UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY

In re:	)	
	)	
JOHN Q. HAMMONS FALL 2006, LLC, *et al.*,	)	**Case No. 16-21142**
	)	
Debtors.	)	
	)	

SFI BELMONT LLC'S OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT

SFI Belmont, LLC ("SFI Belmont"), as party in interest and secured creditor of certain of the above-captioned debtors and debtors-in-possession, respectfully submits this objection (the "Objection") to Debtor's Disclosure Statement with Respect to Debtors' Joint Unimpairment Plan of Reorganization under Chapter 11 of the Bankruptcy Code dated as of December 20, 2017 [Doc. No. 1583] (the "Disclosure Statement"). In further support of the Objection, SFI Belmont states as follows:

I. PRELIMINARY STATEMENT

1. Debtors admit that they cannot currently effect a reorganization that will allow them to retain control of their assets and businesses, and the statutory exclusivity periods are set to expire and do not afford Debtors an extension. Rather than allow other creditors the opportunity to propose their own plans so that this case can progress, Debtors have submitted a plan that is a thinly veiled and impermissible attempt to extend Debtors' exclusivity for another five years.

2. The Disclosure Statement and plan are premised on allowing for an up-to-five-year delay between the confirmation date and effective date. Debtors admit that such a delay is needed because they cannot presently effectuate the necessary sales and/or refinancings to pay all creditors in full. Indeed, Debtors concede that they do not have any binding commitments for any sale or any refinancing, and, worse, they cannot even obtain any - let alone close on them -

until at least 270 days after Debtors successfully litigate all of the pending appeals, which Debtors believe will take at least two years. Even then, the Disclosure Statement cautions that these sales and/or refinancings may be insufficient unless Debtors are also victorious in their bankruptcy court litigation regarding JDH's claim and other disputed claims. And even then, Debtors caution that these sales and/or refinancings may be insufficient because Debtors cannot guaranty the accuracy of their five-year projections and valuations. It is clear that in the face of all of these contingencies, Debtors are asking this Court to confirm a plan that may never become effective solely for the purpose of maintaining exclusivity.

3. Worse, Debtors are trying to pass off this inherently risky, contingency-laden plan as an "unimpairment plan". The Disclosure Statement declares that all creditors are unimpaired and the plan disenfranchises them all, while at the same time refusing to provide any appraisals or any documents to substantiate their claims regarding the sale of Debtors' assets or ability to refinance Debtors' debts.

4. This Court should not approve the Disclosure Statement. The Disclosure Statement fails to provide (and the Debtors have refused to provide) the required adequate information to substantiate Debtors' empty promise to pay all allowed claims in full. In addition to the lack of disclosure regarding the proposed sales and/or refinancings, the Disclosure Statement also fails to provide adequate information regarding the (i) amount of all claims that must be paid, (ii) specific treatment of the claims, including SFI Belmont's claim, (iii) compensation to insiders and related parties and (iv) risks involving the JDH appeals and claims litigation. That missing information is particularly vital here given the plan's proposed disenfranchisement.

5. Debtors' plan fares no better. Indeed, it is fatally flawed and patently unconfirmable because the Plan impairs SFI Belmont but impermissibly deprives it a vote in violation of Section 1129(a)(8), because the plan (i) alters SFI Belmont's contractual rights by refusing to pay off its claim by the underlying loan's maturity date, refusing to pay SFI Belmont's post-petition principal and interest arrearage and refusing to pay post-petition interest at the contract rate, (ii) fails to cure SFI Belmont's claim pursuant to Section 1124(2) and (iii) proposes a five-year window between the confirmation order and effective date that shifts the risk of the Plan's failure onto its creditors while Debtors make tens of millions of dollars in payments to insiders and "equity". The Plan also is not feasible in violation of Section 1129(a)(11) because the plan (A) does not provide concrete proof of any sales or refinancings sufficient to pay off all claims in full and (B) includes a five-year window between the confirmation order and effective date with numerous contingencies. In other words, the Plan is speculative and may never become effective.

6. The burden is on Debtors to provide adequate information and propose a plan that is not fatally flawed in order to move forward in the confirmation process. They have failed to meet this burden given the plan's numerous defects and Debtors' failure to disclose basic financial information. Because the plan is patently nonconfirmable, this Court and the creditors should not have to endure the time and expense of a futile, but very expensive, confirmation process. The Disclosure Statement should not be approved.

II. BACKGROUND

7. On June 26, 2016 (the "Petition Date"), Debtors filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Kansas (these "Chapter 11 Cases"). Debtors have retained possession of

their property and continue to operate and manage their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. Prior to the Petition Date, SFI's predecessor-in-interest iStar, made certain loans and other financial accommodations available to Atrium Lendco, LLC ("Atrium Lendco"), which, in turn, made loans and other financial accommodations to debtor John Q. Hammons Hotels Development, LLC ("Borrower") to enable Borrower to fund the construction of new hotels.

9. Borrower collateralized its loan from Atrium Lendco (the "Atrium Loan") with pledges of its membership interests in, and all cash and other distributions from, the following single-purpose limited liability companies, all of which are Debtors: JQH-East Peoria Development, LLC, JQH-Glendale, AZ Development, LLC, JQH-Concord Development, LLC, JQH-Rogers Convention Center Development, LLC, Hammons of Huntsville, LLC, and JQH - Murfreesboro Development, LLC (together, the "Pledged Entities"). Each of the Pledged Entities owns a hotel developed with proceeds drawn under the Atrium Loan. UCC-1s have been filed in favor of Atrium Lendco – and then amended to be in favor of SFI, as described below – against the equity of the Pledged Entities, as well as all of Borrower's right, title, and interest as a shareholder to distributions at any time of cash and other property from the Pledged Entities.

10. In addition, The Revocable Trust of John Q. Hammons dated December 28, 1989, as amended and restated, together with its wholly-owned subsidiary Hammons, Inc. (together, "Guarantors"), both of which are also Debtors, guarantied the Atrium Loan, and pledged as security for that guaranty their respective interests in and to certain preferred equity interests ("PEI") in Atrium Hotels, L.P. Guarantors received that PEI in the "2005 Transaction," referred to in both paragraphs 18-21 of the Declaration In Support of First Day Motions [Doc. No. 16].

