

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:

Chapter 11

8281 Merrill Road A, LLC,
8281 Merrill Road C, LLC,

Case No. 17-17027-RBR
Case No. 17-17028-RBR
(Substantively Consolidated)

Debtors.

**AMENDED DISCLOSURE STATEMENT IN SUPPORT OF
AMENDED CHAPTER 11 PLAN FOR SUBSTANTIVELY
CONSOLIDATED DEBTORS**

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/s/ Brett D. Lieberman
Brett D. Lieberman
Florida Bar No. 69583

Dated: May 2, 2018.

THIS AMENDED DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. A PRIOR DISCLOSURE STATEMENT (*see* ECF #69, 80, 85 AND 92) WAS APPROVED BY THE BANKRUPTCY COURT. HOWEVER, DEBTOR IS SEEKING APPROVAL OF THE INSTANT AMENDED DISCLOSURE STATEMENT. AS SUCH, DEBTOR IS NOT SOLICITING VOTES ON THE AMENDED PLAN AND AMENDED DISCLOSURE STATEMENT UNTIL BANKRUPTCY COURT APPROVAL. IT IS ANTICIPATED THAT A COMBINED HEARING TO CONSIDER CONFIRMATION OF THE AMENDED PLAN AND AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1129 OF THE BANKRUPTCY CODE PRESENTLY SET FOR MAY 22, 2018 WILL BE SCHEDULED ON THIS AMENDED DISCLOSURE STATEMENT AND AMENDED PLAN. DEBTOR RESERVES THE RIGHT TO MODIFY OR SUPPLEMENT THE AMENDED PLAN AND THE ACCOMPANYING AMENDED DISCLOSURE STATEMENT UP TO AND INCLUDING THE TIME OF CONFIRMATION OF THE PLAN.

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**DISCLOSURE STATEMENT IN CONNECTION WITH
CHAPTER 11 PLAN FOR SUBSTANTIVELY
CONSOLIDATED DEBTORS**

I. INTRODUCTION

This *Amended Disclosure Statement* (the “Disclosure Statement”) in Connection with *Amended Chapter 11 Plan for Substantively Consolidated Debtors* (the “Plan”) is proposed by Debtor.¹ This Disclosure Statement contains information about Debtor and describes the *Amended Chapter 11 Plan for Substantively Consolidated Debtors*. The Plan is attached to this Disclosure Statement as **Exhibit “A.”**

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY AND DISCUSS WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

IN THE OPINION OF DEBTOR, TREATMENT OF CLAIMS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY FOR HOLDERS OF THOSE CLAIMS THAN IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTOR. DEBTOR URGES THAT ALL CREDITORS ENTITLED TO VOTE ON THE PLAN VOTE IN FAVOR OF THE PLAN. DETAILED INSTRUCTIONS REGARDING HOW TO VOTE ON THE PLAN ARE CONTAINED IN ARTICLE V OF THIS DISCLOSURE STATEMENT.

1.1. PURPOSE OF DISCLOSURE STATEMENT

This Disclosure Statement is being submitted in accordance with the requirements of Section 1125 of the Bankruptcy Code. This Disclosure Statement describes: (1) the Debtor and significant events during Debtor’s bankruptcy case; (2) how the Plan proposes to treat Claims or Equity Interests of the type you hold (*i.e.*, what you will receive on account of your Claim or Equity Interest if the Plan is confirmed); (3) who can vote on or object to the Plan; (4) what factors the Bankruptcy Court will consider when deciding whether to confirm the Plan; (5) why Debtor believes the Plan is feasible, and how treatment of your Claim or Equity Interest under the Plan compares to what you would receive on your Claim or Equity Interest in an alternative liquidation; and (6) the effect of Confirmation of the Plan.

This Disclosure Statement also summarizes terms and provisions of the Plan, certain effects of confirmation of the Plan, issues relating to assets to be liquidated under the Plan, securities to be canceled under the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote on the Plan must follow for their votes to be counted. It is anticipated that objections to this Disclosure Statement together with any objections to the Plan will be considered by the Bankruptcy Court during a hearing presently scheduled for May 22, 2018 at 10:00 am.

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

BE SURE TO READ THE PLAN AS WELL AS THE DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT DESCRIBES THE PLAN, BUT IT IS THE PLAN ITSELF THAT WILL, IF CONFIRMED, ESTABLISH YOUR RIGHTS.

1.2. PLAN CONFIRMATION GENERALLY

The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure Statement. This Disclosure Statement describes the procedures pursuant to which the Plan will (or will not) be confirmed.

1.3. TIME AND PLACE OF HEARING FOR FINAL APPROVAL

The Bankruptcy Court will conduct a combined hearing to finally approve this Disclosure Statement as providing “adequate information” pursuant to Section 1125 of the Bankruptcy Code and to confirm the Plan on **May 22, 2018 at 10:00 a.m. (EST)** at United States Bankruptcy Court for the Southern District of Florida (Fort Lauderdale Division), 299 East Broward Blvd., Courtroom 308, Ft. Lauderdale, FL 33301.

1.4. DEADLINE FOR VOTING TO ACCEPT OR REJECT

If you are entitled to vote to accept or reject the Plan, you must cast your vote on the enclosed Ballot and return the Ballot to Clerk of Court, U.S. Bankruptcy Court, 299 East Broward Blvd., Room 308, Ft. Lauderdale, FL 33301, and a copy of the executed Ballot should also be mailed to counsel for the Debtor, **Brett D. Lieberman, Edelboim Lieberman Revah Oshinsky PLLC, 20200 W. Dixie Highway, Suite 1203, Miami, FL 33180**. You should carefully review Article V below for a discussion of voting eligibility, requirements, and procedures. Your properly completed Ballot must be received by **4:00 p.m. EST on May 8, 2018**, or it will not be counted.

1.5. DEADLINE FOR OBJECTIONS

Objections to this Disclosure Statement or to Confirmation of the Plan must be filed with the Bankruptcy Court and properly served upon parties by May 8, 2018 and as required by the Bankruptcy Court and the applicable Rules, with a copy to counsel for the Debtor, **Brett D. Lieberman, Edelboim Lieberman Revah Oshinsky PLLC, 20200 W. Dixie Highway, Suite 1203, Miami, FL 33180**.

1.6. CONTACT FOR MORE INFORMATION

If you want additional information about the Plan, you should contact counsel for the Debtor, **Brett D. Lieberman, Edelboim Lieberman Revah Oshinsky PLLC, 20200 W. Dixie Highway, Suite 1203, Miami, FL 33180**.

1.7. DISCLAIMER

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED HEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR, THE TRUSTEE, OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTOR. THE BANKRUPTCY COURT MAY CONDITIONALLY APPROVE THIS DISCLOSURE STATEMENT AS CONTAINING “ADEQUATE INFORMATION” OF A KIND AND IN SUFFICIENT DETAIL TO ENABLE PARTIES AFFECTED BY THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT ITS TERMS. THE BANKRUPTCY COURT HAS NOT YET DETERMINED WHETHER THE PLAN MEETS THE LEGAL REQUIREMENTS FOR CONFIRMATION, AND THE FACT THAT THE BANKRUPTCY COURT HAS (OR MAY HAVE) CONDITIONALLY APPROVED THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT, OR A RECOMMENDATION THAT IT BE ACCEPTED. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT IS SUBJECT TO FINAL APPROVAL AT THE COMBINED HEARING ON CONFIRMATION OF THE PLAN. AGAIN, OBJECTIONS TO THE ADEQUACY OF THIS DISCLOSURE STATEMENT MAY BE FILED UP TO AND INCLUDING MAY 8, 2018.

THE FINANCIAL ANALYSIS PROVIDED IN THIS DISCLOSURE STATEMENT HAS BEEN PREPARED AND/OR REVIEWED BY DEBTOR. THESE PROJECTIONS AND ANALYSES, WHILE PRESENTED WITH NUMERICAL SPECIFICITY IN THIS DISCLOSURE STATEMENT, NECESSARILY ARE BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS WHICH, ALTHOUGH CONSIDERED REASONABLE BY DEBTOR, MAY NOT PROVE TO BE TRUE OR ACCURATE. THE PROJECTIONS AND ANALYSES (AND THE ESTIMATES AND ASSUMPTIONS ON WHICH THEY ARE BASED) ARE SUBJECT TO A VARIETY OF CONTINGENCIES AND SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY-SPECIFIC, REGULATORY, AND OTHER FINANCIAL UNCERTAINTIES. MOST OF THESE RISKS AND UNCERTAINTIES ARE BEYOND DEBTOR’S CONTROL. IT IS LIKELY THAT SOME OF THE ASSUMPTIONS ON WHICH THE PROJECTIONS AND ANALYSES ARE BASED WILL TURN OUT TO BE INACCURATE FOR A VARIETY OF REASONS, INCLUDING THE OCCURRENCE OF EVENTS AND CIRCUMSTANCES SUBSEQUENT TO THE DATE ON WHICH THOSE PROJECTIONS AND ANALYSES WERE PREPARED THAT ARE DIFFERENT FROM THOSE ASSUMED. THE OCCURRENCE OF THESE EVENTS MAY AFFECT FINANCIAL RESULTS IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER. THESE PROJECTIONS AND ANALYSES, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF FINANCIAL PERFORMANCE, RESULTS, OR ASSURANCE OF THE AMOUNT OF DISTRIBUTIONS UNDER THE PLAN.

DEBTOR BELIEVES THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND HOLDERS OF INTERESTS. ALL CREDITORS AND HOLDERS OF INTERESTS ARE URGED TO VOTE IN FAVOR OF THE PLAN. TO BE COUNTED, YOUR BALLOT MUST BE DULY COMPLETED AND EXECUTED AND RECEIVED BY NO LATER THAN THE TIME SET BY THE COURT, UNLESS EXTENDED.

IN THE EVENT THAT ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN, AND IN ALL LIKELIHOOD, (1) DEBTOR MAY ALSO SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN WITH RESPECT TO THAT CLASS UNDER THE “CRAM-DOWN” PROVISIONS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AND, IF REQUIRED, MAY FURTHER AMEND THE PLAN TO CONFORM TO SUCH REQUIREMENTS, OR (2) THE PLAN MAY BE OTHERWISE MODIFIED OR WITHDRAWN. THE REQUIREMENTS FOR CONFIRMATION, INCLUDING THE VOTE OF HOLDERS OF IMPAIRED CLAIMS TO ACCEPT THE PLAN AND CERTAIN OF THE STATUTORY FINDINGS THAT MUST BE MADE BY THE BANKRUPTCY COURT, ARE SET FORTH IN THE BANKRUPTCY CODE.

II. BACKGROUND

2.1. DESCRIPTION AND HISTORY OF DEBTOR’S BUSINESS

Debtor is the owner of real property formerly used in connection with the operation of a car dealership. Debtor leases office space located at 110 Southeast Sixth Street, Suite 1700, Fort Lauderdale, FL 33301. Debtor owns Parcel A, Parcel C, and the Dames Property (together, the “**Real Property**”). Debtor is managed by JMD. JMD is managed by Daniel Rouche. Daniel Rouche does not receive compensation from Debtor. Instead, he is compensated by JMD.

2.2. EVENTS LEADING TO CHAPTER 11 FILING

On or about August of 2015, Debtor leased a portion of the Real Property to 2014 Management Company, LLC (the “**Merrill Tenant**”). On or about October of 2015, the Merrill Tenant ceased making rent payments to Debtor. As a result, Debtor lacked income to pay debts as they came due. Debtor’s financial statements reflect that Debtor consistently operated on a negative net income basis.

After the Merrill Tenant breached its lease and vacated the property, the Debtor explored alternatives to continue operations. Among other things, Debtor sought to market and sell the Real Property.

However, Debtor had difficulty marketing the Real Property to attract a potential purchaser or tenant based upon, among other things, certain encumbrances upon the Real Property which Debtor seeks to avoid through the bankruptcy case.² Debtor also faces certain pending and

² On August 15, 2017, Debtor commenced an adversary proceeding against Store to, among other things, avoid that certain the *Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement, and Fixture Filing*

threatened lawsuits. Debtor believes that the Chapter 11 process is an appropriate mechanism to reorganize its affairs and that the Bankruptcy Code offers tools that will be useful to facilitate same.

2.3. SIGNIFICANT EVENTS DURING BANKRUPTCY CASE

On June 2, 2017, Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, thereby commencing their bankruptcy cases.

On June 30, 2017, Debtor filed the *Expedited Motion for Substantive Consolidation of Related Chapter 11 Cases* (Doc. No. 22 in Case No. 17-17027-RBR and Doc. No. 25 in Case No. 17-17028-RBR).

On August 3, 2017, this Court entered its *Order Substantively Consolidating Related Chapter 11 Cases* (Doc. No. 35 in Case No. 17-17027-RBR), whereupon Plaintiff was substantively consolidated into Case No. 17-17027-RBR.

On August 15, 2017, Debtor filed the *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. § 502* seeking to avoid recording and perfection of the Mortgage as an avoidable preference under bankruptcy law.

On November 7, 2017, Debtor's counsel filed the *Summary of First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A., as Attorneys for Debtor-in-Possession* (Doc. No. 56) seeking \$57,954.39 in interim fees and expenses.

On December 8, 2017, the Bankruptcy Court entered the *Order Awarding First Interim Fee Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A. as Attorneys for Debtor* (Doc. No. 65) awarding a total of \$47,481.19 as interim compensation and reimbursement of expenses (*i.e.*, 80% of fees and 100% of expenses).

On or about April 16, 2018, Debtor filed its motion seeking approval of a settlement with STORE Master Funding XI, LLC (Doc. No. 105). The hearing on the motion seeking approval of the settlement with STORE Master Funding XI, LLC is presently set for May 15, 2018.

