

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

In re:	)	
	)	Case No.: 17-00057
TARA RETAIL GROUP, LLC,	)	Chapter 11
	)	
Debtor.	)	
	)	

**FIRST AMENDED DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF  
LIQUIDATION OF DEBTOR UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
DATED NOVEMBER 21, 2017  
SPONSORED BY SECURED CREDITOR  
COMM 2013-CCRE12 CROSSINGS MALL ROAD, LLC**

**TABLE OF CONTENTS**

	<b>Page</b>
I. PROCEDURAL INFORMATION.....	1
II. INTRODUCTION .....	5
A. Background.....	5
B. Overview of the Plan .....	6
C. Holders of Claims Entitled to Vote.....	7
III. DISCLAIMERS.....	8
IV. GENERAL INFORMATION CONCERNING THE DEBTOR.....	9
A. Source of Information .....	9
B. Background of Debtor.....	9
(a) Filing of Bankruptcy Petition and Significant Events in Bankruptcy Case and Related Litigation. ....	11
(b) Claims Bar Date and Summary of Filed Claims.....	13
(i) Claim of Secured Creditor	13
(ii) Tenant Unsecured Claims	13
(iii) General Unsecured Claims	14
(iv) Equity Interests	14
C. Valuation and Operating Performance of Crossings Mall.....	14
V. THE PLAN .....	14
A. Overview of Chapter 11 .....	14
B. Classification of Claims and Interests.....	15
(a) Unclassified Claims .....	15
(i) Administrative Claims	15
(ii) Priority Tax Claims	16
(b) Unimpaired Classes .....	16
(i) Class 1 Claims (DIP Claims)	16
(ii) Class 5 Claims (Priority Non-Tax Claims)	16
(c) Impaired Classes .....	17
(i) Class 2 Claim (Secured Creditor Secured Claim)	17
(ii) Class 3 Tenant Unsecured Claims	17

- (iii) Class 4 General Unsecured Claims 17
    - (iv) Class 5 Priority Non-Tax Claims 18
    - (v) Class 6 Equity Interests 18
  - C. Plan Implementation .....18
    - (a) Effective Date .....18
    - (b) Continued Existence of Debtors and Appointment of Plan Administrator .....18
    - (c) Funding and Distribution Mechanics.....20
    - (d) Preservation of Rights of Action.....20
    - (e) Rights of Action.....20
  - D. Allowed Claims, Distribution Rights and Objections to Claims .....21
    - (a) Allowance Requirement.....21
    - (b) Date of Distribution .....21
    - (c) Making of Distributions.....21
    - (d) Objection Procedures .....21
  - E. Disposition of Executory Contracts and Unexpired Leases .....22
    - (a) Contracts and Leases Deemed Rejected .....22
    - (b) Cure with Respect to Assumed Contracts and Leases .....22
    - (c) Rejection Damages .....22
    - (d) Treatment of Rejection Claims. ....22
    - (e) Tenant Leases.....23
- VI. CONFIRMATION AND/OR CONSUMMATION .....23
  - A. Requirements for Confirmation of the Plan.....23
  - B. Effects of Confirmation .....24
    - (a) Binding Effect of the Plan.....24
    - (b) No Discharge of the Debtors.....24
    - (c) Releases and Related Injunctions.....25
      - (i) Claims and Interests 25
      - (ii) Released Claims 25
      - (iii) Releases 26
        - (1) Releases By the Debtors .....26
        - (2) Exculpation .....26

- C. Retention of Jurisdiction.....26
- D. Amendment, Alteration and Revocation of the Plan .....27
- E. Section 1146 Exemption.....27
- F. Tax Consequences of the Plan .....27
- G. Risk Factors .....27
- VII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS .....28
  - A. Feasibility of the Plan .....28
  - B. Acceptance of the Plan.....29
  - C. Best Interests Test.....29
  - D. Liquidation Analysis.....30
  - E. Confirmation Without Acceptance of All Impaired Classes: The Cramdown Alternative.....30
- VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....31
  - A. Liquidation Under Chapter 7 .....31
- IX. THE SOLICITATION; VOTING PROCEDURES .....32
  - A. Parties in Interest Entitled to Vote .....32
  - B. Classes Entitled to Vote to Accept or Reject the Plan.....32
  - C. Solicitation Order.....33
  - D. Waivers of Defects, Irregularities, Etc.....33
  - E. Further Information; Additional Copies .....33
- X. SOLICITATION OF ACCEPTANCES .....33

**EXHIBITS**

- EXHIBIT A - SECURED CREDITOR’S PLAN OF REORGANIZATION
- EXHIBIT B - SCHEDULE OF ASSUMED CONTRACTS

COMM 2013-CCRE12 CROSSINGS MALL ROAD, LLC (the “Secured Creditor”), by and through its undersigned attorneys, Buchanan Ingersoll & Rooney PC (“BIPC”), provides this First Amended Disclosure Statement (the “Disclosure Statement”)<sup>1</sup> to creditors pursuant to 11 U.S.C. § 1125 and in support of its Chapter 11 Plan of Liquidation of the Debtor Sponsored by Secured Creditor (the “Plan”) filed with the United States Bankruptcy Court for the Northern District of West Virginia (the “Bankruptcy Court”) on November 21, 2017 in the above-captioned case. The Secured Creditor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

The purpose of this Disclosure Statement is to provide creditors whose claims or interests are impaired under the Plan with adequate information to make an informed and prudent business judgment when voting on the Plan. This Disclosure Statement is not meant to take the place of the Plan. Because creditors will be bound by the Plan if the Bankruptcy Court confirms it, the Secured Creditor urges creditors to read the Plan carefully and to consult with their own attorneys about the Plan’s effect on their claims and/or rights. A copy of the Plan is attached as **Exhibit A**. Each capitalized term used in this Disclosure Statement, not otherwise defined herein, shall have the meaning ascribed to such term in the Plan.

This Disclosure Statement provides information designed to satisfy the guidelines set forth by the Bankruptcy Court for meeting the “adequate information” requirement under section 1125 of the Bankruptcy Code.

The Bankruptcy Court entered an order approving this Disclosure Statement and found that it contains adequate information in accordance with section 1125 of the Bankruptcy Code to enable a hypothetical, reasonable investor typical of Holders of Claims against the Debtors to make an informed judgment as to whether to accept or reject the Plan, and the Bankruptcy Court has authorized its use in connection with the solicitation of votes with respect to the Plan. Approval of this Disclosure Statement does not, however, constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan. No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating to the Debtors and their business, other than that contained in this Disclosure Statement, the Plan, the Plan Supplement and all exhibits and appendices hereto and thereto.

## I. 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:

<sup>1</sup> This First Amended Disclosure Statement replaces the Disclosure Statement filed by Secured Creditor on November 21, 2017.

- Claims and Interests in Classes 2, 3, 4 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 Secured Creditor 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 Secured Creditor 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 Secured Creditor 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 2, 3, 4 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, Secured Creditor 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 Secured Creditor at the address or phone number listed below.

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

**Voting Recommendations**

Secured Creditor submits that the Plan presents the best opportunity for holders of Claims to maximize their respective recoveries. Secured Creditor **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 Secured Creditor. All correspondence in connection with voting on the Plan should be directed to the following address:

**By mail or overnight delivery:**  
**Buchanan Ingersoll & Rooney PC**  
**Attn: Sharon Troesch**  
One Oxford Centre  
301 Grant Street, 20<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 562-8800

Secured Creditor 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 Secured Creditor 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:

#### **Confirmation Hearing**

**Date and Time:** Commencing at **time** o'clock (a.m./p.m.), on Month/Day, 2018.

**Place:** U.S. Bankruptcy Court, L. Edward Friend II Bankruptcy Courtroom, 1125 Chapline Street Wheeling, West Virginia 26003.

Judge: 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 Secured Creditor: Buchanan Ingersoll & Rooney PC, One Oxford Centre, 301 Grant Street, 20<sup>th</sup> Floor, Pittsburgh, PA 15219, Attn: Christopher P. Schueller, Esq. and (ii) Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, WV 25301, Attn: David Bissett.

## II. INTRODUCTION

### A. Background

Chapter 11 is a remedial statute designed to effect the rehabilitation and reorganization of financially distressed businesses and individuals, but also allows, as is the case here, the transfer of substantially all of a debtor's assets to a third party and the orderly distribution of proceeds pursuant to a plan of liquidation.

