

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

<b>In re:</b>	)	<b>Chapter 11 Proceeding</b>
	)	
<b>COMMERCIAL MORTGAGE &amp; FINANCE CO.</b>	)	<b>Case No. 08-73242</b>
	)	
<b>Debtor.</b>	)	<b>Hon. Manuel Barbosa</b>
	)	

**FIRST AMENDED DISCLOSURE STATEMENT WITH RESPECT TO PLAN OF  
LIQUIDATION PROPOSED BY COMMERCIAL MORTGAGE & FINANCE CO.  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**Dated: June 29, 2009**

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**FIRST AMENDED DISCLOSURE STATEMENT WITH RESPECT TO PLAN OF  
LIQUIDATION PROPOSED BY COMMERCIAL MORTGAGE & FINANCE CO.  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**DISCLAIMER**

This First Amended Disclosure Statement (“Disclosure Statement”) has been prepared by and filed on behalf of Commercial Mortgage & Finance Co. (the “Debtor”) and the Official Committee of Unsecured Creditors for the Estate of Commercial Mortgage & Finance Co. (the “Creditors’ Committee”), as Plan Proponents. This Disclosure Statement contains and identifies certain Assets and the value of the Assets owned by the Debtor and its wholly owned subsidiary corporations, CMF Mortgage Co. (“CMF Mortgage”), City Plaza Realty, Inc. (“City Plaza”), Security Safe Deposit Corporation (“Security Safe”) and Greater Grandview, Inc. (“Grandview”). The identification of the Assets and their values were provided solely by the Debtor. The Creditors’ Committee has not fully analyzed the Assets or their values but reasonably believes the information provided by the Debtor in this Disclosure Statement concerning the Assets and their values fairly represent such Assets and their values. The Debtor and the Creditors’ Committee may not solicit acceptances of the proposed Plan of Liquidation Proposed by Commercial Mortgage & Finance Co. and the Official Committee of Unsecured Creditors (the “Plan”)<sup>1</sup> until the Court has approved this Disclosure Statement after notice and a hearing. The Court has not yet approved this Disclosure Statement.

The Debtor’s assets will be liquidated under the terms of the Plan. Given the current economic climate both nationally and in the Rockford area and southern Wisconsin, the Debtor and the Creditors’ Committee believe that the asset values listed on its schedules overstate their fair market value. As a result, creditors are likely to receive a distribution that will be less than the present stated value of assets. After confirmation of the Plan, the Reorganized Debtor will be responsible for selling the Estate Assets.

It is not possible to estimate how quickly the Reorganized Debtor will be able to sell the Estate Assets. In addition, certain parties seeking to purchase Estate Assets may require financing, which may not be available. All Causes of Action, including claims that the Estate, the Reorganized Debtor, creditors or parties in interest may have, will either be transferred to a Liquidating Trust to be administered by Liquidating Trustees or remain with the Reorganized Debtor. The Causes of Action to be transferred to the Liquidating Trust will include the Causes of Action against any or all of the Debtor’s current and former officers, employees and professionals and any Person acting in concert with them with regard to such Causes of Action. All other Causes of Action will remain with the Reorganized Debtor. The Plan Proponents have not analyzed fully and cannot estimate how quickly the prosecution of Causes of Action will be concluded.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

## **I. SUMMARY OF THE PLAN**

This summary provides an overview of the Plan. Creditors should read the Plan in its entirety in order to understand the proposed treatment of their individual Claim.

Dr. James H. Larson, James L. McKnight, James Rebecca and Carl Kampmeier will administer the Plan including payments under the Plan. These individuals currently serve as members of the Creditors' Committee. After the confirmation of the Plan, each will serve as a member of the Reorganized Debtor's Board of Directors and as a Liquidating Trustee for the Liquidating Trust created as a part of the Plan.

As described in more detail below, the Debtor prior to Confirmation intends to use its best efforts to attempt to consummate the sale or otherwise realize on the value of some of its tangible assets during the pendency of the Bankruptcy Case subject to the approval of the Bankruptcy Court. Consistent with an Order entered by the Bankruptcy Court on March 6, 2009 any proceeds derived from the sale of any of the Assets of the Debtor or any of its wholly owned subsidiary corporations, CMF Mortgage, City Plaza, Grandview and Security Safe are to be deposited into a restricted bank account with any withdrawals from the account to be made only upon the written consent of the Debtor and the Creditors' Committee or the entry of an Order by the Bankruptcy Court approving a withdrawal. The Debtor may use Sale Proceeds derived from the sale of Assets to pay the costs of administering the Bankruptcy Case, including the costs of maintaining the Debtor's various business operations pending such sales. On the Effective Date, any monies remaining in the Debtor's possession, including any Sale Proceeds, will be transferred to the Reorganized Debtor with the exception of a fund to be transferred to the Liquidating Trust to fund the prosecution of Causes of Action transferred to the Liquidating Trust.

The Plan is a liquidating plan that provides for Distributions of the Sales Proceeds in accordance with the priorities set forth in the Bankruptcy Code. Any Estate Assets will be sold and distributed, as will the proceeds of Causes of Action. The Plan provides that the Reorganized Debtor will sell all of the Estate's assets other than Causes of Action. On the Effective Date, the Debtor, as outlined in the Plan, will transfer certain Causes of Action to the Liquidating Trust for the benefit of the Debtor's unsecured creditors. A Board of Trustees serving as "Liquidating Trustees" will manage the Liquidating Trust. The Liquidating Trustees will have authority to take all actions necessary to prosecute and, if the Liquidating Trustees believe it would be beneficial to the holders of Allowed Claims, settle one or more of the Causes of Action. With the exception of the Causes of Action and other Assets transferred to the Liquidating Trust, the Reorganized Debtor will effectuate the Plan.

After Confirmation, the Reorganized Debtor will assume the role previously taken by the Debtor. The Reorganized Debtor, working through a Board of Directors, officers and employees, intends to continue to consummate sales or otherwise realize upon all or substantially all of the Estate's tangible assets. The Reorganized Debtor may determine that the cost of liquidating one or more assets may outweigh the value to be received, and may thus abandon any such asset. On the Effective Date, the Debtor will transfer to the Liquidating Trust an amount determined by the Liquidating Trustees to be sufficient to pay the costs of administering the Liquidating Trust, including the costs of litigation. The Reorganized Debtor will use a portion of the funds the Debtor now holds and such other sums as may be received from the sale of Estate Assets to maintain the value of Estate's Assets pending distributions to holders of Allowed Claims. This will include, without limitation, the retention and oversight of professionals, brokers and other agents, retention and oversight of employees, including potentially one or more individuals currently employed by the Debtor, collection of debts, the management of the Estate Assets, accounting for receipts and disbursements and maintaining the value of Estate Assets.

Claims are divided into Classes. Class 1 includes Allowed Priority Unsecured Claims, which are in the nature of real estate tax debts that were accrued but unpaid as of the Petition Date. Class 2 relates to the secured claim of Momkus McCluskey, LLC for prepetition legal services. Class 3 includes Allowed Loan Participation Claims. The Allowed Loan Participation Claims relate to separate contracts that on their face appear to relate to creditors holding an interest in certain loans made by the Debtor. An examination of the agreements leads the Debtor to believe that these Claims are General Unsecured Claims. The Debtor has or will file an objection to Class 3 claims to clarify the rights of the parties to those agreements and by such objection seek a determination from the Bankruptcy Court that the Class 3 Claims are unsecured claims. Class 4 includes Allowed General Unsecured Claims. These Claims are primarily held by the holders of unsecured promissory notes issued by the Debtor as well as any claims of Class 3 Creditors that are determined by the Bankruptcy Court to be undersecured or unsecured. Class 5 includes the holders of Equity Interests in the Debtor.

The Plan describes the various distribution priorities provided by the Bankruptcy Code, even to the extent that it describes when holders of Allowed General Unsecured Claims in Class 4 would be entitled to a Pro Rata share of the Sale Proceeds and Estate Assets after the payment of Allowed Priority Unsecured Claims and, if ordered by the Court, Allowed Loan Participation Claims. However, the Debtor and Creditors' Committee believe there are insufficient assets in the Estate to pay in full all of the Allowed General Unsecured Claims and therefore there will be no distribution to holders of Equity Interests in Class 5.

The Plan provides that executory contracts, not previously assumed, are rejected as of the Effective Date other than those identified in Exhibit C. Proofs of claim and other Causes of Action asserting Rejection Damages must be filed within Thirty (30) days of the Effective Date. If a party to an executory contract objects to rejection of a contract or unexpired lease, that party must file an objection to the Plan.

It is not anticipated that holders of Claims in Class 2, 3 and 4 will be paid in full under the Plan, since at the very least they will not receive interest and holders of Claims in Class 3 and 4 will most likely receive less than the principal amount of their Claims. Holders of Claims those classes shall be entitled to vote on the Plan. Consequently, and as mandated by the priority scheme of the Bankruptcy Code, holders of Equity Interests in the Debtor shall not be entitled under the Plan to receive any Distributions, retain any property on account of their Interests in the Debtor or vote on the Plan.

The terms of the Plan shall be implemented by the sale of the Debtor's remaining assets after the Effective Date, free and clear of liens.

## **II. INTRODUCTION**

On October 8, 2008 (the "Petition Date"), the Debtor commenced a voluntary case under Chapter 11 of Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Illinois. This Disclosure Statement with respect to the Plan of Liquidation Proposed by Commercial Mortgage & Finance Co. and the Official Committee of Unsecured Creditors (the "Disclosure Statement") sets forth certain information regarding the Debtor's prepetition history, the need to seek protection under Chapter 11 of the Bankruptcy Code, and significant events that have occurred or are expected to occur during the Debtor's Chapter 11 case. This Disclosure Statement also describes the terms and provisions of the Plan (as defined below), including certain alternatives to the Plan, certain effects of confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

The Disclosure Statement is being provided to all of the Debtor's known creditors and other parties in interest, pursuant to 11 U.S.C. §1125, in order to provide information deemed by the Debtor and the Creditors' Committee to be material and necessary to enable such creditors and parties in interest to make a reasonably informed decision in the exercise of their rights to vote on, and participate in, the Plan. A copy of the Plan is attached hereto as Exhibit A. Creditors and holders of Equity Interests are urged to review all terms and provisions thereof with their attorneys.

THIS DISCLOSURE STATEMENT CONTAINS CERTAIN (I) PROVISIONS OF THE PLAN, (II) STATUTORY PROVISIONS, (III) DOCUMENTS RELATING TO THE PLAN, (IV) EVENTS EXPECTED TO OCCUR IN THE CHAPTER 11 CASE AND (V) FINANCIAL INFORMATION. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BASED UPON FINANCIAL AND OTHER INFORMATION DEVELOPED BY THE DEBTOR AND THE CREDITORS' COMMITTEE FROM: (I) INFORMATION MAINTAINED BY THE DEBTOR; (II) INFORMATION OBTAINED FROM THIRD PARTIES; AND (III) PLEADINGS AND DOCUMENTS FILED IN THIS CHAPTER 11 CASE.

THE MATERIAL CONTAINED HEREIN IS INTENDED SOLELY FOR THE USE OF THE DEBTOR'S CREDITORS IN EVALUATING THE PLAN AND VOTING TO ACCEPT

OR REJECT THE PLAN AND, ACCORDINGLY, MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF HOW TO VOTE ON THE PLAN. THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN WILL BE EFFECTUATED. NO REPRESENTATIONS CONCERNING THE DEBTOR'S OPERATIONS, ASSETS AND LIABILITIES ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO ANY AUDIT. CERTAIN INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, BY ITS NATURE, IS FORWARD-LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY PROVE INACCURATE AND CONTAINS PROJECTIONS THAT MAY PROVE WRONG OR THAT MAY PROVE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. NO PARTY SHOULD RELY ON ANY INFORMATION PROVIDED IN THE DISCLOSURE STATEMENT, UNLESS SUCH INFORMATION HAS BEEN INDEPENDENTLY VERIFIED.

THE PLAN REPRESENTS A LEGALLY BINDING ARRANGEMENT AND SHOULD BE READ IN ITS ENTIRETY, AS OPPOSED TO RELYING ON THE SUMMARY IN THIS DISCLOSURE STATEMENT. BANKRUPTCY COURT APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE APPROVAL BY THE BANKRUPTCY COURT OF THE PLAN ITSELF.

A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR YOUR USE IN VOTING ON THE PLAN. IN ORDER TO BE CONFIRMED, THE PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE PLAN, EXCEPT TO THE EXTENT THAT THE PLAN MAY BE CONFIRMED, NOTWITHSTANDING THE FAILURE TO OBTAIN SUCH ACCEPTANCE IN ACCORDANCE WITH §1129(b) OF THE BANKRUPTCY CODE. FOR A DETAILED DISCUSSION ON SOLICITATION AND VOTING, SEE ARTICLE XVI HEREIN.

CREDITORS ARE URGED TO REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE BALLOT WITH COUNSEL OF YOUR CHOICE. HOLDERS OF CLAIMS THAT ARE IMPAIRED UNDER THE PLAN MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING AND RETURNING THE ENCLOSED BALLOT SO AS TO BE RECEIVED ON OR BEFORE \_\_\_\_\_ 2009 AT 3:00 P.M. (PREVAILING CENTRAL TIME) TO THE DEBTOR AT THE ADDRESS SET FORTH BELOW.

**Commercial Mortgage & Finance Co.  
115 Seventh Street  
Rockford IL 61104-1275  
Attn: Kimberly Moore**

IN THE EVENT OF ANY INCONSISTENCIES BETWEEN THE PROVISIONS OF THE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN SHALL CONTROL.

