UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:

BRD LAND & INVESTMENT, *et al.*, **CASE NO.: 26-30215**
CHAPTER 11

DEBTOR.

WILMINGTON RIVER CLUB, LLC'S OBJECTION TO APPROVAL OF DISCLOSURE STATEMENT FOR JOINT AMENDED PLAN OF LIQUIDATION OF BRD LAND & INVESTMENT, BRDL WARDEN STATION, LLC, AND BRDL WARDEN STATION HOLDING CO, LLC AND CONFIRMATION OF JOINT AMENDED PLAN OF LIQUIDATION OF BRD LAND & INVESTMENT, BRDL WARDEN STATION, LLC, AND BRDL WARDEN STATION HOLDING CO, LLC

NOW COMES Creditor WILMINGTON RIVER CLUB, LLC ("WRC"), by and through undersigned counsel, and pursuant to §§ 105(a), 362(d) and 365 of the Bankruptcy Code, hereby objects to—and requests denial of—confirmation of the Joint Amended Plan of Liquidation of BRD Land & Investment, BRDL Warden Station, LLC, and BRDL Warden Station Holding Co, LLC [D.E. 256] (the "Joint Amended Plan" or the "Amended Plan") and approval of the Disclosure Statement for Joint Amended Plan of Liquidation of BRD Land & Investment, BRDL Warden Station, LLC, and BRDL Warden Station Holding Co, LLC [D.E. 257] (the "Disclosure Statement") proposed by Debtors BRD LAND & INVESTMENT ("BRD"), BRDL WARDEN STATION, LLC ("Warden Station"), and BRDL WARDEN STATION HOLDING CO., LLC ("Warden Station Holding") in the underlying jointly

administered bankruptcy proceedings (collectively, the "Bankruptcy Cases").[1] In support hereof, WRC shows unto the Court as follows:

INTRODUCTION AND SUMMARY OF OBJECTION

1. WRC, in accordance with §§ 105, 365, and 1129 of the Bankruptcy Code, as well as Fed. R. Bankr. P. 3020, hereby objects to, and requests denial of confirmation of the Joint Amended Plan proposed by the Debtors in the Bankruptcy Cases because the Joint Amended Plan:

A. Does not comply with §§ 1129(a)(1) and 1129(a)(2) of the Bankruptcy Code, as it fails to comply with the applicable provisions of the Bankruptcy Code, namely, § 365(b) of the Bankruptcy Code relating to the assumption and assignment of executory contracts in Article V thereof;

B. Was not proposed in good faith and, therefore, does not comply with § 1129(a)(3) of the Bankruptcy Code;

C. Does not comply with § 1129(a)(7) of the Bankruptcy Code, in that the Joint Amended Plan does not provide that general unsecured creditors, in Class 7 will receive or retain on the Effective Date an amount not less than the estimated sum between $2,189,051.00 and $1,253.610.00 set forth in the Liquidation Analysis attached to the Joint Amended Plan;

D. Does not comply with § 1129(a)(11) of the Bankruptcy Code because it is not feasible as it is not feasible.

2. WRC, in addition, requests denial of approval of the Disclosure Statement on the grounds that the Debtors have failed to provide adequate information as required by § 1125 of the Bankruptcy Code.

[1] The Debtors in the jointly administered bankruptcy proceedings are the following entities, with the last four digits of their respective taxpayer identification numbers in parentheses: BRD Land & Investment (6940), BRDL Warden Station, LLC (4687), and BRDL Warden Station Holding Co., LLC (0184).

JURISDICTION AND VENUE

3. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

5. BRD, along with its related entities, Warden Station and Warden Station Holding, filed voluntary petitions seeking relief under chapter 11 of the Bankruptcy Code on February 24, 2026 (the "Petition Date") (collectively, the "Bankruptcy Cases"). BRD, since the Petition Date, has operated as Debtor-in-Possession in accordance with §§ 1107(a) and 1108 of the Bankruptcy Code.

6. Prepetition, WRC and BRD, as Seller and Buyer, respectively, entered into a Purchase Sale Agreement effective as of June 8, 2022 (the "PSA Effective Date"), under which BRD agreed to purchase, and Property Owner agreed to sell, a portion of its real property located in Brunswick County, North Carolina, consisting of approximately 150+/- acres on Cedar Hill Road (the "Subject Property") in exchange for the sum of $5,450,000.00 (the "Purchase Price") (collectively, the "PSA").

7. The PSA provided that BRD had 120 days from June 10, 2022 (the "Effective Date"), to investigate the feasibility of its intended development of the Subject Property (the "Due Diligence Period") and, on or before the last day of the Due Diligence Period, BRD was required to provide WRC with "copies of all title reports, environmental, soil, and other tests and studies, and copies of all surveys, engineering and other plans and plats relating to the [Subject] Property."

8. Under the PSA, and within five (5) days of the Effective Date, BRD was required to pay the sum of $150,000.00, as a good faith deposit (the "Initial Deposit"),[2] to Harvey and Vallini, LLC, located at 497 Bramson Court, Suite 201, Mount Pleasant, South Carolina 29464, who was appointed under the PSA as the Escrow Agent (the "Escrow Agent"). In accordance with the terms thereof, the Escrow Agent was required to hold Earnest Money, in escrow, and be disbursed and applied towards the Purchase Price or as otherwise provided for in the PSA.

9. On June 14, 2022, BRD paid the Initial Deposit to the Escrow Agent.

10. In addition to the Initial Earnest Money Deposit, and within five (5) business days of the expiration of the Due Diligence Period, BRD was required to deliver an additional deposit in the amount of $250,000.00 to the Escrow Agent, which became part of the Earnest Money under the PSA (the "Additional Deposit").

11. The closing of the purchase and sale of the Subject Property outlined in the PSA (the "Closing"), was required to be held on or before the ninetieth (90th) day following the conclusion of the Due Diligence Period. BRD, however and under the PSA, had the right to extend the Closing one (1) period of thirty (30) days each (referred to as, an "Extension Period") upon deposit of an additional amount of $100,000.00 (the "Extension Deposit") with the Escrow Agent.[3]

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[2] The Initial Deposit and all other monies paid and deposited with the Escrow Agent under the PSA are collectively referred to herein as, the "Earnest Money."

[3] The First Extension Fee was to be credited towards the Purchase Price under the PSA, whereas the Second Extension Fee was not applied or credited towards the Purchase Price and, instead, non-refundable to BRD.

12. In the event of breach or other default by BRD under the PSA, which remains uncured ten (10) days after receiving written notice of any such breach or default thereunder, all of the Earnest Money held by Escrow Agent, together with any additional amounts held by the Escrow Agent, was required to be paid and delivered to WRC. Thereafter, the PSA automatically terminated and both BRD and WRC "shall be relieved of further liability [t]hereunder, at law or equity."

