

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

THE WOODCREST CLUB, INC.,

Debtor.

Chapter 11  
Case No. 09-79481 (DTE)

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**DISCLOSURE STATEMENT WITH RESPECT TO  
PLAN OF ORDERLY LIQUIDATION OF THE WOODCREST CLUB, INC.  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE**

THIS DISCLOSURE STATEMENT IS THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE DEBTOR'S PLAN. NO OTHER REPRESENTATIONS CONCERNING THE DEBTOR, ITS OPERATIONS OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED BY THE DEBTOR OR THE BANKRUPTCY COURT.

BY ORDER OF THE COURT DATED \_\_\_\_\_, 2010, THIS DISCLOSURE STATEMENT WAS CONDITIONALLY APPROVED FOR DISTRIBUTION TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN THE DEBTOR.

THE COURT'S CONDITIONAL APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION OF THE MERITS OF THE PLAN, BUT IS ONLY A DETERMINATION THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" FROM WHICH CREDITORS MAY FORM AN OPINION AS TO THE MERITS OF THE PLAN.

ANY REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN YOUR ACCEPTANCE WHICH ARE OTHER THAN OR INCONSISTENT WITH THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION REGARDING THE PLAN AND SHOULD BE IMMEDIATELY REPORTED TO THE DEBTOR AND ITS COUNSEL.

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Dated: April 7, 2010

## **I. INTRODUCTION**

This is the disclosure statement (the "Disclosure Statement") of The Woodcrest Club, Inc. (the "Debtor"), the debtor and debtor in possession in the above-captioned chapter 11 case (the "Chapter 11 Case") pending before the United States Bankruptcy Court for the Eastern District of New York (the "Court"), filed in connection with the Debtor's Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, dated as of March \_\_, 2010 (the "Plan"), a copy of which is annexed to this Disclosure Statement as Exhibit "A."

### **A. Definitions and Exhibits**

1. Definitions. Unless otherwise defined herein, capitalized terms used in this Disclosure Statement shall have the meanings ascribed to such terms in the Plan.

2. Exhibits. All exhibits to this Disclosure Statement are incorporated as if fully set forth and are a part of this Disclosure Statement.

### **B. Notice to Creditors**

1. Summary of the Plan. The Plan provides for the auction sale of the Debtor's assets as approved by the Bankruptcy Court. The Debtor believes that the proceeds of the sale will provide the Debtor funds with which to (a) pay 100% of Allowed Unsecured Creditor Claims with interest from the Petition Date in accordance with the provisions of the Bankruptcy Code; and (b) establish a Disputed Claims Reserve with cash sufficient to pay the full amount of Disputed Claims. The Debtor also expects that its Bondholders will receive full payment as provided by their respective bonds. As there are no impaired creditor classes, there are no creditors voting on the Debtor's plan. The Debtor's Equity Holders will vote as provided in the Debtor's By-Laws to satisfy the dissolution requirements under Article 10 of New York Not For Profit Law.

2. Purpose of Disclosure Statement. The purpose of this Disclosure Statement is to set forth information that (i) summarizes the Plan and alternatives to the Plan, (ii) advises holders of Claims and Equity Interests of their rights under the Plan, (iii) assists creditors in making informed decisions with respect to the Plan, and (iv) assists the Court in determining whether the Plan complies with the provisions of chapter 11 of the Bankruptcy Code and should be confirmed. The Plan provides that Allowed Claims will be paid in full and are not entitled to vote on the Plan. Only Equity Holders will be asked to vote on the Plan.

By order dated \_\_\_\_\_ \_\_, 2010, the Court conditionally approved this Disclosure Statement for submission to the holders of claims against, or interests in, the Debtor. The Court has not passed on the merits of the Plan.

PLEASE READ THE DISCLOSURE STATEMENT, INCLUDING THE PLAN, IN ITS ENTIRETY. A COPY OF THE PLAN IS ANNEXED AS EXHIBIT "A." THE DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, FOR THE CONVENIENCE OF CREDITORS AND EQUITY INTEREST HOLDERS, BUT THE PLAN ITSELF QUALIFIES ALL SUCH SUMMARIES. ACCORDINGLY, IF THERE

EXISTS ANY INCONSISTENCY BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

### **C. Disclosure Statement Enclosures**

Accompanying the Disclosure Statement are the following enclosures:

1. Order Conditionally Approving Disclosure Statement and Notice and Fixing Date for Confirmation Hearing. A copy of the Court Order, dated \_\_\_\_\_, 2010, (i) approving the Disclosure Statement and fixing the date for the hearing on confirmation of the Plan; and (ii) fixing the date for filing and serving objections to confirmation of the Plan (the "Confirmation Scheduling Order").

### **D. Inquiries**

If you have any questions about the materials that you have received, please contact Silverman Acampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Telephone (516) 479-6300, Attn: Gerard R. Luckman, Esq., during normal business hours.

## **II. OVERVIEW OF DEBTOR'S OPERATIONS AND CHAPTER 11 CASE**

### **A. Debtor's Prepetition Business Operations**

Background. The Debtor is a non-profit member-owned country club operating an 18 hole golf course with a club house, swimming pool, employees' residence and maintenance/equipment buildings. The Debtor's real property consists of approximately 107 acres in the Village of Muttontown, New York. An area which is zoned for single family homes on 3 acre parcels.