THE DEBTOR AND THE CREDITORS' COMMITTEE RECOMMEND AND REQUEST YOUR ACCEPTANCE OF THE PLAN.

### **III. GENERAL INFORMATION**

#### **A. Introduction**

##### **1. Purpose of Plan**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its obligations to creditors in accordance with the provisions of the Bankruptcy Code. The consummation of a plan of reorganization, which in this case is a plan of liquidation, is the principal objective of a Chapter 11 case. The Plan sets forth the means for satisfying claims against the Debtor. Confirmation of the Plan by the Bankruptcy Court would make the Plan binding upon the Debtor, any Person acquiring property under the Plan and any creditor of the Debtor, whether or not the such creditor (i) is impaired under or has accepted the Plan or (ii) receives or retains any property under the Plan.

The terms of the Plan are based upon, among other things, the Debtor and Creditors' Committee's assessment of the Reorganized Debtor and Liquidating Trust's ability to achieve the Plan's goals, make distributions contemplated under the Plan and pay certain continuing obligations. Even though the Plan calls for liquidation, the Reorganized Debtor will continue to operate the Estate Assets other than Causes of Action transferred to the Liquidating Trust and incur expenses related to the liquidation process. Under the Plan, Claims against the Debtor are divided into classes according to their relative seniority and other criteria.

##### **2. Overview of the Debtor and Its Obligations**

The Debtor is a corporation, organized and existing under the laws of the state of Illinois and headquartered in Rockford, Illinois. The Debtor has been in operation since April 1929 and has been an integral part of the Rockford business community since that time. Prior to the filing of this Bankruptcy Case, the Debtor obtained credit primarily through funds received from the issuance of short-term promissory notes and the sale of loan participation agreements to local individuals. The prepetition Debtor used the money thus generated to fund loans, and shared the interest generated with its customers. The "Negotiable Promissory Notes" issued by the Debtor before the Petition Date were executed in favor of Illinois residents. Those notes, which were neither guaranteed nor did any state or federal agency regulate the issuance thereof, provided purchasers with interest rates generally higher than interest earned by money market certificates. The Debtor also obtained real property through foreclosure or by a voluntary transfer of title in lieu of foreclosure and used it to develop residential subdivisions.

The Debtor has and continues to operate a mortgage loan origination and loan servicing business. However, the Debtor has ceased to originate new loans. The Debtor historically provided commercial loans to fund the purchase and development of real estate. Through its wholly owned subsidiary, CMF Mortgage, the Debtor originated, funded and closed loans, which it either held and serviced or sold on the secondary residential loan market. Because the Debtor

was not a commercial bank or chartered financial institution, it tended to originate and fund riskier loans than its bank competition. The Debtor did not, however, fund loans without verification of income, value and other items traditionally required in the mortgage industry.

The Debtor has operated at a loss for many years. As a result, it relied upon the influx of monies through the issuance of promissory notes to fund both loans and its operations. Unfortunately, the loans made by the Debtor and, in particular, commercial loans represented improvident decisions. As a result, the Debtor holds a number of properties including commercially zoned real estate, residential properties and raw land for future development. As a result of the Debtor's losses, which were exacerbated by the nation's ongoing financial challenges, the Debtor sought protection under the Bankruptcy Code.

### **3. Retention of Professionals Prior to the Petition Date**

For several years prior to the Petition Date, the Debtor had employed certain professionals, such as accountants and lawyers, to advise it regarding business matters, including issues arising under the securities laws of the United States and the state of Illinois. The Debtor employed Craig Stevens and the law firm of Momkus McCluskey, LLC as general attorneys. The Debtor engaged Zane Cohn and Zane M. Cohn & Associates PC as securities counsel. The Debtor hired Karl Winkler and his firm of Oliver, Close, Worden, Winkler & Greenwald LLC and Tom Freethy and his firm, The Law Offices of Thomas Freethy, for litigation matters including foreclosures. In addition, the Debtor employed the firm of Letourneau & Cleland, Ltd., which acted as the Debtor's independent accountant.

### **4. Overview of Assets**

Prior to the Petition Date, the Debtor held primarily commercial real estate loans and real property as its assets. In addition, the Debtor maintained cash balances in various banks. The Debtor, although it has acted as a lender, is not and has never held a charter as a bank or similar entity. Most, although not all of the Debtor's real estate, was received either through foreclosure or by a voluntary transfer of title in lieu of foreclosure. In addition, the Debtor owns certain parcels of real estate that it purchased, including the Debtor's headquarters, which is located at 115 Seventh Street, Rockford, Illinois and the City Plaza building located at 555 North Court Street, Rockford, Illinois. As to the City Plaza building, the Debtor invested in a joint venture that owned the City Plaza building in Rockford, Illinois. Eventually, the Debtor's joint venture default led to the Debtor holding title to that real estate, which it continues to manage. The Debtor also holds a Ten Percent (10%) ownership interest in CMF Insurance Agency, Inc.

The Debtor is the sole owner of the stock of several related businesses. It owns a residential mortgage loan company, known as CMF Mortgage. CMF Mortgage has originated and serviced a residential mortgage loan portfolio. CMF Mortgage continues to hold a number of those loans. In addition, CMF Mortgage originated and sold loans on the secondary residential loan market. The Debtor owned the stock of Security Safe, which provided safe deposit box rentals at the Debtor's headquarters. During the Bankruptcy Case, Security Safe terminated its operations and the Debtor obtained approval to dissolve Security Safe. The assets held by Security Safe along with its obligations were transferred to the Debtor. The Debtor owns

City Plaza, which owns certain real estate, manages the City Plaza building and serves as a real estate broker for the sale of real estate owned by the Debtor. The Debtor owns Grandview, which was originally a real estate development company. Grandview owns a limited amount of undeveloped real estate at this time.

**GENERAL INFORMATION**

The Chart below depicts the corporate structure of the Debtor and its subsidiaries as of the date of this Disclosure Statement.

<b>Commercial Mortgage &amp; Finance Co.</b>
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<b>CMF Mortgage</b>	<b>City Plaza</b>	<b>Grandview</b>
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**5. Events Leading to Bankruptcy**

During the period immediately prior to the Petition Date, a substantial number of the creditors owed monies under Negotiable Promissory Notes issued by the Debtor ended their relationship with the Debtor either at maturity or by requesting that the Debtor pay the amounts owing under their promissory notes prior to the scheduled maturity date. In both cases, the Debtor paid out the principal and interest amounts then owed by it. These actions caused a serious drain on available cash. In late September 2008, the Debtor’s management determined that the Debtor could no longer make principal payments to the remaining holders of its promissory notes, whether at maturity or otherwise. On October 6, 2008, one of the Debtor’s creditors possessing a Negotiable Promissory Note sought and obtained a temporary restraining order blocking the Debtor’s ability to conduct business. Due to the closing of Negotiable Promissory Note accounts, the temporary restraining order and general financial difficulties, the Debtor determined that it would be unable to fund operations and financial obligations without resorting to the protections provided in the Bankruptcy Court.

**6. Significant Events Subsequent to the Petition Date**

**a. Change in Management**

On the Petition Date, Anthony D’Agostino, the Debtor’s largest shareholder, served as the Debtor’s Chief Executive Officer. Mr. D’Agostino served in that role since August 1997. Prior to that time, John Hogfeldt owned and managed the Debtor’s business. Effective on December 31, 2008, Mr. D’Agostino retired and tendered his resignation as an officer, director and employee of the Debtor and related subsidiaries.

In April 2008, which was several months before the filing of this Bankruptcy Case, Michael D’Agostino was elected by the Debtor’s Board of Directors to serve as the Debtor’s

President, and David Satek was elected as a Vice President. Following Anthony D'Agostino's retirement, Mr. Satek became the Chief Executive Officer for the Debtor. Anthony D'Agostino's duties were divided between Michael D'Agostino and David Satek.

Mr. Satek resigned as an officer, director and employee of the Debtor and related subsidiaries, which resignation was effective on February 27, 2009. After Mr. Satek's resignation, Michael D'Agostino assumed Mr. Satek's duties without a change in title.

#### **7. Retention of Debtor's Professionals**

The Debtor has retained counsel to administer the Estate and this Bankruptcy Case. The Debtor filed an application to employ Gregory Jordan and the attorneys and other professionals employed by Polsinelli, Shalton, Flanigan & Suelthaus, PC, as its bankruptcy counsel. Mr. Jordan, the partner in charge of the engagement, relocated his law practice to the firm of Apostol, Kowal & Jordan, Ltd. in November 2008. As a result, the Debtor discharged the Polsinelli firm, effective October 31, 2008, and employed Mr. Jordan and Apostol, Kowal & Jordan, Ltd from and after November 1, 2008. From and after the Petition Date, the Debtor also employed the law firm of Oliver, Close, Worden, Winkler & Greenwald LLC, as special counsel for foreclosure and litigation matters, the firm of Law Offices of Thomas Freethy for a limited period for other foreclosure and litigation matters, and the firm of WilliamsMcCarthy LLP in substitution for the Law Offices of Thomas Freethy. The Court approved the retention of each of the above lawyers and law firms.

The Debtor has also applied for the retention of Letourneau & Cleland, Ltd., a Rockford, Illinois based accounting firm to assist with the management of the Debtor's financial affairs. By order entered by the Bankruptcy Court, this Court granted the retention of the accounting firm. As set forth below, the Debtor has retained two real estate brokers, one to sell the majority of the Debtor's commercial real property, and the other to sell a particular piece of real property to a designated party.

#### **8. Formation of the Creditors' Committee and Retention of Creditors' Committee's Professionals**

On November 6, 2008, the Office of the United States Trustee appointed the Creditors' Committee. At that time, the Creditors' Committee was composed of Mengyue Abernathy, James H. Larson, James L. McKnight, Samuel R. Rebecca and Jerome J. Strohacker. The Creditors' Committee has also retained legal counsel to assist it. On November 21, 2008, the Creditors' Committee filed an application to employ Holmstrom & Kennedy, P.C. as counsel, which application was granted by order dated and entered on the docket on November 26, 2008. Pursuant to an Amended Notice of Appointment of Committee of Unsecured Creditors dated February 27, 2009, Jerome J. Strohacker was removed from the Creditors' Committee and replaced by Carl Kampmeier. Since the formation of the Creditors' Committee, James Rebecca, son of Samuel R. Rebecca, has acted as his father's agent as a member of the Creditors' Committee.

**9. §341 Meetings, Schedules and Statement of Financial Affairs**

On November 14, 2008, the United States Trustee convened the Debtor's initial meeting of Creditors, pursuant to §341(a) of the Bankruptcy Code. Due to space limitations at the original site selected to conduct the initial meeting, the §341 meeting remained open and the United States Trustee continued the meeting to December 12, 2008. The §341 meeting was closed on December 12, 2008.

On November 24, 2008, the Debtor, working together with its counsel and accountants, filed its Schedules and Statement of Financial Affairs ("SOFA"). Generally, the Debtor listed its asset values at book value. The values of most of the Estate Assets, including real estate, were not adjusted to reflect market prices. Given current economic conditions, the Debtor and the Creditors' Committee reasonably believe that the asset values at liquidation, even given an extended liquidation period, will most likely be substantially less than stated on the Debtor's schedules.

**10. Retention of Brokers and Efforts to Sell Property**

As part of the Plan, the Reorganized Debtor will be charged with the responsibility to market the Estate's real and personal property for the benefit of the holders of Allowed Claims. These liquidation efforts include the sale of both commercial and residential properties and the loan portfolio maintained by the Debtor and CMF Mortgage.

The Debtor filed a motion to retain Steve Clark and Doyle Woodhouse & Moore, Inc. as its primary commercial real estate broker ("Doyle Woodhouse"), which the Bankruptcy Court granted on February 18, 2009 and by an Order dated May 6, 2009, expanded to include all of the Debtor's commercial real estate. Doyle Woodhouse is tasked with locating buyers for all of its commercial real estate other than the City Plaza building.

As of the date hereof, the Debtor is in negotiations for the sale of the City Plaza building without the aid of a broker.

**11. Debtor's Efforts to Investigate the Debtor's Financial Affairs and Other Causes of Action**

Since the Petition Date, the Debtor, through counsel, has sought to determine the source of the Debtor's losses. As a part of this process, counsel has interviewed management and conducted discussions with the Debtor's accountant, who has served the Debtor prior to the filing of the Bankruptcy Case.

To date, the Debtor's counsel and accountants, through informal discovery, have reviewed the Estate's records to determine whether the Debtor made any transfers to Insiders outside the ordinary course of business. To date, no such transfers have been uncovered. The Debtor's professionals have recognized a pattern of poor decisions in the loan origination process, an over-reliance on the decisions of Anthony D'Agostino, a failure of management to inform creditors of the existence of the Debtor's losses, which have occurred over an extended

period, and a lack of professionalism in the loan production and loan servicing functions. Counsel for the Debtor noted that the Debtor structured the Negotiable Promissory Notes in an apparent attempt specifically to avoid the necessity of registering those promissory notes as security. The Debtor did not disclose financial information to the parties acquiring or holding the Negotiable Promissory Notes. While the Negotiable Promissory Notes may have been exempt from registration, the issuance, sale and transfer of the Notes were not exempt from liability for violations of the state and federal securities laws. The process that the Debtor's management and others followed in the issuance, sale and transfer of the Notes and Participation Agreements may violate the securities laws and may give rise to fraud and other claims. It is anticipated that the Liquidating Trust may employ professionals to conduct a forensic examination of the Debtor's records, employ counsel experienced in the area of securities law and reserves the right to bring one or more actions against Insiders or others relating to any of the Causes of Action outlined in this Plan or other matters.