13. The PSA was subsequently amended by the following:

A. Amendment to Purchase Sale Agreement entered into as of January 5, 2023 (the "First PSA Amendment"), amending Section 5 of the PSA to provide that BRD, as Buyer, had the right to extend the Closing Date for one (1) period of ninety (90) days upon deposit of an additional sum of $100,000.00, within ten (10) days of the date of First PSA Amendment;

B. Second Amendment to Purchase Sale Agreement entered into as of March 4, 2023 ("Second PSA Amendment"), further amending the PSA to provide in Section 5 of the PSA, that BRD, as Buyer, had the right to extend the Closing Date for an additional period of ninety (90) days with no requirement for any additional deposits remitted to the Escrow Agent.

C. Amendment to Purchase Sale Agreement executed on or about September 9, 2023 (the "Third PSA Amendment"), further amending the PSA as follows:

i. Closing on the purchase and sale of the Subject Property "Shall occur on or before October 31, 2023."

ii. In consideration of the payment of the sum of $100,000.00 (the "Option Fee"), WRC granted and conveyed BRD—at Closing—an option to purchase additional real property consisting of 58.5 +/- acres and identified as Tax Parcel Nos. 240000109, 23000106, and portions of Tax Parcel Nos. 240000107 and 240000102 (the "Option Property") for the sum of $3,500,000.00 (the "Option Purchase Price") (collectively, the "Option"), which would expire and terminate one (1) year after Closing.

D. Amendment to Purchase Sale Agreement (the "Fourth PSA Amendment") executed on December 29, 2023 (the "Fourth PSA Amendment Execution Date"), amending the PSA as follows:

i. Deleting Section 5(a) of the PSA in its entirety and replacing it with the following:

> 5(a) Closing shall occur on or before July 31, 2024. Buyer shall have the right to extend the Closing for three (3) periods of ninety (90) days (each an "Extension Period") by providing written notice to Seller prior to Closing or the end of the current Extension Period, as applicable. Buyer will continue to pay interest to Seller in the amount of Twenty Four Thousand Five Hundred Twenty and 83/100s Dollars ($24,520.83) per month during each Extension Period.

ii. Requiring the release and payment to WRC of a portion of the Earnest Money, totaling $50,000.00, by the Escrow Agent immediately upon execution of the Fourth PSA Amendment, with an additional $50,000.00 of the Earnest Money released and paid to WRC within fourteen (14) days upon the earlier of (i) the date that is six (6) months after the Fourth PSA Amendment Execution Date, or (ii) the date of the Site Plan Approvals described in Section 11(g) of the PSA.

iii. Requiring that BRD pay to WRC, following the date of the Site Plan Approvals described in Section 11(g) of the PSA, and on a monthly basis, interest on the Purchase Price equal to 5.5% per annum (or the sum of $24,520.83), which were non-refundable and commencing on the first (1st) day of the first (1st) calendar month after the Site Plan Approvals described in Section 11(g) of the PSA, and continuing on the first (1st) day of each month thereafter until Closing (the "Interest Payments").

E. Amendment to Purchase Sale Agreement executed on October 28, 2025 (the "Fifth PSA Amendment"), further amending the PSA as follows:

i. Requiring and providing that the "Closing shall occur on or before December 24, 2025[;]" and

ii. Requiring the release and payment to WRC of a portion of the Earnest Money, totaling $100,000.00, by the Escrow Agent immediately upon execution of the Fifth PSA Amendment.

F. Amendment to Purchase Sale Agreement dated December 19, 2025 (the "Sixth PSA Amendment") (the First PSA Amendment, the Second PSA Amendment, the Third PSA Amendment, the Fourth PSA Amendment, the Fifth PSA Amendment, and the Sixth PSA Amendment are

collectively referred to herein as, the "PSA Amendments"), amending and modifying the PSA for the final time, as follows:

i. Requiring and providing that the "Closing shall occur on or before April 30, 2026[;]"

ii. Requiring the release and payment to WRC of a portion of the Earnest Money, totaling $100,000.00, by the Escrow Agent immediately upon execution of the Sixth PSA Amendment; and

iii. Requiring, in the event the sale of the Subject Property does not close for any reason other than a default by WRC, that all permits relating to the Subject Property that were obtained by BRD (the "Permits"), be transferred to WRC.

14. Under the PSA and the PSA Amendments, the sum of $500,000.00 in Earnest Money was paid and deposited by BRD with the Escrow Agent and, in accordance therewith, the sum of $400,000.00 was disbursed to WRC as follows:

Date	**Amount of Earnest Money Disbursed to WRC**
1/23/2024	$50,000.00
5/24/2024	$50,000.00
5/9/2025	$100,000.00
8/12/2025	$100,000.00
12/22/2025	$100,000.00
TOTAL	**$400,000.00**

As of the Petition Date, the Escrow Agent was holding the sum of $100,000.00 in Earnest Money under the PSA, as amended and modified by the PSA Amendments.

15. Under the PSA, as amended and modified by the PSA Amendments, the following Interest Payments were paid by BRD to WRC:

Date	**Interest Payment Received by WRC**
06/10/2024	$24,520.83
07/01/2024	$24,520.83

08/01/2024	$24,520.83
09/01/2024	$24,520.83
10/01/2024	$24,520.83
11/04/2024	$24,520.83
12/02/2024	$24,520.83
01/02/2025	$24,520.83
02/03/2025	$24,520.83
03/04/2025	$24,520.83
04/09/2025	$24,520.83
05/23/2025	$24,520.83
06/04/2025	$24,520.83
07/18/2025	$24,520.83
08/14/2025	$24,520.83
10/09/2025	$24,520.83
11/03/2025	424,520.83
11/03/2025	$49,041.66
01/16/2026	$24,520.83
TOTAL	**$490,416.77**

16. BRD, however, did not remit the Interest Payment in the amount of $24,520.83 that was required to be paid to WRC under the PSA, as amended and modified by the PSA Amendments, on or before February 1, 2026 (the "February 2026 Interest Payment").

17. From and after the Petition Date, BRD has failed to pay the following Interest Payments due and owing to WRC under the PSA, as amended and modified by the PSA Amendments, in the amount of at least $98,083.32, representing the Interest Payments due and payable to WRC on March 1, 2026 in the amount of $24,520.83 (the "March 2026 Interest Payment"), April 1, 2026, in the amount of $24,520.83 (the "April 2026 Interest Payment"), May 1, 2026, in the amount of $24,520.83 (the "May 2026 Interest Payment"), and June 1, 2026, in the amount of

$24,520.83 (the "June 2026 Interest Payment") (collectively, the "Outstanding Post-petition Interest Payments").[4]

18. BRD, in connection with evaluating the feasibility of development and obtaining the necessary permits and entitlements to the Subject Property, engaged various third-party professionals, surveyors, and engineers, who upon information and belief, have not been paid and are owed substantial sums associated with the work, services, and materials furnished to the Subject Property while it was subject to the PSA, as amended and modified. WRC is aware that, as of the Petition Date, and on account of professional services rendered at the request and for the benefit of BRD, in the amount of $350,452.33 is due and owing to Paramounte Engineering, Inc. by BRD.[5]

19. BRD, prior to the Petition Date, and continuing post-petition and through the filing hereof, BRD is and remains in breach and default of the PSA, as amended and modified by the PSA Amendments, as follows:

A. Failure to pay the sum of at least $350,452.33 to third-party professionals, consultants, engineers, contractors, and/or vendors for the

[4] Upon information and belief, BRD will not remit the requisite interest payment of $24,520.83, due and owing to WRC under the PSA on or before July 1, 2026 (the "July 2026 Interest Payment").

