

NOT APPROVED FOR SOLICITATION

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

In re:

BEVERLY HILLS BANCORP INC.,
a Delaware Corporation¹

Debtor.

Chapter 11

Case No. 14-10897 (KJC)

DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

DATED JUNE 25, 2014

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CHAPTER 11 PLAN OF REORGANIZATION

NOTHING CONTAINED IN THIS DOCUMENT SHALL CONSTITUTE AN OFFER, ACCEPTANCE OR A LEGALLY BINDING OBLIGATION OF THE DEBTOR OR ANY OTHER PARTY IN INTEREST UNTIL THIS PLAN HAS BEEN APPROVED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE HAS OCCURRED. THIS PLAN IS NOT BY ITSELF AN OFFER WITH RESPECT TO ANY SECURITIES OR SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN OF REORGANIZATION PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. 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. THE INFORMATION CONTAINED IN THIS PLAN IS PRELIMINARY AND DEVELOPMENTS MAY OCCUR THAT REQUIRE MODIFICATIONS, ADDITIONS, OR DELETIONS TO THIS PLAN PRIOR TO CONFIRMATION.

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, Beverly Hills Bancorp Inc. hereby respectfully proposes the following plan under chapter 11 of the Bankruptcy Code (as defined herein):

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME AND GOVERNING LAW

A. *Rules of Interpretation, Computation of Time and Governing Law*

1. *For purposes herein: (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 herein 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 herein 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 or supplemented; (d) unless otherwise specified, all references herein to Sections and Articles are references to Sections and Articles hereof or hereto; (e) the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) 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 hereof; (g) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used 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.*

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

3. *Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the express provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the laws of the State of Delaware, giving effect to the conflicts of laws’ principles thereof, shall govern the construction of the Plan and any agreements, documents, and instruments executed in connection with the Plan, including, without limitation, any rule of law or procedure supplied by federal law as interpreted under the decisions in the State of Delaware (including the Bankruptcy Code and the Bankruptcy Rules).*

B. *Proponent of Plan*

The Debtor is the sole proponent of the Plan.

C. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Administrative Claim*” means a claim, cause of action, right, or other liability, or the portion thereof, that is entitled to priority under 11 U.S.C. §§ 503(b) and 507(a)(2), including

(a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the bankruptcy Estate and operating the Debtor's business (such as wages, salaries, or payments for goods and services); (b) compensation for legal, financial advisory, accounting and other services, and reimbursement of expenses awarded or allowed under 11 U.S.C. §§ 330(a) or 331; and (c) all fees and charges assessed against the bankruptcy Estate under 28 U.S.C. § 1930, but shall not include any Secured Claims.

2. "*Administrative Claims Bar Date*" means the applicable date by which Administrative Claims are required to be filed, as established by order of the Bankruptcy Court.

3. "*Affiliate*" means, with respect to the Debtor or any other Entity, an affiliate as defined in Section 101(2) of the Bankruptcy Code.

4. "*Allowed*" means, with respect to a Claim or Equity Interest, as of the date of determination, a Claim or Equity Interest allowable under 11 U.S.C. § 502 or 503, as applicable: (a) for which a Proof of Claim or Proof of Equity Interest was filed by the Bar Date and as to which no objection or other challenge to allowance thereof has been filed, or if an objection or challenge has been timely filed, such Claim is allowed by final order; (b) for which a Proof of Claim or Proof of Equity Interest is not filed and that has been listed in the Debtor's schedules of assets and liabilities and is not listed as disputed, contingent, or unliquidated; (c) that is stipulated by the Debtor (or Liquidation Trustee) in writing to be allowed but only for the purpose such stipulation is made, subject to any approvals required by the Bankruptcy Court; (d) that is deemed allowed under the Plan; or (e) is not otherwise Disputed.

5. "*Ballot*" or "*Ballots*" means the ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote shall indicate their acceptance or rejection of the Plan in accordance with the Plan and the Voting Instructions.

6. "*Balloting Agent*" means Young Conaway Startgatt & Taylor, LLP with offices as listed on the caption page of this Plan.

7. "*Bankruptcy Code*" means 11 U.S.C. §§ 101 et seq. and applicable portions of titles 18 and 28 of the United States Code, in each case as amended from time to time.

8. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Case.

9. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, promulgated under 28 U.S.C. § 2075 and applicable General, Local and Chambers Rules of the Bankruptcy Court, as amended from time to time.

10. "*Bar Date*" means (i) July 1, 2014 at 4:00 pm ET, with respect to Claims and Equity Interests other than Claims of Governmental Units, and (ii) October 14, 2014 at 4:00 pm ET, with respect to Claims of Governmental Units, in each case as established by order of the Bankruptcy Court dated May 12, 2014 [Docket No. 62].

11. “*Beneficial Holder*” means the Person or Entity holding the beneficial interest in a Claim or Equity Interest as of the Record Date.

12. “*Business Day*” means any day, other than a Saturday, Sunday, “legal holiday” (as defined in Bankruptcy Rule 9006(a)) or any other day on which commercial banks in Delaware are required or are authorized to close by law or executive order.

13. “*Case*” or “*Chapter 11 Case*” means the Chapter 11 Case styled *In re Beverly Hills Bancorp, Inc.*, Case Number 14-10897 (KJC), pending in the Bankruptcy Court.

14. “*Cash*” means readily available United States Dollars or the equivalent thereof, including bank deposits and checks.

15. “*Causes of Action*” means any and all actions, causes of action, choses in action, suits, debts, dues, damages, demands, rights, contractual rights, judgments, third-party claims, counterclaims, cross-claims and any and all other liabilities and obligations (including, but not limited to, all such matters arising under state, federal and other applicable non-bankruptcy law, as well as under the Bankruptcy Code, including but not limited to Sections 365(g), 502(d), 502(g), 506, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 thereof), whether based in law, contract or equity, whether direct, indirect, or derivative, known or unknown, accrued or accruing, fixed or contingent, liquidated or unliquidated, matured or unmatured, or disputed or undisputed.

16. “*Claim*” means a claim, as defined in Section 101(5) of the Bankruptcy Code, against the Debtor and its bankruptcy Estate.

17. “*Claims Objection Deadline*” means three (3) months after the Effective Date, which may initially be extended by the Liquidation Trust for an additional three (3) months by its filing of a unilateral notice of extension with the Court but without the requirement of a further Court order, and thereafter such further extended date as may be ordered by the Bankruptcy Court for cause shown.

18. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article III herein.

19. “*Company*” means the Debtor or Beverly Hills Bancorp Inc.

20. “*Confirmation*” means the entry on the docket by the Clerk of the Bankruptcy Court of the Confirmation Order, subject to all conditions specified in Article X.A herein having been satisfied or waived pursuant to Article X.C herein.

21. “*Confirmation Date*” means the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, within the meaning of Federal Rules of Bankruptcy Procedure 5003 and 9021.

22. “*Confirmation Hearing*” means the hearing or hearings at which the Bankruptcy Court considers entry of the Confirmation Order.

