

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS

In re:  2654 HIGHWAY 169, LLC,  DEBTOR.	Case No. 16-10644-11 REN
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**DEBTOR'S DISCLOSURE STATEMENT DATED OCTOBER 26, 2016**

**Table of Contents**

- I. Introduction
- II. Background
- III. Summary of the Plan
- IV. Means of Implementing the Plan
- V. Confirmation Requirements and Procedures

**I. INTRODUCTION**

This is the Disclosure Statement in the Chapter 11 case of 2654 Highway 169, LLC (the “**Debtor**”). This Disclosure Statement is filed under Chapter 11 of the Bankruptcy Code (the “**Code**”), and is filed contemporaneously with Debtor’s First Amended Chapter 11 Plan Dated October 26, 2016 (“the **Plan**”). The Plan proposes to pay creditors of the Debtor from the liquidation of the Debtor’s primary asset. This Plan provides for 2 classes of secured claims, 2 classes of unsecured claims, the interest of Debtor in its property, and the equity interest of the Debtor’s members. General unsecured creditors holding allowed claims will be paid in full without interest. All creditors should refer to the Plan for information regarding the precise treatment of their claims.

The Disclosure Statement provides detailed information regarding the terms for payment of the Debtor’s creditors and other information designed to assist creditors in determining whether to accept the Plan. *Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)*

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case.
- Historical information regarding the Debtor and the events leading to the bankruptcy filing.
- A summary of how the Plan proposes to treat claims of the type you hold (i.e., what you will receive on your claim if the Plan is confirmed).

- Who can vote on or object to the Plan.
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan.
- Why Debtor believes the Plan is feasible, and how the treatment of your claim under the Plan compares to what you would receive on your claim in a chapter 7 liquidation.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan. This section describes the procedures under which the Plan will or will not be confirmed.

**1. *Time and Place of the Hearing to Confirm the Plan***

The hearing at which the Court will consider confirmation of the Plan will take place on December 8, 2016 at 10:30 a.m. in the United States Bankruptcy Court, 150 US Courthouse, 401 N. Market, Wichita, KS, 67202.

**2. *Deadline For Voting to Accept or Reject the Plan***

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope before the close of business on November 28, 2016 to:

David P. Eron  
Eron Law, P.A.  
229 E. William, Ste 100  
Wichita, KS 67202  
(316) 262-5500  
(316) 262-5559 (fax)  
david@eronlaw.net

See section V.B and V.F below for a discussion of voting eligibility requirements. Your ballot must be received by November 28, 2016 at 4:00 p.m. or it will not be counted.

**3. *Deadline For Objecting to the Confirmation of the Plan***

Objections to confirmation of the Plan must be filed with the Court by November 28, 2016 and served upon:

David P. Eron  
Eron Law, P.A.  
229 E. William, Ste 100  
Wichita, KS 67202  
(316) 262-5500  
(316) 262-5559 (fax)  
david@eronlaw.net

**4. Identity of Person to Contact for More Information**

If you want additional information about the Plan, you should contact

David P. Eron  
Eron Law, P.A.  
229 E. William, Ste 100  
Wichita, KS 67202  
(316) 262-5500  
(316) 262-5559 (fax)  
david@eronlaw.net

**II. BACKGROUND**

**A. Description of the Debtor**

The Debtor was formed on May 14, 2004 by Andrew Lewis ("**Lewis**"). Lewis, as trustee of the Andrew A. Lewis Revocable Trust, owns 41.8% of the company. Debtor's only ongoing operations are the ownership of the warehouse located at 2654 North Highway 169, Coffeyville, KS 67337 ("the Property"). The Property is the largest warehouse in the state of Kansas. The Property is currently vacant. Debtor owns 76.7942% of the Property. The remainder of the Property is owned as follows:

<b>Investor (hereinafter "Co-owners")</b>	<b>Address</b>	<b>Ownership</b>
Rebecca A. Lewis Minor's Trust dated 12/18/90, Andrew Lewis, Trustee	475 S. San Antonio Road, Los Altos, CA 94022	6.0000%
Emily F. Lewis Minor's Trust dated 12/18/90, Andrew Lewis, Trustee	475 S. San Antonio Road, Los Altos, CA 94022	6.0000%
Margaret C. Lewis Minor's Trust dated 12/18/90, Andrew Lewis, Trustee	475 S. San Antonio Road, Los Altos, CA 94022	6.0000%
Harlow-Fulton Family Trust 9/7/1990, Cynthia E. Harlow, Trustee	2771 Cowper Street, Palo Alto, CA 94306	5.2058%

**B. Insiders of the Debtor**

Debtor's insiders (statutory and non-statutory) include the following individuals:

Andrew A. Lewis      Chief Executive Officer  
Dan Goncharoff      Chief Financial Officer

<b>Investor</b>	<b>Investment %</b>
Andrew A. Lewis Revocable Trust 01/05/84, Andrew A. Lewis, Trustee	41.800%
Tanz Family 1996 Trust, Jacob Tanz & Wendy L. Tanz, Trustees	6.7789%
Burow-Sweeney Family Trust 9/11/95. David P. Burow & Suzanne G. Sweeney, Trustees	6.7789%
Simmons Living Trust 6/30/1998, Charles E. Simmons & Julia W. Simmons,	6.7789%

Trustees	
2000 Johnson Family Trust 2/17/2000. Sanford Johnson & Victoria Hinder, Trustees	5.4231%
1996 Primary Trust U/D/T June 19, 1996, Robert Peter Fruehsamer, Trustee	3.3894%
Amos Barzilay	4.0673%
Alan & Claudia Arndt Inter Vivos 7/27/00, Alan Arndt & Claudia L. Arndt, Trustees	2.0337%
1998 Roy Kumar Trust UDT 12/29/98, Roy Kumar, Trustee	2.7116%
Joel Nelson 2003 Revocable Trust 8/8/03, Joel Nelson, Trustee	4.0673%
Carl Quinn & Tracy Quinn	1.3558%
Ralph Hill & Winnie Chu 2014 Rvcble Trst, Ralph Hill & Winnie Chu, Trustees	1.6947%
Perry Family Revocable Trust 4/26/04, Ogen Perry & Dorit G. Perry, Trustees	4.0673%
Wolf Family 1998 Recovable Trust 6/30/99. Shoshana Wolf, Trustee	3.8233%
DJR Ventures, LLC, Jacob Dayan, Managing Member	5.2299%

### C. Management of the Debtor

Debtor has been managed by Lewis, its CEO and largest shareholder. Lewis will continue to manage the Debtor following Plan confirmation. Dan Goncharoff will continue to act as the Debtor's CFO. Rather than paying compensation to Lewis and Goncharoff, Debtor will pay Investment Grade Loans, Inc. ("IGLI") a management fee of \$1,975.00 per month. Lewis and Goncharoff are also employees of IGLI.

### D. Events Leading to the Debtor's Chapter 11 Filing

From its inception, the Debtor was formed for the purpose of owning and operating the Property. At the time, the Property was occupied by Amazon.com.ksdc, Inc., commonly known as "Amazon." In 2014, Amazon announced that it planned to vacate the Property. Debtor attempted to resolve this mounting crisis through a three part plan: 1) negotiating with Amazon to remain in the Property, 2) marketing the Property to a new tenant, and 3) marketing the Property for sale. The Debtor's efforts were only partially successful. Amazon finally vacated the Property in May 2015. Debtor was unable to locate a new tenant or a buyer by the time that Amazon vacated the Property. As a result, Debtor's secured lender, Wells Fargo Bank, N.A., solely as Trustee for the Registered Holders of the GE Business Loan Pass-Through Certificates, Series 2004-2, as Beneficiaries ("Bank") filed a foreclosure petition against Debtor and the Property in Montgomery County, Kansas. On February 29, 2016, the Montgomery County District Court entered an order of foreclosure against the Debtor ("the Judgment"). Although the Bank's mortgage is a non-recourse obligation, the amount of the Judgment at just under \$11,000,000.00 was substantially less than the value of the Property. Debtor asserts that the fair market value of the Property is somewhere between \$16,000,000 and \$18,000,000. An appraisal ordered by the Bank indicates that the value of the Property is \$14,000,000.00. The Montgomery County appraisal reflects the value of the Property at \$16,963,290.00. Therefore, to protect the Property from an unreasonably low sale price at a sheriff's sale, Debtor filed its Chapter 11 Petition on April 13, 2016. At the time the Petition was filed, Debtor had

\$634,556.63 in funds on deposit. Most of the funds remain on deposit and available for the Debtor to use in furtherance of the Plan.