[5] The amount owed to Paramonte Engineering, Inc. by BRD, for professional engineering services provided and materials furnished to the Subject Property while it was subject to the PSA, as amended and modified by the PSA Amendments, is summarized as follows:

Invoice No.	**Invoice Date**	**Invoice Amount**
22311.PE-2	7/28/2025	$261,722.60
22311.PE-3	2/24/2026	$88,729.73

services and materials that were furnished to the Subject Property between July 28, 2025, and the Petition Date;

B. Failure to remit and pay the February 2026 Interest Payment to WRC in the amount of $24,520.83;

C. Failure to remit and pay the March 2026 Interest Payment to WRC in the amount of $24,520.83;

D. Failure to remit the April 2026 Interest Payment to WRC in the amount of $24,520.83;

E. Failure to close on the purchase and acquisition of the Subject Property by April 30, 2026 (hereinafter, the "Closing Date"), as required by the PSA, as amended and modified by the Sixth PSA Amendment;

F. Failure to remit the May 2026 Interest Payment to WRC in the amount of $24,520.83; and

G. Failure to remit the June 2026 Interest Payment to WRC in the amount of $24,520.83; and

H. Failure to remit the July 2026 Interest Payment to WRC in the amount of $24,520.83.

20. The Debtors, in the Bankruptcy Cases, filed the Joint Amended Plan currently before the Court, which contained the following relevant provision relating to, *inter alia*, the PSA and other executory contracts:

> **5.1 Assumption of Certain Executory Contracts and Unexpired Leases**.
>
> **5.1.1** As of the Effective Date, all unexpired leases of non-residential real property and executory contracts that (a) have not been previously assumed or rejected, (b) have not been previously assumed and assigned in accordance with the Assumption and Assignment Order or other order approving such assumption and assignment, (c) have not been previously rejected pursuant to an order of the Court, and (d) are identified on the Assumed Agreement List will be assumed effective as of the Effective Date pursuant to §§ 365 and 1123 of the Bankruptcy Code and the Confirmation Order, except for any executory contract or

unexpired lease of non-residential real estate (i) identified on the Rejected Agreements List (ii) for which an assumption and assignment notice has been filed and is pending as of the Confirmation Date with no Final Order of the Court yet entered. This Section shall be, and shall be deemed to be, a motion to assume any such unexpired leases and other executory contracts including, without limitation, the following leases and executory contracts (each an "Assumed Agreement," and, collectively, the "Assumed Agreements") along with any and all insurance policies.

5.1.2 The Wind-Up Debtors may reach agreements with parties to certain Assumed Agreements providing for the deferral of cure payments that would otherwise be due by reason of such assumption. If such an agreement is not reached, all requests for cure payments different from the amounts paid or proposed to be paid by the Debtors or Wind-Up Debtors on the Assumed Agreements List to a counterparty must be filed, served, and actually received by the Debtors on or before fourteen (14) days after service of the Assumed Agreements List. Any request not timely filed and served shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtors or Wind-Up Debtors without need for any objection by the Debtors or Wind-Up Debtors or any further notice to or action, order, or approval of the Court. In the event a contract counterparty files a timely request and the Debtors or Wind-Up Debtors cannot resolve such request, the request shall be heard on at least fourteen (14) days' notice to the applicable counterparty, or such date as the parties agree, subject to the Court's calendar and availability. Any objection by a contract or lease counterparty to (a) the ability of the applicable Debtors to provide adequate assurance of future performance within the meaning of § 365 of the Bankruptcy Code under the contract or lease to be assumed or assumed and assigned, or (b) any other matter pertaining to the proposed assumption or proposed assumption and assignment must be filed, served, and actually received by the Debtors by the date on which objections to Confirmation of the Plan are due. Any counterparty that fails to timely object to the proposed assumption or proposed assumption and assignment of any executory contract or unexpired non-residential lease shall forever waive such objection and shall be forever barred, estopped, and enjoined from asserting an objection.

> **5.2 Assignment of Certain Executory Contracts and Unexpired Leases.**
>
> **5.2.1** Following the assumption of unexpired leases of non-residential real property and executory contracts as of the Effective Date as described in Section 5.1, the Wind-Up Debtors shall follow the procedure set forth by the Court in the Assumption and Assignment Order, excluding the assumption procedures, or may file a motion to assign any such unexpired lease of non-residential real property or executory contracts.
>
> **5.3 Rejection of Certain Executory Contracts and Unexpired Leases Bar Date.**
>
> **5.3.1** Except to the extent a statute, rule, or prior order of the Court provides for an earlier date, in which case such earlier date shall control, all proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases shall be filed with the Court on or before the later of (a) the Bar Date or (b) thirty (30) days after the date of the order of the Court rejecting such executory contract or unexpired lease, which may include, if applicable, the Confirmation Order. Any Claims not filed within such times shall be released, discharged, and forever barred from assertion against the Debtors, the Estate, the Wind-Up Debtors, and any property of the Debtors, the Estate, or the Wind-Up Debtors.

Jt. Am. Plan of Liquidation [D.E. 256], at art. V.

RELIEF REQUESTED

A. APPROVAL OF THE DISCLOSURE STATEMENT SHOULD BE DENIED AS THE DEBTORS HAVE FAILED TO SATISFY THE REQUIREMENTS OF § 1125 OF THE BANKRUPTCY CODE.

21. Section 1125(b) of the Bankruptcy Code provides that acceptance of a plan of reorganization may not be solicited "from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written

disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b).

> '[A]dequate information' means information 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, . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1). "Creditors not only rely on the disclosure statement to form their ideas about what sort of distribution or other assets they will receive but also what risks they will face." In re RADCO Props., Inc., 402 B.R. 666, 682 (Bankr. E.D.N.C. 2009) (citation omitted). The determination of whether the disclosure statement has adequate information is made on a case by case basis and is largely within the discretion of the bankruptcy court." Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 696 (4th Cir. 1989) (citation omitted).

22. The Disclosure Statement, in the instant case, does not provide adequate information and, as a result, should not be approved by the Court pursuant to § 1125 of the Bankruptcy Code. Denying approval of the Disclosure Statement is appropriate because, without this information, creditors—including WRC—cannot make a fully-informed decision concerning acceptance or rejection of the Joint Amended Plan, including the risks associated with the undefined and undetermined liquidation proposed by the Debtors therein.

23. Approval of the Disclosure Statement should be denied where, as here, the Joint Amended Plan proposed by the Debtor is patently and utterly unconfirmable under § 1129 of the Bankruptcy Code. Bankruptcy courts are also

prohibited from approving a disclosure statement where "the associated plan of reorganization cannot be confirmed." In re CHL, LLC, BK 18-00630-5-JNC, slip op., at 7 (Bankr. E.D.N.C. June 14, 2018); accord In re Pecht, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986). As observed by the United States Bankruptcy Court for the Eastern District of Virginia, in Pecht, "[i]f the Court can determine from a reading of the plan that it does not comply with § 1129 of the Bankruptcy Code, then it is incumbent upon the Court to decline approval of the disclosure statement and prevent diminution of the estate." 57 B.R. at 139.

