

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:) Chapter 11
)
MW GROUP, LLC) Case No. 11-32674
)
Debtor,)
_____)
_____)

**DISCLOSURE STATEMENT TO ACCOMPANY
CHAPTER 11 PLAN OF LIQUIDATION OF BANK OF AMERICA, N.A.**

DATED NOVEMBER 16, 2012

IMPORTANT DATES

- Date by which objections to Confirmation of the Bank Plan must be filed and served: _____.
- Hearing on Confirmation of the Bank Plan: _____.

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**Attorneys for Bank of America, N.A., successor by merger to
LaSalle Bank National Association**

PLEASE READ THIS IMPORTANT INFORMATION FIRST

Bank of America, N.A. ("Bank of America"), successor by merger to LaSalle Bank National Association ("LaSalle"), files this disclosure statement ("Bank Disclosure Statement") pursuant to Bankruptcy Code section 1125 and Rule 3016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") in conjunction with its Chapter 11 Plan of Liquidation (the "Bank Plan") for MW Group, LLC ("Debtor"), filed with the Bankruptcy Court. **All capitalized terms not defined herein shall have the definition set forth in the Bank Plan.**

Two separate plans of reorganization have been proposed for Debtor's bankruptcy estate - (1) the Bank Plan, submitted by Bank of America and (2) the Plan of Reorganization Pursuant to Section 1125 of the Bankruptcy Code, submitted by Debtor (the "Debtor Plan," collectively with the Bank Plan, the "Plans"). Both Bank of America and Debtor are soliciting acceptances with respect to the Bank Plan and the Debtor Plan respectively. A copy of the Bank Plan is enclosed herewith as **Exhibit A**, while a copy of the Debtor Plan accompanies the Disclosure Statement of MW Group, LLC Relating to Plan of Reorganization Pursuant to Section 1125 of the Bankruptcy Code ("Debtor Disclosure Statement").

This solicitation is conducted in order to obtain sufficient acceptances to enable the Bankruptcy Court to confirm one of the Plans pursuant to the provisions of Bankruptcy Code section 1129. As set forth in the Summary of Voting Procedures below, classes of Claims that are entitled to vote on the Plans will vote separately with respect to each Plan. However, the Bankruptcy Court can only confirm one plan.

The purpose of the Bank Disclosure Statement is to set forth: (a) the history of Debtor, its business, and its Chapter 11 Case; (b) information concerning the Bank Plan and Bank of America's position with respect to the Debtor Plan; (c) information for the Holders of Claims and Equity Interests regarding their rights under the Bank Plan and Bank of America's position with respect to the likely treatment of Allowed Claims against Debtor under the Debtor Plan; and (d) information to assist the Bankruptcy Court in determining whether any or all of the Plans comply with the provisions of chapter 11 of the Bankruptcy Code and whether one of the Plans should be confirmed.

On _____, the Bankruptcy Court: (i) approved this Bank Disclosure Statement, in accordance with Bankruptcy Code section 1125, as containing "adequate information" to enable a typical holder of a Claim or Equity Interest (each, a "Holder" and collectively, the "Holders" as defined in the Bank Plan) in Debtor to make an informed judgment as to whether to vote to accept or reject the Bank Plan; and (ii) authorized its use in connection with the solicitation of votes (the "Solicitation") with respect to the Bank Plan. **This Bank Disclosure Statement is not intended to replace a careful and detailed review and analysis of the Bank Plan by each Holder, but instead is intended only to aid and supplement that review. Any description of the Bank Plan is a summary only. Holders and other parties-in-interest are cautioned to review the Bank Plan and any related attachments in their entirety for a full understanding of the provisions of the Bank Plan.** This Bank Disclosure Statement is qualified in its entirety by reference to the full text of the Bank Plan and the exhibits and attachments to each of the Bank Plan. If any inconsistency exists between the terms of the Bank Plan and this Bank Disclosure Statement, the terms and provisions of the Bank Plan shall control.

Bank of America recognizes that Debtor disagrees with certain of the contentions set forth in this Summary.

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I.
SUMMARY

Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") under the Bank Plan) on October 21, 2011 (the "Petition Date" in the Bank Plan) in the Bankruptcy Court for the Western District of North Carolina (Charlotte Division) (the "Bankruptcy Court"). On _____, 2012, Bank of America filed the Bank Plan and this Bank Disclosure Statement with the Bankruptcy Court. On _____, the Bankruptcy Court approved the Bank Disclosure Statement.

Bank of America holds a secured claim totaling at least \$5,725,420.28. Under the Bank Plan, Bank of America has agreed to have its secured claim bifurcated into (a) a \$5,300,000.00 secured claim (the "Bank Secured Claim") and (b) a \$425,420.28 deficiency claim (the "Bank Deficiency Claim"). Further, pursuant to the Bank Plan, Bank of America has agreed to have its Bank Secured Claim be deemed satisfied upon receipt of payment of \$5,300,000.00 from the Cash Collateral in possession Trustee and/or Net Sale Proceeds from the Sale of Debtor's real property, including (a) that certain real property consisting of 36.5 acres of vacant land, (b) the 48 condominium units in the Marlborough Woods Condominium Association for rent, (c) the 200 apartments known as Weyland and Weyland II, and (d) all improvements and personal property located thereon or relating thereto (collectively, the "Real Property"). On the Effective Date of the Bank Plan, all of Debtor's Property, including the Real Property, will be deemed to be property of the Trust, as managed by Trustee. Trustee, on behalf of the Trust, will hold title to the Real Property and market and sell the same as soon as reasonably practicable, but no later than six (6) months after the Effective Date.

Prior to the Petition Date, Bank of America provided a loan in the original principal amount of \$6.25 million (the "Loan") to Debtor secured by the Real Property. For purposes of the Bank Plan, Bank of America has agreed to accept \$5,300,000.00 from the Net Sale Proceeds and/or Cash Collateral in the possession of Trustee on the Closing Date in satisfaction of its Bank Secured Claim under Bankruptcy Code section 506(a). Pursuant to the Bank Plan, Bank of America has agreed to subordinate its Bank Deficiency Claim to all other Allowed Claims. If the Net Sale Proceeds are less than the Bank Secured Claim amount, then Bank of America will subordinate its remaining unpaid portion of its Bank Secured Claim, along with its Bank Deficiency Claim, to all other Allowed Claims. Further, under the Bank Plan, Bank of America has agreed to allow Trustee to utilize Bank of America's Cash Collateral to ensure that each Holder of an Allowed General Unsecured Claim will receive a one hundred percent (100%) distribution on their respective Allowed General Unsecured Claims. Bank of America has not agreed, however, to allow its Cash Collateral to be used to pay the Allowed Insider Claims. As of _____, 2012, Debtor has reported that it holds Cash Collateral of \$_____, far in excess of the aggregate amount of Allowed General Unsecured Claims as forecasted by Debtor.

With respect to Bank of America's Bank Deficiency Claim, totaling approximately \$425,420.28, as part of the priority of distribution established under the Bankruptcy Code, Bank of America would normally be entitled to share equally in any distributions from Debtor's remaining assets to Holders of Allowed General Unsecured Claims. Further, should the Sale of the Real Property generate insufficient funds to satisfy Bank of America's Bank Secured Claim, Bank of America would normally be entitled to share equally in any distributions from Debtor's remaining assets to satisfy the shortfall as well. To provide the maximum possible recovery to all Holders of Allowed Claims, Bank of America has agreed to subordinate the Bank Deficiency Claim (and any portion of its Bank Secured Claim that remains unpaid after the Sale) to all other Allowed Claims against Debtor. Therefore, all Holders of Allowed Claims (excluding Bank of America as the Holder of the Bank Deficiency Claim) will be paid more under the Bank Plan than the Debtor Plan or in a Chapter 7 liquidation. Indeed, under the Bank Plan, irrespective of the actual value of the Real Property or the amount of Net Sale Proceeds, Holders of Allowed General Unsecured Claims will receive 100% distributions from the Net

Sale Proceeds and/or Cash Collateral. Moreover, if the current market value of the Real Property is greater than the aggregate value of all Allowed Claims against Debtor, then the Bank Plan will result in a greater return to the Holders of Allowed Insider Claims at a much more accelerated date than the proposal under the Debtor Plan. It should be noted, however, that Bank of America strongly disagrees with Debtor's estimation of the current market valuation of the Real Property, and believes that the Real Property will sell for much less than Debtor's appraiser has estimated.

To administer payments to Holders after confirmation, the Bank Plan provides for the formation of a liquidating trust (the "Trust" under the Bank Plan). An individual designated by Bank of America and approved by the Bankruptcy Court will act as the trustee (the "Trustee" under the Bank Plan) of the Trust. Trustee, on behalf of the Trust, will liquidate Debtor's Property (as defined in the Bank Plan), including the Real Property, and will retain the right to pursue all Causes of Action. Bank of America, to recover on its Bank Deficiency Claim will be able to recover from any Cash that may remain after the Sale of Debtor's Property and payment on all other Allowed Claims.

After confirmation of the Bank Plan, Trustee will take possession and control of, and hire a third-party to manage, the Real Property. **Other than professionals (like outside counsel), Trustee and the Real Property manager will use reasonable efforts to continue to do business with the same third-party vendors that provided service and were utilized by Debtor with respect to the Real Property prior to the Petition Date during the Operations Period (as defined in the Bank Plan).** During the Operations Period, Bank of America expects that the Real Property will operate in much the same manner as it did prior to Debtor's bankruptcy filing with the same existing tenants (subject to the Bankruptcy Court approving the assumption and assignment of the leases under the Bank Plan).

A. **Purpose of the Bank Disclosure Statement**

The purpose of this Bank Disclosure Statement is to provide Holders with adequate information about the Bank Plan to enable each Holder to make an informed judgment on the merits of the Bank Plan. This Bank Disclosure Statement does not replace the Bank Plan and therefore Holders are urged to carefully read both the Bank Plan and this Bank Disclosure Statement and to consult with counsel concerning the impact that these documents will have upon each Holder's legal rights.

Bank of America submits this Bank Disclosure Statement to all known Holders of Claims and Equity Interests of Debtor whose Claims or Equity Interests are affected under the Bank Plan. The purpose of this Bank Disclosure Statement is to present all information necessary to satisfy the requirements of the Bankruptcy Code and to enable Holders to make and form prudent decisions in exercising their rights to accept or reject the Bank Plan. By approving this Bank Disclosure Statement, the Bankruptcy Court will neither recommend acceptance nor rejection of the Bank Plan. The hearing on the Bank Disclosure Statement is to determine whether the Bank Disclosure Statement contains "adequate information" as that term is defined in Bankruptcy Code section 1125(a)(1), and approval is not tantamount to a decision on the merits of the Bank Plan.

B. **Source of Information Contained in the Bank Disclosure Statement**

Holders are encouraged to read and carefully consider the matters described in this Bank Disclosure Statement, paying careful attention to the summary of the Bank Plan and the risks of the Bank Plan. Prior to voting on the Bank Plan, each Holder of a Claim should consult such Holder's attorney, accountant, tax advisor, and financial advisor as to the effect of the Bank Plan on such Holder, including, without limitation, the tax effects of the Bank Plan. In making a voting decision, each Holder must rely on the Holder's own examination of Debtor and the terms of the Bank Plan, including the merits and risks involved.

The statements and information about Debtor, including financial information, financial projections, and information regarding Claims or Equity Interests contained in this Bank Disclosure Statement, have been prepared from information provided by Debtor and its advisors. No statement or information concerning Debtor (particularly as to financial condition or with respect to distributions to be made under the Bank Plan) or its assets, properties, or businesses that is given for the purpose of soliciting acceptances of the Bank Plan is authorized, other than as set forth in this Disclosure Statement. The information contained in this Bank Disclosure Statement has not been subject to audit by independent certified public accountants. The books and records of Debtor are not warranted or represented to be complete and historically accurate.

Nothing contained herein shall constitute an admission of any fact or liability by any party, be admissible in any proceeding involving Debtor or any other party, be deemed evidence of the tax or other legal consequences or effects of the Bank Plan, or be construed as a representation of Bank of America.

C. Explanation of the Chapter 11 Case and the Bank Plan Confirmation Process

The Bank Plan sets forth the means for satisfying Claims against Debtor under Chapter 11 of the Bankruptcy Code. Chapter 11 does not require that each Holder of a Claim against Debtor vote in favor of a plan in order for a Bankruptcy Court to confirm a plan. The Bank Plan must be accepted, however, by the Holders of at least one “impaired” Class without considering claims of an “insider” within the meaning of the Bankruptcy Code. A Holder of an Impaired Claim, as defined in Bankruptcy Code section 1124, or Equity Interest is entitled to vote to accept or reject the Bank Plan if such Claim or Equity Interest has been allowed under Bankruptcy Code section 502. In order for an impaired Class to be deemed to have accepted a plan, a majority number of Holders and two-thirds in dollar amount of the total Allowed Claims actually voting in the Class must vote in favor of the Bank Plan. These requirements will be satisfied by Bank of America’s vote in favor of the Bank Plan.

