UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
EASTMINSTER SCHOOL, INC.,	)	CASE NO. 16-58972-LRC
	)	
Debtor.	)	

SECOND AMENDED DISCLOSURE STATEMENT CONCERNING DEBTOR'S PLAN OF REORGANIZATION

COMES NOW Eastminster School, Inc., through its undersigned counsel, pursuant to 11 U.S.C. §1125 and Bankruptcy Rule 3016, and submits the following SECOND Amended Disclosure Statement Concerning Debtor's Plan of Reorganization.

This 22nd day of February, 2017.

Respectfully submitted,

ROBL LAW GROUP LLC

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The following sections are included within this Disclosure Statement:

ARTICLE 1

INTRODUCTION

1.01 **Purpose of the Disclosure Statement.** The purpose of this Disclosure Statement is to provide the holders of claims and interests in the above-styled Chapter 11 bankruptcy case with information on the proposed Plan of Reorganization filed by the Debtor which is adequate to enable such holders of claims and interests to make an informed decision in exercising their right to vote on the Plan. If this Disclosure Statement has been mailed by Debtor to creditors that indicates that a hearing on this Disclosure Statement was held by the Bankruptcy Court and that the dissemination of the Disclosure Statement has been approved by Order of the Bankruptcy Court.

1.02 **Definitions.** Capitalized terms used and not defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

1.03 **Accompanying Documents.** Accompanying this Disclosure Statement are copies of: (1) the Plan; (2) an Order and Notice from the Court establishing (a) the time for and manner of filing ballots accepting or rejecting the Plan, (b) the date and time of the hearing to consider Confirmation of the Plan, and (c) the time for filing objections to the Plan; and (3) a Ballot for voting on the Plan.

1.04 **Voting Instructions**. After reviewing this Disclosure Statement and the Plan, please indicate your vote on the enclosed Ballot and mail or otherwise deliver the Ballot to the office of the Clerk of Bankruptcy Court at the address shown on the Ballot. IN ORDER TO HAVE YOUR VOTE COUNT, YOUR BALLOT MUST BE RECEIVED BY THE CLERK'S OFFICE BY 5:00 P.M. ON THE DATE SHOWN ON THE ACCOMPANYING ORDER AND

NOTICE IF FILED AT THE CLERK'S OFFICE, AND BY 12:00 MIDNIGHT IF SUBMITTED VIA THE COURT'S ECF FILING SYSTEM.

1.05 **Solicitation of Acceptances. Debtor believes that ACCEPTANCE of the Plan is in the best interest of all creditors and recommends that creditors VOTE TO ACCEPT the Plan. The Plan provides for satisfaction in full of priority claims and secured claims, and for payment of a partial dividend on unsecured claims.**

1.06 **Unimpaired, non-voting Classes of Claims**. Creditors in every Class are impaired. Accordingly, Ballots need to be completed and filed by creditors in every Class.

1.07 **Binding Effect.** Whether or not a holder of a claim or interest votes on the Plan, such holder of a claim or interest will be bound by the terms of the Plan if the Plan is confirmed by the Court. Allowance or disallowance of a claim for voting purposes does not necessarily mean that all or a portion of that claim will be allowed or disallowed for purposes of distribution under the Plan.

1.08 **Voting Requirements for Confirmation**. In order for the Plan to be accepted and thereafter confirmed by the Court without resort to the "cramdown" provisions of Chapter 11 (explained later in this Disclosure Statement), votes representing a majority in number and at least two-thirds in amount of claims actually voting on the Plan in each impaired Class must vote to accept the Plan.

1.09 **Use of this Disclosure Statement**. This Disclosure Statement is intended to assist holders of claims and interests in determining whether to accept or reject the Plan. Votes on the Plan may not be solicited unless a copy of this Disclosure Statement is furnished prior to or concurrently with such solicitation. You should read this Disclosure Statement prior to completing your Ballot. You should also read the entire Plan prior to completing your Ballot.

The Plan, if confirmed by the Court, will affect your rights and the Debtor's obligations to you. In the event of any inconsistency between this Disclosure Statement and the Plan, the terms of the Plan shall control.

1.10 **Representations; Solicitations.** ***No representations concerning the Debtor, particularly as to the value of its assets or the likelihood of any distributions or value of any distributions to be made under the Plan, other than those set forth in this Disclosure Statement, are authorized. Any representations or inducements made to secure your vote accepting or rejecting the Plan that are not contained in this Disclosure Statement are not authorized and should not be relied upon in arriving at your decision. Any such additional representations or inducements should be reported to the attorneys for the Debtor, who, in turn, may deliver such information to the Court for such action as may be appropriate.***

1.11 **Sources of Information; Reliance.** The information contained herein has been derived from sources which the Debtor believes to be the most reliable available to the Debtor. Those sources include: *public tax records, public lien records, public real estate records, Debtor's internal accounting records, documents obtained from Debtor's creditors, and appraisals*. The information contained herein has been assembled and prepared by the Debtor and its legal counsel, and reasonable efforts have been made to present accurate information in this Disclosure Statement; however, unless otherwise expressly noted, the financial information contained herein has not been the subject of an independent audit.

