

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:

BERGENFIELD SENIOR HOUSING, LLC,

Debtor.

Case No.: 13-19703-MS

Chapter 11

Judge: Morris Stern, U.S.B.J.

**PLAN OF LIQUIDATION PURSUANT
TO CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTOR**

Nothing contained herein shall constitute an offer, an acceptance, or a legally binding obligation of the Debtor or any other party in interest. This Plan is subject to approval of the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to this Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the District of New Jersey in accordance with section 1125 of the Bankruptcy Code. Such a solicitation will only be made in compliance with applicable provisions of securities and bankruptcy laws. **YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.**

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INTRODUCTION

The above-referenced debtor and debtor-in-possession in this Bankruptcy Case (as defined herein) hereby respectfully proposes this Plan (as defined herein) pursuant to section 1121(a) of the Bankruptcy Code. Reference is made to the Disclosure Statement (as defined herein), distributed contemporaneously herewith, for a discussion of the Debtor's history, business, assets, and operations; a summary and analysis of this Plan; and certain related matters.

ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

A. Rules of Interpretation

For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified, supplemented or restated; (d) unless otherwise specified, all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (e) the words **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”** and comparable terms refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) the words **“include”**, **“includes”** and **“including”** shall not be limiting and shall be deemed to be followed by **“without limitation”** whether or not they are, in fact, followed by such words or words of like import; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any capitalized term used in the Plan that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; AND (j) in the event of any inconsistency between the terms of the Plan and the terms of the Disclosure Statement, the terms of the Plan shall control.

B. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

C. Defined Terms

Unless the context otherwise requires, when used in capitalized form in the Plan, the following terms shall have the respective meanings assigned to such terms below:

“503(b)(9) Claim” means an Administrative Claim under section 503(b)(9) of the Bankruptcy Code.

“Administrative Claim” means a Claim for payment of an administrative expense of a

kind specified in Bankruptcy Code section 503(b) and entitled to priority in payment under Bankruptcy Code sections 507(a)(1), 507(b) or 1114(e)(2), including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries or commissions for services and payments for goods and other services and leased premises); (b) any Professional Fees incurred before the Effective Date; (c) all fees and charges assessed against the Estate under Chapter 123 of title 28 of the United States Code, sections 1911-30; and (d) obligations designated as Allowed Administrative Claims pursuant to an order of the Bankruptcy Court and (f) 503(b)(9) Claims.

“Administrative Claim Bar Date” means the last day to request allowance for administrative expenses incurred during the Bankruptcy Case, including 503(b)(9) Claims, other than for Professional Fees, which shall be the date set in the the Disclosure Statement Approval Order as seven (7) days before the date first set for the Confirmation Hearing.

“Administrative Claim Reserve” means funds set aside from the Debtor’s Cash on hand on the Effective Date, as described in Article III.B.3 of the Plan.

“Allowed” means, with reference to any Claim, except as otherwise provided herein:

(a) a Claim that has been Scheduled by the Debtor in its Schedules as other than disputed, contingent or unliquidated and as to which such Debtor or any other party in interest has not timely Filed an objection in accordance with the provisions of the Plan;

(b) a Claim that either is not a Disputed Claim or has been allowed by a Final Order;

(c) a Claim that is allowed (i) in any stipulation with the Debtor concerning the amount and nature of such Claim executed prior to the Confirmation Date and approved by the Bankruptcy Court upon proper notice to the Debtor and other parties in interest; (ii) in any stipulation with the Debtor concerning the amount and nature of such Claim executed on or after the Confirmation Date and, to the extent necessary, approved by the Bankruptcy Court or (iii) in any contract, instrument, indenture or other agreement entered into or assumed pursuant to the Plan;

(d) a Claim relating to a rejected executory contract or unexpired lease that (i) is not a Disputed Claim or (ii) has been allowed by a Final Order, in either case only if a Proof of Claim has been timely Filed in accordance with the provisions of the Plan or has otherwise been deemed timely Filed under applicable law; or

(e) a Claim that is allowed pursuant to the terms of the Plan; *provided, however*, unless otherwise specified herein or by order of the Bankruptcy Court, the term “Allowed Claim” shall not, for any purpose under the Plan, include interest, penalties, premiums or late charges on such Claim from and after the Petition Date.

“Avoidance Actions” means (a) any and all actions that are Filed or that may be Filed pursuant to the provisions of Bankruptcy Code sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551 and 553, or applicable non-bankruptcy law that may be incorporated or brought under the foregoing sections of the Bankruptcy Code; or (b) any other similar actions or proceedings filed to recover property for or on behalf of the Estate or to avoid a lien or transfer.

“Bankruptcy Case” means, the Debtor’s bankruptcy case under Chapter 11 of the Bankruptcy Code pending in the Bankruptcy Court and docketed as Case No. 13-19703-MS.

“Bankruptcy Code” means title 11 of the United States Code, sections 101-1330 and applicable portions of titles 18 and 28 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended from time to time, as applicable to the Bankruptcy Case, promulgated under 28 U.S.C. § 2075 and the Local Rules of the Bankruptcy Court.

“Bid Procedures” means those certain procedures approved by the Bankruptcy Court pursuant to the Bid Procedures Motion, as same may have been modified or amended.

“Bid Procedures Motion” means the Debtor’s Motion for an Order (I) Approving Bid Procedures for the Sale of Substantially All of the Debtor’s Assets and (II) Approving the Form and Scope of Notice of the Bid Procedures (Docket No. 57).

“Business Day” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“Carve-Outs” means, collectively, amounts carved-out from the collateral of the Debtor’s secured creditors for the benefit of Professionals.

“Cash” means legal tender of the United States of America and equivalents thereof, including bank deposits and checks.

“Causes of Action” means all of the Debtor’s actions, causes of action, choses in action, liabilities, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, third-party claims, counterclaims, and crossclaims, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Bankruptcy Case, through and including the Effective Date, including, but not limited to, the Avoidance Actions.

“Claim” means a “claim” against the Debtor, as defined in Bankruptcy Code section 101(5), whether or not asserted.

“Class” means a category of Claims or Equity Interests described in Article III of the Plan.

“Closing Date” means the date on which the sale of the Property is consummated.

“Confirmation” means the entry of the Confirmation Order, subject to all conditions specified in Article IX of the Plan having been (i) satisfied or (ii) waived pursuant to Article IX.C.

“Confirmation Date” means the date of entry of the Confirmation Order on the docket of the Bankruptcy Case within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Hearing” means the hearing held by the Bankruptcy Court pursuant to

Bankruptcy Code section 1128(a) to consider Confirmation of the Plan in accordance with Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

“Confirmation Hearing Date” means the date on which the Confirmation Hearing is first commenced.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

“Consummation” means the occurrence of the Effective Date.

“Covered Persons” means (i) the members and managers of the Debtor, whenever serving, and (ii) employees employed by or serving the Debtor as of the Petition Date.

“Creditor” means the Holder of a Claim against the Debtor or its Estate.

“Debtor” means Bergenfield Senior Housing, LLC, as a debtor and debtor in possession in the Bankruptcy Case.

