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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Biti, LLC,

Case No.: 12-74810-REG

Debtor

-----X

**THIRD AMENDED DISCLOSURE STATEMENT**

THIS THIRD AMENDED DISCLOSURE STATEMENT IS THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE FIRST AMENDED PLAN. NO OTHER REPRESENTATIONS CONCERNING THE DEBTOR, ITS OPERATIONS OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED BY THE DEBTOR.

THIS IS NOT A SOLICITATION FOR ACCEPTANCE OR REJECTION OF THE THIRD AMENDED PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION ON THE MERITS OF THE FIRST AMENDED 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.

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**I. INTRODUCTION**

On August 2, 2012 (the "Filing Date"), Biti, LLC (hereinafter, "Biti" or the "Debtor") filed a voluntary petition for reorganization pursuant to Chapter 11 of Title 11 of the United States Code (hereinafter "Bankruptcy Code"). The petition was filed in the United States Bankruptcy Court for the Eastern District of New York (the "Court"). By order of the Court dated September 27, 2012, the Court authorized the retention of Stagg, Terenzi, Confusione & Wabnik, LLP (hereinafter, "Debtor's Attorneys" or "Stagg Terenzi") as counsel to the Debtor. In addition, by order dated October 10, 2012, the Court authorized the retention of Fuller & Lowenberg & Co. CPAs PC as accountants to the Debtor. On August 29, 2012, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") in this case which consists of Rosenberg Calica Birney, Core Group Architects and Charles J. Voorhis. On September 11, 2012, the Court entered an order authorizing the retention of Rivkin Radler LLP as counsel to the Committee.

The Debtor presents this Third Amended Disclosure Statement (hereinafter, the "Statement") pursuant to §1125 of the Bankruptcy Code. The Statement is provided to all of the Debtor's known creditors and parties-in-interest in order to disclose that information deemed to be material, important and necessary for the Debtor's creditors to arrive at a reasonably informed decision in exercising their rights to vote on the Proponents' proposed third amended plan of reorganization dated March , 2013 (hereinafter, the "Plan"). A copy of the Plan accompanies this Statement and is annexed hereto as Exhibit "1".

Pursuant to §1125 of the Bankruptcy Code, after a hearing, and a notice to all creditors and other interested parties, the Proponents have obtained an order of the Court dated \_\_\_\_\_, 2013,

approving this Statement for submission to the holders of claims against, or interests in, the Debtor.

The Court has set the 29th day of April, 2013, as the date for a hearing on the confirmation of the Plan.

The purpose of this Statement is to inform all claim holders of information that may be deemed material, important and necessary in order for such claim holders to make an informed judgment about the Plan, and to vote for the acceptance or rejection of the Plan, where voting is necessary.

A class that is not impaired under the Plan and each holder of a claim of such class, are conclusively presumed to have accepted the Plan, and solicitation of acceptances with respect to such class from the holders of claims of such class is not required.

The approval by the Court of this Statement does not constitute a recommendation as to the merits of the Plan, only that it contains "adequate information" from which creditors may form an opinion as to the merits of the Plan. Each creditor should read the Statement and the Plan in their entirety.

The definitions and designations of terms, names and designations of persons, or entities, made in the Plan, apply to the Statement, and it is suggested that you refer to the Plan for such definitions and designations.

**II. HISTORY OF THE DEBTOR AND THE BANKRUPTCY FILING**

The Debtor is a New York limited liability company. On or about October 29, 2003, State Bank of Long Island ("SBLI") made a loan to Biti in the aggregate sum of \$6,500,000 evidenced by a Mortgage Note dated October 29, 2003, as amended, modified, restated or supplemented from

time to time (the "Mortgage Loan"). As collateral security for all sums due under the Note, Biti executed, acknowledged and delivered a Mortgage dated October 29, 2003 on the property located at 28-32 Skillman Street, Roslyn, New York (the "Property"). As further security for the Mortgage Loan, the individuals who constituted the members of Biti ("Members") gave their personal guarantees of the Mortgage Loan.

Biti used the proceeds of the Mortgage Loan, along with capital contribution by the Members, to acquire the Property with the intent to develop a luxury condominium development consisting of a minimum of 78 luxury condominiums (the "Project"). Incident to moving the Project forward, Biti was required to obtain various approvals and permits from the Village of Roslyn (the "Village"). Unfortunately, numerous disputes arose with the Village resulting in the cessation of any progress on the Project for over 6 years and ultimately resulting in Biti filing a lawsuit in February 2009 against the Village.

During the protracted and contentious dispute and ensuing litigation with the Village, Biti, mainly through contributions by Members of their own funds, whether through loans or capital contributions, continued to timely make the required monthly debt service payments under the Mortgage Loan to SBLI as well as paying the real estate taxes and other carrying charges relating to the Project as they came due, despite the fact that Biti was not generating any income. As a consequence of the debt service and other required expenditures, including contribution to the acquisition costs, the Members have contributed nearly Twelve Million Dollars (\$12,000,000) of their own funds to the Project.

After 6 years of dispute and 2 years of litigation with the Village, sometime in the early spring of 2011 the Village, led by a new administration, approached Biti with a settlement proposal. Biti informed SBLI of the Village's overtures toward settlement. After SBLI was

informed of the overtures by the Village, Biti and SBLI had a meeting to discuss the status and strategy going forward on the Project. In May 2011, Biti met with representatives of SBLI to discuss the Village's settlement proposal and to collaborate on a strategy going forward.

Biti determined that once a settlement with the Village was finalized, Biti would require a minimum of an additional \$2,000,000 in funding to obtain the necessary permits from the Village to begin construction on the Property. The obtaining of the permits is a critical step in any major land development. It is upon the obtaining of the permits that the project becomes saleable and financeable. Upon obtaining permits the value of the project greatly increases, it becomes saleable as a viable and vital project and construction financing can be obtained. Biti believed that it had a multi-million dollar lawsuit against the Village based on the Village's unlawful obstruction of the Project. SBLI encouraged Biti to accept the Village's settlement in order to move ahead with the Project which all agreed would provide sufficient revenue to pay back the Mortgage Loan and provide Biti with a healthy profit. In order to encourage Biti to settle with the Village, SBLI promised to further extend the Mortgage Loan, both in duration and to add the additional sums needed to bring the Project to permits.

Consistent with its promise, SBLI issued a Term Sheet dated July 19, 2011 regarding the additional funding (the "SBLI Term Sheet"). The Term Sheet provided for the extension of the Mortgage Loan and an additional \$1,500,000 of funding. Biti was told the remainder of the funds needed would be extended when it was close to the issuance of permits.

In reliance on the promises of SBLI and the SBLI Term Sheet, Biti accepted the Village's offer and the litigation was settled on or about July 21, 2011 (the "Village Stipulation"). Under the Village Stipulation, the Village granted certain approvals for the Project and set forth requirements for the granting of permits and further committed to act without delay on any

building plans submitted by Biti.

During the period that the Village Stipulation was being finalized, in connection with the promise of additional funding as detailed in the SBLI Term Sheet, SBLI, at Biti's expense, conducted an appraisal of the Property resulting in an appraisal dated September 7, 2011, which determined the value of the Property, as is, to be in excess of \$14,000,000 (the "Appraisal").

Thereafter, in the fall of 2011, Biti contacted SBLI in order to set a closing on the additional funding promised by SBLI. However, after conducting the Appraisal, SBLI became unresponsive to Biti's efforts to move the loan process along. Eventually, toward the end of 2011, Biti was informed that SBLI would decline to lend Biti the additional funds. No explanation was given for the abrupt change of position by SBLI.

