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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION**

IN RE:	}	CHAPTER 11
	}	
151 MILBANK, LLC	}	CASE NO.: 15-51485(JAM)
Debtor	}	
	}	
_____	}	JANUARY 31, 2017

**(PROPOSED) DISCLOSURE STATEMENT WITH RESPECT TO  
ALTERNATIVE PLAN OF REORGANIZATION FILED BY RICHARD M. COAN,  
CHAPTER 7 TRUSTEE FOR THE ESTATE OF SEAN DUNNE, UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES TO THE TRUSTEE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE TRUSTEE PLAN.

ALL CREDITORS AND EQUITY SECURITY HOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE TRUSTEE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE TRUSTEE PLAN. TRUSTEE PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE TRUSTEE PLAN AND THIS DISCLOSURE STATEMENT. **OTHER THAN THE INTRODUCTION SECTION BELOW OR AS NECESSARY TO REFLECT DIFFERENCES BETWEEN THE DEBTOR PLAN AND THE TRUSTEE PLAN, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT WERE MADE BY THE DEBTOR AS OF JULY 2016 AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE THEREOF.**

THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE REORGANIZATION AS TO HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTOR.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

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## I. INTRODUCTION

On or about June 10, 2016, 151 Milbank, LLC (the “Debtor”), the debtor and debtor-in-possession in the above captioned Chapter 11 Case, filed its Second Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code (the “Debtor Plan”). On or about July 1, 2016, the Debtor served its Second Amended Disclosure Statement (the “Debtor Disclosure Statement”) upon all parties entitled to vote on the proposed Debtor Plan. Although parties in interest voted on that proposed Debtor Plan, the Bankruptcy Court has not and -- the Trustee (as defined below) believes -- cannot confirm that proposed Debtor Plan.

As a result, the Trustee is proposing an alternative plan of liquidation (the “Trustee Plan”) for consideration by parties in interest in the above-captioned case.

In connection therewith, the Trustee submits this disclosure statement (the “Disclosure Statement”) for the purpose of providing information to creditors and equity security holders to make an informed decision in exercising their rights with respect to the Trustee Plan. The Trustee Plan, a copy of which accompanies the Disclosure Statement as Exhibit A, is being filed with the Bankruptcy Court simultaneously with the submission of the Disclosure Statement. All capitalized terms not otherwise defined in the Disclosure Statement have the meanings ascribed to them in the Trustee Plan.

The Trustee Plan is identical to the Debtor Plan except the Trustee Plan (i) provides for the appointment of an independent fiduciary to sell the Units and escrow the net proceeds thereof, (ii) preserves the Debtor’s causes of action, and (iii) removes certain other provisions that benefited insiders, which the Trustee Plan defines to include the pre-petition professionals of the Debtor and the defendants in litigation commenced by the Trustee pre-petition.

**For your convenience, attached hereto as Exhibit B is a copy of the Trustee Plan, marked to show changes from the Debtor Plan.**

The Trustee recommends that you vote to accept the Trustee Plan. Each creditor and equity security holder must, however, review the Trustee Plan and the Disclosure Statement carefully and in their entirety (including all Exhibits) and determine whether or not to accept or reject the Trustee Plan. The description of the Trustee Plan in the Disclosure Statement is in summary form and is qualified by reference to the actual terms and conditions of the Trustee Plan, which should be reviewed carefully before making a decision to accept or reject the Trustee Plan.

Except as otherwise expressly indicated, the information contained in the Disclosure Statement was provided by the Debtor in its Debtor Disclosure Statement in July 2016, and has not been subject to audit or independent review. Although the information in this Disclosure Statement has been provided by the Debtor, or was included by the Debtor Disclosure Statement (which the Debtor represented was true and accurate), the Trustee and its counsel do not warrant the accuracy of the information contained herein.

The Trustee does not make any statement concerning the Debtor, and the statements included in the Disclosure Statement are true only to the extent the Debtor’s previous representations were and remain true and accurate. You should not rely on any representations, warranties, or agreements contained in the Disclosure Statement when deciding how to vote on the Trustee Plan.

**THE TRUSTEE URGES ALL CREDITORS AND EQUITY SECURITY HOLDERS TO VOTE IN FAVOR OF THE TRUSTEE PLAN.**

**II. TRUSTEE PLAN OVERVIEW**

The following summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in the Disclosure Statement and the Trustee Plan.

**A. Treatment of Claims and Interests Under the Trustee Plan**

The following table summarizes the treatment of Claims and Interests under the Trustee Plan. In general, the Trustee Plan proposes to pay the Claims of general unsecured creditors in full, plus interest, from the sale of the four condominium Units that the Debtor has developed in Greenwich, Connecticut. Based on an appraisal of the Units, the Debtor has stated that it expects to sell the Units for an aggregate of approximately \$13,000,000. For a complete explanation, please refer to the discussion in Section V below, entitled the “Trustee Plan of Reorganization” and to the Trustee Plan itself.

<b>CLASS</b>	<b>TYPE OF CLAIM OR INTEREST</b>	<b>TREATMENT</b>	<b>ESTIMATED APPROXIMATE AMOUNT</b>	<b>APPROXIMATE PERCENTAGE DOLLAR RECOVERY</b>
N/A	DIP LENDER CLAIM	THE DIP LENDER (MAXIM) SHALL BE PAID IN CASH THE ENTIRE NET SALES PROCEEDS FROM EACH UNIT SALE CLOSING, UP TO THE FULL AMOUNT OF THE DIP LENDER’S CLAIM	\$5,000,000 PLUS INTEREST	100%
N/A	ADMINISTRATIVE CLAIMS	UNLESS OTHERWISE AGREED TO BY THE HOLDER OF AN ALLOWED ADMINISTRATIVE CLAIM AND THE DEBTOR, EACH HOLDER OF AN ALLOWED ADMINISTRATIVE CLAIM SHALL RECEIVE IN FULL AND FINAL	\$360,000 <sup>1</sup>	100%

<sup>1</sup> The estimated administrative claims in the Debtor Plan were \$400,000.

		SATISFACTION OF ITS ALLOWED ADMINISTRATIVE CLAIM, CASH EQUAL TO THE FULL AMOUNT OF SUCH ALLOWED ADMINISTRATIVE CLAIM.		
N/A	PRIORITY TAX CLAIMS	NONE	N/A	N/A
CLASS 1	GENERAL UNSECURED CREDITORS	HOLDERS OF ALLOWED CLAIMS IN CLASS 1 SHALL BE PAID FROM THE NET SALES PROCEEDS AFTER PAYMENT IN FULL OF (i) THE DIP LENDER'S CLAIM, AND (ii) ALL ALLOWED ADMINISTRATIVE CLAIMS. HOLDERS OF CLASS 1 ALLOWED CLAIMS SHALL RECEIVE CASH IN THE FULL AMOUNT OF THE ALLOWED CLAIMS PLUS INTEREST AT THE FEDERAL JUDGMENT RATE, BUT EXCLUDING ANY ATTORNEY'S FEES OR COSTS OF COLLECTION.	\$615,000 PLUS INTEREST	100%
CLASS 2	INSIDER CLAIMS	HOLDERS OF ALLOWED CLAIMS IN CLASS 2 SHALL BE PAID AS DIRECTED IN ACCORDANCE WITH RESOLUTION OF THE COAN ADVERSARY PROCEEDING	TBD	TBD <sup>2</sup>
CLASS 3	COAN TRUSTEE CLAIM	HOLDERS OF ALLOWED CLAIMS IN CLASS 3 SHALL BE PAID AS DIRECTED IN ACCORDANCE WITH RESOLUTION OF THE COAN ADVERSARY PROCEEDING	TBD	TBD
CLASS 4	INTERESTS	HOLDERS OF ALLOWED INTERESTS SHALL BE PAID AS DIRECTED IN ACCORDANCE WITH	N/A	N/A

<sup>2</sup> This table was changed from the Debtor's Disclosure Statement to conform with the treatment of classes proposed by the Trustee Plan.



		RESOLUTION OF THE COAN ADVERSARY PROCEEDING.		
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### III. INFORMATION ABOUT THE REORGANIZATION PROCESS

#### A. Purpose of the Disclosure Statement

The Disclosure Statement includes background information about the Debtor and also identifies the classes (the “Classes”) into which creditors and equity security holders have been placed in the Trustee Plan. The Disclosure Statement describes the proposed treatment of each of these Classes if the Trustee Plan is confirmed.