This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan, and nothing contained herein shall constitute an admission in any proceeding or action, nor shall it be deemed to be advice on the tax effects or legal effects of the Plan on any holder of a claim or interest.

1.12 **Explanation of Chapter 11**. Chapter 11 is the business reorganization chapter of Title 11 of the United States Code. The primary purpose of Chapter 11 bankruptcy cases is to restructure and reorganize a debtor's obligations. A reorganization plan is the vehicle for restructuring a debtor's obligations. The Bankruptcy Code permits the liquidation, sale or transfer of a debtor's assets to creditors as part of, or the entirety of, a reorganization plan.[1]

ARTICLE 2

INFORMATION CONCERNING DEBTOR'S BUSINESS, HISTORIC OPERATIONS AND EVENTS LEADING TO BANKRUPTCY

2.01. Organization of Debtor's Business. Debtor is a corporation organized under the laws of the State of Georgia as a non-profit corporation. Debtor was organized with the intent of owning and operating a private school in an area largely not served by other college preparatory schools East of Atlanta. Debtor may also be referred to herein as the "School." Debtor's principal place of business and all of its assets are located in the State of Georgia.

2.02. Historic Operations. Debtor was formed on February 24, 2004 with the Georgia Secretary of State. Debtor was gifted land over a period of several years on which to build and operate a private school. Debtor built and presently owns a school building comprised of several buildings situated on over 28 acres of land (the "School Property") in Conyers, Georgia, and also

[1] *See, e.g.*, 11 U.S.C. § 1123(a) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—*** (5) provide adequate means for the plan's implementation, such as— *** (B) *transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan*; *** (D) sale of all or any part of the property of the estate, either subject to or free of any lien, *or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate*;….") (emphasis supplied).

owns one (1) residential Lot of approximately acres in size, located at 108 Stephanie Lane, Covington, Georgia (the "Lot").

The School's Board of Directors had a plan to grow the size of its facilities in order to provide services to more students based on certain criteria, and the School had the land that had been donated to it which could be pledged to borrow money for construction of the School's facilities and while constructing those facilities the School could conduct capital campaigns. The school took out a loan from Eastside Commercial Bank in September of 2008 in the amount of $2,300,000 to construct buildings and pledged the School Property as collateral. The school installed 10 buildings, some of it which it built and some of which were modular buildings. The real estate market crashed around the time that the School's loan with Eastside Commercial Bank was taken out.

The School made its loan payments, and the loan was renewed at the end of 2009, the end of 2011 and the end of 2013. Eastside Commercial Bank failed and was closed by the Georgia Department of Banking and Finance on July 18, 2014 and the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver of that bank. On July 23, 2014, the FDIC, as receiver, sold the promissory note held by Eastside Commercial Bank concerning the School to State Bank & Trust Company. The School requested that State Bank & Trust Company refinance the loan, but the bank refused.

When real estate and financial markets collapsed throughout the United States, other banks stopped lending as well and the School was not able to refinance the loan with any bank. As a result, the School's funding of all operations and development of facilities was accomplished from tuition payments, donor gifts, and unsecured loans from individuals who have historically assisted the School.

After a number of challenges with teachers' contracts, student enrollment levels, funding of operations, and administrative changes, the School suspended operations at the end of 2014-2015 school year.

After ceasing its own school operations, Debtor leased the School Property to another private school named Georgia Preparatory School pursuant to a Lease signed March 24, 2016 (the "Lease") and term of that Lease commenced June 1, 2016.

No foreclosure proceedings as to either the School Property, or the Lot, were pending at the time the above-captioned bankruptcy case was filed.

2.03. Events which led to the filing of a bankruptcy petition. Debtor's financial distress was triggered by the economic downturn which hindered its ability to continue development of the School Property, to grow its student base, and to fund operations, and by the failure of Eastside Commercial Bank and the subsequent inability to refinance its loan with Eastside Commercial Bank's successor in interest State Bank & Trust Company.

ARTICLE 3

INFORMATION CONCERNING THE DEBTOR'S CHAPTER 11 BANKRUPTCY CASE

3.01. Debtor in Possession. Debtor has operated as a Debtor-in-Possession, with no trustee appointed to manage the Debtor's business affairs, since the initiation of the Chapter 11 Case. No creditors' committee has been appointed.

3.02 Schedules. Debtor filed its Schedules of Assets and Liabilities and Statement of Affairs with its Chapter 11 Petition. The information contained therein, in addition to any amendments filed, is believed to be generally accurate by the Debtor with the potential for changes in valuations of real property owned by Debtor over time. Debtor reserves the right to

amend its Schedules of Assets and Liabilities if other information becomes available or inaccuracies are discovered.