III. SUMMARY OF THE PLAN

The Plan is attached hereto as **Exhibit "A."** The Plan contemplates the orderly reorganization of Debtor's affairs. Debtor believes the Plan provides the greatest possible recovery for Creditors at the lowest possible cost. Debtor believes acceptance of the Plan is in the best interest of Creditors and recommends that all voting classes entitled to vote accept the Plan.

(the "Mortgage") as an avoidable preference under applicable bankruptcy law and lodged an objection to Store's claim.

3.1. CLAIMS AND INTERESTS

3.1.1. Unclassified Claims

3.1.1.1. Administrative Claims

The Plan provides that unless the Holder agrees to different treatment, all Administrative Claims, other than Ordinary Course Administrative Claims, arising prior to and on the Effective Date, will be paid by the Debtor, in full, in Cash on the later of: (1) on or as soon as practicable after the Effective Date; or (2) if an Administrative Claim is not Allowed as of the Effective Date, then or as soon as practicable after an order becomes a Final Order by which such Administrative Claim becomes an Allowed Administrative Claim. Allowed Administrative Claims include the following:

CLAIMANT	CLAIM	AMOUNT
Dames Point Crossing Association, Inc.		\$7,387.06
Total:		\$7,387.06

3.1.1.2. Ordinary Course Administrative Claims

Allowed Ordinary Course Administrative Claims will be paid pursuant to the terms and conditions giving rise to such Administrative Claim, without the need for any further Final Order or action by the Holders of such Ordinary Course Administrative Claims.

3.1.1.3. U.S. Trustee Fees

The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) within ten days of the entry of the confirmation order for pre-confirmation periods and simultaneously file with the Court the monthly operating reports for all pre-confirmation periods. Furthermore, the Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods and simultaneously file with the Court quarterly post-confirmation reports, until the earlier of the closing of this case by the issuance of a Final Decree by the Court, or upon the entry of an Order by this Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code.

3.1.1.4. Priority Tax Claims

All Priority Tax Claims that are not fully paid in Cash on the later of (1) the Effective Date or (2) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, shall instead be paid in regular installment payments in Cash of a total value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claim over a period ending not later than five years after the Petition Date, and in a manner not less favorable than the most favored General Unsecured Claim

provided for by the Plan. Notwithstanding the foregoing, each Holder of an Allowed Priority Tax Claim may be paid under such other terms as may be agreed upon by both the Holder of such Allowed Priority Tax Claim and the Debtor, as the case may be. Priority Tax Claims in Debtor's bankruptcy case include the following:

CLAIMANT	CLAIM	AMOUNT
Duval County Tax Collector	Claim No. 7	\$5,128.59
Total:		\$5,128.59

3.1.1.5. Professional Fee Claims

Professional Fee Claims will consist primarily of fees and expenses of Debtor's counsel and professionals hired in connection same. Allowed Professional Fee Claims shall be paid after application of any retainers received prior to the Petition Date. The balance of any unpaid Professional Fee Claims shall be paid on or before 14 days after the entry of an order Confirming the Plan. As of the date of this Disclosure Statement, Debtor's counsel has filed two applications for compensation and anticipates additional fees and costs, as detailed below:

APPLICATION	FEES	EXPENSES	COMBINED
<i>Summary of First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A., as Attorneys for Debtor-in-Possession (Doc. No. 56).</i>	\$52,366.00	\$5,588.39	\$57,954.39
<i>Summary of Second and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A., as Attorneys for Debtor-in-Possession (Doc. No. 101).</i>	\$54,852.50	\$2,053.52	\$56,906.02
<i>Anticipated Fees and costs required to advance confirmation of the Plan earned and incurred by Edelboim Lieberman Revah Oshinsky PLLC</i>	\$25,000.00	\$5,000.00	\$30,000.00

Previous Fees and Costs Awarded to Messana PA:	(\$41,892.80)	(\$5,588.39)	(\$47,481.19)
Total Outstanding:	\$90,325.70	\$7,053.52	\$97,379.22

All Professionals seeking Professional Fees arising prior to and on the Effective Date, shall file their respective final applications for Professional Fees prior to the Administrative Claims Bar Date or pursuant to any other deadlines and procedures as may otherwise be established by the Bankruptcy Court.

3.1.2. Classified Claims and Interests

3.1.2.1. Claims of Secured Creditors

CLASS	IMPAIRMENT	TREATMENT
CLASS 1: <u>Duval County</u> <i>Secured</i>	Unimpaired	In full and complete satisfaction and release of its Allowed Secured Claim (Claim Nos. 4, 5 and 6) against Debtor, Duval County shall be paid \$78,682.20 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.
CLASS 2: <u>Roger</u> <i>Secured</i>	Impaired	Class 2 Treatment: Roger's Allowed Secured Claim consists of all amounts due and owing under the Roger Loan Documents, expressly including the remaining principal balance of \$799,400.00, all interest due through the Effective Date, all reasonable costs and expenses (including Roger's reasonable attorney's fees and costs incurred in this bankruptcy case), and all additional consideration to Roger provided in the Roger Promissory Note. Debtor shall pay Roger the full amount of its Allowed Secured Claim, by: (a) on the Effective Date, making a lump sum payment to Roger in an amount consisting of (i) all accrued interest through the first day of the month in which the Effective Date occurs, (ii) all reasonable attorney's fees and costs, and (iii) all other amounts due and owing under the Roger Loan Documents through the first day of the month in which the Effective Date occurs; and (b) following the Effective Date, paying Roger in accordance with the terms of the

		<p>Roger Loan Documents, by paying Roger of \$18,000.00 per month on the first day of each month following the Effective Date until the Maturity Date (as defined in the Roger Promissory Note) of September 1, 2018, and paying Roger at such Maturity Date the remaining principal balance, all interest due, and any and all other amounts due under the Roger Loan Documents. Debtor's failure to make any payment to Roger under this Plan shall constitute an additional "Event of Default" under the Roger Loan Documents. All provisions in the Roger Loan Documents shall remain in full force and effect, and Roger shall retain all rights thereunder, except as modified herein. Roger shall retain all liens securing its Allowed Secured Claim. Debtor may pay all or part of the Class 2 Allowed Secured Claim at any time without penalty of any kind. This Plan does not affect Roger's rights as to any party other than Debtor.</p>
<p>CLASS 3: <u>Ticon</u> <i>Secured</i></p>	Impaired	<p>In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim against Debtor, Ticon shall be paid \$29,294.02 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 3 Allowed Secured Claim at any time without penalty of any kind.</p>
<p>CLASS 4: <u>FCAP</u> <i>Secured</i></p>	Unimpaired	<p>In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim against Debtor, FCAP shall be paid \$8,740.86 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.</p>
<p>CLASS 5: <u>Collier's</u> <i>Secured</i></p>	Unimpaired	<p>In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim against Debtor, Collier's shall be paid \$40,000.00 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay</p>

		all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.
CLASS 6: <u>STORE Master Fund XI, LLC</u> <i>Secured</i>	Impaired	In full and complete satisfaction and release of its Allowed Secured Claim and any other claims STORE has, or may have against the Debtor, STORE shall be paid \$25,000 through equal monthly payments over (a) the Payment Period, ³ made up of 12 equal monthly installments beginning on the Effective Date of the Plan (the “Monthly Payments”); and (b) the balance, if any, of the unpaid Allowed Secured Claim shall be paid in full upon the sale of the Merrill Property if such sale is closed prior to the end of the Payment Period.

3.1.2.2. Claims of General Unsecured Creditors

CLASS	IMPAIRMENT	TREATMENT
CLASS 7: <u>General Unsecured Claims</u>	Impaired	Each holder of an Allowed General Unsecured Claim, shall, in full and complete settlement, satisfaction and discharge of such Allowed General Unsecured Claim receive: (1) on each Distribution Date, Distribution in an amount equal to its Pro Rata Share of \$35,000 (<i>i.e.</i> , \$175,000 total, split across five Distribution Dates); or (2) such other treatment as may be consensually agreed to by the applicable Debtor and the holder of an Allowed General Unsecured Claim. Debtor may pay all or part of the Class 7 Allowed Unsecured Claims at any time without penalty of any kind.

3.1.2.3. Equity Interest Holders

CLASS	IMPAIRMENT	TREATMENT
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³ As defined in the Settlement Agreement as attached as Exhibit “A” to the *Motion to Approve Compromise and Settlement Between Debtor and Store Master Funding XI, LLC* (ECF #105).

CLASS 8: <u>Equity Interests</u>	Impaired	Each holder of an equity interest shall retain such equity interest and shall retain, unaltered, the legal, equitable, and contractual rights to which such equity interest entitles such holder in exchange for a pro rata contribution of \$110,000.00 to be paid in aggregate by all equity interest holders on or before May 22, 2018.
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3.2. MEANS OF IMPLEMENTING PLAN

Debtor will fund payments to be made under the Plan through the following: (1) cash on hand on the Effective Date; (2) exit financing, if necessary; and/or (3) cash generated by Debtor in the ordinary course of business on and after the Effective Date. Prior and as a condition precedent to the Effective Date, Debtor shall have obtained leases for Parcel A, Parcel C, and/or the Dames Property generating income sufficient to fund all payments under and pursuant to this Plan or Debtor shall have sold the Merrill Property.

The Debtor will continue to exist after the Effective Date as a business entity with all of the powers of a limited liability company under applicable law in the jurisdiction in which the Debtor is organized or otherwise formed and pursuant to its organizational documents in effect before the Effective Date, as such documents are amended by or pursuant to the Plan or pursuant to any amended articles of organization. Notwithstanding the foregoing, the Debtor may change its status of organization or formation or alter its corporate structure (either through mergers, consolidations, restructurings, conversions, dispositions, liquidations, dissolutions, or otherwise) after the Effective Date, subject to its organizational documents, as may be determined by Debtor to be appropriate.

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

If any Claimant entitled to Distributions cannot be located prior to the Effective Date or Allowance Date or has its Distribution returned to the Debtor, then such Distribution shall be held in a non-interest bearing account or fund maintained by the Debtor for purposes of holding such distributions. Debtor shall try to contact such Claimant for a period of 3 months after the first Distribution Date. To the extent a Claimant cannot be found within the first 3 months after the first Distribution Date or any funds are unclaimed or otherwise undistributable pursuant to the Plan, Bankruptcy Code Section 347, Bankruptcy Rule 3011, or Local Bankruptcy Rule 3011-1, such funds shall be distributed to the Bankruptcy Bar Foundation for the Southern District of Florida.

Debtor may suspend distribution to any Claimant that has not provided its Federal Tax Identification Number or Social Security Number, as the case may be. Any such distributions that remain suspended as of the Effective Date or Allowance Date shall be held by Debtor in a non-

interest bearing account or fund maintained by Debtor pending receipt by Debtor of such information. If such information is not made available within 3 months of the first Distribution Date, the Debtor may distribute such funds to the Bankruptcy Bar Foundation for the Southern District of Florida.

- 3.3. **SUBSTANTIAL CONSUMMATION.** The Plan shall be deemed substantially consummated upon the Effective Date.
- 3.4. **FINAL DECREE.** After the Effective Date, Debtor may move for a final decree closing the case and requesting such other orders as may be necessary and appropriate.
- 3.5. **WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 62(A).** Debtor will request that the Confirmation Order include (i) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order; (ii) authorization for the consummation of the Plan and the transactions contemplated by the Plan immediately after entry of the Confirmation Order pursuant to Bankruptcy Rule 3020(e).
- 3.6. **POST CONFIRMATION DEBTOR.** Upon the Effective Date, all of Debtor's pre-confirmation property shall vest in the Post-Confirmation Debtor subject to the terms of the Plan. Wherever the Plan refers to Debtor's authority, responsibilities, rights, powers or limitations on or after the Effective Date, such reference shall be deemed to be a reference to the Post-Confirmation Debtor. The Post-Confirmation Debtor shall have the same authority, responsibilities, rights, powers or limitations to discharge the duties of Debtor pursuant to the Plan. The Post-Confirmation Debtor shall be managed by Mr. Rouche.
- 3.7. **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The Bankruptcy Code allows Debtor to assume and assign executory contracts and unexpired leases under the Plan. Assumption means Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and that there will be a cure of certain defaults prior to any such assumption (and subsequent assignment) to the extent required under the Bankruptcy Code.

The Plan provides that any Executory Contracts or Unexpired Leases not assumed or conditionally assumed by Confirmation (or subject to a pending motion to assume) shall be deemed rejected upon Confirmation. Debtor reserves the right under the Plan to assume (or reject) any and all other Executory Contracts and/or Unexpired Leases to which Debtor is a party. If Debtor elects to assume a contract or lease, and the counterparty objects to the assumption of the Unexpired Lease or Executory Contract, the proposed cure of any defaults, or the adequacy of assurance of performance, that Person or Entity must file and serve such objection to the Debtor within the deadline for objecting to Confirmation of the Plan, unless the Court has set an earlier time. Failure to do so will be deemed consent to the treatment proposed in the Plan.

Unless the Bankruptcy Court has specifically ordered otherwise, the deadline for filing a Proof of Claim based on a Claim arising from the rejection of a lease or contract is the earlier of: (1) thirty (30) days from the date of the entry of an order rejecting an Unexpired Lease or Executory Contract; or (2) thirty (30) days from date of the entry of the Confirmation Order. Any Claim based on the rejection of an Unexpired Lease or Executory Contract will be barred if the Proof of Claim is not timely filed.

