

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON DIVISION

IN RE:

CHAPTER 11

LEE'S FORD DOCK, INC., *et al.*

CASE NO. 12-60818

DEBTORS IN POSSESSION

JOINTLY ADMINISTERED<sup>1</sup>

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**DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN  
OF REORGANIZATION UNDER CHAPTER 11 OF THE  
UNITED STATES BANKRUPTCY CODE**

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Respectfully submitted,

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Dated: August 22, 2013

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<sup>1</sup> The Debtors whose Chapter 11 cases are being jointly administered with the case of Lee's Ford Dock, Inc. are: Hamilton Brokerage, LLC (Case No. 12-60819), Hamilton Capital, LLC (Case No. 12-60820), Lee's Ford Woods, LLC (Case No. 12-60822), Lee's Ford Hotels, LLC (Case No. 12-60821), and Top Shelf Marine Sales, Inc. (Case No. 12-60823).

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Come Lee's Ford Dock, Inc. ("Lee's Ford Dock"), Hamilton Brokerage, LLC ("Hamilton Brokerage"), Hamilton Capital, LLC ("Hamilton Capital"), Lee's Ford Hotels, LLC ("Lee's Ford Hotels"), Lee's Ford Woods, LLC ("Lee's Ford Woods"), and Top Shelf Marine Sales, Inc. ("Top Shelf," also collectively, the "Debtors"), as debtors and debtors in possession in the above-captioned bankruptcy cases, and pursuant to 11 U.S.C. § 1125 and Fed. R. Bankr. P. 3016, hereby submit the following Disclosure Statement (the "Disclosure Statement") to provide holders of Claims against and Interests in the Debtors with adequate information in order to allow them to make an informed decision regarding their rights to vote on the Debtors' proposed Joint Plan of Reorganization (the "Plan") filed contemporaneously herewith.

**ARTICLE I**

**PRELIMINARY STATEMENTS AND DISCLAIMERS**

1.1 **Introduction.** The Debtors are seeking approval of their joint Plan of Reorganization. The confirmation of a plan is the overriding purpose of a Chapter 11 case. Although referred to as a "plan of reorganization," a plan may provide for anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of assets. In either event, upon confirmation of a plan, the plan becomes binding on the debtor and all of its creditors and other parties in interest, and the obligations owed by the debtor to those parties are substituted for those outlined in the confirmed plan. In these Bankruptcy Cases,<sup>2</sup> the Plan contemplates a restructuring of the Debtors' business in order to continue the Debtors' going-concern operations and to maximize the value of the ultimate recoveries of all Creditors.

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<sup>2</sup> All capitalized terms used in this Disclosure Statement and not otherwise specifically defined herein have the meanings given to them in the Plan. As used in this Disclosure Statement, any other terms defined in the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), shall have the meanings given to them in the Bankruptcy Code, unless the context clearly requires otherwise.

To assist all known Creditors, Interest Holders, and other parties in interest of the Debtors with their review of the Plan, the Debtors provide this Disclosure Statement to all such parties for the purpose of disclosing all information that the Debtors have deemed material, important, and necessary to the parties' ability to make a reasonably informed decision regarding their rights to vote on the Plan. By an Order of the United States Bankruptcy Court for the Eastern District of Kentucky entered on \_\_\_\_\_ [Doc \_\_\_\_], this Disclosure Statement has been approved as containing "adequate information" in accordance with 11 U.S.C. § 1125. The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor's books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan . . . ." 11 U.S.C. § 1125(a)(1).

***All Creditors, Interest Holders, and Parties in Interest are encouraged to read and carefully consider this entire Disclosure Statement and to refer to the Plan during their review.*** THE PROVISIONS CONTAINED IN THE PLAN CONTROL OVER ANY STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.

1.2 **Debtors' Preliminary Statement.** The Debtors believe that the Plan is in the best interests of all Creditors. As a Creditor, your vote on the Plan is important. All Creditors entitled to vote are urged to vote in favor of the Plan. A summary of the voting instructions is set forth in Section 8.2 herein, and more detailed instructions are contained on the ballots distributed to each Creditor entitled to vote on the Plan. ***For your vote to be counted, your ballot must be duly completed, executed, and received by 5:00 p.m. Eastern Daylight Time, on \_\_\_\_\_, 2013 (the "Voting Deadline"), unless the Voting Deadline has been extended by the Debtors in writing prior to that time.***

The Plan will be confirmed by the Bankruptcy Court if it is accepted by the holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Creditors' Claims in each class voting on the Plan. However, the provisions of 11 U.S.C. § 1129(b) may be invoked by the Debtors if necessary in order to obtain confirmation of the Plan. These provisions permit confirmation even though a class or classes reject the Plan, if the Bankruptcy Court finds that the Plan provides fair and equitable treatment for the rejecting class.

1.3 **Disclaimers.**

1.3.1 **Legal Effect of Statements Contained Herein.** The information contained in this Disclosure Statement—including, but not limited to, the information regarding the Debtors' history, business, and operations, the Debtors' financial information, and the Debtors' liquidation analysis—is included solely for the limited purpose of soliciting acceptances of the Plan. This information shall not be construed as an admission of any fact or liability, stipulation, or waiver by the Debtors in any contested matter, adversary proceeding, or other action or threatened action involving the Debtors, but rather as statements made in the course of settlement negotiations. Further, this information shall not be admissible in any non-bankruptcy proceeding involving the Debtors, nor shall it be construed to be conclusive advice on the tax or other legal effects of the Plan as to Creditors of the Debtors; provided, however, that in the event that any of the Debtors defaults under the Plan, the Disclosure

Statement may be admissible in a proceeding relating to such default for the purpose of establishing the existence of such default.

1.3.2 **No Other Representations Authorized Except as Provided Herein.** All representations contained herein are those of the Debtors. No other person is authorized by the Debtors to give any information or to make any representation other than as contained in this Disclosure Statement, the Plan, and the exhibits attached thereto, incorporated by reference, or referred to herein. If any such information is given or representations are made, such information or representations *may not be relied upon* as having been authorized by the Debtors. Further, any representations or inducements made to secure acceptance of the Plan which are *other than* as contained in this Disclosure Statement *should not be relied upon* by any person.

1.3.3 **No Involvement of Independent Public Accountant.** To the Debtors' knowledge, no information contained in this Disclosure Statement has been prepared by an independent public accountant, except as specifically noted.

1.3.4 **Forward-Looking Statements.** This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtors and projections about future events and financial trends affecting the financial conditions of the Debtors' business. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect," and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described in Article VII herein. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

*Neither the Plan nor this Disclosure Statement has attempted to forecast consequences which follow from a general rejection of the Plan, although an attempt is made herein to state the consequences of a liquidation of the Debtors.*

1.3.5 **Effect of Representation by Counsel.** The Debtors are represented by the law firm of DelCotto Law Group PLLC, 200 North Upper Street, Lexington, Kentucky 40507. DelCotto Law Group has not expressed an opinion on any information set forth herein and has no actual knowledge of any information that would conflict with any information contained in the Plan or in this Disclosure Statement.

## **ARTICLE II**

### **NOTICES AND DEADLINES**

2.1 **Voting Deadline.** For your vote to accept or reject the Plan to be counted, you must: (1) complete all required information on the ballot; (2) execute the ballot; and (3) return the completed ballot to the Debtors' counsel at DelCotto Law Group PLLC, c/o Pam Lickert, 200 North Upper Street, Lexington, Kentucky 40507 so that it is *received by 5:00 p.m., Eastern*

***Daylight Time, on the Voting Deadline, \_\_\_\_\_, 2013.*** Any failure to follow the voting instructions included with the ballot or to return a properly completed ballot so that it is received by the Voting Deadline may disqualify your ballot and your vote.

2.2 **Date of Confirmation Hearing.** A hearing to consider the confirmation of the Plan will be held before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Third Floor, Lexington, Kentucky 40507, on \_\_\_\_\_, 2013 at the hour of \_\_\_\_\_, Eastern Daylight Time. Whether or not you expect to be present at the Confirmation Hearing, you are urged to fill in, date, sign, and promptly return your ballot to the Debtors' counsel by the Voting Deadline.

2.3 **Deadline to Object to Confirmation of the Plan.** Objections, if any, to confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of the party; (c) state with particularity the basis and nature of any objection; and (d) be filed with the Court and served so that they are ***received no later than 5:00 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2013*** by the U.S. Trustee and the Debtors' counsel.

2.4 **Deadline to Object to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the secured status of any claim, shall be filed on or before ninety (90) days following the Effective Date, or forty five (45) days following the filing of any Claim, whichever is later (the "Claims Objection Bar Date"), without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

2.5 **Requests for Copies of Disclosure Statement and Plan.** Requests for copies of the Disclosure Statement and the Plan by parties in interest may be made in writing to the Debtors' counsel by mail at DelCotto Law Group PLLC, c/o Pam Lickert, 200 North Upper Street, Lexington, Kentucky 40507, or by email to plickert@dlgfirm.com. Please call Ms. Lickert at (859) 231-5800 with any questions.

### **ARTICLE III**

#### **GENERAL INFORMATION ABOUT THE DEBTORS**

3.1 **Formation and Historical Background.** The Debtors operate collectively as six affiliated entities: Lee's Ford Dock, Hamilton Brokerage, Hamilton Capital, Lee's Ford Hotels, Lee's Ford Woods, and Top Shelf. The ownership of all six entities traces back to non-debtor Hamilton Revocable Trust (the "Trust"). The Debtors' principal, James D. Hamilton ("Mr. Hamilton"), is the Trustee of the Trust, which is the sole member of Hamilton Brokerage and Hamilton Capital. Lee's Ford Dock was originally formed in 1972, and Hamilton Capital purchased all of the outstanding shares of Lee's Ford Dock in October 2003. Top Shelf was originally formed in 1998, and Hamilton Brokerage purchased all of the outstanding shares of Top Shelf in October 2003. Lee's Ford Hotels was formed in May 2004, and its sole member is

Hamilton Capital. Lee's Ford Woods was formed in July 2004, and its sole member is also Hamilton Capital.

3.2 **Debtors' Business Operations.** The Debtors collectively operate as "Lee's Ford Resort & Marina," which consists of a boat dock (the "Dock"), lodging facilities (the "Lodging Facilities"), the Harbor Restaurant & Tavern (the "Restaurant"), a retail store (the "Ship's Store"), and a boat brokerage business on Lake Cumberland in Nancy, Kentucky. The Debtors' operations are hereinafter referred to as the "Marina." Lee's Ford Dock is the main operating entity of the Debtors. It manages the Dock, the Lodging Facilities, the Restaurant, and the Ship's Store, and employs all related employees. It also owns approximately 1.25 acres surrounding the Dock, and it leases the Lake Cumberland waterfront property (approximately 36 land acres and 130 water acres) upon which the Dock and related property are located from the Secretary of the Army (by and through the U.S. Army Corps of Engineers) (together, the "Corps") under that certain Lease for Commercial Concession Purposes entered into by these parties in August 2000 (the "Corps Lease"). In addition, Lee's Ford Dock owns and manages the hourly and daily rental of various ski boats, pontoon boats, jon boats, jet skis, and related accessories through the Ship's Store.

The Lodging Facilities include a five-room hotel (the "Hotel"), eight apartments in a condominium association (the "Condominiums"), sixteen rental cottages (the "Cottages"), and one Harbor Cottage Houseboat. The Condominiums are owned by Lee's Ford Hotels, the Harbor Cottage Houseboat is owned by Lee's Ford Dock, and the Hotel and Cottages are leased by Lee's Ford Dock under the Corps Lease. Lee's Ford Dock manages the rental and maintenance of all of the Lodging Facilities. In addition to these real properties, Lee's Ford Woods owns approximately 2.8 acres of raw land adjacent to the Marina. Lee's Ford Hotels also owns an approximately 3500 square foot building comprised of retail space and one apartment, which is located on the same lot as the Condominiums.

Top Shelf owns and operates the boat brokerage business located in the Ship's Store that is known as BuyaBoat.net, which offers brokerage services to both buyers and sellers of various types of boats and related accessories and operates a web site located at [www.buyaboat.net](http://www.buyaboat.net). Hamilton Brokerage and Hamilton Capital are not actively involved in the Debtors' operations but are holding companies set up as part of the structure of the original purchase transactions which began in 2003.

3.3 **Debtors' Prepetition Assets and Liabilities.** The following subsections provide a summary of the Debtors' primary Assets and Liabilities according to the Debtors' books and records and their Bankruptcy Schedules. This summary does *not* take into consideration all of the Proofs of Claim filed herein. The Asset values contained herein and/or in the Debtors' Schedules are based on the Debtors' best estimates of market values or historic book values on the Petition Date and may *not*, and in all likelihood *do not*, accurately reflect liquidation values or what value may ultimately be obtained for these Assets.<sup>3</sup> ***Holders of Claims are encouraged***

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<sup>3</sup> See Section 8.3.1 of this Disclosure Statement and Exhibit H attached hereto for the Debtors' Liquidation Analysis.



*to review the Schedules and related Amendments for a complete listing of the Debtors' Assets and Liabilities.*

3.3.1 **Prepetition Assets.** As of the Petition Date, the Debtors estimate the approximate fair market values of their respective prepetition hard Assets as follows, based on real estate appraisals and the Debtors' knowledge of the marina industry:

- (a) Lee's Ford Dock – \$23.3 million  
(real property – \$320,000, personal property - \$23 million)
- (b) Hamilton Brokerage – \$905,000  
(entirely personal property)
- (c) Hamilton Capital – \$17 million  
(entirely personal property)
- (d) Lee's Ford Hotels – \$445,000  
(real property – \$420,000, personal property - \$25,000)
- (e) Lee's Ford Woods – \$830,001  
(real property – \$830,000, personal property - \$1.00)
- (f) Top Shelf – \$612,000  
(entirely personal property)

[See Schedules and Amendments, Lee's Ford Dock – Docs 69 and 142, Hamilton Brokerage – Doc 58, Hamilton Capital – Docs 59 and 67, Lee's Ford Hotels – Docs 60 and 68, Lee's Ford Woods – Docs 60 and 67, and Top Shelf – Docs 58 and 64]. However, these amounts do not adequately portray the total “going concern” value of the Debtors' businesses as a whole, as they do not take into account the added goodwill value that the Debtors' businesses have developed over their lifetimes, nor does they account for the human capital provided by the Debtors' employees or the expertise of Mr. Hamilton as the Debtors' principal and his extensive knowledge and understanding of the marina industry. These “soft” Assets are a vital and important component of the Debtors' businesses and their “going concern” value.

3.3.2 **Overview of Total Prepetition Liabilities.** As of the Petition Date, the Debtors' respective prepetition liabilities were as follows:

(a) **Lee's Ford Dock.** Lee's Ford Dock's prepetition liabilities totaled approximately \$11.3 million, which consists of: (a) secured claims totaling approximately \$9.38 million; (b) priority unsecured claims totaling approximately \$36,000; and (c) unsecured claims totaling approximately \$1.95 million. See Schedules [Doc 69], Amendments [Docs 142 and 211], and related proofs of claim.

(b) **Hamilton Brokerage.** Hamilton Brokerage's prepetition liabilities totaled approximately \$9.2 million, which consists of: (a) secured claims

totaling approximately \$5.1 million; and (b) unsecured claims totaling approximately \$4.1 million. *See* Schedules [Doc 58] and related proofs of claim.

(c) **Hamilton Capital.** Hamilton Capital's prepetition liabilities totaled approximately \$9.2 million, which consists of: (a) secured claims totaling approximately \$5.1 million; and (b) unsecured claims totaling approximately \$6.2 million. *See* Schedules [Doc 59], Amendments [Doc 167], and related proofs of claim.

