

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

3982 CLUB DRIVE, LLC,

Debtor.

CHAPTER 11

Case No. 17-63460-crm

**DEBTOR'S DISCLOSURE STATEMENT**

3982 CLUB DRIVE, LLC (the "Debtor"), in accordance with 11 U.S.C. §1125, submits this Disclosure Statement (the "Disclosure Statement") as follows:

**I. INTRODUCTION**

Debtor submits this Disclosure Statement (the "Disclosure Statement") pursuant to Section 1125 of the Bankruptcy Code (11 U.S.C. §1125), and Bankruptcy Rules 3016 and 3017, to creditors and holders of equity interests in Debtor (collectively, the "Claimants") to disclose information to enable Claimants to make an informed decision in exercising their rights to accept or reject Debtor's Chapter 11 Plan of Reorganization (the "Plan") filed by Debtor with the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Bankruptcy Court").

This Disclosure Statement contains information that is material, important and necessary for the Claimants to reach an informed decision on exercising their right to vote for acceptance of the Plan. A copy of the Plan accompanies this Disclosure Statement. A failure to vote on the Plan does not constitute either an acceptance or

rejection of the Plan. Debtor urges parties in interest to read this Disclosure Statement and the Plan carefully prior to voting for or against the Plan.

**No representations concerning Debtor or the Plan are authorized other than as set forth herein. In arriving at a decision you should not rely upon any representations or inducements to secure your acceptance of the Plan other than those contained herein. The information contained herein has not been reviewed or approved by an accountant. Debtor is unable to warrant or represent that the information contained herein is without any inaccuracy although all such information is accurate to the best of Debtor's knowledge, information and belief. The Court has not verified the accuracy of the information contained herein, and the Court's approval of this Disclosure Statement does not imply that the Court endorses or approves the Plan, but only that if the information is accurate, it is sufficient to provide an adequate basis for creditors and interest holders to make informed decisions whether to approve or reject the Plan. The information contained herein is provided as of the date of this Disclosure Statement unless clearly indicated to the contrary.**

**This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission or the Georgia Secretary of State nor has either of them passed upon the accuracy or adequacy of the statements contained herein. This statement has been reviewed pursuant to 28 U.S.C. §586(a) by the U.S. Trustee's Office of the Department of Justice.**

## **Defined Terms**

Most words or phrases used in this Disclosure Statement shall have their usual and customary meanings. Some words or phrases when used in the context of the Plan and Disclosure Statement with initial capital letters shall have the definitions set forth in the Plan. Unless otherwise defined, the terms used in this Disclosure Statement shall have the same meaning as in the Bankruptcy Code or Rules.

## **BACKGROUND INFORMATION**

### **A. Debtor's Formation and History**

Debtor is a Georgia limited liability company formed in 2016 to acquire and hold residential real property in the City of Atlanta (Fulton County), located at 3982 Club Drive, Atlanta, GA 30318 (the "Property"). Debtor has one principal: J. Allen Miller, who owns 100% of the membership interests and serves as the Debtor's manager. Mr. Miller is also the tenant of Debtor pursuant to a written residential real property lease dated May 2, 2016.

The purpose of the acquisition was to hold the real estate for appreciation of value, and to lease it to generate income to service the debt secured by the Property. Debtor funded the acquisition through a combination of a capital contribution from Mr. Miller made to fund the down payment and a loan from Wiser Private Equity II, LLC ("Wiser"), as described in more detail below.

**B. Description of Assets and Liabilities of Debtor**

**1. Assets of Debtor**

Upon the filing of Debtor's Chapter 11 case, Debtor's assets consisted primarily of the Property and the residential lease with the Tenant. Debtor, First National and Wiser stipulated to a value of the Property in the amount of \$1,300,000. The stipulated amount is based on an appraisal commissioned by Wiser in or around October 2017.

**2. Liabilities of Debtor**

No creditors have filed a proof of claim in this case as of November 9, 2017. Debtor believes the only pre-petition creditors in the case are First National Acceptance Company and Wiser. Post-petition creditors will include administrative claims of First National, Debtor's professionals, and, potentially, real property taxes.

