

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:	)	
	)	Chapter 11
Dickinson Theatres, Inc.,	)	Case No. 12-22602
A Kansas corporation	)	
Debtor.	)	
	)	

**DISCLOSURE STATEMENT**

Sharon L. Stolte, KS #14302  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-2456  
Fax: (816) 412-9325  
sstolte@stinson.com

Paul M. Hoffmann, KS Fed. Bar No. 70170  
Stinson Morrison Hecker LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-2746  
Fax: (816) 412-1192  
phoffmann@stinson.com

Timothy M. Swanson, KS #24516  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-3122  
Fax: (816) 412-9327  
tswanson@stinson.com

Dated: September 21, 2012  
OVERLAND PARK, KANSAS

## **DISCLAIMER**

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

ALL CREDITORS AND INTERESTHOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, OTHER EXHIBITS ANNEXED OR REFERRED TO IN THE PLAN, AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER LAWS GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NONBANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE REORGANIZATION AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, DEBTOR.

## SUMMARY OF PLAN

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement. All capitalized terms not defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan, a copy of which is annexed hereto as Appendix 1.

### *(a) Overview*

In general, the Plan contemplates Debtor retaining its existing management and business operations. Secured creditors will be paid in full according to their existing loan documents, except for modifying various covenants to "fit" with Reorganized Debtor's anticipated financial condition for the balance of those loans. Unsecured creditors holding priority claims will be paid in full in accordance with the Bankruptcy Code. Unsecured creditors with claims that are less than, or voluntarily reduced to, \$2,000 will be paid in full on or about the Effective Date. All other unsecured creditors will be paid in full, with 4.5% interest, in equal quarterly payments over five years.

### *(b) Treatment of Claims and Interests under the Plan*

Under the Plan, Claims against and Interests in Debtor are divided into Classes. Certain unclassified Claims, including Administrative Priority Claims and Priority Tax Claims, will receive payment in Cash either (1) on the later of the Effective Date or as soon as practicable after such Claims are allowed, (2) in installments over time (as permitted by the Bankruptcy Code), or (3) as agreed with the holders of such Claims. The DIP Facility Claims are included as Administrative Claims and will be paid or otherwise satisfied in full in accordance with the terms of the DIP Financing Order. All other Claims and Interests are classified separately in various Classes in Debtor's Chapter 11 Case and will receive the distributions and recoveries (if any) described herein.

The following table summarizes the classification and treatment of the principal pre-petition Claims and Interests under the Plan and in each case reflects the amount and form of consideration that will be distributed in exchange for such Claims and Interests and in full satisfaction, settlement, release and discharge of such Claims and Interests. The classification and treatment for all Classes are described in more detail under the Section of this Disclosure Statement entitled "Classification and Treatment of Claims and Interests."

<b>Class Description</b>	<b>Treatment Under Plan</b>
Class 1 – Other Priority Claims	On the first Periodic Distribution Date occurring after the later of (i) the date an Other Priority Claim becomes an Allowed Other Priority Claim or (ii) the date an Other Priority Claim becomes payable pursuant to any agreement between a Debtor (or Reorganized Debtor) and the holder of such Priority Claim, an Allowed Class 1 Other Priority Claimholder

## Class Description

## Treatment Under Plan

shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 1 Other Priority Claim, (a) Cash equal to the amount of such Allowed Class 1 Other Priority Claim or (b) such other treatment as to which Debtor (or Reorganized Debtor) and such Claimholder shall have agreed in writing.

### Class 2 -- Secured Claims of Peoples Bank

As used in this Plan, the term "Secured Claims of Peoples Bank" shall mean and include all pre-petition and post-petition claims of Peoples Bank against the Debtor (including, without limitation all claims,, indebtedness, and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) And (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, And (5) Setting A Final Hearing On The Motion). All documents and instruments evidencing and/or securing the Secured Claims of Peoples Bank are herein sometimes collectively referred to as the "Peoples Loan Documents."

Peoples Bank shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and Peoples Bank as of the Petition Date and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) And (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion).

The Secured Claims of Peoples Bank, as evidenced and secured by the Peoples Loan Documents, shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order. Without limiting the generality of the immediately preceding sentence, (i) The Peoples Bank shall retain its liens under the

## **Class Description**

## **Treatment Under Plan**

Peoples Loan Documents, and (ii) the Secured Claims of Peoples Bank shall continue to be evidenced and secured by and payable as provided in the Peoples Loan Documents, On or before the Effective Date the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as The Peoples Bank may reasonably request that are not inconsistent with the terms and provisions of this Plan. Except as otherwise set forth herein, the secured claims of Peoples Bank as evidenced by the Loan Documents, and the liens granted thereunder, shall not be discharged, impaired, or affected in any way by the Plan or Confirmation Order

### **Class 3 – Secured Claim of 6801 West 107<sup>th</sup> LLC**

As used in this Plan, the term "Secured Claims of 6801 West 107<sup>th</sup> LLC" shall mean and include all pre-petition and post-petition claims of 6801 West 107<sup>th</sup> LLC against the Debtor (including, without limitation all claims,, indebtedness, and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) And (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, And (5) Setting A Final Hearing On The Motion). All documents and instruments evidencing and/or securing the Secured Claims of 6801 West 107<sup>th</sup> LLC are herein sometimes collectively referred to as the "6801 West 107<sup>th</sup> LLC Loan Documents."

6801 West 107<sup>th</sup> LLC shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and 6801 West 107<sup>th</sup> LLC arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) And (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, and (5) Setting A

## **Class Description**

## **Treatment Under Plan**

Final Hearing On The Motion).

The Secured Claims of 6801 West 107<sup>th</sup> LLC, as evidenced and secured by the 6801 West 107<sup>th</sup> LLC Loan Documents, shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order.

### **Class 4 -- Secured Claim of Hawthorn Bank**

Hawthorn Bank shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and Hawthorn Bank as of the Petition Date. Hawthorn Bank shall retain its liens under the Hawthorn Loan Documents, and the Secured Claims of Hawthorn Bank shall continue to be evidenced and secured by and payable as provided in the Hawthorn Loan Documents. On or before the Effective Date, the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as Hawthorn Bank may reasonably request that are not inconsistent with the terms and provisions of this Plan. Except as otherwise set forth herein, the secured claims of Hawthorn Bank as evidenced by the Loan Documents, and the liens granted thereunder, shall not be discharged, impaired, or affected in any way by the Plan or Confirmation Order.

### **Class 5 -- General Unsecured Claims**

The holders of General Unsecured Claims shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 4 Claim Cash, with interest equal to an annual percentage rate of four and one-half percent (4.5%), in equal payments commencing on the Distribution Date and continuing on the Periodic Distribution Dates until the fifth anniversary of the Confirmation Date.

### **Class 6 -- Administrative Convenience Claims**

On the Effective Date or first Periodic Distribution Date occurring after the later of (i) the date an Administrative Convenience Claim becomes an Allowed Administrative Convenience Claim or (ii) the date an Administrative Convenience Claim becomes payable pursuant to any agreement between Debtor (or Reorganized Debtor) and the holder of such



**Class Description****Treatment Under Plan**

Administrative Convenience Claim, the holder of an Allowed Class 5 Administrative Convenience Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 4 Administrative Convenience Claim, Cash equal to (a) the amount of such Allowed Claim if such amount is less than or equal to \$2,000 or (b) \$2,000 if the amount of such Allowed Claim is greater than \$2,000.

*(c) General Unsecured Claims Estimates*

Excluding duplicate Claims and Claims for utilities and "critical vendors" that Debtor has requested be paid in accordance with the Court's orders, an aggregate of about \$838,000 million in General Unsecured Claims (Class 4 in the Plan) have been either scheduled or filed in the Debtor's Chapter 11 Case, and are as follows: (1) Trade claims totaling approximately \$187,000 have been filed and/or scheduled; (2) Landlord claims estimated at \$427,000 (after removing the claims of landlords who have renegotiated their leases with Debtor in lieu of having their leases rejected) have been filed and/or scheduled; and (3) disputed claims totaling approximately \$224,000 have been filed and/or scheduled.

Debtor has not yet completed its analysis of the above Claims. However, based upon Debtor's preliminary analysis, Debtor believes the aggregate amount of the Claims set forth above will be reduced substantially following consummation of the Plan and completion of the Claims resolution process. In particular, Debtor anticipates substantially reducing, if not eliminating, the disputed claims identified above. However, the total amount of lease and contract rejection Claims may grow as Debtor completes the review of leases and contracts.

There can be no assurance that Debtor will be able to achieve the significant reductions in Claims set forth above. In addition, additional Claims may be filed or identified during the Claims resolution process that may materially affect the above Claims estimates.

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## **APPENDICES**

- Appendix 1 First Amended Plan of Reorganization
- Appendix 2 Liquidation Analysis
- Appendix 3 September 30, 2012 Financial Statements
- Appendix 4 Financial Projections

**DISCLOSURE STATEMENT WITH RESPECT TO  
PLAN OF REORGANIZATION OF  
DICKINSON THEATRES, INC.**

**I.  
INTRODUCTION**

Dickinson Theatres, Inc. debtor and debtor-in-possession ("Debtor"), submits this Disclosure Statement (the "Disclosure Statement") pursuant to Section 1125 of the United States Bankruptcy Code (the "Bankruptcy Code"), for use in the solicitation of votes on Debtor's Plan of Reorganization (the "Plan") dated September 21, 2012, which was filed with the United States Bankruptcy Court for the District of Kansas (the "Court" and/or the "Bankruptcy Court"), a copy of which is attached as Appendix 1 hereto.

This Disclosure Statement sets forth certain information regarding the Debtor's pre-petition history, significant events that have occurred during the Chapter 11 Case, and the anticipated organization, operations and financing of Reorganized Debtor. This Disclosure Statement also describes the Plan, 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 and Interests must follow for their votes to be counted.

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISK AND OTHER FACTORS PERTAINING TO THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST AND INTERESTS IN DEBTOR, PLEASE SEE "SUMMARY OF THE REORGANIZATION PLAN" AND "CERTAIN FACTORS TO BE CONSIDERED."

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASE, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH DEBTOR BELIEVES THAT THE PLAN AND RELATED DOCUMENTS AND OTHER SUMMARIES ARE ACCURATE AND COMPLETE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY DEBTOR'S MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

**II.  
THE BANKRUPTCY PLAN VOTING INSTRUCTIONS AND PROCEDURES**

**A. Definitions**

Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

## **B. Notice to Holders of Claims and Interests**

This Disclosure Statement is being transmitted to certain Claimholders and Interestholders for the purpose of soliciting votes on the Plan and to others for informational purposes. The purpose of this Disclosure Statement is to provide adequate information to enable the holder of a Claim against or Interest in the Debtor to make a reasonably informed decision with respect to the Plan prior to exercising the right to vote to accept or reject the Plan.

The United States Bankruptcy Court for the District of Kansas approved this Disclosure Statement as containing information of a kind and in sufficient detail adequate to enable the Claimholders and Interestholders to make an informed judgment with respect to acceptance or rejection of the Plan. THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE COURT.

ALL CLAIMHOLDERS AND INTERESTHOLDERS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN. This Disclosure Statement contains important information about the Plan, considerations pertinent to acceptance or rejection of the Plan, and developments concerning the Bankruptcy Case.

THIS DISCLOSURE STATEMENT AND SOLICITATION PACKAGE ARE THE ONLY DOCUMENTS AUTHORIZED BY THE COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning Debtor or the Plan other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. Except with respect to the projections set forth in Appendix 4 attached hereto (the "Projections") and except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. Neither Debtor nor Reorganized Debtor intend to update the Projections for the purposes hereof; thus the Projections will not reflect the impact of any subsequent events not already accounted for in the assumptions underlying the Projections. Further, Debtor does not anticipate that any amendments or supplements to this Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of this Disclosure Statement does not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC

ACCOUNTANT AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

**C. Solicitation Package**

Accompanying this Disclosure Statement are, among other things, copies of (1) the Plan (Appendix 1 hereto); (2) the notice of, among other things, (a) the time for submitting Ballots to accept or reject the Plan, (b) the date, time and place of the hearing to consider the confirmation of the Plan and related matters, and (c) the time for filing objections to the confirmation of the Plan (the "Confirmation Hearing Notice"); and (3) a Ballot to be used by you in voting to accept or to reject the Plan.

