

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re:**

**TARA RETAIL GROUP, LLC**

**Debtor.**

**Case No. 1:17-bk-00057**

**Chapter 11**

**DISCLOSURE STATEMENT TO ACCOMPANY SECOND AMENDED PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY TARA RETAIL GROUP, LLC**

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**IMPORTANT NOTICE**

This Disclosure Statement<sup>1</sup> and its related documents are the only documents authorized by the Bankruptcy Court to be used in connection with the solicitation of votes to accept the Plan. No representations have been authorized by the Bankruptcy Court concerning the Debtor, its business operations or the value of its assets, except as explicitly set forth in this Disclosure Statement.

Unless specifically defined herein, please refer to the Plan (or, where indicated, certain motions filed with the Bankruptcy Court) for definitions of the capitalized terms used in this Disclosure Statement.

Tara reserves the right to file an amended Plan and Disclosure Statement from time to time. Tara urges you to read this Disclosure Statement carefully for a discussion of voting instructions, recovery information, classification of claims, the history of Tara and the Case and a summary and analysis of the Plan.

This Disclosure Statement contains only a summary of the Plan. This Disclosure Statement is not intended to replace a careful and detailed review of the Plan, only to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the Plan, the exhibits attached thereto, and the agreements and documents described therein. If there is a conflict between the Plan and this Disclosure Statement, the provisions of the Plan will govern. You are encouraged to review the full text of the Plan and to read carefully the entire Disclosure Statement, including all exhibits, before deciding how to vote with respect to the Plan.

Except as expressly otherwise indicated, the statements in this Disclosure Statement are made as of Month/Day, 2018, and the delivery of this Disclosure Statement will not, under any circumstances, imply that the information contained in this Disclosure Statement is correct at any time after Month/Day, 2018. Any estimates of claims or interests in this Disclosure Statement may vary from the final amounts of claims or interests allowed by the Bankruptcy Court. In addition, the treatment of creditors under the Plan described herein is subject to change as such treatment continues to be negotiated.

**YOU SHOULD NOT CONSTRUE THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. YOU SHOULD, THEREFORE, CONSULT WITH YOUR OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS IN CONNECTION WITH THE PLAN, THE SOLICITATION OF VOTES ON THE PLAN AND THE TRANSACTIONS CONTEMPLATED BY THE PLAN.**

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<sup>1</sup>Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Tara Retail Group, LLC (the "Plan").

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CERTIFICATE OF SERVICE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

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Debtor.

Case No. 1:17-bk-00057

Chapter 11

DISCLOSURE STATEMENT TO ACCOMPANY SECOND AMENDED PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY TARA RETAIL GROUP, LLC

I. OVERVIEW OF THE DISCLOSURE STATEMENT

PURPOSE OF DISCLOSURE STATEMENT

The debtor and debtor-in-possession in the above-captioned case, Tara Retail Group, LLC (“**Tara**” or “**Debtor**”), has prepared this Disclosure Statement (the “**Disclosure Statement**”) to accompany the Second Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code Proposed by Tara Retail Group, LLC (the “**Plan**”), and in connection with its solicitation of acceptances of Plan filed in Tara’s chapter 11 Case under the Bankruptcy Code. Upon order of the Bankruptcy Court entered Month/Day, 2018, the Bankruptcy Court approved this Disclosure Statement and scheduled the Confirmation Hearing.

A copy of the Plan is attached to this Disclosure Statement and incorporated into this Disclosure Statement by reference as **Exhibit A**. Unless otherwise specifically noted, all capitalized terms utilized herein shall have the meanings ascribed to such terms as set forth in the Plan.

You should read this Disclosure Statement and the Plan in their entirety before voting on the Plan. No statements or information concerning Tara, its affiliates or any other entity described in this Disclosure Statement or the Plan, particularly, but not limited to, Tara’s profits, financial condition, assets or liabilities are authorized by Tara other than as set forth in this Disclosure Statement or Exhibits hereto.

The financial information set forth in this Disclosure Statement has not been audited by independent certified public accountants, nor has it necessarily been prepared in accordance with generally accepted accounting principles, except as specifically set forth herein. For that reason, and as a result of the complexity of the financial affairs of Tara, Tara is not able to represent and warrant that the information set forth in this Disclosure Statement is without any inaccuracy. To the extent possible, however, the information has been prepared from Tara’s Schedules and other information available to Tara, and every reasonable effort has been made to ensure that all information in this Disclosure Statement has been fairly presented.

**PROCEDURAL INFORMATION**

**Voting**

**Which Classes of Claims and Interests are Entitled to Vote on the Plan?**

Classes of Claims entitled to vote on the Plan are as follows:

- Claims and Interests in Classes 1, 2, 3, 4, 5 and 6 are Impaired and entitled to vote on the Plan (each a “Voting Class” and together the “Voting Classes”).

Under the Bankruptcy Code, the Plan will be deemed accepted by an Impaired Class of Claims if Tara receives votes accepting the Plan representing at least:

- two-thirds of the total dollar amount of the allowed Claims in Classes that vote; and
- more than one-half of the total number of allowed Claims in the Class that cast a vote.

All properly completed ballots received by Tara on or before **Month/Day, 2018 at 5:00 p.m. (prevailing eastern time)** (the “Voting Deadline”), will be counted in determining whether each Impaired Class entitled to vote on the Plan has accepted the Plan. Any ballots received after the Voting Deadline will not be counted. All ballots must contain an original signature to be counted. No ballots received by facsimile will be accepted.

**Voting on the Plan**

***When does the vote need to be received?*** The deadline for the receipt by Tara of properly completed ballots is **Month/Day, 2018 at 5:00 p.m. (prevailing eastern time)**.

***Which Classes may vote?*** Persons may vote to accept or reject the Plan with respect to Allowed Claims that belong to a Class that is Impaired under the Plan and is not deemed to have rejected the Plan- i.e. Classes 1, 2, 3, 4, 5 and 6.

***Which members of the Impaired Classes may vote?*** The *voting record* date for determining which members of Impaired Classes may vote on the Plan is Month/Day, 2018. Persons may vote on the Plan only with respect to Claims and Equity Interests that were held on the voting record date.

***How do I vote on the Plan?*** For a vote to be counted, Tara must receive an original signed copy of the ballot form approved by the Bankruptcy Court. Faxed copies and votes sent on other forms will not be accepted.

***Who should I contact if I have questions or need a ballot?*** You may contact Tara at the address or phone number listed below.

This Disclosure Statement, the Plan, attachments thereto and documents filed by Tara in connection therewith are the only materials that you should use in determining how to vote on the Plan. Tara submits that approval of the Plan provides the greatest return to holders of Claims in the Voting Classes.

**Voting Recommendations**

Tara submits that the Plan presents the best opportunity for holders of Claims to maximize their respective recoveries. **Tara encourages holders of Impaired Claims to vote to accept the Plan.**

The ballots have been specifically designed for the purpose of soliciting votes on the Plan from each Class entitled to vote. If you hold Claims in more than one Class, you must use a separate ballot for voting with respect to each Class of Claims that you hold.

Please complete and sign your ballot and return it in the enclosed pre-addressed envelope to the office of the bankruptcy counsel to Tara. All correspondence in connection with voting on the Plan should be directed to the following address:

**By mail or overnight delivery:**  
**Kay Casto & Chaney PLLC**  
**Attn: Deadra Cummins**  
1500 Chase Tower  
707 Virginia Street East  
Charleston, WV 25301  
(304) 345-8900

Tara will prepare and file with the Bankruptcy Court a certification of the results of the voting on the Plan on a Class-by-Class basis.

Additional copies of the ballots, this Disclosure Statement and the Plan are available upon request made to Tara at the address and telephone number above.

**Your Vote Is Important**

Your vote on the Plan is important because:

- Under the Bankruptcy Code, a chapter 11 plan can only be confirmed if certain majorities in dollar amount and number of claims (as described above) of each Voting Class under the plan vote to accept the plan, unless the “cram down” provisions of the Bankruptcy Code are used.
- Under the Bankruptcy Code, only the votes of those holders of claims or interests who actually submit votes on a plan are counted in determining whether the specified majorities of votes in favor of the plan have been received.

- If you are eligible to vote with respect to a Claim and do not deliver a properly completed ballot relating to that Claim by the Voting Deadline, you will be deemed to have abstained from voting with respect to that Claim and your eligibility to vote with respect to that Claim will *not* be considered in determining the number and dollar amount of ballots needed to make up the specified majority of that Claim's Class for the purpose of approving the Plan.

All pleadings and other documents referred to in this Disclosure Statement as being on file with the Bankruptcy Court are available for inspection and review during normal business hours at the Office of the Clerk of the United States Bankruptcy Court for the Northern District of West Virginia, U.S. Bankruptcy Court, 1125 Chapline Street Wheeling, West Virginia 26003.

### Confirmation Hearing

The Bankruptcy Court will hold the Confirmation Hearing at the following time and place:

<b>Confirmation Hearing</b>
<b>Date and Time:</b> Commencing at _____ (_____ time), on [Month/Day], 2018.
<b>Place:</b> U.S. Bankruptcy Court, L. Edward Friend II Bankruptcy Courtroom, <u>1125 Chapline Street Wheeling, West Virginia 26003.</u>
<b>Judge:</b> Patrick M. Flatley, United States Bankruptcy Judge, Northern District of West Virginia.
The Confirmation Hearing may be adjourned from time to time on announcement in the Bankruptcy Court on the scheduled date for the hearing. No further notice will be required to adjourn the hearing.

At the Confirmation Hearing, the Bankruptcy Court will:

- determine whether sufficient majorities in number and dollar amount, as applicable, from each Voting Class have delivered properly executed votes accepting the Plan;
- hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of;
- determine whether the Plan meets the confirmation requirements of the Bankruptcy Code; and
- determine whether to confirm the Plan.

Any objection to confirmation of the Plan must be in writing and filed and served as required by the Bankruptcy Court under the order approving this Disclosure Statement. That order requires any objections to the confirmation of the Plan to be served so as to be received on or before 4:00 p.m. (prevailing eastern time) on Month/Day, 2018, by (i) Counsel for the Debtor: Kay Casto and Chaney PLLC, 1500 Chase Tower, 707 Virginia Street East, Charleston,



WV 25301, Attn: Steven L. Thomas, Esquire, and (ii) Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, WV 25301, Attn: David Bissett.

**II. SUMMARY AND OVERVIEW OF THE PLAN**

The following table briefly summarizes the classifications and treatment of Claims and Equity Interests under the Plan.