Wiser has asserted various claims in motions it has filed with the Court [Docket Nos.10 & 33], and through presentation of evidence and arguments of counsel at the October 30, 2017 MRS Hearing. These claims asserted by Wiser are claims it asserts on its own behalf and on behalf of First National Acceptance Company. First National, pursuant to a Memorandum of Purchase & Sale Agreement, signed October 18, 2017, effectively appointed Wiser as its agent for pursuit of its claims against Debtor.

The claims are based on two notes originated by Wiser. One claim is based on the loan made to Debtor by Wiser to acquire the Property. That loan is represented by the "Secured Promissory Note" dated April 25, 2016 in the principal amount of \$1,100,000.00, executed by Debtor in favor of Wiser, as amended by the April 5, 2017 Amendment to Loan Documents executed by Debtor in favor of Wiser ("Note 1"). Note 1

is secured by the “Deed to Secure Debt Securing Promissory Note” dated April 28, 2016, recorded on May 6, 2016 in Deed Book 56132, page 648, Clerk of Superior Court, Fulton County, Georgia (“Deed to Secure Debt”).

Wiser also asserts a claim based on the “Secured Promissory Note” dated February 26, 2017 in the principal amount of \$325,000.00, executed by Debtor in favor of Wiser (“Note 2”). No funds were distributed to Debtor on account of its making Note 2. Note 2 was made to account for some combination of past due interest, fees and attorneys’ fees due to Wiser under Note 1, and also to compensate Wiser for its perceived additional risk due to the an extension of the maturity date of Note 1. The allocation of the \$325,000 among these line items is a subject of dispute between Wiser and Debtor. However, as Debtor proposes a cure and reinstatement of Note 2 under the Plan, such dispute has no material effect on the Plan and need not be resolved by the Court.

On April 10, 2017, First National purchased from Wiser a portion of the Note 1 future income stream pursuant to a Purchase and Sale Agreement. As part of that sale transaction, Wiser assigned its rights in and under Note 1 and the Deed to Secure Debt to First National pursuant to the “Transfer and Assignment of Note and Security Deed, Deed of Trust, Mortgage and Deed to Secure Debt” dated April 10, 2017, and recorded on May 16, 2017 in the Clerk of Superior Court, Fulton County, Georgia. Under the Purchase and Sale Agreement, upon First National’s receipt of its bargained for income stream under Note 1, it is contractually obligated to reconvey the Note and Deed to Secure Debt back to Wiser.

Through its Court filings and presentation of evidence at the MRS Hearing, Wisner asserts Debtor owes First National and Wisner the principal amounts owed under Note 1 (\$1,100,000.00) and Note 2 (\$325,000.00), plus the following amounts:

Note 1 (First National):

- a. \$21,999.99 past due pre-petition interest (June to August 2017);
- b. \$7,333.33, past due post-petition interest (September 2017); and
- c. \$7,333.33 per month post-petition interest going forward (Debtor paid \$8,666.66 to Wisner in October 2017).

Note 1 (Wisner):

- a. \$29,333.32 past due pre-petition interest (February to May 2017);
- b. \$75.00, bank fees;
- c. \$17,253.18 actual attorneys' fees incurred as presented on Exhibit M33 at the MRS Hearing);
- d. Additional actual attorneys' fees incurred, but amounts not yet specified;
- e. Statutory attorneys' fees of 15% of the principal and interest; and
- f. A \$22,000.00 exit fee.

Note 2 (Wisner):

- a. \$8,666.68: past due interest (May to August 2017);
- b. \$4,333.34: past due post-petition interest (September and October 2017);
- c. \$1,300.00: late fees (10% of outstanding payments through October 2017);
- d. Any additional amounts for past due post-petition interest and late fees accrued beginning November 2017 until the Effective Date of the Plan; and
- e. Statutory attorneys' fees of 15% of the principal and interest.