24. In the instant case, and as illustrated by the complete lack of information concerning the proposed liquidation of its assets, when coupled with the over four (4) months of delay and wasting of time while incurring necessary administrative expenses and costs, the Joint Amended Plan proposes to appoint a Liquidating Agent to implement and effectuate the terms of the Joint Amended Plan, further increasing the administrative costs and expenses of the Bankruptcy Cases to the detriment of WRC and general unsecured creditors.

25. The Disclosure Statement fails to provide adequate information on a variety of matters, all of which support denial of approval of the Disclosure Statement under § 1125 of the Bankruptcy Code. *First*, the Disclosure Statement fails to provide information regarding the timing, procedure, cost, and anticipated recovery from the liquidation of the Debtor's assets, including the alleged "valuable" executory contracts that it seeks to market, assume, and assign to third parties for an unknown and undetermined amount of revenue. Specifically, and with respect to said executory

contracts, neither the Disclosure Statement nor the Joint Amended Plan provide adequate information concerning the types of default (monetary or non-monetary) befalling each of the executory contracts that it intends to assume and assign to third parties, much less the costs that it will be forded to bear in order to cure any such defaults under said executory contracts, including the PSA with WRC. For example, any cure of the monetary default under the PSA would require payment of approximately one-fourth (1/4) of the total revenue the Debtor is projecting it will generate/receive from assumption and assignment of all of the executory contracts in the Bankruptcy Cases.

26. Because the recovery, if any, of WRC and other general unsecured creditors under the Joint Amended Plan is entirely dependent upon the expeditious and efficient liquidation and sale of the Debtor's assets, including its interests in real property and the assignment of assumed and defaulted executory contracts, the Disclosure Statement fails to provide any meaningful information, procedure, or timeframe by which these events will occur after the Effective Date. Neither the Joint Amended Plan nor the Disclosure Statement provide any meaningful information about the anticipated timeline for marketing and closing on the sale of any asset or executory contract, and either provide a definite marketing plan for the massive liquidation to be undertaken by the Liquidation Agent.

27. Second, the Disclosure Statement fails to provide adequate information concerning the timing and duration of the liquidation contemplated under the Joint Amended Plan, as well as the timing of any distributions to creditors under the Joint

Amended Plan. Other than the Administrative Claims, no other creditor has, nor could they have, an understanding of when they will receive any payment from the Debtors, nor the amount of any such payment. This failure to provide any meaningful details concerning the proposed liquidation under the Joint Amended Plan, including its duration, prevents any creditors and/or the Court from evaluating whether the Joint Amended Plan (and the liquidation procedures deployed by the Debtors through the Liquidation Agent) are feasible as required by § 1129(a)(11) of the Bankruptcy Code because the Joint Amended Plan is premised on liquidation of the Debtors' assets over an unstated and undetermined period of time.

28. Third, the Disclosure Statement fails to provide adequate information concerning the Liquidatoin Analysis attached to the Joint Amended Plan as Exhibit B. The Liquidation Analysis attached to the Joint Amended Plan purports to state what general unsecured crediotrs would receive in the event the Debtors were liquidated under chapter 7 of the Bankruptcy Code; however, there is no information concerning any of the assumptions that support the Liquidation Analysis or otherwise. The Disclosure Statement provides no information as to how the estimated property values were determined with respect to any of the assets, including the executory contracts, what comparable sales or market data were considered, who prepared the analysis, or what methodology was employed. Without this information, no creditors cannot evaluate whether the "best interests of creditors" test under § 1129(a)(7) of the Bankruptcy Code will be satisfied. The omission is especially material because Exhibit B appears to utilize appraised values

and then lists high and low estimated realized values without explaining the adjustment methodology. The Disclosure Statement, likewise, and at least with respect to WRC, fails to contain adequate information because the Liquidation Analysis is imperssiibly grouped amongst all of the Debtors when, as here, WRC, is only a creditor of BRD, not of Warden Station or Warden Station Holding. Upon information and belief, separate Liquidation Analyses for each of the Debtors would reveal whether the Joint Amended Plan, as opposed to separate plans of reorganization, would be in the best interests of all creditors, including WRC.

29. The absence of adequate information in the Disclosure Statement precludes all creditors, including WRC, from evaluating when, or even determining whether it will receive any payment from the Debtors. Moreover, and as illustrated below, the Plan currently before the Court is patently unconfirmable, as it fails to comply with the requirements of § 1129(a) of the Bankruptcy Code. Based upon the apparent and obvious non-confirmability of the Plan, this Court should deny approval of the Disclosure Statement.

B. CONFIRMATION OF THE JOINT AMENDED PLAN SHOULD BE DENIED BECAUSE THE JOINT AMENDED PLAN, AS PROPOSED, DOES NOT COMPLY WITH THE REQUIREMENTS OF § 1129 OF THE BANKRUPTCY CODE.

30. A plan proponent "has the burden of establishing by a preponderance of the evidence that the plan complies with the statutory requirements for confirmation of § 1129(a)." In re Swartville, No. 11-08676, 2012 WL 3564171 (Bankr. E.D.N.C. Aug. 17, 2012) (quoting In re Atrium High Point P'ship, 189 B.R. 599, 609 (Bankr. M.D.N.C. 1995)); see Radco Properties, 402 B.R. at 671 ("In order for a plan of

reorganization to be confirmable, the plan must satisfy the thirteen requirements set forth in Section 1129 of the Bankruptcy Code. The proponent of the reorganization plan bears the burden of proof as to introduction and persuasion that each of these requirements has been satisfied.").

I. THE JOINT AMENDED PLAN DOES NOT SATISFY THE REQUIREMENTS OF §§ 1129(a)(1) AND 1129(a)(2) OF THE BANKRUPTCY CODE BECAUSE IT DOES NOT COMPLY WITH THE REQUIREMENTS OF § 365(b) OF THE BANKRUPTCY CODE RELATING TO THE ASSMPTION AND ASSIGNMENT OF THE PSA AND OTHER EXECUTORY CONTRACTS.

31. Section 1129(a)(1) of the Bankruptcy Code requires that "[t]he plan compl[y] with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). As a result, § 1129(a)(1) of the Bankruptcy Code "focuses on the contents of the plan[:]"

> [T]he legislative history of subsection 1129(a)(1) suggests that Congress intended the phrase "applicable provisions" in this subsection to mean provisions of Chapter 11 that concern the form and content of reorganization plans: "Paragraph (1) [of subsection 1129(a)] requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of plan." S.Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978), reprinted in 1978 U.S.Code Cong. & Admin. News 5787, 5912 (emphasis added). It is doubtful that violations of Code provisions unrelated to the form and content of a plan, such as voting procedures, implicate subsection 1129(a)(1) at all.