#### **E. Significant Events During the Bankruptcy Case**

Debtor filed an application to employ Eron Law, P.A. as counsel upon the filing of the Petition, which was granted on May 6, 2016 (Doc. No. 29). On May 16, 2016, Debtor filed a Motion for Order Authorizing Payment of Pre-Petition Debts and to Pay Expenses in the Ordinary Course of Business (Doc. No. 36). At the same time, the Debtor filed an Application for Authority to Employ Investment Grade Loans Inc. as Manager and Accountant (Doc. No. 37). The Bank objected to both motions. At the hearing on May 26, 2016, the Court granted both motions, with certain modifications. The Court did not allow Debtor to pay the pre-petition claim for property taxes held by Montgomery County. Additionally, the Court ordered the Debtor and the Bank to negotiate a reduced fee for IGLI (which was ultimately set at \$1,975). The orders granting the motions (Doc. Nos. 51 and 52) set forth the permitted operating budget.

The Bank filed a Motion to Dismiss or, in the Alternative, Convert Case to Chapter 7 Liquidation (Doc. No. 22) on April 29, 2016. The Debtor objected to the Motion to Dismiss. After the Motion to Dismiss was filed, the Debtor entered into negotiations for the sale of the Property to Ariel Capital, LLC for a sale price of \$14,000,000.00. By agreement of the Debtor and the Bank, the Motion to Dismiss was tabled to allow Debtor to consummate a sale of the Property.

Debtor received a signed letter of intent from Ariel Capital on June 2, 2016, which was also executed by Debtor. Debtor and Ariel Capital, LLC signed a Purchase Agreement, which the Court approved on August 18, 2016 (Doc. No. 96), which calls for a sale price of \$14,000,000.00. The sale to Ariel Capital originally had a closing deadline of October 21, 2016. That deadline has now been extended to December 21, 2016.

#### **F. Projected Recovery of Avoidable Transfers**

Debtor does not intend to pursue any fraudulent conveyance or avoidance actions after confirmation, as its management believes after consultation with counsel that there are either no viable actions and/or that any such actions would not result in any material recovery to creditors. This statement is intended only to convey the Debtor's current plans, and should not be construed as a definitive statement of the existence of any viable actions.

#### **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final nonappealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are stated in Article III.B of the Plan. Debtor does not intend to file objections to any claims. A claims summary is attached hereto as **Exhibit B**, which definitively identifies which claims will be allowed and the proposed amount of the allowance of the claims. If the Plan is confirmed, the amount set forth in **Exhibit B** as the allowed amount of your claim and the treatment of your claim as set forth in the Plan will

become final. You are strongly encouraged to read the Plan and **Exhibit B** thoroughly to understand how your claim will be treated. No modification of your claim will be permitted after confirmation of the Plan.

#### **H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets (including applicable encumbrances of those assets) are listed in **Exhibit A**, together with an analysis of a possible chapter 7 liquidation.

Debtor's tax returns for 2014 and 2015 are attached hereto as **Exhibit C**.

#### **I. Projected Financial Conditions**

The Debtor currently has sufficient funds on deposit to pay all allowed administrative claims and general unsecured claims in full. The value of the Property is sufficient to pay the secured claims of the Bank and the Montgomery County Treasurer, together with all interest accumulating thereon following the Petition Date and any costs of sale. The Debtor projects that there will be funds returned to Debtor and the Co-owners from the net sale proceeds. Additionally, Debtor projects that there will be funds remaining on hand and a potential claim against Amazon for unpaid rents and/or expenses. After payment of all claims as contemplated by the Plan, such assets will remain property of the Debtor and/or Co-owners, and may be distributed as they see fit.