Even if all Classes of Claims and Equity Interests accept the Bank Plan, the Court may not confirm it under certain circumstances. Bankruptcy Code section 1129 sets forth the requirements for confirmation. Among other things, that section requires that the Bank Plan be in the best interest of Holders and Equity Interests and that the value to be distributed to Holders and Equity Interests be not less than the value those parties would receive if Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court may confirm the Bank Plan even though less than all of the Classes of impaired Claims or Equity Interests accept it, so long as one Class of impaired Claims (excluding insider Claims) accepts the Bank Plan. Confirmation of the Bank Plan over the objection of one or more Classes or Claims or Equity Interests is generally referred to as *Cramdown*. The circumstances under which the Court may confirm the Bank Plan over the objection of a Class of Claims or Equity Interests are set forth in Bankruptcy Code section 1129(b). The Bank Plan may be crammed-down, if, in addition to satisfying the usual requirements of Bankruptcy Code section 1129, it (1) does not discriminate unfairly, and (2) is fair and equitable with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Bank Plan. *See* 11 U.S.C. § 1129(b).

For purposes of seeking cramdown, should that alternative be necessary, Bank of America reserves the right to modify or vary the treatment of any Class, as provided in the Bank Plan. Confirmation of the Bank Plan is binding upon Debtor, all Holders, and all other parties-in-interest, regardless of whether or not they have accepted the Bank Plan.

Only one of the competing Plans may be confirmed. If the Court should determine that both the Bank Plan and Debtor Plan meet all requisite requirements for confirmation under the Bankruptcy Code, the Court will decide which of the competing Plans will be confirmed.

D. Procedure for Filing Proof of Claim and Proof of Interest

The General Bar Date for filing a Proof of Claim or Proof of Interest was February 21, 2012. If a Holder is listed in Debtor's Schedules of Assets and Liabilities as holding non-contingent, liquidated and undisputed Claims in an amount certain, that Holder was not required to file a Proof of Claim and may therefore have elected not to file such a Proof of Claim. Debtor's Schedules of Assets and Liabilities are on file at the Bankruptcy Court and are available for inspection during regular business hours.

E. Treatment of Executory Contracts and Unexpired Leases

Debtor will assume and assign certain executory contracts and unexpired leases to Trustee, as the legal owner and holder of title to the Real Property after the Effective Date. Bank of America, in the Bank Plan Supplement, will designate those executory contracts and unexpired leases in a schedule (the "Contract/Lease Schedule" under the Bank Plan) to be assumed by and assigned to Trustee and will provide notice to all counterparties to any agreement identified in the Contract/Lease Schedule within fourteen (14) days after the Confirmation Hearing. Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Bank Plan is in default shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (a) the amount of any cure payments; (b) the ability of Trustee to provide "adequate assurance of future performance" (within the meaning of Bankruptcy Code section 365) under the contract or lease to be assumed; or (c) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

Effective immediately prior to the Effective Date, Debtor shall be deemed to have rejected any executory contract or unexpired lease that is not listed in the Contract/Lease Schedule. All proofs of Claims with respect to Claims arising from the rejection of such agreements, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims arising from the rejection of an executory contract or unexpired lease not filed within such time will be forever barred from assertion against Debtor, its Estate, the Trust, the Real Property, and the Trust Assets unless otherwise ordered by the Bankruptcy Court or provided in the Bank Plan.

F. Confirming and Consummating the Bank Plan

It shall be a condition to Confirmation of the Bank Plan that all provisions, terms and conditions of the Bank Plan are approved in the Confirmation Order, in form and substance reasonably satisfactory to Bank of America. In addition, certain other conditions contained in the Bank Plan shall have been satisfied or waived pursuant to Article 4 of the Bank Plan.

Following Confirmation, the Bank Plan will be consummated on the date selected by Bank of America, after consultation with Trustee and Debtor, that is one or more business days after the Confirmation Date on which: (1) no stay of the Confirmation Order is in effect and (2) all conditions to consummation of the Bank Plan have been (a) satisfied or (b) waived (the "Effective Date" under the Bank Plan). Distributions will be made on or as soon after the Effective Date as practicable, and no later than six months after the Effective Date. It shall be a condition to Consummation of the Bank Plan that the certain conditions contained in the Bank Plan shall have been satisfied or waived pursuant to the provisions of Article 8 of the Bank Plan.

G. Risk Factors

Prior to deciding whether and how to vote on the Bank Plan, each Holder of Impaired Claims should consider carefully all of the information in this Bank Disclosure Statement, especially the Risk Factors described in Section X hereof.

Bank of America recognizes that Debtor disagrees with certain of the contentions set forth in this Article I.

II.
VOTING INSTRUCTIONS

The Bank Plan divides the Claims of Holders and Equity Interests into four (4) classes, including sub-classes. Only classes of Holders with claims or interests impaired under the Bank Plan are entitled to vote on a plan. Generally, and subject to the specific provisions of the Bankruptcy Code, this includes Holders whose Claims or Equity Interests, under the Bank Plan, may be modified in terms of principal, interest, length of time for payment, or a combination of the above. Each Holder in a Class that is not impaired under the Bank Plan is conclusively presumed to have accepted the Bank Plan, and solicitation of the acceptances from the Holders of such Claims is not required and will not be undertaken.

A. Impaired Voting Classes

Claims in Class 1, Class 2 and Class 3 are impaired under the Bank Plan, and therefore, Holders of Class 1, Class 2 and Class 3 Allowed Claims are entitled to vote to accept or reject the Bank Plan. Bank of America shall be entitled to vote the full amount of its Class 1 Bank Secured Claim with respect to the Bank Plan. Bank of America, as the proponent of the Bank Plan, is deemed to have voted the full amount of its Bank Secured Claim for the Bank Plan. Class 2 Allowed General Unsecured Claims are impaired under the Bank Plan, and therefore, Holders of Class 2 Allowed General Unsecured Claims are entitled to vote to accept or reject the Bank Plan. Bank of America with respect to its Class 2 Bank Deficiency Claim is Impaired under the Bank Plan. Bank of America shall be entitled to vote the full amount of the Bank Deficiency Claim with respect to the Bank Plan. Bank of America, as the proponent of the Bank Plan, is deemed to have voted for the Bank Plan. Class 3 Claims are impaired under the Bank Plan, and therefore, Holders of Class 3 Allowed Claims are entitled to vote to accept or reject the Bank Plan.

B. Impaired Non-Voting Class

Interests in Class 4 are deemed to have rejected the Bank Plan by virtue of Bankruptcy Code section 1126(g) and are not entitled to vote to accept or reject the Bank Plan.

C. Voting

Bank of America may vote on acceptance or rejection by completing, dating and signing the ballot, after the Court approves this Bank Disclosure Statement, and returning it to the Clerk of the Bankruptcy Court at the following address:

CLERK OF THE BANKRUPTCY COURT
CHARLES JONAS FEDERAL BUILDING
401 WEST TRADE STREET, ROOM 111
CHARLOTTE, NC 28202

IN ORDER FOR THE BALLOT BE COUNTED, THE CLERK OF THE BANKRUPTCY COURT MUST RECEIVE THE BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE BANK PLAN PRIOR TO THE VOTING DEADLINE WHICH IS _____ P.M., EASTERN TIME, ON

_____.

III.
KEY TERMS OF THE BANK PLAN

THE FOLLOWING SECTIONS SUMMARIZE CERTAIN KEY INFORMATION CONTAINED IN THE BANK PLAN. THIS SUMMARY REFERS TO, AND IS QUALIFIED IN ITS ENTIRETY BY, REFERENCE TO THE BANK PLAN. THE TERMS OF THE BANK PLAN WILL GOVERN IN THE EVENT ANY INCONSISTENCY ARISES BETWEEN THIS SUMMARY AND THE BANK PLAN.

THE COURT HAS NOT YET CONFIRMED THE BANK PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE BANK PLAN DO NOT YET BIND ANY PERSON OR ENTITY. IF THE BANKRUPTCY COURT DOES CONFIRM THE BANK PLAN, HOWEVER, THEN IT WILL BIND ALL CLAIM AND EQUITY INTEREST HOLDERS.

A. Bank Plan Summary

Treatment of Impaired Claims

Debtor will transfer and Trustee shall receive title to the Real Property upon the Effective Date. Trustee shall sell or otherwise liquidate the Real Property and other Property of Debtor as soon as reasonably practicable, but no later than six (6) months after the Effective Date. The Net Sale Proceeds from the Sale and/or the Cash Collateral in the possession of Trustee on the Closing Date shall be used to satisfy or pay Allowed Claims.

Trustee, after closing of the Sale, shall distribute all remaining Cash Collateral on hand as follows: (i) first, to pay the reasonable costs and expenses of the Trust (including professional fees) as provided in the Bank Plan under the Trust Budget (to the extent not otherwise paid pursuant to the Bank Plan); (ii) second, to pay (1) all Allowed Administrative Claims; (2) all Allowed Professional Fee Claims; (3) all Allowed Priority Tax Claims; and (4) all Allowed Secured Claims other than the Bank Secured Claim, (iii) third, to make all Bank Reconciliation Payments to all applicable Holders of Allowed General Unsecured Claims, and (iv) fourth, to pay the Bank Secured Claim.

Trustee shall distribute the Net Sale Proceeds as follows: (i) first, to pay the reasonable costs and expenses of the Trust (including professional fees) as provided in the Bank Plan under the Trust Budget (to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (ii) second, to pay (1) all Allowed Administrative Claims; (2) all Allowed Professional Fee Claims; (3) all Allowed Priority Tax Claims; and (4) all Allowed Secured Claims other than the Bank Secured Claim (each to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (iii) third, to pay the Bank Secured Claim (to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (iv) fourth, to pay Pro Rata Shares of the Unsecured Cash Distribution owed to the Holders of Allowed General Unsecured Claims and Allowed Insider Claims; and (v) fifth, to the extent Cash remains after payment pursuant to (i) to (iv) (including, *inter alia*, payment in full of all Allowed General Unsecured Claims), to pay the Bank Deficiency Claim.

Pursuant to the Bank Reconciliation Payments, Bank of America has agreed to permit Trustee to make 100% distributions to Holders of Allowed General Unsecured Claims from Cash Collateral and/or Net Sale Proceeds if the Pro Rata Share distributions of the Unsecured Cash Distribution are insufficient to pay 100% of such Allowed General Unsecured Claims after satisfaction of the Bank Secured Claim. This agreement by Bank of America to allow the use of Cash Collateral to make 100% distributions on Allowed General Unsecured Claims does not apply to Allowed Insider Claims.

Equity Interests are cancelled.

Release Provisions

In consideration of the consideration provided by Bank of America to Debtor, in the form of, *inter alia*, subordinating its Bank Deficiency Claim to all other Allowed Claims and permitting the use of its Cash Collateral to provide 100% distributions to Holders of Allowed General Unsecured Claims, Debtor will provide a general release of all claims and causes of action it may have against Bank of America.

Other Key Proposed Plan Provisions

To administer the payments under the Bank Plan to the Holders, to manage and sell the Real Property and other Property of Debtor, and to hold, prosecute, and resolve Causes of Action, the Bank Plan provides for the formation of the Trust and the appointment of a Trustee (subject to the approval of the Bankruptcy Court).

Trustee will hold title to and assume control of and/or will hire a third-party to manage the Real Property until the Sale. Trustee is expected to maintain existing relations with most of Debtor's existing vendors that service the Real Property while Trustee markets and sells the Real Property.

Valuation Assumption

Debtor's appraiser has valued the Real Property at \$_____. Bank of America strongly disagrees with this valuation, and will show, at confirmation, that the true market value of the Real Property is substantially less than this valuation. However, the final value assigned to the Real Property by the Bankruptcy Court, and the actual Net Sale Proceeds from the Real Property received by Trustee, will not affect the Distributions to be provided to the Holders of Allowed General Unsecured Claims under the Bank Plan. Any deficiency in a Allowed General Unsecured Claim Holder's Pro Rata Share of the Unsecured Cash Distribution will be augmented by the Bank Reconciliation Payment to ensure 100% distributions on all Allowed General Unsecured Claims.

B. Treatment of Claims

Under the Bank Plan, Claims against and Equity Interests in Debtor are divided into Classes. Certain unclassified Claims, including Administrative Claims and Priority Tax Claims, will receive payment in Cash either on the Effective Date, or as promptly thereafter as each such Claims are liquidated but no later than six (6) months from the Effective Date, or in installments over time as permitted by the Bankruptcy Code or as agreed with the Holders of such Claims. All other Claims and all Interests are classified into Classes for each Debtor and will receive the distributions and recoveries (if any) described in the Bank Plan.

C. Analysis of Treatment of Claims

After consideration of (1) the proposed distributions under the Debtor Plan and (2) the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including: (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee; (b) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail; and (c) substantial increases in claims which would be satisfied on a priority basis, **BANK OF AMERICA HAS DETERMINED, THAT CONFIRMATION OF THE BANK PLAN WILL PROVIDE EACH HOLDER WITH A RECOVERY THAT IS: (i) GREATER THAN OR EQUAL TO WHAT IT WOULD RECEIVE UNDER THE DEBTOR PLAN; AND (ii) NOT LESS THAN IT WOULD RECEIVE PURSUANT TO A LIQUIDATION OF DEBTOR UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.**

The Bank Plan, by subordinating its Bank Deficiency Claim (and any portion of its Bank Secured Claim that remains unpaid after the Sale) to all other Allowed Claims against Debtor, will provide all Holders of Allowed Claims against Debtor, other than Bank of America with respect to the Bank Deficiency Claim, the maximum potential amount of recovery. Further, under the Bank Plan, irrespective of the actual value of the Real Property or the amount of Net Sale Proceeds, Holders of Allowed General Unsecured Claims will receive 100% distributions from the Net Sale Proceeds and/or Cash Collateral pursuant to the Bank Reconciliation Payments. Moreover, if the current market value of the Real Property is greater than the aggregate value of all Allowed Claims against Debtor, then the Bank Plan will result in a greater return to the Holders of Allowed Insider Claims at a much more accelerated date than the proposal under the Debtor Plan. Bank of America urges Holders to carefully consider this analysis in deciding how they cast their votes with respect to the Plans.