On January 24, 2017 (the "Petition Date"), Tara Retail Group, LLC, a Georgia limited liability company (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing case number: 17-00057. The Debtor continued in possession of its assets and continued to operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

On or about May 25, 2017, the exclusivity period expired, thereby allowing Secured Creditor to propose the Plan discussed herein. On March 19, 2018, the Debtor filed its First Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Debtor Plan"). [Docket No. 629]. Under the Debtor Plan, the Debtor intends to object to virtually all unsecured claims. The Debtor's projections do not account for payment for over \$4,000,000 in asserted General Unsecured Claims and assume the Debtor will successfully avoid a prepayment penalty of approximately \$3 million. The Debtor's plan is also contingent upon: (1) the Debtor recovering \$550,000 from Emerald Grande, LLC, also a debtor in bankruptcy, to fund administrative claims and other effective date payments; (2) the Debtor surcharging secured creditor's collateral to pay unpaid legal fees in excess of \$300,000; (3) the Debtor successfully objecting to nearly all unsecured claim; and (4) equity contributions in unspecified amounts from William and Rebecca Abruzzino. The Secured Creditor submits that this Plan provides for significantly enhanced treatment to Holders of General Unsecured Claims including a guaranteed cash recovery for all general unsecured creditors holdings claims equal to or less than \$20,000 on the Effective Date. In addition, the Secured Creditor's plan will be funded with cash from the Secured Creditor and is not contingent on future performance at the Crossings Mall and equity contributions from William and Rebecca Abruzzino.

**B. Overview of the Plan**

The primary elements of the Plan are simple. It is a straightforward liquidating plan. On the Confirmation Date, the Secured Creditor will fund a cash advance to the Plan Administrator to pay 100% of Administrative Claims, Priority Tax Claims and Priority Non-Tax Claims. The Secured Creditor will make all payments to Holders of DIP Claims in accordance with the DIP loan documents. In addition, the Secured Creditor will pay \$200,000 in cash to the Plan Administrator to be distributed *pro rata* to all Holders of Allowed Unsecured Claims. All unsecured creditors holding claims less than \$20,000 will be Allowed on the Effective Date.

Upon receipt of these funds from the Secured Creditor, the Plan Administrator will deed the Crossings Mall property to the Secured Creditor. The Secured Creditor has waived any right to participate in the unsecured Claim pool and therefore its deficiency claim will not dilute the recovery available to Holders of Unsecured Claims. The Excluded Litigation Claims will be assigned to Secured Creditor. The Secured Creditor will also advance an additional \$50,000 to the Plan Administrator for use in pursuit the Litigation Claims and Avoidance Actions. The Plan Administrator will then be authorized to pursue the Litigation Claims and Avoidance Actions with any net recoveries being distributed to Holders of Allowed Unsecured Claims.

The classification, treatment and projected recovery of Claims in Secured Creditor’s Plan is as follows:

<b>Classes in Secured Creditor’s Plan</b>	<b>Treatment in Secured Creditor’s Plan</b>	<b>Projected Recovery</b>
Priority Tax Claims	Paid in full on Effective Date	100%
Administrative Claims	Paid in full on Effective Date	100%
Class 1 DIP Claims	Paid in full in accordance with terms of DIP loan documents	100%
Class 2 Secured Creditor Secured Claim	Receipt of Deed to Crossings Mall; Secured Creditor to waive any right to participate in unsecured claim fund	Unknown
Class 3 Tenant Unsecured Claims	Tenants may elect either (a) 2 months free Base Rent or (b) to participate in the Class 4 general unsecured claim pool.	5% to 29%
Class 4 General Unsecured Claims	<i>Pro Rata</i> share of \$200,000 <u>plus</u> net recoveries from Litigation Claims and Avoidance Actions	5% to 29%
Class 5 Priority Non-Tax Claims	Paid in full on Effective Date	100%
Class 6 Interests in the Debtor	After payment of all Allowed Claims, 100% of any remaining	Unknown but expected to be 0%

Classes in Secured Creditor's Plan	Treatment in Secured Creditor's Plan	Projected Recovery
	proceeds from Litigation Claims and Avoidance Actions	

**C. Holders of Claims Entitled to Vote**

Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to have rejected a proposed plan of reorganization or liquidation are entitled to vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are altered under the plan. Classes of claims or equity interests in which the holders of claims or equity interests are unimpaired under a chapter 11 plan are deemed to have accepted a proposed plan and are not entitled to vote. In addition, classes of claims or equity interests in which the holders of claims or equity interests will not receive or retain any property on account of such claims or interests are deemed to have rejected a proposed plan and are not entitled to vote. The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan.

Administrative Claims and Priority Tax Claims are treated in accordance with section 1129(a)(9)(A) and section 1129(a)(9)(C) of the Bankruptcy Code, respectively and will be paid in full on the Effective Date. Such Claims are Unimpaired under the Plan and, in accordance with section 1123(a)(1) of the Bankruptcy Code, are not designated as Classes of Claims for purposes of this Plan and for purposes of sections 1123, 1124, 1126 and 1129 of the Bankruptcy Code.

Claims in Classes 1 & 5 are Unimpaired. As a result, Holders of Claims in those Classes are deemed to have accepted the Plan and are not entitled to vote on the Plan. The Claim in Classes 2 is held by the Secured Creditor and is Impaired. As a result, the Secured Creditor will be entitled to vote on the Plan. ***Secured Creditor intends to vote the Claim in Class 2 to accept the Plan.***

Interests in Class 3 are Impaired. This class consists of all Unsecured Claims of Tenants. Holders of such Interests are entitled to elect between receiving (a) assumption of its lease coupled with 2 months free base rent under their Lease for the Property or (b) to participate in Class 4 General Unsecured Claim Pool. If a Tenant elects under (a) to accept 2 months of free base rent, such Tenant's lease shall be deemed assumed as of the Effective Date. Any Tenant electing the treatment under Subpart (a) of Section 3.06 of the Plan shall also be treated as a Released Party and shall receive a release of all Debtor claims as provided in Section 10.04(a) of the Plan. Any Holder of Class 3 Tenant Unsecured Claim who does not vote or make an election hereunder shall be deemed to have accepted the treatment described in subpart (a) herein. Each election by a Class 3 Holder shall be irrevocable. The rent abatement for electing Holders of Class 3 Tenant Unsecured Claims shall include base rent only and excludes CAM charges and all other monthly amounts payable under each Tenant's applicable lease.

Interests in Class 4 are Impaired. This class consists of all Holders of General Unsecured Claims. Holders of such Interests shall receive on a *pro rata* basis, the proceeds of the \$200,000 Unsecured Claim Fund plus net recoveries from pursuit of Litigation Claims and Avoidance Actions other than the Excluded Litigation Claims. Any Claim of a Class 4 General Unsecured Creditor under \$20,000 shall be deemed allowed and shall not be contested.

### III. DISCLAIMERS

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATING TO THE PLAN, CERTAIN EVENTS THAT HAVE OCCURRED IN THE CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION.**

**ALTHOUGH THE SECURED CREDITOR BELIEVES THAT THE SUMMARIES OF THE PLAN AND RELATED DOCUMENT SUMMARIES ARE FAIR AND ACCURATE AS OF THE DATE HEREOF, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS AND TO THE EXTENT THAT THEY MAY CHANGE AS PERMITTED BY THE PLAN AND APPLICABLE LAW. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN TAKEN FROM DEBTORS' FILINGS IN THIS CHAPTER 11 CASE. THE SECURED CREDITOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.**

**NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE SECURED CREDITOR OR ANY OTHER PARTY OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS OR INTERESTS. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.**

**CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. EXCEPT AS OTHERWISE SPECIFICALLY AND EXPRESSLY STATED HEREIN, THIS DISCLOSURE STATEMENT DOES NOT REFLECT ANY EVENTS THAT MAY OCCUR SUBSEQUENT TO THE DATE HEREOF AND THAT MAY HAVE A MATERIAL IMPACT ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. FURTHER, THE SECURED CREDITOR DOES NOT ANTICIPATE THAT ANY AMENDMENTS OR SUPPLEMENTS TO THIS DISCLOSURE STATEMENT WILL BE DISTRIBUTED TO REFLECT SUCH OCCURRENCES.**

**ACCORDINGLY, THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCE IMPLY THAT THE INFORMATION HEREIN IS CORRECT OR COMPLETE AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF.**

**THE SECURED CREDITOR BELIEVES THAT THE PLAN WILL ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF THE DEBTORS' CREDITORS AND ITS ESTATES. THE SECURED CREDITOR URGES ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT THE PLAN.**

#### **IV. GENERAL INFORMATION CONCERNING THE DEBTOR**

##### **A. Source of Information**

The information contained in this Disclosure Statement is taken from pleadings filed by the Debtor with the Bankruptcy Court and other documents disclosed and representations made by the Debtor in this case. Secured Creditor is also relying on and will refer to certain provisions of the Debtors' Disclosure Statement to Accompany Debtor's First Amended Chapter 11 Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 358] as a source of additional information concerning the Debtor and the estate ("Debtor's Disclosure Statement").