IV. RISK FACTORS TO CONSIDER

IMPLEMENTATION OF THE PLAN IS SUBJECT TO A NUMBER OF MATERIAL RISKS, INCLUDING THOSE ENUMERATED BELOW. IN EVALUATING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS AGAINST AND INTERESTS IN DEBTOR SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN), BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS ASSOCIATED WITH THE PLAN AND ITS IMPLEMENTATION, OR ALTERNATIVES TO THE PLAN.

The following is a summary of risk factors associated with the Plan, but is not exhaustive and must be supplemented by the analysis and evaluation of the Plan and this Disclosure Statement as a whole by each holder of a claim or interest with such holder's own advisors.

4.1. Parties in Interest May Object to Debtor's Classifications

Section 1122 of the Bankruptcy Code provides that a plan of reorganization may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtor believes that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, the Debtor cannot assure you that the Bankruptcy Code will reach the same conclusion.

4.2. Possible Loss of Favorable Tax Attributes

Although Debtor does not believe that implementation of the Plan will itself result in significant tax liability, the proposed transactions could potentially reduce any favorable tax attributes that the Debtor may otherwise be entitled to. The reduction of, and potential limitations on the Debtor's ability to use such favorable tax attributes could adversely affect Debtor's financial position in future years.

4.3. Debtor May Not Be Able to Secure Confirmation of the Plan

Debtor cannot assure that requisite acceptances to confirm the Plan will be received. Even if requisite acceptances are received, Debtor cannot assure the Bankruptcy Court will confirm the

Plan. A non-accepting Holder of a claim or equity interest might challenge the balloting procedures and results as not being in compliance with the Code or Bankruptcy Rules. Even if the Bankruptcy Court determined this Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any statutory requirements for confirmation had not been met.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that confirmation of the plan is not likely to be followed by a liquidation or a need for further financial reorganization and that value of distributions to non-accepting Holders of claims and interests within a particular class under the plan will not be less than the value of distributions such Holders would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. The Debtor believe that the Plan will not be followed by a need for further financial reorganization and that Holders within each class under the Plan will receive distributions at least as great as would be received following a liquidation under Chapter 7 of the Bankruptcy Code when taking into consideration all administrative expense claims and the costs and uncertainty associated with any such Chapter 7 case.

4.4. Inherent Uncertainty of Financial Projections

Debtor's projected financial performance will necessarily be based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; realization of the operating strategy of the Debtor; industry performance; no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles; no material adverse changes in general business and economic conditions; no material adverse changes in competition; the Debtor's retention of key management and other key employees; adequate financing; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of Debtor and some or all of which may not materialize.

To the extent that any assumptions are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by the Debtor, assumptions and estimates contained in the Plan and Disclosure Statement are subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond Debtor's control. It can be expected that some or all of the assumptions will not be realized and that actual results will vary. In light of the foregoing, Holders of Claims and Interests are cautioned not to place undue reliance on any projections that may be provided in connection with the Plan. The projected financial information should not be regarded as a representation or warranty by the Debtor, the Debtor's advisors, or any other Person that such projections can or will be achieved.

4.5. Executory Contracts and Unexpired Leases

Unless provided by separate order, Debtor will be conclusively deemed to have assumed all executory contracts and/or unexpired leases upon confirmation of the Plan. If you object to the assumption of your unexpired lease or executory contract or assert a default or the adequacy of

assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set a separate time.

If the Debtor wants to reject your contract or lease, it will do so through separate motion whereupon the Court shall set a deadline for you to object to such rejection and to file a proof of claim *arising from the rejection*. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

4.6. Tax Consequence of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN MATERIAL FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO HOLDERS OF CLAIMS AGAINST THE DEBTOR, BUT IS NOT A COMPLETE DISCUSSION OF ALL SUCH CONSEQUENCES. CERTAIN OF THE CONSEQUENCES DESCRIBED BELOW ARE SUBJECT TO SUBSTANTIAL UNCERTAINTY DUE TO THE UNSETTLED STATE OF THE TAX LAW GOVERNING BANKRUPTCY REORGANIZATIONS. NO RULINGS HAVE BEEN OR WILL BE REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE "IRS") WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. FURTHER, THE TAX CONSEQUENCES OF THE PLAN TO THE HOLDERS OF CLAIMS AGAINST THE DEBTOR MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. IN ADDITION, THERE MAY BE STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN APPLICABLE TO PARTICULAR HOLDERS OF CLAIMS OR INTERESTS, NONE OF WHICH ARE DISCUSSED BELOW. THEREFORE, THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM, AND YOU ARE URGED TO CONSULT WITH YOUR OWN TAX ADVISORS CONCERNING THE

**INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED
BY THE PLAN, INCLUDING STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

4.6.1. Potential Consequences to Holders of Secured Claims

The following discussion assumes that each Holder of an Allowed Secured Claim holds such claim as a “capital asset” within the meaning of Section 1221 of the IRC. If an Allowed secured claim remains secured by a lien on the Debtor’s assets, the Holder of such claim should not recognize a gain or loss except to the extent collateral securing such claim is changed, and the change in collateral constitutes a “significant modification” of the Allowed secured claim within the meaning of Treasury Regulations promulgated under Section 1001 of the IRC. If an Allowed secured claim is paid in full in cash, the Holder should recognize a capital gain or loss (which capital gain or loss would be a long-term capital gain or loss to the extent that the Holder has held the debt instrument underlying its claim for more than one (1) year) in an amount equal to the amount of cash received over the Holder’s adjusted basis in the debt instrument(s) underlying its Allowed secured claim. To the extent that a portion of the cash received represents accrued but unpaid interest that the Holder has not already taken into income, the Holder may recognize ordinary interest income.

4.6.2. Potential Consequences to Holders of Priority Claims

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

4.6.3. Potential Consequences to Holders of General Unsecured Claims

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

To the extent that any amount received by a Holder of an Allowed unsecured claim under the Plan is attributable to accrued but unpaid interest and such amount has not previously been included in the Holder’s gross income, such amount should be taxable to the Holder as ordinary interest income. Conversely, a Holder of an Allowed General Unsecured Claim may be able to recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the Holder’s gross income but was not paid in full by Debtor. Such loss may be ordinary, but the tax law is unclear on this point.

4.6.4. Potential Consequences to Equity Interest Holders

Debtor is recognized as a “pass through” entity under the IRC. As such, the tax consequences of Debtor’s generations of profit or loss in a given year generally “passes through” to Debtor’s Equity Interest Holders. Allocations of profits and losses are generally governed by ownership allocation of the company. As such, the tax consequences of the Plan will vary depending on the specific circumstances of each Equity Interest Holder.

4.6.5. Potential U.S. Federal Income Tax Consequences of the Plan

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any COD income realized during the taxable year, which generally includes the amount of principal debt discharged and any interest that has been previously accrued and deducted for tax purposes but remains unpaid at the time the indebtedness is discharged. The Tax Code permits a debtor in bankruptcy to exclude its COD income from gross income, but requires the debtor to reduce certain tax attributes by the amount of the excluded COD income. To the extent the amount of excluded COD Income exceeds the Tax Attributes available under the ordering rules found in the treasury regulations related to members of a consolidated group, the remaining COD Income generally has no adverse federal income tax consequences. It is likely that the Debtor will realize a significant amount of COD Income upon the consummation of the Plan. However, the Debtor will not be required to include COD Income in gross income because the indebtedness will be discharged while the Debtor is under the jurisdiction of a court in a Title 11 case.

4.6.6. Backup Withholding and Reporting

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

4.6.7. IRS Circular 230 Notice

Any tax advice contained in this Disclosure Statement (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (1) avoiding tax-related penalties under the IRC; or (2) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

V. CONFIRMATION REQUIREMENTS AND VOTING PROCEDURES

To be confirmable, the Plan must meet the requirements listed in Sections 1129(a) or (b) of the Bankruptcy Code. These requirements include: (1) the Plan must be proposed in good faith; (2) at least one Impaired Class of Claims must accept the Plan, without counting the votes of Insiders; (3) the Plan must distribute to each Creditor and Equity Interest Holder at least as much as the Creditor or Equity Interest Holder would receive in a chapter 7 liquidation case, unless the Creditor or Equity Interest Holder votes to accept the Plan; (4) and the Plan must be feasible. These requirements are not the only requirements listed in Section 1129, and they are not the only requirements for Confirmation.

5.1. WHO MAY VOTE OR OBJECT

Any party in interest may object to Confirmation of the Plan if the party believes the requirements for Confirmation are not met. Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A Creditor or Equity Interest Holder has a right to vote for or against the Plan only if that Creditor or Equity Interest Holder has a Claim or Equity Interest that is: (1) Allowed or allowed for voting purposes; and (2) Impaired.

5.1.1. Claims Entitled to Vote

Only a Creditor with an Allowed Claim has the right to vote on the Plan. Generally, a Claim is Allowed if: (1) Debtor has scheduled the Claim on the Debtor's Schedules, unless the Claim has been scheduled as disputed, contingent, or unliquidated; or (2) the Creditor has filed a Proof of Claim, unless an objection has been filed to such Proof of Claim. When a Claim is not Allowed, the Creditor holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection or Allows the Claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

As noted above, the Holder of an Allowed Claim has the right to vote only if it is in a Class that is Impaired under the Plan. As provided in Section 1124 of the Bankruptcy Code, a Class is considered Impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class.

5.1.2. Who is Not Entitled to Vote

The Holders of the following five types of Claims and Equity Interests are *not* entitled to vote: (1) Holders of Claims and Equity Interests that have been Disallowed; (2) Holders of other Claims or Equity Interests that are not "Allowed Claims" (as discussed above), unless they have been "Allowed" solely for voting purposes; (3) Holders of Claims in Unimpaired Classes; (4) holders of Claims entitled to priority pursuant to Sections 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code (Administrative Claims and Priority Tax Claims); and (5) Holders of Claims in Classes that do not receive or retain any value under the Plan.

5.1.3. Who Can Vote in More than One Class

A Creditor with a Claim that has been Allowed in part as a Secured Claim and in part as an Unsecured Claim, or who otherwise holds Claims in multiple Classes, is entitled to accept or reject the Plan in each capacity and should cast one Ballot for each Claim.

5.2. HOW TO VOTE

Accompanying this Disclosure Statement is a solicitation package containing copies of the following: (1) the Plan; (2) a Ballot; and (3) a Disclosure Statement Order, which, among other things, conditionally approves this Disclosure Statement as containing "adequate information" in accordance with Section 1125 of the Bankruptcy Code, establishes the procedures for voting on the Plan, schedules a hearing to consider confirmation of the Plan, and sets the deadline for voting on and objecting to Confirmation.

After carefully reviewing all of the documents contained in the solicitation package, exhibits, and any other documents referenced therein, Creditors in voting Classes should complete the enclosed Ballot, indicating their vote with respect to the Plan, and return it as provided below.

If you are a member of a voting Class and did not receive a Ballot, if your Ballot is damaged or lost, or if you have any questions concerning voting procedures, please immediately call counsel for Debtor at (954) 400-1499.

CREDITORS IN VOTING CLASSES SHOULD COMPLETE AND SIGN THE ENCLOSED BALLOT AND RETURN IT AS DESCRIBED BELOW. EACH HOLDER OF A CLAIM IN A VOTING CLASS MAY CAST ONLY ONE BALLOT FOR EACH SUCH CLAIM HELD. IN ORDER TO BE COUNTED, BALLOTS MUST BE DULY COMPLETED AND EXECUTED AND RECEIVED NO LATER THAN MAY 8, , 2018 at 4:00 P.M. (EST) 2018 OR AS THE BANKRUPTCY COURT MAY OTHERWISE SET OR EXTENDED. ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM AND TIMELY SUBMITTED, BUT WHICH DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, SHALL NOT BE COUNTED.

All Ballots should be returned by regular mail, hand delivery, or overnight delivery to:

Clerk of Court
U.S. Bankruptcy Court
299 East Broward Blvd., Room 112
Ft. Lauderdale, FL 33301

A copy of the executed Ballot should also be mailed to:

Brett D. Lieberman
Edelboim Lieberman Revah Oshinsky PLLC
20200 W. Dixie Hwy., Suite 1203
Miami, FL 33180

5.3. VOTE NECESSARY TO CONFIRM PLAN

If Impaired Classes exist, the Court cannot confirm the Plan unless: (1) at least one Impaired Class of Creditors has accepted the Plan without counting the votes of any Insiders within that Class; and (2) all Impaired Classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” of non-accepting Classes.

5.3.1. Votes Necessary for a Class to Accept the Plan

A Class of Claims accepts the Plan if both of the following occur: (1) the Holders of more than one-half (1/2) of the Allowed Claims in the class, who vote, cast their votes to accept the Plan; and (2) the Holders of at least two-thirds (2/3) in dollar amount of the Allowed Claims in the

Class, who vote, cast their votes to accept the Plan. A Class of Equity Interests accepts the Plan if the Holders of at least two-thirds (2/3) in amount of the Allowed Equity Interests in the Class who vote cast their votes to accept the Plan.

5.3.2. Treatment of Non-Accepting Classes

Even if one or more Impaired Classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting Classes are treated in the manner prescribed by Section 1129(b) of the Bankruptcy Code. A plan that binds non-accepting Classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind non-accepting Classes of Claims or Equity Interests if it meets all the requirements for consensual Confirmation except the voting requirements of Section 1129(a)(8) of the Bankruptcy Code, does not “discriminate unfairly,” and is “fair and equitable” toward each Impaired Class that has not voted to accept the Plan.

VI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION

Debtor believes the Plan affords Holders of Claims the greatest opportunity for realization of any value on Debtor’s Assets. Therefore, Debtor believes the Plan is in the best interests of Holders of Claims and Interests. If the Plan is not confirmed, however, the theoretical alternatives include: (1) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; or (2) alternative plans chapter 11 of the Bankruptcy Code.