Kane v. Johns-Manville Corp., 843 F.2d 636, 648-49 (2d Cir. 1988); 7 Collier on Bankruptcy ("Collier") ¶ 1129.02[1] (16th ed. 2020). (stating that "[s]ection 1129(a)(1) can also be used as the grounds for denial of confirmation when the plan is contrary to provisions of title 11 not found in chapter 11, such as impermissible releases of third parties, or if the plan selectively rides roughshod over and attempts to nullify important provisions of the Bankruptcy Code.").

32. Section 1129(a)(2) of the Bankruptcy Code, in turn, states that a plan may only be confirmed where "[t]he proponent of the plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). Implicit in this concept is that § 1129(a)(2) of the Bankruptcy Code requires compliance with court orders issued in furtherance of the reorganization process. In re Greate Bay Hotel & Casino, Inc., 251 B.R. 213, 236 (Bankr. D.N.J. 2000). Numerous bankruptcy courts have indicated that "serious violations of the Bankruptcy Code by a [proponent] can and should result in a denial of confirmation of a plan under § 1129(a)(2)." In re Landing Assocs., Ltd., 157 B.R. 791, 810 (Bankr. W.D. Tex. 1993); see, e.g., Cothran v. United States, 45 B.R. 836, 838 (S.D. Ga. 1984) (denying confirmation because of debtor's violation of § 363(c)(2), spending cash proceeds from sale of collateral without court permission); In re Lapworth, No. 97–34529, 1998 WL 767456, *3 (Bankr. E.D. Pa. Nov. 3, 1998) (holding that the debtor's violation of § 502(b), by making post-petition interest payments to unsecured creditor, which was neither cured or disclosed in disclosure statement, prevented confirmation pursuant to § 1129(a)(2)); In re Keiser, 204 B.R. 697 (Bankr. W.D. Tex. 1996) (concluding that a debtor's failure to attend meeting of creditors violated § 1129(a)(2)); In re Wermelskirchen, 163 B.R. 793 (Bankr. N.D. Ohio 1994) (recognizing that debtor's failure to include all creditors in his schedules violated § 521(1) and thus, § 1129(a)(2))

33. Section 365(a) of the Bankruptcy Code provides, in part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a); see NLRB v. Bildisco &

Bildisco, 465 U.S. 513, 521 (1984); accord In re Lavigne, 114 F.3d 379, 386 (2d Cir. 1997). "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993), cert. dismissed, 511 U.S. 1026 (1994). Courts, under § 365(d)(2) of the Bankruptcy Code, and "on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease." 11 U.S.C. § 365(d)(2).

34. Courts, in determining whether to permit assumption or rejection of an unexpired lease or executory contract, defer to, and examine whether, the proposed assumption or rejection is the result of the debtor's sound business judgment. See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996) (recognizing that, upon finding that a debtor has exercised its sound business judgment, the proposed assumption may be approved under § 365(a) of the Bankruptcy Code); Orion Pictures Corp., 4 F.3d at 1099; In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (stating that a debtor may assume or reject an unexpired lease under § 365(a) in the exercise of its "business judgment"). The "business judgment" standard is not strict and only requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the bankruptcy estate. *See* Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citation

omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993); Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612 (Bankr. S.D.N.Y. 1986) (stating that where the debtor articulates a reasonable basis for its business decisions, courts will generally not entertain objections to the debtor's conduct).

35. Section 365(b)(1) of the Bankruptcy Code, setting for the requirements for assumption of an executory contract[6] or unexpired lease, provides as follows:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> > (A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default

[6] The term "executory contract" is not defined in the Bankruptcy Code, but Congress has ratified and the Fourth Circuit has adopted, the "Countryman Definition,"[6] under which an executory contract is defined as follows:

> A contract under which the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete the performance would constitute a material breach excusing the performance of the other.

Gloria Mfg. Corp. v. International Ladies' Garment Workers' Union,734 F.2d 1020, 1022 (4th Cir. 1984) (quoting Countryman, "Executory Contracts in Bankruptcy: Part I," 57 Minn. L. Rev. 439, 460 (1973)); Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.,756 F.2d 1043, 1043 (4th Cir. 1985) (confirming the Fourth Circuit has adopted the Countryman definition of executory contract); In re Future Graphics, Inc., No. 09-09272-8-JRL, 2010 Bankr. LEXIS 1666, at *7-8 (Bankr. E.D.N.C. May 17, 2010). Determining whether a contract is executory is a question of law that "'may be freely reviewed by successive courts' based on the facts of each case." Future Graphics, 2010 Bankr. LEXIS 1666, at *7-8 (quoting Lubrizol,756 F.2d at 1045). "Countryman divided potentially executory contracts into three categories: (1) those in which the non-bankrupt has performed fully, (2) those in which the bankrupt has performed fully and (3) those in which neither party has performed fully." Gloria Mfg. Corp., 734 F.2d at 1022.

> arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). An executory contract or unexpired lease may be assigned if the debtor-in-possession "assumes such contract or lease in accordance with the provisions of this section; and . . . adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease." Id. § 365(f).

36. Article V of the Joint Amended Plan, proscribing the procedure for assumption and/or rejection of executory contracts, including the PSA, is contrary to the express requirements of § 365 of the Bankruptcy Code. Because Article V of the Joint Amended Plan violates § 365 of the Bankruptcy Code by permitting the Debtor to assume and assign executory contracts, such as the PSA, without curing any defaults thereunder and providing adequate assurance of future performance, as required by § 365(b) of the Bankruptcy Code. The PSA, as an executory contract

under Countryman, must be assumed or rejected in accordance with § 365 of the Bankruptcy Code.

37. Article V of the Joint Amended Plan—and the procedure for assumption and assignment of executory contracts such as the PSA and set forth therein—violates § 365 of the Bankruptcy Code in several respects. *First*, BRD's failure to close on the sale of the Subject Property by the Closing Date (i.e., April 30, 2026), is an incurable non-monetary default that precludes assumption of the PSA, as amended and modified by the PSA Amendments. See, e.g., 11 U.S.C. § 365(b). BRD cannot assume the PSA, as amended and modified, because the Closing Date by which it or any subsequent assignee of the PSA was required to complete the sale of the Subject Property is April 30, 2026, which is approximately sixty (60) days prior to the filing hereof. Adherence to contractual deadlines, such as closing dates, are material terms in any contract for the sale of commercial development property in the State of North Carolina. Requiring BRD, or any buyer or assignee thereof, close on the purchase of the Subject Property by the Closing Date, is a material provision of the PSA. The materiality of this term of the PSA is evidenced by the fact that any failure to observe and close on the sale of the Subject Property constitutes a breach of the PSA by BRD, which if not cured, leads to termination of the PSA. The failure by BRD to close on the purchase and sale of the Subject Property by April 30, 2026, is not a non-monetary default that cannot be cured under § 365(a) of the Bankruptcy Code, nor is it one that the Debtor is permitted to ignore, disregard, and/or attempt to cure through Article V of the Joint Amended Plan.