Debtor admits and stipulates for the purposes of its cure and reinstatement Plan, from the amounts listed above, as to:

- a. The existence and validity of Note 1, in the principal amount of \$1,100,000.00, and Note 2, in the principal amount of \$325,000.00;

- b. The amounts owed to First National on Note 1 of \$21,999.99 past due pre-petition interest (June to August 2017); and \$7,333.33, past due post-petition interest (September 2017); plus \$7,333.33 per month post-petition interest going forward (Debtor began paying this monthly amount as an adequate protection payment in in October 2017; the October payment included an over-payment and totaled \$8,666.66, paid to Wiser per direction of First National).
- c. The amounts owed to Wiser on Note 1 of \$29,333.32 past due pre-petition interest (February to May 2017); \$75.00, bank fees; \$17,253.18 actual reasonable attorneys' fees incurred; and, subject to presentation of appropriate proof, additional actual and reasonable attorneys' fees incurred; and
- d. The amounts owed to Wiser on Note 2 of \$8,666.68: past due interest (May to August 2017); \$4,333.34: past due post-petition interest (September and October 2017); \$1,300.00: late fees (10% of outstanding payments through October 2017); additional amounts for past due post-petition interest and late fees accrued beginning November 2017 until the Effective Date of the Plan.

Debtor disputes Wiser's claim for statutory attorneys' fees (calculated as a percentage of principal and interest owed, as opposed to actually incurred reasonable attorneys' fees). Debtor believes the law prohibits allowance of statutory attorneys' fees in a cure and reinstatement plan, but that payment of actually incurred reasonable attorneys' fees is allowable as part of the cure amounts required under 11 U.S.C. § 1124(2)(C). Debtor asserts that if its cure and reinstate plan is confirmed, the asserted \$22,000 exit fee under Note 1 will not be due and payable as a cure amount; instead it will be due and payable under the terms of Note 1 (on or before the reinstated Maturity Date).

Debtor's administrative liabilities include: 1) professional fees (which are subject to review and approval by the Court); 2) ongoing adequate protection payments, which are being paid in the ordinary course of business; and 3) potentially, real property taxes.

**C. Income to Debtor**

Debtor's income is generated primarily through the business of renting the Property. Debtor receives additional funds from capital contributions of its principal, such as the capital contribution made to fund the down payment of the acquisition of the Property. On or before the Effective Date, Debtor will enter into a new residential lease with Tenant that provides for a monthly lease payment sufficient to service the monthly debt obligations under the Plan (\$9,500).

The Plan is expected to last for a period of up to the maturity date of Note 2, April 1, 2022. Debtor may sell the Property during that time and utilize the sale proceeds to complete funding of the Plan prior to the maturity date of Note 1 of December 1, 2021. Debtor might obtain new financing secured by the Property and utilize the financing proceeds to complete funding of the Plan prior to the maturity date of Note 1 of December 1, 2021.

**D. Reasons for Filing Chapter 11 Petition**

Debtor filed for protection under the Bankruptcy Code to protect the Property from a pending foreclosure. Debtor was unable to make certain prepetition debt service payments, as detailed above. This was due to a temporary inability of the Tenant to pay rent for 8 months prepetition. During the short course of this case, Tenant has resumed paying rent, and Debtor has resumed its debt service interest payments.



Tenant, Mr. Miller, is a financial professional who assists clients in sourcing and restructuring capital for real estate and other projects, through his business Sterling Consulting, LLC (“Sterling”). In general, Sterling is paid on a project by project basis. Historically, since its inception over 5 years ago until 2017, Sterling has been profitable every year without exception.

Sterling was due to be paid a \$375,000 fee by a client in later 2015 to mid-2016. That client refused to pay. The non-payment is the subject of a lawsuit: *Sterling Consulting, LLC v. SouthEast Development Group, LLC*, Case No. 16-2017-CA-002356, Circuit Court of the Fourth Judicial Circuit, Duval County, Florida. Had that fee been paid, Tenant, and therefore Debtor, would not have experienced the cash flow problems that caused the filing of this case. As with any ongoing litigation, the timing and outcome remain uncertain.