“Disallowed Claim” means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order, (b) a Claim that is Scheduled as zero or as contingent (other than with respect to tenant security deposits on Schedule E), disputed, or unliquidated and as to which no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law, (c) a Claim that has not been Scheduled and as to which no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law or (d) a Claim disallowed in accordance with section 502(d) of the Bankruptcy Code pursuant to Article VII of the Plan.

“Disbursing Agent” means the Debtor.

“Disclosure Statement” means the written disclosure statement (including all exhibits and schedules thereto) that relates to the Plan, as the same may be amended, supplemented, revised or modified from time to time, as approved by the Bankruptcy Court pursuant to the Disclosure Statement Approval Order.

“Disclosure Statement Approval Order” means the Final Order approving, among other things, the adequacy of the Disclosure Statement pursuant to Bankruptcy Code section 1125.

“Distribution” means the distributions to be made in accordance with the Plan of, as the case may be: (a) Cash or (b) any other consideration or residual value distributed to Holders of Allowed Claims under the terms and provisions of the Plan.

“Distribution Record Date” means the record date for the purpose of determining Holders of Allowed Claims entitled to receive Distributions under the Plan on account of Allowed Claims which date shall be the tenth (10th) day following entry of the Disclosure Statement Approval Order.

“Effective Date” means that date following the Confirmation Date on which all conditions to consummation to the Plan shall have been satisfied or waived as provided in Article IX hereof.

“Entity” means an “entity,” as defined in section 101(15) of the Bankruptcy Code.

“Equity Interest” means, with respect to the Debtor, as of the Petition Date, all member and/or other ownership interests in the Debtor.

“Estate” means the estate of the Debtor created by section 541 of the Bankruptcy Code upon the commencement of the Bankruptcy Case.

“Exculpated Parties” mean, collectively, each of the following parties in their respective capacities as such: (a) the Debtor, and (b) each manager, financial advisor, restructuring advisor or attorney employed by or serving the Debtor as of the Petition Date.

“File” or **“Filed”** means file or filed on the Bankruptcy Court’s docket for the Bankruptcy Case.

“Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

“Final Order” means an order of the Bankruptcy Court (x) as to which the time to appeal, petition for certiorari, or move for reargument, reconsideration, rehearing or new trial has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, reconsideration, rehearing or new trial shall then be pending; (y) as to which any right to appeal, petition for certiorari, reargue, reconsider, rehear or retry shall have been waived in writing; or (z) in the event that an appeal, writ of certiorari, reargument, reconsideration, rehearing or new trial has been sought, as to which (i) such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order is appealed, (ii) certiorari has been denied as to such order, or (iii) reargument, reconsideration or rehearing or new trial from such order shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument, reconsideration, rehearing or new trial shall have expired without such actions having been taken, provided, however, that the possibility of a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule being filed with respect to such order shall not cause such order to be deemed a non-Final Order, provided, however, that with respect to the Confirmation Order, the Debtor may in its sole discretion elect to treat the Confirmation Order as a Final Order so long as there shall not then be pending any stay or injunction with respect to the Confirmation Order.

“General Unsecured Claim” means any Claim against the Debtor that is not an Administrative Claim, a Secured Claim, a Priority Tax Claim or a Priority Non-Tax Claim.

“Holder” means any Entity holding a Claim or an Equity Interest.

“Impaired Class” means a Class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Initial Distribution Date” means the Effective Date or the date, occurring as soon as practicable after the Effective Date, on which the initial Distributions are made to Holders of Allowed Claims.

“Internal Revenue Code” means title 26 of the United States Code, as amended from time to time.

“IRS” means the Internal Revenue Service.

“Official Bankruptcy Forms” means the Official Bankruptcy Forms, prescribed by the

Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

“Person” means a “person,” as defined in section 101(41) of the Bankruptcy Code.

“Petition Date” means May 2, 2013.

“Plan” means this chapter 11 plan, including all exhibits and schedules annexed hereto or otherwise incorporated herein, either in its present form or as it may be altered, amended, modified, revised or supplemented from time to time.

“Plan Termination Date” has the meaning ascribed to it in Article IV.D.2.

“Priority Non-Tax Claim” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than (1) a Priority Tax Claim, (2) an Administrative Claim or (3) a Claim for refund of all or part of a Tenant Security Deposit.

“Priority Tax Claim” means a Claim of a “governmental unit” (as such term is defined in section 101(27) of the Bankruptcy Code) of the kind specified in, and entitled to priority under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

“Professional” means a Person or Entity (a) employed by the Debtor pursuant to a Final Order in accordance with sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 330 or 331 of the Bankruptcy Code, for whom or for which compensation and reimbursement of expenses has been allowed by the Bankruptcy Court or is sought pursuant to section 503(b) of the Bankruptcy Code or (b) for whom or for which compensation and reimbursement has been allowed by the Bankruptcy Court or is sought pursuant to section 503(b)(4) of the Bankruptcy Code.

“Professional Fees” means the fees for professional services rendered and expenses incurred in connection with such services by Professionals on and after the Petition Date.

“Professional Fee Carve-Outs” means the aggregate of amounts carved-out for the benefit of Professionals from the collateral of secured creditors pursuant to the Rents Orders or otherwise.

“Proof of Claim” means a proof of Claim Filed against the Debtor in the Bankruptcy Case, including a request for payment of administrative expenses pursuant to 11 U.S.C. § 503(b)(9).

“Property” means the apartment building and all assets of the Debtor related thereto located at 47 Legion Drive in Bergenfield, NJ.

“Proponent” means the Debtor.

“Pro Rata Share” means, with reference to any Distribution on account of any Allowed Claim or Allowed Interest, as applicable, in any Class, the ratio (expressed as a percentage) that the amount of such Allowed Claim or Allowed Interest bears to the aggregate amount of Allowed Claims or Allowed Interests of the same Class (and to the extent required for an interim Distribution and any reserve for disputed Claims)

“Releasing Parties” mean, collectively, each of the following parties in their respective capacities as such: (a) the Debtor, (b) each member, manager, and/or employee employed by or serving the Debtor on or after the Petition Date, and (c) all financial advisors, restructuring advisors and attorneys of the Debtor employed by and serving on or after the Petition Date.

“Rents Orders” means the Orders entered by the Bankruptcy Court permitting the Debtor, *inter alia*, with the Consent and License of Boiling Springs Savings Bank, to Use Rents of Existing Secured Creditors and Granting Adequate Protection for Use and Prescribing Form

“Sale” means the intended sale of the Property to the highest bidder determined through the Bid Procedures.

“Schedules” mean the schedules of assets and liabilities, schedules of executory contracts, and the statement of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time through the Confirmation Date in accordance with Bankruptcy Rule 1009.

“Scheduled” means an entry that appears on the Schedules.

“Secured” means, when referring to a Claim: (a) secured by a lien on property in which the Estate has an interest, which lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is entitled to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

“Secured Claim” means a Claim against the Debtor to the extent it is Secured.

“Securities Act” means the Securities Act of 1933, as amended.

“Security” means a “security,” as defined in section 101(49) of the Bankruptcy Code.

“Tax” or **“Taxes”** means all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise or other similar taxes, estimated import duties, fees, stamp taxes and duties, value added taxes, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed on the Debtor or its Estate by any taxing authority with respect thereto.

