at 5:00 p.m., shall be accompanied by a memorandum of legal authorities in support of the objection, and shall otherwise be filed in accordance with the requirements set forth in the Court's Order Approving Solicitation and Voting Procedures and Creditor's Second Amended Disclosure Statement in Support of Creditor's Second Amended Liquidating Plan of Reorganization Proposed by Compass Bank [Docket No. \_\_\_\_] (the "Disclosure Statement Order"). A copy of the Disclosure Statement Order is attached hereto as Exhibit G.

THE BANKRUPTCY COURT HAS SET \_\_\_\_\_, OCTOBER 9, 2012, AT \_\_\_\_\_ 12:00 P.M., AS THE DATE AND TIME FOR HEARING ON CONFIRMATION OF THE PLAN ("CONFIRMATION HEARING"). THE CONFIRMATION HEARING WILL BE HELD IN THE U.S. BANKRUPTCY COURTROOM OF THE HONORABLE H. CHRISTOPHER MOTT, U.S. BANKRUPTCY JUDGE, IN EL PASO, TEXAS.

#### 1.03 Purpose of the Plan.

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to Chapter 11, the debtor attempts to reorganize the business of the debtor or effectively liquidate the debtor's assets for the benefit of the creditors, equity interest holders and other parties in interest. Formulation of a plan of reorganization is the purpose of a Chapter 11 reorganization case. A reorganization plan sets forth the means for satisfying the holders of claims against, or interests in, the debtor.

After a Chapter 11 plan has been filed, it must be accepted by the creditors and equity interest holders of the debtor. Section 1125 of the Bankruptcy Code requires full disclosure before solicitation of acceptances of a Chapter 11 plan. This Disclosure Statement is presented to the Creditors of the Debtor to satisfy the requirements of §1125 of the Bankruptcy Code.

#### 1.04 Requirements for Confirmation of Plan.

At the hearing on confirmation of the Plan, the Bankruptcy Court shall determine whether the requirements of § 1125 of the Bankruptcy Code have been satisfied. If the requirements have been satisfied, the Bankruptcy Court shall enter the Confirmation Order. To confirm the Plan, the Bankruptcy Court must find that:

- (1) the Plan complies with the applicable provisions of the Bankruptcy Code;
- (2) the Plan Proponent has complied with the applicable provisions of the Bankruptcy Code;
- (3) the Plan has been proposed in good faith and not by means forbidden by law;
- (4) any payment made or promised by the Plan Proponent, the Debtor, or by a person issuing securities or acquiring property under the Plan, for services or for costs

and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

(5) the Plan Proponent has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint plan with the Debtor, or a successor to the Debtor under the Plan, and that the appointment to, or continuance in, such office of such individual, is consistent with the interests of Creditors and Equity holders of Interests, and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of any compensation for such insider;

(6) any regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;

(7) with respect to each class of impaired Claims, either each holder of a Claim or Interest of such class has accepted the Plan, or will receive or retain under the Plan, on account of such Claim or interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code;

(8) each class of Claims or Interests has either accepted the Plan or is not impaired under the Plan;

(9) except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that administration expenses will be paid in full on the Effective Date, that priority claims (other than tax claims), to the extent the applicable class has accepted the Plan, will receive deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims or, to the extent the applicable class has not accepted the Plan, will receive cash on the Effective Date equal to the allowed amount of such claims, and that priority tax claims will receive on account of such claims deferred cash payments, over a period not exceeding six years after the date of assessment of such Claim, of a value, as of the Effective Date, equal to the allowed amount of such Claim;

(10) at least one class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim of such class;

(11) confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan;

(12) all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for payment of all such fees on the Effective Date; and

(13) the Plan provides for the continuation, after the Effective Date, of payment of all retiree benefits, as that term is defined in § 1114 of the Bankruptcy Code, at required levels and for the duration of the period the Debtor has obligated itself to provide such benefits.

Compass believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy code, that it has complied with or will have complied with all of the requirements of Chapter 11 and that the proposal of the Plan is made in good faith.

Compass believes that holders of all Claims impaired under the Plan will receive payments under the Plan having a present value as of the Effective Date in amounts materially exceeding the amounts likely to be received if the Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code. Compass also believes that confirmation of the Plan will effectuate the liquidation of the Debtor and there will be no need for further financial reorganization of the Debtor.

#### 1.05 Creditors Entitled to Vote and Impairment of Claims.

Any Creditor of the Debtor whose Claim is impaired under the Plan is entitled to vote, if either (i) its Claim has been scheduled by the Debtor (and such Claim is not scheduled as disputed, contingent or unliquidated), or (ii) it has filed a proof of Claim on or before the last date set by the Bankruptcy Court for such filings. Any Claim as to which an objection has been filed (and such objection is still pending) is not entitled to vote, unless the Bankruptcy Court temporarily allows the Claim in an amount which it deems proper for the purpose of accepting or rejecting the Plan, upon application by a creditor whose Claim is subject to an objection. Such application must be heard and determined by the Bankruptcy Court on or before the Confirmation Hearing. A Creditor's vote may be disregarded if the Bankruptcy Court determines that the Creditor's acceptance or rejection was not solicited or made in good faith or in accordance with the provisions of the Bankruptcy Code.

ONLY THE VOTES OF CREDITORS HOLDING IMPAIRED CLAIMS OR INTERESTS WILL BE COUNTED FOR THE PURPOSE OF CONFIRMING THE PLAN. UNDER § 1124 OF THE BANKRUPTCY CODE, A CLASS OF CLAIMS OR INTERESTS IS IMPAIRED UNLESS, WITH RESPECT TO EACH CLAIM OR INTERESTS IN SUCH CLASS, THE PLAN:

(1) leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or interest to receive accelerated payment of his claim or interest after the occurrence of a default:

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

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

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

(d) does not otherwise alter the legal, equitable, or contractual rights to which the holder of such claim or equity interest is entitled; or

(3) provides that, on the effective date, the holder of such claim or interest receives, on account of such claim or interest, cash, equal to:

(a) with respect to a claim, the allowed amount of such claim; or

(b) with respect to an interest, if applicable, the greater of:

(i) any applicable fixed liquidation preference; or

(ii) any fixed price at which the debtor, under the terms of the security, may redeem the security.

#### 1.06 Acceptance of Plan and Cramdown of Dissenting Claims.

Acceptance of the Plan by the Creditors is extremely important. In order for the Plan to be accepted by each class of Claims, the parties that hold at least 2/3 in amount and more than 1/2 in number of the Allowed Claims voting on the Plan in such class must vote for the Plan. Chapter 11 does not require that each Creditor vote in favor of the Plan in order for the Bankruptcy Court to confirm the Plan. The Plan, however, must be accepted by at least one class of holders of impaired Claims by at least 2/3 in amount and more than 1/2 in number of the Allowed Claims of such class actually voting in connection with the Plan.

The Bankruptcy Court may confirm the Plan even though less than all classes of Claims and interests have accepted the Plan. Confirmation of the Plan over the objection of one or more classes of creditors or equity interest holders is generally referred to as a “cramdown”. Section 1129(b) of the Bankruptcy Code sets forth the circumstances in which the Bankruptcy Court may confirm the Plan over the objection of a class of creditors or equity interest holders pursuant to “cramdown”.

Generally, the Bankruptcy Court may cramdown the Plan on dissenting, impaired classes if the plan “does not discriminate unfairly” and is “fair and equitable”. A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity

interests. "Fair and equitable" has different meanings for secured claims, unsecured claims and equity interests.

With respect to a secured claim, "fair and equitable" means either (i) the impaired secured creditor retains its lien to the extent of its allowed claim and receives deferred cash payments at least equal to the allowed amount of its claim with a present value as of the effective date at least equal to the value of such creditor's interest in the property securing its lien, (ii) property subject to the lien of the impaired secured creditor is sold free and clear of that lien, with that lien attaching to the proceeds of the sale, and such lien proceeds must be treated in accordance with clauses (i) or (iii) hereof, or (iii) the impaired secured creditor realizes the "indubitable equivalent" of its claim under the Plan.

With respect to an unsecured claim, "fair and equitable" means either (i) each impaired unsecured creditor receives or retains property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the Plan.