The Pledged Entities and the PEI constitute the "Prepetition Collateral" and the liens on the Prepetition Collateral constitute the "Prepetition Liens".[1]

11. iStar, pursuant to an agreement between it, Atrium Lendco and Borrower, funded Borrower's draws on the Atrium Loan (the "iStar Loan"). Pursuant to the Collateral Assignment of Loan Documents dated as of September 15, 2005, between Atrium Lendco LLC and iStar, the iStar Loan was secured by a collateral assignment to iStar of the Atrium Loan and all of its documents and collateral. iStar was also granted all rights to service the Atrium Loan and enforce all of Atrium Lendco's rights and remedies as lender. On March 16, 2011, iStar assigned the iStar Loan to SFI pursuant to an Assignment and Assumption of Note and Other Loan Documents. On June 30, 2015, Atrium assigned to SFI the Loan Documents and all of the obligations owing thereunder from Borrower and Guarantors. For all purposes, SFI is the lender-party to the Loan Documents and is entitled to enforce any and all obligations thereunder.

12. As of the Petition Date, Borrower and Guarantors owe, jointly and severally, the principal amount of $146,783,049 on the Atrium Loan (the "Prepetition Indebtedness"). That principal amount is not in dispute. Borrower had a monthly obligation to pay current non-default interest. Until the Petition Date, Borrower paid all such monthly installments. No Debtor has paid the contractually mandated monthly interest payments since the Petition Date. As of January 17, 2018, Debtors have failed to pay SFI interest under the Atrium Loan in the amount of $10,254,916.20.

13. In November 2012, August 2015 and September 2015, Borrower and Guarantors defaulted on certain obligations to partially pre-pay the Atrium Loan. At various other times prior to the Petition Date, Borrower and Guarantors breached loan covenants intended to protect

[1] Included in SFI Belmont's Prepetition Collateral and Prepetition Liens is a lien on any net proceeds of the sale of the assets owned or held by debtor Chateau Lake, LLC.

the security and collectability of the Atrium Loan. Borrower and Guarantors have contested such defaults.

14. As a result of their defaults, Atrium Lendco defaulted on the iStar Loan. In partial satisfaction of Atrium Lendco's obligations on the iStar Loan, as a result of those crossdefaults, Atrium Lendco assigned the Atrium Loan to SFI as of June 30, 2015, pursuant to Assignment and Assumption of Note and Other Loan Documents. Since June 30, 2015, SFI is the absolute owner of and "Lender" under the Atrium Loan.

15. In addition to the Prepetition Indebtedness, as a result of Borrower's and Guarantors' defaults, Borrower and each of the Guarantors owe interest at the default rate of an additional 5% over the non-default rate since November 5, 2012. Borrower has not paid any such default rate interest, which, as of January 17, 2018, totals at least $38,567,704.41.

16. On September 23, 2016, this Court approved a stipulation between SFI Belmont and Debtors regarding the use of cash collateral as to the Pledged Entities [Doc. No. 500] (the "Stipulation"). Among other things, the Stipulation (i) requires that the Pledged Entities' cash collateral only be used for expenses related to the Pledged Entities and not for any other Debtor (Stipulation ¶ 6) and (ii) does not require Debtors to make any adequate protection payments to SFI (*Id*. ¶ 14).

17. On November 7, 2016, SFI Belmont filed proofs of claim against Guarantors and Borrower for at least $183,815,766.98, which included claims for principal, interest as well as prepetition attorneys' fees and expenses under the Atrium Loan (collectively and as amended or otherwise modified, the "SFI Belmont Claim"). Since the Petition Date, SFI has incurred substantial attorneys' fees and expenses in connection with enforcing and protecting SFI Belmont's rights in these Chapter 11 Cases.

18. On November 27, 2017, Debtors filed their Motion for Order Authorizing the Debtors to Continue to (A) Use Cash Collateral and (B) Grant Adequate Protection [Doc. No. 1488] (the "Cash Collateral Motion"), which asked the Court to approve their use of cash collateral for all of 2018. On December 4, 2017, SFI Belmont filed a limited objection to this motion. This Court has extended the Cash Collateral Motion through April 30, 2018 [Doc. No. 1575].

19. On December 20, 2017, Debtors filed the Disclosure Statement and Debtors' Joint Unimpairment Plan of Reorganization under Chapter 11 of the Bankruptcy Code dated as of December 20, 2017 [Doc. No. 1584] (the "Plan").

20. On January 9, 2018, Debtors filed their Motion for Entry of an Order (A) Determining Necessity for Disclosure Statement, Necessity for Solicitation of Acceptances, and Continuance of Exclusivity under 11 U.S.C. §§ 1121(b) and 1125; (B) If Necessary, Granting Relief under 11 U.S.C. § 105(d) with respect to Consideration and Approval of the Disclosure Statement and Plan; and (C) If Necessary, Holding a Hearing on Confirmation of the Plan by February 26, 2018 [Doc. No. 1612] (the "Exclusivity Motion"). The Exclusivity Motion, without limitation, asks this Court to determine that it was unnecessary for Debtors to have filed this Disclosure Statement and will be unnecessary for Debtors to solicit votes in a desperate bid to indefinitely maintain exclusivity solely on the basis that Debtors claim their creditors are unimpaired under the Plan.[2] (*Id*. ¶ 10.)

[2] The Exclusivity Motion offers no support for this request, which would violate Bankruptcy Rule 3016(b) and the fundamental protections afforded creditors through the plan confirmation process. This request is rooted merely in Debtors' assertion, provided with insufficient evidentiary support, that the creditors are unimpaired and should be disenfranchised. That assertion is incorrect as set forth herein, and the Exclusivity Motion should be denied.

21. On January 10, 2018, Debtors filed their First Supplement to the Disclosure Statement [Doc. No. 1616] (the "Disclosure Statement Supplement") roughly a week before the objection deadline regarding the Disclosure Statement.

III. BASES FOR OBJECTION

22. While one of the purposes of a bankruptcy proceeding commenced under chapter 11 of the Bankruptcy Code is to confirm a plan of reorganization, an equally important goal of the Bankruptcy Code is to protect the rights and interests of creditors. In furtherance of that goal, the Bankruptcy Code contains strict requirements that both a plan of reorganization and a disclosure statement must meet in order for a debtor to successfully reorganize. The Disclosure Statement and Plan, however, run roughshod over those requirements, rendering the Disclosure Statement unapprovable and the Plan patently unconfirmable.