“Tenant Security Deposit” means a deposit provided by a tenant in connection with such tenant’s lease of an apartment at the Property.

“Unclassified Claims” means administrative claims and priority tax claims, as described in Article II of the Plan.

“Unimpaired” means a Claim or Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

“Unimpaired Class” means a Class that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

“United States Trustee” means the United States Trustee appointed under 28 U.S.C. § 591 to serve in the District of New Jersey.

ARTICLE II.

PAYMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

A. Administrative Claims

On, or as soon as reasonably practicable after (i) the Initial Distribution Date, if such Administrative Claim is an Allowed Administrative Claim as of the Effective Date or (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim or as otherwise determined by the Debtor, each Holder (other than a Professional) of an Allowed Administrative Claim shall receive, in full settlement, satisfaction and release of, and in exchange for, such Allowed Administrative Claim, (a) Cash in an amount equal to the unpaid amount of such Allowed Administrative Claim or (b) such other, less favorable treatment as may be agreed upon in writing by such Holder and the Debtor, as applicable; provided, however, that the Debtor shall be authorized to pay Allowed Administrative Claims that arise in the ordinary course of the Debtor's business, in full, in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions, post-confirmation. All requests for allowance of Administrative Claims must be made, other than for Professional fees, by written motion no later than the Administrative Claim Bar Date. Administrative Claims not paid as of the Effective Date will be paid from the Administrative Claims Reserve.

Any Holder of a 503(b)(9) Claim that did not timely file a 503(b)(9) Claim by the Administrative Claim Bar Date shall be forever barred from asserting such 503(b)(9) Claim against the Debtor, its Estate, its successors or its property, and such Administrative Claim shall be deemed discharged and released as of the Effective Date. Further, the Debtor reserves the right to file objections to any asserted 503(b)(9) Claims, and to request that the Bankruptcy Court enter orders disallowing and expunging, or, in certain instances, reducing such asserted 503(b)(9) Claims. Asserted 503(b)(9) Claims Filed, but not objected to as of the Initial Distribution Date, or which were objected to and reduced but not expunged, shall be deemed Allowed Administrative Claims in full or as reduced, respectively.

Any further request for allowance of an Administrative Claim in this case must be made, other than for a Professional, by written motion by the Administrative Claim Bar Date. Any Objections to such a request must be Filed and served on the requesting party prior to the Initial Distribution Date. Unless the Debtor or another party in interest objects to a request for payment of an Administrative Claim within such time period, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtor or another party in interest objects to a request for payment of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

B. Professional Fees

Notwithstanding any other provision of this Plan concerning Administrative Claims, any Professional seeking an award by the Bankruptcy Court of an Allowed Administrative Claim on account of Professional Fees incurred from the Petition Date through and including the Effective Date (i) shall, no later than forty-five (45) days after the Effective Date, File a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Effective Date and (ii) shall receive, as soon as reasonably practicable

after such claim is Allowed, in full settlement, satisfaction and release of, and in exchange for, such Allowed Administrative Claim, Cash in an amount equal to the unpaid amount of such Allowed Administrative Claim in accordance with the Order relating to or allowing any such Administrative Claim.

Any Professional providing services on behalf of the Estate after the Effective Date may submit invoices to the Debtor for compensation for services rendered and reimbursement of expenses provided after the Effective Date. The Debtor may pay such Professionals, without further application or Order of the Bankruptcy Court, Cash in an amount equal to the unpaid amount of such post-Effective Date invoices to the extent the Debtor agrees that the services thus provided were for the benefit of the Estate and that the amounts requested in such invoices are reasonable. In the event the Debtor disagrees with any such post-Effective Date request for payment by a Professional, and the Debtor and the requesting Professional are unable to resolve such dispute consensually, the invoice shall be submitted to the Bankruptcy Court for a final determination as to its Allowance.

Allowed Professional Fees shall be paid from the Professional Fee Carve-Outs, and, in the event the Professional Fee Carve-Outs are insufficient to pay all Allowed Professional Fees, any unpaid amounts may be paid from the Administrative Claims Reserve.

C. Priority Tax Claims

On, or as soon as reasonably practicable after (i) the Initial Distribution Date, if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against the Debtor shall receive, (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (2) Cash in an amount agreed to by such Holder and agreed to and paid by the Debtor, provided that such parties may further agree for the payment of such Allowed Priority Tax Claim to occur at a later date without any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests that are required to be designated in classes pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and their treatment is set forth in Article II hereof. Classification of Claims and Equity Interests in this Plan is for all purposes, including voting, confirmation and distribution pursuant to the Plan.

A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class only to the extent that any portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is

placed in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled prior to the Effective Date. Notwithstanding any Distribution provided for in the Plan, no Distribution on account of any Claim or Equity Interest is required or permitted unless and until such Claim or Equity Interest becomes an Allowed Claim or Allowed Equity Interest, as the case may be, which might not occur, if at all, until after the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests			
Class	Claim	Status	Voting Rights
1	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
2	Secured Claim –Boiling Springs Savings Bank	Impaired	Entitled to Vote
3	Secured Claim – Gene Rotonda	Impaired	Entitled to Vote
4	Secured Claim – Nicholas Rotonda	Impaired	Entitled to Vote
5	Secured Claim – Rosemarie Hebner	Impaired	Entitled to Vote
6	Secured Claim – Nicholas and Rosemarie Rotonda	Impaired	Entitled to Vote
7	Secured Claim – Nicholas and Rosemarie Rotonda	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Equity Interests	Impaired	Deemed to Reject

B. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Priority Non-Tax Claims

(a) Classification: Class 1 consists of Priority Non-Tax Claims.

(b) Treatment: On or as soon as practicable after the Effective Date, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and final satisfaction of such Claim, one of the following treatments, in the sole discretion of the Debtor: (a) full payment in Cash of its Allowed Priority Non-Tax Claim or (b) treatment of its Allowed Priority Non-Tax Claim in a manner that leaves such Claim Unimpaired.

(c) Voting: Class 1 is Unimpaired and Holders of Priority Non-Tax Claims are conclusively deemed to have accepted the Plan.

2. Class 2 – Secured Claim of Boiling Springs Savings Bank (“BSSB”)

(a) Classification: Class 2 consists of the Secured Claim of BSSB.

(b) Treatment: On the later of the Closing Date or the date on which its Claim becomes Allowed, whether pursuant to stipulation or Court order, BSSB shall receive, in full and final satisfaction of its Allowed Secured Claim, the total amount of its Allowed Secured Claim, which amount shall be the sum of the then-unpaid principal balance plus interest calculated at the rate of 3% per annum, plus BSSB’s reasonable costs and professional fees, but excluding any claim for early payment in the nature of pre-payment penalties or otherwise, and further excluding any interest in excess of 3% per annum.

(c) Payment of the above amount shall be deemed to fully satisfy BSSB's Allowed Secured Claim, and BSSB shall waive any claims in excess of this amount and shall not participate as the Holder of a Class 8 Claim.

(d) Voting: Class 2 is Impaired and the Holder of the Class 2 Claim is entitled to vote to accept or reject the Plan.