**D. General Voting Procedures, Ballots, and Voting Deadline**

After carefully reviewing the Plan, this Disclosure Statement, and (if you are entitled to vote) the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by checking the appropriate box on the enclosed Ballot. Please complete and sign your original Ballot and return it in the envelope provided. You must provide all of the information requested by the appropriate Ballot(s). Failure to do so may result in the disqualification of your vote on such Ballot(s).

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED BY Sharon L. Stolte, Stinson Morrison Hecker LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106-2150 NO LATER THAN \_\_\_\_\_ 2012 AT 4:00 P.M. (prevailing Central Time) (THE "VOTING DEADLINE"). BALLOTS RECEIVED AFTER SUCH TIME WILL NOT BE COUNTED. **BALLOTS SHOULD NOT BE DELIVERED DIRECTLY TO THE DEBTOR, THE COURT, OR ANYONE ELSE.**

**E. Questions About Voting Procedures**

If (A) you have any questions about (i) the procedure for voting your Claim or Interest, (ii) the packet of materials that you have received, or (iii) the amount of your Claim or your Interest holdings or (B) you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents please contact:

Sharon L. Stolte  
Stinson Morrison Hecker LLP  
1201 Walnut St., Suite 2900  
Kansas City, Missouri 64106  
(816) 691-2456

FOR FURTHER INFORMATION AND INSTRUCTION ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE "VOTING REQUIREMENTS."

**F. Confirmation Hearing and Deadline for Objections to Confirmation**

Pursuant to Section 1128 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017(c), the Court has scheduled the Confirmation Hearing for \_\_\_\_\_, 2012, at \_\_\_\_\_ a.m. (prevailing Central Time), at the United States Bankruptcy Court for the District of Kansas, Federal Building, 500 State Avenue, Kansas City, Kansas. The hearing may be adjourned from time to time by the Court without further notice except for the announcement of the adjournment date made at the hearing or at any subsequent adjourned hearing. The Court has directed that objections, if any, to confirmation of the Plan be filed with the Clerk of the Court and served so that they are RECEIVED on or before \_\_\_\_\_, 2012, at 4:00 p.m. (prevailing Central Time) by:

*Counsel for the Debtors*

Sharon L. Stolte  
Paul M. Hoffmann  
Stinson Morrison Hecker LLP  
1201 Walnut St., Suite 2900  
Kansas City, Missouri 64106  
Facsimile: 816-412-9325

*United States Trustee*

The Office of the United States Trustee  
500 Epic Center  
301 North Main Street  
Wichita, KS 67202-1508  
Attn: Bill Schantz  
Facsimile: 316-269-6182

*Counsel for the Creditors' Committee*

*Counsel for the DIP Lender:*

Wes Smith  
Address



### III. HISTORY OF DEBTOR AND COMMENCEMENT OF THE CHAPTER 11 CASE

#### A. Overview of Business Operations

##### 1. Summary of the Debtors' Pre-petition Business Practices

Entertaining audiences in the Midwest for 90 years, Dickinson Theatres continues to provide motion picture excellence with quality presentations and superior customer service.

In 1920, company founder Glen W. Dickinson, Sr. quit the family business—a Ford dealership in Brookfield, Missouri specializing in tractors—to purchase a small two-screen theatre in a booming agricultural college town. The Dickinson Marshall Theatre in Manhattan, Kansas was christened in November 1920 as the first of many Dickinson Theatres.

After overwhelming success with his first venture into motion picture exhibition, Mr. Dickinson soon added a second market to his circuit. The Dickinson Bowersock Theatre sprung up in a booming college town less than 2 hours away in Lawrence, Kansas.

It wasn't long after when a second Lawrence theatre was opened, and within a brief period of time, the fledgling circuit had expanded its size and scope to include theatres in Junction City, Kansas; Ellsworth, Kansas; Beloit, Kansas; Great Bend, Kansas, and Springfield, Missouri.

By 1931, Dickinson Theatres had grown to parent 26 theatres and continued to expand. It was at that time Mr. Dickinson decided to relocate the company office to Lawrence, Kansas.

In 1946, the company branched out to introduce its first drive-in theatre. The first Dickinson drive-in opened in Pittsburg, Kansas and was followed in 1948 by the construction of the 81 Drive-In Theatre in Salina, Kansas, the Shawnee Drive-In in Shawnee, Kansas, and the Leawood Drive-In Theatre in Leawood, Kansas.

Company expansion and diversification continued under the operation of Glen W. Dickinson, Jr. as theatres sprang up in Waterloo, Iowa; Quincy, Illinois; Monroe, Missouri; Noel, Missouri; Anderson, Missouri and Branson, Missouri. Property was also purchased near a little known town called Overland Park, Kansas with contract and the dream to build Dickinson's finest theatre.

After more expansion, the company decided to move Dickinson's corporate headquarters to Kansas City's suburb, Mission, Kansas. At that time, the small city only included a filling station, barber shop, taxi service and bicycle rental shop.

The next ten years became very important for Dickinson Theatres, as the construction of a major motor hotel complex, the Glenwood Manor Motor Hotel, began at 95th and Metcalf, just a short distance away from what would be Dickinson's "Flagship" Glenwood Theatre, already under construction. In 1966, the Glenwood Theatre opened with the Midwest Premiere of the popular movie "Is Paris Burning?"

The "new" Glenwood Theatre received instant recognition for movie theatre comfort, quality and design. Its overwhelming popularity with the public and film companies soon warranted the construction of additional screens and expansion to the complex.

The decade of the 60's also marked the passing of the company's founder, Glen W. Dickinson, Sr. in 1963. The company was passed on to Glen W. Dickinson, Jr. who would go on to run the theatre chain for the next 20 years.

One of the company's most significant milestones occurred in early 1980 when Dickinson Theatres purchased 25 screens from Mann Theatres. The acquisition increased the company's size from 46 screens to 71 screens with operations in 4 states.

Glen W. Dickinson, Jr. passed away in 1983, leaving the leadership of the company to Kent Dickinson, the second of three sons. The other two, Jon Scott Dickinson and Glen Wood Dickinson, III assisted as vice presidents for the company.

Throughout the 80's under Kent Dickinson's administration, existing theatre properties were refurbished and updated with the latest technology. New luxurious theatre complexes were constructed over the next few years and included major multiplexes in Kansas City, Kansas; Wichita, Kansas; Springfield, Missouri and Columbia, Missouri.

A change in company direction occurred in October 1992 when Wood Dickinson was named president of Dickinson Theatres.

During Wood Dickinson's appointment to office, Dickinson Theatres opened its first 12-screen motion picture entertainment complex, the SouthGlen Theatre in suburban Overland Park, Kansas, as well as the new Plaza Cinema 6 facility in Leavenworth, Kansas.

1995 marked Dickinson Theatres' 75th anniversary and a year of great success. Dickinson introduced the "Crown Jewel" to the Kansas City area, opening the extraordinary WestGlen 12 Theatre in Shawnee, Kansas. Destined to become Dickinson's most luxurious movie center and model operation for excellence, the WestGlen surpassed expectations and later expanded to 18 screens.

With a minimum addition of 20 new screens during 1995, Dickinson Theatres was operating 168 screens in 39 locations throughout Mid-America.

In September of 1999, a monumental event propelled the company in a new and exciting direction. Wood Dickinson, the last of the Dickinson family, decided to move on to other industry related and personal ventures. In his place, a young and motivated team led by John Hartley, head of purchasing for Dickinson Theatres, stepped up and took control of the company. Reviving the company mission to provide the best of family entertainment, the following years showed a rebirth of the Dickinson Theatres.

Debtor previously filed Chapter 11 before the Court on October 2, 2000, Case No. 00-22852 (the "Previous Bankruptcy Case"). Judge Julie A Robinson initially presided, and Judge Janice Miller Karlin ultimately presided, over the Debtor's Previous Bankruptcy Case. Debtor confirmed a plan of reorganization on January 25, 2001. The Previous Bankruptcy Case was closed on September 27, 2003.

Thereafter, Debtor continued to operate in the ordinary course of business, including expanding to additional locations and undertaking various types of real estate development. John Hartley was the majority shareholder and Chief Executive officer of Debtor during this time. Ron Horton was a minority shareholder and executive vice-president.

After more than 30 years in the business, John Hartley retired and sold the company to Ron Horton, the Executive Vice President of Film Buying and Marketing.

Today, Ron Horton continues to lead the company into the digital age. The company currently operates 18 theatre locations with 210 screens across 7 states.

With projected growth, stability in operations and a never-ending pursuit to please customers, Dickinson Theatres strives to be the premier movie exhibition company in the Midwest.

The fundamental goal of the company rests in the enduring mission statement:

"Dickinson Theatres is dedicated to serving customers as we would our own families—in an environment of trust, innovation and fun."

## 2. Industry and Competition

Motion picture theatres are the primary initial distribution channel for new motion picture releases. The theatrical success of a motion picture is a very important factor in establishing its value in the cable television, DVD and other ancillary markets. Debtor believes that the public will continue to recognize the value of viewing a movie on a large screen with superior audio and visual quality, while enjoying a variety of concessions and sharing the experience with a larger audience. The Motion Picture Association of America reported that during 2011, domestic attendance was 1.3 billion with 221.2 million people in the U.S. and Canada attending at least one movie in 2011. Variances in year-to-year attendance are primarily related to the overall popularity and supply of motion pictures.

However, the film exhibition industry in the United States does face several challenges. Most notably, the increased popularity of vending machine style distributors, online/streaming of

content and home theatres place more pressure on film exhibitors to create a more enhanced entertainment experience. One aspect of the enhanced experience has been seen in megaplexes which are theatres with predominantly stadium-style seating (seating with an elevation between rows to provide unobstructed viewing) and other amenities to enhance the movie-going experience. Consumers have demonstrated their demand for the amenities in the new megaplex theatres by being willing to travel farther to see a movie in such theatres. This megaplex trend has even caused some megaplex theatres to be built too close to other megaplex theatres. In addition, long-term leases of existing theatre facilities often reduce the industry's ability to retire older screens as quickly and inexpensively as they might like.

Second, the percentage of box office revenue that film distributors can command as licensing fees are higher because there are so many screens competing for the right to license the films. Today film rental (the amount paid by exhibitors to film companies) is paid as an aggregate with such costs increasing by 3-4% over the last 10-year period. In part, this is due to the increased number of megaplexes increasing demand for quality first run films. In turn, the large number of screens makes it possible for a larger number of consumers to see a movie during the early weeks of a run, but studios now demand more from theatres for film rental.

Third, during 2012 particularly, there have been fewer box office hits than in the recent past. The Company's business is seasonal in nature, with the highest attendance and revenues generally occurring during the summer months and holiday seasons. Summer 2012 was not a strong season, and there is traditionally a decline in box office revenues during the Olympic games. Fewer customers also reduces income from concessions, from video games in the lobbies and from on-screen advertising.

Finally, Debtor competes against both local and national exhibitors, some of which may have substantially greater financial resources. The Company's theatres are subject to varying degrees of competition in the geographic areas in which they operate. Competitors may be national circuits, regional circuits or smaller independent exhibitors. Competition is often intense with respect to attracting patrons and licensing motion pictures.

### 3. Vendors

Debtor mainly licenses "first-run" motion pictures from distributors owned by major film production companies and from independent distributors that generally acquire licensing rights from smaller production companies. These licenses are on a film-by-film and theatre-by-theatre basis. Negotiations with distributors are based on several factors, including theatre location, competition, season of the year and motion picture content. North American film distributors typically establish geographic film licensing zones and allocate available film to one theatre within that zone.