With respect to a class of equity interests, "fair and equitable" means either (i) each holder of an interest receives or retains property of a value, as of the Effective Date, equal to the greatest of the allowed amount of (a) any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled, or (c) the value of such interest; or (ii) the holder of any interest that is junior to the interest of the stockholder will not receive or retain any property on account of such junior interest.

In the event one or more classes of impaired Claims or Interests rejects the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired class or claims or interests. Compass reserves the right to confirm the Plan through a cramdown of dissenting, impaired classes at the Confirmation Hearing, without additional notice to Creditors and holders of Interests.

#### 1.07 Effect of Confirmation of Plan.

On the Effective Date, the provisions of the Plan shall be binding on the Debtor, any person or entity acquiring property under the Plan, and any Creditor of the Debtor, whether or not such Creditor has accepted the Plan.

## II.

### **GENERAL INFORMATION ABOUT THE DEBTOR**

#### 2.01 Nature of the Debtor.

The Debtor, Vey Finance, LLC, is a limited liability company that filed its Chapter 11 case on May 3, 2011. Carlos Veytia and Veronica Veytia are scheduled by the Debtor each with a 50% ownership interest.



2.02 Factors Precipitating Bankruptcy Filing.

On April 10, 2010, Compass filed a lawsuit in the United States District Court for the Western District of Texas, El Paso Division (the "USDC"), Case No. EP-10-CV-137-PRM (the "USDC Lawsuit") against the Debtor, Carlos Veytia and Veronica Veytia (Carlos and Veronica are hereinafter referred to together as the "Veytias") seeking to recover approximately \$9,631,441.76 plus attorneys fees due to Compass on various loan obligations that were then in default. The USDC Lawsuit was assigned to the Honorable. Philip R. Martinez. Compass believes that this was the main precipitating cause for the bankruptcy filing.

2.03 Debtor's Relationship with Compass.

Over the course of several years, the Debtor amassed several millions of dollars in debts to Compass through loans from Compass to finance its real estate operations. Substantially all of these loans are guaranteed by Carlos Veytia and/or Veronica Veytia. Compass has filed Proofs of Claim in the Bankruptcy Case, in the total amount of \$9,045,859.48, as follows: (1) Claim No. 8 for \$236,353.93 – unsecured, (2) Claim No. 9 for \$361,449.73 – unsecured, (3) Claim No. 10 for \$1,623,819.97 – partially secured, (4) Claim No. 11 for \$940,943.54 – unsecured, (5) Claim No. 12 for \$77,097.20 – unsecured, (6) Claim No. 13 for \$205,353.15 – unsecured, and (7) \$5,640,841.96 – partially secured. Collateral exists with respect to some of these claims; however, Compass believes that the value of such collateral is substantially less than the amount of debt owed. On August 9, 2011, the Debtor filed an objection to Claim No. 9, and on December 9, 2011, the Debtor filed objections to Claim Nos. 8, 10, 11, 12, 13 and 16 (the "Claim Objections").

2.04 The Debtor's Scheduled Assets and Liabilities.

The Debtor's Schedules, as originally filed, reflect real property owned and valued by the Debtor at \$2,790,574. See Exhibit A. The El Paso County Tax Assessor-Collector lists one additional property owned by the Debtor: 14940 Whitetail Deer Drive, El Paso, Texas (Account No. D32200000400300). The Debtor's Amended Schedule B reflects personal property owned and valued by the Debtor at \$7,346,880.01. See Exhibit B.

The Debtor's Amended Schedules reflect total liabilities in the amount of \$12,667,725.91, consisting, in part, of \$12,293,495.52 in secured claims to the Bank of the West, Capital Bank and Compass.

In addition to the secured claims, the Debtor scheduled unsecured claims in the amount of \$374,230.39, some of which claims have been updated by filed Proofs of Claim, as follows:

	<u>Creditor</u>	<u>Scheduled Amount</u>	<u>POC Amount</u>
1.	Blanco Ordanez Wallace	\$25,588.68	\$32,382.48
2.	Capital One Visa	1,600.00	2,596.48

3.	Casa Palmira, LP <sup>(1)</sup>	\$71,139.22	---
4.	Casa Palmira, LP	\$92,379.45	---
5.	George Veytia <sup>(1)</sup>	56,000.00	---
6.	Gordon David Johnson	3,852.81	---
7.	Kemp Smith, LLP	29,152.60	31,044.70
8.	Parkland Capital	46,729.57	---
9.	Viola Veytia <sup>(2)</sup>	47,788.06	---

(1) Casa Palmira, L.P. (“Casa”) has filed its own Chapter 11 case in the Bankruptcy Court, being Case No. 11-31471-HCM. Casa did not file a proof of claim in the Debtor’s bankruptcy case.

(2) These claims are treated as Class 5 Claims under the Plan.

2.05 Debtor’s Relationships with Affiliates and Insiders.

Pursuant to the definitions of “affiliate” and “insider” set forth in §§ 101(2) and (31)(A), respectively, of the Bankruptcy Code, Compass believes the following Persons could be classified as affiliates or insiders of the Debtor, and their Claims against the Debtor, are as follows:

Name of “Affiliate” or “Insider”		Nature of Claim Against the Debtor
1.	Carlos Veytia	None
2.	Veronica Veytia	None
3.	George Veytia	\$56,000.00
4.	Viola Veytia	\$47,788.06
5.	Casa Palmira, L.P.	\$71,139.22; \$92,379.45

2.06 Summary of Debtor’s Current Financial Condition.

Attached as Exhibit C is a copy of the most recent (for June 2012) Monthly Operating Report filed by the Debtor. Attached as Exhibit D is a copy of the most recent Loan Status Report (through July 31, 2012) that has been furnished to Compass by the Debtor.

**III.**

**OVERVIEW OF THE PLAN AND THE CHAPTER 11 CASE**

3.01 General.

This Disclosure Statement is qualified in its entirety by the more specific treatment contained in the Plan.

### 3.02 General Concept of the Plan.

In general, the Plan calls for the appointment of a Plan Agent to administer the liquidation of the Debtor's pursuant to the terms of the Plan. This includes, but is not limited to: (1) valuing the collateral underlying the Secured Claims in Classes 2 and 3 and determining whether to abandon the collateral to the secured creditors; (2) pursuing Causes of Action; (3) compromising, setting, and resolving Disputed Claims; and (4) ensuring distribution of assets to the various classes of Creditors.

### 3.03 Significant Legal Events During the Chapter 11 Case.

In the opinion of Compass, the principal legal events that have occurred during the pendency of this Chapter 11 Case, and orders which have been entered relating thereto, if any, may be summarized by topic as set forth below:

(1) Filing of the Case: The Debtor filed for protection under Chapter 11 on May 3, 2011. Since that date, the Debtor have managed its affairs and its property as Debtor-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

(2) Filing of the Debtor's Statement of Affairs and Schedules: The Debtor filed its Statement of Financial Affairs and Schedules on May 13, 2011. On November 29, 2011, the Debtor filed an Amended Statement of Financial Affairs, together with an Amended Summary of Schedules, Amended Schedule B—Personal Property, amended Schedule F—Creditors Holding Unsecured Non-Priority Claims, Amended Schedule G—Executory Contracts and Unexpired Leases, and an Amended Declaration Concerning Debtor's Schedules.

#### (3) Motions to Lift Stay:

(a) On August 18, 2011, Compass filed a motion seeking relief from the automatic stay to permit the USDC Lawsuit to proceed to judgment [Docket No. 53]. The Debtor did not oppose the relief sought by Compass. An order was entered on October 21, 2011 authorizing the USDC Lawsuit to proceed to judgment.

(b) On October 31, 2011, the Bank of the West filed a motion seeking relief from the automatic stay to permit it to foreclose on its collateral [Docket No. 92]. The Debtor filed a response in opposition on November 15, 2011 [Docket No. 111]. A hearing was held by the Court on December 14, 2011 and the Court entered an agreed order on December 16, 2011 providing for the continuation of the automatic stay and for certain stipulations related to Bank of the West's Claim [Docket No. 140].