Soon thereafter, on or about January 1, 2012, SBLI merged into Valley National Bank ("Valley National"). Valley National is the successor by merger to SBLI (SBLI and Valley National together referred to herein as the "Bank").

Despite SBLI's representations to Biti and its obligations to move forward under the SBLI Term Sheet, the Bank refused to lend Biti the additional funds. All efforts by Biti to communicate and to open a dialogue with the Bank were ignored and Biti's demand that the Bank honor the SBLI Term Sheet was rejected. Frustrated by the Bank's breach of its agreement and failure to perform, coupled with the Bank's lack of response to attempts to engage them in dialogue, Biti stopped making the monthly payments due under the Note. Thereafter Valley National declared the Loan in default.

It should be noted that from the inception of the loan until the payments were stopped at the end of 2011 due to the Bank's failure to fund, a period of nearly 8 years, all payments on the debt service and taxes through the first half of 2011, were paid on time from contributions from the



Members despite the fact that Biti had no income during that 8 year period.

The Bank finally agreed to a meeting in early June 2012 at which time Biti proposed that the Bank honor the SBLI Term Sheet, subordinate to allow alternate financing, every dime of which would be used to enhance the position of the Bank by paying real estate taxes and getting to permits which would enhance the value of their collateral which already exceed their debt by about 100%; or agree to be taken out at a discount. The Bank eventually responded by rejecting all proposals, demanding payment and serving a summons and complaint for foreclosure.

By complaint dated June 5, 2012, Valley National commenced a foreclosure action against Biti and its principals in the Supreme Court, County of Nassau entitled Valley National Bank v. Biti, LLC, Nicholas Cassis, Tina Cassis, John J. Quinn, William S. Cohn, The Christopher Companies at Roslyn, LLC, and T&B Roslyn LLC bearing index No.: 7670/2012 (the “State Foreclosure Action”).

In addition to the Mortgage Loan, SBLI made two separate loans to Members of Biti. One was made in or about 2007 and renewed yearly with the last renewal dated June 1 2011, to William S. Cohn and Nicholas Cassis (each of whom are Members of Biti who had given their individual guarantee of the Mortgage Loan) consisting of two separate notes (one in the amount of \$1,000,000 and the other in the amount of \$999,986.10) together totaling \$2,000,000 (the “Cassis & Cohn Loan”). This loan was secured by two certificates of deposit each in the amount of \$500,000 for a total of \$1,000,000 in collateral. The other was a loan made in or about 2007 and renewed yearly, with the last renewal dated June 1, 2011, in the original amount of \$2,000,000 to Nicholas Cassis and his wife Tina Cassis (the “Cassis & Cassis Loan”). Again each of these individuals were Members who had given their individual guarantee of the Mortgage Loan. Collectively the Cassis & Cohn Loan and the Cassis & Cassis Loan are hereinafter referred to as the “Principals’ Loans.”

The proceeds of the Principals' Loans were used primarily to pay the debt service, taxes and other expenses of Biti while the issues with the Village were continuing and no income was being generated by Biti.

The Principals' Loans were interest only and all payments were made timely for the life of the loans. The Cassis & Cassis Loan was actually paid down by over \$1,600,000 from funds which became available to Cassis through other projects, leaving less than \$400,000 outstanding on that loan.

Despite the fact that the payments on the Principals' Loans were timely made without failure, Valley National called a default on the Principals' Loans due to a cross default provision and citing the default wrongfully called on the Biti Loan. Upon the default, Valley National, executed on the \$1,000,000, plus accrued interest, in CDs pledged for the Cassis & Cohn Loan thereby lowering the outstanding balance to \$887,276. On June 5, 2012, Valley National commenced two additional actions on the Principals' Loans, based on a cross default provision relating back to the default called on the Biti Mortgage Loan.

In addition to bringing the above described actions, Valley National contacted the Firm of Forcelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, at which William Cohn, one of the principals of Biti was a named partner. That firm did a fair amount of work for Valley National and informed them that if William Cohn continued to be a part of the firm they would pull all their work from the firm, this despite the fact that Cohn did not work on Valley National matters nor did he ever default on a personal obligation with the Bank. As a result, Mr. Cohn was asked to leave the firm and the name was changed to Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana.

Counter claims were asserted in both the Foreclosure action and the actions on the Principals' Loans alleging lender liability as well as torts for the interference with Cohn's

employment with the Forchelli Firm.

As a result of the actions by the Bank and the Bank's failure to engage in discussion, and despite having significant equity and a valuable project, Biti was compelled to seek bankruptcy protection and on August 2, 2012 (the "Petition Date"), Biti filed a voluntary petition for relief under Chapter 11 of the United State Bankruptcy Code.

Soon after filing Biti filed an action against the Bank alleging lender liability for the wrongful acts, including failure to abide by the terms of the SBLI Term Sheet.

Biti's stated intention from the commencement of the Bankruptcy was to obtain financing to take the Project to permits. As stated above a development project greatly increases in value and becomes saleable and financeable when at the permit stage. Given the Bank's appraisal from just over a year ago which valued the project at \$14MM before the permits, the value after permits is estimated to be approximately \$20MM. Accordingly, the plan for reorganization of the Debtor has been to get the financing to take the Project to permits, at which time it would pay all creditors in full by, either, selling the project, refinancing by way of construction loans, or bringing in a new equity partner with new cash infusion.

Biti believes that it will be able to obtain permits within 18 months of funding of the new financing requested herein. Biti's Plan, based on the financing sought therein, will provide for the payment of all creditors no later than two years after the Effective Date of the Plan. The creditors will be paid from refinancing, a sale of the project, or funding by a new equity investor, all of which will be viable possibilities upon the procurement of permits for the project.

### **III. EXIT FINANCING**

Pursuant to the Plan and Sections 105(a) and 364 of Title 11 of the United States Code §§

101 *et seq.* (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtor seeks authorization to obtain secured postpetition financing with superpriority status, in the form of a loan (the “Financing” or “Loan”) in an aggregate principal amount of \$3,500,000 pursuant to a Term Sheet, a copy of which is attached hereto as Exhibit “A”, by and between Biti as borrower and Bridge Funding Inc. (“Bridge Funding”) as lender dated December 19, 2012 (the “Term Sheet”) which contemplates that Biti will grant Bridge Funding a first position security interest in substantially all of its assets and the proceeds thereof. The Term Sheet provides that Bridge Funding’s final approval to provide the Loan is subject to the negotiation, execution and delivery of a definitive loan and security agreements, mortgage, notes, and other documentation upon confirmation of the Plan.

The loan proceeds would be utilized in accordance with a budget (the “Budget”), a copy of which is attached thereto as Exhibit “B”. The Financing is expected to close within 29 days of the confirmation order approving the Financing becoming a final order (the “Funding Date”). Upon the closing of the Financing, the proceeds therefrom shall constitute the “Funding Pool” which shall be used to fund the Plan as detailed below.

The following is a concise statement that summarizes the elements of the Loan:

|                                   |  |
|-----------------------------------|--|
| <b>REVOLVING CREDIT FACILITY:</b> | up to \$3,500,000.00   |
| <b>BORROWERS:</b>                 | BITI LLC   |
| <b>GUARANTORS:</b>                | Nicholas Cassis, John J. Quinn, and William Cohn   |
| <b>USE OF PROCEEDS:</b>           | to bring Project to permits and keep current with interest, taxes, insurance and professional fees.  |
| <b>INTEREST:</b>                  | Wall Street Journal Prime Rate plus nine and three quarters percent (9.75%), floating and reset on the first day of each month. The minimum interest rate will be 13%. Interest will be calculated on a 360 day year and actual number of days elapsed in each |

calendar month.