A. The Disclosure Statement Fails to Provide Adequate Information and Should Not Be Approved.

23. The Disclosure Statement does not contain adequate information to allow for this Court or a reasonable investor to make an informed judgment about the Plan. More specifically, the Disclosure Statement lacks adequate information regarding the (i) Debtors' purported solvency and offered valuations of its assets, (ii) Debtors' ability to sell or refinance its assets and debts, (iii) Debtors' ability to pay all allowed claims in full, (iv) amount of the claims that must be paid, (v) specific treatment of these claims, including the SFI Belmont Claim, (vi) compensation to insiders and related parties and (vii) risk to claimants regarding the JDH Appeals. This failure is exacerbated by Debtors' unsupported contention that all creditors are unimpaired and Debtors' insistence that no creditor be allowed to vote. The Court should not approve the Disclosure Statement.

24. In a chapter 11 case, "a disclosure statement under § 1125 of the Code … shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1) [reserved for small business cases]." Rule 3016(b). "The disclosure, solicitation and voting requirements of the Bankruptcy Code are a streamlined and highly simplified procedure for business reorganization. The opportunity for parties in interest to appear and effectively express a dissenting voice would be drastically diminished if these minimal creditor protections were ignored." *In re Jeppson*, 66 B.R. 269, 297 (Bankr. D. Utah 1987) (holding that disclosure statement was required even when all parties were subject to cram down); *see also In re Forrest Hills Assocs., Ltd.*, 18 B.R. 104, 104 (D. Del. 1982) (requiring disclosure statement even though plan proponent stated that all classes were not impaired).

25. Because "[d]isclosure is the pivotal concept in reorganization practice under the Bankruptcy Code," the disclosure statement serves a critical function in the bankruptcy process. 7 COLLIER ON BANKRUPTCY ¶ 1125.02 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 226–31 (1977), *reprinted in* App. Pt. 4(d)(i); *In re Cyr Bros. Meat Packing, Inc.*, 2 B.R. 620, 626 (Bankr. D. Me. 1980)). The "disclosure statement was intended by Congress to be the primary source of information upon which creditors and shareholders would make an informed judgment about a plan of reorganization." *Jeppson*, 66 B.R. at 291. To that end, Section 1125(b) of the Bankruptcy Code requires that a disclosure statement contain "adequate information." The Bankruptcy Code defines "adequate information" as

> [I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a

> hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. 1125(a)(1).

26. Generally speaking, adequate information is determined on a case-by-case basis. *In re Phoenix Petroleum Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988). However, courts have admonished that certain categories (or categories substantially similar) should be considered, including, among others:

(i) a complete description of the available assets and their value;

(ii) the anticipated future of the debtor, with accompanying financial projections;

(iii) information regarding claims against the estate, including those allowed, disputed, and estimated;

(iv) a summary of the plan of reorganization;

(v) an estimate of all administrative expenses, including attorneys' fees and accountants' fees;

(vi) information relevant to the risks being taken by the creditors and interest holders;

(vii) the actual or projected value that can be obtained from avoidable transfers; and

(viii) the relationship of the debtor with affiliates.

In re Oxford Homes, Inc., 204 B.R. 264, 269 n.17 (Bankr. D. Me. 1997) (citing *In re Ferretti*, 128 B.R. 16, 18-19 (Bankr. D.N.H. 1991)).

27. A disclosure statement that fails to provide adequate information violates 11 U.S.C. § 1125(a)(1) and cannot be approved. *Hall v. Vance*, 887 F.2d 1041, 1043 (10th Cir. 1989). The court should also not approve a disclosure statement that is inaccurate or lacks an adequate factual basis. *See Menard-Sandford v. Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999).

28. The plan proponent bears the ultimate burden of persuasion on the question of compliance with the requirement to disclose adequate information and regarding the adequacy of the disclosure statement. *In re Michelson*, 141 B.R. 715, 720 (Bankr. E.D. Cal. 1992); *In re*

Bellows, 554 B.R. 219, 225 (Bankr. D. Alaska 2016) (refusing to approve disclosure statement due to material omissions).

1. The Disclosure Statement lacks adequate information regarding Debtors' purported solvency and ability to sell sufficient assets or refinance sufficient debt to pay all allowed claims in full.

29. At the heart of the proposed Plan and upon which the entire success of the Plan hinges is Debtors' contention that they are solvent and will be able to sell sufficient assets or refinance sufficient debts to pay all allowed claims in full. (Disclosure Statement i.) Debtors admit that the proposed sales and/or refinancings cannot occur now but claim they will occur within 270 days after Debtors successfully conclude all of the JDH Appeals. (*Id*. i.) The Disclosure Statement concedes that the JDH Appeals will likely take at least two years, creating a roughly three-year delay between the Plan's confirmation and the Plan's effective date. (*Id*.) However, the Plan gives Debtors up to five years from the Plan's confirmation date to become effective. (Plan Section § 13.02). As such, the Disclosure Statement must provide adequate information that Debtors will be solvent up through at least the first quarter of 2023 and will be able to sell sufficient assets or refinance sufficient debts up through at least the first quarter of 2023 to pay all allowed claims in full. The Disclosure Statement fails to do so.

30. The Disclosure Statement's importance is further magnified here because the Plan contends that all holders of allowed claims are unimpaired and refuses to allow them to vote on the Plan. (Disclosure Statement 4.) Accordingly, the Disclosure Statement's failure to provide adequate information to substantiate its promise to pay all allowed claims in full is even more egregious.

31. The Disclosure Statement fails to provide adequate information to support Debtors' claim that they are currently solvent, especially regarding the valuation of their assets.

(Disclosure Statement 20.) A plan proponent "must set forth a factual basis for the purported value" of its assets; "opinions without factual support are not proper content of a disclosure statement and do not provide the parties voting on the plan with adequate information." *In re Fierman*, 21 B.R. 314, 315 (Bankr. E.D. Pa. 1982) (denying approval of disclosure statement) (quoting *In re East Redley Corp.*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982)); *see also In re Reilly*, 71 B.R. 132, 135 (Bankr. D. Mon. 1987) (denying approval of disclosure statement for failure to provide adequate factual basis for valuation). For instance, Debtors value their assets at almost $1.8 billion but only provide a cursory, two-page list of assets in support of this valuation. (*Id*. 19, Appendix 4.) This number is "based primarily upon appraisals" or "in large part on valuations" but the Disclosure Statement (i) fails to include any of these appraisals or valuations, (ii) fails to describe or detail on what information and inputs those appraisals and valuations were based (for example, the cash flow and capital expenditure assumptions), and (iii) fails to clarify what else beyond these appraisals or valuations Debtors are relying upon (for example, whether the value disclosures are also based on management's whims). (*Id*. 12, 19.) The offered value of the hotels is further muddied by the fact that they are based on an "as renovated" analysis that Debtors admit will require "substantial capital expenditures to preserve the value of the assets while the JDH Appeals are pending." (*Id*. 12, 19.) No further explanation or documents are provided to add clarity. Among other things, the Disclosure Statement fails to disclose (i) whether the projected capital expenditures are sufficient to fund the actual needs, (ii) whether the assets being sold to fund the capital expenditures are likely to be sold in time and generate sufficient proceeds to comply timely with all capital expenditure requirements, (iii) if the projected capital expenditure are adequate to satisfy the requirements of any franchisors, and (iv) that, by effectively converting non-hotel assets into hotel assets (by selling non-hotel assets