Upon approval by the Bankruptcy Court, the Disclosure Statement and the Exhibits attached hereto will have been found to contain, in accordance with the provisions of the Bankruptcy Code, adequate information of a kind and in sufficient detail that would enable a reasonable, hypothetical investor typical of a Holder of an impaired Claim or Interest to make an informed judgment about the Trustee Plan. Approval of this Disclosure Statement by the Bankruptcy Court, however, does not constitute a recommendation by the Bankruptcy Court either for or against the Trustee Plan.

#### B. Voting Procedure

All creditors and equity security holders entitled to vote on the Trustee Plan may cast their votes for or against the Trustee Plan by completing, dating, signing, and causing the form of ballot (the “Ballot”) accompanying the Disclosure Statement to be returned to the following address:

Coan, Lewendon, Gulliver & Miltenberger, LLC  
Counsel for Chapter 7 Trustee for Estate of Sean Dunne  
495 Orange Street  
New Haven, CT 06511-3860  
Attn: Timothy D. Miltenberger Esq.

**Ballots must be received on or before 4:00 P.M. (Eastern Time) on March \_\_, 2017 to be counted in the voting. Ballots received after this time will not be counted in the voting unless the Bankruptcy Court so orders. Any properly executed, timely received Ballot that indicates both an acceptance and a rejection of the Trustee Plan will be counted as a vote to accept the Trustee Plan. Faxed and electronic scanned copies of Ballots will not be accepted.**

If you are a Holder of a Claim or Interest entitled to vote on the Trustee Plan and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, or if you have any questions

concerning the procedures for voting on the Trustee Plan, please contact the counsel for the Trustee:

Coan, Lewendon, Gulliver & Miltenberger, LLC  
Counsel for Chapter 7 Trustee for Estate of Sean Dunne  
495 Orange Street  
New Haven, CT 06511-3860<sup>3</sup>  
Attn: Timothy D. Miltenberger Esq.

**The Trustee recommends a vote for “ACCEPTANCE” of the Trustee Plan.**

**C. Ballots**

Accompanying the Disclosure Statement are appropriate Ballots for acceptance or rejection of the Trustee Plan. Each party in interest entitled to vote on the Trustee Plan will receive a Ballot for each Class of Claims or Interests to which it belongs. Because some parties in interest may be in more than one Class for voting purposes, in some instances more than one Ballot has been included with the Disclosure Statement.

All Classes of Claims and Interests are impaired under the Trustee Plan and are entitled to vote on the Trustee Plan. Each member of a voting Class will be asked to vote for acceptance or rejection of the Trustee Plan. A party who holds Claims or Interests in more than one Class should complete a Ballot for each Class with respect to the applicable portion of its Claim or Interest included in each Class.

**D. The Confirmation Hearing and the Date Set for Filing Objections to Confirmation**

The Bankruptcy Court has scheduled a hearing on confirmation (the “Confirmation Hearing”) of the Trustee Plan to commence on **March \_\_, 2017** or as soon thereafter as the parties can be heard. The Confirmation Hearing will be held before the Honorable Julie A. Manning, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Connecticut, 915 Lafayette Blvd., Room 326, Bridgeport, Connecticut. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Trustee Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of creditors. The Bankruptcy Court will also receive and consider a report prepared by the Trustee summarizing the votes for acceptance or rejection of the Trustee Plan by the persons entitled to vote.

Objections to confirmation of the Trustee Plan must be filed with the Bankruptcy Court by March \_\_, 2017 and served so as to be received on or before that date by (a) counsel to Richard M. Coan, Trustee, Coan, Lewendon, Gulliver & Miltenberger, LLC, 495 Orange Street, New Haven, CT 06511, Attention Timothy D. Miltenberger; and (b) the Office of the United States Trustee for the District of Connecticut, 150 Court Street, Room 302, New Haven, CT

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<sup>3</sup> The Debtor’s disclosure statement has been changed so that ballots, objections to the Trustee Plan, and questions about the Trustee Plan are directed to counsel for the Trustee, not counsel for the Debtor.

06510, Attention: Holley L. Claiborn.

**E. Acceptances Necessary to Confirm Trustee Plan**

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether each impaired Class has accepted the Trustee Plan. Under Section 1126(c) of the Bankruptcy Code, an impaired Class is deemed to have accepted the Trustee Plan if at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims or Interests of Class members who have voted to accept or reject the Trustee Plan have voted for acceptance of the Trustee Plan. Further, unless there is acceptance of the Trustee Plan by all members of an impaired Class, the Bankruptcy Court must also determine that under the Trustee Plan, Class members will receive property of a value, as of the Effective Date of the Trustee Plan, that is not less than the amount that such Class members would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date of the Trustee Plan.

**F. Confirmation of the Trustee Plan without the Necessary Acceptances**

The Trustee Plan may be confirmed even if it is not accepted by all of the impaired Classes if the Bankruptcy Court finds that the Trustee Plan does not discriminate unfairly against and is fair and equitable as to such Class or Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires that, among other things, Holders of Claims must either receive the full value of their Claims or, if they receive less, no class with junior liquidation priority may receive anything.

Specifically, Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed as long as at least one impaired Class of Claims has accepted it without regard to the votes of Insiders. If a Class rejects the Trustee Plan, the Bankruptcy Court may nevertheless confirm the Trustee Plan at the request of the proponent upon finding that the Trustee Plan “does not discriminate unfairly” and is “fair and equitable” as to each dissenting impaired Class. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting Class is treated equally with respect to other Classes of equal rank.

A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (a) that each holder of an interest included in the rejecting class receives or retains on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (b) that the holder of any interest that is junior to the interest of such class will not receive or retain under the plan on account of such junior interest any property at all.

The Trustee reserves the right to seek confirmation of the Trustee Plan pursuant to Section 1129(b) of the Bankruptcy Code.<sup>4</sup>

#### **IV. GENERAL INFORMATION**

The following paragraphs in this Section IV are allegations and representations made by the Debtor in the Debtor Disclosure Statement. The Trustee has attempted to identify and remove statements that were demonstrably false or misleading, but has not otherwise verified the accuracy or completeness of the statements by the Debtor. For the purpose of the disclosure regarding the Trustee Plan, the Debtor's allegations and representations are reprinted below.<sup>5</sup>

##### **A. Overview of Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself and all economic parties in interest. In addition to permitting rehabilitation of a debtor, chapter 11 promotes equality of treatment of similarly situated claims and similarly situated equity interests with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the bankruptcy court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor of, or holder of an equity interest in, a debtor. Under the Trustee Plan, the Debtor will not receive a discharge.<sup>6</sup>

In order to solicit acceptances of a proposed plan, however, Section 1126 of the Bankruptcy Code requires a debtor and any other plan proponents to conduct such solicitation, pursuant to a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The Trustee is submitting the Disclosure Statement in accordance with the Disclosure Statement Order and the requirements of Sections 1125 and 1126 of the Bankruptcy Code.

##### **B. Description of the Debtor's Business**

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<sup>4</sup> The Trustee has eliminated the recitation of the terms defined in the Trustee Plan that was found in the Debtor's Disclosure Statement. Creditors may refer to Exhibit A for a complete list of the defined terms in the Trustee Plan.

<sup>5</sup> The Trustee may disagree with factual statements in this Disclosure Statement. No factual statement in this Disclosure Statement shall be binding on Coan Trustee in the Coan Adversary Proceeding.

<sup>6</sup> This provision is new. Under the Debtor's Plan, the Debtor did receive a discharge.

The Debtor's business consists of the ownership, development, and sale of four residential condominium units (the "Units") located at 151 Milbank Avenue in Greenwich, Connecticut. The Debtor has no other business operations and has no employees.

The Debtor was initially established by Gayle Killilea Dunne ("GKD") for the purpose of purchasing and developing the real property located at 151 Milbank Avenue in Greenwich, Connecticut (the "Property"). The Debtor purchased the Property in April 2014. The Property consisted of vacant land at the time of the purchase. At the time of closing, GKD held 100% of the Debtor's membership interests and loaned the Debtor approximately \$3,275,000.00 to purchase the Property. The purchase price for the Property was \$3.25 million plus closing costs. On March 24, 2015, GKD transferred 100% of her membership interest in the Debtor to her stepson, John Dunne, as trustee of four trusts for the benefit of her minor children. Prior to transferring her membership interest, GKD forgave the loan she made to the Debtor to acquire the Property (approximately \$3.275 million). As a result, the Debtor owned the Property free and clear of any debt obligations, thus allowing the Debtor to focus on developing the Property in a manner that would allow for an expedited construction schedule followed by a timely sale or leasing of the completed Units.