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
N/A	Administrative Expense Claims (including claims of Applied Construction Solutions, Inc., and SLS Land & Energy Development).	Paid in full, in cash, according to (i) ordinary business terms, or (ii) the terms of the Promissory Notes payable to Applied Construction Solutions, Inc., and SLS Land & Energy Development.	100%	Unimpaired	No
N/A	Professional Fee Compensation and Reimbursement Claims	Paid in full, in cash. These expenses are classified as Reorganization Expenses in the Projected Financial Statements, attached to the Plan as Exhibit 4. Tara reserves the right to recover from the Collateral of Comm 2013 the reasonable, necessary costs and expenses of preserving the Crossings Mall, including reasonable attorney's fees, accountant's fees and ad valorem property taxes, to the extent of any the increased value of the Crossings Mall after the rebuilding of the bridge, which inure to the benefit of Comm 2013, pursuant to Bankruptcy Code §506(c) (Doc. 580).	100%	Unimpaired	No

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
N/A	U.S. Trustee Fees	All fees payable in the Case under 28 U.S.C. §1930, as agreed by Tara or as determined by the Bankruptcy Court, will be paid in Cash on the Effective Date or as soon thereafter as is practicable, and will continue to be paid by Tara as required under 28 U.S.C. §1930 until such time as an order is entered by the Bankruptcy Court closing the Case.	100%	Unimpaired	No
N/A	Priority Tax Claims	The only Priority Tax Claim is Claim No. 6 filed by the Kanawha County Sheriff, in the amount of \$139,112.01. If the Bankruptcy Court finds that the Lien of Comm 2013 does not attach to payments of property taxes made by tenants of the Crossings Mall, then the Class 2 Priority Tax Claim will be paid the amount determined by the Bankruptcy Court to be attributable to property taxes paid by tenants of the Crossings Mall, in cash on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the date such Priority Tax Claim becomes an Allowed Priority Tax Claim. Otherwise, the Class 2 Priority Tax Claim will be paid in equal monthly installments commencing on the later of (i) the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon as practicable thereafter) and ending no later than five years after the Petition Date.	100%	Unimpaired	No

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
<b>Class 1</b>	Comm 2013 Secured Claims	On the date ordered by the Bankruptcy Court, interest at the Market Interest Rate will be paid in deferred cash payments equal to (i) approximately \$72,370.00 per month for approximately 23 months, until all Administrative Claims owed to Applied Construction Solutions, Inc., and SLS Land & Energy Development have been paid, (ii) principal and interest payments of \$86,000.00 per month for the ensuing 120 months, (iii) annual payments to Comm 2013, beginning on the first business day that is 365 days after the Effective Date, in the amount of 50% of the Annual Excess Available Cash, and (iv) a balloon payment in the amount of all remaining principal and other amounts owed on the date that is 30 days after the last payment of \$86,000.00 is due. A New Promissory Note and New Loan Agreement will be issued to Comm 2013, and the existing Promissory Note and Loan Agreement will be cancelled. Distributions to Comm 2013 will begin on the date ordered by the Bankruptcy Court.	100%	Impaired	Yes

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
<b>Class 2</b>	Unsecured Claims of Tenants of the Crossings Mall	For Claims for which there is a settlement agreement approved by the terms of a final order of the Bankruptcy Court, paid according to the terms of such settlement agreement between Tara and the holder of a Tenant Unsecured Claim. For claims for which there is no settlement agreement, if Tara ultimately assumes the underlying lease, paid in full, in cash on the later of (i) the Effective Date (or as soon as practicable thereafter), or (ii) on the 15 <sup>th</sup> day of the month following the date such Tenant Unsecured Claim becomes an Allowed Tenant Unsecured Claim. If Tara ultimately rejects the underlying lease, paid in full in deferred cash payments with interest at the Federal Judgment Interest Rate beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15 <sup>th</sup> day of the month following the date such Tenant Unsecured Claim becomes an Allowed Tenant Unsecured Claim and continuing for a total of one hundred forty-four (144) months.	100%	Impaired	Yes

<b><u>Class</u></b>	<b><u>Type of Claim or Equity Interest</u></b>	<b><u>Treatment</u></b>	<b><u>Estimated Recovery</u></b>	<b><u>Impairment</u></b>	<b><u>Voting</u></b>
<b>Class 3</b>	Unsecured Claims of Individuals having damage claims arising from the June 23, 2016 Flood.	In full payment of the holders of Citizen Unsecured Claims, Tara will assign its claims under its Commercial Insurance Policy Y-630-5D958742-TIL-15 issued by Travelers Indemnity Company to Tara for the period 9/11/2015 to 9/11/2016, relating to claims of (i) local residents claiming flood damage to their property; (ii) stranded patrons of the Crossings Mall claiming inconvenience; (iii) local residents claiming additional travel expenses and inconvenience due to the loss of access to the shops in the Crossings Mall; and (iv) employees of retail businesses at the Crossings Mall claiming loss of employment.	100%	Impaired	Yes
<b>Class 4</b>	General Unsecured Claims	Paid in full, in deferred cash payments with interest at the Federal Judgment Interest Rate, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15 <sup>th</sup> day of the month following the date such General Unsecured Claim becomes an Allowed General Unsecured Claim, and continuing on the 15 <sup>th</sup> day of each month thereafter, ending no later than twelve years after the date that the first such payment is made.	100%	Impaired	Yes
<b>Class 5</b>	Insider Unsecured Claims	Holders of Insider Unsecured Claims will retain their claims, but will receive no distributions over the Plan period	0%	Impaired	Yes
<b>Class 6</b>	Equity Interests	The pre-petition Equity Interests will be cancelled, and new equity interests will be issued to William A. Abruzzino and Rebecca A. Abruzzino.	100%	Impaired	Yes

### III. SOURCES OF FUNDING AND PROJECTED DISTRIBUTION TO CREDITORS

The sources of funding for the Plan are (1) rental payments from tenants at the Crossings Mall; (2) the proceeds of the civil action pending against U.S. Bank, National Association, as Trustee for the Benefit of the Holders of COMM 2013-CCRE Mortgage Trust Commercial Mortgage Pass-Through Certificates and COMM 2013 CCRE12 Crossings Mall Road, LLC, Civil Action No: 2:16-cv-09232 in the District Court, which has been referred to the Bankruptcy Court; (3) reimbursement payments from Emerald Grande, LLC, for a portion of the cost of rebuilding the bridge providing access to the Crossings Mall and the Elkview La Quinta Inn and Suites; (4) proceeds from insurance for claims of Tara, and; (5) additional equity contributions by William A. Abruzzino and Rebecca Abruzzino.

Tara projects that distributions under the Plan, after resolution of objections to claims, will return 100% to holders of Allowed Claims.

### IV. BACKGROUND

#### A. Background of Tara.

##### **General Background**

Prior to the Petition Date, Tara was engaged principally in the business of owning the Crossings Mall in Elkview, West Virginia, and managing the Crossings Mall through its sister company, Plaza Management, LLC. Prior to June 23<sup>rd</sup>, 2016, the Crossings Mall was a successful real estate retail development, and was a vital commercial center for the citizens of Elkview, West Virginia.

On or about September 17, 2013, UBS Real Estate Securities, Inc. ("**Original Lender**") originated a \$13,650,000 loan ("Loan") to Tara. As evidence of the Loan, Tara executed a Promissory Note dated September 17, 2013, in the original principal amount of \$13,650,000.00 in favor of Original Lender (the "**Note**") along with that certain Loan Agreement dated September 17, 2013, between Tara and Original Lender (the "**Loan Agreement**"). The Loan is secured by a deed of trust (the "**Deed of Trust**") on the Crossings Mall, an assignment of rents from the tenants of the Crossings Mall, and other collateral.

The Original Lender subsequently assigned all its rights under the Loan to U.S. Bank National Association, as trustee for the benefit of the holders of "COMM 2013-CCRE12 Mortgage Trust Commercial Mortgage Pass-through Certificates" ("**Lender**"). Upon information and belief, the Loan was packaged together with numerous other commercial loans which were held by Lender as trustee for the benefit of an unknown and unidentified group of investors. Subsequent to Tara's bankruptcy petition on January 23<sup>rd</sup>, 2017, Lender assigned its interest in the Loan to COMM 2013 CCRE12 Crossings Mall Road, LLC ("**Comm 2013**").

Under the Loan Agreement, payments became due starting on November 6, 2013, and continuing on the 6<sup>th</sup> day of each ensuing month. The Loan is "non-recourse" with exceptions which are outlined in Section 11.22 of the Loan Agreement. One of the exceptions is the filing of a bankruptcy petition by Tara.

Under the Deed of Trust, Tara conveyed certain real estate and personal property, described more specifically in the Deed of Trust, known as the Crossings Mall located at 223

Crossings Mall Road, Elkview, West Virginia 25071 in trust for the benefit of Original Lender. The Crossings Mall contains many retail tenants such as Kmart Corporation (“**Kmart**”), Kroger Limited Partnership I (“**Kroger**”), Little General Stores (Exxon franchisee) and McDonald's. The Crossings Mall is the only large retail center within a substantial radius around Elkview, West Virginia and is a vital commercial center for residents in the area. A copy of the rent roll immediately prior to June 23, 2016, dated May 3, 2016, is attached as Exhibit A to the Declaration of William A. Abruzzino, Managing Member of Debtor Tara Retail Group, LLC, in Support of Pleadings of Debtor and Debtor in Possession (Doc. 17) (the “**Abruzzino Declaration**”). The rent roll reflected monthly base rent of \$142,278.30 from 23 active tenants. The two largest tenants are K-Mart and Kroger, which occupy 40.02% and 15.47% of the Crossings Mall respectively.

Prior to June 23, 2016, Tara’s monthly debt service under the Loan Agreement was \$108,366.03, excluding late charges. A copy of the last Commercial Mortgage Servicing Billing Statement, dated June 6, 2016, is attached as Exhibit B to the Abruzzino Declaration. Each monthly payment included principal and interest of \$84,846.02, and prepayments for taxes (\$13,500.00), insurance (\$1,500.00), and capital reserves (\$8,520.01).

Under the Loan Agreement, tenants of the Crossings Mall were required to remit payments directly to Lender’s “**Clearing Account**” (as defined in the Loan Agreement). Copies of the bank statements from Lender’s Clearing Account are attached as Exhibit C to the Abruzzino Declaration. A spreadsheet summarizing the deposits into Lender’s Clearing Account, the required monthly payments and what should be the running balance in the Clearing Account through November, 2016, is attached as Exhibit D to the Abruzzino Declaration. William A. Abruzzino and Rebecca Abruzzino personally guaranteed repayment of the Loan, which guaranties are triggered by the recourse events as specified in the loan documents, including the filing of Tara’s bankruptcy petition.