to fund capital expenditures for the hotels), Debtors conclude they have sufficient assets to pay all creditors in full under all reasonably likely circumstances. Without that information, the Disclosure Statement is not adequate.

32. Debtors then add a 10% premium on to the valuation of certain, unspecified real estate holdings because Debtors claim to "have consistently sold their assets at least 10% more than appraised value[.] This market value increment is included within the valuation analysis with respect to real estate assets for which a bid has not yet been received." (*Id*. 19.) However, the Disclosure Statement (i) fails to provide any documents or even a cursory list of sales vis-à-vis appraisals to support this claim, (ii) fails to identify the specific real estate assets that this 10% premium has been applied to in order to assess its impact and (iii) fails to offer any property specific justification for applying a 10% premium on properties that failed to even receive a bid. The Disclosure Statement has not offered adequate information to support this 10% premium or to show how it has been applied.

33. The Disclosure Statement also fails to provide adequate information to support Debtors' valuation for the next 5 years. The Disclosure Statement alleges that the current, unsupported valuation of its assets "is not expected to materially change" over the next five years based upon Debtors' own projections and the assumption that "the values attributable to the land and equity interest investments held by the Trust are expected to remain at current figures." (Disclosure Statement 19, Appendix 5.) Again, Debtors provide nothing in support of their five-year operating projections or assumption regarding their real estate and equity interest investments. Debtors fail to disclose whether the Disclosure Statement's projections are based on prior forecasts or are consistent with the current operations of their businesses. Also, Debtors fails to disclose whether the appraisal and valuation firms they have retained support Debtors'

allegation and will provide evidence or testimony to support it. To this end, the Disclosure Statement must provide more than a 2017 budget reconciliation for the Trust; it should disclose all prior, missed operating projections with reconciliations, so that this Court and the parties in interest can be fully informed regarding the Plan's feasibility or lack thereof.

34. Furthermore, the offered operating projections do not even cover the entire five-year period that Debtors have proposed for the Plan to become effective given that a confirmation order has yet to be entered in this case. Instead, they run only through December 31, 2022.

35. The Disclosure Statement also fails to provide adequate information regarding Debtors' ability to sell sufficient assets or refinance debt to pay all claims in full. While Debtors claim that their valuations are "confirmed by the bids actually received in the marketing and sale process undertaken by the Debtors during the pendency of the Chapter 11 Cases", the Disclosure Statement fails to provide any information regarding these bids or any term sheets, letters of intent or draft purchase agreements to support their existence. (Disclosure Statement 12.) Likewise, the Disclosure Statement fails to provide any proposals, term sheets, or similar documents regarding Debtors' efforts to obtain title insurance. Without the bids and title insurance information, this Court and the parties in interests cannot be properly informed of whether the offers for Debtors' assets even exist and the nature of their terms, which may include certain conditions and contingencies that would affect their certainty and net realization. Without that information, the Court and all parties in interest are just being told Debtors "opinions without factual support", which, without more, renders the Disclosure Statement inadequate as a matter of law. *See Fierman*, 21 B.R. at 315.

36. The Disclosure Statement also provides no information whatsoever regarding any attempts to refinance Debtors' debts beyond admitting that they are presently unable to do so because of the JDH Appeals. (Disclosure Statement i.) The Disclosure Statement should present adequate information to show that but for the JDH Appeals, Debtors have lenders ready, willing and able to close refinancing transactions of sufficient magnitude to pay all claims in full. Otherwise, this is an unsupported assertion that should be stricken from the Disclosure Statement.

37. Similarly, the Disclosure Statement fails to provide adequate information regarding Debtors' ability to sell sufficient assets or refinance their debt over the next five years to pay all claimants in full. Instead, the Disclosure Statement concedes that it needs the 270-day gap between the presumed successful conclusion of the JDH Appeals and the payment in full of the allowed claims "to reconnect with interested bidders, update the due diligence information, and give the bidders some time to re-establish their funding for a purchase (or, alternatively, arrange for a refinancing transaction)." (Disclosure Statement 22.) Thus, Debtors admit they do not have any concrete sale or refinancing commitments that extend through the entire five-year period proposed by the Plan, and the source of funding for payment of claims in full is just wishful thinking. The Disclosure Statement should clearly state that Debtors do not have any binding commitments that will survive over the up to five-year period proposed by the Plan.

38. Even worse than the Disclosure Statement's many failures to provide adequate information is the Disclosure Statement Supplement's outright refusal to do so. The Disclosure Statement Supplement further clarifies that Debtors refuse to provide any (i) appraisals, valuations or other documents to support their proposed valuations, (ii) documents regarding bids, written offers, proposals, term sheets, or similar documents related to the purchase of

Debtors' assets since the Petition Date, (iii) any proposals, term sheets or similar documents regarding efforts to obtain title insurance or (iv) any documents regarding Debtors efforts to refinance its debt with Vanguard Financial Services. (Disclosure Statement Supplement 5-6, 7-9, 11.) The Disclosure Statement Supplement, in part, references discovery requests related to this Court's December 19, 2017 Order Granting Debtor's Motion for Protective Order [Doc. No. 1585] (the "Protective Order"). This Court granted the Protective Order but only after finding that creditors had demonstrated good cause and affirmatively shown the need for the aforementioned documents regarding the appraisal, valuations, bids, title insurance and refinancing "by pointing out *the inadequacy of the financial information thus far filed and/or produced by Debtors*." (Protective Order 7 (emphasis added).) The Court anticipated that Debtors would provide these documents as a part of any disclosure statement, which Debtors are now refusing to do: *"[T]he Court also anticipates that Debtors would need to include much – if not most – of that information in any disclosure statement they might file*. In that event, Creditors would obtain much – if not most – of the information they seek at no additional cost to Debtors." (*Id*. 8 (emphasis added).)