GKD also owns a 100% interest in and is the managing member of Mountbrook USA, LLC ("Mountbrook"). Mountbrook was formed in 2010. Mountbrook is the general contractor on GKD's construction projects in the United States. Mountbrook has broad experience in the construction business, having constructed three similar properties in Connecticut since 2010. Mountbrook typically hires individual employees to act as construction managers for its projects, while engaging subcontractors in various building trades to complete the construction work on the properties owned and developed by GKD.

Commencing in 2014, the Debtor, through Mountbrook, started the process of construction of the four-Unit condominium development on the Property (the "Development"). The Debtor, through Mountbrook, retained professionals to secure zoning and related municipal approvals, develop site Trustee Plans, create architectural drawings, and do all the related pre-construction work necessary to commence the Development. The Debtor consulted with licensed real estate brokers to assess the feasibility of selling the four completed Units at a price that would be marketable in the Greenwich residential real estate market.

The Development, known as Maples on Milbank, is a group of four luxury townhouse condominium Units in an attractive location two blocks from Greenwich Avenue, the Town's upscale shopping and dining area. Each Unit has approximately 4,000 square feet of living space with either three or four bedrooms, including master suites, garages, private gardens, and terraces.

On March 16, 2015, the Debtor entered into a loan agreement (the "Construction Loan Agreement") with a third party lender, Avant Capital 151 Milbank, LLC ("Avant"). Pursuant to the Construction Loan Agreement, the Debtor borrowed \$3.5 million (the "Avant Loan") from Avant in order to finance the construction work necessary to complete the Development.

The Avant Loan was secured by, inter alia, a duly recorded first mortgage on the Property filed with the Town of Greenwich Land Records. The entire principal balance of the Avant Loan was advanced at the closing, but was not disbursed to the Debtor. Instead, Avant disbursed funds to the Debtor from the Avant Loan as work on the Development was completed, with such disbursements used to fund payments to the contractors and suppliers working on the Development. As of the Petition Date, Avant was holding approximately \$1,100,000 of undisbursed funds as cash collateral.

**C. Key Events Leading To the Commencement of the Chapter 11 Reorganization Case**

On March 29, 2013, Sean Dunne (the husband of GKD) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code (Case No. 13-50484) in Connecticut. Richard M. Coan was appointed the Chapter 7 trustee for Sean Dunne's estate (the "Trustee"). On March 27, 2015, the Trustee commenced an adversary proceeding against GKD, Mountbrook, the Debtor, and other parties (the "Coan Adversary Proceeding") alleging, *inter alia*, that Sean Dunne had fraudulently transferred assets to GKD. One of the claims in the Coan Adversary Proceeding is that the Trustee is the owner of the Property under a constructive trust theory.

Thereafter, on April 14, 2015, the Trustee filed a Notice of Lis Pendens against the Property, which was recorded on the Town of Greenwich Land Records (the "Lis Pendens"). Trustee did not seek any prejudgment remedy or other attachment against the Property. The Debtor disputes that there is any legal basis for the Trustee to assert the Lis Pendens or any other Claim against the Property or against the Debtor, but the Debtor determined it was not appropriate to contest these issues through an evidentiary hearing in the Bankruptcy Court given its decision to file for bankruptcy.

Avant asserted that the filing of the Lis Pendens constituted an event of default under the Avant Loan and thus ceased disbursing funds under the Avant Loan to the Debtor. Avant also took the position that it would not fund under the Avant Loan absent the express consent and agreement of the Trustee. The Debtor was unable or unwilling to reach a consensual resolution that would allow Avant to resume funding for the Development.

Avant's unwillingness to resume funding caused work on the Development to substantially cease in May 2015. Most subcontractors refused to return to the site after funding ceased. The Debtor was unable or unwilling to pay for materials. Work on the project fell behind schedule, and it was increasingly likely that the Debtor would be unable to complete essential work on a timely basis.

**D. The Bankruptcy Case and Significant Post-Petition Events**

The Debtor filed the Chapter 11 Case on October 21, 2015 in order to obtain the use of Avant's cash collateral to re-commence work on the Development with the goal of completing the entire Development to allow the sale of Units in the spring of 2016. The Debtor also believed that it would be able to sell the Units free and clear of the Lis Pendens in the Chapter 11 Case. The Debtor believed that by doing this, the value of the Property would be materially

increased and that Avant and all unsecured creditors would be paid in full. The timing of this, however, was critical because certain work required on the Development could not be completed during the winter months. Moreover, because it would take approximately ninety days to complete the Development once work re-commenced, it was essential to start the work soon if the Units were to be marketed in the spring of 2016.

Accordingly, on the Petition Date, the Debtor also filed a Motion for Order allowing the Debtor to Use Cash Collateral on a Preliminary and Final Basis, and to Provide Adequate Protection, including the Granting of Liens, Superpriority Administrative Claims and Related Relief (the "Cash Collateral Motion"). Avant consented to the Cash Collateral Motion. The Debtor also requested entry of an interim order allowing use of cash collateral (the "Interim Order") to preserve and prevent damage and deterioration to the Property. The Coan Trustee objected to the Cash Collateral Motion and the proposed Interim Order. At the request of the Bankruptcy Court (Shiff, J.), the Debtor, Avant, and Coan Trustee discussed and ultimately resolved these objections. On October 29, 2015, the Bankruptcy Court (Shiff, J.) entered the Interim Order allowing the Debtor to use cash collateral on a preliminary basis. The Interim Order approved by the Bankruptcy Court was in the total amount of \$286,832, with funds allocated to the completion of work as necessary to preserve and protect the Property prior to the onset of winter.

Certain contractors returned to the Development site after the Interim Order was approved and a number of critical vendors agreed to supply essential materials. The Bankruptcy Court entered orders allowing the Debtor to convey easements to the electric utility company and pay two junior mechanic's lien holders as part of the efforts to complete critical site work before winter weather. The Debtor also filed a motion for an order allowing the Debtor to pay a third junior lien holder. Avant also approved the release of funds to pay for exterior work that was essential to preserving the Property. The remaining contractors and suppliers held off on resuming work and/or delivering materials until the Debtor was able to provide sufficient assurance that the Debtor had the financial resources to pay for any future work or materials.

In connection with the Cash Collateral Motion, the Debtor and Avant (through its construction cost consultant) reviewed the projected costs to complete the Development and concluded that additional funds were necessary to complete the Development beyond the cash collateral available under the Avant Loan. Prior to the bankruptcy, the Debtor had projected that these additional costs to complete the Development would be in the range of \$500,000, and Avant's construction cost consultant had agreed with these projections. These costs increased materially, however, as a result of the costs associated with the bankruptcy process and the default interest charged by Avant. Initially, the Debtor intended to fund these costs with a post-petition loan from GKD that would be subordinate to the Avant Loan. The Debtor eventually determined that it would be better served to obtain a third party loan sufficient both to pay off the Avant Loan and to fund the remaining costs to complete the Development.

On December 8, 2015, the Debtor entered into a non-binding "Term Sheet" with Maxim Credit Group, LLC (the "DIP Lender" or "Maxim"), pursuant to which Maxim indicated that it would, subject to Bankruptcy Court approval and execution of final loan documents, provide post-petition financing to the Debtor in the total amount of \$5,000,000. On December 9, 2015,

the Debtor filed a Motion for Order Authorizing the Debtor to Obtain Post-Petition Financing from Maxim (the "Borrowing Motion"). The Bankruptcy Court entered an order approving the Borrowing Motion on February 5, 2016.

On January 21, 2016, the Debtor filed a motion for an order authorizing the Debtor to pay the undisputed portion of Avant's secured claim (the "Payment Motion"). In conjunction with the hearing on the Borrowing Motion, the Bankruptcy Court entered an order (the "Payment Order") approving the Payment Motion on February 5, 2016 (ECF No. 189). In accordance with the Payment Order and in conjunction with the closing of the Maxim loan, on February 12, 2016, the Debtor paid to Avant the undisputed portion of Avant's claim in the amount of \$3,014,002.44, and on that same date, the Debtor funded \$235,000 into an escrow account with Connecticut Attorneys Title Insurance Company to cover the disputed portion of Avant's claim (the "Avant Reserve Account"). Avant and the Debtor subsequently entered into an agreement pursuant to which the Debtor paid to Avant from the Avant Reserve Account the sum of \$147,500, plus interest at the default rate under the Avant Loan from February 12, 2016, through the date of payment in full satisfaction of Avant's Claim. As part of this agreement, the Debtor released Avant from any and all claims that the Debtor may have against Avant. The balance of escrowed funds from the Avant Reserve Account was paid to the Debtor.