Film zones generally encompass a radius of three to five miles in metropolitan and suburban markets, depending primarily upon population density. In film zones where the Company is the sole exhibitor, the Company obtains film licenses by selecting a film from among those offered and negotiating directly with the distributor. In film zones where there is competition, a distributor will allocate its films among the exhibitors in the zone.



Licenses entered between distributors and exhibitors now encompass a fixed percentage of theatre admissions as the license fee for such films. Some of these license arrangements are under a Master Lease, whereas others are associated with a film by film license—in effect, by accepting the film for exhibition the exhibitor agrees to the terms set by the distributor as the film is delivered/received.

Concessions sales are the second largest source of revenue for Debtor after box office admissions. Concession items include popcorn, soft drinks, candy and other products. Debtor's strategy emphasizes prominent and appealing concessions counters designed for rapid service and efficiency. Debtor's primary concessions products are various sizes of popcorn, soft drinks, candy and hot dogs, all of which Debtor sells at each of its theatres. Debtor negotiates prices for its concessions products and supplies directly with concessions vendors to obtain volume discounts or bulk rates.

Debtor believes that its relations with vendors have been generally satisfactory.

4. Employees; Labor Matters

Debtor currently employs approximately 36 full-time employees, and approximately 650 part-time employees at the various theatres. The full-time employees receive typical benefits for a company the size of Debtor, including but not limited to health insurance, disability insurance, vacation pay, severance pay and life insurance. The part-time employees receive no benefits. Debtor believes that its relationship with employees is generally satisfactory.

5. Legal Proceedings

Debtor, like others in the theatre business, is from time to time the subject of complaints, threat letters or litigation from customers alleging illness, injury, or other food quality, health (including food-borne illness Claims), or operational concerns. Claims of this nature are common in the theatre industry, and a number of such Claims may exist at any given time. Debtor maintains insurance to cover most of these Claims. However, adverse publicity resulting from such allegations may materially adversely affect the Debtor, regardless of whether such allegations are valid or whether Debtor is liable. In addition, Debtor encounters complaints and allegations from former or prospective employees or others from time to time, as well as other matters which are common for businesses such as those of Debtor. Finally, Debtor was recently served a petition filed in the 16<sup>th</sup> Judicial Circuit Court, Jackson County, Missouri, captioned: Prize Properties, LLC c. Dickinson Theatres, Inc.; Case No. 1216CV23980 for past due rent on a lease that Debtor intends to reject. Debtor does not believe that any such matters of which it is aware are material to Debtor individually or in the aggregate, but matters could arise in the future which could adversely affect Debtor or its business operations.

6. Properties

Debtor operates 210 screens in 18 locations. All screens are operated under leases in 7 different states including, 3 locations in Oklahoma, 3 locations in Missouri, 1 location in Arkansas, 7 locations in Kansas, 2 locations in Arizona, 1 location in Nebraska and 1 location in Texas. Some of these locations are expected to be closed prior to confirmation of the Plan, but the remaining business operations will be stronger.

7. Selected Pre-petition Financial Data for the Fiscal Year Ended May 31, 2000

Attached as Appendix 3 is Debtor's financial statements for the fiscal year ending May 31, 2012. These financial statements were prepared with the assistance of Debtor's corporate counsel, Robert J Rayburn, III and Bruce Wittman, Chief Financial Officer. These financial statements were the basis for Debtor's Projections in Appendix 4.

**B. Events Leading to Debtor's Chapter 11 Filing**

In January, 2012, John Hartley sold his ownership interest in Debtor to Ron Horton. Thereafter, Ron Horton became the sole owner and Chief Executive Officer of Debtor. Mr. Horton continued to operate Debtor in the ordinary course of business through the Summer of 2012. Unfortunately, revenue from films and concessions during this time was not adequate to allow Debtor to cover anticipated negative cash flow between the Summer season and the Holiday season starting around Thanksgiving 2012. Moreover, Projections for 2013 and beyond showed significant negative cash flow from operations in certain specific locations.

One set of events leading up to this filing center on related party or similar dealings of the prior controlling shareholder of DTI. In particular, above market rate contracts with entities owned by relatives of such shareholder and the acquisition of real estate outside the course and scope of Dickinson's film exhibition business. In addition, unfavorable leasing terms in theater leases with yet other parties has also had a negative effect on DTI's operations over the last several years. The full extent of these negative aspects only become known after such shareholder's interest in Debtor was purchased in January 2012. Over the course of approximately ten years, these circumstances have cost Debtor, on estimate, in excess of \$3,000,000 and currently burden Debtor with over \$700,000 in annual payments for related party, outside of business scope and unprofitable theater ventures.

In an effort to bring lease arrangements in line as to theaters, four theaters have been analyzed with their leases to be rejected, some pursuant to prepetition renegotiations. Others are hoped to be renegotiated in this process with the exact disposition of such locations, if such efforts fail, to be determined as quickly and efficiently as possible.

Industry changes and competition are also a factor. Motion picture theatres are the primary initial distribution channel for new motion picture releases. The theatrical success of a motion picture is very important factor in establishing its value in the cable television, DVD and other ancillary markets. While the movie experience is changing, Debtor believes that the public will continue to recognize the value of viewing a movie on a large screen with superior audio and visual quality, while enjoying a variety of concessions and sharing the experience with a larger audience. The Motion Picture Association of America reported that during 2011, domestic attendance was 1.3 billion with 221.2 million people in the U.S. and Canada attending at least one movie in 2011. Variances in year-to-year attendance are primarily related to the overall popularity and supply of motion pictures.

However, the film exhibition industry in the United States does face several challenges. Most notably, the increased popularity of vending machine style distributors, online/streaming of content and home theaters place more pressure on film exhibitors to create a more enhanced



entertainment experience. One aspect of the enhanced experience has been seen in megaplexes which are theatres with predominantly stadium-style seating (seating with an elevation between rows to provide unobstructed viewing) and other amenities to enhance the movie-going experience. Consumers have demonstrated their demand for the amenities in the new megaplex theaters by being willing to travel farther to see a movie in such theaters. This megaplex trend has even caused some megaplex theaters to be built too close to other megaplex theaters. In addition, long-term leases of existing theater facilities often reduce the industry's ability to retire older screens as quickly and inexpensively as they might like.

Second, the percentage of box office revenue that film distributors can command as licensing fees are higher because there are so many screens competing for the right to license the films. Today film rental (the amount paid by exhibitors to film companies) is paid as an aggregate with such cost having increased by 3-4% over the last 10 year period. In part, this is due to the increased number of megaplexes increasing demand for quality first run film. In turn, the large number of screens makes it possible for a larger number of consumers to see a movie during the early weeks of a run, but studios now demand more from theaters for film rental.

Third, during 2012 particularly, there have been fewer box office hits than in the recent past. The Company's business is seasonal in nature, with the highest attendance and revenues generally occurring during the summer months and holiday seasons. Summer 2012 was not a strong season, and there is traditionally a decline in box office revenues during the Olympic games. Fewer customers also reduces income from concessions, from video games in the lobbies and from on-screen advertising.

Finally, Debtor competes against both local and national exhibitors, some of which may have substantially greater financial resources. The Company's theatres are subject to varying degrees of competition in the geographic areas in which they operate. Competitors may be national circuits, regional circuits or smaller independent exhibitors. Competition is often intense with respect to attracting patrons and licensing motion pictures.

#### **C. Need for Restructuring and Chapter 11 Relief**

After extensive analysis, Mr. Horton determined that a bankruptcy case was necessary to reject certain leases and contracts, abandon certain real estate, and approve certain additional loans. However, all claims arising from the bankruptcy case should be paid in full over five years as proposed in the Plan that has been filed with this Disclosure Statement.

### **IV. CAPITAL STRUCTURE OF DEBTOR AS OF COMMENCEMENT OF THE CHAPTER 11 CASE**

#### **A. Secured Claims**

As of the date Debtor filed its Chapter 11 Case, Debtor had essentially four creditors holding Secured Claims. The creditor with the largest Secured Claim was First Community Bank with a claim for approximately \$2.1 million secured by real property commonly referred to as the "K-7 Property." Debtor intends to surrender the K-7 Property to First Community Bank, leaving First Community Bank with a possible general unsecured deficiency claim. The creditor

with the next largest Secured Claim was Peoples Bank with a claim for approximately \$2.0 million secured primarily by the Palazzo 16 Theatre, LLC, the Midwest Cinema Group, the Mesa Cinemas LLC, the Chenal 9 IMAX Theatre assets and a blanket lien on all of Debtor's other assets. The creditor with the third largest Secured Claim was Hawthorn Bank with a claim for approximately \$725,000 secured primarily by the Gateway 12 IMAX Theatre assets in Mesa, Arizona and a line on Debtor's other assets. Finally, 6801 West 107th, LLC has a claim of \$500,000 secured by a lien on all of Debtor's other assets.

## **B. Unsecured Claims**

Excluding duplicate Claims and Claims for utilities and "critical vendors" that have been paid in accordance with the Court's orders, an aggregate of about \$1.8 million in General Unsecured Claims (Class 6 in the Plan) have been either scheduled or filed in the Debtor's Chapter 11 Case, and are as follows: (1) Trade claims totaling approximately \$186,431.00 have been filed and/or scheduled; (2) Landlord claims totaling \$426,502.70 (after removing the claims of landlords who have renegotiated their leases with Debtor in lieu of having their leases rejected) have been filed and/or scheduled; and (3) disputed claims totaling approximately \$223,883.39 have been filed and/or scheduled.

Debtor has not yet completed its analysis of the above Claims. However, based upon Debtor's preliminary analysis, Debtor believes the aggregate amount of the Claims set forth above will be reduced substantially following consummation of the Plan and completion of the Claims resolution process. In particular, Debtor anticipates substantially reducing, if not eliminating, the disputed claims identified above. However, the total amount of lease and contract rejection Claims may grow as Debtor completes the review of leases and contracts.

There can be no assurance that Debtor will be able to achieve the significant reductions in Claims set forth above. In addition, additional Claims may be filed or identified during the Claims resolution process that may materially affect the above Claims estimates.

## **V. CORPORATE STRUCTURE OF DEBTOR**

### **A. Current Corporate Structure and Management of Debtor**

Debtor is a Kansas corporation in good standing and qualified to do business in each state in which Debtor does business. Debtor's stock currently is owned 100% by Ronald J. Horton, Trustee of the Ronald Horton Revocable Trust dated May 26, 2005. Debtor's President and sole Director is Ronald J. Horton. Bruce Wittman is the treasurer and chief financial officer with no stock ownership. Edward Carl is the Secretary with no stock ownership. Debtor does not currently anticipate any material change in its corporate structure under the Plan.

**VI.**  
**THE CHAPTER 11 CASE**

**A. Continuation of Business; Stay of Litigation**

On September 21, 2012 (the "Petition Date"), Debtor filed a Petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, Debtor has continued to operate as a debtor-in-possession subject to the supervision of the Court in accordance with the Bankruptcy Code. While Debtor is authorized to operate in the ordinary course of business, transactions out of the ordinary course of business require Court approval. In addition, the Court has supervised Debtor's employment of attorneys, accountants, financial advisors and other professionals as required by the Bankruptcy Code.

An immediate effect of the filing of Debtor's bankruptcy petition was the imposition of the automatic stay under Section 362(a) of the Bankruptcy Code which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of Debtor and the continuation of litigation against Debtor. This relief provided Debtor with the "breathing room" necessary to assess and reorganize its business. The automatic stay remains in effect, unless modified by the Court or applicable law, until the Effective Date of the Plan.