In or about May, 2006 the Debtor entered into that certain Amended, Restated and Consolidated Mortgage Note (the "Mortgage") by and between the Debtor as Mortgagor and Time Insurance Company ("Time") as Mortgagee. The Debtor owes approximately \$6.5 million dollars under the Mortgage. Despite all of its equity in its assets, the Debtor found itself severely constrained for cash. Under the Mortgage, the Debtor is precluded from further encumbering the property or borrowing money other than ordinary trade credit. Further, if the Debtor were to refinance the property in order to allow it to draw from its substantial equity in the property, the Mortgage contains a prepayment penalty in the form of a "yield maintenance provision" which has the effect of adding a significant amount to be paid upon a refinancing or other early termination of the Mortgage. Consequently, the Debtor filed the Chapter 11 bankruptcy case so that it could incur additional obligations without causing the acceleration of the mortgage.

By letter dated November 10, 2009 (the "Letter of Intent"), the Debtor entered into a letter of intent with John Bennardo, a member of the club and former member of its board of directors, for the purpose of providing a framework under which Mr. Bennardo would, through a related entity, Legacy Capital Management, Inc.<sup>1</sup> ("Legacy"), manage the day to day operations of the club while the Debtor's bankruptcy

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<sup>1</sup> The Letter of Intent refers to the management company as Manageco. Subsequent to entering into the Letter of Intent, Bennardo formed Legacy for use as the contemplated management company entity.

case proceeds pending the approval by the Debtor's membership of a final management agreement.

Given the magnitude of the Debtor's obligations, the various immediate pressures of maintaining adequate cash flow and working capital to operate the Debtor's business with the greatly reduced dues revenue, the Debtor was constrained to obtain debtor-in-possession financing and offer its lender the protections available under the Bankruptcy Code. The Debtor hoped that this would afford it the ability to sustain operations until either the consummation of the Management Agreement which provides for continued financing, or if the Management Agreement is not approved, the sale of the Property to the highest and best bidder via a bankruptcy court authorized public auction. Initially, John Bennardo's company was the DIP Lender.

The Management Agreement was never finalized as negotiations between the Board of Governors and Legacy broke down. Thereafter, the debtor located a new DIP Lender in Chelsey Funding, LLC.

#### **B. The Ad Hoc Committee Action and the Push for a Sale**

Although the Debtor commenced its Chapter 11 case fully expecting to enter into the Management Agreement and sustain operations, there was a group of former and some current equity members who wanted the Debtor to sell its property. Most of the members of this ad hoc committee of equity members (the "Ad Hoc Committee") had already resigned from the club but, apparently, were concerned that the remaining members could eventually sell the property and profit from the sale. The Ad Hoc Committee advocated for an immediate sale of the property and petitioned the Court for a temporary restraining order ("TRO"). The Ad Hoc Committee sought to prevent the passage of time to the consummation of sale from prejudicing its members right to participate in a distribution of sale proceeds as equity members. In connection with the request for this relief the Ad Hoc Committee presented what it believed to be two offers for the purchase of the property as a stalking horse bidder. Each offer was purported to be an "all cash" deal in excess of \$18.0 million dollars. With regard to one of these statements of interest, the realtor failed to produce any financial information regarding the purchaser's ability to close the transaction. With regard to the other purported offer, the bidder negotiated a significantly lesser stalking horse offer and then did not fund the necessary deposit to be the stalking horse bidder.

In order to obtain the TRO, the Ad Hoc Committee commenced litigation against the Debtor asserting that the Board of Governors somehow deprived them of rights by not presenting the form of Management Agreement or the offers for the purchase of the property to the membership for consideration and vote prior to December 31, 2009. The Debtor opposed the request for the TRO and injunction stating that the Management Agreement was not in final form to be presented to the membership by the end of December and was still being negotiated. Further, the Debtor took the position that the clubs' charter was to operate as a golf club and that the Board of Governors was acting properly by pursuing a means to continue to operate rather than sell.

The tension of the litigation, coupled with the inability to reach an acceptable Management Agreement led the Debtor to determine to pursue the sale of the property. On January 21, 2010 the Debtor's Class A equity members, who, under

the Debtor's By-Laws had the ability to vote on certain dissolution resolutions, voted to pursue the sale of the club's assets. These members also approved resolutions to settle the litigation and allow the sharing of the sale proceeds with equity members in good standing as of October 1, 2009.

**C. The Requirement that the Plan Comply with New York Not For Profit Corporation Law**

The voluntary dissolution of a Not for Profit Corporation is achieved by having the Board of Governors adopt a plan of dissolution of the Corporation and distribution of the assets. This plan must implement any provision in the Certificate of Incorporation concerning the distributive rights of members (Not for Profit Corporation Law Section 1001). The Woodcrest Club was formed under the predecessor of the Not for Profit Corporation Law. According to the provisions of the Not for Profit Corporation Law, since Woodcrest Club was formed under the predecessor law it is deemed to be a type B not for profit corporation.