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

24. “*Consensual Class 4 Treatment*” means the treatment accorded to certain Holders of Allowed Indemnification Claims in Class 4 under Treatment Outcome One, Two or Three, as applicable, and consists of the following:

- (1) To the extent such Holder is a Covered Person (as defined in the Segregated Account Agreement), its pro rata share along with each other Covered Person that is currently a named defendant in the FDIC Action, or such share as otherwise determined by unanimous written consent between such Covered Persons, of the Indemnification Pool; provided, the Indemnification Pool shall be effectuated and implemented according to the terms of an amended escrow agreement or, if necessary, a new escrow agreement, in either case the form of which is to be included in the Plan Supplement²; further provided, Holders of Allowed Indemnification Claims must use best efforts to seek recourse against existing D&O Coverage prior to seeking recourse against the Indemnification Pool subject to Section (3) below of this definition; and further provided, that upon a determination that no unresolved Indemnification Claims continue to exist, all amounts in the Indemnification Pool shall be released to the Liquidation Trust for administration in accordance with the Plan for the benefit of Creditors other than the Indemnification Claimants;
- (2) Subject to providing releases from Causes of Action to the Releasing Parties and their Related Parties, releases from Causes of Action by the Releasing Parties and their Related Parties, subject in all respects to the provisions of Articles I.C.86 and XI.C;
- (3) Subject to clause (b) of the definition of Preserved Matters, access to the proceeds of D&O Coverage subject to the terms, conditions and availability of such coverage, as to which the Estate stipulates that the proceeds of such D&O Coverage are not property of the Estate under 11 U.S.C § 541 and further stipulates to relief from the automatic stay of 11 U.S.C. § 362 to permit the Holders of Allowed Indemnification Claims to access such policy proceeds; provided, the Debtor, its Estate and the Liquidation Trustee and Liquidation Trust shall not be required to expend any Cash or incur any obligations or liabilities with respect to the providing of such access or as a result thereof;
- (4) consideration on account of a Transaction under Article VI hereof; and
- (5) its Pro-Rata share of any Residual Distributable Cash.

² All amounts in such segregated account in excess of the Indemnification Pool shall be released to the Estate to satisfy allowed claims other than Allowed Indemnification Claims pursuant to the Plan, unless Treatment Outcome Three applies to Class 4 in which event no Indemnification Pool shall exist.

For the avoidance of doubt, the consideration provided in items (1) through (5) of this definition shall only be available to satisfy actual indemnifiable expenses incurred by Holders of Indemnification Claim which Claims are Allowed.

25. “*Convenience Class Claim*” means any general unsecured Claim, not a General Unsecured Claim, Indemnification Claim, Subordinated Debenture Claim or Claim or Interest in another Class, in an amount that is less than or equal to \$15,000 (or any Allowed Claim in any Class where the Holder thereof agrees to reduce such Allowed Claim to \$15,000) that is not (i) entitled to priority under section 507 of the Bankruptcy Code; or (ii) subject to subordination under section 510 of the Bankruptcy Code, contract, or applicable non-bankruptcy law.

26. “*Creditor*” means any Holder of an Allowed Claim.

27. “*Debtor*” or “*Debtor-in-Possession*” means Beverly Hills Bancorp Inc., as debtor and debtor-in-possession in the Case.

28. “*Debtor Parties*” means collectively the Debtor, its Estate, the Liquidation Trust and Liquidation Trustee and their respective Related Parties, including the assets and properties of all such parties.

29. “*Disclosure Statement*” means the Disclosure Statement for the Plan approved by Order of the Bankruptcy Court as it may be amended, supplemented, or modified from time to time, describing the Plan, that is prepared and distributed in accordance with Sections 1125, 1126(b) and/or 1145 of the Bankruptcy Code and Bankruptcy Rule 3018 and/or other applicable law.

30. “*Disputed*” means, with respect to any Claim or Equity Interest, as of the date of determination, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless and until it is Allowed pursuant to an order that is a Final Order; (b) as to which the Debtor or any other party-in-interest has Filed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; (c) as to which the deadline for filing objections has not passed (whether or not an objection has been filed), and the Liquidation Trustee has indicated formally or informally that it intends to object; or (d) that is otherwise disputed by the Debtor, the Liquidation Trustee or any other party-in-interest, or is subject to any right of setoff or recoupment, or the Holder thereof is subject to any Claim or Cause of Action, in accordance with applicable law, which dispute, right of setoff or recoupment, Claim or Cause of Action, has not been withdrawn or determined in favor of such Holder by a Final Order.

31. “*Distributable Cash*” means all Cash of the Estate from time to time net of reserves established by the Liquidation Trustee pursuant to the Liquidation Trust Agreement, which reserves shall include, without limitation, reserves with regard to payment of Secured, Administrative, Tax, Priority, Convenience, Indemnification and Disputed Claims, the expenses of the Liquidation Trust, and any such other amounts with respect to which the Liquidation Trustee determines in its reasonable business judgment a reserve is appropriate.

32. “*D&O Coverage*” means coverage under insurance policies purchased by the Company for directors and officers of the Company or Affiliates, subject to all of the terms, conditions and availability of such policies.

33. “*Earnest Money Deposit*” means the deposit required to be made by potential Qualified Investors in the amount of \$500,000.

34. “*Effective Date*” means the date which is the first Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect, and (b) all conditions specified in Article X.B herein have been (x) satisfied or (y) waived pursuant to Article X.C herein.

35. “*Entity*” means an entity as defined in Section 101(15) of the Bankruptcy Code.

36. “*Equity Interest*” means all equity interests in the Debtor, including, but not limited to, all issued, unissued, authorized or outstanding shares of stock together with any warrants, options or contract rights to purchase or acquire such interests at any time.

37. “*Estate*” means the Estate of the Debtor created pursuant to Section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case of the Debtor.

38. “*FBBH Surplus Share*” means any dividend or distribution actually received by the Debtor Parties on account of the Debtor’s equity interest in First Bank of Beverly Hills.

39. “*FDIC Action*” means the action styled as *Federal Deposit Insurance Company As Receiver of First Bank of Beverly Hills v. Larry B. Faigin et al.* and pending in the District Court for the Central District of California as Case No. 12-03448-DDP.

40. “*File*” or “*Filed*” means file or filed with the Bankruptcy Court in the Chapter 11 Case as reflected on the docket of the Court.

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

42. “*Final Order*” means an order: (i) as to which the time to appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument, reconsideration or rehearing is pending; or (ii) if an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order has been affirmed by the highest court to which such order was appealed or from which certiorari was sought, reargument, reconsideration or rehearing has 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 or rehearing has expired; 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.

43. “*General Unsecured Claim*” means any general unsecured Claim, not a Convenience Class Claim, Indemnification Claim, Subordinated Debenture Claim or other Claim or Interest in another Class, that is not (i) entitled to priority under section 507 of the Bankruptcy

Code; (ii) subject to subordination under section 510 of the Bankruptcy Code, contract, or applicable non-bankruptcy law; or (iii) subordinated by an order of the Bankruptcy Court. For the avoidance of doubt, the Guaranteed TruPS Claims shall be General Unsecured Claims.

44. “*Governmental Unit*” has the meaning ascribed to it in Section 101(27) of the Bankruptcy Code.

45. “*Guaranteed TruPS Claim*” shall mean the General Unsecured Claim of a Guaranteed TruPS Holder with respect to the TruPS issued by the Guaranteed Trusts and with respect to which the Company issued one of its Guarantees. For the avoidance of doubt and notwithstanding anything herein to the contrary, the Guaranteed TruPS Claims shall constitute Allowed Claims in the following amounts for the respective Guaranteed TruPS Holders, subject to the provision of proofs of claim by such Holders and review and validation by the Debtor prior to the hearing on the Disclosure Statement:

HoldCo:	Guaranteed Trust I	-	\$11,133,110.11
	Guaranteed Trust II	-	\$2,825,354.48

USCAP Parties:

U.S. Capital Funding V, Ltd.

Guaranteed Trust I	-	\$5,566,555.05
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U.S. Capital Funding VI, Ltd.