**B. Significant Events During the Bankruptcy Case**

*1. First Day Orders*

Debtor filed numerous motions on the Petition Date seeking the relief provided by certain so-called "first day orders." First day orders are intended to ensure a seamless transition between a debtor's pre-petition and post-petition business operations by approving certain normal business conduct that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Court. The first day orders in this case addressed, among other things:

- Establishing Noticing Requirements with Respect to All Proceedings Herein
- Establishing Procedures for the Assertion of Section 503(b)(9) Claims Relating to Goods Received Within Twenty Days Prior to the Petition Date
- Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-petition Financing From Peoples Bank; (B) Granting Liens and Superpriority Claims in Favor of Peoples Bank; (C) Authorizing Use of Peoples Bank's Cash Collateral; (D) Granting Adequate Protection to Peoples Bank; and (E) Scheduling a Final Hearing
- Interim and Final Orders: (A) Authorizing Debtor to Obtain Post-petition Financing From 6801 West 107th, LLC; (B) Granting Liens and Superpriority Claims in Favor of 6801 West 107th, LLC; and (C) Scheduling a Final Hearing
- Authorization to Pay Claims of Critical Trade Vendors

- Authorization to Continue Customer Programs (the "Customer Programs Motion")
- (A) Authorizing, But Not Directing, Dickinson Theatres, Inc., to (1) Pay Certain Accrued Pre-Petition Wages, Salaries and Employee Benefits, (2) Permit Employees to Use Accrued Pre-Petition Vacation Time, (3) Permit Employees' Pre-Petition Reimbursable Business Expenses, (4) Continue Employee Benefit Plans, and (5) Directing All Banks to Honor Pre-Petition Checks for Payment of Pre-Petition Obligations; (B) Authorizing Related Relief; and (C) Authorizing, But Not Directing, The Release of Withholding Taxes and Employee Contributions
- Authorizing (i) Maintenance of Existing Bank Accounts, (ii) Continued Use of Existing Business Forms, and (iii) Continued Use of Existing Cash Management Systems
- Authorizing the Debtor-in-Possession to Reject Certain Unexpired Leases and Executory Contracts
- (I) Prohibiting Utilities From Altering, Refusing or Discontinuing Services on Account of Prepetition Invoices; (II) Determining That The Utilities Are Adequately Assured of Future Payment; (III) Establishing Procedures for Determining Requests For Additional Assurance of Future Payment; (IV) Granting Certain Related Relief; and (V) Scheduling a Final Hearing Date
- (A) Authorizing, but not Directing, the Debtor to Pay Prepetition Taxes and Regulatory Fees; and (B) Directing Financial Institutions to Honor and Process Checks Related to Prepetition Taxes and Regulatory Fees

## 2. DIP Facility

On the Petition Date, Debtor filed motions for authority to use cash collateral and to obtain post-petition secured financing. An interim order granting these motions was entered on September \_\_\_\_, 2012. A final hearing on these motions and orders was held on October \_\_\_\_, 2012.

In general, the orders authorizing Debtor to obtain post-petition financing allow Debtor to borrow from Peoples Bank up to an aggregate amount of \$500,00 and from 6801 West 107<sup>th</sup> LLC up to an aggregate amount of \$500,000. The loans are secured by liens on all assets of Debtor, subject only to certain valid pre-petition liens on those assets. The orders and related loan documents also contain numerous other provisions that are typical in financing transaction of this nature.

## 3. Other Significant Court Actions

In addition to the orders approving the first day motions and the other matters described above, Debtor has sought and obtained certain orders from the Court that are of particular importance in the operation of the business or in the administration of the Chapter 11 Case. Included among such orders are those authorizing:



- **Establishment of Bar Date.** The Court established 4:00 P.M. prevailing Central Time on November 5, 2012 (the "Bar Date") as the deadline for filing proofs of Claim against and proofs of interest in Debtor on behalf of all entities other than governmental entities and certain other parties.
- **Approval of Rejection of Certain Unexpired Leases and Executory Contracts.** The claims expected to be created by rejection of these leases and contracts are not expected to be material. Approval to Assume in Part, and Reject in Part, the Amended and Restated Master Lease Agreement with Spirit Master Funding, LLC
- **Retention of Professionals.** The Court authorized the retention of the following professionals to serve on behalf of Debtor in the case: Stinson Morrison Hecker LLP as counsel, and Robert Rayburn as conflicts counsel.

## VII. SUMMARY OF THE REORGANIZATION PLAN

THIS SECTION CONTAINS A SUMMARY OF THE STRUCTURE OF, CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS IN, AND IMPLEMENTATION OF, THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ATTACHED TO THIS DISCLOSURE STATEMENT AS APPENDIX 1 AND TO THE EXHIBITS ATTACHED THERETO OR REFERRED TO THEREIN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN, WHICH ARE OR WILL HAVE BEEN FILED WITH THE COURT, WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE OF THE PLAN, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, DEBTOR AND REORGANIZED DEBTOR AND OTHER PARTIES IN INTEREST, REGARDLESS OF WHETHER OR HOW THEY HAVE VOTED ON THE PLAN.

### **A. Overall Structure of the Plan**

Prior to filing for Chapter 11 Case, Debtor focused on formulating a plan of reorganization that would enable it to emerge quickly from chapter 11 and preserve the value of its Business as a going concern. Under the Plan, Claims against, and Interests in, Debtor are divided into Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated, Classes of Claims against and Interests in the Debtors will receive the treatment described in Part B below. The amounts and forms (e.g., Cash) of distributions under the Plan are based upon, among other things, the requirements of applicable law and Debtor's assessment of its ability to achieve the goals set forth in their business plan. Following consummation of the Plan, Reorganized Debtor will operate its business with a reduced level of indebtedness and operating expenses.

## **B. Classification and Treatment of Claims and Interests**

Section 1122 of the Bankruptcy Code requires that a plan of reorganization classify the Claims of a debtor's creditors and the interests of its equity holders. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, a plan of reorganization may place a Claim of a creditor or an Interest of an equity holder in a particular class only if such Claim or Interest is substantially similar to the other Claims or Interests in such class.

The Bankruptcy Code also requires that a plan of reorganization provide the same treatment for each Claim or Interest of a particular class unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. Debtor believes that it has complied with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the Claimholders and Interestholders affected do not consent to the treatment afforded them under the Plan.

The Plan classifies the following in separate Classes:

- Class 1. Class 1 consists of Other Priority Claims
- Class 2. Class 2 consists of the Secured Claims of Peoples Bank.
- Class 3. Class 3 consists of the Secured Claims of 6801 West 107<sup>th</sup> LLC.
- Class 4. Class 4 consists of the Secured Claims of Hawthorne Bank
- Class 5. Class 5 consists of General Unsecured Claims.
- Class 6. Class 6 consists of Administrative Convenience Claims.

Debtor believes that it has classified all Claims and Interests in compliance with the requirements of Section 1122 of the Bankruptcy Code. If a Claimholder or Interestholder challenges such classification of Claims or Interests and the Court finds that a different classification is required for the Plan to be confirmed, Debtor, to the extent permitted by the Court, intends to make such modifications to the classifications of Claims or Interests under the Plan to provide for whatever classification might be required by the Court for confirmation. UNLESS SUCH MODIFICATION OF CLASSIFICATION ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM OR INTEREST AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM OR INTEREST PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM OR



INTEREST REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER IS ULTIMATELY DEEMED TO BE A MEMBER.

*1. Treatment of Unclassified Claims*

*(i) Administrative Claims*

Administrative Claims consist primarily of the costs and expenses of administration of the Chapter 11 Cases. They include, but are not limited to, Claims arising under the DIP Facility, the cost of operating the Debtor's businesses since the Petition Date, the outstanding unpaid fees and expenses of the professionals retained by the Debtors and the Creditors' Committee as approved by the Court, and the payments necessary to cure pre-petition defaults on unexpired leases and executory contracts that are being assumed under the Plan ("Cure"). All payments to professionals in connection with the Chapter 11 Cases for compensation and reimbursement of expenses, and all payments to reimburse expenses of members of the Creditors' Committee, will be made in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Rules and are subject to approval of the Court as being reasonable.

Debtor believes that the aggregate amount of Administrative Claims will not exceed Reorganized Debtor's ability to pay such Claims when they are allowed and/or otherwise become due. The procedures governing allowance and payment of Administrative Claims are described in Section VII.E. below, entitled "Distributions." On the Periodic Distribution Date occurring after the later of (i) the date an Administrative Claim becomes an Allowed Administrative Claim or (ii) the date such Administrative Claim becomes payable pursuant to any agreement between Debtor (or Reorganized Debtor) and the holder of such Administrative Claim, a holder of an Allowed Administrative Claim will receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other treatment as Debtor (or Reorganized Debtor) and such holder shall have agreed upon in writing. However, Allowed Administrative Claims with respect to liabilities incurred by the Debtor during the ordinary course of business during the Chapter 11 Case will be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

*(ii) Priority Tax Claims*

Priority Tax Claims are those tax Claims entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code. The Plan provides that Priority Tax Claims, if any, are Unimpaired. With respect to each Allowed Priority Tax Claim in Debtor's Chapter 11 Case, at the sole option of Debtor (or Reorganized Debtor), the Allowed Priority Tax Claimholder shall be entitled to receive on account of such Priority Tax Claim, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Tax Claim, (a) equal Cash payments made on the last Business Day of every three-month period following the Effective Date, over a period not exceeding six years after the assessment of the tax on which such Claim is based, totaling the principal amount of such Claim plus simple interest on any outstanding balance from the Effective Date calculated at the interest rate available on ninety (90) day United States Treasuries on the Effective Date, (b) such other treatment agreed to by the Allowed Priority Tax

Claimholder and Debtor (or Reorganized Debtor), provided such treatment is on more favorable terms to Debtor (or Reorganized Debtor after the Effective Date) than the treatment set forth in clause (a) hereof, or (c) payment in full in Cash. Debtor believes that the aggregate amount of Priority Tax Claims will not exceed Reorganized Debtor's ability to pay such Claims when they are allowed.

Under the Plan, no holder of an Allowed Priority Tax Claim will be entitled to any payments on account of any pre-Effective Date interest accrued on, or penalty arising after the Petition Date with respect to or in connection with, an Allowed Priority Tax Claim. Any such Claim or demand for any such accrued post-petition interest or penalty will be discharged upon confirmation of the Plan in accordance with Section 1141 (d)(1) of the Bankruptcy Code, and the holder of a Priority Tax Claim will be precluded from assessing or attempting to collect such accrued interest or penalty from Reorganized Debtor or its property.

2. Unimpaired Classes of Claims

(a) *Class 1 - Other Priority Claims*

Class 1 Other Priority Claims consist of Claims other than Administrative Claims and Tax Priority Claims entitled to priority under Section 507(a) of the Bankruptcy Code. On the first Periodic Distribution Date occurring after the later of (i) the date an Other Priority Claim becomes an Allowed Other Priority Claim or (ii) the date an Other Priority Claim becomes payable pursuant to any agreement between a Debtor (or Reorganized Debtor) and the holder of such Priority Claim, an Allowed Class 1 Other Priority Claimholder shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 1 Other Priority Claim, (a) Cash equal to the amount of such Allowed Class 1 Other Priority Claim or (b) such other treatment as to which Debtor (or Reorganized Debtor) and such Claimholder shall have agreed in writing. Debtor believes that the aggregate amount of Other Priority Claims will not exceed Reorganized Debtor's ability to pay such Claims when they are allowed.

(a) *Class 2 - Secured Claim of Peoples Bank*

As used in this Plan, the term "Secured Claims of Peoples Bank" shall mean and include all pre-petition and post-petition claims of Peoples Bank against the Debtor (including, without limitation, all claims (including, without limitation, Claims), indebtedness, and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) And (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion). All documents and instruments evidencing and/or securing the Secured Claims of Peoples Bank are herein sometimes collectively referred to as the "Peoples Loan Documents."

The Secured Claims of Peoples Bank, as evidenced and secured by the Peoples Loan Documents, shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order. Without limiting the generality of the immediately preceding sentence, (i) The Peoples Bank shall retain its liens under the Peoples Loan Documents, and (ii) the

Secured Claims of Peoples Bank shall continue to be evidenced and secured by and payable as provided in the Loan Documents. On or before the Effective Date the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as The Peoples Bank may reasonably request that are not inconsistent with the terms and provisions of this Plan.