Section 1001(d) provides that the dissolution plan must contain a description with reasonable certainty of the assets of corporation, their fair value, the total amount of debts and liabilities and a statement as to whether any gifts or other assets are legally required to be used for a particular purpose. The Disclosure Statement describes the stalking horse bid, the amount of the obligations against the estate and the proposed distribution of sale proceeds.

Once the Board has adopted a plan of dissolution, the Board must submit the plan to a vote of the members. A vote of 2/3rds of the members is required (Section 1002). Section 1002 provides for alternative voting procedures in the case where the Club has no assets to distribute other than a reserve not to exceed \$25,000.00 for the purpose of paying ordinary necessary expenses of winding up its affairs and liabilities not in excess of \$10,000.00 at the time of the adoption of the plan of dissolution.

The Bylaws of the Woodcrest Club do not specify any greater number of members in order to vote. Article 6 of the Bylaws provides that the members entitled to vote are "Regular Members". Article 3 provides that the Regular Members are the adult Class A males and adult Class A females. Section 4 of Article 6 of the Bylaws provides that at membership meetings only Regular Members in good standing for the seven (7) days immediately preceding the meeting are entitled to vote.

According to Section 1002 in the absence of a court order to the contrary, notice of the meeting of the Board of Governors to vote on the plan of dissolution and of the members to vote on the plan of dissolution must be sent by certified mail return receipt requested to the last known address of record, not fewer than thirty (30), no more than sixty (60) days before the date of each meeting. The Debtor intends to present the Plan and disclosure statement to its members in accordance with Section 1002.

The approval of a Justice of the Supreme Court in the judicial district in which the office of the Corporation is located is required (Section 1002(d)). The approval of the Justice of the Supreme Court must be annexed to the plan of distribution. Application to the Supreme Court for an order for such approval shall be by verified petition with a plan of dissolution and certified copies of the consents annexed after ten (10) days written notice to the Attorney General accompanied by copies of such petition,

plans and consents. A copy of the plan certified under penalties of perjury shall be filed with Attorney General within ten (10) days after its authorization (Section 1002(d)). If the Liquidation Plan is approved by the members, the Debtor intends to present it for approval by a Justice of the Supreme Court.

Once court approval is obtained, and prior to filing the certificate of dissolution with the Department of State, the Corporation shall carry out its plan of distribution, pay its liabilities and distribute its assets within 270 days from the date the dissolution plan has been approved by the Supreme Court (Section 1002-a). Section 1002-a details the requirements involved in selling and distributing assets. The Debtor will either pay or reserve for payment of claims under the Plan within the required time frames.

The contents of the certificate of dissolution are set forth in Section 1003. However, the approval of the Attorney General's Office must be obtained before filing the certificate of dissolution with the Secretary of State. The application to the Attorney General for approval must include a final financial report showing the disposition of all the Corporation's assets and liabilities (Section 1003(c)). Notices to creditors and matters dealing with the filing and barring of claims are detailed in Section 1007.

#### **D. The Attempt to Identify a Stalking Horse Bidder and the Sales Process**

As previously noted, the Ad Hoc Committee was pushing for the Debtor to enter into a Stalking Horse Agreement for a sale of the Debtor's assets with one of the proposed purchaser's that it believed it had identified. The Debtor's voting members met on January 21, 2010 and passed the resolution to sell. The Debtor authorized counsel to negotiate with prospective buyers for the form and terms of a Stalking Horse Agreement. The Debtor also undertook to solicit proposals from various brokers and auctioneers to market and sell the property. A concern in soliciting these proposals was that the Debtor believed it would have a stalking horse bidder and therefore was reluctant pay a full commission to any retained broker on the price set by a stalking horse bidder. Eventually, the Board approved the Debtor's retention of David R. Maltz Co., Inc. as real estate broker and auctioneer to market and sell the property.

One of the purchasers proposed by the Ad Hoc Committee failed to respond to any request for information and was through a broker that was not retained by the Debtor. The other proposed bidder was more actively involved in making proposals to the club for the acquisition of the Debtors' assets. Accordingly, counsel attempted to negotiate terms for a stalking horse bid; including a deposit that would be required from this bidder. This bidder reduced the amount it was willing to propose as a stalking horse bid by \$3.5 million dollars from what was represented by the Ad Hoc Committee to be the offer. Ultimately, it was agreed with this bidder what the stalking horse bid should be. The bidder was to provide a 10% deposit in escrow with its counsel before the Asset Purchase Agreement could be signed. During the time within which the Debtor was waiting for this entity to put a deposit in escrow, the Debtor continued to negotiate with a new entity that wanted to be the stalking horse bidder. The Debtor believed that the requirements imposed by this new bidder regarding the bid terms and bidder protections would not be acceptable to the parties in interest in this case and were unlikely to be approved by the Court. The Debtor did not want to delay the sales process trying to get the provisions approved. Debtor's counsel attempted to negotiate

better bid terms with this new bidder so that it could move forward with a Stalking Horse Agreement. Having been unable to reach agreement on the bid terms and the marketing period for the sale, the Debtor elected to proceed with the sales process without a stalking horse bidder and preserved the right to continue to try to negotiate a stalking horse bid.

