

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Chapter 11

In re:

**CYPRESS WAY LLC and  
BCH CAPITAL LLC,**

Debtors.

Case Nos.: 17-22383 (RDD) and  
17-22384 (RDD)

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**DISCLOSURE STATEMENT FOR AMENDED PLAN OF  
REORGANIZATION OF CYPRESS WAY LLC AND BCH CAPITAL LLC**

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF  
THE PLAN FOR CYPRESS WAY LLC AND BCH CAPITAL LLC.  
ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL  
A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE  
BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING  
SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL BUT HAS  
NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE  
INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION  
OR AMENDMENT.**

**ROBINSON BROG LEINWAND GREENE  
GENOVESE & GLUCK P.C.**

**Attorneys for the Debtors**

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**A. Mitchell Greene, Esq.  
Robert M. Sasloff**

**Dated:** New York, New York  
August 23, 2017

## **DISCLAIMER**

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS SHOULD READ THIS DISCLOSURE STATEMENT AND ALL EXHIBITS HERETO, INCLUDING THE PLAN, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, AND (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS WITH "ADEQUATE INFORMATION" (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR.

## **SUMMARY**

A glossary of terms frequently used in this disclosure statement, is set forth in Article 1 of the amended plan of reorganization filed with the Bankruptcy Court.

The Debtors, Cypress Way LLC (“Cypress”) and BCH Capital LLC (BCH Capital, and together with Cypress, the “Debtors”), have filed their *Plan of Reorganization of Cypress Way LLC and BCH Capital LLC* dated June 13, 2017 (the “Plan”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). This *Disclosure Statement for Plan of Reorganization of Cypress Way LLC and BCH Capital LLC* (the “Disclosure Statement”) has been approved by the Bankruptcy Court for use in connection with the solicitation of acceptances of the Plan from holders of Claims against the Debtors pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

In the Debtors’ opinion, the treatment of claims under the Plan provides a greater recovery for Creditors than that which is likely to be achieved under other alternatives for the reorganization or liquidation of the Debtors.

**Accordingly, the Debtors believe that Confirmation of the Plan is in the best interests of Creditors and Interest Holders, and recommends that you vote to accept the Plan.**

### **THE DEBTORS**

Cypress owns a multi-family apartment complex located at 3025 Sunrise Highway, Islip Terrace, New York (the “Property”). Cypress purchased the Property in March of 2016 using the proceeds from a \$6,450,000 note and mortgage made by Creif 102 LLC (“CREIF”). Due to certain construction delays, Cypress was not able to rent out all of the units at the Property pursuant to its original schedule causing Cypress to default on the note and mortgage. Because of the default, the Lender noticed a UCC sale for the membership interests in Cypress held by BCH Capital. In order to prevent CREIF from taking over Cypress’ assets via the sale of BCH Capital’s membership interests, the Debtors filed for chapter 11 protection on the Petition Date.

### **THE PLAN**

The Plan provides for (i) paying CREIF, the largest secured creditor, 100% of its claim, over five years at 4.75% interest per annum,<sup>1</sup> with the first 24 months payable as interest only, and thereafter payable for an additional 36 months in arrears with a 25-year amortization and a balloon payment at the end of five years (ii) paying the Other Secured Claims the full amount of their Claims in Cash, (iii) paying Unsecured Claims 100% of their allowed claims in five equal installments, and (v) the Interest Holders will contribute the Contribution Amount in an amount

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<sup>1</sup> Debtor contends that the 4.75% interest rate is commercially reasonable in today’s market for this type of property. The balance of the terms of the New CREIF Security Documents will be fairly standard.

necessary to complete any renovations necessary to the Property, fund distributions under the Plan and to establish an interest reserve, if necessary. Debtors anticipate that at the term of the New CREIF Note, it will be able to refinance the debt and pay off CREIF pursuant to the terms of the Plan. It is in the experience of Debtors' management and that this proposal is feasible.

The table below provides a summary of the classification and treatment of Claims under the Plan. The figures set forth in the table below represent the Debtors' best estimate of the aggregate amount of Claims in the Case. These estimates are based on an analysis of the Schedules filed by the Debtors, the Proofs of Claims filed by Creditors, and certain other documents of public record. There can be no assurance that Claims will be allowed by the Bankruptcy Court in the amounts set forth below. The aggregate amount of Allowed Claims may be significantly lowered from the amounts set forth below as the result of objections to claims which may be brought by the Debtors or through stipulations which may be negotiated with various creditors.

Class and Estimated Amount	Type of Claim or Equity Interest	Summary of Treatment
\$0.00	Administrative Claims (excluding Claims for professional compensation and reimbursement and Administrative Tax Claims, but including post-petition ordinary course liabilities)	<b>Non-Voting.</b> Subject to the provisions of article 7 of the Plan with respect to Disputed Claims, each Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full on (i) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law, or (z) three business days after such Claim becomes an Allowed Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Debtors and the Holder of such Claim; <i>provided, however,</i> that any Administrative Claim incurred by the Debtors in the ordinary course of their business shall be paid in full or performed by the Reorganized Debtors in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.
\$ 0.00	Administrative Tax Claims	<b>Non-Voting.</b> Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, all allowed Administrative Tax Claims held by Governmental Units shall be paid, in Cash, in full either (i) on or prior to the Effective Date, or as soon as practicable thereafter, or (ii) upon such other terms as may be agreed to, in writing, between the Debtors and such Governmental Units on or before the Confirmation Date.
\$43,000	Administrative Claims for Professional Compensation and Reimbursement <sup>2</sup>	<b>Non-Voting.</b> Each Person seeking an award by the Bankruptcy Court of Professional Fees shall file its final application for approval of its Professional Fees no later than the Administrative Bar Date. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim.

<sup>2</sup> Any agreement with respect to the waiver and/or modification of fees will be disclosed to the Court and the Office

<p>\$142,000</p>	<p>Priority Tax Claims</p>	<p><b>Non-Voting.</b> In full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtors and such Governmental Units, all allowed Priority Tax Claims shall be paid by the Reorganized Debtors in Cash in full, together with interest on the Effective Date or as soon as practicable thereafter.</p>
<p>Class 1 \$9,070.00</p>	<p>Cypress Way Priority Non-Tax Claims</p>	<p><b>Unimpaired.</b> In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of a Priority Non-Tax Claim against Cypress Way shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (i) in Cash in the full amount of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the Cypress Way and the Holder of such Priority Non-Tax Claim.</p>
<p>Class 2 0.00</p>	<p>BCH Capital Priority Non-Tax Claims</p>	<p><b>Unimpaired.</b> In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of a Priority Non-Tax Claim against BCH Capital shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (i) in Cash in the full amount of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the BCH Capital and the Holder of such Priority Non-Tax Claim.</p>

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of the United States Trustee.

<p>Class 3 \$6,962,928.04<sup>3</sup></p>	<p>CREIF Secured Claim Against Cypress Way</p>	<p><b>Impaired.</b> In full satisfaction, release and discharge of the CREIF Secured Claim, the Holder of the CREIF Secured Claim shall receive, on the Effective Date, or as soon as practicable after the CREIF Secured Claim becomes an Allowed Claim, the New CREIF Note (which shall provide for payment of 100% of the claim over 5 years at 4.75% per annum, payable for the first 24 months, interest only, and thereafter, payable for an additional 36 months in arrears with a 25-year amortization), or (ii) such other treatment as to which the Debtors and the Holder of the CREIF Secured Claim shall have agreed upon in writing. The Reorganized Debtors shall be permitted to prepay the New CREIF Note at any time without premium or penalty.</p>
<p>Class 4 \$6,962,928.04<sup>4</sup></p>	<p>CREIF Secured Claim Against BCH Capital</p>	<p><b>Impaired.</b> Subject to the treatment of the CREIF Secured Claim under Art. 4.3, the CREIF Secured Claim shall continue to be secured against the membership Interests of BCH Capital pursuant to the New CREIF Security Documents.</p>
<p>Class 5 \$38,000.00</p>	<p>Cypress Way Other Secured Claims</p>	<p><b>Unimpaired.</b> In full satisfaction, release and discharge of each Other Secured Claim against Cypress Way, each Holder of a Class 5 Other Secured Claim shall receive, on the Effective Date, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim, or (ii) such other treatment as to which the Cypress Way and each Holder of such Other Secured Claim shall have agreed upon in writing.</p>

<sup>3</sup> Based on value asserted in Stipulated Order Authorizing Debtor to Use Cash Collateral Pursuant to Section 363 of the United States Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001.

<sup>4</sup> Based on value asserted in Stipulated Order Authorizing Debtor to Use Cash Collateral Pursuant to Section 363 of the United States Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001.