6.1. LIQUIDATION UNDER CHAPTER 7

Debtor believes that, under the Plan, each Holder of Impaired Claims will receive property of a value not less than the value such Holder would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code. That belief is based primarily upon extensive consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for Distribution to Holders of Claims, including, but not limited to (1) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee and professional advisors to that trustee, and (2) the erosion (or total elimination) in value of any remaining Assets in a chapter 7 case in the context of the rapid liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail. That belief is also based upon a Liquidation Analysis, which is attached hereto **Exhibit “B.”** Furthermore, even the Liquidation Analysis will not reflect the likely delay in the timing of Distributions to Holders of Claims in a liquidation scenario where the Debtor must resolve all Claims prior to making Distributions, a process that could take more than a year. If these delays are considered, the present value of any liquidation proceeds would be further reduced.

Debtor believes that any liquidation analysis is speculative as such analyses are necessarily premised upon assumptions and estimates that are inherently subject to significant uncertainties and contingencies, many of which would be beyond the control of the Debtor. Thus, there can be no assurance as to values that would actually be realized in a chapter 7 liquidation, nor can there be any assurance that the Bankruptcy Court will accept the Debtor’s conclusions or concur with such assumptions in making its determinations under Section 1129(a)(7) of the Bankruptcy Code.

6.2. OTHER ALTERNATIVES

If the orderly liquidation and reorganization proposed by the Plan is not confirmed, Debtor and other parties may attempt to confirm a different chapter 11 Plan. That alternate plan could propose a reorganization of the Debtor (which Debtor believes to be highly unlikely) or some other form of liquidation. However, Debtors does not believe any alternative plan can be proposed that provides a greater benefit to Creditors than the Plan. In any plan under chapter 11, however, Debtor's Assets could be administered in an orderly fashion potentially yielding a greater recovery than liquidations under chapter 7.

VII. RETENTION OF JURISDICTION

The Bankruptcy Court even after the case has been closed, shall have jurisdiction to the fullest extent of the law over all matters arising under, arising in, or relating to Debtor's chapter 11 cases, including proceedings to:

- (a) ensure that the Plan is carried out;
- (b) enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- (c) consider any modification of the Plan under Section 1127 of the Bankruptcy Code;
- (d) hear and determine all Claims, controversies, suits and disputes against Debtor to the extent permitted under 28 U.S.C. § 1334;
- (e) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- (f) hear, determine, and adjudicate any litigation involving the Avoidance Actions or other claims or causes of action constituting Estate Property;
- (g) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving Debtor that may be pending on or commenced after the Effective Date;
- (h) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any entity's obligations incurred in connection with the Plan, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;

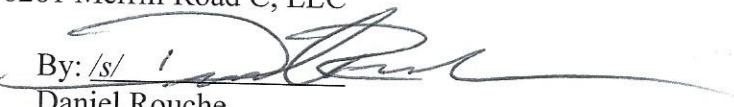
- (i) hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any and all subordination and similar agreements among various creditors pursuant to Section 510 of the Bankruptcy Code;
- (j) hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;
- (k) enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;
- (l) enter an order concluding and terminating this case;
- (m) correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order;
- (n) determine all questions and disputes regarding title to the Estate Property and any other assets of Debtor;
- (o) classify the Claims of any Claim holders and the treatment of these Claims under the Plan, to re-examine Claims that may have been allowed for purposes of voting, and to determine objections that may be filed to any Claims;
- (p) take any action described in the Plan involving the post-confirmation Debtor;
- (q) enter a final decree in Debtor's case as contemplated by Bankruptcy Rule 3022;
- (r) enforce, by injunction or otherwise, the provisions set forth in the Plan, the Confirmation Order, any final decree, and any Final Order that provides for the adjudication of any issue by the Bankruptcy Court; and
- (s) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

If the Bankruptcy Court abstains or exercises discretion not to hear any matter within the scope of its jurisdiction, nothing in the Plan shall prohibit or limit the exercise of jurisdiction by any other tribunal of competent jurisdiction.

VIII. SUMMARY, RECOMMENDATION, AND CONCLUSION

The Plan provides for an orderly and prompt Distribution to Holders of Allowed Claims and the satisfaction of all asserted Claims and Interests. In the opinion of Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger Distribution to Debtor's Creditors than would otherwise result from liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller Distributions to Holders of Allowed Claims than proposed under the Plan. ***Accordingly, Debtor recommends that Holders of Claims entitled to vote on the Plan support Confirmation of the Plan and vote to accept the Plan.***

8281 Merrill Road A, LLC
8281 Merrill Road C, LLC

By:  /s/ Daniel Rouche
Daniel Rouche
Manager, JMD

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:

Chapter 11

8281 Merrill Road A, LLC,
8281 Merrill Road C, LLC,

Case No. 17-17027-RBR
Case No. 17-17028-RBR
(Substantively Consolidated)

Debtors.

**AMENDED CHAPTER 11 PLAN FOR SUBSTANTIVELY
CONSOLIDATED DEBTORS**

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/s/ Brett D. Lieberman
Brett D. Lieberman
Florida Bar No. 69583

Dated: May 2, 2018.

THIS AMENDED PLAN HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. AS SUCH, DEBTOR IS NOT CURRENTLY SOLICITING VOTES ON THE AMENDED PLAN AND AMENDED DISCLOSURE STATEMENT. IT IS ANTICIPATED THAT A COMBINED HEARING TO CONSIDER CONFIRMATION OF THE AMENDED PLAN AND AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1129 OF THE BANKRUPTCY CODE WILL BE HELD ON OR NEAR THE PRESENTLY SCHEDULED HEARING ON THE ORIGINAL PLAN AS AMENDED (*SEE* DOC. NO. 70 AND 79). DEBTOR RESERVES THE RIGHT TO MODIFY OR SUPPLEMENT THIS AMENDED PLAN AND THE ACCOMPANYING AMENDED DISCLOSURE STATEMENT UP TO AND INCLUDING THE TIME OF CONFIRMATION OF THE PLAN.

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CHAPTER 11 PLAN FOR SUBSTANTIVELY CONSOLIDATED DEBTORS

This *Amended Chapter 11 Plan for Substantively Consolidated Debtors* (the “**Plan**”) is proposed by substantively consolidated debtors 8281 Merrill Road A, LLC and 8281 Merrill Road C, LLC (together, “**Debtor**”). Reference is made herein to the *Amended Disclosure Statement in Connection with Chapter 11 Plan for Substantively Consolidated Debtors* (the “**Disclosure Statement**”) for a discussion of Debtor’s history, assets, business, results of operations, historical financial information, and for a summary and analysis of the Plan. All Creditors and Equity Interest Holders should review the Disclosure Statement before voting to accept or reject the Plan. In addition, there are other agreements, documents, and pleadings on file with the Bankruptcy Court that may be referenced in the Plan and Disclosure Statement, which are also available for review.

This Plan proposes to pay Creditors of the Debtor in part from operation of Debtor’s Assets. Prior to Confirmation, Debtor shall hire professionals to help operate and/or liquidate certain of Debtor’s assets as more specifically described herein and in the Disclosure Statement. Net proceeds from operations shall be distributed to Creditors holding Allowed Claims as provided by this Plan. This Plan provides for 7 Classes of Claims and Interests. All Creditors and Equity Interest Holders should refer to Articles 2 and 3 of this Plan for information regarding the precise treatment of their Claims and Interests.

ARTICLE I: DEFINED TERMS AND CONSTRUCTION

1.1 GENERAL PROVISIONS

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form in the Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to the Plan as a whole and not any particular Article, section, subsection, or clause contained in the Plan, unless the context requires otherwise. Whenever it appears appropriate from the context, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender include the masculine, feminine, and the neutral gender. Any term used in capitalized form in the Plan that is not defined herein but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

1.2 DEFINED TERMS

- 1.2.1 “**Administrative Claim**” means any Claim constituting a cost or expense of administration of this case under Sections 503(b) and 507(a)(1) of the Bankruptcy Code including, without limitation, any actual and necessary expenses of preserving the estate of the Debtor, including Professional Fees, and any other actual and necessary expenses of operating the business of the Debtor.

- 1.2.2 “**Administrative Claims Bar Date**” means the date established by the Bankruptcy Court by which Persons asserting Claims against the Debtor that arose after the commencement of the case must file an application for the allowance and payment of such Administrative Claims.
- 1.2.3 “**Allowed**” means, with reference to any Claim: (1) a Claim that has been listed by the Debtor in its Schedules, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009, and is not listed as disputed, contingent or unliquidated, and is not a Claim as to which a proof of claim has been filed; (2) a Claim as to which a timely proof of claim has been filed as of the Bar Date in a sum certain and either no objection thereto, or application to estimate, equitably subordinate, reclassify or otherwise limit recovery, has been made on or before any applicable deadline, or if an objection thereto, or application to estimate, equitably subordinate, reclassify or otherwise limit recovery, has been interposed, the extent to which such Claim (whether in whole or in part) has been Allowed by a Final Order; (3) a Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and Allowed in accordance with Section 502(h) of the Bankruptcy Code; (4) any Claim expressly Allowed under this Plan; or (5) any Claim expressly Allowed by Final Order.
- 1.2.4 “**AMT**” means alternative minimum tax.
- 1.2.5 “**Ballots**” means the ballots accompanying the Disclosure Statement upon which Impaired Creditors shall have indicated their acceptance or rejection of the Plan in accordance with the Plan and the Voting Instructions.
- 1.2.6 “**Bankruptcy Code**” means Title 11 of the Bankruptcy Reform Act of 1978, as set forth in Sections 101, et seq. of Title 11 of the United States Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and as otherwise amended from time to time, and applicable portions of Titles 18 and 28 of the United States Code, as amended from time to time.
- 1.2.7 “**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division.
- 1.2.8 “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to this case, promulgated under 28 U.S.C. Section 2075, the Local Rules, and Administrative Orders of the Bankruptcy Court.
- 1.2.9 “**Bar Date**” means October 10, 2017 for all creditors and November 29, 2017 for governmental units, which is the date fixed by the Bankruptcy Court pursuant to the *Notice of Chapter 11 Bankruptcy Case* (Doc. No. 8) or such other date established by the Bankruptcy Court by which Persons asserting a Claim against the Debtor, and who are required to file a proof of claim on account of such

Claim, must file a proof of claim or be forever barred from asserting a Claim against the Debtor or its property and from voting on this Plan and/or sharing in Distributions under same.

- 1.2.10 “**Business Day**” means any day other than a Saturday, Sunday or a day which in Tampa, Florida, is a legal holiday or any day designated in Bankruptcy Rule 9006(a) as a “legal holiday.”
- 1.2.11 “**Cash**” means cash and cash equivalents, including, but not limited to, bank deposits, wire transfers, checks, and other similar items.
- 1.2.12 “**Claims Objection Deadline**” means for each Claim, the later of: (1) ninety (90) days after the Effective Date; or (2) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claim.
- 1.2.13 “**Claim**” means any “claim” against Debtor as defined in Section 101(5) of the Bankruptcy Code
- 1.2.14 “**Class**” means a category of Holders of Claims or Equity Interests pursuant to section 1122(a) of the Bankruptcy Code.
- 1.2.15 “**COD**” means cancellation of debt.
- 1.2.16 “**Collier’s**” means Collier’s International.
- 1.2.17 “**Collateral**” means any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code, or applicable state or other law.
- 1.2.18 “**Confirmation**” means the entry of an order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.
- 1.2.19 “**Confirmation Date**” shall mean the date upon which the Confirmation Order is entered on the docket by the Bankruptcy Court.
- 1.2.20 “**Confirmation Hearing**” means the date of the final hearing at which the Bankruptcy Court considers Confirmation of the Plan.
- 1.2.21 “**Confirmation Order**” means the Final Order of the Bankruptcy Court confirming the Plan.
- 1.2.22 “**Consummation**” means the occurrence of the Effective Date
- 1.2.23 “**Contingent Claim**” means a Claim that has not accrued and which is dependent upon a future event which may never occur.

- 1.2.24 “**Creditor**” has the meaning ascribed in Section 101(10) of the Bankruptcy Code.
- 1.2.25 “**Dames Property**” shall mean real property located at Dames Point Crossing, Unit 2 with tax identification number 112897-1552.
- 1.2.26 “**Debtor**” is defined in the introduction to this Plan.
- 1.2.27 “**Deficiency Claim**” means a General Unsecured Claim resulting from the value of any Collateral securing an Allowed Secured Claim being less than the amount of the Secured Claim secured by such Collateral.
- 1.2.28 “**Disallowed**” shall mean, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which: (1) has been Disallowed, in whole or part, by a Final Order of the Bankruptcy Court; (2) has been withdrawn by agreement of the Debtor and the Holder thereof, in whole or in part; (3) has been withdrawn, in whole or in part, by the Holder thereof; (4) if listed in the Schedules as zero or as Disputed, contingent or unliquidated and in respect of which a proof of claim has not been timely filed or deemed timely filed pursuant to this Plan, the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law; (5) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the filed amount of any proof of claim or proof of interest; or (6) is evidenced by a proof of claim or a proof of interest which has been filed, or which has been deemed to be filed under applicable law or order of the Bankruptcy Court or which is required to be filed by order of the Bankruptcy Court but as to which such proof of claim or proof of interest was not timely or properly filed. In each case a Disallowed Claim or a Disallowed Interest is Disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.
- 1.2.29 “**Disclosure Statement**” means the *Amended Disclosure Statement in Connection with Chapter 11 Plan for Substantively Consolidated Debtors* (and all exhibits and schedules annexed thereto or referenced therein) referenced in the introduction, as such Disclosure Statement may be amended, modified or supplemented.
- 1.2.30 “**Disputed Claim**” means a Claim or Interest as to which a proof of Claim or proof of Interest has been filed or deemed filed and as to which an objection has been or may be timely filed by any party in interest entitled to do so, which objection, if timely filed, has not been withdrawn and has not been overruled or denied by a Final Order. Prior to the time that an objection has been or may be timely filed for the purposes of the Plan, a Claim or Interest shall be considered a Disputed Claim if: (1) the amount of the Claim or Interest specified in the filed proof of Claim or proof of Interest exceeds the amount of the Claim or Interest scheduled by a Debtor as other than disputed, contingent, or unliquidated; (2) the priority

of the Claim or Interest specified in the filed proof of Claim or proof of Interest is of a more senior priority than the priority of the Claim or Interest scheduled by a Debtor; or (3) the Claim or Interest has been Scheduled as disputed, contingent, or unliquidated or as being in the amount of “\$ ” or \$0.00.