The Debtor believes there is a range of the possible sales prices for the proposed property. At minimum, the Debtor believes that the sale of its property will result in proceeds sufficient to pay the secured creditors, the cost of sale, any taxes imposed as a result of the gain on the sale of the property, all administrative expenses, priority claims and all general unsecured claims. The Debtor also believes that it is likely that the sales proceeds will be sufficient to pay the unsecured claims of the bondholders. If the auction is very successful and the sale price reached certain levels, the sale of the Debtor's assets could also yield a distribution to the Debtor's equity holders in accordance with the Debtor's By-Laws. A analysis with estimates of potential sale prices and creditor recoveries is attached hereto at **Exhibit "B"**.

### **III. OVERVIEW OF THE DEBTOR'S PLAN**

#### **A. General**

This section of the Disclosure Statement summarizes the Plan, which is annexed hereto as **Exhibit "A"**. This summary is qualified in its entirety by reference to the Plan. **YOU SHOULD READ THE PLAN IN ITS ENTIRETY BECAUSE IT AFFECTS YOUR RIGHTS AGAINST THE DEBTOR.**

In general, a chapter 11 plan of reorganization (i) divides claims and equity interests into separate classes, (ii) specifies the property that each class is to receive under the plan, and (iii) contains other provisions necessary to implement the plan. Under the Bankruptcy Code, "claims" and "equity interests" are classified rather than "creditors" and "members" because such entities may hold claims and equity interests in more than one class. Under section 1124 of the Bankruptcy Code, a class of claims is "impaired" under a plan unless the plan (a) leaves unaltered the legal, equitable and contractual rights of each holder of a claim in such class or (b) provides, among other things, for the cure of existing defaults and reinstatement of the maturity of claims in such class. Holders of Claims in Class 1 2, 3 and 4 under the Plan are unimpaired and therefore are not entitled to vote on the Plan. Holders of equity interests in Class 5 are also unimpaired but will get to vote on the Plan as a plan of dissolution to comply with the requirements of Article 10 of New York Not For Profit Corporation Law.

The Bankruptcy Code provides that unimpaired creditors are conclusively deemed to have accepted the Plan and, therefore, need not be solicited to vote to accept or reject the Plan.

Section 11.1 of the Plan sets forth the conditions precedent to the "effectiveness" of the Plan; the "Effective Date" of the Plan means the date on which each of the conditions precedent to the occurrence of the Effective Date of the Plan specified in section 11.1 of the Plan have been satisfied or waived in accordance with section 11.2 of the Plan.

## B. Treatment of Administrative Expense Claims and Priority Tax Claims

### 1. Administrative Expense Claims.

On the Effective Date, or as soon as thereafter as is reasonably practicable, each holder of an Allowed Administrative Expense Claim shall receive in full satisfaction thereof an amount in cash equal to the Allowed amount of such Claim. The Debtor estimates that Allowed Administrative Claims will be approximately \$150,000.

2. Priority Tax Claims. On the Effective Date, or as soon thereafter as is reasonably practicable, each holder of an Allowed Priority Tax Claim shall receive in full satisfaction thereof an amount in cash equal to the Allowed amount of such Claim. The Debtor believes that there are no Allowed Priority Tax Claims.

## C. Classification of Claims and Equity Interests

Equity Interests and Claims (other than Priority Tax Claims and Administrative Expense Claims) are classified for all purposes, including voting (unless otherwise specified), confirmation, and distribution pursuant to the Plan, as follows:

CLASS NUMBER AND DESCRIPTION	ESTIMATED AMOUNT OF ALLOWED CLAIMS IN CLASS	STATUS AND TREATMENT UNDER PLAN
Class 1 – Priority Non-Tax Claims	\$10,000	Not Impaired—Payment in full on Effective Date with interest
Class 2(a) – Time Insurance Company	(est.) \$6.5 million	Not Impaired- Payment in full of Allowed Claim at closing of sale of the Premises
Class 2(b) – DIP Lenders' Claims	\$700,000	Not Impaired- Payment in full of Allowed Claim at closing of sale of the Premises
Class 3 – General Unsecured Claims	(est.) \$1,500,000	Possibly Impaired – The Debtor expects the sale of the assets to yield funds sufficient for the payment of these Claims in full with interest as soon as practicable after the closing of the sale.

Class 4 – Bondholders Claims	2.0 million	Possibly Impaired – The Debtor expects the sale of the assets to yield funds sufficient for the payment of these Claims in full with interest as soon as practicable after the closing of the sale.
Class 5 – Equity Interests		Impaired – Equity Interests will be cancelled and holders thereof will receive a <u>pro rata</u> distribution of excess sales proceeds, if any, after satisfaction of all expenses of sale, taxes and creditor Claims as provided by Article XVI of the Debtor’s By laws.

**D. Provisions Governing Distributions**

1. Effective Date Payments. On the Effective Date or as soon thereafter as is reasonably practical and provided that it has already paid the DIP Lender’s claims and Time Insurance Company the full amount of its Allowed Claim and reserved for the payment of any tax liabilities, the Debtor shall (i) remit to holders of Allowed Administrative Expense Claims and Allowed Priority Claims an amount in cash equal to the Allowed amount of such Claims, or such lesser amounts as agreed to by such holders and, if the sale of the Debtor’s assets generates sufficient funds, pay; (ii) Allowed Unsecured Claims the Allowed amount of such Claims, with interest; (iii) holders of Allowed Bondholder Claims the full amount of such Allowed Claims; and (iv) remit to the Disputed Claims Reserve in respect of Disputed Unsecured Claims cash equal to the amount of such Disputed Unsecured Claims prior to paying the Bondholder Claims.