IV.
GENERAL INFORMATION

A. Overview of Chapter 11.

Chapter 11 is the principal commercial or business chapter of the Bankruptcy Code. Chapter 11 authorizes the liquidation or reorganization of a debtor and also requires any distributions to stakeholders promote equality of treatment for similarly situated creditors and similarly situated equity interest holders.

Commencing a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession.” The principal objective of a chapter 11 case is to consummate a Chapter 11 plan. A Chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a Chapter 11 plan by a bankruptcy court binds a debtor, any issuer of securities thereunder, any person acquiring property under the plan and any creditor or equity interest holder of that debtor to the terms of the plan.

In order to solicit acceptances of a proposed plan, however, Bankruptcy Code section 1125 requires a debtor and any other plan proponents to transmit to a holder of a claim or interest with respect to such claim or interest the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the bankruptcy court as containing adequate information. This Bank Disclosure Statement is intended to comply with Bankruptcy Code section 1125.

B. Debtor's History.

Bank of America understands that Debtor disagrees with certain of the facts and contentions set forth in this section. For a recitation of the background and facts from Debtor's perspective, please consult the Debtor Disclosure Statement served herewith.

1. General Information.

Debtor is a North Carolina limited liability company, with its principal office located at 2814 Marlowe Avenue, Charlotte, NC 28208 ("Headquarters"). Debtor's primary, if not sole asset is the Real Property. In 2003, Debtor obtained the Loan from Bank of America, pursuant to which Debtor acquired certain properties constituting the Real Property. After failing to sell some of the condominium units comprising a portion of the Real Property, Debtor converted the remaining, unsold condominiums into rental units.

2. Debtor's Business and Operations.

At this time, Debtor operates the Real Property and is subject to various leases with residential tenants of the Real Property. Under the Bank Plan and as part of the transfer of the Real Property, Trustee will assume the existing residential leases, meaning that the income-generating portions of the Real Property will continue to operate in substantially the same manner as it did prior to the Petition Date. Trustee is also expected to assume some or all of Debtor's executory contracts with those parties that provide real property services and related to the Real Property.

The Land remains undeveloped and the rental revenues from the Real Property are capped by the market conditions in the surrounding area of the Real Property. Bank of America believes Debtor lacks the necessary capital or the ability to obtain financing to fund any further build-out construction on the Real Property, or to improve the revenues from the rental units at the Real Property to sufficiently meet its obligations to creditors.

C. Capital Structure and Assets.

Debtor's primary debt obligations comprise, in order of priority: Bank of America's Secured Claim and claims from insiders and trade vendors resulting from Debtor's pre-Petition Date operation of the Real Property. As more fully described below, Debtor is subject to the following debt obligations as of the Petition Date:

1. Bank of America's Secured Claim.

Debtor initially obtained the Loan from LaSalle, the predecessor to Bank of America, to finance the acquisition of certain portions comprising the Real Property and the conversion of certain unsold condominium units into apartments for rent. The Loan is evidenced by, *inter alia*, (a) the Loan Agreement, dated as of June 1, 2003, as modified by (i) that certain Modification Agreement, dated June 1, 2006, (ii) that certain Second Modification Agreement, dated September 1, 2006, (iii) that certain Third Modification Agreement, dated December 1, 2006, (iv) that certain Modification Agreement and Partial Release Deed, dated January 29, 2007, (v) that certain Fifth Modification Agreement, dated November 26, 2007, and (vi) that certain Sixth Modification Agreement, dated February 22, 2010; (b) a Mortgage Note, dated June 1, 2003, in the original principal amount of \$6.25 million (the "Note"); (c) a Deed of Trust, dated June 1, 2003 and recorded with the Public Registry of Mecklenburg County, North Carolina on November 14, 2003 in Instrument/Book No. 15473 Page No. 573 and ends with Page No. 607 (the "Deed of Trust"); and (d) an Assignment of Rents and Leases, dated June 1, 2003 and recorded with the Public Registry of Mecklenburg County, North Carolina on November 14, 2003 in Instrument/Book No. 15473 Page No. 607 and ends with Page No. 619 (the "Assignment of Rents"). Pursuant to the Deed of Trust and the Assignment of Rents, the Loan is secured, in part, by a first

mortgage and assignment of rents and leases on the Real Property. Bank of America possesses security interests and liens in and against substantially all of the assets of Debtor, including a lien on future rents (the "Prepetition Collateral").

The Loan matured on April 1, 2010, at which time Debtor defaulted on its obligations to repay the Loan. Prior to Bank of America's foreclosure of the Real Property, on the Petition Date, Debtor commenced this bankruptcy proceeding. As of the Petition Date, Debtor owed Bank of America \$5,201,057.34 in outstanding principal attributable to the Loan, \$443,938.93 in pre-bankruptcy accrued interest and \$80,424.01 in pre-bankruptcy fees, for a total amount of \$5,725,420.28 (the "Obligations"). Debtor has previously acknowledged (including in its Debtor Plan) the validity of the Obligations and the security interests and liens in and against the Prepetition Collateral securing the Obligations.

2. Other Prepetition Obligations.

Aside from approximately \$2,534,074.33 in general unsecured claims outstanding as of the Petition Date (based on Debtor's bankruptcy schedules and filed proofs of claim), unliquidated contract rejection damages, and any known or unknown claims arising from litigation proceedings and any other unknown claims, Bank of America does not believe that Debtor has incurred any other significant debt.

A substantial portion of the general unsecured claims against Debtor consist of the Insider Claims. The Insider Claims include: the claim of Laurance Freed in an amount of no less than \$223,208.01 (Claim No. 20), the claim of DDL, LLC in an amount of no less than \$717,256.33 (Claim No. 21), the claim of CF Palwaukee, LLC in the amount of \$2,150.00, the claim of Donald James in the amount of \$360,622.98 and the claim of Laurance Realty Associates, LLC in the amount of \$1,220,110.02. The claim of Laurance Freed relates to a "guaranty fee" owed by Debtor to Laurance Freed for his guaranty of Debtor's obligations under the Loan Agreement and related loan documents. The claim of DDL, LLC against Debtor relates to a promissory note made by Debtor in favor of DDL, LLC that has matured but remains unpaid. Laurance Freed and DDL, LLC were guarantors of an unrelated loan made by Bank of America to an entity affiliated with or owned in part by Laurance Freed and DDL, LLC. After obtaining judgments on those guaranties, Bank of America initiated collection efforts against DDL, LLC and Laurance Freed, resulting in assignments to Bank of America of the claims held by them against Debtor.

3. Summary of Debtor's Assets.

Substantially all of Debtor's assets are subject to Bank of America's security interests. These assets include: (1) the Real Property, which is valued by Debtor at \$_____ based upon an as-is appraisal by _____; (2) bank accounts, cash and cash equivalents reported by Debtor to total \$[-] in its [] monthly operating report [Dkt. No. []]; (3) accounts, accounts receivable, lease and contract rights to payment; (4) leases of residential units at the Real Property to Debtor's tenants; (5) equipment and furniture; (6) certain general intangibles and other rights to payment; and (7) Causes of Action. Bank of America does not agree with Debtor's valuation of the Real Property.

D. Equity Structure and Management.

1. Ownership of Debtor.

The following individuals hold the Equity Interests (Debtor is member-owned) in Debtor: (1) A. Bruce Parker: 27.5%; (2) DDL Investors, LLC: 33.229%; (3) David LaFave: 12.083%; (4) David L. Kirshenbaum Revocable Trust dated February 29, 1996, David L. Kirshenbaum, trustee: 6.042%; Thomas H. Fraerman: 3.021%; and (3) Donald R. James: 18.125%. Donald James is the manager of Debtor. Laurance Realty

Associates, LLC, an entity owned by affiliates of Debtor, DDL Investors, LLC, David LaFave and Donald James, performs the day-to-day management of the Real Property pursuant to an agreement dated November 30, 1998.

2. Management and Employees.

To manage the Real Property, Debtor employs affiliate Laurance Realty Associates, LLC as the property manager and pays Laurance Realty Associates, LLC 5% of Debtor's gross revenues per year. Kathleen O'Connor, who does not own equity in Debtor, is listed as an officer of Debtor. Additionally, Debtor's payroll expenses total approximately \$300,000.00 per year.

Bank of America recognizes that Debtor disagrees with certain of the contentions contained in Article IV.

V.

THE CHAPTER 11 CASES

As noted above, Debtor filed for Chapter 11 bankruptcy relief on October 21, 2011.

On February 20, 2012, Debtor filed its Debtor Plan and Debtor Disclosure Statement. [Dkt. No. 112, 113.] In the Debtor Plan, Debtor proposes to conduct a valuation of the Real Property. If it is determined that Bank of America is oversecured, Debtor proposes to restructure Bank of America's claim amortized over 25 years at 4.25% interest and a 7 year maturity date. If it is determined that Bank of America is undersecured, Debtor proposes to treat Bank of America's secured portion of its claim under the same terms, but to pay Bank of America's deficiency claim as a Class 4 unsecured deficiency claim to be paid over 12 months at 4.25% interest. The Debtor Plan also proposes, *inter alia*, (a) to pay all general unsecured claims over 12 months at 4.25% interest, (b) to pay a separately classified class of insider unsecured claims upon the sale or refinance of the Real Property, with 4.25% interest, and (c) to permit equity interest owners in Debtor to retain their interests. Bank of America's preliminary specific objections to the Debtor Plan and Debtor Disclosure Statement were set forth in Bank of America's Objection to Disclosure Statement [Dkt. No. 136] and are set forth below.

Bank of America recognizes that Debtor disagrees with certain of the contentions contained in Article V.

VI.

BANK OF AMERICA'S POSITION REGARDING THE DEBTOR PLAN

Bank of America has previously objected to the Debtor Disclosure Statement of the Debtor Plan, and the Bankruptcy Court previously did not approve the Debtor Disclosure Statement and ordered the filing of an amended disclosure statement. To date, Debtor has not filed an amended plan of reorganization or amended disclosure statement. Nevertheless, Bank of America believes that the Debtor Plan is unconfirmable for a number of reasons, including, *inter alia*:

1. Bank of America asserts that the Debtor Plan proposes to: (a) cramdown the Debtor Plan over Bank of America's objection; (b) pay Bank of America's Class 1 Secured Claim in a balloon payment seven years from the effective date of the Debtor Plan; and (c) pay a below-market interest rate.
2. Bank of America asserts that the Debtor Plan provides for retention of equity interests before full satisfaction of senior claims.

3. Bank of America asserts that to repay Bank of America's Class 1 Secured Claim at maturity, the Debtor Plan requires Debtor to sell or refinance the Real Property. Debtor provides no support for its conclusion that it will be able to sell the Real Property or obtain such financing for sufficient amounts to make the distributions proposed in the Debtor Plan. Without such financing, Debtor will not be able to make all proposed payments under the Debtor Plan.
4. Bank of America asserts that, based on Debtor's own cash flow projections, Debtor will not have sufficient funds to make required payments to Class 3 or Class 6 claims (as defined in the Debtor Plan) under the Debtor Plan.
5. Bank of America asserts that Debtor filed for bankruptcy protection in an attempt to favor its existing equity owners to the detriment of Bank of America. Under the Debtor Plan, Bank of America asserts that Debtor continues to favor its existing equity owners to the detriment of Bank of America.

Bank of America reserves the right to assert additional objections to the Debtor Plan following discovery and the submission of expert reports and to the extent Debtor modifies or amends the Debtor Plan.

Bank of America understands that Debtor disagrees with these contentions and asserts that the Debtor Plan meets all of the requirements of the Bankruptcy Code, is confirmable, and provides the maximum consideration of any of the proposed Plans.

VII.
**RECOMMENDATION OF BANK OF AMERICA FOR
CONFIRMATION OF THE BANK PLAN**

Bank of America believes that the Bank Plan is in the best interests of all Holders of Claims. In Bank of America's opinion, the Bank Plan is preferable to any of the alternatives described herein because: (a) it provides for a larger distribution to Holders of Allowed Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code; and (b) provides for a greater distribution in a more timely fashion to all Holders of General Unsecured Claims than would be available under the Debtor Plan, particularly if the Bankruptcy Code's "absolute priority" rule were strictly enforced. The "absolute priority" rule provides, in pertinent part, that senior classes of claims will be satisfied in full before junior classes receive any distribution. In addition, any alternative other than confirmation of the Bank Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Claims.

BANK OF AMERICA THEREFORE RECOMMENDS THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED, TIMELY SUBMIT BALLOTS VOTING FOR THE BANK PLAN.

Bank of America understands that Debtor disagrees with these contentions and Bank of America's recommendation.