On June 23, 2016, thunderstorms brought torrential rain to much of southern West Virginia, resulting in accumulations of up to 10 inches (250 mm) in 12 hours. According to meteorologists at the National Weather Service, this rainfall qualifies as a 1,000 year event. The tremendous rainfall produced widespread and destructive flash floods in the state. The Elk River rose to an all-time high of 33.37 ft (10.17 m), surpassing the previous record of 32 ft (9.8 m) set in 1888. In Kanawha County, the flood waters of Little Sandy Creek, a tributary of the Elk River, washed away the culvert and bridge located in the right of way maintained by the West Virginia Division of Highways (the “**DOH Right of Way**”) connecting the Crossings Mall to Kanawha County Route 45, stranding approximately 500 people for nearly 24 hours. At least six people died in Kanawha County as a result of the Flood.<sup>2</sup>

In January, 2016, Tara made a pre-Flood request for a release of capital expenditure funds under the Loan Agreement to allow certain structural repairs to be made to the culvert near this access way to the Crossings Mall. A copy of the letter making this request to Lender, through its servicer, is attached as Exhibit E to the Abruzzino Declaration. Lender, through its servicer, denied this request. Tara reasonably believes that the culvert would not have been destroyed in the Flood, if Lender had honored the pre-Flood request for a release of capital expenditure funds to make repairs to the culvert, as two bridges adjacent to the Crossings Mall survived the Flood: one immediately upstream from the Crossings Mall and the other immediately downstream, the later providing access to the 84 Lumber store adjacent to the Crossings Mall. Tara has asserted claims against Lender and Comm 2013 in the Civil Action for damages it has suffered as a result of the denial of the pre-Flood request for release of capital

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<sup>2</sup>See Wikipedia Article, 2016 West Virginia Flood, [https://en.wikipedia.org/wiki/2016\\_West\\_Virginia\\_flood](https://en.wikipedia.org/wiki/2016_West_Virginia_flood).

expenditure funds to make repairs to the culvert. In addition, Tara has filed an objection and motion to equitably subordinate the claim of Comm 2013 in this Case (Doc. 531). Thus, Tara disputes the claim of Comm 2013, and Comm 2013 will receive no distributions under Tara's Plan until the litigation involving Tara's claim against Lender and Comm 2013 is resolved, and all other objections to the Claim of Comm 2013 have been adjudicated. The claims against Comm 2013 are summarized at pps. 19-21 of this Disclosure Statement.

After the June 23<sup>rd</sup>, 2016 Flood, there was no public commercial access to the Crossings Mall. Immediately after June 23, Tara began to contact Lender's servicer, to address the fact that the Crossings Mall was now cut off from public access and thus closed. Neither Lender nor its servicer responded for more than a month. During this period after the Flood, Tara undertook efforts to re-construct the bridge in the DOH Right of Way, to restore access to the Crossings Mall, including obtaining a permit to rebuild the bridge, and arranging for financing to fund construction.

On July 28, 2016, counsel for Tara wrote a letter to Lender's servicer, summarizing the crisis facing the Crossings Mall, Tara, and Lender itself. A copy of this Letter is attached as Exhibit F to the Abruzzino Declaration. After the July 28, 2016 letter, LNR Partners, LLC ("LNR"), the special servicer under the Loan Agreement, finally responded to Tara. In August – September, 2016, Tara undertook negotiations with Lender through LNR to obtain access to capital expenditure funds being held on behalf of Lender to rebuild the bridge. Tara proposed to rebuild the bridge using the capital expenditure funds then being held on behalf of Lender, which Tara understood to be approximately \$300,000.00, with the balance of the repair cost to be injected as new capital by William A. Abruzzino, as Tara's principal, through financing he had arranged.

To support this injection of new capital, Tara asked Lender through LNR to agree to add the missed payments under the Loan, to the end of the loan term. However, Lender through LNR refused Tara's request to add the missed loan payments to the end of the Loan term, instead insisting that Tara must make up the missed loan payments over the ensuing 12 months. As the rents from the Crossings Mall appeared to be insufficient to amortize the missed payments over 12 months, Tara's negotiations with Lender to rebuild the bridge broke down.

After the Flood, the tenants at the Crossings Mall ceased making rental payments into Lender's Clearing Account. When negotiations with Lender broke down, Lender thereafter declared Tara in default on the Loan, accelerated the balance owed, and demanded immediate payment in full from Tara. Thus, in essence, Lender precipitated Tara's default, by refusing its proposal to rebuild the bridge and add the missed payments to the end of the Loan term.

On September 28, 2016, Lender filed the Civil Action in the District Court against Tara, alleging default under the Loan between Tara and Lender and seeking the appointment of a receiver. Tara's claims against Lender and Comm 2013 for failure to authorize a release of capital expenditure funds under the Loan Agreement to allow structural repairs to be made to the bridge and culvert, are pending as a counterclaim in the Civil Action, and also in *Debtor's Renewed Objection to and Restated Motion to Equitably Subordinate Claim of Comm 2013 CCRE12 Crossings Mall Road, LLC* (Doc. 538).

The bridge providing access to the Crossings Mall was located entirely within the DOH Right of Way, which extends from County Route 45 over Little Sandy Creek, to Tara's property line. Tara requested the State to undertake to rebuild the bridge providing access to the Crossings Mall. The State failed to respond to this request. Thus, by letter dated November 15, 2016, Tara gave notice to the State pursuant to West Virginia Code Section 55-17-3, of its intent



to file a claim, due to the failure of the State to undertake repairs to rebuild the bridge providing access to the Crossings Mall. The State did not respond to this notice.

On December 1, 2016, Judge Johnston scheduled a hearing and settlement meeting on Lender's request for a receiver in the Civil Action. After negotiations through the court-led mediation failed, Judge Johnston held a hearing on Lender's motion for appointment of a receiver, and thereafter granted Lender's request, appointing a receiver by order entered on December 23, 2016.

Almost immediately after the order appointing the receiver was entered, by notice dated December 28, 2016, Lender initiated foreclosure on the Crossings Mall pursuant to the terms of the Deed of Trust. The foreclosure was scheduled for Tuesday, January 24, 2017, at 1:30 p.m.

Prior to the Petition Date, the receiver appointed by Judge Johnston obtained construction bids to restore access to the Crossings Mall, but as of the Petition Date, no contract was awarded and construction to rebuild the bridge had not started at the site.

On January 11, 2017, Emerald Grande, LLC ("EG"), an entity which owns and operates the Elkview La Quinta Inn and Suites adjacent to the Crossings Mall, filed a petition for relief under Chapter 11 of the Bankruptcy Code. Though EG is technically not an affiliate of Tara, both entities are controlled by William A. Abruzzino, and restoration of access to the Crossings Mall has also substantially benefited EG, as the bridge has restored access to both the Elkview La Quinta Inn and Suites and the Crossings Mall.

**B. Filing of Bankruptcy Petition and Significant Events in Bankruptcy Case and Related Litigation.**

Tara determined that the most efficient and equitable way to address the significant issues resulting from the Flood, was through a chapter 11 bankruptcy proceeding. Thus, on January 24<sup>th</sup>, 2017, Tara filed its voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the Bankruptcy Court, commencing this Case. Tara has filed its Statement of Financial Affairs, Schedules of Assets and Liabilities, and lists of Equity Security Holders, each as amended from time to time. On February 21, 2017, the Office of the United States Trustee conducted a meeting of creditors pursuant to section 341 of the Bankruptcy Code (the "**Meeting of Creditors**"). Tara has filed monthly operating reports and paid all quarterly fees as and when due to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

The Crossings Mall constitutes "single asset real estate", within the meaning of Bankruptcy Code section 101(51B). Thus, special rules limit the time within which Tara could propose a plan of reorganization. These special rules were added to the Bankruptcy Code in 2005, in response to perceived abuses by shopping mall debtors that filed chapter 11 bankruptcy petitions, despite not having enough income to service the debt securing their properties. Because Tara was able to service its secured debt with money to spare prior to the Flood, on February 1, 2017, Tara filed a motion under section 362(d)(3) of the Bankruptcy Code to extend its time to file a plan. Doc. 34.

Comm 2013 objected to Tara's request. Doc. 93. In addition, Comm 2013 filed a motion to dismiss Tara's bankruptcy case (Doc. 92) and filed a motion for relief from the automatic stay, to allow it to foreclose on the Crossings Mall. Doc. 44. On February 17, 2017, Tara filed its response to Comm 2013's motion for relief from the automatic stay, and a cross motion to equitably subordinate Comm 2013's claim. Doc. 97. During a hearing held on March 30, 2017,

the Bankruptcy Court deferred action on Tara's motion to equitably subordinate the Claim of Comm 2013.

Also on February 17, 2017, Tara filed a motion to obtain post-petition financing, granting super priority administrative expense claim and priming lien on the Crossings Mall property, in order to rebuild the bridge providing access to the Crossings Mall. Doc. 98. On February 23, 2017, the Bankruptcy Court entered an order and notice setting a final hearing on March 2, 2017, on Comm 2013's motion for relief from stay, Comm 2013's motion to dismiss case, Tara's motion to obtain post-petition financing to rebuild the bridge, and Tara's motion for an extension of its deadline for filing a plan under bankruptcy code section 362(d)(3). At the conclusion of the hearing on March 2, the Bankruptcy Court took all pending motions under advisement. On March 15, 2017, Tara filed its renewed motion to obtain post-petition financing, granting super priority administrative expense claim and priming lien on the Crossings Mall property. Doc. 167.

On March 30, 2017, the Bankruptcy Court convened a hearing, and orally rendered its ruling on all pending motions. At that time, the Bankruptcy Court raised the issue as to whether Tara's independent director, Tara Retail Management Group, Inc., had ratified Tara's bankruptcy filing by failing to object after being notified. After this hearing, also on March 30, 2017, the Bankruptcy Court entered an order conditionally granting Comm 2013's motion for relief from stay conditioned upon Tara succeeding on its motion to obtain post-petition financing at a hearing scheduled for April 6, 2017. In that order, the Bankruptcy Court also ordered Tara to provide a copy of the order to all known directors of Tara Retail Management Group, Inc., in the most expeditious manner reasonably available, so that all such directors were thereby notified that they could appear and be heard at the hearing on April 6, 2017, and object to Tara's bankruptcy filing.

Immediately after the hearing on March 30, 2017, Tara notified John Hosmer of SPE Independent Director, LLC (the independent director of Tara Retail Management Group, Inc.), of the April 6 hearing. Thereafter, Tara furnished Mr. Hosmer with a copy of the court's March 30, 2017 order, inviting him to appear during the hearing on April 6, 2017, if he objected to Tara's bankruptcy petition.

On April 6, 2017, the Bankruptcy Court convened a hearing in Clarksburg, West Virginia, on Comm 2013's motion to dismiss, Tara's renewed motion for post-petition financing, and Tara's motion to extend its time to file a plan of reorganization. Mr. Hosmer did not appear at this hearing, nor did Tara Retail Management Group, Inc. otherwise object to Tara's action in filing this Case.