**MATURITY DATE:**

The term of the Loan shall expire on the first business day 18 months from the 1<sup>st</sup> of the month following the closing date. The loan is renewable for 12 months after the payment of a \$105,000 fee.

**SUPERPRIORITY CLAIM:**

Subject only to the Carve-Outs, amounts due under the Loan will be secured by a lien on all assets of the Borrowers (now or hereafter acquired and all proceeds thereof) pursuant to Section 364(d)(1) of the Bankruptcy Code. All obligations under the Loan shall constitute senior lien with priority under Section 364(d)(1) of the Bankruptcy Code.

**COLLATERAL:**

A first senior super priority lien on and security interest in and a perfected first priority mortgage upon 12 acres of vacant real property located at Skillman Street & Old Northern Blvd., Roslyn, New York.

**CARVE OUT:**

In accordance with the Budget, interest, taxes, insurance, and professional fees will be paid from the loan proceeds.

**FEES AND COSTS:**

\$10,000 was advanced by the Debtor's principals for application fee, good faith deposit and due diligence fee. An additional \$130,000 is due at closing as well as any fees incurred by BFI for BFI's attorneys' fees, costs and expenses for due diligence and appraisal, if necessary.

**3.1 Biti's Attempts to Obtain Financing**

Biti has sought sources of financing from the time of the filing in August of 2012. Biti has exhausted all possible avenues in attempting to obtain financing. First Biti attempted to obtain financing from traditional banks, including TD Bank, Astoria Federal Bank, Empire Bank, and M&T Bank. Biti also tried to obtain financing from its current lender, Valley National Bank. However, these attempts were unsuccessful.

Biti also spoke with numerous brokers and nontraditional lenders including G4 Capital Lenders LLC, ASM Capital and Paramount Realty USA to name a few. However, after hours of negotiations, and responding to due diligence requests, none of these entities could offer term as favorable as Bridge Funding.

Entry into the Loan is an exercise of Biti's sound business judgment that warrants approval by the Court. Biti is in dire need of cash to refinance its loan with Valley National and to administer this Chapter 11 case. The Loan will provide Biti with up to \$3,500,000.00, an amount that Biti has determined, in accordance with the Budget, will be sufficient to improve the Property sufficient to obtain the necessary permits to then either develop or sell the Property and to keep current with interest owed to Valley National as well as taxes, insurance and professional fees.

### **3.2 The Loan is in Bit's Best Interest**

The Court is expected to authorize Biti to enter in the Loan with BFI as an exercise of Biti's sound business judgment.

Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its reasonable business judgment in obtaining such credit. *See In re YL W. 87<sup>th</sup> Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor] reasonable business judgment to be exercised so long as

the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”)

In addition, Section 105(a) of the Bankruptcy Code grants courts authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §105(a). This provision is “the basis for the broad exercise of power [by the Court] in the administration of the bankruptcy case.” *In re Flores*, 291 B.R. 44, 54 (Bankr. S.D.N.Y. 2003).

Entry into the Loan is an exercise of Biti’s sound business judgment that’s warrants approval by the Court. Biti is in dire need of cash to refinance its loan with Valley National and to administer this Chapter 11 case. The Loan will provide Biti with up to \$3,500,000.00, an amount that Biti has determined, in accordance with the Budget, will be sufficient to improve the Property sufficient to obtain the necessary permits to then either develop or sell the Property and to keep current with interest owed to Valley National as well as taxes, insurance and professional fees.

### **3.3 Biti Should be Authorized to Obtain Financing on A Secured and Superpriority Basis**

Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis. Specifically, Section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the [Bankruptcy Code];
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. §364(c).

To satisfy the requirements of Section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative basis. Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4<sup>th</sup> Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Id. When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require the [debtor] to conduct an exhaustive search for financing. In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff sub nom.*, Anchor Savs. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

Biti’s lack of revenue precludes it from obtaining credit on an unsecured or administrative basis. BFI has refused to provide Biti with postpetition financing on terms other than a secured and superpriority basis. In order to obtain the benefits to be provided under the Term Sheet, therefore, Biti must be allowed to provide BFI with the liens and security interests described above, securing Biti’s repayment obligations under the Loan, as provided in Section 364(c)(2) of the Bankruptcy Code, as well as to grant those repayment obligations superpriority administrative expense status as provided in Section 364(c) of the Bankruptcy Code.

### **3.4 The Court Should Declare that Bridge Funding Is a Good Faith Lender Under Section 364(e)**

Section 364(e) of the Bankruptcy Code protects a good faith lender’s right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal.



Specifically, Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed while pending appeal.

The Term Sheet is the result of Biti's reasonable and informed determination that BFI offered Biti the most favorable terms available on which to obtain needed postpetition financing, and of extended arm's-length good faith negotiations between Biti and BFI. BFI is not an "affiliate" or "insider" of Biti and, upon information and belief, has acted in good faith at all times. Biti was advised throughout these negotiations by its professional. The terms and conditions of the Term Sheet are fair and reasonable, and the proceeds of the Loan will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Plan requests the make a finding that BFI is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that section

#### IV. CLAIMS

**In accordance with Bankruptcy Rule 3003(c)(3), the Court fixed November 30, 2012 (the "Bar Date") as the last day by which creditors would be permitted to file claims in the Debtor's Chapter 11 case.** Pursuant to Bankruptcy Rule 3003(c)(2), any creditor whose claim had not been scheduled by the Debtor or was scheduled as disputed, contingent or unliquidated and has failed to file a proof of claim on or before the Bar Date is deemed not to be a creditor with respect to such claim for purposes of voting on and receiving a distribution under the Plan.

Pursuant to the Debtor's Schedules, the Debtor estimates that the total amount of claims against the Debtor as of the Filing Date was secured debt in the approximate amount of \$6,800,000.00, unsecured priority debt in the approximate amount of \$789,694.89, and general unsecured debt in the approximate amount of \$5,601,374.97. Of the unsecured debt Bit estimates that approximately \$600,000 would be considered trade debt or debt to wholly unrelated parties. Any proof of claims which were filed against the Debtor were already reflected in the Debtor's Schedules.

**V. THE PLAN OF REORGANIZATION**

THIS PART PRESENTS ONLY A SUMMARY OF THE PLAN OF REORGANIZATION AND SHOULD NOT BE RELIED UPON FOR VOTING PURPOSES. CREDITORS ARE URGED TO READ THE PLAN IN FULL. CREDITORS ARE FURTHER URGED TO CONSULT WITH COUNSEL OR WITH EACH OTHER IN ORDER TO DETERMINE WHETHER TO VOTE FOR OR AGAINST THE PLAN.

On or about December 19, 2012, the Debtor entered into the Term Sheet with Bridge Funding to obtain secured postpetition financing with superpriority status in the amount up to \$3,500,000.00. Biti's stated intention from the commencement of the Bankruptcy was to obtain financing to take the Project to permits. A development project greatly increases in value and becomes saleable and financeable when at the Permit stage. Given the Bank's appraisal from just over a year ago which valued the project at \$14,000,000 before the permits, the value after permits is estimated to be approximately \$20,000,000. Accordingly, the plan for reorganization of the Debtor has been to get the financing to take the Project to permits, at which time the Debtor would

pay all creditors in full by, either, selling the project, refinancing by way of construction loans, or bringing in a new equity partner with new cash infusion.