Guaranteed Trust I	-	\$5,566,555.05
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Guaranteed Trust II	-	\$2,825,354.48
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46. “*Guaranteed TruPS Holders*” means the Holders of the TruPS issued by the Guaranteed Trusts. The known Guaranteed TruPS Holders are the following: HoldCo Opportunities Fund, L.P., a Delaware limited partnership; U.S. Capital Funding V, Ltd., an exempted company with limited liability under the laws of the Cayman Islands; and U.S. Capital Funding VI, Ltd., an exempted company with limited liability under the laws of the Cayman Islands.

47. “*Guaranteed Trust I*” means that certain Amended and Restated Declaration of Trust of the Beverly Hills Statutory Trust 2006 dated as of May 16, 2006.

48. “*Guaranteed Trust II*” means that certain Amended and Restated Declaration of Trust of the Beverly Hills Statutory Trust II dated as of December 28, 2006.

49. “*Guaranteed Trusts*” means collectively Guaranteed Trust I and Guaranteed Trust II.

50. “*Guarantees*” means the guarantees made under that certain Guarantee Agreement, dated as of May 16, 2006, pertaining to Guaranteed Trust I and that certain Guarantee Agreement, dated as of December 28, 2006, pertaining to Guaranteed Trust II, in each case, with the guarantee trustee named therein, as trustee for the benefit of the Guaranteed TruPS Holders.

51. “*HoldCo*” means HoldCo Opportunities Fund, L.P., a Delaware limited partnership.

52. “*Holder*” means the Beneficial Holder of an Equity Interest or Claim as of the Record Date.

53. “*Impaired*” means with respect to any Class of Claims or Equity Interests, a Claim or Equity Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

54. “*Impaired Claim*” or “*Impaired Equity Interest*” means a Claim or Equity Interest, as the case may be, classified in an Impaired Class.

55. “*Indemnification Claim*” shall mean any Claim for indemnification, not a General Unsecured Claim, Convenience Class Claim, Subordinated Debenture Claim or other Claim or Interest in another Class, against the Company asserted by a current or former director, officer, or employee of the Company under the Company’s organization documents, a separate indemnity agreement or a duly authorized and adopted resolution of the Board of Directors of the Company.

56. “*Indemnification Pool*” shall mean the sum of (x) \$1,000,000 (One Million Dollars) of the funds on deposit in that certain segregated account established pursuant to the Segregated Account Agreement plus (y) the first proceeds of up to \$3,000,000 (Three Million Dollars) of the FBBH Surplus Share, if any; provided, should Treatment Outcome 3 apply to Class 4 then the Indemnification Pool shall be limited to clause (y) hereof and should Treatment Outcome 4 apply to Class 4 then there shall be no Indemnification Pool.

57. “*Indentures*” means that certain Indenture, dated as of May 16, 2006, and that certain Indenture, dated as of December 28, 2006 (together, the “*Indentures*”), in each case, with the indenture trustee named therein and pursuant to which the Company issued the Subordinated Debentures in favor of the Guaranteed Trusts.

58. “*IRS*” means the United States Internal Revenue Service.

59. “*Lien*” means any charge, lien, or encumbrance against, or interest in, property to secure payment of a debt or performance of an obligation, including a right of set off to secure payment of a debt or performance of an obligation.

60. “*Liquidation Trust*” means the liquidation trust established upon the Effective Date for the benefit of the Liquidation Trust Beneficiaries to which the Liquidation Trust Assets will be transferred; the Liquidation Trust shall conduct no business and shall qualify as a grantor trust pursuant to Treasury Regulations § 301.7701-4(d).

61. “*Liquidation Trust Agreement*” means the trust agreement approved by the Court and subject to the consent of the Guaranteed TruPS Holders (such consent not to be unreasonably withheld) that, among other things, creates and establishes the Liquidation Trust, describes the powers, duties and responsibilities of the Liquidation Trustee, provides for the liquidation and distribution of proceeds of the Liquidation Trust Assets, and describes the powers, duties and responsibilities of the Plan Oversight Committee, which trust agreement shall be included in the Plan Supplement in substantially final form.

62. “*Liquidation Trust Assets*” means all assets, property and rights of the Debtor and the Estate as of the Effective Date, including, without limitation, Cash, accounts receivables, Causes of Action of the Debtor and its Estate, and all rights of setoff and recoupment and other defenses that the Debtor and the Estate may have with respect to any Claim, but excluding Retained Assets, if any.

63. “*Liquidation Trust Beneficiaries*” means the Holders of Allowed Claims and Equity Interests with the right to share in distributions from the Liquidation Trust to the extent provided by and pursuant to the Plan and the Liquidation Trust Agreement.

64. “*Liquidation Trustee*” initially means Bradley D. Sharp, as designated by Development Specialists Inc. or, subject to the terms of the Liquidation Trust Agreement, such Person’s duly selected successor.

65. “*New Investor*” means the Qualified Bidder selected by the Company, in its sole discretion, as having the highest and best proposal under a Qualifying Letter of Intent.

66. “*Non-Tax Priority Claim*” means any unsecured Claim entitled to priority in payment as specified in Sections 507(a)(3), (4), (5), (6), (7) or (9) of the Bankruptcy Code.

67. “*Official Bankruptcy Forms*” means the Official and Procedural Bankruptcy Forms, prescribed by the Judicial Conference of the United States, in accordance with Bankruptcy Rule 9009.

68. “*Permissible Investments*” means (i) (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof or (c) such other investments as the Bankruptcy Court may approve from time to time; or (ii) deposit of such assets in demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000.

69. “*Person*” means a person as defined in Section 101(41) of the Bankruptcy Code.

70. “*Petition Date*” means April 15, 2014.

71. “*Plan*” means collectively this plan pursuant to chapter 11 of the Bankruptcy Code and the Plan Supplement, together with all exhibits hereto or thereto, either in present form or as altered, amended, modified or supplemented from time to time in accordance with the terms hereof or thereof, the Bankruptcy Code and the Bankruptcy Rules.

72. “*Plan Oversight Committee*” means the maximum three member committee selected to serve pursuant to the terms and for the purposes set forth in the Liquidation Trust Agreement. When applicable by the context, and as not otherwise inconsistent with the Plan or the Liquidation Trust Agreement, each reference to the Plan Oversight Committee herein shall also be a reference to each member in its respective capacity as a member of the Plan Oversight Committee.

73. “*Plan Proponent*” or “*Proponent*” means the Debtor, as proponent of the Plan.

74. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules and exhibits to be Filed on or before ten (10) days prior to the Voting Deadline and which may be amended from time to time until Confirmation and subject to the consent of the Guaranteed TruPS Holders, such consent not to be unreasonably withheld.

75. “*Preserved Matters*” means (a) the obligations of any Person or Entity under this Plan, (b) the right of the Debtor, its Estate or the Liquidation Trust or Liquidation Trustee to receive payment, repayment or reimbursement from any Person or Entity (other than a Releasing Party receiving a release under Article XI) of any dollar amounts advanced or paid by the Debtor in connection with alleged indemnity rights or legal defense costs; provided, all rights and Causes of Action to receive such payments, repayments or reimbursements are preserved as against all insurers and, to the extent any Holder of an Indemnification Claim or any Related Party of such a Holder has actually received or in the future actually receives any payments, repayments or reimbursements of any such amounts, as against all such Holders and Related Parties), (c) any Causes of Action solely among the Holders of Indemnification Claims or between the Holders of Indemnification Claims and the FDIC in the FDIC Action, in both cases involving no other parties; and (d) any other Causes of Action that is not specifically within the scope of the matters being released pursuant to Article XI, including whether or not listed on the Non-Exclusive Schedule of Causes of Action.