*(b) Class 3 - Secured Claim of 6801 West 107<sup>th</sup> LLC*

Class 3 consists of the Secured Claim of 6801 West 107<sup>th</sup> LLC. The Secured Claim of 6801 West 107<sup>th</sup> LLC may be approximately \$500,000. 6801 West 107<sup>th</sup> LLC shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and 6801 West 107<sup>th</sup> LLC, 6801 West 107<sup>th</sup> LLC shall retain its liens under the 6801 West 107<sup>th</sup> LLC Loan Documents, and (ii) the Secured Claims of 6801 West 107<sup>th</sup> LLC shall continue to be evidenced and secured by and payable as provided in the 6801 West 107<sup>th</sup> LLC Loan Documents. On or before the Effective Date, the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as 6801 West 107<sup>th</sup> LLC may reasonably request that are not inconsistent with the terms and provisions of this Plan. Except as otherwise set forth herein, the Secured Claims of 6801 as evidenced by the Loan Documents, and the liens granted thereunder, shall not be discharged, impaired, or affected in any way by the Plan or Confirmation Order. Debtor believes that the aggregate amount of the Secured Claim of 6801 West 107<sup>th</sup> LLC will not exceed Reorganized Debtor's ability to pay such Claim.

*(c) Class 4 – Secured Claim of Hawthorn Bank*

Class 3 consists of the Secured Claim of Hawthorn Bank. As of the Petition Date, the Secured Claim of Hawthorn Bank was approximately \$723,175.00. Hawthorn Bank shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and Hawthorn Bank as of the Petition Date, Hawthorn Bank shall retain its liens under the Hawthorn Loan Documents, and (ii) the Secured Claims of Hawthorn Bank shall continue to be evidenced and secured by and payable as provided in the Hawthorn Loan Documents. On or before the Effective Date, the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as Hawthorn Bank may reasonably request that are not inconsistent with the terms and provisions of this Plan. Except as otherwise set forth herein, the Secured Claims of Hawthorn Bank as evidenced by the Loan Documents, and the liens granted thereunder, shall not be discharged, impaired, or affected in any way by the Plan or Confirmation Order. Debtor believes that the aggregate amount of the Secured Claim of Hawthorn Bank will not exceed Reorganized Debtor's ability to pay such Claim.

*(d) Class 5 - Administrative Convenience Claims*

Class 5 Administrative Convenience Claims consist of all Claims against Debtor that otherwise would be included in the Class of the Plan containing General Unsecured Claims that is (a) for \$2,000 or less, or (b) for more than \$2,000 if the holder of such Claim has made the Convenience Class Election on the Ballot provided for voting on the Plan within the time fixed by the Bankruptcy Court for completing and returning such Ballot, to accept the lesser of the

allowed amount of such Claim or \$2,000 in Cash in full satisfaction, discharge and release of such Claim. Debtor estimates these claims will be approximately \$82,000.

On the Effective Date or the first Periodic Distribution Date occurring after the later of (i) the date an Administrative Convenience Claim becomes an Allowed Administrative Convenience Claim or (ii) the date an Administrative Convenience Claim becomes payable pursuant to any agreement between Debtor (or Reorganized Debtor) and the holder of such Administrative Convenience Claim, the holder of an Allowed Class 8 Administrative Convenience Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 4 Administrative Convenience Claim, Cash equal to (a) the amount of such Allowed Claim if such amount is less than or equal to \$2,000 or (b) \$2,000 if the amount of such Allowed Claim is greater than \$2,000. Debtor believes that the aggregate amount of Administrative Convenience Claims will not exceed Reorganized Debtor's ability to pay such Claims.

3. Impaired Classes of Claims and Interests

(a) Class 6 - General Unsecured Claims

Class 6 consists of General Unsecured Claims. As of the Petition Date, Debtor estimates the General Unsecured Claims are approximately \$1,870,000.00. The holders of General Unsecured Claims shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 6 Claim Cash, with interest equal to an annual percentage rate of four and one-half percent (4.5%), in equal payments commencing on the Distribution Date and continuing on the Periodic Distribution Dates until the fifth anniversary of the Confirmation Date. Debtor believes that the aggregate amount of the General Unsecured Claims will not exceed Reorganized Debtor's ability to pay such Claims.

C. **Means of Plan Implementation**

1. Continued Operations in the Ordinary Course of Business

In general, Debtor will continue to operate in the ordinary course of business. No material changes in officers, directors, employees or operations are planned at this time.

D. **Post-Consummation Operations of Debtor**

1. Reorganized Debtor

Debtor shall continue to exist as reorganized Debtor after the Effective Date as a separate corporate entity, with all the powers of a corporation under applicable law in the jurisdiction in which it is incorporated and pursuant to the certificate of incorporation and bylaws in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws are amended by this Plan.



2. Management and Directors of Reorganized Debtor

(a) Officers and Directors

Unless otherwise disclosed at or prior to the Confirmation Hearing, the existing directors and senior officers of Debtor will serve in their current capacities after the Effective Date.

(b) Employment, Retirement, Indemnification and Other Agreements and Incentive Compensation Programs

To the extent that Debtor has in place as of the Effective Date employment, retirement, indemnification, and other agreements with its respective active directors, officers, and employees who will continue in such capacities (or similar capacities) after the Effective Date, or retirement income plans, welfare benefit plans, and other plans for such Persons, such agreements, programs, and plans shall remain in place after the Effective Date, and Reorganized Debtor shall continue to honor such agreements, programs, and plans. However, as of the Effective Date, Reorganized Debtor shall have the authority to terminate, amend, or enter into employment, retirement, indemnification, and other agreements with their respective active directors, officers, and employees and to terminate, amend, or implement retirement income plans, welfare benefit plans, and other plans for active employees.

**E. Distributions**

1. Time of Distributions

Except as otherwise provided for herein or ordered by the Bankruptcy Court, distributions under the Plan shall be made on a Periodic Distribution Date.

2. No Interest on Claims or Interests

Unless otherwise specifically provided for in the Plan, Confirmation Order, or the DIP Credit Agreement, interest shall not accrue or be paid on Claims or Interests after the Petition Date. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim or Disputed Interest in respect of the period from the Effective Date to the date such Disputed Claim or Disputed Interest becomes an Allowed Claim or Allowed Interest.

3. Disbursing Agent

The Disbursing Agent shall make all distributions required under this Plan.

4. Delivery of Distributions

Distributions on Allowed Claims and Allowed Interests shall be made by the Disbursing Agent (a) at the addresses set forth on the proofs of claim or interest filed by such Claimholders or Interestholders (or at the last known addresses of such Claimholders or Interestholders if no proof of claim or interest is filed or if Debtor has been notified in writing of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related proof of claim or interest, or (c) at the addresses

reflected in the Schedules if no proof of claim or interest has been filed and the Disbursing Agent has not received a written notice of a change of address. If any Claimholder's or Interestholder's distribution is returned as undeliverable, no further distributions to such Claimholder shall be made unless and until the Disbursing Agent is notified of such Claimholder's or Interestholder's then current address, at which time all missed distributions shall be made to such Claimholder or Interestholder without interest. Amounts in respect of undeliverable distributions shall be returned to or held by Reorganized Debtor until such distributions are claimed. All claims for undelivered distributions must be made on or before the second anniversary of the Effective Date. After such date, all unclaimed property shall revert to Reorganized Debtor. Upon such reversion, the claim of any Claimholder or Interestholder, or their successors, with respect to such property shall be discharged and forever barred notwithstanding any federal or state escheat laws to the contrary.

5. *Procedures for Treating and Resolving Disputed and Contingent Claims or Interests*

(a) *No Distributions Pending Allowance*

No payments or distributions will be made with respect to all or any portion of a Disputed Claim or Disputed Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by a Final Order of the Bankruptcy Court, and the Disputed Claim or Disputed Interest has become an Allowed Claim or Allowed Interest. All objections to Claims or Interests must be filed on or before the Claims/Interests Objection Deadline.

(b) *Distribution Reserve*

The Disbursing Agent shall create a separate Distribution Reserve from the property to be distributed to the holders of General Unsecured Claims. The amount of Cash withheld as a part of the Distribution Reserve shall be equal to the amount Reorganized Debtor reasonably determines is necessary to satisfy the distributions required to be made, respectively, to the Claimholders when the allowance or disallowance of each Disputed Claim or Disputed Interest is ultimately determined. The Disbursing Agent may request estimation for any Disputed Claim or Disputed Interest that is contingent or unliquidated (but is not required to do so). If practicable, the Disbursing Agent will invest any Cash that is withheld as the Distribution Reserve in a manner that will yield a reasonable net return, taking into account the safety of the investment.

(c) *De Minimis Distributions*

The Distribution Agent shall not have any obligation to make a distribution on account of an Allowed Claim or Allowed Interest from any Distribution Reserve or otherwise if (a) the aggregate amount of all distributions authorized to be made from such Distribution Reserve or otherwise on the Periodic Distribution Date in question is or has a value less than \$100, or (b) if the amount to be distributed to the specific holder of the Allowed Claim or Allowed Interest on the particular Periodic Distribution Date does not constitute a final distribution to such holder and is or has a value less than \$50.00.



6. Fractional Distributions

Any other provision of this Plan notwithstanding, neither Debtor nor the Disbursing Agent shall be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

7. Allowance of Certain Claims

(a) *DIP Facility Claim*

The DIP Lender(s) shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, the DIP Facility Claim Cash in accordance with the DIP Facility.

(b) *Professional Claims*

All final requests for payment of Professional Claims must be filed no later than **thirty (30) days after the Effective Date**. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court. Upon the Effective Date, any requirement that professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate.

(c) *Other Administrative Fees*

All other requests for payment of an Administrative Claim (other than as set forth in Sections 10.2 and 10.3 of this Plan) must be filed with the Bankruptcy Court and received by counsel for Debtor no later than **thirty (30) days after the Effective Date**. Unless Reorganized Debtor objects to an Administrative Claim by the Claims/Interests Objection Deadline, such Administrative Claim shall be deemed allowed in the amount requested. In the event that Reorganized Debtor objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim which is paid or payable by either Debtor in the ordinary course of business.

**F. Preservation of Rights of Action**

In accordance with Section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, Reorganized Debtor shall retain and may (but is not required to) enforce all Retained Actions and all Avoidance Claims, a nonexclusive list of which is attached to the Plan as Exhibit B, and other similar claims arising under applicable state laws, including, without limitation, fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code. Reorganized Debtor, in its sole and absolute discretion, will determine whether to bring, settle, release, compromise, or enforce such rights (or decline to do any of the foregoing). Notwithstanding anything to the contrary in the Plan, entry of a Final Order confirming the Plan shall constitute the satisfaction, discharge and release

of any and all claims, if any, by Debtor or any bankruptcy estate representative or agent against Sellers under the Stock Purchase Agreement, except any claims arising under the Stock Purchase Agreement or any related agreements and documents.

Debtor has not undertaken a comprehensive review of all possible Retained Actions and all Avoidance Claims. In general, Debtor does not anticipate pursuing any "preferences" under Section 547 of the Bankruptcy Code against any trade vendors because (1) Debtor generally was "current" or only slightly behind with its trade vendors on the Petition Date, and (2) Debtor is proposing to pay unsecured creditors in full under the Plan. Debtor is not aware of any material causes of action that could or should be pursued at this time, other than claims that might constitute causes of action that arise in the ordinary course of business from disputes over contracts and other matters.

#### **G. Miscellaneous Matters**

##### **1. Revesting of Assets**

Except as otherwise explicitly provided in this Plan, on the Effective Date all property comprising the Estate (including Retained Actions and Avoidance Claims) shall revert in and Reorganized Debtor free and clear of all Claims, liens, charges, encumbrances, rights and Interests of creditors and equity security holders (other than as expressly provided herein). As of the Effective Date, Reorganized Debtor may operate its business and use, acquire, and dispose of property, and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly provided by the Plan and Confirmation Order.