<p>Class 6 0.00</p>	<p>BCH Capital Other Secured Claims</p>	<p><b>Unimpaired.</b> In full satisfaction, release and discharge of each Other Secured Claim against BCH Capital, each Holder of a Class 6 Other Secured Claim shall receive, on the Effective Date, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim, or (ii) such other treatment as to which the BCH Capital and each Holder of such Other Secured Claim shall have agreed upon in writing.</p>
<p>Class 7 \$197,540.00</p>	<p>Cypress Way Unsecured Claims</p>	<p><b>Impaired.</b> In full satisfaction, settlement, release and discharge of the Class 7 Unsecured Claims against Cypress Way, Holders of Class 7 Unsecured Claims shall receive, on the Effective Date, 100% of their Allowed Claims in cash in five equal annual installment payments, with the first payment to be made on the Effective Date, with the remaining four payments to be made on the anniversary of the Effective Date.</p>
<p>Class 8 \$36,370.00</p>	<p>BCH Capital Unsecured Claims</p>	<p><b>Impaired.</b> In full satisfaction, settlement, release and discharge of the Class 7 Unsecured Claims against BCH Capital, Holders of Class 8 Unsecured Claims shall receive, on the Effective Date, 100% of their Allowed Claims in cash in five equal annual installment payments, with the first payment to be made on the Effective Date, with the remaining four payments to be made on the anniversary of the Effective Date.</p>
<p>Class 9</p>	<p>Cypress Way Interests</p>	<p><b>Unimpaired.</b> Upon the Effective Date, the Interest Holders of Cypress Way shall retain their Interests in the Cypress Way in consideration for: (1) the funding of the Contribution Amount due hereunder, and (2) the guaranty by the Interest Holder of the fees of the Court-retained professionals in these Cases, after such fees are approved by the Court.</p>
<p>Class 10</p>	<p>BCH Capital Interests</p>	<p><b>Unimpaired.</b> Upon the Effective Date, the Interest Holders of BCH Capital shall retain their Interests in the BCH Capital in consideration for: (1) the funding of the Contribution Amount due hereunder, and (2) the guaranty by the Interest Holder of the fees of the Court-retained professionals in these Cases, after such fees are approved by the Court.</p>



## CONFIRMATION OF THE PLAN

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan, on \_\_\_\_\_, 2017 at \_:\_ .m., Eastern Standard Time, in the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601. The Bankruptcy Court has directed that objections, if any, to Confirmation of the Plan be filed and served on or before \_\_\_\_2017 at \_:00 p.m., in the manner described under “ACCEPTANCE AND CONFIRMATION -- Confirmation Hearing.”

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Debtors intend to seek Confirmation of the Plan at the Confirmation Hearing. In the event that any impaired Class of Claims does not accept the Plan, the Debtors may seek a “cram down” Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. **The Debtors believe that the Plan satisfies all applicable requirements of section 1129(a) and section 1129(b) of the Bankruptcy Code.** See “ACCEPTANCE AND CONFIRMATION -- Requirements for Confirmation” for a description of such requirements.

With the entry of the Confirmation Order, pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise provided in the Plan, the distributions provided for in the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims against the Debtors or any of their assets or properties, including any Claim accruing after the Petition Date and before the Confirmation Date. As of the Effective Date, all holders of Claims shall be precluded from asserting any Claim against the Debtors or their assets or properties or other interests in the Debtors based on any transaction or other activity of any kind that occurred before the Confirmation Date except as otherwise provided in the Plan. Confirmation makes the Plan binding upon the Debtors, all Creditors and other parties regardless of whether they have accepted the Plan.

## VOTING INSTRUCTIONS — SUMMARY

The following discussion summarizes more detailed voting instructions set forth in the section of this Disclosure Statement entitled “VOTING INSTRUCTIONS.” If you have any questions regarding the timing or manner of casting your ballot, please refer to the “VOTING INSTRUCTIONS” section of this Disclosure Statement and the instructions contained on the ballot that you received with this Disclosure Statement.

**General.** The Debtors have sent to all of their known Creditors who are in Classes impaired under the Plan a ballot with voting instructions and a copy of this Disclosure Statement. Creditors may refer to the above chart to determine whether they are impaired and

entitled to vote on the Plan. Creditors should read the ballot carefully and follow the voting instructions. Creditors should only use the official ballot that accompanies this Disclosure Statement.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by (a) the holders of two-thirds in amount and more than one-half in number of claims in each class who actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if (i) the Bankruptcy Court finds that the Plan accords fair and equitable treatment, and does not discriminate unfairly, with respect to the class rejecting it and (ii) at least one impaired class of creditors excluding insiders has accepted the Plan. See "ACCEPTANCE AND CONFIRMATION -- Requirements for Confirmation" and "EFFECT OF CONFIRMATION."

**As the preceding paragraph makes evident, a successful reorganization depends upon the receipt of a sufficient number of votes in support of the Plan. YOUR VOTE IS THEREFORE EXTREMELY IMPORTANT. Creditors should exercise their right to vote to accept or reject the Plan.**

**Voting Multiple Claims and Interests.** A single form of ballot is provided for each Class of Claims. Any Person who holds Claims in more than one Class is required to vote separately with respect to each Class in which such Person holds Claims. However, any Person who holds more than one Claim in one particular Class will be deemed to hold only a single Claim in such Class in the aggregate amount of all Allowed Claims in such Class held by such Person. Thus each Person need complete only one ballot for each Class.

**Deadline for Returning Ballots.** The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received by the Debtors, no later than 5:00 p.m., Eastern Time, on \_\_\_\_\_, 2017 at the following address:

**Robinson Brog Leinwand Greene Genovese & Gluck P.C.**  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
**Attention: Robert M. Sasloff, Esq.**

**Voting Questions.** If you have any questions regarding the provisions or requirements for voting to accept the Plan or require assistance in completing your ballot, you may contact Robert M. Sasloff, Esq. at (212) 603-6329.

#### **NOTICE TO HOLDERS OF CLAIMS AND INTERESTS**

This Disclosure Statement and the accompanying ballots are being furnished by the Debtors to the Debtors' known Creditors pursuant to section 1125(b) of the Bankruptcy Code in connection with a solicitation of acceptances of a plan of reorganization by the Debtors. The

Plan is filed with the Bankruptcy Court and is incorporated herein by reference. Parties in interest may view the Plan on the Internet at <http://www.nysb.uscourts.gov>.<sup>5</sup>

The purpose of this Disclosure Statement is to enable you, as a Creditor whose Claim is in a Class impaired under the Plan, to make an informed decision in exercising your right to accept or reject the Plan.

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTORS. THE STATEMENTS AND OPINIONS SET FORTH HEREIN ARE THOSE OF THE DEBTORS, AND NO OTHER PARTY HAS ANY RESPONSIBILITY WITH RESPECT THERETO.**

**THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN PROPOSED BY THE DEBTOR. PLEASE READ THIS DOCUMENT WITH CARE.**

**THE PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY ANY BANKRUPTCY COURT, THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE FAIRNESS OR MERITS OF THE PLAN OR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

The historical information concerning the Debtors have been prepared using the Debtors' books and records and certain filings made with the Bankruptcy Court. The estimates of Claims set forth herein may vary from the final amounts of Claims allowed by the Bankruptcy Court. While every effort has been made to ensure the accuracy of all such information, except as noted in the Disclosure Statement, the information presented herein is unaudited and has not been examined, reviewed or compiled by the Debtors' independent public accountants.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, and may contain descriptions of certain other related documents, if any. While the Debtors believe that these summaries are fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents. Reference is made to the Plan and the documents referred to herein and therein, if any, for a complete statement of the terms and provisions thereof. In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan

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<sup>5</sup> A password is necessary for access to view documents on the Internet.

shall be controlling. In reviewing the Plan and this Disclosure Statement, the reader should give special attention to “RISK FACTORS.” No statements or information concerning the Debtors or their future business operations, results of operations or financial condition, are authorized by the Debtors other than as set forth in this Disclosure Statement, the Plan and the exhibits hereto.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified herein. The delivery of this Disclosure Statement shall not create, under any circumstances, an implication that there has been no change in the facts set forth herein since the date hereof.

This Disclosure Statement is intended for the sole use of Holders of Claims and Interests to make an informed decision about the Plan. Each Holder of a Claim and Interest should review this Disclosure Statement, the Plan and all exhibits hereto before casting a ballot. Holders of Claims and Interest are urged to consult with their own legal and financial advisors.

No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. No Person has been authorized to use or promulgate any information concerning the Debtors or their business or the Plan, other than the information contained in this Disclosure Statement and the exhibits hereto. You should not rely on any information relating to the Debtors or their business or the Plan other than that contained in this Disclosure Statement and the exhibits hereto.

#### **RECOMMENDATION**

In the Debtors’ opinion, the treatment of Creditors and Interests under the Plan provides a greater recovery than is likely to be achieved under any other alternatives, including liquidation under Chapter 7. See “ALTERNATIVES TO THE PLAN.” In particular, the Debtors believe that in a Chapter 7 liquidation, administrative costs will be greater, and depending upon the ultimate determination of the amount of CREIF’s Secured Claim, only a payment may be available to CREIF on account of its Secured Claim in a chapter 7 liquidation. In that event, where there is a partial payment to CREIF on account of its Secured Claim, the Unsecured Creditors will not receive any distribution on account of Claims. Further, the Debtors believe that the value of any distribution in a chapter 7 liquidation case will be discounted by the litigation and delays which will precede any such distribution.

**THE DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND THEIR INTEREST HOLDERS AND URGES EACH CREDITOR AND INTEREST HOLDER ENTITLED TO VOTE TO ACCEPT THE PLAN.**

#### **SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

On March 15, 2017, the Petition Date, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for

the Southern District of New York. The following discussion is intended to highlight some of the more significant events which have occurred during the pendency of the Debtors' cases.

#### **RETENTION OF PROFESSIONALS**

Section 327(a) of the Bankruptcy Code provides that a debtor, with the court's approval, may employ one or more accountants or other professional persons that do not hold or represent an interest adverse to the estate and that are disinterested persons to represent or assist the debtor in carrying out its duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

On May 2, 2017, the Debtors sought authority from the Bankruptcy Court to retain the law firm of Robinson Brog Leinwand Greene Genovese & Gluck P.C., as their counsel. The application was granted pursuant to an order signed on May 4, 2017.