76. “*Professional*,” or collectively “*Professionals*,” means a Person or Entity employed pursuant to a Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

77. “*Professional Fee Claims*” means all fees for services incurred and expenses advanced by Professionals in the Chapter 11 Case for the benefit of or on behalf of the Debtor or its Estate.

78. “*Proof of Claim*” has the meaning ascribed to it in Bankruptcy Rule 3001.

79. “*Property of the Estate Determination*” shall mean a Final Order of the Bankruptcy Court determining that the funds on deposit pursuant to the Segregated Account Agreement are property of the Estate under 11 U.S.C. § 541, providing for the return of such funds to the Estate, and making such funds available for distribution by the Estate in payment of Allowed Claims, all to the extent necessary to implement the Plan.

80. “*Property of the Estate Determination Costs*” shall mean all of the expenses of the Estate, including any Professional Fee Claims, incurred in obtaining a contested Property of the Estate Determination.

81. “*Pro Rata*” means the proportion that an Allowed Claim or Allowed Equity Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Equity Interests in such Class.

82. “*Qualified Investor*” means, as determined by the Company in its sole discretion, an investor who (i) timely submits a Qualifying Letter of Intent that includes a statement of willingness to consummate a Transaction on a schedule acceptable to the Company, fully discloses the identify of each entity that will be investing or participating in the Transaction, provides the terms of any such participation and, if an entity has been formed for the purpose of participating in the Transaction, the parties that will bear liability for any breach by such entity; (ii) timely submits an Earnest Money Deposit; and (iii) provides credible evidence of financial wherewithal necessary to consummate a Transaction.

83. “*Qualifying Letter of Intent*” means a letter of intent that meets the requirements set forth in Article VI, including subsections a through j.

84. “*Record Date*” means [REDACTED], 2014, as the date to be established for the purpose of determining those Holders of Claims and Equity Interests, if any, that are entitled to vote to accept or reject this Plan and receive distributions thereunder.

85. “*Related Parties*” means with respect to any Person or Entity any and all of such Person’s or Entity’s current and former officers, directors, agents, employees, attorneys, advisors, representatives, Affiliates, heirs, successors and assigns.

86. “*Release Conditions*” shall mean that no Holder of an Allowed Indemnification Claim shall receive the Consensual Class 4 Treatment (including a release) under this Plan, unless such Holder (i) voted in favor of and did not directly or indirectly object to, contest or oppose in any manner the Plan and (ii) did not directly or indirectly object to, contest or oppose in any manner a Property of the Estate Determination.

87. “*Releasing Parties*” means (i) the Debtor and the Debtor’s Estate, (ii) the Guaranteed TruPS Holders, (iii) the Holders of Convenience Class Claims and, (iv) if permitted the opportunity to elect on a ballot submitted in connection with the Plan, each other Holder of a Claim that elects to be a Releasing Party, all subject to Article XI.C of the Plan.

88. “*Reorganized Company*” means, in the event a New Investor is selected to complete a Transaction, the Company as reorganized on and after the Effective Date pursuant hereto.

89. “*Residual Distributable Cash*” means the residual Distributable Cash that is remaining after payment in full of Allowed General Unsecured Claims, Convenience Class Claims, and all other Claims that are pari passu with or enjoy priority over the foregoing Allowed Claims, other than the Indemnification Claims, and after appropriate reserves.

90. “*Retained Assets*” means the assets designated by the New Investor (if any) in its Qualifying Letter of Intent, but in all cases limited solely to Intellectual Property, trademarks, and Tax Attributes.

91. “*Schedule of Causes of Action*” means the non-exclusive Schedule attached as Exhibit IV to the Disclosure Statement and is used interchangeably with the term “*Non-Exclusive Schedule of Causes of Action*.”

92. “*Schedules*” mean the schedules of assets and liabilities, schedules of executory contracts, and the statement of financial affairs that were filed by the Debtor in accordance with Section 521 of the Bankruptcy Code, the Official Bankruptcy Forms and the Bankruptcy Rules, as they may be modified, amended and supplemented from time to time.

93. “*Secured Claim*” means (a) a Claim that is 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 subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’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) a Claim Allowed under this Plan as a Secured Claim.

94. “*Segregated Account Agreement*” means that certain Escrow Agreement dated as of December 22, 2011 by and among the Company, Robert H. Kanner, and the escrow agent named therein, pursuant to which approximately \$2 million was on deposit as of the Petition Date.

95. “*Subordinated Debenture*” means collectively the subordinated debentures dated as of May 16, 2006 and December 28, 2006, respectively, in each case, with the indenture trustee named therein, issued by the Debtor in favor of the Guaranteed Trusts named under each of the Indentures.

96. “*Subordinated Debenture Claim*” means a general unsecured Claim, not a General Unsecured Claim, Indemnification Claim, Convenience Class Claim or Claim or Interest in another Class, based upon a Subordinated Debenture.

97. “*Tax Attributes*” shall mean the attributes described under 28 U.S.C. § 108(b)(2)(A) – (G), including net operating loss carry-forwards and tax credits.

98. “*Tax Claim*” means an unsecured Claim of a Governmental Unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code or a Secured Claim of a Governmental Unit.

99. “*Transaction*” means the reorganization of the Company under chapter 11 of the Bankruptcy Code as proposed by a New Investor and agreed to by the Company and consistent in all respects with Article VI herein.

100. “*Treatment Outcome One*” shall have the meaning assigned to it in Article III.

101. “*Treatment Outcome Two*” shall have the meaning assigned to it in Article III.

102. “*Treatment Outcome Three*” shall have the meaning assigned to it in Article III.

103. “*Treatment Outcome Four*” shall have the meaning assigned to it in Article III.

104. “*TruPS*” means those certain trust preferred capital securities issued by the Guaranteed Trusts to the Guaranteed TruPS Holders.

105. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests, a Claim or Equity Interest that is unimpaired within the meaning of Section 1124 of the Bankruptcy Code.

106. “*Unknown Causes of Action*” means any and all Causes of Action that currently exist or may subsequently arise and which have not been otherwise set forth herein or in the non-exclusive Schedule of Causes of Action, whether or not capable of discovery with or without due diligence or otherwise subject to constructive or other notice.

107. “*USCAP Parties*” means, collectively, U.S. Capital Funding V, Ltd., an exempted company with limited liability under the laws of the Cayman Islands, and U.S. Capital Funding VI, Ltd., an exempted company with limited liability under the laws of the Cayman Islands.

108. “*Voting Deadline*” means the deadline to vote on the Plan as may be set by the Bankruptcy Court.

109. “*Voting Instructions*” means the instructions for voting on the Plan contained in Article V of the Disclosure Statement and in the Ballots and in any order of the Bankruptcy Court entered in conjunction with a motion by the Debtor to establish plan solicitation procedures.

ARTICLE II

UNCLASSIFIED CLAIMS AGAINST THE DEBTOR

A. *Administrative Claims*

1. Administrative Claims Bar Date

Any request for allowance of any Administrative Claim, other than Professional Fee Claims (including claims of ordinary course professionals), shall be Filed no later than the Administrative Claims Bar Date. Any request for allowance of Professional Fee Claims, or Administrative Claims accruing between the Administrative Claims Bar Date and the Effective Date of the Plan, shall be Filed no later than thirty (30) days after the Effective Date of the Plan. Objections to any Administrative Claim shall be due no later than forty-five (45) days after the applicable bar date. The restructuring professionals for the Debtor shall use reasonable best efforts to comply with the partial, pre-Confirmation, estimated budget for all periods thereof provided to the Guaranteed TruPS Holders, subject to any terms and conditions stated on such budget which are incorporated herein by this reference; provided, that all professionals reserve the right to apply for payment of all fees and expenses incurred and advanced by such

professionals (whether within or in excess of such estimated budget), and all parties reserve the right to object to any such professional fees and expenses. For the sake of clarity, the fact that any such fees or expenses for any period covered by such budget shall exceed such estimated budget shall not create any presumption with regard to the reasonableness or unreasonableness, validity or invalidity, or allowance or disallowance thereof.