##### **2. Treatment of Executory Contracts and Unexpired Leases; Bar Date for Rejection Damage Claims**

###### **(a) Assumed Contracts and Leases**

Each executory contract and unexpired lease to which Debtor is a party shall be deemed automatically assumed and Reinstated as of the Effective Date, unless such executory contract or unexpired lease (a) shall have been previously rejected by Debtor, (b) is the subject of a motion to reject filed, or a notice of rejection served pursuant to order of the Bankruptcy Court, on or before the Confirmation Date, or (c) is listed on the schedule of rejected contracts and leases annexed hereto as Exhibit A. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such assumptions, pursuant to Section 365(b)(1) of the Bankruptcy Code and, to the extent applicable, Section 365(b)(3) of the Bankruptcy Code, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, and any other interests in real estate or rights in

rem related to such premises, unless any of the foregoing agreements have been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of this Plan.

(b) *Payments Related to Assumption of Executory Contracts and Unexpired Leases*

The provisions (if any) of each executory contract and unexpired lease to be assumed and Reinstated under the Plan which are or may be in default shall be satisfied solely by Cure. In the event of a dispute regarding (a) the nature or the amount of any Cure, (b) the ability of Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of Section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur as soon as practicable following the entry of a Final Order resolving the dispute and approving the assumption and, as the case may be, assignment.

(c) *Rejected Contracts and Leases*

Except with respect to executory contracts and unexpired leases that have previously been rejected or are the subject of a filed motion to reject, or a notice of rejection served pursuant to order of the Bankruptcy Court, on or before the Confirmation Date, all executory contracts and unexpired leases set forth on Exhibit A to the Plan shall be deemed automatically rejected as of the Effective Date or such earlier date as Debtor may have unequivocally terminated their performance under such lease or contract; provided, however, that neither the inclusion by Debtor of a contract or lease on Exhibit A to the Plan nor anything contained in this Plan shall constitute an admission by Debtor that such lease or contract is an unexpired lease or executory contract or that either Debtor, or its respective Affiliates, has any liability thereunder. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to Section 365 of the Bankruptcy Code. Debtor reserves the right to file a motion on or before the Confirmation Date to reject any executory contract or unexpired lease.

3. Discharge

Pursuant to Section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, the distributions and rights that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Confirmation Date (but subject to the occurrence of the Effective Date), of Claims against, and Interests in, Debtor and Reorganized Debtor, and their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not (i) a proof of claim or interest based upon such Claim or Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) a Claim or Interest is allowed under Section 502 of the Bankruptcy Code, or (iii) the holder of such a Claim, or Interest accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in Debtor, subject to the Effective Date occurring.

4. Compromises and Settlements

Pursuant to relevant law, including but not limited to Bankruptcy Rule 9019(a), Debtor and Reorganized Debtor may compromise and settle any Claims (a) against them and (b) that they have against other Persons. Debtor and Reorganized Debtor expressly reserve the right (with Bankruptcy Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and Claims that they may have against other Persons up to and including the Effective Date. After the Effective Date, such right shall pass to Reorganized Debtor as contemplated in Section 11.1 of the Plan.

5. Release of Certain Parties

As of the Confirmation Date, but subject to the Effective Date, and except as otherwise expressly provided in the Plan, Debtor and Reorganized Debtor will be deemed to have released the Released Parties from any and all Claims, obligations, rights, Causes of Action, and liabilities which Debtor or Reorganized Debtor or the Estate is entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part upon any act or omission, transaction, or occurrence taking place after the Petition Date in any way relating to Debtor, this Chapter 11 Case, or the Plan.

6. Indemnification Obligations

Except as specifically provided in Section 7.4 of the Plan, in satisfaction and compromise of the Indemnitees' Indemnification Rights: (a) all Indemnification Rights, except (i) those based upon any act or omission arising out of or relating to any Indemnitee's service with, for, or on behalf of Debtor on or after the Petition Date and (ii) those held by Persons who served during the Chapter 11 Case as Debtor's officers, directors, officers, or employees and/or serve in such capacities (or similar capacities) after the Effective Date, shall be released and discharged on and as of the Effective Date, provided that the Indemnification Rights excepted in subparts (i) and (ii) shall remain in full force and effect on and after the Effective Date and shall not be modified, reduced, discharged, or otherwise affected in any way by the Chapter 11 Case; (b) Debtor or Reorganized Debtor, as the case may be, covenants to use commercially reasonable efforts to purchase and maintain D&O Insurance providing coverage for those Persons currently covered by such policies for a period of two years after the Effective Date insuring such parties in respect of any claims, demands, suits, Causes of Action, or proceedings against such Persons based upon any act or omission related to such Person's service with, for, or on behalf of Debtor in at least the scope and amount as currently maintained by Debtor (the "Insurance Coverage"); and (c) Debtor or Reorganized Debtor, as the case may be, hereby indemnifies such Persons referred to in subclause (b) above to the extent of, and agrees to pay for, any deductible or retention amount that may be payable in connection with any claim covered by either under the foregoing Insurance Coverage or by any prior similar policy. In this regard, Debtor notes that Article XI of its Bylaws adopted July 7, 1993 provides customary indemnity provisions for Debtor's directors, officers, employees and agents.



7. Injunction

The satisfaction, release, and discharge pursuant to this Article XI of this Plan shall also act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released, or discharged under this Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.

8. Exculpation and Limitation of Liability

Except as otherwise specifically provided in this Plan, Debtor, Reorganized Debtor, the Creditors' Committee, the members of the Creditors' Committee in their capacities as such, the DIP Lender(s), and the holders of Claims in Classes 2, 3, 4, 5, and 6, any of such parties' respective present or former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents, and any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action, or liability to one another or to any Claimholder or Interestholder, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of Debtor's Chapter 11 Case, negotiation and filing of the Plan, filing the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**VIII.**

**CERTAIN FACTORS TO BE CONSIDERED**

The holder of a Claim against Debtor or an Interest in Debtor should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan.

**A. General Considerations**

The formulation of a reorganization plan is the principal purpose of a chapter 11 case. The Plan sets forth the means for satisfying the holders of Claims against and Interests in the Debtors. Certain Claims may receive partial distributions pursuant to the Plan, and in some instances, no distributions at all. See "Classification and Treatment of Claims and Interests," above. The recapitalization of Debtor realizes the going concern value of Debtor for its Claimholders and Interestholders. Moreover, reorganization of the Debtor's business and operations under the proposed Plan also avoids the potentially adverse impact of a liquidation on the Debtor's employees, and many of its customers, trade vendors, suppliers of goods and services, and lessors.



## **B. Certain Bankruptcy Considerations**

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Case will continue rather than be converted to a liquidation, or that any alternative plan of reorganization would be on terms as favorable to the Claimholders and Interestholders as the terms of the Plan. If a liquidation or protracted reorganization were to occur, there is a risk that there would be little, if any, value available for distribution to the holders of Claims and Interests. See Appendix 2 attached to this Disclosure Statement for a liquidation analysis.

## **C. Inherent Uncertainty of Financial Projections**

The Projections attached as Appendix 4 to this Disclosure Statement cover the Debtor's operations through Fiscal Year 2012. These Projections are based on numerous assumptions including the timing, confirmation and consummation of the Plan in accordance with its terms, the anticipated future performance of Reorganized Debtor, industry performance, general business and economic conditions and other matters, many of which are beyond the control of Reorganized Debtor and some or all of which may not materialize. In addition, unanticipated events and circumstances occurring subsequent to the date that this Disclosure Statement was approved by the Bankruptcy Court may affect the actual financial results of Reorganized Debtor's operations. These variations may be material and may adversely affect the ability of Reorganized Debtor to make payments with respect to post-Effective Date indebtedness. Because the actual results achieved throughout the periods covered by the Projections may vary from the projected results, the Projections should not be relied upon as a guaranty, representation or other assurance of the actual results that will occur.

Except with respect to the Projections and except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. Neither the Debtor nor Reorganized Debtor intend to update the Projections; thus, the Projections will not reflect the impact of any subsequent events not already accounted for in the assumptions underlying the Projections.

## **D. Dividends**

Reorganized Debtor does not anticipate that dividends will be paid with respect to the Interests in the near term.

## **E. Access to Financing**

Debtor's operations are dependent on the availability and cost of working capital financing and may be adversely affected by any shortage or increased cost of such financing. Debtor's post-petition operations are financed from operating cash flow and borrowings pursuant to the DIP Facility. Debtor believes that substantially all of its needs for funds necessary to consummate the Plan and for post-Effective Date working capital financing will be met by projected operating cash flow. However, if Reorganized Debtor requires working capital greater than that provided by operating cash flow, it may be required either to (a) seek to increase the availability under the DIP Facility, (b) obtain other sources of financing, or (c) curtail its operations. Debtor believes that the recapitalization to be accomplished through the Plan will

facilitate the ability to obtain additional or replacement working capital financing. No assurance can be given, however, that any additional replacement financing will be available on terms that are favorable or acceptable to Reorganized Debtor.

#### **F. Competition**

The theatre industry is highly competitive. Generally, Debtor competes with other theatre circuits, including AMC, Cinemark, Regal and other regional operators. Debtor also competes with other forms of entertainment, including cable television and video rental chains. Certain competitors are better capitalized than Debtor, provide a wider variety of services, have greater experience, and have longer-established relationships with vendors, customers and other parties than does Debtor.

#### **G. Claims Estimations**

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual allowed amounts of Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual allowed amounts of Claims may vary from those estimated herein.

#### **H. Regulatory Issues**

Reorganized Debtor will continue to do business in a number of states after the Effective Date and will be subject to the jurisdiction of numerous state and local statutes which regulate various aspects of the food service and theatre industry. Debtor does not anticipate that Reorganized Debtor will have difficulty complying with existing applicable law.

### **IX.**

#### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following is a general summary of certain material federal income tax consequences that implementation of the Plan may have on Debtor, Claimholders and Interestholders. This summary does not discuss all aspects of federal income taxation that may be relevant to Debtor, to a particular Claimholder or Interestholder in light of its individual investment circumstances, or to certain Claimholders or Interestholders subject to special treatment under the federal income tax laws (for example, tax-exempt organizations, foreign corporations or individuals who are not citizens or residents of the United States). This summary also does not discuss any aspects of state, local or foreign taxation.

This summary is based upon the Internal Revenue Code of 1986, as amended (the "IRC"), the Treasury regulations (including temporary regulations) promulgated thereunder, judicial authorities and current administrative rulings, all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Debtor has not requested a ruling from the Internal Revenue Service (the "IRS") with respect to these matters, and no opinion of counsel has

been sought or obtained by Debtor with respect thereto. FOR THE FOREGOING REASONS, CLAIMHOLDERS AND INTERESTHOLDERS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES (FOREIGN, FEDERAL, STATE AND LOCAL) TO THEM OF THE PLAN. DEBTOR IS NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CLAIMHOLDER OR INTERESTHOLDER, NOR IS DEBTOR RENDERING ANY FORM OF LEGAL OPINION AS TO SUCH TAX CONSEQUENCES.

**A. Federal Income Tax Consequences to Debtor**

**1. Cancellation of Indebtedness**

Under general tax principles, Debtor would realize cancellation of debt ("COD") income to the extent that Debtor pays a creditor pursuant to the Plan an amount of consideration in respect of a Claim against Debtor that is worth less than the amount of such Claim. For this purpose, the amount of consideration paid to a creditor generally would equal the amount of cash or the fair market value on the Effective Date of any other property paid to such creditor. Because Debtor will be in a bankruptcy case at the time the COD income is realized, Debtor will not be required to include COD income in gross income, but rather will be required to reduce certain of its tax attributes by the amount of COD income so excluded. Under the general rules of IRC Section 108, the required attribute reduction would be applied first to reduce ENBC's net operating loss carry-forwards ("NOLs") to the extent of such NOLs, with any excess excluded COD income applied to reduce certain other tax attributes.

IRC Section 108(b)(5) provides an election pursuant to which Debtor can elect to apply the required attribute reduction to first reduce the basis of its depreciable property to the extent of such basis, with any excess applied next to reduce its NOLs and then certain other tax attributes. ENBC has not yet determined whether it will make the election under IRC Section 108(b)(5).