#### **CASH COLLATERAL**

The Debtors filed their motion for authorization to utilize cash collateral on July March 16, 2017. The Debtors and CREIF, successfully negotiated a final cash collateral stipulation authorizing the Debtors' use of cash collateral which was entered on July 17, 2017.

#### **BAR DATE**

In accordance with the requirements of section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtors filed their schedules of assets and liabilities, including schedules of all of their known creditors and the amounts and priorities of the Claims the Debtors believe are owed to such creditors. Pursuant to section 501 of the Bankruptcy Code, any creditor may file a Proof of Claim and, unless disputed, such filed Proof of Claim supersedes the amount and priority set forth in the Debtors' schedules. By order of the Bankruptcy Court dated June 21, 2017, July 31, 2017 was set as the last day for creditors to file Proofs of Claim in the Debtors' Chapter 11 cases.

There can be no assurance that the Allowed Claims as determined by the Bankruptcy Court will be in the amounts and priorities stated in the Schedules filed by the Debtors or the Proofs of Claim filed by the Creditors.

#### **OPERATING REPORTS**

Pursuant to the requirements of the Office of the United States Trustee for the Southern District of New York, the Debtors have been preparing and filing monthly operating reports with the Bankruptcy Court. Copies of such reports may be obtained (i) from the Bankruptcy Court during normal business hours, (ii) upon written request made to counsel for

the Debtors, or (iii) from the Bankruptcy Court's Electronic Case Filing System ("ECF")<sup>6</sup> which may be accessed at the Bankruptcy Court's Internet website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

## **FILING OF THE PLAN**

In order to be in compliance with 11 U.S.C. §362(d)(3), Debtors filed their Plan with the Court on June 13, 2017.

## **SUMMARY OF THE PLAN**

The following summary of the terms of the Plan is qualified in its entirety by reference to the provisions of the Plan, a copy of which is filed with the Clerk of the Bankruptcy Court and which is incorporated herein by reference.

## **CLASSIFICATION OF CLAIMS AND INTERESTS**

Classification of claims is governed, in part, by sections 1122 and 1123(a) of the Bankruptcy Code. Section 1123(a) requires that a plan designate classes of claims, requires that the plan specify the treatment of any impaired class of claims, and requires that the plan provide the same treatment for each claim of a particular class, unless the holder of a claim receiving less favorable treatment consents to such treatment. 11 U.S.C. §1123(a)(1), (3) and (4). Section 1122(a) of the Bankruptcy Code provides, subject to an exception for administrative convenience, that "a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

Article 3 of the Plan classifies the various Claims against and Interests in the Debtors into eight classes of Claims and two classes of Interests:

**Class 1 – Cypress Way Priority Non-Tax Claims.** Class 1 consists of all Priority Non-Tax Claims against Cypress Way.

**Class 2 – BCH Capital Priority Non-Tax Claims.** Class 2 consists of all Priority Non-Tax Claims against BCH Capital.

**Class 3 – CREIF Secured Claim against Cypress Way.** Class 3 consists of the CREIF Secured Claim against Cypress Way.

**Class 4 – CREIF Secured Claim against BCH Capital.** Class 4 consists of the CREIF Secured Claim against BCH Capital.

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<sup>6</sup> Filing documents on the ECF requires a password which an attorney may obtain by contacting the Bankruptcy Court's technical assistance department, Monday through Friday, 9:00 a.m. to 4:00 p.m.

**Class 5 – Cypress Way Other Secured Claims.** Class 5 consists of all Other Allowed Secured Claims against Cypress Way.

**Class 6 – BCH Capital Other Secured Claims.** Class 6 consists of all Other Allowed Secured Claims against BCH Capital.

**Class 7 – Cypress Way Unsecured Claims.** Class 7 consists of all Allowed Unsecured Claims against Cypress Way.

**Class 8 – BCH Capital Unsecured Claims.** Class 8 consists of all Allowed Unsecured Claims against BCH Capital.

**Class 9 – Cypress Way Interests.** Class 9 consists of all Interests in Cypress Way.

**Class 10 – BCH Capital Interests.** Class 10 consists of all Interests in Cypress Way.

As set forth in Article 2 of the Plan, pursuant to section 1123(a)(1) of the Bankruptcy Code, certain Administrative Claims against the Debtors have not been classified. See “SUMMARY OF THE PLAN -- Treatment of Non-Classified Claims.”

Allowed Claims in Classes 1, 2, 5, and 6, and the Interests in Classes 9 and 10 are unimpaired and are not entitled to vote on the Plan. Allowed Claims in Classes 3, 4, 7 and 8 are impaired and are entitled to vote to accept or reject the Plan.

#### **TREATMENT OF CLAIMS CLASSIFIED UNDER THE PLAN**

Article 4 of the Plan provide for the treatment of impaired and unimpaired Claims classified in Article 3 of the Plan as follows:

**Class 1 – Cypress Way Priority Non-Tax Claims.** In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of a Priority Non-Tax Claim against Cypress Way shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (i) in Cash in the full amount of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the Cypress Way and the Holder of such Priority Non-Tax Claim.

**Class 2 – BCH Capital Priority Non-Tax Claims.** In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of a Priority Non-Tax Claim against BCH Capital shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (i) in Cash in the full amount

of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the BCH Capital and the Holder of such Priority Non-Tax Claim.

**Class 3 – CREIF Secured Claim Against Cypress Way.** In full satisfaction, release and discharge of the CREIF Secured Claim, the Holder of the CREIF Secured Claim shall receive, on the Effective Date, or as soon as practicable after the CREIF Secured Claim becomes an Allowed Claim, the New CREIF Note (which shall provide for payment of 100% of the claim over 5 years at 4.75% per annum, payable for the first 24 months, interest only, and thereafter, payable for an additional 36 months in arrears with a 25-year amortization), or (ii) such other treatment as to which the Debtors and the Holder of the CREIF Secured Claim shall have agreed upon in writing. The Reorganized Debtors shall be permitted to prepay the New CREIF Note at any time without premium or penalty.

**Class 4 – CREIF Secured Claim Against BCH Capital.** Subject to the treatment of the CREIF Secured Claim under Art. 4.3, the CREIF Secured Claim shall continue to be secured against the membership Interests of BCH Capital pursuant to the New CREIF Security Documents.

**Class 5 – Cypress Way Other Secured Claims.** In full satisfaction, release and discharge of each Other Secured Claim against Cypress Way, each Holder of a Class 5 Other Secured Claim shall receive, on the Effective Date, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim, or (ii) such other treatment as to which the Cypress Way and each Holder of such Other Secured Claim shall have agreed upon in writing.

**Class 6 – BCH Capital Other Secured Claims.** In full satisfaction, release and discharge of each Other Secured Claim against BCH Capital, each Holder of a Class 6 Other Secured Claim shall receive, on the Effective Date, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (i) Cash, in the full amount of its Claim, or (ii) such other treatment as to which the BCH Capital and each Holder of such Other Secured Claim shall have agreed upon in writing.

**Class 7 – Cypress Way Unsecured Claims.** In full satisfaction, settlement, release and discharge of the Class 7 Unsecured Claims against Cypress Way, Holders of Class 7 Unsecured Claims shall receive, on the Effective Date, 100% of their Allowed Claims in cash in five equal annual installment payments, with the first payment to be made on the Effective Date, with the remaining four payments to be made on the anniversary of the Effective Date.

**Class 8 – BCH Capital Unsecured Claims.** In full satisfaction, settlement, release and discharge of the Class 7 Unsecured Claims against BCH Capital, Holders of Class 8 Unsecured Claims shall receive, on the Effective Date, 100% of their Allowed Claims in cash in five equal annual installment payments, with the first payment to be made on the Effective Date, with the remaining four payments to be made on the anniversary of the Effective Date.



**Class 9 – Cypress Way Interests.** Upon the Effective Date, the Interest Holders of Cypress Way shall retain their Interests in the Cypress Way in consideration for: (1) the funding of the Contribution Amount due hereunder, and (2) the guaranty by the Interest Holder of the fees of the Court-retained professionals in these Cases, after such fees are approved by the Court.

**Class 10 – BCH Capital Interests.** Upon the Effective Date, the Interest Holders of BCH Capital shall retain their Interests in the BCH Capital in consideration for: (1) the funding of the Contribution Amount due hereunder, and (2) the guaranty by the Interest Holder of the fees of the Court-retained professionals in these Cases, after such fees are approved by the Court.

#### **TREATMENT OF NON-CLASSIFIED CLAIMS**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims entitled to priority treatment under section 507(a)(1) of the Bankruptcy Code or Claims of Governmental Units entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code. Article 2 of the Plan provides for the manner of treatment of such non-classified Claims.

**Administrative Claims.** Administrative Claims are the costs and expenses of administration of this Case, allowable under section 503(b) of the Bankruptcy Code, other than Bankruptcy Fees. Administrative Claims include Claims for the provision of goods and services to the Debtors after the Petition Date, the liabilities incurred in the ordinary course of the Debtors' business (other than claims of governmental units for taxes or interest or penalties related to such taxes) after the Petition Date, Claims of professionals, such as attorneys, appraisers, and accountants, retained pursuant to an order of the Bankruptcy Court, for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, and tax claims for the period from the Petition Date to the Effective Date of the Plan.

Subject to the provisions of article 7 of the Plan with respect to Disputed Claims, each Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full on (i) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law, or (z) three business days after such Claim becomes an Allowed Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Debtors and the Holder of such Claim; *provided, however*, that any Administrative Claim incurred by the Debtors in the ordinary course of their business shall be paid in full or performed by the Reorganized Debtors in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.