(d) **Lee's Ford Hotels.** Lee's Ford Hotels' prepetition liabilities totaled approximately \$9.8 million, which consists of: (a) secured claims totaling approximately \$9.2 million; and (b) unsecured claims totaling approximately \$610,000. *See* Schedules [Doc 60], Amendments [Doc 68], and related proofs of claim.

(e) **Lee's Ford Woods.** Lee's Ford Woods' prepetition liabilities totaled approximately \$9.2 million, which consists of (a) secured claims totaling approximately \$9.5 million; and (b) unsecured claims totaling approximately \$358,000. *See* Schedules [Doc 60], Amendments [Doc 67], and related proofs of claim.

(f) **Top Shelf.** Top Shelf's prepetition liabilities totaled approximately \$9.2 million, which consists of: (a) secured claims totaling approximately \$9.2 million; (b) priority unsecured claims totaling approximately \$2,000; and (c) unsecured claims totaling approximately \$17,000. *See* Schedules [Doc 58], Amendments [Doc 64], and related proofs of claim.

3.3.3 **Additional Information about Prepetition Assets and Liabilities.** For more specific information about the Debtors' prepetition Assets and Liabilities, see the Debtors' Schedules and Amendments filed in their respective Bankruptcy Cases [Lee's Ford Dock – Docs 69 and 142, Hamilton Brokerage – Doc 58, Hamilton Capital – Docs 59 and 67, Lee's Ford Hotels – Docs 60 and 68, Lee's Ford Woods – Docs 60 and 67, and Top Shelf – Docs 58 and 64].

### 3.4 **Debtors' Postpetition Liabilities.**

#### 3.4.1 **Professional Fees.**

(a) **DelCotto Law Group PLLC.** As set forth more fully in Section 5.2.1 below, the Debtors have been authorized to employ DelCotto Law Group PLLC ("DLG") as their counsel in the Bankruptcy Cases. As set forth more fully in Section 5.3 below, the Debtors have entered into several agreed Cash Collateral Orders [Docs 61, 92, 116, 120, 129, 137, 157, 167, 174, 189, 198, 204, 218, 238, 252, and 265] with Branch Banking & Trust Company ("BB&T"), as defined and discussed more fully in Section 5.3 below. As part of the Cash Collateral Orders, the Debtors agreed to adhere to approved Cash Collateral Budgets, as defined and described in Section 5.3 below, which included a carve-out from cash collateral to assure payment for the fees of DLG. As of August 19, 2013, DLG has received a total of \$240,000.00 pursuant to this carve-out. As of August 19, 2013, DLG's total fees and expenses

incurred in its postpetition, pre-Confirmation Date representation of the Debtors total approximately \$184,357.97. DLG currently has \$135,677.49 in its escrow account.

(b) **Venters Law Office.** As set forth more fully in Section 5.2.2 below, Lee's Ford Dock has been authorized to employ the Venters Law Office ("Venters") as special litigation counsel in its Bankruptcy Case. As set forth more fully in Section 5.3 below, the Debtors have entered into the Cash Collateral Orders with BB&T. As part of the Cash Collateral Orders, the Debtors agreed to adhere to approved Cash Collateral Budgets, which included a carve-out from cash collateral to assure payment for the fees of Venters. As of August 21, 2013, Venters has received a total of \$3,705.00 pursuant to this carve-out. As of August 21, 2013, Venters' total fees and expenses incurred in its postpetition, pre-Confirmation Date representation of the Debtors total approximately \$5,955.00. Venters is not currently holding any of the Debtors' funds in its escrow account.

(c) **Radwan, Brown & Company P.S.C.** As set forth more fully in Section 5.2.3 below, the Debtors have been authorized to employ Radwan, Brown & Company, P.S.C. ("RBC") as their accountants in the Bankruptcy Cases. As set forth more fully in Section 5.3 below, the Debtors have entered into the Cash Collateral Orders with BB&T. As part of the Cash Collateral Orders, the Debtors agreed to adhere to approved Cash Collateral Budgets, which included a carve-out from cash collateral to assure payment for the fees of RBC. As of July 31, 2013, RBC had received a total of \$7,743.50 pursuant to this carve-out. As of July 31, 2013, RBC's total fees and expenses incurred in its postpetition, pre-Confirmation Date representation of the Debtors total approximately \$18,933.40. RBC is not currently holding any of the Debtors' funds in its escrow account.

(d) **Baldwin CPAs, PLLC.** As set forth more fully in Section 5.2.4 below, the Debtors have been authorized to employ Baldwin CPAs, PLLC ("Baldwin") as their accounts for the purpose of performing an annual financial review of the Debtors. The Order [Doc 200] approving Baldwin's employment authorized the Debtors to pay Baldwin a flat fee of \$11,300 as compensation for its services. Baldwin provided the appropriate services to the Debtors. As of August 22, 2013, Baldwin's total fees and expenses incurred in its postpetition, pre-Confirmation Date representation of the Debtors totals the \$11,300 approved flat fee. Baldwin is not currently holding any of the Debtors' funds in its escrow.

(e) **Smith, Currie & Hancock, LLP.** As set forth more fully in Section 5.2.5 below, Debtor Lee's Ford Dock has been authorized to employ Smith, Currie & Hancock, LLP ("Smith Currie") as its special counsel for the purpose of advising and assisting Lee's Ford Dock with its pursuit of claims against the Corps and any other specific matters in connection therewith. As part of the Cash Collateral Orders the Debtors agreed to adhere to approved Cash Collateral Budgets, which included a carve-out from cash collateral to assure payment for the fees of Smith Currie. As of August 19, 2013, Smith Currie had received a total of \$50,000.00 pursuant to this carve-out. As of August 19, 2013, Smith Currie's total fees and expenses in its postpetition, pre-Confirmation Date representation of Lee's Ford Dock total approximately \$35,021.00. Smith Currie is presently holding \$50,000.00 of Lee's Ford Dock's funds in its escrow account.

3.4.2. **Insurance Premium Financing.** On May 29, 2013, Debtor Lee's Ford Dock filed its Motion for an Order Authorizing Debtor to Enter into Postpetition Insurance Premium Financing Agreement and Make All Related Postpetition Payments; and Approving Shortened Notice and Expedited Hearing on Same [Doc 226]. By this Motion, Lee's Ford Dock requested authority to obtain financing from Lake Forest Bank & Trust Company c/o FIRST Insurance Funding Corp. to pay the premiums due on its marina general liability and floating property casualty insurance policies in the total amount of \$187,444.80, and to pay all amounts due thereunder. This Motion was approved by Order of the Bankruptcy Court [Doc 242] entered on June 14, 2013. Lee's Ford Dock has since obtained the requested insurance premium financing, paid a down payment of \$22,493.38 towards the insurance policies, and remains current on its monthly payment obligations.

### 3.5 **Current Litigation involving the Debtors.**

3.5.1 **Prepetition Litigation.** As of the Petition Date, the Debtors were involved in four state court actions. A summary of those actions and the Debtors' projected outcomes of same are as follows:

(a) **BB&T Foreclosure Suit.** The case of *Branch Banking & Trust Company v. Hamilton Capital, LLC, et al.* (the "BB&T Foreclosure Suit") was commenced on June 7, 2012, in the Circuit Court for Pulaski County, Kentucky (the "Pulaski Circuit Court"), Case No. 12-CI-00718. This suit arose out of the decision of the Debtors' primary secured lender, BB&T, to pursue collection of the outstanding debts that BB&T asserts it is owed by the Debtors. A notice of the Debtors' bankruptcy was filed in this action on July 9, 2012, and it is currently stayed due to the filing of the Bankruptcy Cases. The Debtors believe that all issues involved in the BB&T Foreclosure Suit will be resolved through the Plan.

(b) **Henderson Boat Repair Suit.** The case of *Henderson Boat Repair, LLC v. Lee's Ford Dock, Inc.* (the "Henderson Suit") was commenced on August 3, 2010 in the Pulaski Circuit Court, Case No. 10-CI-01103. This suit is an action relating to a business dispute between Henderson Boat Repair and Lee's Ford Dock. A notice of the Debtors' bankruptcy was filed in this action on July 27, 2012, and it is currently stayed due to the filing of the Bankruptcy Cases. Lee's Ford Dock believes that all issues involved in the Henderson Suit will be resolved through Lee's Ford's payment of the final Allowed amount of Henderson's claim under the Plan, if any.

(c) **Schoonmaker Suit.** The case of *Lee E. Schoonmaker and Peggy Mook v. Lee's Ford Dock, Inc.* (the "Schoonmaker Suit") was commenced on October 25, 2011 in the Pulaski Circuit Court, Case No. 11-CI-01256. This suit is an action arising out of a slip and fall that occurred on the Marina property. A notice of the Debtors' bankruptcy was filed in this action on July 27, 2012. An Agreed Order Lifting Automatic Stay [Doc 133] was entered in the Debtors' Bankruptcy Case on October 10, 2012, which Order limits any recovery by Ms. Mook and/or Mr. Schoonmaker to the extent of the proceeds available solely from Lee's Ford Dock's liability insurance and waives any further claims that these parties may have against Lee's Ford Dock's bankruptcy Estate. Thus, the Debtors do not believe that the Schoonmaker suit will have any monetary effect on the Debtors' Plan.

(d) **Bank of the West Suit.** The case of *Lee's Ford Resort Marina, Inc. v. Bank of the West* (the "Bank of the West Suit") was commenced on October 14, 2011 in the Pulaski Circuit Court, Case No. 12-CI-01230. This suit is an action to determine whether and to what extent that Bank of the West ("BOTW") and/or Lee's Ford Dock have a lien on a boat that Lee's Ford Dock repossessed due to its owners' unpaid slip rental fees, and who should receive the sale proceeds from same. BOTW filed a Motion for Relief from Stay to Pursue Claims against Debtor in Pulaski Circuit Court [Doc 43] on July 12, 2012, and the Court entered an Order granting this Motion [Doc 108] on July 31, 2012. BOTW and Lee's Ford Dock participated in a mediation regarding the Bank of the West Suit on October 26, 2012 and reached a settlement of all issues in the Suit. Lee's Ford Dock filed its Motion for Entry of an Order Approving Settlement Reached between Debtor and Bank of the West [Doc 151] on November 7, 2012, and the Court entered an Order granting the motion and approving the settlement on November 28, 2012 [Doc 161]. Lee's Ford Dock believes that all issues in the Bank of the West Suit have now been resolved and will have no effect on the Debtors' Plan.

3.5.2 **Claims against the Corps.** On January 18, 2013, Lee's Ford Dock submitted a claim to the Corps under the Corps Lease pursuant to the Contract Disputes Act of 1978 for damages suffered as a result of the lowering of Lake Cumberland in the amount of at least \$4,000,000 (the "Corps Claim"). On March 22, 2013, the Corps responded to the Corps Claim by requesting that Lee's Ford Dock provide additional information regarding the Claim and indicating that the Corps would issue a decision on the Corps Claim no later than May 22, 2013. Given the extensive nature of these information requests, on May 2, 2013, Lee's Ford Dock requested that the Corps extend its May 22, 2013 deadline to allow Lee's Ford the time needed to fully comply with the requests and provide the Corps with all pertinent information. On May 14, 2013, the Corps agreed that Lee's Ford Dock had until July 19, 2013 to respond to the information requests and indicated that Lee's Ford Dock should not expect to receive a response to the Corps Claim prior to August 23, 2013. The Corps has not yet issued a decision on the Corps Claim as of the date of filing of this Disclosure Statement, and the Claim remains pending.

As discussed in Sections 3.4.1(e) and 5.2.5 herein, Lee's Ford Dock has been authorized to employ Smith Currie as its special counsel for the purpose of advising and assisting Lee's Ford Dock with its pursuit of claims against the Corps and any other specific matters in connection therewith. Smith Currie has reviewed the facts and circumstances leading up to the lowering of the lake level. Smith Currie estimates Lee's Ford Dock's damages will total approximately \$8 million. Through Smith Currie, Lee's Ford Dock is seeking additional documents related to its claims against the Corps. Within a few weeks of its receipt of this information, Lee's Ford Dock anticipates that, through Smith Currie, it will restate and resubmit its claim to the Corps.

If after the submission of the restated claim, the Corps Claim is not resolved through negotiation and results in the Corps' denial of the claim in whole or substantial part, Lee's Ford Dock anticipates appealing that denial further through formal litigation in which it would be represented by Smith Currie at the Armed Services Board of Contract Appeals or the United States Court of Federal Claims. If formal litigation proves necessary, Lee's Ford Dock

understands that the litigation could take 24-30 months from start to finish, at a cost of approximately \$15,000 per month in legal fees, plus the cost associated with any expert witnesses that may be necessary. These costs have been accounted for in the financial projections attached hereto as Exhibit I. To the extent that Lee's Ford Dock receives a favorable outcome at any stage of its prosecution of claims against the Corps through Smith Currie, the Application to Employ Smith Currie [Doc 232] and the Agreed Order [Doc 247] approving the Application contemplate that Smith Currie will receive a contingency fee in the amount of 10% of any positive benefits obtained by Lee's Ford Dock. Smith Currie is also granted a lien on certain items described in the Application, including the proceeds of any recovery that Lee's Ford Dock obtains. However, the Agreed Order specifically makes no determination as to the priority of said lien, and all arguments relating to priority are specifically reserved.

It is difficult to predict what will be recovered under the Corps Claim, but the substantial likelihood is that whatever will be received will be in the form of a cash payment to Lee's Ford Dock. Lee's Ford Dock believes that any favorable recovery will strengthen the Debtors' reorganization efforts and may allow Lee's Ford to pay down its debts more quickly than required under the terms of the Plan. However, Lee's Ford Dock is confident that it will be able to satisfy the Plan terms even if it does not obtain a favorable recovery on the Corps Claim.

#### **ARTICLE IV**

### **CERTAIN EVENTS LEADING UP TO THE COMMENCEMENT OF THE DEBTORS' CHAPTER 11 CASES**

#### **4.1 Precipitating Factors.**

4.1.1 **Events Contributing to the Chapter 11 Filing.** The Marina is located on Lake Cumberland, which is dammed by Wolf Creek Dam (the "Dam"). The Dam is monitored and maintained by the Corps. On January 19, 2007, Corps officials signed the Memorandum for Record (the "Memorandum") on the subject of "Wolf Creek Dam Interim Risk Reduction Measures," which discussed concerns with the possible failure of Wolf Creek Dam and the need to repair it. The Memorandum concluded that the Lake had to be substantially lowered in order to accomplish the necessary repairs. On January 22, 2007, the Corps began to lower the Lake water levels by a total of 43 feet below the typical summer pool elevation of 723 feet. Summer pool levels are critical to the recreation opportunities that are the base of the Debtors' operations. This lowering has been widely publicized and reduced the Lake's surface area by several thousand acres. The Lake's levels have remained lowered for more than six years to date, which is quite an anomaly in the Lake's more than fifty year history. In fact, to the Debtors' knowledge, the Lake has only been lowered to 680 feet twice in its history for repairs to the Dam: once for 6 ½ months in 1968 and once for a month in 1970.

The reduced water levels of Lake Cumberland greatly affected many of the area marinas, including the Debtors' operations. Prior to the 2007 lowering, there were eleven operating marinas on Lake Cumberland. Since then, eight of these marinas have either filed for bankruptcy or gone out of business, and a sixth is struggling with a significant decrease in revenues. The main difference between these six marinas and the remaining five that did not

experience such an extreme financial downturn is their location. Lake Cumberland is a “finger lake,” with its surface area split into deep water areas on the main lake and shallower areas in the “fingers” or tributaries of the Lake. The Debtors’ Marina, as well as the other five marinas hit hardest by the lowering of Lake Cumberland, is located in a shallow-water area. When the Lake was lowered, the Marina’s water surface area decreased by approximately 60%, and the Debtors were forced to incur extraordinary costs to relocate the Dock and related facilities in accordance with the new water level, which included the forced elimination of 85 rental slips in order to create a header pier required to allow the Marina facilities necessary access to deeper water.