**2. Limitation on Net Operating Losses**

Debtor will experience an "ownership change" (within the meaning of IRC Section 382) upon closing of the Stock Purchase Agreement as a result of the transfer of the Interests to the Buyers. As a result, Debtor's ability to use any pre-Effective Date NOLs and capital loss carryovers to offset its income in any post-Effective Date taxable year (and in the portion of the taxable year of the ownership change following the Effective Date) to which such a carryover is made generally (subject to various exceptions and adjustments, some of which are described below) will be limited to the sum of (a) a regular annual limitation (prorated for the portion of the taxable year of the ownership change following the Effective Date), (b) the amount of the "recognized built-in gain" for the year which does not exceed the excess of its "net unrealized built-in gain" over previously recognized built-in gains (as the quoted terms are defined in IRC Section 382(h)), and (c) any carry forward of unused amounts described in (a) and (b) from prior years. IRC Section 382 may also limit Debtor's ability to use "net unrealized built-in losses," if any, to offset future taxable income. The regular annual limitation will generally be equal to the product of (x) the lesser of the value of the stock of Debtor immediately after the ownership change or the gross value of Debtor's assets immediately before the ownership change (with

certain adjustments) and (y) the "long-term tax-exempt rate" (as defined in IRC Section 382(f)). The loss carryovers will be subject to further limitations if Debtor experiences additional future ownership changes or if it does not continue its business enterprise for at least two years following the Effective Date.

The operation and effect of IRC Section 382 will be materially different from that just described if Debtor is subject to the special rules for corporations in bankruptcy provided in IRC Section 382(l)(5). In that case, Debtor's ability to utilize its pre-Effective Date NOLs would not be limited as described in the preceding paragraph. However, several other limitations would apply to Debtor under IRC Section 382(l)(5), and if Debtor undergoes another ownership change within two years after the Effective Date, Debtor's IRC Section 382 limitation with respect to that ownership change will be zero.

## **B. Federal Income Tax Consequences to Interestholders and Claimholders**

The federal income tax consequences arising from implementation of the Plan to a creditor of Debtor will depend upon a number of factors, including whether the creditor is deemed to have participated in an exchange for federal income tax purposes, and, if so, whether such exchange transaction constitutes a tax-free recapitalization or a taxable transaction; whether the creditor's present debt Claim constitutes a "security" for federal income tax purposes; the type of consideration received by the creditor in exchange for its Allowed Claim; and whether the creditor reports income on the accrual basis.

### **1. Holders of Other Priority Claims, and Certain General Unsecured Claims**

A holder whose Claim is paid in full or otherwise discharged on the Effective Date will recognize gain or loss for federal income tax purposes in an amount equal to the difference between (i) the fair market value on the Effective Date of any property received by such holder in respect of its Claim (excluding any property received in respect of a Claim for accrued interest that had not been included in income) and (ii) the holder's adjusted tax basis in the Claim (other than any Claim for such accrued interest). A holder's adjusted tax basis in property received in exchange for its Claim will generally be equal to the fair market value of such property on the Effective Date. The holding period for any such property will begin on the day after the Effective Date.

Under the Plan, some property may be distributed or deemed distributed to certain Claimholders with respect to their Claims for accrued interest. Holders of Claims for accrued interest which previously have not included such accrued interest in taxable income will be required to recognize ordinary income equal to the fair market value of the property received with respect to such Claims for accrued interest. Holders of Claims for accrued interest which have included such accrued interest in taxable income generally may take an ordinary deduction to the extent that such Claim is not fully satisfied under the Plan (after allocating the distribution between principal and accrued interest), even if the underlying Claim is held as a capital asset. The adjusted tax basis of the property received in exchange for Claims for accrued interest will equal the fair market value of such property on the Effective Date, and the holding period for the property received in exchange for such Claims will begin on the day after the Effective Date. The extent to which consideration distributable under the Plan is allocable to interest is not clear.



Claimholders are advised to consult their own tax advisors to determine the amount, if any, of consideration received under the Plan that is allocable to interest.

The market discount provisions of the IRC may apply to holders of certain Claims. In general, a debt obligation other than a debt obligation with a fixed maturity of one year or less that is acquired by a holder in the secondary market (or, in certain circumstances, upon original issuance) is a "market discount bond" as to that holder if its stated redemption price at maturity (or, in the case of a debt obligation having original issue discount, the revised issue price) exceeds the adjusted tax basis of the bond in the holder's hands immediately after its acquisition. However, a debt obligation will not be a "market discount bond" if such excess is less than a statutory de minimis amount. Gain recognized by a creditor with respect to a "market discount bond" will generally be treated as ordinary interest income to the extent of the market discount accrued on such bond during the creditor's period of ownership, unless the creditor elected to include accrued market discount in taxable income currently. A holder of a market discount bond that is required under the market discount rules of the IRC to defer deduction of all or a portion of the interest on indebtedness incurred or maintained to acquire or carry the bond may be allowed to deduct such interest, in whole or in part, on disposition of such bond.

## 2. Holders of Miscellaneous Secured Claims

A holder whose Claim is Reinstated will not realize gain or loss as a result of the Plan unless either (i) such holder is treated as having received interest, damages or other income in connection with the Reinstatement or (ii) such Reinstatement is considered a "significant modification" of the Claim.

**THE APPLICATION OF THE RULES DESCRIBED ABOVE TO THE SITUATION OF ANY PARTICULAR CLAIMHOLDER OR INTERESTHOLDER IS COMPLEX. HOLDERS OF ALL CLAIMS AND INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE TAX CONSEQUENCES TO THEM.**

## **X. FEASIBILITY OF THE PLAN AND THE BEST INTERESTS TEST**

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

To confirm the Plan, the Court must find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of Debtor. This requirement is imposed by Section 1129(a)(11) of the Bankruptcy Code and is referred to as the "feasibility" requirement. Debtor believes that it will be able to timely perform all obligations described in the Plan, and, therefore, that the Plan is feasible.

To demonstrate the feasibility of the Plan, Debtor has prepared financial Projections for Fiscal Years 2013 through 2017, as set forth in Appendix 4 attached to this Disclosure Statement. For comparison purposes, Debtor has attached its audited financial statements through May 31, 2012 as Appendix 3. The Projections indicate that Reorganized Debtor should have sufficient cash flow to pay and service its debt obligations, and to fund its operations. Accordingly, Debtor believes that the Plan satisfies the feasibility requirement of



Section 1129(a)(11) of the Bankruptcy Code. As noted in the Projections, however, Debtor cautions that no representations can be made as to the accuracy of the Projections or as to Reorganized Debtor's ability to achieve the projected results. Many of the assumptions upon which the Projections are based are subject to uncertainties outside the control of Debtor. Some assumptions inevitably will not materialize, and events and circumstances occurring after the date on which the Projections were prepared may be different from those assumed or may be unanticipated, and may adversely affect the Debtor's financial results. Therefore, the actual results may vary from the projected results and the variations may be material and adverse. See "Certain Factors to Be Considered" for a discussion of certain risk factors that may affect financial feasibility of the Plan.

THE PROJECTIONS WERE NOT PREPARED WITH A VIEW TOWARD COMPLIANCE WITH THE GUIDELINES ESTABLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OR THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION REGARDING PROJECTIONS. FURTHERMORE, THE PROJECTIONS HAVE NOT BEEN AUDITED BY DEBTOR'S INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS. ALTHOUGH PRESENTED WITH NUMERICAL SPECIFICITY, THE PROJECTIONS ARE BASED UPON A VARIETY OF ASSUMPTIONS, SOME OF WHICH IN THE PAST HAVE NOT BEEN ACHIEVED AND WHICH MAY NOT BE REALIZED IN THE FUTURE, AND ARE SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE CONTROL OF DEBTOR. CONSEQUENTLY, THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION OR WARRANTY BY DEBTOR, OR ANY OTHER PERSON, THAT THE PROJECTIONS WILL BE REALIZED. ACTUAL RESULTS MAY VARY MATERIALLY FROM THOSE PRESENTED IN THE PROJECTIONS.

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

As a condition to confirmation, the Bankruptcy Code requires that each Class of Impaired Claims and Interests vote to accept the Plan, except under certain circumstances.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired Claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of Claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, a Class of Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor of acceptance. Under Section 1126(d) of the Bankruptcy Code, a Class of Interests has accepted the Plan if holders of such Interests holding at least two-thirds in amount actually voting have voted to accept the Plan. Holders of Claims or Interests who fail to vote are not counted as either accepting or rejecting a plan.

#### **C. Best Interests Test**

Even if a plan is accepted by each class of holders of Claims and Interests, the Bankruptcy Code requires a bankruptcy court to determine that the plan is in the "best interests" of all holders of Claims and Interests that are impaired by the plan and that have not accepted the

plan. The "best interests" test, as set forth in Section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that (i) all members of an impaired class of Claims or Interests have accepted the plan or (ii) the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

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

The amount of liquidation value available to unsecured creditors would be reduced by, first, the Claims of secured creditors to the extent of the value of their collateral, and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 case and the Chapter 11 Case. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Debtor in its bankruptcy case (such as compensation of attorneys, financial advisors, and restructuring consultants) that are allowed in the chapter 7 case, litigation costs, and Claims arising from the operations of the Debtor during the pendency of the bankruptcy case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority Claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured Claims or to make any distribution in respect of equity interests. The liquidation also would prompt the rejection of a large number of executory contracts and unexpired leases and thereby create a significantly higher number of unsecured Claims.

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

#### **D. Application of the Best Interests Test to the Liquidation Analysis**

A liquidation analysis prepared with respect to Debtor is attached as Appendix 2 to this Disclosure Statement. Debtor believes that any liquidation analysis is speculative. For example, the liquidation analysis necessarily contains an estimate of the amount of Claims which will ultimately become Allowed Claims. This estimate is based solely upon the Debtor's incomplete review of Claims filed and Debtor's books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the liquidation analysis. The estimate of the amount of Allowed Claims set forth in the liquidation analysis should not be relied on for any other

purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims and Interests under the Plan.

Notwithstanding the difficulties in quantifying recoveries to creditors with precision, Debtor believes that, taking into account the liquidation analysis, the Plan meets the "best interests" test of Section 1129(a)(7) of the Bankruptcy Code. Debtor believes that the members of each impaired class will receive at least as much under the Plan than they would in a liquidation in a hypothetical chapter 7 case. Creditors and Interestholders of Debtor will receive a better recovery through the distributions contemplated by the Plan because the continued operation of Debtor as going concern rather than a forced liquidation will allow the realization of more value for Debtor's assets. Moreover, as a result of the reorganization of Debtor, creditors such as the Debtor's employees (close to 686) would retain their jobs and most likely make few if any other Claims against the estate. Lastly, in the event of liquidation, the aggregate amount of unsecured Claims will no doubt increase significantly, and such Claims will be subordinated to priority Claims that will be created. For example, employees will file Claims for wages, pensions and other benefits, some of which will be entitled to priority. Landlords will no doubt file large Claims for both unsecured and priority amounts. The resulting increase in both general unsecured and priority Claims will no doubt decrease percentage recoveries to unsecured creditors of Debtor. All of these factors lead to the conclusion that recoveries under the Plan would be at least as much, and in many cases significantly greater, than the recoveries available in a chapter 7 liquidation.

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

Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if it has not been accepted by all impaired classes, as long as at least one impaired class of Claims has accepted it. The Court may confirm the Plan at the request of Debtor notwithstanding the Plan's rejection (or deemed rejection) by impaired Classes as long as the Plan "does not discriminate unfairly" and is "fair and equitable" as to each impaired Class that has not accepted it. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank.

A plan is fair and equitable as to a class of secured Claims that rejects such plan if the plan provides (1)(a) that the holders of Claims included in the rejecting class retain the liens securing those Claims whether the property subject to those liens is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such Claims, and (b) that each holder of a Claim of such class receives on account of that Claim deferred cash payments totaling at least the allowed amount of that Claim, of a value, as of the effective date of the plan, of at least the value of the holder's interest in the estate's interest in such property; (2) for the sale, subject to Section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the Claims included in the rejecting class, free and clear of the liens, with the liens to attach to the proceeds of the sale, and the treatment of the liens on proceeds under clause (1) or (2) of this subparagraph; or (3) for the realization by such holders of the indubitable equivalent of such Claims.