2. Subsequent Distributions. After the Effective Date, to the extent cash is available from (i) the Disputed Claims Reserve following the disallowance or reduction of Disputed Unsecured Claims, or (ii) undeliverable, time-barred or unclaimed distributions to holders of Allowed Unsecured Claims, such cash shall be returned to the Debtor. After the Effective Date, the Debtor shall distribute to the holders of Claims Allowed by a Final Order of the Bankruptcy Court after the Effective Date cash equal to the Allowed portion of such holder’s Allowed Claim, including interest thereon from the Commencement Date to the Effective Date, and shall retain cash equal to that portion of such holder’s Claim that is disallowed by a Final Order of the Bankruptcy Court.

3. Distributions of Cash. Any payment of cash made by the Debtor pursuant to the Plan may be made at the option of the Debtor either by check drawn on a domestic bank or by wire transfer from a domestic bank.

4. Delivery of Distributions and Undeliverable Distributions. Distributions to holders of Allowed Claims shall be made to the address of each such holder as set forth on the Schedules filed with the Bankruptcy Court, unless superseded by a new address as set forth (a) on a proof of claim filed by a holder of an Allowed Claim or (b) in another writing notifying the Debtor (at the address set forth in the Plan) of a change of address. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Debtor is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder, without interest. All Claims for undeliverable distributions shall be made on or before the earlier of (i) with respect to the initial distributions made on or after the Effective Date, one hundred and twenty (120) days after the date such undeliverable distribution was initially made, or (ii) with respect to the distributions made on a Subsequent Distribution Date, sixty (60) days after the date such undeliverable distribution was initially made.

5. Compliance with Tax Requirements. In connection with the Plan, to the extent applicable, the Debtor in making distributions under the Plan shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Debtor, may withhold the entire distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property withheld will then be paid by the Debtor to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six (6) months from the date of first notification to the holder of the need for such information or for the cash necessary to comply with any applicable withholding requirements, then the holder's distribution shall be treated as an undeliverable distribution in accordance with this Article.

6. Time Bar to Cash Payments. Checks issued by the Debtor in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date the check is mailed. Requests for reissuance of any check shall be made to the Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any claim in respect of a voided check shall be made on or before the earlier of (a) thirty (30) days after the expiration of the sixty (60) day period following the date of issuance of such check, and (b) the thirtieth (30th) day prior to a Subsequent Distribution Date.

7. Setoffs. The Debtor may, in accordance with section 553 of the Bankruptcy Code and applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, Debtor in Possession or Reorganized Debtor of any such claims, rights and causes of action that

the Debtor, Debtor in Possession or Reorganized Debtor may possess against such holder; and provided further, however, that any claims of the Debtor arising before the Commencement Date shall first be setoff against Claims against the Debtor arising before the Commencement Date.

8. Professional Fees and Expenses. Each professional person or firm retained by order of the Bankruptcy Court requesting compensation in the Chapter 11 Case pursuant to sections 330 or 503(b) of the Bankruptcy Code shall be required to file an application for an allowance of final compensation and reimbursement of expenses in the Chapter 11 Case incurred through the Confirmation Date on or before a date to be set by the Bankruptcy Court in the Confirmation Order, which shall be no later than sixty (60) days after the Confirmation Date. Objections to any such application shall be filed on or before a date to be set by the Bankruptcy Court in the Confirmation Order.

9. 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 instead occur on the next succeeding Business Day.

#### **E. Means for Implementation and Execution of the Plan**

1. Funding. The Debtor will pay Class 1 and 3 Claims, Administrative Claims and professional fees in cash as soon as practicable after the Effective Date with cash on hand from the closing of the sale of the Debtor's property.

Payments to be made to Time Insurance on account of its Class 2(a) Claim and the DIP Lenders on account of their Class 2(b) Claims will be made at the closing of the sale of the Debtor's real property.

2. Debtor's Post-Confirmation Role. On or before the Effective Date, the Debtor shall make the distributions and transfers from the Disputed Claims Reserve contemplated by the Plan. After the Effective Date, the Debtor shall administer the Disputed Claims Reserve. On and after the Effective Date, the Reorganized Debtor shall be solely responsible for filing any tax returns for, and for all other tax matters relating to, any of the Debtor or Reorganized Debtor.

3. Corporate Action. Upon the Effective Date, the Reorganized Debtor shall perform each of the actions required by the terms of the Plan, in the time period set forth in the Plan.

4. Effectuating Documents and Further Transactions. Each of the officers and Members of the Debtor is authorized and directed to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, including without limitation, the Plan Documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

5. Closing of the Chapter 11 Case. When all Disputed Claims filed against the Debtor have become Allowed Claims or have been disallowed by Final Order, and the Disputed Claims Reserve has been distributed in accordance with the

Plan, the Debtor shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**F. Procedures for Resolving and Treating Disputed Claims**

1. No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no cash or other property shall be distributed under the Plan on account of any Disputed Claim or Interest, unless and until such Claim or Interest becomes an Allowed Claim or Interest.