VIII.
SUMMARY OF BANK PLAN.

A. Purpose and Effect of the Bank Plan

The Bank Plan's primary purpose is to (1) effectuate a transfer of the title to the Real Property to Trustee for the purpose of marketing and selling the Real Property within six (6) months of the Effective Date of the

Bank Plan, (2) pay Debtor’s various classes of creditors from the proceeds of the sale of the Real Property and/or Cash Collateral in the possession of Trustee on the Closing Date within six (6) months of the Effective Date of the Bank Plan, (3) provide for the Trust to pay Pro Rata Shares from the Unsecured Cash Distributions to Holders of Allowed Claims, with Bank to subordinate its Bank Deficiency Claim to the Holders of all other Allowed Claims, (4) allow Trustee on behalf of the Trust to pursue Causes of Action, to the extent applicable, for the benefit of all Allowed Claim Holders, and (5) provide 100% distributions for Holders of Allowed General Unsecured Claims. Should the distribution of the Pro Rata Shares of the Unsecured Cash Distributions be insufficient to satisfy the Allowed General Unsecured Claims in full, Trustee, from Cash Collateral, will pay to each Holder of an Allowed General Unsecured Claim a Bank Reconciliation Payment to ensure 100% distributions to Holders of Allowed General Unsecured Claims. Each Bank Reconciliation Payment will be made at the same time as Trustee makes each Distribution of the Pro Rata Share of the Unsecured Cash Distribution to each Holder of an Allowed General Unsecured Claim. The aggregate Bank Reconciliation Payments made from Cash Collateral shall decrease Bank of America’s Distribution on the Bank Secured Claim as provided in Section 2.3.1(a)(i) of the Bank Plan.

B. Summary of Classified Claims and Equity Interest

1. Unclassified Claims.

(a) Administrative Claims Bar Date.

All requests for payment of Administrative Claims and applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon Trustee and Bank of America at least fourteen days prior to the Confirmation Hearing or by such earlier deadline as may apply to such Administrative Claim pursuant to an earlier order of the Bankruptcy Court. Professional Fee Claims incurred during the fourteen days prior to Confirmation Hearing and through the Confirmation Date shall be filed with the Bankruptcy Court and served upon Trustee and Bank of America within fourteen days after the Confirmation Date. Except as provided herein, any Administrative Claim or Professional Fee Claim for which an application or request for payment is not filed within such time period shall be discharged and forever barred.

(b) Treatment of Administrative Claims, including Professional Fee Claims.

Allowed Administrative Claims and Professional Fee Claims incurred through the Confirmation Date shall be completely and fully satisfied by payment in Cash from Debtor or the Trust after the Effective Date, with any such payment to be made on the later of the Effective Date or the Allowance Date except as provided otherwise in the Bank Plan and to the extent that any Claimant holding an Allowed Administrative Claim or Allowed Professional Fee Claim agrees to treatment different than that proposed under the Bank Plan.

(c) Treatment of Priority Tax Claims.

Allowed Priority Tax Claims shall be completely and fully satisfied by payment of Cash from Debtor or the Trust after the Effective Date, or from the proceeds of the sale of the Real Property, with any such payment to be made no later than the later of six (6) months from the Effective Date or the Allowance Date. However, as noted in the Debtor Plan, the relevant outstanding tax obligations were paid in full in December 2011.

2. Provisions For Treatment Of Allowed Claims And Interests; Voting.

Class	Status	Voting Rights
Class 1 (Secured Claims)	Impaired	Entitled to vote

Class	Status	Voting Rights
Class 2 (Unsecured Claims)	Impaired.	Entitled to vote.
Class 3 (Insider Claims)	Impaired	Entitled to vote
Class 4 (Equity Interests)	Impaired	Not entitled to vote

The timing and procedures for all distributions specified in this section are governed by Bank Plan Articles 4, 5 and 10 of the Bank Plan. The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, confirmation and distribution, pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

(a) Class 1 - Allowed Secured Claims.

Allowed Secured Claims in Class 1 shall receive the following treatment:

- *Bank Secured Claim.* Solely for purposes of the Bank Plan, Bank of America shall be deemed to have an Allowed Secured Claim in the amount of \$5,300,000.00. Upon (a) transfer of the Real Property to Trustee, (b) Trustee's sale of the Real Property and/or liquidation of other Property, and (c) distribution of \$5,300,000.00 from Trustee to Bank of America from the Net Sale Proceeds and/or Cash Collateral in the possession of Trustee on the Closing Date, Bank of America's Allowed Secured Claim shall be deemed satisfied, subject to Bank of America's other remedies with respect to the Bank Deficiency Claim (as described below). Further, should the Net Sale Proceeds and the Cash Collateral in the possession of Trustee on the Closing Date be insufficient to satisfy the \$5,300,000.00 Bank Secured Claim, then the unpaid portion of the Bank Secured Claim shall be added to the Bank Deficiency Claim.
- *Other Secured Claims.* Allowed Other Secured Claims, including any Allowed Mechanic's Lien Claims, shall receive payment in Cash in accordance with applicable state law Lien priorities from Debtor or the Trust on or before the later of (a) six (6) months from the Effective Date or as soon as reasonably practicable thereafter, (b) the Allowance Date, and (c) the date that such Claim would be paid in accordance with any terms and conditions of any agreements or understandings relating thereto between Debtor and the Holder of such Claim.

Claims in Class 1 are Impaired under the Bank Plan. Therefore, Claimants within Class 1 are entitled to vote to accept or reject the Bank Plan. Bank of America shall be entitled to vote the full amount of the Bank Secured Claim with respect to the Bank Plan. Bank of America, as the proponent of the Bank Plan, is deemed to have voted for the Bank Plan.

(b) Class 2 - Allowed Unsecured Claims.

Allowed Unsecured Claims in Class 2 shall receive the following treatment:

- *Allowed General Unsecured Claims.* Each Allowed General Unsecured Claim in Class 2 shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Claim, its Pro Rata Share of the Unsecured Cash Distribution in Cash on the Closing Date or as soon thereafter as reasonably practicable. Should the distribution of the Pro Rata Shares of the Unsecured Cash Distributions be insufficient to satisfy the Allowed General Unsecured Claims, Trustee shall make Bank Reconciliation Payments to such Holders of Allowed General

Unsecured Claims to ensure 100% distributions. However, as noted hereinbelow, Holders of Class 3 Allowed Insider Claims and Class 2 Bank Deficiency Claim will not be entitled to receive Bank Reconciliation Payments.

- *Bank Deficiency Claim.* Bank of America shall be deemed to have an Allowed Unsecured Claim in an amount equal to \$425,420.28 (or such other amount as determined after the Sale). The Bank Deficiency Claim shall not be subject to objection, disallowance, or subordination, except that Bank of America hereby agrees to subordinate its rights to receive a Pro Rata Share of the Unsecured Cash Distribution from the Trust on account of the Bank Deficiency Claim to all other Allowed Claims. After payment of all other Allowed Claims, the Bank Deficiency Claim shall be paid from, *inter alia*, recoveries by the Trust and Trustee from all Trust Assets, including, *inter alia*, the sale of the Real Property.
- The subordination of the Bank Deficiency Claim shall not waive, alter, or in any way prejudice the right of Bank of America to assert the full amount of the Bank Deficiency Claim in any other proceeding in state or federal court for any and all causes of action Bank of America may possess, including but not limited to causes of action for indemnification and/or enforcement of any guarantee, against any third party.

Pursuant to Bankruptcy Code section 1126(f), Holders of Allowed General Unsecured Claims within Class 2, including Bank of America with respect to the Bank Deficiency Claim, are Impaired, and therefore are entitled to vote to accept or reject the Bank Plan.

Bank of America with respect to the Bank Deficiency Claim is Impaired under the Bank Plan. Bank of America shall be entitled to vote the full amount of the Bank Deficiency Claim with respect to the Bank Plan. Bank of America, as the proponent of the Bank Plan, is deemed to have voted for the Bank Plan.

(c) Class 3 - Insider Claims.

Allowed Insider Claims in Class 3 shall receive the following treatment:

Each Allowed Insider Claim in Class 3 shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Claim, its Pro Rata Share of the Unsecured Cash Distribution in Cash on the Closing Date or as soon thereafter as reasonably practicable. Should the distribution of the Pro Rata Shares be insufficient to satisfy the Allowed Insider Claims, Bank of America shall not, and is under no obligation to, authorize the payment of Bank Reconciliation Payments to Holders of Allowed Insider Claims.

Pursuant to Bankruptcy Code section 1126(f), Holders of Allowed Insider Claims within Class 3 are Impaired, and therefore are entitled to vote to accept or reject the Bank Plan.

(d) Class 4 - Interests in Debtor.

Allowed Class 4 Interests shall receive no distribution under the Bank Plan and shall retain no property whatsoever under the Bank Plan. Holders of Class 4 Claims are deemed to have rejected the Bank Plan by virtue of Bankruptcy Code section 1126(g) and is not entitled to vote to accept or reject the Bank Plan.

C. Executory Contracts.

Executory Contracts entered into by Debtor prior to the Petition Date, shall be treated as follows:

1. Treatment of Executory Contracts and Unexpired Leases To Be Assumed And Assigned To Trustee.

(a) Assumption and Cure of Executory Contracts and Unexpired Leases.

On the Effective Date, all executory contracts and unexpired leases of Debtor identified on a Schedule set forth in the Bank Plan Supplement (as it may be filed and amended prior to the Confirmation Date, the “**Contract/Lease Schedule**”), in form and substance reasonably acceptable to Bank of America and Trustee, are hereby deemed assumed and assigned to Trustee in accordance with the provisions and requirements of Bankruptcy Code sections 365 and 1123. Each executory contract and unexpired lease assumed and/or assigned pursuant to this Bank Plan Article III (or pursuant to other Bankruptcy Court order) shall remain in full force and effect and be fully enforceable in accordance with its terms, except as modified by the provisions of the Bank Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable law.

(b) Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.

Any monetary cure amounts by which each executory contract and unexpired lease to be assumed pursuant to the Bank Plan is in default shall be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by payment of the cure amount in Cash on the later of (a) the Effective Date (or as soon as practicable thereafter), (b) as due in the ordinary course of business or (c) on such other terms as Bank of America (or Trustee) and the non-Debtor counterparties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (x) the amount of any cure payments, (y) the ability of Bank of America (or Trustee) to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code section 365) under the contract or lease to be assumed or assigned, or (z) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

2. Rejection of Other Executory Contracts And Unexpired Leases.

All Executory Contracts not otherwise assumed, assumed and assigned, or rejected pursuant to Bankruptcy Code section 365 prior to the Effective Date shall be deemed rejected as of the Effective Date.

3. Approval of Assumption and Assignment or Rejection.

Entry of the Confirmation Order shall constitute the approval, pursuant to Bankruptcy Code sections 363(b), (f) and (m) and 365(a) and (f), of the assumption and assignment or rejection of all Executory Contracts.

4. Rejection Claims.

Except as the Bankruptcy Court established in the Rejection Order, or unless the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules establish an earlier deadline with regard to the rejection of particular Executory Contracts, any Claims arising out of the rejection of Executory Contracts pursuant to Section 3.1 must be filed with the Bankruptcy Court and served upon Debtor, Trustee, and Bank of America no later than thirty days after entry of the Confirmation Order. Any Claims not filed within the time set forth in the Rejection Order or as provided above, are, or will be, forever barred and will not receive any distributions under the Bank Plan. All Claims arising from the rejection of an Executory Contract shall be treated as a Class 2 General Unsecured Claim.

D. Means For Execution Of The Bank Plan.

1. The Effective Date.

The Effective Date shall be the business day designated in writing by Trustee and Bank of America on which: (a) the Closing of the transactions required and contemplated under Sections 4.2 and 8.2 of the Bank Plan shall have taken place; and (b) each condition to the occurrence of the Effective Date has been satisfied or waived by the applicable party pursuant to Section 8.3 of the Bank Plan.

2. Transactions at or Before Effective Date.

The following shall occur after the Confirmation Date, but at or before the Effective Date and shall be effective as of the Effective Date.

(a) Transfer of Property.

On the Effective Date, all of Debtor's Property, including the Real Property, shall be deemed to be property of the Trust, free and clear of all Encumbrances. Trustee is authorized on behalf of Debtor to sign and deliver to Trustee, on behalf of the Trust, such deeds, bills of sale, assignments and other conveyance documents as Bank of America or Trustee reasonably requests. If necessary, at the request of Trustee, Debtor shall sign and deliver such deeds, bills of sale, assignments and other conveyance documents as Bank of America or Trustee reasonably requests, but Debtor's failure to sign and deliver such conveyance documents shall not impair the transfer of title of Debtor's Property to the Trust. Further, to the extent necessary, upon request from Trustee, the Court shall direct Debtor to execute and deliver such requested conveyance documents pursuant to Bankruptcy Code sections 363, 1123 and/or 1142.

(b) Execution of the Trust Agreement; Purpose of the Trust.

The Trust Agreement shall be executed by all necessary parties thereto. The Trust is established for the purpose of satisfying Claims by liquidating the Trust Assets and such Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, maintaining and preserving the Trust Assets, including the Real Property, until the liquidation of Debtor's Property. No other business activities will be conducted by the Trust other than those associated with or related to maintaining and preserving the Real Property prior to the sale of the Real Property, and the liquidation of the Trust Assets. The purpose of the Trust is to provide a mechanism for the liquidation of the Trust Assets and to distribute the proceeds of the liquidation to (collectively, the "Beneficiaries"): (a) the holders of all Allowed Claims, and (b) after payment in full to the holders of all other Allowed Claims, Bank of America, as the holder of the Bank Deficiency Claim.

All payments pursuant to Section 4.2.4 of the Bank Plan shall be net of all expenses, charges, liabilities, and obligations of the Trust, which will be treated as Allowed Claims, in accordance with the terms of the Bank Plan.