(c) On May 16, 2012, Bank of the West filed a second motion seeking relief from the automatic stay to permit it to foreclose on its collateral [Docket No. 205] (the "Second Lift Stay Motion"). The Debtor filed a response in opposition to the Second Lift Stay Motion on June 1, 2012 [Docket No. 210]. Compass filed a response and objection

to the Second Lift Stay Motion on August 14, 2012 [Docket No. 252]. ~~The~~[On August 16, 2012, the Court held a hearing and denied the relief sought by Bank of the West in the Second Lift Stay Motion](#) ~~has been set for hearing on August 16, 2012.~~

(4) Cash Collateral and Related Financing Orders: On July 14, 2011, the Court entered its "Agreed Order Authorizing Use of Cash Collateral of Bank of the West." On July 18, 2011, the Court entered its "Final Order Authorizing Use of Cash Collateral of Compass Bank," and its "Agreed Final Order Authorizing Use of Cash Collateral of Capital Bank." Pursuant thereto, the Debtor has made post-petition payments to Bank of the West, Capital Bank and Compass.

(5) Motion to Incur Debt: None.

(6) Property Sales:

(a) On July 19, 2011, the Debtor filed a motion to sell real property located at 1263 Franklin Jay, El Paso, Texas. On August 11, 2011, the Debtor withdrew its motion. On October 20, 2011, the Debtor filed a second motion to sell the real property located at 1262 Franklin Jay, El Paso, Texas. A buyout provision was included in the contract for sale, and the buyers opted out of the contract after the October 20, 2011 motion was filed. On February 9, 2012, the Debtor filed a third motion to sell the real property located at 1262 Franklin Jay, El Paso, Texas. On February 14, 2012, Compass filed an objection to the third motion to sell on various grounds. On February 27, 2012, the Bankruptcy Court entered an order authorizing the sale, and requiring the net sale proceeds be paid to Compass.

(b) On September 21, 2011, the Debtor filed a motion to sell real property located at 11716 Lorri, El Paso, Texas. On September 29, 2011, the Court entered an order authorizing the sale, and requiring the net sale proceeds to be deposited into an escrow account pending confirmation of a plan of reorganization.

(c) On November 10, 2011, the Debtor filed a motion to sell real property located at 5906 Cleveland, El Paso, Texas. On December 19, 2011, the Bankruptcy Court entered an order authorizing the sale, and requiring the net sale proceeds be paid to Compass.

(d) On November 10, 2011, the Debtor filed a motion to sell real property located at 323 Chelsea and 325 Chelsea, El Paso, Texas. On November 14, 2011, the Debtor filed an amended motion to sell. On December 19, 2011, the Bankruptcy Court entered an order authorizing the sale, and requiring the net sale proceeds be paid to Compass.

(e) On December 9, 2011, the Debtor filed a motion to sell real property located at 14410 Hoveland, Clint, Texas. On December 30, 2011, the Bankruptcy Court entered an order authorizing the sale, and requiring the net sale proceeds be paid to Compass.

(7) Motion for Valuation of Secured Status of Creditors Under 11 U.S.C. § 506(a): None.

(8) Preferential or Otherwise Avoidable Transfer Litigation: See (14) below.

(9) Claim Objections:

(a) On August 9, 2011, the Debtor filed an objection to Claim No. 9 (in the amount of \$361,449.73 – unsecured), as filed by Compass.

(b) On December 9, 2011, the Debtor filed objections to Claim No. 8 (in the amount of \$236,353.93-unsecured), Claim No. 10 (in the amount of \$1,623,819.97-partially secured), Claim No. 11 (in the amount of \$940,943.54-unsecured), Claim No. 12 (in the amount of \$77,097.20-unsecured), Claim No. 13 (in the amount of \$205,353.15-unsecured), and Claim No. 16 (in the amount of \$5,640,841.96-partially secured), all as filed by Compass.

(c) On June 18, 2012, the Debtor filed notices withdrawing each of its objections to the Compass claims. On June 19, 2012, the Court entered an "Order Withdrawing Debtor's Objection to Compass Bank Claims," thereby withdrawing the Claim Objections without prejudice. As of the filing of this Disclosure Statement, the Debtor has no objection to Compass's claims on file.

(10) Request For Trustee/or Examiner: None.

(11) Debtor's Plan of Reorganization and Disclosure Statement: The Debtor has not filed a plan of reorganization and disclosure statement.

(12) Employment of Professionals:

(a) On June 13, 2011, the Court entered an Order approving the Debtor's employment of James & Haugland, P.C. as its bankruptcy counsel. That firm received a retainer of \$41,769.50 from the Debtor.

(b) On June 13, 2011, the Court entered an Order approving the Debtor's employment of John W. (Jay) Dunbar, CPA, as its accountant. That firm received a retainer of \$8,000.00 from the Debtor.

(c) On August 19, 2011, the Court entered an Order approving the Debtor's employment of Patrick Tuttle and Re/Max Real Estate Group, as realtors, to market and sell certain real properties owned by the Debtor.

(d) On August 19, 2011, the Court entered an Order approving the Debtor's employment of Anderson Bright & Crout, PC, as its special legal counsel for real estate matters, collections and related proceedings. That firm received no retainer from the Debtor.

(13) Approval of Administrative Expense: None.

- (14) Adversary Proceeding: See summary below at Section 6.05.

#### IV.

### **SUMMARY OF THE CREDITOR'S PLAN**

#### 4.01 Classification of Claims and Distribution to Creditors.

A summary of the principal provisions of the Plan as they relate to the treatment of Claims is set forth below.

**THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF.**

#### **Unclassified Claims**

##### **Administrative Claims**

- (1) Description: Administrative Claims shall consist of all Claims arising under Bankruptcy Code Section 503(b), including Professional Claims. The Debtor estimates that the Administrative Claims potentially to be asserted by parties in interest total approximately \$250,000.
- (2) Treatment: The Plan Agent will pay all Allowed Administrative Claims in Cash in full on the later of: (1) the first Business Day 15 days following the Administrative Claims Bar Date; or (2) 30 days after an Administrative Claim becomes an Allowed Administrative Claim; provided, however, that all funds on deposit with Professionals retained by the Debtor shall be applied, first, toward payment of the Allowed Administrative Claims of those Professionals.
- (3) Bar Date: All requests for allowance of an Administrative Claim, including but not limited to Professional Claims, must be filed with the Court not later than the Administrative Claims Bar Date. Any person seeking to assert an Administrative Claim who fails to file a request for allowance of an Administrative Claim by the Administrative Claims Bar Date shall be deemed to have waived such Administrative Claim, and it shall be forever barred.

##### **Ad Valorem Tax Claims**

- (1) Description: Ad Valorem Tax Claims shall consist of all Tax Claims of the City of El Paso, and Dallas County.
  - (i) The City of El Paso has timely filed a proof of claim in the amount of \$56,360.57, for unpaid ad valorem taxes on real property located in El Paso owned by the Debtor (plus statutory interest and penalties), which relates to unpaid ad valorem taxes on real property owned by the Debtor. To the extent that such ad valorem taxes have not been

paid, such Claim (as adjusted for payments made) shall be deemed to be an Allowed Tax Claim for all purposes.

- (ii) Dallas County has timely filed a proof of claim in the amount of \$10,165.79, for unpaid ad valorem taxes on real property located in Dallas County owned by the Debtor (plus statutory interest and penalties), which relates to unpaid ad valorem taxes on real property for 2010. To the extent that any 2010 ad valorem taxes have not been paid, such Claim (as adjusted for payments made) shall be deemed to be an Allowed Tax Claim for all purposes.
  - (iii) Tarrant County has timely filed a proof of claim in the amount of \$4,576.06, for unpaid ad valorem taxes on real property located in Tarrant County owned by the Debtor (plus statutory interest and penalties), which relates to unpaid ad valorem taxes on real property for 2010. To the extent that any 2010 ad valorem taxes are due, and have not been paid, such Claim (as adjusted for payments made) shall be deemed to be an Allowed Tax Claim for all purposes.<sup>1</sup>
- (2) Treatment: In full satisfaction any payment of the Allowed Tax Claims (including statutory interest and penalties), the Allowed Ad Valorem Tax Claims shall retain all of their liens, and such Allowed Ad Valorem Tax Claims shall be paid by the Plan Agent in full and in Cash the later of: (1) 30 days after the Claim Determination Date; or (2) 30 days after such Ad Valorem Tax Claim becomes an Allowed Ad Valorem Tax Claim.