In addition to these relocation costs, the Debtors’ overall revenues have dropped in direct conjunction with the lowering, which has also negatively affected their operations, as is true for most, if not all, operations that existed in the shallower portions of the Lake. Due to the Debtors’ long-term planning and pro-growth measures, their sales and overall revenues had increased significantly in 2006, but this growth was stymied by the lowering of the Lake in 2007, which caused revenues to return to pre-2006 levels in 2007. Revenues have remained relatively consistent since 2007, as the lowered Lake levels continue to negatively impact the Debtors’ operations and act as a barrier to any significant pro-growth measures. A main contributing factor to this continued decrease in revenues is that two of the Marina’s main traffic drivers, the 800-acre Pulaski County Park and the Fishing Creek Recreation Area, became completely dry as a result of the lowering, which decreased the Debtors’ retail sales in the Restaurant and Ship’s Store. The Debtors’ slip rental revenues, which comprise a significant portion of their revenues, also decreased considerably. The Debtors’ slip rental income is heavily weighted toward houseboat slips. Prior to the lowering, the Debtors’ location was near many easily-accessible coves that provided a great location for mooring a houseboat by tying it off on rocks and trees on the nearby embankment. The lowered levels not only decreased the surface area of these coves, but also caused difficulty for houseboat owners who were forced by the lowered water to tie off their boats to a tree line that has raised 43 feet in the air. The reduced surface area also contributed to a decrease in the Debtors’ small watercraft slip rentals. The coves near the Marina that were originally favored over the main lake for tubing, waterskiing, and wakeboarding because of their smooth water (the main lake can be much more choppy) quickly grew much less popular after the water surface area available for these activities decreased.

The Debtors’ gross profit has also been negatively affected by the unanticipated, extraordinary costs associated with the lowering. When the Lake levels were at normal pool, the increased surface area allowed for a “buffer zone” around the Marina that protected it from floating debris. In 2010, a large flood hit the Lake Cumberland area and caused vast amounts of debris that had collected upon the shoreline to hit the Marina with unusual force because of the reduced “buffer zone.” The Debtors estimate that the total damage to the Marina from this flood was approximately \$1,000,000.

Managing all of these and other challenges caused by the lowering, coupled with a fundamentally-altered market and decreased, unpredictable revenues, have placed an enormous hardship on the Debtors and their management, and have made it nearly impossible for management to focus solely on the Debtors’ operations. As a result, high management turnover has plagued the Debtors’ operations since the 2007 lowering. The only member of the Debtors’ pre-2007 management team remaining is Mr. Hamilton. Due to the widespread concern for the

lowered Lake levels among those who live and recreate in the Lake Cumberland community, it has been difficult for the Debtors to retain and keep employees willing to work in such a high-stress environment.

The Debtors have attempted to navigate these and other difficulties as best they could, but management and long-term planning decisions have been negatively affected by uncertainty as to when Lake levels would return to normal. Throughout the Wolf Creek Dam repair project, the Corps has suggested multiples dates by which it anticipated the repairs would be completed, and each time, the Debtors have relied on those dates when making financial and operational decisions. In September and October 2007, the Lexington Herald-Leader newspaper reported statements from the Corps that water levels might be raised the following year because of improvements on Wolf Creek Dam. In June 2008, levels remained low, but the Herald-Leader again quoted a Corps official as stating that levels would be rising. The following year, in June 2009, the Herald-Leader reported that there had been some expectation that the Dam repairs would be completed by spring 2010. However, in March 2010, the Herald-Leader cited a Corps official as stating that delays made it highly unlikely that the Dam repairs would be completed by the 2011 recreation season. In the spring of 2013, the Corps announced that the Dam repairs will be completed in 2013. The Lake levels have since raised to between 705 and 710 feet, and the Corps has stated that the Lake will return to normal pool in 2014. The Debtors feel confident that the repair project is finally coming to a close and that the repairs have permanently fixed Wolf Creek Dam. Although the Debtors are pleased that the disaster seems to be reaching an end, the financial impact that the lowering and related uncertainty have had on their business continues. The Debtors anticipate that it will take some time for the operations and revenues to recover, and they estimate that it may take up to five years before the Lake Cumberland community fully recovers economically from the significant brand damage to the Lake region caused by the long-term lowering.

**4.1.2 Causes of Precipitating Factors.** When viewed together, the Debtors' management asserts that the problems discussed in Section 4.1.1 and other similar issues aggregated to cause the extreme financial distress that precipitated the Debtors' Chapter 11 filing. The Debtors' management further asserts that these precipitating factors all directly resulted from the Corps' decision to lower Lake Cumberland and its failure to anticipate or fully mitigate the damages incurred as a direct result of the lowering. The only mitigation that the Corps has offered to date is to abate the Debtors' rent for a one-year period from July 2007 to June 2008. Following that period, the Corps declined to abate rent any further because it found that there were no "extreme and unusual circumstances" warranting additional abatement for the Debtors. At the urging of many members of the Lake Cumberland community, including the Debtors, the Secretary of the Army ordered the U.S. Army Audit Agency to audit the Corps' actions with regard to the lowering. The Army Audit Agency's report (the "AAA Report") was released in January 2013 and concludes that the Corps generally complied with applicable laws, regulations, and guidance for actions related to marinas on Lake Cumberland. The Debtors' management understands that the Corps has considerable latitude in exercising its judgment to mitigate the impact of the lowered Lake levels, and management believes that the Corps has not used those authorities to fulfill the commitments to mitigate contained in the Memorandum. The management further believes that the AAA Report contains inaccuracies and reached conclusions based on macroeconomic issues, when it should have focused on the Lake



Cumberland micro-market and the effect that the extended and historic low water levels had on the Debtors and other area marinas.

4.2 **Prepetition Restructuring Efforts.** On July 12, 2007, the U.S. Small Business Administration (the “SBA”) announced that small businesses in Kentucky that were impacted by the lowered water levels on Lake Cumberland could receive assistance through economic injury disaster loans. The SBA’s standard operating procedures only authorize the SBA to issue loans of this type to businesses suffering economic injuries that are directly attributable to the effects of the declared disaster. To maintain the Debtors’ going-concern operations after the drawdown of Lake Cumberland’s water level, the Debtors’ management weighed all possible options and decided that the Debtors should request financial assistance from the SBA rather than closing the business or bringing suit against the Corps for damages that management asserts were caused by the lowering. Lee’s Ford Dock applied for and received disaster loan assistance from the SBA under this program in late summer of 2007. The SBA found that the Corps’ decision to lower Lake Cumberland to such a great extent constituted a “disaster” under its regulations and has loaned Lee’s Ford Dock a total of \$4 million due to the fact that the water level has remained lowered for far longer than was projected by the Corps. The original amount of the SBA loan was \$830,400 in 2007, and it was increased to the SBA’s stated maximum disaster loan amount of \$1.5 million in 2008. The SBA loan was increased again in 2010 to \$4 million, after the SBA designated Lee’s Ford Dock a “major source of employment,” which allowed the SBA to waive the \$1.5 million loan limitation in light of the SBA’s recognition that Lee’s Ford Dock’s damages due to lowered water levels were continuing. At this time, the SBA and the Debtors anticipated that the Lake levels would return to normal in 2012.

The Debtors have worked diligently to find ways to address the economic disaster caused by the Corps’ decision to lower the water levels, in addition to obtaining disaster loans from the SBA. They discussed possible new statutory law addressing the situation where an economic disaster is caused by a Federal governmental agency and not by an act of God, supported the introduction of a reimbursement bill in the United States House of Representatives in 2009 (H.R. 2821), and also discussed potential changes to the SBA’s policies and procedures that would allow for the modification and/or forgiveness of SBA disaster loans where the disaster was caused by such governmental action. From the beginning of the disaster, they also tried to work with the Corps of Engineers and the Secretary of the Army to modify the Corps Lease so that Lee’s Ford Dock would not be required to pay rent until this economic disaster ends and to mitigate the Debtors’ damages to the maximum extent possible as committed in the Memorandum, so that the Debtors would be better able to maintain their operations and financial obligations to their creditors. Additionally, the Debtors worked with BB&T to obtain multiple extensions of the maturity date on the Debtors’ outstanding loan obligations so that they would be able to service their debts.

With the understanding that the repairs to Wolf Creek Dam would be completed in early 2012, and that the water levels would be correspondingly increased that year, the Debtors structured their financing with their primary lender, BB&T, so that the debt to BB&T would not mature until June 2012. The Corps did not raise the Lake Cumberland water levels in 2012, and the Debtors understand that, although the levels have raised significantly since the spring of

2013, they will not return to pre-2007 levels until the end of the spring rain season in 2014—seven years since the original lowering.

While many of the Debtors' efforts to manage through the lowered Lake levels were still ongoing as of the Petition Date, they were not successful enough to allow the Debtors to return to their once profitable status, and the Debtors commenced the Bankruptcy Cases in order to develop a joint plan to reorganize their operations and restructure their debts for the benefit of all of creditors and parties in interest.

## **ARTICLE V**

### **COMMENCEMENT OF EVENTS IN THE CHAPTER 11 CASES**

#### **5.1 Commencement of Cases.**

5.1.1 **Petition Date.** On July 4, 2012, the Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code and thereby commenced the Bankruptcy Cases.

5.1.2 **Chapter 11 Operating Order.** On July 5, 2012, the Bankruptcy Court entered a Chapter 11 Operating Order in each of the Debtors' respective Bankruptcy Cases evidencing that the Debtors had requested and been granted relief under Chapter 11 of the Bankruptcy Code and had thereby become Debtors in Possession. *See* Lee's Ford Dock – Doc 8; Hamilton Brokerage – Doc 8; Hamilton Capital – Doc 7; Lee's Ford Hotels – Doc 7; Lee's Ford Woods – Doc 7; and Top Shelf – Doc 5.

#### **5.2 Retention of Professionals.**

5.2.1 **Retention of Debtors' Counsel.** Pursuant to the interim Order entered on July 12, 2012 [Doc 45], and the final Order entered on July 27, 2012 [Doc 105], the Debtors were authorized to employ the law firm of DelCotto Law Group PLLC as their counsel in the Bankruptcy Cases, effective as of the Petition Date.

5.2.2 **Retention of Debtors' Special Counsel.** Pursuant to the Order entered on August 20, 2012 [Doc 123], Lee's Ford Dock was authorized to employ the Venters Law Office as special counsel in its Bankruptcy Case, effective as of the Petition Date, for the purpose of representing Lee's Ford Dock in the prosecution and defense of general litigation matters, including the collection of unpaid slip rental fees.

5.2.3 **Retention of Debtors' Accountants.** Pursuant to the Order entered on August 20, 2012 [Doc 122], the Debtors were authorized to employ Radwan, Brown & Company, P.S.C. as their accountants in the Bankruptcy Cases, effective as of the Petition Date.

5.2.4 **Retention of Debtors' Accountants for Annual Financial Review.** Pursuant to the Order entered on March 19, 2013 [Doc 200], the Debtors were authorized to

employ Baldwin CPAs, PLLC as their accountants in the Bankruptcy Cases for the purpose of providing annual financial review services.

5.2.5 **Retention of Special Counsel for Lee's Ford Dock.** Pursuant to the Order entered on June 18, 2013 [Doc 247], Lee's Ford Dock was authorized to employ Smith, Currie & Hancock, LLP as its special counsel in its Bankruptcy Case, effective as of May 31, 2013, for the purpose of advising and assisting Lee's Ford Dock in connection with its pursuit of claims against the Corps and any other specific matters in connection therewith.

5.2.6 **Official Committee of Unsecured Creditors.** No official committee of unsecured creditors was appointed in these Bankruptcy Cases.

5.3 **Cash Collateral/Adequate Protection.** On July 13, 2012, the Court entered the first Order for Interim Use of Cash Collateral [Doc 61]. The Court subsequently entered the Second [Doc 92], Third [Doc 116], Fourth [Doc 120], Fifth [Doc 129], Sixth [Doc 137], Seventh [Doc 157], Eighth [Doc 167], Ninth [Doc 174], Tenth [Doc 189], Eleventh [Doc 198], Twelfth [Doc 204], Thirteenth [Doc 218], Fourteenth [Doc 238], Fifteenth [Doc 252], and Sixteenth [Doc 265] Orders for Interim Use of Cash Collateral on July 13, July 25, August 3, August 10, September 12, October 12, November 15, and December 12, 2012, and on January 14, February 13, March 13, April 12, May 15, June 12, July 11, and August 9, 2013, respectively. Collectively, these cash collateral orders are referred to herein as the "Cash Collateral Orders." The Cash Collateral Orders approve certain cash collateral budgets (the "Cash Collateral Budgets") for the Debtors' pre-Confirmation operations and provide adequate protection to BB&T and the SBA. To date, the Debtors have been operating in compliance with these Cash Collateral Orders.

5.4 **DIP Financing.** On August 22, 2013, the Debtors filed their Motion for Order Authorizing Debtors to Obtain First-Priority Secured Postpetition Financing and Related Relief [Doc 270] (the "DIP Financing Motion"), requesting authority to obtain a revolving line of credit in the amount of \$500,000.00 from Community Trust Bank, Inc. As of the date of the filing of this Disclosure Statement, the DIP Financing Motion is pending before the Bankruptcy Court and is scheduled to be heard by the Court on Wednesday, September 25, 2013 at 9:30 a.m. Eastern Daylight Time. To the extent that the Court grants the DIP Financing Motion, the Plan provides that the Debtors intend to obtain this line of credit financing from Community Trust Bank, Inc. If the Court does not grant the DIP Financing Motion, the Reorganized Debtors reserve the right in the Plan to pursue other line of credit financing options post-Confirmation and to obtain such financing to the extent available.

5.5 **Motion to Assume Corps Lease.** As discussed in Section 6.3.11(b)(i) below, on July 30, 2013, Lee's Ford Dock filed its Motion for Authority to Assume Nonresidential Real Property Lease with the Secretary of the Army and to Establish Prompt Cure Procedures regarding Same [Doc 257] (the "Corps Lease Assume Motion"). The Corps Lease Assume Motion requests authority for Lee's Ford Dock to assume the Corps Lease, setting a cure amount for any arrearage under said Lease, and establishing procedures for prompt cure regarding said arrearage. As of the date hereof, the Corps Lease Assume Motion is pending before the

Bankruptcy Court and is scheduled for hearing on Wednesday, August 28, 2013, at 9:30 a.m. EDT.

5.6 **Plan Formulation Process.** Following the internal formulation of their Plan of reorganization, the Debtors have communicated with their major secured lenders, as well as the Corps. The Debtors have discussed initial drafts and concepts for their Plan with these parties and others in advance of its filing.

The Debtors have worked diligently to prepare a plan of reorganization that is fair and equitable among all of their Creditors and parties in interest. The Debtors submit that the Plan filed with the Court and attached hereto represents the product of these efforts and provides the best possible recovery for all Creditors.

## **ARTICLE VI**

### **OVERVIEW OF THE DEBTORS' PLAN OF REORGANIZATION**

6.1 **General Summary.** The Plan contemplates the continued business operations of the Debtors and the payment of all Allowed Claims to the extent possible over a period of time from future income and revenue. In general, all Claims other than Secured Claims will be paid to the greatest extent possible within five years after the Effective Date of the Plan. The Secured Claims will be paid in full over time, as set described more fully in Section 6.5 below. As the greatest contributing factor to the Debtors' financial distress is the lowering of Lake Cumberland, the Debtors have structured the Plan and their obligations thereunder around the anticipated return of the Lake to normal levels in summer 2014. The Debtors believe that this provides a reasonable and conservative approach to their emergence from Chapter 11. It will allow time for the Debtors' revenues to recover and strengthen, which will provide long-term benefits to the Debtors and all parties in interest.