##### **B. Background of Debtor**

Prior to the Petition Date, Debtor 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.

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

The Original Secured Creditor 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" ("Secured Creditor").

Under the Deed of Trust, Debtor 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 Secured Creditor. The Crossings Mall contains many retail tenants such as K-mart, Kroger, Exxon and McDonald's.

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. The rain caused a

flood which washed out the culvert which was the sole access point to the Property effectively rendering the Property inaccessible. The Property was rendered inaccessible as a result of the flooding and has remained closed since that time.

In January 2016, Debtor alleges that it 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. Secured Creditor, through its servicer, did not approve request as it had no obligation to do so under the governing loan documents. Debtor has alleged that the culvert would not have been destroyed in the Flood, if Secured Creditor had honored the pre-Flood request for a release of capital expenditure funds to make repairs to the culvert. *See* Debtor's Disclosure Statement, pp. 8-11. The Secured Creditor has denied the Debtor's allegations, submits that it had no obligation to honor any request by the Debtor to fund capital expenditures and has no liability to the Debtor for failure to honor a pre-flood advance for capital expenditures.

Debtor has filed a civil action against Secured Creditor and Secured Creditor for damages relating to the alleged denial of the pre-Flood request for release of capital expenditure funds to make repairs to the culvert. Thus, Debtor disputes the claim of Secured Creditor. Original Secured Creditor and Secured Creditor dispute all of Debtor's allegations and contend that the Secured Creditor was under no obligation to make any advances to fund repairs to the culvert. As such, the Secured Creditor asserts that its Claim should be allowed in full and further that it has no liability to the Debtor. *See* Debtor's Disclosure Statement, pp. 14-15.

On September 28, 2016, Secured Creditor filed a lawsuit in the District Court against Debtor, alleging default under the Loan between Debtor and Secured Creditor and seeking the appointment of a receiver, which is pending as Civil Action No. 16-cv-09232 (the "Civil Action"). Debtor's claim against Original Secured Creditor and Secured Creditor for their alleged 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, is pending as a counterclaim in the Civil Action.

The bridge and culvert providing access to the Crossings Mall were located entirely within the boundaries of the right-of-way for the West Virginia Division of Highways, which extends from County Route 45 over Little Sandy Creek, to Debtor's property line. Debtor allegedly requested the State of West Virginia to undertake to rebuild the bridge providing access to the Crossings Mall. When the State of West Virginia failed to respond to this request, on November 15, 2016, Debtor allegedly gave notice to the State of West Virginia, pursuant to West Virginia Code Section 55-17-3, of its intent to file a claim, due to the failure of the State of West Virginia, Division of Highways, to undertake repairs to rebuild the bridge and culvert providing access to the Crossings Mall. To date, no response has been received.

On December 23, 2016, Secured Creditor's motion for appointment of a receiver was granted. By notice dated December 28, 2016, Secured Creditor 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., at the Kanawha County Courthouse in Charleston, West Virginia.

**(a) Filing of Bankruptcy Petition and Significant Events in Bankruptcy Case and Related Litigation.**

On January 24, 2017, Debtor filed this Case under Chapter 11 of the Bankruptcy Code, in the Bankruptcy Court. On February 1, 2017, Debtor filed its motion to extend time to file a plan under section 362(d)(3) of the Bankruptcy Code, because the Crossings Mall constitutes “single asset real estate”, within the meaning of Bankruptcy Code section 101(51B).

Secured Creditor objected to Debtor’s request. [Docket No. 93]. In addition, Secured Creditor filed a motion to dismiss Debtor’s bankruptcy case [Docket No. 92] and filed a motion for relief from the automatic stay, to allow it to foreclose on the Crossings Mall. [Docket No. 44]. On February 17, 2017, Debtor filed its response to Secured Creditor’s motion for relief from the automatic stay, and a cross motion to equitably subordinate Secured Creditor’s claim. [Docket No. 97]. Debtor has asked the Court to equitably subordinate the Claim of Secured Creditor. *See* Debtor’s Disclosure Statement, pp.14. On August 31, 2017, The Elswick Company, LLC d/b/a Anytime Fitness Elkview filed a motion to equitably subordinated the Secured Creditor’s claim. [Docket No. 375] The Secured Creditor disputes all such allegations and asserts that there is no basis to equitably subordinate it claim. During a hearing held on March 30, 2017, the Court deferred action on Debtor’s motion to equitably subordinate the Claim of Secured Creditor.

Also on February 17, 2017, Debtor 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. [Docket No. 98]. On February 23, 2017, the Bankruptcy Court entered an order and notice setting a final hearing on March 2, 2017, on Secured Creditor’s motion for relief from stay, Secured Creditor’s motion to dismiss case, Debtor’s motion to obtain post-petition financing to rebuild the bridge, and Debtor’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, 2017, the Bankruptcy Court took all pending motions under advisement. On March 15, 2017, Debtor filed its renewed motion to obtain post- petition financing, granting super priority administrative expense claim and priming lien on the Crossings Mall property. [Docket No. 167].

On March 30, 2017, the Bankruptcy Court orally rendered its ruling on all pending motions. At that time, the Bankruptcy Court raised the issue as to whether Debtor’s independent director, Tara Retail Management Group, Inc., had ratified Debtor’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 Secured Creditor’s motion for relief from stay conditioned upon Debtor 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 Debtor to provide a copy of the order to all known directors of Tara Retail Management Group, Inc. (the independent director of Debtor) 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 Debtor’s bankruptcy filing.

On April 6, 2017, the Bankruptcy Court held a hearing in Clarksburg, West Virginia, on Secured Creditor’s motion to dismiss, Debtor’s renewed motion for post-petition financing, and Debtor’s motion to extend its time to file a plan of reorganization.

Thereafter, on April 14, 2017, the Bankruptcy Court orally rendered its ruling on Secured Creditor's motion to dismiss and Debtor's motion for post-petition financing. The Bankruptcy Court ruled that Tara Retail Management Group, Inc. had ratified Debtor'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 Secured Creditor's motion to dismiss. Thereafter, the Bankruptcy Court granted Debtor's renewed motion for post-petition financing, thereby approving Debtor's plan to rebuild the bridge providing access to the Crossings Mall through incurrence of approximately \$1 million in post-petition financing secured by priming liens on the Crossings Mall. The Bankruptcy Court also granted, in part, Debtor's motion for an extension of time to file a plan of reorganization under Section 362(d)(3) of the Bankruptcy Code, extending Debtor'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, Secured Creditor 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 (the "Appeal"). 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 Secured Creditor's motion to dismiss. [Docket No. 217] On May 26, 2017, Debtor filed a motion to dismiss Secured Creditor's appeal in the United States District Court for the Northern District of West Virginia, for lack of jurisdiction. On June 30, 2017, Debtor's motion to dismiss the Pending Appeal was granted. Secured Creditor reserves the right to appeal the denial of the Motion to Dismiss at the conclusion of this case.

On April 28, 2017, Debtor filed its motion to refer its counterclaim against Secured Creditor in the Civil Action pending in the District Court, to the United States Bankruptcy Court for the Southern District of West Virginia. *See* Debtor's Disclosure Statement, pp. 12. Secured Creditor has opposed this motion.

On May 24, 2017, Debtor also filed its renewed motion for leave to file second amended defenses and answer to plaintiff's complaint, counterclaim and third-party complaint in the District Court; to which plaintiff objected by a memorandum in opposition filed on June 7, 2017. As of the date of this Disclosure Statement, the District Court has not ruled on Debtor's motion to refer its counterclaim to the bankruptcy court, or on Debtor's motion for leave to file a second amended complaint.

On June 23, 2017, Debtor filed its complaint in the Circuit Court of Kanawha County, West Virginia, against the State of West Virginia, for failing to rebuild the bridge, which was on the Department of Highways right-of-way, providing access to the Crossings Mall. *See* Debtor's Disclosure Statement, pp. 13-14.