Construction on the Development proceeded smoothly once Maxim became the DIP Lender. As of the date of the Debtor's Disclosure Statement, the Development was virtually 100% complete with the exception of punch list type items that remain to be completed. Maxim had a cost consultant review the Debtor's budget to finish the Development, and this consultant concurred with the Debtor that the completion budget was appropriate. Pursuant to the Final DIP Order, the Debtor also retained The Vertex Companies, Inc. ("Vertex") as an independent project oversight manager to monitor construction and supervise payments to subcontractors and suppliers. In order to supervise these payments, Vertex had signature authority on the Debtor's bank account in accordance with the Final DIP Order; however, on or about the date hereof, now that the construction of the Units is essentially completed, Vertex will no longer have signature authority over the Debtor's bank account. Upon information and belief, as of the date hereof, the DIP Loan from Maxim is fully drawn.

The Debtor filed an application with the Bankruptcy Court to retain Coldwell Banker as its broker to market and sell the Units with a four percent (4%) commission. On May 17, 2016, the Bankruptcy Court granted that application and immediately thereafter, the Debtor began to actively market the four Units for sale. In the opinion of the Debtor, six months is a reasonable period of time to market and sell all four of the Units. In addition, as individual Units are sold, Net Sales Proceeds from the individual sales will be available to make Distributions under and in accordance with the Trustee Plan to the extent of available Cash.

On May 17, 2016, the Bankruptcy Court also approved the Debtor's retention of Attorney John Heagney, who will prepare the condominium declaration that the Debtor will file with respect to the Units.

The Debtor also has obtained an appraisal of the Property dated September 25, 2015 (the "Appraisal"), prepared by GGP Real Estate Advisors of Riverside, Connecticut. The Appraisal



valued the gross sellout market value of the four completed Units as \$13,700,000.00 as of September 25, 2015. Significantly, if the Development had not proceeded, the Appraisal valued the Property as of September 25, 2015 on an as is basis of \$6,400,000.00. This is consistent with the Debtor's business judgment that the Holders of Claims and Interests are significantly better off by completing the Development. Indeed, as set forth herein, the Debtor believes that general unsecured creditors in Class 1 will be paid 100% on their Claims (with interest) after Maxim and all Administrative Claims are paid in full.

## **V. THE TRUSTEE PLAN OF REORGANIZATION**

### **A. Introduction**

The Trustee believes that the proposed Trustee Plan will allow the Units to be marketed and sold as quickly as possible. The Trustee also believes that under the Trustee Plan, creditors and parties in interest will not receive less value than they would receive in liquidation under chapter 7 of the Bankruptcy Code. Indeed, the Trustee believes that Maxim and general unsecured creditors in Class 1 will all be paid in full under the Trustee Plan from the proceeds of the sale of the Units.

The following is a general discussion of the provisions of the Trustee Plan. The Trustee Plan is attached as Exhibit A to the Disclosure Statement. A copy of the Trustee Plan, marked to show the changes from the Debtor Plan, is attached to the Disclosure Statement as Exhibit B. In the event of any discrepancies between this Disclosure Statement and the Trustee Plan, the terms of the Trustee Plan will govern.

One of the key concepts under the Bankruptcy Code is that only claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Trustee Plan and the descriptions below. In general, an "allowed" claim or "allowed" equity interest simply means that the debtor agrees, or in the event of a dispute, that the Bankruptcy Court determines, that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the debtor. Section 502(a) of the Bankruptcy Code provides that a timely filed claim or equity interest is automatically "allowed" unless the debtor or other party in interest objects. However, Section 502(b) of the Bankruptcy Code specifies certain claims that may not be "allowed" in bankruptcy even if a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damage claims in excess of specified amounts, late-filed claims, and contingent claims for contribution and reimbursement. Additionally, Bankruptcy Rule 3003(c)(2) prohibits the allowance of any claim or equity interest that either is not listed on the debtor's schedules or is listed as disputed, contingent, or unliquidated, if the holder has not filed a proof of claim or equity interest before the established deadline.

The Bankruptcy Code requires that, for purposes of treatment and voting, a chapter 11 plan divide the different claims against, and equity interests in, the debtor into separate classes

based upon their legal nature. Claims of a substantially similar legal nature are usually classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the “claims” and “equity interests” themselves, rather than their holders, are classified.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as “impaired” (affected by the plan) or “unimpaired” (unaffected by the plan). If a class of claims is “impaired,” the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the plan, and the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code. Under section 1124 of the Bankruptcy Code, a class of claims or interests is “impaired” unless the plan (i) does not alter the legal, equitable, and contractual rights of the holders or (ii) irrespective of the holders’ acceleration rights, cures all defaults (other than those arising from the debtor’s insolvency, the commencement of the case, or nonperformance of a nonmonetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable, and contractual rights. Typically, this means that the holder of an unimpaired claim will receive on the later of the consummation date or the date on which amounts owing are actually due and payable, payment in full, in cash, with post-petition interest to the extent appropriate and provided for under the governing agreement (or if there is no agreement, under applicable non-bankruptcy law), and the remainder of the debtor’s obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than its right to accelerate the debtor’s obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor’s case not been commenced. Pursuant to Section 1126(f) of the Bankruptcy Code, holders of unimpaired claims or interests are “conclusively presumed” to have accepted the Trustee Plan. Accordingly, their votes are not solicited.

## **B. The Claim of Maxim**

Maxim shall be indefeasibly paid in Cash the entire Net Sales Proceeds from each Unit Sale Closing, up to the full amount of its Claim. All such payments shall be made at the Unit Sale Closing in accordance with customary closing practices for the real estate bar in Fairfield County Connecticut. No payments on account of Allowed Administrative Claims or other Allowed Claims shall be made until Maxim’s Claim is paid in full. Upon payment of Maxim’s Claim in full, Maxim shall release all remaining Liens and mortgages against the Debtor and its assets including the Property. Maxim’s claim is approximately \$5,000,000, thus the Debtor anticipated that Maxim’s Claim will be paid in full from Net Sales Proceeds when the second condominium Unit is sold. Net Sales Proceeds means the proceeds received from each sale of a Unit after payment of routine, customary, and reasonable closing fees, costs, adjustments, and expenses, including any commission due to any broker.

## **C. Administrative Claims and Other Unclassified Claims**

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor, each Holder of an Allowed Administrative Claim shall receive in full and final

satisfaction of its Allowed Administrative Claim, Cash equal to the full amount of such Allowed Administrative Claim on the later of (i) the Effective Date, (ii) the date that is two business days after such Administrative Claim becomes an allowed claim, and (iii) the date that is two business days after proceeds from a Unit Sale Closing are available to make such payment. All fees due and owing to the United States Trustee shall be paid in full on or before the Effective Date, and after the Confirmation Date, the Debtor will continue to make requisite payments and file quarterly disbursement reports with the United States Trustee until the entry of a final decree pursuant to Bankruptcy Rule 3022.

All Professional Fee Claims and other Administrative Claims must be filed by the Administrative Claim Bar Date, which is thirty-five (35) days after the Effective Date.

Each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction of its Allowed Priority Tax Claim, Cash equal to the amount of such Allowed Priority Tax Claim on the Effective Date, or as soon as practical thereafter. If such Priority Tax Claim is not deemed Allowed as of the Effective Date, payment shall be made within twenty (20) days from the date upon which the Bankruptcy Court enters a Final Order allowing the Priority Tax Claim. The Debtor does not believe that there are any Priority Tax Claims.

From and after the Effective Date, and after payment of (i) the DIP Lender’s Claim, (ii) all Allowed Administrative Claims, (iii) all Allowed Priority Tax Claims pursuant to Article II, and (iv) all Allowed Class 1 Claims pursuant to Article III, the costs and expenses of the Plan Administrator in connection with the exercise of its obligations under the Trustee Plan, except for the investigation and prosecution of causes of action or in connection with the Coan Adversary Proceeding, shall be paid from the Unit Sale Proceeds. In addition, the Plan Administrator may, in the ordinary course of business and with the consent of Coan Trustee, or, if such consent cannot be obtained, with an order of the Bankruptcy Court, pay reasonable legal and professional fees and expenses that accrue after the Effective Date with respect to Unit Sale Closings and other legal issues related to the operations of the Units.

**D. Classification of Claims and Interests**

Except for the Claims addressed above, all Claims against and Interests in the Debtor are placed in four Classes and treated as set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified the Administrative Claims and the Priority Tax Claims (if any) described above. **The treatment of insider creditors is under the Trustee Plan than under the Debtor’s Plan. Creditors should review the following provisions carefully.**

CLASS	CLAIM	STATUS	VOTING
1	Unsecured Claims	Impaired	Yes
2	Insider Claims	Impaired	Yes
3	Coan Trustee Claim	Impaired	Yes
4	Interests	Impaired	Yes

**1. Class 1- General Unsecured Claims**

Class 1 consists of the Claims of general unsecured creditors, excluding the Claims of Insiders and the Coan Trustee Claim. Holders of Allowed Claims in Class 1 shall be paid from the Net Sales Proceeds after payment in full of the DIP Lender's Claim, all Allowed Administrative Claims, and all Priority Tax Claims. Holders of Class 1 Allowed Claims shall receive Cash in the full amount of the Allowed Claims plus interest at the federal judgment rate, but excluding any attorney's fees or costs of collection. Class 1 is impaired and is entitled to vote on the Trustee Plan.