3. Class 3 – Secured Claim of Gene Rotonda

(a) Classification: Class 3 consists of the Secured Claim of Gene Rotonda, noted on the Debtor's Schedule D in the amount of \$1,000,000.

(b) Treatment: To the extent that the Secured Claim of Gene Rotonda is an Allowed Claim, on the Initial Distribution Date the Holder of the Claim in Class 3 will receive cash in the full Allowed Amount of its Secured Claim from the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 and 2.

(c) Payment of the above amount shall be deemed to fully satisfy the Allowed Secured Claim of Gene Rotonda.

(d) Voting: Class 3 is Impaired and the Holder of the Class 3 Claim is entitled to vote to accept or reject the Plan.

4. Class 4 – Secured Claim of Nicholas Rotonda

(a) Classification: Class 4 consists of the Secured Claim of Nicholas Rotonda, son of the Debtor's principal, Nicholas Rotonda, noted on the Debtor's Schedule D in the amount of \$1,000,000.

(b) Treatment: To the extent that the Secured Claim of Nicholas Rotonda is an Allowed Claim, on the Initial Distribution Date the Holder of the Claim in Class 4 will receive cash in the full Allowed Amount of its Secured Claim from the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 through 3.

(c) Payment of the above amount shall be deemed to fully satisfy the Allowed Secured Claim of Nicholas Rotonda.

(d) Voting: Class 4 is Impaired and the Holder of the Class 4 Claim is entitled to vote to accept or reject the Plan.

5. Class 5– Secured Claim of Rosemarie Hebner

(a) Classification: Class 5 consists of the Secured Claim of Rosemarie Hebner, noted on the Debtor's Schedule D in the amount of \$1,000,000.

(b) Treatment: To the extent that the Secured Claim of Rosemarie Hebner is an Allowed Claim, on the Initial Distribution Date the Holder of the Claim in Class 5 will receive cash in the full Allowed Amount of its Secured Claim from the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 through 4.

(c) Payment of the above amount shall be deemed to fully satisfy the Allowed Secured Claim of Rosemarie Hebner.

(d) Voting: Class 5 is Impaired and the Holder of the Class 5 Claim is entitled to vote to accept or reject the Plan.

6. Class 6 – Secured Claim of Nicholas and Rosemarie Rotonda

(a) Classification: Class 6 consists of the Secured Claim of Nicholas and Rosemarie Rotonda, noted on the Debtor's Schedule D in the amount of \$1,500,000.

(b) Treatment: To the extent that the Secured Claim of Nicholas and Rosemarie Rotonda is an Allowed Claim, on the Initial Distribution Date the Holders of the Claim in Class 6 will receive cash in the full Allowed Amount of their Secured Claim from the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 through 5.

(c) Payment of the above amount shall be deemed to fully satisfy the Allowed Secured Claim of Nicholas and Rosemarie Rotonda.

(d) Voting: Class 6 is Impaired and the Holders of the Class 6 Claim are entitled to vote to accept or reject the Plan.

7. Class 7 – Secured Claim of Nicholas and Rosemarie Rotonda

(a) Classification: Class 7 consists of the Secured Claim of Nicholas and Rosemarie Rotonda, noted on the Debtor's Schedule D in the amount of \$600,000.

(b) Treatment: To the extent that the Secured Claim of Nicholas and Rosemarie Rotonda is an Allowed Claim, on the Initial Distribution Date the Holders of the Claim in Class 7 will receive cash in the full Allowed Amount of their Secured Claim from the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 through 6.

(c) Payment of the above amount shall be deemed to fully satisfy the Allowed Secured Claim of Nicholas and Rosemarie Rotonda.

(d) Voting: Class 7 is Impaired and the Holders of the Class 6 Claim are entitled to vote to accept or reject the Plan.

8. Class 8 – General Unsecured Claims

(a) Classification: Class 8 consists of General Unsecured Claims.

(b) Treatment: Each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such Claim, (a) its Pro Rata Share of the proceeds of the Sale, after payment and/or adequate reservation for all Unclassified Claims and Claims in Classes 1 through 7, and (b) its Pro Rata Share of the proceeds of the liquidation of any further assets of the Debtor, including Causes of Action, after payment and/or adequate reservation for all Unclassified Claims.

(c) Payment of the above amounts shall be deemed to fully satisfy General Unsecured Creditors with respect to all claims against the Debtor.

(d) Voting: Class 8 is Impaired, and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

9. Class 9 – Equity Interests

(a) Classification: Class 9 consists of Equity Interests.

(b) Treatment: Holders of Equity Interests shall neither receive nor retain any property under the Plan. All Equity Interests shall be cancelled and of no further force or effect and all proofs of interest filed on account of Equity Interests shall be deemed disallowed by operation of the Plan.

(c) Voting: Class 9 is Impaired and Holders of Equity Interests are deemed not to have accepted the Plan, unless they vote to accept the plan, notwithstanding such deemed non-acceptance.

C. Elimination of Vacant Classes

Any Class of Claims or Equity Interests that is not occupied as of the date of the commencement of the Confirmation Hearing by at least one Allowed Claim or Allowed Equity Interest, as applicable, or at least one Claim or Equity Interest, as applicable, temporarily Allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for purposes of (i) voting on the acceptance or rejection of the Plan and (ii) determining acceptance or rejection of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Funding of the Plan

The Debtor is marketing the Property pursuant to the Bid Procedures Motion. The Debtor intends to sell the Property to the highest bidder resulting from the process approved by the Bankruptcy Court in the Bid Procedures Motion. The Sale of Property to such highest bidder is specifically contemplated and approved through this Plan and the Confirmation Order, and is the primary mechanism for funding payments under the Plan. The payments provided for in this Plan will be made to Creditors by the Debtor from the Sale Proceeds and/or the Net Effective Day Cash and/or proceeds from the liquidation of other assets of the Debtor, including, without limitation, Causes of Action.

B. Vesting of Assets and Dissolution

1. On the Effective Date, the Debtor's assets shall vest in the Debtor, free and clear of all Claims, Equity Interests, liens, charges or other encumbrances, except as set forth in this Plan. After one hundred eighty (180) days after the Effective Date, or such other date as may be ordered by the Bankruptcy Court the Debtor is authorized, without the need for any further action or formality which might otherwise be required under applicable non-bankruptcy laws, to dissolve the Debtor.

2. On the Effective Date or as soon as practicable thereafter, the Debtor shall consummate, pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, those transactions and sales of property, if any, authorized herein.

3. On the Effective Date, any provision in any operating agreements, limited liability company agreements or any other organizational document (as the same may be amended or

restated from time to time) of the Debtor requiring dissolution, liquidation, or withdrawal of a member upon insolvency, bankruptcy or the filing of Bankruptcy Case:

(a) is deemed waived and of no further force and effect and

(b) any action taken to prevent or revoke such potential dissolution or liquidation by the Debtor or potential withdrawal of the Debtor from the applicable limited liability company or partnership is ratified and deemed effective to prevent such dissolution or liquidation and the Debtor shall continue its existence regardless of any such provision.