- 1.2.31 “**Disputed Claims Reserve**” means an account that may be established and maintained at the election of the Debtor to hold Cash to be distributed to Holders of Claims pending the resolution of Disputed Claims.
- 1.2.32 “**Distribution**” means any distribution pursuant to the Plan and Disclosure Statement to Holders of Allowed Claims.
- 1.2.33 “**Distribution Account**” means one or more deposit accounts established for the benefit of one or more Classes of Creditors in order to receive and hold funds payable to the Holders of Allowed Claims.
- 1.2.34 “**Distribution Date**” shall be the first, second, third, fourth, and fifth anniversary of the Effective Date.
- 1.2.35 “**Duval County**” means Duval County Tax Collector.
- 1.2.36 “**Effective Date**” means the first Business Day after the satisfaction or waiver of all conditions precedent to the Effective Date as set forth in the Plan but not later than July 31, 2018
- 1.2.37 “**Entity**” means an Entity as defined in Section 101(15) of the Bankruptcy Code.
- 1.2.38 “**Equity Interest**” means any share of common stock, preferred stock or other instrument evidencing an ownership interest in the Debtor, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interest in the Debtor that existed immediately prior to the Effective Date.
- 1.2.39 “**Estate**” means the estate created for the Debtor in this Chapter 11 case pursuant to Section 541 of the Bankruptcy Code.
- 1.2.40 “**Executory Contract**” means a contract to which the Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.
- 1.2.41 “**FATCA**” means Foreign Account Tax Compliance Act.
- 1.2.42 “**FCAP**” means FCAP as Custodian for FTCFIMT, LLC.
- 1.2.43 “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

- 1.2.44 “**Final Order**” means an order, judgment, ruling or other decree of the Bankruptcy Court or any other court of competent jurisdiction, which judgment, order or other decree (1) has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari or seek re-argument or rehearing has expired and no appeal, re-argument, petition for certiorari or rehearing is pending or any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner satisfactory to the Debtor, or (2) if an appeal, re-argument, petition for certiorari or rehearing thereof has been denied, the time to take any further appeal or petition for certiorari or further re-argument or rehearing has expired.
- 1.2.45 “**General Unsecured Claim**” means a Claim arising prior to the Petition Date against Debtor that is not a Secured Claim, Priority Tax Claim, Priority Claim, Administrative Claim, Ordinary Course Administrative Claim, Professional Fee, or otherwise entitled to any priority by order of the Bankruptcy Court.
- 1.2.46 “**Governmental Unit**” means any foreign, federal, state, municipal, or other local governmental unit, including without limitation those defined under Section 101(27) of the Bankruptcy Code.
- 1.2.47 “**Holder**” means the legal or beneficial holder of a Claim or Interest (and, when used in conjunction with a Class or type of Claim or Interest, means a Holder of a Claim or Interest in such Class or of such type).
- 1.2.48 “**Impaired**” means impaired as defined in Section 1124 of the Bankruptcy Code.
- 1.2.49 “**Impaired Class**” means any of Classes labeled as impaired in Article 3 of the Plan.
- 1.2.50 “**Impaired Creditor**” means the Holder of a Claim in an Impaired Class.
- 1.2.51 “**Initial Distribution Date**” means when used with respect to an Allowed Claim, the Effective Date or as soon as reasonably practicable after the Effective Date.
- 1.2.52 “**Insider**” means an insider of the Debtor, as defined in Section 101(31) of the Bankruptcy Code.
- 1.2.53 “**Interest**” means the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person in the Debtor including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtor, partnership interests in the Debtor’s stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and

liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated “stock” or a similar security.

- 1.2.54 “**IRC**” means Internal Revenue Code.
- 1.2.55 “**JMD**” means Jacksonville Merrill Dealership, LLC.
- 1.2.56 “**Lien**” means charge against or interest in property to secure payment of a debt or performance of an obligation as defined in Section 101(37) of the Bankruptcy Code.
- 1.2.57 “**Merrill Property**” means both Parcel A and Parcel C.
- 1.2.58 “**New Equity**” Means equity in Debtor issued to Distribution Account on the Effective Date.
- 1.2.59 “**NOLs**” means net operating losses.
- 1.2.60 “**Ordinary Course Administrative Claim**” means an Administrative Claim incurred in the ordinary course of business of the Debtor, provided, however, that any due and unpaid, post-petition payments with respect to any rejected, or to be rejected, Executory Contract or Unexpired Lease shall not be an Ordinary Course Administrative Claim.
- 1.2.61 “**OID**” means original issue discount.
- 1.2.62 “**Parcel A**” means real property located at 8281 Merrill Road Parcel A, Jacksonville, FL 32277 with tax identification number 112897-1590.
- 1.2.63 “**Parcel C**” means real property located at 8281 Merrill Road Parcel C, Jacksonville, FL 32277 with tax identification number 112897-1595.
- 1.2.64 “**Payment Date**” means the date(s) upon which the payments under the Plan shall be made as provided in the Plan.
- 1.2.65 “**Person**” means any individual, corporation, general partnership, limited partnership, limited liability company, association, joint stock company, joint venture, estate, business, Distribution Account, Governmental Unit, committee, or other Entity.
- 1.2.66 “**Petition Date**” means June 2, 2017.
- 1.2.67 “**Plan**” means this *Chapter 11 Plan for Substantively Consolidated Debtors* as referenced in the introduction, either in its present form or as it may be altered,

amended, modified or supplemented from time to time in accordance with this Plan, the Bankruptcy Code, and the Bankruptcy Rules.

- 1.2.68 “**Plan Funds**” means the Cash and other property derived from liquidation of Debtor’s Assets prior to Consummation of the Plan, including any property, and any funds deposited into one or more Distribution Accounts by or at the direction of the Debtor to fund the payments to be made on account of Allowed Claims under this Plan. The Plan Funds shall be deposited into the Distribution Account on the Effective Date and shall, at that point, become part of the Distribution Account.
- 1.2.69 “**Pre-Change Losses**” means any remaining NOL carryforwards and other Tax Attributes allocable to periods prior to the Effective Date.
- 1.2.70 “**Priority Claim**” means a Claim entitled to priority under Section 507 of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.
- 1.2.71 “**Priority Tax Claim**” means a Claim entitled to priority in payment pursuant to Section 507(a)(8) of the Bankruptcy Code.
- 1.2.72 “**Pro Rata**” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in such Class.
- 1.2.73 “**Proof of Claim**” means a proof of claim, including, but not limited to, any Administrative Claim, filed with the Bankruptcy Court or its duly appointed claims agent in connection with the Chapter 11 Case pursuant to Section 501 of the Bankruptcy Code.
- 1.2.74 “**Proof of Interest**” means any proof of Interest filed with the Bankruptcy Court or its duly appointed claims agent in connection with the Chapter 11 Case pursuant to Bankruptcy Rule 3002.
- 1.2.75 “**Professional**” means a person retained or to be compensated pursuant to Sections 326, 327, 328, 330, 503(b)(2) or (4), 1103 or 1107(b) of the Bankruptcy Code.
- 1.2.76 “**Professional Fees**” means those fees and expenses claimed by Professionals retained by the Debtor through a Bankruptcy Court order pursuant to Sections 330, 331 and/or 503 of the Bankruptcy Code, and unpaid as of the Confirmation Date, but not including any subrogation or contribution Claim arising from any payment of any fees and expenses to a Professional other than from property of the Estate.
- 1.2.77 “**Roger**” means Roger 14, LLC.

- 1.2.78 “**Roger Loan Documents**” means the underlying documents between Debtor and Roger, consisting of a Promissory Note dated September 30, 2015, in the original principal amount of \$1,800,000.00 (the “**Roger Promissory Note**”), secured by a Mortgage on the Collateral dated September 30, 2015, and recorded in the Official Records of Duval County, Florida at OR Book 17321, Page 904 (Instrument Number 2015225737) on October 1, 2015, copies of which are attached to Proof of Claim No. 12.
- 1.2.79 “**Schedules**” means the Schedule of Assets and Liabilities filed by Debtor in connection with this Chapter 11 case, as the same have been or may be amended or supplemented from time to time prior to the Effective Date.
- 1.2.80 “**Secured Claim**” means a Claim, including interest, fees and charges to the extent allowable pursuant to Section 506(b) of the Bankruptcy Code, that is secured by an unavoidable Lien on property in which the Estate has an interest, or that is subject to set-off under Section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in the Estate’s interest in such property, or to the extent of the amount subject to set-off, as applicable, as determined pursuant to Section 506(a) and, if applicable, Section 1129(b)(2)(a)(i)(II) of the Bankruptcy Code. Any difference between the amount of any Creditor’s Allowed Claim and its Allowed Secured Claim shall be a Deficiency Claim as defined above.
- 1.2.81 “**Tax Attributes**” means any and all net operating losses and any other tax attributes belonging to Debtor.
- 1.2.82 “**Tax Code**” means the Internal Revenue Code of 1986, as amended.
- 1.2.83 “**Ticon**” means Ticon Commercial, LLC.
- 1.2.84 “**Undeliverable Distribution**” means a Distribution of Cash that is returned to the Debtor as undeliverable or is otherwise unclaimed for ninety (90) days after the date such Distribution was made.
- 1.2.85 “**Unexpired Lease**” means a lease of non-residential real property or personal to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.
- 1.2.86 “**Unimpaired**” means a Claim that is unimpaired within the meaning of Section 1126 of the Bankruptcy Code.
- 1.2.87 “**U.S. Trustee**” means the Office of the United States Trustee for the Middle District of Florida, Fort Myers Division.
- 1.2.88 “**U.S. Trustee Fees**” means fees required to be paid by 28 U.S.C. § 1930(a)(6).

1.2.89 “**Voting Deadline**” means the date established by the Bankruptcy Court by which Ballots voting for or against the Plan must be received.

1.2.90 “**Voting Instructions**” means the instructions for voting on the Plan contained in the Section of the Disclosure Statement discussing voting procedures.

1.3 **CONSTRUCTION, COMPUTATION OF TIME, CHOICE OF LAW**

1.3.1 The provisions of the Plan and of any contract, instrument or other agreement or document created in connection with the Plan, as an adjunct or supplement thereto, or required thereby, shall control over any descriptions thereof contained in the Disclosure Statement.

1.3.2 The provisions of the Plan shall control over the provisions of any contract, instrument or other agreement or document, other than the Confirmation Order, created in connection with the Plan, as an adjunct or supplement thereto, or required thereby.

1.3.3 Any reference in the Plan to a contract, document, instrument, release, certificate, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions.

1.3.4 Any reference in the Plan to an existing document or exhibit means such document or exhibit as it may have been amended, modified or supplemented as of the Effective Date.

1.3.5 Any exhibits to the Plan are incorporated into the Plan and shall be deemed to be included in the Plan.

1.3.6 In computing any period of time prescribed or Allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II: CLASSIFICATION OF CLAIMS AND INTERESTS

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, Distribution and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

2.1. **UNCLASSIFIED CLAIMS**

Allowed Administrative Claims, Ordinary Course Administrative Claims, U.S. Trustee fees, Priority Tax Claims, and Professional Fees are not classified for purposes of voting on this Plan and Holders of such Claims are not required to vote on this Plan.

2.2. CLASSIFIED CLAIMS

2.2.1. CLASS 1: Duval County Tax Collector

This class consists of the Allowed Secured Claim of Duval County.

2.2.2. CLASS 2: Roger 14, LLC

This class consists of the Allowed Secured Claim of Roger.

2.2.3. CLASS 3: Ticon Commercial, LLC

This class consists of the Allowed Secured Claim of Ticon.

2.2.4. CLASS 4: FCAP as Custodian for FTCFIMT, LLC

This class consists of the Allowed Secured Claim of FCAP.

2.2.5. CLASS 5: Collier's International

This class consists of the Allowed Secured Claim of Collier's.

2.2.6. CLASS 6: STORE Master Fund XI, LLC

This class consists of the Allowed Secured Claim of Store Master Fund XI, LLC

2.2.7. Class 7: General Unsecured Claims

This Class consists of all Allowed General Unsecured Claims.

2.2.8. CLASS 8: Equity Interests

This Class consists of Holders of Equity Interests.

**ARTICLE III:
TREATMENT OF CLAIMS AND INTERESTS**

3.1. UNCLASSIFIED CLAIMS

3.1.1. Administrative Claims

3.1.1.1 In General

Administrative Claims are those Claims allowable under Section 503 and entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including unpaid fees payable to the U.S. Trustee under 28 U.S.C. § 1930, the fees of Debtor's counsel, other Professional Fees, and any other Allowed Administrative Claim accruing and due after the Petition Date.