The Financing sought to be approved under the Plan consist of a line up to \$3,500,000. (the "Funding Pool"). The Funding Pool will be used to pay for: the cost of the Financed funds, including funding costs and interest on a monthly basis; interest on the pre-petition Secured debt of the Bank at the contractually agreed rate that was in place before the default called by the Bank; the payment of all real estate tax arrearages; the payment of real estate taxes as they come due; all costs of acquiring the permits which include engineering, architectural and other professional costs as well as any municipal fees and costs; and the funding of administrative costs incurred by the Debtor.

The Debtor anticipates funding the Distribution Fund with the proceeds of either the sale of or refinancing of its Property or funding by a new equity investor. If, however, the Property has not been sold or a commitment for refinancing has not been received by the Debtor or a closing with respect to any of these events has not been scheduled by the date which is twenty-two (22) months from the Effective Date then the Property shall be scheduled for a foreclosure sale by Valley National Bank for a date which is no later than two years after the Effective Date. The net proceeds of any foreclosure sale shall be deposited into the Distribution Fund and shall be available to pay Class 4 Creditors.

The Debtor believes that the Plan will provide all holders of claims against the Debtor with a greater recovery than would be available if all of the assets and interests of the Debtor were liquidated in a proceeding under Chapter 7 of the Bankruptcy Code and distributed by a Chapter 7 Trustee in accordance with the statutory scheme and priorities contained in the Bankruptcy Code. In such event, given the additional Chapter 7 administrative cost at the discount inherent in any

duress sale in bankruptcy, the Debtor believes there would be insufficient assets available to pay all General Unsecured Claims in full (see liquidation analysis below).

### **5.1 Classification of Claims**

A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that the Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and has not been paid, released or otherwise satisfied prior to the Confirmation Date.

The term "Impaired" as used below shall have the same meaning it has pursuant to Section 1124 of the Bankruptcy Code. Thus, a Class of Claims is impaired under the Debtor's Plan, unless with respect to each and every Claim in the Class, the holder of such Claim receives, on the Effective Date of the Plan, the total allowed amount of such Claim in cash.

#### **5.1(a) Unclassified Claims/Administrative Claims**

Administrative Expense Claims are not classified under the Plan. Administrative Expenses are claims against the Debtor for any costs or expenses of the Chapter 11 case allowed under §503(b) and §507(a)(1) of the Bankruptcy Code, including all actual and necessary expenses of preservation of the Debtor's estate, Court fees and expenses, and allowances of compensation for professionals retained by Order of the Court.

The Debtor estimates that the amount of all Allowed Administrative Expense claims total approximately \$150,000, comprised of fees due to professionals for services rendered during the Chapter 11 case. The Debtor believes that all post-petition taxes have been paid. All Allowed Administrative Expense Claims for pre-confirmation services shall be paid in full, in cash on the later of 10 days after the Funding Date from the Funding Pool, or the date any such Claim becomes an Allowed Claim, which with respect to professional fees is when the fees are approved by court order, or at such other date and upon such other terms as may be agreed upon by the holder of the Allowed Administrative Expense Claim and the Debtor or upon such other date as may be ordered by the Court. Fees for post-confirmation services shall be paid by the Reorganized Debtor in the ordinary course of business. The estimated professional fees outstanding to date are as follows:

Stagg, Terenzi, Confusione & Wabnik, LLP, counsel for the Debtor - \$100,000.00

Fuller & Lowenberg, accountant to the Debtor - \$0

Rivkin Radler LLP, counsel to the Committee - \$50,000

The Plan provides that except as provided below, requests for payment of Administrative Claims that accrued after the Bar Date must be filed and served on the Debtor's Attorneys not later than 30 days after Confirmation, with objections to such claims to be served on or before the Distribution Date. Further, provided however, that Administrative Expenses representing liabilities incurred in the ordinary course of business by the Debtor shall be paid by the Debtor in accordance with the terms and conditions of its arrangements with a particular creditor, and in accordance with ordinary business terms. The Administrative Claims of Professional Persons retained pursuant to order of the Bankruptcy Court are subject to Court approval after notice and a hearing. Such Professionals need not file a Claim.

**5.1(b) Classified Claims**

The Plan provides for the division of claims into separate classes as follows:

**5.1(b)(i) Class 1- Secured Claim of Valley National Bank**

Class 1 Secured Claim of Valley National Bank is a claim against the Debtor secured by a mortgage lien against Property of the Debtor.

The Debtor's Schedules list the secured claim of Valley National as of the Petition Date in the amount of \$6,500,000.00. Valley National Bank has filed a secured claim in the amount of \$6,806,851.99. The Allowed Class 1 Secured Claim of Valley National is impaired under the Plan. Valley National shall retain its mortgage lien on and in the Property, subordinate to the lien of Bridge Funding, to the extent of its claim and to the extent of such liens until the sale thereof pursuant to the Plan. The Class One claim of Valley National shall be paid interest on the Mortgage Loan from the Funding Pool in accordance with the pre-default contractual arrangement with the Bank, which provided for the Payment of 4% interest and accrual of 2.5%. The Secured Claim of Valley National shall be satisfied by paying Valley National from the Distribution Fund the full amount of the Debt as more fully described in the Forebearance Agreement which is attached hereto as Exhibit "A", in Cash on the earlier of (i) the Distribution Date or (ii) the date of the closing of the sale of such property as set forth in the Plan and as more fully described in the Forebearance Agreement. Upon such payment, the lien securing such Secured Claim shall be satisfied and discharged and the holder of such Secured Claim shall execute and deliver to the Debtor such instruments as are necessary to discharge such lien of record.

**5.1(b)(ii) Class 2 Secured Claim of N&P Engineers & Land Surveyor, PLLC**

Class 2 Secured Claim of N&P Engineers & Land Surveyor, PLLC is a claim against the Debtor secured by a lien, as that term is defined in Section 101(37) of the Bankruptcy Code, against any property of the Debtor, but only to the extent of the "value", as determined by the Bankruptcy Court pursuant to Section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012 or as otherwise agreed to, of such creditor's interest in the Estate's interest in such property.

The Debtor's Schedules list the secured claim of N&P Engineers as a general unsecured claim as of the Petition Date in the amount of \$310,895.95. N&P Engineers has filed a secured claim in the amount of \$310,895.95 based upon it filing a mechanic's lien against the Property. The Allowed Class 2 Secured Claim of N&P Engineers National is impaired under the Plan and is thus entitled to vote thereunder. N&P Engineers shall retain all liens on and in the Property to the extent of its claim and to the extent of such liens until the sale thereof pursuant to the Plan. The Secured Claim of N&P Engineers shall be satisfied by paying N&P Engineers from the Distribution Fund the full amount of the Allowed Secured Claim of N&P Engineers plus interest at the contract rate from the Filing Date until the Distribution Date, in Cash on the earlier of (i) the Distribution Date or (ii) the date of the closing of the sale of such Property. Upon such payment, the lien securing such Secured Claim shall be satisfied and discharged and the holder of such Secured Claim shall execute and deliver to the Debtor such instruments as are necessary to discharge such lien of record.

**5.1 (b)(iii) Class 3 Priority Claims**

Class 3 Priority Claims under the Plan consist of the claims of the governmental taxing authorities including the Incorporated Village of Roslyn and the Receiver of Taxes. The Debtor's Schedules lists unsecured priority claims as of the Petition Date in the amount of \$789,694.89.