6.2 **Debtors' Recommendation.** The Debtors believe that the Plan is in the best interests of all of their constituencies and will permit the maximum recovery possible for all classes of Claims, greater than any possible recovery in a Chapter 7 or other liquidation setting.

6.3 **Description of Certain Key Plan Terms.** The Debtors provide this general summary and description of what they believe to be certain of the key terms of the Plan. This is not a full and complete description of everything contained in the Plan, only of various general and specific Plan provisions. THE PLAN AND THE EXACT LANGUAGE THEREIN CONTROL OVER THIS GENERAL DESCRIPTION AND SHOULD BE REVIEWED CAREFULLY.

6.3.1 **Continued Existence of the Debtors.** The Plan provides for the Debtors to continue to operate post-Confirmation as the "Reorganized Debtors" in the ordinary course of their business, receiving ongoing income from their operations in order to fund Plan payments to their Creditors. While operating, the Reorganized Debtors may also seek and consummate offers to purchase any of the Debtors' Assets, as their business needs dictate.

6.3.2 **Funding the Plan.** The Reorganized Debtors will fund the Plan payments to Creditors in the ordinary course and according to the Plan treatment terms from post-Confirmation net profits, as well as from any net proceeds from any post-Confirmation sales. As of the Effective Date, and as long as the Reorganized Debtors continue operations, the Reorganized Debtors shall have the right to collect and use all of their revenues for operations, provided however, that a portion of the remaining “Net Cash Flow” each month shall be segregated and held solely for funding Plan payments.

6.3.3 **Vesting of the Debtors’ Assets.** At the Confirmation Date, all Assets of the Debtors and the Estates, including all Avoidance Actions and Causes of Action (if any), including the Corps Claim and any subsequent, related litigation, will revert in and remain with the Reorganized Debtors, free and clear of all liens, claims, interests, and encumbrances, except for those liens specifically provided for in the Plan. If the Reorganized Debtors liquidate any of their assets which remain subject to a lien post-Confirmation, then they will seek the consent of any Creditor holding a lien upon the particular Asset. If the Secured Creditors and the Reorganized Debtors cannot agree to the terms for a private, ordinary-course sale, then the Reorganized Debtors may seek authority for any such sale from this Court. The Reorganized Debtors and their Assets will remain subject to the jurisdiction of this Court until the Bankruptcy Cases are closed or dismissed.

6.3.4 **Post-Confirmation Liabilities of the Reorganized Debtors.** The Reorganized Debtors will not have any prepetition liabilities except those expressly assumed and/or addressed under the Plan. The Reorganized Debtors will be responsible for all ongoing business expenses and payments due and owing or contemplated under the Plan.

6.3.5 **Injunctions.** Except as may be otherwise provided in the final and entered Confirmation Order, the Plan provides generally that the entry of the Confirmation Order will constitute an **injunction** against all Persons from taking any actions to commence or continue any action or proceeding that arose before the Effective Date against or affecting the Debtors, the Estates, or the Assets, **and against any guarantor or other person who might be obligated on any Claim along with the Reorganized Debtors**, so long as the Reorganized Debtors are in compliance with the Plan provisions. That is to say, no party in interest may take any steps to collect or otherwise proceed on its claim against any person, so long as the Reorganized Debtors are performing and in compliance with the Plan as confirmed. No guarantor is being released, but no party can pursue any such person so long as the Reorganized Debtors are in Plan compliance.

6.3.6 **Term of Injunction for any Claim not Treated and Allowed in the Plan.** Except as may be otherwise provided in the final Confirmation Order, the Plan provides that the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released or modified pursuant to the Plan, except for the treatment as provided for in the Plan.

6.3.7 **Discharge of Claims.** The Plan provides that the payments, distributions, and other treatment provided in respect to each Allowed Claim in the Plan shall be in complete satisfaction of such Allowed Claim, and said Claim shall be discharged in accordance with the provisions of 11 U.S.C. § 1141. The Confirmation Order shall discharge the Debtors from all Claims and other debts that arose before the Confirmation Date and all debts of the kind specified in 11 U.S.C. §§ 502(g), 502(h), or 502(i), whether or not: (i) a Claim based on such debt is allowed pursuant to 11 U.S.C. § 502, or (ii) the holder of a Claim based on such debt has accepted the Plan.

6.3.8 **Objections to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the priority/type of status of any Claim, shall be filed on or before ninety (90) days following the Effective Date, or forty-five (45) days following the filing of any Claim, whichever is later, without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007.

6.3.9 **Valuation of Secured Claims.** Under 11 U.S.C. § 506, a secured creditor has a “secured claim” to the extent of such creditor’s interest in a Debtors’ interest in the collateral, and an unsecured claim for the balance, if any. The “allowed” amount of the creditor’s secured claim will be the lesser of value of the creditor’s interest in the Debtors’ interest in the property as determined under 11 U.S.C. § 506, or the allowed amount of the creditor’s claim. Under the Plan, if any dispute over valuation occurs with any Secured Creditor, the Debtors reserve the right to request that the Court determine the value of the Creditor’s interest in the collateral which secures the Creditor’s Claim. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

6.3.10 **Procedure for Contingent and Unliquidated Claims.** The Plan provides that Creditors holding contingent or unliquidated Claims shall have sixty (60) days from the Confirmation Date to file a motion or adversary action with the Court to have their Claim allowed. Upon the allowance of a contingent or unliquidated Claim, the Plan provides that said Claim shall be entitled to distribution under the Plan consistent with the treatment of other Claims in the Class in which the contingent or unliquidated Claim is ultimately allowed. The contingent or unliquidated Claim of any Creditor who fails to initiate timely action pursuant to this provision for the allowance of its Claim shall have its Claim disallowed and be forever barred from seeking any recovery from the Reorganized Debtors, the Estates, or the Assets. A chart indicating which Claims the Debtors believe are Contingent and Unliquidated is attached hereto as **Exhibit B.**

6.3.11 **Executory Contracts and Unexpired Leases.**

(a) **Generally.** Under the Plan, the Debtors reserve the right to apply to the Court at any time prior to Confirmation for authority to assume, assign, or reject any Executory Contracts and Unexpired Leases not expressly addressed in the Plan in whole or in part as provided in 11 U.S.C. §§ 365 and 1123. The Plan further provides that all remaining Executory Contracts and Unexpired Leases for which the Debtors have not so moved on or before the Confirmation Date shall be deemed rejected as of said date (the “Rejection Date”);

provided, however, that any such motions, requests, proceedings, or actions to seek to assume or reject, or to determine Allowed Cure Claims, pending at the Confirmation Date shall be continued until determined by Final Order of the Bankruptcy Court.

A chart describing the Debtors' Executory Contracts and Unexpired Leases is attached hereto as **Exhibit C**. As reflected on Exhibit C, the Debtors presently believe that Lee's Ford Dock and Top Shelf are the only Debtors with Executory Contracts and/or Unexpired Leases. However, the Debtors reserve the right to amend Exhibit C and/or move to assume, assign, or reject any other Executory Contracts or Unexpired Leases as described in this Section should they subsequently become aware of any such agreements.

(b) **Specific Assumptions under the Plan.** Under the Plan, Lee's Ford Dock and Top Shelf propose to assume the following Unexpired Leases as set forth below:

(i) **Corps Lease.** In August 2000, Lee's Ford Dock entered into the Corps Lease with the Corps for the Lake Cumberland waterfront property upon which the Dock and related property are located. The initial term of the Corps Lease was twenty-five (25) years, beginning September 1, 2000 and ending August 31, 2025. In early 2003, Lee's Ford Dock's then-current owners listed it for sale. Hamilton Capital desired to purchase the Marina operations and make significant improvements, so it submitted a competitive offer. Given its contemplated substantial investment, Hamilton Capital and Mr. Hamilton, as the Trustee of Hamilton Capital's principal, requested as part of the purchase offer that the Corps issue Lee's Ford Dock a new 25-year lease with an option to renew for an additional 25 years. The Corps viewed this as unnecessary and declined to issue a new lease since the existing Corps Lease had 22 years remaining in its term at that time. Following negotiations, the parties agreed that: (a) the Corps would approve a transfer of all outstanding stock of Lee's Ford Dock to Hamilton Capital; (b) the original Corps Lease would remain effective, but pursuant to the First Supplemental Agreement between Lee's Ford Dock and the Corps dated October 7, 2003, Lee's Ford Dock would be granted an option to renew or extend the Corps Lease for an additional 25-year term at the expiration of the initial 25-year term; (c) Lee's Ford Dock would make a minimum investment of \$1.229 million into the leased premises; and (d) Lee's Ford Dock and the Corps would enter into a memorandum of lease to be filed of record in the Pulaski County Clerk's Office. The Corps and Lee's Ford Dock entered into a Second Supplemental Agreement relating to the Corps Lease in March 2007, which modified the reporting and rental payment requirements of the Lease. The Corps and Lee's Ford Dock entered into a Third Supplemental Agreement in June 2007, which fully abated the rent that would otherwise be payable by Lee's Ford Dock from July 1, 2007 to June 30, 2008, and the rent for that one-year period was modified to \$1.00 for the year.

(1) **Assumption.** On July 30, 2013, Lee's Ford Dock filed the Corps Lease Assume Motion, which requests authority for Lee's Ford Dock to assume the Corps Lease, setting a cure amount for any arrearage under said Lease, and establishing procedures for prompt cure regarding said arrearage. The Plan provides that Lee's Ford Dock will assume the Corps Lease to the extent that the Corps Lease Assume Motion is ultimately granted by the Court, in

compliance with the terms of any Order granting said Motion. As of the date of the filing of this Disclosure Statement, the Corps Lease Assume Motion is pending before the Bankruptcy Court and is scheduled for hearing before the Court on Wednesday, August 28, 2013, at 9:30 a.m. EDT.

(2) **Non-Monetary Defaults.** To the extent that any non-monetary defaults exist under the Corps Lease as of the Confirmation Date, the Plan provides that the rights of Lee's Ford Dock and the Corps in relation to any such alleged defaults shall remain unaltered by the Confirmation of the Plan.

(3) **Post-Confirmation Rent.** Following Confirmation and the entry of an Order granting the Corps Lease Assume Motion, the Plan provides that Lee's Ford Dock shall timely make all post-Confirmation quarterly rent payments that may be owed to the Corps under the Corps Lease.

(4) **Post-Confirmation Non-Rent Obligations.** Under the Plan, following Confirmation and the entry of an order granting the Corps Lease Assume Motion, all terms of the Corps Lease shall remain unchanged unless otherwise modified herein or in any such order.

(5) **Effect of Potential Post-Confirmation Events.** Should any change in applicable law or policy, or any order or judgment entered by a court of competent jurisdiction related to the Corps Claim or any subsequent litigation, relieve Lee's Ford Dock of its obligation to pay some or all of the prepetition or post-Confirmation amounts that it would otherwise owe to the Corps and/or the United States government under the terms of the Plan and/or the Corps Lease, the Plan provides that such a change shall apply retroactively to relieve Lee's Ford Dock of any such repayment obligations.

(6) **Corps Claim.** Following Confirmation, the Plan provides that Lee's Ford Dock shall have the discretion to continue its pursuit of the Corps Claim and any related claims against the Corps.

(ii) **Slip Rental Agreements.** Lee's Ford Dock is the lessor under numerous agreements with parties who rent boat slips on the Dock (the "Slip Rental Agreements"). These Agreements were identified on the portion of Lee's Ford Dock's Schedule G that was filed under seal pursuant to Order of the Bankruptcy Court [See Doc 100]. Certain of these Slip Rental Agreements are "seasonal" and expired by their own terms on October 31, 2012. The remaining Slip Rental Agreements were "annual" and expired by their own terms on March 31, 2013. Lee's Ford Dock previously assumed these "annual" Agreements pursuant to Order of the Court entered on November 1, 2012 [Doc 147].

Since the Petition Date, Lee's Ford Dock has entered into postpetition slip rental agreements with certain of its prepetition slip rental customers and some new customers in the ordinary course of its business for the 2013 season (the



“Postpetition Slip Rental Agreements”). The Plan provides that Lee’s Ford Dock shall continue to satisfy its obligations under the Postpetition Slip Rental Agreements post-Confirmation in the ordinary course of its business.

(iii) **Top Shelf Sublease.** Lee’s Ford Dock is the lessor under a Sublease and Agreement with Top Shelf as lessee for a portion of the Ship’s Store that serves as Top Shelf’s office space for its boat brokerage business (the “Top Shelf Sublease”). On July 30, 2013, Lee’s Ford Dock and Top Shelf filed their Motion for Authority to Assume Mutual Nonresidential Real Property Sublease [Doc 258] (“Top Shelf Sublease Assume Motion”), requesting authority to assume the Top Shelf Sublease. The Plan provides that Lee’s Ford Dock and Top Shelf will assume the Top Shelf Sublease to the extent that the Top Shelf Sublease Assume Motion is ultimately granted by the Court. As of the date of the filing of this Disclosure Statement, the Top Shelf Sublease Assume Motion is pending before the Bankruptcy Court and is scheduled for hearing before the Court on Wednesday, August 28, 2013 at 9:30 a.m. EDT. Neither Lee’s Ford Dock nor Top Shelf is in default under the Top Shelf Sublease.

(iv) **Pitney Bowes Lease.** Lee’s Ford Dock is the lessee of a postage machine under a lease dated December 2, 2009 with Pitney Bowes, Inc. (the “Pitney Bowes Lease”). The Plan requests that Lee’s Ford Dock be authorized to assume the Pitney Bowes Lease and pay Pitney Bowes, Inc. the sum of \$559.49 within thirty (30) days of the Effective Date to cure its prepetition default under the Pitney Bowes Lease. This request is supported by Lee’s Ford Dock’s sound business judgment, as postage is a necessary expense of the Marina operations and having a postage machine on-site helps to streamline those operations.

(c) **Specific Rejection under the Plan.** Under the Plan, Lee’s Ford Dock proposes to reject the following Executory Contract:

(i) **McCarthy Strategic Solutions Contract.** Lee’s Ford Dock is a party to a contract for lobbying services dated June 1, 2012 with McCarthy Strategic Solutions, LLC (the “McCarthy Contract”). Lee’s Ford Dock believes that the parties agreed to terminate the McCarthy Contract in or about July 2012, as the services contemplated therein were no longer needed. However, to the extent that the McCarthy Contract was not finally terminated, the Plan provides that Lee’s Ford Dock shall be authorized to reject the McCarthy Contract upon Confirmation. This request is supported by Lee’s Ford Dock’s sound business judgment, as the lobbying services contemplated under the McCarthy Contract are no longer necessary to the Debtors’ operations.

(d) **Bar Date for Rejection Damages Claims.** The Plan provides that any proof of claim that any third party has with respect to the rejection of any Unexpired Lease or Executory Contract must be filed no later than thirty (30) days after the later of: (i) entry of a Final Order of this Court authorizing such rejection, or (ii) the Rejection Date. Any such Claim for rejection damages shall be treated as a Class 6 Unsecured Claim.

(e) **Allowed Cure Claims on Assumed Unexpired Leases and Executory Contracts.** If the Debtors apply for and receive the Court's authorization to assume an Unexpired Lease or Executory Contract as provided under 11 U.S.C. § 365, other than those Unexpired Leases and Executory Contract specifically addressed in the Plan, the Plan provides that the landlord under said Lease shall have thirty (30) days to seek allowance of a Cure Claim from the Bankruptcy Court, provided that the Court has not already entered an order specifying the Cure Claim terms. If no such allowance of a Cure Claim is sought within that time period, all such Claims shall be barred. However, if a Cure Claim is timely sought and thereafter Allowed by the Court, the Plan requires that the Debtors will then consult with the Claimant/landlord to negotiate a repayment of the Allowed Cure Claim over a reasonable period of not longer than two (2) years.