2. Resolution of Disputed Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Debtor shall have the right to the exclusion of all others (except as to applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code) to make and file objections to Claims and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than sixty (60) days after the Confirmation Date. From and after the Confirmation Date, all objections shall be litigated to a Final Order except to the extent the Debtor elects to withdraw any such objection or the Debtor and the claimant elect to compromise, settle or otherwise resolve any such objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without approval of the Bankruptcy Court.

3. Reserve Accounts for Disputed Claims. On and after the Effective Date, the Debtor shall hold in the Disputed Claims Reserve, (i) cash in an aggregate amount sufficient to pay to each holder of a Disputed Unsecured Claim the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date or any Subsequent Distribution Date and (ii) net earnings on such cash. All cash and earnings thereon shall be used to satisfy any expenses incurred in connection with the maintenance of the Disputed Claims Reserve, including taxes payable on such interest income, if any.

4. Investment of Disputed Claims Reserve. The Debtor shall be permitted, from time to time, in its sole discretion, to invest all or a portion of the cash in the Disputed Claims Reserve in United States Treasury Bills, interest-bearing certificates of deposit, tax exempt securities or investments permitted by section 345 of the Bankruptcy Code or otherwise authorized by the Bankruptcy Court, using prudent efforts to enhance the rates of interest earned on such cash without inordinate credit risk or interest rate risk.

5. Allowance of Disputed Claims. If, on or after the Effective Date, any Disputed Unsecured Claim becomes an Allowed Claim, the Debtor shall, on the fifteenth (15th) Business Day of the first month following the month in which the Claim becomes an Allowed Claim, distribute from the Disputed Claims Reserve to the holder of such Allowed Claim (x) (i) cash in an aggregate amount sufficient to pay to each holder of a Disputed Claim the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date and (ii) earnings on such cash, reduced by (y) an amount equal to such Claim's proportionate share of all expenses of the Disputed Claims Reserve, including without limitation, any

taxes imposed by any governmental unit with respect to income generated by or attributable to property held in the Disputed Claims Reserve and reasonable reserves.

6. Release of Funds from Disputed Claims Reserve. To the extent a Disputed Unsecured Claim is disallowed, the cash attributable to such Disallowed Claim will be distributed to the Debtor; provided, however, that the Debtor shall retain at all times until closing of the Disputed Claims Reserve at least \$10,000 cash from which the Debtor shall pay the costs and fees, if any, of administering the Disputed Claims Reserve.

7. Closing of the Disputed Claims Reserve. After the last Disputed Claim is resolved, whether by Final Order of the Bankruptcy Court or by stipulation between the Debtor and the holder of such Disputed Claim, the Debtor shall (i) distribute to the holder of Claims cash as provided by in Article 8.5 of the Plan, (ii) pay all remaining costs and fees, (iii) distribute all remaining cash to the Debtor's members as may be required and (iv) close the Disputed Claims Reserve.

#### **G. Treatment of Executory Contracts and Unexpired Leases**

1. Executory Contracts and Unexpired Leases. On the Confirmation Date, all executory contracts and unexpired leases that exist between the Debtor and any Person, whether or not previously listed by the Debtor on Schedule "G," of its Schedules shall be deemed rejected as of the Confirmation Date, except for any executory contract or unexpired lease (a) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date, or (b) as to which a motion for approval of the assumption or rejection of such contract or lease is pending on the Confirmation Date.

2. Approval of Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases assumed pursuant to the Plan.

#### **H. Releases Granted Pursuant to the Plan**

1. Release of Releasees by Debtor. As of the Effective Date, each of the Releasees shall be released by the Debtor from any and all claims (as defined in Section 101(5) of the Bankruptcy Code), obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtor is entitled to assert in its own right or on behalf of any holder of any Claim or Equity Interest or other Person, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or prior to the Effective Date.

2. Release of Released Parties. In consideration for the distributions received under the Plan all holders of Claims shall be deemed to have released and forever discharged: (a) the Debtor, Reorganized Debtor, the present and former members, officers, agents or employees, attorneys, advisors, successors and assigns of the foregoing, and (b) the Releasees, and any Person claimed to be liable derivatively through any of the foregoing (such parties described in the preceding clauses (a) and (b) above, collectively, the "Released Parties") of and from all debts, demands, actions,

causes of action, suits, accounts, covenants, contracts, agreements, promises, damages, claims and liabilities whatsoever, known or on known, arising from a Claim or based upon the same subject matter as a claim or Equity Interest and existing on the Confirmation Date or which thereafter could arise based on any fact, transaction, cause, matter or thing which occurred prior to the Confirmation Date. Subject to sections 524 and 1141 of the Bankruptcy Code, the releases described herein shall not preclude, police, federal tax, or regulatory agencies from fulfilling their statutory duties. Any Person accepting any distribution pursuant to the Plan shall be presumed conclusively to have released the Released Parties from any cause of action arising from or based on the same subject matter as the Claim or Interest. The release described in the preceding sentence shall be enforceable as a matter of contract. The releases described herein are in addition to, and not in lieu of, any other release separately given, conditionally or unconditionally, by the Debtor or Reorganized Debtor to any other Person.