The Debtor estimates that there will be approximately \$615,000 of Allowed Class 1 Claims. Class 1 is impaired and is entitled to vote on the Trustee Plan.

**2. Class 2- Insider Claims**

Class 2 consists of the Claims of Insiders. All of these Claims are deemed to be Disputed Claims without the necessity of any objection thereto being filed by the Coan Trustee. The Holder of an Allowed Claim in Class 2 shall have such legal, contractual, or equitable rights as may be determined by the Bankruptcy Court in the Coan Adversary Proceeding, including rights (if any) to Distributions from the Escrow Balance. Class 2 Claims are subordinate to the DIP Lender's Claim, all Allowed Administrative Claims, all Allowed Class 1 Claims, and any fees and expenses of professionals pursuant to Section 2.5 of the Plan. Class 2 is impaired and is entitled to vote on the Trustee Plan.

**3. Class 3- Coan Trustee Claim**

Class 3 consists of the Coan Trustee Claim. The Coan Trustee Claim is deemed to be a Disputed Claim without the necessity of any objection thereto being filed. The Holder of an Allowed Claim in Class 3 shall have such legal, contractual, or equitable rights as may be determined by the Bankruptcy Court in the Coan Adversary Proceeding, including rights (if any) to Distributions from the Escrow Balance. The Coan Trustee Claim is subordinate to the DIP Lender's Claim, all Allowed Administrative Claims, all Allowed Class 1 Claims, and any fees and expenses of professionals pursuant to Section 2.5 of the Plan. Class 3 is impaired and is entitled to vote on the Trustee Plan.

**4. Class 4- Interests**

Class 4 consists of all Interests in the Debtor. Holders of Interests shall have such legal, contractual, or equitable rights as may be determined by the Bankruptcy Court in the Coan Adversary Proceeding, including rights (if any) to Distributions from the Escrow Balance. Class 4 is impaired and is entitled to vote on the Trustee Plan.

**E. Acceptance of the Trustee Plan**

All voting Classes are impaired under the Trustee Plan, and the Holders of Claims and Interests in all Classes are entitled to vote on the Trustee Plan. If no Holders of Claims eligible to vote in a particular Class vote to accept or reject the Trustee Plan, the Trustee Plan shall be

deemed accepted by the Holders of such Claims in such Class. A Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Trustee Plan for purposes of voting to accept or reject the Trustee Plan and for purposes of determining acceptance or rejection of the Trustee Plan by such Class pursuant to Section 1129(a)(8) of the Bankruptcy Code.

## **VI. PROVISIONS FOR THE EXECUTION AND IMPLEMENTATION OF THE TRUSTEE PLAN**

### **A. Plan Administrator.**

Effective as of the Confirmation Date, Roberta Napolitano will be Plan Administrator until she is unwilling or unable to serve in such capacity, in which event the Coan Trustee and the Debtor shall select a successor Plan Administrator by the filing of a joint notice of the appointment of the successor Plan Administrator. If the Coan Trustee and the Debtor cannot agree on a successor Plan Administrator within five (5) business days of the resignation or other termination of the existing Plan Administrator, the successor Plan Administrator would be appointed by the Office of The United States Trustee.

The Plan Administrator would be the disbursing agent under the Trustee Plan without a bond, provided however, that all estate funds would remain in either the Operating Account (as defined below) or the Escrow Account (as defined below) and the Plan Administrator would be the sole signatory over such accounts as of the Confirmation Date. The Plan Administrator would have the obligations set forth in Sections 1106 and 1107 of the Bankruptcy Code, and those duties would include the following:

- (i)** making all distributions and entering all agreements set forth in the Trustee Plan;
- (ii)** selling the Units in accordance with the terms thereof;
- (iii)** investigating all causes of action belonging to the Debtor's estate;
- (iv)** if appropriate, filing and prosecuting causes of action on behalf of the estate, and
- (v)** negotiating on behalf of the estate, including, as appropriate, tolling agreements to preserve said causes of action pending payment of Class 1 creditors.

The Plan Administrator would be authorized to exercise and perform the rights, powers and duties held by the Estate, including, without limitation, the authority under Bankruptcy Code section 1123(b)(3) to provide for the settlement, adjustment, retention and enforcement of claims and interests of the Estate. The Confirmation Order would not bar the Plan Administrator, on behalf of the Debtor or the Estate, by *res judicata*, collateral estoppel, or otherwise, from collecting or prosecuting any cause of action. The Plan Administrator would stand in the shoes of the Debtor and may take such actions in the Debtor's name without the need to intervene in or amend any pending actions and without need for any further order of the Court.

The Plan Administrator will be entitled to hire professionals with the approval of the Coan Trustee or the Bankruptcy Court. The Plan Administrator, and its professionals, would be compensated as set forth below. The Bankruptcy Court must approve any settlement between the Plan Administrator and any party pursuant to Fed. R. Bankr. P. 9019.

**B. Preservation of Causes of Action.**

All existing or potential claims or causes of action against Insiders, including all rights pursuant to Sections 502, 544, 545 and 546 of the Bankruptcy Code, all preference claims pursuant to Section 547 of the Bankruptcy Code, all fraudulent transfer claim pursuant to Section 548 of the Bankruptcy Code, and all claims relating to post-petition transactions under Section 549 of the Bankruptcy Code would be preserved for the benefit of the Debtor's estate.

Unless otherwise agreed to by the Coan Trustee in writing in advance, the fees and expenses of the Plan Administrator incurred in connection with the investigation or prosecution of any cause of action would be covered solely from the proceeds of such cause of action. The proceeds of any claim or cause of action preserved under Article 5.2 of the Plan would be paid first to satisfy the fees and expenses of the Plan Administrator, then to pay Class 1 Unsecured Creditors, and any remaining proceeds to be deposited into the Escrow Account established under the provisions of the Trustee Plan for distribution in accordance therewith.

**C. Completion of the Development**

In accordance with the Final DIP Order, the Debtor has completed construction of the four-Unit condominium development on the Property. The Debtor has prepared and filed a declaration of common interest ownership community on the Town of Greenwich Land Records that will allow the Debtor to declare and sell the four completed Units. The Debtor has retained a licensed real estate broker to list and market the Units for sale. Under the Trustee Plan, the Plan Administrator will market and use reasonable efforts to sell the Units in an efficient and timely manner. The procedures for selling the Units are set forth on Exhibit A to the Trustee Plan. Creditors are urged to review Exhibit A of the Plan and reference is made thereto. The Unit Sales Closings will take place in accordance with customary closing practices for the real estate bar in Fairfield County Connecticut. For any sale conducted pursuant to Exhibit A and that complies with the requirements of Exhibit A, the Coan Trustee will issue a release of the Lis Pendens in connection with the Unit Sales Closings. The Debtor believes that the Net Sale Proceeds will be sufficient to make all of the Distributions required by the Trustee Plan.

**D. The Maxim Loan**

On and after the Effective Date, the Debtor and the Property shall continue to be bound by the terms and provisions of the DIP Loan, the DIP Loan Documents, and the Final DIP Order. Additionally, the DIP Lender shall retain all of the Liens and mortgages granted to it pursuant to the Final DIP Order and the DIP Loan Documents. Confirmation of the Trustee Plan shall not discharge the Debtor from its obligations to the DIP Lender under the DIP Loan, the DIP Loan Documents, and the Final DIP Order and the DIP Lender retains all rights and remedies against the Debtor and the Property that are available to it under the DIP Loan Documents and the Final

DIP Order. If the DIP Lender is not paid in full from the sale of Units on or before June 1, 2017, as provided in the Final DIP Order (time being of the essence), the Units shall be auctioned in accordance with the Final DIP Order. The Debtor believes that Units will be sold well before that date sufficient to pay the Maxim loan in full. The Debtor does not intend to borrow any additional funds from Maxim after the Effective Date.

**E. Establishment of Escrow Account By Plan Administrator.**

As of the Effective Date, the Plan Administrator shall establish an Escrow Account, and all of the assets of the Debtor, other than the Units and the cash in the Operating Account as forth below, will be deposited into such Escrow Account.