### **Classified Claims**

(a) **Class 1 – Priority Non-Tax Claims**

- (i) Description: Class 1 consists of all Priority Non-Tax Claims.
- (ii) Treatment: To the extent that any Priority Non-Tax Claims have not been satisfied prior to the Effective Date, the Plan Agent will pay all Allowed Priority Claims that are allowed as of the Claim Determination Date in full and in Cash, or as soon thereafter as is reasonably practicable. To the extent that any Class 1 Claim is allowed after the Claim Determination Date, it will be paid in full in Cash as soon thereafter as is reasonably practicable. The Plan Agent shall be entitled, at his or her discretion, to pay any Allowed Ad Valorem Tax Claim at a date earlier than such Ad Valorem Tax Claim become due and owing.
- (iii) Impairment: Class 1 Creditors are not impaired.
- (iv) Impairment: The Class 1 Creditors are not impaired.

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<sup>1</sup> Compass has reason to believe that the Tarrant County Claim has been paid in full.

(b) **Class 2 – Secured Claim of Bank of the West**

(i) Description:

Class 2 consists of the Secured Claim of Bank of the West.

On June 20, 2011, Bank of the West filed an amended Secured Claim in the amount of \$1,445,993.73. As of June 20, 2011, the collateral for the Secured Claim was valued by Bank of the West at \$2,000,000.00. The Debtor in its Schedules valued the collateral for Bank of the West's Secured Claim at \$2,293,058.00.

(ii) Treatment:

For the purpose of voting only, Bank of the West shall have a Secured Claim in the amount of \$1,445,993.73.

Bank of the West shall retain all of its liens on the collateral held for the obligations of the Debtor. Any guarantees of such obligations by Carlos and/or Veronica shall not be affected by confirmation of the Plan.

The Plan Agent shall determine the value and disposition of the collateral underlying Bank of the West's Secured Claim as set forth in Article VII, section 7 of this Plan.

(iii) Impairment: The Class 2 Creditor is impaired.

(c) **Class 3 – Secured Claim of Capital Bank**

(i) Description:

Class 3 consists of the Secured Claim of Capital Bank.

On July 26, 2012, Capital Bank filed an amended Secured Claim in the amount of \$1,464,417.00. The ~~collateral for the Secured Claim was valued~~ amended proof of claim filed by Capital Bank ~~at~~ sets forth a collateral value of \$1,612,628.00. The Debtor in its Schedules valued the collateral for Capital Bank's Secured Claim at \$1,470,628.

(ii) Treatment:

For the purpose of voting only, Capital Bank shall have a Secured Claim in the amount of \$1,464,517.00.

Capital Bank shall retain all of its liens on the collateral held for the obligations of the Debtor. Any guarantees of such obligations by Carlos and/or Veronica shall not be affected by confirmation of the Plan.



The Plan Agent shall determine the value and disposition of the collateral underlying Capital Bank's Secured Claim as set forth in Article VII, section 7 of this Plan.

(iii) Impairment: The Class 3 Creditor is impaired.

(d) **Class 4 – Secured Claim of Compass**

(i) Description: Class 4 consists of the Secured Claim of Compass.

(ii) Treatment: Pursuant to the Compass Settlement:

Compass shall have an Allowed Secured Claim in the amount of \$2,000,000.00

Compass shall retain all of its liens on the collateral held for the obligations of the Debtor.

The Plan Agent shall, upon the occurrence of the Effective Date, abandon the collateral underlying Compass's Allowed Secured Claim to Compass, in full satisfaction of Compass's Allowed Secured Claim.

(iii) Impairment: The Class 4 Creditor is unimpaired.

(e) **Class 5 – Unsecured Claims**

(i) Description:

A. Class 5 consists of all Unsecured Claims, with the exception of the Insider Claims.

B. Class 5 shall include the Allowed Compass Unsecured Claim in the amount of \$4,712,812.89.

(ii) Treatment: Holders of the Unsecured Claims will be paid by the Plan Agent, pro rata from funds available, if any, after the Plan Agent satisfies in full the Allowed Claims of Classes 1-4. Holders of Class 5 Claims shall be paid Pro Rata with holders of Class 6 Claims.

**AS PER THE LIQUIDATION ANALYSIS ATTACHED HERETO AS EXHIBIT E, THE ESTIMATED RECOVERY TO CLASS 5 CREDITORS IS 27.7 PERCENT. PLEASE CAREFULLY REVIEW THE LIQUIDATION ANALYSIS FOR THE DISCLAIMERS AND ASSUMPTIONS ASSOCIATED WITH THIS ESTIMATED RECOVERY.**

(iii) Impairment: The Class 5 Creditors are impaired.

- (4) Compass reserves all rights as to, and shall be entitled to pursue, the Compass Guaranty Claim for any amount of Compass' total claim that is not paid by the Debtor's under the terms of the Plan.

(f) **Class 6 – Claims of Insiders of the Debtor**

- (1) Description: Class 6 consists of Claims of Insiders George Veytia in the amount of \$56,000.00; Viola Veytia, in the amount of \$47,788.06; and Casa Palmira, L.P. in the amount of \$163,518.67.
- (2) Treatment: To the extent that all Allowed Claims of creditors in Classes 1-4, and all fees and expenses of the Plan Agent, have been paid in full, the Class 6 Creditors shall be paid Pro Rata with holders of Class 5 Claims.

**AS PER THE LIQUIDATION ANALYSIS ATTACHED HERETO AS EXHIBIT E, THE ESTIMATED RECOVERY TO CLASS 6 CREDITORS IS 27.7 PERCENT. PLEASE CAREFULLY REVIEW THE LIQUIDATION ANALYSIS FOR THE DISCLAIMERS AND ASSUMPTIONS ASSOCIATED WITH THIS ESTIMATED RECOVERY.**

- (3) Impairment: Class 6 creditors are impaired.

(g) **Class 7 – Subordinated Unsecured Claim of Compass**

- (1) Description: Class 7 consists of the Subordinated Allowed Unsecured Claim of Compass, in the amount of \$2,000,000.00.
- (2) Treatment: Compass will be paid its Class 7 claim by the Plan Agent from funds available, if any, after the Plan Agent satisfies in full the Allowed Claims of Classes 1-6.
- (3) Impairment: The Class 7 Creditor is impaired.

(h) **Class 8 – Equity Interests in the Debtor**

- (i) Description: Class 8 consists of the Equity Interests in the Debtor, owned by Carlos and Veronica, as duly set forth in the Debtor's Schedules filed on May 13, 2011.
- (ii) Treatment: On the Effective Date, all Equity Interests in the Debtor shall be cancelled. Carlos and Veronica will receive no Distribution of any kind under the Plan on account of their Equity Interests.
- (iii) Impairment: Class 8 is impaired by the Plan and the Class 8 Creditors are deemed to have rejected the Plan.

V.

**MEANS FOR IMPLEMENTATION OF THE PLAN**

5.01 Vesting of the Debtor's Assets and Estimated Distribution to Creditors

Pursuant to the Plan, all property of the Estate shall vest automatically in the Debtor on the Effective Date (without the necessity of executing any instruments of assignment), for the express purpose of allowing the Plan Agent (and the Debtor) to make Distributions to holders of Allowed Claims pursuant to the terms and conditions of the Plan. As of the Effective Date, all property of the Debtor shall be held free and clear of all liens, Claims and Interests, except as may be specifically provided in the Plan or Confirmation Order. If the Chapter 11 case is converted to a case under Chapter 7 of the Bankruptcy Code, then all property of the Estate then remaining shall revert to the Estate, and shall be administered by the duly appointed Chapter 7 trustee.

5.02 Notice of Effective Date.

Within five Business Days of the occurrence of the Effective Date, the Plan Agent shall file a "Notice of Effective Date" with the Court.