It is intended that the Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Treasury Regulations. All parties hereto shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code (including, §§ 61(12), 483, 1001, 1012, and 1274). All parties hereto shall treat the transfers in trust as if all the transferred assets, including all the Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code as the grantors of the Trust and the owners of the Trust. All income of the Trust shall be taxed directly to its

Beneficiaries (except to the extent the IRS is a Beneficiary). Trustee shall file returns for the Trust as a grantor trust pursuant to Section 1.671-4(a) or (b) of the Treasury Regulations.

The parties hereto, including Trustee and the Beneficiaries, shall value the Property transferred to the Trust consistently and such valuations shall be used for all federal income tax purposes. The Beneficiaries (except to the extent the IRS is a Beneficiary) shall be responsible for payment of any taxes due with respect to the operations of the Trust. The Trust shall terminate on the date which is the fifth anniversary of its establishment unless sooner terminated, or unless its termination date is extended by the Bankruptcy Court as provided in the Trust Agreement. During its existence, the Trust shall not receive or retain Cash or Cash equivalents in excess of a reasonable amount necessary to meet Claims and contingent liabilities (including Disputed Claims) or to maintain the value of the Trust Assets during liquidation.

The Trust shall distribute to the Beneficiaries all its net income and all the net proceeds from the liquidation of Trust Assets, less such net income or net proceeds reasonably necessary to maintain the value of the Trust Assets or to meet Claims or contingent liabilities (including Disputed Claims). Trustee shall use his/her continuing best efforts to dispose of the Trust Assets, make timely Distributions, and shall not unduly prolong the duration of the Trust.

3. Trustee Powers and Duties.

Subject to the oversight of Bank of America, Trustee shall have the rights and powers set forth in the Trust Agreement. Trustee shall be governed in all things by the terms of the Trust Agreement and the Bank Plan. Trustee shall administer the Trust, and its assets, and make Distributions from the proceeds of the assets of Trust in accordance with the Bank Plan. Subject to the oversight of Bank of America, Trustee shall be authorized, empowered and directed to take all actions necessary to comply with the Bank Plan and the Trust and exercise and fulfill the duties and obligations arising thereunder, including, without limitation, to:

(a) employ, retain, and replace one or more actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of Trustee under the Bank Plan and the Trust, including, without limitation, authority to retain (i) a real estate broker to market and sell the Real Property within six (6) months of the Effective Date and (ii) a property manager to oversee and operate the Real Property during the Operations Period;

(b) establish reserves and open, maintain and administer bank accounts with Bank of America as necessary to discharge the duties of Trustee under the Bank Plan and the Trust, including, without limitation, bank accounts related to the operation of the Real Property during the Operations Period;

(c) dissolve Debtor and wind up the financial and other affairs of Debtor and the Estate in accordance with the Bank Plan, the Trust Agreement and applicable law;

(d) administer, sell, liquidate or otherwise dispose of the Property, including the Real Property, or any portion thereof, in accordance with the terms of the Bank Plan;

(e) pay Allowed Claims, costs, fees and expenses from the Cash Collateral and the Net Sale Proceeds in accordance with the Bank Plan;

(f) represent the Trust before the Bankruptcy Court and other courts of competent jurisdiction with respect to matters concerning the Trust, the Property, or the Real Property;

- (g) file an application to close the Chapter 11 Case pursuant to Bankruptcy Code section 350;
- (h) comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;
- (i) comply with all applicable laws and regulations concerning the matters set forth herein;
- (j) exercise such other powers as may be vested in Trustee pursuant to the Trust Agreement, the Bank Plan, or other Final Orders of the Bankruptcy Court; and
- (k) execute and file any documents, instruments, contracts, forms, returns, pleadings and agreements necessary and appropriate to carry out the powers and duties of Trustee.

4. Fees and Expenses.

From the Effective Date forward, Trustee's compensation shall be as provided in the Trust Agreement. Compensation of Trustee and the costs and expenses of Trustee, and the Trust (including, without limitation, professional fees and expenses) shall be paid from first from Cash Collateral on hand at the Closing and second from the Net Sale Proceeds. Without limitation of the forgoing, Trustee shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of Trustee and Trustee's professionals, as necessary to discharge Trustee's duties under the Bank Plan, subject only to such notice procedures as set forth in the Trust Agreement.

5. Retention of Professionals and Compensation Procedure.

On and after the Effective Date, Trustee may engage such professionals and experts as deemed necessary and appropriate by Trustee to assist Trustee in carrying out the provisions of the Bank Plan. For services performed from and after the Effective Date, professional Persons engaged by Trustee shall receive compensation and reimbursement of expenses in the manner set forth in the Trust Agreement.

6. Sale of the Real Property.

As soon as reasonably practicable but no later than six (6) months after the Effective Date, Trustee, on behalf of the Trust for the benefit of the beneficiaries of the Trust (without further motion, notice or order of the Bankruptcy Court, subject to the terms of the Trust Agreement), expeditiously shall liquidate the Real Property, on the terms and conditions set forth in the Trust Agreement and the Bank Plan and distribute the Net Proceeds thereof to the holders of Allowed Claims in accordance with the Trust Agreement and the Bank Plan. All sales of Property by Trustee, including the Sale, shall be deemed made pursuant to the Bank Plan and authorized by the Confirmation Order and (a) shall be free and clear of all Liens, Claims, encumbrances and other Interests pursuant to Bankruptcy Code section 363(f) and 1123(a)(5)(D), with all such Liens, Claims, encumbrances and other interests attaching to the Net Proceeds of such sales subject to the terms and conditions of the Bank Plan; and (b) pursuant to Bankruptcy Code section 1146(a) shall not be taxed under any law imposing a stamp tax or similar tax. Bank of America shall be permitted to credit bid at the Sale of the Real Property up to a maximum amount of \$5,300,000.00. If such credit bid is the prevailing bid, Bank of America shall be permitted and obligated to offset any credit bid against the Bank Secured Claim under the Bank Plan.

7. Trust Distributions.

Upon the completion of the Sale, the Net Sale Proceeds and any remaining Cash Collateral shall be distributed (without interest) consistent with the treatment provided in this Bank Plan to the Holders of Allowed

Claims. Any such distributions shall be in lieu of any other distribution. Distributions from the Trust shall be made by Trustee as follows:

(a) Trustee, after closing of the Sale, shall distribute all remaining Cash Collateral on hand as follows: (i) first, to pay the reasonable costs and expenses of the Trust (including professional fees) as provided in the Bank Plan under the Trust Budget (to the extent not otherwise paid pursuant to the Bank Plan); (ii) second, to pay (1) all Allowed Administrative Claims; (2) all Allowed Professional Fee Claims; (3) all Allowed Priority Tax Claims; and (4) all Allowed Secured Claims other than the Bank Secured Claim, and (iii) third, to pay the Bank Secured Claim;

(b) Trustee shall distribute the Net Sale Proceeds as follows: (i) first, to pay the reasonable costs and expenses of the Trust (including professional fees) as provided in the Bank Plan under the Trust Budget (to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (ii) second, to pay (1) all Allowed Administrative Claims; (2) all Allowed Professional Fee Claims; (3) all Allowed Priority Tax Claims; and (4) all Allowed Secured Claims other than the Bank Secured Claim (each to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (iii) third, to pay the Bank Secured Claim (to the extent not otherwise paid pursuant to the Bank Plan or from Cash Collateral); (iv) fourth, to pay Pro Rata Shares of the Unsecured Cash Distribution owed to the Holders of Allowed General Unsecured Claims; (v) fifth, to pay Pro Rata Shares of the Unsecured Cash Distribution owed to the holders of Allowed Insider Claims; and (vi) sixth, to the extent Cash remains after payment pursuant to (i) to (v) (including, *inter alia*, payment in full of all Allowed General Unsecured Claims), to pay the Bank Deficiency Claim.

8. Dissolution of Debtor; Cancellation of Equity Interests.

On the Effective Date, or as soon thereafter as is practicable, Trustee shall file articles of dissolution dissolving Debtor in accordance with applicable law. The Confirmation Order shall provide that Trustee is an authorized signatory to execute on behalf of Debtor any and all documents to accomplish such dissolution.

On the Effective Date, (a) all outstanding shares or membership interests in Debtor shall be cancelled and extinguished and all certificates representing Interests in Debtors shall become void without the need for further action; and (b) the articles of incorporation or organization and the by-laws or operating agreement of Debtor (to the extent necessary) shall be deemed amended and restated as necessary to effectuate the Bank Plan.

9. Execution of Documents and Corporate Action.

Trustee will deliver all documents including, *inter alia*, the conveyance documents, and perform all actions reasonably contemplated with respect to implementation of the Bank Plan and the transfer of the Property (including the Real Property) to the Trust. Trustee will be designated the authorized representative to execute on behalf of Debtor, in a representative capacity and not individually, any documents or instruments to be executed by Debtor on and after the Effective Date in order to consummate the Bank Plan.

10. Designation of Trustee and Terms of Compensation.

No later than five (5) days prior to the commencement of the Confirmation Hearing, Bank of America shall nominate the initial Trustee. As of the Effective Date, Trustee shall be approved to serve in accordance with Trust Agreement. For purposes of performing his or her duties and fulfilling his or her obligations under the Trust Agreement and the Bank Plan, Trustee shall be deemed to be a "party in interest" within the meaning of Bankruptcy Code section 1109(b). Trustee shall be the "administrator" of the Trust as that term is used in

Treas. Reg. Section 1.468B-2(k)(3). As consideration for Trustee's services, Trustee shall receive the compensation set forth in the Trust Agreement.

11. Good Faith.

Confirmation of the Bank Plan shall constitute a finding that: (a) the Bank Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code, and (b) all solicitations of acceptances or rejections of the Bank Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

12. Officers and Directors After Effective Date.

On the Effective Date, any remaining managers or officers of Debtor shall be deemed to have resigned, except for Trustee who shall be authorized to take all actions reasonable and necessary to ensure that Debtor is dissolved. In the event Trustee is unable or unwilling to ensure that Debtor is dissolved, Trustee shall be authorized to serve as a member and/or a manager of Debtor.

13. Waiver of Federal Rule of Bankruptcy Procedure 3020(e).

The Confirmation Order shall include (a) a finding that Fed. R. Bankr. P. 3020(e) shall not apply to the Confirmation Order and (b) authorization for the consummation of the Bank Plan and the transactions contemplated by the Bank Plan immediately after entry of the Confirmation Order. Bank of America recognizes that Debtor disagrees with and may oppose such relief.

E. General Provisions Governing Distributions By Debtor Prior To Effective Date.

1. Applicability of Bank Plan Article 5.

Bank Plan Article 5 shall only apply to Distributions to Claimants made by Debtor prior to the Effective Date. Distributions made by the Trust are governed by the Trust Agreement.

2. Place and Manner of Payments or Distributions.

Should Debtor make Distributions to the holders of Allowed Claims prior to the Effective Date, such Distributions shall be delivered by either: (a) mail to the Claimant at the address of such Claimant as listed in the Schedules, or listed on any Proof of Claim filed by the Claimant; or (b) by mail to such other address or by wire transfer to the destination that such Claimant shall have specified for payment purposes in a written notice to Debtor and filed with the Bankruptcy Court.

Unless otherwise required by Final Order of the Bankruptcy Court or applicable bankruptcy law, interest shall not accrue or be paid after the Filing Date on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Filing Date on any Claim.

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent. No interim Distribution will be made on account of any Allowed Claim if the amount of such Distribution is less than \$20.00. On the date of the last Distribution from the Trust under the Bank Plan, Trustee shall (i) aggregate the amount of all Distributions that would have been made on account of an Allowed Claim but for this *de minimis* provision and (ii) make a Distribution on account of such Allowed Claim in accordance with the Bank Plan.

Subject to Bankruptcy Code section 553, in the event Debtor has a Claim of any nature whatsoever against a holder of a Claim, Trustee may, but is not required to, set off or recoup Debtor's Claim against such Claim (and any Distributions or other rights to receive property arising out of such Claim under the Bank Plan). Neither the failure to set off nor the allowance of any Claim under the Bank Plan shall constitute a waiver or release of any Claim of Debtor.

In making Distributions under the Bank Plan, Trustee may rely upon the accuracy of the claims register maintained by the Bankruptcy Court or its designee as claims agent in the Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

3. Undeliverable Distributions.

If a Distribution to any Claimant is returned as undeliverable, Debtor shall use reasonable efforts to determine such Claimant's current address and no further Distributions shall be made to such Claimant until a current address is obtained by Debtor or Trustee (after the Effective Date).

4. Treatment of Unclaimed or Undeliverable Distributions.

If any Claimant entitled to Distributions from Debtor cannot be located prior to the Effective Date, then, subject to the provisions of Section 5.4 of the Bank Plan, such Distribution shall be transferred to the Trust and, in the case of Cash, held in an interest-bearing account or fund maintained by Trustee for purposes of holding such Distributions. Any Distribution that is unclaimed shall revert to the Trust after ninety days from the date the Distribution was sent to Claimant, shall be deemed to be part of the Estate Assets, and shall be distributed to remaining Claimants in accordance with the terms of this Bank Plan.

5. Compliance with Tax Requirements.

Each Claimant shall have an affirmative duty to provide Debtor with its Federal Tax Identification Number. In lieu of backup withholding, Debtor may suspend Distribution to any Claimant that has not provided its Federal Tax Identification Number or Social Security Number, as the case may be. Any such Distributions that remain suspended as of the Effective Date shall be transferred to the Trust and held in an interest-bearing account or fund maintained by Trustee pending receipt by Trustee of such information if deemed necessary by Trustee.