6.3.12 **Causes of Action.** The Plan provides that at the Confirmation Date, all Assets of the Debtors and their Estates, including all Avoidance Actions or other Causes of Action (if any), including the Corps Claim and any subsequent, related litigation, will revert in and remain with the Reorganized Debtors. As set forth below, the Debtors have conducted a preliminary analysis of potential Avoidance Actions and have determined that transferees appear to have valid defenses. However, the Debtors reserve their rights to bring such an Avoidance Action or other Cause of Action (if any) prior to or following the Confirmation Date if they subsequently determine otherwise.

(a) **Prepetition Vendor Payments.** Lee's Ford Dock and Top Shelf were the only two Debtors that made payments to creditors within ninety (90) days prior to the Petition Date that exceeded an aggregate of \$5,850 per creditor. Details of those payments are reflected in their respective Schedules [Lee's Ford Dock - Doc 69; Top Shelf - Doc 58]. Lee's Ford Dock has examined its 90-day payment history, and in its business judgment, has determined that the payments to its regular trade vendors were ordinary course and thus that most transferees have valid defenses to any potential Avoidance Actions. Top Shelf has examined its 90-day payment history, and all payments at issue were made to Marny Schlundt who worked for Top Shelf as a contract employee. As these payments were all regular payments for wages earned in the ordinary course of business, Top Shelf believes that Ms. Schlundt has valid defenses to any potential Avoidance Actions.

(b) **Prepetition Insider Payments.** Excluding ordinary-course intercompany transactions between the affiliate Debtor entities, Lee's Ford Dock is the only Debtor that made payments to insiders, as that term is defined in 11 U.S.C. § 101(31), within two years preceding the Petition Date. Lee's Ford Dock has reviewed its payment history with insiders from 2010 through the Petition Date, and in its business judgment, has determined that all insiders appear to have valid defenses to any potential avoidance actions and/or that any such actions would not yield value for the Estate. However, for purposes of full disclosure, the Debtors include the following summary of such transactions with insiders.

(i) **Payments and Benefits Paid.** As discussed in Section 3.1 above, Mr. Hamilton serves as the Trustee of the Hamilton Revocable Trust and the principal of each of the Debtors, and in that capacity, he acts as the top manager of all of the Debtors' day-to-day operations. As compensation for these services, Mr. Hamilton has historically received a

compensation package including an annual salary and various other benefits as described below. In August 2010, as part of the Debtors' financing negotiations with the SBA, Mr. Hamilton and the SBA agreed that his annual compensation would be limited to \$185,000 per year with a 5% cost of living adjustment on an annual basis. This amount was set based on the applicable Risk Management Association ("RMA") standards. The average RMA compensation level for someone in Mr. Hamilton's position is calculated at 6.5% of annual gross revenues. For example, in 2010, the average annual salary would be calculated as \$279,500 based on approximately \$4.3 million in annual revenue. Mr. Hamilton also agreed with the SBA that he would no longer receive principal payments on the Hamilton Note (defined in Section 6.3.12(b)(ii) below) but would continue to receive interest payments. Mr. Hamilton's total salary for 2010 was \$356,406.60, which reflected an approximately \$140,000 payment to a judgment creditor affecting the Debtors' operations as part of the agreed restructuring and disbursement of loan proceeds by all parties in September 2010. Pursuant to his agreement with the SBA, Mr. Hamilton's salary for 2011 was reduced to \$185,000. However, recognizing in the summer of 2011 that the Debtors would not have sufficient funds to cash flow operations through the end of the year, Mr. Hamilton elected to defer his salary payments effective July 17, 2011. As a result, Mr. Hamilton only received salary payments totaling \$100,096 for 2011; the remaining \$84,904 salary outstanding was accrued but remains unpaid. The Debtors' cash flow naturally increased in winter 2011 with the payment of slip rental renewal fees. After receiving no payment for compensation from July 17 to December 31, 2011, Mr. Hamilton was to begin receiving salary payments effective January 1, 2012 at the agreed upon rate of \$185,000 per annum (\$3,557.69 per week). It was during this time that the Debtors were in the process of transitioning between controllers. Consequently, the resumption of Mr. Hamilton's salary was not implemented in a timely manner, and no payments were made in January 2012. As a further result of the transition, when salary payments did resume, they were at an incorrect rate of \$100,000 per annum (\$1,923.08 per week). On February 19, 2012, Mr. Hamilton received \$15,385 as compensation for services rendered year to date. On March 11, 2012, the weekly payment amount was corrected to \$3,558, and a payment of \$16,346 was issued to correct the amounts inadvertently paid at the wrong rate. Against this background, the 2012 W-2 issued to Mr. Hamilton shows taxable compensation of \$190,315, which includes total salary of \$185,000 and \$5,315 attributable to health insurance paid by Lee's Ford Dock. Mr. Hamilton continues to receive his annual salary of \$185,000 per annum, and he has not taken the 5% COLA allowed by the SBA. The Plan proposes that Mr. Hamilton continue to receive salaried compensation and health insurance benefits post-Confirmation, as well as certain of the other portions of his total compensation package discussed below.

Since December 2003, Mr. Hamilton's former spouse, Joe Ann Hamilton ("Ms. Hamilton"), has been employed by Lee's Ford Dock to manage the purchasing and inventory of the Ship's Store. As compensation for her services, she has historically been paid a salary and received additional benefits described below as part of her total compensation package. Ms. Hamilton received a salary of \$3,995.20 during 2010, \$6,991.60 during 2011, and \$7,246.40 from January 1 to July 4, 2012. Ms. Hamilton's salary stopped from July 17 to December 31, 2011 along with Mr. Hamilton's salary, as described above. She is presently paid a salary of \$12,000 per year, paid monthly, and the Debtors contemplate that she will continue to be employed post-Confirmation. The only additional transaction between Ms. Hamilton and the Debtors from 2010 through the Petition Date (besides her salary and the charges to Acct. 2540

described below) was reimbursement for bedding that she purchased for the Debtors' rental cabins for a total of \$1,167.50, which was recorded as an expense to the appropriate lodging account. The only other members of Mr. Hamilton's family who have ever received payments from the Debtors are his former step-daughters. In May 2011, Lee's Ford Dock purchased a couch, table, and chair to be used in cottage 3 from Cassie Ridge for \$575.00, and that furniture is still in use in cottage 3. Natalie Ridge received wages of \$129.08 for working in the Ship's Store during a weekend in May 2012.

Since before 2010, Mr. Hamilton has resided in the "Resort Manager's Cottage" located on the Marina grounds from time to time. Due to the nature of many facets of the Debtors' business, it is often necessary for Mr. Hamilton to be at work outside of regular business hours, and his residence in the Resort Manager's Cottage allows him to provide necessary after-hours services to the Debtors. The Resort Manager's Cottage has never been rented to the public in its history. Its utilities are grouped with several other cottages, and separating the utilities would be quite expensive, so the Debtors provide utility service to the Resort Manager Cottage as part of Mr. Hamilton's compensation package, with the exception of an upgraded cable package that Mr. Hamilton purchases for himself. The Plan provides that Mr. Hamilton will be authorized to continue residing in the Resort Manager's Cottage post-Confirmation.

It is the Debtors' policy that restaurant managers receive complimentary meals in the Restaurant as part of their employment, which is the ordinary course of business in the national restaurant industry. These complimentary meals are recorded in the Debtors' books and records at full retail price, not cost. The total retail cost of complimentary meals provided to Mr. Hamilton was \$420.93 during 2010, \$10,309.61 during 2011, and \$7,925.49 from January 1 to July 4, 2012. However, when the average food and bar costs during those time periods are taken into account, the total actual cost of Mr. Hamilton's meals was less than \$135 in 2010, less than \$2,900 in 2011, and less than \$2,457 in 2012. The Plan provides that Mr. Hamilton, as the general manager of the Restaurant, will continue to receive complimentary meals post-Confirmation, which the Debtors believe is necessary to continue monitoring food quality and guest experiences in the Restaurant.

It has also been the Debtors' policy to provide cell phone service for Mr. Hamilton and his former spouse, Ms. Hamilton, as part of their total compensation packages. Cell phone services have also been and continue to be provided to four of the Debtors' main non-insider managers as part of their compensation packages. The Debtors paid cell phone bills for Mr. and Ms. Hamilton of \$4,301.26 in 2010, \$5,299.85 in 2011, and \$2,233.34 from January 1 to July 4, 2012. The Debtors are now only providing cell phone service for Mr. Hamilton. The Debtors have also historically provided car insurance for Mr. Hamilton, as well as Ms. Hamilton and her children as part of Mr. and Ms. Hamilton's compensation packages. The Debtors paid car insurance premiums totaling \$9,270.27 in 2010, \$5,621.43 in 2011, and \$2,657.58 from January 1 to July 4, 2012. As of July 2012, Mr. Hamilton was the only party for whom the Debtors were paying car insurance premiums. Mr. Hamilton has been paying his own car insurance premiums since August 2012, and the Debtors no longer provide him with car insurance. The Plan provides that the Debtors shall continue to provide cell phone service for

Mr. Hamilton post-Confirmation, as this expense helps to ensure that Mr. Hamilton is readily available to the Marina when necessary, both during and beyond regular business hours.

(ii) **Servicing of Note to Insider.** As discussed in Section 6.5.5 below, Mr. Hamilton has an unsecured claim against Lee's Ford Dock arising out of a promissory note issued to Mr. Hamilton by Lee's Ford Dock in January 2008 (the "Hamilton Note"). As part of loan negotiations with the SBA in 2010, it was agreed that Mr. Hamilton could pay the principal balance of his note down to \$872,000 but that he could take no further principal payments until the SBA loans were repaid. He was, however, allowed to continue receiving interest payments. The outstanding principal balance of the Hamilton Note as of the Petition Date was \$872,000, with accrued interest of \$35,905.94, for a total outstanding balance of \$907,905.74. Principal payments paid by the Debtors to Mr. Hamilton or on his behalf were \$71,749.19 in 2010, and no principal payments have been paid since then. Interest on the Hamilton Note has been accruing since its inception and is regularly recorded in Lee's Ford Dock's general ledger account number 2540 ("Acct. 2540"). To ensure that its records accurately reflect any payments made to Mr. Hamilton or on his behalf on account of the Hamilton Note, as well as any charges for his "in-house" purchases at the Marina, Lee's Ford Dock regularly records these amounts as debits to Acct. 2540, which offset against the balance of his accrued but unpaid interest. Any such payments made on behalf of Ms. Hamilton were also recorded in this manner to Acct. 2540. A statement reflecting all credits and debits to Acct. 2540 during the one-year period immediately preceding the Petition Date is included as an exhibit to Lee's Ford Dock's Schedules [Doc 69]. The net disbursements to Acct. 2540 during the one-year period preceding the Petition Date were \$44,117.37. For purposes of further disclosure, the total net disbursements from Acct. 2540 against interest owed as authorized by the terms of the 2010 negotiations were \$75,073.47 in 2010, \$74,608.40 in 2011, and \$552.55 (at cost) from January 1 to July 3, 2012. Since the Petition Date, Mr. Hamilton has been paying Lee's Ford Dock for all postpetition charges to Acct. 2540, and he will continue to do so until he is authorized to begin receiving interest payments on the Hamilton Note under the terms of the Plan.

(iii) **American Express Reimbursement Process.** As described in the Debtors' Expedited Motion for Interim and Final Orders Authorizing Debtors to Continue Pre-Petition Payment Practices and Scheduling a Final Hearing [Doc 71], since approximately four months prior to the Petition Date, Mr. Hamilton has allowed the Debtors to use his personal American Express credit card from time to time to obtain supplies that may only be purchased via credit card. Prior to that time, Mr. Hamilton allowed the Debtors to use his American Express if cash flow was a concern. In either event, upon receipt of his American Express statement each month, Mr. Hamilton redacts the personal charges and presents the Debtors' accounting department with the statement of remaining business charges. The accounting department then reconciles the American Express charges with purchase orders for the corresponding month, and upon verification that the charges match, issues a check to Mr. Hamilton to reimburse him for the charges for that month. There is no written agreement between the Debtors and Mr. Hamilton regarding this process. The Court authorized the Debtors to continue this process postpetition by Order entered on July 25, 2012 [Doc 96]. The reimbursement payments are recorded in Lee's Ford Dock's general ledger in the appropriate account related to the charged purchase. The total amount of American Express purchases

reimbursed to Mr. Hamilton was \$6,808.93 during 2010, \$25,502.28 in 2011, and \$12,776.74 from January 1 to July 4, 2012.

6.4 **General Summary of Plan Treatment of Unclassified Claims.** *The Plan provisions control over the following generalized summary.*

6.4.1 **Administrative Claims.**

(a) **Ordinary Course Administrative Claims.** The Plan provides that all Allowed Administrative Claims arising from obligations incurred by the Debtors in the ordinary course of their business prior to the Confirmation Date, including Administrative Trade Claims, will be paid and performed by the Reorganized Debtors in the ordinary course of their business in accordance with the terms of any agreements governing, instruments evidencing, or other documents relating to such transactions. The Debtors believe that all “ordinary course” Claims are generally current.

(b) **Other Allowed Administrative Claims.** The Plan states that all other holders of Allowed Administrative Claims, including, but not limited to Professional Claims and any other 11 U.S.C. § 503(b)(9) Allowed Claims, if any, shall be paid in full on the Effective Date or as agreed by any such Creditor. All Professionals shall retain their respective carve-out rights as provided for by Cash Collateral Orders of the Court. At present, the Debtors do not anticipate that there will be any other Allowed Administrative Claims, beyond those Allowed Administrative Claims for Professional fees and expenses.

6.4.2 **Bar Date for Administrative Claims.** The Plan provides certain time deadlines for certain administrative claimants to seek application for allowance and should be closely reviewed, as any untimely-filed claim might be disallowed.

6.4.3 **Post-Confirmation Professional Claims.** Post-Confirmation Date Professional Claims will not require Bankruptcy Court approval and will be paid post-Confirmation in the ordinary course from the Reorganized Debtors’ business operations.

6.4.4 **United States Trustee Fees.** The Plan provides that all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date of the Plan. Following Confirmation, the Reorganized Debtors’ obligation to pay United States Trustee fees shall continue until the Bankruptcy Cases are converted, dismissed, or closed, whichever occurs first, and said fees will be paid by the Reorganized Debtors in the ordinary course as they are incurred, with all fees to be paid before the Bankruptcy Cases may be closed. The Reorganized Debtors shall also timely file and serve all reports required by the U.S. Trustee.

6.4.5 **Priority Tax Claims.** As set forth more fully in the Plan, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Reorganized Debtors, each governmental unit which is the holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Allowed Priority Tax Claim, deferred cash payments totaling the Allowed amount of such Claim over a period not exceeding five (5) years from the Petition Date, as required by the Bankruptcy Code, which period shall conclude on July 3, 2017. The Plan

provides that payments on the Allowed Priority Tax Claims will be made beginning on the July 1, 2014 Quarterly Distribution Date and shall continue to become due on each subsequent Quarterly Distribution Date until the Priority Tax Claims are paid in full. The payments on the Allowed Priority Tax Claims shall be made in equal quarterly installments of principal and simple interest accruing from the Effective Date at the current rate of interest required by law on the unpaid portion of each Allowed Priority Tax Claim (or upon such other terms determined by the Bankruptcy Court to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claims). No payments will be made on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim. The Reorganized Debtors will have the right and discretion to pay any Allowed Priority Tax Claim, or any remaining balance of such Priority Tax Claim, in full, at any time on or after the Effective Date, without premium or penalty and without further order of the Court if cash is available to do so. A chart describing the Debtors' Priority Tax Claims is attached hereto as **Exhibit D**.