Net Sales Proceeds (after payment of all sums due to the DIP Lender pursuant to Section 2.1 of the Plan) and all other income received by the Debtor of every kind after the Effective Date shall be deposited into the Escrow Account. No bond will be required with respect to the Escrow Account. The Escrow Account shall be used (i) to make payment of all Allowed Administrative Claims and all Allowed Priority Tax Claims (if any) pursuant to Article II of the Plan, and (ii) to make payment of all Allowed Class 1 Claims pursuant to Article III of the Plan. All payments from the Escrow Account in accordance with the foregoing either shall require a joint instruction from the Plan Administrator and the Coan Trustee, or in the event of a dispute regarding the approval of any such payment, the Bankruptcy Court shall retain jurisdiction to enter an order approving or disapproving such payment. All remaining sums in the Escrow Account (the "Escrow Balance") shall be held pending further order of the Bankruptcy Court in the Coan Adversary Proceeding.

In addition, any funds held by the Debtor on the Effective Date up to Fifty Thousand Dollars (\$50,000) shall be deposited into a separate bank account in the name of the Plan Administrator, which will hold the funds in accordance with the terms of the Plan. This separate bank account (the "Operating Account") can be used only for the preservation of the Units in the ordinary course operating expenses to non-insiders.

**D. Retention of Property**

The Units shall remain property of the Estate on the Effective Date of the Trustee Plan, subject only to the lien created by the DIP Loan in favor of Maxim and the Lis Pendens and the rights of Coan Trustee in accordance with the terms of the Trustee Plan. The lien created by the DIP Loan will be released paid in accordance with the provisions of the Trustee Plan. Coan Trustee shall release his Lis Pendens and his claims against the Units after a sale of a Unit that complies with Exhibit A to the Trustee Plan.

The Plan Administrator is authorized to sell any Unit without further order of the Bankruptcy Court if (i) the Plan Administrator concludes that the sale complies with Exhibit A to the Trustee Plan in her sole discretion, (ii) the Plan Administrator give Coan Trustee seventy-two (72) hours' notice of any such sale, and (iii) Coan Trustee does not file a motion with the Bankruptcy Court seeking a determination of whether the sale complies with Exhibit A to the Trustee Plan within seventy-two hours of receiving notice of a proposed sale.

**E. Exempt from Transfer Taxes**

Pursuant to Section 1146(a) of the Bankruptcy Code, the creation, transfer, filing, or recording of any mortgage, deed of trust, financing statement, or other security interest, or the making, delivery, filing, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with the Trustee Plan, shall not be subject to any stamp tax, real estate tax, conveyance filing, or transfer fees, mortgage, recording, or other similar tax or other government assessment. Accordingly, the sale of Units shall not be subject to these charges, fees, taxes, or assessments. The Confirmation Order shall direct all appropriate governmental officials or agents to forgo the collection of any such charge, fee, tax, or assessment and to accept such documents delivered under the Trustee Plan without the imposition or payment of any charge, fee, assessment, or tax.

**F. Management of the Debtor**

The Debtor will continue to exist as a limited liability company following confirmation and consummation of the Trustee Plan solely for the purposes of performing its obligations under the Trustee Plan. Except as may be determined by the Bankruptcy Court in the Coan Adversary Proceeding, the Debtor will be managed by Roberta Napolitano, who will serve as Plan Administrator.

**VII. PROVISIONS GOVERNING DISTRIBUTIONS AND PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

**A. In General**

Subject to Bankruptcy Rule 9010 and except as otherwise provided for in the Trustee Plan, Distributions to the Holders of Allowed Claims shall be mailed by first class mail to (a) the address of each Holder as set forth in the Schedules, unless superseded by the address set forth on the Proof of Claim filed by such Holder, or (b) the last known address of such Holder if no Proof of Claim is filed. If any Distribution is returned as undeliverable, the Debtor shall undertake reasonable efforts to determine the current address of the Holder of the Claim with respect to such Distribution. Any Distributions to the Holders of Allowed Claims or Interests shall be in strict compliance with the Trustee Plan and the Confirmation Order or as may be subsequently ordered by the Bankruptcy Court.

Checks issued pursuant to the Trustee Plan on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Any Claim in respect of such voided check shall be made in writing on or before the first anniversary of the Distribution Date. After such date, all Claims in respect of void checks shall be released and forever barred. Any amounts related to any such voided check shall remain in the Escrow Account and held for Distribution in accordance with the Trustee Plan.

In connection with making Distributions under the Trustee Plan, to the extent applicable, the Debtor shall comply with all tax reporting requirements imposed on it by any governmental



unit. All Distributions pursuant to the Trustee Plan shall be subject to such reporting requirements. If the Holder of an Allowed Claim fails to provide the information necessary to comply with any reporting requirements of any governmental unit within six (6) months from the date the Holder was first notified of the need for such information, such Holder's Distribution shall be treated as an undeliverable Distribution in accordance with Section 6.5 of the Trustee Plan.

Except as otherwise provided herein, on or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court. Any such new or amended Claim shall be deemed Disallowed and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

Each and every Holder of an Allowed Claim or Interest that receives a Distribution under the Trustee Plan warrants that it is authorized to accept, in consideration of such Claim or Interest, the Distribution provided for in the Trustee Plan and that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by it under the Trustee Plan.

#### **B. Objections to Disputed Claims and Interests**

Any objections to Claims or Interests shall be filed no later than the Claims Objection Bar Date, which is the date that is thirty-five (35) days after the Effective Date, unless extended by an order of the Bankruptcy Court. Notwithstanding the foregoing, the Debtor has agreed that in connection with the Trustee Plan, it only shall object to the Claims and Interests set forth on Exhibit C (excluding any Claims or Interests that are filed or amended after the date that this Disclosure Statement is filed with the Bankruptcy Court).

After the Effective Date, the Debtor shall maintain any and all rights and defenses that the Debtor had with respect to any Disputed Claim or Disputed Interest. Except as expressly provided in the Trustee Plan or in any order entered in the Chapter 11 Case (including the Confirmation Order and Final DIP Order), no Disputed Claim or Disputed Interest shall become an Allowed Claim or an Allowed Interest unless and until such Claim or Interest shall be Allowed pursuant to a Final Order of the Bankruptcy Court. All settled Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court under Bankruptcy Rule 9019, or otherwise, shall be binding on all parties in interest.

#### **C. Disputed Claim Reserve**

If a timely objection to a Claim or portion thereof is filed prior to the Distribution Date, no payment or Distribution provided under this Trustee Plan shall be made on account of such Claim, or portion thereof, unless and until such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. To the extent that a Disputed Claim becomes an Allowed Claim, Distributions, if any, shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Trustee Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Debtor shall provide the Distribution to which such Holder is entitled under the Trustee Plan.

The Bankruptcy Court may separate a Disputed Claim into component parts, treat such component parts as though they were separate Claims, and issue a Final Order allowing or disallowing any component part. If the Bankruptcy Court issues a Final Order allowing a component part of a Disputed Claim, then Distributions shall be made on such Allowed component part.

From the Net Sales Proceeds, the Debtor shall reserve in Cash in the Escrow Account, for Distribution on account of each Disputed Administrative Expense Claim and on account of each Disputed Claim in Class 1, the full asserted amount with respect to each Disputed Claim or such lesser amount as determined by the Bankruptcy Court.

**D. Claims and Interests in Classes 2, 3 and 4**

Any objections to the Claims and Interests in Classes 2, 3 and 4 shall be determined by the Bankruptcy Court in conjunction with the Coan Adversary Proceeding.

**VIII. TREATMENT OF EXECUTORY CONTRACTS**

**A. Deemed Rejection of Certain Executory Contracts**

Unless otherwise assumed or rejected by Final Order of the Bankruptcy Court, all executory contracts that are not insurance contracts provided for in Section 8.2 of the Trustee Plan, shall be deemed rejected. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code. The contract between the Debtor and Mountbrook shall be deemed to be not an executory contract and is neither assumed nor rejected. Any rights Mountbrook has against the Debtor, if any, shall be determined in the Coan Adversary Proceeding.

**B. Insurance Policies**

All of the Debtor's insurance policies and any related agreements are treated as executory contracts under the Trustee Plan and are hereby expressly assumed by the Debtor. Nothing herein shall constitute or be deemed a waiver of any right or cause of action that the Debtor may have against any insurer under any of such policies.

**C. Rejection Damages Claims**

Any Person who has a Claim as a result of the rejection of any executory contract shall have thirty (30) days after the Effective Date to file a Proof of Claim; failing which any such Claim will be disallowed in full. Any objection to any such Proof of Claim shall be filed within thirty (30) days of the filing of such Proof of Claim.