38. Bankruptcy courts throughout the United States have concluded that the existence of an uncurable non-monetary prepetition or post-petition default, precludes assumption of the underlying executory contract or unexpired lease under § 365 of the Bankruptcy Code. See, e.g., In re Eagle Creek Subdivision, LLC, 397 B.R. 758, 764 (Bankr. E.D.N.C. 2008) (holding that the debtor was precluded from assumption of executory contracts with a construction company under § 365(b)(1) of the Bankruptcy Code because its failure and inability to complete the underlying lots by June 30, 2008, constituted a material and non-monetary default, which the could not cure); In re New Breed Realty Enters., Inc., 278 B.R. 314, 320 (Bankr. E.D.N.Y. 2002).[7]

39. The United States Bankruptcy Court for the Eastern District of New York, in In re New Breed Realty, addressing an analogous situation, concluded that a debtor's failure to close on the purchase of the underlying property by the closing date "constitute[d] a non-monetary default which cannot be cured because it is a

[7] See, e.g., In re Claremont Acquisition Corp., Inc., 113 F.3d 1029, 1033 (9th Cir. 1997); In re Toyota of Yonkers, Inc., 135 B.R. 471, 477 (Bankr. S.D.N.Y. 1992) (concluding that a debtor's failure to operate its car dealership for seven (7) consecutive days was a default under the franchise agreement that was incapable of cure or remedy because it was grounds for termination under applicable state law and the debtor could not undo this historical fact); In re Lee West Enterprises, Inc., 179 B.R. 204, 206 (Bankr. C.D. Cal. 1995) (finding that the historical fact—the closure of the debtor's automobile dealership—constituted a material default which was incapable of cure); In re Mack, No. 93-13116 F, 1993 WL 722255 at *1, *4 1993 Bankr. LEXIS 2270 (Bankr. E.D. Penn. Nov. 10, 1993) (finding that prior illegal drug activity at the debtor's leasehold constituted a non-monetary breach of the parties' lease agreement, which was a historical fact incapable of being cured); In re Deppe, 110 B.R. 898, 904 (Bankr. D. Minn. 1990) (finding that the debtor's failure to maintain its gas station operations was a material default incapable of cure or remedy because the estate cannot overcome a nineteen-day lapse in operations).

historical fact." 278 B.R. at 320 (citations omitted). The New Breed Court determined that the debtor's failure to close on the transaction by August 1, 2001, constituted a material non-monetary default, which rendered the underlying executory contract incapable of being cured under § 365 of the Bankruptcy Code.

40. *Second*, and aside from the incurable non-monetary default, BRD does not have the financial ability, capacity, or capability to assume the PSA, as amended and modified, under § 365(b)(1)(A) of the Bankruptcy Code. The Debtor does not have the ability to cure its ongoing defaults thereunder, or provide adequate assurance of any cure, through payment of the sum of at least $473,056.48 [8] to WRC as a condition of assumption and assignment thereof.

41. Based upon the foregoing, including the existence of an incurable non-monetary default by BRD arising from its own failure to close on the purchase of the Subject Property by the Closing Date (i.e., April 30, 2026), and BRD's inability to cure the existing prepetition and post-petition defaults totaling not less than $473,056.48, the Debtors' attempt to circumvent the requirements of § 365(b) of the Bankruptcy Code should not be ignored by this Court. The Joint Amended Plan, in essence and if confirmed, would permit the Debtors to assume the PSA with WRC, without curing any of the monetary or non-monetary defaults thereunder, and even when

[8] This amount reflects the outstanding and unpaid Prepetition Interest Payment, the Post-petition Interest Payments, and the outstanding balance owed to Paramounte Engineering, Inc. for engineering services and materials that were furnished to the Subject Property at the request of BRD. This amount does not include the attorneys' fees, costs, and expenses that WRC was forced to incur on account of the actions, conduct, default, and breach of BRD, which would need to be paid as part of any cure of BRD's default and breach of the PSA, as amended and modified.

assumption and assignment may not be supported by the Debtors' sound business judgment on account of the substantial monetary cure amount that would be required to be paid to WRC as a condition of an assumption under, inter alia, § 365 of the Bankruptcy Code. Perhaps worse, and if confirmed, the Joint Amended Plan would allow the Debtor to do the unimaginable, assume and assign an executory contract—such as the PSA—which is and will remain subject to an uncurable non-monetary default, i.e., the failure to close on the sale of the Property by April 30, 2026.

42. The Joint Amended Plan, as proposed, as evidenced by Article V thereof, violates and runs afoul of the statutory requirements for assumption and assignment of executory contracts such as the PSA. The Debtor, by proposing the Joint Amended Plan that knowingly violates the terms and provisions of the Bankruptcy Code, cannot satisfy the requirements of §§ 1129(a)(1) and 1129(a)(2) of the Bankruptcy Code. As a result, confirmation of the Joint Amended Plan must be denied.

II. THE JOINT AMENDED PLAN WAS NOT PROPOSED IN GOOD FAITH AND, THEREFORE, DOES NOT COMPLY WITH § 1129(a)(3) OF THE BANKRUPTCY CODE.

43. Section 1129(a)(3) of the Bankruptcy Code provides that "[t]he court shall confirm a plan if . . . [t]he plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Notwithstanding the fact that "good faith" is not defined by the Bankruptcy Code, this inquiry under § 1129(a)(3) is "narrowly focused, and tests directly whether the debtor's conduct in formulating, proposing and confirming a plan displays the requisite honesty of intention." Swartville, 2012 WL 3564171, at *5 ("While the term 'good faith' remains undefined

by the Bankruptcy Code, courts have interpreted the § 1129(a)(3) requirement as mandating a 'reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Code.'" (citations omitted)). The primary objective of the reorganization chapter of the Bankruptcy Code is to promote the restructuring of debt and the preservation of economic units. See In re Nite Lite Inns, 17 B.R. 367, 370 (Bankr. S.D. Cal. 1982). "When conducting a good faith inquiry, a court must view the plan in light of the totality of the circumstances surrounding the proposal of the plan." In re Osborne, No. 12–00230, 2013 WL 2385136, at *3 (Bankr. E.D.N.C. May 30, 2013) (citation omitted). "Part of the good faith analysis is that the plan must deal with the creditors in a fundamentally fair manner." In re Marshall, 298 B.R. 670, 676 (Bankr. C.D. Cal. 2003).

44. Good faith has been found lacking in a variety of circumstances. The proposed percentage to be paid on unsecured creditors' claims is a factor in determining whether the debtor has proposed a plan in good faith. Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982); accord In re Namie, 395 B.R. 594, 596 (Bankr. D.S.C. 2008); In re Kitson, 65 B.R. 615, 622 (Bankr. E.D.N.C. 1986) (holding, as a basis for denial of confirmation upon excessive housing expenses, that a "chapter 13 debtor who proposes to pay his creditors 38 cents on the dollar cannot expect to 'go first class' when 'coach' is available"). Good faith has been found absent where a plan of reorganization was proposed for ulterior motive or in an inequitable manner. See, e.g., Gonzalez Hernandez v. Borgos, 343 F.2d 802, 805 (1st Cir. 1965) (holding "a Chapter XII proceeding may not be used as a vehicle to place a debtor's assets beyond

the reach of his dependent children."); In re Weathersfield Farms, Inc., 14 B.R. 572 (Bankr. D. Vt. 1981).