6.4.6 **Other Allowed Priority Non-Tax Claims.** Under the Plan, as soon as practicable after the later of the Effective Date and the date the Claim becomes an Allowed Claim, each holder of an Allowed Priority Non-Tax Claim against a Reorganized Debtor will receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Non-Tax Claim a Distribution from the applicable Reorganized Debtor: (i) in Cash equal to the unpaid portion of such Allowed Priority Non-Tax Claim against the Debtor, or (ii) in such amounts and on such other terms as may be agreed between the holder of the Allowed Priority Non-Tax Claim and the Debtor, or (iii) in accordance with the terms of the particular agreement under which such Priority Non-Tax Claim arose. To the extent that any Creditor's total Allowed Priority Non-Tax Claim exceeds the amount entitled to Priority treatment under 11 U.S.C. § 507, the remaining amount of such Claim shall be treated as a Class 6 Allowed Unsecured Claim. The Debtors do not believe that there are any unpaid Priority Non-Tax Claims, but for purposes of disclosure, a chart describing the Debtors' Priority Non-Tax Claims as of the Petition Date is attached hereto as **Exhibit E**.

6.5 **General Summary of Plan Treatment of Classified Claims.** *The Plan provisions control over the following generalized summary.*

6.5.1 **Class 1: Allowed Secured Claims of Branch Banking & Trust Company.** Class 1 consists of the Allowed Secured Claims of Branch Banking & Trust Company ("BB&T"), in the total amount of \$5,162,868.29 as of the Petition Date, plus interest from the Petition Date through the Confirmation Date at the rate set forth in the loan documents underlying the Class 1 Claims, plus reasonable attorney's fees and expenses, plus the amount of \$48,472.63 relating to Lee's Ford Dock's credit card account with BB&T, less all payments received by the Effective Date. The Class 1 Claims are impaired.

As set forth more fully in the Plan, the Class 1 Claims will be paid in full over time. Subject to cash collateral carve-outs as approved by prior Cash Collateral Orders of this Court, BB&T will retain its liens securing the Class 1 Claims until paid in full or until the collateral securing the Class 1 Claims is sold under the terms of the Plan, via consent or Court Order, with the liens to attach to the proceeds of any such post-Confirmation sales, after payment

of ordinary costs of sales. The Plan provides that Class 1 Claims will be repaid through regular monthly principal and interest payments, amortized over thirty (30) years at an interest rate of 4.25%, with the entire claim to be repaid in full on or before August 31, 2025, which is the end of the current term of the Corps Lease, with no prepayment penalties. Payments on the Class 1 Claims will begin on the 10<sup>th</sup> day of the month following the Effective Date and will continue to become due on the 10<sup>th</sup> day of the month thereafter until the Class 1 Claims are paid in full on or before August 31, 2025. To account for the lowered Lake Cumberland water levels and related depressed revenues that are anticipated until the levels return to normal in 2014, and also for the estimated cost of relocating the Debtors' dock facilities following the return of the levels, the Plan provides that the Class 1 Claims shall be paid monthly payments of "interest only" beginning in the month following the Effective Date and continuing through November 2015. Thereafter, the Plan states that beginning in December 2015, BB&T shall be paid combined monthly payments of principal and interest until the Class 1 Claims are paid in full. The Plan requires that, within fifteen (15) days of the Confirmation Date, BB&T shall provide the Debtors with a specific amortization schedule setting forth the monthly payments for the Class 1 Claims in accordance with the terms set forth herein.

(a) **Debts Comprising the Class 1 Claims.** The Class 1 Claims are comprised of the following original principal indebtedness, the amount of which has since been decreased by the Debtors' payments, plus interest thereon and reasonable attorney's fees and expenses:

- (i) \$6,500,000 ("Note 00001"), incurred by Hamilton Capital, Hamilton Brokerage, and Mr. Hamilton on October 7, 2003
- (ii) \$500,000 ("Note 00002"),<sup>4</sup> incurred by Hamilton Capital, Hamilton Brokerage, and Mr. Hamilton on October 7, 2003
- (iii) \$1,146,650 ("Note 00003"), incurred by Hamilton Capital, Hamilton Brokerage, Lee's Ford Dock, Lee's Ford Hotels, Lee's Ford Woods, and Mr. Hamilton on August 5, 2004
- (iv) \$400,000 ("Note 00004"), incurred by Hamilton Capital, Hamilton Brokerage, Lee's Ford Dock, Lee's Ford Hotels, Lee's Ford Woods, and Mr. Hamilton on July 18, 2007

The outstanding amount of the Class 1 Claims on the Petition Date was \$5,162,868.29, plus the \$48,472.63 balance of Lee's Ford Dock's credit card with BB&T.

(b) **Assets Securing the Class 1 Claims.** The Class 1 Claims are secured by the following Assets:

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<sup>4</sup> Note 00002 had a zero balance as of the Petition Date and continues to have a zero balance.



- (i) **Real Property.** The Class 1 Claims are secured by first-priority mortgages on: (1) real property located at 21 and 81 Lee's Ford Dock Road, Nancy Kentucky, owned by Lee's Ford Hotels; (2) real property located at 451 Lee's Ford Dock Road, owned by Lee's Ford Dock; and (3) 2.59 acres on Lee's Ford Dock Road owned by Lee's Ford Woods. The Class 1 Claims are further secured by a first-priority leasehold mortgage on the property Lee's Ford Dock leases from the Corps located at 451 Lee's Ford Dock Road.
- (ii) **Personal Property.** The Class 1 Claims are secured by first-priority security interests in: (1) all assets of Lee's Ford Hotels and Lee's Ford Woods; and (2) the accounts, inventory, equipment, deposit accounts, chattel paper, general intangibles, and supporting obligations of Lee's Ford Dock and Top Shelf.

6.5.2 **Class 2: Allowed Secured Claims of the U.S. Small Business Administration.** Class 2 consists of the Allowed Secured Claims of the U.S. Small Business Administration (the "SBA"), in the total amount of \$4,119,897.50 as of the Petition Date, plus interest from the Petition Date through the Confirmation Date at the rate set forth in the loan documents underlying the Class 2 Claims, plus reasonable attorney's fees and expenses, less all payments received by the Effective Date. As set forth more fully in the Plan, the Class 2 Claims will be paid in full over time, with the entire claim to be repaid in full on or before September 24, 2037 with no prepayment penalties. Subject to cash collateral carve-outs as approved by prior Cash Collateral Orders of this Court, the SBA will retain its liens securing the Class 2 Claims until paid in full or until the collateral securing the Class 2 Claims is sold under the terms of the Plan, via consent or Court Order, with the liens to attach to the proceeds of any such post-Confirmation sales, after payment of ordinary costs of sale.

The Plan provides that Class 2 Claims will be repaid through regular monthly principal and interest payments, amortized over thirty (30) years at an interest rate of 4.00%, with the entire then-outstanding balance of the Class 2 Claims to become due on September 24, 2037 with no prepayment penalties. Payments on the Class 2 Claims will begin on the 24<sup>th</sup> day of the month following the Effective Date and will continue to become due on the 24<sup>th</sup> day of the month thereafter until the Class 2 Claims are paid in full. To account for the lowered Lake Cumberland water levels and depressed revenues that are anticipated until the levels return to normal in 2014, and also for the estimated cost of relocating the Debtors' dock facilities following the return of the levels, the Plan provides that the SBA will receive \$1,000.00 per year on account of the Class 2 Claims for the first two (2) years following the Effective Date, with the first payment to be made on the twentieth (20<sup>th</sup>) day of the month following the Effective Date and the subsequent payments to come due on the same date in the following year.

The Debtors submit that the \$1,000.00/year payments are in accordance with the "Hardship Case" guidelines set forth in the Chapter 5 of the SBA's SOP 50 51 2. In cases where

there is a “local economy or marketplace with unique problems that impair [the SBA’s] enforcement of collection,” the SBA is to consider recommending a reduction of “future installments to \$1.00 for a period of no more than 1 year from the date of the next installment due date to provide relief to the borrower.” *See* SOP 50 51 2, Ch. 5, § 10(c). However, the one-year period can be extended if, after “[a]n annual review of the obligor’s financial condition,” the SBA “determines [that] subsequent annual suspensions (and reviews) of the payment installment are appropriate.” *Id.* The Debtors submit that the lowering of Lake Cumberland and the related financial distress it has imposed on the Debtors clearly constitutes a “local economy or marketplace with unique problems.” The proposed \$1,000.00/year treatment through November 2015 will allow time for the Lake levels to return to normal, for the Debtors to move their dock in accordance with the increased levels (and pay for the move), and for the Debtors’ revenues to increase in accordance with the return of the Lake to normal levels. Taken together, the Debtors believe that the \$1,000.00/year treatment will allow these “unique problems” to be rectified in such a way that the Debtors can return to servicing the SBA Class 2 Claims at normal levels beginning in December 2015, as discussed below. During that \$1,000.00/year term, the Debtors submit that the SBA’s interests will be adequately protected by their servicing of the BB&T Class 1 Claims as set forth in Section 6.5.1 above and the anticipated assumption of the Corps Lease as described in Section 6.3.11(b)(i) above. The Debtors will allow the SBA to review their financial condition annually as needed to comply with the SBA’s SOP 50 51 2 requirements for the \$1,000.00/year treatment.

Following the initial \$1,000.00/year period, beginning in December 2015, the Plan states that the SBA shall receive combined monthly payments of principal and interest in the amount of \$20,833.33 until the Class 2 Claims are paid in full, with a final payment of all then-outstanding principal and interest coming due on September 24, 2037. Within fifteen (15) days of the Confirmation Date, the Plan requires that the SBA shall provide the Debtors with a specific amortization schedule setting forth the payments for the Class 2 Claims in accordance with the terms set forth herein.

Should any change in applicable law or policy relieve the Debtors of their obligation to repay some or all of the Class 2 Claims occur during the repayment period set forth herein, the Plan provides that such a change shall apply retroactively to relieve the Debtors of any such repayment obligations.

As further protection for the SBA, the Plan provides two additional terms relating to the Class 2 Claims. First, for so long as the Class 2 Claims remain outstanding, the Debtors are required to provide copies of their tax returns and Mr. Hamilton’s personal tax returns and any summary or report relating to any annual financial reviews to the SBA within thirty (30) days of the completion of same. Second, the Plan provides that before Lee’s Ford Dock, Lee’s Ford Hotels, and/or Top Shelf (collectively, the “Active Debtors”) make any payments or transfers of any kind to Hamilton Capital, Hamilton Brokerage, and/or Lee’s Ford Woods (collectively, the “Passive Debtors”) in an amount exceeding \$5,000.00 in any given calendar month, the Active Debtors must provide the SBA with contemporaneous written notice of the payment and/or transfer via electronic mail. Within fourteen (14) days of the Confirmation Date, the SBA is required to provide the Active Debtors with a contact person to whom the written notice should be emailed. This Plan provision specifically does not apply to ordinary-course payments and/or

transfers made for the purpose of satisfying property tax debts, utility costs, U.S. Trustee fees, or payments to creditors under the terms of the Plan

The Class 2 Claims are impaired.

(a) **Debt Comprising the Class 2 Claim.** The Class 2 Claims are comprised of original principal indebtedness in the total amount of \$4,000,000.00, which was incurred by Lee's Ford Dock and issued in three stages (\$830,400 on September 24, 2007, increased to \$1,500,000 on October 20, 2008, and increased to \$4,000,000 on August 16, 2010), plus interest thereon and reasonable attorney's fees and expenses. The outstanding amount of the Class 2 Claims on the Petition Date was \$4,099,812.75.

(b) **Assets Securing the Class 2 Claim.** The Class 2 Claims are secured by the following Assets:

- (i) **Real Property.** The Class 2 Claims are secured by second-priority mortgages on: (1) real property located at 21 and 81 Lee's Ford Dock Road, Nancy, Kentucky, owned by Lee's Ford Hotels; (2) real property located at 451 Lee's Ford Dock Road, Nancy, Kentucky, owned by Lee's Ford Dock; and 2.59 acres on Lee's Ford Dock Road, owned by Lee's Ford Woods. The Class 2 Claims are further secured by a second-priority leasehold mortgage on the property Lee's Ford Dock leases from the Corps located at 451 Lee's Ford Dock Road. BB&T has first-priority mortgages on these properties.
- (ii) **Personal Property.** The Class 2 Claims are secured by second-priority security interests in the inventory, fixtures, accounts receivable, machinery, and equipment (excluding automotive) of Lee's Ford Dock and Top Shelf. BB&T has first-priority security interests in these properties.
- (iii) **Guarantees.** The Class 2 Claims are secured by Guarantees issued by Hamilton Brokerage, Hamilton Capital, Lee's Ford Hotels, Lee's Ford Woods, Top Shelf, and Mr. Hamilton.

6.5.3 **Class 3: Prepetition Allowed Secured Claims of Lake Forest Bank & Trust Company.** Class 3 consists of the prepetition Allowed Secured Claims of Lake Forest Bank & Trust Company c/o FIRST Insurance Funding Corp. ("Lake Forest"), in the total amount of \$125,376.94 as of the Petition Date, plus interest at the rate set forth in the contract underlying the Class 3 Claims, plus reasonable attorney's fees and expenses, less all payments received by the Effective Date. As set forth more fully in the Plan, Lee's Ford Dock has made timely payments towards the Class 3 Claims in the ordinary course of business during the pendency of

its Bankruptcy Case, and it asserts that the Class 3 Claims have already been paid in full. However, to the extent that any portion of the Class 3 Claims remains outstanding as of the Confirmation Date, the Plan provides the outstanding portion of the Class 3 Claims will be paid in full over time pursuant to the terms of the contract with Lake Forest, and Lake Forest will retain its liens securing the Class 3 Claims until paid in full. The Class 3 Claims are not Impaired.

(a) **Debt Comprising the Class 3 Claim.** The Class 3 Claims are comprised of original principal indebtedness in the amount of \$157,727.39 incurred by Lee's Ford Dock on May 21, 2012. The outstanding amount of the Class 3 Claims on the Petition Date was \$125,376.94.

(b) **Assets Securing the Class 3 Claim.** The Class 3 Claims are secured by return premiums and certain loss payments related to certain insurance policies that Lee's Ford Dock has with Allianz Global Risks US Insurance (Policy No. xxxxxxx0332) and Scottsdale Insurance Co. (Policy No. xxxxxx6031).

6.5.4. **Class 4: Postpetition Allowed Secured Claims of Lake Forest Bank & Trust Company.** Class 4 consists of the postpetition Allowed Secured Claims of Lake Forest in the total amount of \$187,444.80, plus interest at the rate set forth in the contract underlying the Class 4 Claims, less all postpetition payments received by Lake Forest on account of the Class 4 Claims by the Effective Date. The Plan provides that the Class 4 Claims will be paid in full over time, and Lake Forest will retain its liens securing the Class 4 Claims until paid in full. Lee's Ford Dock has made timely payments towards the Class 4 Claims during the pendency of its Bankruptcy Case in the ordinary course of business, and it will continue making payments pursuant to the terms of the contract with Lake Forest until the Class 4 Claims are paid in full. The Class 4 Claims are not Impaired.

(a) **Debt Comprising the Class 4 Claim.** The Class 4 Claims are comprised of original principal indebtedness in the amount of \$187,444.80 incurred postpetition by Lee's Ford Dock in July 2013.

(b) **Assets Securing the Class 4 Claim.** The Class 4 Claims are secured by return premiums and certain loss payments related to certain insurance policies that Lee's Ford Dock has with Lexington Insurance Co. (Policy No. 012116658) and Scottsdale Insurance Co. (Policy No. CLS1586672).