#### **IV. Conditions Precedent to Effectiveness of the Plan**

1. Conditions Precedent to the Effective Date. The following are conditions precedent to the Effective Date of the Plan:

- (a) The Bankruptcy Court shall have entered the Confirmation Order, in form and substance satisfactory to the Debtor, on or before May 15, 2010;

- (b) No stay of the Confirmation Order shall then be in effect and the Confirmation Order is a Final Order;

- (c) The Debtor shall have received Court approval to close on the sale of its real property and closed on such sale and thereby have sufficient cash to fund the initial Plan payments provided under the Plan; and

- (d) All agreements and instruments contemplated by, or to be entered into pursuant to, the Plan and its provisions, including without limitation, the Plan Documents necessary for the effectuation of the Plan, shall have been duly and validly executed and delivered by the parties thereto and all conditions to their effectiveness shall have been satisfied or waived.

- (e) The Debtor's Plan providing for the dissolution of the Debtor shall have received the required approvals under the New York Not For Profit Corporation Law.

2. Waiver of Conditions. Notwithstanding the foregoing, the Debtor reserves the right to waive the occurrence of any of the foregoing conditions precedent. Any such waiver of a condition precedent hereof may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such

action. If the Debtor decides that one of the foregoing conditions cannot be satisfied and the occurrence of such condition is not waived, then the Debtor shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

**I. Effects of Confirmation**

1. Vesting of Assets in Reorganized Debtor. As of the Effective Date, the property of the Estate, other than the cash distributed pursuant to this Plan, shall vest in the Reorganized Debtor, free and clear of all Claims and interests.

2. Release of Assets. Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtor, its assets and property. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matter set forth in Article XIII of the Plan.

3. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and its successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

4. Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Case.

5. Rights of Action. Except as otherwise provided in the Plan, on and after the Effective Date, the Debtor will have the exclusive right to enforce any and all present or future rights, claims or causes of action against any Person and rights of the Debtor that arose before or after the Effective Date. The Debtor may pursue, abandon, settle or release any or all such rights of action, as it deems appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court. The Debtor may, in its sole discretion, offset any such claim held against a person against any payment due such person under the Plan; provided, however, that any claims of the Debtor arising before the Commencement Date shall first be offset against Claims against the Debtor arising before the Commencement Date.

6. Injunction. On and after the Confirmation Date, all Persons are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of or respecting any claim, debt, right or cause of action of the Debtor for which the Debtor retains sole and exclusive authority to pursue in accordance with the Plan.

**J. Retention of Jurisdiction.** The Bankruptcy Court shall retain jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine any motions for the assumption, assumption and assignment or rejection of executory contracts or unexpired leases, and the allowance of any Claims resulting therefrom;

- (b) To determine any and all pending adversary proceedings, applications, and contested matters;
- (c) To hear and determine any objection to any Claims;
- (d) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (e) To issue such orders in aid of execution of the Plan to the extent authorized by section 1142 of the Bankruptcy Code;
- (f) To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (g) To hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331, and 503(b) of the Bankruptcy Code;
- (h) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan;
- (i) To recover all assets of the Debtor and property of the Estate, wherever located;
- (j) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;
- (k) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Commencement Date through the closing of the Chapter 11 Case);
- (l) To hear any other matter consistent with the provisions of the Bankruptcy Code; and
- (m) To enter a final decree closing the Chapter 11 Case.

**K. Post-Confirmation Date Fees and Expenses.**

1. Fees and Expenses of Professionals. After the Confirmation Date, the Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of the professional persons employed by the Debtor in connection with the implementation and consummation of the Plan, the claims reconciliation process and any other matters as to which such professionals may be engaged. The fees and expenses of such professionals shall be paid within ten (10) Business Days after submission of a detailed invoice to the Debtor. If the Debtor disputes the reasonableness of any such invoice, it shall timely pay the undisputed portion of such invoice, and the Debtor or the affected

professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of such invoice.

2. Payment of Statutory Fees. All fees payable pursuant to 28 U.S.C. §1930, as determined by the Bankruptcy Court on the Confirmation Date, shall be paid on the Effective Date. Any statutory fees accruing after the Confirmation Date shall constitute Administrative Expense Claims and be paid by the Debtor in accordance with section 2.1 of the Plan.

**L. Modification of Plan.** The Debtor reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A holder of an Allowed Claim that is deemed to have accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder.

## **V. ALTERNATIVES TO THE PLAN**

The Plan reflects the efforts of Debtor's Board of Governors to market and sell the Debtor's assets. The Debtor has determined that the Plan is the most practical means of providing maximum recoveries to creditors. Alternatives to the Plan which have been considered and evaluated by the Debtor during the course of the Chapter 11 Case include (a) liquidation of the Debtor's assets under chapter 7 of the Bankruptcy Code, and (b) an alternative chapter 11 plan. The Debtor's thorough consideration of these alternatives to the Plan has led the Debtor to conclude that the Plan, in comparison, provides a more certain and greater recovery to creditors on a more expeditious timetable, and in a manner that minimizes certain inherent risks in any other course of action available to the Debtor.