3.03. Management. Debtor has continued to be managed by the individual who served as the School's Headmaster prior to the cessation of operations, Mr. Andy Brown, during the pendency of this Chapter 11 Case.

Debtor anticipates that Mr. Brown will continue to serve in his existing capacities through confirmation and implementation of the Plan, after which time it is not expected that he would have ongoing duties since the Plan contemplates the transfer of all of Debtor's assets to State Bank & Trust Company or the sale of those assets to pay creditors.

The School Property is leased out to a commercial tenant operating a private school. The School Property has been well managed and generally kept in good condition. The School Property is insured.

3.04. Post-Filing Significant Events. During the pendency of the Chapter 11 Case:

a. Debtor continues to lease and maintain the School Property.

b. Debtor pays to State Bank & Trust Company the net revenues from the School Property pursuant to an Order regarding cash collateral.

ARTICLE 4

SUMMARY OF THE PLAN

The following is only a summary of certain notable provisions of the Plan. The Plan should be read and analyzed in its entirety.

4.01 Satisfaction of Claims of Secured Creditors. On the Effective Date of the Plan, the Debtor will deed to State Bank & Trust Company all of the School Property with a fair market value to be established by the Court at the hearing to confirm the Plan.

4.02. Satisfaction of tax claims. The Debtor has no pre-petition tax claims.

4.03 Logistics for payment of Unsecured Claims – Class 2 and Class 3. Unsecured claims will be paid, after all prior classes have been paid in full or otherwise satisfied, to the extent that individual unsecured claims are allowed by the Court, to the extent possible, through the sale of the Lot.

The dollar amount ultimately to be paid to creditors in Class 2 and Class 3 is presently unknown; however, the Debtor expects the payment to creditors in Classes 2 and 3 to be minimal for the following reasons. First, there is a large dollar amount of claims in Class 3, and potentially in Class 2. The Schedules of assets and liabilities filed by the Debtor with the Bankruptcy Court on May 24, 2016 reflect that general unsecured creditors other than State Bank & Trust Company hold claims amounting to $739,912.21 (Docket No. 1, pages 16-18). The amount of the Class 2 claim is not presently known by the Debtor, as it will be calculated based on the amount of State Bank & Trust Company's total claim, less the value of real property conveyed to State Bank & Trust Company which secures its claims, and therefore will the unsecured claim amount will depend on the Court's valuation of the real property securing the claim of State Bank & Trust Company. The Debtor's estimated value of the property securing State Bank & Trust Company's claim is disputed by State Bank & Trust Company and, if the estimated valuation put forth by State Bank & Trust Company were to be adopted by the Court as the value of the property securing the bank's claim, then the bank might have a deficiency claim in Class 2 greater in amount than the Class 3 claims. State Bank & Trust Company filed a

Proof of Claim with the Bankruptcy Court on August 26, 2016 in the total amount of $2,393,818.34, which indicates that State Bank & Trust Company places a value of $600,000.00 on the property securing its claim. The Debtor understands that appraisal amounts, under various valuation methodologies, exceed that amount; however, the amount remains in dispute and for resolution by the Court. The debtor does not know the precise amount of State Bank & Trust Company's claim at this juncture, as State Bank & Trust Company has collected hundreds of thousands of dollars from individuals who guaranteed the loan obligations of the Debtor to State Bank & Trust Company, and which reduces that bank's claim amount.

Second, the Debtor expects for the cash available from the sale of the Lot – which is the source of funding of payment to Classes 2 and 3 – to be relatively small in amount. As noted elsewhere herein, Debtor believes that the value of the Lot is approximately $15,000 based on tax assessor records, and proceeds available to the debtor to distribute would be determined after deducting closing costs such as attorney's fees and any real estate agent commission(s). Accordingly, the amount of funds anticipated to be received from the sale of the Lot is negligible when compared to the total amount of claims in Classes 2 and 3.

Finally, the funds paid to any single general unsecured creditor pursuant to this Plan would be that creditor's pro rata share of its allowed claim amount out of the total funds available for distribution to that entire class of creditors (and, in this case, combining Classes 2 and 3 for similar treatment and payment from the Lot sale), such that any single creditor will receive only partial payment on its claim. While the actual percentage of any claim amount which will be paid to a creditor depends, in part, on the valuation of the property securing the claim of State Bank & Trust Company and, thus, the amount of its Class 2 claim, the Debtor expects that the percentage paid to Classes 2 and 3 will not exceed approximately two and two-

hundredths percent (2.02%), as even if State Bank & Trust Company's Class 2 claim (*i.e.*, its unsecured claim) is satisfied in full by a combination of payments from guarantors and the value placed on its collateral, the remaining claims in Class 3 of $739,912.21 would be sharing in a distribution expected not to exceed $15,000.00.