5.03 Bond of Plan Agent.

Within 10 Business Days following the Confirmation Date, the Plan Agent shall secure a general liability bond (the "Bond"). The Bond shall provide for payment of damages or losses incurred or suffered by the Plan Agent in connection with any claim or demand which in any way arises out of or relates to the Plan or the services of the Plan Agent under the Plan. The premiums for the Bond shall be paid by the Plan Agent from the assets of the Estate without the necessity of Court approval. The amount, cost, and terms of the Bond shall be determined by the Court at the Confirmation Hearing.

5.04 Matters Pertaining to the Plan Agent.

On August 15, 2012, Compass filed a "Designation of Proposed Plan Agent" identifying Jeffrey H. Mims as the proposed Plan Agent [Docket No. 253]. A copy of the Designation of Proposed Plan Agent is attached hereto as Exhibit F. The Plan Agent shall thereafter be approved by order of the Court.

The Plan Agent shall be the representative of the Estate as contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code. The Plan Agent shall have full and exclusive power and authority to act on behalf of the Debtor, and shall have the rights, duties and powers of a trustee appointed pursuant to Sections 701, 702 and 1104 of the Bankruptcy Code to act on behalf of the Debtor with regard to the administration of the Chapter 11 Case.

No recourse shall ever be had, directly or indirectly, against the Plan Agent personally, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement

whatsoever executed by the Plan Agent under the Plan, or by reason of the creation of any indebtedness by the Plan Agent under this Plan for any purpose authorized by this Plan, save and except in cases of defalcation, misappropriation, fraud, willful misconduct or gross negligence by the Plan Agent, it being expressly understood and agreed that such liabilities, promises, contracts, instruments, undertakings, obligations, covenants and agreements shall be enforceable only against and be satisfied only out of the assets of the Debtor or shall be evidence only of a right of payment from the Debtor's assets.

The Plan Agent shall be indemnified and held harmless by the Estate from and against any expenses (including the reasonable fees and expenses of counsel), damages or losses incurred or suffered by the Plan Agent in connection with any claim or demand which in any way arises out of or relates to the Plan or the post-confirmation services of the Plan Agent under the Plan; provided, however, if the Plan Agent is guilty of defalcation, misappropriation, fraud, willful misconduct or gross negligence, then the Plan Agent shall bear all losses, damages and expenses arising as a result of such defalcation, misappropriation, fraud, willful misconduct or gross negligence.

The Plan Agent may resign at any time in his sole discretion, and thereafter the Office of the United States Trustee for the Western District of Texas shall appoint a successor to the resigning Plan Agent. After Designated Notice, such proposed Plan Agent shall be the Successor Plan Agent.

#### 5.05 Compensation Payable to the Plan Agent.

The Plan Agent shall maintain written records of his services as such, and shall be compensated from assets of the Estate, at the proposed compensation model summarized in the Designation of Proposed Plan Agent filed by Compass on August 15, 2012 [Docket No. 253] and attached hereto as Exhibit E, or such other payment arrangement approved by the Court, plus reimbursement for his reasonable out-of-pocket expenses incurred in connection with the discharge of his duties under the Plan. The Plan Agent shall give Designated Notice before any payments to the Plan Agent are made.

Payment to the Plan Agent shall be initially be made by the Debtor's cash on hand upon confirmation of the Plan. Thereafter, the Plan Agent shall be compensated from funds recovered by the Plan Agent for the benefit of the Estate, arising from any source.

#### 5.06 Maintenance of Bank Accounts, Books, Investments, and Distributions.

The Plan Agent shall have the authority and responsibility to make payments to the holders of Allowed Claims in accordance with the terms of the Plan. The Plan Agent shall be entitled to open such bank or other depository accounts as may be necessary or appropriate in the discretion of the Plan Agent to enable him to carry out the provisions of this Plan. The Plan Agent shall prepare and maintain an adequate set of financial books, records or databases that will allow the Plan Agent to accurately track the amount of Claims asserted against the Estate and the amounts paid to each holder of Allowed

Claims pursuant to the terms of the Plan; provided that the Plan Agent also shall be entitled to use the Debtor's books and records that are in existence on the Effective Date.

#### 5.07 Administration of Claims.

Prior to the Claim Determination Date, the Plan Agent shall review Claims with regard to (a) the supporting documents evidencing the Claims; (b) the appropriateness of the characterization of each Claim; (c) the amount of the Claim as set forth in the proof of claim; (d) the extent to which the Debtor originally scheduled the Claim as contingent, disputed or unliquidated; (e) whether the proof of claim was timely filed by the Bar Date, and whether it is otherwise valid, permissible, due and payable under the Bankruptcy Code and applicable state law; (f) whether the Claim is fully or partially secured; and (g) whether the Claim is otherwise allowable under the Bankruptcy Code.

Subject to the provisions in the following paragraphs of this Article VII, section 7, on or before the Claim Determination Date, the Plan Agent shall initiate and file any and all actions as he deems necessary or appropriate to dispute, disallow, object to, estimate or otherwise quantify the Claims against the Estate. The Plan Agent shall take actions regarding the administration, reconciliation and settlement of Claims, and shall object to Claims and prosecute Claims actions, until such time as the Plan Agent determines that further pursuit of litigation or actions objecting to Claims is no longer cost efficient, and will be of no further benefit to the Estate and its Creditors. **THE FAILURE TO OBJECT TO ANY CLAIM, OR TO SEEK THE ESTIMATION OF ANY CLAIM, PRIOR TO THE COMMENCEMENT OF THE HEARING ON CONFIRMATION OF THE PLAN SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO OBJECT THEREAFTER TO SUCH CLAIM IN WHOLE OR IN PART, OR TO THEREAFTER SEEK ESTIMATION OF SUCH CLAIM, FOR THE PURPOSE OF DISTRIBUTION.**

As to the Secured Claims in the amounts set forth in Classes 2 and 3, on or before the Claim Determination Date, the Plan Agent shall determine whether the value of the collateral underlying the Secured Claims is equal to the Secured Claims. If the Plan Agent determines that the value of the collateral is equal to a Secured Claim, the Plan Agent shall deem the Secured Claim as an Allowed Secured Claim and shall, no later than the Claim Determination Date, return such collateral to the respective secured claimant in full satisfaction of the Allowed Secured Claim. If the Plan Agent determines that the value of the collateral is either more or less than the value of the Secured Claim, the Plan Agent shall, on or before the Claim Determination Date, file an objection to the Secured Claim. After notice and hearing of such an objection, the Court shall determine the value of the collateral and the Secured Claim. In the event that the Court determines collateral is worth less than the Secured Claim set forth in this Plan, then: (1) the Secured Creditor shall have an Allowed Unsecured Claim for the difference between the Court-determined value of the Collateral and the Secured Claim value set forth in Article IV of this Plan; (2) the collateral shall be returned to the Secured Creditor; and (3) the Secured Creditor shall have an Allowed Secured Claim in the amount of the Court's valuation of the collateral.

In the event that the Court determines the collateral is worth more than the Secured Claim, the collateral shall be sold or otherwise disposed of and the proceeds shall be distributed to the Secured Creditor in full satisfaction of its Secured Claim, with excess funds to be added to the amounts available for distribution to junior classes pursuant to the Plan and the Bankruptcy Code. Such a sale or disposition shall be pursuant to procedures approved by the Court after notice and a hearing.

If the Plan Agent has not objected to a Claim on or before the Claim Determination Date, such claim shall be deemed allowed in the amount set forth in the proof of claim, as scheduled, as timely asserted by a holder of an Administrative Claim, or as set forth in this Plan, as applicable.

If the Plan Agent objects to a Claim on or before the Claim Determination Date, the Claim shall not be Allowed or otherwise paid until the objection has been settled or resolved, or has been determined by a Final Order.