Any Holder of an Administrative Claim who fails to file a timely request for the allowance of an Administrative Claim: (i) shall be forever barred, estopped and enjoined from asserting such Administrative Claim against any of the Debtor Parties (or filing a request for the allowance thereof), and the Debtor Parties shall be forever discharged from any and all indebtedness or liability with respect to such Administrative Claim; and (ii) such Holder shall not be permitted to participate in the Liquidation Trust or any distribution under the Plan on account of such Administrative Claim.

2. Treatment

Except to the extent that a Holder of an Allowed Administrative Claim and the Company agree to a different treatment, each Allowed Administrative Claim shall be paid in full in Cash on the later of the Effective Date or the date such claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable, or shall be paid as otherwise provided in the Bankruptcy Code.

B. *Tax Claims*

The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Tax Claims. Unless otherwise agreed to by the Holder of an Allowed Tax Claim and the Proponent, each Holder of an Allowed Tax Claim shall be paid (i) in full, in Cash on the Effective Date or as soon thereafter as is practicable, (ii) over a period through the fifth anniversary of the Petition Date, deferred Cash payments in an aggregate amount equal to such Allowed Tax Claim, plus interest on such aggregate amount over such period, or as soon thereafter as is practicable, (iii) if such Tax Claim is allowed after the Effective Date, on such date such Claim is Allowed or as soon thereafter as is practicable; or (iv) on such other day as agreed to by the Debtor or Liquidation Trustee and such Creditor, or otherwise ordered by 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 against and Equity Interests in the Debtor for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. 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 to the extent that any remainder of such Claim or Equity Interest

qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date.

Summary of Classification and Treatment of Claims and Equity Interests

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>
1	Non-Tax Priority Claims	Unimpaired	Deemed to accept
2	Secured Claims	Unimpaired	Deemed to accept
3	General Unsecured Claims	Impaired	Entitled to vote
4	Indemnification Claims	Impaired	Entitled to vote
5	Convenience Class Claims	Impaired	Entitled to vote
6	Subordinated Debenture Claims	Impaired	Deemed to reject
7	Equity Interests	Impaired	Deemed to reject

1. Class 1 – Non-Tax Priority Claims

(a) *Classification:* Class 1 comprises the Non-Tax Priority Claims against the Debtor.

(b) *Treatment:* The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Non-Tax Priority Claims. Unless otherwise agreed to by the Holder of an Allowed Non-Tax Priority Claim and the Proponent, each Holder of an Allowed Non-Tax Priority Claim shall be paid in full, in Cash on the Effective Date, or as soon thereafter as is practicable, or on such other day as agreed to by Liquidation Trustee and such Creditor, or otherwise ordered by the Bankruptcy Court.

(c) *Voting:* Class 1 is Unimpaired and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. Class 2 –Secured Claims

(a) *Classification:* Class 2 comprises the Secured Claims against the Debtor. The Company is not aware of any existing Claims that would constitute Allowed Secured Claims.

(b) *Treatment:* The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Secured Claims. Unless otherwise agreed to by the Holder of an Allowed Secured Claim and the Proponent, each Holder of an Allowed Secured Claim shall receive or retain on the date specified, or as soon thereafter as is practicable, (i) the collateral subject to the Allowed Secured Claim, which shall be

transferred to the Creditor as of the Effective Date in full satisfaction of the Allowed Secured Claim, (ii) the Liens securing such Claim, whether the property subject to such Lien is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such Allowed Secured Claim, and on account of such Claim deferred Cash payments totaling at least the allowed amount of such Claim, of a value, as of the Effective Date of the Plan, of at least the value of such Holder's interest in the Estate's interest in such property, or (iii) receive the indubitable equivalent of such Claim within the meaning of the Bankruptcy Code.

(c) *Voting:* Class 2 is Unimpaired and the Holders of Class 2 Claims are conclusively deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

3. Class 3—General Unsecured Claims

(a) *Classification:* Class 3 comprises General Unsecured Claims against the Debtor.

(b) *Treatment:* Each Holder of an Allowed General Unsecured Claim shall receive on the later of the Effective Date or the date such Claim becomes an Allowed General Unsecured Claim, or as soon thereafter as is practicable, in full and final satisfaction of its Claim, together with the Holders of Allowed Indemnification Claims if Treatment Outcome Four shall apply, its Pro Rata share of all Distributable Cash. In addition, the Holders of General Unsecured Claims that are Guaranteed TruPS Claims are deemed hereby to provide to, and receive from, all of the Releasing Parties and Related Parties the releases from Causes of Action on the basis set forth in and subject in all respects to the provisions of Article XI(C).

(c) *Voting:* Class 3 is Impaired and the Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Indemnification Claims

(a) *Classification:* Class 4 comprises the Indemnification Claims against the Debtor.

(b) *Treatment:* The treatment of Class 4 Claims is subject to four potential outcomes based upon satisfaction of the criteria below.

(i) *Treatment Outcome One.* Treatment Outcome One shall apply in the event that the consent of all Holders of Indemnification Claims whose consent is necessary to terminate the Segregated Account Agreement has been obtained. If Treatment Outcome One shall apply, then the Holders of Allowed Indemnification Claims shall receive the Consensual Class 4 Treatment on the later of the Effective Date or the date such Indemnification Claims become Allowed Indemnification Claims, or

as soon thereafter as is practicable, in full and final satisfaction of such Holders' Allowed Indemnification Claims;

provided, an affirmative vote on the Plan by a Holder of an Indemnification Claim shall be deemed to be the Holder's consent to and instruction under the Segregated Account Agreement to terminate the Segregated Account Agreement in favor of an amended or new agreement as necessary to implement the terms of the Plan and to cause not less than \$1,000,000 (One Million Dollars), consisting of funds contained in the segregated account subject to the Segregated Account Agreement, other than the funds necessary to establish the Indemnification Pool, to be remitted to the Liquidation Trust to be administered for the benefit of Creditors other than the Indemnification Claimants.

(ii) *Treatment Outcome Two.* Treatment Outcome Two shall apply in the event that Treatment Outcome One does not apply and the Proponent or other party with standing has obtained a Property of the Estate Determination. If Treatment Outcome Two shall apply, then the Holders of Allowed Indemnification Claims shall receive the Consensual Class 4 Treatment on the later of the Effective Date or the date such Indemnification Claims become Allowed Indemnification Claims, or as soon thereafter as is practicable, in full and final satisfaction of such Holders' Allowed Indemnification Claims;

provided, the Indemnification Pool shall be decreased by any Property of the Estate Determination Costs; and

further provided, no Holder of an Indemnification Claim shall receive the Consensual Class 4 Treatment unless such Holder has satisfied the Release Conditions.