Despite the foregoing claim amounts in Classes 2 and 3, and the foregoing asset value estimate, Debtor believes that this Plan is in the best interest of unsecured claimholders, as this Plan administers all of the Debtor's assets and the Debtor does not expect that unsecured claimholders would receive any greater distribution in a liquidation proceeding.

4.03. Incorporation of Full Plan Herein. THE DEBTOR IS DISTRIBUTING A FULL COPY OF ITS PROPOSED PLAN OF REORGANIZATION WITH THIS DISCLOSURE STATEMENT. YOU SHOULD READ THE ENTIRETY OF THE PLAN BEFORE DECIDING TO CAST YOUR VOTE.

ARTICLE 5

INFORMATION POTENTIALLY RELEVANT TO AN ANALYSIS OF THE PLAN

The following information is intended to provide additional relevant information to creditors and parties in interest, as required by *In Re Metrocraft Publishing, Inc*, 39 B.R. 567 (N.D. Ga. 1984) and similar cases, to aid in the analysis of the Plan.

(1) The events which led to the filing of a bankruptcy petition.

Debtor's bankruptcy was triggered by the economic downturn which hindered its ability to develop fully the School Property and to maintain and grow its student base, and by the inability to reach agreement with the lender who holds a secured interest in the School Property, State Bank & Trust Company.

(2) A description of the available assets and their value.

Debtor obtained appraisals of its School Property from Dr. Thomas Carson. Dr. Carson's appraisal is attached hereto. Dr. Carson appraised the School Property as of August 17, 2016 at a fair market value of $1,350,000.00.

Debtor believes that the value of the Lot is approximately $15,000 based on tax assessor records.

Debtor does not have any accounts receivable.

Debtor has limited cash on hand due to turning over net rents on a monthly basis to State Bank & Trust Company which has a security interest in the rents deposited in the DIP account and referenced in the operating report.

Some courts have determined that the valuation of real property conveyed to a secured lender through a Chapter 11 plan of reorganization should utilize a conservative valuation. For instance, the Bankruptcy Court for the Southern District of Georgia concluded:

> Precedent in "dirt for debt" cases, however, has to be considered and it generally leads to the conclusion that if a Plan is to be confirmed which approves "dirt-for-debt" or "partial dirt for debt," the decision must be so conservatively or sparingly applied as to ensure that the lender forced over its objection to accept property in satisfaction of a claim receives the indubitable equivalent of cash. *See In re SUD Properties, Inc.*, 2011 WL 5909648 at *6 (Bankr.E.D.N.C.2011) ("Many courts when valuing collateral in 'dirt-for-debt' plans have taken conservative approaches."); *see also In re Bannerman Holdings, LLC*, 2010 WL 4260003 at *4 (Bankr.E.D.N.C.2010) ("[V]aluation is not an exact science, and the chance for error always exists. A conservative approach should, therefore be taken in order to protect the secured creditor in this regard.").

In re Inv'rs Lending Grp., LLC, 489 B.R. 307, 314–15 (Bankr. S.D. Ga. 2013). Based on a very conservative approach, that same court determined that the appropriate methodology for valuing

real property deeded by a debtor to a secured lender was to deduct the realtor's commission and closing costs:

> Thus, I conclude that in order to sell the property at the price contemplated by the appraisal and achieve the highest and best price, not only would the property be subject to the three to six month holding period the appraisal contemplated, but would be subject to an eight percent reduction in the net amount received by the lender on account of a typical realtor's commission and the expected closing costs that would be imposed on BTO [Bank of The Ozarks] as seller.
> The current values of the seven properties to be surrendered are $752,000.00. BTO's claim totals $744,000.00. I find that the values listed in the approved Joint Disclosure Statement will be subject to an eight percent reduction to account for realtor's commission and closing costs. Therefore, in order for the Plan to be confirmable as "fair and equitable" and to provide BTO the "indubitable equivalent" of its claim, confirmation is denied unless the Plan is amended to surrender properties totaling $810,000.00 in Disclosure Statement value, no later than January 29, 2013. That number, after deduction of eight percent in likely costs, will yield the amount necessary to cover the BTO debt.

In re Inv'rs Lending Grp., LLC, 489 B.R. 307, 314–15 (Bankr. S.D. Ga. 2013). If the Court in the case at hand were to adopt such an approach, then its valuation of the School Property might include reductions for a realtor's commission and anticipated closing costs in amounts to be determined at the confirmation hearing from testimony. Once the Court makes such a determination, it could confirm the Plan, as the Court indicated in the *Investors Lending Group* decision:

> *ORDER*
> Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that confirmation of the Joint Plan of Reorganization (Dckt. No. 296) is DENIED. ***If Debtor and the Committee file an amended Plan by January 29, 2013, pursuant to the above findings, the Plan will be confirmed without further notice or hearing***.