#### 5.08 Pursuit of Causes of Action.

As of the Effective Date, the Causes of Action, including but not limited to any causes of action against Carlos and/or Veronica under Sections 547, 548 and 550 of the Bankruptcy Code, shall vest in the Debtor and be preserved for the benefit of the Estate. The Plan Agent shall have full, exclusive and complete authority to cause the Debtor to pursue and prosecute such Causes of Action, or to refrain from pursuing any potential Cause of Action, based upon the joint assessment of the Plan Agent and Compass of the net benefit expected to be received by the Estate in connection therewith (taking into account the costs and expenses projected to be incurred in connection therewith, the likelihood of success on the merits, and the range of potential recoveries to be received by the Estate). The Plan Agent shall cause the Debtor to bring any such Cause of Action within the applicable statutes of limitation prescribed by Section 546 of the Bankruptcy Code. The Plan Agent shall be authorized to designate or retain such professional persons as the Plan Agent may deem necessary or desirable to evaluate and prosecute these Causes of Action, including the professional persons identified in Section 10 below. Subject to Designated Notice, the Plan Agent shall have the authority to cause the Debtor to compromise, settle and resolve any Cause of Action upon such terms and conditions as the Plan Agent deems appropriate and in the best interests of the Estate. **ALL CAUSES OF ACTION SHALL SURVIVE CONFIRMATION, AND THE ASSERTION OF CAUSES OF ACTION SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE OR OTHERWISE.**

#### 5.09 Compromise of Disputed Claims.

After the Effective Date, the Plan Agent shall have the authority, on behalf of the Debtor, to compromise, settle and resolve any Disputed Claim that was originally asserted in an amount less than \$5,000.00 upon such terms and conditions as the Plan Agent deems appropriate and in the best interests of the Estate. Any such compromise

and settlement shall be deemed final and binding upon all parties in interest in the Chapter 11 Case.

With respect to any Disputed Claim that was originally asserted in an amount that equals or exceeds \$5,000.00, and subject to Designated Notice having been given, the Plan Agent shall have the authority to cause the Debtor to compromise and settle Claims Litigation on such terms as the Plan Agent deems appropriate and in the best interests of the Estate, after final approval of the Court. The Plan Agent may cause the Debtor to file a single motion to compromise more than one Claim, which shall specify, with regard to each such Claim to be compromised: (a) the holder of said Claim against the Estate; (b) the original asserted amount of said Claim; (c) the proposed allowed amount of such Claim or the proposed amount to be paid to the holder of said Claim in full and final satisfaction of said Claim; and (d) the basis for said compromise.

This section shall not apply to the Adversary Lawsuit or to otherwise affect the Compass Settlement. The Adversary Lawsuit Appeal shall be disposed of pursuant to the Compass Settlement and the Plan Agent shall have no authority to prosecute the Adversary Lawsuit Appeal.

#### 5.10 Retention of Professional Persons.

After the Effective Date, the Plan Agent shall have the authority, after providing Designated Notice, to retain any Person of his choosing (including himself) as a Professional Person. These agents will work for the Plan Agent pursuant to compensation arrangements which must be approved by the Court.

#### 5.11 Effectuating Documents; Further Transactions.

The Debtor and/or the Plan Agent shall be authorized to execute, deliver, file, and/or record such contracts, instruments, releases, and other agreements or documents, and to take such actions, as may be necessary, desirable or appropriate to effectuate and further evidence the terms and conditions of the Plan. On the Effective Date the Plan Agent shall be deemed, by operation of law and the Confirmation Order and without need for any action by any person affiliated with the Debtor, to hold an irrevocable power of attorney on behalf of the Debtor and the Estate with respect to all assets of the Debtor and the Estate.

#### 5.12 U.S. Trustee Fees and Reports.

Notwithstanding any other provisions of this Plan, the Plan Agent shall pay from assets of the Estate any and all fees of the Office of the United States Trustee as and when such fees become due, and shall file with the Office of the United States Trustee all reports which are required pursuant to the relevant guidelines of the Office of the United States Trustee.

#### 5.13 Discharge of the Plan Agent.

After the final Distribution to Creditors, the Plan Agent shall be discharged from his duties under the Plan.

## VI.

### **DESCRIPTION OF LITIGATION AND COMPROMISE AND SETTLEMENT OF LITIGATION WITH COMPASS PURSUANT TO BANKRUPTCY RULE 9019**

#### 6.01 Background to Litigation.

From at least 2004 through at least 2009, the Debtor was engaged in a secondary mortgage finance business. In the course of that business, the Debtor made mortgage loans to third party borrowers secured by real estate. Many of these third party borrowers would not have been qualified to obtain traditional bank financing for their mortgages.

To finance the mortgage loans to these third party borrowers, in many instances, the Debtor obtained financing in its own name from Compass, using its secured real estate mortgages with the third party borrowers as collateral to secure the loans from Compass.

#### 6.02 The Debtor's Unpaid Debts to Compass.

Compass has filed Proofs of Claim in the Bankruptcy Case, in the total amount of \$9,045,859.48, as follows: (1) Claim No. 8 for \$236,353.93, (2) Claim No. 9 for \$361,449.73, (3) Claim No. 10 for \$1,623,819.97, (4) Claim No. 11 for \$940,943.54, (5) Claim No. 12 for \$77,097.20, (6) Claim No. 13 for \$205,353.15, and (7) Claim No. 16 for \$5,640,841.96. Collateral exists with respect to some of these claims; however, Compass asserts that the value of such collateral is far less than the amount of debt owed. On August 9, 2011, the Debtor filed an objection to Claim No. 9, and on December 9, 2011, filed objections to Claim Nos. 8, 10, 11, 12, 13 and 16 (the "Claim Objections").

#### 6.03 The USDC Lawsuit and the Severed USDC Lawsuit.

On April 10, 2010, Compass filed the USDC Lawsuit against the Debtor and the Veytias seeking to recover approximately \$9,631,441.76 due on the various loan obligations that were then in default. The USDC Lawsuit was later amended to include, as additional defendants, Casa, Ocho, OMC and Maese. The Debtor responded by asserting causes of action against Compass for breach of contract, breach of fiduciary duty, respondeat superior, negligence, accounting, rescission of one loan based on fraud and other claims. The Debtor and the Veytias demanded a jury trial.

After the Debtor's bankruptcy filing, on June 1, 2011, the USDC severed the causes of action against the Veytias, Casa, Maese, Ocho, and OMC out of the USDC Lawsuit, which was stayed and administratively closed pending resolution of the Debtor's bankruptcy proceedings. The USDC allowed Compass to proceed against the Veytias and the other entities in the Severed USDC Lawsuit.



On August 2, 2011, after Casa filed its own Chapter 11 case in the Bankruptcy Court, the USDC severed Casa from the Severed USDC Lawsuit and assigned it back to the USDC Lawsuit, leaving the Veytias as the only defendants in the Severed Lawsuit.

Subsequently, on August 18, 2011, Compass filed its "Compass Bank's Motion for Relief from Stay to Allow Pending Litigation to Proceed" in the Bankruptcy Court. By this filing, Compass requested that the pre-petition litigation against the Debtor, i.e. the USDC Lawsuit, which had been stayed, to proceed to a conclusion against the Debtor. On October 21, 2011, the Bankruptcy Court entered its order allowing the USDC Lawsuit to proceed to judgment, as to the Debtor. The USDC Lawsuit remains ~~stayed~~pending in the USDC.

6.04 Summary Judgment for \$9,631,441.76 Plus Interest, Costs and Attorneys' Fees Rendered Against the Veytias in the Severed USDC Lawsuit

On December 5, 2011, the USDC entered its "Memorandum Opinion and Order Granting Summary Judgment" (the "Summary Judgment") in the Severed USDC Lawsuit.

As the Summary Judgment details, Compass contended that the Veytias were liable as guarantors based on five guaranty agreements, the terms of which made them liable for all of the debts of Vey to Compass.

The Veytias argued that there was no evidence that Compass was the owner of the guaranties, and that Compass did not have standing. The USDC found that each loan and guaranty listed State National Bank as either payee, lender or creditor. The USDC also accepted the written Declaration of Mike Lewis, a senior officer of Compass, who attested to Compass's status as successor in interest to State National Bank by the attachment to the Declaration of the certain merger documents between State National Bank and Compass,<sup>2</sup> who authenticated each of the notes and guaranties, and who validated the loan defaults.