In compliance with Bankruptcy Code section 346, to the extent applicable, Trustee shall comply with all withholding and reporting requirements imposed by federal, state or local taxing authorities in connection with making Distributions pursuant to the Bank Plan and shall be authorized to take any and all action necessary and appropriate to comply with such requirements

F. Discharge, Release And Extinguishment Of Liens, Claims, Interests, And Encumbrances.

1. No Discharge of Debtor.

As a Chapter 11 plan of liquidation, Debtor shall not be discharged under Bankruptcy Code section 1141 nor shall the Bank Plan release or discharge claims against any other Person, including but not limited to guarantors of obligations of Debtor except as specifically provided otherwise in Section 6.3 of the Bank Plan.

2. Limitation on Fiduciary Liability of Trustee.

Only holders of Allowed Claims shall be beneficiaries of the Trust.

3. Releases in Favor of Bank of America.

ON THE EFFECTIVE DATE, IN CONSIDERATION OF THE AGREEMENT OF BANK OF AMERICA TO SUBORDINATE ITS BANK DEFICIENCY CLAIM AND TO ALLOW THE USE OF BANK OF AMERICA'S CASH COLLATERAL TO PROVIDE 100% DISTRIBUTIONS TO HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS, BANK OF AMERICA AND EACH OF ITS DIRECTORS, EMPLOYEES, OFFICERS, PREDECESSORS, SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND REPRESENTATIVES (collectively, the "Bank Releasees" under the Bank Plan) SHALL BE RELEASED AND DISCHARGED OF ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, DEBTS, DAMAGES, OBLIGATIONS, COSTS, AND DEMANDS OF WHATEVER CHARACTER, NATURE, TYPE, OR DESCRIPTION, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH, DEBTOR, OR ITS CREDITORS MAY HAVE HAD, OR MAY NOW HAVE THAT RELATE IN ANY WAY TO DEBTOR, DEBTOR'S BANKRUPTCY CASE, THE BANK SECURED CLAIM OR THE BANK DEFICIENCY CLAIM, EXCEPT FOR OBLIGATIONS EXPRESSLY CONTAINED IN THE BANK PLAN; *PROVIDED, HOWEVER*, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FORGOING RELEASE, ANY OTHER SECTION OF THE BANK PLAN OR ANY OF THE OTHER BANK PLAN EXHIBITS, THIS RELEASE SHALL NOT RELEASE (X) ANY OBLIGATION OF BANK OF AMERICA UNDER THE BANK PLAN OR THE BANK PLAN EXHIBITS, OR (Y) ACTS OR OMISSIONS THAT ARE THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Bank of America believes the releases set forth in the Bank Plan and in the Release Agreement are reasonable and appropriate. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Section 6.3 of the Bank Plan and Bank Plan Exhibit A, which includes by reference each of the related provisions and definitions contained in the Bank Plan, *and further*, shall constitute the Bankruptcy Court's finding that the releases set forth in Section 6.3 of the Bank Plan and Bank Plan Exhibit A are: (a) in exchange for good and valuable consideration provided by the Bank Releasees, representing good faith settlement and compromise of the Claims released by Debtor; (b) in the best interests of Debtor and all Holders of Claims; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to Debtor or any other Person acting on behalf of it asserting any Claim released by the releases set forth in Section 6.3 of the Bank Plan and Bank Plan Exhibit A against any of the Bank Releasees or their respective property.

Any action brought against any party receiving a release hereunder or under Bank Plan Exhibit A for any matter or thing related to the Chapter 11 Case or the Bank Plan must be brought in Bankruptcy Court.

Bank of America recognizes that Debtor disagrees with and may oppose such relief.

4. Reservation of Rights.

Notwithstanding any other provision of the Bank Plan to the contrary, the release provision and the injunction set forth in Section 7.2 of the Bank Plan shall not serve to preclude Trustee on behalf of the Trust or Bank of America from enforcing any provision of this Bank Plan, any Bank Plan exhibit and/or the Confirmation Order.

G. Injunction Against Enforcement Of Pre-Confirmation Debt.

1. Term of Certain Injunctions and Automatic Stay.

All of the injunctions and/or automatic stays provided for in or in connection with the Chapter 11 Case, whether pursuant to Bankruptcy Code section 105(a), 362(a), or any other provision of the Bankruptcy Code or

other applicable law, in existence immediately prior to Confirmation shall remain in full force and effect until the injunctions set forth in Section 7.2 of the Bank Plan become effective, and thereafter if so provided by the Bank Plan, the Confirmation Order, or by their own terms. In addition, on and after Confirmation, Bank of America, Trustee or Debtor may seek such further orders as they may deem necessary to preserve the status quo during the time between Confirmation and the Effective Date.

2. Injunction Enjoining Certain Actions

Except as expressly provided herein, at all times on and after the Effective Date, Debtor and all Persons who have been, are, or may be holders of Claims against or Equity Interests in Debtor arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Property, including the Trust Assets:

- commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind arising before the Confirmation Date against Debtor, its Estate, or the Property, including the Trust Assets (including, *inter alia*, all suits, actions, and proceedings that are pending as of the Effective Date, shall be deemed to be withdrawn or dismissed with prejudice) or the Real Property, including any suit, action or other proceeding which might affect the use or enjoyment of any Trust Asset or the Real Property;
- enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against Debtor, its Estates, or the Property, including the Trust Assets or the Real Property relating to any obligation which arose prior to the Effective Date;
- creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien or Encumbrance against Debtor, its Estates, or the Property, including the Trust Assets or the Real Property;
- asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due Debtor, its Estates, or the Property, including the Trust Assets or the Real Property; and
- proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Bank Plan.

This injunction shall become effective on the Effective Date and shall continue in effect at all times thereafter. Notwithstanding anything to the contrary contained in the Bank Plan, all actions in the nature of those to be enjoined by this injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

H. **Conditions To Effective Date.**

1. Conditions to Confirmation.

Confirmation of the Bank Plan shall not occur unless the Bankruptcy Court shall have made specific findings and/or conclusions of law, each of which shall be expressly set forth in the Confirmation Order, in a form acceptable to Bank of America, including findings and/or conclusions of law to the effect that the Bank Plan satisfies each of the requirements for Confirmation contained in Bankruptcy Code section 1129, is the

result of good faith and arm's length negotiations, and is otherwise fair, equitable, and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and other federal or state law to the extent applicable.

2. Conditions to the Effective Date.

Notwithstanding any other provision of the Bank Plan, the Bank Plan exhibits and/or the Confirmation Order, the Effective Date of the Bank Plan shall not occur unless and until each of the following conditions has been satisfied or waived in accordance with Section 8.2 of the Bank Plan:

- The Bank Plan exhibits necessary or appropriate to implement the Bank Plan shall be acceptable to Bank of America and shall have been executed, delivered and, where applicable, filed with the appropriate governmental authorities; all conditions precedent to the effectiveness of each of such Bank Plan exhibits shall have been satisfied or waived by the respective parties thereto; and the Bank Plan exhibits shall be in full force and effect.
- The Trust shall have been established and Debtor's title to all Property shall have transferred to the Trust.
- The Confirmation Order shall be entered by the Bankruptcy Court and not stayed.
- All deliveries or payments required to be made pursuant to the Bank Plan by the Effective Date shall have been made or waived by the party for whose benefit such delivery is intended. All authorizations, consent and regulatory approvals required, if any, in connection with the consummation of the Bank Plan shall have been obtained, and all actions, documents, and agreements necessary to implement the Bank Plan shall have been effected or executed.

3. Waiver of Conditions.

Each of the conditions set forth in Bank Plan Article 8 above may be waived in whole or in part by Bank of America. The failure of Bank of America to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

4. Effect of Failure of Conditions; Order Denying Confirmation.

In the event that the Effective Date does not occur within six months following entry of the Confirmation Order, upon notification submitted by Bank of America to the Bankruptcy Court: (a) the Confirmation Order shall be vacated, (b) no distributions under the Bank Plan shall be made, (c) Debtor and all Holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) Debtor's obligations with respect to the Claims and Equity Interests shall remain unchanged (except to the extent of any payments made after entry of the Confirmation Order but prior to the Effective Date) and nothing contained in the Bank Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against Debtor or any other Person or to prejudice in any manner the rights of Debtor or any Person in any further proceedings involving Debtor.

If an order denying confirmation of the Bank Plan is entered by the Bankruptcy Court, then the Bank Plan shall be null and void in all respects, and nothing contained in the Bank Plan shall (a) constitute a waiver or release of any Claims against or Equity Interests in Debtor, (b) prejudice in any manner the rights of the

Holder of any Claim against, or Equity Interest in, Debtor, (c) prejudice in any manner any right, remedy or Claim of Debtor, or (d) be deemed an admission against interest by Bank of America.

5. Confirmation of Plan Over Dissenting Class.

In the event at least one Impaired Class of Claims votes to accept the Bank Plan (and at least one Impaired Class either votes to reject the Bank Plan or is deemed to have rejected the Bank Plan), Bank of America shall request that the Bankruptcy Court confirm the Bank Plan under Bankruptcy Code section 1129(b).

I. **Provisions For The Resolution Of Objections To Proofs Of Claim.**

1. Right to Object to Claims.

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, Trustee, Bank of America or any other party in interest shall have the right to make and file objections to Proofs of Claim or other applications or motions for allowance and payment of Claims, for distribution purposes, at any time on or before thirty (30) calendar days after the later of (a) the Effective Date and (b) the date on which such Claim was filed with the Bankruptcy Court unless no Proof of Claim, application or motion is required to be filed pursuant to Bankruptcy Rule 3002, the Bank Plan, or any order of the Bankruptcy Court; *provided, however*, that (i) the deadline may be extended by the Bankruptcy Court on motion by Trustee, Bank of America or any other party in interest, as applicable, and (ii) none of Trustee, Bank of America or any other party in interest may file an objection to any Claim Allowed by the Bank Plan. In addition, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, Trustee, Bank of America or any other party in interest shall have the right to make and file objections to Administrative Claims or to object to any Claim specified in the Schedules, at any time on or before thirty (30) calendar days after the later of (A) the Effective Date or (B) the date on which such Claim or motion or application seeking allowance of any such Administrative Claim was filed with the Bankruptcy Court unless no such motion for allowance or payment of such Administrative Claim or Proof of Claim is required to be filed under the Bankruptcy Code, the Bankruptcy Rules, the Bank Plan, or any order of the Bankruptcy Court; *provided, however*, that (x) this deadline may be extended by the Bankruptcy Court on motion by Trustee, Bank of America or any other party in interest and (y) none of Trustee, Bank of America or any other party in interest may file an objection to an Administrative Claim or Claim specified in the Schedules that is Allowed by the Bank Plan.

2. Deadline for Responding to Claim Objections.

A Claimant whose Claim has been objected to in accordance with Section 9.1 of the Bank Plan, must file with the Court and serve upon the parties identified in of the Bank Plan 12.1 a response to such claim objection within 15 days after service of any objection to its Claim. Failure to file such a response within the 15-day time period shall be cause for the Bankruptcy Court to enter a default judgment against the non-responding Claimant and to thereby grant the relief requested in the Claim objection.

3. Estimation of Claims.

After the Effective Date, Trustee may request the Bankruptcy Court to estimate any Claim for purposes of Allowance pursuant to Bankruptcy Code section 502(c).

4. Disallowance of Improperly Filed Claims for Distribution Purposes.

Subject to Bankruptcy Code section 502(j) and Bankruptcy Rules 3008 and 9006, any Claim for which the filing of a Proof of Claim, application or motion with the Bankruptcy Court is required under the terms of the Bankruptcy Code, the Bankruptcy Rules, any order of the Bankruptcy Court (including one providing for a Bar Date) or the Bank Plan will be disallowed for distribution purposes if and to the extent that such Proof of Claim (or other filing) is not timely and properly made.

5. No Distributions Pending Allowance.

Notwithstanding any other provision of the Bank Plan, if a Claim or any portion of a Claim is a Disputed Claim, no payment or distribution shall be made on account of such Disputed Claim, unless and until such Disputed Claim becomes an Allowed Claim.

6. Distributions After Allowance.

Payments and distributions to each holder of a Claim that is Disputed, or that is not Allowed, to the extent that such Claim ultimately becomes Allowed, shall be made in accordance with the provisions of the Bank Plan governing the Class of Claims in which such Claim is classified. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, Debtor or Trustee shall distribute to the holder of such Claim any payment or property that would have been distributed to such holder if the Claim had been Allowed as of the Effective Date (or such other date on which such distribution would have been made).

J. General Provisions Relating To Reserves Prior To Effective Date.

1. Applicability of Bank Plan Article 10.

Bank Plan Article 10 shall apply only to Distributions to Claimants made by Debtor. Provisions relating to Disputed Claims administered by the Trust are set forth in the Trust Agreement.

2. Distributions on Allowed Claims Only.

Distributions made by Debtor or Trustee under the Bank Plan shall be made only to the holders of Allowed Claims. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive the consideration otherwise provided to such Claimant under the Bank Plan.

K. Retention Of Jurisdiction.

1. Jurisdiction.

Until the Chapter 11 Case is closed pursuant to Bankruptcy Code section 350, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction permissible, including that necessary to ensure that the purposes and intent of the Bank Plan are carried out. Except as otherwise provided in the Bank Plan, the Bank Plan exhibits and/or the Confirmation Order, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Equity Interests in Debtor, and to adjudicate and enforce all other Causes of Action which may exist on behalf of Debtor. Nothing contained herein shall prevent Trustee or the Trust from taking such action as may be necessary in the enforcement of any Cause of Action which the Trust have or may have and which may not have been enforced or prosecuted by Debtor, which Cause of Action shall survive Confirmation and shall not be affected thereby except as specifically provided in the Bank Plan, the Bank Plan exhibits, and/or the Confirmation Order.