> "Good faith" requires honesty of intention in the debtor's conduct in the submission, approval and implementation of their plan. It requires a determination by the Court that the debtors have not misrepresented facts in their plan, unfairly manipulated the Bankruptcy Code or otherwise proposed their Plan in an inequitable manner.

In re Bodine, 113 B.R. 134, 136 (Bankr. W.D.N.Y. 1990) (citing In re Johnson, 708 F.2d 865, 868 (2d Cir. 1983)).

45. Here, the Debtors are proposing to pay their general unsecured creditors which, upon information and belief, may include WRC, an undetermined and unidentified dividend amount and an undetermined date in the future after the Effective Date, which is defined as the "Distribution Date." The Debtors, in the Joint Amended Plan, are seeking confirmation of an illusory payment to their general unsecured creditors by and through the unsupported suggestion that on some undetermined date after the Effective Date, its general unsecured creditors, who are owed approximately $108,043,297.00, may receive a *pro rata* share of the remaining Net Estate Cash following payment of undetermined and unidentified amounts to Administrative Claims, Priority Claims, Secured Tax Claims in Class 1, and Secured Claims in Classes 2, 3, 4, and 5, and Priority Claims in Class 6. Even if the Debtor could guarantee payment of a total dividend to general unsecured creditors of between $1,253,610.00 and 2,189,051.00 as set forth in the Liquidation Analysis, a total dividend of between 1.2% and 2.00% is not, cannot, and can never be, good faith.

46. Aside from the illusory and wholly-insufficient payment being proposed to general unsecured creditors in the Joint Amended Plan, and as illustrated above, the procedure set forth in Article V of the Joint Amended Plan for assumption and rejection of executory contracts was proposed in an inequitable manner and in contravention of the provisions of the Bankruptcy Code, including § 365(b) of the Bankruptcy Code. If confirmed, the Joint Amended Plan would enable the Debtors to assume and assign any executory contracts, including the PSA, without demonstrating that said assignment is supported by a sound and legitimate business justification and without providing adequate assurance of future performance of, inter alia, the PSA or any other executory contracts to which the Debtor was a party as of the Petition Date. The Joint Amended Plan, as a result, was not proposed in good faith as required by § 1129(a)(3) of the Bankruptcy Code because it provides for an inequitable and unfair procedure for the assumption and assignment of, inter alia, the PSA and other executory contracts, which if approved, would enable said assumption and assignment without providing cure of any existing defaults or reasonable assurance of future performance by the Debtors or any third-party assignees.

III. THE JOINT AMENDED PLAN DOES NOT COMPLY WITH § 1129(A)(7) OF THE BANKRUPTCY CODE BECAUSE IT DOES NOT PROVIDE GENERAL UNSECURED CREDITORS IN CLASSES 7 OR 8 WILL RECEIVE OR RETAIN ON THE EFFECTIVE DATE AN AMOUNT LESS THAN THEY WOULD RECEIVE IN A LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE BETWEEN $1,253,610.00 AND $2,189,051.00.

47. Section 1129(a)(7)(A) of the Bankruptcy Code provides as follows:

> (7) With respect to each impaired class of claims or interests—
>
> (A) each holder of a claim or interest of such class—
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date[.]

11 U.S.C. § 1129(a)(7).

48. Section 1129(a)(7) of the Bankruptcy Code, known as the "best-interest-of-creditors-test," "requires a plan proponent to show that each claimant has either accepted the plan or will receive at least as much as they would in a chapter 7 liquidation." In re Pyle Transp., Inc., No. 24-00578, 2025 Bankr. LEXIS 308023, at *5 (Bankr. N.D. Iowa Sep. 3, 2025); Diwan, L.L.C. v. Maha-Vishnu (In re Diwan, L.L.C.), 848 F.3d 1147, 1149 (8th Cir. 2017) ("[A] debtor's Chapter 11 plan may only be confirmed, inter alia, if any holder of an impaired claim or interest either accepts the plan or receives no less than he would under a Chapter 7 liquidation (the best-interest-of-the-creditors test)."); In re Cypresswood Land Partners, I, 409 B.R. 396, 428 (Bankr. S.D. Tex. 2009) (recognizing that best interest of creditors test "ensures that reorganization is in the best interest of individual claimholders who have not voted in favor of the plan." (citation omitted)); Bank of Am. Nat. Trust & Sav. Assoc. v. 203 N. LaSalle Street P'ship, 526 U.S. 434, 441 n.13 (1999).

49. The Liquidation Analysis attached and affixed to the Joint Amended Plan shows that general unsecured creditors, in a hypothetical liquidation under

chapter 7 of the Bankruptcy Code, will receive between $1,253,610.00 and $2,189,051.00, as compared to the undefined, undetermined, and uncertain *pro rata* portion of the Net Estate Cash distributed to Allowed Claims in Classes 7 and 8 of the Joint Amended Plan. The Debtors have not demonstrated, nor can they, that general unsecured creditors will receive, under the Joint Amended Plan, at least as much as would be received in the event they were liquidated under chapter 7 of the Bankruptcy Code. The Joint Amended Plan, which does not propose any identified dividend or payment to general unsecured creditors, much less the sum of at least $1,253,610.00, is not in the best interest of creditors and does not comply with § 1129(a)(7) of the Bankruptcy Code. General unsecured creditors under the Joint Amended Plan are not received the minimum required dividend under § 1129(a)(7) of the Bankruptcy Code.

50. Based upon the foregoing, the Debtors have failed to demonstrate, by a preponderance of the evidence, that general unsecured creditors would receive at least as much as they would receive in the event the Debtors were liquidated under chapter 7 of the Bankruptcy Code. As a result, confirmation of the Joint Amended Plan must be denied.

IV. THE JOINT AMENDED PLAN IS NOT FEASIBLE AND DOES NOT COMPLY WITH § 1129(a)(11) OF THE BANKRUPTCY CODE.

51. Section 1129(a)(11) states that the plan proponent must prove, by a preponderance of the evidence, that "[c]onfirmation of the plan 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, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). The plan proponent, the Debtor in the case of the Joint Amended Plan before this Court, "bears the burden to show feasibility of the plan by a preponderance of the evidence." Radco Properties, 402 B.R. at 678 (citations omitted). Although success under a proposed plan does not have to certain or guaranteed, more is required "than mere hopes and desires," In re Grandfather Mountain Ltd. P'ship, 207 B.R. 475, 485 (Bankr. M.D.N.C. 1996), because feasibility is "firmly rooted in predictions based upon objective fact." Radco Props., 402 B.R. at 678 (quoting In re Cheatham, 78 B.R. 104, 109 (Bankr. E.D.N.C. 1987)); see In re Hoffman, 52 B.R. 212, 215 (Bankr. D.N.D. 1985) ("Sincerity, honesty and willingness are not sufficient to make the plan feasible, and neither are visionary promises.").[9]