#### **12. Bar Date for Filing Proofs of Claim**

The Bankruptcy Court set April 9, 2009 as the deadline by which both non-governmental entities and governmental entities were required to submit their Proofs of Claim.

#### **13. Exclusive Period to File and Solicit Acceptances to a Plan of Liquidation**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptances of a plan of reorganization (in this Bankruptcy Case it is a plan of liquidation) for an initial period of One Hundred Twenty (120) days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then that debtor has the exclusive right for One Hundred Eighty (180) days from the Petition Date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization. A court may, however, extend these periods upon request of a party in interest and for "cause."

On January 28, 2009, the Debtor filed a motion seeking to extend the period of exclusivity. At the hearing on the motion, the Court ordered that for a period of Thirty (30) days the exclusivity period within which the Debtor, independently or in conjunction with the Creditors' Committee, could file a plan of reorganization was extended. To the extent that an impasse in negotiations existed between the Debtor and the Creditors' Committee, the Creditors' Committee was granted the right to file a plan of reorganization. The exclusivity period has expired.

#### **14. Preferences, Fraudulent Transfers and Other Avoidance Actions**

Pursuant to §547 of the Bankruptcy Code, a debtor may recover certain preferential transfers of property, including cash, made while insolvent during the ninety (90) days immediately prior to the filing of its bankruptcy petition with respect to pre-existing debts to the extent the transferee received more than it would have in respect of the pre-existing debt had the Debtor been liquidated under chapter 7 of the Bankruptcy Code. In the case of "Insiders," the Bankruptcy Code provides for a one year preference period.

To the extent that a transfer was in payment of a debt incurred by the Debtor in the ordinary course of business or financial affairs of the Debtor and the transferee, and such transfer was made in the ordinary course of business or financial affairs of the Debtor and the transferee, or made according to ordinary business terms, the transfers are not recoverable. Furthermore, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension may constitute a defense, to the extent of any new value, against any otherwise recoverable transfer of property. If a preferential transfer is recovered against a Creditor, that Creditor, as a transferee, will have a General Unsecured Claim against the Debtor to the extent of such recovery. The Debtor estimates that they made payments totaling in the aggregate \$989,722.83 to various creditors within the ninety (90) day period preceding the Petition Date that may be recoverable. The Debtor also made payments to Insiders within the one year period preceding the Petition Date as cash distributions, including W-2 wages, which the Reorganized Debtor and/or the Liquidation Trust will analyze regarding any potential recoveries. The Debtor has not yet completed its analysis whether the recipients of such payments would have a defense to a preference action, if commenced.

The Debtor anticipates that the Reorganized Debtor or the Liquidating Trust will file preference actions against certain the holders of Claims in Classes 3 and 4 to require that parties who received preferential payments during the ninety (90) day period prior to the Petition Date return monies they received.

Under §548 of the Bankruptcy Code and various state laws, a debtor may recover certain prepetition transfers of property, including the grant of a security interest in property, made while insolvent to the extent the Debtor receives less than fair value for such property. In addition, avoidance actions exist under §§544, 545, 549 and 553(b) of the Bankruptcy Code that allow a debtor to avoid and/or recover certain property. As of the date of the distribution of this Disclosure Statement, the Debtor has not yet estimated the potential recovery from the prosecution of their Avoidance Actions.

The Debtor also has possible preference, fraudulent transfer actions and/or state law avoidance actions against those individuals who received a return of their principal balances, since each payment further deepened the Debtor's negative equity balance.

Upon confirmation of the Plan, the authority to investigate and the right to prosecute all Avoidance Actions will remain with the Reorganized Debtor or will be transferred to the Liquidating Trust to the extent any such Avoidance Action involves a claim or claims against any or all of the Debtor's current and former officers, employees and professionals and any Person acting in concert with them with regard to such Causes of Action.

#### **15. Causes of Action against Officers, Employees and Professionals**

The Debtor, creditors or parties in interest may have Causes of Action against certain of the Debtor's current and former officers, employees and professionals. These include, without limitation, claims against Anthony D'Agostino, relating to fraud, constructive trust, breach of fiduciary duty, Causes of Action arising under the securities laws of the United States and the state of Illinois, breach of contract, Causes of Action relating to preference and fraudulent

transfers and/or state law avoidance actions including improper or excessive payments or distributions. All such Causes of Action will be transferred to the Liquidating Trust.

#### **16. Other Causes of Action**

The Estate holds one or more Causes of Action against CMF Insurance Agency, Inc., which is a company in which the Estate owns a Ten Percent (10%) interest. Such Causes of Action arise from CMF Insurance Agency, Inc.'s issuance of fraudulent or false insurance certificates after its receipt of insurance premiums from the Debtor. The Estate also holds one or more Causes of Action against Rockford Title Company, which released funds to the Debtor's borrower without obtaining waivers of mechanics liens. Due to that borrower's failure to pay those funds to its subcontractors, mechanics liens and/or mechanics lien rights impair the Estate's security interest in certain collateral. All such Causes of Action will either remain with the Reorganized Debtor unless any such Causes of Action involves a claim or claims against any or all of the Debtor's current and former officers, employees and professionals and any Person acting in concert with them. In the latter case, such Causes of Action will be transferred to the Liquidating Trust.

Causes of action under §510 of the Bankruptcy Code, which allows for the contractual and equitable subordination of certain Claims and Causes of Action including Causes of Action against current and/or former officers and directors, shall vest in the Liquidating Trustees as of the Confirmation Date.

#### **17. Maintenance and Preservation of Causes of Action**

Except as otherwise provided herein or in the Plan, the Debtor shall transfer to the Reorganized Debtor or the Liquidating Trustees all rights on behalf of the Debtor and its bankruptcy estate to commence and pursue, as appropriate, any and all Causes of Action, whether such Causes of Action accrued before or after the Petition Date, in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case.

As to the aforementioned Causes of Action, the Reorganized Debtor or the Liquidating Trustees may decide not pursue one or more matters to the extent they either determine such Causes of Action do not have value, because (i) there is a high risk of collection even if judgments could be obtained; (ii) the cost of pursuing one or more Causes of Action is high; or (iii) the existence of valid defenses.

The Debtor has not yet completed and the Creditors' Committee has not commenced an analysis of whether any such Causes of Action exist or whether any defenses might defeat any such Causes of Action, if one or more Causes of Action was commenced.

The Debtor has attempted to disclose all material Causes of Action, including Avoidance Actions and other actions that they may hold against third parties. However, neither the Debtor nor the Creditors' Committee has performed an exhaustive investigation or analysis of potential claims and Causes of Action against third parties. You should not rely on the omission of the disclosure of a claim or Causes of Action to assume that neither the Debtor, its estate or its

creditors collectively holds no claim or Causes of Action against any third party, including any Creditor that may be reading this Disclosure Statement and/or casting a Ballot. Unless expressly released by the Plan or by an order of the Bankruptcy Court, any and all such claims or Causes of Action against third parties are specifically reserved. Accordingly, except claims or Causes of Action which are expressly released by the Plan or by an Order of the Bankruptcy Court, the Debtor's failure to identify a claim or Causes of Action herein shall not give rise to any defense of any preclusion doctrine, including, but not limited to, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches with respect to claims or Causes of Action which could be asserted against third parties.

## **B. Assets, Property and Investments of the Debtor**

The Debtor owns substantial real property in the Rockford area. In addition, the Debtor has various potential Causes of Action against third parties. Under the Plan, the Reorganized Debtor will liquidate or abandon all assets other than Causes of Action transferred to the Liquidating Trust. Causes of Action shall remain with the Reorganized Debtor or shall be assigned to the Liquidating Trust to be liquidated or abandoned, as the case may be, for the benefit of the holders of Class 4 Allowed General Unsecured Claims.

The Debtor holds a portfolio of real estate, which it obtained through foreclosure or by a voluntary transfer of title in lieu of foreclosure. The Debtor also owns commercial buildings located at 115 Seventh Street, Rockford, Illinois (the Debtor's headquarters) and 555 N. Court Street, Rockford, Illinois (the City Plaza building).

The Debtor owns a Ten Percent (10%) ownership interest in CMF Insurance Agency, Inc., along with One Hundred Percent (100%) of the equity in the subsidiaries listed above.

The Debtor, through its Plan, will (i) transfer its interest in all of the Estate Assets to the Reorganized Debtor, other than the Causes of Action transferred to the Liquidating Trust. Upon its receipt of such assets, the Reorganized Debtor will take such actions as are directed by its Board of Directors to insure that the holders of Allowed Claims receive the proceeds and other economic benefits of the Estate Assets. The Plan provides for the liquidation of the Estate Assets.

A Schedule summarizing the assets and liabilities of the Debtor and affiliated entities is attached hereto as Exhibit B.

## **IV. CLASSIFICATION OF CLAIMS AND INTERESTS**

### **A. Introduction**

The following is a summary of certain provisions of the Plan. IT IS NOT A COMPLETE STATEMENT OF THE PLAN OR ITS OPERATION AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PROVISIONS OF THE PLAN. The Plan is annexed to this Disclosure Statement as Exhibit A. The Plan, which is subject to the provisions of the

Bankruptcy Code, provides for the treatment of all creditors of the Debtor. SINCE THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING YOUR DECISIONS REGARDING YOUR VOTING ON THE PLAN.

The following is a designation of the Classes of Claims in the Plan. In accordance with §1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Unsecured Claims have not been classified, and the respective treatment of such Unclassified Claims is set forth below.

The Debtor is required, under §1122 of the Bankruptcy Code, to classify Claims against the Debtor into Classes that contain Claims that are substantially similar to the other Claims in such Class. The Debtor believes that the Plan has classified all Claims in compliance with the provisions of §1122, and that (i) a Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Class, and (ii) a Claim is also placed in a particular Class for the purpose of receiving distributions under the Plan only to the extent such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

It is possible that a holder of a Claim may challenge the Debtor's classification of Claims and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In that event, the Debtor intends, to the extent permitted by the Bankruptcy Code, the Plan and the Bankruptcy Court, to make such reasonable modifications of the classification under the Plan to permit confirmation and to use the Plan acceptances received in this solicitation for purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting creditor ultimately is deemed to be a member.

The amount of any Claim that ultimately is allowed by the Bankruptcy Court may vary from any estimated allowed amount of such Claim and, accordingly, the total Claims ultimately allowed by the Bankruptcy Court with respect to each Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the value of the property that a particular holder of an Allowed Claim ultimately will receive under the Plan may be adversely or favorably affected by the aggregate amount of Claims ultimately allowed in the applicable Class. There can be no assurance that the actual aggregate amounts of Allowed Claims will not materially exceed the aggregate estimated amounts set forth in this Disclosure Statement. Thus, no representation can be or is being made with respect to the accuracy of the estimated amount or percentage recovery by the holder of an Allowed Claim in any particular Class and all statements contained in the Disclosure Statement with respect to the estimated Allowed amounts of the Claims in any Class.

The classification of Claims and the nature of distributions to members of each Class are summarized below. For purposes of calculating distributions to holders of Allowed Claims in Class 4, "Pro Rata" means, at any time, the proportion that the face amount of a Claim in Class 4 bears to the aggregate face amount of all Claims in such Class (including disputed Claims, but

excluding, disallowed Claims) in such Classes, unless the Plan provides otherwise. The Debtor believes that the consideration, if any, provided under the Plan to holders of Claims reflects an appropriate resolution of their Claims, taking into account the differing nature and priority of such Claims. The Debtor and the Creditors' Committee will seek confirmation of the Plan under the "cramdown" provisions of the Bankruptcy Code. Similarly, to the extent that any other Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtor and the Creditors' Committee will request confirmation of the Plan, as it may be modified from time to time under §1129(b) of the Bankruptcy Code, with respect to such other Impaired Class. Specifically, §1129(b) of the Bankruptcy Code permits confirmation of a Chapter 11 plan in certain circumstances, even if the Plan has not been accepted by all Impaired classes of Claim and Interest. Although the Debtor believes the Plan could be confirmed under §1129(b) of the Bankruptcy Code, there can be no assurance that the requirements of such section would be satisfied. The Debtor and the and the Creditors' Committee reserve the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement and any exhibit, appendix or schedule attached thereto, including to amend or modify such document to satisfy the requirements of §1129(b) of the Bankruptcy Code, if necessary; provided, however, that any such amendment or modification made after the voting deadline that materially and adversely alters the treatment of any Class entitled to a distribution under the Plan will require the consent of the Creditors' Committee and either (a) approval of the Bankruptcy Court or (b) the consent of such Class.

#### **B. Classification of Claims**

The following is the designation of the Classes of Claims under the Plan:

1. Class 1 shall consist of the Allowed Priority Unsecured Claims.
2. Class 2 shall consist of the Allowed Claim of Momkus McCluskey, LLC.
3. Class 3 shall consist of the Allowed Loan Participation Claims. Class 3 Allowed Loan Participation Claims shall be broken down into five (5) separate subclasses.
4. Class 4 shall consist of the Allowed General Unsecured Claims against the Debtor.
5. Class 5 shall consist of the Allowed Interests held by holders of Equity Interests in the Debtor.

### **V. TREATMENT OF CLAIMS**

#### **A. Plan Controls Treatment of Claims**

Creditors should refer to the Plan for a more detailed description of the treatment of each class of Claims. No securities will be issued under the Plan.

Under the Plan, Classes 2, 3 and 4 are listed as Impaired and, therefore, entitled to vote for or against the Plan. Impairment is defined to mean any change in the terms of the contracts

or agreements between the Debtor and their creditors, which alterations change the terms of the agreements between the parties. The Debtor believes that a distribution to holders of General Unsecured Claims will occur. Recovery will come from the liquidation of assets, the value of which in the current economic climate can only be estimated in broad terms, along with the proceeds from any litigation. The likelihood of success in litigation is uncertain. Even if judgments are obtained, the risk of collection on judgments will remain.