39. Accordingly, this Court has already recognized that Debtors have provided creditors with "inadequate" information, which it anticipated Debtors would remedy through this Disclosure Statement. They have not. Should Debtors continue their refusal to provide these documents and remedy the inadequate financial information that they have provided, then Debtors have failed to meet their burden to provide adequate information, and the Disclosure Statement should not be approved.

2. The Disclosure Statement lacks adequate information regarding the amount of the claims, including the SFI Belmont Claim.

40. Even if the proposed sales and refinancings were actually concrete, the Disclosure Statement still does not provide adequate information regarding the total amount that Debtors plan to pay all claimants, nor does it transparently disclose what the Plan proposes to pay claimants in addition to their principal, such as the specific interest rate, fees, costs and expenses. Again, this information is vital here given the Disclosure Statement's contention that all claimants are unimpaired and the Plan's refusal to allow them to vote.

41. While the Disclosure Statement purports that all claimants will be paid in full, it refuses to provide a reliable amount for the total claims so that claimants can ascertain whether the proposed sales and/or refinancings will be sufficient. Instead, it provides another cursory list. (Disclosure Statement Appendix 2.) Even worse, Debtors refuse to stand behind any of these amounts, equivocating that "[t]here can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual Allowed 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 provide incorrect, the actual allowed amounts of Claims may vary from those estimated herein." (*Id*. 22.) This is not adequate information to support the Plan's proposed disenfranchisement of all creditors.

42. Likewise, the Disclosure Statement refuses to provide adequate information regarding precisely what the Plan is proposing to pay the claimants or whether the Plan is proposing to effectuate a cure under 11 U.S.C. § 1124(2)(A). For example, with respect to the SFI Belmont Claim, the Disclosure Statement states that the Plan will pay "interest appropriate under applicable law". (Disclosure Statement 23.) However, the purportedly solvent Debtors refuse to clarify whether they will pay post-petition interest at the non-default contract rate,

default contract rate, or some other rate. Moreover, the Disclosure Statement states that such interest payments will include "interest not previously paid during the Chapter 11 Case to SFI Belmont". (Disclosure Statement 30.) However, Debtors refuse to clarify whether they will immediately cure the substantial post-petition interest arrearage that has developed resulting from Debtors' refusal to make any interest payments to SFI Belmont since the Petition Date. Even based upon Debtors' own projections, this arrearage would amount to almost $10 million, which Debtors' projections do not reflect sufficient cash to pay. Furthermore, the Disclosure Statement also refuses to state whether Debtors will pay SFI Belmont's post-petition fees, including attorneys' fees, costs and expenses as well as any and all other required payments to effectuate a cure under 11 U.S.C. § 1124(2)(A). *See In re Sweet*, 369 B.R. 644, 651 (Bankr. D. Col. 2007) (applying contractual default rate and providing post-petition attorneys' fees as a part of cure under 11 U.S.C. § 1124(2)). All of this information is vital given Debtors' insistence that the SFI Belmont Claim is unimpaired and will not be allowed to vote.

43. Finally, the Disclosure Statement and Plan are silent as to what Debtors propose to do on March 15, 2021, when the Atrium Loan matures. This maturity date occurs roughly two years before the end of the five-year window that Debtors give the Plan to become effective. The Disclosure Statement fails to provide adequate information as to how the Plan affords SFI Belmont its unaltered legal, equitable and contractual rights on the maturity date.

3. The Disclosure Statement lacks adequate information regarding the compensation of insiders and related parties.

44. While the Disclosure Statement admits that Debtors will pay the Co-Trustees of the Trust salaries of almost $800,000 annually, it fails to disclose whether this is the only form of compensation or benefits they will receive. (Disclosure Statement 15.) The Disclosure Statement must disclose any other form of compensation or benefits Debtors' insiders will

receive. For example, the Disclosure Statement must identify whether the Co-Trustees will be provided with other benefits, such as access to private planes, or receive other remuneration, in the form of distribution from the Trust as beneficiaries or otherwise.

45. The Five-Year Financial Projections also show that Debtors plan to make $21.5 million in "owner distributions" during this five-year span. (Disclosure Statement Appendix 5.) Yet, the Disclosure Statement is silent on the nature of these distributions and who will receive them. Debtors must provide adequate information regarding the $21.5 million in "owner distributions" so that they can be properly scrutinized.

4. The Disclosure Statement lacks adequate information regarding the risk to claimants regarding the JDH Appeals.

46. The Disclosure Statement fails to provide adequate information regarding the underlying risk associated with the Plan regarding the JDH Appeals, particularly JDH's appeal of the motion to dismiss these bankruptcy cases. Instead, Debtors gloss over them and offers their opinion that "the appeals process will resolve adverse to JDH." (Disclosure Statement 21.) Debtors fail to disclose the impact on the claimants if Debtors' are wrong. This information is particularly important because the Plan is premised on Debtors being victorious before they can even turn to the task of selling their assets and/or refinancing their debts. The Disclosure Statement should provide a complete summary of this litigation and the impact on the claimants should Debtors lose any aspect of the JDH Appeals.

B. The Disclosure Statement May Not Be Approved Because the Plan Is Patently Not Confirmable.

47. In addition to the adequate information requirement, courts agree that a disclosure statement should not be approved if the plan it describes is inherently or patently unconfirmable. *In re K Lunde, LLC*, 513 B.R. 587, 590 (Bankr. D. Colo. 2014) (citing, in part, *In re Am. Capital*

Equip., LLC, 688 F.3d 145, 154 (3rd Cir. 2012) (listing cases)). "The rationale given for this short-circuited process is that the estate and parties should not bear the expense and effort required by the full confirmation process if there is a fatal flaw that makes the plan unconfirmable as a matter of law." *K Lunde*, 513 B.R. at 590. "A plan is patently unconfirmable where (1) confirmation 'defects [cannot] be overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'" *K Lunde*, 513 B.R. at 590 (sustain objection to adequacy of disclosure statement on grounds that plan was facially unconfirmable) (citing *Am. Capital Equip.*, 688 F.3d at 154-55). "Confirmation of a proposed Chapter 11 reorganization plan is governed by 11 U.S.C. § 1129." *In re Armstrong World Indus.*, 432 F.3d 507, 511 (3d. Cir. 2005).