In re Inv'rs Lending Grp., LLC, 489 B.R. 307, 314–15 (Bankr. S.D. Ga. 2013) (emphasis supplied).

(3) The anticipated future of the Debtor.

The Debtor is deeding all of the School Property to its secured creditor to satisfy in full its secured claims. Debtor is selling the Lot. The Debtor does not anticipate having ongoing operations after those events.

(4) The source of information stated in the disclosure statement.

The information contained in this Disclosure Statement was prepared by management for the Debtor, including Mr. Andy Brown, appraiser Dr. Tom Carson, and legal counsel for the Debtor (Michael Robl, Esq.).

(5) The present condition of the debtor while in Chapter 11.

The Debtor continues to own the real property listed in its Schedules of Assets (*i.e.*, the School Property and the Lot) and the School Property been rented out. Otherwise, the Debtor has no operating business activities. The Debtor is a debtor in possession, no trustee having been appointed to manage its affairs as of the date of this Disclosure Statement.

The Debtor will file monthly Operating Reports, and the Operating Reports will reflect any cash on hand each month, the sources of cash on hand, all expenditures made each month, any significant developments, and other information concerning the Debtor. The monthly Operating Reports are incorporated herein by reference, and available for any creditor or party in interest to view at http://www.ganb.uscourts.gov/.

(6) The estimated return to creditors under a Chapter 7 liquidation.

The Debtor anticipates that a Chapter 7 liquidation would provide little or no return to any creditors other than its secured creditor. The nature of a Chapter 7 liquidation case calls for a relatively rapid sale of assets, potentially as rapidly as within two to three months. In the current real estate market it is unlikely, in the Debtor's opinion, that the Debtor's real property

could be marketed for an amount sufficient to pay creditors other than secured creditor. Thus, the Chapter 7 process would not result in any greater satisfaction of claims than Debtor's Plan.

(7) The accounting method utilized to produce financial information and the name of the accountants responsible for such information.

Debtor's financial information contained herein does not include any information prepared by accountants.

(8) The future management of the debtor.

The Debtor will continue to be managed by its former and current manager, Mr. Andy Brown, who had been Headmaster of the School.

(9) The Chapter 11 plan or a summary thereof.

Certain notable provisions of the proposed Plan are summarized above in this Disclosure Statement. Additionally, THE DEBTOR IS DISTRIBUTING A FULL COPY OF ITS PROPOSED PLAN OF REORGANIZATION WITH THIS DISCLOSURE STATEMENT. YOU SHOULD READ THE ENTIRETY OF THE PLAN BEFORE DECIDING TO CAST YOUR VOTE. In essence, the Plan provides for a transfer of certain real property to secured creditors to satisfy their claims and for an infusion of cash from the owner of the Debtor to satisfy other claims.

(10) The estimated administrative expenses, including attorneys' and accountants' fees.

The Debtor estimates that administrative expenses will be in negligible, as it has minimal operating costs by virtue of having leased out the School Property after cessation of School operations, and has few assets to administer by virtue of the nature of the Plan. The Debtor estimates that legal fees will be satisfied by a retainer already provided to legal counsel pre-

petition plus no more than $15,000 beyond that retainer and that individuals associated with the School will fund administrative expenses.

It is possible, but not presently anticipated, that other fees and expenses could be incurred during the case, depending on certain future events, which are difficult to predict, but include (a) real property taxes accruing post-petition, (b) quarterly fees required to be paid to the U.S. Trustee's office, provided that such quarterly fees will end after the Plan is confirmed and substantially consummated and Debtor makes a motion and obtains Court approval to close the case, (c) legal fees and expenses related to Debtor's normal business operations, and to fulfill requirements of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, such as (without limitation) filing monthly operating reports, responding to creditor inquiries, and other ongoing matters, (d) legal fees and expenses related to a confirmation of the proposed Plan of reorganization, such as (without limitation) negotiating amendments to the Plan, amending the Plan, amending the Disclosure Statement, and preparing for and attending hearings to approve the Plan and Disclosure Statement, and, (e) any other unforeseen expenses necessary for administration of the Debtor's estate and business operations.

(11) The collectability of accounts receivable.

The Debtor does not have any accounts receivable.

(12) Financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan.

Debtor obtained an appraisal of its real property from Dr. Thomas Carson, as summarized above and filed herewith.

The Plan provides that State Bank & Trust Company will receive the School Property in satisfaction of its secured claim. The School Property is income producing property, as it is

leased to a private school which has paid rent from June of 2016 through the present date, as follows:

Check Date:	***Amount:***	***Notes:***
June 9, 2016	$5,200.00	security deposit
June 28, 2016	$5,2000.00	June rent
June 30, 2016	$5,200.00	July rent
July 29, 2016	$5,200.00	August rent
September 9, 2016	$5,200.00	September rent
October 7, 2016	$5,200.00	October rent
November 17, 2016	$3,675.00	November rent
December 17, 2016	$4,175.00	December rent

Debtor has been filing Operating Reports reflecting deposits, and has been remitting net rents to State Bank & Trust Company pursuant to cash collateral Orders.