Subject to other applicable Plan provisions, unless the Holder agrees to different treatment, all Administrative Claims, other than Ordinary Course Administrative Claims, arising prior to and on the Effective Date, will be paid by the Debtor, in full, in Cash on the later of: (1) on or as soon as practicable after the Effective Date; or (2) if an Administrative Claim is not Allowed as of the Effective Date, then or as soon as practicable after an order becomes a Final Order by which such Administrative Claim becomes an Allowed Administrative Claim. Allowed Administrative Claims include the following:

CLAIMANT	CLAIM	AMOUNT
Dames Point Crossing Association, Inc.		\$7,387.06
Total:		\$7,387.06

3.1.1.2 Professional Fees

All Professionals seeking an award by the Bankruptcy Court of Professional Fees, or of compensation for services rendered to the Debtor or reimbursement of expenses arising prior to and on the Effective Date under Sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred, prior to the Administrative Claims Bar Date and/or pursuant to any other deadlines and procedures as may be established by the Bankruptcy Court.

Professional Fee Claims will consist primarily of fees and expenses of Debtor's counsel and professionals hired in connection same. Allowed Professional Fee Claims shall be paid after application of any retainers received prior to the Petition Date. The balance of any unpaid Professional Fee Claims shall be paid on or before 14 days after the entry of an order Confirming the Plan. As of the date of this Disclosure Statement, Debtor's counsel has filed two applications for compensation and anticipates additional fees and costs, as detailed below:

APPLICATION	FEES	EXPENSES	COMBINED
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<i>Summary of First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A., as Attorneys for Debtor-in-Possession (Doc. No. 56).</i>	\$52,366.00	\$5,588.39	\$57,954.39
<i>Summary of Second and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses for Messana, P.A., as Attorneys for Debtor-in-Possession (Doc. No. 101).</i>	\$54,852.50	\$2,053.52	\$56,906.02
<i>Anticipated Fees and costs required to advance confirmation of the Plan earned and incurred by Edelboim Lieberman Revah Oshinsky PLLC</i>	\$25,000.00	\$5,000.00	\$30,000.00
Previous Fees and Costs Awarded to Messana PA:	(\$41,892.80)	(\$5,588.39)	(\$47,481.19)
Total Outstanding:	\$90,325.70	\$7,053.52	\$97,379.22

All Professionals seeking Professional Fees arising prior to and on the Effective Date, shall file their respective final applications for Professional Fees prior to the Administrative Claims Bar Date or pursuant to any other deadlines and procedures as may otherwise be established by the Bankruptcy Court.

3.1.2. Priority Tax Claims

All Priority Tax Claims that are not fully paid in Cash on the later of (1) the Effective Date or (2) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, shall instead be paid in regular installment payments in Cash of a total value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claim over a period ending not later than five years after the Petition Date, and in a manner not less favorable than the most favored General Unsecured Claim provided for by the Plan. Notwithstanding the foregoing, each Holder of an Allowed Priority Tax Claim may be paid under such other terms as may be agreed upon by both the Holder of such Allowed Priority Tax Claim and the Debtor. Priority Tax Claims in Debtor's bankruptcy case include the following:

CLAIMANT	CLAIM	AMOUNT
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Duval County Tax Collector	Claim No. 7	\$5,128.59
Total:		\$5,128.59

3.1.3. U.S. Trustee Fees

The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) within ten days of the entry of the confirmation order for pre-confirmation periods and simultaneously file with the Court the monthly operating reports for all pre-confirmation periods. Furthermore, the Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods and simultaneously file with the Court quarterly post-confirmation reports, until the earlier of the closing of this case by the issuance of a Final Decree by the Court, or upon the entry of an Order by this Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code.

3.2. CLASSIFIED CLAIMS AND INTERESTS

Claims of Secured Creditors

CLASS	IMPAIRMENT	TREATMENT
CLASS 1: <u>Duval County</u> <i>Secured</i>	Unimpaired	In full and complete satisfaction and release of its Allowed Secured Claim (Claim Nos. 4, 5 and 6) against Debtor, Duval County shall be paid \$78,682.20 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.
CLASS 2: <u>Roger</u> <i>Secured</i>	Impaired	Class 2 Treatment: Roger's Allowed Secured Claim consists of all amounts due and owing under the Roger Loan Documents, expressly including the remaining principal balance of \$799,400.00, all interest due through the Effective Date, all reasonable costs and expenses (including Roger's reasonable attorney's fees and costs incurred in this bankruptcy case), and all additional consideration to Roger provided in the Roger Promissory Note. Debtor shall pay Roger the full amount of its Allowed Secured Claim, by: (a) on the Effective Date, making a lump sum payment to Roger in an amount consisting of (i) all accrued interest through the first day of the month in which the Effective Date occurs, (ii) all reasonable attorney's

		fees and costs, and (iii) all other amounts due and owing under the Roger Loan Documents through the first day of the month in which the Effective Date occurs; and (b) following the Effective Date, paying Roger in accordance with the terms of the Roger Loan Documents, by paying Roger of \$18,000.00 per month on the first day of each month following the Effective Date until the Maturity Date (as defined in the Roger Promissory Note) of September 1, 2018, and paying Roger as such Maturity Date the remaining principal balance, all interest due, and any and all other amounts due under the Roger Loan Documents. Debtor's failure to make any payment to Roger under this Plan shall constitute an additional "Event of Default" under the Roger Loan Documents. All provisions in the Roger Loan Documents shall remain in full force and effect, and Roger shall retain all rights thereunder, except as modified herein. Roger shall retain all liens securing its Allowed Secured Claim. Debtor may pay all or part of the Class 2 Allowed Secured Claim at any time without penalty of any kind. This Plan does not affect Roger's rights as to any party other than Debtor.
CLASS 3: <u>Ticon</u> <i>Secured</i>	Impaired	In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim against Debtor, Ticon shall be paid \$29,294.02 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 3 Allowed Secured Claim at any time without penalty of any kind.
CLASS 4: <u>FCAP</u> <i>Secured</i>	Unimpaired	In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim against Debtor, FCAP shall be paid \$8,740.86 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.
CLASS 5: <u>Collier's</u>	Unimpaired	In full and complete satisfaction and release of its Allowed Secured Claim and/or any other Claim

<i>Secured</i>		against Debtor, Collier's shall be paid \$40,000.00 through equal monthly payments over a period of no longer than five years commencing as of the Effective Date, at 5.25% interest. Debtor may pay all or part of the Class 1 Allowed Secured Claim at any time without penalty of any kind.
CLASS 6: <u>STORE Master Fund XI, LLC</u> <i>Secured</i>	Impaired	In full and complete satisfaction and release of its Allowed Secured Claim and any other claims STORE has, or may have against the Debtor, STORE shall be paid \$25,000 through equal monthly payments over (a) the Payment Period, ¹ made up of 12 equal monthly installments beginning on the Effective Date of the Plan (the "Monthly Payments"); and (b) the balance, if any, of the unpaid Allowed Secured Claim shall be paid in full upon the sale of the Merrill Property if such sale is closed prior to the end of the Payment Period.

Claims of General Unsecured Creditors

CLASS	IMPAIRMENT	TREATMENT
CLASS 7: <u>General Unsecured Claims</u>	Impaired	Each holder of an Allowed General Unsecured Claim, shall, in full and complete settlement, satisfaction and discharge of such Allowed General Unsecured Claim receive: (1) on each Distribution Date, Distribution in an amount equal to its Pro Rata Share of \$35,000 (<i>i.e.</i> , \$175,000 total, split across five Distribution Dates); or (2) such other treatment as may be consensually agreed to by the applicable Debtor and the holder of an Allowed General Unsecured Claim. Debtor may pay all or part of the Class 7 Allowed Unsecured Claims at any time without penalty of any kind.

Equity Interest Holders

¹ As defined in the Settlement Agreement as attached as Exhibit "A" to the *Motion to Approve Compromise and Settlement Between Debtor and Store Master Funding XI, LLC* (ECF #105).

CLASS	IMPAIRMENT	TREATMENT
CLASS 8: <u>Equity Interests</u>	Impaired	Each holder of an equity interest shall retain such equity interest and shall retain, unaltered, the legal, equitable, and contractual rights to which such equity interest entitles such holder in exchange for a pro rata contribution of \$110,000.00 to be paid in aggregate by all equity interest holders on or before May 22, 2018.

ARTICLE IV:
UNEXPIRED LEASES AND EXECUTORY CONTRACTS

4.1. ASSUMPTION

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases, not previously assumed or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of Sections 365 and 1123 of the Bankruptcy Code; except for those Executory Contracts or Unexpired Leases that are (1) the subject of a motion to assume (or conditionally assume) Executory Contracts or Unexpired Leases that is pending on the Effective Date, or (2) subject to a motion to reject (or conditionally reject) an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

Notwithstanding the foregoing, Debtor reserves the right, up to and including the Confirmation Hearing, to (1) seek to reject any Executory Contract it has previously identified for assumption, or (2) to assume any Executory Contract it has not previously identified for assumption (or has identified for rejection). In both instances, however, any such action shall be subject to the counterparty's right to (1) object to the change in Debtor's decision to assume or reject that Executory Contract as the case may be, and (2) change its vote on the Plan at the Confirmation Hearing.

4.2. CLAIMS DEADLINE

All proofs of claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, or as the Bankruptcy Court may otherwise direct. Any Claims arising from rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be forever barred from assertion

against the Debtor's Estate, the Distribution Account, any Distribution Account, the Debtor, and all respective property, and shall not be entitled to any Distribution under this Plan.

4.3. CURE OF DEFAULTS FOR ASSUMED

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the assignment of such Executory Contract and Unexpired Lease, on such other terms as Debtor and the counterparties to such Executory Contracts or Unexpired Leases may otherwise agree, or as ordered by the Bankruptcy Court. Any counterparty to an Executory Contract and unexpired lease that fails to object timely to the proposed assumption (or conditional assumption) or cure will be deemed to have consented to such matters.

4.4. POST-PETITION CONTRACTS AND LEASES

To the extent provided in the Confirmation Order, contracts and leases entered into after the Petition Date by Debtor, including any Executory Contracts and Unexpired Leases assumed on behalf of the Estate, will be performed by Debtor. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE V: DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

5.1. OBJECTION TO CLAIMS

After the Effective Date, but on or before the Claims Objection Deadline, the Debtor shall have the authority to file objections to Claims (other than Administrative Claims). Any party in interest may also file objections to the allowance of any Claims (other than Administrative Claims) after the Effective Date but on or before the Claims Objection Deadline. Subject to limitations described in this Plan, Debtor shall have exclusive authority to compromise, settle, litigate, otherwise resolve or withdraw any objections filed by Debtor. If any joinder is made with respect to an objection filed by the Debtor and the objection is subsequently withdrawn, the joinder shall be deemed withdrawn as well. Unless otherwise ordered by the Bankruptcy Court, all objections to the allowance of Claims or Equity Interests that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court, shall be filed and served upon the Holder of the Claim or Equity Interest to which the objection is made prior to the Claims Objection Deadline or such other date as may be approved by the Bankruptcy Court. Any Claim or Interest not otherwise Allowed as provided in this Plan shall be a Disallowed Claim or Interest, respectively. Upon filing a responsive pleading to an objection, the Disputed Claim Holder shall submit to mediation and shall split the cost of same evenly with Debtor and/or the objecting party.

Presently, the Debtor has objected to the claim of Store. Under this Plan, it is anticipated that Store will not be allowed a secured claim. Rather, if Store has any allowed claim, such claim

would only be as an unsecured creditor. Debtor's position is that Store ought not have any allowed claim.

5.2. ESTIMATION AND DETERMINATION OF CLAIMS

Disputed Claims will be fixed or liquidated in the Bankruptcy Court on or before the Claims Objection Deadline, as core proceedings within the meaning of 28 U.S.C. § 157(b)(2)(B) unless the Bankruptcy Court orders otherwise. If the fixing or liquidation of a contingent or unliquidated Claim would cause undue delay in administration, such Claim may be estimated by the Bankruptcy Court for purposes of allowance and Distribution. Upon receipt of a timely filed proof of claim, the Debtor, or other party in interest may file a request for estimation along with its objection to the Claim set forth therein. The determination of Claims in estimation hearings will be binding for purposes of establishing the maximum amount of the Claim for purposes of allowance and Distribution.

5.3. DISPUTED CLAIMS RESERVE

The Debtor may elect to maintain a Disputed Claims Reserve equal to the aggregate of any distributable amounts of Cash, such amount being equal to the relevant percentage of the Distributions to which Holders of Disputed Claims would be entitled under this Plan if such Disputed Claims were Allowed Claims in the amount of such Disputed Claim or such lesser amount as required by a Final Order. For the purposes of effectuating the provisions of this Section and Distributions to Holders of Allowed Claims, the Debtor may, at any time and regardless of whether an objection to the Disputed Claim has been brought, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of Disputed Claims pursuant to Section 502(c) of the Bankruptcy Code, in which event the amounts so estimated, fixed or liquidated shall be deemed the Allowed amounts of such Claims for purposes of Distribution under this Plan. In lieu of estimating, fixing or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claim (singularly or in the aggregate), or such amount may be fixed by an agreement in writing by and between the Debtor and the Holder of a Disputed Claim.

5.4. DISTRIBUTION UPON ALLOWANCE OF DISPUTED CLAIMS

The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall receive Distribution from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such Distribution shall be made in accordance with this Plan based upon the Distributions that would have been made to such Holder under this Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date plus any interest, dividends or other Distributions earned thereon (if any). No Holder of a Disputed Claim shall have any Claim against the Disputed Claims Reserve, the Debtor, the Distribution Account, or the Estate with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no Holder of a Disputed Claim shall have any right to interest, dividends or other Distribution on such Disputed Claim except as provided in this Section.

