

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**HARVEST OAKS DRIVE  
ASSOCIATES, LLC**

**CASE NO. 10-03145-8-SWH  
CHAPTER 11**

**DEBTOR**

**SECOND AMENDED PLAN OF REORGANIZATION**  
August 12, 2011

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**SECOND AMENDED PLAN OF REORGANIZATION**

Pursuant to the provisions of Section 1123 of the Bankruptcy Code (11 U.S.C. § 1123), the Debtor hereby submits the following Plan of Reorganization:

**I. SUMMARY OF PLAN**

The Second Amended Plan contemplates a reorganization and continuation of the Debtor's business (the "Plan"). In accordance with the Plan, the Debtor intends to satisfy certain creditor claims from income earned through continued operations.

The Debtor's Plan of Reorganization is based on the Debtor's belief that the interests of its creditors will be best served if it is allowed to reorganize its debts.

The Debtor's liabilities will be paid according to the priorities of the Bankruptcy Code and the Orders of this Court. The specific amounts and terms of payment will be made according to the treatment of each respective creditor.

**II. DEFINITIONS**

1. "ADMINISTRATIVE CLAIM" shall mean any Claim entitled to priority under § 507(a)(1) of the Bankruptcy Code.

2. "ALLOWED" shall mean (a) any Claim against the Debtor, proof of which was timely filed or by order of the Bankruptcy Court was not required to be filed; or (b) any Claim that has been listed in the Schedules as liquidated in amount and not disputed or contingent; and in each such case in (a) or (b) above, as to which either (1) no objection to the allowance thereof or other similar pleading has been filed within the applicable period, or (2) an objection or other similar pleading has been filed and the Claim has been allowed by a Final Order of the Bankruptcy Court, but only to the extent so allowed.

3. "BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, Title 11 of the United States Code, as enacted in 1978 and thereafter amended. References to "§ \_\_\_"

herein shall refer to a section of the Bankruptcy Code, 11 U.S.C. § 101, et seq.

4. "BANKRUPTCY RULES" shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to Chapter 11 cases.

5. "CLAIM" shall mean a duly listed or a timely filed claim which is allowed in order to be paid by the Court.

6. "CLASS" shall mean any one of the Classes of Claims or Interests designated in Article III of the Plan.

7. "CONFIRMATION DATE" shall mean the date of entry by the Court of an order confirming the Plan at or after a hearing pursuant to 11 U.S.C. § 1129.

8. "CONFIRMATION HEARING" shall mean the hearing conducted by the Court regarding confirmation of the Plan pursuant to 11 U.S.C. § 1129.

9. "CONFIRMATION ORDER" shall mean the order of the Court confirming the Plan.

10. "COURT" shall mean the United States Bankruptcy Court for the Eastern District of North Carolina, including the United States Bankruptcy Judge presiding in the Chapter 11 case of the Debtors.

11. "CREDITORS" shall mean all creditors of the Debtors holding claims for unsecured debts, liabilities, demand or claims of any character whatsoever.

12. "DEBTOR" shall mean the Debtor (or Debtors, if more than one) identified on the first page of this Plan.

13. "DISBURSING AGENT" shall mean that person selected by the Court who shall perform the duties and have the rights and obligations described herein.

14. "DISCLOSURE STATEMENT" shall mean the Disclosure Statement describing this Plan prepared in accordance with § 1125 and approved by order of the Bankruptcy Court, to be distributed to the holders of claims whose votes with respect to this Plan are to be solicited.

15. "DISPUTED CLAIM" shall mean any claim (a) that is scheduled by the Debtor as disputed, contingent or unliquidated, or (b) that is scheduled by the Debtor, or proof of which has been filed with the Bankruptcy Court and with respect to which a timely objection to allowance, in whole or in part, has been filed and which objections have not been (i) withdrawn or settled, or (ii) determined by a Final Order.

16. "DISTRIBUTION DATE" shall mean the date on which distributions are to be made under the Debtor's Plan.

17. "EFFECTIVE DATE" shall be that date on which the Order Confirming Plan becomes final and non-appealable.

18. "FINAL DECREE" shall mean the order of this Court pursuant to Bankruptcy Rule 3022 closing this case.

19. "FINAL ORDER" shall mean an order of the Court that has been entered and either (a) the time for appeal from such entered order has expired; or (b) any appeal that has been timely filed has been dismissed or otherwise finally determined.

20. "GENERAL UNSECURED CLAIM" shall mean any claim, whether or not liquidated or contingent, other than a priority claim, administrative claim, or secured claim.

21. "IMPAIRED" classes of creditors are those whose claims or interests are altered by the Plan, or who will not receive under the Plan the allowed amount of their claims in cash as of the "Effective Date" (as defined in the Plan).

22. "PETITION DATE" shall mean the date upon which the Debtor filed the voluntary Chapter 11 petition.

23. "PLAN" shall mean this Plan of Reorganization in its present form or as it may be amended or modified.

24. "PRIORITY CLAIM" shall mean any claim to the extent entitled to priority in payment under § 507.

25. "PRO-RATA" shall mean the amount of cash or property to be paid or distributed to a claimant with respect to an Allowed Claim on a particular date, in accordance with the ratio, as of such date, of the dollar amount of the Allowed Claim of such person in the indicated class to the aggregate dollar amount of Claims in the indicated class (including, in each such calculation, the full amount of Disputed Claims in the class which have been asserted or are otherwise pending and which have not yet been allowed or otherwise disposed of).