48. As discussed below, the Plan is fatally flawed and unconfirmable for at least two independent reasons. First, the Plan does not permit SFI Belmont to vote even though it is impaired. Second, the Plan is not feasible as Debtors cannot satisfy their burden to show that exit financing or a sale will close or that, even if the exit financing or sale ultimately is available, whether they will be sufficient to pay all of the claims in full, with interest, as contemplated by the Plan. The creditors should not be forced to endure the time and expense required of the confirmation process in this case, which will involve time consuming and costly discovery given these blatant deficiencies. As a result, the Disclosure Statement should not be approved on this independent basis.

1. The Plan impairs SFI Belmont but impermissibly deprives it a vote, causing the Plan to fail under Section 1129(a)(8).

49. Section 1129(a)(8) requires that all classes of claims and interests have either "accepted the plan" or are "not impaired under the plan." The Plan states that all claimants are

unimpaired such that none will be allowed to vote. (Plan Article V.) "A statement that a class is not impaired does not necessarily make it so. A creditor may assert that he is improperly treated as unimpaired." *Forrest Hills*, 18 B.R. at 104. SFI Belmont is impaired as a matter of law for three independent reasons: (i) the Plan alters SFI Belmont's contractual rights, (ii) the proposed five year delay between confirmation date and the effective date exposes SFI Belmont and other claimants to numerous contingencies and improper risks and (iii) the Plan admits that it does not have the funds to pay all claims, including SFI Belmont's claims, if the JDH Claims are allowed in full. Accordingly, the Plan is patently unconfirmable, and the Disclosure Statement should not be approved.

50. Whether a claim is impaired is determined by Section 1124, which states:

> [Unless the holder of a claim agrees to a less favorable treatment of such particular claim, a] class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (2) … (A) cures any such default that occurred before or after the commencement of the case under this title …; (B) reinstates the maturity of such claim or interest as such maturity existed before such default; (C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

51. The Supreme Court has noted that "[c]laims are unimpaired if they retain *all of their prepetition … contractual* rights against the debtor." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 442 n. 14 (1999) (emphasis added). "The general rule [is] … that a claim is impaired unless it falls within one of the … exceptions set forth in 11

U.S.C. § 1124." *In re Madison Hotel Assocs.*, 749 F.2d 410, 419 (7th Cir. 1984); *In re Seasons Apartments, Ltd. P'ship*, 215 B.R. 953 (Bankr. W.D. La. 1997). "The standard for impairment is very lenient and any alteration of the rights constitutes impairment even if the value of the rights is enhanced." *In re Wabash Valley Power Ass'n*, 72 F.3d 1305, 1321 (7th Cir. 1995), *cert. denied*, 519 U.S. 965, 117 S.Ct. 389, 136 L.Ed.2d 305 (1996). "Generally, a class is impaired when the legal, equitable and contractual rights out of which [a creditor's] claim arises are altered in *any* way." *In re G.L. Bryan Inv., Inc.*, 340 B.R. 386, 390 (Bankr. D. Colo. 2006) (emphasis in original) (holding at disclosure statement hearing that objecting creditor were impaired and entitled to vote).

52. The concept of impairment is integral to the chapter 11 process in that it determines if a creditor is permitted to vote to accept or reject the plan or is, instead, deemed to accept the plan. 11 U.S.C. § 1126(f) (stating that an unimpaired class of creditors under a plan is conclusively deemed to have accepted the plan and need not be solicited to vote).

a. SFI Belmont is impaired because the Plan alters its contractual rights and refuses to propose a cure under Section 1124(2).

53. SFI Belmont is impaired under the Plan because the Plan alters SFI Belmont's contractual rights and refuses to propose a cure under Section 1124(2). The Plan alters SFI Belmont's contractual rights in three independent ways.

54. First, it alters SFI Belmont's rights under the Atrium Loan because it refuses to pay off the SFI Belmont Claim in full on the March 15, 2021 maturity date.

55. Second, the Plan alters SFI Belmont's contractual rights because the purportedly solvent Debtors refuse to pay SFI Belmont the post-petition principal and interest arrearage resulting from Debtors' failure to make any of these payments to SFI Belmont since the Petition Date. "[A] solvent debtor must pay postpetition and pre-confirmation interest on a claim to have

a class considered unimpaired." *In re Rocha*, 179 B.R. 305, 307 n.1 (Bankr. M.D. Fla. 1995)). In *Rocha*, the court recognized that Congress's 1994 amendment to section 1124 deleted 1124(3) in order to preclude a result where creditors were denied the right to receive postpetition interest on their allowed claims even though the debtor was solvent. *Id.*; *see also* 140 Cong. Rec. H 10,768 (Oct. 4, 1994).

56. Third, the Plan alters SFI Belmont's contractual rights because the purportedly solvent Debtor refuses to pay post-petition interest to SFI Belmont at the contract rate as well as attorneys' fees, costs and expenses pursuant to the Atrium Loan. "[C]reditors may recover their attorneys' fees, costs and expenses from the estate of a solvent debtor where they are permitted to do so by the terms of their contract and applicable non-bankruptcy law." *In re UPS Capital Bus. Credit v. Gencarelli (In re Gencarelli),* 501 F.3d 1, 6 (1st Cir. 2007) (quoting *Official Comm. Of Unsecured Creditors v. Dow Corning Corp. (In re Dow Corning Corp.),* 456 F.3d 668, 683 (6th Cir. 2006)). When there is a solvent debtor case, "the equities strongly favor holding the debtor to his contractual obligations as long as those obligations are legally enforceable under applicable non-bankruptcy law." *Gencarelli*, 501 F.3d at 7; *see also Dow Corning*, 456 F.3d at 679 ("absent compelling equitable considerations, when a debtor is solvent, it is the role of the bankruptcy court to enforce the creditors' contractual rights."); *In re Chicago, Milwaukee, St. Paul & Pac. R. Co*., 791 F.2d 524, 528 (7th Cir. 1986) (awarding post-petition interest to bondholders at the contractual rate of interest because "when the debtor is solvent the judicial task is to give each creditor the measure of his contractual claim, no more and no less.").