Class 3 Priority Claims are unimpaired under the Plan. Unless otherwise agreed by the Debtor and such Claimant, each holder of a Class 3 Allowed Priority Claim shall be paid in cash, in full, from the Funding Pool on the later of 10 days after the Funding Date or the date any such Claim becomes an Allowed Claim, or on such other date and upon such other terms as may be agreed upon by the holder of the Allowed Priority Claim and the Debtor.

**5.1(b)(iv) Class 4 – Non-Insider Unsecured Claims**

Class 4 consists of all Claims of Unsecured Non-Priority Creditors of the Debtor who are not insiders of the Debtor. The Debtor's Schedules list non-priority Non-Insider General Unsecured Claims aggregating approximately \$681,593.72 which includes the Secured Claim of N&P Engineers which has been classified in Class 2 above and the contingent, unliquidated and disputed claim of Stop & Shop for \$54,848.46 which did not file a proof of claim. Therefore, the resulting total Non-Insider General Unsecured Claims is approximately 565,849.31. Any proof of claims which were filed are already reflected in the Debtor's Schedules.

Class 4 Claimants are impaired under the Plan and are thus entitled to vote thereunder. Each holder of an Allowed Unsecured Claim shall be paid in cash, in full, on the Distribution Date, together with interest at the contract rate if one exists but in no event less than six percent (6%) per annum from the Filing Date until the Distribution Date, on the Distribution Date from the Distribution Fund.



**5.1(b)(v) Class 5 – Insider Unsecured Claims**

Class 5 consists of all of the Claims of Unsecured Non-Priority Insider Creditors of the Debtor all of whom are insiders, as that term is defined by §101(31) of the Bankruptcy Code (“Insiders”). The Debtor and its principals represent that the . non-priority Insider General Unsecured Claims aggregate no more than approximately \$4,919,781.20. The Debtor and its principals represent that any and all Unsecured Non-Priority Insider Claims held against the Debtor are as follows:

Americo Magalhaes (\$1,265,000.00),  
 Bill Cohn (\$6,000.00),  
 Cen Family Roslyn LLC (\$624,000.00),  
 Jay Quinn (\$145,781.35), NTEC, LLC (\$975,000.00),  
 TIBI Contracting Corp (\$800,000.00),  
 The Christopher Companies (\$854,000.00), and  
 Cue Realty Profit Sharing (\$250,000.00).

Class 5 Claims shall be subordinate to all other creditors and shall agree to subordinate pursuant to the terms of a written Subordination Agreement, annexed hereto as Exhibit “B”. The Debtor and its equity interest holders hereby represent and warrant that there are no other Unsecured Non-Priority Insider Claims than those set in this Section 3.2(e), and understand and agree that the Bankruptcy Court, The Office of the U.S. Trustee, the Debtor’s creditors, and all parties in interest are relying on this representation, including, in the case of Class 4 Non-Insider Unsecured Claimants, in determining whether to cast a vote to accept or reject the Plan.

Class 5 Claimants are impaired under the Plan and are thus entitled to vote thereunder. Each holder of an Allowed Insider Unsecured Claim shall be paid in their pro rata share subject to

any contractual agreement between the parties, or as agreed upon by the Debtor and the Claimant in Class 5, of the funds remaining in the Distribution Fund after all other creditors are paid in full on the Distribution Date..

**5.1(b)(vi) Class 6 - Equity Interests**

Class 6 is designated as the "Equity Interests" and consists of the interest of the members of Debtor. Class 6 shall receive no cash distribution. Interests of the members of the Debtor and other insiders, all of which are set forth below, shall be subordinated to all other creditors. On and after the Effective Date, the equity interests in the Debtor shall continue to be held by

Americo Magalhaes  
123 South Street  
Oyster Bay, NY 11771  
10%

Cen Family Roslyn LLC  
123 South Street  
Suite 201/204  
Oyster Bay, NY 11771  
5%

Robert Antonucci  
123 South Street  
Suite 201-204  
Oyster Bay, NY 11771  
8.5%

T & B, LLC  
123 South Street  
Suite 201-204  
Oyster Bay, NY 11771  
41.5%

The Christopher Companies at Roslyn, LLC  
102 Duck Pond Road  
Glen Cove, NY 11542  
35% interest

The Debtor and its equity interest holders hereby represent and warrant that there are no other Class 6 Equity Interest Holders other than those set in this Section 3.2(f), and understand and agree that the Bankruptcy Court, The Office of the U.S. Trustee, the Debtor's creditors, and all parties in interest are relying on this representation, including, in the case of Class 4 Non-Insider Unsecured Claimants, in determining whether to cast a vote to accept or reject the Plan. The legal, equitable, and contractual rights to which the shareholders were entitled to prior to the Petition Date shall continue unaffected after the Confirmation Date, except as set forth in the Subordination Agreement annexed hereto as Exhibit "B".

## **5.2 Payment of Allowed Claims**

Payment is to be made only to those holders of Allowed Claims of the various Classes on the Distribution Date. The Plan provides that the Debtor may pre-pay all or part of any class of Claims without penalty.

### **5.2(a) Objection to Claims**

The Debtor may file objections to claims of record in order to correct erroneous or duplicative amounts, or for any other reason that in its business judgment would be appropriate, provided that as to Class 4, such objections are filed prior to the deadline for creditors to cast their votes on the Plan.

(i) **General Procedures**: Unless another date is provided for in this Plan or the Bankruptcy Court, on or before the fortieth (40<sup>th</sup>) day after the Confirmation Date, the Debtor may file with the Bankruptcy Court objections to Claims, including objections to the amount and classification thereof, except Class 4 Claims and those Claims previously allowed by a Final Order, and shall serve a copy of such objection upon the holder of the Claim to which such

objection pertains. The resolution of any such objection shall be governed by the Bankruptcy Code, the Bankruptcy Rules and such provisions as may be established by the Bankruptcy Court, or by the procedural rules of the Court in which such objection is to be litigated. Any Claim as to which an objection is not timely filed in accordance with the provisions of the Plan or orders of the Bankruptcy Court and to which the Debtor's time to interpose objection has expired, shall be an Allowed Claim, except that any Claim scheduled as disputed to which no proof of claim has been filed shall be deemed and is expunged. Notwithstanding anything contained in this Plan to the contrary, the Debtor may bring a motion for the estimation of any claim that it believes reserving for would be impracticable except for Class 4 claims.

(ii) **Prosecution of Objections**: Unless otherwise ordered by the Bankruptcy Court, the Person objecting to a Claim shall litigate to judgment, settle or withdraw the objection.

**5.2(b) Setoffs**

The Debtor shall have the right to setoff against any payment to be made pursuant to the Plan to a Claimant, claims of any nature whatsoever that the Debtor may have or has had, against the holder of such claim including, but not limited to, judgments obtained pursuant to sections 547 and 548 of the Bankruptcy Code, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claim that it may have or has had against any such Claimant.

**5.2(c) Unclaimed Cash**

(i) In the event that any Claimant fails to claim any distribution within three months from the date of such distribution, by failing to present such distribution check for payment to Stagg Terenzi or the Debtor's bank as applicable, such Claimant shall forfeit all rights thereto, and

thereafter the distribution formerly available to the Claimant shall be returned to the Reorganized Debtor, and such Claimant shall have no further rights to share in any subsequent distributions which may be made.

(ii) For purposes of mailing distribution checks, the Debtor may rely on the addresses for holders of Allowed Claims as set forth in the Schedules unless superseded by the address for such holders set forth in the proofs of Claims filed by creditors with the Bankruptcy Court. If no proofs of Claim are filed and Schedules filed by the Debtor fail to furnish valid addresses for holders of Allowed Claims, such Allowed Claims shall be deemed unclaimed property pursuant to Section 347(b) of the Bankruptcy Code at the expiration of the later of (a) six months from the entry of the Confirmation Order and (b) three months after an initial distribution is made to that Creditor.