Ultimately, Debtor filed its Chapter 11 petition on August 1, 2017 in reaction to steps by Wisser to exercise the power of sale in the Deed to Secure Debt for the Property through a foreclosure sale.

### **III. THE PLAN**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

All Claims and Interests are placed in the following classes.

- Class 1:** The claim of First National.
- Class 2:** The claim of Wisser as to Note 1.
- Class 3:** The claim of Wisser as to Note 2.
- Class 4:** Equity Interests.

## **CLAIMS AND INTERESTS NOT IMPAIRED UNDER THE PLAN**

All non-insider Classes of Claims and Interests are unimpaired under the Plan, and therefore are deemed to have accepted the Plan.

## **TREATMENT OF IMPAIRED CLAIMS AND INTERESTS**

### **A. General**

All classes of claims and interests shall receive the distributions set forth in the Plan on account of and in complete satisfaction of all such Allowed Claims (and any interest accrued thereon) and Allowed Interests. Without limiting the foregoing and effective upon the Effective Date, each creditor and each equity holder (or its successor) shall be deemed to have assigned to Debtor and all such parties shall be deemed to have waived, relinquished and released any and all of their rights and claims against Debtor (other than as provided for in the Plan or the Court's order confirming the Plan).

Attached to the Plan as Exhibit A is a budget showing anticipated sources and estimated uses of cash, and the estimated amount of funds available for Debtor to fund operations and pay Allowed Claims. Attached to the Plan as Exhibit B is a budget showing the Tenant's anticipated sources of income, to be used to pay the lease payments to Debtor.

### **B. Specific Plan Treatment of Claims and Interests**

The Plan proposes to cure the defaults under, and reinstate, the debts to First National and Wiser under Note 1 and Note 2, respectively. The result would be to restore the parties to their respective pre-default positions, except that all payments required from the date of default through the Effective Date of the Plan shall be made on or before

the Effective Date. Creditors should read the copy of the Plan being provided herewith for a more detailed description of the treatment of creditors' claims.

**C. Causes of Action and Pending Litigation Involving Debtor**

In addition to the foregoing, the Plan specifically provides, pursuant to Section 1123(b)(3)(B) of the Code, that Debtor shall retain each and every claim, demand or cause of action whatsoever which Debtor had or has power to assert immediately prior to the confirmation of the Plan, including, without limitation, actions for the avoidance and recovery pursuant to Section 550 of the Code of transfers avoidable by reason of Sections 544, 545, 547, 548, 549 or 553(b) of the Code, and may commence or continue in any appropriate court or tribunal any suit or other proceeding for the enforcement of same.

**D. General Provisions**

The Plan further provides that all executory contracts and unexpired leases to which Debtor is a party are deemed rejected on the Effective Date unless expressly assumed under the Plan. Each counter-party to an executory contract or unexpired lease rejected under this Plan shall have thirty (30) days after the Effective Date to file a proof of claim with the clerk of the Bankruptcy Court, and serve such claim on counsel for Debtor, for any damages claimed to result from such rejection.

The Plan also provides that it may be modified under certain circumstances more particularly set forth in the Plan, and provides for the continuing jurisdiction of the Court for certain purposes more particularly set forth in the Plan.

#### **IV. CONFIRMATION REQUIREMENTS AND EFFECT OF CONFIRMATION**

##### **A. Confirmation Summary**

To confirm the Plan, the Court must, after notice, hold a hearing on the question of confirmation. A party in interest may object to confirmation of the Plan and appear at the confirmation hearing to prosecute such objection. The requirements for confirmation of a Chapter 11 Plan are set forth in detail in 11 U.S.C. § 1129. What follows is a summary statement of some of those requirements. The requirements of § 1129 (a) or (b) of the Code include that: the Plan must be proposed in good faith; 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; and the Plan must be feasible. In general, a class of claims has accepted a plan if the plan has been accepted by creditors that hold the least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims of such class held by creditors that have accepted or rejected such plan. Also, under § 1126(f), a class of claims that is not impaired under the Plan is conclusively presumed to have accepted the Plan. A class of interests has accepted a plan if the plan has been accepted by holders of such interests that have accepted or rejected such plan. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