Debtor 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"). Debtor 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. Debtor has also filed two status reports with the Bankruptcy Court [Docket Nos. 212 and 236] detailing progress made on rebuilding the bridge to restore access to the Crossings Mall from the DOH Right of Way. The bridge was completed in July of 2017.

**(b) 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 Debtor (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.

**(i) Claim of Secured Creditor**

Secured Creditor’s (Proof of Claim No. 2) is asserted in the amount of \$17,263,842.28. As previously described, Debtor has asserted a counterclaim against Secured Creditor and Secured Creditor in the Civil Action pending in the District Court, and on this basis, Debtor disputes Secured Creditor’s Claim. In addition, Debtor disputes the Claim of Secured Creditor for the reasons set forth in the Debtor’s Disclosure Statement. *See* Debtor’s Disclosure Statement, pp. 15-16. Secured Creditor disputes all of the Debtor’s allegations, asserts that its Claim should be allowed in full and disputes that there are any grounds to equitably subordinate its Claim.

Under this Plan, Secured Creditor will receive a quit claim deed to the Property and all claims against it will be released by the Debtor thereby ending the pending litigation against it. All Excluded Litigation Claims will be assigned to Secured Creditor.

**(ii) Tenant Unsecured Claims**

Five tenants of the Crossings Mall have filed proofs of claim, asserting claims for business interruption and other claims, asserting that Debtor breached some duty under the applicable lease agreement to provide access to the Crossings Mall as a result of the June 23, 2016 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

Debtor disputes the proofs of claim by tenants of the Crossings Mall, for the reasons set forth in the Debtor’s Disclosure Statement. *See* Debtor’s Disclosure Statement, pp. 15-16. The Secured Creditor is in the process of evaluating the Tenant Unsecured Claims.

**(iii) General Unsecured Claims**

Seventy-one (71) persons have filed proofs of claim, asserting 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 in the Flood. Debtor disputes the proofs of claims filed by these seventy-one (71) persons, for the same reasons detailed in the immediately preceding section describing Tenant Unsecured Claims. Debtor has stated that will file an objection to the individuals' Unsecured Claims. Any Claim of a Class 4 General Unsecured Creditor under \$20,000 shall be deemed allowed and shall not be contested under Secured Creditor's Plan. The Secured Creditor is in the process of evaluating all general Unsecured Claims equal to or exceeding \$20,000.

**(iv) Equity Interests**

All Equity Interests will be retained by William Abruzzino. Any net recoveries from the Litigation Claims and/or Avoidance Actions, after payment of all Allowed Claims, will be distributed to the Holders of Equity Interests.

**C. Valuation and Operating Performance of Crossings Mall**

The Secured Creditor has a real property appraisal for Crossings Mall from CBRE. CBRE assesses the "As-Is" value of the property at \$7,800,000 and an "As Stabilized" value as \$14,200,000. Any party who would like a copy of the CBRE Appraisal may contact Secured Creditor's counsel.

**V. THE PLAN**

**A. Overview of Chapter 11**

The formulation and confirmation of a plan is the principal function of a chapter 11 case. Such a plan normally includes provisions for (a) settling, altering and modifying the rights of creditors and/or equity holders, (b) dealing with the property of the debtor, (c) paying costs and expenses of administering the chapter 11 case, (d) dealing with executory contracts and unexpired leases, and (e) executing the plan. Chapter 11 plans do not necessarily mean that creditors will receive full payment for all of their claims, but do provide a method for obtaining an equitable and optimal recovery for creditors.

The following is a non-technical discussion of the provisions of the Plan. This Disclosure Statement and the descriptions herein are qualified in their entirety by reference to the provisions of the Plan. Each Holder of a Claim or Interest is urged to carefully review the terms of the Plan. In the event of any inconsistency between the provisions of the Plan and the summary contained herein, the terms of the Plan shall govern.

The Plan in these Chapter 11 Cases is structured as a liquidating plan. Accordingly, on the Confirmation Date, the Plan Administrator will deed the Crossings Mall property to the Secured Creditor. The Plan Administrator will also make distributions to Holders of Allowed Claims from the Debtors' cash on hand as of the Effective Date (the "Effective Date Cash") under the terms of the Plan. The Plan Administrator will pursue the Litigation Claims

Avoidance Actions after the Effective Date on behalf of the Estates and to distribute net recoveries from such actions to the Holders of Claims in accordance with the terms of the Plan.

**B. Classification of Claims and Interests**

The following is a summary of the provisions of the Plan as they relate to the classification and treatment of claims and interests thereunder. This summary is not the Plan. All parties in interest are referred to the Plan for full and complete information as to its provisions. To the extent there are any inconsistencies, the Plan will control.

There are five (5) classes of Claims and one (1) class of Interests under the Plan. Administrative Claims and Priority Tax Claims are not subject to classification pursuant to 11 U.S.C. § 1123(a)(1) and thus are not entitled to vote.

The Claims in Class 2, 3 and 4 and are Impaired and the Interests in Class 6 are Impaired and thus are entitled to vote on the Plan. The Plan contemplates distribution of available funds to the following Classes of Claims and Interests in the order provided below.

**(a) Unclassified Claims**

Unclassified Claims consist of Administrative Claims, which are obligations of the Debtors incurred after the Petition Date pursuant to 11 U.S.C. §§ 507(a)(1) and 503(b) that have remained unpaid (primarily fees of Professionals), and Priority Tax Claims entitled to priority pursuant to 11 U.S.C. § 507(a)(2).

**(i) Administrative Claims**

Administrative expenses are the actual and necessary costs and expenses of the Chapter 11 Cases that are allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code. The Debtor estimates that there will be approximately \$595,000 of Administrative Claims. Secured Creditor reserves all rights to object to fee applications filed by Debtors' counsel and other Professionals.

Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims must be Filed with the Bankruptcy Court and served on the Debtor, the Secured Creditor and the United States Trustee not later than: (1) ten (10) days prior to the Confirmation Hearing ("Initial Request for Payment of Administrative Claims Bar Date") with respect to all Administrative Claims arising during the period between the Petition Date and the date that is ten (10) days prior to the Confirmation Hearing ("Initial Administrative Claims Period"); and (2) ten (10) days after the Effective Date (the "Second Request for Payment of Administrative Claims Bar Date") with respect to Administrative Claims arising during the period between the Initial Request for Payment of Administrative Claims Bar Date and the date that is ten (10) days after the Effective Date (the "Second Administrative Claims Period"). **Any Person that is required to File and serve a request for payment of an Administrative Claim and fails to timely File and serve such request, shall be forever barred, estopped and enjoined from asserting such Administrative Claim or participating in Distributions under this Plan on account thereof.** Objections to an Administrative Claim must be Filed and served

on the Debtors, the Secured Creditor, the United States Trustee and the requesting party and their respective counsel, if any, not later than thirty (30) days after the Effective Date.

Each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Plan Administrator or as the Bankruptcy Court may order. Distributions to each Holder of Administrative Claims shall be made on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, or (iii) a date agreed to in writing by the Plan Administrator and the Holder of such Administrative Claim.

**(ii) Priority Tax Claims**

Priority Tax Claims essentially consist of unsecured Claims of federal and state governmental authorities for the kinds of taxes specified in section 507(a)(8) of the Bankruptcy Code, such as certain income taxes, property taxes, excise taxes, and employment and withholding taxes. Priority Tax Claims are given statutory priority in right of payment. It is estimated that there are \$139,112.01 in Priority Tax Claims.

Each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Plan Administrator or as the Bankruptcy Court may order. Distributions to each Holder of Priority Tax Claims shall be made on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed, or (iii) a date agreed to in writing by the Plan Administrator and the Holder of such Claim.

**(b) Unimpaired Classes**

**(i) Class 1 Claims (DIP Claims)**

Class 1 Claims consist of DIP Claims. DIP Claims are Unimpaired. Each Holder of a DIP Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim payment in accordance with the terms of the DIP loan documents. All liens and security interests granted under the DIP Loan Documents shall be retained until the DIP Claims are paid in full.

**(ii) Class 5 Claims (Priority Non-Tax Claims)**

Class 5 Claims consist of Priority Non-Tax Claims. Priority Non-Tax Claims are Unimpaired. Each Holder of an Allowed Priority Non-Tax Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Secured Creditor or as the Bankruptcy Court may order. Distributions to each Holder of

Priority Non-Tax Claims shall be made on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Non-Tax Claim becomes Allowed, or (iii) a date agreed to in writing by the Secured Creditor and the Holder of such Claim. It is estimated that the amount of Priority Non-Tax Claims is \$0.00.