**B. Claims**

**1. Unclassified Claims**

Under §1123 of the Bankruptcy Code, certain claims entitled to priority treatment are not to be classified along with all other classes of claims or interests. Accordingly, set forth below is a discussion of the treatment of the Administrative Expense Claims and Priority Unsecured Claims under the Plan. The treatment of these Claims will be made in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Rules and is subject to approval of the Bankruptcy Court as being reasonable.

**a. Administrative Expense Claims**

(1) An Administrative Expense Claim is a Claim for payment of an administrative expense of a kind specified in §§503(b) and 507(a)(2) of the Bankruptcy Code.

**(2) General Administrative Expense Claims**

Except to the extent that the payee agrees to a different treatment, the Debtor or the Reorganized Debtor shall deliver available cash from Estate Assets to pay each holder of an Allowed Administrative Expense Claim by Cash Payments equal to such Allowed Claim on the later of the Effective Date (or as soon as reasonably practicable thereafter), the date such Claims are allowed or upon such later date as such Allowed Claim is due in accordance with the terms and conditions of the particular transactions or governing documents. Administrative Expense Claims allowed after the Effective Date shall be paid by the Debtor or the Reorganized Debtor immediately upon entry of a Final Order allowing each such Administrative Expense Claim or by the Reorganized Debtor upon such later date as such Allowed Administrative Expense Claim is due in accordance with the terms and conditions of the particular transactions or governing documents.

**(3) Professional Administrative Expense Claims**

Administrative Expense Claims of the Professionals shall be paid as follows: The Reorganized Debtor shall pay from Available Cash to the

Debtor's Professionals<sup>2</sup> and the Creditors' Committee's Professionals<sup>3</sup>, in respect of their Allowed Administrative Expense Claims, except to the extent they otherwise agree.

**(4) Procedure for the Payment of Administrative Expense Claims**

All requests for payment of Administrative Expense Claims and applications for final allowance of compensation and reimbursement of expenses of Professionals will be subject to the authorization and approval of the Bankruptcy Court. Holders of Administrative Expense Claims (including, without limitation, Professionals) requesting compensation or reimbursement of expenses that do not file such requests by the applicable bar date will be forever barred and shall not be enforceable against the Estate, the Reorganized Debtor, the Liquidating Trust, their successors, trustees, directors, officers, agents or properties. Any objections to an Administrative Expense Claim shall be filed in accordance with the Local Rules.

Except for Professionals retained during this bankruptcy case, or otherwise provided in the Plan, requests for payment of Administrative Expense Claims must be filed with the Bankruptcy Court and served on the counsel for Reorganized Debtor and the United States Trustee no later than forty-five (45) days after service of notice of entry of the Confirmation Order. Professionals or other entities requesting compensation or reimbursement of expenses, pursuant to §§327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code, for services rendered prior to the Effective Date will be required to file and serve on all parties entitled to notice thereof, an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the Effective Date.

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<sup>2</sup> The Debtor's Professionals are Apostol, Kowal & Jordan, Ltd., Oliver, Close, Worden, Winkler & Greenwald LLC, WilliamsMcCarthy LLP and Letourneau & Cleland, Ltd.

<sup>3</sup> The Creditors' Committee's Professionals are Holmstrom & Kennedy P.C.

(5) **Administrative Expense Claims Are Not Classified**

The holders of Administrative Expense Claims will not be entitled to vote on the Plan. However, those holders of Administrative Expense Claims, which are not paid in full on the Effective Date of the Plan (or as soon as reasonably practicable thereafter), must consent to their treatment under the Plan. These Administrative Claimants consist of Professionals retained by order of the Bankruptcy Code in this Chapter 11 case. The Debtor and the Creditors' Committee, as the Plan Proponents, are confident that they will obtain such consents.

2. **Class 1 – Allowed Priority Unsecured Claims**

Class 1 shall consist of all Allowed Priority Unsecured Claims unpaid as of the Effective Date. The Bankruptcy Court entered an order on June 10, 2009 authorizing the Debtor to pay Class 1 property taxes that accrued before the Petition Date. The Debtor believes that it has paid all Class 1 Claims that will be allowed. Certain persons holding Loan Participation Claims filed priority claims. The Bankruptcy Code does not, in the Plan Proponents view, provide for paying those claims as priority claim. To the extent that any Class 1 Claim remains unpaid, that or those Class 1 Claims shall be paid by Cash Payments on the later of (1) the date such payment is due by contract, (2) the Effective Date (or as soon as reasonably practicable thereafter), (3) fifteen (15) Business Days following the date such Claim is allowed by Final Order or (4) receive such other less favorable treatment that may be agreed upon in writing by the Reorganized Debtor and such holder. Allowed Priority Unsecured Claims accrued on the Petition Date, but not invoiced on the Effective Date, will be paid in accordance with their terms. Payment of Priority Unsecured Claims will be made from cash on hand unless any such holder accepts less favorable treatment.

Estimated Amount of Class 1 Claims after Claim Objections - \$0. Class 1 is Impaired.

3. **Class 2 – Allowed Secured Claim of Momkus McCluskey, LLC**

Class 2 shall consist of the Allowed Claim of one creditor, which is Momkus McCluskey, LLC. The Debtor withdrew its Application to retain Momkus McCluskey, LLC as its special counsel during the Bankruptcy Case. The Debtor hired Momkus McCluskey, LLC, as one of its professionals, before the Petition Date. Momkus McCluskey, LLC has filed a Secured Claim arising from the Debtor's delivery prior to the Petition Date of a retainer to Momkus McCluskey, LLC for legal services. All legal services provided that form the basis of the Class 2 Allowed Claim of Momkus McCluskey, LLC were provided after its receipt of that retainer. Payment of the Class 2 Claim will be made by Momkus McCluskey, LLC's setoff against the retainer it holds unless Momkus McCluskey, LLC accepts less favorable treatment with the balance of the retainer, if any, to be returned by Momkus McCluskey, LLC to the Reorganized Debtor.

Estimated Amount of the Class 2 Claim after Claim Objections - \$1,750.00. Class 2 is Impaired.

**4. Class 3 – Allowed Loan Participation Claims**

Class 3 shall consist of all Allowed Loan Participation Claims, which include Five (5) subclasses. Each subclass will vote separately. Each subclass shall consist of the holder or holders, if joint, of a Loan Participation Claim in a particular loan made by the Debtor to a borrower. The Debtor will file objections to Loan Participation Claims that were filed as secured claims (along with the Loan Participation Claim filed as a priority claim) seeking a determination that each Loan Participation Claim is a General Unsecured Claim. To the extent the Court rules in the Debtor’s favor as to its objection to one or more Loan Participation Claims, each such Loan Participation Claim shall be deemed a General Unsecured Claim and a part of Class 4. To the extent the Court rules against the Debtor, the holder of that Allowed Loan Participation Claim will receive periodic payments in an equal percentage to the portion of his, her or their interest in the underlying loan upon the receipt by the Reorganized Debtor of the periodic payment from the borrower of the underlying loan. The Reorganized Debtor shall have no obligation to make periodic payments to the holder of an Allowed Class 3 Claim unless the Reorganized Debtor receives payments from the borrower on the underlying loan to which the Loan Participation Claim relates. If the Court determines that the principal portion of a Loan Participation Claims is payable from the principal proceeds of the underlying loan, the holder of an Allowed Loan Participation Claim will receive a Pro Rata share of the monies received by the Reorganized Debtor based on the percentage in the underlying loan owned by such Creditor. The Debtor anticipates that it will attempt to sell each of the underlying loans to the extent a market exists for the same. Under the Plan, the Reorganized Debtor will have the right to sell all or any of the affected loans without being required to obtain the consent of any holder of an Allowed Class 3 Claim.

To the extent that any portion of a Class 3 claim is determined to be unsecured or undersecured, the portion of the Claim that is not secured will be treated as a Class 4 claim.

<b>Subclass</b>	<b>Name of Holder of Participation Interest</b>	<b>Claim as of Petition Date</b>
Class 3a	Robert J. & Darlene R. Borsberry	\$37,000.00
Class 3b	Elizabeth Burns, as Trustee	\$522,300.00
Class 3c	Ted & Elena Maggio	\$50,000.00
Class 3d	Arlene W. Palmgren, as Trustee	\$17,500.00
Class 3e	Maynard & Bonnie Sweeney, Sr.	\$20,000.00

Estimated Amount of the Class 3 Claims after Claim Objections - \$0.00.  
Class 3, including each subclass, is Impaired.

**5. Class 4 –Claims of Allowed General Unsecured Claims**

Class 4 shall consist of all claims other than Administrative Claims and the Allowed Claims in Classes 1, 2 and 3 and the Equity Interests. Each holder of a Class 4 Allowed General Unsecured Claim shall receive a Pro Rata share of (a) the Sale Proceeds of the Estate Assets less (1) costs incurred in administering the Plan and (2) costs incurred in the sale of any of the Estate Assets and (b) the proceeds obtained as a result of any litigation, including the settlement of one or more Causes of Action, less (a) costs incurred relating to the Causes of Action and (b) costs incurred in administering the Plan.

There are two creditors who filed alleged secured claims based on mechanics liens. Both parties failed to follow the requirements of the Illinois Mechanics Lien Act. The Debtor anticipates that it will file an objection to those Claims. Should the Court overrule the objections, the Claims will be treated as separate secured claims and paid under the requirements of the Illinois Mechanics Lien Act.

Estimated Amount of the Class 4 Claims after Claim Objections -  
\$63,173,327. Class 4 is Impaired.

**6. Class 5 –Claims of Equity Interests**

Class 5 shall consist of all Equity Interests in the Debtor. On the Effective Date, each then issued and outstanding Equity Interests shall be deemed cancelled and retired. None of the holders of Equity Interests shall be entitled to receive any Distribution or retain any property on account of his or her interests under this Plan unless all Creditors are paid in full plus interest.

Class 5 is Impaired, but not entitled to vote.

**7. Classes Impaired Under the Plan**

Under §1126 of the Bankruptcy Code, only classes of claims against or interests in a debtor, other than the holders of administrative claims or priority claims, which are impaired under the terms and provisions of a plan of reorganization, are generally entitled to vote to accept or reject a plan of reorganization, including a plan of liquidation. Under §1124 of the Bankruptcy Code, a class of claims or interests is impaired if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of claims and interests that are not impaired are not entitled to vote on a plan and, under §1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the plan.

Claims in Classes 2, 3 and 4 Claims are Impaired under the Plan and are entitled to vote. Claims in Class 5 are Impaired under the Plan, but are not entitled to vote.

**VI. MEANS OF IMPLEMENTATION**

**A. General**

The Plan provides that the Reorganized Debtor will receive all of the Estate Assets, other than Causes of Action and other Assets transferred to the Liquidating Trust. The Plan calls for the appointment of Liquidating Trustees, who shall be responsible for administering a Liquidating Trust that shall be formed for the benefit of creditors under the terms of the Plan. The Reorganized Debtor will transfer certain of the Estate's Causes of Action into the Liquidating Trust. The proceeds of the property liquidated by the Reorganized Debtor less the costs and expenses incurred by the Reorganized Debtor shall be used to pay Claims in the manner and to the extent provided in the Plan. The proceeds of the property liquidated by the Liquidating Trust less the costs and expenses by the Liquidating Trust shall be used to pay Allowed Class 4 Claims in the manner and to the extent provided in the Plan. Any funds transferred by the Debtor to the Liquidating Trustees shall be deposited into the Liquidating Trust, which shall be used to pay the expenses of the Liquidating Trust, including attorneys, expert witness and other litigation expenses

The Reorganized Debtor will administer and liquidate all of the Estate's remaining assets. The role of the Reorganized Debtor, generally, will be to liquidate those assets being sold under the Plan, such as the Debtor's real property and loan portfolio owned by the Debtor and affiliates of the Debtor. The proceeds of the property liquidated by the Reorganized Debtor shall be used to pay Claims in the manner and to the extent provided in the Plan. Any funds held by the Reorganized Debtor shall be maintained in bank accounts and used to pay the expenses of selling Estate Assets and making payments to the holders of Allowed Claims under the Plan. The Reorganized Debtor will provide quarterly reports of its activities to the Bankruptcy Court.

#### **B. Sale of Real Property**

If not already sold by the Effective Date, the Reorganized Debtor shall continue the marketing of the Estate's real estate and the other Estate Assets and will collect all proceeds from the disposition of the Estate Assets. The Reorganized Debtor, acting through its officers, shall have the right to execute agreements, deeds and related documents required or necessary to sell such properties and transfer title thereto.

The officers of the Reorganized Debtor shall have the authority to execute all documents and instruments that are necessary for the closing of the sale of any of the Estate's assets, including, without limitation, deeds and bills of sale, and transfer tax returns and questionnaires, and such other and further documents and instruments as are necessary to effectuate the sales contemplated under the Plan. In so acting, such officers may execute documents without the necessity of seeking or obtaining an order of the Court provided, however, the Plan provides that the Reorganized Debtor may seek the approval of the Bankruptcy Court for any sale or disposition of any Assets. All sales will be made free and clear of all liens and interests, which shall attach to the proceeds.

### C. Auction Sale

In the event that any of the Estate Assets is to be sold at a public auction, the auction may be conducted in accordance with the provisions set forth below.