Article 2 of the Plan sets a final date for the filing of Administrative Claims against the Debtors. The Administrative Bar Date is the first Business Day which is at least 60

days after the Effective Date. In the event that the Plan is confirmed, the Debtors shall deliver a notice of such bar date to all parties-in-interest.

**Professionals' Fees.** Section 330 of the Bankruptcy Code sets the standard for the determination by the Bankruptcy Court of the appropriateness of fees to be awarded to Professionals retained by the Debtors in a case under the Bankruptcy Code. In general, "bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable service other than in a case under title 11." 124 Cong. Rec. H11091 (Daily ed. Sept. 28, 1978).

With respect to Professionals' Fees, the Plan provides that, subject to the approval of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, the Debtors shall pay the Administrative Claims held by Bankruptcy Professionals as follows:

Each Person seeking an award by the Bankruptcy Court of Professional Fees shall file its final application for approval of its Professional Fees no later than the Administrative Bar Date. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim.

**Administrative Tax Claims.** Subject to the provisions of Article 7 of the Plan with respect to Disputed Claims, all allowed Administrative Tax Claims held by Governmental Units shall be paid, in Cash, in full either (i) on or prior to the Effective Date, or as soon as practicable thereafter, or (ii) upon such other terms as may be agreed to, in writing, between the Debtors and such Governmental Units on or before the Confirmation Date.

**Priority Tax Claims.** In full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtors and such Governmental Units, all allowed Priority Tax Claims shall be paid by the Reorganized Debtors in Cash in full, together with interest on the Effective Date or as soon as practicable thereafter.

**Bankruptcy Fees.** All fees and charges assessed against the Debtors under section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Reorganized Debtors, in full, in Cash on the Effective Date, until the closing, conversion or dismissal of these Cases, whichever is earlier.

#### **DISPUTED CLAIMS AND INTERESTS**

Article 7 of the Plan contains a mechanism for resolving disputes concerning the amount of certain Claims or Interests asserted against the Debtors by any Entity.

**Time to Object.** Unless otherwise ordered by the Bankruptcy Court for cause, the Debtors or the Reorganized Debtors may file and serve any objection to any Claim or Interest at any time, but in no event after the later to occur of (i) 60 days after the Effective Date, or (ii) 60 days after the date proof of such Claim or Interest or a request for payment of such Claim is filed.

#### **DISTRIBUTIONS UNDER THE PLAN**

Article 7 contains provisions governing the making of distributions on account of Claims

**Disbursing Agent.** The Reorganized Debtors shall be the Disbursing Agent to make distributions under the Plan. The Disbursing Agent shall distribute all Cash or other property to be distributed under the Plan and may employ or contract such third parties as may be necessary to assist in or perform the distribution of Cash or other property under the Plan. Pending the final distribution of all sums distributable under the terms of the Plan (including the delivery to the Reorganized Debtors of unclaimed distributions pursuant to section 7.14 of the Plan), the Disbursing Agent shall have full authority to sign checks on any bank account of the Reorganized Debtors to the extent necessary to make any payment or distribution contemplated by the Plan.

**Timing of Distributions Under the Plan.** Subject to sections 7.6 and 7.8 of the Plan, any payments, distributions or other performance to be made pursuant to the Plan on account of any Disputed Claim, shall be deemed to be timely made if made on or within five days following the later of (i) the expiration of any applicable objection deadline with respect to such Disputed Claim or (ii) such other times provided in the Plan.

**Method of Payment.** Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank.

**Claims Objection Deadline.** Unless otherwise ordered by the Bankruptcy Court, the Debtors or the Reorganized Debtors may file and serve any objection to any Claim or Interest at any time, but in no event after the later to occur of (i) 60 days after the Effective Date, or (ii) 60 days after the date proof of such Claim or Interest or a request for payment of such Claim is filed.

**Prosecution of Objections.** After the Confirmation Date, only the Reorganized Debtors shall have authority to file, settle, compromise, withdraw or litigate to judgment objections to Disputed Claim. The Reorganized Debtors may comprise any objections to Disputed Claims without further order of the Court.

**No Distribution Pending Allowance.** Notwithstanding any other provision of the Plan, no payment or distribution of any kind shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order.

**Escrow of Cash Distributions.** (a) On any date that distributions are to be made under the terms of the Plan, the Reorganized Debtors shall make available any and all funds required under Plan to be disbursed on that date, and the Disbursing Agent shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, including, but not limited to (i) Disputed Claims that may be entitled to treatment as Administrative Claims or as Priority Non-Tax Claims pursuant to sections 503 and 507 of the Bankruptcy Code, (ii) claims of Governmental Units for any tax, (iii) any disputed Cure Amount, and (iv) any amount due but not payable on the Effective Date on account of Administrative Claims or claims entitled to priority pursuant to section 503 and 507 of the Bankruptcy Code. The Disbursing Agent shall also segregate any interest, dividends or other proceeds of such Cash. Such Cash together with any interest, dividends or proceeds thereof, be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

(b) The Reorganized Debtors shall have the right to seek an Order of the Bankruptcy Court, after notice and hearing, estimating or limiting the amount of Cash that must be so deposited on account of any Disputed Claim. Any Creditor whose Claim is so estimated shall have no recourse to any assets theretofore distributed on account of any Allowed Claim if the Allowed Claim of that Creditor as determined by Final Order exceeds the amount so deposited. Such Creditor shall have recourse first, to the undistributed assets in the Disputed Claims Reserve (on a Pro Rata basis with other Creditors of the same Class who are similarly situated) that exceed the aggregate amount of all Disputed Claims allowed by Final Order, or not yet resolved, and second any unpaid amount shall be an obligation of the Reorganized Debtors.

**Distribution After Allowance.** Within 15 days after the entry of a Final Order resolving an objection to a Disputed Claim, the Disbursing Agent shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a Holder is then entitled with respect to any formerly Disputed Claim that has become an Allowed Claim.

**Investment of Segregated Cash.** To the extent practicable, the Disbursing Agent may invest any Cash segregated on account of a Disputed Claim, disputed Interest, undeliverable distribution, or any proceeds thereof (i) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by section 345 of the Bankruptcy Code; *provided, however,* that the Disbursing Agent shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash or proceeds. Segregated Cash shall be maintained in an authorized depository.

**Distribution After Disallowance.** Subject to section 7.7 of the Plan, the Cash segregated on account of Disputed Claims, including the allocable portion of the net return yielded from any investment thereof, if any, remaining after all Disputed Claims have been resolved by Final Order shall revert to the Reorganized Debtors.

**Surrender of Instruments; Execution of Satisfactions and Releases.**

(a) Notwithstanding any other provision of the Plan, no Creditor that holds a note (including the CREIF Note) or other instrument evidencing such Creditor's Claim may receive any distribution with respect to such Claim unless and until the original note or other original instrument evidencing such Claim (including but not limited to all documents evidencing the CREIF Secured Claim) shall have been validly surrendered to the Disbursing Agent at the sole cost and expense of such Creditor.

(b) Any Cash or property to be distributed pursuant to the Plan on account of any such Claim shall, pending surrender, be treated as an undeliverable distribution pursuant to section 7.13 of the Plan.

(c) In the event any Creditor is unable to surrender a note (including the CREIF Note) or other instrument evidencing a Claim against the Debtors that has been destroyed, lost or stolen, such entity may receive a distribution with respect to such Claim by presenting to the Disbursing Agent, in a form acceptable to the Disbursing Agent: (i) proof of such entity's title to such Claim; (ii) an affidavit to the effect that the same has been lost and after diligent search cannot be located; and (iii) such indemnification as may be required by the Disbursing Agent and all other entities deemed appropriate by the Disbursing Agent from any loss, action, suit or any claim whatsoever which may be made as a result of such entity's receipt of a distribution under the Plan.

(d) All questions as to the validity, form or eligibility of any note or other instrument evidencing a Claim so surrendered shall be resolved by Final Order of the Bankruptcy Court. The Disbursing Agent shall not be under any duty to give notification of defects in such tender or shall incur liability for failure to give notification of such defects.

**Delivery of Distributions.** Except as provided in sections 7.13, 7.14 and 7.15 of the Plan, distributions to Holders of Allowed Claims and Allowed Interests shall be made: (1) at the addresses set forth on the respective Proofs of Claim or Proofs of Interests filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim; or (3) at the address reflected in the Schedules if no Proof of Claim or Proof of Interest is filed and the Disbursing Agent has not received a written notice of a change of address.

**Undeliverable Distributions.** (a) If the distribution to the Holder of any Claim or Interest is returned to the Disbursing Agent as undeliverable, no further distribution shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then current address. Undeliverable distributions shall remain in the possession of the

Disbursing Agent until the earlier of (i) such time as a distribution becomes deliverable or (ii) such undeliverable distribution becomes an unclaimed distribution pursuant to section 7.14 of the Plan.

(b) Until such time as an undeliverable distribution becomes an unclaimed distribution pursuant to section 7.14 of the Plan, within 30 days after the end of each calendar quarter following the Effective Date, the Disbursing Agent shall make distributions of all Cash that has become deliverable during the preceding quarter. Each such distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such distribution would have been due had it then been deliverable to the date that such distribution becomes deliverable.

(c) Nothing contained in the Plan shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim or an Allowed Interest.