C. Reservation of Rights Regarding Causes of Action

1. The Debtor reserves the right to pursue any and all Causes of Action, and the right to administer, settle, litigate, enforce and liquidate, consistent with the terms and conditions of the Plan, such Causes of Action. The Debtor specifically reserves and preserves any and all Causes of Action which it has or may have against SM Global Group LLC and Piekarsky & Associates, LLC as more fully described in the Disclosure Statement.

2. Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled in the Plan, or any Final Order, the Debtor expressly reserves all Causes of Action for later adjudication and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or *laches*, shall apply to such Causes of Action upon, after, or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtor expressly reserves the right to pursue or adopt any Causes of Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits.

D. Distributions

1. Rights and Powers of the Debtor

(a) The Debtor shall have all the rights and powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules, including without limitation, the right to (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan; (ii) prosecute, settle, abandon or compromise any Claims; (iii) make Distributions contemplated by the Plan; (iv) establish and administer any necessary reserves for disputed Claims that may be required; (v) object to disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections; (vi) employ and compensate professionals (including professionals previously retained by the Debtor); and (vii) file all federal, state and local tax returns if necessary.

2. Unsecured Creditor Distributions

(a) Initial Distributions. On the Initial Distribution Date, the Debtor shall make Distributions required to be made under the Plan to Holders of Allowed Unsecured Claims, and shall make adequate reserves for any disputed Claims.

(b) Final Distributions. The Debtor's estate shall be dissolved and its affairs wound up and the Debtor shall make the Final Distributions, upon the earlier of (i) the date which is two (2) years after the Effective Date, and (ii) that date when, (A) in the reasonable judgment of the Debtor, substantially all of the assets of the Debtor have been liquidated and there are no substantial potential sources of additional assets for Distribution; and (B) there remain no substantial disputed Claims. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term for the Debtor to make distributions for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Plan. The date on which the final Distributions are made is referred to as the "**Plan Termination Date**". On the Plan Termination Date, the Debtor shall:

(i) distribute all Cash held by the Debtor to in accordance with the Plan; and

(ii) promptly thereafter, request the Bankruptcy Court enter an order closing the Bankruptcy Case (unless this has already been done). For the avoidance of doubt, nothing herein shall be construed to prevent the Debtor from closing the Bankruptcy Case if in the Debtor's reasonable judgment no further matters are required to be presented to or adjudicated by the Bankruptcy Court.

E. Directors/Officers/Equity Interests/Professionals of the Debtor on the Effective Date

1. The authority, power and incumbency of the Persons then acting as directors and officers of the Debtor shall continue until the Plan Termination Date, at which point such authority, power and incumbency shall be terminated and such directors and officers shall be deemed to have resigned.

2. On the Effective Date, all the Equity Interests in the Debtor (including all instruments evidencing such Equity Interests) shall be canceled and extinguished without further action under any applicable agreement, law, regulation or rule.

3. On the Effective Date, the Professionals for the Debtor shall be deemed to have completed their services and have no further obligations to render service unless they are retained by the Debtor upon such terms as shall be agreed upon by the Debtor and the Professionals, which terms must be acceptable to each in its sole discretion, but they shall be able to file a final application for a reasonable compensation and reimbursement of expenses through the Effective Date as permitted by this Plan, compensation for which may be included in such final application as an estimate.

F. Operations of the Debtor between the Confirmation Date and the Effective Date, and Following the Effective Date

During the period from the Confirmation Date to and until the Effective Date, the Debtor shall continue as debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. If the Effective Date does not occur by last day for the Debtor to use rents pursuant to the Rents Order, the Debtor may continue to operate its business until the Closing Date, solely with the consent of BSSB, pursuant to a budget which must be acceptable BSSB in its sole discretion, without further order of the Bankruptcy Court.

G. Term of Injunctions or Stays

Unless otherwise provided, all injunctions or stays provided for in the Bankruptcy Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Bankruptcy Case is closed.

H. Company Action

The entry of the Confirmation Order shall constitute the approval of the authorization for the Debtor to take or cause to be taken all company actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and any documents contemplated to be executed therewith, prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order rule or regulation.

I. Authorization of Plan-Related Documentation

1. All documents, agreements and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan shall become, and shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person (other than as expressly required by such applicable agreement).

2. A responsible officer, director or member of the Debtor shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

J. Exclusivity Period.

Subject to further order of the Bankruptcy Court, the Proponent shall retain the exclusive right to amend the Plan and solicit acceptances thereof through and including the Effective Date.

K. Exemption from Certain Fees and Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property, including the Property, pursuant to this Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property, including the Property, without the payment of any such tax or governmental assessment.

ARTICLE V.

ACCEPTANCE OR REJECTION OF THE PLAN

A. Voting Classes

Holders of Claims in each Impaired Class of Claims are entitled to vote as a class to accept or reject the Plan. Each Holder of an Allowed Class 2 Claim, Allowed Class 3 Claim,

Allowed Class 4 Claim, Allowed Class 5 Claim, Allowed Class 6 Claim, Allowed Class 7 Claim, or an Allowed Class 8 Claim shall be entitled to vote to accept or reject the Plan. Class 9 is deemed to reject the Plan because the Holders of Class 9 Equity Interests will receive no distribution on account of their Equity Interests, subject to the provisions of Article III.B.9 hereof..

B. Acceptance by Impaired Classes

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

C. Presumed Acceptance of the Plan

Class 1 is Unimpaired under the Plan, and, therefore, Holders of Class 1 Claims are presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

D. Non-Consensual Confirmation

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan (and does not vote to accept the Plan as provided in Article III.B.9 hereof), the Proponent will request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code. The Proponent reserves the right to alter, amend, modify, revoke or withdraw this Plan or any documents related thereto, including to amend it to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE VI.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases; Treatment of Tenant Security Deposits

1. Any executory contract or unexpired lease which has not expired by its own terms on or prior to the Effective Date, which has not been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court, or which the Debtor has obtained the authority to reject but has not rejected as of the Effective Date, or which is not the subject of a motion to assume the same pending as of the Effective Date, shall be deemed rejected by the Debtor on the Effective Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to sections 365(e) and 1123(b)(2) of the Bankruptcy Code. For avoidance of doubt, any executory contract or unexpired lease being assumed and assigned in connection with the Sale of the Property shall not be deemed rejected.

2. From and after the Closing Date, the purchaser of the Property shall have sole responsibility for the maintenance and refund of Tenant Security Deposits. No tenant shall have any claim against the Debtor, its Estate or Assets in connection with or arising out of their Tenant Security Deposits and any claims for refunds of all or any part thereof.

B. Rejection Damages Claims

Proofs of all Claims arising out of the rejection of an executory contract or an unexpired lease pursuant to the Plan shall be filed with the Bankruptcy Court and served upon the Debtor, through its attorneys, not later than thirty (30) days after notice of the occurrence of the Effective Date has been served. Any such Claims covered by the preceding sentence not filed within such time shall be forever barred from assertion against the Debtor's estate, and its respective properties and interests.

ARTICLE VII.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Manner of Payment under the Plan

At the option of the Debtor, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. Cash payments made pursuant to this Plan in the form of checks issued by the Debtor shall be null and void if not cashed within 90 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly and subject to the sound discretion of the Debtor.