The Debtor anticipates that a Chapter 7 liquidation would provide little or no return to any unsecured creditor. The nature of a Chapter 7 liquidation case calls for a relatively rapid sale of assets, potentially as rapidly as within two to three months. In the current real estate market it is unlikely, in the Debtor's opinion, that the Debtor's real property could be marketed for an amount sufficient to pay creditors more than the Plan proposes.

(13) Information relevant to the risks posed to creditors under the plan.

In deciding whether to accept or reject Debtor's Plan, a creditor or other claimant should consider risk factors. Each creditor or other claimant should consult its own legal counsel and financial advisors regarding risk factors. Some possible risk factors are listed below:

A. General Economic Conditions. As is evident from statistics and projections circulated in the popular news media, the United States economy has been in a recession and slow and uncertain recovery. Such economic conditions may have a downward effect on real estate prices at times. Current efforts by the United States Congress and executive branch, or the State of Georgia, may tend to limit or reverse such recessionary tendencies, but the timing and extent of such efforts and of their effects are difficult to predict.

B. Competition with Other Properties in the Area. The Debtor's real estate may be in competition with other properties for sale near the Debtor's real estate. Some of the projects competing with Debtor may be either in foreclosure, in bankruptcy proceedings, or already be held by lenders who have foreclosed on the projects. These factors could, in some situations, put downward pressure on prices within an area.

C. Non-exclusive List of Risks. The risks addressed in this Disclosure Statement are risks known to the Debtor, but this is not intended to an exhaustive list of potential risks.

(14) The actual or projected realizable value from recovery of preferential or otherwise voidable transfers.

The Debtor does not presently anticipate recovering any money or other property as a result of asserted and potential avoidance actions.

(15) Litigation likely to arise in a non-bankruptcy context.

No litigation is anticipated in a non-bankruptcy context.

(16) Tax attributes of the debtor; Tax consequences of confirmation of Plan.

The confirmation and execution of the Plan may have certain tax consequences to holders of Claims and Interests, as well as to the Debtor. The Debtor is a Georgia non-profit corporation. As such, Debtor has not historically paid taxes.

The tax consequences to the holders of unsecured claims or interests may depend on a number of factors unknown by Debtor, including: whether or not the unsecured claim has been written off completely, reserved against, or is being treated as a collectible account. Debtor does not have sufficient information to make meaningful disclosure regarding the tax consequences to such Creditors of an order confirming Debtor's Plan.

It is imperative that each interest holder seek individual tax counsel for advice on its particular situation. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO: WHETHER THE HOLDER HAS PREVIOUSLY CLAIMED A BAD DEBT DEDUCTION WITH RESPECT TO ITS CLAIM AGAINST THE DEBTOR; WHETHER THE HOLDER OF A CLAIM REPORTS INCOME ON THE ACCRUAL OR CASH BASIS; WHETHER THE HOLDER OF A CLAIM RECEIVES DISTRIBUTIONS UNDER THE PLAN IN MORE THAN ONE TAXABLE YEAR; WHETHER THE CLAIM CONSTITUTES A CAPITAL ASSET IN THE HANDS OF THE HOLDER, AND HOW LONG IT HAS BEEN HELD OR IS TREATED AS HAVING BEEN HELD; AND ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE AND NON-U.S. INCOME TAX AND OTHER TAX CONSEQUENCES OF THE PLAN.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT: (i) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER

UNDER THE TAX CODE; (ii) SUCH DISCUSSION IS INCLUDED HEREBY BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (iii) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

(17) Relationship with Affiliates and "insiders."

The Bankruptcy Code defines the term 'affiliate' as follows:

> **(2)** The term "affiliate" means--
> **(A)** entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--
> **(i)** in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
> **(ii)** solely to secure a debt, if such entity has not in fact exercised such power to vote;
> **(B)** corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--
> **(i)** in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
> **(ii)** solely to secure a debt, if such entity has not in fact exercised such power to vote;
> **(C)** person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
> **(D)** entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

11 U.S.C.A. § 101. The Debtor does not own any 'affiliates'.

Under the Bankruptcy Code, the term "insider" is defined as follows:

> **(31)** The term "insider" includes--
> **(A)** if the debtor is an individual--
> **(i)** relative of the debtor or of a general partner of the debtor;
> **(ii)** partnership in which the debtor is a general partner;
> **(iii)** general partner of the debtor; or
> **(iv)** corporation of which the debtor is a director, officer, or person in control;
> **(B)** ***if the debtor is a corporation--***
> ***(i) director of the debtor;***
> ***(ii) officer of the debtor;***
> ***(iii) person in control of the debtor;***
> ***(iv) partnership in which the debtor is a general partner;***
> ***(v) general partner of the debtor; or***
> ***(vi) relative of a general partner, director, officer, or person in control of the debtor***;
> **(C)** if the debtor is a partnership--
> **(i)** general partner in the debtor;
> **(ii)** relative of a general partner in, general partner of, or person in control of the debtor;
> **(iii)** partnership in which the debtor is a general partner;
> **(iv)** general partner of the debtor; or
> **(v)** person in control of the debtor;
> **(D)** if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;
> **(E)** affiliate, or insider of an affiliate as if such affiliate were the debtor; and
> **(F)** managing agent of the debtor.

11 U.S.C. § 101 (emphasis supplied). The Debtor is a corporation. Some of the individuals who lent money to the Debtor while it was operating a school had also previously served on its Board of Directors. Those individuals, however, had resigned before the Debtor filed the above-captioned Chapter 11 case, for which reason the Debtor understands that those individuals are not classified as 'insiders'. *See, e.g., In re Optical Technologies, Inc.*, 246 F.3d 1332 (11th Cir. 2001); *also In re Netbank, Inc.*, 424 B.R. 568 (Bankr. M.D. Fla. 2010).[2] Any creditor or party in

[2] In *In re Optical Technologies, Inc.*, 246 F.3d 1332 (11th Cir. 2001), the Eleventh Circuit affirmed the grant of summary judgment in favor of two defendants against whom the debtor sought to avoid certain allegedly preferential or fraudulent transfers. The court affirmed the district court's finding that there was insufficient evidence that the defendants were insiders where they had sold their stock and resigned their positions with debtor prior to the payment they

interest desiring to review a list of individuals who presently serve, or who previously served, as Directors of the Debtor corporation may view that information on the Statement of Financial Affairs filed by the Debtor on May 4, 2016 at pages 28 through 30, or may request that list from Debtor's counsel, whose contact information is below, who will supply the filed Statement of Financial Affairs free of charge.

Debtor's Plan would include payment to insiders or former insiders who no longer hold that status; however, Debtor believes that the Bankruptcy Code permits such treatment, as the Bankruptcy Court for the Eastern District of Pennsylvania explained:

> Congress did not exclude insider-held claims from equality of treatment under section 1123(a)(4). Moreover, section 1129(a)(10) implicitly recognizes that insider claims may be properly classified along with non-insider claims. As a result, while a debtor may in some instances properly elect to classify insider claims separately, *see In re Carelinc National Corp.* 1995 WL 750160 (Bankr.E.D.Pa.1995), a debtor is not required to separately classify general unsecured claims held by insiders. *See In re Heritage*

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received. *Id*. at 1335-1336. The district court case, *In re Optical Technologies, Inc.*, 252 B.R. 531 (M.D. Fla. 2000), which gave rise to the Eleventh Circuit opinion provides more factual background. Specifically, the two defendants sold their stock in the debtor company in January 1994, and they also executed resignation letters around that time, resigning as officers, directors, and employees of the debtor. The court noted that to establish a preference claim against the defendants, the debtor would have to establish that they were insiders. *Id*. at 539. In granting summary judgment to the defendants, the court reiterated that the defendants had resigned their positions and that there was nothing in the record to indicate that they retained sufficient control over the debtor to constitute 'insider' status. *Id*. at 540. A more recent Florida case evaluated exactly when a payment to an insider would create an avoidable preferential transfer. *In re Netbank, Inc.*, 424 B.R. 568 (Bankr. M.D. Fla. 2010). In that case, the debtor and its CEO entered into a separation agreement pursuant to which the former-CEO received a payment of $2.9 million on or around the separation date. *Id*. at 569. In its bankruptcy case, the debtor sought to recover the payment alleging that the former CEO was an insider at the time the transfer was arranged. *Id*. at 570. The court discussed that the Eleventh Circuit has not yet addressed the issue of whether an insider must be an insider on the date of the transfer or simply when the transfer was arranged. *Id*. After citing several other jurisdictions' decisions, the court determined that the proper inquiry is whether the person was an insider on the actual date of transfer. *Id*. at 571-572. Because the former-CEO in *Netbank* had resigned (and was thus no longer an insider) before the actual date of the payment, the court held that he was not an 'insider' and dismissed the debtor's complaint. *Id*. at 572-573.