Thereafter, on April 14, 2017, the Bankruptcy Court convened a hearing at which it orally rendered its ruling on Comm 2013's motion to dismiss and Tara's motion for post-petition financing. During this hearing, the Bankruptcy Court ruled that Tara Retail Management Group, Inc. had ratified Tara's bankruptcy filing, by failing to appear at the hearing on April 6, 2017, after being given notice of the opportunity to appear and object. Thus, the Bankruptcy Court denied Comm 2013's motion to dismiss. Also in April 14, 2017, the Bankruptcy Court entered an order granted Tara's renewed motion for post-petition financing (Doc. 200), thereby approving Tara's plan to rebuild the bridge providing access to the Crossings Mall, and directing tenants to remit rent payments to Tara's Disputed Claims Reserve account. The Bankruptcy Court also granted, in part, Tara's motion for an extension of time to file a plan of reorganization, extending Tara's deadline for filing a plan to June 23, 2017. The Bankruptcy Court reserved the right to file a written memorandum opinion, should any party file a notice of appeal from the court's ruling.

On April 26, 2017, Comm 2013 filed a notice of appeal from the Bankruptcy Court's order denying its motion to dismiss, initiating Civil Action 17-cv-00067 in the United States District Court for the Northern District of West Virginia. Also on April 26, 2017, work commenced on rebuilding the bridge to provide access to the Crossings Mall. On May 4, 2017, the Bankruptcy Court entered its memorandum opinion, restating the court's basis for denying Comm 2013's motion to dismiss. Doc. 217. On May 26, 2017, Tara filed a motion to dismiss Comm 2013's appeal in the United States District Court for the Northern District of West Virginia, for lack of jurisdiction. Comm 2013 responded on June 9, 2017, and Tara filed its Reply on June 16, 2017. On June 30, 2017, Judge Keeley entered a Memorandum Opinion and Order Granting Motion to Dismiss for Lack of Jurisdiction. Comm 2013 did not file a notice of appeal from Judge Keeley's order.

On April 28, 2017, Tara filed its motion to refer its counterclaim against Lender in the Civil Action pending in the District Court, to the United States Bankruptcy Court for the Southern District of West Virginia. The basis for this motion is that numerous individuals and businesses have filed proofs of claim in Tara's bankruptcy case, relating to losses suffered as a result of destruction of the bridge providing access to the Crossings Mall. These claims which have been asserted against Tara, constitute a significant portion of Tara's damages asserted in its counterclaim against Lender and Comm 2013. In response, Lender moved to withdraw the reference of the Civil Action to the bankruptcy court on May 12, 2017, to which Tara responded on May 24, 2017. Also on May 24, 2017, Tara filed its renewed motion for leave to file second amended defenses and answer to plaintiff's complaint, counterclaim and third-party complaint against Comm 2013 in the District Court. Lender objected to this motion on June 7, 2017. On March 12, 2018, the District Court granted Tara's motion to refer its counterclaim to the Bankruptcy Court, and denied without prejudice Lender's motion to withdraw the reference to the Bankruptcy Court. Also on March 12, 2018, the District Court granted similar motions to refer to the Bankruptcy Court three related civil actions filed by Elswick and the holders of Citizen Unsecured Claims against Lender and Wells Fargo Commercial Loan Servicing, asserting similar Claims to those asserted by Tara in its counterclaim, pending in the District Court as Civil Action Nos. 17-2328, 17-3003 and 17-3005.

On June 22, 2017, Tara filed its application in this Case to employ conflicts counsel, for the purpose of making application in the bankruptcy case of EG, for a Bankruptcy Court order requiring EG to pay a portion of the cost of rebuilding the bridge providing access to the Crossings Mall and the Elkview La Quinta Inn. On that same day, EG filed a motion to employ conflicts counsel, to defend against any application filed by Tara in EG's bankruptcy case. The Bankruptcy Court granted Tara's motion to employ conflicts counsel on July 11, 2017, and granted EG's motion to employ conflicts counsel on July 18, 2017. Thereafter, Tara filed a motion to allow an administrative claim in the EG case, for a portion of the cost of rebuilding the bridge restoring access to the Elkview La Quinta Inn. First Bank of Charleston, Inc. and Carter Bank and Trust filed objections to this claim. In response, both Tara and EG filed amendments to bankruptcy schedule G, to list a joint venture or joint enterprise between the two entities as an executory contract, for the purpose of rebuilding the bridge. Thereafter the Bankruptcy Court entered an order in EG's case, finding that Tara's motion to award an administrative priority claim against EG was mooted by the amendments to bankruptcy schedule G in this case and EG's case. (EG Doc. 307). On March 12, 2018, Tara filed its *Motion to Determine Reasonable Value of Services and Award Administrative Expense Claim* in EG's case (EG Doc. 336), which remains pending before the Bankruptcy Court. Objections to this motion are due by April 5, 2018.

On June 23<sup>rd</sup>, 2017, Tara filed its *Disclosure Statement to Accompany Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. 269), and *Plan of*

*Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. 270). Objections to the disclosure statement and plan were filed by the office of the United States Trustee, Comm 2013, The Elswick Company dba Anytime Fitness (“Elswick”), Kmart and Kroger.

Also on June 23, 2017, Tara filed its complaint in the Circuit Court of Kanawha County, West Virginia, against the State, (the “**Kanawha County Action**”) for failing to rebuild the bridge providing access to the Crossings Mall, which was on the State’s right-of-way. The basis for this complaint was outlined in the letter to the West Virginia Attorney General and the West Virginia Secretary of Transportation on November 15, 2016, described at page 12 of this Disclosure Statement, which asserted in part as follows:

Based upon information contained in documents produced by the State of West Virginia in response to a Freedom of Information Act (“FOIA”) request, [Tara and Emerald Grande] believe that the West Virginia Department of Transportation/Division of Highways retained responsibility for replacing the culvert and bridge and restoring access to the Shopping Center and hotel.

Attached for your information are copies of the documents produced by the State of West Virginia in response to Tara Retail’s FOIA request. We direct your attention to page WVDOH FOIA000030 of these documents, which contains the following:

***“It is our recommendation that the area occupied by the structure and the north approach be declared “excess land” and offered for sale at public auction. This effectively would remove the maintenance responsibility from the Department of Highways to the developer. This should not be done until culvert design has been approved.”***

A similar statement is found at page WVDOH FOIA000033:

***“We concur with Right-Of-Way in the sale of the property relieving the Department of the responsibility for the maintenance of the approach and pipe in the creek.”***

However, a sale of this property never occurred. From the documents (page WVDOH FOIA000043), it appears that the Federal Highway Administration would not allow the State to divest itself of responsibility for maintaining the culvert:

***“FHWA indicated their non-approval for abandonment.”***

Further, although Tara Retail’s predecessor in interest constructed the culvert, it was and is required to pay an annual fee to the West Virginia Public Land Corporation for use of the culvert. See page WVDOH FOIA000052.

In summary, there is no agreement which shifted the burden to Tara Retail or its predecessor in interest to maintain the culvert and bridge, which was situate on the state’s right of way. The state is

responsible for replacing the culvert and bridge, and has failed to timely replace the culvert and bridge resulting in a prolonged lack of access to the Shopping Center and Hotel, to the detriment of Emerald, Tara Retail, their tenants, and the community.

In response, the State filed a motion to dismiss Tara's complaint on August 29, 2017. In this motion, the State was represented by its internal legal staff, which signals that the State's insurer has denied coverage for Tara's claims asserted in the Kanawha County Action. Tara filed a response to this motion to dismiss on October 27<sup>th</sup>, 2017. Thereafter, Tara and the State filed a joint stipulation allowing Tara to file an amended complaint on January 2, 2018, and Tara filed its amended complaint against the State in the Kanawha County Action, also on January 2, 2018. Internal counsel for the State has informed Tara that the State's insurer has again denied coverage for Tara's claims asserted in its amended complaint, which means that, even if Tara prevails on its amended complaint in the Kanawha County Action, it would then have to pursue a claim against the State in the Court of Clams. This process would take years, and cannot be relied upon by Tara to fund its Plan.

Tara filed three status reports with the Bankruptcy Court (Doc. 212, Doc. 236 and Doc. 283) detailing progress made on rebuilding the bridge to restore access to the Crossings Mall from the DOH Right of Way. The bridge project was completed on or about July 26, 2017, and the Crossings Mall reopened for business on or about August 1, 2017. The bridge project was completed by Applied Construction Solutions, Inc. ("ACS") and SLS Land and Energy Development, LLC ("SLS"). Pursuant to the Bankruptcy Court's *Order on Debtor's Renewed Motion to Obtain Post-Petition Financing, Granting Superpriority and Administrative Expense Claim and Priming Lien on Crossings Mall Property* (Doc. 200), the rents from Kmart and Kroger are being paid into a trust account at MVB Bank, and are being disbursed to ACS and SLS to repay their administrative expense claims over approximately 23 months, from January 1, 2018.

In anticipation of the Crossings Mall reopening, and pursuant to the Bankruptcy Court's order dated April 14, 2017 (Doc. 200), Tara sent a series of letter to its tenants informing them that commercial access to the Crossings Mall would be restored on or before August 1, 2017, and directing them to remit rent payments to Tara's Disputed Claims Reserve account at MVB Bank. In response to these communications, Tara learned that several of its tenants, including without limitation Kmart, Elswick, Bob Evans, and Dollar Tree, continued to pay rent to Lender's servicer for several months after the Flood. To remediate this, Tara entered into agreements with all such tenants, allowing them credits against their rental obligations after the reopening of the Crossings Mall, to allow them to recoup the rents that they paid to Lender's servicer during months when the Crossings Mall was inaccessible and their stores were thus closed. As a consequence, a number of Tara's tenants did not start making rent payments until several months after the Crossing Mall reopened.

Despite the fact that Tara directed it tenants to remit rent payments directly to its Disputed Claims Reserve account at MVB Bank, Tara is informed and believes that some of its tenants, including, without limitation, Slayton Wireless (AT&T) and CVS Pharmacy, have continued to make rent payments to Lender's servicer. Thus, Comm 2013 has continued to collect some rents after the Crossings Mall reopened.

On August 7, 2017, Tara filed its *Disclosure Statement to Accompany First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. 358) and *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Doc. 358-1). Objections to the first amended disclosure statement were filed by Comm 2013 and Elswick.

Before the Bankruptcy Court scheduled a hearing on these objections, the parties attempted mediation in an effort to resolve or narrow the disputes in the Case. The mediation took place on November 2, 2017, but was unsuccessful.