### **III. SUMMARY OF THE PLAN**

#### **A. What is the Purpose of the Plan of Liquidation?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### **B. Treatment of Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. Accordingly, the Plan Proponent has not placed the following claims in any class:

##### ***1. Administrative Expenses***

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under Code § 507(a)(2). Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that each administrative expense

claim be paid on the Effective Date of the Plan, unless the holder of the claim agrees to a different treatment. In this case, all administrative expenses will be paid in full. A summary of the administrative expense claims is provided in the Plan. However, such administrative expenses are ongoing. Other than fee applications required by 11 U.S.C. §330, administrative claims need not be filed. All claims incurred after the Petition Date will be paid as and when due. Fee applications will not be filed for fees incurred after the confirmation of this Plan, and the Debtor shall not be required to seek Court approval of professionals after the confirmation of the Plan, including but not limited to attorneys, accountants, and real estate sales professionals.

**2. Priority Tax Claims**

Priority tax claims are unsecured income, employment, sales, and other taxes described by Code § 507(a)(8). Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief. The only priority claim herein is Claim No. 3 filed by the Internal Revenue Service. Claim No. 3 was an estimated tax claim, filed prior to the filing of Debtor's 2015 income tax return. There are no taxes owed by the Debtor to the Internal Revenue Service. As such, Claim No. 3 shall be disallowed.

**C. Treatment of Classified Claims and Interests.**

**1. Class 1: Priority Claims**

Class 1 shall consist of all allowed claims entitled to priority under Code § 507 (except administrative expense claims under § 507(a)(2)). The Class 1 claims shall include any interest incurred prior to the Petition Date, but shall not include any penalties or interest incurred after the Petition Date. **Exhibit B** shall be definitive of the allowed Class 1 Claims, and confirmation of the Plan shall act as an allowance of all Class 1 Claims specified on **Exhibit B** as "Allow" in the Treatment section. Likewise, confirmation of the Plan shall act as a disallowance of any Class 1 Claims specified on **Exhibit B** as "Disallow" in the Treatment section. The only Class 1 Claim is held by the Internal Revenue Service. The claim of the Internal Revenue Service shall be disallowed as it was an estimated claim based upon a tax return that has been subsequently filed. Class 1 is impaired.

**2. Class 2: Secured Claim of Wells Fargo Bank, N.A., solely as Trustee for the Registered Holders of the GE Business Loan Pass-Through Certificates, Series 2004-2, as Beneficiaries**

Class 2 consists of the claim of the Bank in the amount of \$10,771,012.00, less amounts paid to the Bank since the Petition Date, plus interest incurred since the Petition Date accruing at the rate of \$3,666.24 per diem. Subject to Court approval as to reasonableness, the Bank is entitled to recovery of its reasonable attorney fees, costs and expenses incurred in this action pursuant to 11 U.S.C. § 506(b). Said §506(b) fees and expenses shall become a part of the Class 2 Claim to be paid as set forth below. The Class 2 claim of the Bank is secured by the Property, legally described as:

Beginning at a point located 2,645.50 feet North and 75.00 feet East of the Southwest corner of the SE/4 of Section 7, Township 34 South, Range 17 East, Montgomery County, Kansas, thence North along a line parallel to the center line of said Section 7, a distance of 2,621.75 feet, thence East along a line parallel to the north line of the NE/4 of said Section 7 a distance of 1,981.90 feet, thence South a distance of 2,498.50 feet, thence West a distance of 1,998.00 feet to the point of beginning, all located in Section 7, Township 34 South, Range 17 East, Montgomery County, Kansas.

A part of Section 7, Township 34 South, Range 17 East of the 6th P.M., Montgomery County, Kansas, described as follows: Commencing at the SW corner of the SE/4 of said Section, thence on an assumed bearing of N 00°00'00" W along the centerline of said Section 7, a distance of 2,645.50 feet, thence N 90°00'00" E a distance of 75.00 feet to the true point of beginning, thence N 00°00'00" W a distance of 2,621.75 feet, thence S 87°11'57" E parallel with the North line of said Section 7, a distance of 1,981.90 feet, thence S 00°25'11" E a distance of 2,498.50 feet, thence S 89°14'27" W a distance of 1,998.00 feet to the true point of beginning.