**(c) Impaired Classes**

**(i) Class 2 Claim (Secured Creditor Secured Claim)**

Class 2 Claims consist of the Secured Creditor Secured Claim. On the Confirmation Date, the Plan Administrator will assume limited control of the Estate and will execute and deliver to the Secured Creditor (or Secured Creditor's designee) a quit claim deed to the Property. The deed shall contain customary non-merger language. The Secured Creditor waives any right to assert a deficiency claim against the estates on account of the Class 2 Secured Creditor Secured Claim. On the Effective Date, the Secured Creditor shall receive an assignment of all Leases and the Excluded Litigation Claims.

**(ii) Class 3 Tenant Unsecured Claims**

Each holder of an Allowed Class 3 Claim shall 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). Each ballot for a Class 3 Tenant Unsecured Claim shall provide for each Class 3 Tenant to elect between the treatment offered under Subpart (a) or (b) of Section 3.06 of the Plan. Any Tenant electing the treatment under Subpart (a) of Section 3.06 of the Plan shall also be treated as a Released Party and shall receive a release of all Debtor claims as provided in Section 10.04(a) of the Plan. Any Holder of Class 3 Tenant Unsecured Claim who does not vote or make an election hereunder shall be deemed to have accepted the treatment described in Subpart (a) of Section 3.06 of the Plan. Each election by a Class 3 Holder shall be irrevocable. The rent abatement for electing Holders of Class 3 Tenant Unsecured Claims shall include base rent only and excludes CAM charges and all other monthly amounts payable under each tenant's applicable lease. Any and all setoff or recoupment rights of any Holder of a Class 3 Tenant Unsecured Claim shall be terminated and extinguished effective immediately upon Confirmation of this Plan.

**(iii) Class 4 General Unsecured Claims**

The Class 4 General Unsecured Claims are Impaired. Each Holder of an Allowed Class 4 General Unsecured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) its *pro-rata* distribution of the Unsecured Claim Fund; and (b) a *pro-rata* distribution of all Litigation Proceeds and Avoidance Actions. Allowed Class 4 General Unsecured Claims shall not be entitled to post-Petition Date interest. Any Claim of a Class 4 General Unsecured Creditor under \$20,000 shall be deemed allowed and shall not be contested.

*(iv) Class 5 Priority Non-Tax Claims*

Each Holder of an Allowed Priority Non-Tax Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Secured Creditor or as the Bankruptcy Court may order. Distributions to each Holder of Priority Non-Tax Claims shall be made on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Non-Tax Claim becomes Allowed, or (iii) a date agreed to in writing by the Secured Creditor and the Holder of such Claim.

*(v) Class 6 Equity Interests*

Holders of Interests in Class 6 will retain their Interests in the Debtor and shall receive, to the extent available, all remaining net proceeds from pursuit of the Litigation Claims and Avoidance Action after payment in full of Allowed Claims.

**C. Plan Implementation**

**(a) Effective Date**

The Plan shall become effective fourteen (14) days after entry of the Bankruptcy Court's Order confirming the Secured Creditor's Plan.

**(b) Continued Existence of Debtors and Appointment of Plan Administrator**

From and after the Confirmation Date, the Debtors shall continue in existence for the purposes of implementation of the Plan. On the Confirmation Date, a Plan Administrator<sup>2,3</sup> shall be appointed by the Court. The Plan Administrator shall have the sole authority to carry out the following:

1. To issue a quit claim deed to convey the Property to the Secured Creditor on the Effective Date;
2. To assign to the Secured Creditor all of the Debtor's rights to pursue the Excluded Litigation Claims;
3. To liquidate and/or abandon any other assets of the Debtor;
4. To employ or terminate the employment of Professionals to pursue Avoidance Actions and/or Litigation Claims;

---

<sup>2</sup> The Bankruptcy Court has the power to appoint plan administrators pursuant to Sections 105, 1123(b)(5) and 1142(b) of the Bankruptcy Code.

<sup>3</sup> Pursuant to Section 1129(a)(5), the Plan Administrator shall be selected by the Court and shall have the duties and powers described herein and as contemplated in Section 7.01 of the Plan.

5. The Plan Administrator will be in charge of filing the post-Confirmation operating reports with the Bankruptcy Court;
6. Any lawsuit or claims for the actions of the Plan Administrator in his or her administration of the Estate shall be brought against the Estate and resolved by this Court. The Plan Administrator shall not be held personally liable for his or her actions as the representative of the estate;
7. To execute all instruments and documents necessary to effectuate distributions;
8. To pay Allowed Administrative Claims and Allowed Rejection Claims pursuant to the terms of the Plan;
9. To pay Allowed Claims on the Effective Date pursuant to the terms of the Plan;
10. To investigate, settle and/or object to Claims. Secured Creditor shall also be entitled to object to claims;
11. To prosecute causes of action on behalf of and for the benefit of the post-confirmation Estate including the Litigation Claims;
12. To compromise, settle, resolve, discontinue, abandon or dismiss all such actions with approval of the Bankruptcy Court;
13. To exercise such other powers deemed necessary and proper to carry out the provisions of the Plan.

The Plan Administrator shall be vested with the sole authority and discretion to pursue Avoidance Actions and/or the Litigation Claims. The Plan Administrator may fund such actions by retaining counsel of his choice on a contingency basis or by obtaining an advance of funds from the Secured Creditor. The Secured Creditor shall advance fifty thousand dollars (\$50,000) to the Plan Administrator to fund the Plan Administrator's fees and expenses for all the Plan Administrators' activities including without limitation the pursuit of Avoidance Actions and/or the Litigation Claims. The Plan Administrator may also pay his or her fees through proceeds of Avoidance Actions and Litigation Claims. The Plan Administrator shall be entitled to a fee of 10% of all net recoveries distributed to holders of Allowed Claims from the pursuant of Avoidance Actions and/or the Litigation Claims.

For purposes of clarification, the Plan does not provide for, and the Plan Administrator is not responsible for (i) filing Debtor's tax returns or winding down the Estate, (ii) setting aside any proceeds respecting taxes and tax-related liabilities of the Debtor (or, if such Debtor is, for Federal income tax purposes, a pass-through or flow-through entity, of each Debtor's ultimate beneficial owners), or (iii) otherwise paying, or setting aside proceeds for the payment of, any taxes or tax-related liabilities arising from the transfer of the Property or the completion of transactions contemplated in the Plan (other than taxes specifically contemplated in the Plan, *e.g.*, Allowed Priority Tax Claims, as contemplated in Section 3.03 of the Plan). To the extent a

Debtor is, for Federal income tax purposes, a pass-through or flow-through entity, then pursuant to the Internal Revenue Code and the Treasury Regulations promulgated thereunder, any gain or loss arising from the sale of the Property will be allocated, and flow through, to such Debtor's ultimate beneficial owners who shall, in turn, incur and pay any tax or tax-related liability arising therefrom or relating thereto.

**(c) Funding and Distribution Mechanics**

On, and as of the Effective Date, the Plan Administrator shall pay in full all Allowed Priority Tax Claims, Allowed General Unsecured Claims, Allowed Rejection Claims, and Allowed Priority Non-Tax Claims from the Effective Date Cash. In the event that the Effective Date Cash is inadequate to fund the distributions, the Secured Creditor will advance funds sufficient to satisfy the Effective Date distributions (the "Effective Date Advance").

Requests for payment of Administrative Claims must be filed with the Bankruptcy Court and served on the Debtor, the Secured Creditor and the United States Trustee by (1) the Initial Request for Administrative Claims Bar Date with respect to all Administrative Claims arising during the Initial Administrative Claims Period and (2) the Second Request for Administrative Claims Bar Date with respect to all Administrative Claims arising in the Second Administrative Claims Period. Objections to an Administrative Claim must be Filed and served on the Debtors, the Secured Creditor, the United States Trustee and the requesting party and their respective counsel, if any, not later than twenty (20) days after the Second Request for Administrative Claims Bar Date. The Plan Administrator shall pay all Allowed Administrative Claims within twenty days (20) of the Bankruptcy Court entering an order setting forth an Allowed Administrative Claim amount. In the event that the Effective Date Cash is inadequate to fund the Allowed Administrative Claims distributions, the Secured Creditor will advance additional funds sufficient to satisfy the Allowed Administrative Claims distributions ("Allowed Administrative Claims Advance").