(iii) *Treatment Outcome Three.* Treatment Outcome Three shall apply in the event that Treatment Outcomes One and Two do not apply and a sufficient number of Holders of Allowed Indemnification Claims meeting the Release Conditions shall have remitted to the Debtor funds in a total aggregate amount of not less than \$1,000,000 (One Million Dollars) plus the Property of the Estate Determination Costs. If both of these conditions precedent shall be satisfied, then the Holders of Allowed Indemnification Claims shall receive the Consensual Class 4 Treatment on the later of the Effective Date or the date such Indemnification Claims become Allowed Indemnification Claims, or as soon thereafter as is practicable, in full and final satisfaction of such Holders' Allowed Indemnification Claims;

provided, in the event that Treatment Outcome Three applies, then no Holder of an Allowed Indemnification Claim that has not met

the Release Conditions shall receive the Consensual Class 4 Treatment; and

further provided, the Holders of Allowed Indemnification Claims who have not met the Release Conditions shall retain their pro-rata rights in and to the funds remaining in the Segregated Account Agreement but shall receive no further consideration under the Plan or otherwise participate in distributions from the Estate or Liquidation Trust.

(iv) *Treatment Outcome Four.* Treatment Outcome Four shall apply in the event that neither Treatment Outcomes One, Two or Three shall apply by their terms. If Treatment Outcome Four shall apply, each Holder of an Allowed Indemnification Claim shall receive on the later of the Effective Date or the date such Claim becomes an Allowed Indemnification Claim, or as soon thereafter as is practicable, in full and final satisfaction of its Claim, together with the Holders of General Unsecured Claims, its Pro Rata share of all Distributable Cash.

provided, in the event Treatment Outcome Four applies to Class 4 then the Indemnification Claims shall be considered to be Disputed Claims; and

further provided, the Debtor, the Estate, the Liquidation Trustee and the Liquidation Trust and any other party with standing shall have reserved all rights against the Holders of Indemnification Claims, including, but not limited to, (x) the right to contest the allowance or payment upon, or seek the subordination of, any and all asserted claims for indemnification of any Holder of an Indemnification Claim, and (y) to pursue Causes of Action against any Holder of an Indemnification Claim or any of its Related Parties.

For the avoidance of doubt, the Debtor reserves the right to commence an adversary or other proceeding or take such other action as necessary to obtain a Property of the Estate Determination at any time.

(c) *Voting:* Class 4 is Impaired and the Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

5. Class 5 – Convenience Class Claims

(a) *Classification:* Class 5 comprises the Convenience Claims against the Debtor.

(b) *Treatment:* Each Holder of an Allowed Convenience Class Claim shall receive on the later of the Effective Date or the date on which such Claim becomes an Allowed Convenience Class Claim, or as soon thereafter as is practicable, in full and final

satisfaction of such Allowed Convenience Class Claim, Cash in an amount equal to 95% of its Claim. In addition, the Holders of Convenience Class Claims are deemed hereby to provide to, and receive from, all of the Releasing Parties and Related Parties the releases from Causes of Action on the basis set forth in and subject in all respects to the provisions of Article XI(C); notwithstanding, no Holder of an Indemnification Claim and no Related Party of a Holder of an Indemnification Claim that is also the Holder of an Allowed Convenience Class Claim shall obtain a release by virtue of its participation in Class 5.

(c) *Voting:* Class 5 is Impaired and the Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – Subordinated Debenture Claims

(a) *Classification:* Class 6 comprises the Subordinated Debenture Claims against the Debtor.

(b) *Treatment:* Each Holder of an Allowed Subordinated Debenture Claim, shall receive no distribution under the Plan.

(c) *Voting:* Class 6 is Impaired and the Holders of Class 6 Claims are deemed to reject the Plan.

7. Class 7 – Equity Interests

(a) *Classification:* Class 7 comprises the Equity Interests in the Debtor.

(b) *Treatment:* All Class 7 Equity Interests shall be cancelled and the Holders thereof will receive no distribution under the Plan; provided, to the extent that Allowed Claims in Classes 1 through 6 have been paid in full with interest at the contractual or applicable non-contractual rate, then Holders of Allowed Class 7 Equity Interest shall share Pro Rata in the remaining Estate, subject to a modification of the Plan (and bar date for filing Proofs of Equity Interest) if and as may be necessary to accomplish such result in the Liquidation Trustee's discretion.

(c) *Voting:* Class 7 is Impaired and the Holders of Class 7 Equity Interests are deemed to reject the Plan.

ARTICLE IV

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 3, 4, or 5 Claim shall be entitled to vote to accept or reject the Plan. Classes 6 and 7 are deemed to reject the Plan because the Proponent believes there is no reasonable prospect for recovery in Classes 6 or 7.

B. *Acceptance by Impaired Classes*

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the 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*

Classes 1 and 2 are Unimpaired under the Plan, and, therefore, 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 this Plan or is deemed to have rejected this Plan, the Proponent will request confirmation of this Plan, as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code. The Proponent reserves the right to alter, amend, modify, revoke or withdraw this Plan or any document in the Plan Supplement, including to amend or modify it to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE V

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

A. *The Liquidation Trust*

1. *Establishment of the Liquidation Trust*

On the Effective Date, the Debtor and the Liquidation Trustee shall execute the Liquidation Trust Agreement and shall take all other steps necessary to establish the Liquidation Trust in accordance with the Plan. The Debtor shall be deemed to have automatically transferred to the Liquidation Trust all of its right, title, and interest in and to all of the Liquidation Trust Assets, and in accordance with Section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidation Trust free and clear of all Claims, Liens and Causes of Action, subject only to the Allowed Claims of the Liquidation Trust Beneficiaries as set forth in the Plan and the expenses of the Liquidation Trust as provided in the Liquidation Trust Agreement, Plan and Confirmation Order. Thereupon, the Debtor shall have no interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust. In connection with the vesting and transfer of the Liquidation Trust Assets, including rights and Causes of Action, any attorney-client privilege, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust shall vest in the Liquidation Trust. The Debtor and the Liquidation Trustee are authorized to take all necessary actions and create any necessary documentation to effectuate or evidence the transfer of such assets, privileges, protections and immunities, which in any event are self-effectuating and require no further action or evidence.

To effectively investigate, defend or pursue Causes of Action and the Liquidation Trust Assets, the Debtor, the Liquidation Trust, the Plan Oversight Committee and the Liquidation Trustee must be able to exchange information with each other on a confidential basis and cooperate in common-interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidation Trust's position as successor to the Causes of Action, sharing such information among the Debtor, the Liquidation Trust, the Plan Oversight Committee, the Liquidation Trustee or their respective professionals shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information.

The Plan Oversight Committee shall have consent rights with respect to material decisions made by the Liquidation Trustee, such consent not to be unreasonably withheld and to be set forth in definitive documentation in the form of the Liquidation Trust Agreement to be filed with the Plan Supplement. In the event the Plan Oversight Committee does not consent to any such material action proposed by the Liquidation Trustee, the Liquidation Trustee may seek approval of the Court for the proposed action.

2. Treatment of Liquidation Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Liquidation Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. Accordingly, the Liquidation Trustee shall in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Trust Assets, including all Causes of Action, make timely distributions to the Liquidation Trust Beneficiaries and not unduly prolong its duration. The Liquidation Trust shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Liquidation Trust Beneficiaries treated as grantors and owners of the Liquidation Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidation Trustee, and the Liquidation Trust Beneficiaries) shall treat the transfer of the Liquidation Trust Assets by the Debtor to the Liquidation Trust, as set forth in the Liquidation Trust Agreement, as a transfer of such assets by the Debtor to the Holders of Allowed Claims of Liquidation Trust Beneficiaries entitled to distributions from the Liquidation Trust Assets, followed by a transfer by such Holders to the Liquidation Trust. Thus, the Liquidation Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Liquidation Trustee (to the extent that the Liquidation Trustee deems it necessary or appropriate in his or her sole discretion) shall value the Liquidation Trust Assets based on the good faith determination of the value of the Liquidation Trust and shall apprise the Plan Oversight Committee of such valuation. The valuation shall be used consistently by all parties (including the Debtor, the Liquidation Trustee, and the Liquidation Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Liquidation Trust Assets.