## **B. Feasibility**

One of the requirements for the Court to confirm a plan is that the Court find the plan is feasible. In this case, feasibility is dependent on Debtor's income. Proving feasibility will require Debtor to show that confirmation of the Plan is not likely to be followed by liquidation, or need for further financial reorganization, or the Debtor. The plan must offer a reasonable probability of success, rather a mere possibility.

Debtor proposes to fund the Plan primarily from lease income, but also from a capital infusion from the principal to fund the cure payments required under the cure and reinstatement Plan, and, ultimately, to fund a down payment for take-out financing. Therefore, Debtor must show the projected income of Debtor, from its Tenant is probable. As Tenant derives its income from Sterling, Debtor must also prove Sterling's projected income is probable. Attached to the Plan as Exhibit A is a budget showing anticipated sources and estimated uses of cash, and the estimated amount of funds available for Debtor to fund operations and pay Allowed Claims. Attached to the Plan as Exhibit B is a budget showing the Tenant's anticipated sources of income, to be used to pay the lease payments to Debtor, and, ultimately, to fund a down payment for take-out financing.

As noted above, Sterling has enjoyed financial success for most of its 6 year history. And the one client's failure to pay a \$375,000 fee in late 2015 to mid 2016 had a significant negative impact on its earnings. However, Sterling's hard work to develop new business over the past year is beginning to show results.

Sterling received \$15,000 in October 2017 from a project it had been working on for some number of months. Sterling advised a principal of debtor in bankruptcy. Sterling originally anticipated that fee being paid in or before August 2017. However, events in that bankruptcy case delayed payment of Sterling's fee. Mr. Miller testified at his September 2017 2004 exam conducted by Wisner as to expecting payment of that fee. This is one example of Sterling's projected receipt of a fee coming to fruition. Another \$10,000 from that project is due to be paid in November 2017.

Described below are projected fees which Sterling believes are, at the very least, probable to be collected on or before January 30, 2018. These amounts are more than sufficient to fund the cure of defaults necessary to implement the Plan. These amounts are among those listed in Exhibit B to the Plan, and serve as examples.

Sterling is scheduled to receive a fee of \$225,000 upon the closing of the sale of a medical office building in San Antonio, Texas. The project is under contract. The buyer's earnest money is set to go hard on December 1, 2017. The deal is scheduled to close on or before December 31, 2017, with the buyer having an option to extend that to January 15, 2017 upon payment of additional fees.

Sterling is scheduled to receive \$15,000 due on January 22, 2018 from USWR Holding LLC. This fee is already earned, due and payable. Additional amounts are scheduled to be paid from this client in February 2018.

Mr. Miller is scheduled to receive a return of capital from Certus Real Estate Solutions LLC in the amount of \$25,000 on January 30, 2018. Mr. has been receiving

regular return of capital payments during 2017, and these are projected to continue into 2018.

Debtor intends to present evidence supporting the probability of each of the above-described income projections, and possibly additional sources of funds, at a hearing on confirmation of the Plan.

**The foregoing is a summary of the Plan and creditors are urged to read the Plan in full. Creditors should consult with counsel in order fully to understand the Plan, which is a proposed legally binding agreement by Debtor.**

#### **V. FEDERAL INCOME TAX CONSEQUENCES**

Debtor has not obtained a tax opinion and express no opinion as to the tax consequences to the holder of any claim or interest caused by the terms of the Joint Plan of Reorganization. Creditors are advised and encouraged to obtain their own tax counsel to determine the tax consequences of this Plan. In obtaining that advice, certain matters require particular attention due to their uncertainty and potentially significant tax consequences. For example, significant issues may arise as to the amount of any debts that will be deemed discharged by the Plan and therefore generate discharge of indebtedness income to the corporation which would flow through to the corporation; and the amount of tax that would be payable by partners if they withdraw from the partnership or if the Plan is not confirmed and there is a foreclosure.