**(d) Preservation of Rights of Action**

Except to the extent that any Claim is Allowed during the Chapter 11 Cases or expressly by the Plan, nothing, including, but not limited to, the failure of the Debtors or any other party in interest to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Cases, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Secured Creditor with respect to any Claim or Interest, including, but not limited to, all rights of the Secured Creditor to contest or defend itself against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

**(e) Rights of Action**

As of the Effective Date, all Litigation Claims and Avoidance Actions shall be vested in the Plan Administrator as the representative of the Debtors' Estates under section 1123(b)(3)(B) of the Bankruptcy Code, and may be retained, enforced or prosecuted by the Plan Administrator pursuant to the Plan except for the Excluded Litigation Claims that will be assigned to Secured Creditor.



Without limiting the foregoing, and with the intention being to retain all potential Litigation Claims and Avoidance Action, the following rights of action are specifically reserved and preserved: all claims against Emerald Grande, LLC for contribution or reimbursement regarding repairing of the culvert, all claims against the State of West Virginia and any insurance carrier relating to the flood damage.

**D. Allowed Claims, Distribution Rights and Objections to Claims**

**(a) Allowance Requirement**

Only Holders of Allowed Claims are entitled to receive distributions under the Plan. An Allowed Administrative Claim is a Claim or any portion thereof that has been Allowed, or adjudicated in favor of the Holder by estimation or liquidation, by a Final Order, that was incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases and as to which there is no dispute as to the Debtors' liability, or that has become Allowed by failure to object pursuant to Article VIII of the Plan. An Allowed Claim is such Claim or any portion thereof (other than an Administrative Claim) of (a) any Claim against the Debtors that has been listed by the Debtors in the Schedules, as such Schedules may have been amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (b) any Claim specifically allowed under the Plan, (c) any Claim the amount or existence of which has been determined or allowed by a Final Order, or (d) any Claim as to which a proof of claim has been timely filed before the Bar Date, provided that at the time of the Effective Date the Debtors have not identified such Claim as being objectionable in part or in whole and no objection to the allowance thereof has been filed by the Claims Objection Deadline; provided, however, that the term Allowed, with reference to any Claim, shall not include (x) any unliquidated claim or (y) interest or attorneys' fees on or related to any Claim unless otherwise expressly provided for in the Plan.

**(b) Date of Distribution**

All Distributions to Holders of Allowed Claims as of the Effective Date will be made as and when provided in the Plan.

**(c) Making of Distributions**

Distributions to Holders of Allowed Claims will be made by the Plan Administrator as and in the manner provided in the Plan.

**(d) Objection Procedures**

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, under the Plan, the Plan Administrator and the Lender shall have the exclusive rights, on and after the Effective Date, to File objections to Claims (other than Claims specifically Allowed in the Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the objection is made as soon as practicable in accordance with the provisions of the Plan.

**E. Disposition of Executory Contracts and Unexpired Leases**

**(a) Contracts and Leases Deemed Rejected**

All executory contracts and unexpired leases of Debtors (except for unexpired leases of Tenant which are governed by Section 6.06 of the Plan) shall be deemed rejected by Debtor as of the Effective Date, except for any executory contract or unexpired lease that: (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date; or (b) is listed on the Schedule of Assumed Contracts<sup>4</sup>, provided, however, that the Secured Creditor shall have the right, at any time prior to the Confirmation Date, to amend the Schedule of Assumed Contracts to either (i) delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to Section 6.01 of the Plan, or (ii) to add any executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant to Section 6.01 of the Plan.

**(b) Cure with Respect to Assumed Contracts and Leases**

The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Plan, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Plan and other orders of the Bankruptcy Court. All such cure amounts shall be satisfied by the Plan Administrator from Effective Date Cash.

**(c) Rejection Damages**

Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan (each, a “Rejection Claim”) must be filed with the Bankruptcy Court before the later of (a) twenty (20) Days after the Effective Date, or (b) thirty (30) Days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Plan Administrator shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 8.05 of the Plan.

**(d) Treatment of Rejection Claims.**

The Bankruptcy Court shall determine any objections Filed in accordance with Section 8.05 hereof at a hearing to be held on a date to be determined by the Bankruptcy Court. Subject to any statutory limitation, including, but not limited to the limitations contained in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code, any Allowed Claims arising out of the rejection of executory contracts and unexpired leases shall be Impaired and treated as Class 4 Claims in accordance with Section 3.07 of the Plan.

---

<sup>4</sup> The Schedule of Assumed Contracts will be filed as a supplement to this Disclosure Statement no later than 10 days prior to the Voting Deadline.

**(e) Tenant Leases.**

For all Tenants electing treatment set forth in Section 3.06(a) of the Plan (each, an “Electing Assumption Tenant”), the cure amount for each assumed Tenant lease shall be deemed \$0.00 and satisfied through treatment afforded such Tenant under Section 3.06(a) of the Plan. As of the Effective Date, with respect to each lease of an Electing Assumption Tenant: (i) all defaults, event of defaults or violations by the Debtor existing under any of the tenant leases as of the Effective Date shall be deemed cured; (ii) each lease among the Debtor and Tenants shall be deemed assumed and reinstated in accordance with its respective terms; (iii) all Claims of any Tenant against the Debtor shall be treated in accordance with Section 3.06(a) of the Plan; and (iv) each Tenant shall be forever barred, discharged and enjoined from asserting any Claim or Administrative Claim on account of matters occurring prior to the Effective Date. For the avoidance of doubt, nothing in this Plan shall be deemed to cure outstanding defaults of by any Tenant which such defaults shall be unaffected by the Plan and all rights of the Debtor with respect to such default are expressly reserved and preserved.

For those Tenants which are not an Electing Assumption Tenant, the Secured Creditor reserves the right to assume or reject such unexpired lease in accordance with the provisions of Article 6 of the Plan. With respect to any unexpired lease of a Tenant which is rejected in accordance with Article 6 of the Plan, such Tenant shall be permitted to (x) treat its lease as terminated and vacate the Property at its own expense or (y) retain its rights under Section 365(h) of the Bankruptcy Code provided that, for the avoidance of doubt, any Tenant electing to remain in possession of its leasehold interest shall be prohibited from exercising any rights of setoff and/or recoupment with respect to any pre-petition Claims (including any Rejection Claims) and such rights of setoff and/or recoupment, if any, shall be limited to, post-Effective Date matters. In addition, any Tenant whose lease is rejected shall have the right to assert a claim for Rejection Damages in accordance with Article 6 of the Plan.

**VI. CONFIRMATION AND/OR CONSUMMATION**

Described below are certain important considerations under the Bankruptcy Code in connection with the Plan’s confirmation. In addition to the information provided herein, all parties in interest are encouraged to review the relevant provisions of the Bankruptcy Code and consult their own attorneys.

**A. Requirements for Confirmation of the Plan**

In order for the Plan to be confirmed, the Bankruptcy Code requires the Bankruptcy Court to determine that the Plan complies with the requirements of chapter 11 of the Bankruptcy Code. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law.

Some specific requirements under the Bankruptcy Code for confirmation of the Plan are: (a) the Plan must be accepted by the requisite votes of Creditors and Interest holders, except to the extent that confirmation despite dissent is available under section 1129(b) of the Bankruptcy Code; and (b) the Plan must be in the “best interests” of all of the Debtor’s Creditors (i.e.,

Creditors will receive at least as much pursuant to the Plan as they would receive in liquidation under chapter 7 of the Bankruptcy Code (see Article VII of this Disclosure Statement)).

To confirm a plan, the Bankruptcy Court must find that all of the above conditions are met, unless the applicable provisions of section 1129(b) of the Bankruptcy Code are employed. Thus, even if all of the Classes accept the Plan by the requisite number of votes, the Bankruptcy Court must make independent findings concerning whether the Plan conforms to the requirements of the Bankruptcy Code and whether the Plan is in the best interests of the Debtor's Creditors before it may confirm the Plan.

The Secured Creditor believes that, upon receipt of the votes required to confirm the Plan, the Plan will satisfy all the statutory requirements of chapter 11 of the Bankruptcy Code, that the Secured Creditor has complied or will have complied with all of the requirements of chapter 11 and that the Plan has been proposed and submitted to the Bankruptcy Court in good faith.

Even if all of the foregoing requirements are satisfied, if any Class of Claims is Impaired and votes to reject the Plan, the Secured Creditor must satisfy the applicable "cramdown" standard with respect to that Class. Section 1129(b) of the Bankruptcy Code requires that the plan "not discriminate unfairly" and be "fair and equitable" with respect to such rejecting Class of Claims. In the event any Class of Claims votes to reject the Plan, the Secured Creditor believes it will satisfy the cramdown standards in section 1129(b) with respect to any such rejecting Class.