> *Organization, L.L.C.*, 375 B.R. 230, 301 n. 90 (Bankr.N.D.Tex.2007); *In re Frascella Enterprises, Inc.*, 360 B.R. 435, 443 (Bankr.E.D.Pa.2007) ("There is no *per se* requirement that unsecured insider claims be separately classified from other unsecured claims. Insider status alone does not make a claim dissimilar."); *see also In re Austin Ocala Ltd.*, 152 B.R. 773, 776 (Bankr.M.D.Fla.1993) ("The Debtor's Plan proposed to separately classify NationsBank's unsecured deficiency claim, Essex's unsecured claim, non-insider unsecured claims, and insider unsecured claims. The Debtor failed to offer a sufficient justification for the separate classification of these claims, all of which are nothing more than general unsecured claims."). *Compare In re Machne Menachem, Inc.*, 233 Fed.Appx. 119 (3d Cir.2007) (non-precedential) (debtor acted in bad faith when an insider purchased postpetition certain non-insider unsecured claims, and then separately classified those claims as insider claims).

In re S. Canaan Cellular Investments, Inc., 427 B.R. 44, 81 (Bankr. E.D. Pa. 2010). *Accord In re ARN LTD. Ltd. P'ship*, 140 B.R. 5, 13 (Bankr. D.D.C. 1992) ("Separate classification on the basis of the insider or equity holder status of the creditor does not alone warrant unequal treatment unless equitable subordination principles apply.").

ARTICLE 6

DISCLAIMERS

In addition to any and all other disclaimers, limitations, qualifications, or similar provisions contained in this Disclosure Statement, the information contained herein is subject to the following:

6.01. Information Subject to Change. The statements contained in this Disclosure Statement are made as of the date hereof, and unless another time is specified herein, neither the delivery of this Disclosure Statement nor an exchange of rights made in connection herewith,

shall under any circumstance, create an implication that there has been no change in the facts set forth herein since the date hereof.

6.02. Securities representations. Any benefits offered to the holders of Claims or interests, in accordance with the Plan, which may constitute securities, have not been approved or disapproved by the Securities and Exchange Commission (the "Commission"), or by any relevant government authority of any state of the United States. Neither the Commission, nor any such state authority, has passed upon the accuracy of this Disclosure Statement or the merits of the Plan.

6.03. Representations outside of Disclosure Statement. No representations concerning Debtor, the value of its property, or the value of any benefits offered to holders of Claims or interests in connection with the Plan, are authorized by Debtor, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure acceptances which are contrary to the information contained in this Disclosure Statement should not be relied on by you in arriving at its decision. Any such additional representations or inducements should be reported to counsel for Debtor, who contact information is at the end of this Disclosure Statement.

6.04. No Audit; Appraised Value May Change. The information contained herein has not been subjected to a certified or other audit. While Debtor's real estate has been appraised, opinions of value may differ and circumstances may change.

6.05. No Endorsement by Bankruptcy Court of Plan. The approval of the Bankruptcy Court of this Disclosure Statement does not constitute an endorsement by the Court of the Plan of Reorganization, or a guarantee of the accuracy or completeness of the information contained herein.

ARTICLE 7

PROCEDURE FOR CONFIRMATION OF THE PLAN

7.01. General. In order to confirm the Plan, the Court must find that the Plan meets the requirements of 11 U.S.C. § 1129(a). All of these requirements must be met if the Plan is to be confirmed without resort to the "cramdown" provisions in 11 U.S.C. § 1129(b). Debtor believes that the Plan meets all requirements of §1129(a), other than – potentially -- acceptance by all impaired classes.

7.02. Cramdown. If a plan contains impaired classes and at least one impaired class votes to accept the Plan, the Court may nevertheless confirm the Plan under 11 U.S.C. § 1129(b). For the Court to do so, it must conclude that the Plan does not unfairly discriminate against, and is fair and equitable to, each impaired non-accepting class. If less than all impaired classes accept the Plan, Debtor intends to seek Confirmation of the Plan pursuant to 11 U.S.C. § 1129(b).

ARTICLE 8

SOLICITATION OF ACCEPTANCES

Debtor believes that the Plan is in the best interests of all creditors and classes of claims, accordingly, **DEBTOR RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN**. Please complete and return your Ballot in accordance with the accompanying Order setting a balloting deadline. You must submit a timely Ballot for your vote to count..

This 22nd day of February, 2017.

[signature follows]

ROBL LAW GROUP LLC

/s/ Michael Robl
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Attorneys for Debtor

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CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 and that I have, on the date below, served the foregoing *Second Amended Disclosure Statement Concerning Debtor's Plan of Reorganization* on the following creditors or parties in interest **Via the Court's ECF system:**

Lindsay P. S. Kolba on behalf of U.S. Trustee U.S. Trustee: lindsay.p.kolba@usdoj.gov, lisa.maness@usdoj.gov

Cater C. Thompson on behalf of Creditor State Bank and Trust Company: cater.thompson@jonescork.com, betsy.arrington@jonescork.com

This 22nd day of February, 2017.

ROBL LAW GROUP LLC

/s/ Michael Robl
Michael D. Robl
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