Thereafter, on November 21, 2017, Comm 2013 filed its *Disclosure Statement to Accompany Plan of Liquidation of Debtor under Chapter 11 of the Bankruptcy Code* (Doc. 468), and *Plan of Liquidation of the Debtor under Chapter 11 of the Bankruptcy Code* (Doc. 469). Also on November 21, 2017, Comm 2013 filed its *Motion of Comm 2013 CCRE12 Crossings Mall Road, LLC for Relief From the Automatic Stay Pursuant to 11 U.S.C. §362(d)(1)* (Doc. 466). This Court heard arguments on this motion on January 8, 2018, and entered an order taking the motion under advisement and ordering the automatic stay to continue in effect pending conclusion of a final hearing (Doc. 540). On March 12, 2018, the Bankruptcy Court entered an order modifying the automatic stay in part, ordering Tara to make adequate protection payments consisting of interest payments to Comm 2013, consistent with the offer of adequate protection payments made by Tara in its *Renewed Motion of Debtor to Obtain Post-Petition Financing, Granting Superpriority Administrative Expense Claim and Priming Lien on Crossings Mall Property* (Doc. 167) (the “Renewed Motion”). In this order, the Bankruptcy Court noted that, in the Renewed Motion, Tara stated that “it has proposed to provide Lender with adequate protection against any potential diminution in value of its interests caused by the priming liens to be provided to the Contractor and Engineer, by providing interest only payments commencing on the last day of the third month after the Shopping Mall reopens and both Kmart and Kroger have resumed operations.” On this basis, the Court ordered Tara to make adequate protection payments of \$72,369.90 to Comm 2013, beginning on the last day of the third month after the Crossings Mall reopened and both Kroger and Kmart resumed operations. As Kmart resumed operations on September 1, 2017, the obligation to make adequate protection payments would date from December 31, 2017.<sup>3</sup>

On December 19, 2017, the Bankruptcy Court conducted a telephonic scheduling conference to consider the competing disclosure statements and plans filed by Tara and Comm 2013. Thereafter, the Bankruptcy Court entered an order on January 3, 2018, requiring Tara to file an amended disclosure statement and plan by January 17, 2018, and providing that Comm 2013 may amend its disclosure statement and plan by January 26, 2018 (Doc. 523).

On January 9, 2018, Tara filed *Debtor’s Renewed Objection to and Restated Motion to Equitably Subordinate Claim of Comm 2013 Crossings Mall Road, LLC* (Doc. 538). In a related proceeding, Elswick and the holders of Citizen Unsecured Claims in this case filed *Creditor The Elswick Company, LLC dba Anytime Fitness Elkview and Certain Other Creditors’ Motion and Brief in Support to Recharacterize or Subordinate the Claim of Comm 2013* (Doc. 375). On January 9, 2018, Elswick supplemented its motion. Comm 2013’s response to these motions was due by February 15, 2018.

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<sup>3</sup>Tara anticipates filing a motion under Bankruptcy Rule 9023 asking the Bankruptcy Court to alter or amend this order, for several reasons, including: (i) Tara’s offer of adequate protection payments in the Renewed Motion was predicated upon the resumption of rent payments by tenants of the Crossings Mall coincident with the Mall reopening. However, as many tenants continued paying rent to Comm 2013 after the Flood, actual payments of rent by many tenants did not commence until several months after the reopening of the Mall; (ii) The calculation of interest noted in the order is not Tara’s calculation, but rather is Comm 2013’s calculation, and that calculation appears to be suspect; (iii) Several tenants of the Crossings Mall have disregarded the direction to pay rents to Tara’s Disputed Claims Reserve account, and instead have been remitting payments directly to Comm 2013, and thus Tara should receive credit for these payments against the obligation to make adequate protection payments to Comm 2013.

On January 17, 2018, Tara filed *Debtor's Motion to Extend Deadline for Filing Second Amended Disclosure Statement and Plan* (Doc. 548), to allow for time for negotiations with Kroger and Kmart to take place. On January 18, 2018, the Bankruptcy Court entered its *Order Modifying Deadlines for the Filing of Amended Plans of Reorganization and Disclosure Statements* (Doc. 552), extending to February 16, 2018, Tara's time to file a second amended disclosure statement and plan of reorganization, and allowing Comm 2013 to file an amended disclosure statement within thirty days of the filing of Tara's second amended disclosure statement and plan. Thereafter, Tara, Comm 2013 and Elswick entered into a consent order extending (i) Comm 2013's deadline to respond to Elswick's motion to recharacterize or subordinate its claim, and Tara's objection to and restated motion to equitably subordinate its claim, to April 16, 2018, (ii) Tara's deadline to file an amended disclosure statement and plan to March 19, 2018, and (iii) Comm 2013's deadline to file an amended disclosure statement and plan to 30 days after the filing of Tara's amended disclosure statement and plan. Doc. 596.

### **C. Claims Bar Date and Summary of Filed Claims.**

The Bankruptcy Court set May 22, 2017 as the date by which to file proofs of claim against Tara (the "Bar Date"). As of the Bar Date, the Bankruptcy Court's Claims Register reflects that 80 claims totaling approximately Twenty One Million, Four Hundred Eighty-Three Thousand, One Hundred Fifty-Three Dollars and Forty-Eight Cents (\$21,483,153.48) were filed. Virtually all of the Claims filed in this Case are Disputed.

#### **1. Disputed Claim of COMM 2013**

Comm 2013's Claim (Proof of Claim No. 2), in the asserted amount of \$17,263,842.28, constitutes over 80% of the total filed claims. As previously described, Tara has asserted a counterclaim against Lender and Comm 2013 in the Civil Action pending in the District Court and referred to the Bankruptcy Court, and on this basis, Tara disputes Comm 2013's claim. In addition, on January 9, 2018, Tara filed *Debtor's Renewed Objection to and Restated Motion to Equitably Subordinate Claim of Comm 2013 Crossings Mall Road, LLC* (Doc. 538). Tara disputes the Claim of Comm 2013 for the following reasons:

(i) Tara objects to Comm 2013's claim to the extent that it includes a defeasance penalty, or "make-whole premium", of approximately \$3,550,000.00, because the note was accelerated upon declaration of default, and Tara's plan proposes to pay interest at the contract rate specified in the Loan Agreement under its Plan. *See, Matter of MPM Silicones*, 874 F.3d 787, 801-02 (2<sup>nd</sup> Cir. 2017); *U.S. Bank Nat'l Assoc. v. South Side House, LLC*, 2012 WL 273119 (Jan. 30, 2012); *HSBC Bank USA, N.A. v. Calpine Corp. (In re Calpine Corp.)*, No. 07 Civ. 3088 (GBD), 2010 WL 3835200, at \*4 (S.D.N.Y. Sept. 15, 2010).

(ii) Under the Loan Agreement, Lender required that all tenants pay all rent into its Clearing Account. Before the Flood, Lender clearly knew that the rent roll was in excess of \$142,000.00 (Doc. 47 at p. 145), and the deposits into Lender's Clearing Account were substantially below this amount. Doc. 17-4. Despite this, Lender and Comm 2013 apparently cannot account for which tenants paid rent into its Clearing Account, and their negligence has substantially prejudiced Tara. Thus, Tara objects to Comm 2013's claim and demands that Comm 2013 provide a complete and comprehensible accounting of all monies paid into and disbursed out of its Clearing Account, and which tenants still owe money for unpaid rent.

(iii) On January 22, 2016, Tara made a critical capital expenditure request under the Loan Agreement to allow certain structural repairs to be made to the culvert and bridge providing the access way to the Crossings Mall. This request stated, in part, that "[i]f these

issues are not resolved immediately, the only entrance to the center could collapse....” A copy of the letter making this request to Lender, through its servicer, is attached as Ex. E to the Abruzzino Declaration. By email dated January 22, 2016, Lender, through its servicer, responded to Tara’s request for a critical capital improvement repair, by asking Tara to explain the difference between the deposits into Lender’s Lockbox compared to the rent roll. At all times, Lender through its servicer did not preserve records of which tenants of the Crossings Mall made rent payments prior to the June 23<sup>rd</sup> flood. *See* Doc. 97, Ex. 3. As a result, Lender is unable to account for which tenants made rent payments, and Tara lacked the information necessary to perform this analysis. Thus, Tara was unable to respond to Lender’s request through its servicer. Upon information and belief, these capital repairs to the culvert bridge would have prevented the bridge from being washed away in the Flood, because two bridges proximate to the Crossings Mall survived the Flood, one immediately upstream from the Crossings Mall and the other immediately downstream from the Crossings Mall. Lender’s bad faith refusal to approve Tara’s pre-flood request for critical capital repairs to the culvert bridge, constitutes a breach of the Loan Agreement. Tara’s claims against Lender must be offset against Comm 2013’s claims against Tara, and thus Tara objects to Comm 2013’s claim to the extent of the damages it suffered as a result of Lender’s bad faith refusal to fund critical capital repairs to the culvert bridge prior to the Flood.

(iv) Even though all rents clearly were not deposited into Comm 2013’s Clearing Account (and Comm 2013 should have known this yet took no action), the rents that were deposited into the Clearing Account were more than sufficient to service Tara’s Loan. Despite this, Comm 2013 was charging Tara late penalties of over \$5,400.00/month. Because there were sufficient monies in the Clearing Account to fully and timely satisfy Tara’s loan obligations (*see* Doc. 17-2, 17-4), Lender’s conduct in charging late penalties of over \$5,400/month further justifies an award of damages to be offset against Comm 2013’s claim, and equitable subordination of Comm 2013’s Claim.

(v) Lender has been charging Tara default interest at the rate of 11.5% per annum under the Loan Agreement and is assessing Tara other late fees and assessments. Tara objects to Lender’s claim to the extent that it includes default interest, where Lender’s own conduct precipitated Tara’s default.

(vi) Tara disputes the reasonableness of the legal fees asserted in Comm 2013’s proof of claim, including any legal fees for defending against claims asserted by Tara and/or Elswick against Lender and/or Comm 2013.

(vii) Tara objects to the position of Comm 2013 to the extent that it claims a Lien on the funds it is holding which were earmarked by tenants for payment of property taxes.

(viii) Under the Loan Agreement, Comm 2013 maintained strict control over all funds in the Lockbox Account, including control over payment of insurance, taxes capital improvements and common area maintenance, to the extent that Lender assumed actual participatory control of Tara. Under West Virginia law, this created a “special relationship” between the parties, because Comm 2013, through Servicer, was performing services not normally provided by a lender to a borrower. Thus, Tara has tort claims against Comm 2013 for property damage, in addition to contractual claims for economic loss. *See, Glasscock v. City National Bank of W. Va.*, 213 W.Va. 61, 576 S.E. 2d 540 (2002) (In other words, our law allows a negligence claim for purely economic losses when then there is evidence of a “special relationship” between the plaintiff and the defendant.) *See, Aikens v. Debow*, 208 W. Va. 486, 500, 541 S.E.2d 576, 590 (2000) (“[W]here a special and narrowly defined relationship can be established between the tortfeasor and a plaintiff who was deprived of an economic benefit, the



tortfeasor can be held liable.”); *Eastern Steel Constructors, Inc. v. City of Salem*, 209 W.Va. 392, 398, 549 S.E.2d 266, 272 (2001) (“[R]ecovery of economic damages should be allowed in certain meritorious claims when an adequate barrier against limitless liability, such as the existence of a special relationship, can be identified”).

(ix) Tara reserves the right to object to other elements of Comm 2013’s Claim.