**B. Effects of Confirmation**

**(a) Binding Effect of the Plan**

As of the Effective Date, the provisions of the Plan shall be binding upon and inure to the benefit of the Debtor, the Estates, the Secured Creditor, the Plan Administrator, any Holder of any Claim or Interest treated herein or any Person named or referred to in the Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan.

**(b) No Discharge of the Debtors**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, entry of the confirmation Order will not discharge Claims against the Debtors; provided however, no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtors, the Estate or the Released Parties, or their respective successors, assigns or Property, except as expressly provided in this Plan.

(c) **Releases and Related Injunctions**

(i) ***Claims and Interests***

Except as otherwise expressly provided for in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including sections 524 and 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability that is Impaired or an Interest or other right of an equity security holder that is Impaired or terminated pursuant to the terms of the Plan from taking any of the following actions against the Debtor or its respective property on account of any such Claims, debts or liabilities or such Impaired Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtor; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan.

(ii) ***Released Claims***

As of the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, cause of action or liability that is released pursuant to this Section 10.03 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, cause of action or liability against the Debtor or any of its respective property based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Case, all of which claims, demands, debts, rights, causes of action or liabilities shall be deemed released on and as of the Effective Date; provided, however, that with respect to the former directors, officers and employees of the Debtor, this injunction shall apply only to the enforcement of Claims, demands, debts, rights, causes of action or liabilities with respect to which such former directors, officers and employees would be entitled to indemnification from the Debtor under contract or law; and, provided further, however, that this injunction shall not apply to (a) any claims Creditors may assert under the Plan to enforce their rights thereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtor, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtor may have or assert in respect of any of the claims of the type described in (a) or (b) of this Section 10.03(b) of the Plan are fully preserved (except as otherwise affected by Section 10.04 of this Plan). For the avoidance of doubt, any claims held by the Secured Creditor against any guarantors are specifically not released.

**(iii) Releases**

The Plan provides for certain releases granted by the Debtors and by Holders of Claims and Interests.

**(1) Releases By the Debtors**

Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, in its individual capacity and as debtor in possession, shall be deemed to have forever released, waived and discharged the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by Debtor, taking place on or prior to the Effective Date.

**(2) Exculpation**

From and after the Effective Date, to the fullest extent permitted by applicable law, the Released Parties shall neither have no incur any liability to any Person or entity with respect to any and all Claims and Cause of Action in connection with, relating to or arising out of the Chapter 11 Case, including, without limitation, Claims and Causes of Action relating to or arising out of acts or omissions occurring after the Confirmation Date in connection with distributions made consistent with the terms of the Plan by the Plan Administrator, the restructuring of the Debtor, the formulation, negotiation, preparation, dissemination, implementation, confirmation or approval of this Plan (or the distributions under the Plan), the Disclosure Statement or any contract, instruction, release or other agreement or document provided for or contemplated in connection with the transactions set forth in this Plan provided that this section shall not apply to obligations arising under the Plan and provided further that the foregoing provisions shall not affect the liability of any Person that otherwise would result from any act or omission to the extent that act or omission is determined by a Final Order to have constituted gross negligence or willful misconduct. Any of the foregoing parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**C. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Cases to the fullest extent permitted by applicable law.

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Chapter 11 Cases, nothing in the Plan shall prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

**D. Amendment, Alteration and Revocation of the Plan**

The Secured Creditor may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Secured Creditor or the Plan Administrator may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014.

The Secured Creditor reserves the right, at any time prior to the earlier of Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn or if the Confirmation Date does not occur, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by the Secured Creditor or any other Person or to prejudice in any manner the rights of the Secured Creditor or any Person in any further proceedings involving the Debtor.

**E. Section 1146 Exemption**

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

**F. Tax Consequences of the Plan**

The Secured Creditor does not believe the appointing of a Plan Administrator, as contemplated throughout the Plan, will, in and of itself, result in any significant adverse tax consequences to the Debtors. **DISCLAIMER: NEITHER THE SECURED CREDITOR NOR ITS COUNSEL IS PROVIDING ANY OPINION OR ADVICE REGARDING THE TAX CONSEQUENCES OF THE PLAN. THE TAX CONSEQUENCES OF THE PLAN FOR HOLDERS OF CLAIMS AND INTERESTS MAY BE DIFFERENT. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN ADVISORS AS TO THE OVERALL TAX IMPLICATIONS OF THE PLAN.**

**G. Risk Factors**

For Classes of Claims that do not receive payment in Cash on the Effective Date, there are certain risk factors inherent in accepting the Plan, including the uncertainty of receiving future payment. When the Secured Creditor has endeavored to present information fairly and accurately in this Disclosure Statement, there is no assurance that the information this Disclosure Statement is based on, including Debtors' monthly operating reports and rent rolls, is complete and accurate. The financial information set forth herein has not been audited.

Additionally, the contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Creditor or holder of an Interest should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim or Interest. Nothing contained herein shall constitute an admission of any fact or liability by any party (including Secured Creditor) or shall be deemed evidence of the tax or other legal effects of the Plan on Debtors, Secured Creditor or on Holders of Claims or Interests.

A Creditor's vote for or against the Plan does not constitute a waiver or release of any claims or rights of Secured Creditor (or any other party in interest) to object to that Creditor's Claim, or recover any preferential, fraudulent, or other voidable transfer of Estate assets.

Confirmation requires, among other things, a finding by the Bankruptcy Court that it is not likely there will be a need for further financial reorganization and that the value of the distributions to dissenting members of Impaired Classes of Creditors and Holders of Interest would not be less than the value of distributions such Creditors and Holders of Interests would receive if Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Although Secured Creditor believes that the Plan will not be followed by a need for further financial reorganization, there can be no assurance that the Bankruptcy Court will conclude that this test has been met.

Although Secured Creditor believes the Plan satisfies all additional requirements for Confirmation, the Bankruptcy Court might not reach that conclusion. It is possible those modifications to the Plan will be required for confirmation and that such modifications would necessitate a solicitation of votes if the modifications are material.

Certain Classes of Claims, and the Classes below them in priority, could be affected by the allowance of Claims in an amount that is greater than projected.

## **VII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS**

### **A. Feasibility of the Plan**

In connection with confirmation of the Plan, the Secured Creditor must demonstrate and the Bankruptcy Court must find that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for a further financial reorganization.

The Plan provides for the appointment of a Plan Administrator to deed the Property to the Secured Creditor, make distributions to Holders of Allowed Claims and pursue, if deemed appropriate in the exercise of the Plan Administrator's business judgment, the Litigation Claims. The Secured Creditor will contribute the funds necessary to ensure all such Distributions are made in full. Accordingly, the Secured Creditor believes that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.



## **B. Acceptance of the Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, Holders of Claims and/or Interests in Classes 2, 3, 4 and 6 will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number of the Claims actually voting in each Class cast their ballots in favor of the Plan's acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan. The Secured Creditor intends to vote its entire Class 2 Claim in favor of the Plan.

## **C. Best Interests Test**

Even if a plan is accepted by each class of claims and interests, the plan must still be in the best interests of all holders of claims or interests that are impaired by the plan and that have not accepted the plan. The "best interests" test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor's assets if its chapter 11 case was converted to chapter 7 cases under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the debtor's assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors in a chapter 7 liquidation would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 case and the chapter 11 case. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as attorneys and other professionals retained by the trustee, asset disposition expenses, all unpaid administrative expenses incurred by the debtor in its chapter 11 case that are allowed in the chapter 7 case, litigation costs and claims arising from the operations of the debtor during the pendency of the chapter 11 case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in connection with equity security interests. The liquidation would also prompt the rejection of executory contracts and unexpired leases and thereby enlarge the total pool of unsecured claims by reason of resulting rejection damages claims.

Once the bankruptcy court ascertains the anticipated recoveries of secured creditors and priority claimants in a liquidation, it must then determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under the plan, then the plan is not in the best interests of creditors and equity security holders.