**5.2(d) Disputed Claims Reserve**

**5.2(d)(i) Disputed Claims Reserve in General**

A reserve for Disputed Claims shall be established as detailed below. The amount of this reserve shall be equal to the amount of each Disputed Claim that the holder of such Disputed Claim would be entitled to receive if the Disputed Claim were an Allowed Claim; provided however, in the event the Debtor determines that a Disputed Claim or Claims is or are overstated to such a degree that reserving in full therefor would be prejudicial to other creditors and/or the Debtor, the Debtor may request that the Bankruptcy Court estimate said Disputed Claim or Claims, in which case the reserve for said Claim or Claims shall be based upon the amount so estimated.

**5.2(d)(ii) Resolution of Disputed Claims**

The Plan provides that no distribution shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim. Cash held in the Disputed Claims reserve shall be distributed to the holder of a Disputed Claim if and when, and to the extent that, such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. The holder of a Disputed Claim shall receive on account of its Allowed Claim cash in an amount equal to the full amount of the required distribution to such Claim holder as provided under the Plan once such claim becomes an Allowed Claim.

If any Disputed Claim is disallowed, in whole or in part, then the amount reserved in the Disputed Claims Reserve relating to the disallowed portion of such Disputed Claim shall be distributed in accordance with the terms of the Plan.

**5.2(e) Fee Applications by Professionals**

An application for Professional Fees for services rendered by professionals retained by both the Debtor and the Committee in connection with the Reorganization Case and the Plan up to and including the Confirmation Date shall be filed with the Bankruptcy Court on or before thirty (30) days after the Confirmation Date and shall be paid in accordance with the Plan or as otherwise ordered by the Court.

Upon the Effective Date, the Committee shall disband and shall not serve as a Committee post-confirmation. Accordingly, the Committee's Professional's retention shall be terminated at that time. However, if the Debtor defaults under the Plan, then counsel to BFI and counsel to Valley National Bank shall give notice of such default to the Committee members and to the Committee's current counsel, Rivkin Radler. Upon receipt of such notice, if the members

choose to reconvene the Committee, the Committee may retain Rivkin Radler without further order of the Court, to act on its behalf and such expenses shall be paid from the Distribution Fund and the Funding Pool.

All Professional Fees and Post-Confirmation Expenses for services rendered by the Debtor's professionals in connection with the Reorganization Case and the Plan incurred after the Confirmation Date shall be paid directly by the Reorganized Debtor, in the ordinary course as provided herein:

(a) a written invoice or statement accompanied by supporting time records and an itemization of charges shall be submitted to the Debtor. Upon receipt of such invoice, the Debtor shall after thirty (30) days to make payment on account thereof unless a written objection thereto is received. The objection shall be served by the Debtor on said professional and if the objection is not resolved by the parties then said professional shall promptly seek a hearing before the Bankruptcy Court for the payment of such invoice.

### **5.3 Conditions to the Effective Date**

In order for the Plan to be deemed effective the following events must occur:

- (i) entry of a Confirmation Order which includes which includes approval for the Debtor to obtain financing from Bridge Funding on a superpriority basis; and;
- (ii) the Confirmation Order becoming a Final Order.

**5.4 Period Prior to Effective Date**

During the period between the Confirmation and Distribution Dates, the Debtor shall continue to exercise ownership and control of all Assets and Property of its Estate.

**5.5 Consummation of Plan**

Debtor anticipates that the Plan will be substantially consummated upon the Effective Date and that the Debtor's bankruptcy proceeding shall be closed as soon as practicable thereafter.

**5.6 Distribution Fund**

Upon either the sale of or refinancing of the Debtor's Property as contemplated by the Plan, including any foreclosure sale, the Debtor shall transfer the proceeds of to Stagg Terenzi, to be deposited into an account to be known as the Distribution Fund, for payment of Allowed Claims as provided in Article III above. As to any Claim that has not become an Allowed Claim, the dollar amount of any distributions to which Disputed Claim Holders would be entitled under the Plan on the Distribution Date and such later dates as provided under the Plan, shall be reserved in the Distribution Fund, as if these Disputed Claims were Allowed Claims on that date, and shall thereafter be reduced by the amount reserved for each Disputed Claim, upon entry of a Final Order Allowing or expunging each such Disputed Claim.

**5.7 Vesting of Assets in Post-Confirmation Debtor**

As of the Confirmation Date, pursuant to the provisions of Section 1141(b) and (c) of the Bankruptcy Code, all property, Assets and effects of the Debtor shall vest in the Reorganized Debtor free and clear of all Claims and Interests except as otherwise expressly provided in the



Plan. In addition, the Distribution Fund shall be free and clear of all Claims and Interests. Any excess cash in the Distribution Fund not required for distributions under the Plan shall be returned to the Reorganized Debtor.

#### **5.8 Confirmation Order**

The Confirmation Order shall constitute a judicial determination that each term and provision of the Plan, is valid and enforceable pursuant to its terms. If any provisions of the Plan are prohibited by the Bankruptcy Code, the Debtor reserves the right to sever such provisions from the Plan, and to request that the Plan, as so modified, be confirmed.

#### **5.9 Assumption and/or Rejection of Executory Contracts**

Subject to the provisions of this Paragraph, all executory contracts and unexpired leases not otherwise assumed by the Debtor, or otherwise designated to be assumed by the Debtor in writing prior to Confirmation and not terminated by their own terms, shall be deemed rejected under the Plan. Notwithstanding the afore-referenced, under the Plan no executory contract or unexpired lease shall be deemed assumed unless the Debtor has cured any defaults thereunder prior to the Distribution Date, and absent such cure, any such respective executory contract or unexpired lease shall be and is deemed rejected. Any Allowed Claims arising out of the rejection of an executory contract shall be treated as a Class 4 Non-Insider Unsecured Claim. **Each entity that is a party to an executory contract that is rejected will be entitled to file, not later than 30 days after the Confirmation Date, a proof of claim for damages alleged to arise from the rejection of such executory contract.** Objections to any such claim(s) shall be filed by the Debtor not later than 90 days after the filing of such claim(s) and the Bankruptcy Court shall

determine any such objection. With respect to any executory contracts or unexpired leases that were previously assumed, the Debtor will continue to make monthly payments as required by such contracts in the ordinary course of business. In addition, any lien on respective equipment or property subject to an Assumed Executory Contract, shall continue to the same extent and priority as presently existing, unaffected by Confirmation.

#### **5.10 Binding Effect/Injunction**

Except as otherwise expressly provided in this Plan and in the provisions of the Bankruptcy Code and the Bankruptcy Rules, on and after the Effective Date, the terms of this Plan shall bind all holders of Claims, Interests and Administrative Expenses. Except as set forth herein or in the Confirmation Order, on and after the Distribution Date all Persons or Entities who have held, hold or may hold Claims or Administrative Expenses against the Debtor are permanently enjoined and precluded from asserting, commencing, or continuing in any manner any actions or from asserting any lien against the Debtor and its respective agents, officers, directors, shareholders, advisors, attorneys, and representatives (the "Released Parties") and against any of such parties' respective assets or properties, with respect to any debt, Claim or interest including any guarantee by any of the Released Parties based upon any document, instrument or act, omission, transaction or other activity of any kind or nature arising out of, based upon, or in any way related to the conduct, actions and transactions of the Debtor through the Confirmation Date. A standstill with respect to any actions against the Released Parties shall be in effect until the Distribution Date.