Once all objections and offsets to the Claim of Comm 2013 have been resolved, Tara will cure the existing pre-petition default the remaining Allowed Claim of Comm 2013, if any, will be paid in deferred Cash payments of principal and interest at the Market Interest Rate. The Market Interest Rate will result in monthly payments equal to (i) approximately \$72,370.00 per month for 23 months, or until all Administrative Claims owed to Applied Construction Solutions, Inc., and SLS Land & Energy Development have been paid, (ii) after all Administrative Claims owed to Applied Construction Solutions, Inc., and SLS Land & Energy Development have been paid, \$86,000.00 per month for the ensuing 120 months, (iii) annual payments to Comm 2013, beginning on the first business day that is 365 days after the Effective Date, in the amount of 50% of the Annual Excess Available Cash and (iv) a balloon payment in the amount of all remaining principal and other amounts owed on the date that is 30 days after the last payment of \$86,000.00 is due. The projected amounts of Annual Excess Available Cash are reflected in Tara’s Projected Financial Statements, attached to the Plan as Exhibit 4. A new Loan Agreement will be issued to Comm 2013, and the existing Loan Agreement will be cancelled. Copies of the proposed New Loan Agreement is attached to the Plan as Exhibit 2. Distributions to Comm 2013 will commence effective on the date specified by order of the Bankruptcy Court. Until that date, the payments called for under the Plan will be held in the Disputed Claim Reserve account at MVB Bank.

## 2. Disputed Tenant Unsecured Claims

Five tenants of the Crossings Mall have filed proofs of claim, asserting claims for business interruption and other claims, alleging that Tara breached some duty under the applicable lease agreements to provide access to the Crossings Mall as a result of the Flood, as follows:

1. The Elswick Company, Proof of Claim No. 3-2, Unliquidated
2. Kroger Limited Partnership I, Proof of Claim No. 59, \$1,200,581.00
3. Dollar Tree Stores, Inc., Proof of Claim No. 60-2, \$276,969.00
4. Kmart Corporation, Proof of Claim No. 65, \$1,045,223.51
5. Bob Evans Restaurants, LLC, Proof of Claim No. 80, \$17,500.00 for rent paid after the Flood, and an unliquidated amount for damages as a result of the Flood.

Tara disputes the proofs of claim by tenants of the Crossings Mall, on the basis that access to the entrance to the Crossings Mall from the DOH Right of Way remains intact. The bridge and culvert which washed out was entirely on the DOH Right of Way. Pursuant to documents received by Tara in response to a FOIA request to the State of West Virginia, it appears that the West Virginia Department of Transportation, Division of Highways retained responsibility for maintaining and replacing the bridge and culvert, to restore access to the Crossings Mall.

On June 29, 2017, Tara filed an objection to the Tenant Unsecured Claims (Doc. 278). Thereafter, Tara has resolved its objections to three of the five Tenant Unsecured Creditors:

**a. Claim of Bob Evans Restaurants, LLC**

Effective as of July 20, 2017, Tara entered into a Letter Agreement with Bob Evans Restaurants, LLC, as successor in interest to BEF REIT, Inc. (“Bob Evans”), to resolve Tara’s objection to its proof of claim. By the Letter Agreement, Tara and Bob Evans agree to terminate the lease for the Bob Evans restaurant at the Crossings Mall. For Plan voting purposes, the parties agree that Bob Evans shall have an estimated allowed claim for \$217,500.00, and will be entitled to its pro rata distribution(s) from funds to be distributed under Tara’s Plan on account of its claim, but only up to an aggregate of \$1,000.00. Tara will take ownership of all equipment, furniture, fixtures and other personal property at the termination of the lease. Tara and Bob Evans agree to mutually release all other claims that each has against the other. On August 16, 2017, the Bankruptcy Court entered an order giving effect to the Letter Agreement, and resolving Tara’s objection to the Bob Evans Proof of Claim (Doc 365).

The Bob Evans Letter Agreement resolves one of the disputed tenant unsecured claims on extremely favorable terms. In addition to an unliquidated claim for damages as a result of the Flood, Bob Evans holds a claim for rent payments made after the flood in the amount of \$17,500.00, which is not subject to reasonable dispute. Further, by agreeing to terminate the Bob Evans lease, Tara will be able to re-let Building 103 at a much higher rental rate; the Bob Evans lease is a so-called “Land Lease.” Because Bob Evans built building 103, the rental rate is only \$8.10/square-foot, or \$3,500.00/month in base rent. Tara expects to be able to re-let Building 103 to a new national restaurant tenant at ~\$22.00/square-foot, or ~\$10,000/month in base rent.

**b. Claim of Dollar Tree Stores, Inc.**

On October 31, 2017, Tara entered into a *Stipulation Between Tara Retail Group, LLC and Dollar Tree Stores, Inc., to Partially Allow Proof of Claim No. 60 Filed by Dollar Tree Stores, Inc.* (Doc 447) (the “**Dollar Tree Stipulation**”), to resolve Tara’s objection to that claim. By the Dollar Tree Stipulation, Tara and Dollar Tree Stores agree that Dollar Tree Stores shall have an estimated allowed claim of \$276,969.28 for plan voting purposes, but agree to limit to \$26,969.28 the amount of the distributions to be made on this claim under Tara’s plan. Comm 2013 objected to the Dollar Tree Stipulation. On January 3, 2017, the Bankruptcy Court entered an order approving the Dollar Tree Stipulation (Doc. 524) (the “**Dollar Tree Order**”). On January 17, 2018, Comm 2013 filed a notice of appeal of the Dollar Tree Order. On January 18, 2018, the Bankruptcy Court entered a *Memorandum Opinion* (Doc. 553) restating its legal basis for approving the Dollar Tree Stipulation.

**c. Claim of The Elswick Company, LLC d/b/a Anytime Fitness Elkview**

On December 18, 2017, Tara filed its *Motion of Tara Retail Group, LLC to Compromise Objection to Proof of Claim No. 3-2 Filed by The Elswick Company, LLC dba Anytime Fitness* Doc. 500 (the “**Motion to Compromise**”). By the Motion to Compromise, Tara and The Elswick Company, LLC (“**Elswick**”) agreed that (i) Elswick shall have an estimated allowed Claim of \$835,888.00 for plan voting purposes, (ii) the distributions to be made under the Plan on this Claim will be limited to \$21,431.65, representing one (1) month of rent paid for the month of July, 2016, and four (4) month’s rent for periods accruing after August 1, 2017, and (iii) Elswick shall receive assignment of Tara’s claim under its Commercial Insurance policy issued by Travelers Indemnity Company for the period 9/11/2015 to 9/11/2016, to the extent of the claims of Elswick for business interruption, loss of revenue, loss of goodwill, and any other claims asserted by Elswick against Tara. On December 21, 2017, the Court gave notice of the Motion to Compromise (the “**Elswick Notice**”), requiring interested parties to file any “written

objection before twenty-three (23) days from the date of” the Elswick Notice. On January 16, 2018, Comm 2013 filed an objection to the Motion to Compromise, Doc. 542. On February 14, 2018, the Bankruptcy Court entered an order approving Tara’s motion to compromise its objection to the Elswick Proof of Claim (Doc. 582) (the “**Elswick Order**”). On February 26, 2018, Comm 2013 filed a notice of appeal of the Elswick Order. On March 7, 2018, the Bankruptcy Court entered a *Memorandum Opinion* (Doc. 611) restating its legal basis for entering the Elswick Order. On March 9, 2018, Judge Keely entered an order consolidating Comm 2013’s appeals of the Dollar Tree Stipulation and the Elswick Order. (Doc. 3 in Case No. 18-C-00011.

**d. Claims of Kmart Corporation and Kroger Limited Partnership I**

The only remaining Disputed Tenant Unsecured Claims are the Disputed Claims of Kmart and Kroger. As of this date, there is no anticipated resolution of Tara’s objection to the Claims of Kmart and Kroger.

If Tara ultimately assumes the leases of Kmart and Kroger, on the later of the Effective Date or the date on which the Claims of Kmart and Kroger become Allowed Claims, Tara will cure the existing defaults under the leases with Kmart Corporation and Kroger Limited Partnership I, being the full amount of their Allowed Tenant Unsecured Claims, on the later of (i) the Effective Date, or (ii) the date on which such Claims become Allowed Tenant Unsecured Claims, or such other amount over such other period as may be agreed upon by Tara and Kmart and Kroger, in resolution of Tara’s objection. Kmart and Kroger will not be allowed to offset the amounts of their alleged Class 2 Claims against their current rent obligations under the applicable lease, except to the extent specifically provided by the terms of a settlement agreement between Tara and Kmart and/or Kroger.

If Tara ultimately rejects the leases of Kmart and Kroger, on the later of the Effective Date or the date on which the Claims of Kmart and Kroger become Allowed Claims, Tara will commence monthly payments to Kmart and Kroger, in equal payments over one hundred forty-four (144) months, in the full amount of their Tenant Unsecured Claims, with interest at the Federal Judgment Rate, or such other amount over such other period as may be agreed upon by Tara and Kmart and/or Kroger. Kmart and Kroger will not be allowed to offset the amounts of their alleged Class 2 Claims against their current rent obligations under the applicable lease, except to the extent specifically provided by the terms of a settlement agreement between Tara and the holder of a Tenant Unsecured Claim.

On March 14, 2018, Kmart and Kroger each filed motions for estimation and temporary allowance of their Claims for Plan voting purposes. Tara does not object to the Court estimating and temporarily allowing the Claims of Kmart and Kroger, but asserts that these claims should be estimated and temporarily allowed in the amount of \$1.00 each, for Plan voting purposes, on the basis that Tara did not breach the any term of its leases with Kmart and Kroger.

**3. Disputed Citizen Unsecured Claims**

Seventy-one (71) persons have filed proofs of claim, asserting Citizen Unsecured Claims in amounts ranging from \$500.00 for several individuals who state that they were stranded at the Crossings Mall overnight, to a claim filed by Geary Wayne Copenhaver, for \$248,250.00 for damages to property during the Flood. In addition to filing proofs of claim in the Case, the holders of Citizen Unsecured Claims have filed two suits against Lender and its servicer, Wells Fargo Commercial Mortgage Servicing, pending as Civil Action No. 2:17-02328 and Civil

Action No. 2:17-03005 (the “**Citizen Actions**”). The Citizen Actions, originally filed in the District Court and referred to the Bankruptcy Court on March 12, 2018, assert claims that parallel the claims asserted by Tara against Comm 2013 in the Civil Action and Tara’s objection to the claim of Comm 2013 in this Case.

Tara disputes the proofs of claims filed by these seventy-one (71) persons, on the basis that access to the entrance to the Crossings Mall from the DOH Right of Way remains intact. The bridge and culvert which washed out was entirely on the DOH Right of Way. Pursuant to documents received by Tara in response to a FOIA request to the State of West Virginia, it appears that the West Virginia Department of Transportation, Division of Highways retained responsibility for maintaining and replacing the bridge and culvert, to restore access to the Crossings Mall.