**A. Liquidation Under Chapter 7 of the Bankruptcy Code.** If the Plan or any other chapter 11 plan for the Debtor cannot be confirmed under section 1129(a) of the Bankruptcy Code, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which case, a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. If a trustee is appointed and the remaining assets of the Debtor are liquidated under chapter 7 of the Bankruptcy Code, or the Premises is sold at an expedited auction, there can be no assurances that the Debtor would be able to attain the value of the Premises or a price that would permit a distribution to all Unsecured Creditors.

**B. Alternative Chapter 11 Plan.** If the Plan is not confirmed, the Debtor or any other party in interest may attempt to formulate an alternative chapter 11 plan which might provide for the liquidation of the Debtor's assets other than as provided in the Plan. The ability of the Debtor or any other party in interest to liquidate the Debtor's assets under a separate plan may run afoul of New York Not For Profit Law and such plan may be unconfirmable.

**C. Certain Risk Factors.** In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor believes that such action or inaction, as the case may be, will cause the Debtor to incur substantial expenses and otherwise serve only to prolong unnecessarily the Case and negatively affect the timing creditors' recoveries on their respective Claims.

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

The following discussion summarizes certain material federal income tax consequences of the implementation of the Plan to the Debtor and to certain holders of Unsecured Claims.

***Accordingly, the following summary of certain material federal income tax consequences has been provided for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of an Unsecured Claim. Each holder of an Unsecured Claim is urged to consult its own tax advisors for the federal, state, local and foreign income and other tax consequences applicable under the Plan.***

### **A. Gain or Loss.**

In general, each holder of an Allowed Unsecured Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such holder in satisfaction of its Claim (other than any Claim representing accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim representing accrued but unpaid interest). The "amount realized" by a holder of an Unsecured Claim will equal the sum of the cash, less any amount required to be treated as imputed interest in respect of any distributions received after the Effective Date.

Where gain or loss is recognized by a holder in respect of its Allowed Unsecured Claim, the character of such gain or loss (i.e., long-term or short-term capital, or ordinary) will be determined by a number of factors, including the tax status of the holder, whether the Claim in respect of which any property was received constituted a capital asset in the hands of the holder and how long it had been held, whether such Claim was originally issued at a discount or acquired at a market discount and whether and to what extent the holder had previously claimed a bad debt deduction in respect of such Claim. A holder that purchased its Claim from a prior holder at a market discount may be subject to the market discount rules of the Tax Code. Under those rules, assuming that the holder had not made an election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) would generally be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

### **B. Information Reporting and Withholding**

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding (including employment tax withholding). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable rate (currently 30%). Backup withholding generally applies if the holder (a) fails to furnish its social

security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

***The foregoing summary of certain material federal income tax consequences has been provided for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim. Each holder of a Claim is urged to consult its own tax advisors for the federal, state, local and foreign income and other tax consequences applicable under the Plan.***

## **VII. CONFIRMATION OF THE PLAN**

The Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan (i) is accepted by all impaired classes of Claims entitled to vote or, if rejected by an impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class and as to the impaired Classes of Claims and Equity Interests that are deemed to reject the Plan, (ii) is feasible, and (iii) is in the "best interests" of the holders of Claims and Equity Interests impaired under the Plan. As explained above, no Class of Claims is impaired under the Plan. No Class of creditors will be entitled to vote on the Plan.

### **A. Best Interests Test**

The Bankruptcy Code provides that the Plan will not be confirmed, regardless of whether or not anyone objects to Confirmation, unless the Bankruptcy Court finds that the Plan is in the "best interests" of all Classes of Claims and Equity Interests which are impaired. The "best interests" test will be satisfied by a finding of the Bankruptcy Court that either (i) all holders of impaired Claims or Equity Interests have accepted the Plan, or (ii) the Plan will provide such a holder that has not accepted the Plan with a recovery at least equal in value to the recovery such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

### **THE PLAN IS IN THE BEST INTERESTS OF EACH CLASS OF CLAIMS OR EQUITY INTERESTS WHICH IS IMPAIRED UNDER THE PLAN.**

### **B. Feasibility of the Plan**

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. Since the Plan contains conditions precedent to the confirmation and effectiveness of the Plan, the Bankruptcy Court will find that the Plan is feasible if it determines that the Debtor will be able to satisfy or obtain waivers with respect to such conditions precedent otherwise have sufficient funds to meet its post-Confirmation Date

obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case. The Debtor has the funds necessary to satisfy its obligations under the Plan and, therefore, the Debtor believes that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code.

### **C. Classification of Claims and Equity Interests Under the Plan**

The Debtor believe that the Plan meets the classification requirements of the Bankruptcy Code which requires that a chapter 11 plan place each claim or equity interest into a class with other claims or equity interests that are "substantially similar." The Plan establishes classes of Claims and Equity Interests as required by the Bankruptcy Code and summarized above. Administrative Expense Claims and Priority Tax Claims are not classified.

## **VII. CONCLUSION**

THE DEBTOR SUBMITS THAT THE DISCLOSURE STATEMENT AND THE PLAN COMPLY IN ALL RESPECTS WITH SECTIONS 1125 AND 1129 OF THE BANKRUPTCY CODE AND THAT THE DISCLOSURE STATEMENT SHOULD BE APPROVED.

Dated: Jericho, New York  
April 7, 2010

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