**5.11 Exculpation**

Upon the Distribution Date, neither the Debtor nor any of their shareholder, officers, directors, employees, agents, or professionals (as applicable) shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, or arising out of, the Chapter 11 Case, the Confirmation of the Plan, the Consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan.

**5.12 Waiver of Claims and Causes of Action for the Estate**

After review of the Debtor's relevant books and records, the Debtor has determined that it will not commence any causes of action pursuant to (i) Sections 502, 542, 544, 545, 546, 550 and 553 of the Bankruptcy Code; (ii) any preference claims pursuant to Section 547 of the Bankruptcy Code; (iii) any fraudulent transfer claims pursuant to Section 548 of the Bankruptcy Code; or (iv) any claims relating to post-petition transactions pursuant to Section 549 of the Bankruptcy Code, and that it has waived any such claims

**5.13 Miscellaneous**

**5.14(a) Satisfaction of Section 1129 (a)(12) of the Bankruptcy Code**

All fees payable under 28 U.S.C. §1930, as determined by the Bankruptcy Court at the hearing on Confirmation of this Plan, shall be paid on the Effective Date. Prior to entry of a final decree, any such fees that accrue post-confirmation shall be paid by the Reorganized Debtor. The Debtor will continue to file operating reports until such time as a final decree is issued.

**5.14(b) Modification of the Plan**

Under the Plan, the Proponents reserve their right to propose amendments or modifications to the Plan at any time prior to the date of the entry of the Confirmation Order, except as otherwise provided in the Plan. After the date of the Confirmation Order, the Debtor may, without approval of the Bankruptcy Court, remedy any defects or omissions or reconcile any inconsistencies in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and intent of the Plan so long as it does not materially or adversely affect Claimants.

**VI. MECHANICS OF HOW THE PLAN MAY BE ACCEPTED OR REJECTED**

This Disclosure Statement has been approved by order of the Bankruptcy Court dated \_\_\_\_\_, 2013 as containing information of a kind and in sufficient detail that will enable holders of Claims to make an informed decision about the Plan. Accordingly, this Disclosure Statement is being used in connection with the solicitation of acceptances of the Plan from those Classes entitled to vote on confirmation.

In order for the Plan to be confirmed, various statutory conditions prescribed by the Bankruptcy Code must be satisfied, including (a) acceptance of the Plan by at least one impaired Class entitled to vote on the Plan, (b) provision for payment or distribution under the Plan to each Creditor of money and/or other property at least equal in value to what that Creditor would have received in a Chapter 7 liquidation of the Debtor, (c) a finding by the Bankruptcy Court that the Plan is feasible, and (d) with respect to each Class, either acceptance by that Class or a finding by the Bankruptcy Court that the Plan is "fair and equitable" and does not "discriminate unfairly" against that Class.

## 6.1 Who May Vote

Only Classes that are impaired under the Plan are entitled to vote on acceptance or rejection of the Plan. Generally, Section 1124 of the Bankruptcy Code provides that a class of claims or interests is considered impaired unless the allowed amount of class is paid in full upon consummation of the plan or a plan does not alter the legal, equitable, and contractual rights of the holder of the claim or interest. In addition, these classes are impaired unless all outstanding defaults, other than defaults relating to the insolvency or financial condition of a debtor or the commencement of a Chapter 11 case, have been cured and the holders of claims or interests in these classes have been compensated for any damages incurred as a result of any reasonable reliance on any contractual provisions or applicable law to demand accelerated payment.

Classes 1, 2 and 3 are unimpaired under the Plan and the holders of such Claims are presumed to have accepted the Plan under Section 1126 of the Bankruptcy Code. Accordingly, the Debtor is not required to solicit votes of such Class with respect to the acceptance or rejection of the Plan. The Claims of Creditors in Class 4 and 5 are impaired by the Plan, and therefore the holders of such Class are entitled to vote to accept or reject the Plan. The Claims of the Equity Interests in Class 4 are insiders as that term is defined in the Bankruptcy Code, and as such will not vote on the Plan. Thus, only the holders of claims in Classes 4 and 5 are entitled to vote to accept or reject the Plan.

A Creditor is entitled to vote only if (a) either (i) its Claim has been scheduled by the Debtor as not disputed, contingent or unliquidated or (ii) it has filed a proof of claim on or before the Bar Date established by the Bankruptcy Court and (b) no objection to such Claim is pending.

**ANY HOLDER OF A CLAIM AS TO WHICH AN OBJECTION IS PENDING IS NOT ENTITLED TO VOTE IN RESPECT OF SUCH CLAIM UNLESS THE CREDITOR HAS**

OBTAINED AN ORDER OF THE BANKRUPTCY COURT TEMPORARILY ALLOWING THE CLAIM FOR THE PURPOSE OF VOTING ON THE PLAN. A CREDITOR'S VOTE MAY BE DISREGARDED IF THE BANKRUPTCY COURT DETERMINES THAT SUCH ACCEPTANCE OR REJECTION WAS NOT SOLICITED OR PROCURED IN ACCORDANCE WITH THE PROVISIONS OF THE BANKRUPTCY CODE.

**6.2 Voting Procedures**

**6.2(a) Solicitation Period**

In order to be counted, a ballot must be RECEIVED at the following address no later than 5:00 P.M., Eastern Standard time, on April 19, 2013:

Stagg, Terenzi, Confusione & Wabnik, LLP  
Attorneys for Debtor  
401 Franklin Avenue  
Garden City, New York 11530  
Attn.: Ronald M. Terenzi, Esq.

**6.2(b) Ballots**

A ballot is enclosed herewith for each holder of a Claim eligible to vote on the Plan, which will serve as the ballot for indicating acceptance or rejection of the Plan pursuant to the requirements of Sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rule 3018(c).

**6.3 Confirmation of the Plan**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

**6.3(a) Confirmation Hearing**

Section 1128 of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. The Bankruptcy Court has scheduled the confirmation hearing for April 29, 2013 at 1:30p.m. in Courtroom 860, located at the United States Bankruptcy Court for the Eastern District of New York, 290 Federal Plaza, Central Islip, New York 11722 (the "Confirmation Hearing"). Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan, regardless of whether such party is entitled to vote.

**6.3(b) Objections to Confirmation**

The Bankruptcy Court has directed that, on or before 5:00 p.m. on April 19, 2013, any objections to the Plan are required to be in writing and filed with the Bankruptcy Court, and a copy served upon the United States Trustee and the respective counsel for the Debtor and the Committee. The Bankruptcy Court will schedule a hearing to consider objections to confirmation of the Plan. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Hearing or any adjourned hearing. While the Debtor anticipates that any hearing to consider objections to the confirmation of the Plan will be held in conjunction with the Confirmation Hearing, there can be no assurance that such will be the case.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. **IF AN OBJECTION TO CONFIRMATION IS NOT TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**6.3(c) Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129(b) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court may enter an order confirming the Plan. These requirements include the following:

**6.3(c)(i) Best Interests Test**

Confirmation of the Plan requires that with respect to each impaired Class of Creditors, each holder of an Allowed Claim in such Class has either accepted the Plan or will receive under the Plan property of a value, as of the Effective Date, that is not less than the amount the holder would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. In the instant case, the Plan passes the best interests test since all creditors will be receiving 100% of their allowed claim on the Effective Date. Moreover, it is the Debtor's belief that liquidation of the Debtor's assets under Chapter 7 of the Bankruptcy Code would result in an unnecessary added administrative cost given the fees due to a trustee under Chapter 7 of the Bankruptcy Code, which must be paid before any other unsecured or priority Claim under the Bankruptcy Code.