5.5. OBJECTIONS TO PRE-CONFIRMATION ADMINISTRATIVE CLAIMS

Procedures respecting objections to applications for allowance of compensation and reimbursement of expenses under Sections 330 and 503 of the Bankruptcy Code shall be governed by this Plan and the Confirmation Order or other Final Order of the Bankruptcy Court.

ARTICLE VI: ACCEPTANCE OR REJECTION OF PLAN

6.1. VOTING BY IMPAIRED CLASSES

Each Holder of an Allowed Claim in an Impaired Class which is entitled to retain or receive property under this Plan shall be entitled to vote separately to accept or reject this Plan, and indicate such vote on a duly executed and delivered Ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject this Plan, or any other order or orders of the Bankruptcy Court. Only those votes cast by Holders of Allowed Claims and Allowed Interests shall be counted in determining whether acceptances have been received sufficient in number and amount to confirm the Plan.

6.2. ACCEPTANCE BY IMPAIRED CLASSES

An Impaired Class of Claims shall have accepted the Plan if: (1) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan; and (2) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. An Impaired Class of Interests shall have accepted the Plan if the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of Allowed Interests actually voting in such Class have voted to accept the Plan.

6.3. PRESUMED ACCEPTANCE/REJECTION

Classes 2, 3, 6, 7 and 8 are impaired under the Plan and, therefore, are not presumed to have accepted the Plan under Section 1126 of the Bankruptcy Code. Classes 1, 4 and 5 of Secured Claim Holders are unimpaired under the Plan and therefore are presumed to have accepted. Class 8 Equity Interest Holders shall retain all of their rights and interests in exchange for “new value” contributions and are accordingly impaired.

6.4. NONCONSENSUAL CONFIRMATION

To the extent that any Impaired Class rejects the Plan and Disclosure Statement or is deemed to have rejected the Plan and Disclosure Statement, Debtor reserves its rights to request Confirmation of the Plan and Disclosure Statement, as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code. Debtor reserves the right to alter, amend, modify, revoke, or withdraw the Plan and Disclosure Statement, the Plan Supplement, or any schedule or exhibit,

including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE VII:
EXECUTION AND IMPLEMENTATION OF PLAN

Debtor will fund payments to be made under the Plan through the following: (1) cash on hand on the Effective Date; (2) exit financing, if necessary; and/or (3) cash generated by Debtor in the ordinary course of business on and after the Effective Date. Prior and as a condition precedent to the Effective Date, Debtor shall have obtained leases for Parcel A, Parcel C, and/or the Dames Property generating income sufficient to fund all payments under and pursuant to this Plan.

The Debtor will continue to exist after the Effective Date as a business entity with all of the powers of a limited liability company under applicable law in the jurisdiction in which the Debtor is organized or otherwise formed and pursuant to its organizational documents in effect before the Effective Date, as such documents are amended by or pursuant to the Plan or pursuant to any amended articles of organization. Notwithstanding the foregoing, the Debtor may change its status of organization or formation or alter its corporate structure (either through mergers, consolidations, restructurings, conversions, dispositions, liquidations, dissolutions, or otherwise) after the Effective Date, subject to its organizational documents, as may be determined by Debtor to be appropriate.

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

If any Claimant entitled to Distributions cannot be located prior to the Effective Date or Allowance Date or has its Distribution returned to the Debtor, then such Distribution shall be held in a non-interest bearing account or fund maintained by the Debtor for purposes of holding such distributions. Debtor shall try to contact such Claimant for a period of 3 months after the first Distribution Date. To the extent a Claimant cannot be found within the first 3 months after the first Distribution Date or any funds are unclaimed or otherwise undistributable pursuant to the Plan, Bankruptcy Code Section 347, Bankruptcy Rule 3011, or Local Bankruptcy Rule 3011-1, such funds shall be distributed to the Bankruptcy Bar Foundation for the Southern District of Florida.

Debtor may suspend distribution to any Claimant that has not provided its Federal Tax Identification Number or Social Security Number, as the case may be. Any such distributions that remain suspended as of the Effective Date or Allowance Date shall be held by Debtor in a non-interest bearing account or fund maintained by Debtor pending receipt by Debtor of such information. If such information is not made available within 3 months of the first Distribution Date, the Debtor may distribute such funds to the Bankruptcy Bar Foundation for the Southern District of Florida.

SUBSTANTIAL CONSUMMATION. The Plan shall be deemed substantially consummated upon the Effective Date.

FINAL DECREE. After the Effective Date, Debtor may move for a final decree closing the case and requesting such other orders as may be necessary and appropriate.

WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 62(A). Debtor will request that the Confirmation Order include (i) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order; (ii) authorization for the consummation of the Plan and the transactions contemplated by the Plan immediately after entry of the Confirmation Order pursuant to Bankruptcy Rule 3020(e).

POST CONFIRMATION DEBTOR. Upon the Effective Date, all of Debtor's pre-confirmation property shall vest in the Post-Confirmation Debtor subject to the terms of the Plan. Wherever the Plan refers to Debtor's authority, responsibilities, rights, powers or limitations on or after the Effective Date, such reference shall be deemed to be a reference to the Post-Confirmation Debtor. The Post-Confirmation Debtor shall have the same authority, responsibilities, rights, powers or limitations to discharge the duties of Debtor pursuant to the Plan. The Post-Confirmation Debtor shall be managed by Mr. Rouche.

7.1. GENERAL SETTLEMENT OF CLAIMS

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

Except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims against or Interests in Debtor arising prior to the Effective Date, shall be enjoined from taking any of the following actions against the Debtor or affecting the Real Property:

- 7.1 commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind arising before the Confirmation Date against Debtor, Debtor's estate, or the Real Property (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date, shall be deemed to be withdrawn or dismissed with prejudice), including any suit, action or other proceeding which might affect the use or enjoyment of any portion of the Acquired Assets;
- 7.2 enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against Debtor, Debtor's estate, or the Real Property, relating to any obligation which arose prior to the Effective Date;

- 7.3 creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien or Encumbrance against Debtor, Debtor's estate, or the Real Property;
- 7.4 asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due Debtor, Debtor's estate, or the Real Property; and
- 7.5 proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

ARTICLE VIII: PROVISIONS GOVERNING DISTRIBUTIONS

8.1. DISTRIBUTIONS FOR ALLOWED CLAIMS

8.1.1. In General

The Debtor shall assume all obligations to make Distributions in accordance with the Plan from the Plan Funds held by the Distribution Account, limited to the Distributions expressly provided for in the Plan and/or approved by Final Order.

8.1.2. Distribution of Net Recoveries

After payment in full (or reserving for payment in full) of all Administrative Claims and Priority Claims, as and when Allowed, and when economically feasible, the Debtor shall distribute to Creditors on account of their Allowed Claims, all Cash (treating any permissible investment as Cash for this purpose) held by the Distribution Account, less such amounts that may be reasonably necessary to: (1) meet contingent liabilities and to maintain the value of the Distribution Account during liquidation; (2) pay reasonably incurred or anticipated expenses (including, without limitation, any taxes imposed on or payable by the Distribution Account or in respect of the Distribution Account, including with respect to Assets allocable to Disputed Claims); or (3) satisfy other liabilities incurred or anticipated by such Distribution Account in accordance with the Plan and Disclosure Agreement. Provided, however, Debtor shall not be required to make a Distribution if Debtor determines the expense associated with making the Distribution would likely utilize a substantial portion of the amount to be distributed, thus making the Distribution impracticable.

8.1.3. Distributions on Allowed Claims Only

Distributions from Distribution Account shall be made only to holders of Allowed Claims on account of such holder's Allowed Claims. Until a Disputed Claim becomes an Allowed Claim in its entirety, the Holder of that Disputed Claim shall not receive any Distribution from the Distribution Account.

8.1.4. Place and Manner of Payment of Distribution

Except as otherwise specified in this Plan, Distributions shall be made by mailing such Distribution to the Creditor at the address listed in any proof of claim filed by the Creditor or at such other address as such Creditor shall have specified for payment purposes in a written notice received by Debtor at least twenty (20) days before a Distribution Date. If a Creditor has not filed a proof of claim or interest or sent Debtor a written notice of payment address, then the Distribution(s) for such Creditor will be mailed to the address identified in the Schedules. Debtor shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Creditors, at the request of Debtor, must provide written notification of their respective Federal Tax Identification Numbers or Social Security Numbers to Debtor; otherwise, Debtor may suspend Distributions to any Creditors who have not provided their Federal Tax Identification Numbers or Social Security Numbers.

8.1.5. Undeliverable Distributions

If a Distribution made from Available Cash to any Creditor is returned as undeliverable, Debtor shall use reasonable efforts to determine such Creditor's then current address. If Debtor cannot determine, or is not notified of, a Creditor's then current address within three months after the Effective Date, the Distribution reserved for such Creditor shall be deemed an unclaimed Distribution and section 8.1.6 – "Unclaimed Distributions" shall be applicable thereto.

8.1.6. Unclaimed Distributions

If the current address for a Creditor entitled to a Distribution from Available Cash under the Plan and Disclosure Statement has not been determined within three months after the Effective Date or such Creditor has otherwise not been located or submitted a valid Federal Tax Identification Number or Social Security Number to Debtor, then such Creditor (1) shall no longer be a Creditor, (2) shall be deemed to have released such Claim; and (3) any distribution that would have been made to such Creditors shall be made to the Bankruptcy Bar Foundation for the Southern District of Florida.

8.1.7. Set-Offs

Except as otherwise provided in this Plan, agreements entered into in connection therewith, the Confirmation Order, or agreements previously approved by Final Order of the Bankruptcy Court, the Debtor may, pursuant to Section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim before any Distribution is made on account of such Allowed Claim, any and all of the Claims, rights and Causes of Action of any nature that Debtor holds against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release of any such Claims, rights or Causes of Action that Debtor may possess against such Holder. To the extent Debtor fails to set off against a Claim Holder and seeks to collect a Claim from such Claim Holder after a Distribution to such Claim Holder pursuant to this Plan on account of its Allowed Claim, Debtor shall be entitled to full recovery on its Claim against such Claim Holder.

8.1.8. Withholding

In connection with the Plan and Disclosure Statement, any party issuing any instrument or making any Distribution described in this Plan and Disclosure Statement shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions and all related agreements shall be subject to any such withholding or reporting requirements. Notwithstanding the foregoing, each Holder of an Allowed Claim or any other Person that receives a Distribution shall have responsibility for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such Distribution. Any party issuing any instrument or making any Distribution has the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations. Debtor may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of this section. Any party entitled to receive any property as an issuance or distribution under the Plan and Disclosure Statement shall, upon request, by the Debtor provide an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8. If such request is made and such party fails to comply before the date that is 180 days after the request is made, the amount of such Distribution shall irrevocably revert to Distribution Account and any Claim in respect of such Distribution shall be discharged and forever barred from assertion against the Debtor, the Distribution Account and their respective property.

8.2. CREATION AND TERMINATION OF DISBURSEMENT ACCOUNTS

The Debtor, in its reasonable business judgment, shall be able to create and terminate any Disbursement Accounts, whether held on behalf of the Debtor's Estate or the Distribution Account, as it deems reasonable and appropriate in fulfilling duties under this Plan.

8.3. TRANSFER OF CLAIMS

In the event the Holder of any Claim transfers such Claim on and after the Effective Date, it will immediately advise the Debtor and its counsel in writing of such transfer, and file notice of such transfer with the Bankruptcy Court. The Debtor will be entitled to assume that no transfer of any Claim has been made by any Holder unless the Debtor and its counsel have received written notice to the contrary, which has been filed with the Bankruptcy Court. Each transferee of any Claim will take such Claim subject to the provisions of the Plan and to any request made, waiver or consent given, or other action taken hereunder and, except as otherwise expressly provided in such notice, the Debtor will be entitled to assume conclusively that the transferee named in such notice will thereafter be vested with all rights and powers of the transferor under the Plan.

ARTICLE IX:
CONDITIONS PRECEDENT TO EFFECTIVE DATE

9.1. CONDITIONS PRECEDENT**9.1.1. Conditions to Confirmation**

The following conditions precedent to the occurrence of the Confirmation Date must be satisfied unless any such condition shall have been waived by Debtor:

(a) The Confirmation Order shall have been entered in form and substance satisfactory to Debtor and shall, among other things provide that Debtor is authorized and directed to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan and Disclosure Statement.

(b) The Bankruptcy Court finds that adequate information and sufficient notice of the Plan and Disclosure Statement, and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan and Disclosure Statement has been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017 and 3020(b); and

(c) All exhibits to the Plan and Disclosure Statement are in form and substance satisfactory to Debtor and as applicable, the Bankruptcy Court.

9.1.2. Conditions to Effective Date

The following conditions precedent to the occurrence of the Effective Date must be satisfied or waived by the Debtor on or prior to the Effective Date:

(a) the Plan and Disclosure Statement, and all Plan Supplement documents, including any amendments, modifications or supplements thereto, shall be in form and substance acceptable to Debtor;

(b) the Confirmation Order shall be a Final Order and approves and authorizes Debtor to take all actions necessary or appropriate to implement the Plan and Disclosure Statement, including completion of any transactions contemplated by the Plan and Disclosure Statement and the implementation of and consummation of contracts, instruments, releases and other agreements or documents created in connection with the Plan and Disclosure Statement;

(c) each of the exhibits to the Plan and Disclosure Statement and any other necessary documents shall be fully executed and delivered to the Debtor, shall be in form and substance acceptable to Debtor, and shall be fully enforceable in accordance with their terms; and

(d) Debtor shall have obtained leases for Parcel A, Parcel C, and/or Dames Property generating income sufficient to fund all payments under and pursuant to this Plan or shall have sold the Real Property or the Debtor shall have waived this condition.