Any auction of Estate Assets conducted by the Reorganized Debtor will be conducted, subject to applicable state law, in the following manner:

1. For at least three successive weeks prior to the auction, the Reorganized Debtor shall cause a notice of auction to be published in a newspaper of daily circulation in the city or town where the property to be sold is located.
2. The successful bidder at the auction shall be required at the closing to pay all outstanding state and local taxes constituting a lien on the Estate Assets (including, without limitation, county and local real estate taxes, school taxes and any special district taxes or charges), unpaid water and sewer charges and any other charges owed to any governmental entity or unit which are a lien or charge on the parcel(s), (such taxes and water and sewer and other charges shall hereafter be referred to as the "Charges"). Bids submitted at the auction will not include amounts due for the Charges. The charges due on the parcels to be paid by the successful bidder are in addition to the amount of its successful bid.
3. Immediately following the auction, the highest bidder will execute a sales contract in a form acceptable to the Reorganized Debtor, which will provide, among other things, that: (i) the closing of the sale will occur no later than Thirty (30) days after the date of the auction; (ii) the closing will not be conditioned upon financing by the purchaser; and (iii) time is of the essence with respect to the closing.
4. Any transfers occurring shall be free and clear of all liens, claims, encumbrances, equities and interests, of any nature or kind, and shall: (i) be exempt under any law imposing a stamp or similar tax, pursuant to §1146 of the Bankruptcy Code; and (ii) constitute a sale under §§105, 363(b), 363(f), 1123(b) (4) and 1129 of the Bankruptcy Code. All liens and encumbrances upon the properties will remain in effect until the closing of the sale. At closing, such liens and encumbrances shall be transferred to and attached to the proceeds of the sale in the same priority that existed immediately before the closing.
5. The sales contract shall provide for a Ten Percent (10%) down payment to be held by the Reorganized Debtor or by one of the Reorganized Debtor's attorneys in trust. The down payment will be made in Cash or official bank, certified or cashier's check drawn on and payable by a federally insured commercial bank (collectively, "Acceptable Funds"), and will be delivered to the Reorganized Debtor upon execution of the sales contract. If the highest bidder defaults under the sales contract, the Reorganized Debtor will be entitled to keep the down payment as liquidated damages and will deposit such funds into the Reorganized

Debtor's account, which will thereafter be distributed in priority under the terms of this Plan.

6. If the highest bidder is unable to close within Thirty (30) days of the auction, the Reorganized Debtor will contact the party with the next highest bid and enter into a sales contract for the amount of such bid, provided however, that the sales contract with the second highest bidder(s) shall comply with the same requirements as the highest bidder including the requirements of paragraph (C)(3) above.

#### **D. Liquidating Trust**

##### **1. Establishment of Liquidating Trust**

The Liquidating Trust will be established on the Effective Date. The Liquidating Trust will be governed by and operate in conformity with the Liquidating Trust Agreement (the "Trust Agreement") to be filed as part of the Plan Supplement with the Bankruptcy Court by the Plan Proponents, not later than fifteen (15) days prior to the Confirmation Hearing. On the Effective Date, the Liquidating Trustees will be appointed and will assume the responsibilities of the Liquidating Trustees as provided for in the Plan and the Trust Agreement. The Liquidating Trustees will act as the fiduciaries and trustees for the Liquidating Trust from and after the Effective Date. The Liquidating Trustees will collect, administer, investigate, dispose of and distribute the proceeds derived from Causes of Action and other Assets on behalf of the Liquidating Trust, and will provide quarterly written reports on such activities to the Bankruptcy Court.

##### **2. Plan Agent**

The Reorganized Debtor may, but is not required to appoint a Plan Agent, who shall assume such responsibilities as may be designated by the Reorganized Debtor's Board of Directors regarding the sale of the Reorganized Debtor's loan portfolio, real estate and/or other assets. The Plan Agent will not be a fiduciary or trustee, but will act in accordance with and at the direction of the Reorganized Debtor's Board of Directors and will have standing to pursue the Reorganized Debtor's rights and remedies in the Bankruptcy Court or other forum on the Reorganized Debtor's behalf to protect the Reorganized Debtor's interests or to enforce performance of the Plan.

##### **3. Transfer of Causes of Action to Liquidating Trust**

On the Effective Date, the Debtor shall convey, and the Reorganized Debtor and the Liquidating Trustees shall receive, the Causes of Action transferred to them and all rights proceeds, interest and other earnings generated therefrom, all to be transferred free and clear of all liens, encumbrances, interests, exemptions, claims and rights of setoff or recoupment. The Causes of Action, which is a term defined in the Plan, shall specifically include all Causes of Action (which will include, without limitation, Causes of Action arising under chapter 5 of the Bankruptcy Code, other Avoidance Actions) and rights to object to Claims, all of which will be

preserved and will be conveyed to and administered by the Reorganized Debtor or the Liquidating Trust and will not be waived, released or discharged by Confirmation of the Plan, entry of the Confirmation Order, Allowance of any Claim or the occurrence of the Effective Date. To the extent necessary, the Liquidating Trustees will be deemed the representatives of the Estate in accordance with §1123(b) of the Bankruptcy Code.

#### **4. Objections to Claims**

The Reorganized Debtor shall have the right to object to Claims after the Effective Date and have the Bankruptcy Court estimate or determine the amount of any Allowed Claim. The Debtor has determined that certain holders of Class 4 Allowed General Unsecured Claims have filed proofs of claim that understated the amounts owed to them due to accrued interest owing and other reasons. The Plan provides that the Reorganized Debtor will have the right to increase the amount of the claim of any such Creditor in the interest of fairness.

#### **5. The Reorganized Debtor's Distribution of Estate Assets; Order of Payments**

The Reorganized Debtor shall distribute the Estate Assets, other than those transferred to the Liquidating Trust, or the proceeds therefrom in satisfaction of Allowed Claims (and establish appropriate reserves as described below) in the following order of priority:

- a. First, Allowed Administrative Expense Claims to the extent not previously paid by the Debtor;
- b. Second, Allowed Priority Unsecured Claims;
- c. Third, expenses incurred in administering and liquidating the assets under the Reorganized Debtor's control;
- d. Fourth, Allowed Loan Participation Claims to the extent such Claims are secured by specific Estate Assets; and
- e. Fifth, Allowed General Unsecured Claims.

In the unlikely event that Estate Assets remain in the Reorganized Debtor's control after payment of all amounts owing to holders of Allowed Claims through distributions due under the Plan and complete satisfaction of all obligations under the Plan, including the resolution of all Disputed Claims, any residual assets remaining in the Reorganized Debtor's control will be paid or transferred to the holders of Equity Interests. The Debtor shall not receive a discharge and will emerge from the Bankruptcy Case, but will hold no assets other than the contingent rights described in this paragraph.

6. **The Liquidating Trust's Distribution of the Proceeds from Causes of Action; Order of Payments**

The Liquidating Trustees shall distribute the proceeds derived from the prosecution of Causes of Action transferred to the Liquidating Trust, whether through settlement or by collection of one or more judgments, in satisfaction of Allowed Class 4 Claims (and establish appropriate reserves as described below) in the following order of priority:

- a. First, expenses incurred in prosecuting the Causes of Action and operating and managing the Liquidating Trust; and
- b. Second, Allowed General Unsecured Claims.

7. **Reserves**

Before making any Distributions or payments from Estate Assets on the Effective Date the Reorganized Debtor shall establish a reasonable reserve, which shall be used to fund the Reorganized Debtor's anticipated expenses including expenses related to the disposition of Estate Assets and the objection to and allowance of Claims. The Reorganized Debtor shall be responsible for resolving any Claims against the Estate that are not resolved by the Effective Date and for establishing as may be reasonably necessary reserves in respect of Disputed Claims.

Before making any Distributions or payments from assets maintained in the Liquidating Trust, the Liquidating Trustees shall each establish a reasonable reserve, which shall be used to fund the investigation, litigation, and disposition of the Causes of Action transferred to the Liquidating Trust.

8. **Liquidating Trust Provisions**

This section sets forth certain terms, rights, duties, and obligations of the Liquidating Trust and its trustees, the Liquidating Trustees. In the event of any conflict between the terms of this Disclosure Statement and the terms of the Trust Agreement, the terms of the Trust Agreement shall govern. In the event of any conflict between the terms of the Plan and the terms of the Trust Agreement, the terms of the Liquidating Trust shall govern.

a. **Authority**

The Liquidating Trustees shall have standing and the authority to prosecute the Causes of Action transferred to the Liquidating Trust.

b. **Purpose of the Liquidating Trust**

The Liquidating Trust shall be established for the sole purpose of liquidating the Causes of Action transferred to the Liquidating Trust, in accordance with the U.S. Treasury Regulation §301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

c. **Trust Assets**

The Liquidating Trust shall consist of the Assets, including Causes of Action, transferred to the Liquidating Trust, the right to prosecute the Causes of Action and the right to the proceeds derived from the prosecution of the Causes of Action, including funds received in settlement of the Causes of Action.

d. **Report to Bankruptcy Court**

The Liquidating Trustees shall make a determination, in consultation with their counsel, as to when there no longer exists assets to recover and distribute to holders of General Unsecured Claims. The Liquidating Trustees shall notify the Bankruptcy Court and make a report to the Bankruptcy Court as to the amount of Allowed Unsecured Claims and the percentage of distributions made to the holders thereof.

Notwithstanding anything in the Plan to the contrary contained herein, the Reorganized Debtor may, but is not obligated to lend or transfer money to the Liquidating Trust to fund the cost of pursuing Causes of Action transferred to the Liquidating Trust.

E. **Consolidation**

The Debtor will have submitted, prior to Confirmation Hearing, a motion to authorize it to dissolve certain of its subsidiaries, pursuant to §363 of the Bankruptcy Code or the Plan will provide for such dissolution. Approval of the dissolution through either granting such motion or confirmation of the Plan is a condition precedent to the Effective Date. If approved, the Debtor will file the appropriate documents with the state of Illinois and the federal government to dissolve each of its subsidiaries. The Debtor does not intend to file such a motion with regard to its subsidiaries that hold real estate assets. If the motion is not approved prior to the Confirmation Date or if the Debtor does not file such a motion prior to the Confirmation Hearing, the assets of any remaining subsidiary shall be transferred to the Reorganized Debtor as a part of the Plan. All real estate received by the Debtor shall be transferred free of any transfer tax, pursuant to §1146 of the Bankruptcy Code. As a part of that process, the Debtor's subsidiaries will pay, subject to the approval of the Creditors' Committee, their creditors, who are ordinary course creditors, and each will take such steps as are necessary to transfer their respective assets to the Reorganized Debtor. All property of each of the Debtor's subsidiaries will be property of the Reorganized Debtor. Each of the contracts, which involve leases of real estate, and the debts of the Debtor's subsidiaries, which are in the nature of ordinary course transactions, will be the Reorganized Debtor's obligations. All intercompany Claims and any Administrative Expense Claims by and among the Debtor and its subsidiaries will be eliminated and cancelled.

**VII. PROVISIONS REGARDING VOTING AND DISTRIBUTIONS UNDER THE PLAN, AND TREATMENT OF DISPUTED, CONTINGENT, AND UNLIQUIDATED ADMINISTRATIVE EXPENSE CLAIMS, OTHER CLAIMS AND INTERESTS**

**A. Voting of Claims**

**1. In General**

Each holder of an Allowed Claim in an Impaired Class, including subclasses, shall be entitled to vote separately to accept or reject the Plan, as provided in the order entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

**2. Controversy Concerning Impairment**

In the event of a controversy as to whether any Claim or Class of Claims is Impaired under the Plan, the Bankruptcy Court will, after notice and a hearing, determine such controversy.

**B. Distributions to Holders of Claims**

**1. In General**

Unless otherwise set forth in the Plan, all Distributions under the Plan will be made by the Reorganized Debtor and the Liquidating Trustees from the assets in their respective control.

**2. Distributions on Account of Allowed Claims Only**

Notwithstanding anything herein to the contrary, no Distribution will be made on a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

**3. No Recourse**

No Creditor will have recourse to the Reorganized Debtor (or any property thereof), the Liquidating Trust (or any property thereof), the Liquidating Trustees or their agents, officers, directors, employees, successors or assigns other than with regard to the enforcement of rights or Distributions under the Plan and for claims of gross negligence.

**4. Method of Cash Distributions**

Any payment to be made under the terms of this Plan will be in U.S. dollars and may be made by draft, check, wire transfer or as otherwise required or provided in any relevant agreement or applicable law, and payment shall be deemed made when the draft, check or wire transfer, as the case may be, is transmitted.

**5. Minimum Distributions**

Payment of Cash in an amount of less than twenty-five dollars (\$25.00) need not be made to any holder of a Claim.

**6. No Distribution in Excess of Allowed Amount of Claim**

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth in the Plan or in this Disclosure Statement) in excess of the Allowed amount of such Claim.

**C. Objections to Claims**

**1. Claim Objection Process**

In a Chapter 11 case, claims against a debtor are established either (i) as a result of being listed in the debtor's schedules of liabilities as not being disputed or contingent or (ii) through assertion by a creditor in a timely filed proof of claim. Once established, the claims are either allowed or disallowed. If allowed, the claim will be recognized and treated under the terms of this Plan. If disallowed, the creditor will have no right to obtain any recovery on or otherwise to enforce the claim against the Debtor.

**2. Objections to Claims**

Unless otherwise ordered by the Bankruptcy Court, objections to Claims shall be filed and served on the applicable holder of such Claim no later than one hundred twenty (120) days after the later to occur of: (a) the Effective Date and (b) the filing of the relevant Claim. After the Effective Date, only the Reorganized Debtor will have the authority to file, settle, compromise, withdraw or litigate to judgment their respective objections to Claims. The Reorganized Debtor may settle or compromise any Disputed Claim without Bankruptcy Court approval provided such claim is fixed at an amount not greater than \$50,000.