B. Timing of Distributions

Except as otherwise provided herein or as may be ordered by the Bankruptcy Court, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date and that are entitled to receive Distributions under the Plan shall be made on the Initial Distribution Date. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Distributions on account of Claims that become Allowed after the Effective Date shall be made pursuant to Article VIII.D of the Plan. The Allowed Secured Claim of BSSB shall be paid on the date provided for in Article III.B.2.b above.

C. Distributions by Debtor

1. The Debtor shall serve as Disbursing Agent on behalf of the Estate (on and after the Effective Date) under the Plan and shall make all Distributions required under the Plan. The Debtor shall make all Plan Payments.

2. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

3. Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent (including taxes and reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Debtor.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions

Except as otherwise provided in the Plan, subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, as applicable, unless the Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a Proof of Claim by such Holder that contains an address for such Holder different from the address reflected on the Schedules. In the event that any Distribution to any Holder is returned as undeliverable, the Debtor shall use commercially reasonable efforts to determine the current address of such Holder, but no Distribution to such Holder shall be made unless and until the Debtor has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code upon the expiration of 90-days from the date such Distribution was returned undeliverable. After such date, all unclaimed property or interest in property shall revert to the Debtor for distribution on account of other Allowed Claims, and the Claim of the Holder originally entitled such unclaimed property or interest in property shall be discharged and forever barred.

E. Record Date for Distributions

As of the close of business on the Distribution Record Date, the transfer register for any Claims or Equity Interests, for the purposes of Distributions shall be closed, and there shall be no further changes in the record Holders of any Claims or Equity Interests. The Debtor shall have no duty to recognize the transfer of, or the sale of any interest in, any Claims or Equity Interests occurring after the close of business on the Distribution Record Date and shall be entitled for all purposes relating to this Plan to recognize, distribute to and deal with only those record Holders of Claims or Equity Interests stated on the transfer books and records as maintained by the Debtor or its agents, as the case may be, as of the close of business on the Distribution Record Date.

F. Allocation of Plan Distributions between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the Distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

G. Fractional Dollars; De Minimis Distributions

Notwithstanding any other provision of the Plan to the contrary, (a) the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down and (b) the Disbursing Agent shall have no duty to make a Distribution on account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be made on such date is less than \$5,000, in which case such Distributions shall be deferred to the next Distribution date or (ii) if the amount to be distributed to that Holder on the particular Distribution date is less than \$50.00. The limitations posed in

subparagraphs (b)(i) and (ii) of this paragraph shall not apply if such Distribution constitutes the final Distribution.

H. No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distributions, which individually or in the aggregate, exceed of the Allowed amount of such Claim.

I. Setoffs

The Debtor may, but shall not be required to, set-off against, or recoup from, any Claim, including Administrative Claims, (for purposes of determining the Allowed amount of such Claim on which a distribution shall be made), any claims or Causes of Action of any nature whatsoever that the Debtor may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any such claim the Debtor may have against the Holder of such Claim.

J. Compliance with Tax Requirements

In connection with the Plan and all Distributions hereunder, to the extent applicable, the Debtor is authorized to take any and all actions that may be necessary or appropriate to comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions pursuant to the Plan shall be subject to any such withholding and reporting requirements. The Debtor shall be authorized to require each Creditor to provide it with an executed Form W-9 or similar tax form as a condition precedent to being sent a Distribution. If a Holder of an Allowed Unsecured Claim does not provide the Debtor with an executed Form W-9 or similar form within 90 days of written request, said Creditor shall be deemed to have forfeited their Distribution.

K. Release of Liens

Except as otherwise provided by Article III of the Plan or in any contract, instrument, release or other agreement or document created or assumed in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Article VII, all mortgages, deeds of trust, liens, pledges or other security interests against the property of the Debtor's Estate, including the Property, shall be fully released and discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, liens, pledges or other security interests shall revert to the Estate.

ARTICLE VIII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Prosecution of Objections to Claims on and after the Effective Date

Subject to Article VIII.G below, on and after the Effective Date, objections to, and requests for estimation of any Claims may be interposed and prosecuted only by the Debtor. Such objections and requests for estimation shall be served on the respective claimant and filed with the Bankruptcy Court on or before the later of (a) one hundred twenty (120) days after the Claims Bar Date and (b) such other date as may be fixed by the Bankruptcy Court upon a motion filed by the Debtor.

B. Estimation of Claims

The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C. No Distributions Pending Allowance

Notwithstanding any other provision hereof, if any portion of a Claim is a disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such disputed Claim becomes Allowed. To the extent that all or a portion of a disputed Claim is disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed and any property withheld pending the resolution of such Claim shall be reallocated pro rata to the Holders of Allowed Claims in the same Class.

D. Distributions After Allowance

To the extent that a disputed Claim becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any disputed Claim becomes a Final Order, the Debtor shall provide to the Holder of such Claim the Distribution (if any) to which such Holder is entitled under the Plan.

E. Preservation of Rights to Settle

In accordance with section 1123(b) of the Bankruptcy Code, the Debtor shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights, Causes of Action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtor or its Estate may hold against any person or entity without the approval of the Bankruptcy Court (subject to the provisions of this Plan, the Confirmation Order, and any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan). The Debtor or its successor(s) may pursue such retained claims, rights, Causes of action, suits, or proceedings, as appropriate, in accordance with the best interests of the Debtor or its successor(s) who hold such rights.

F. Disallowed Claims

Any Claim held by a Person or Entity against whom any Debtor or its successor(s) has commenced a proceeding asserting a Cause of Action under section 542, 543, 544, 545, 547, 548, 549, and/or 550 of the Bankruptcy Code, shall be deemed a Disallowed Claim pursuant to section 502(d) of the Bankruptcy Code and the Holder of such Claim shall not be entitled to vote to

accept or reject the Plan. Claims that are deemed Disallowed Claims pursuant to this Article VIII.F., shall continue to be Disallowed Claims for all purposes until such Cause of Action has been settled or resolved by Final Order and any sums due to the Debtor from such party have been paid.

G. Secured Claims in Classes 3, 4, 5, 6 and 7

Any Creditor may file an objection to and/or complaint to determine the validity, priority and extent of the Secured Claims of the Holders in Classes 3, 4, 5, 6 and 7. Any such action shall be filed no later than the sixtieth (60th) day following the Effective Date. To the extent any such action has been filed and is pending as of the Effective Date, there shall be no need to file any such action anew, and such action may be prosecuted to its conclusion without further leave of Court. The filing of any such action shall render the Claim which is the subject thereof a disputed Claim and such Claim shall be paid only upon its becoming an Allowed Claim pursuant to the provisions of this Plan.

ARTICLE IX

**CONDITIONS PRECEDENT TO CONFIRMATION
AND EFFECTIVE DATE OF THE PLAN**

A. Condition Precedent to Confirmation

The Plan shall not be deemed confirmed, and the Confirmation Date shall not be deemed to occur, unless and until the Confirmation Order, in form and substance satisfactory to the Proponent, has been entered on the docket maintained by the Clerk of the Bankruptcy Court.