**IX. EFFECT OF CONFIRMATION**

**A. Discharge**

Pursuant to Section 1141(d), the Debtor shall not receive a discharge.

**B. Exculpation.**

The Coan Trustee (and its respective affiliates, agents, managers, members, employees, advisors, and attorneys) has, and on the Effective Date shall be deemed to have, participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the Chapter 11 Case and shall not be liable for the violation of any applicable law, rule, or regulation governing the solicitation of acceptance or rejections of the Plan.

**D. Protection Against Discriminatory Treatment**

Consistent with Section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons, including governmental units, shall not discriminate against the Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtor or other Person with whom the Debtor has been associated, solely because the Debtor has been a Debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Case, or has not paid a debt that is dischargeable in the Chapter 11 Case.

**E. Binding Nature of the Trustee Plan**

The Trustee Plan shall bind all Holders of Claims against and Interests in the Debtor to the maximum extent permitted by applicable law, whether or not such Holder (a) will receive or retain any property or interest in property under the Trustee Plan, (b) has filed a proof of claim or interest in this chapter 11 case, or (c) failed to vote to accept or reject this Trustee Plan or voted (or is deemed to have voted) to reject the Trustee Plan. The Confirmation Order shall ratify all transactions effected by the Debtor during the pendency of the Chapter 11 Case.

**F. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain the maximum legally permissible jurisdiction over this Chapter 11 Case and all Persons with respect to all matters related to this Chapter 11 Case, the Debtor, and the Trustee Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim, the resolution of any and all objections to the allowance or priority of any Claim, and the resolution of any and all issues related to the release of Liens upon payment of a Secured Claim;

2. for periods ending on or before the Effective Date, grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Trustee Plan;

3. resolve any matters related to the assumption, assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable; and to adjudicate and, if necessary, liquidate, any Claims arising therefrom;

4. ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Trustee Plan;

5. decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other causes of action that are pending as of the date hereof or that may be commenced in the future, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or after the Effective Date;

6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Trustee Plan and all other contracts, instruments, releases, indentures, and other agreements or documents adopted in connection with the Trustee Plan or the Disclosure Statement;

7. resolve any cases, controversies, suits, or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Trustee Plan, or any Person's obligations incurred in connection with the Trustee Plan;

8. issue injunctions and enforce them, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the Trustee Plan after the Effective Date or enforcement of the Trustee Plan, except as otherwise provided in the Trustee Plan;

9. enter and implement such orders, or take such other actions as may be necessary or appropriate, if the Confirmation Order is modified, stayed, reversed, or vacated;

10. enter and implement such orders, or take such other actions as may be necessary or appropriate, regarding the auction process set forth in Section 5.4 of the Trustee Plan;

11. to appoint or approve the appointment of a Plan Administrator, approve the retention of its counsel, preside over any and all actions and/or adversary proceedings that the Plan Administrator may commence, adjudicate any motion or other pleading that the Plan Administrator may file, and, if necessary, approve any settlements obtained by the Plan Administrator.

12. resolve any other matters that may arise in connection with or relate to the Trustee Plan, the Disclosure Statement, the Confirmation Order, the sale of Units, or any contract,

instrument, release, indenture or other agreement or document adopted in connection with the Trustee Plan, the Disclosure Statement, or the sale of Units; and

13. enter an order concluding this Chapter 11 Case.

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

The Holder of a Claim against or Interest in the Debtor should read and carefully consider the following factors, as well as the other information set forth in the Disclosure Statement before deciding whether to vote to accept or reject the Trustee Plan.

### **A. Certain Bankruptcy Law Considerations**

Although the Trustee believes that the Trustee Plan, will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Trustee Plan will not be required for confirmation or that such modifications would not necessitate re-solicitation of votes.

Although the Trustee believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing.

### **B. Additional Factors to Be Considered**

#### **1. The Trustee and the Debtor Have No Duty to Update**

The statements contained in the Disclosure Statement were made by the Debtor as of the date of the Debtor Disclosure Statement, unless otherwise specified herein, and the delivery of the Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. Neither the Debtor nor the Trustee have a duty to update the Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

#### **2. No Representations Outside This Disclosure Statement Are Authorized**

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Trustee Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in the Disclosure Statement. Any representations or inducements made to secure your acceptance, or rejection, of the Trustee Plan that are other than as contained in, or included with, the Disclosure Statement should not be relied upon.

#### **3. Projections and Other Forward Looking Statements Are Not Assured, and Actual Results Will Vary**

Certain of the information contained in the Disclosure Statement is, by nature, forward looking, and contains estimates and assumptions that might ultimately prove to be incorrect, and contains projections that may be materially different from actual future experiences. There are

uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various Classes that might be Allowed.

**4. No Legal or Tax Advice is Provided by the Disclosure Statement**

The contents of the Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or Interest should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim or Interest.

**5. No Admission Made**

Nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Trustee Plan on the Debtor or on Holders of Claims or Interests.

**6. Economic Factors and Real Estate Market Conditions**

The Trustee has assumed that the general economic conditions of the United States economy will be stable over the next year. The stability of economic conditions is subject to many factors outside the Debtor's control, including interest rates, inflation, unemployment rates, consumer spending, war, terrorism, and other such factors. Any one of these or other economic factors, including the real estate market in Greenwich, Connecticut, could have a significant impact on the ability of the Debtor to sell the Units.

**7. Modification of Trustee Plan**

Effective as of the date hereof and subject to the limitations and rights contained in the Trustee Plan: (1) the Trustee reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Trustee Plan before the entry of the Confirmation Order; and (2) after the entry of the Confirmation Order, the Trustee may, upon order of the Bankruptcy Court, amend or modify the Trustee Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission, or reconcile any inconsistency in, the Trustee Plan in such manner as may be necessary to carry out the purpose and intent of the Trustee Plan.

**8. Revocation or Withdrawal of the Trustee Plan**

The Trustee reserves the right to revoke or withdraw the Trustee Plan before the Confirmation Hearing and to file subsequent Chapter 11 Trustee Plans. If the Trustee revokes or withdraws the Trustee Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Trustee Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Trustee Plan, assumption or rejection of Executory Contracts effected by the Trustee Plan, if any, and any document or agreement executed pursuant hereto, shall be deemed null and void; and (3) nothing contained in the Trustee Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (b) prejudice the

Trustee or any other Person's rights in any manner, or (c) constitute an admission, acknowledgement, offer, or undertaking by the Trustee or any other Person.

#### **9. Successors and Assigns**

The rights, benefits, and obligations of any Person named or referred to herein shall be binding on, and shall inure to the benefit of, such Person's heir, executor, administrator, successor, or assign.

#### **10. Reservation of Rights**

Except as expressly set forth herein, the Trustee Plan shall be of no force and effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Trustee Plan, any statement or provision contained herein, nor the taking of any action by the Trustee with respect to the Trustee Plan, shall be, or shall be deemed to be, an admission or waiver of any rights of: (1) the Trustee with respect to the Holders of Claims against, or Interests in, the Debtor, or (2) any Holder of a Claim or an Interest, or other Person, before the Effective Date.

#### **11. Severability**

If any term or provision hereof is held by the Bankruptcy Court to be invalid, void, or unenforceable before the Confirmation Date, the Bankruptcy Court, at the request of the Trustee, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision then will be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation by the Bankruptcy Court, the remainder of the terms and provisions of the Trustee Plan shall remain in full force and effect. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Trustee Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **12. Filing and Execution of Additional Documents**

On or before the Effective Date, the Trustee may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Trustee Plan. The Plan Administrator may execute such documents, take such other actions, and perform all acts necessary or appropriate to implement the terms and conditions of the Trustee Plan without the need for further Bankruptcy Court approval. Upon application by the Trustee or Plan Administrator, the Bankruptcy Court may issue an order directing any necessary party to execute or deliver, or to join in the execution or delivery of, any instrument or document, and to perform any act, necessary for the consummation or implementation of the Trustee Plan.

#### **13. Integration**

The Trustee Plan is the complete, whole, and integrated statement of the binding agreement among the Debtor, the Holders of Claims or Interests, and other parties in interest upon the matters herein. Parole evidence shall not be admissible in any action regarding the Trustee Plan or any of its provisions.