Tara has negotiated an agreement to compromise the Citizen Unsecured Claims under its Plan. Under the terms of the compromise, Tara will assign to the Class of citizen claimants its claims under its Commercial Insurance Policy Y-630-5D958742-TIL-15 issued by Travelers Indemnity Company to Tara for the period 9/11/2015 to 9/11/2016, relating to claims of (i) local residents claiming flood damage to their property; (ii) stranded patrons of the Crossings Mall claiming inconvenience; (iii) local residents claiming additional travel expenses and inconvenience due to the loss of access to the shops in the Crossings Mall; and (iv) employees of retail businesses at the Crossings Mall claiming loss of employment in full satisfaction of the Citizen Unsecured Claims against Tara. The citizen claimants will retain the Claims asserted in the Citizen Actions against Lender and Wells Fargo.

#### **4. General Unsecured Claims**

After any objections to the General Unsecured Claims have been resolved, all Allowed General Unsecured Claims will be paid in full, in monthly deferred cash payments without interest, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15<sup>th</sup> day of the month following the date such General Unsecured Claim becomes an Allowed General Unsecured Claim, and continuing on the 15<sup>th</sup> day of each month thereafter, ending no later than eight years after the first such payment is made. From a review of the claims register, it appears that the claim filed by West Virginia American Water in the amount of \$141.40 is undisputed. All other unsecured claims are disputed.

#### **5. Insider Unsecured Claims**

Retail Designs, LLC and Plaza Management, LLC, (the “Insider Creditors”) both wholly owned by William and Rebecca Abruzzino, hold unsecured claims against Tara in the amounts of \$1,155,709 and \$169,361, respectively. The Insider Creditors will retain their claims, but will receive no distributions under the Plan.

#### **6. Equity Interests**

On the Effective Date, all Equity Interests will be cancelled, and new equity interests will be issued to William A. Abruzzino and Rebecca Abruzzino.

### **D. Means for Implementation and Execution of the Plan.**

#### **1. Resumption of Rental Payments Following Reopening of the Crossings Mall.**

The main source of funding for distributions under Tara's Plan will be rents paid by tenants of the Crossings Mall. Attached to the Plan as Exhibit 1A is the rent roll immediately after the Crossings Mall reopened; Exhibit 1B is the projected rent roll within twelve (12) months after the Crossings Mall reopens; and for purposes of historical comparison, Exhibit 1C is the rent roll of the Crossings Mall prior to the Flood.

The largest tenant at the Crossings Mall is Kmart. As there have been reports questioning whether Sears and Kmart can continue as a going concern, Tara has begun communications with other prospective tenants for Kmart's leasehold space, in the event that it does not continue under the lease, and has received expressions of interest from another national discount retail operator about moving into the Crossings Mall if the opportunity is presented.

CVS Pharmacy has expressed an interest in expanding into a free-standing store building at the Crossings Mall, containing approximately 13,500 square feet. Tara currently cannot fulfill this request, but may be able to within the repayment term of the Plan. CVS currently occupies Building 221, adjacent to Kroger in Building 223, and Kroger has a right of first refusal under its lease for this space, if it becomes available. Although this is a possibility, the projected rent roll and financial statements supporting the Plan do not contain this as a projection. Further, Tara is in negotiations with a replacement restaurant tenant for Building 103, which had been occupied by Bob Evans until the Flood. Tara expects to find a replacement tenant for Building 103 within twelve months of reopening, at a rental rate of approximately \$10,000.00/month in base rent. In addition, Tara expects to enter into leases with (i) a clothing retailer in Building 215, (ii) a shoe store in Building 207, (iii) a cell phone store in Building 295, and (iv) a restaurant in Building 311, within twelve months of reopening.

## **2. Proceeds from litigation**

As described, Tara filed suit against the State of West Virginia for failing to undertake repairs to the bridge and culvert, located on the DOH Right of Way. Tara's claim for damages includes (i) the cost of rebuilding the bridge which Tara was forced to undertake; (ii) its lost profits from operations of the Crossings Mall after the bridge providing access reasonably should have been repaired; and (iii) the damage claims which have been asserted against Tara in this Case. However, as there appears to be no insurance coverage for this claim, Tara would first have to prevail in this suit, then file an independent action in the West Virginia Court of Claims in order to obtain any award of damages. This process is anticipated to take several years, and there is no guaranty that the Court of Claims would agree to fund any damage award recovered by Tara. As a result, the financial statements supporting the Plan do not contain anything from this litigation as a projected source of funding for the Plan.

In addition, Tara has filed suit against Lender for Lender's failure to approve an expenditure of capital reserve funds to repair the culvert bridge due to observed erosion in the culvert bridge, and has objected to the Claim of Comm 2013 on this same basis. Any proceeds from this litigation, including rights of set off, will also be devoted to the Plan. However, the financial statements supporting the Plan do not rely upon any net recovery from this litigation as a projected source of funding for the Plan.

## **3. Reimbursement payments from Emerald Grande, LLC and Comm 2013's Collateral**

Tara has employed conflicts counsel in this Case, and on March 12, 2018, Tara filed a *Motion to Determine Reasonable Value of Services and Award Administrative Expense Claim* in the EG case (EG Doc. 336), asserting a claim in the EG bankruptcy case for reimbursement of a

portion of the cost of rebuilding the bridge to restore access to the Crossings Mall and the Elkview La Quinta Inn and Suites. In response, EG has filed its *Debtor's Motion to Surcharge Carter Bank & Trust's Collateral, the Elkview La Quinta Inn, for the Expense of Restoring access to the Elkview La Quinta Inn*, (EG Doc. 344). To the extent that Tara establishes an Administrative Expense Claim in the EG case for a portion of the cost of rebuilding the bridge, EG is asking the Bankruptcy Court to surcharge the collateral of Carter Bank, i.e. the Elkview La Quinta Inn, upon the sale of that asset in the EG case. Proceeds from this will be devoted to the Plan.

Also in the EG bankruptcy case, EG is attempting to sell an unencumbered parcel of property for \$850,000. In the event that EG's motion to surcharge the collateral of Comm 2013 is unsuccessful, Tara expects that a portion of the net proceeds from the sale of this property by EG will be channeled to reimburse Tara for its claim relating to the cost of rebuilding the bridge. These funds will enable Tara to pay the administrative costs of this reorganization, as shown in the projected financial statements attached to the Plan as Exhibit 4.

In addition, in response to Comm 2013's objection to the first fee application of Kay Casto & Chaney, PLLC, Tara has filed a *Cross Motion to Surcharge Collateral Under 11 U.S.C. 506(c)* (Doc. 581), to recover from the collateral securing the claim of Comm 2013, pursuant to Bankruptcy Code §506(c), the reasonable, necessary costs and expenses of preserving the Crossings Mall, including any unreimbursed cost of rebuilding the bridge, reasonable attorney's fees and ad valorem property taxes, to the extent of any the increased value of the Crossings Mall after the rebuilding of the bridge, which inure to the benefit of Comm 2013. This would be an additional source of funds to enable Tara to pay the administrative costs of this reorganization

#### **4. Proceeds from insurance for claims asserted by Tara**

Tara has filed claims with its Insurers for damages suffered from the destruction of the culvert bridge during the Flood, including the damages that have been asserted by creditors holding Citizen Unsecured Claims and Tenant Unsecured Claims in Class 3 and Class 4 under the Plan, and for the cost of rebuilding the bridge. To date, Tara's insurer has denied all claims asserted, except for the Claims asserted by holders of Citizen Unsecured Claims. Under the Plan, Tara will assign its Claims under its Insurance Policies relating to Claims asserted by the citizen unsecured creditors to the holders of Citizen Unsecured Claims, in full satisfaction of their claims against Tara. The holders of Citizen Unsecured Claims will retain all other claims and rights of action that they hold, including their Citizen Actions against Lender and Comm 2013.

#### **5. Additional Contributions by William A. Abruzzino and Rebecca Abruzzino**

To the extent that additional Cash is required to fund the Plan, including ongoing administrative expenses, William A. Abruzzino and Rebecca Abruzzino are making additional contributions of Cash, which will be treated as equity contributions.

### **V. EFFECTIVENESS OF THE PLAN**

#### **A. Conditions Precedent to Effective Date.**

The following are conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered a Confirmation Order in form and substance satisfactory to Tara;

(b) No stay of the Confirmation Order shall then be in effect; and

(c) A final order will have been entered dismissing the appeal of Comm 2013 with respect to the Dollar Tree Stipulation and the Elswick Order.

**B. Satisfaction of Conditions.**

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If Tara determines that one of the conditions precedent set forth in Section 9.1 of the Plan cannot be satisfied and the occurrence of such condition is not waived by Tara or cannot be waived by Tara, then Tara shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

**C. Effect of Nonoccurrence of Conditions to Effective Date.**

If each of the conditions to consummation and the occurrence of the Effective Date has not been satisfied or duly waived on or before the Effective Date, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to Section 9.3 of the Plan, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims against Tara.

**VI. EFFECT OF CONFIRMATION**

**A. Vesting of Assets.**

As of the Effective Date, Tara will commence monthly payments to the holders of Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, and Allowed Class 4 Claims. The pre-petition Equity Interests in Tara will be cancelled, and new equity interests will be issued to William A. Abruzzino and Rebecca Abruzzino on the Effective Date.

**B. Release of Assets.**

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of Tara, the Estate and the Debtor's assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matter set forth in Article XI of the Plan.

**C. Binding Effect.**

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and to the fullest extent permitted by section 1141 of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against or Equity Interest in Tara, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

**D. Satisfaction of Claims and Termination of Interests.**

To the maximum extent provided by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement

or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction and release, effective as of the Effective Date, of Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, Liens on, obligations of, rights against, liabilities of, and Equity Interests in Tara or any of its assets or properties, whether known or unknown, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Equity Interests relate to any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a proof of claim or proof of interest based upon such debt, right, or interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Equity Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Equity Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring.

**E. Term of Injunctions or Stays.**

Unless otherwise expressly provided herein, all injunctions or stays arising under or entered during the Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, at which time such injunctions or stays shall be deemed lifted.

**F. Retention of Causes of Action.**

Except as otherwise waived and released in accordance with the Plan, on and after the Effective Date, the Reorganized Debtor shall have the exclusive right to enforce and shall retain, all Causes of Action against any Persons. The Reorganized Debtor may prosecute, defend, enforce, abandon, settle or release any and all Claims and Causes of Action as it deems appropriate, subject to Bankruptcy Court approval as set forth in the Plan. The Reorganized Debtor may, in its sole discretion, offset any such claim held against a Person, against any payment due such person under the Plan; *provided, however*, that any Claims of Tara arising before the Petition Date shall first be offset against Claims against Tara arising before the Petition Date, subject in each instance to the limitations of Section 10.6 of the Plan. All privileges, defenses and rights of avoidance of Tara not otherwise waived and released in accordance with the Plan, shall be retained and may be exercised by the Reorganized Debtor. Without limiting the preservation of Claims and Causes of Action as set forth in Section 10.6 of the Plan, the Claims and Causes of Action of Tara and the Estate against the State of West Virginia, Lender, Comm 2013 and their affiliates, EG and any Insurer, are expressly preserved.