26. "SALE" shall mean the sale of certain assets of the Debtor under this Plan.

27. "SALE PROCEEDS" means the proceeds of the Sale of certain assets of the Debtor under this Plan, after payment of all reasonable and ordinary closing costs, (including but not limited to ad valorem taxes, commissions, and any other costs permitted under § 506(c) of the Code).

28. "SECURED CREDITORS" shall mean all creditors who hold a lien, security interest or any other encumbrances which have been properly perfected as required by law with respect to property owned by the Debtor, to the extent of the value of the collateral.

29. "SUBSTANTIAL CONSUMMATION" shall mean the time the reorganized Debtor has commenced the distribution of initial Plan payments to all creditor classes.

30. "TAX CLAIM" shall mean any claim entitled to priority in treatment pursuant to § 507(a)(8).

**III. CLASSIFICATION AND TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

The Debtor classifies the following classes of claims, indicating whether said class is impaired or unimpaired, and proposes the following treatment:

**Class 1 - Administrative Costs:**

(1) Description of Claims. Class 1 consists of claims for any cost or expense of administration pursuant to §§ 503, 506, and 507 of the Bankruptcy Code.

The following claims of professionals will be paid subject to Court approval:

Stubbs & Perdue, P.A.	Attorney for the Debtor	To be determined by the Court
Shanahan Law Group	Special Counsel for the Debtor	To be determined by the Court
Will Weatherspoon	Special Counsel for the Debtor	To be determined by the Court

(2) Impairment. This class will be impaired.

(3) Treatment. Administrative costs and expenses approved by the Court shall be paid in cash and in full including accruals to date of payment within the later of ten days from the Effective Date of the Plan or approval of such claims. It is anticipated that Administrative Claims may be satisfied by a combination of estate and non-estate property.

In the event that funds are not available to pay such costs and expenses within ten (10) days of the Effective Date of the Plan, then each holder of such a claim who agrees to receive payments over time will receive payments from the Debtor until paid in full. Such claims remaining unpaid ten days following the Effective Date shall accrue interest at a rate of six percent (6%) per annum.

**Class 2 – Ad Valorem Taxes:**

(1) Description of Claims. Class 2 consists of claims for taxes owed by the Debtor to any city, county, or other municipality or taxing entity entitled to tax the property of the Debtor based upon the value of the property assessed. The Debtor is aware of the following claim(s) in this Class:

Wake County Revenue Department	Claim No. 5 2010 Property Taxes	\$155,635.30
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(2) Impairment. This class will be unimpaired.

(3) Treatment. The 2010 property taxes were paid on December 29, 2010 and the Debtor is unaware of any other claims in this class. To the extent any pre-petition ad valorem taxes remain, the Debtors proposes to pay claims in this class with quarterly payments over a period of five (5) years from the Petition Date. Quarterly payments shall commence on the earlier of January 15, April 15, July 15, or October 15 following the Effective Date and shall continue quarterly thereafter, and shall include annual interest at the statutory rate.

It is anticipated that Ad Valorem Taxes for 2011 may be satisfied by a combination of estate and non-estate property

**Class 3 – Tax Claims:**

(1) Description of Claims. Class 3 consists of claims against the Debtor for income taxes, withholding taxes, unemployment taxes, and/or any and all other taxes levied or entitled to be levied against the Debtor by the Internal Revenue Service, the North Carolina Department of Revenue, or the Employment Security Commission, plus interest as allowed by law. *The Debtor is not aware of any claims in this class.*

(2) Impairment. This class will be unimpaired.

(3) Treatment. The Debtors proposes the following treatment, in the event any claims arise:

**Costs and expenses of administration**, if any, shall be paid in cash and in full including accruals to date of payment within thirty (30) days from the Effective Date. *The Debtor does not anticipate that any such claims will be allowed.*

**Unsecured priority tax claims**, described in Section 507(a)(8) of the Bankruptcy Code shall be paid in full in quarterly installments over a period not exceeding five (5) years from the Petition Date and payments shall commence on the earlier of January 15, April 15, July 15, or October 15 following the Effective Date and shall continue quarterly thereafter, with interest at the statutory rate as of the date of confirmation of the Plan, currently four percent (4%) per annum.

**Secured claimants**, shall retain their secured interest in the property of the Debtor. The taxing authority shall retain its lien and secured status as to the underlying secured tax liability, plus accruing interest at the statutory rate, currently four percent (4%) per annum. The Debtor shall pay these claims over a period not to exceed five (5) years from the Petition Date beginning on the earlier of January 15, April 15, July 15, or October 15 following the Effective Date, and shall continue quarterly thereafter, with interest at the statutory rate. These claims may also be satisfied in whole or in part from the sale of the real or personal property securing such claims, after satisfaction of senior claims.

In the event that the Debtor fails to timely make a required payment as to any claim of the North Carolina Department of Revenue (“Department”), then, subject to a ten (10) day right to cure following written notice of default from the Department, the Department shall be permitted

to exercise any and all of its collection remedies under non-bankruptcy law as to any and all of its claims without further order of the Court.

The rights of the Department to setoff under 11 U.S.C. § 553 shall not be altered by the Plan or the confirmation order entered in this matter and are expressly reserved. The claim of the North Carolina Department of Revenue is subject to adjustment on account of federal corrections, as required by N.C. Gen. Stat. § 105-130.20. Notwithstanding any other provisions of the Plan and the confirmation order, the North Carolina Department of Revenue shall retain any and all statutory tax liens that may have arisen by operation of statute prior to the Petition Date, except to the extent that the treatment for the Secured Claimants in Class 3 expressly states that such tax lien will not be treated as secured or fully secured in the treatment for Class 3. Absent such express language in the treatment for Class 3, any such lien may be ruled unenforceable by the Bankruptcy Court only upon the filing of a separate pleading and after notice and a hearing.