A plan is fair and equitable as to a class of unsecured Claims which rejects a plan if the plan provides (1) for each holder of a Claim included in the rejecting class to receive or retain on account of that Claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such Claim; or (2) that the holder of any Claim or Interest that is junior to the Claims of such rejecting class will not receive or retain on account of such junior Claim or Interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (1) that each holder of an Interest included in the rejecting class receive or retain on account of that Interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such Interest; or (2) that the holder of any Interest that is junior to the Interest of such rejecting class will not receive or retain under the plan on account of such junior Interest any property at all. Debtor is seeking confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code with respect to any Classes which vote to reject the Plan.

**F. Conditions to Confirmation and/or Consummation of the Plan**

*1. Conditions to Confirmation*

The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Section 12.3 of the Plan:

The Bankruptcy Court shall have approved a disclosure statement with respect to the Plan in form and substance acceptable to Debtor in its sole discretion.

The Confirmation Order shall be in form and substance acceptable to Debtor in its sole discretion.

*2. Conditions to Consummation*

The Effective Date shall occur on or prior to \_\_\_\_\_, unless such date is extended by Debtor. The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Section 12.3 of the Plan:

- (a) The Bankruptcy Court shall have entered one or more orders (which may include the Confirmation Order) authorizing the assumption of unexpired leases and executory contracts by Debtor as contemplated by Section 8.1 hereof.*
- (b) Debtor shall not be in default under the DIP Facility.*
- (c) The Confirmation Order shall have been entered by the Bankruptcy Court.*



#### **G. Waiver of Conditions to Confirmation and/or Consummation**

The conditions set forth in Sections 12.1 and 12.2 of the Plan may be waived by Debtor and Reorganized Debtor in their sole discretion without any notice to parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by Debtor or Reorganized Debtor in their sole discretion regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by Debtor or Reorganized Debtor in its sole discretion). The failure of Debtor or Reorganized Debtor in their sole discretion to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

#### **H. Retention of Jurisdiction**

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and as more particularly described in Article XIII of the Plan, the Court will have jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including, among other things: (1) the assumption or rejection of executory contracts or unexpired leases and the amount of any damages or Cure payments with respect thereto; (2) to determine any and all pending adversary proceedings, applications, and contested matters; (3) to adjudicate any and all disputes arising from the distribution of Cash, and all controversies and issues arising from or relating to any of the foregoing; (4) to ensure that distributions to holders of Allowed Claims and Interests are accomplished as provided in the Plan; (5) to hear and determine any and all objections to the allowance of Claims and Interests and the estimation of Claims; (6) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, or vacated; (7) to hear and determine disputes arising under, and issue orders in aid of, execution, implementation, or consummation of the Plan; (8) to consider any modifications of the Plan; (9) to hear and determine all applications for compensation and reimbursement of Professional Claims; (10) to hear and determine disputes arising from Claims entitled to priority treatment under Section 507(a)(1) of the Bankruptcy Code; (11) to hear and determine matters concerning state, local, and federal taxes; (12) to hear and determine all disputes involving the existence, nature, or scope of Debtor's discharge; (13) to hear and determine any and all matters relating to the Retained Actions; and (14) to enter a final decree closing the Bankruptcy Case.

### **XI.**

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

Debtor believes that the Plan affords holders of Claims and Interests the potential for the greatest realization on Debtor's assets and, therefore, is in the best interests of such holders.

If the Plan is not confirmed, however, the theoretical alternatives include: (a) continuation of the pending Chapter 11 Cases; (b) an alternative plan or plans of reorganization; or (c) liquidation of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code.



#### **A. Continuation of the Bankruptcy Case**

If it remains in chapter 11, Debtor could continue to operate its business and manage its properties as a Debtor in possession, but it would remain subject to the restrictions imposed by the Bankruptcy Code. It is not clear whether Debtor could survive as a going concern in a protracted Chapter 11 Case. Debtor could have difficulty sustaining the high costs and the erosion of market confidence which may be caused if Debtor remains a chapter 11 debtor in possession.

#### **B. Alternative Plans of Reorganization**

If the Plan is not confirmed, Debtor or, after the expiration of Debtor's exclusive period in which to propose and solicit a reorganization plan, any other party in interest in the Chapter 11 Case, could propose a different plan or plans. Such plans might involve either a reorganization and continuation of Debtor's business, or an orderly liquidation of its assets, or a combination of both.

#### **C. Liquidation Under Chapter 7 or Chapter 11**

If no plan is confirmed, Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a trustee or trustees would be appointed to liquidate the assets of Debtor. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Interests in Debtor.

However, Debtor believes that creditors would lose the substantially higher going concern value if Debtor were forced to liquidate. In addition, Debtor believes that in liquidation under chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a trustee and attorneys, accountants and other professionals to assist such trustee would cause a substantial diminution in the value of the Estate. The assets available for distribution to creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of Debtor's assets.

Debtor may also be liquidated pursuant to a Chapter 11 plan. In a liquidation under chapter 11, Debtor's assets could be sold in an orderly fashion over a more extended period of time than in a liquidation under chapter 7. Thus, a chapter 11 liquidation might result in larger recoveries than a chapter 7 liquidation, but the delay in distributions could result in lower present values received and higher administrative costs. Because a trustee is not required in a chapter 11 case, expenses for professional fees could be lower than in a chapter 7 case in which a trustee must be appointed. Any distribution to the Claimholders and Interestholders under a chapter 11 liquidation plan probably would be delayed substantially.

Debtor's liquidation analysis is premised upon a hypothetical liquidation in a chapter 7 case and is attached as Appendix 2 to this Disclosure Statement. In the analysis, Debtor has

taken into account the nature, status, and underlying value of its assets, the ultimate realizable value of its assets, and the extent to which such assets are subject to liens and security interests.

The likely form of any liquidation would be the sale of individual assets. Based on this analysis, it is likely that a liquidation of Debtor's assets would produce less value for distribution to creditors than that recoverable in each instance under the Plan. In the opinion of Debtor, the recoveries projected to be available in liquidation are not likely to afford holders of Claims and holders of Interests as great a realization potential as does the Plan.

## **XII. VOTING REQUIREMENTS**

The Bankruptcy Court has entered an order (the "Solicitation Procedures Order"), among other things, approving this Disclosure Statement, setting voting procedures and scheduling the hearing on confirmation of the Plan. A copy of the Confirmation Hearing Notice is enclosed with this Disclosure Statement. The Confirmation Hearing Notice sets forth in detail, among other things, the voting deadlines and objection deadlines with respect to the Plan. The Confirmation Hearing Notice and the instructions attached to the Ballot should be read in connection with this section of this Disclosure Statement.

If you have any questions about (i) the procedure for voting your Claim or Interest or with respect to the packet of materials that you have received, (ii) the amount of your Claim or your Interest holdings, or (iii) if you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact:

Mary Lou Azeltine, Paralegal  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-2308  
Fax: (816) 421-1010

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the requirements of chapter 11 of the Bankruptcy Code and that the disclosures by Debtor concerning the Plan have been adequate. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law, and under Bankruptcy Rule 3020(b)(2), it may do so without receiving evidence if no objection is timely filed.

In particular, the Bankruptcy Code requires the Bankruptcy Court to find, among other things, that (a) the Plan has been accepted by the requisite votes of all Classes of impaired Claims and Interests unless approval will be sought under Section 1129(b) of the Bankruptcy Code in spite of the non-acceptance by one or more such Classes, (b) the Plan is "feasible," which means that there is a reasonable probability that Debtor will be able to perform its obligations under the Plan and continue to operate its business without further financial reorganization or liquidation, and (c) the Plan is in the "best interests" of all Claimholders and

Interestholders, which means that such holders will receive at least as much under the Plan as they would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Bankruptcy Court must find that all conditions mentioned above are met before it can confirm the Plan. Thus, even if all the Classes of impaired Claims and Interests against Debtor accept the Plan by the requisite votes, the Bankruptcy Court must still make an independent finding that the Plan satisfies these requirements of the Bankruptcy Code, that the Plan is feasible, and that the Plan is in the best interests of the holders of Claims and Interests against and in Debtor.

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

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

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 "allowed," 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 the holder of an impaired Claim or impaired Interest will not receive any distribution under the plan in respect of such Claim or Interest, the Bankruptcy Code deems such holder to have rejected the plan. If the Claim or Interest is not impaired, the Bankruptcy Code deems that the holder of such Claim or Interest has accepted the plan and the plan proponent need not solicit such holder's vote.

The holder of a Claim or Interest that is "impaired" under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides a distribution in respect of such Claim or Interest and (2) (a) the Claim or Interest has been scheduled by the respective Debtor (and such Claim or Interest is not scheduled as disputed, contingent, or unliquidated), (b) such Claimholder or Interestholder has timely filed a Proof of Claim or Proof of Interest as to which no objection has been filed, or (c) such Claimholder or Interestholder has timely filed a motion pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure, along with a completed Proof of Claim or Interest, seeking temporary allowance of such Claim or Interest for voting purposes only and Debtor has not opposed the Motion, or objected to the Claim or Interest, in which case the holder's vote shall be counted only upon order of the Court.

A vote may be disregarded if the Court determines, pursuant to Section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Solicitation Procedures Order also sets forth assumptions and procedures for tabulating Ballots, including Ballots that are not completed fully or correctly.

#### **B. Classes Impaired Under the Plan**

The following Classes are impaired under, and entitled to vote to accept or reject, the Plan:

Class 6 (General Unsecured Claims)

All other Classes are either Unimpaired or deemed Unimpaired, are presumed to have accepted the Plan, and are not entitled to vote on the Plan.

### **XIII. CONCLUSION**

#### **A. Hearing on and Objections to Confirmation**

##### ***1. Confirmation Hearing***

The hearing on confirmation of the Plan has been scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_ a.m. (prevailing Central Time). Such hearing may be adjourned from time to time by announcing such adjournment in open court, all without further notice to parties in interest, and the Plan may be modified by Debtor pursuant to Section 1127 of the Bankruptcy Code prior to, during, or as a result of that hearing, without further notice to parties in interest.

##### ***2. Date Set for Filing Objections to Confirmation of the Plan***

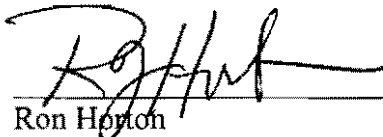
The time by which all objections to confirmation of the Plan must be filed with the Court and received by the parties listed in the Confirmation Hearing Notice has been set for \_\_\_\_\_, 2012, at 4:00 p.m. (prevailing Central Time). A copy of the Confirmation Hearing Notice is enclosed with this Disclosure Statement.

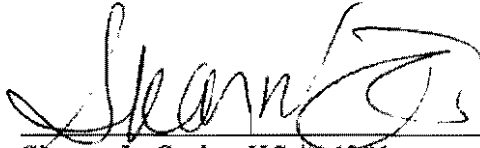
#### **B. Recommendation**

The Plan provides for an equitable and early distribution to creditors of Debtor, preserves the value of the Business as a going concern, and preserves the jobs of employees. Debtor believes that any alternative to confirmation of the Plan, such as liquidation or attempts by another party in interest to file a plan, could result in significant delays, litigation, and costs, as well as the loss of jobs by the employees. FOR THESE REASONS, DEBTOR URGES YOU TO RETURN YOUR BALLOT ACCEPTING THE PLAN.

Dated: September 21, 2012

Dickinson Theatres, Inc.,  
Debtor and Debtor-in-Possession

By:   
Ron Horton  
Its: President

  
Sharon L. Stolte, KS #14301  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-2456  
Fax: (816) 412-9325  
sstolte@stinson.com

Paul M. Hoffmann, KS Fed. Bar No. 70170  
Stinson Morrison Hecker LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-2746  
Fax: (816) 412-1192  
phoffmann@stinson.com

Timothy M. Swanson, KS #24516  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Tel: (816) 691-3122  
Fax: (816) 412-9327  
tswanson@stinson.com

*ATTORNEYS FOR DICKINSON THEATRES, INC.*