A part of Section 7, Township 34 South, Range 17 East of the 6th P.M., Montgomery County, Kansas, described as follows: Commencing at the SW corner of the SE/4 of said Section 7, thence on an assumed bearing of N 00°00'00" W along the center line of said Section 7 a distance of 2,645.50 feet, thence N 90°00'00" E a distance of 66.80 feet to the East right-of-way line of US Highway No. 169 and the true point of beginning, thence continuing N 90°00'00" E a distance of 8.20 feet, thence N 00°00'00" W a distance of 2,621.75 feet, thence S 90°00'00" W a distance of 1.90 feet to said East right-of-way line of US Highway No. 169, thence S 00°08'13" W along said East right-of-way line a distance of 2,621.76 feet to the point of beginning.

The foregoing shall be referred to as "the Property." The Class 2 Claim is secured by a validly recorded mortgage against the Property and the Judgment. The Class 2 Claim shall be paid in full as follows:

- a. Debtor shall close on the sale to Ariel Capital, LLC as approved by Doc. No. 96 (which shall remain in full force and effect following entry of the Confirmation Order) not later than December 28, 2016 ("the Ariel Sale"), subject to extension by approval of the Bank and the County. The Class 2 Claim shall be paid in full from the proceeds of the sale.
- b. In the event that the Ariel Sale fails to close as provided in the preceding paragraph, Debtor shall auction the Property to the highest and best bidder by way of public auction ("the Auction").
  - i. The Auction shall be conducted by a professional auction company.
  - ii. The Auction procedure shall require prior approval by the Court. The employment or compensation of any attorneys, accountants, auctioneers, brokers,

agents, or marketers as they may be employed by the Debtor in any way related to the Auction shall also be subject to court approval. The payment of any fees and costs due in advance shall be paid by the Debtor and the Co-owners at or before the Auction. The Debtor shall seek court approval of the Auction contract and auction procedures, and Debtor shall notice such request to all parties in interest.

- iii. The Auction shall be conducted not later than February 28, 2017, with closing to occur not later than March 31, 2017.
- iv. The sale of the Property at the Auction shall be free and clear of liens and encumbrances, including but not limited to all such encumbrances listed on **Exhibit D**, but not including any such encumbrances identified as “Surviving”, pursuant to 11 U.S.C. §363(f). Any order confirming this Plan shall constitute an order of sale free and clear of liens pursuant to the terms of 11 U.S.C. §363(f), and no further order shall be required by the Court to authorize such sale. The claims of the Bank, the County, and the Co-owners shall attach to the proceeds of the Auction, in the order of priority in which such claims existed immediately prior to confirmation of this Plan.
- v. The Bank shall itemize all attorney’s fees and costs for payment out of the sale proceeds and present such itemization to Debtor’s counsel not later than 14 days prior to the Auction, and any portion of such attorney’s fees or costs to which Debtor objects shall be retained in escrow until such time as the Bankruptcy Court determines the reasonableness of such fees and costs under 11 U.S.C. §506(b). The Bank shall have the right to make a credit bid at the Auction. The Bank’s credit bid may include all asserted fees and costs, but in the event that the Bank is the purchaser at the Auction, the purchase price shall be reduced by the portion of such fees and costs subsequently disallowed by the Court. In the event that the Bank is no longer the highest bidder after the reduction of the Bank’s fees, the Property shall be sold to the next highest bidder.
- vi. In the event that the sale is by credit bid of the Bank, the Debtor and the Co-owners shall be responsible for any brokerage or other sales commissions, marketing fees, and other costs incurred for the Auction. The liens, mortgages, or other interests of the Class 3 Claim shall not be extinguished by the sale unless satisfied by the Bank.
- vii. Neither the Debtor nor the Co-owners shall have any right of redemption for the Property following the Auction.
- viii. The sale of the Property at Auction shall include the ownership interest of the Co-owners pursuant to 11 U.S.C. §363(h), and the further consent of the Co-owners shall not be required.
- ix. At any time prior to the Auction, if the Debtor receives a written and binding offer to purchase the Property for an amount sufficient to pay the entire Class 2 and Class 3 Claims in full ( including all accrued interest, attorney’s fees, and costs

owed to the Bank), nothing herein shall prevent the Debtor from entering into such a contract for sale, and such sale shall have the same force and effect as either the Ariel Contract or the Auction, subject to the provisions of subparagraph c, and further subject to the right of the Bank, the County, and/or the Co-owners to object to such a sale, each of which shall receive notice of such intended sale in writing not more than seven days after such a contract is executed by the Debtor. Any such sale shall be subject to the Court's approval and such approval will be given only if the Debtor presents evidence of its financial ability to continue to fund the Property until and through the closing of any such sale.