The USDC concluded by noting that Compass contended that it was owed \$9,631,441.76 by the Veytias for the debts of Vey, and that while the Veytias claimed various offsets and payments, those claims had been waived. The USDC concluded that Compass "shall have and recover \$9,631,441.76 from the Veytias, jointly and severally" in addition to interest and fees accruing after September 30, 2011, plus post-judgment interest, and attorneys' fees in connection with the loans to the Debtor. The USDC further concluded that Compass shall have and recover from the Veytias \$489,797.24 in connection with the loans to Casa in addition to interest and fees accruing after

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<sup>2</sup> The USDC determined in its "Memorandum Opinion and Order on Rule 12(b)(1) Motions," also entered on December 5, 2011, that the merger documents were adequate to substantiate Compass's assertion that it is, in fact, the successor in interest to State National Bank. The Court noted, in addition to the merger documents, that the Veytias had admitted in their pleadings that Compass was the successor in interest to State National Bank, and that Carlos Veytia had stated, in an affidavit offered in opposition to the Summary Judgment that he had been working with Compass to resolve "all the loans in question." The Court concluded "that the Veytias do not seriously dispute Compass's status as the successor in interest to State National Bank.

September 30, 2011, plus post-judgment interest and attorneys' fees. The USDC then directed Compass to file a motion for attorneys' fees.

Compass filed its motion for attorneys' fees on December 14, 2011. The Veytias filed a response to Compass's motion for attorneys' fees on December 21, 2011. On February 24, 2012, the USDC entered its "Order Awarding Attorneys' Fees and Costs." The Order Awarding Attorneys' Fees and Costs awarding Compass \$335,663.30 in attorneys' fees and \$45,301.52 in costs against the Veytias, jointly and severally, plus post-judgment interest at the applicable statutory rates or as allowed under the law.

On March 22, 2012, the Veytias filed their "Motion for New Trial." The USDC entered an order denying the Motion for New Trial on March 29, 2012. The Veytias filed their notice of appeal on March 27, 2012. The Veytias' appeal of the Severed USDC Lawsuit Summary Judgment remains pending.

#### 6.05 The Adversary Proceeding and the Adversary Lawsuit.

On August 8, 2011, the Debtor filed its "Plaintiff's Original Complaint and Request for Injunctive Relief" in the Bankruptcy Case against Compass, thus initiating the Adversary. In the Adversary, the Debtor first requested a declaratory judgment as to the amount owed by the Debtor, Carlos and Veronica to Compass, and invoked state law to dispute the extent and validity of the liens of Compass. The Debtor also sought to set aside one loan on the grounds that it was obtained by duress or fraud. The Debtor also sought a judgment that Compass is responsible, under a respondeat superior theory, for all damages caused by a former Compass employee.

Then, the Debtor asserted a state law fraudulent transfer cause of action against Compass, for "at least \$4,104,752.74," basing its claim on Tex. Bus. & Com. Code § 24.001 et seq.

Finally, the Debtor sought to equitably subordinate all of Compass's claims, and to protect the Veytias, by enjoining Compass from continuing to pursue the Veytias on their guarantees. The claim for equitable subordination was based on Section 510(c) of the Code, while the injunctive relief was based on Sections 105 and 362 of the Code.

On August 18, 2011, Compass filed its "Defendant Compass Bank's Motion to Withdraw the Reference of Adversary Proceeding." By this filing, Compass requested that the causes of action asserted by the Debtor against Compass in the Adversary be tried in the USDC. On September 2, 2011, the Clerk of the Bankruptcy Court certified to the transmission of the Adversary record to the USDC, thus initiating the Adversary Lawsuit. The Adversary Lawsuit was assigned to the Honorable Kathleen Cardone. On September 13, 2011, the Adversary Lawsuit was reassigned to the Honorable Philip R. Martinez.

On November 10, 2011, the USDC granted Compass's Motion to Withdraw Reference, and transferred the Adversary Lawsuit to the USDC for all further proceedings.

6.06 Judgment for \$8,567,309.05, Plus Interest, Costs and Attorneys' Fees Against the Debtor in the Adversary Lawsuit

On March 26, 2012 and March 27, 2012, the USDC conducted a bench trial in the Adversary Lawsuit. On March 30, 2012, the USDC entered its "Findings of Fact and Conclusions of Law." By the Findings of Fact and Conclusions of Law the USDC held that Compass is entitled to a judgment against the Debtor for \$8,567,309.05, plus post-judgment interest at the applicable statutory rates or as allowed under the law. The USDC further held that all of the Debtor's counterclaims were dismissed with prejudice, with the exception of the Debtor's claims for equitable subordination and the determination of the validity, extent, and priority of Compass's liens. These claims were dismissed by the USDC without prejudice "so that the bankruptcy court may consider these issues."

On June 4, 2012, the USDC entered its "Final Judgment" in the Adversary Lawsuit. On June 25, 2012, the USDC entered its "Order Awarding Attorneys' Fees & Costs." The Order Awarding Attorneys' Fees & Costs awarded Compass \$145,503.84 in attorneys' fees and costs against the Debtor, plus post-judgment interest at the applicable statutory rates or as allowed under the law.

On July 2, 2012, the Debtor filed its notice of appeal, thus initiating the Adversary Lawsuit Appeal. ~~The Adversary Lawsuit Appeal remains pending~~ On June 23, 2012, in anticipation of the compromise and settlement with Compass described below (the "Compass Settlement"), the Debtor filed its Unopposed Motion to Dismiss Appeal with the United States Court of Appeals for the Fifth Circuit. Also on June 23, 2012, the Debtor filed its Unopposed Motion to Voluntarily Dismiss Appeal in the USDC. By these filings, the Debtor sought to dismiss the Adversary Lawsuit Appeal.

6.07 The Debtor Withdraws its Claims Against Compass.

On June 18, 2012, the Debtor filed notices of withdrawing each of its objections to the Compass claims. On June 19, 2012, the Court entered an "Order Withdrawing Debtor's Objection to Compass Bank Claims," thereby withdrawing the Claim Objections without prejudice.

As of the filing of this Plan, the Debtor has no objection to Compass's claims on file.

6.08 Compromise and Settlement with Compass.

In exchange for Compass partially subordinating its Claim and the Debtor agreeing to support this Plan: (1) Compass's Claims shall be finally allowed, and the value of the underlying collateral shall be set, as set forth in this Plan without further objection from the Plan Agent, the Debtor, or any other party in interest; and (2) ~~within five Business Days of the Effective Date, the Debtor shall file with the USDC a notice of dismissal of~~ not seek to appeal the Adversary Lawsuit ~~Appeal with prejudice (the "Compass Settlement")~~ judgment in any forum.

The Compass Settlement is in the best interest of the Estate, given: (a) the probability of the Debtor's success in the Adversary Lawsuit Appeal; (b) the difficulties that may be encountered in collecting any judgment resulting from the Adversary Lawsuit Appeal; (c) the complexity of the Adversary Lawsuit Appeal, and the expense, inconvenience and delay necessarily attending the Adversary Lawsuit Appeal; and (d) the paramount interests of the Debtor and the Estate.

Notice of the Compass Settlement is hereby provided to all parties in interest pursuant to Bankruptcy Rule 9019(a). The Confirmation Order shall act as the Court's approval of the Compass Settlement.

## VII.

### **PROVISIONS REGARDING DISTRIBUTIONS**

#### 7.01 Date of Distributions.

The Plan Agent shall make Distributions with respect to Allowed Claims to the extent provided for herein or as ordered by the Court.

#### 7.02 Interest and Fees on Claims.

Except as set forth in a Final Order of the Court entered in the Chapter 11 Case, no holder of any Claim shall be entitled to interest or fees of any nature whatsoever accruing on or after the Petition Date on such Claim.

#### 7.03 Means of Payment.

All payments made pursuant to this Plan shall be in Cash and by any means reasonably selected by the Plan Agent, including check or wire transfer, and may include any endorsement or limitation as may be approved by the Plan Agent.

#### 7.04 Duties of Plan Agent.

The Plan Agent will have responsibility for sending Distributions to the appropriate holders of Claims. Notwithstanding any other provision of this Plan to the contrary, Distributions may be deferred or delayed in the discretion of the Plan Agent for a reasonable time in the event that such deferral is necessary to permit investments to reach maturity, in the event that additional time is needed to make a proper Distribution, or in the event that the receipt of additional funds is necessary to make meaningful payments. Distributions may be further deferred or delayed as to any Creditor that has not provided to the Plan Agent its Federal Tax Identification number or its Social Security number, as the case may be.