**Unclaimed Distributions.** Any Cash or other assets to be distributed under the Plan shall revert to the Reorganized Debtors if it is not claimed by the entity entitled thereto before the later of (i) one year after the Effective Date; (ii) one year after such scheduled payment to such entity under Article 4 of this Plan; or (iii) one year after an Order allowing the Claim of that entity becomes a Final Order, and such entity's claim shall be reduced to zero.

**Set-offs.** The Reorganized Debtors, as Disbursing Agent, may, but shall not be required to, set-off against the distributions to be made pursuant to the Plan, the claims, obligations, rights, causes of action and liabilities of any nature that the Reorganized Debtors may hold against the Holder of an Allowed Claim, *provided, however*, that neither the failure to effect such a set-off nor the allowance of any claim hereunder shall constitute a waiver or release by the Reorganized Debtors of any such claims, obligations, rights, causes of action and liabilities that the Debtors (or the Reorganized Debtors) has or may have against such Holder. To the extent the Reorganized Debtors elect to effectuate a set-off, it shall notify the Holder of the Allowed Claim in writing at least ten (10) days prior to effectuating the set-off. To the extent the Holder of an Allowed Claim objects to the set-off, a written objection shall be provided to the Reorganized Debtors, as Disbursing Agent, no later than three (3) days prior to the set-off date or the objection shall be waived.

#### **COMPLIANCE WITH TAX REQUIREMENTS**

In connection with the Plan, the Disbursing Agent shall comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities and distributions under the Plan shall be subject to such withholding and reporting requirements provided, however, that the transfer of any Cash, property or other interest under the Plan shall not be subject to any federal, state or local tax to the fullest extent provided under section 1146 of the Bankruptcy Code.

## **EFFECTIVE DATE**

The Effective Date of the Plan shall be the first Business Day after which all of the conditions to the Effective Date, specified in section 11.1 of the Plan, have been satisfied.

## **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

On the Effective Date, all Executory Contracts and Unexpired Leases not expressly set forth in the Plan or Plan Supplement prior to the Confirmation shall be deemed assumed and assigned to the Reorganized Debtors in accordance with section 365 of the Bankruptcy Code.

**Rejection Claims.** Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be treated as Unsecured Claims.

A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Leases pursuant to the Plan shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Debtors no later than 30 days after the later of (i) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely filed unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Effective Date. Any such Proof of Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the Debtors, their successors or their respective properties.

## **IMPLEMENTATION OF THE PLAN**

**Implementation.** The Debtors shall take all necessary steps, and perform all necessary acts, to consummate the terms and conditions of the Plan. The Confirmation Order shall contain appropriate provisions, consistent with section 1142 of the Bankruptcy Code, directing the Debtors and any other necessary party to, among other things, (i) execute and deliver the New CREIF Note and New CREIF Security Documents and (ii) perform any act, including the satisfaction of any lien, that is necessary for the consummation of the Plan.

**Plan Funding.** Funding for the Plan shall be from any available Cash on hand on the Confirmation Date, the Contribution Amount, and the funds to be generated from the operation of the Reorganized Debtors' business post-Confirmation including the rehabilitation of the Property to bring it up to full performance.

The Contribution Amount shall be paid on or before the Effective Date, and shall be used to pay certain of the Creditors' claims under this Plan, including, but not limited to, payment of Administrative Claims, Bankruptcy Fees, Tax Claims and the Unsecured Creditors' Claims. The Contribution Amount shall be funded by the Allowed Interests and deposited into escrow two

business days prior to the Effective Date. If such amounts are insufficient to cover all such costs, Allowed Interests has agreed to invest additional funds as necessary to make the payments on the Effective Date.

**Vesting of Assets.** Except as otherwise provided in the Plan, on the Effective Date all of the Debtors' assets (including the Property) shall vest in the Reorganized Debtors, free and clear of all Liens, Claims and encumbrances, except for the CREIF Secured Claim. On the Effective Date, any and all Liens, Claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Following the Effective Date, the Debtors may operate, buy, use, acquire, and dispose of the property of the Estates and may settle and compromise any claims, interests and causes of action in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

**Execution of Documents.** (a) On the Effective Date, the Debtors, and any necessary party thereto, shall execute, release and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan.

(b) Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, the Debtors shall be authorized to execute, in the name of any necessary party any estoppel certificate, or any notice of satisfaction, release or discharge of any Lien, Claim or encumbrance (including, any Lien, Claim or encumbrance that is to be released and satisfied upon the Debtors' compliance with the provisions of article 4 of the Plan) not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation, and the Confirmation Order shall expressly so provide.

**Filing of Documents.** Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

**Distributions.** Except as set forth elsewhere in the Plan, all payments required to be made under the Plan shall be made by the Disbursing Agent for disbursement in accordance with the terms of the Plan.

**Preservation of Rights of Action.** Except as otherwise provided in the Plan, or in any contract, instrument, release or other agreement entered into in connection with the Plan, the Reorganized Debtors shall retain any claims, rights and causes of action (i) arising under sections 510 and 544 through 550 of the Bankruptcy Code or (ii) belonging to the Debtors as of the Petition Date, or the Estates of the Debtors, and arising under any provision of state or federal law, or any theory of statutory or common law or equity.

Any recovery received by the Reorganized Debtors through the prosecution, settlement or collection of any such claim, right or cause of action, shall be retained by the



Reorganized Debtors following the satisfaction of all other Allowed Claims under the terms of the Plan.

Notwithstanding any provision of the Plan to the contrary, definitions and descriptions contained herein respecting pre-Petition Date documents, agreements or claims are provided solely for the purpose of identification and classification thereof and do not constitute an admission by the Debtors of the existence, validity allowance, or amount of any such claim, document or agreement. The Debtors and the Reorganized Debtors expressly reserve the right to challenge the existence, validity, allowance, or amount of any such claim, document or agreement.

**Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan, (including any instrument executed in furtherance of the transactions contemplated by the Plan), shall not be subject to tax under any law imposing a stamp tax, real estate Transfer Tax, mortgage recording tax or similar tax, including any such taxes due on the refinancing or sale of the Properties as contemplated by the Plan, and to the extent provided by 1146(a), if any, shall not be subject to any state, local or federal law imposing such tax.

**Post-Confirmation Management and Compensation.** The Debtors will continue in existence post-confirmation as the Reorganized Debtors. The Interest Holders of the Debtors have agreed that the Reorganized Debtors shall continue be managed by New York City Management.

**The New CREIF Note and New CREIF Security Documents.** In accordance with Section 1.53 of the Plan, the Debtors will file the Plan Supplement no later than five (5) days prior to the Confirmation Date, which will contain, but will not be limited to, the New CREIF Security Documents. On the Effective Date, the Reorganized Debtors shall execute and deliver to CREIF (a) the New CREIF Note, and (b) the New CREIF Security Documents, that evidence and perfect the liens and security interests granted to CREIF pursuant to the Plan. The issuance of the New CREIF Note and New CREIF Security Documents are hereby authorized without further act or action under applicable law. The New CREIF Note shall be (i) secured with a lien on the Property, (ii) issued in accordance with the terms of the Plan, without further act or action under applicable law, regulation order or rule and (iii) exempt from registration under section 1145 of the Bankruptcy Code.

## **MISCELLANEOUS PROVISIONS**

### **MODIFICATION AND REVOCATION OF THE PLAN**

The Plan may be altered, amended or modified by the Debtors, at any time before the substantial consummation of the Plan, as provided in sections 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Section 1127 of the Bankruptcy Code authorizes

the proponent of a plan of reorganization to modify such plan at any time prior to confirmation of the plan so long as the plan, as modified, continues to meet certain technical requirements of sections 1122 and 1123 of the Bankruptcy Code with respect to the classification of Claims and Interests and the contents of a plan. Prior to Confirmation, if a proponent files modifications to a plan, pursuant to section 1127(a) “the plan as modified becomes the plan.” No order of the Court is required to modify the Plan under the terms of section 1127(a); however, the proponent of a modification to a plan must comply with section 1125 of the Bankruptcy Code with respect to the plan as modified. In other words, if a modification materially alters the treatment of any Creditor who has accepted the Plan, the Debtors will be required to make additional disclosures to those Creditors whose treatment has been materially and adversely altered and give such Creditors an opportunity to change their votes.

The Debtors may revoke or withdraw the Plan at any time prior to entry of the Confirmation Order. If the Debtors revoke or withdraws the Plan, or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against or any interest in, the Debtor; or (ii) prejudice in any manner the rights of the Debtors in any further proceedings involving the Debtors or any other party, or their Estates.

#### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, until the Case is closed, the Bankruptcy Court shall retain and have original, but not exclusive, jurisdiction to:

i) Insure that the Plan is consummated, and to enter any Order pursuant to section 1142(b) of the Bankruptcy Code, to compel the Debtors, the Interest Holders and any other necessary party, to take such action and execute such documents to effectuate the Plan;

ii) Consider any modification of the Plan proposed pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019;

iii) Allow, disallow, determine, liquidate, classify or establish the priority, secured or unsecured status of any Claim or Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense, the resolution of any and all objections to the allowance or priority of Claims or Interests, and the resolution of any adversary proceeding;

iv) Grant or deny any and all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for any period ending on or before the Effective Date;

v) Resolve any motions pending on the Effective Date to assume, assume and assign or reject any Executory Contract or Unexpired Lease to which the Debtors are

a party or with respect to which the Debtors may be liable and to hear, determine and if necessary, liquidate, any and all Claims arising therefrom;

vi) Ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished in accordance with the provisions of this Plan;

vii) Decide or otherwise resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters or grant or deny any applications involving the Debtors that may be pending on the Effective Date;

viii) Enter such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan or Disclosure Statement or to enforce all orders, judgments, injunctions, and rulings entered in connection with the Case, including, but not limited to any Order necessary to enforce the provisions of article 7 of the Plan;

ix) Resolve any and all controversies, suits or issues that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

x) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, or to modify the Disclosure Statement or any contract, instrument, release or other agreement or document created in connection with the Plan or Disclosure Statement;

xi) Remedy any defect or omission or reconcile any inconsistency in any Order, the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created in connection with the Plan, to the extent authorized herein or in the Bankruptcy Code;

xii) Issue any injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan;

xiii) Enter and implement such Orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

xiv) Determine any dispute arising under or related to the Plan, including, without limitation, any dispute concerning the scope or effect of any release or discharge provided for by the Plan or the Confirmation Order.

xv) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument,

release or other agreement or document created in connection with the Plan or Disclosure Statement; and

xvi) Enter an Order or Final Decree concluding the Case.

### **RISK FACTORS**

Although the Debtors believe that it will be able to meet all of the obligations that it is undertaking pursuant to the Plan there can be no assurance that future events will not cause the Debtors to default on one or more of its obligations under the Plan or that the closing will occur.

### **CONFIRMATION OF THE PLAN**

All distributions to Creditors are contingent on the Plan being confirmed by this Court. Otherwise, the Debtors are not obligated, in any way, to make the payments required hereunder.

### **RISK OF SUBSEQUENT REORGANIZATION OR LIQUIDATION**

Although the Debtors believe that the confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, there can be no assurance that such liquidation will not occur or that the need for such financial reorganization will not arise.

### **VOTING INSTRUCTIONS**

A Creditor who is entitled to vote may accept or reject the Plan by executing and returning to the Balloting Agent (as defined below) the ballot (a "Ballot") that was sent out with this Disclosure Statement. The following instructions govern the time and manner for filing Ballots accepting or rejecting the Plan, withdrawing or revoking a previously filed acceptance or rejection, who may file a Ballot, and procedures for determining the validity or invalidity of any Ballot received by the Balloting Agent.

### **DEADLINE FOR RECEIPT OF BALLOTS**

The solicitation period for votes accepting or rejecting the Plan will expire at 5:00 p.m., Eastern Standard Time, \_\_\_\_\_, 2017 (the "Voting Deadline"). A Ballot accepting or rejecting the Plan must be received no later than that date and time or it will not be counted in connection with the Confirmation of the Plan or any modification thereof.

## **BALLOTING AGENT**

All votes to accept or reject the Plan must be cast by using the Ballot. Executed Ballots should be returned by \_\_\_\_\_, 2017 at 5:00 p.m. to:

**Robinson Brog Leinwand Greene Genovese & Gluck P.C.**  
875 Third Avenue, 9th Floor  
New York, New York 10022  
**Attention: Robert M. Sasloff, Esq.**

(the "Balloting Agent"). A Creditor entitled to vote who has not received a Ballot, or who's Ballot has been lost, stolen or destroyed, may contact the Balloting Agent at the address indicated above, or call Robert M. Sasloff at (212) 603-6329 to receive a replacement Ballot.

## **WHO MAY VOTE - IN GENERAL**

Claims in Classes 1, 2, 5, and 6, and the Interests in Classes 9 and 10 are unimpaired and are not entitled to vote on the Plan. Allowed Claims in Classes 3, 4, 7 and 8 are impaired and are entitled to vote to accept or reject the Plan.

**Ballots Executed in a Representative or Fiduciary Capacity.** Ballots executed by the Debtors, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, must indicate the capacity in which such person executed the Ballot and, unless otherwise determined by the Debtors, must submit proper evidence satisfactory to the Debtors of their authority to so act.

**Voting Multiple Claims.** A single form of ballot is provided for each Class of Claims. Any Person who holds Claims in more than one Class is required to vote separately with respect to each Class in which such Person holds Claims. However, any Person who holds more than one Claim in one particular Class will be deemed to hold only a single Claim in such Class in the aggregate amount of all Allowed Claims in such Class held by such Person. Thus, each Person need complete only one ballot for each Class.

## **DEFECTS OR IRREGULARITIES**

**ANY EXECUTED AND TIMELY FILED BALLOT WHICH DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PLAN.**

Where more than one timely and properly completed Ballot is received, the Ballot which bears the latest date will be counted.

The Debtors reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless waived, any defects or irregularities in connection

with deliveries of Ballots must be cured prior to the deadline for filing timely Ballots. Neither the Debtors, the Balloting Agent, nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. All questions as to the validity, form, eligibility (including the time of receipt), acceptance and revocation or withdrawal of Ballots will be determined by the Bankruptcy Court, upon motion and upon such notice and hearing as is appropriate under the circumstances. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots as to which any irregularities have not been cured or waived will not be counted toward the acceptance or rejection of the Plan.

### **REVOCATION OF PREVIOUSLY FILED ACCEPTANCES OR REJECTIONS**

Any Creditor who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Balloting Agent at any time prior to the Voting Deadline.

A notice of withdrawal, to be valid, must (i) describe the Claim, as the case may be, if appropriate, represented by such Claim, (ii) be signed by the Creditor in the same manner as the Ballot was signed and (iii) be received by the Balloting Agent on or before the Voting Deadline. The Debtors reserve the absolute right to contest the validity of any such withdrawals of Ballots.

### **ACCEPTANCE AND CONFIRMATION**

#### **CONFIRMATION HEARING**

The Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing to consider confirmation of the Plan. The Confirmation Hearing is scheduled to commence on \_\_\_\_\_, 2017 at \_\_\_\_\_ a.m. in the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing.

Any party in interest may object to Confirmation of the Plan by filing a written objection, setting forth their identity and standing and the facts and authorities upon which any objection is based, in the Office of the Clerk of the Bankruptcy Court, no later than the deadline fixed by the Court and by delivering a courtesy copy to the Chambers of the presiding judge. Copies of all objections must also be served so that they are received, as required by the Court upon (i) Robinson Brog Leinwand Greene Genovese & Gluck P.C., 875 Third Avenue, 9<sup>th</sup> Fl., New York, New York 10022, Attn.: Robert M. Sasloff, Esq., and (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014. Any objection that is not timely filed and served as required by any order of this Court, will not be considered by this Court at the Confirmation Hearing.

## REQUIREMENTS FOR CONFIRMATION

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. These requirements include determinations by the Bankruptcy Court that: (i) the Plan has classified Claims and Interests in a permissible manner, (ii) the contents of the Plan comply with various technical requirements of the Bankruptcy Code, (iii) the Debtors have proposed the Plan in good faith, (iv) the Debtors have made disclosures concerning the Plan that are adequate and include information concerning all payments made or promised in connection with the Plan and the Case, (v) the Plan is in the “best interest” of all Creditors, (vi) the Plan is feasible, and (vii) the Plan has been accepted by the requisite number and amount of Creditors in each Class entitled to vote on the Plan, or that the Plan may be confirmed without such acceptances. The Debtors believe that all of these conditions have been or will be met prior to the Confirmation Hearing.

**Best Interest Test.** The so-called “best interest” test requires that each impaired Creditor and impaired Interest Holder either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value such entity would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Impaired Class of Claims or Interest would receive if the Debtors were liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtors’ assets and properties in a chapter 7 liquidation case. The amount that would be available for satisfaction of Allowed Claims against the Debtors would consist of the proceeds resulting from the disposition of the Debtors’ assets, augmented by the cash held by the Debtors at the commencement of the chapter 7 case. Such amount would be reduced by the amount of any Claim or Claims secured by the Debtors’ assets, the costs and expenses of the liquidation, and such additional Administrative Claims and Priority Claims that may have accrued. Such value is then juxtaposed against the amount creditors are receiving under the Plan to determine if the value each impaired creditor is receiving is the same or more than such creditor would receive from a chapter 7 liquidation on the Confirmation Date.

The costs of liquidation under chapter 7 would become Administrative Claims with the highest priority against the proceeds of liquidation. Such costs would include the fees payable to a chapter 7 Trustee, as well as those which might be payable to attorneys, financial advisors, appraisers, accountants and other professionals that such a Trustee may engage to assist in the liquidation. In addition, chapter 7 costs would include any liabilities incurred or assumed pursuant to the transactions necessary to effectuate the liquidation. Moreover, claims entitled to administrative priority may arise by reason of any breach or rejection of any executory contracts entered into by the Debtors during the pendency of these Cases in chapter 11.

After satisfying Administrative Claims arising in the course of the chapter 7 liquidation, the proceeds of the liquidation would then be payable to satisfy any unpaid expenses incurred during the time the Case was pending under chapter 11, including compensation for attorneys, financial advisors, appraisers, accountants and other professionals retained by the Debtors or any official committee appointed pursuant to section 1102 of the Bankruptcy Code.

After consideration of the effects that a chapter 7 liquidation would have on the proceeds available for distribution including (i) the increased costs and expenses of a chapter 7 liquidation arising from fees payable to a Trustee in bankruptcy and professional advisors to such Trustee, (ii) the erosion in value of the Debtors' 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 (iii) the potential increases in Claims which would be satisfied on a priority basis or on a parity with the Claims of general Unsecured Creditors, and (iv) the substantial amount of secured claims in this case, which, the Debtors believe would exceed the value of the Property only in a chapter 7 forced liquidation, the Debtors believe that holders of Unsecured Claims would not receive any distribution on account of their claims. Rather, there would be insufficient funds to satisfy any of the Debtors' Creditors.