**D. Liquidation Analysis**

In the event of a forced liquidation of the Debtors' assets under chapter 7, the aggregate value to be realized by the Debtors' estate would be less than that to be realized under the Plan. The Class 1 DIP Claims totals over \$1 million and are secured by a valid, first priority security interest in the Property, all related personal property, and all rents and profits derived from the Property's operations. The Class 2 Secured Creditor Secured Claim totals over \$17 million and is secured by a valid, second priority security interest in the Property, all related personal property, and all rents and profits derived from the Property's operations. Consequently, any sales proceeds from the forced sale of the Property will first be paid over to the DIP Secured Creditors first and the Secured Creditor second until the Class 1 DIP Claims and Class 2 Secured Creditor Secured Claims are paid in full. Per the Secured Creditor's appraisal value of the Property ranges from a low of \$7,800,000 to a high of \$14,200,000. As such, 100% of the proceeds from the sale of the property would be distributed to the Holder of the Allowed Class 1 DIP Claims and Allowed Class 2 Secured Creditor Secured Claim. Other Holders of Classes of Claims or Interests likely would not receive a distribution in a forced chapter 7 liquidation; whereas, Unclassified Claims and Holders of Allowed Claims (other than in Class 6) will certainly receive a distribution under the Plan. Accordingly, the Secured Creditor believes that the best interests test of section 1129 of the Bankruptcy Code is satisfied.

**E. Confirmation Without Acceptance of All Impaired Classes: The Cramdown Alternative**

In the event any Class of Impaired Claims rejects the Plan, the Secured Creditor may seek confirmation of the Plan pursuant to the so-called "cramdown" provisions of the Bankruptcy Code.

Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. The Bankruptcy Court may confirm a plan at the request of the plan proponent if the plan "does not discriminate unfairly" and is "fair and equitable" as to each impaired class that has not accepted the plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank. The Secured Creditor believes the Plan does not discriminate unfairly with respect to the Claims and Interests in Classes 2, 3, 4 and 6.

A plan is fair and equitable as to a class of secured claims that rejects a plan if the plan provides: (a) that the holders of secured claims retain the liens securing such claims and that each holder of a secured claim receives on account of such claim deferred cash payments totaling at least the allowed amount of such claim; (b) for the sale, subject to section 363(k) of the

Bankruptcy Code, of any property that is subject to the liens securing the secured claims with such liens to attach to the proceeds of such sale; or (c) for the realization by such holders of the indubitable equivalent of the secured claims.

A plan is “fair and equitable” as to holders of unsecured claims that reject the plan if the plan provides either that: (a) each holder of a claim of such class receives or retains on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides: (a) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest; or (b) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property at all.

The Secured Creditor believes that it could, if necessary, meet the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code with respect to Holders of Claims and Interests in Classes 2, 3, 4 and 6.

## **VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Secured Creditor believes that the Plan affords Holders of Claims and Interests with the greatest realization of the Debtors’ assets and ensures the continued operation of the Property and therefore is in the best interests of such Holders. If, however, the requisite acceptances are not received, or the Plan is not confirmed and consummated, the theoretical alternatives include (a) an alternative chapter 11 plan of reorganization, including potentially a forthcoming plan proposed by the Debtors, or (b) liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

### **A. Liquidation Under Chapter 7**

If no plan is confirmed, the Debtors’ case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtors’ assets for distribution in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict with certainty how the proceeds of the liquidation would be distributed to the respective Holders of Claims or Interests. However, the Holders of the DIP Claims and Secured Creditor would assert that they held valid and perfected first and second priority security interests in substantially all assets to be liquidated, likely resulting in nothing to distribute to any other Class of Claims or Interests.

The Secured Creditor believes that liquidation under chapter 7 would cause a diminution in the Debtors’ Estates given the additional administrative expenses involved in the appointment of a trustee and attorneys, accountants and other professionals to assist such trustee. The assets

available for distribution to Holders of Claims and Interests would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, arising by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtors' assets.

Rather than try to sell the Debtors' assets, a chapter 7 trustee could abandon the Property or consent to relief from the automatic stay to permit the Secured Creditor to foreclose on the Property. In such instance, only the Holders of DIP Claims and the Secured Creditor, certain administrative priority claimants and other secured and priority creditors would realize any distribution from the disposition of the Debtors' assets; general unsecured creditors and equity interests would receive nothing.

**IX. THE SOLICITATION; VOTING PROCEDURES**

**A. Parties in Interest Entitled to Vote**

In general, a holder of a claim or interest may vote to accept or to reject a plan if (a) the claim or interest is "allowed," which means generally that no party in interest has objected to such claim or interest, and (b) the claim or interest is "impaired" by the plan but such holder is entitled to receive or retain property under the plan.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" under a plan unless (a) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof, or (b) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

If, however, the holder of an impaired claim or interest will not receive or retain any distribution under the plan on account of such claim or interest, the Bankruptcy Code deems such holder to have rejected the plan and, accordingly, holders of such claims and interests do not actually vote on the plan. If a claim or interest is not impaired by the plan, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan and, accordingly, holders of such claims and interests are not entitled to vote on the plan.

**B. Classes Entitled to Vote to Accept or Reject the Plan**

Only Holders of Claims and Interests in Classes 2, 3, 4 and 6 are entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims is deemed to have accepted the Plan and each Impaired Class of Claims or Interests that will receive nothing under the Plan is deemed to have rejected the Plan and, therefore, the Holders of Claims or Interests in such Classes are not entitled to vote. Classes 1 and 5 are Unimpaired and thus deemed to have accepted the Plan.

**C. Solicitation Order**

Upon approval of this Disclosure Statement, the Bankruptcy Court entered an order that, among other things, determines the dates, procedures and forms applicable to the process of soliciting votes on the Plan and establishes certain procedures with respect to the tabulation of such votes (the "Solicitation Order"). Parties in interest may obtain a copy of the Solicitation Order through the Bankruptcy Court's electronic case filing system or by making written request upon the Secured Creditor's counsel.

**D. Waivers of Defects, Irregularities, Etc.**

All questions with respect to the validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of ballots will be determined by the Bankruptcy Court. Any withdrawal of a ballot must be delivered to the Clerk of the Bankruptcy Court prior to the Voting Deadline. The Secured Creditor reserves the absolute right to contest the validity of any such withdrawal. The Secured Creditor also reserves the right to seek rejection of any and all ballots not in proper form. The Secured Creditor further reserves the right to seek waiver of any defects or irregularities or conditions of delivery as to any particular ballot. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) may be invalidated by the Bankruptcy Court.

**E. Further Information; Additional Copies**

If you have any questions or require further information about the voting procedures for voting your Claim or about the package of materials you received, or if you wish to obtain an additional copy of the Plan or this Disclosure Statement, or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d) or the Solicitation Order), please contact the Secured Creditor's counsel at:

BUCHANAN INGERSOLL & ROONEY PC  
One Oxford Centre  
301 Grant Street, 20<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Telephone: 412-562-8800  
Attn: Christopher P. Schueller, Esq.

**X. SOLICITATION OF ACCEPTANCES**

For all of the reasons set forth in this Disclosure Statement, the Secured Creditor believes that confirmation and consummation of the Plan is preferable to all other alternatives.

Dated: April 18, 2018

Respectfully submitted,

/s/ Christopher P. Schueller

West Virginia State Bar Number 11267

Attorney for Plaintiff

BUCHANAN INGERSOLL & ROONEY PC

One Oxford Centre

301 Grant Street, 20<sup>th</sup> Floor

Pittsburgh, PA 15219

Telephone: (412) 562-8432

Fax: (412) 562-1041

E-mail: christopher.schueller@bipc.com

*Attorneys for COMM 2013-CCRE12 Crossings  
Mall Road, LLC*

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:	)	Chapter 11
	)	
TARA RETAIL GROUP, LLC,	)	Case No. 1:17-bk-57
	)	
Debtor.	)	Honorable Patrick M. Flatley
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2018, a copy of the First Amended Disclosure Statement to Accompany Plan of Liquidation of Debtor Under Chapter 11 of the Bankruptcy Code dated April 18, 2018 Sponsored by Secured Creditor COMM 2013-CCRE12 Crossings Mall Road, LLC was served by the Court's CM/ECF noticing system.

Dated: April 19, 2018

**BUCHANAN INGERSOLL & ROONEY LLP**

/s/ Christopher P. Schueller  
Christopher P. Schueller, Esq.  
WV State Bar No. 11267  
Timothy P. Palmer, Esq.  
WV State Bar No. 11275  
One Oxford Centre, 20<sup>th</sup> Floor  
301 Grant Street  
Pittsburgh, PA 15219  
Tel: (412) 562-8800  
[christopher.schueller@bipc.com](mailto:christopher.schueller@bipc.com)  
[timothy.palmer@bipc.com](mailto:timothy.palmer@bipc.com)  
Attorneys for COMM 2013 CCRE12 Crossings Mall Road, LLC