#### 7.05 Rounding.

Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

7.06 Unclaimed Property.

“Unclaimed Property” means any funds payable to holders of Allowed Claims which are unclaimed. Unclaimed Property shall include (a) checks (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address, (b) funds for checks which have not been presented and paid within 60 days of their issuance, and (c) checks (and the funds represented thereby) which were not mailed or delivered because of the absence of a proper address to mail or deliver such property. Unclaimed Property shall be held in an “Unpaid Claims Reserve” to be held for the benefit of the holders of Allowed Claims entitled thereto under the terms of the Plan. For a period of the later of 180 days following the first Distribution to a Class of Claims or 120 days after a Distribution is made to a claimant on account of which Unclaimed Property first results (said period being hereinafter referred to as the “Claiming Period”), Unclaimed Property shall be held in the Unpaid Claims Reserve solely for the benefit of the holders of Allowed Claims which have failed to claim such property. During the Claiming Period, Unclaimed Property due the holder of an Allowed Claim shall be released from the Unpaid Claims Reserve and delivered to such holder upon presentation of proper proof by such holder of its entitlement thereto. In the event that there is Unclaimed Property in the Unpaid Claims Reserve with regard to any Claim, the Plan Agent shall, until such Unclaimed Property is claimed or the Claiming Period with regard to the holder of such Claim has expired, make all subsequent Distributions due with regard to such Claim to the Unpaid Claims Reserve. After the Claiming Period with regard to such holder has expired, no subsequent Distributions shall be made on account of such Claim, and such Claim shall be treated as being disallowed, waived, and satisfied, and the Unclaimed Property shall be utilized by the Plan Agent in payment of Allowed Claims under this Plan. These provisions shall apply without regard to any applicable nonbankruptcy laws with respect to unclaimed property. The Unpaid Claims Reserve may be maintained as an interest bearing account; but no claimant shall be entitled to interest on the funds in the Unpaid Claims Reserve.

7.07 Taxes.

The Plan Agent shall deduct any federal or state withholding taxes from any Distributions made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code. The Plan Agent shall be authorized to seek a determination of the Estate’s tax liabilities, as contemplated by Section 505 of the Bankruptcy Code, and shall be authorized to negotiate, litigate, and settle any governmental audit with respect to taxes alleged due and payable by the Estate.

## VIII.

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

#### 8.01 Alternatives.

This Disclosure Statement is designed to provide information to the Creditors to assist them in forming a judgment as to whether to vote to accept or reject the Plan. A brief discussion of alternatives to the Plan may be useful in making this decision. The Debtor believes that the Plan is the best alternative. In arriving at this conclusion, the Plan Proponent has evaluated the various alternatives as follows:

(1) Alternative Plan. Other parties may propose alternative plans, but Compass is unable to predict whether any such alternative plans will provide a greater recovery for the Creditors than is proposed by its Plan, or whether such plans will be feasible.

(2) Dismissal of the Chapter 11 Case. Dismissal of the Chapter 11 Case would likely result in no payments to any Creditors, as the Class 4 and 5 Creditors would foreclose on their liens.

(3) Conversion of the Chapter 11 Case to a Chapter 7 Case. In the event that this Chapter 11 case is converted to a Chapter 7 case, the ultimate distribution to Creditors, other than the Class 2, 3 and 4 Creditors, would likely be minimal, due to (a) the Class 2, 3 and 4 Creditors likely would pursue the immediate foreclosure of their liens, (b) unsecured claims would total approximately \$7 million and (c) there would be an additional layer of administrative costs on the Estate, i.e., fees and expenses of the Chapter 7 Trustee, and professionals that would be employed by the Chapter 7 Trustee.

## IX.

### **VALUATION OF DEBTOR'S ASSETS AND LIABILITIES**

#### 9.01 Liquidation Analysis.

The purpose of a liquidation analysis, in the usual case, is to provide the holders of Claims with a means to compare the results under the Plan to the results for such parties if the Chapter 11 Case was converted to a case under Chapter 7 of the Bankruptcy Code, and the Debtor was then liquidated. Under § 1129(a)(7) of the Bankruptcy Code, to confirm the Plan, each holder of a Claim whose rights are impaired and who does not accept the Plan must receive or retain property of a value or under the Plan as of the Effective Date that is not less than the amount that such holder would retain or receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code as of such date. See INTRODUCTION, § 1.04 Requirements for Confirmation of Plan, supra. Because of the secured claims of Bank of the West, Capital Bank and Compass and the Ad Valorem Tax Claims, and because of the large amount of unsecured Claims in this case, which aggregate approximately \$7 million, in the opinion of Compass the assets available for

distribution to unsecured creditors in a Chapter 7 case would be significantly less than what will be paid to unsecured creditors under the Plan.

Compass has conducted a liquidation analyzing the estimated recoveries to creditors in a Chapter 7 case versus the estimated recoveries under the Plan (the "Liquidation Analysis"). A copy of the Liquidation Analysis is attached as Exhibit E to this Disclosure Statement. As set forth in the Liquidation Analysis, the analysis was conducted by Compass with the best information available to Compass at this time. While the Liquidation Analysis shows an estimated percentage of recovery to Unsecured Creditors under this Plan, Unsecured Creditors should be aware that this is an estimate and is subject to change and should review in full the disclaimers set forth on the face of the Liquidation Analysis.

## X.

### **FEDERAL INCOME TAX CONSEQUENCES**

#### 10.01 General.

The following discussion is not intended as a substitute for professional tax advice, including the evaluation of recently enacted and pending legislation, since recent changes in the federal income tax law and Bankruptcy Code are complex and lack authoritative interpretation. The brevity of the following discussion requires omission of matters which might affect one or more Creditors, depending upon their individual circumstances. **Accordingly, all Creditors are strongly urged to consult with their own tax advisors considering the federal, state and local tax consequences of the Plan.**

#### 10.02 Tax Consequences.

To the extent a Creditor receives or expects to receive less from the Debtor pursuant to the Plan than the Creditor's tax basis in the claim to which such amount relates, such Creditor may be permitted to claim a bad debt deduction. The amount and timing of such deduction will depend, among other things, upon the Creditor's tax accounting method for bad debts. It should be noted that if the debt is not business-related, the deduction may only be available if the debt is worthless. To the extent that a Creditor receives payment from the Debtor pursuant to the Plan in an amount in excess of the Creditor's adjusted tax basis in the claim to which the payment relates, such excess may be income to the Creditor.

## XI.

### **GENERAL PROVISIONS**

The Bankruptcy Court shall retain exclusive jurisdiction of the Chapter 11 Case after the Confirmation Date with respect to the following matters:

- (1) To classify, allow or disallow Claims and direct distribution of funds under the Plan and to hear and determine any controversies pertaining thereto.
- (2) To hear and determine any and all applications, adversary proceedings and other matters arising out of or related to the Plan.
- (3) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated.
- (4) To liquidate or estimate claims, damages or values or determine the manner and time for such liquidation or estimation.
- (5) To adjudicate all Claims to any interest and in any of the Debtor's property or any proceeds thereof.
- (6) To enter such orders as are necessary or appropriate to carry out the Plan.
- (7) To hear and determine matters concerning state, local and federal taxes pursuant to §§ 346, 505, 525 and 1146 of the Bankruptcy Code.
- (8) To hear and determine any dispute or matter relating to the Chapter 11 Case.

## XII.

### **SOLICITATION IN CONNECTION WITH THE PLAN**

Although this Disclosure Statement has attempted to provide information regarding the estate of the Debtor and the potential benefit that might accrue to the Creditors, this Disclosure Statement cannot guarantee the percentages of each Allowed Claim to be realized upon immediate liquidation or that will be received from the Plan if implemented because of the various factors described herein. Despite these uncertainties and risks described herein, Compass believes that the Plan is feasible and can provide each holder of a Claim against the Debtor with an opportunity to receive more than the benefits that would be received from liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. **COMPASS RESPECTFULLY SOLICITS YOUR VOTE IN FAVOR OF THE PLAN.**



**DATED:** August ~~15~~, 17, 2012.

Respectfully submitted,  
COMPASS BANK

By: /s/ Mike Lewis  
Mike Lewis  
Its Senior Vice-President, Special  
Assets Group

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