2. General Retention.

Following Confirmation, the administration of the Chapter 11 Case will continue until entry of a decree pursuant to Bankruptcy Code section 350 closing this Chapter 11 Case. Moreover, the Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court. The Bankruptcy Court shall also retain jurisdiction for the purpose of classification of any Claim and the re-examination of Claims that have been Allowed for purposes of voting only, and the determination of such objections as may be filed with the Bankruptcy Court with respect to any such Claim. The failure by Debtor or Trustee to object to or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the right of Bank of America or the Trust, or any other interested party, as the case may be, to object to or re-examine such Claim in whole or in part.

3. Specific Purposes.

In addition to the foregoing, the Bankruptcy Court, even after the this Chapter 11 Case has been closed, shall have jurisdiction to the fullest extent of the law over all matters arising under, arising in, or relating to Debtor's this Chapter 11 Case, including proceedings to:

- ensure that the Bank Plan is carried out;
- enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Bank Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Bank Plan or the Bank Disclosure Statement;
- consider any modification of the Bank Plan under Bankruptcy Code section 1127;
- hear and determine all Claims, controversies, suits and disputes against Debtor to the extent permitted under 28 U.S.C. § 1334;
- allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- hear, determine, and adjudicate any litigation involving the Avoidance Actions or other claims or causes of action constituting Estate Property;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving Debtor that may be pending on or commenced after the Effective Date;
- resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Bank Plan or the Trust, or any Entity's obligations incurred in connection with the Bank Plan or the Trust, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;
- hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any and all subordination and similar agreements among various creditors pursuant to Bankruptcy Code section 510;
- hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;

- enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;
- enter an order concluding and terminating this Chapter 11 Case;
- correct any defect, cure any omission, or reconcile any inconsistency in the Bank Plan or the Confirmation Order;
- determine all questions and disputes regarding title to the Trust Assets and any other assets of Debtor;
- classify the Claims of any Claim holders and the treatment of these Claims under the Bank Plan, to re-examine Claims that may have been allowed for purposes of voting, and to determine objections that may be filed to any Claims;
- take any action described in the Bank Plan involving the post-confirmation Debtor;
- enter a final decree in the Chapter 11 Case as contemplated by Bankruptcy Rule 3022;
- enforce, by injunction or otherwise, the provisions set forth in the Bank Plan, the Trust, the Confirmation Order, any final decree, and any Final Order that provides for the adjudication of any issue by the Bankruptcy Court; and
- enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

4. Failure of Bankruptcy Court to Exercise Jurisdiction.

If the Bankruptcy Court abstains or exercises discretion not to hear any matter within the scope of its jurisdiction, nothing herein shall prohibit or limit the exercise of jurisdiction by any other tribunal of competent jurisdiction.

L. **General Provisions Of The Bank Plan.**

1. Notices.

All notices, requests and demands required or permitted hereunder, to be effective, shall solely be set forth in writing unless otherwise expressly provided in the Bank Plan, and shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Bank of America

Seyfarth Shaw LLP

Gus A. Paloian, Esq.

Jason J. DeJonker, Esq.

131 S. Dearborn St., Suite 2400

Chicago, Illinois 60603

Tel: (312) 460-5000

Fax: (312) 460-7000

2. Dates.

The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Bank Plan, except as otherwise provided. If any payment or act under this Bank Plan is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date.

3. Further Action; Exemptions.

Nothing contained in the Bank Plan shall prevent Trustee and Bank of America from taking such actions as may be necessary to consummate the Bank Plan, even though such actions may not specifically be provided for within the Bank Plan. Trustee and Bank of America, if and to the extent necessary, may seek such orders, judgments, injunctions, and rulings that it deems necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, the Bank Plan.

Pursuant to Bankruptcy Code section 1146(c), the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, this Bank Plan or the re-vesting, transfer or sale of any real or Personal property of Debtor pursuant to, in implementation of, or as contemplated by, this Bank Plan, or the transfer of the Real Property to Trustee pursuant to this Bank Plan, shall not and may not be taxed under any state or local law imposing a stamp tax, transfer tax, sales tax or similar tax or fee.

Confirmation of the Bank Plan shall constitute a determination, in accordance with Bankruptcy Code section 1145, that except with respect to an Entity that is an underwriter as defined in Bankruptcy Code section 1145(b), Section 5 of the Securities Act of 1933, as amended, and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, broker or dealer in, a security does not apply to the offer or sale under the Bank Plan of the Trust Assets or of the exchange of Claims against Debtor for Claims against the Trust.

4. Attachments; Entire Agreement; Severability.

All attachments to the Bank Plan are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Bank Plan. All exhibits to the Bank Plan shall be filed with the Bankruptcy Court no later than ten days before the Confirmation Date or such other date as is agreed to by Debtor and Bank of America.

The Bank Plan and all exhibits thereto set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents. No Entity shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter of the Bank Plan, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing. To the extent there is any inconsistency or ambiguity between any term or provision contained in the Bank Plan, on the one hand, and the Bank Disclosure Statement, on the other, the terms and provisions of the Bank Plan shall control.

If any term or provision of the Bank Plan is held by the Bankruptcy Court, prior to or at the time of Confirmation, to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Bank Plan may, at the option of Bank of

America, remain in full force and effect and not be deemed affected. However, Bank of America reserves the right not to proceed to Confirmation or consummation of the Bank Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Bank Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

5. Plan Amendments.

Before the Confirmation Date, Bank of America may modify, amend or withdraw the Bank Plan, without approval of the Bankruptcy Court. After the Confirmation Date and subject to approval of Bank of America and the Bankruptcy Court, Trustee may amend or modify the Bank Plan to remedy any defect or omission or reconcile any inconsistencies in the Bank Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Bank Plan and so long as it does not materially or adversely affect the rights set forth in the Bank Plan of creditors and other parties in interest. Trustee reserves the right to modify the treatment of any Allowed Claim, as provided in Bankruptcy Code section 1123(a)(4), at any time after the Effective Date upon the consent of Bank of America and the holder of such Allowed Claim.

6. Binding Effect; No Waiver; Non-Debtor Waiver of Rights.

Upon occurrence of the Effective Date, the Bank Plan shall be binding on, and inure to the benefit of, Debtor, Trustee, Bank of America, and all holders of Claims and Equity Interests, and their respective successors and assigns, regardless of whether those parties voted to accept the Bank Plan.

Neither the failure of Debtor to list a Claim in its Schedules, the failure of Trustee on behalf of the Trust or Bank of America to object to any Claim or Equity Interest for purposes of voting, the failure of Trustee on behalf of the Trust or Bank of America to object to a Claim, Administrative Claim or Equity Interest prior to the Confirmation Date or the Effective Date, the failure of Trustee on behalf of the Trust or Debtor to assert a Cause of Action prior to the Confirmation Date or the Effective Date, the absence of a Proof of Claim having been filed with respect to a Claim, Administrative Claim, Interest or Cause of Action other than a legally effective express waiver or release shall be deemed a waiver or release of the right of a Debtor or Trustee on behalf of the Trust or Bank of America, before or after solicitation of votes on the Bank Plan or before or after, the Confirmation Date or the Effective Date to (a) object to or examine such Claim, Administrative Claim or Equity Interest, in whole or in part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any Cause of Action.

Non-Debtor parties shall have the right to voluntarily waive any rights, benefits or protections that are afforded to them under the provisions of the Bank Plan or any order issued in furtherance of the Bank Plan, and such waiver shall supersede such rights, benefits or protections. Any such waiver shall only be effective if such party expressly and specifically waives in writing one or more of such rights, benefits or protections.

7. Governing Law.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Bank Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina, without giving effect to any conflicts of law principles.

8. No Admissions.

Notwithstanding anything here and to the contrary, nothing contained in the Bank Plan shall be deemed as an admission by any Person with respect to any matter set forth herein.

9. Recordable Order.

Upon Confirmation of the Bank Plan, the Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications, or other supporting documents.

10. Setoffs.

Subject to the limitations provided in Bankruptcy Code section 553, Debtor (or Trustee after the Effective Date) may, but will not be required to, setoff against any Claim and the payments or other distributions to be made pursuant to the Bank Plan in respect of such Claim, claims of any nature whatsoever Debtor (or Trustee after the Effective Date) may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Bank Plan will constitute a waiver or release by Debtor (or Trustee after the Effective Date) of any such claim that Debtor (or Trustee after the Effective Date) may have against such holder.

11. Objections to Professional Fee Claims.

Objections to any application of Professional Fee Applications for compensation or reimbursement of expenses must be filed and served on the respective applicant and its counsel no later than the first Business Day following 10 calendar days (or such other period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was received.

12. Plan Supplement.

Identification of the initial Trustee, the Contract/Lease Schedule, and forms of documents and the agreements pertaining to the transfer of the Property from Debtor to Bank of America shall be contained in the Bank Plan Supplement and filed at least fourteen (14) days prior to the Confirmation Hearing, or as reasonably soon thereafter as such documents become available. Upon its filing with the Bankruptcy Court, the Bank Plan Supplement may be inspected during normal Bankruptcy Court hours, **provided however**, that Bank of America shall give direct notice of the Contract/Lease Schedule to all counterparties to executory contracts and unexpired leases to be assumed and assigned to Trustee. Holders of Claims (other than counterparties to executory contracts and unexpired leases to be assumed and assigned to Trustee) may obtain a copy of the Bank Plan Supplement upon written request to counsel to Bank of America.

M. Substantial Consummation.

1. Substantial Consummation.

The Bank Plan shall be deemed substantially consummated immediately on the final Distributions to all Holders of Allowed Claims.

2. Notice of Effective Date.

Promptly after occurrence of the Effective Date, Trustee shall file with the clerk of the Bankruptcy Court a notice that the Bank Plan has become effective; *provided, however*, that the failure to file such notice shall not affect the effectiveness of the Bank Plan or the rights or substances obligations of any Entity hereunder.

3. Final Decree.

On substantial consummation, Trustee may move for a final decree closing the Chapter 11 Case and requesting such other orders as may be necessary and appropriate.

Bank of America recognizes that Debtor disagrees with certain of the contentions contained in Article VIII.

IX.
CONFIRMATION PROCEDURES

A. **The Confirmation Hearing.**

Bankruptcy Code section 1128 requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Bank Plans (the “Confirmation Hearing” in the Bank Plan). Bankruptcy Code section 1128(b) provides that any party-in-interest may object to confirmation of the Plans.

The Bankruptcy Court has scheduled the Confirmation Hearing for _____, at _____.m. E.S.T., before the Honorable Laura T. Beyer, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Western District of North Carolina, Courtroom 126, Charles Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to confirmation of the Plans must be filed with the Bankruptcy Court and served on or before _____ in accordance with the Notice accompanying this Disclosure Statement. **THE BANKRUPTCY COURT WILL NOT CONSIDER OBJECTIONS TO CONFIRMATION UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE APPROVAL ORDER.** Objections to confirmation of the Plans must be served on the following parties:

Gus A. Paloian
Jason J. DeJonker
Seyfarth Shaw LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
Facsimile: (312) 460-7000

Travis W. Moon
Andrew T. Houston
MOON, WRIGHT & HOUSTON, PLLC
227 West Trade Street, Suite 1800
Charlotte, North Carolina 28202
Facsimile: (704) 944-0380

Attorneys for Bank of America, N.A., successor by merger to LaSalle Bank National Association

Attorneys for MW Group, LLC

1. Statutory Requirements For Confirmation Of The Bank Plan.

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of Bankruptcy Code section 1129 have been satisfied. Bank of America believe that the Bank Plan satisfies or will satisfy the applicable requirements, as follows:

- The Bank Plan complies with the applicable provisions of the Bankruptcy Code.
- Bank of America, as Plan proponent, will have complied with the applicable provisions of the Bankruptcy Code.

- The Bank Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Bank Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Bank Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (2) made before the Confirmation of the Bank Plan is reasonable; or (2) subject to the approval of the Bankruptcy Court as reasonable if it is to be fixed after the Confirmation of the Bank Plan.
- Either each Holder of an Impaired Claim or Equity Interest has accepted the Bank Plan, or will receive or retain under the Bank Plan on account of that Claim or Equity Interest, property of a value, as of the Effective Date of the Bank Plan, that is not less than the amount that the Holder would receive or retain if Debtors were liquidated on that date under Chapter 7 of the Bankruptcy Code.
- Each Class of Claims or Equity Interests that is entitled to vote on the Bank Plan has either accepted the Bank Plan or is not Impaired under the Bank Plan, or the Bank Plan can be confirmed without the approval of each voting Class pursuant to Bankruptcy Code section 1129(b).
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Bank Plan provides that all Allowed Claims against Debtor (other than the Bank Deficiency Claim) will be paid in full on the Effective Date, or as soon thereafter as practicable.
- At least one Class of Impaired Claims will accept the Bank Plan, determined without including any acceptance of the Bank Plan by any insider holding a Claim of that Class.
- Confirmation of the Bank Plan is not likely to be followed by the liquidation or the need for further financial reorganization of Debtor or any successors thereto under the Bank Plan unless such a liquidation or reorganization is proposed in the Bank Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.

Bank of America believes that: (a) the Bank Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (b) it has complied or will have complied with all of the requirements of chapter 11; and (c) the Bank Plan has been proposed in good faith. Bank of America understands that Debtor disagrees with these contentions.