**Liquidation Analysis.** The Debtors have concluded that the Plan provides to each Creditor recovery with a present value at least equal to the present value of the distribution which such person would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The Plan provides for the restructuring of CREIF's Allowed Secured Claim payable over five years with the payments being amortized over a 20 year period and a balloon payment at the end of five years, (ii) paying the Other Secured Claims the full amount of their Claims in Cash, (iii) paying the Holders of the Class 4 Unsecured Claims 50% of their Allowed Claims in cash, and (v) the current Equity Interest to contribute sufficient financing to fund the Plan. The Debtors' available Cash on hand as of the Effective Date, the Debtors' Contribution Amount and Other Contribution Amount will be utilized to fund distributions under the Plan.

The Debtors believe that in the event their assets were sold in chapter 7 liquidation, all of the proceeds would go to pay priority tax claims, Chapter 7 administrative claims, bankruptcy fees, and a lesser portion of the secured claims held by the CREIF and the Other Secured Claims as provided for in the Plan. In such event, no funds would be remaining for distribution to chapter 11 administrative claims and to Unsecured Creditors. As such, the Debtors believe that no Creditors would receive a distribution in a Chapter 7 case which is greater than the one they may be entitled to under the Plan.

The Debtors further believe that the net effect of a conversion of this case to Chapter 7 would be to (i) increase the administrative expenses of the estate and (ii) decrease the funds available for non-administrative creditors.

The liquidation values stated herein assume that all assets of the Debtors would be liquidated in the context of a chapter 7 case and assumes the present values of such liquidation values as of August 2017. The assumptions utilized in the analysis considered the estimated



liquidation value of the assets and estimated amount of Claims that would be allowed, together with an estimate of certain administrative costs and other expenses which would likely result during the liquidation process. While the Debtors believe the assumptions underlying the Liquidation Analysis are reasonable, the validity of such assumptions may be affected by the occurrence of events, and the existence of conditions not now contemplated or by other factors, many of which will be beyond the control of the Bankruptcy Court, the Debtors and any trustee appointed for the Debtors. The actual liquidation value of the Debtors may vary from that considered herein and the variations may be material.

The Debtors have assumed that the Property would be sold within six months in a Chapter 7 liquidation. It is assumed that cash proceeds of liquidating the Property would total approximately \$5,962,500 (which is 75% of the estimated \$7,950,000 value of the Property<sup>7</sup>) taking into account the negative impact on values attributed to the Chapter 7 process.

Upon consultation with their advisors, the Debtors assume for the purposes of this analysis that the cash would be distributed as follows:

**Available for distribution** **\$5,962,500**  
**To the payment of:**

Chapter 7 Administrative Claims:

Chapter 7 trustee commissions and expenses (approximately 3% of \$5,962,500)	\$178,875
Chapter 7 trustee's professionals (attorneys, appraisers, brokers, auctioneers accountants, etc.)	\$348,125
CREIF Secured Claim	\$6,962,928.04 <sup>8</sup>
Other Secured Claim against Cypress and BCH Capital	\$38,000
Priority Tax Claims	\$142,000
Priority Non-Tax Claims	\$9,070
Chapter 11 Administrative Claims	\$43,000
General Unsecured Claims	\$233,910

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<sup>7</sup> The Debtors' schedules reflect an approximately value of \$8,800,000, however a more recent appraisal reflects a current value of \$7,950,000.

<sup>8</sup> Based on value asserted in Stipulated Order Authorizing Debtor to Use Cash Collateral Pursuant to Section 363 of the United States Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001.

**In a liquidation, depending on the valuation of the CREIF Secured Claim, there would be insufficient funds to satisfy: (1) all of the Debtors' Secured Creditors (absent an agreement or court order); (2) chapter 11 administrative claims; and (3) priority claims. There would be no funds available at all for distribution to Unsecured Creditors.**

The Plan contemplates payment to more classes of creditors than in a chapter 7 liquidation where there would insufficient funds to satisfy all of the secured creditors and other classes of claims. Accordingly, the Debtors believe that the Plan provides Creditors with at least as much as they would be entitled to receive in a chapter 7 liquidation.

**Feasibility.** For the Plan to be confirmed, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. The Projections, attached hereto as Exhibit A, demonstrate that the Debtors expects after the rehabilitation of the Property to be profitable. In the meanwhile, the Contribution Amount will fund Effective Date payments, including a reserve for Administrative Expenses an escrow for interest payments to the extent necessary. Based on the Summary of the Plan, the Plan meets the feasibility requirements of the Bankruptcy Code. The Debtors will offer testimony at confirmation to demonstrate that the Projections are reasonably calculated to forecast Debtors' ability to meet the obligations under the Plan.

Presently, the Effective Date payments under the Plan are to be funded by the Contribution Amount, plus cash on hand. If such amounts are insufficient to cover all such costs, Allowed Interests have agreed to invest additional funds as necessary to make the payments in the Effective Date. Moreover, Debtors' counsel, if needed, has agreed to be paid over time.

**Confirmation With the Acceptance of Each Impaired Class.** The Plan may be Confirmed, if each impaired Class of Claims accepts the Plan. Classes of Claims which are not impaired are deemed to have accepted the Plan. A Class is impaired if the legal, equitable or contractual rights attaching to the Claims of that Class are modified other than by curing defaults and reinstating maturities or by payment in full in cash.

Holders of Claims impaired by the Plan are entitled to file Ballots accepting or rejecting the Plan. Holders of Claims not impaired by the Plan, are deemed to accept the Plan, and may not vote to accept or reject the Plan. Holders of Claims that will neither receive nor retain any property under the Plan are deemed to reject the Plan.

The Bankruptcy Code defines acceptance of a plan by a Class of Claims as acceptance by the holders of two-thirds in dollar amount and a majority in number of Claims of that Class. Only those Claims, the holders of which actually vote to accept or reject the Plan, are counted for the purpose of determining whether the requisite number and amount of acceptances have been received.

**Confirmation Without the Acceptance of Each Impaired Class.** In the event that any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm the Plan at the Debtors' request if (i) all other requirements of section 1129(a) of the Bankruptcy Code are satisfied, (ii) at least one impaired Class of Claims votes to accept the Plan without regard to any vote cast on account of a Claim held by "insiders" (as defined in the Bankruptcy Code) and (iii) as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such non-accepting Class. The Debtors believe that the Plan is in the best interest of all Creditors and strongly recommends that all parties entitled to vote cast their ballots in favor of accepting the Plan. Nevertheless, out of an excess of caution, pursuant to the Plan, the Debtors have requested that the Court confirm the Plan over the rejection of any non-accepting class in the event all other elements of section 1129(a) are satisfied.

A plan "does not discriminate unfairly" if the legal rights of a non-accepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are intertwined with those of the non-accepting class, and no class receives payments in excess of that which it is legally entitled to receive for its Claims. The Debtors believe that under the Plan all classes of Impaired Claims are treated in a manner that is consistent with the treatment of other classes of Claims with which their legal rights are intertwined, if any, and no class of Claims will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims in such class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any impaired class of Claims.

Whether the Plan is fair and equitable depends upon the application of the so-called "absolute priority rule." Subject to certain exceptions, this rule, codified in section 1129(b)(2) of the Bankruptcy Code, generally requires that an impaired Class of Claims that has not accepted the Plan must be paid in full if a more junior class receives any distribution under the Plan.

With respect to Secured Claims, the absolute priority rule allows the confirmation of a Plan over the rejection of a class of Secured Claims if the holders of such Claims retain their liens and each holder of a Claim of such class receives on account of such Claim deferred cash payments, totaling at least the allowed amount of such Claim, of a value, as of the Effective Date of the plan, of at least the value of such holder's interest in the property securing its Claim. The Debtors' impaired Secured Creditor, CREIF, will retain its lien on the Property and will receive on account of its claim deferred Cash payments totaling at least the allowed amount of its claim, of a value, as of the Effective Date, at least the value of CREIF's interest in the Property securing CREIF's claim.

With respect to Unsecured Claims, the absolute priority rule allows the confirmation of a Plan over the rejection of a class of Unsecured Claims if the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property. The Holders of Class 7 and Class 8

Unsecured Claims will be 100% of their Allowed Claims in five equal annual installment payments.

Additionally, since Holders of Interests are funding the Contribution Amount they are retaining their Interests despite Unsecured Creditors being impaired.

If the Plan is rejected by Classes 3, 4, 7, or 8, the Debtors request that the Plan be confirmed under section 1129(b).