**3. Amendments to Claims**

After the Confirmation Date, a Claim may not be filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the holder of such Claim solely to decrease, but not to increase, the amount or priority. Unless otherwise provided in the Plan, any new or amended Claim filed after the Confirmation Date shall be deemed disallowed in full and expunged without any action by the Reorganized Debtor, unless the holder of a Claim has obtained prior Bankruptcy Court authorization for the filing.

**D. Unclaimed Property**

Subject to Bankruptcy Rule 9010, all Distributions to any holder of an Allowed Claim shall be made at the Distribution Address unless the Reorganized Debtor and/or the Liquidating

Trust, as the case may be, have been notified in writing of a change of address. In the event that any Distribution to any holder of an Allowed Claim is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Reorganized Debtor and the Liquidating Trustees are notified of such holder's then current address, at which time all eligible missed Distributions shall be made to such holder, without interest. All demands for undeliverable Distributions shall be made on or before one hundred and twenty (120) days after the date such undeliverable Distribution was initially made. Thereafter, the amount represented by such undeliverable Distribution shall irrevocably revert to the Reorganized Debtor and be treated as Available Cash. Any Claim in respect of such undeliverable Distribution shall be forever barred from assertion against the Reorganized Debtor and its property or the Liquidating Trust and shall receive no further distributions pursuant to the Plan.

Checks issued by the Reorganized Debtor or the Liquidating Trustees, as applicable, in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be in writing and be made to the Reorganized Debtor or the Liquidating Trustees, as applicable, by the holder of the Allowed Claim to whom such check originally was issued and such request must be accompanied by delivery of the original check. The Reorganized Debtor or the Liquidating Trustees, as applicable, on or before one hundred and eighty (180) days following the date of issuance of such check, must receive any written claim in respect of such a voided check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor and be treated as Available Cash. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Reorganized Debtor, and its property or the Liquidating Trust and shall receive no further distributions pursuant to the Plan.

#### **E. Disputed Claims**

If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Reorganized Debtor may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account until the disposition thereof will be determined by the Bankruptcy Court order or by written agreement among the interested parties to such dispute, provided, that the Reorganized Debtor will not invest any Distribution while it is in escrow so that no income will be earned thereon.

#### **F. Setoffs**

Except as provided in the Plan, the Confirmation Order, or in agreements approved by a final order of the Bankruptcy Court, the Reorganized Debtor and the Liquidating Trustees, as applicable, may, pursuant to applicable law (including §553 of the Bankruptcy Code), offset against any Claim, including an Administrative Expense Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights and Causes of Action of any nature that the Debtor or its Estate may hold against the holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, nor any other action or omission of the Reorganized Debtor or the Liquidating Trust, as applicable, nor any provision of the Plan, will constitute a waiver or release by the Reorganized Debtor or the Liquidating Trust of any such claims, rights and Causes of Action that the Debtor, the Estate, the

Reorganized Debtor or the Liquidating Trust may possess against such holder. To the extent the Reorganized Debtor and/or the Liquidating Trustees fail to setoff against a Creditor and seek to collect a claim, right or one or more Causes of Action from such Creditor after a Distribution to such Creditor under the terms of this Plan, the Reorganized Debtor and/or the Liquidating Trustees, if successful in asserting such claim, will be entitled to full recovery on the claim, right or one or more Causes of Action against such Creditor. Notwithstanding any provision of the Plan, any other provision in the Plan to the contrary or any documents incorporating or implementing the Plan in any manner, the United States' setoff rights under §553 of the Bankruptcy Code are preserved and are in no way affected by the Plan.

**G. Not Severable**

The provisions of the Plan, including, without limitation, its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable.

**VIII. EFFECT OF CONFIRMATION OF PLAN**

**A. No Discharge**

Except as otherwise provided herein, pursuant to §1141 of the Bankruptcy Code, the Confirmation of the Plan will not discharge the Debtor of any debts.

**B. Vesting of Assets**

Pursuant to the provisions of §§1141(b) and 1141(c) of the Bankruptcy Code, all of the Estate Assets and effects of the Debtor including, without limitation, all assets, interests, property or rights transferred or assigned to the Reorganized Debtor, shall vest in the Reorganized Debtor on the Effective Date free and clear of all Claims, Liens, encumbrances, charges and other interests of the holders of Claims and holders of Equity Interests in the Debtor, except as otherwise provided in this Plan.

Pursuant to the provisions of §§1141(b) and 1141(c) of the Bankruptcy Code, certain of the Causes of Action shall vest in the Liquidating Trust on the Effective Date free and clear of all Claims, Liens, encumbrances, charges and other interests of the holders of Claims and holders of Equity Interests, as provided in this Plan. Pursuant to the provisions of §§1141(b) and 1141(c) of the Bankruptcy Code, all other Assets of the Estate shall vest in the Reorganized Debtor on the Effective Date free and clear of all Claims, Liens, encumbrances, charges and other interests of the holders of Claims and holders of Equity Interests, as provided in this Plan.

**C. Legal Binding Effect**

The provisions of the Plan shall bind all holders of Claims and holders of Equity Interests in the Debtor and their respective successors and assigns, whether or not they accept the Plan. On and after the Effective Date, except as provided in the Plan, all holders of Claims and holders of Equity Interests in the Debtor shall be precluded from asserting any Claim against the Debtor, the Reorganized Debtor, the Liquidating Trust or the Estate, based on any transaction or other

activity of any kind that occurred prior to the Confirmation Date.

**D. Winding Down of Business**

Upon and following the Effective Date, the Debtor's affairs will be wound down by the Reorganized Debtor through the sale of assets and the distribution of funds, including the preparation of final tax returns and dissolution of all the Debtor's subsidiaries. The Debtor will conduct no further business other than maintaining the value of Estate assets.

**E. Exculpation and Limitation of Liability**

Notwithstanding any other provision of this Plan, no holder of a Claim or holder of an Interest in the Debtor shall have any right of action against the Debtor, the Reorganized Debtor, the Debtor or the Reorganized Debtor's officers, directors, employees or agents, the Liquidating Trust, the Trustee's of the Liquidating Trust, the Liquidating Trust's agents, the Creditors' Committee, the Creditors' Committee members or any of their, attorneys or financial advisors for any act or omission in connection with, relating to or arising out of the administration of the Debtor's Case, the pursuit of confirmation of the Plan or the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, provided such exculpated Person acted and/or acts in good faith and in compliance with the Bankruptcy Code.

**F. Rights Existing during the Term of the Debtor's Case**

All holders of Claims against the Debtor that arose prepetition shall have the right only to participate in distribution under the Plan once the Plan is confirmed. Except as otherwise provided in the Plan, injunctions, liens or stays ordered in the Debtor's Case, pursuant to §§105 and 362 of the Bankruptcy Code, or in existence immediately prior to the Confirmation Date will remain in full force and effect until the Effective Date of the Plan and shall terminate immediately thereafter.

**G. Delivery of Distributions**

Subject to Bankruptcy Rule 9010, distributions to holders of Allowed Claims will be made at the address of each holder, as set forth on the proof of Claims filed by such holders, or at the last known address of such holder if no proof of claim is filed or if the Debtor has been notified in writing of a change of address. If any holder's distribution is returned as undeliverable, no further distribution to such holder will be made unless and until the Debtor is notified of such holder's then current address in a timely manner consistent with the provisions of the Plan.

**H. Insurance**

Confirmation and consummation of the Plan shall have no effect on insurance policies in which the Debtor is or was an insured party, except as provided herein. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to the Debtor's

bankruptcy, the Plan or any provision within the Plan, including the treatment or means of liquidation set out within the Plan for insured Claims, except as provided herein.

## **IX. EXECUTORY CONTRACTS**

### **A. Executory Contracts and Unexpired Leases**

1. Except as otherwise provided in the Plan or by the Confirmation Order, as of the Effective Date, and except as to residential leases, all prepetition executory contracts and unexpired leases of the Debtor, the Estate, CMF Insurance, City Plaza or Grandview) shall be rejected by the Debtor, pursuant to the provisions of §§365 and 1123 of the Bankruptcy Code, except any executory contracts and unexpired leases set forth in Exhibit C, which shall be the subject of separate motions to assume filed pursuant to §365 of the Bankruptcy Code by the Debtor before the entry of the Confirmation Order. Any order entered after the Confirmation Date by the Bankruptcy Court, after notice and a hearing, authorizing the rejection of an executory contract or unexpired lease shall cause such rejection to be a prepetition breach under §§365(g) and 502(g) of the Bankruptcy Code, as if such relief was granted and such order was entered prior to the Confirmation Date.
2. Listing a contract or lease in Exhibit C shall not constitute an admission by the Debtor that such contract or lease, including related agreements, is an executory contract or unexpired lease or that the Debtor has any liability thereunder.
3. Subject to Article VI Section C of the Plan, the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumption or rejection, as applicable, of executory contracts and unexpired leases the assumption or rejection of which is provided for in Article VI Section C of the Plan, pursuant to §365 of the Bankruptcy Code, and such assumption or rejection shall be deemed effective as of the Effective Date.

### **B. Bar Date for Rejection Damages**

If the rejection of any executory contract or unexpired lease under the Plan (including executory contracts and unexpired leases included in the Plan Supplement) gives rise to a Claim by the non-Debtor party or parties to such contract or lease, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified as a General Unsecured Claim in Class 4; provided, however, that the General Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, the Liquidating Trust or their successors, trustees, directors, officers, agents or properties, unless a proof of such Claim is filed with the Bankruptcy Court and served on the counsel for the Reorganized Debtor and the United States Trustee within Thirty (30) days after the date of notice of the entry of the order of the Bankruptcy Court rejecting the executory contract or unexpired lease, which may include, if applicable, the Confirmation Order.

### **C. Cure**

At the election of the Reorganized Debtor, any monetary defaults under each executory contract and unexpired lease to be assumed under the Plan will be satisfied, pursuant to §365(b)(1) of the Bankruptcy Code, (a) by payment of the default amount in Cash by the Reorganized Debtor on, or as soon as reasonably practicable, after the later to occur of (i) Thirty (30) days after the determination of the cure amount and (ii) the Effective Date or such other date as may be set by the Bankruptcy Court, or (b) on such other terms as agreed to by the Reorganized Debtor and the non-Debtor party to such executory contract or unexpired lease. In the event of a dispute regarding: (i) the amount of any cure payments, (ii) the ability of the Reorganized Debtor to provide adequate assurance of future performance under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, the cure payments required by §365(b) (1) of the Bankruptcy Code will be made only following the entry of a Final Order resolving the dispute and approving assumption. The Debtor shall have the right at any time to move to reject any prepetition executory contract or unexpired lease based on the existence of such a dispute.

## **X. EFFECTIVENESS OF THE PLAN**

### **A. Executory Contracts to Which One of the Debtor's Subsidiaries Is a Party.**

Notwithstanding the consolidation of the Debtor's subsidiaries into the Debtor, any executory contract or lease into which any such entity is a party will not be deemed to be an executory contract or lease of the Debtor unless specifically identified as an executory contract of the Debtor in the Plan.

### **B. Conditions Precedent**

The effectiveness of the Plan (and the occurrence of the Effective Date) is subject to the following conditions:

1. The entry of an order authorizing the Debtor to dissolve the Debtor's subsidiaries and consolidate their respective assets into the Debtor's assets; and
2. The Confirmation Order shall have become a Final Order.

The Debtor and the Creditors' Committee may waive the foregoing conditions precedent, as the Plan Proponents, in their sole and absolute discretion, in which case the Reorganized Debtor and the Liquidating Trustees shall consummate the Plan, notwithstanding the particular condition precedent waived.

### **C. Effective Date Transactions**

On the Effective Date, the following transactions shall occur simultaneously. The Effective Date shall not be deemed to have occurred, and the Plan shall not be effective, until each of the following transactions or events has occurred.

1. Except as to Causes of Action transferred to the Liquidating Trust, the Estate Assets shall be transferred to the Reorganized Debtor.
2. The Liquidating Trust shall be established by execution and delivery of the Trust Agreement, and certain Causes of Action, as set forth in the Plan, to be transferred to the Liquidating Trust along with the funds necessary to fund the Liquidating Trust.
3. Each of the Directors and Officers of the Reorganized Debtor shall be appointed and shall assume his responsibilities as provided in the Plan.
4. Each of the Liquidating Trustees shall be appointed and shall assume his responsibilities as provided in the Plan.

**D. Failure of Conditions/Non-Occurrence of Effective Date**

In the event that any of the conditions specified in the Plan or any event or transaction described above either has not occurred or has not been satisfied or waived within sixty (60) days after entry of the Confirmation Order, then the Debtor and the Creditors' Committee, as the Plan Proponents, may, upon notification to the Bankruptcy Court, terminate the Plan. In addition, if the Effective Date does not occur by December 1, 2009, unless extended by agreement of the Debtor and the Creditors' Committee, as the Plan Proponents, the Plan shall automatically be terminated. Upon termination of the Plan (a) the Confirmation Order shall be vacated, (b) no Distributions under the Plan will be made, (c) the Debtor and all holders of Claims will be restored to the status quo ante as of the day immediately preceding the Confirmation Date, as though the Confirmation Date never occurred, and (d) all the Debtor's obligations with respect to the Claims will remain unchanged, and nothing contained herein will be deemed to constitute a waiver or release of any claims by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

**E. Waiver of Conditions**

The conditions to effectiveness of the Plan set forth in the Plan may be waived only upon the express written consent of the Debtor and the Creditors' Committee.