57. A creditor is impaired when a plan provides for interest payments at an interest rate that is lower than the contractually bargained-for rate or the rate required by applicable non-bankruptcy law, such as the current federal judgment rate. *G.L. Bryan*, 340 B.R. at 390 (holding

that objecting creditors were impaired and entitled to vote when plan proposed lower federal judgment rate of interest rather than state statutory judgment rate); *In re Dvorkin Holdings, LLC*, 547 B.R. 880, 890 (N.D. Ill. 2016) ("Here, Creditor's rights are 'impaired' because its underlying contracts entitle it to interest at one rate and the Plan awards Creditor interest at a lower rate—namely, the Federal Judgment Rate.").

58. The Plan also fails to cure the SFI Belmont Claim pursuant to Section 1124(2). As previously noted, Debtors have defaulted both pre- and post-petition through their failure to pay certain amounts due under the Atrium Loan. In order to effect a cure under Section 1124(2), at least one court in the Tenth Circuit has required a debtor to pay interest at the contractual default rate through the plan's effective date and all of claimant's attorney's fees and costs regarding the bankruptcy litigation. *Sweet*, 369 B.R. at 651-54; *see also* 11 U.S.C. 1123(d) ("if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law."); *see also In re New Invs., Inc.*, 840 F.3d 1137, 1141-42 (9th Cir. 2016); *In re Moody Nat. SHS Houston H, LLC*, 426 B.R. 667, 676 (Bankr. S.D. Tex. 2010).

b. SFI Belmont is impaired because the Plan proposed a five year gap between its confirmation order and its effective date.

59. SFI Belmont is impaired under the Plan because the Plan proposes a five year delay between the confirmation order and the effective date along with numerous contingencies that impermissibly shifts the risk of the Plan's failure on to the creditors. As previously noted, the Plan asks this Court to confirm the Plan but to then allow Debtors up to five years to successfully litigate all of the JDH Appeals and then sell and/or refinancing hundreds of millions of dollars' worth of assets to make the Plan go effective and finally pay all allowed claims in full. This five-year delay and the numerous contingencies render SFI Belmont and the other

creditors impaired because the "delayed and uncertain payment would unacceptably place all the risk on [the creditors]." *In re Cent. European Indus. Devel. Co. LLC*, 288 B.R. 572, 577 (Bankr. N.D. Cal. 2003) (holding that causing creditors "to wait an indefinite time, possibly years, before the plan could become effective" alters creditors rights and leaves them impaired under Section 1124). Courts have routinely denied confirmation of plans that propose any substantial delay between the confirmation date and the effective date. *In re Yates Devel., Inc.*, 258 B.R. 36, 42-43 (Bankr. M.D. Fal. 2000) (citing *In re Jones*, 32 B.R. 951, 958, n.13 (Bankr. D. Utah 1983); *In re Wonder Corp. of America*, 70 B.R. 1018, 1021 (Bankr. D. Conn. 1987)); *see e.g. In re Haardt*, 65 B.R. 697, 701 (Bankr. E.D. Pa. 1986) (holding that plan impaired creditors when it proposed a maximum 120-day delay from the confirmation date to obtain refinancing); *In re Krueger*, 66 B.R. 463, 465 (Bankr. S.D. Fla. 1986) (holding effective date four months after confirmation order is unreasonable); *In re Premiere Network Services, Inc.*, 2005 WL 6443624, *5 (Bankr. N.D. Tex. July 1, 2005) (same regarding 120-day delay); *In re Potomac Iron Works, Inc.*, 217 B.R. 170, 171 (D. Md. 1997) (same regarding one year delay).

60. Moreover, the Disclosure Statement concedes that even if Debtors are successful with respect to the JDH Appeals, Debtors still may not be able to pay the JDH Contract Claim in full such that all allowed claims would not be paid in full under the Plan: "Full allowance of these Claims *would exceed the likely recovery from disposition of the Debtors' assets*, although the historic recovery by the Debtors in excess of 10% more than the appraised value of their assets would cover the very unlikely scenario in which the JDH Contract Claims were estimated in the full amount sought." (Disclosure Statement 31 (emphasis added).) Accordingly, Debtors will actually need sales that exceed even the unsupported 10% premium included in their

valuations to pay all claims in full. This is yet another contingency that creditors will be forced to endure.

61. To this end, the Disclosure Statement itself even recognizes that this lengthy delay and the Plan's numerous contingencies render Debtors' projections intrinsically tentative, causing great risk to the creditors that they will never be paid in full and making the Plan's disenfranchisement of all of its creditors even more unsupportable:

> As noted in the Projections, however, the Debtors caution that *no definitive representations can be made as to the accuracy of the Projections, the Debtors' ability to achieve the projected results in asset sales or refinancings, the likelihood that JDH might succeed in reversal of the rulings by the Bankruptcy Court, or that the Disputed Claims asserted by JDH will be allowed in an amount which will not exceed the funds available for payment in full plus interest*. Many of the assumptions upon which the Plan and Projections are based are thus subject to uncertainties outside the control of the Debtors. 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 Debtors' financial results. *Therefore, the actual results may vary from the projected results and the variations may be material and adverse*.

(Disclosure Statement 31 (emphasis added).) Debtors should not be allowed to include such hedging in the Disclosure Statement while the Plan strips all claimants of their voting rights.

62. As in the aforementioned cases, the Plan's proposed delay and numerous contingencies impermissibly cause SFI Belmont and the other creditors to bear all of the risk of the delay, while simultaneously denying them the right to vote. Even worse, Debtors' "equity" class will be fairing much better during this time, as the Plan proposes to make $21.5 million in equity distributions and to pay the Co-Trustees almost $800,000 a year. Accordingly, the Plan impairs SFI Belmont and the other creditors and it violates section 1129(a)(8).

2. The Plan is not feasible and fails to satisfy Section 1129(a)(11).

63. Section 1129(a)(11) requires that a plan be feasible in order to be confirmed. A plan can only be confirmed if it "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan[.]" *Id*. "[T]he purpose of 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Travelers Ins. Co. v. Pikes Peak Water Co. (In re Pikes Peak Water Co.)*, 779 F.2d 1456, 1460 (10th Cir. 1985) (citation omitted). "[I]n determining whether [a plan] is feasible, the bankruptcy court has an obligation to scrutinize the plan carefully to determine whether it offers a reasonable prospect of success and is workable." *Id*. (citation omitted). A plan is not feasible when it does not "appear realistic based on the record to date." *In re RIM Dev., LLC*, 448 B.R. 280, 290 (Bankr. D. Kan. 2010) (finding plan was patently unconfirmable due, in part, to lack of feasibility).