**Unsecured general tax claims**, if any, will be treated as provided below in the section relating to “General Unsecured Claims.”

**Class 4 – CSMC 2006-C5 STRICKLAND ROAD, LLC (“CSMC”) SECURED CLAIM:**

(1) Description of Debt. On or about August 15, 2006, the Debtor executed a promissory note in the original principal amount of \$13,475,000.00 in favor of Column Financial, Inc. (“CFI”) (the “Note”). The Note provided for interest to accrue at a fixed rate of 6.13% per annum. The Note called for the Debtor to make monthly interest only payments from October 11, 2006 until September 11, 2009. Thereafter, the Debtor was to make monthly principal and interest payments of \$81,919.09 beginning October 11, 2009 and ending on August 11, 2016. A final payment of all outstanding principal and interest was due September 11, 2016. In effect, beginning October 11, 2009, this loan was amortized over 30 years with a 7 year balloon. The Note provided for a pre-payment penalty based on a formula described in the Note if the Note was paid prior to the maturity date. It appears that the Note was assigned several times, and is now held by CSMC 2006-C5 STRICKLAND ROAD, LLC.

The Note also provided for several reserve accounts to be established, including reserves for property taxes and insurance, repairs, replacements and other reserve accounts as described in the loan documents. According to an objection to the use of cash collateral filed by CSMC, funds in the reserve accounts were used to pay certain property taxes for the 2009 tax year.

The Note is secured by essentially all of the Debtor’s assets including the shopping center located at 9650 Strickland Road, Raleigh, North Carolina and 8801 Lead Mine Road, Raleigh, North Carolina, rents received from the shopping centers, security deposits, the Tenant Improvements and Leasing Commissions Reserve account, Tax and Insurance Impound account, the Lease Termination Payment Reserve account, and the Replacement Reserve account. These security interests are evidenced by a Deed of Trust, Security Agreement and Financing Statement, effective as of August 15, 2006, and recorded August 16, 2006, in the Wake County Registry of Deeds, Book 12118, Pages 19-94; an Assignment of Leases and Rents, effective as of

August 15, 2006, and recorded August 16, 2006, in the Wake County Registry of Deeds, Book 12118, Pages 95-106; a modification of the Deed of Trust, effective as of September 28, 2006, and recorded October 6, 2006, in the Wake County Registry of Deeds, Book 12206, Pages 2458-2469; and UCC Financing Statements recorded with the North Carolina Secretary of State and the Wake County Registry of Deeds. The Note, Deed of Trust as modified, Assignment and other loan documents were subsequently assigned to Wells Fargo, N.A., as trustee for the registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-C5, recorded on October 1, 2007 in the Wake County Registry, Book 12774, Pages 1901-1903; and then assigned to CSMC 2006-C5 Strickland Road, LLC, recorded on February 24, 2010 in the Wake County Registry, Book 13859, Pages 2007-2012. The preceding shall be collectively referred to as the "Loan Documents."

CSMC filed Claim Number 3 in the amount of \$16,743,992.78. The Debtor objected to the claim, and pursuant to an Order dated January 14, 2011, the Debtor's objection was allowed to the to the extent CSMC sought to recover interest at the default from August 2006 through August 11, 2009, and denied to the extent that CSMC sought to recover at the default rate from August 11, 2009 through April 21, 2010. The Debtor estimates that on the petition date, CSMC had a secured claim in the amount of \$14,909,208.22, which includes \$230,246.31 in taxes that CSMC paid on behalf of the Debtor for the 2010 property taxes.

Since the Petition Date, the Debtor has been making monthly adequate protection payments to CSMC based on the Debtor's monthly cash collateral budgets. The total of these payments through August 1, 2011 are \$625,759.37.

Pursuant to Joint Pre-Trial Order dated August 4, 2011, the Parties agreed that a Confirmation Hearing should be scheduled after the Court determined the value of the Debtor's real property. The Debtor has asserted that the value of the real property is at least that of the CSMC's claim, such that there is not a deficiency. The Debtor estimates the CSMC's claim will be approximately \$14,036,705.54 as of October 1, 2011. CSMC has asserted that the value of the real property is approximately \$11,770,000.00 as of August 8, 2011, based upon the appraisal Mr. Chris R. Morris. If the Court were to adopt CSMC's appraisal, the Debtor estimates CSMC would have a deficiency of \$2,336,705.54 as of October 1, 2011. If a deficiency claim is found to exist, the Debtor will provide for its treatment in Class 5 below.