**F. Revocation of the Plan**

The Debtor and the Creditors' Committee, as the Plan Proponents, may revoke or withdraw the Plan at any time prior to the Confirmation Date. If the Debtor and the Creditors' Committee, as the Plan Proponents, revoke or withdraw the Plan prior to the Confirmation Date, the Plan will be deemed null and void.

## **XI. ADMINISTRATIVE PROVISIONS**

### **A. Retention of Jurisdiction**

Notwithstanding Confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the following purposes:

1. To determine the allowance, classification or priority of Claims upon objection by the Reorganized Debtor or any other party in interest entitled hereunder to file an objection (including the resolution of disputes regarding any Disputed Claims and claims for disputed Distributions) and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;
2. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Bankruptcy Case on or before the Effective Date with respect to any Person;
3. To protect the property of the Estate and the Reorganized Debtor and the Liquidating Trust from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning liens, security interests or encumbrances on any property of the Estate, the Reorganized Debtor and the Liquidating Trust and to approve the sale, transfer or abandonment of any property of the Estate;
4. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and related agreements and other documents and the making of Distributions hereunder;
5. To determine any and all motions related to the rejection, assumption or assignment of executory contracts or unexpired leases, to determine assumption or rejection of any executory contract or unexpired lease under the terms of this Plan or to resolve any disputes relating to the appropriate cure amount or other issues related to the assumption of executory contracts or unexpired leases in the Bankruptcy Case;
6. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under §§330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code for services rendered and expenses incurred on or before the Effective Date;

7. To determine all applications, motions, adversary proceedings, contested matters, actions and any other litigated matters instituted in and prior to the closing of the Bankruptcy Case, including any remands;
8. To enter a Final Order closing the Bankruptcy Case;
9. To modify the Plan under §1127 of the Bankruptcy Code, remedy any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes;
10. To issue such orders in aid of consummation of the Plan and the Confirmation Order, notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person, to the full extent authorized by the Bankruptcy Code;
11. To enable the Reorganized Debtor or Liquidating Trustees, as applicable, to prosecute any and all proceedings to set aside liens or encumbrances and to recover any transfers, assets, properties or damages to which the Estate may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state, or local laws except as may be waived under the terms of this Plan;
12. To hear and determine matters concerning state, local and federal taxes in accordance with §§346, 505 and 1146 of the Bankruptcy Code;
13. To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in the Bankruptcy Case;
14. To hear and resolve any of the Causes of Action involving the Debtor, the Reorganized Debtor, the Liquidating Trust, or the Estate, creditors or parties of interest that arose prior to the Effective Date or in connection with the implementation of the Plan, including actions to avoid or recover preferential transfers or fraudulent conveyances and other Causes of Action;
15. To resolve any disputes concerning any release of a non-Debtor hereunder or the injunction against acts, employment of process or actions against such non-Debtor arising hereunder;
16. To approve any Distributions, or objections thereto, under the Plan;
17. To approve any Claims settlement entered into by the Reorganized Debtor or setoff exercised by the Reorganized Debtor and/or Liquidating Trustees; and
18. To hear and determine any motion for allowance of fees and costs payable by the Debtor or the Estate.

**B. Failure of the Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or

is otherwise without jurisdiction over any matter arising in, arising under, or related to the Bankruptcy Case, then Article XV of the Plan will have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

**C. Amendment of the Plan; Modification of the Plan**

The Debtor and the Creditors' Committee may alter, amend or modify the Plan or any Plan Documents under §1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to Substantial Consummation of the Plan, the Debtor may, pursuant to §1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially or adversely affect the treatment of holders of Claims or holders of Equity Interests in the Debtor under the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or Order of the Bankruptcy Court.

**D. Governing Law**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the laws of the state of Illinois will govern the rights and obligations arising under this Plan, without giving effect to principles of conflicts of law.

**E. Effectuating Documents and Further Transactions**

**1. Documents**

The Debtor, the Reorganized Debtor and the Liquidating Trustees will be authorized to execute, deliver, file or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan without the necessity of the approval or authorization of the Bankruptcy Court provided, however, the Reorganized Debtor and the Liquidating Trustees may seek the approval or authorization of the Bankruptcy Court for any transaction pursuant to the Plan.

**2. Notices**

All notices or requests in connection with the Plan will be in writing and will be deemed to have been given when received by overnight delivery service, facsimile transmission or email to the Debtor's counsel, the Creditors' Committee's counsel, the Reorganized Debtor and the Liquidating Trustees at the following addresses:

**Debtor:**

Michael D'Agostino

**Debtor's Counsel:**

Gregory J. Jordan  
Apostol, Kowal & Jordan, Ltd.

Commercial Mortgage & Finance, Co.  
115 Seventh Street  
Rockford, Illinois 61104

200 South Wacker Drive, 32nd Floor  
Chicago, Illinois 60606

**Creditors' Committee's Counsel:**

Bradley T. Koch  
Holmstrom & Kennedy, P.C.  
800 N. Church Street  
P.O. Box 589  
Rockford, Illinois 61105

**Reorganized Debtor:**

James H. Larson, M.D., President  
10245 Tybow Trail  
Roscoe, Illinois 61073

**Liquidating Trust:**

James H. Larson, M.D., Chairman  
10245 Tybow Trail  
Roscoe, Illinois 61073

**Reorganized Debtor's Counsel:**

Bradley T. Koch  
Holmstrom & Kennedy, P.C.  
800 N. Church Street  
P.O. Box 589  
Rockford, Illinois 61105

**Liquidating Trust's Counsel:**

Bradley T. Koch  
Holmstrom & Kennedy, P.C.  
800 N. Church Street  
P.O. Box 589  
Rockford, Illinois 61105

**F. No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor and/or the Creditors' Committee, as the Plan Proponents, with respect to any matter set forth herein, including, without limitation, liability on any Claim or the propriety of the classification of a Claim.

**G. Admissibility**

In the event the Confirmation Order is not entered, the provisions of this Plan will be of no force or effect. Any statement made herein by the Debtor will be deemed a statement made in connection with a settlement or compromise and will not be admissible in any subsequent proceeding.

**H. Termination of Creditors' Committee**

On the date by which (a) the Effective Date has occurred, (b) the Confirmation Order has become a Final Order, (c) all adversary proceedings have been terminated or the Creditors' Committee's participation therein as a party plaintiff has terminated or been assigned, and (d) all objections to Claims have been resolved or assigned, the Creditors' Committee shall cease to

exist, and its members, employees and agents (including, without limitation, attorneys, financial advisors, accountants and other professionals) shall be deemed released and discharged from any further authority, duties, responsibilities and obligations relating to, arising from or in connection with their service on the Creditors' Committee. Following the date that the Creditors' Committee ceases to exist, the Creditors' Committee will continue to exist (and the Creditors' Committee will continue to employ its counsel) after such date solely with respect to applications filed pursuant to §§330 and 331 of the Bankruptcy Code seeking payment of fees and expenses incurred by any Professional.

#### **I. Withholding Taxes**

Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Distributions hereunder. All Persons holding Claims will be required to provide any information necessary to effect the withholding of such taxes.

#### **J. Exemption from Certain Transfer Taxes**

Pursuant to §1146(c) of the Bankruptcy Code: (i) the issuance, transfer or exchange of any securities, instruments or documents; (ii) the creation of any other lien, mortgage, deed of trust, or other security interest; or (iii) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of or in connection with the Plan or the sale of Estate Assets. Any deeds, bills of sale or assignments executed in connection with the Plan or the Confirmation Order shall not be subject to any stamp tax, transfer tax, intangible tax, recording fee or similar tax, charge or expense to the fullest extent provided for under §1146(c) of the Bankruptcy Code.

#### **K. Statute of Limitations**

Pursuant to §108(a) of the Bankruptcy Code, the time period for the Reorganized Debtor or Liquidating Trustees to commence Causes of Action shall be the later of (a) two years from the Petition Date or (b) the end of such period provided by applicable non-bankruptcy law.

### **XII. RELEVANT FINANCIAL INFORMATION**

All holders of Claims and Interests and all other recipients of this Disclosure Statement should review the following documents, which are incorporated herein and made a part hereof:

A. Estimated Liquidation Analysis of the Debtor, which will be provided prior to or at the hearing on this Disclosure Statement; and

B. The Debtor's Schedules and Statement of Financial Affairs, which may be viewed by creditors at the office of the Clerk of the Bankruptcy Court at Federal Courthouse, 211 South Court Street, Rockford, Illinois.

### **XIII. ALTERNATIVES TO THE PLAN AND LIQUIDATION ANALYSIS**

#### **A. Alternatives to the Plan**

Any discussions referring to alternatives are limited by both practical consideration of space and the opinion of the Debtor and the Creditors' Committee regarding the same. In addition, applicable law does not require that information regarding alternatives be included in a disclosure statement, so any information is provided at the discretion of the Debtor and the Creditors' Committee.

The Debtor and the Creditors' Committee believe that the Plan affords Claimants the greatest realization from the Estate Assets, and is in the best interests of all Claimants. The Debtor and the Creditors' Committee have considered alternatives to the Plan, such as the dismissal of the Debtor's Case, liquidation within the context of a chapter 7 case and the formulation of other possible Chapter 11 plans. In the opinion of the Debtor and the Creditors' Committee, such alternatives would not afford the Claimants a return as great as may be achieved under the Plan.

If the Debtor's Case were dismissed, the Debtor would no longer have the protection of the Bankruptcy Code. In the event of a dismissal of the Debtor's Case, a race among the Debtor's creditors to the courthouse would ensue. With that race, the parties including the Debtor would incur substantial litigation costs. Even the most diligent Creditor likely would experience difficulty realizing a significant recovery on his or her Claim.

If the Plan is not confirmed, it is likely that the Debtor's Case would be converted to a case under chapter 7 of the Bankruptcy Code in which circumstance one or more trustees would be elected or appointed to liquidate the remaining Estate Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. If the Debtor's Case were converted to a case under chapter 7, the present Administrative and Priority Unsecured Claims would have a lower priority than claims generated in the chapter 7 case.

In a case under chapter 7, the court may allow reasonable compensation under §330 of the Bankruptcy Code of the chapter 7 trustee for the trustee's services, payable after the trustee renders such services, not to exceed Twenty-Five Percent (25%) on the first \$5,000 or less, Ten Percent (10%) on any amount in excess of \$5,000 but not in excess of \$50,000, Five Percent (5%) on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed Three Percent (3%) of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. The Debtor and the Creditors' Committee propose that the Liquidating Trustees serve without compensation. Similarly, the Reorganized Debtor's officers and directors will serve without compensation. The cost of liquidating in this fashion would thus be substantially lower than the statutory fee paid to a chapter 7 trustee.

Because the Debtor seeks to liquidate at a cost below the liquidation cost to be incurred by a chapter 7 trustee, there would not be a benefit to the conversion of the Debtor's Case to a case under chapter 7. The conversion to the Debtor's Case under chapter 7 would only delay the

distribution to holders of Allowed Claims and would cause the incurrence of additional Administrative Expense Claims.

There is a strong probability that a chapter 7 trustee in this Bankruptcy Case would not possess any particular knowledge about the Debtor. The Debtor and the Creditors' Committee assert that the value of the Estate Assets would be greatly diminished thereby. Additionally, a chapter 7 trustee would probably seek the assistance of professionals that would not have any significant background or familiarity with this Bankruptcy Case. The chapter 7 trustee and any professionals retained by the chapter 7 trustee likely would expend significant time familiarizing themselves with this Bankruptcy Case. This would result in duplication of effort, increased expenses and delay in payments to the Claimants.

To the extent permitted by the Court and the Bankruptcy Code, another party in interest could pursue an alternative plan. Such a plan could be pursued with the permission of the Bankruptcy Court or after the Debtor has failed to gain acceptance of the Plan. Because the professionals would need to evaluate competing plans, the pursuit of multiple plans would result in the incurrence of a substantial amount of Professional Fees, which would cause the reduction of funds available to distribute to holders of Allowed General Unsecured Claims. Additionally, because the Debtor has a fixed pool of assets, it is unlikely that a competing plan could significantly improve on recovery to holders of General Unsecured Claims.

#### **B. Liquidation Analysis**

The "best interest of creditors" test, which is set out in §1129(a)(7) of the Bankruptcy Code, requires that the Bankruptcy Court find that the Plan provides to each non-accepting holder of a Claim or holder of Equity Interests in the Debtor treated under the Plan a recovery that has a present value at least equal to the present value of the distribution that such Person would receive from the Debtor if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. As described above, the Debtor has considered the impact of a conversion to chapter 7 and compared the amounts Claimants with Allowed Claims would receive upon liquidation to the amounts they will receive under the Plan. The Debtor's analysis leads it to conclude that each Creditor, and the Creditors as a whole, would receive substantially less in liquidation under chapter 7 than each will receive under the terms of this Plan.

## **XIV. TAX ASPECTS**

### **A. General**

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED UPON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS ISSUED THEREUNDER, JUDICIAL DECISIONS AND THE INTERNAL REVENUE SERVICE'S ADMINISTRATIVE DETERMINATIONS. CHANGES IN ANY OF THESE AUTHORITIES OR CHANGES IN THE INTERPRETATION OF ANY OF THESE AUTHORITIES, WHICH MAY HAVE A RETROACTIVE EFFECT, MAY CAUSE THE FEDERAL TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW.