64. The Plan is not feasible for two independent reasons. First, Debtor fails to provide any concrete evidence that it will make the necessary sales and/or refinancings over the next five years to pay all claimants in full. Second, Debtor insists upon an impermissible five-year delay between the confirmation order and the effective date.

a. Debtors do not provide concrete evidence that sales and/or refinancings sufficient to pay all allowed claims will occur.

65. The Plan is not feasible because the proposed sales and/or financings are speculative. A plan is not feasible and cannot be confirm when its sole source of funding is speculative. *Am. Capital Equip.*, 688 F.3d at 156 (affirming bankruptcy court's denial of plan's confirmation when sole source of funding would be obtained from wholly speculative litigation proceeds) (citing *In re Quigley Co., Inc.*, 437 B.R. 102, 142 (Bankr. S.D.N.Y. 2010) (plan was not feasible where funding source was "speculative at best and visionary at worst")). "At the

point of confirmation, *[a] source of funding must be shown to be firm as it goes directly to feasibility*. Without evidence of a firm commitment of refinancing, [a p]lan does not meet the feasibility requirement." *In re Ralph C. Tyler, P.E., P.S., Inc.*, 156 B.R. 995, 997 (Bankr. N.D. Ohio 1993) (emphasis added); 7 COLLIER ON BANKRUPTCY ¶ 1129.02[11] (16th ed. 2015) ("Particularly important in this regard [feasibility] is that that plan proponent demonstrate that any necessary financing has been obtained, or is likely to be obtained."); *see e.g.*, *In re Made in Detroit, Inc.*, 299 B.R. 170, 177 (Bankr. E.D. Mich. 2003) (finding plan not feasible because at the time of confirmation hearing, debtor only had an unsigned commitment letter and there was no reasonable assurance that exit financing would ever close, causing plan to be based on "wishful thinking" and "visionary promises" and insufficiently concrete); *In re Haardt*, 65 B.R. 697, 702 (Bankr. E.D. Pa. 1986) (finding plan not feasible when purported refinancing commitment was not credible, as it was unsigned and was not a true commitment); *Ralph C. Tyler*, 156 B.R. at 997 (finding plan not feasible when there lacked evidence of firm financing or commitment "at the point of confirmation."); *In re Repurchase Corp.*, 332 B.R. 336, 343 (Bankr. N.D. Ill. 2005) (finding plan not feasible where debtor offered no contract, evidence or corroboration regarding exit financing because "[o]ptimistic but hollow declaration from [d]ebtor's [p]resident about hopes for funding did not satisfy its burden of proof."); *In re Thurmon*, 87 B.R. 190, 192 (Bankr. M.D. Fla. 1988) (finding plan not feasible when debtor unable to show existence of financing at confirmation hearing).

66. Similar to the cases cited above, Debtors have failed to provide any concrete evidence that they can sell sufficient assets or refinance sufficient debts to pay all claimants in full. The Disclosure Statement Supplement outright refuses to provide any documents regarding (i) appraisals, (ii) the sale of Debtors' assets, (iii) efforts to obtain title insurance, or (iv) efforts

to refinance Debtors' debts. (*Id*. 5-6, 7-9, 11.) The Disclosure Statement admits that Debtors have no firm source of funding to pay all claim in full, let alone any that would extend for the next five years, as proposed by the Plan. Instead, Debtors admit that they need 270 days after the conclusion of the JDH Appeals "*to reconnect with interested bidders, update the due diligence information, and give the bidders some time to re-establish their funding for a purchase* (or, alternatively, arrange for a refinancing transaction)." (Disclosure Statement 22 (emphasis.) In other words, there is no firm source of funding to pay all allowed claims in full; the Plan is the type of visionary scheme based on wishful thinking proscribed by Section 1129(a)(11).

b. The proposed five-year delay between the confirmation date and the effective date shows that the Plan is speculative.

67. As previously noted, the Plan provides a five-year window after confirmation for its effective date. This delay and vagueness is intentional, as Debtor must satisfy numerous contingencies during this time, culminating in unspecified sales and/or refinancing that will pay all claimants in full. To this end, the Plan is not based upon firm commitments to sell or refinance; it is based upon Debtors' desire to maintain control and plan exclusivity for the next five years.

68. Debtor's insistence on this five-year window for the effective date confirms that the Plan is speculative, may never be consummated, and is unconfirmable. The effective date "is expressly designated as the critical point for the major financial standards for confirmation. *See* §§ 1129(a)(7), 1129(a)(9), 1129(b). The valuations required by these sections are likely to be less accurate if the effective date is not close to the date of the hearing on confirmation." *Cent. European*, 288 B.R. at 577 (quoting *In re Jones*, 32 B.R. 951, 958 n. 13 (Bankr. D. Utah 1983)). "[S]etting the effective date on or shortly after the final [confirmation] order is reasonable." *Potomac Iron*, 217 B.R. at 174. Court have routinely denied confirmation of plans setting their

effective dates more than four months after the confirmation date because, in part, they impermissibly shift the risk on to their creditors due to their speculative nature. *See e.g. Haardt*, 65 B.R. at 701 (Bankr. E.D. Pa. 1986) (denying confirmation when plan proposed 120-day delay); *Krueger*, 66 B.R. at 465 (Bankr. S.D. Fla. 1986) (same); *Premiere Network*, 2005 WL 6443624, *5 (same); *Potomac Iron*, 217 B.R. at 171 (same regarding one year delay).

69. As previously mentioned, the Disclosure Statements' various equivocations illuminate the numerous contingencies present in the Plan and the fact that Debtors refuse to stand firmly behind their ability to ever consummate it. (*See* Disclosure Statement 22, 31.) The Plan's request for a five-year window for an effective date is a byproduct of its inherent uncertainty and impermissibly passes all of the risk of its failure to SFI Belmont and the other claimants, which would be left captive to a confirmed plan that may never become effective.

IV. CONCLUSION

70. In light of the Plan's patent non-confirmability and its thinly veiled attempt to extend exclusivity for five years, together with Debtors' refusal to provide numerous key documents so as to give this Court and the parties in interest adequate information regarding the Disclosure Statement, this Court should deny approval of the Disclosure Statement and, on the Court's own motion, terminate Debtors' remaining exclusivity. The creditors should no longer be held hostage to Debtors' desire to maintain exclusive control of the plan confirmation process.

WHEREFORE, for the reasons stated above, SFI Belmont respectfully requests that this Court deny approval of the Disclosure Statement, terminate Debtors' exclusivity and grant such other and further relief that is just and proper.

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