- c. In the event that closing of any sale of the Property does not occur on or before March 31, 2017, the Bank shall have immediate relief from the automatic stay under 11 U.S.C. §362 to continue the prosecution of the Montgomery County foreclosure action, Case No. 15-CV-93, including to pursue all remedies available under the Judgment and to proceed to a sheriff's sale of the Property as may be otherwise permitted by Kansas law, in which event the confirmation of this Plan shall not have any further effect on the Bank's rights under the note, mortgage, other loan documents, or the Judgment.

The Class 2 Claim is impaired.

### **3. Class 3: The Secured Claim of Montgomery County**

Class 3 consists of the claim of Montgomery County, Kansas (the "County") in the amount of \$493,728.10, plus interest and any additional taxes accrued but not paid since the filing of the case. The Class 3 claim of the County was filed as proof of claim number 1, reflecting the entire balance as being secured by the Property. The Class 3 Claim is secured by a statutory lien against the Property. The treatment provided to the Bank in satisfaction of the Class 2 Claim shall inure to the benefit of the Class 3 Claim. The County shall retain all of its rights to continue assessing taxes from and after the Effective Date. In the event that Closing does not occur on or before March 31, 2017, the County shall have immediate relief from stay under 11 U.S.C. §362 to foreclose any tax liens to the extent the Class 3 Claim is not timely paid, in which event the confirmation of this Plan shall not have any further effect on the County's rights under Kansas law. The Class 3 Claim is impaired.

### **4. Class 4: General Unsecured Claims**

Class 4 consists of all timely-filed, unsecured claims allowed under Code § 502 that are not separately classified herein. Debtor estimates the Class 4 Claims at \$5,926.89. **Exhibit B** shall be definitive of the allowed Class 4 Claims, and confirmation of the Plan shall act as an allowance of all Class 4 Claims specified on **Exhibit B** as "Allow" in the Treatment section. Likewise, confirmation of the Plan shall act as a disallowance of any claim specified on **Exhibit B** as "Disallow" in the Treatment section. All claims identified as "Disallow" shall be permanently barred by an order confirming this Plan. The Class 4 Claims shall receive payment in full within 30 days of the Effective Date, without interest. Class 4 is impaired.

### **5. Class 5: Equity Interest Holders**

Class 5 consists of the equity interests of the Debtor's members. The Debtor's members shall retain their equity interests in the Debtor. Debtor's members shall not receive any distributions on account of their equity interests until the treatment provided to Classes 1 through 4 under the Plan has been fully provided, including, in the event that Closing does not occur, the provision of stay relief to the Bank and the County. Class 5 is impaired.

**6. *Class 6: Interest of the Debtor in Property of the Estate***

Debtor shall retain any interest in its property or the property of the estate not otherwise disposed of under the terms of the Plan. The property not specifically disposed of under the Plan shall revert in the Debtor upon confirmation. Class 6 is impaired.

**D. Treatment of U.S. Trustee Fees**

All fees required to be paid by 28 U.S.C. § 1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid as set forth above. The Debtor reserves the right to request a final decree at any time after the Effective Date, including at a time prior to distribution of the Plan Payment Pool or sale of the Property.

**E. Provisions for Executory Contracts and Unexpired Leases**

The Debtor elects to reject all of its leases and executory contracts. This rejection includes, but is not limited to, any brokerage contracts with NAI Martens and Zimmer Real Estate Services, L.C. dba Newmark Grubb Zimmer.