**6.3(c)(ii) Feasibility of the Plan**

In order for the Plan to be confirmed, the Bankruptcy Court must determine that it is feasible; i.e., that as a practical matter, there are sufficient resources to meet the obligations under the Plan on a timely basis.

In this regard, as stated above, the funds necessary to effectuate the Plan will be derived from the sale of the Debtor's properties.



**6.3(c)(iii) Acceptance by Impaired Classes**

Section 1129(a)(8) of the Bankruptcy Code generally requires that each impaired Class must accept the Plan by the requisite votes for confirmation to occur. A Class of impaired creditors will have accepted the Plan if at least two-thirds in amount and more than one-half in number of Allowed Claims actually voting in the Class have accepted it. It is anticipated that all impaired Classes entitled to vote (Class 3) will accept the Plan.

**6.3(c)(iv) Cramdown**

Even though the Plan has not been accepted by all impaired classes the Plan may nevertheless be confirmed by the Bankruptcy Court pursuant to its "cramdown" powers under Section 1129(b) of the Bankruptcy Code if (i) the Plan is accepted by at least one impaired class and the Plan meets all of the other requirements of Section 1129(a) of the Bankruptcy Code; (ii) the Plan does not discriminate unfairly; and (iii) the Plan is fair and equitable to the rejecting Classes. The Bankruptcy Court must determine at the Confirmation hearing whether the Plan is fair and equitable and does not discriminate unfairly against any impaired dissenting Class of Claims. A plan will not discriminate unfairly if no class receives more than it is legally entitled to receive for its Claims and Interests. The meaning of the phrase "fair and equitable" is different when applied to secured claims and unsecured claims.

With respect to a Secured Claim, "fair and equitable" as applicable herein requires that any such Claim Holder retains their respective lien and receives present value interest on account of any deferred payout, equal to the Allowed amount of such Claim. With respect to an Unsecured Claim, "fair and equitable" means either (i) an impaired unsecured creditor receives 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 a plan unless such junior Claim or Interest makes a contribution of sufficient new value under the Plan.

If Claimants do not vote in numbers and amounts sufficient to accept the Plan as proposed, the Debtor will nonetheless seek Confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code. To the extent an unsecured class of creditors does not accept the Plan by the requisite votes, the Debtor's exclusive right to confirm the Plan will immediately be terminated, any objecting claimant(s) will be given an opportunity to submit a competing plan of reorganization or liquidation, and the Court shall thereafter consider the Plan and any competing plan at an adjourned hearing on Confirmation. At such time the Court will determine whether, as follows: (i) all of the requirements of Section 1129(a) of the Bankruptcy Code have been met; (ii) a class of creditors is receiving more than it is legally entitled for its respective Claims and (iii) the contribution of new value to be proposed by the Debtor's principals and other consideration given, constitutes necessary and sufficient monies and/or monies worth to confirm the case (and, if applicable, whether a dissenting secured class of creditors has retained their respective lien(s) in the Debtor's Assets and is receiving present value interest on account of any deferred payouts equal to the Allowed Amount of such Claim(s)). The Debtor believes that in a cram down confirmation, the Plan satisfies the foregoing requirements.

## **VII. TAX CONSEQUENCES OF THE PLAN**

Given both the complexity of federal, state local and foreign tax laws and the interplay between those tax laws and the Bankruptcy Code, each holder of a Claim should consult with its own tax advisor as to the specific tax consequences to such holder of the confirmation and implementation of the Plan, including the application and effect of federal, state, local and foreign

tax laws. The Plan Proponents and their attorneys make no representations as to the tax consequences of the Plan.

### **VIII. ALTERNATIVES TO THE PLAN**

The alternative to the Plan would be a conversion of the Debtor's case from Chapter 11 to Chapter 7. However, as stated above, a liquidation under chapter 7 would result in an additional layer of administrative expenses, including Trustee commissions and fees for professionals retained by the Trustee including attorneys, accountants and brokers. Pursuant to the provisions of the Bankruptcy Code these commissions and fees are required to be paid prior to the general claims.

Based on the anticipated decrease in the value of the Debtor's Assets in Chapter 7, the significant administrative expenses which would result from a conversion to Chapter 7, and that Administrative and Secured Claims exceed the value of the assets as detailed above, the Debtor believes that the Plan provides holders of Class 3 Unsecured Claims with the best chance of receiving a distribution on account of their respective Allowed Claims.

### **IX. RISKS ASSOCIATED WITH THE PLAN**

While the Debtor is confident that it will be able to either refinance the Property, sell the Property, or obtain an equity investor after it receives permits, and thereafter pay unsecured creditors one hundred percent of their allowed claims, the possibility exists that the Property could be sold at a foreclosure sale. Since the Debtor cannot predict how the real estate market will fluctuate, there is a possibility, however slim, that after a foreclosure sale of the Property, there will be insufficient funds to pay a distribution to the unsecured creditors.

**X. RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction of Debtor's case pursuant to and for the purposes set forth in Section 1127(b) of the Bankruptcy Code and, inter alia, for the following purposes:

(i) To determine any and all objections to the allowance and/or classification of Claims or Interests;

(ii) To determine any and all applications for compensations and reimbursement of expenses for Professional Fees and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code;

(iii) To amend or modify the Plan to remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary or advisable to carry out the purpose and intent of the Plan to the extent authorized by the Bankruptcy Code or the Bankruptcy Rules;

(iv) To determine any and all controversies and disputes arising under or related to the Plan;

(v) To construe and enforce any and all provisions of the Plan;

(vi) To determine any and all pending applications for the rejection or assumption of executory contracts and unexpired leases under 365 of the Bankruptcy Code to which the Debtor is a party or with respect to which it may be liable, and to hear and determine and, if need be, to liquidate, any and all claims arising therefrom;

(vii) To determine any and all applications, motions, adversary proceedings and contested or litigated matters pending before the Bankruptcy Court on the Confirmation Date;

(viii) To determine the validity, priority and extent of liens, claims and encumbrances upon property of the estate and to determine any questions and issues regarding title to and interests in any property of the estate and to enter any order, including injunctions, necessary to enforce the title, rights and powers of the Debtor or the debtor in possession;

(ix) To determine any and all controversies and disputes arising under or related to any settlement of any adversary proceeding or contested matter approved by the Bankruptcy Court, either before or after the Confirmation Date;

(x) To order the transfer of any Asset of Debtor's estate free and clear of liens, claims and encumbrances, and to effectuate payments under and performance of the provisions of the Plan;

(xi) To enter a Final Order or decree in the Debtor's Chapter 11 Case; and

(xii) To determine such other matters as may be provided for in the Plan, Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code or the Bankruptcy Rules.

## **XI. CONCLUSION**

This Statement was approved by the Bankruptcy Court after a notice and a hearing. The Office of the United States Trustee has reviewed the Plan and this Statement but is not otherwise responsible for the contents of either documents.

COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT

CONSTITUTE COURT APPROVAL OR RECOMMENDATION OF THE MERITS OF THE  
DEBTOR'S PLAN OF REORGANIZATION.

Dated: \_\_\_\_\_, New York  
March , 2013

**BITI, LLC**

BY: \_\_\_\_\_  
Nicholas Cassis

Dated: Garden City, New York  
March , 2013

**STAGG, TEREZI, CONFUSIONE  
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