### **C. Certain Federal Income Tax Consequences of the Trustee Plan**

The potential material federal tax consequences of the Trustee Plan on any Class of creditors as well as on any particular creditor within a Class is dependent upon numerous circumstances known only to the Holders of such Claims and not to the Debtor. Some of the circumstances that make it impossible to determine the material federal tax consequences to a Class of creditors or a particular creditor include, but are not limited to: (1) the creditor entity type (individual, corporation, s-corporation, partnership, limited liability company, limited liability partnership, limited partnership, trust, or any other entity allowed by various federal and state laws); (2) the creditor may be a parent or a subsidiary of another entity, which may or may not have filed for bankruptcy protection; (3) the creditor may be for profit or not-for-profit; (4) the creditor may have unused and unexpired net operating losses, alternative minimum tax net operating losses, contributions carryovers, alternative minimum contribution carryovers, short or long-term capital loss carryovers, or general business credits as defined in the Internal Revenue Code and related regulations; (5) the method of accounting used by a creditor may be cash or accrual and whether the Claim is a capital or ordinary asset of the creditor; (6) a creditor's basis in its Claim against the Debtor, if any, is not known; (7) whether the creditor is deemed to have participated in an exchange for federal income tax purposes, and, if so, whether such exchange transaction constitutes a tax-free recapitalization or a taxable transaction; (8) whether the creditor's present debt Claim constitutes a "security" for federal income tax purposes; and, (9) the relative size of a creditor's Claim to the size of the creditor's entity.

Because the tax consequences of the Trustee Plan vary based on individual circumstances, each Holder of a Claim should consult with its own tax advisor as to the consequences of the Trustee Plan to it under federal and applicable state, local and foreign tax laws.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, the following: (1) certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds; and (2) certain transactions in which the taxpayer's book-tax differences exceed a specified threshold in any tax year. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Trustee Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

## **XI. REQUIREMENTS FOR CONFIRMATION OF THE TRUSTEE PLAN**

### **A. Requirements of Section 1129(a) of the Bankruptcy Code**



At the Confirmation Hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in Section 1129 of the Bankruptcy Code have been satisfied:

1. The Trustee Plan complies with the applicable provisions of the Bankruptcy Code.
2. The Debtor has complied with the applicable provisions of the Bankruptcy Code.
3. The Trustee Plan has been proposed in good faith and not by any means proscribed by law.
4. Any payment made or promised by the Debtor or by a Person issuing securities or acquiring property under the Trustee Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Trustee Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Trustee Plan is reasonable, or if such payment is to be fixed after confirmation of the Trustee Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
5. The Trustee has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Trustee Plan, as a director or officer of the Debtor, an affiliate of the Debtor participating in a Trustee Plan with the Debtor, or a successor to the Debtor under the Trustee Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy, and the Trustee has disclosed the identity of any Insider that will be employed or retained by the Debtor, and the nature of any compensation for such Insider. With respect to each Class of Claims or Interests, each Holder of an impaired Claim or impaired Interest either has accepted the Trustee Plan or will receive or retain under the Trustee Plan on account of such Holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such Holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.
6. Except to the extent the Trustee Plan meets the requirements of Section 1129(b) of the Bankruptcy Code (discussed below), each Class of Claims or Interests has either accepted the Trustee Plan or is not impaired under the Trustee Plan.
7. Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the Trustee Plan provides that Administrative Claims and priority Claims other than priority tax Claims will be paid in full on the Effective Date and that priority tax Claims will receive on account of such Claims deferred Cash payments, over a period not exceeding six years after the date of assessment of such Claims, of a value, as of the Effective Date, equal to the Allowed amount of such Claims.

8. At least one Class of impaired Claims has accepted the Trustee Plan, determined without including any acceptance of the Trustee Plan by any Insider holding a Claim in such Class.
9. Confirmation of the Trustee Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Trustee Plan, unless such liquidation or reorganization is proposed in the Trustee Plan. See discussion of “Feasibility” below.

**B. Best Interests Test/Liquidation Analysis**

As described above, the Bankruptcy Code requires that each Holder of an impaired Claim or Interest either (a) accepts the Trustee Plan or (b) receives or retains under the Trustee Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

The first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor’s assets and properties in the context of a chapter 7 liquidation case. The gross amount of Cash available would be the sum of the proceeds from the disposition of the Property. The next step is to reduce that total by the amount of any Claims secured by such assets, the costs and expenses of the liquidation, and such additional Administrative Claims and priority Claims that may result from the use of chapter 7 for the purposes of liquidation. Any remaining net Cash would be allocated to Creditors and equity security holders in strict priority in accordance with Section 726 of the Bankruptcy Code (see discussion below). Finally, taking into account the time necessary to accomplish the liquidation, the present value of such allocations would be compared to the value of the property that is proposed to be distributed under the Trustee Plan.

If the Debtor’s assets in their current condition were liquidated by a Chapter 7 Trustee, the Property would likely be sold in a Bankruptcy Court auction sale. There are significant uncertainties in attempting to predict the likely sales proceeds that a Chapter 7 Trustee would receive in an auction sale. As a general rule, real estate forced auction sales typically generate less than the fair market value of a property sold by a licensed broker in a properly marketed sales effort. At this stage of the proceedings, the Property lacks a certificate of occupancy, and the Property has not been declared a Common Interest Ownership Community such that each Unit could be sold individually. As such, the Property would likely generate interest in a more narrowly defined group of prospective buyers, resulting in gross sales proceeds that would be significantly less than the proceeds that could be achieved if the Debtor completes the Development and markets the Property’s four Units over time.

Assuming for sake of argument that the Debtor secures required permits and declares the Property as a common interest ownership community before the Chapter 11 Case was converted to Chapter 7, the Chapter 7 trustee could possibly retain a broker for private sales efforts. The Debtor believes that allowing the Debtor to work with brokers in an orderly effort to generate the

highest sales would still yield gross sales proceeds that will be higher than the likely result for a Chapter 7 trustee attempting to market and sell the Property with the assistance of a licensed broker. At a minimum, this amount is “not less” than would be received in a Chapter 7 liquidation. Accordingly, the Trustee believes that the Trustee Plan satisfies the best interests test.

### **C. Feasibility**

The Bankruptcy Code requires a debtor to demonstrate that confirmation of a Trustee Plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor unless so provided by the Trustee Plan of reorganization. For purposes of determining whether the Trustee Plan meets this requirement, the Debtor analyzed the ability to market and sell completed Units and generate proceeds sufficient to make the payments provided for under the Trustee Plan, and the Debtor believes that it will be able to make these payments. Attached hereto as Exhibit D is a pro forma projection prepared by the Debtor showing how the Trustee Plan is feasible pursuant to Section 1129(a)(11) of the Bankruptcy Code.

### **D. Requirements of Section 1129(b) of the Bankruptcy Code**

The Bankruptcy Court may confirm the Trustee Plan over the rejection or deemed rejection of the Trustee Plan by a Class of Claims or Interests if the Trustee Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such class.

#### **1. No Unfair Discrimination**

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under a Trustee Plan of reorganization. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.”

#### **2. Fair and Equitable Test**

This test applies to Classes of different priority (e.g., unsecured versus secured) and includes the general requirement that no Class of Claims receive more than 100% of the Allowed amount of the Claims in such Class. As to the dissenting Class, the test sets different standards, depending on the type of Claims or Interests in such Class.

#### **3. Secured Claims**

Each Holder of an impaired secured Claim either (i) retains its liens on the property (or if sold, on the proceeds thereof) to the extent of the Allowed amount of its secured Claim and receives deferred Cash payments having a value, as of the effective date of the Trustee Plan, of at least the Allowed amount of such Claim or (ii) receives the “indubitable equivalent” of its Allowed secured Claim.

#### **4. Unsecured Claims**

Either (i) each Holder of an impaired unsecured Claim receives or retains under the Trustee Plan property of a value equal to the amount of its Allowed unsecured Claim or (ii) the Holders of Claims and Interests that are junior to the Claims of the dissenting Class will not receive or retain any property under the Trustee Plan.

## **5. Equity Interests**

Either (i) each Interest Holder will receive or retain under the Trustee Plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such Interest and (b) the value of the Interest, or (ii) the Holders of Interests that are junior to the Interests of the dissenting Class will not receive or retain any property under the Trustee Plan.

## **XII. CONCLUSION**

The Trustee believes that confirmation and implementation of the Trustee Plan is in the best interests of all creditors, and urges the Holders of impaired Claims and Interests to vote to accept the Trustee Plan and to evidence such acceptance by timely returning their Ballots.

Dated: February 1, 2017

RICHARD M. COAN, TRUSTEE OF THE  
BANKRUPTCY ESTATE OF SEAN  
DUNNE.

By: /s/ Timothy Miltenberger  
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**EXHIBIT A**

**[Trustee Plan to be attached]**

**EXHIBIT B**

**[Marked Version of Trustee Plan to be attached]**

**EXHIBIT C**

**[List of Claims and Interests to which the Debtor objects to be attached]**



**EXHIBIT D**

**[Feasibility Analysis to be Attached]**