B. Conditions Precedent to the Effective Date

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions have been satisfied in full:

1. the Confirmation Order, in form and substance satisfactory to the Proponent, shall be entered by the Bankruptcy Court, shall become a Final Order, shall be in full force and effect and shall not be subject to a stay or an injunction which would prohibit the transactions under the Plan;

2. the Confirmation Order shall, among other things, provide that all transfers of property by the Debtor under the Plan (a) (i) are or shall be legal, valid, and effective transfers of property, (ii) vest or shall vest the transferee with good title to such property free and clear of all liens, charges, claims, encumbrances or interests, except as expressly provided in the Plan or Confirmation Order or those voluntarily assumed or permitted by the transferee, (iii) do not and shall not constitute voidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (iv) shall be exempt from any transfer, sales, stamp or other similar tax and (v) do not and shall not subject the transferee or Holders of Claims to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, any laws with respect to successor or transferee liability and (b) to Holders of Claims under the Plan are for good consideration and value;

3. the final version of the Plan and all of the documents and exhibits contained and referenced herein shall have been Filed and in a form and substance satisfactory to the

Proponent;

4. all actions and transfers and all agreements, instruments, or other documents necessary to implement the terms and provisions of the Plan, shall have been effected or executed and delivered, as applicable, in form and substance satisfactory to the Proponent; and

5. all authorizations, consents, and regulatory approvals, if any, required by the Proponent in connection with the consummation of the Plan shall have been obtained and not revoked; and

6. the Sale of the Property shall have closed.

C. Waiver of Conditions

Any of the conditions to Confirmation of the Plan and/or to the Effective Date set forth in Articles VIII.A. and VIII.B. hereof, other than entry of the Confirmation Order in form and substance satisfactory to the Proponent, may be waived with the express written consent of the Proponent without leave or order of the Bankruptcy Court, and without any formal action.

D. Satisfaction of Conditions

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Proponent determines that one of the conditions precedent set forth in Articles IX.A. and IX.B. of the Plan cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Proponent shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

E. Effect of Nonoccurrence of Conditions

If each of the conditions to occurrence of the Effective Date set forth in Article IX.B. has not been satisfied or duly waived on or before the first Business Day that is 180 days after the Confirmation Date, or such later date as shall be determined by the Debtor, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is so vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims or Equity Interests against the Debtor or release of any claims or interests by the Debtor or the Estate.

ARTICLE X.

SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

A. Compromise and Settlement of Claims, Equity Interests and Controversies

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, distributions, releases, and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved pursuant to the Plan or relating to the contractual, legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Claim or Equity Interest, or any distribution to be made on account of such Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims,

Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and Holders of Claims and Equity Interests and is fair, equitable, and reasonable. After the Effective Date, and without any further notice to or action, order, or approval of the Bankruptcy Court, the Debtor may compromise and settle Claims against the Debtor and those of its Estate against other Entities.

B. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released, including through a prior Order of the Bankruptcy Court, the Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Debtor's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Debtor's estate. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtor, with approval of the Bankruptcy Court, has released any Entity on or prior to the Effective Date, the Debtor expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Debtor expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. For the avoidance of doubt, the Debtor's potential Causes of Action against SM Global Group LLC and Piekarsky & Associates, LLC are specifically preserved.

C. Indemnification Obligations

Any obligations of the Debtor pursuant to its constituent documents, operating agreements, bylaws or other agreements, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse, or limit the liability of any Covered Persons pursuant to the Debtor's certificates of incorporation or equivalent, bylaws, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Covered Persons based upon any act or omission related to such Covered Persons' service with, for, or on behalf of the Debtor prior to the Effective Date with respect to all present and future actions, suits, and proceedings relating to the Debtor shall continue as obligations of the Debtor, and shall, in any event, survive confirmation of the Plan and except as set forth herein, remain unaffected thereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date, provided, however, that all monetary obligations under this Article X.C. shall be limited solely to available insurance coverage and neither the Debtor, its estate nor any of their assets shall be liable for any such obligations. Any Claim based on the Debtor's obligations set forth in this Article X shall not be a disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code. This provision for Indemnification Obligations shall not

apply to or cover any Claims, suits or actions against a Covered Person that result in a final order determining that such Covered Person is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of the duty of loyalty.

D. Releases

1. Releases by the Debtor

For good and valuable consideration, the adequacy of which is hereby confirmed, upon the Effective Date, the Debtor, and its Estate will be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Bankruptcy Case, the Plan, or the Disclosure Statement, that could have been asserted at any time, past, present, or future, by or on behalf of the Debtor, or its Estate, against (a) BSSB, its officers, directors, successors and assigns, and each of their respective retained Professionals, in connection with or arising out of BSSB's relationship with the Debtor, (b) each director, officer or employee employed by or serving the Debtor on and after the Petition Date, in its capacity as such, and (c) each financial advisor, restructuring advisor or attorney of the Debtor, in its capacity as such employed by or serving on and after the Petition Date; provided, however, that the foregoing shall not affect the liability or release of any Person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of the duty of loyalty; and shall not be a waiver of any defense, offset or objection to any Claim filed against the Debtor and its Estate by any Person.

2. Releases among the Releasing Parties.

EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, ON THE EFFECTIVE DATE, IN CONSIDERATION FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASING PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASING PARTIES, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, DISCHARGE AND RELEASE AND SHALL BE DEEMED TO HAVE PROVIDED A FULL DISCHARGE AND RELEASE TO EACH OF THE OTHER RELEASING PARTIES (AND EACH OF THE OTHER RELEASING PARTIES SHALL BE DEEMED FULLY RELEASED AND DISCHARGED BY THE RELEASING PARTIES) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, REMEDIES, CAUSES OF ACTION, LIABILITIES WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, EQUITY OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, THE TRANSACTIONS CONTEMPLATED BY THE PLAN, THE BANKRUPTCY CASE, THE PURCHASE, SALE OR RESCISSION OF ANY SECURITY OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY

CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY OF THE OTHER RELEASING PARTIES, THE RESTRUCTURING OF CLAIMS AND EQUITY INTERESTS PRIOR TO OR IN THE BANKRUPTCY CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS RELATED TO THE BANKRUPTCY CASE, OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, INCLUDING THOSE THAT ANY OF THE RELEASING PARTIES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF ANY OF THE RELEASING PARTIES; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT AFFECT THE LIABILITY OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY SUCH ACT OR OMISSION TO THE EXTENT SUCH ACT OR OMISSION IS DETERMINED BY A FINAL ORDER TO HAVE CONSTITUTED FRAUD, WILLFUL MISCONDUCT, GROSS NEGLIGENCE, BAD FAITH, SELF-DEALING OR BREACH OF DUTY OF LOYALTY; PROVIDED FURTHER, HOWEVER, THAT THE FOREGOING SHALL NOT RELEASE ANY PRESERVED CLAIMS (WHICH FOR THE AVOIDANCE OF DOUBT INCLUDES, AMONG OTHER THINGS, AVOIDANCE ACTIONS NOT RELEASED UNDER THE PLAN) AND SHALL NOT BE A WAIVER OF ANY DEFENSE, OFFSET OR OBJECTION TO ANY CLAIM FILED AGAINST THE DEBTOR AND ITS ESTATE BY ANY PERSON. For clarity, nothing in this Release shall release, waive or discharge any Person of any Cause of Action under Chapter 5 of the Bankruptcy Code or any state law cause of action relating to transfers, fraudulent transfers or pre-petition management of the Debtor.