9.1.3. Notice of Occurrence of Effective Date

The Debtor shall file a notice of the occurrence of the Effective Date within five (5) days thereafter.

9.1.4. Waiver of Conditions

Each of the conditions set forth in this Article may be waived in whole or in part by the Debtor without any notice to parties-in-interest or the Bankruptcy Court and without a hearing.

9.1.5. Consequences of Non-Occurrence of Effective Date

If the Confirmation Order is vacated, (1) the Plan and Disclosure Statement shall be null and void in all respects; (2) any settlement of Claims or Interests provided for hereby shall be null and void without further order of the Bankruptcy Court; and (3) to the extent permitted under the Bankruptcy Code, the time within which the Debtor may assume and assign or reject all Executory Contracts and Unexpired Leases shall be extended for a period of one hundred twenty (120) days after the date the Confirmation Order is vacated.

9.1.6. Substantial Consummation

Substantial Consummation of the Plan and Disclosure Statement shall be deemed to occur on the Effective Date.

**ARTICLE X:
LIMITATION OF LIABILITY**

10.1. POST-PETITION DISCLOSURES AND SOLICITATION

To the extent provided under Sections 1123(b)(3)(A) and 1125(e) of the Bankruptcy Code, and applicable law, the Debtor and its employees, agents, representatives, Professionals (acting in such capacity), and their respective successors and assigns, will neither have nor incur any liability whatsoever to any Person or other Entity for any act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, implementation, Confirmation, or Consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the bankruptcy case. The rights granted under this Article are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Debtor and its agents have or obtain pursuant to any provision of the Bankruptcy Code. Consistent with 11 U.S.C. § 1144, the Bankruptcy Court shall retain sole and exclusive jurisdiction for a period of 180 days following the entry of the Confirmation Order to consider modification of this exculpation provision in the event that any Holder of an Allowed Claim asserts that the Confirmation Order was procured by fraud.

10.2. NO LIABILITY FOR TAX CLAIMS

Unless a taxing Governmental Authority has asserted a Claim against the Debtor by properly filing a proof of claim before the Bar Date established therefore, no Claim of such

Governmental Authority will be Allowed against the Debtor for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of the Debtor or any other Person or Entity to have paid tax or to have filed any tax return (including any income tax return or franchise tax return) in or for any prior year or arising out of an audit of any return for a period before the Petition Date.

**ARTICLE XI:
RETENTION OF JURISDICTION**

11.1. GENERAL RETENTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, until the bankruptcy case is closed, the Bankruptcy Court will retain the fullest and most extensive jurisdiction of the bankruptcy case that is permitted by applicable law, within the discretion of the Bankruptcy Court, including jurisdiction necessary to ensure that the purposes and intent of the Plan are carried out.

11.2. SPECIFIC PURPOSES

In addition to the general retention of jurisdiction set forth in this Article, after Confirmation of the Plan and until the bankruptcy case is closed, the Bankruptcy Court will retain jurisdiction of the bankruptcy case for the following specific purposes:

- To determine any and all cases, controversies, suits, Causes of Action and Retained Assets, or disputes arising under or relating to the Plan or the Confirmation Order (including whether conditions to the Consummation and/or Effective Date of the Plan have been satisfied) and to enforce the obligations under the Plan;
- To determine any and all applications for allowance of Professional Fees arising out of or relating to this bankruptcy case;
- To determine any and all motions, applications, adversary proceedings, contested or litigated matters, Causes of Action and Retained Assets, and any other matters involving the Debtor, commenced in connection with, or arising during, the bankruptcy case and pending on the Effective Date, including approval of proposed settlements thereof;
- To enforce, interpret, and administer the terms and provisions of this Plan;
- To modify any provisions of this Plan to the fullest extent permitted by the Bankruptcy Code and the Bankruptcy Rules;
- To consider and act on all objections to Claims, counterclaims and the compromise and settlement of any Claim against or Equity Interest in the Debtor or the Estate;

- To correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary change or modification in or to the Disclosure Statement, the Plan, the Confirmation Order, or any exhibits or schedules to the foregoing, as may be necessary or appropriate to carry out the purposes and intent of this Plan, including the adjustment of the date(s) of performance under this Plan in the event the Effective Date does not occur as provided herein so that the intended effect of this Plan may be substantially realized thereby;
- To enforce all orders, judgments, injunctions, and rulings entered in connection with this bankruptcy case;
- To enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan, the Disclosure Statement, or the Confirmation Order;
- To determine all questions and disputes regarding title to the Assets of the Debtor or the Estate or disputes arising pre-petition between the Debtor and all parties over which this Court has jurisdiction;
- To determine any motions or contested matters involving taxes, tax refunds, Tax Attributes, tax benefits, development rights, impact fees, and similar or related matters with respect to the Debtor arising on or prior to the Effective Date or arising on account of transactions contemplated by this Plan;
- To resolve any determinations which may be requested by Debtor of any unpaid or potential tax liability or any matters relating thereto under Sections 505 and 1146(d) of the Bankruptcy Code, including tax liability or such related matters for any taxable year or portion thereof ending on or before the Effective Date;
- To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or other Entity with Consummation, implementation, or enforcement of this Plan or the Confirmation Order;
- To enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- To determine any other matters that may arise in connection with or relating to this Plan, the Disclosure Statement, or the Confirmation Order;
- To determine such other matters and for such other purposes as may be provided for in the Confirmation Order or as may from time to time be authorized under the provisions of the Bankruptcy Code or any other applicable law;
- To enter an order concluding and terminating this bankruptcy case; and

- To enter an order reopening this bankruptcy case after the case has been closed.

11.3. VENUE

In all instances where the Bankruptcy Court retains jurisdiction, including, but not limited to, those specified in this Plan, venue shall be appropriate in and before the Bankruptcy Court.

11.4. FAILURE TO EXERCISE JURISDICTION

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, the provisions of this Article shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE XII: MODIFICATION AND CONFIRMATION OVER OBJECTION

12.1. MODIFICATION OF PLAN

Debtor may modify this Plan at any time prior to the entry of the Confirmation Order provided that this Plan, as modified, and the Disclosure Statement meet applicable requirements of the Bankruptcy Code and Bankruptcy Rules. At any time prior to solicitation of this Plan, Debtor reserves the right to make non-substantive modifications to this Plan and Disclosure Statement.

After the Confirmation Date and before the Effective Date of this Plan, Debtor may modify this Plan in a way that materially or adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Equity Interests, provided: (1) the Plan, as modified, meets applicable Bankruptcy Code requirements; (2) Debtor obtains Bankruptcy Court approval for such modification, after notice and a hearing; (3) such modification is accepted by at least two-thirds (2/3) in amount, and more than one-half (1/2) in number, of Allowed Claims or Allowed Equity Interests voting in each Class adversely affected by such modification; and (4) the Debtor complies with Section 1125 of the Bankruptcy Code with respect to this Plan, as modified.

12.2. CRAMDOWN

In the event any Class of Claims or Equity Interests votes against the Plan, and the Plan is not revoked or withdrawn, Debtor hereby requests, and will be Allowed, to modify the terms of this Plan to effect a “cramdown” on the dissenting Class or Classes by (1) restructuring the treatment of any Class on terms consistent with Section 1129(b)(2)(B) of the Bankruptcy Code, or (2) deleting Distributions to all Classes at or below the level of the objecting Class, or reallocating such Distributions, until such Impaired senior Classes are paid in accordance with the absolute priority rule of Section 1129(b) of the Bankruptcy Code. Debtor may make such modifications or amendments to the Plan and such modifications or amendments will be filed

with the Bankruptcy Court and served on all parties in interest entitled to receive notice of the Confirmation Hearing. No such modifications will require any resolicitation of acceptances as to the Plan by any Class of Claims or Equity Interests unless the Bankruptcy Court requires otherwise.

Notwithstanding any provision of the Plan to the contrary, Debtor reserves any and all rights it may have to challenge the validity, perfection, priority, scope, and extent of any Liens in respect to any Secured Claims and the amount of any Secured Claims, the Holders of which have not accepted the Plan.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

13.1. SECTION 1146 EXEMPTION

Pursuant to Section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, this Plan, or the re-vesting, transfer, or sale of any real or personal property of, by, or in the Debtor pursuant to, in implementation of, or as contemplated by, this Plan, will not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee.

13.2. NO ADMISSIONS

This Plan provides for the resolution, settlement, and compromise of Claims against and Equity Interests in the Debtor. Nothing herein will be construed to be an admission of any fact or otherwise to be binding upon the Debtor or any other Person in any manner prior to the Effective Date.

13.3. EXTENSION OF AUTOMATIC STAY

Unless otherwise provided herein, all injunctions or stays applicable to Assets of Debtor's Estate, whether pursuant to Section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect with respect to the Distribution Account and all other assets of Debtor's Estate.

13.4. REVOCATION OR WITHDRAWAL OF PLAN

Debtor reserves the right to revoke or withdraw this Plan, or any portion thereof, prior to the Confirmation Date and is specifically conditioned upon the approval of the settlement agreement between the Debtor and STORE Master Fund XI, LLC (*see* ECF\$105). If Debtor revokes or withdraws this Plan, then this Plan will be deemed null and void and nothing contained in this Plan will be deemed to (1) constitute a waiver or release of any Claims by or against, or Equity Interests in, the Debtor or Debtor's Estate in the bankruptcy case or any other Person or other Entity, or (2) prejudice in any manner the rights of the Debtor or any other Person or other Entity in any further proceedings involving the Debtor and/or the bankruptcy case.

13.5. HEADINGS

The headings and table of contents used in this Plan are for convenience and reference only and will not constitute a part of this Plan for any other purpose or in any manner affect the construction of the provisions of this Plan.

13.6. NOTICES

All notices, requests, and other documents in connection with this Plan or required by this Plan to be served will be in writing and will be sent (1) first class United States mail, postage prepaid, or (2) by overnight delivery by a recognized courier service, to Debtor and respective counsel at the following addresses:

To Debtor:

8281 Merrill Road A, LLC
8281 Merrill Road C, LLC
c/o Daniel Rusche
110 SE 6th St, Suite 1700
Fort Lauderdale, FL 33301

With a copy to:

Brett D. Lieberman
Edelboim Lieberman Revah Oshinsky PLLC
20200 W. Dixie Hwy., Suite 1203
Miami, FL 33180

13.7. GOVERNING LAW

Except to the extent that federal law (including the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure) is applicable, or where this Plan or the provisions of any contract, instrument, release, indenture, or other agreement or document entered into in connection with this Plan provide otherwise, the rights and obligations arising under this Plan will be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to the principles of conflicts of law thereof.

13.8. LIMITATION ON ALLOWANCE

No attorney's fees, costs, punitive damages, penalties, exemplary damages, treble damages, late charges, or interest will be paid with respect to any Claim or Equity Interest except as specified herein or as Allowed by a Final Order of the Bankruptcy Court.

13.9. ESTIMATED CLAIMS

To the extent that any Claim is estimated for any purpose other than for voting, then in no event will such Claim be Allowed in an amount greater than the estimated amount.

13.10. PARTIES AND BINDING EFFECT

This Plan and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto, including but not limited to all Holders of Claims, Holders of Interests, Holders of Administrative Claims, employees, third party beneficiaries, shareholders, Governmental Authorities, parties to executory contracts and unexpired leases, in whatever capacity, and its officers, agents, successors, assigns, servants, employees, attorneys and any party in active concert or participation with the foregoing. Receipt of the Plan and Disclosure Statement shall be deemed sufficient notice of the content and effect thereon to bind all of the foregoing in whatever capacity, and its officers, agents, successors, assigns, servants, employees, attorneys and any party in active concert or participation with the foregoing. Any of the foregoing Persons failing to timely object to Confirmation of the Plan, or who does so object but has such objection overruled by the Bankruptcy Court, shall be deemed to consent to, and shall be bound by, the terms of this Plan as confirmed by the Bankruptcy Court.

13.11. CONSENT TO JURISDICTION

Upon any default under this Plan, Debtor consents to jurisdiction of the Bankruptcy Court, or any successor thereto, and agrees that it will be the preferred forum for all proceedings relating to any such default.

By accepting any Distribution or payment under or in connection with this Plan, by filing any proof of claim, by filing any cure claim or objection to the assumption or assignment of any assumed contract, by voting on this Plan, by filing an objection to Confirmation, by filing any motion or application in the Bankruptcy Court, or by entering an appearance in the bankruptcy case, all Creditors and other parties in interest have consented, and will be deemed to have expressly consented to, the jurisdiction of the Bankruptcy Court for all purposes with respect to any and all matters relating to, arising under, or in connection with, this Plan or the bankruptcy case, including the matters and purposes set forth in this Plan. The Bankruptcy Court will maintain jurisdiction to the fullest extent allowed under applicable law over all matters set forth in this Plan.

13.12. SUCCESSORS AND ASSIGNS

The rights, benefits, duties, and obligations of any Entity named or referred to in this Plan will be binding upon, and will inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity.

13.13. ENTIRE AGREEMENT

This Plan sets forth the entire agreement and undertakings relating to the subject matter thereof and supersedes all prior discussions and documents. No Person or other Entity will be bound by any terms, conditions, definitions, warranties, understandings, or representations with

respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

13.14. SEVERABILITY OF PLAN PROVISIONS

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, or Debtor, as applicable, will 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

13.15. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by this Plan, the provisions of F.R.B.P. 9006(a) will apply.

8281 Merrill Road A, LLC
8281 Merrill Road C, LLC

By: 

Daniel Rusche
Manager, JMD