The right and power of the Liquidation Trustee to invest the Liquidation Trust Assets transferred to the Liquidation Trust, the proceeds thereof, or any income earned by the Liquidation Trust, shall be limited to the right and power to (i) invest such Liquidation Trust Assets (pending distributions in accordance with the Plan) in Permissible Investments; provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

Subject to the provisions of this Article V, the Liquidation Trustee shall distribute to the Liquidation Trust Beneficiaries all net Cash income plus all net Cash proceeds from the liquidation of the Liquidation Trust Assets (including as Cash for this purpose, all Cash equivalents) at such time intervals as decided by the Liquidation Trustee, after consultation with the Plan Oversight Committee pursuant to the terms of the Plan and Liquidation Trust Agreement. The Liquidation Trustee may cause the Liquidation Trust to establish all necessary reserves, including but not limited for the purposes of, retaining an amount of net Cash reasonably necessary to maintain the value of its assets, to meet Claims and contingent liabilities (including Disputed Claims), pursue and defend Causes of Action or otherwise administer the Liquidation Trust, subject to the terms of the Liquidation Trust Agreement. The Liquidation Trustee may also determine that in a given period, there are insufficient assets to make a distribution.

The Liquidation Trustee may require any Liquidation Trust Beneficiary or other distributee to furnish to the Liquidation Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service, and the Liquidation Trustee may condition any distribution to any Liquidating Trust Beneficiary or other distributee upon receipt of such identification number.

3. *Funding of the Liquidation Trust*

The Liquidation Trust shall be funded with all assets of the Company other than Retained Assets, if any, including any and all Cash, property, claims and Causes of Action.

4. *The Liquidation Trustee*

The Debtor's Board of Directors has selected Bradley D. Sharp as the initial Liquidation Trustee, and the Guaranteed TruPS Holders have consented thereto.

From and after the Effective Date, subject to the terms of the Plan and the Liquidation Trust Agreement, the Liquidation Trustee shall serve as trustee of the Liquidation Trust, and shall have all powers, rights and duties of a trustee, as set forth in the Liquidation Trust Agreement. Among other things, the Liquidation Trustee shall subject to the terms of the Liquidation Trust Agreement and the rights of the Plan Oversight Committee set forth therein: (i) hold and administer the Liquidation Trust Assets, including the Causes of Action, invest Cash, establish accounts and make appropriate reserves, (ii) have the authority and discretion on behalf of the Liquidation Trust to evaluate and determine strategy with respect to the Causes of Action, and to litigate, settle, transfer, release or abandon any and all Causes of Action on behalf

of the Liquidation Trust, in each case, on any terms and conditions as it may determine in good faith based on the best interests of the Liquidation Trust Beneficiaries, (iii) have the power and authority to retain, as an expense of the Liquidation Trust attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Liquidation Trustee hereunder or in the Liquidation Trust Agreement, (iv) make distributions to the Liquidation Trust Beneficiaries as provided in the Liquidation Trust Agreement and the Plan, (v) have the right to receive reasonable compensation for performing services as Liquidation Trustee and to pay the reasonable fees, costs and expenses of any counsel, professionals, advisors or employees as may be necessary to assist the Liquidation Trustee in performing the duties and responsibilities required under the Plan and the Liquidation Trust Agreement, (vi) file, litigate, settle, compromise or withdraw objections to Claims as set forth in Article IX.A herein, (vii) provide periodic reports and updates to the Plan Oversight Committee regarding the status of the administration of the Liquidation Trust Assets, including the Causes of Action, and the assets, liabilities and transfers of the Liquidation Trust, and make filings with the Court, (viii) dispose of the Liquidation Trust Assets, including transferring such assets pursuant to Section 363(f) of the Bankruptcy Code or abandoning such assets; (ix) purchase all insurance coverage necessary or desirable with respect to the Liquidation Trust Assets or the Liquidation Trustee, the Plan Oversight Committee and their respective professionals; and (x) take all other actions necessary or desirable to wind-up the business affairs of the Debtor and non-debtor Affiliates, terminate their respective corporate existence, administer the Liquidation Trust and store or destroy records of the Debtor and its Estate and the Liquidation Trust.

The Liquidation Trustee shall be: (i) recognized by foreign courts, tribunals and jurisdictions, (ii) the subject of the recognition of comity of such foreign courts, tribunals and jurisdictions, (iii) vested with the authority of a statutory trustee pursuant to the Liquidation Trust Agreement, and, as well, with the authority of a chapter 7 bankruptcy trustee in foreign pursuits and actions.

In the event the Liquidation Trustee is no longer willing or able to serve as trustee, then the successor shall be appointed by the Plan Oversight Committee subject to the terms of the Liquidation Trust Agreement, or as otherwise determined by the Bankruptcy Court, and notice of the appointment of such Liquidation Trustee shall be filed with the Bankruptcy Court.

5. The Plan Oversight Committee

The Plan Oversight Committee shall initially be comprised of not more than three members for the purposes and subject to the terms set forth in the Liquidation Trust Agreement. The Company shall nominate one person from the Company, HoldCo shall nominate one Person from its organization, and the USCAP Parties shall nominate one Person from one of their organizations, all such nominations to be set forth in the Plan Supplement. In the event any committee member is no longer willing or able to serve as a Plan Oversight Committee member, then the remaining Plan Oversight Committee members (upon consent of the Liquidation Trustee, such consent not to be unreasonably withheld) may appoint a replacement committee member to serve as a successor Plan Oversight Committee member. If the remaining members do not agree on a successor, the Liquidation Trustee may cast a vote to break a tie. The Liquidation Trustee shall file notice of such appointment with the Bankruptcy Court.

To the extent the Plan Oversight Committee in its exercise of business judgment and consistent with the Plan determines that the Liquidation Trustee should commence any Cause of Action on behalf of the Liquidation Trust not released pursuant hereto, and the Liquidation Trustee has not indicated in writing that it intends to commence such Cause of Action within thirty (30) days of a written request by the Plan Oversight Committee to do so and actually commences such Cause of Action within sixty (60) days of such written request, the Plan Oversight Committee shall be vested with the authority to bring such Cause of Action in the name of the Plan Oversight Committee and to hire special litigation counsel for such purpose to be compensated from the Liquidation Trust. The Liquidation Trustee shall have consent rights with respect to the identity of the special litigation counsel, such consent not to be unreasonably withheld.

For the avoidance of doubt, the indenture trustees under the Indentures shall have no power or authority with respect to the Plan Oversight Committee, the Liquidation Trustee, any special litigation counsel or other professional or appointee for the Liquidation Trustee or the Liquidation Trust.

6. *Termination of the Liquidation Trust*

The Liquidation Trust will terminate as soon as practicable, but in no event later than the fifth (5th) anniversary of the Effective Date; provided, however, that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a party-in-interest, may extend the term of the Liquidation Trust for a finite period, if such an extension is necessary to liquidate the Liquidation Trust Assets or for other good cause. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term; further provided, that the Liquidation Trustee receives advice of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes.

7. *Release of Liquidation Trustee and Plan Oversight Committee*

Upon the closing of the Case pursuant to Article XIV.R upon the full administration of the Liquidation Trust, the duties, responsibilities and powers of the Liquidation Trustee and Plan Oversight Committee shall terminate in accordance with the terms of the Liquidation Trust Agreement and each such Person and Entity shall be released from further service, duties and obligations.