[9] Where the plan provides for deferred payments over time, the plan proponent must (1) establish that "projections of future expenses and earnings must be derived from realistic and reasonable assumptions which are not merely speculative," Grandfather Mountain, 207 B.R. at 485; (2) demonstrate, based upon these projections, an ability to make the payments proposed; and (3) provide reasonable assurance that the plan, as proposed, can be effectuated. An assessment of feasibility should include consideration of "the debtor's prior performance, the adequacy of the capital structure, the earning power of the business, economic conditions, the ability of management, and any other related matter that determines the prospects of a sufficiently successful operation to performance of the provisions of the plan." In re Atrium High Point Ltd. P'ship, 189 B.R. 599, 609 (Bankr. M.D.N.C. 1995) (citation omitted). Additional factors warranting consideration when determining feasibility include:

> (1) the adequacy of the [debtor's] capital structure; (2) the earning power of the [debtor's] business; (3) economic conditions [that the debtor will face during the plan period]; (4) the ability of [the debtor's present] management; (5) the probability of the continuation of the same management; and (6) any other related matter which determines the

52. Feasibility, in the context of a liquidating plan, "focus[es] [on] whether the liquidation itself, as proposed in the plan, is feasible." Holmes v. United States (In re Holmes), 301 B.R. 911, 914 (Bankr. M.D. Ga. 2003). In the context of a liquidating plan, "§ 1129(a)(11) requires a debtor to show that it can accomplish what it proposes to do, in the time period allowed, on the terms set forth in the plan." In re Star Ambulance Serv., LLC, 540 B.R. 251, 266 (Bankr. S.D. Tex. 2015); In re CRB Partners, LLC, No. 11-11924, 2013 Bankr. LEXIS 800, 2013 WL 796566, at *7 (Bankr. W.D. Tex. Mar. 4, 2013) ("One purpose of the feasibility test is to weed out plans that promise more than debtors can deliver."); accord In re Two Sts., Inc., 597 B.R. 309, 317 (Bankr. S.D. Miss. 2019).

53. The liquidation of the Debtors, proposed in the Joint Amended Plan, is not feasible and, as a result, the Joint Amended Plan does not satisfy the requirements of § 1129(a)(11) of the Bankruptcy Code. Utilizing the Debtors' post-petition performance in the Bankruptcy Cases, see In re Geijsel, 480 B.R. 238, 256 (Bankr. N.D. Tex. 2012) (recognizing that a debtor's post-petition and pre-confirmation performance is the best indicator of the reliability of its projected performance, success, or failure in connection with any plan of reorganization or plan of liquidation), it is obvious that the Debtors lack the ability to fulfill the overly ambitious metrics set forth in the Joint Amended Plan while managing the

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> prospects of a sufficiently successful operation to enable performance of the provisions of the plan.

In re Mallard Pond, 217 B.R. 782, 785 (Bankr. M.D. Tenn. 1997) (citation omitted).

liquidation process in an efficient and expeditious manner. As illustrated by its post-petition efforts, or lack thereof, one cannot reasonably assume that the Debtor (or the Liquidation Agent designated thereunder) can market, sell,

54. The Joint Amended Plan rests in its entirety on the ability to persuade WRC and at least eight (8) other counterparties to executory contracts to voluntarily waive monetary and non-monetary defaults by the Debtors thereunder, as a means to generate at least $2,000,000.00 in revenue that will be distributed to creditors thereunder. There is no reasonably possibility that the Debtors, given their post-petition dilatory tactics, will be able to monetize and generate any revenue from any executory contracts, including the now-defaulted PSA with WRC.. As proposed, the Joint Amened Plan does not offer or provide any probability of success, much less a reasonable possibility of success (or that it will be able to secure any of these projected funds associated with assumption and assignment of any executory contracts). The Debtors, themselves, do not appear to believe that funds will be generated from the assumption and assignment of executory contracts:

> Those land purchase agreements [i.e., executory contracts] each have their own challenges to assume and assign, including finding assignees for each agreement along with availability of funds, whether from BRD or the assignee, to cure any prepetition defaults under each agreement. Also counsel representing property owners for the Rehobeth, Cedar Hill Bluffs at Riverbend, Derrick Road, and Midland Sands projects have express an unwillingness to extend closing dates, which BRD believes is required to properly market and assign the agreements.

Disclosure Statement for Joint Amended Plan of Liquidation of BRD Land & Investment, BRDL Warden Station, LLC and BRDL Warden Station Holding Co., LLC [D.E. 257], at pp. 4-5. The Debtor, as a result, cannot reasonably rely upon

income generated from more than one-half (1/2) of the nine (9) executory contracts identified in the Joint Amended Plan because assumption and assignment of those is challenging due to the Debtor's non-monetary defaults and corresponding contracting parties' unwillingness to waive any such monetary defaults.

55. To the extent the Debtors rely, in whole or in part, upon the generation of any revenue from the assumption and assignment of the PSA with WRC, said reliance is unfounded and not justified based upon the existence of at least one (1) non-monetary default under the PSA, requiring the closing on the sale of the Subject Property thereunder be completed by April 30, 2026, which cannot be cured under § 365(b) of the Bankruptcy Code and precludes assumption and assignment of the PSA. Because assumption and assignment of the PSA by the Debtor is precluded on account of a non-monetary default that is incapable of being cured, the Joint Amended Plan is not feasible because the liquidation process outlined therein relies, in part, upon income or revenue projected from the assumption and assignment of the PSA and other executory contracts that cannot be assumed or assigned, whether economically or practically, by the Debtors.

RESERVATION OF RIGHTS

56. WRC expressly reserves all rights, claims, defenses, and objections with respect to the Joint Amended Plan and the Disclosure Statement, including without limitation: (a) the right to object to confirmation of the Plan on any and all grounds; and (b) any and all other rights WRC may have under applicable law. Nothing herein shall be deemed a waiver of any such rights.

CONCLUSION

WHEREFORE, and based upon the foregoing, WRC respectfully requests that confirmation of the Joint Amended Plan and approval of the Disclosure Statement proposed by the Debtors and currently before the Court be **DENIED** and WRC be allowed such further relief as the Court deems necessary and appropriate.

Respectfully submitted this, the 26th day of June, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is, and at all times hereinafter was, more than eighteen (18) years of age, and on this date, a true and accurate copy of the foregoing **WILMINGTON RIVER CLUB, LLC'S OBJECTION TO APPROVAL OF DISCLOSURE STATEMENT FOR JOINT AMENDED PLAN OF LIQUIDATION OF BRD LAND & INVESTMENT, BRDL WARDEN STATION, LLC, AND BRDL WARDEN STATION HOLDING CO, LLC AND CONFIRMATION OF JOINT AMENDED PLAN OF LIQUIDATION OF BRD LAND & INVESTMENT, BRDL WARDEN STATION, LLC, AND BRDL WARDEN STATION HOLDING CO, LLC** was electronically filed utilizing the CM/ECF system, notification of which was remitted to all ECF participants in the above-captioned adversary proceeding.

Executed this, the 26th day of June, 2026.

s/Joseph Z. Frost
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