**G. Injunction Against Interference with Plan.**

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

**VII. ALTERNATIVES TO THE PLAN**



Tara submits that the Plan is the best means of providing maximum recoveries to creditors. Alternatives to the Plan that have been considered and evaluated by Tara during the course of the Case include (i) the plan of liquidation proposed by Comm 2013; (ii) liquidation of Tara's assets under chapter 7 of the Bankruptcy Code, which would provide no recovery to creditors other than Comm 2013, and (iii) dismissal of the Case. Tara submits that the proposed Plan provides a greater recovery to creditors or a more equitable distribution of Estate assets on a more expeditious timetable than any other course of action available to Tara and its creditors. Tara cannot predict potential recoveries in litigation at this time, but submits that the Plan gives the best chance to creditors to achieve a substantial recovery.

**A. Other Plans of Reorganization.**

Comm 2013 has proposed a plan of liquidation of Tara. Under Comm 2013's plan, holders of Tenant Unsecured Claims receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim, at such Holder's election, either: (a) assumption of its lease coupled with a two (2) month rent abatement commencing the first day following the Effective Date or (b) rejection of its lease coupled with a Class 4 General Unsecured Claim equal to the Allowed amount of its Claim (including any rejection claim that is ultimately Allowed). Holders of Tenant Unsecured Claims are required to give up their claims against Lender and Comm 2013 pursuant to the Exculpation clause in Comm 2013's plan. Under Comm 2013's plan, holders of Citizen Unsecured Claims receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) its pro-rata distribution of a \$200,000 Unsecured Claim Fund; and (b) a pro-rata distribution of all Litigation Proceeds and Avoidance Actions, other than the Excluded Litigation Claims. Holders of Citizen Unsecured Claims are required to give up their claims against Lender and Comm 2013 pursuant to the Exculpation clause in Comm 2013's plan. Given the releases required and inferior treatment afforded creditors under Comm 2013's plan, Tara submits that this Plan optimizes the resources available to Tara for the benefit of all of Tara's creditor Classes.

**B. Liquidation Under Chapter 7 of the Bankruptcy Code.**

If the Plan is not confirmed under section 1129(a) of the Bankruptcy Code, the Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which event a chapter 7 trustee would be appointed (or subsequently elected) to liquidate any remaining assets of Tara for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. Tara does not believe that conversion to chapter 7 is in the best interests of Tara's estate and creditors, because it is highly unlikely that any creditor other than Comm 2013 would receive any recovery in a chapter 7 liquidation. This primarily follows because, Comm 2013 would be entitled to the prepayment premium of \$3,139,776.71 reflected in its proof of claim in the event of a sale of the Crossings Mall, either by Tara as debtor in possession, or by a chapter 7 trustee. A liquidation analysis reflecting the most likely result of a liquidation of Tara's assets is attached to the Plan as Exhibit 3.

**VIII. CONFIRMATION REQUIREMENTS**

**A. The Confirmation Hearing.**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing before a plan of reorganization may be confirmed. The Confirmation Hearing to confirm the Plan has been scheduled for the date set forth on page 3 of this Disclosure Statement before the Honorable Patrick M. Flatley, United States Bankruptcy Judge in the United States Bankruptcy Court, L. Edward Friend II Bankruptcy Courtroom, located on the third floor of the

U.S. Courthouse, 1125 Chapline Street, Wheeling, West Virginia. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or number and type of shares of Equity Interests held by the objector. Any such objection must be filed with the Bankruptcy Court and served so that it is received by the Bankruptcy Court and certain other parties when and as set forth in the attached notice of confirmation hearing.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. At the hearing on the confirmation of the Plan, the Bankruptcy Court will confirm the Plan only if the requirements of the Bankruptcy Code, particularly those set forth in section 1129 of the Bankruptcy Code, have been satisfied. Objections to final approval of the Disclosure Statement are governed by Bankruptcy Rules 3017 and 9014. At the final hearing on approval of the Disclosure Statement, the Bankruptcy Court will approve the Disclosure Statement on a final basis if the requirements of Bankruptcy Code section 1125 are satisfied.

**B. Acceptances Necessary to Confirm the Plan.**

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by the requisite amount and number of Allowed Claims and Allowed Equity Interests in each impaired class. Under the Bankruptcy Code, a class of creditors or equity security holders is impaired if its legal, equitable or contractual rights are altered by a proposed plan of reorganization or liquidation. If a Class is not impaired, each creditor or equity security holder in such unimpaired class is conclusively presumed to have accepted the plan pursuant to section 1126(f) of the Bankruptcy Code.

An impaired class of creditors and each holder of a claim in such class will be deemed to have accepted the Plan if the holders of at least two-thirds in amount and more than one-half of those in number of the Allowed Claims in such impaired class for which complete and timely ballots have been received have voted for acceptance of the Plan. An impaired class of equity securities and each holder of an interest in such class will be deemed to have accepted a plan if the Plan has been accepted by at least two-thirds in amount of the interests in such class who actually vote on the Plan.

In the event that all Classes do not vote to accept the Plan, Tara reserves the right to seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Under section 1129(b), the Bankruptcy Court must determine, among other things, that the Plan does not discriminate unfairly and that it is fair and equitable with respect to each class of impaired Allowed Claims and Allowed Equity Interests that have not voted to accept the Plan.

**C. Best Interests of Creditors.**

The Bankruptcy Code requires that each holder of an impaired Claim or Equity Interest either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if Tara was liquidated under chapter 7 of the Bankruptcy Code.

The first step in determining whether this test has been satisfied is to determine the dollar amount that would be generated from the liquidation of Tara's assets and properties in the context of a chapter 7 liquidation case. The gross amount of Cash that would be available for satisfaction of Claims and Equity Interests would be the sum consisting of the proceeds resulting

from the disposition of the unencumbered assets and properties of Tara, augmented by the unencumbered cash held by Tara at the time of the commencement of the liquidation cases.

The next step is to reduce that gross amount by the costs and expenses of liquidation and by such additional Administrative Expense Claims and priority Claims that might result from the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the present value of such allocations (taking into account the time necessary to accomplish the liquidation) are compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The costs of liquidation of Tara under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. Other liquidation costs include the expenses incurred during the Case and subsequently allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals for Tara, as well as other compensation claims.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition priority and unsecured Claims.

Tara submits that each impaired Class will receive under the Plan a recovery value far in excess of the recovery value such Class would receive pursuant to a liquidation of Tara under chapter 7 of the Bankruptcy Code, due to (i) the statutory fees to which a chapter 7 trustee is entitled for administering assets and (ii) the other matters discussed in this Section.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Case – including the viability of claims and Causes of Action held by the Estate and a Claims resolution process for the administrative expense, professional fee and prepetition Claims against Tara and the Estate – Tara has determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of Tara under chapter 7.

Tara also submits that the present value of any distributions to each Class of Allowed Claims in a chapter 7 case, would be less than the value of distributions under the Plan because it is highly unlikely that any distribution would be made to the holder of any claim other than Comm 2013 in a chapter 7 case, and in any event, any such distributions in a chapter 7 case would not occur for a substantial period of time. In the event litigation was necessary to resolve claims asserted in a chapter 7 case, the delay could be prolonged and administrative expenses increased, such that ultimate creditor recoveries will be decreased.

**D. Feasibility.**

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. The Bankruptcy Court will find that the Plan is feasible if it determines that the conditions precedent to the Effective Date can be satisfied and sufficient funds are available from tenant rental payments, proceeds from litigation, proceeds from Insurers, proceeds from EG and additional equity contributions from William A. Abruzzino and Rebecca Abruzzino, to enable Tara to meet its post-Confirmation

Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Case. Tara submits that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code. Attached to the Plan as Exhibit 4 are Tara's Projected Financial Statements from October, 2017 until September, 2029, demonstrating that Tara will have sufficient sources of income to fund the plan, regardless of whether or not any recovery is achieved in litigation with the State of West Virginia or Comm 2013, or in respect of the insurance claims that Tara has filed. Copies of Tara's 2015 Financial Statements are attached to the Plan as Exhibit 5, for comparison purposes.

**E. Confirmation of the Plan.**

In the event the Bankruptcy Court determines that all of the requirements for the confirmation of the Plan are satisfied, the Bankruptcy Court will issue the Confirmation Order confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**IX. CERTAIN RISK FACTORS TO BE CONSIDERED**

HOLDERS OF IMPAIRED CLAIMS AGAINST OR EQUITY INTERESTS IN TARA ARE ENCOURAGED TO READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THOSE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

**A. Parties-In-Interest May Object to the Classification of Claims.**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization or liquidation may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. Tara submits that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, Tara cannot give assurances that the Bankruptcy Court will reach the same conclusion.

**B. Tara May Not Be Able to Secure Confirmation of the Plan.**

Tara cannot assure you that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, Tara cannot assure you that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or equity security holder of Tara might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization, and that the value of distributions to non-accepting holders of Claims and Equity Interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if Tara was liquidated under chapter 7 of the Bankruptcy Code. While Tara cannot give assurances that the Bankruptcy Court will conclude that these requirements have been met, Tara submits that the Plan will not be followed by a need

for further financial reorganization and that non-accepting holders within each class under the Plan will receive distributions at least as great as would be received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such chapter 7 case.

The confirmation and consummation of the Plan are also subject to certain conditions.

**C. Tara May Object to the Amount or Classification of Your Claim.**

Tara reserves the right to object to the amount or classification of any Claim or Equity Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose claim or interest is subject to an objection. Any such Claim or Equity Interest holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

**X. WHERE YOU CAN OBTAIN MORE INFORMATION**

Pursuant to the requirements of the Office of the U.S. Trustee, Tara is required to and has filed monthly operating reports for the post-petition period with the Bankruptcy Court. These monthly operating reports may be obtained at prescribed per page copy rates by writing to the Office of the Clerk of the United States Bankruptcy Court for the Northern District of West Virginia, U.S. Bankruptcy Court located on the third floor of the U.S. Courthouse, 1125 Chapline Street, Wheeling, West Virginia.

**XI. CONCLUSION AND RECOMMENDATION**

Tara submits that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims and Equity Interests. Tara urges holders of Claims and Equity Interests entitled to vote on the Plan to vote to ACCEPT the Plan.

Dated: March 19, 2018

TARA RETAIL GROUP, LLC

By: /s/ William A. Abruzzino  
Its: Managing Member and President

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re:**

**TARA RETAIL GROUP, LLC**

**Case No. 1:17-bk-00057**

**Debtor.**

**Chapter 11**

**CERTIFICATE OF SERVICE**

I do hereby certify that on **March 19, 2018**, I filed the *Disclosure Statement to Accompany the Second Amended Plan of Reorganization Under Chapter 11 of The Bankruptcy Code Proposed by Tara Retail Group, LLC* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following participants:

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