E. Exculpation

The Exculpated Parties shall neither have, nor incur, any liability to any Entity for any act taken or omitted to be taken in connection with, relating to, or arising out of, the Bankruptcy Case, formulating, negotiating, soliciting, preparing, disseminating, implementing, confirming, or effecting the Consummation of the Plan, the Disclosure Statement, the administration of the Plan or the property to be distributed under the Plan or related to the issuance, distribution, and/or sale of any security, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtor and/or related to this Bankruptcy Case; provided, however, that the foregoing shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of duty of loyalty.

ARTICLE XI.

RETENTION OF JURISDICTION

A. Retention of Bankruptcy Court Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Bankruptcy Case or Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. § 1334 or 28 U.S.C. § 157, including, within limitation, jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

(b) Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

(c) Resolve any matters related to: (i) the assumption, assignment, or rejection of any executory contract or unexpired lease to which the Debtor is party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an executory contract or unexpired lease, cure obligations pursuant to section 365 of the Bankruptcy Code, or any other matter related to such executory contract or unexpired lease; (ii) any potential contractual obligation under any executory contract or unexpired lease that is assumed and/or assigned and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

(d) Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(e) Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

(f) Adjudicate, decide, or resolve any and all matters related to Causes of Action;

(g) Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

(h) Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

(i) Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or

any Entity's obligations incurred in connection with the Plan;

(j) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

(k) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article X and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

(l) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Distributions;

(m) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(n) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

(o) Adjudicate any and all disputes arising from or relating to Distributions under the Plan or any transactions contemplated therein;

(p) Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(q) Determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

(r) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(s) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(t) Hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(u) Enforce all orders previously entered by the Bankruptcy Court;

(v) Hear any other matter not inconsistent with the Bankruptcy Code;

(w) Enter an order concluding or closing the Bankruptcy Case; and

(x) Enforce the injunction, release, and exculpation provisions set forth in

Article X.

(y) Notwithstanding any other provision in this article to the contrary, nothing herein shall prevent the Debtor from commencing and prosecuting any Cause of Action before any other court or judicial body which would otherwise have appropriate jurisdiction over the matter and the parties thereto and nothing herein shall restrict any such courts or judicial bodies from hearing and resolving such matters.

ARTICLE XII.

MODIFICATION AND REVOCATION OF THE PLAN

A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor and any and all Holders of Claims against or Equity Interests in the Debtor (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtor. All Claims and debts shall be fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Modification of the Plan

Subject to the limitations contained herein, the Proponent reserves the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Proponent expressly reserves its right to alter, amend, or modify materially the Plan one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article XII.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and prior to the Confirmation Date are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Proponent reserves the right to revoke or withdraw the Plan prior to the Confirmation Date or the Effective Date and to file subsequent plans. If the Proponent revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Equity Interest or Class of Claims or Equity Interests), assumption and assignment or rejection of executory contracts or unexpired leases

effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Equity Interests; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. After the Effective Date, the Debtor shall pay, prior to the closing of the Bankruptcy Case, in accordance with the Bankruptcy Code and the Bankruptcy Rules, all fees payable pursuant to 28 U.S.C. § 1930 which accrue after the Effective Date through and including the closing of the Bankruptcy Case.

B. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent a schedule or exhibit hereto or instrument, agreement or other document executed under the Plan provides otherwise, this Plan, the rights, duties and obligations arising under this Plan, and any claim or controversy directly or indirectly based upon or arising out of this Plan or the transactions contemplated by this Plan (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall be governed by and interpreted, construed and determined in accordance with, the internal laws of the State of New Jersey (without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction).

C. Company Action

Prior to, on and after the Effective Date, all matters provided for under the Plan that otherwise would require approval of the members or managers of the Debtor shall be deemed to have occurred and shall be in effect prior to, on and after the Effective Date pursuant to the applicable general limited liability company law of the jurisdiction in which the Debtor is organized without any requirement of further action by the members or managers of the Debtor.

D. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court or other court of competent jurisdiction to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or

interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

E. Successors and Assigns

The Plan shall be binding on, and shall inure to the benefit of the Debtor, and its respective successors and assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person or Entity.

F. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Effective Date shall have occurred. Neither the filing of this Plan, nor any statement or provision contained herein, nor the taking of any action by the Debtor with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtor prior to the Effective Date. If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Bankruptcy Cases are and shall be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Bankruptcy Cases shall be bound or deemed prejudiced by any such concession or settlement.

G. Further Assurances

The Debtor is authorized to execute, deliver, file or record such contracts, agreements, instruments, releases and other documents and take or cause to be taken such action as may be necessary or appropriate to effectuate, implement and further evidence the terms, provisions and intent of this Plan and to consummate the transactions and transfers contemplated by the Plan.

H. Notice and Service of Documents

All notices, requests and demands required or permitted to be provided to the Debtor, Liquidating Debtor, or the Committee under the Plan shall be in writing and shall be deemed to have been duly given or made (a) when actually delivered (i) by certified mail, return receipt requested, (ii) by hand delivery or (iii) by U.S. mail, postage prepaid or, (b) in the case of notice by electronic transmission, when received and confirmed, addressed as follows:

To the Debtor:

Bergenfield Senior Housing, LLC
Attn: Nicholas Rotonda
1 Castle Hill Court
Bergenfield, NJ 07621

With a copy to:

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
1617 JFK Boulevard, Suite 1500
Philadelphia, PA 19103
Attn: Barry D. Kleban, Esquire
Aaron S. Applebaum, Esquire
Facsimile: (215) 557-2990

I. Conflicts

To the extent any provision of the Disclosure Statement or any instrument, document or agreement executed in connection with the Plan or the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) conflicts with or is in any way inconsistent with the terms of the Plan, the terms and provisions of the Plan shall govern and control.

J. Determination of Tax Liability

The Debtor is authorized, but not required, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor for all taxable periods ending after the Petition Date through and including the Effective Date.

K. Post-Effective Date Fees and Expenses

From and after the Effective Date, the Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Debtor, and any professionals retained by the Debtor, related to the consummation and to the implementation of this Plan. In the event the Debtor disputes any such request for payment, the Bankruptcy Court shall retain jurisdiction to determine whether such disputed fees should be paid.

L. Entire Agreement

This Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated in to this Plan.

M. Closing of Chapter 11 Case

The Confirmation Order shall act as a final decree pursuant to section 350 of the Bankruptcy Code formally closing the Debtor's Chapter 11 Case; provided, however, that the Chapter 11 Case shall remain open until such time as the Debtor files with the Bankruptcy Court such documents required by the Bankruptcy Rules and any applicable orders of the Bankruptcy Court to close the Chapter 11 Case.

N. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

Dated: August 30, 2013

BERGENFIELD SENIOR HOUSING, LLC

By: 
Nicholas Rotonda, Managing Member