- (2) Impairment. This class will be impaired.
- (3) Treatment. The Debtor's obligation to CSMC shall remain secured by the same collateral as existed prior to the Petition Date. The following terms shall apply to the obligation:
  - a. The obligation shall be treated as a secured obligation in an amount equal to the value determined by the Court. For feasibility purposes, the Debtor has estimated that CSMC shall have a secured claim in the amount of \$14,036,705.54 in Alternative A \$11,700,000.00 and in Alternative B as shown on Exhibit D to the Disclosure Statement.

b. From and after the Effective Date, interest shall accrue on the obligation at 4.75% per annum.

c. CSMC shall retain its lien(s) with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until its claim is paid as described herein.

d. The Debtor and CSMC shall enter into a lock box cash management agreement whereby all rents and security deposits received after the Effective Date shall be deposited into designated accounts maintained by CSMC for disbursement as described herein. All accounts maintained by CSMC shall be held in FDIC insured accounts in the name of the Debtor and shall not be co-mingled with any other funds. The Debtor shall instruct all tenants to make their rent checks payable to CSMC in the manner indicated by CSMC. Each month, CSMC shall make the following disbursements from the lock box account for the management and operation of the Shopping Centers as follows:

i. First, CSMC shall deposit the sum equal to 1/12 of the amount necessary for the property taxes and property insurance into a Tax and Insurance Impound account in such amount to ensure timely payment of these bills. CSMC shall be responsible for making timely disbursements from these accounts to the appropriate recipient for property taxes and insurance coverage, or to the Debtor to pay such obligations.

ii. Second, payment to CSMC in the amounts outlined below in paragraphs f and g for debt service payments to CSMC

iii. Third, and if applicable, the payments due to CSMC pursuant to Class 5.

iv. Third, a minimum payment to the Debtor equal to \$16,000.00 for Management and Operations of the shopping centers.

v. Fourth, the amount necessary to fund the unsecured creditor payment when such payment is due.

vi. All remaining rental proceeds after the distributions above are made shall be held in a separate interest bearing escrow account known as the Management & Upfit Account maintained by CSMC on behalf of the Debtor.

vii. All disbursements by CSMC from the lockbox shall be made on the first day of the month.

viii. The lockbox arrangement will commence on the later of (i) thirty days following the Effective Date of the Plan; or (ii) the date upon which CSMC establishes the accounts for the lockbox and notice has been provided to all

tenants concerning the instructions for making payments to the lockbox. Between the Effective Date of the Plan and the commencement of the lockbox arrangement, the Debtor will continue making cashflow payments according to an approved budget in the same manner as it is presently making under the existing cash collateral orders.

e. CSMC shall provide copies of the bank statement(s) for each account maintained by CSMC on behalf of the Debtor upon request within a timely manner.

f. Payments to CSMC. Payments to CSMC during the time in which the lockbox arrangement is in place shall be as follows:

i. For the first twelve (12) months of the lockbox arrangement, CSMC shall receive interest only payments from the Debtor.

ii. Beginning on the thirteenth (13<sup>th</sup>) month of the lockbox arrangement, the Debtor shall make seventy-two (72) monthly payments of principal and interest to CSMC calculated utilizing the outstanding principal balance at a 30 year amortization schedule, with one final payment of all outstanding principal and interest due on the 72<sup>nd</sup> month (“Amortized Payment Amount”).

g. Management and Upfit Account. Funds in this account shall be permitted to be used for the following purposes and shall be disbursed by CSMC to the extent of available funds:

i. For use by the Debtor to pay quarterly fees.

ii. For use by the Debtor to pay Administrative Claims not to exceed \$150,000.00.

iii. Such funds may be used to supplement the amount paid to the Debtor for management and operations costs when the monthly rent received is insufficient to result in a payment to the Debtor of at least \$16,000.00 to use towards management and operating costs.

iv. To pay upfit costs for new tenants upon receipt of a written lease which requires reimbursement or payment by the landlord of upfit costs and presentation of an invoice for such upfit work.

v. To fund payment of taxes not escrowed.

vi. Any other expenses to which CSMC and the Debtor agree to pay.

h. All prepayment penalties shall be eliminated and the Debtor shall be entitled to pay all or any portion of the CSMC claim prior to the maturity date established in this Plan without penalty.

i. All covenants, reporting requirements, or other such similar terms in the Loan Documents not expressly set forth herein shall be eliminated.

j. All reserve accounts, excluding the Tax and Insurance Impound account or unless provided for in this treatment, shall be eliminated. The balance of any funds in such reserve accounts, including the Tenant Improvements and Leasing Commissions Reserve account, the Lease Termination Payment Reserve account, and the Replacement Reserve account, and all other reserve accounts, shall be transferred to the lockbox account, unless previously applied against the outstanding amount of the allowed claim.

k. The Tax and Insurance Impound account shall be maintained as an escrow account by CSMC and shall be used solely to fund payments for the property taxes and insurance premiums; provided however that funds in such escrow account shall not be used to pay the property taxes to be paid by the Debtor through the Plan.

l. Security Deposits. All Security deposits shall be held in a separate Security Deposit Escrow Account and shall be held in escrow by CSMC in an account so designated on behalf of the Debtor, pending termination of the lease. Upon the termination of any lease when a tenant is entitled to have a security deposit refunded, CSMC shall timely remit such security deposit to the tenant upon receiving notice from the Debtor that a reimbursement is due. In the event that a security deposit is forfeited, the forfeited security deposit shall be treated as rent and used in accordance with the lockbox arrangement set forth above.

m. Reporting Requirements. Throughout the period of repayment described herein, the Debtor shall be required to comply with the following Financial Reporting Covenants:

i. The Debtor shall provide CSMC with a copy of each new lease or renewal of an existing lease within fifteen days of the execution by all parties of such document.

ii. The Debtor shall provide CSMC with notice of any tenant who has terminated their lease.

iii. CSMC shall designate an email address to which the Debtor shall email all of the Financial Reporting Covenants described herein.

m. Events of Default. Throughout the period of repayment as set forth herein, the following shall constitute an Event of Default:

i. The failure by the Debtor to maintain the shopping center property, normal wear and tear excepted.

ii. The failure to make the payments to CSMC as described herein and Class 5 by the due date.

iii. The failure to comply with any Reporting Requirements by the due date.

iv. The failure to turn over any rents to CSMC for deposit in the lockbox account which are paid by any tenant to the Debtor.

n. Remedies Upon Default. In the event of a post-confirmation default which remains uncured for 15 days following written notice from CSMC, CSMC shall be entitled to exercise all state law rights to foreclose on its collateral or request the appointment of a receiver which previously existed in the pre-petition Loan Documents.