6.5.5 **Class 5: Allowed Other Secured Claims.** Class 5 consists of all other Secured Claims, if any, excluding the Class 1, 2, 3, and 4 Secured Claims. The Plan provides that, in satisfaction of the Allowed Secured Claim of any Class 5 Claimant, if any, the Debtors shall, on the Effective Date, or such other date as may be agreed on, at the Debtors' option, either: (i) surrender the collateral to the Claimant to allow it to liquidate said collateral at its discretion; or (ii) pay the amount of such Allowed Secured Claim to the Class 5 Creditor over time during the life of the Plan. Any Allowed Deficiency Claim shall be treated as a Class 5 Claim. The Class 5 Claims are Impaired. There are no known claims in this Class.

**6.5.6 Class 6: Allowed Unsecured Claims.** Except as otherwise set forth herein, the Plan provides that each holder of an Allowed Claim in Class 6 shall receive Distribution(s) equal to the full Allowed amount of its Claim within twelve (12) months following the Effective Date. Within thirty (30) days of the Effective Date, the Plan requires that the Reorganized Debtors establish a separate escrow account to be used solely for funding Distributions to Class 6 Claimants (the "Class 6 Escrow"). As described in Section 6.5.8 below, the Plan requires that Mr. Hamilton make a capital contribution of \$27,709.49 to the Debtors within thirty (30) days of the Effective Date, and that the Debtors shall deposit those funds into the Class 6 Escrow. On or before the next Quarterly Distribution Date that is at least thirty (30) days after Mr. Hamilton's capital contribution, the Plan provides that the Reorganized Debtors shall make Distributions from the Class 6 Escrow to each holder of an Allowed Class 6 Claim in the amount of such Claimant's *pro rata* share of the Class 6 Escrow on that date. Thereafter, beginning in January 2014 and continuing through June 2014, the Plan states that the Debtors shall deposit the monthly sum of at least \$4,618.25 from their Net Cash Flow into the Class 6 Escrow for the purposes of paying Class 6 Allowed Unsecured Claims. The Reorganized Debtors shall make Distributions from the Class 6 Escrow to each holder of an Allowed Class 6 Claim on the July 1, 2014 Quarterly Distribution Date in the amount of each Claimant's *pro rata* share of the Class 6 Escrow on that date. Following the July 1, 2014 Distributions, each Allowed Class 6 Claims shall have been paid in full. In addition to the Distributions contemplated in this paragraph, the Plan provides that, on or after the Effective Date, any holder of an Allowed Class 6 Claim that possesses a deposit of the Reorganized Debtors' funds may apply those funds to the Allowed amount of its Claim, *provided that* in no event shall a Class 6 Claimant receive more than the Allowed, unpaid amount of its Claim as of the Petition Date through Distributions and/or deposit application.

As described in Section 6.3.12(b)(ii) above, Mr. Hamilton has an unsecured claim against Lee's Ford Dock arising out of the Hamilton Note. The Plan provides that Mr. Hamilton shall not receive any payments on account of his Allowed Class 6 Claims arising out of the Hamilton Note until all other Class 6 Claims have been paid in full and principal and interest payments to the SBA begin in 2015 as set forth in Section 6.5.2 above; provided, however, that interest only on the Hamilton Note will continue to accrue, but remain unpaid, at a rate of 4.00% during this time, which is a reduction from the 8.5% contract rate set forth in the Note. Once all other Class 6 Claims have been fully satisfied and SBA principal and interest payments have begun, Mr. Hamilton shall be entitled to receive payments of interest only at the rate of 6.25% on the Hamilton Note beginning in December 2015 and continuing until all other Allowed Claims have been satisfied in full. Once all other Allowed Claims have been fully satisfied, the Plan states that Mr. Hamilton shall be entitled to receive regular monthly payments of principal and interest at the rate of 6.25% on the Hamilton Note. Beginning on the date that is five (5) years from the Effective Date and continuing on the same day of each month thereafter for the next ten (10) years, Mr. Hamilton shall be entitled to receive regular monthly payments on his remaining unsecured claims (without interest), which include his claim for prepetition wages against Lee's Ford Dock, for prepetition advances against Hamilton Capital, and for reimbursement for the Debtors' charges on his American Express card, until Mr. Hamilton's remaining unsecured claims totaling \$188,359.75 are repaid in full. Unless otherwise specified, the Class 6 Claims shall not receive interest on account of their claims. The Class 6 Claims are Impaired.

A chart describing all of the Unsecured Claims against the Debtors as of the Petition Date is attached hereto as **Exhibit F**, which also indicates which Unsecured Claims remain outstanding and are to be paid through the Class 6 Escrow described herein.

6.5.7 **Class 7: Intercompany Claims.** Class 7 consists of Intercompany Claims. Under the Plan, Class 7 Claims shall continue to accrue, be recorded, and be paid in the ordinary course of the Debtors' businesses, as required by the Debtors' overall tax structure. A chart describing the Intercompany Claims as of the Petition Date is attached hereto as **Exhibit G**. The Class 7 Claims are not Impaired.

6.5.8 **Class 8: Equity Interests in the Debtors.** Class 8 consists of those Persons or entities holding equity or membership Interests in the Debtors. Hamilton Brokerage and Hamilton Capital are for-profit Kentucky limited liability companies, and both are wholly owned by the Trust. Mr. Hamilton is the Trustee of the Trust. Lee's Ford Dock is a for-profit Kentucky corporation and is wholly owned by Hamilton Capital. Lee's Ford Hotels and Lee's Ford Woods are both for-profit Kentucky limited liability companies, and both are also wholly owned by Hamilton Capital. Top Shelf is a for-profit Kentucky corporation, wholly owned by Hamilton Brokerage.

The Plan provides that Mr. Hamilton, as the Trustee of the Trust, shall make a capital contribution of \$27,709.49 to the Debtors within thirty (30) days of the Effective Date, which amount shall be utilized by the Debtors to satisfy Class 6 Claims as set forth in Section 6.5.6 above. Mr. Hamilton is also reducing his annual salary post-Confirmation by \$35,000.00 until principal and interest payments begin on the SBA's Class 2 Claims under the Plan so that these funds will remain with the Debtors to assist with the payment of operational expenses and Plan payments. As set forth in the Plan, Class 8 Claimants holding Equity Interests in the Debtors will remain otherwise unimpaired by Confirmation of the Debtors' Plan, so long as the Plan is approved by the Bankruptcy Court and in accordance with the Bankruptcy Code. Except as otherwise set forth herein, there will be no dividends, Distributions, or any other payments to or on account of the Interests until all Allowed Claims have been paid in full. The Class 8 Claims are Impaired.

## 6.6 **Plan Implementation**

6.6.1 **Parties Responsible for Implementation of the Plan.** Upon confirmation, the Plan provides that Mr. Hamilton, acting as the Trustee of the Trust and the authorized representative of the Reorganized Debtors, will continue to manage the Debtors' operations, subject to the terms of the Plan. Mr. Hamilton will have the authority to take all actions desirable in his business judgment to continue the operations of the Reorganized Debtors, including implementation of the Plan and administration of the Debtors' Estates. In exchange for providing these services to the Debtors, the Plan provides that Mr. Hamilton will receive salaried compensation of \$150,000.00 per year post-Confirmation, as well as certain additional benefits that have historically comprised his compensation package, which include the payment of health insurance premiums, providing cell phone service, complimentary manager meals in the Restaurant, and housing in the Resort Owner's Cottage, which the Debtors believe are

necessary elements of the resort manager position. This is a reduction from Mr. Hamilton's prepetition salary of \$185,000.00 per year, which was set by the SBA in 2010 using the RMA standards reflecting the average between current and historical low and median average for marinas comparable to the Debtors' size. Once principal and interest payments begin on the SBA's Class 2 Claims, the Plan provides that Mr. Hamilton's annual salary shall return to \$185,000.00 and authorizes the Debtors to increase Mr. Hamilton's salary on an annual basis in accordance with the cost of living adjustment standards published annually by the United States Department of the Treasury. The Reorganized Debtors will pay all United States Trustee fees and will file all post-Confirmation reports required by the United States Trustee's Office. The Reorganized Debtors will also file the necessary final reports and will request to close the Bankruptcy Cases as soon as practicable after plan payments have begun, but would not anticipate seeking to close the case until, at minimum, a year following Confirmation.

**6.6.2 Means of Implementation.** The Debtors will continue to operate post-Confirmation as the Reorganized Debtors in the ordinary course of business, receiving ongoing income from their operations, and using all income to pay their customary operating expenses and necessary capital expenditures and Plan payments. The Debtors have projected and assumed income growth through a conservatively-projected growth in their business following the return of Lake Cumberland to its pre-2007 water level, as well as refinements and improvements in their internal business operations.

Due to the cyclical nature of their business, the Debtors have historically utilized a revolving line of credit to ensure that cash remains available throughout the year, even in the historically lean months. The Debtors previously had a line of credit through BB&T, but BB&T declined to renew it.<sup>5</sup> On August 22, 2013, the Debtors filed their DIP Financing Motion, requesting authority to obtain a revolving line of credit in the amount of \$500,000.00 from Community Trust Bank, Inc. As of the date of the filing of this Disclosure Statement, the DIP Financing Motion is pending before the Bankruptcy Court and is scheduled to be heard by the Court on Wednesday, September 25, 2013 at 9:30 a.m. EDT. To the extent that the Court grants the DIP Financing Motion, the Plan provides that the Debtors intend to obtain this line of credit financing from Community Trust Bank, Inc. If the Court does not grant the DIP Financing Motion, the Reorganized Debtors reserve the right in the Plan to pursue other line of credit financing options post-Confirmation and to obtain such financing to the extent available.

**6.6.3 Continued Engagement of Professionals.** The Reorganized Debtors shall continue the engagement of DelCotto Law Group PLLC and such other professionals as may be necessary for the purposes of rendering services in connection with implementing the Plan, resolving Claims, and performing routine post-Confirmation Chapter 11 administration, such as final reporting and moving to have the Cases closed upon Plan completion. Post-Confirmation, any professional services will not require Court approval.

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<sup>5</sup> This line of credit is Note 00002 referenced in Section 6.5.1(a)(ii), which had a zero balance as of the Petition Date and continues to have a zero balance.

## **ARTICLE VII**

### **RISK FACTORS**

7.1 **Risks of Non-Confirmation.** Even if all impaired classes accept or could be deemed to have accepted the Plan, the Plan may not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things: (a) that the confirmation of a plan not be followed by a need for further liquidation or reorganization; (b) that the value of distributions to dissenting holders not be less than the value of Distributions to such holders if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code; and (c) that the plan and the Debtors otherwise comply with the applicable provisions of the Bankruptcy Code. Although the Debtors believe that the Plan will meet all applicable tests and that they have proposed a confirmable Plan, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

If no Plan can be confirmed, the Chapter 11 Bankruptcy Cases may be converted to Cases under Chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate the Debtors' Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that Confirmation is preferable to Chapter 7 liquidation because the Plan maximizes the distributions to all Classes of Creditors, and any alternative to Confirmation would result in substantial delays and potentially lesser recoveries as persons unfamiliar with the Debtors' Assets would assume administration of the Cases. It is projected that only the secured creditors would have any recovery in any type of liquidation, and even this recovery could be substantially less, since the Debtors' operations could "go dark" prior to sale or an "auction" sale could produce lower results than any going concern, ordinary-course sale.

7.2 **Risks of Non-Consensual Confirmation.** Pursuant to the "cramdown" provisions of 11 U.S.C. § 1129, the Bankruptcy Court can confirm the Plan at the Debtors' request if at least one impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any "insider" in such Class) and, with respect to each Impaired class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to impaired Classes. In accordance with 11 U.S.C. §§ 1129(a)(8) and (b), the Debtors will request Confirmation of the Plan without the acceptance of all impaired Classes entitled to vote.

The Debtors reserve the right to modify the terms of the Plan as necessary for Confirmation without the acceptance of all impaired Claims. Such modification could result in less favorable treatment for any non-accepting Classes than the treatment currently provided for in the Plan. Such less favorable treatment could include a distribution of property of a lesser value than that currently provided for in the Plan or no distribution of property whatsoever.

7.3 **Risks of Delays in Confirmation.** Any delay in Confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims or contested fights with secured creditors. These or any other negative effects of delays in Confirmation of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court.



7.4 **Risks of Shut Down of Operations.** In their business judgment, the Debtors have determined that maintaining and reorganizing their business operations pursuant to the Plan will provide a much better return for all parties in interest. Due to the nature of the Debtors' business, a majority of their assets are worth much more as part of a going concern than they are if sold on a piecemeal basis. As a result, if the Debtors were forced to discontinue their business operations, all of their Creditors stand to receive far smaller distributions, if any, in satisfaction of their Claims than they would if the Debtors' businesses continue operating.

## **ARTICLE VIII**

### **PLAN CONFIRMATION**

8.1 **Generally.** To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtors, including that the:

- (1) Plan has classified Claims and Interests in a permissible manner;
- (2) Plan complies with the applicable provisions of the Bankruptcy Code;
- (3) Debtors comply with the applicable provisions of the Bankruptcy Code;
- (4) Debtors, as proponents of the Plan, have proposed the Plan in good faith and not by any means forbidden by law;
- (5) Disclosure required by 11 U.S.C. § 1125 has been made;
- (6) Plan has been accepted by the requisite votes of creditors and equity interest holders (except to the extent that cramdown is available under 11 U.S.C. § 1129(b));
- (7) Plan is feasible;
- (8) Plan is in the "best interests" of all holders of Claims or Interests in an impaired Class by providing to creditors or interest holders, on account of such Claims or Interests, property of value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a Chapter 7 liquidation unless each holder of a Claim or Interest in such Class has accepted the Plan;
- (9) Fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been

paid or the Plan provides for the payment of such fees on the Effective Date;

- (10) Plan provides for the continuation after the Effective Date of all retiree benefits, as defined in 11 U.S.C. § 1114, at the level established at any time prior to Confirmation pursuant to 11 U.S.C. §§ 1114(e)(1)(B) or 1114(g), for the duration of the period that the applicable Debtors have obligated itself to provide such benefits; and
- (11) Disclosures required under 11 U.S.C. § 1129(a)(5) concerning the identity and affiliations of persons who will serve as officers, directors, and voting trustees of the successors to the Debtors have been made.

## **8.2 Voting Requirements for Confirmation under the Bankruptcy Code.**

### **8.2.1 General Voting Information.**

PLEASE CAREFULLY FOLLOW ALL OF THE INSTRUCTIONS CONTAINED ON THE BALLOT PROVIDED TO YOU. ALL BALLOTS MUST BE COMPLETED AND RETURNED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED.

TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE DEADLINE SET BY THE COURT AND AT THE ADDRESS SET FORTH ON YOUR BALLOT. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTORS THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE DEBTORS OR THEIR COUNSEL.

IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, IF YOU HOLD MULTIPLE GENERAL UNSECURED CLAIMS, OR UNDER CERTAIN OTHER CIRCUMSTANCES, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN, AND RETURN EACH BALLOT YOU RECEIVE.

**ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED, PURSUANT TO THE BANKRUPTCY CODE, BASED UPON THE BALLOTS OF THE CREDITORS HOLDING ALLOWED CLAIMS THAT *ACTUALLY VOTE* ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT CLAIMANTS EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.**

IF ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN: (A) THE DEBTORS MAY SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN UNDER THE CRAMDOWN PROVISIONS OF 11 U.S.C. § 1129(b) AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO THE STANDARDS OF SUCH SECTION; OR (B) THE PLAN MAY BE MODIFIED OR

WITHDRAWN WITH RESPECT TO A PARTICULAR CREDITOR, OR (C) THE PLAN MAY BE WITHDRAWN IN ITS ENTIRETY. *See* Section 7.2.