**No ruling has been sought or obtained from the IRS with respect to any of the tax aspects of the Plan and no opinion of counsel has been obtained by Debtor with respect thereto. No representation or assurance is being made with respect to the**

**federal income tax consequences as described herein. Certain types of claimants and interest holders may be subject to special rules not addressed in this paragraph. There may also be state, local, or foreign tax considerations applicable to each holder of a claim or equity interest which are not addressed herein. Each holder of a claim or equity interest affected by the Plan must consult and rely upon such holder's own tax advisor regarding the specific tax consequences of the plan with respect to such holder's claim or equity interest. This information may not be used or quoted in whole or in part in connection with the offering for sale of securities.**

## **VI. LIQUIDATION ALTERNATIVE**

Debtor estimates the unsecured creditors would receive limited distributions in the event of liquidation. Debtor and its creditors have stipulated the value of Debtor's asset, the Property, is \$1,300,000.00. The creditors have asserted combined claims on Note 1 and Note 2 in a total principal amount of \$1,425,000, plus interest, fees and costs. The stipulated value of the collateral is less than the amount of the undisputed portions of the creditors' claims, before taking into account liquidation costs. In a chapter 7 bankruptcy case, if the Property was sold, the sale proceeds would be insufficient to satisfy even the claims for the principal on Notes 1 and 2. Therefore, before even accounting for the costs and expenses of such sales, chapter 7 trustee costs and expenses, it is clear insufficient funds would be available for satisfaction in full of unsecured creditors' claims (as proposed under Debtor's cure and reinstate plan). Consequently, Debtor believes the Plan is in the best interest of all creditors and equity interests.



## **VII. VOTING ON THE PLAN**

In order for the Plan to be accepted by a class, 11 U.S.C. § 1126(c) provides that creditors in that class holding at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allotted claims actually voting, must vote to accept the Plan. All classes of claims are unimpaired under the Plan and, under § 1126(f), a class of claims that is not impaired under the plan is conclusively presumed to have accepted the plan. Debtor believes that the proposed Plan is in the best interest of all the creditors.

If the Plan is not confirmed, it is unlikely that Debtor will be able to reorganize. In the event Debtor is unable to reorganize, it is likely that secured lender will foreclose on real estate asset, with the result that the estate will have no assets with which to pay its other creditors, including unsecured creditors.

## **VIII. LEGALLY BINDING EFFECT; DISCHARGE OF CLAIMS AND INTERESTS**

Upon confirmation of the Plan, its provisions will bind Debtor and all creditors and interest holders, whether or not they accept the Plan. Confirmation will also discharge Debtor from all debts that arose before confirmation, except as provided in the Plan and in the Order of Confirmation.

Upon entry of an order granting Debtor a discharge pursuant to section 1141(d)(5) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, the distributions and rights that are provided in this Plan shall be in complete satisfaction, discharge and release of all Claims, whether known or unknown,

against liabilities of, Liens on, obligations of, rights against, and Interests in Debtor or its Estate that arose prior to the Effective Date.

Debtor may modify the Plan at any time before the confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan. Further, with the approval of the Court and without notice, Debtor may modify the Plan to correct defects, omissions, or inconsistencies which do not materially and adversely affect the interest of holders of claims. Further, after confirmation, but before the case is closed, Debtor may modify the Plan upon approval of the Court after notice to creditors.

Upon request of Debtor, the U.S. Trustee, or holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.

The distribution of cash and other consideration provided for in the Plan will be in exchange for and in complete satisfaction, discharge and release of all claims against Debtor or any of its assets or properties.

**IX. RECOMMENDATION**

Debtor recommends that all holders of Claims support the Plan.

This 10<sup>th</sup> day of November, 2017.

/s/

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