**Class 5 – CSMC 2006-C5 STRICKLAND ROAD, LLC (“CSMC”) DEFICIENCY CLAIM:**

(1) Description of Debt. Pursuant to Joint Pre-Trial Order dated August 4, 2011, the Parties agreed that a Confirmation Hearing should be scheduled after the Court determined the value of the Debtor’s real property. The Debtor has asserted that the value of the real property is at least that of the CSMC’s claim, such that there is not a deficiency. The Debtor estimates the CSMC’s claim will be approximately \$14,036,705.54 as of October 1, 2011. CSMC has asserted that the value of the real property is approximately \$11,770,000.00 as of August 8, 2011, based upon the appraisal Mr. Chris R. Morris. This Class provides for the treatment of CSMC’s deficiency claim, if a deficiency is found to exist

(2) Impairment. This class will be unimpaired.

(3) Treatment. If a deficiency claim is found to exist, the Debtor will provide for its treatment as follows:

a. The obligation shall be treated as a unsecured obligation in an amount equal to the value determined by the Court. For feasibility purposes, the Debtor has estimated that CSMC shall have a deficiency claim in the amount of \$2,336,705.54 as shown on Exhibit D to the Disclosure Statement as Alternative B.

b. From and after the Effective Date, interest shall accrue on the obligation at 3.25% per annum.

c. Payments to CSMC. Payments to CSMC during the time in which the lockbox arrangement is in place (as described in Class 4) shall be as follows:

i. For the first twelve (12) months of the lockbox arrangement, CSMC shall receive interest only payments from the Debtor.

ii. Beginning on the thirteenth (13<sup>th</sup>) month of the lockbox arrangement, the Debtor shall make seventy-eight (72) monthly payments of principal and interest to CSMC calculated utilizing the outstanding principal balance at a 30 year amortization schedule, with one final payment of all outstanding principal and interest due on the 72nd month (“Amortized Payment Amount”).

**Class 6 – Tenant Leases:**

(1) Description of Debt. Prior to filing its petition, the Debtor entered into a number of Lease Agreements, as the lessor.

(2) Impairment. This class will be unimpaired.

(3) Treatment. Pursuant to § 365, the Debtor will assume these leases on the Effective Date to the extent such lease has not already expired according to its terms or has been expressly rejected or terminated.

**Class 7 – Pitney Bowes:**

(1) Description of Debt. Prior to filing its petition, the Debtor and Pitney Bowes entered into a lease for a postage machine.

(2) Impairment. This class will be unimpaired.

(3) Treatment. Pursuant to § 365, the Debtor will assume this lease on the Effective Date.

**Class 8 – General Unsecured Claims:**

(1) Description of Class. This class consists of all allowed, undisputed, non-contingent unsecured claims listed in the Debtor’s petition or as otherwise approved by the Court, excluding any unsecured claim of an insider as defined by § 101(31) of the Bankruptcy Code.

(2) Impairment. This class will be impaired.

(3) Treatment. The approximate total of non-insider general unsecured claims based on claims filed or scheduled, and projected deficiency claims, as of the date of the filing of this Plan is \$42,007.83.

The Debtor proposes to pay allowed general unsecured claims in full, over a period of five years, with quarterly payments, commencing eighteen (18) months after the Effective Date and continuing quarterly thereafter for a period of five years. For feasibility purposes, this payment has been calculated at \$2,100.00 per quarter. The Debtor shall provide a promissory note to this Class in an amount equal to the amount to be paid to this Class.

The Debtor may investigate and pursue avoidance actions pursuant to 11 U.S.C. §§ 547 and 548. Any funds collected through such actions will be distributed in accordance with the priorities established by the Bankruptcy Code and Orders of this Court.

**Class 9 – Subordinated Claims:**

(1) Description of Class. This class consists of all allowed, undisputed, non-contingent unsecured claims of insiders as defined by § 101(31) of the Bankruptcy Code listed in the Debtor’s petition or as otherwise approved by the Court, and specifically excluding any general unsecured claim provided for in Class 8. This class consists of all allowed, undisputed, non-contingent unsecured claims for insiders or as otherwise approved by the Court.

(2) Impairment. This class will be impaired.

(3) Treatment. The approximate total of general unsecured claims for insiders based on claims filed or scheduled, as of the date of the filing of this Plan is \$2,569,352.85. The Debtor intends to file an objection to Claim Number 6 filed by Harvest Plaza Developers, LLC, and asserts that no amounts are due.

The Debtor shall not make any payments to this Class until such time as the Class 8 General Unsecured Claims are paid in full. At such time the Debtor may pay these claims as agreed by between the parties.

The Debtor may investigate and pursue avoidance actions pursuant to 11 U.S.C. §§ 547 and 548. Any funds collected through such actions will be distributed in accordance with the priorities established by the Bankruptcy Code and Orders of this Court.

**Class 10 – Equity Security Holders:**

(1) Classification. This class consists of the equity claims of the members of the Debtor. The Debtor’s two members and corresponding interests are:

<b>Member</b>	<b>Interest Percentage</b>
Max Barbour	99%
Cheryl Barbour	1%

(2) Impairment. This class will be unimpaired.