NO RULING WILL BE SOUGHT FROM THE INTERNAL REVENUE SERVICE, AND NO OPINION OF COUNSEL HAS BEEN OR WILL BE SOUGHT, WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THE DISCUSSION SET FORTH BELOW IS FOR GENERAL INFORMATION ONLY. THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS. EACH CLAIM AND INTEREST HOLDER IS URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

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

The following discussion summarizes certain significant federal income tax consequences of the transactions that are described herein and in the Plan that affect the Debtor and the holders of Claims. This summary is based upon the Internal Revenue Code of 1986, as amended ("Tax Code"), the applicable Treasury Department regulations promulgated thereunder ("Treasury Regulations"), judicial authority and current administrative rulings and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"). These authorities are all subject to change at any time by legislative, judicial or administrative action, and such change may be applied retroactively in a manner that could adversely affect the Debtor and the holders of Claims. The federal income tax consequences to any particular holder of a Claim may be affected by matters not discussed below. For example, neither the impact of the Plan on foreign holders of Claims, nor the impact under any state or local law is discussed herein. Further, this summary generally does not address the tax consequences to holders of Claims who may have acquired their Claims from the initial holders, nor does it address the tax considerations applicable to any holder of a Claim that may be subject to special tax rules such as financial institutions, insurance companies, dealers in securities or currencies, tax exempt organizations or taxpayers subject to the alternative minimum tax.

EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE POTENTIAL FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS in Circular 230, you are hereby informed that (i) any tax advice contained in this Disclosure Statement is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Code, (ii) the advice written to support the promotion or marketing of the transactions or matters addressed in the Disclosure Statement, and (iii) each holder of a Claim should seek advice based on its particular circumstances from an independent tax advisor.

#### **B. Federal Income Tax Consequences to Creditors**

Except with respect to a Claim (or portion thereof) for accrued but unpaid interest, for federal income tax purposes, a Creditor should recognize gain or loss upon consummation of the Plan in an amount equal to the difference between the amount of cash and fair market value of other property received and their tax basis in the Claim. The tax basis of a holder of Claim in such Claim should generally equal the amount advanced to or for the benefit of the individual or amount included in income as a result of the provision of goods or services to or for the benefit of the Debtor. The gain or loss should be capital gain or loss under §1221 of the Tax Code to the extent that the Claim did not arise in the ordinary course of trade or business for services rendered or from the sale of inventory to the Debtor, in which case such gain or loss should generally be ordinary. Any capital gain or loss recognized by a Creditor should be long-term capital gain or loss with respect to Claims held for more than one year.

#### **C. Receipt of Interest**

The Plan provides that the aggregate consideration to be distributed to holders of Claims will, to the extent relevant, first be allocated to the stated principal amount of the Claim and any remaining consideration will then be allocated to accrued but unpaid interest. Case law suggests that such an agreed-upon allocation should be respected. However, Treasury regulations appear to support a contention that all consideration distributed to a holder of a Claim should be treated as interest income to the extent of accrued interest, and there can be no assurance that the IRS would respect the allocation of consideration under the Plan.

In general, to the extent that any amount of consideration received by a holder of a Claim is received in satisfaction of accrued interest, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, a holder may be allowed a bad debt deduction to the extent any accrued interest was previously included in his, her or its gross income but subsequently not paid in full. However, the IRS may take the position that any such loss would be a capital loss if the underlying obligation were a capital obligation.

Each holder is urged to consult his, her or its tax advisor regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

#### **D. Withholding and Reporting**

The Reorganized Debtor and the Liquidating Trustees will withhold all amounts required by law to be withheld from payments of interest (actual or imputed) and dividends. The

Reorganized Debtor and the Liquidating Trustees will comply with all applicable reporting requirements of the Tax Code. Under the Tax Code, interest, dividends and other “reportable payments” may, under certain circumstances, be subject to “backup withholding” at a rate equal to the fourth lowest rate of tax under §1(c) of this Article. Backup withholding generally applies if the holder (1) fails to furnish his social security number or other taxpayer identification number (“TIN”), (2) furnishes an incorrect TIN, (3) fails to report interest or dividends properly or (4) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his, her or its correct number and that the holder is not subject to backup withholding. Your ballot contains a place to indicate your TIN. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in overpayment of tax. Certain Persons are exempt from backup withholding, including corporations and financial institutions.

AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OR HER OWN TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO THAT PERSON.

## **XV. CONFIRMATION REQUIREMENTS**

In order to obtain confirmation of the Plan, all of the requirements of §1129 of the Bankruptcy Code must be satisfied. These requisites include, but are not limited to, findings that the Plan complies with the applicable provisions of Chapter 11 of the Bankruptcy Code and that the Plan has been proposed in good faith and not by any means forbidden by law.

### **A. Best Interest Test**

Before the Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Plan provides, with respect to each Class, that each holder of a Claim or Interest of such Class, either (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Person would receive or retain if the Debtor was, on the Effective Date, liquidated under chapter 7 of the Bankruptcy Code. The Debtor believes that this test will be satisfied.

### **B. Acceptance by Impaired Classes**

The Bankruptcy Code generally requires as a condition to confirmation that each class of claims or interests that is impaired under the Plan accept the Plan, with the exception described in the following section. A class of claims has accepted the Plan if the Plan has been accepted by creditors (other than insiders of the debtor) that hold at least two-thirds in dollar amount and more than one-half in number of the allowed claims of such class who actually vote to accept or to reject the Plan. Holders of claims who fail to vote are not counted as either accepting or

rejecting the Plan.

Under the Plan, Class 2 Claims, Class 3 Claims and Class 4 Claims are Impaired and entitled to vote on the Plan. Under the Plan, Class 5 Equity Interests are Impaired, but not entitled to vote on the Plan.

### **C. Confirmation without Acceptance by All Impaired Classes**

The Bankruptcy Code contains provisions that could enable the Bankruptcy Court to confirm the Plan, even though the Plan has not been accepted by all impaired classes, provided that the Plan has been accepted by at least one impaired class of claims, excluding the votes of insiders.

The Debtor believes that the Plan will be able to meet the statutory standards set forth in the Bankruptcy Code.

§1129(b)(1) of the Bankruptcy Code states:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under and has not accepted the plan.

This section makes clear that a plan must be confirmed notwithstanding the failure of an impaired class to accept a plan, so long as: (1) at least one impaired class of claims votes to accept the plan; (2) the plan does not discriminate unfairly; and (3) a plan is “fair and equitable” with respect to each class that is impaired under, and has not accepted, the plan. This “fair and equitable” requirement applies only with respect to dissenting classes of claims and interests.

Under the provisions of the Plan, all of the applicable requirements of subsection (a) of §1129 will be met, with possibly the single exception stated and allowed by subsection (b) in the event that one or more Classes of Claims or Interests votes to reject the Plan. The Plan does not discriminate unfairly because similarly situated creditors are treated identically.

Accordingly, the Debtor will seek to have the Plan confirmed pursuant to §1129(b) of the Bankruptcy Code in the event that one or more classes of Claims or Interests votes to reject the Plan.

## **XVI. THE SOLICITATION; VOTING PROCEDURES**

### **A. Solicitation of Votes**

In general, a holder of a Claim or Interest may vote to accept or to reject a plan if (1) the Claim or Interest is an “Allowed” Claim, which means generally that no party in interest has

objected to such Claim or Interest and (2) the Claim or Interest is impaired by the Plan. 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, the holder of each such Claim or Interest is not entitled to vote on the Plan.

Under §1124 of the Bankruptcy Code, a class of claims or interests is deemed to be “impaired” under a plan unless (1) the plan leaves unaltered the legal, equitable, and contractual rights to which such Claim or Interest entitles the holder thereof or (2) 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.

Claims in Classes 2, 3 and 4 are impaired under the Plan and holders of Claims in Class 2, 3 and 4 that are neither Disputed Claims nor Disallowed Claims are entitled to vote on the Plan. Any Claim to which an objection has been timely filed before confirmation of the Plan will not be entitled to vote; provided, however, that if a Rule 3018(a) Motion is filed on account of such Claim, the holder of such Claim will be entitled provisionally to vote on the Plan and, to the extent such Rule 3018(a) Motion is decided in favor of the holder of such Claim, the ballot cast on account of such Claim will be counted in determining whether the requirements of §1126(c) of the Bankruptcy Code have been met. Any holder of a Claim that is the subject of an objection must file a Rule 3018(a) Motion for purposes of having his, her or its Claim temporarily Allowed for voting purposes on or before \_\_\_\_\_, 2009 at 3:00 p.m. (Prevailing Central Time).

Each holder of Claims in Classes 2, 3 and 4 will be furnished with a copy of the Disclosure Statement, together with related materials, as well as a Ballot to cast his, her or its vote (and pre-addressed, postage-prepaid return envelope) appropriate for the specific creditor.

**B. Voting Deadline**

All votes to accept or reject the Plan must be cast by using the Ballot enclosed with the Disclosure Statement. NO other votes will be counted. Ballots must be received by:

**Commercial Mortgage & Finance Co.  
115 Seventh Street  
Rockford IL 61104-1275  
Attn: Kimberly Moore**

**by July \_\_\_\_\_, 2009 at 3:00 pm. (Central Time) (the “Voting Deadline”).**

The Debtor and the Creditors’ Committee reserve the absolute right to extend the period of time (on a daily basis, if necessary) during which Ballots will be accepted for any reason including, but not limited to, determining whether or not the requisite acceptances have been received by

advising the Office of the United States Trustee (by email or orally) of such extension no later than 9:00 a.m. (Prevailing Central Time) on the first Business Day after the previously announced Voting Deadline. Without limiting the manner in which the Debtor and the Creditors' Committee may choose to make such announcement, the Debtor will not have any obligation to publish, advertise or otherwise communicate any such announcement.

### **C. Voting Procedures**

The failure of a holder of a Claim in Classes 2, 3 and 4 to deliver a duly executed Ballot will be deemed to constitute an abstention by such holder with respect to voting on the Plan, and such abstentions will not be counted as votes for or against the Plan.

Each voting holder of a Claim should provide all of the information requested by the Ballots. Each voting holder of a Claim should complete and return in the return envelope provided with each such ballot. **IN NO CASE SHOULD A BALLOT BE DELIVERED TO ANY ENTITY OTHER THAN THE DEBTOR.**

Except as provided below, unless the appropriate Ballot is timely submitted to the Debtor before the Voting Deadline, the Debtor may, in its sole discretion, reject such a Ballot as invalid, and therefore, decline to utilize it in connection with seeking confirmation of the Plan.

**IF YOU ARE A HOLDER OF A LOAN PARTICIPATION CLAIM OR A GENERAL UNSECURED CLAIM ENTITLED TO VOTE AND YOU HAVE RETURNED YOUR BALLOT, BUT FAILED TO INDICATE ON YOUR BALLOT WHETHER YOU ACCEPT OR REJECT THE PLAN, SUCH BALLOT WILL BE COUNTED AS AN ACCEPTANCE OF THE PLAN.**

### **D. Fiduciaries and Other Representatives**

If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or another Person acting in a fiduciary or representative capacity, such Person should indicate such capacity when signing and, unless otherwise determined by the Debtor, must submit proper evidence satisfactory to the Debtor of authority to so act.

### **E. Waivers of Defects, Irregularities, Etc.**

Unless otherwise directed by the Bankruptcy Court, all questions as to validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of Ballots will be determined by Apostol, Kowal & Jordan, Ltd., the Debtor and the Creditors' Committee in their sole discretion, which determination will be final and binding. As indicated below in "Withdrawal of Ballots; Revocation," effective withdrawals of Ballots must be delivered to the Debtor prior to the Voting Deadline. The Debtor and the Creditors' Committee reserve the absolute right to contest the validity of any such withdrawal. The Debtor and the Creditors' Committee also reserves the right to reject any Ballots not in proper form, the acceptance of which would, in the opinion of Debtor, the Creditors' Committee and its their counsel, be unlawful. The Debtor and the Creditors' Committee further reserve the right to waive any

defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and the respective instructions thereto) by the Debtor, and the Creditors' Committee, unless otherwise instructed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with the deliveries of Ballots must be cured within such time as the Debtor and the Creditors' Committee (or the Bankruptcy Court) determines. Neither the Debtor, the Creditors' Committee, nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not therefore been cured or waived) will be invalidated.

#### **F. Withdrawal of Ballots; Revocation**

Any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering written notice of withdrawal to the Debtor at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must (1) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (2) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (3) contain a certification that the withdrawing party owns the Claim(s) and possess the right to withdraw the vote sought to be withdrawn and (4) be received by the Debtor with a copy to Debtor's counsel, Apostol, Kowal & Jordan, Ltd and to Holmstrom & Kennedy, P.C., counsel to the Creditors' Committee, at the, at the address set forth on the title page of this Disclosure Statement. As stated above, the Debtor expressly reserves the absolute right to contest the validity of any such withdrawals of Ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots, which is not received in a timely manner by the Debtor and Apostol, Kowal & Jordan, Ltd and Holmstrom & Kennedy, P.C. will not be effective to withdraw a previously cast Ballot.

Any party who has previously submitted to the Garden City Group, Inc., the Claims Agent appointed in this Bankruptcy Case, a properly completed Ballot shall be deemed to have delivered that vote in accordance with the requirements of the Plan. Any party who has previously submitted a properly completed Ballot to the Garden City Group, Inc. may revoke such Ballot and change his, her or its vote by submitting to the Debtor, prior to the Voting Deadline, a subsequently properly completed Ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date will be counted for purposes of determining whether the requisite acceptances have been received.

### **XVII. CONCLUSION**

The formation of the Plan was the result of careful review and analysis by the Debtor and the Creditors' Committee. The Debtor and the Creditors' Committee respectfully request that you vote to accept the Plan.

Dated: June 29, 2009

**COMMERCIAL MORTGAGE  
& FINANCE CO.**

By: \_\_\_\_\_  
Michael A. D'Agostino, President

By: /s/ Gregory J. Jordan  
One of Its Attorneys

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UNSECURED CREDITORS FOR THE  
ESTATE OF COMMERCIAL  
MORTGAGE & FINANCE CO.**

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