**IV. MEANS OF IMPLEMENTING THE PLAN**

**A. Source of Payments**

The funds currently held on deposit by the Debtor are in excess of \$500,000.00. These funds shall be used to pay all administrative expenses and make the payments required to the Class 4 Claims. Additionally, in the unlikely event that the Property does not sell (by private contract or otherwise) for a sufficient amount to pay the Class 2 Claim in full, a portion of the funds held on deposit may be utilized to pay such attorney's fees and costs as may constitute a monetary obligation of the Debtor (the balance of the Class 2 Claim being a non-recourse obligation). The sale of the Property is likely to produce sufficient proceeds to satisfy all of the Class 2 and Class 3 Claims. A complete analysis of Debtor's assets is attached to the Disclosure Statement as **Exhibit A**.

**B. Post-Confirmation Management**

The Post-Confirmation management is described above in paragraph II.C.

**C. Risk Factors**

The primary risk factor is that the Debtor will not be able to close the Ariel sale by December 21, 2016. However, the Plan calls for the Debtor to auction the Property if necessary, and the Bank will have the opportunity to credit bid against the Property. Furthermore, all unsecured creditors will be paid in full out of cash on hand. As such, there appears to be very little risk associated with the Plan.

#### **D. Tax Consequences of Plan**

Creditors and equity interest holders concerned with how the Plan may affect their tax liability should consult with their accountants, attorneys, or advisors. The Debtor makes no statements or representations regarding the tax effect of this Plan on any member of any class or any of the classes described in the Plan. You should consult your tax advisor concerning any tax consequences. There has been no independent audit of the financial information contained in this disclosure statement. The Debtor is unable to warrant or represent that the information contained herein is without any inaccuracy, although all such information is accurate to the Debtor's best knowledge, information and belief. The Plan contemplates the liquidation of certain capital assets. Debtor is a pass-through entity, and any taxation will be addressed by Debtor's shareholders. Debtor does not believe that the Plan will have any noteworthy tax consequences for Debtor.

### **V. CONFIRMATION REQUIREMENTS AND PROCEDURES**

#### **A. Overview of Requirements**

To be confirmable, the Plan must meet the requirements listed in Code §§ 1129(a) or (b). These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; 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. These requirements are not the only requirements listed in Code § 1129, and they are not the only requirements for confirmation.

#### **B. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

#### **C. What Is an Allowed Claim or an Allowed Equity Interest?**

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity

interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court overrules the objection or allows the claim or equity interest for voting purposes under Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

**D. What Is a Disputed Claim?**

A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or liquidated. No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order. An analysis of all claims is attached as **Exhibit B**.

**E. What Is an Impaired Claim or Impaired Equity Interest?**

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in Code § 1124, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

**F. Who is Not Entitled to Vote**

The following types of creditors and equity interest holders are not entitled to vote:

- Holders of Claims and equity interests that have been disallowed by an order of the Court.
- Holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- Holders of claims or equity interests in unimpaired classes.
- Holders of claims entitled to priority pursuant to Code §§ 507(a)(2), (a)(3), and (a)(8).
- Holders of claims or equity interests in classes that do not receive or retain any value under the Plan.
- Holders of administrative expenses.

Even if you are not entitled to vote on the plan, you may have a right to object to the confirmation of the plan.

**G. Who Can Vote in More Than One Class**

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**H. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed below in section H.2.

***1. Votes Necessary for a Class to Accept the Plan***

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

***2. Treatment of Nonaccepting Classes***

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by Code § 1129(b). A Plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of Code § 1129(a)(8), does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan. You should consult your own attorney if a "cram down" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

**I. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. Debtor's liquidation analysis is contained in **Exhibit A**.

**J. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

**K. Ability to Initially Fund Plan**

The Debtor does not believe that it will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. However, as demonstrated by **Exhibit A**, Debtor believes that the liquidation of its assets as provided hereunder will be sufficient to fund all administrative expenses of the Debtor and all allowed

claims herein. Debtor has sufficient funds on deposit to pay all allowed general unsecured claims on the Effective Date.

**L. Ability to Make Future Plan Payments And Operate Without Further Reorganization**

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. Debtor has provided information sufficient to support this finding in **Exhibit A**.

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

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