(3) Treatment. The equity security holders shall retain their ownership interest upon confirmation of the Debtor’s Plan.

**IV. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Except as specified herein, all contracts which exist between the Debtor and any individual or entity, whether such contract be in writing or oral, which have not heretofore been rejected or heretofore been approved by Orders of the Court are hereby specifically rejected;

provided, however, that this provision is not intended to reject and does not reject any agreement for the renewal or the extension of any loan or funds, presently binding and in effect between the Debtor and any secured creditor. The Debtor hereby assumes all leases currently in effect in which the Debtor is the lessor, except as may be otherwise specifically stated herein.

Any person with a Claim arising from such rejection shall be deemed to hold a general unsecured claim and shall file a proof of claim within sixty (60) days of the Effective Date or be forever barred from asserting any Claim relating to such rejection.

#### **V. MEANS OF IMPLEMENTATION AND EXECUTION OF PLAN**

A. The Debtor proposes to make payments under the Plan from the income derived from the continued operation of its business.

B. Distributions under the Plan shall be made on the Distribution Date; provided however, that Court approved professionals may be paid as such fees and expenses are approved by the Court. Any distribution required to be made hereunder on a day other than a business day shall be made on the next succeeding business day.

C. De Minimis Distributions. No distribution of less than twenty-five dollars (\$25.00) shall be required to be made to any holder of an allowed unsecured claim. Instead, the Debtor shall have the option of retaining such funds to be distributed at the time of the final distribution in accordance with the Plan.

D. Unclaimed Property. If any distribution remains unclaimed for a period of 90 days after it has been delivered, or attempted to be delivered, such unclaimed property shall be forfeited by such holder of the claim and the Disbursing Agent shall not attempt to make any further distribution of such holder of the claim. Undistributed property shall be returned to the Debtor for distribution in accordance with the Plan.

E. Preservation of Avoided Transactions for the Benefit of the Estate. All transactions avoided or otherwise set aside pursuant to §§ 544, 547, 548, and/or 549, if any, shall be preserved for the benefit of the Estate pursuant to § 551 and applicable case law. Funds received from such transactions shall be distributed to creditors according to the priorities of the Code. In the case of any lien that has been avoided which encumbered certain properties of the Debtor and has since been avoided, the lien shall remain on the public record and shall remain an encumbrance upon the real property. However, all distributions made towards such deed of trust shall be distributed not to the named beneficiary of such deed of trust, but shall instead be paid to the Disbursing Agent for distribution to creditors.

F. The Debtor will execute and deliver all documentation to the Bankruptcy Court and to all parties in interest who are entitled to receive the same as required by the terms of the Plan and the Bankruptcy Code.

G. The Debtor shall take such other action as necessary to satisfy the other terms and requirements of the Plan and the Bankruptcy Code.

H. Except as expressly stated in the Plan, or allowed by a Final Order of the Bankruptcy Court, no interest, penalty, or late charge shall be allowed on any claim subsequent to the Petition Date, unless otherwise required by the Code. No attorney's fees or expenses shall be paid with respect to any claim except as specified herein or as allowed by a Final Order of the Court.

I. Confirmation of this plan shall constitute a finding that the Debtor does not waive, release, or discharge, but rather retains and reserves any and all pre-petition claims and any and all post-petition claims that it could or might assert against any party or entity arising under or otherwise related to any state or federal statute, state or federal common law, and any and all violations arising out of rights or claims provided for by Title 11 of the United States Code, by the Federal Rules of Bankruptcy Procedure, or by the Local Rules of this Court, including all rights to assert and pursue any and all avoidance actions, preference actions, and any other actions pursuant to 11 U.S.C. §§ 545, 546, 547, 548, and 550, except to the extent such avoidance actions, preference actions, or other actions were assigned to a creditor(s) as part of the Debtor's Plan. Further, the Debtor retains all rights to assert and pursue all claims under 11 U.S.C. § 542, including without limitation actions to seek turnover of estate assets, actions to recover accounts receivable, and/or actions to invalidate setoffs.

J. Administrative claims unpaid on the Effective Date will be paid from funds on hand or as the parties otherwise agree.

K. Max Barbour, Individually and Harvest Oaks, LLC v. Horsley Law Firm, P.A. and Charles Jeffrey Horsely, 10 CVS 4273 ("Tax Lawsuit"). The Debtor shall be entitled to apply the proceeds from the Tax Lawsuit to payment of its Administrative Expenses without the need for such funds to be paid into the lockbox maintained by CSMC. If administrative Expenses have been paid, these funds shall be deposited in the Management and Upfit Account.

L. All objections to claims, fee applications, and adversary proceedings will be filed with the Court within 60 days of the Effective Date; provided however, that the Debtor retains the right to object or otherwise pursue any claims against secured creditors relating to the payoff and/or satisfaction of their secured claims.

M. Procedure for Payment of Professional Fees. Current Court approved professionals shall not be subject to the fee application process for services rendered post-confirmation in furtherance of implementation of the confirmed Plan.

N. The Debtor intends to maintain its current officers and management personnel subsequent to the Effective Date. Max Barbour shall continue to serve as the President of the Debtor. Mr. Barbour shall only be entitled to receive compensation in the form of an owners draw if cash flow is sufficient to support such draw and shall not to exceed \$5,000.00 per month for the later of (i) 18 months or (ii) until such time as Class 8 is paid in full.