2. Best Interests of Holders Test/Liquidation Analysis.

Before the Bank Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Bank Plan provides, with respect to each Class, that each Holder of a Claim or Equity Interest in such Class either: (a) has accepted the Bank Plan; or (b) will receive or retain under the Bank Plan property of a value, as of the Effective Date, that is not less than the amount that such person would receive or retain if Debtors liquidated under chapter 7 of the Bankruptcy Code.

In chapter 7 liquidation cases, unsecured creditors and interest holders of a debtor are paid from available assets generally in the following order, with no junior Class receiving any payments until all amounts due to senior Classes have been paid fully or any such payment is provided for:

- Secured creditors (to the extent of the value of their collateral);
- Priority creditors;

- Unsecured creditors;
- Debt expressly subordinated by its terms or by order of the Bankruptcy Court; and
- Equity Interest Holders.

As described in more detail in the Liquidation Analysis set forth above, Bank of America believes that the value of any distributions in a chapter 7 case would be less than the value of distributions under the Bank Plan because, among other reasons, distributions in a chapter 7 case may not occur for a longer period of time, thereby reducing the present value of such distributions. In this regard, it is possible that distribution of the proceeds of a liquidation could be delayed for a period in order for a chapter 7 trustee and its professionals to become knowledgeable about the chapter 11 cases and the Claims against Debtor. In addition, proceeds received in a chapter 7 liquidation are likely to be significantly discounted due to the distressed nature of the sale, and the fees and expenses of a chapter 7 trustee would likely exceed those of the Professionals retained by Debtor (thereby further reducing Cash available for distribution).

3. Feasibility.

The Bankruptcy Code requires the Bankruptcy Court to find, as a condition to confirmation, that confirmation is not likely to be followed by Debtor's liquidation or the need for further financial reorganization, unless that liquidation is contemplated by the Bank Plan. For purposes of showing that the Bank Plan meets this feasibility standard, Bank of America analyzed the likelihood that all Holders of Allowed Claims will receive the treatment and Distributions provided under the Bank Plan.

Bank of America believes that Debtor's available cash flow, in addition to the proceeds from the sale of the Real Property and with Bank of America's consent to Trustee making Bank Reconciliation Payments, will provide more than sufficient Cash to afford a one-hundred percent (100%) Distribution to the Holders of all Allowed General Unsecured Claims (other than Bank of America's Bank Deficiency Claim and the Holders of the Insider Claims). Bank of America is one of the world's largest financial institutions, serving individual consumers, small- and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

The Trust should have sufficient cash flow and proceeds from the sale of the Real Property to pay and service all of its obligations under the Bank Plan. Further, should such proceeds fail to satisfy all Allowed Claims, pursuant to Bank of America's guaranty, Holders of Allowed Claims (excluding the Bank Deficiency Claim and the Insider Claims) will receive 100% distributions on their Allowed Claims. Accordingly, Bank of America believes that the Bank Plan complies with the financial feasibility standard of Bankruptcy Code section 1129(a)(11). Bank of America understands that Debtor may disagree with these contentions.

4. Acceptance by Impaired Classes.

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each Class of Claims or Equity Interests that is impaired under the Bank Plan accept the Bank Plan. A Class that is not "impaired" under a plan of reorganization is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such Class is not required. A Class is "Impaired" unless the plan: (1) leaves unaltered the legal, equitable and contractual rights to which the Claim or Equity Interest entitles the Holder of that Claim or Equity Interest; (2) cures any default and reinstates the original terms of the obligation; or (3) provides that, on the consummation date, the Holder of the Claim or Equity Interest receives Cash equal

to the allowed amount of that Claim or, with respect to any interest, any fixed liquidation preference to which the interest Holder is entitled or any fixed price at which Debtor may redeem the security. Under the Bank Plan, Holders of Class 1, Class 2 and Class 3 Claims are impaired and entitled to vote.

5. Confirmation Without Acceptance by All Impaired Classes.

Bankruptcy Code section 1129(b) allows a Bankruptcy Court to confirm a plan, even if all Impaired Classes entitled to vote on the plan have not accepted it, *provided that* the plan has been accepted by at least one Impaired Class of Claims. Bank of America, as the impaired Holder of both a Class 1 Claim and a Class 2 Claim against Debtor under the Bank Plan, will support its Bank Plan and vote to accept it. Holders of Interests in Class 4 are deemed to reject the Bank Plan and, therefore, Bank of America may attempt to confirm the plan pursuant to Bankruptcy Code section 1129(b).

Bankruptcy Code section 1129(b) states that, notwithstanding an Impaired Class's failure to accept a plan of reorganization, the plan shall be confirmed, at the plan proponent's request, in a procedure commonly known as "cram-down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is Impaired under, and has not accepted, the plan.

In general, a plan does not discriminate unfairly if it treats a class substantially equivalent to how other classes that have equal rank are treated. Courts will take into account a number of factors in determining whether a plan discriminates unfairly, including the effect of applicable subordination agreements between parties. Accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

The Bank Plan provides that if any Impaired Class rejects the Bank Plan, Bank of America reserves the right to seek to confirm the Bank Plan utilizing the "cram down" provisions of Bankruptcy Code section 1129(b). To the extent that any Impaired Class rejects the Bank Plan or is deemed to have rejected the Bank Plan, Bank of America will request confirmation of the Bank Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). Bank of America reserves the right to alter, amend, modify, revoke or withdraw the Bank Plan or any Plan Exhibit or Schedule, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

B. Risk Factors.

Prior to deciding whether and how to vote on the Bank Plan, each Holder of a Claim should consider carefully all of the information in this Disclosure Statement, and should particularly consider the Risk Factors described in Section X below.

C. Identity of Persons to Contact for More Information.

Any interested party desiring further information about the Bank Plan should contact: Jason J. DeJonker, Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603, Telephone: (312) 460-5000, jdejonker@seyfarth.com.

Bank of America recognizes that Debtor disagrees with certain of the contentions contained in this Article IX.

X.

CERTAIN RISK FACTORS
AFFECTING CONFIRMATION OF THE BANK PLAN

PRIOR TO VOTING TO ACCEPT OR REJECT THE BANK PLAN, ALL HOLDERS SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS ALL OTHER INFORMATION IN THIS BANK DISCLOSURE STATEMENT.

- **Parties in Interest May Object To The Classification of Claims and Equity Interests Under The Bank Plan:** Bankruptcy Code section 1122 provides that a plan of reorganization may place a class or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. Bank of America believes that the classification of Claims and Equity Interests under the Bank Plan complies with the requirements set forth in the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will reach the same conclusion.
- **Risk of Non-Confirmation of the Bank Plan.** Although Bank of America believes that the Bank Plan will satisfy all requirements necessary for Confirmation, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Bank Plan will not be required for Confirmation or that such Modifications would not necessitate the resolicitation of votes.
- **Bank of America May Not be Able to Secure Confirmation of the Bank Plan.** A non-accepting creditor or a Holder of an Equity Interest of Debtors might challenge the adequacy of this Bank Disclosure Statement or could assert that the balloting procedures and results do not comply with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court were to determine that this Bank Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Bank Plan if it were to determine that any of the statutory requirements for confirmation had not been met, including a determination that the terms of the Bank Plan are not fair and equitable to non-accepting Classes. Bankruptcy Code section 1129 sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that a plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes, confirmation of the plan is not likely to be followed by a liquidation or a need for further financial reorganization, and the value of distributions to non-accepting Holders of Claims and interests within a particular class under the plan will not be less than the value of distributions that any such Holders would receive were the debtor to be liquidated under chapter 7 of the Bankruptcy Code.
- **Bank of America or Another Party In Interest May Object to the Amount or Classification of a Claim.** Except as otherwise provided in the Bank Plan, Bank of America, Trustee on behalf of the Trust, and all parties-in-interest reserve the right to object to the amount or classification of any Claim or Equity Interest deemed Allowed under the Bank Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim or Equity Interest where such Claim or Equity Interest is subject to an objection. Any Holder of a Claim may not receive its specified share of the estimated distributions described in this Disclosure Statement.
- **Risk of Non-Occurrence of the Effective Date.** Although Bank of America believes that the Effective Date may occur as soon as fourteen (14) Business Days after the Confirmation Date, there can be no assurance as to such timing.
- **Contingencies Not to Affect Votes of Impaired Classes to Accept the Bank Plan.** The distributions available to Holders of Allowed Claims under the Bank Plan can be affected by a variety of

contingencies, including, without limitation, whether the Bankruptcy Court orders certain Claims to be subordinated to other Claims. The occurrence of any and all such contingencies which could affect distributions available to Holders of Allowed Claims under the Bank Plan, however, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Bank Plan or require any sort of revote by the Impaired Classes.

XI.

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE BANK PLAN

If the Bank Plan is not confirmed and consummated, the alternatives to the Bank Plan include: (1) the Debtor Plan proposed by Debtor, (2) liquidation of Debtor under chapter 7 of the Bankruptcy Code; and (3) an alternative plan of reorganization proposed by Debtor, the Bank, or another interested party. Bank of America understands that Debtor may disagree with the contentions set forth in this Article XI.

A. The Debtor Plan.

For the reasons stated above, Bank of America believes that: (1) the Bank Plan will provide all Holders of Allowed Claims against Debtor, other than Bank of America with respect to its deficiency claim, the maximum possible recovery on such Allowed Claims within six (6) months of the Effective Date, including 100% distributions to Holders of Allowed General Unsecured Claims, while the Debtor Plan will likely result in substantially less recoveries to the Holders of Allowed Claims; and (2) the Bank Plan will provide faster payment of Allowed Claims than the Debtor Plan which provides for installment payments in the twelve (12) months following the Effective Date for Class 2 Claims. Unlike the Bank Plan, Bank of America also contends that the Debtor Plan is not confirmable as a matter of law.

B. Liquidation under Chapter 7.

If the Bankruptcy Court does not confirm or determines that it cannot confirm a Chapter 11 plan, Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected to liquidate the assets of Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of Holders of Claims and Equity Interests and the Bank of America's liquidation analysis is set forth in Section III.C. Bank of America believes that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Bank Plan because of: (1) the likelihood that the assets of Debtor would have to be sold or otherwise disposed of in a less orderly fashion over a shorter period of time; (2) additional administrative expenses involved in the appointment of a trustee; and (3) additional expenses and claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of Debtor's operations. In addition, Bank of America believes that no distributions will be made to any class junior to the Bank Secured Claim in a Chapter 7 liquidation, as Bank of America will not have subordinated a portion its secured claim as part of a Chapter 7 liquidation.

C. Alternative Plan of Reorganization.

If the Bank Plan is not confirmed, Bank of America, Debtor or any other party in interest could attempt to formulate a different plan. Such a plan might involve either a reorganization and continuation of Debtor's business or an orderly liquidation of its assets. With respect to an alternative plan, Bank of America has explored various alternatives in connection with the formulation and development of the Bank Plan. Bank of

America believes that the Bank Plan, as described herein, enables creditors to realize the most value under the circumstances.

XII.
MISCELLANEOUS PROVISIONS

A. Attachments; Entire Agreement.

All attachments to the Bank Disclosure Statement are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Bank Disclosure Statement.

B. Plan Amendments.

Before the Confirmation Date, Bank of America may modify, amend or withdraw the Bank Plan, without approval of the Bankruptcy Court. After the Confirmation Date and subject to approval of Bank of America and the Bankruptcy Court, Trustee may amend or modify the Bank Plan to remedy any defect or omission or reconcile any inconsistencies in the Bank Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Bank Plan and so long as it does not materially or adversely affect the rights set forth in the Bank Plan of creditors and other parties in interest. Trustee reserves the right to modify the treatment of any Allowed Claim, as provided in Bankruptcy Code section 1123(a)(4), at any time after the Effective Date upon the consent of Bank of America and the Holder of such Allowed Claim.

C. Governing Law.

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Bank Disclosure Statement and Bank Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina, without giving effect to any conflicts of law principles.

D. No Admissions.

Notwithstanding anything here and to the contrary, nothing contained in the Bank Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

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XIII.
CONCLUSION AND RECOMMENDATION

Bank of America believes the Bank Plan is in the best interests of all creditors and accordingly urges the Holders to vote to reject the Debtor Plan.

Dated: November 16, 2012
Charlotte, North Carolina

Respectfully Submitted:

BANK OF AMERICA, N.A., successor by merger
to LaSalle Bank National Association

By: /s/ D. Kyle Deak

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**Attorneys for the Bank of America, N.A., successor by merger
to LaSalle Bank National Association**

EXHIBITS

Exhibit A Chapter 11 Plan of Liquidation of Bank of America, N.A. for MW Group, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically in accordance with the local rules and was therefore served electronically on those entities that have properly registered for such electronic service including:

Andrew T. Houston
Moon Wright & Houston, PLLC
227 W. Trade Street, Suite 1800
Charlotte, NC 28202
Counsel for the Debtor

U.S. Bankruptcy Administrator
402 W. Trade Street
Suite 200
Charlotte, NC 28202-1669

and on the parties listed below by the United States Postal Service:

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Securities and Exchange Commission
Atlanta Regional Office
Office of Reorganization
950 East Paces Ferry Road, NE, Suite 900
Atlanta, GA 30326-1382

Linda W. Simpson
U.S. Bankruptcy Administrator
402 West Trade Street, Suite 200
Charlotte, NC 28202

This the 16th day of November, 2012.

TROUTMAN SANDERS LLP

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