#### 8.2.2 **Classes Entitled to Vote on the Plan.**

(a) **Generally.** Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are “impaired” under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interests that are not impaired are *not* entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan unless such Class otherwise indicates acceptance. *The classification of Claims and Interests under the Plan is summarized, together with an indication of whether each Class of Claims or Interests is impaired, in Section 6.5.*

(b) **Contested and Unliquidated Claims.** Contested, disputed, contingent, and/or unliquidated Claims are *not* entitled to vote to accept or reject the Plan. If your Claim has been estimated for voting purposes by Court Order, you will be allowed to vote your Claim in the amount estimated by said Order. If ballots are erroneously sent to a Creditor not entitled to vote, then the ballot will not be counted in the calculation of the Creditors voting to accept or reject the Plan. If you are a Creditor holding a contested or disputed claim, you may ask the Court to have your Claim temporarily allowed for the purpose of voting pursuant to Fed. R. Bankr. P. 3018.

#### 8.2.3 **Voting Procedures and Requirements.**

(a) **Ballots and Voting.** Creditors holding Allowed Claims entitled to vote on the Plan will be sent a ballot, together with instructions for voting, with this Disclosure Statement. Creditors should read the ballot carefully and follow the instructions contained therein. In voting to accept or reject the Plan, you must use *only* the ballot sent to you with this Disclosure Statement. Creditors entitled to vote must complete, sign, and return their ballots to counsel for the Debtors on or before the Voting Deadline. Fed. R. Bankr. P. 3018(a) permits a Creditor, for cause, to petition the Court to permit it to change or withdraw its vote on a plan. Any such petition must be made before the Confirmation Hearing, unless otherwise permitted by the Court. The Debtors will present the results of the voting to the Bankruptcy Court at the Confirmation Hearing.

(i) **Lost or Damaged Ballots.** If you are entitled to vote and you did not receive a ballot, received a damaged ballot, or lost your ballot, please contact Pam Lickert at DelCotto Law Group PLLC at (859) 231-5800 or plickert@dlgfirm.com. Also, this Disclosure Statement, the Plan, and all of the related Exhibits and Schedules are available upon request to any party in interest by contacting the Debtors’ counsel.

(ii) **Effective Transmittal of Ballots.** Votes cannot be transmitted orally or by facsimile. Accordingly, you are urged to return your signed and completed ballot by hand delivery, overnight service, email, or regular U.S. mail, promptly.

(b) **Requirements for Class Acceptance.** As a condition of Confirmation, the Bankruptcy Code requires that each class of Claims that is impaired vote to accept the Plan, subject to the exception of 11 U.S.C. § 1129(b), which still requires one class of Claims that is impaired to have voted to accept the Plan. A class of Claims accepts the Plan if: (i) holders of at least two-thirds in the total dollar amount of Allowed Claims in that class, and (ii) a majority in number of holders of Claims in that class, vote to accept the Plan.

### 8.3 **General Requirements for Confirmation under the Bankruptcy Code.**

8.3.1 **Best Interests of Creditors/Liquidation Analysis.** Notwithstanding acceptance of the Plan by each impaired Class, to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the “best interests” test requires that the Bankruptcy Court find that the Plan provides to each member of such impaired Class a recovery on account of the member’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the applicable Debtor or Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each impaired Class of Claims or Interests would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Chapter 11 Bankruptcy Cases were converted to Chapter 7 cases under the Bankruptcy Code and the Debtors’ Assets were liquidated by a Chapter 7 trustee (the “Liquidation Value”). The Liquidation Value would consist of the net proceeds from the disposition of the assets of the Debtors, augmented by any cash held by the Debtors.

The Liquidation Value available to holders of Unsecured Claims and Interests would be reduced by, among other things: (a) the Claims of secured creditors to the extent of the value of their collateral; (b) the costs, fees, and expenses of the liquidation, as well as other administrative expenses of the Debtors’ Chapter 7 cases; (c) unpaid Administrative Claims of the Chapter 11 Cases; and (d) Priority Claims and Priority Tax Claims. The Debtors’ costs of liquidation in Chapter 7 would include the compensation of a trustee, as well as of counsel and of other professionals retained by a trustee, asset disposition expenses, applicable taxes, litigation costs, claims arising from the operation of the Debtors during the pendency of the Chapter 7 cases, and all unpaid Administrative Claims incurred by the Debtors during the Chapter 11 cases that are allowed in the Chapter 7 cases. The liquidation itself would likely accelerate the payment of certain Priority Claims and Priority Tax Claims that would otherwise be payable in the ordinary course of business. These Priority Claims and Priority Tax Claims would be paid to the extent possible out of the net liquidation proceeds, after payment of Secured Claims, before the balance would be made available to pay Unsecured Claims or to make any distribution in

respect of Interests. The Debtors believe that the liquidation also would generate an increase in Unsecured Claims, such as rejection damages Claims, and Tax and other governmental Claims.

The information contained in **Exhibit H** attached hereto provides a summary of the Liquidation Values of the Debtors' Assets, assuming a hypothetical Chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the Debtors' Assets.

In summary, the Debtors believe that Chapter 7 liquidation of the Debtors would result in diminution in the value to be realized by holders of Claims, as compared to the proposed distributions under the Plan, because of, among other factors: (a) the negative impact of conversion to a Chapter 7 case and subsequent expedited liquidation on the Debtors' employees; (b) additional costs and expenses involved in the appointment of trustees, attorneys, accountants, and other professionals to assist such trustees in the Chapter 7 cases; and (c) additional expenses and Claims, some of which would be entitled to priority in payment, that would arise by reason of a liquidation. Consequently, the Debtors believe that the Plan will provide a greater ultimate return to holders of Claims than a Chapter 7 liquidation.

8.3.2 **Feasibility of Plan.** Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation of the Debtors or any successor to the Debtors, or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the Plan. Based on the Debtors' analysis, the Reorganized Debtors will have sufficient assets and business operations to accomplish their tasks under the Plan. Therefore, the Debtors believe that their reorganization pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code. To support this contention, the Debtors' financial projections over the first five years of the Plan term are attached hereto as **Exhibit I**.

8.3.3 **Compliance with Applicable Provisions of the Bankruptcy Code.** Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtors have considered each of these issues in the development of the Plan and believe that the Plan complies with all provisions of the Bankruptcy Code.

#### 8.4 **Confirmation.**

8.4.1 **Confirmation Hearing.** The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtors have fulfilled the Confirmation requirements of 11 U.S.C. § 1129. The Confirmation Hearing has been or will be scheduled by Order of the Court and you will or have received notice of the hearing by separate notice/order. If you have any questions concerning the hearing, please contact the undersigned counsel.

8.4.2 **Objections to Confirmation.** Any objection to Confirmation must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount of the Claim or Interest held by the objector. Any such objections must be filed and served upon the persons designated in the notice of the Confirmation Hearing and in the manner and by the deadline described therein.

#### 8.4.3 **Methods of Confirmation.**

(a) **Confirmation Based on Plan Acceptance.** A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and a majority in number of claims of that class vote to accept the plan. Only those holders of claims who actually vote (and are entitled to vote) to accept or to reject a plan count in this tabulation. In addition to this voting requirement, 11 U.S.C. § 1129 requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan otherwise be found to be in the best interests of each holder of a claim or interest in an impaired class by the Bankruptcy Court.

(b) **Confirmation through Cramdown.** The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, so long as at least one impaired class of claims has accepted it. These “cramdown” provisions are set forth in 11 U.S.C. § 1129(b). As indicated above, the Plan may be confirmed under the cramdown provisions if, in addition to satisfying the other requirements of 11 U.S.C. § 1129(a), it: (a) is “fair and equitable;” and (b) “does not discriminate unfairly” with respect to each Class of Claims or Interests that is impaired under, and has not accepted, the Plan. The “fair and equitable” standard, also known as the “absolute priority rule,” requires, among other things, that unless a dissenting class of unsecured claims or a class of interests with respect to a debtor receives full compensation for its allowed claims or allowed interests, no holder of allowed claims or interests with respect to such debtor in any junior class may receive or retain any property on account of such claims or interests. With respect to a dissenting class of secured claims, the “fair and equitable” standard requires, among other things, that holders either: (a) retain their liens and receive deferred cash payments with a value as of the effective date equal to the value of their interest in property of the debtor’s estate; or (b) receive the indubitable equivalent of their secured claims. The “fair and equitable” standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims or allowed interests. The Debtors believe that, if necessary, the Plan may be crammed down over the dissent of certain Classes of Claims, in view of the treatment proposed for such Classes.

The requirement that the Plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Debtors do not believe that the Plan unfairly discriminates against any Class that may not accept or otherwise consent to the Plan. Subject to the conditions set forth in the Plan, a determination by the Bankruptcy Court that the Plan, as it applies to any particular Debtor, is not confirmable pursuant to 11 U.S.C. § 1129 will not limit or affect: (a) the confirmability of the Plan as it applies to any other Debtors; or (b) the Debtors’ ability to modify the Plan, as it applies to any particular Debtor, to satisfy the provisions of 11 U.S.C. § 1129(b).

8.5 **Alternatives to Confirmation.** If the Plan is not confirmed and consummated, the alternatives include preparation and presentation of an alternative plan of reorganization or a conversion of this case to one under Chapter 7 of the Bankruptcy Code. If the Court denies confirmation, the Debtors or any other party in interest could propose a different Plan. The Debtors believe such an alternative plan would result in less return to creditors than the distributions to creditors pursuant to the Plan. Before proposing the present Plan, the Debtors

explored other alternatives and engaged in negotiations with their major Secured Creditors and the Corps. The Debtors believe not only that the Plan, as described herein, fairly adjusts the rights of various classes of Creditors and enables Creditors to realize the most possible under the circumstances, but also that rejection of the Plan in favor of some alternative arrangement will require, at the very least, an extensive and time-consuming process and will not result in a better recovery for any Class.

## **ARTICLE IX**

### **CERTAIN FEDERAL TAX CONSEQUENCES**

IRS Circular 230 Disclosure: To ensure compliance with requirement imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

#### **9.1 General.**

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS, JUDICIAL DECISIONS, AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION MAY HAVE RETROACTIVE EFFECT, WHICH MAY CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW. NO RULING HAS BEEN REQUESTED FROM THE IRS, NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTORS OR HOLDERS OF CLAIMS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT ORGANIZATIONS, AND FOREIGN TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTORS. THIS DESCRIPTION DOES NOT DISCUSS THE POSSIBLE STATE TAX OR NON-U.S. TAX CONSEQUENCES THAT MIGHT APPLY TO THE DEBTORS OR TO HOLDERS OF CLAIMS.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS

REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

9.2 **Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally.** The federal income tax consequences of the implementation of the Plan to the holders of Allowed Claims will depend, among other things, on the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder receives distributions under the Plan in more than one taxable year, whether the holder's Claim is Allowed or disputed on the Effective Date, and whether the holder has taken a bad debt deduction or worthless security deduction with respect to its claim.

9.2.1 **Recognition of Gain or Loss.** In general, a holder of an Allowed Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim, less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim, and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized. The holder's amount realized generally will equal the sum of the cash and the fair market value of any other property received by the holder under the Plan on the Effective Date or a subsequent distribution date, less the amount (if any) treated as interest, as discussed below.

9.2.2 **Post-Effective Date Distributions.** Because certain holders of Allowed Claims, including Disputed Claims that ultimately become Allowed Claims, may receive cash distributions after the Effective Date, the imputed interest provisions of the Internal Revenue Code may apply and cause a portion of the subsequent distribution to be treated as interest. Additionally, because holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the holder may be deferred. All holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

9.2.3 **Receipt of Interest.** Holders of Allowed Claims will recognize ordinary income to the extent that they receive cash or property that is allocable to accrued but unpaid interest which the holder has not yet included in its income. If an Allowed Claim includes interest, and if the holder receives less than the amount of the Allowed Claim pursuant to the Plan, the holder must allocate the Plan consideration between principal and interest. The holder may take the position that the amounts received pursuant to the Plan are allocable first to principal, up to the full amount of principal, and only then to interest. However, the proper allocation of Plan consideration between principal and interest is unclear, and holders of Allowed Claims should consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.



9.2.4 **Bad Debt or Worthless Securities Deduction.** A holder who receives, in respect of an Allowed Claim, an amount less than the holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under 26 U.S.C. § 166(a) or a worthless securities deduction under 26 U.S.C. § 165(g). The rules governing the character, timing, and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

9.2.5 **Information Reporting and Withholding.** Under the Internal Revenue Code's backup withholding rules, the holder of an Allowed Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan, unless the holder comes within certain exempt categories (which generally include corporations) and, when required, either demonstrates that categorization or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

9.3 **Certain U.S. Federal Income Tax Consequences to the Debtors.** In the event that the Debtors sell any of their Assets, the Debtors will generally recognize a gain or loss on the sale of those Assets, equal to the difference between the amount realized on the sale and the adjusted tax basis of the Assets being sold. Additionally, if the Debtors convey appreciated (or depreciated) property (i.e. property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of full recourse debt, the Debtors must recognize taxable gain or loss equal to the excess or shortfall, respectively, of such fair market value over that adjusted basis. This gain or loss may be ordinary income or loss, capital gain or loss, or a combination of each, and may be offset against any applicable net operating loss carry-forwards from previous tax years.

Further, the discharge of a recourse debt obligation by the Debtors in exchange for the Debtors' payment of cash and/or transfer of property with a fair market value that is less than the adjusted issue price of the debt obligation (as determined for U.S. federal income tax purposes) may give rise to cancellation of indebtedness ("COD") income. COD income must generally be included in the Debtors' gross income, subject to certain statutory or judicial exceptions that may limit the amount of COD income required to be included. One such statutory exception applies to certain debtors whose discharge of indebtedness is granted in a case brought under Title 11 of the United States Code (relating to bankruptcy), pursuant to a court-approved plan of reorganization. A related similar exception applies to taxpayers who receive a discharge of indebtedness while insolvent.

For the foregoing reasons, the precise amount of taxable gain or loss, COD income, or both that the Debtors may realize as a result of effectuation of the Plan cannot be determined until the date of the exchange.

## **ARTICLE X**

### **ADDITIONAL INFORMATION, RECOMMENDATIONS, AND CONCLUSION**

10.1 **Additional Information.** Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance, reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement. The Debtors will file all exhibits to the Plan with the Bankruptcy Court, and the exhibits also will be available upon request from the Debtors' counsel.

10.2 **Recommendations and Conclusion.** The materials provided in this Disclosure Statement are intended to assist you in reviewing the Plan in an informed manner. If the Plan is confirmed, you will be bound by the terms of the Plan. You are urged to study these materials and make such further inquiries as you may deem appropriate.

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all holders of Claims in voting Classes to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

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Dated: August 22, 2013

Respectfully submitted,

**HAMILTON BROKERAGE, LLC**

By: Hamilton Revocable Trust, Sole Member

By /s/ James D. Hamilton  
Trustee

**HAMILTON CAPITAL, LLC**

By: Hamilton Revocable Trust, Sole Member

By: /s/ James D. Hamilton  
Trustee

**LEE'S FORD DOCK, INC.**

By: /s/ James D. Hamilton  
James D. Hamilton, President

**TOP SHELF MARINE SALES, INC.**

By: /s/ James D. Hamilton  
James D. Hamilton, President

**LEE'S FORD HOTELS, LLC**

By: Hamilton Capital, LLC, Sole Member

By: Hamilton Revocable Trust, Sole Member

By /s/ James D. Hamilton  
Trustee

**LEE'S FORD WOODS, LLC**

By: Hamilton Capital, LLC, Sole Member

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