## **VI. SIMILAR TREATMENT FOR EACH CLAIM WITHIN A CLASS**

The claims stated herein, by modification, Court Order, or other legally appropriate manner, might be modified throughout the course of payment under this Plan. The Debtor, upon full payment as called for under the notes and deeds of trust, shall be entitled to have the note marked paid and satisfied and the deed of trust canceled as a matter of record, by the Trustee, or by appropriate application to this Bankruptcy Court, and upon a showing that the full amount of the monthly payments were made by the Debtor.

## **VII. PROVISIONS GOVERNING DISTRIBUTIONS**

A. Delivery of Distributions in General. Distributions to holders of allowed claims shall be made: (i) at the addresses set forth in the proofs of claim filed by such holders; (ii) at the addresses set forth in any written notices of address change submitted to the Court or Attorney for the Debtor after the date on which any related proof of claim was filed; or, if the information described in clauses (i) or (ii) is not available, (iii) at the addresses reflected in the Debtor's schedules of liabilities.

B. Distribution Dates. It is the intent of this Plan that the distribution shall occur as early as practicable following the Effective Date.

## **VIII. ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION BY AN IMPAIRED CLASS**

A. Each Impaired Class Entitled to Vote Separately. Each impaired class of claims shall be entitled to have the holders of claims therein vote separately as a class to accept or reject the Plan.

B. Acceptance by a Class of Creditors. Consistent with § 1126(c) of the Bankruptcy Code, and except as provided in § 1126(e) of the Bankruptcy Code, a class of claims shall have accepted the Plan if the Plan is accepted by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that have timely and properly voted to accept or reject the Plan.

C. Claimants Entitled to Vote. Holders of impaired claims shall be entitled to vote if:

(1) Such claim has been filed against the Debtor in a liquidated amount or has been listed on the Debtor's schedules other than as contingent, unliquidated or disputed, and as to which no proof of claim has been filed. The claim shall be allowed solely for the purpose of voting on the Plan in the amount in which such claim has been filed or listed on the Debtor's schedules;

(2) Such claim has been filed against the Debtor or listed on the Debtor's schedules and is the subject of an existing objection filed by the Debtor, and is temporarily allowed for voting purposes by order of the Court in accordance with Bankruptcy Rule 3018;

(3) Such claim has been filed in an undetermined amount, in which case the creditor shall not be entitled to vote unless the Debtor and the holder of the claim agree on an amount for voting purposes or the Court enters an order setting the amount of the claim that the creditor may ballot.

(4) Any entity holding two or more duplicate claims shall be entitled to vote only one claim.

D. Confirmation Hearing. The Court will set a hearing on the confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied.

E. Acceptances Necessary to Confirm the Plan. At the hearing of confirmation of the Plan, the Court shall determine, among other things, whether the Plan has been accepted by each impaired class. Under § 1126 of the Bankruptcy Code, an impaired class of Creditors is deemed to accept the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number vote to accept the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired class, the Court must also determine that class members will receive property with a value, as of the Effective Date of the Plan, that is not less than the amount that such class member would receive or retain if the Debtor was liquidated as of the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code.

F. Confirmation of Plan Without Necessary Acceptances. The Bankruptcy Code provides that the Plan may be confirmed even if it is not accepted by all impaired Classes. In order to be confirmed without the requisite number of acceptances of each impaired class, the Court must find that at least one impaired class has accepted the Plan without regard to the acceptances of insiders, and the Plan does not discriminate unfairly against, and is otherwise fair and equitable, to such impaired class. In the event that any class votes against the plan, the Debtor hereby requests and moves the Court under the provisions of this Plan entitled "Cramdown," for confirmation pursuant to the "cramdown" provisions of § 1129(b) of the Bankruptcy Code. In connection therewith, the Debtor shall be allowed to modify the proposed treatment of the allowed claims in any class that votes against the Plan consistent with § 1129(b)(2)(A).

### **IX. "CRAMDOWN" FOR IMPAIRED CREDITORS NOT ACCEPTING THE PLAN**

In respect to any class of creditors impaired but not accepting the Plan by the requisite majority in number or two-thirds in amount, the proponent of this Plan requests the Court to find that the Plan does not discriminate unfairly and is fair and equitable in respect to each class of claims or interests that are impaired under the Plan and that the Court confirm the Plan without such acceptances by the said impaired classes. The Debtor will also request that the Court establish a value for any assets, the value of which is in dispute between the Debtor and any secured creditor, at a valuation hearing under § 506 of the Bankruptcy Code, to be scheduled at the same time as the hearing on confirmation of the Plan.

## **X. EFFECT OF CONFIRMATION**

A. Except as otherwise provided in the Plan, the confirmation of the Plan vests all of the property of the estate in the Debtor.

B. **Injunction.** As of the Confirmation Date, except as otherwise provided in the Plan or the Confirmation Order, all persons that have held, currently hold, or may hold a claim, equity interest, or other debt or liability that is treated pursuant to the terms of the Plan or that is otherwise enjoined pursuant to § 1141 of the Code, are enjoined from taking any of the following actions on account of any such claims, equity interests, debtors or liabilities, other than actions brought to enforce obligations under the Plan: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; (iv) asserting a setoff or right of recoupment of any kind against any debt, liability, or obligation; and/or (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation order. Notwithstanding the foregoing, the Plan does not release or waive any claims it may have against any party in interest.