## EFFECT OF CONFIRMATION

### INJUNCTION

**Except (i) as otherwise provided in the Plan, (ii) as otherwise provided under Final Order entered by the Bankruptcy Court or (iii) with respect to the Debtors' obligations under the Plan, the entry of the Confirmation Order shall forever stay, restrain and permanently enjoin with respect to any claim or interest held as of the Effective Date, (a) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from the Property or property of the Estate that has been, or is to be, distributed under the Plan, and (b) the creation, perfection or enforcement of any lien or encumbrance against the Property or property of the Estate that has been, or is to be, distributed under the Plan.**

**Except as otherwise provided in the Confirmation Order, the entry of the Confirmation Order shall constitute an injunction against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset, from the Debtors, the Reorganized Debtors (in their own capacity and as Disbursing Agent) or property of the Estate, any claim, obligation or debt that was held by any person or entity as of the Effective Date except pursuant to the terms of the Plan.**

### RELEASE

**Except as otherwise provided in the Plan, upon the Effective Date, in consideration of the Cash and other property to be distributed to or on behalf of the holders of Claims and Interests under the Plan, the Plan shall be deemed to resolve all disputes and constitute a settlement and release, between and among the Debtors, on the one hand, and each Creditor and Interest Holder, on the other, from any claim or liability, whether legal, equitable, contractual, secured, unsecured, liquidated, unliquidated, disputed, undisputed, matured, unmatured, fixed or contingent, known or unknown, that the Debtors, their Creditors or Interest Holders ever had or now have through the Effective Date in connection with their Claim or Interest (including, without limitation, any claims the Debtors may assert on their own behalf or on behalf of Creditors or Interest Holders pursuant to sections 510 and 542 through 553 of the Bankruptcy Code, any claims Creditors or Interest Holders may have asserted derivatively on behalf of the Debtors**

absent bankruptcy, any claims based on the conduct of the Debtors' business affairs prior or subsequent to the commencement of the Case or any claims based on the negotiation, submission and confirmation of the Plan), provided however that nothing in the Plan or the Confirmation Order shall effect a release of any claim for any debt owed to the United States Government arising under the Internal Revenue Code; any state, city or municipality arising under any state, city or municipal tax code; any environmental laws or any criminal laws of the United States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any claim, suit or action arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall exculpate any party from any liability to the United States Government or any of its agencies or any state, city or municipality arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United States or any state.

#### **LIMITATION OF LIABILITY**

Section 1125(e) of the Bankruptcy Code, commonly referred to as the "safe harbor," protects persons acting in good faith, from civil claims arising in connection with solicitations of acceptances of plans of reorganization or participating in the offer, issuance, sale or purchase of a security under the Plan. Pursuant to section 1125(e), as set forth in Article 8 of the Plan, neither the Debtors, the Interest Holders nor any of their respective officers, directors, members, general partner, managers or employees (acting in such capacity), nor any professional person employed by any of them, if an, (the "Released Parties") shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with these cases or the Plan except in the case of fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing contained herein shall limit the liability of the Debtors' professionals pursuant to Rule 1.8(h)(1) of the New York State Rules of Professional Conduct. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any claim or liability released pursuant to Article 8 of the Plan.

### **ALTERNATIVES TO THE PLAN**

If the Plan is not confirmed by the Bankruptcy Court, the alternatives may include (a) liquidation of the Debtors under chapter 7 of the Bankruptcy Code; (b) the formulation, promulgation and confirmation of an alternative plan of reorganization involving a sale; or (c) dismissal of the Debtors' cases. In the case of dismissal, CREIF would be allowed to foreclose in BCH Capital's membership interests in Cypress.

The Debtors believe that the Plan provides a recovery to all Creditors equal to or greater than would be obtainable in a chapter 7 liquidation. See Liquidation Analysis.

The Debtors believe that the Plan enables Creditors to realize the most value under the circumstances.

### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

The following summary of certain U.S. Federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to each holder of an Allowed Claim. Each holder of an Allowed Claim is urged to consult his own tax advisors. This summary does not cover all potential U.S. federal income tax consequences that could possibly arise under the Plan and does not address the Plan's U.S. federal income tax consequences for any holder of an Allowed Claim that is a partnership (or other pass-through entity) or otherwise subject to special tax rules.

The Debtors have not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will the Debtors, with respect to the federal income tax consequences of the Plan, obtain any opinion of counsel. Consequently, there can be no assurance that the treatment set forth in the following discussion will be accepted by the IRS. The Debtors offer no statements or opinions that are to be relied upon by the creditors as to the treatment of creditors' claims under the Plan. Matters not discussed in this Disclosure Statement may affect the tax consequences of the Plan on any particular holder of a Claim or Equity Interest

This summary is based upon the laws in effect on the date of this Disclosure Statement and existing judicial and administrative interpretations thereof, all of which are subject to change, possibly with retroactive effect. Holders of Allowed Claims should consult their own tax advisors as to the Plan's specific federal, state, local and foreign income and other tax consequences.

The tax consequences to Creditor and Interest Holders will differ and will depend on factors specific to each Creditor and Interest Holder, including but not limited to: (i) whether the Claim or Interest (or portion thereof) constitutes a claim for principal or interest; (ii) the origin of the Claim or Interest; (iii) the type of consideration received by the Creditor and Interest Holder in exchange for the Claim; (iv) whether the Creditor and Interest Holder is a

United States person or foreign person for tax purposes; (v) whether the Creditor and Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor and Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim.

**THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR AND INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH CREDITOR AND INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR AND INTEREST HOLDER AS A RESULT OF THE PLAN.**

**THE DISCUSSION HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY CREDITOR AND INTEREST HOLDER FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON A TAX PAYER. THE DISCUSSION HEREIN WAS WRITTEN TO SUPPORT THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT. EACH CREDITOR AND INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR AND INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

#### **ADDITIONAL INFORMATION**

Requests for information and additional copies of this Disclosure Statement, the Ballots and the other materials delivered together herewith and all deliveries, correspondence and questions, as the case may be, relating to the Plan should be directed to (i) the Debtors' counsel, Robinson Brog Leinwand Greene Genovese & Gluck P.C., 875 Third Avenue, 9<sup>th</sup> Fl., New York, New York 10022, Attn.: Robert M. Sasloff, Esq. (212) 603-6329.

Copies of all pleadings, orders, lists, schedules, proofs of claims or other documents submitted in these cases are on file in the Office of the Clerk of the United States Bankruptcy Court at 300 Quarropas Street, White Plains, New York, and are available for public inspection Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m. and are also available for viewing on the Internet at <http://www.nysb.uscourts.gov>.

**CONCLUSION**

The Debtors believe the Plan is in the best interests of all Creditors and strongly encourages all holders of Claims against the Debtors to vote to accept the Plan and to evidence such acceptance by promptly returning their Ballots to ensure that they will be received not later than 5:00 p.m., Eastern Standard Time, on \_\_\_\_\_, 2017.

**DATED:** New York, New York  
August 23, 2017

**ROBINSON BROG LEINWAND GREENE  
GENOVESE & GLUCK P.C.**

**Attorneys for the Debtors**  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
Tel. No.: (212) 603-6300

**By: S/Robert M. Sasloff**  
**Robert M. Sasloff**



**EXHIBIT A**

Bankruptcy Plan Projections						
	Current	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Income:</b>						
Residential Income	\$520,272	\$698,600	\$719,558	\$741,145	\$763,379	\$786,280
Commercial Income	\$0	\$0	\$0	\$0	\$0	\$0
3.00% Residential Vacancy/Collection Loss	\$0	(\$20,958)	(\$21,587)	(\$22,234)	(\$22,901)	(\$23,588)
5.00% Commercial Vacancy/Collection Loss	\$0	\$0	\$0	\$0	\$0	\$0
Misc. Income	\$0	\$0	\$0	\$0	\$0	\$0
<b>EGI:</b>	<b>\$520,272</b>	<b>\$677,642</b>	<b>\$697,971</b>	<b>\$718,910</b>	<b>\$740,478</b>	<b>\$762,692</b>
<b>Expenses:</b>						
Real Estate Taxes	\$141,561	\$145,100	\$148,727	\$152,446	\$156,257	\$160,163
Water & Sewer	\$2,760	\$2,829	\$2,900	\$2,972	\$3,047	\$3,123
Insurance	\$25,547	\$16,456	\$16,867	\$17,289	\$17,721	\$18,164
Cable	\$6,900	\$7,073	\$7,249	\$7,431	\$7,616	\$7,807
Electric & Gas	\$19,140	\$19,619	\$20,109	\$20,612	\$21,127	\$21,655
Payroll - Super	\$9,500	\$9,738	\$9,981	\$10,230	\$10,486	\$10,748
Panther Alarm Company	\$1,900	\$1,948	\$1,996	\$2,046	\$2,097	\$2,150
Repairs and Maintenance	\$12,000	\$12,300	\$12,608	\$12,923	\$13,246	\$13,577
Waste Services	\$7,169	\$7,349	\$7,532	\$7,721	\$7,914	\$8,111
Landscaping Services	\$12,708	\$7,600	\$7,790	\$7,985	\$8,184	\$8,389
General & Administrative	\$1,200	\$1,230	\$1,261	\$1,292	\$1,325	\$1,358
Reserves (\$200/Door)	\$5,000	\$5,125	\$5,253	\$5,384	\$5,519	\$5,657
3.00% Management Fee	\$15,608	\$20,329	\$20,939	\$21,567	\$22,214	\$22,881
<b>Total Expenses:</b>	<b>\$260,994</b>	<b>\$256,694</b>	<b>\$263,213</b>	<b>\$269,898</b>	<b>\$276,753</b>	<b>\$283,783</b>
<b>OPEX Ratio</b>	50.16%	37.88%	37.71%	37.54%	37.37%	37.21%
<b>NOI:</b>	<b>\$259,278</b>	<b>\$420,948</b>	<b>\$434,759</b>	<b>\$449,013</b>	<b>\$463,725</b>	<b>\$478,909</b>
<b>Debt Service:</b>	<b>\$0</b>	<b>\$376,277</b>	<b>\$376,277</b>	<b>\$376,277</b>	<b>\$376,277</b>	<b>\$376,277</b>
<b>Cash Flow After DS</b>	<b>\$259,278</b>	<b>\$44,671</b>	<b>\$58,481</b>	<b>\$72,735</b>	<b>\$87,447</b>	<b>\$102,632</b>