## **XI. RELEASE OF TITLE TO PROPERTY**

A. **Vehicles.** Upon the satisfaction or other discharge of a security interest in a motor vehicle, mobile home, or in any other property of this estate in bankruptcy for which the certificate of title is in the possession of the secured party, the secured party shall within ten (10) days after demand and, in any event, within thirty (30) days of receipt of the payment in full pursuant to the Plan, execute a release of its security interest on the said title or certificate, in the space provided therefore on the certificate or as the Division of Motor Vehicles prescribes, and mail or deliver the certificate and release to the Debtor. Confirmation of this Plan shall impose an affirmative and direct duty on each such secured party to comply with the provision. This provision shall be enforced in a proceeding filed before the Bankruptcy Court and each such creditor consents to such jurisdiction by failure to file any timely objection to this Plan. Such an enforcement proceeding may be filed by the Debtor in this case either before or after the closing of this case. The debtor(s) specifically reserve the right to file a motion to reopen this case under Section 350 of Title 11 of the United States Code to pursue the rights and claims provided for herein.

B. **Real Property.** Pursuant to N.C.G.S. § 45-36.9, upon the satisfaction or other discharge of a security interest in real property for which a creditor holds a properly secured mortgage, the secured party shall within thirty (30) days after demand or within thirty (30) days of payment in full pursuant to the Plan, submit for recording with the Office of the Register of Deeds for the applicable County a satisfaction of its security interest and mail or deliver the recorded satisfaction document or documents to the Debtor. The failure of any such party to comply with this section shall result in the imposition of statutory damages of \$1,000.00, actual damages, costs and legal fees as provided for by § 45-36.9(c) of the N.C. General Statutes. Confirmation of this Plan shall impose an affirmative and direct duty on each such secured party to comply with this provision. This provision shall be enforced in a proceeding filed before the

Bankruptcy Court and each such creditor consents to such jurisdiction by failure to file any timely objection to this plan. Such an enforcement proceeding may be filed by the Debtor in this case either before or after the closing of this case. The Debtor specifically reserves the right to file a motion to reopen this case under § 350(b) of Title 11 of the United States Code to pursue the rights and claims provided for herein including all remedies for damages and attorney fees under applicable State and Federal statutes.

## **XII. APPLICATION OF PLAN PAYMENTS**

A. All payments made by the Debtor shall be applied as indicated in the respective treatment for each creditor, or if no such application of payments is specified, then payments shall be applied to principal and interest on a monthly basis according to the amortization schedule proposed for each creditor. In the event that a creditor is entitled to costs and/or attorneys fees post-petition under § 506(b) of the Code, such creditor must file an application in accordance with the Code and/or Bankruptcy Rules pertaining to approval of costs and/or attorney fees prior to such costs and/or attorneys fees becoming part of the creditor's allowed claim. Confirmation of the Plan shall impose an affirmative duty and legal obligation on the holders and/or the servicers of any claims secured by liens, mortgages and/or deeds of trust to apply payments in the manner set forth in the Plan in accordance with § 524(i).

B. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the Debtor to the month in which they were made under the plan or directly by the Debtor, whether such payments are immediately applied to the loan or placed into some type of suspense account and to otherwise comply with 11 U.S.C. § 524(i).

## **XIII. RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction of these proceedings pursuant to and for the purposes of §§ 105(a) and 1127 of the Code and for, without limitation, the following purposes, inter alia:

1. to determine any and all objections to the allowance of claims and/or interests;
2. to determine any and all applications for allowance of compensation for periods prior to or after the Confirmation Date;
3. to determine any and all applications pending on the Confirmation Date for the rejection and disaffirmance or assumption or assignment of executory contracts and the allowance of any claim resulting therefrom;
4. to determine all controversies and disputes arising under or in connection with the Plan;
5. to determine all applications, adversary proceedings and litigated matters pending on the Confirmation Date;

6. to effectuate payments under, and performance of, the provisions of the Plan, including, but not limited to, future sales of personal and real property retained by the Estate;
7. to determine such other matters and for such other purposes as may be provided for in the confirmation order;
8. to determine all disputes regarding property of the estate;
9. to establish and adjust procedures for the orderly administration of the estate;
10. to determine matters that are subject to proceedings duly removed to the Bankruptcy Court; and
11. to replace the Debtor-in-Possession with a Trustee for good cause shown.

#### **XIV. MISCELLANEOUS PROVISIONS**

A. Survival of Terms. The covenants, representations and agreements made in this Plan shall survive the Confirmation Date and the transactions contemplated herein.

B. Successors Bound. This Plan shall on the Consummation Date be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Debtor, and the holders of claims and interests.

C. Controlling Law. This Plan shall be read and construed and take effect in all respects in accordance with the law as set forth in the United States Bankruptcy Code and the Rules promulgated thereunder.

D. Further Assurance. If at any time, the Debtor shall consider, or be advised, that any further releases, assurances or documents are reasonably necessary or desirable to carry out the provisions hereof, and the transactions contemplated herein, the holders of claims and the holders of interest shall, upon reasonable request, execute and deliver any and all documents and assurances, and do all things necessary or appropriate to carry out fully the provisions hereof.

E. Liens. All liens remaining in favor of any creditor in this action against the real property conveyed prior to the filing of the petition shall be deemed to be released upon confirmation of the Plan. The Debtor shall request and all parties shall provide such additional documentation as may be necessary to effectuate these releases.

F. Incorporation of Disclosure Statement. All the terms and conditions of the Disclosure Statement are incorporated herein by reference.

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Respectfully submitted, this the 12th day of August, 2011.

s/Trawick H. Stubbs, Jr.  
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