8. *Exculpation and Indemnification of Liquidation Trust, Plan Oversight Committee and Related Parties*

The Liquidation Trustee, Liquidation Trust and Plan Oversight Committee, and their respective Related Parties shall be exculpated and indemnified hereby without any further action or order and in accordance with the terms of the Liquidation Trust Agreement to the maximum extent permitted by applicable law. No such exculpated and indemnified parties will have or incur liability to any Person or Entity for any act taken or omission made in good faith in connection with or related to the administration of the Liquidation Trust and Liquidation Trust

Assets, the implementation of the Plan and the making of distributions made thereunder, or otherwise with respect to the Case, and any and all Causes of Action related thereto are deemed fully waived, barred, and released in all respects. Such parties will in all respects be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities under the Plan and the Liquidation Trust Agreement or at law. Provided, however, this exculpation and indemnity shall not act to exculpate, indemnify or release any Person or Entity from any obligation under the Plan or the Liquidation Trust Agreement or with respect to any act or omission that is determined by a Final Order to constitute gross negligence, willful misconduct or fraud.

9. *Preservation of Records and Documents*

The Debtor and Liquidation Trustee shall: (i) take commercially reasonable efforts to preserve all records and documents (including any electronic records or documents) related to the Causes of Action and the Liquidation Trust Assets for a period of five (5) years from the Effective Date or, if actions with respect to the Causes of Action are then pending, until the Liquidation Trustee notifies the Debtor such records are no longer required to be preserved; and (ii) provide the Liquidation Trustee, Plan Oversight Committee, and their respective counsel, agents and advisors, with reasonable access to such records and documents.

10. *Discovery*

The Liquidation Trust shall be authorized to employ Bankruptcy Rule 2004 and any other bankruptcy tools of discovery as such are available prior to the Effective Date to the Estate.

B. *Corporate Action*

Except as provided in Article VI below, upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtor shall be deemed authorized and approved without any requirement of further action by the Debtor, the Debtor's shareholders or the Debtor's boards of directors. To the extent such action has not been completed, the Debtor shall dissolve or otherwise terminate its existence on the Effective Date, by filing a certificate of dissolution and a copy of the Confirmation Order with the Delaware Secretary of State, and the Debtor and Liquidation Trustee are authorized to dissolve or terminate the existence of any wholly-owned, non-Debtor Affiliates following the Effective Date as well as any remaining health, welfare or benefit plans.

C. *Cancellation of Notes, Instruments, Debentures and Equity Securities*

Except as provided herein, on the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, certificates and other documents evidencing Claims and all Equity Interests in any of the Debtor shall be cancelled and deemed terminated. For the avoidance of doubt, except as otherwise provided herein, on the Effective Date, all notes, stocks, instruments, certificates and other documents evidencing the Subordinated Debentures and the TruPS, including the Indentures, the documents establishing the Guaranteed Trusts, the Subordinated Debentures, and the TruPS shall be deemed automatically cancelled, shall be of no further force or effect, including as related to the rights or powers of the indenture trustees and guarantee trustees of the Guaranteed Trusts, whether surrendered for cancellation or otherwise.

D. *Binding Agreement of Holders of Allowed Indemnification Claims*

On the occurrence of the Effective Date, unless Class 4 shall receive Treatment Outcome Four, any Holder of an Allowed Indemnification Claim that votes to accept the Plan shall be deemed to have agreed that (1) the funds subject to the Segregated Account Agreement constitute property of the Estate under 11 U.S.C. § 541; and (2) the Holders of Allowed Indemnification Claims have no right in or claim to any such funds, except for an amount of \$1,000,000 (One Million Dollars) which shall be deposited into the Indemnification Pool pursuant to the terms of the Plan and is subject to reduction by any Property of the Estate Determination Costs that are incurred.

E. *Turnover of Amounts Held in Segregated Account Pursuant to the Segregated Account Agreement.*

To the extent the FDIC Action is (1) settled and such settlement results in the irrevocable dismissal of such action, (2) completely resolved by judgment or other judicial determination and such judgment or determination is the subject of a Final Order, or (3) otherwise fully and finally terminated, all dollar amounts at such time remaining in the Indemnification Pool, in excess of any dollar amounts necessary to satisfy Allowed Indemnification Claims, shall be turned over to the Estate or Liquidation Trust, as the case may be, for the benefit of the Holders of Allowed Claims other than Holders of Indemnification Claims.

ARTICLE VI

REORGANIZATION PROVISIONS

A. *Potential Transaction*

To the extent a New Investor is selected by the Company to pursue a Transaction as described below (which selection of such New Investor shall be included in the Plan Supplement), the Company shall reorganize on the Effective Date around the Retained Assets and new equity of the Reorganized Company shall be issued on such date.

B. *Selection of New Investor*

Parties interested in becoming the New Investor may contact Debtor's counsel at the address listed on the caption of this Plan. The Company will afford any potential investor who is a Qualified Investor access to information to conduct due diligence that the Company, in its business judgment, determines to be reasonable and appropriate, subject to the execution of a non-disclosure agreement in form and substance acceptable to the Company. Notwithstanding, the Company shall not be obligated to furnish any due diligence information. Neither the Company nor its advisors are responsible for, and will bear no liability with respect to, any information provided or obtained in connection with due diligence. Notwithstanding anything contained herein to the contrary, the Company will decide what, if any, diligence information to make available to a particular Qualified Investor in its business judgment, and neither the Company nor its representatives will be obligated to furnish any information of any kind whatsoever to any party.

A Qualified Investor interested in pursuing a Transaction must submit a Qualifying Letter of Intent to accomplish a Transaction no later than seven (7) calendar days prior to the hearing on the Disclosure Statement or such other date as continued by the Debtor or set by the Court, accompanied by an Earnest Money Deposit, and containing at a minimum the following items:

- a. The dollar amount to be invested by the Qualified Investor in order to purchase new equity in the Reorganized Company;
- b. A statement that the offer is irrevocable until the Effective Date and closing of the Transaction, if such Qualified Investor is designated as the New Investor or is selected by the Company as a back-up investor;
- c. A statement that there are no material due diligence or financing contingencies;
- d. Evidence of corporate or Entity authorization and approval with respect to the submission of the letter of intent;
- e. A statement of the proposed new capital and equity structure of the Reorganized Company, including classes of debt and equity and rights and privileges appurtenant thereto, and an opinion of legal counsel that the proposed capital structure of the Reorganized Company will qualify for an exemption under IRC § 382(l)(5);
- f. An agreement the greater of \$200,000 or the actual amount incurred by the Estate in pursuing the Transaction shall first be deducted from the Earnest Money Deposit and be deemed irrevocably earned by the Estate in order to defray the costs of the Transaction (including the cost of the drafting of new organizational documents, making of regulatory and other filings to accomplish the existence and governance of the Reorganized Company, and other matters necessary to close the Transaction), whether closed or not, and not applied as a credit towards the investment amount.
- g. A description of proposed Retained Assets, which shall be limited to the following property, if any: intellectual property, including trade and corporate names; any licenses and permits to conduct business; all Tax Attributes of the Debtor; and other assets, if any, specifically excluded in writing from the Liquidation Trust;
- h. A statement of the business operations to be conducted by the Reorganized Company on and following the Effective Date;
- i. A disclosure of all connections to the Debtor, its Affiliates, and any past or present directors or officers; and
- j. A statement that the investment or sale is “AS IS,” “WHERE IS,” “WITH ALL FAULTS AND CONDITIONS,” AND “WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND.”

The Company may (or may not) select from all Qualifying Letters of Intent, and seek approval by the Court at the time of the Hearing on the Disclosure Statement or such other date continued by the Debtor or set by the Court, a Qualified Investor to serve as the New Investor. The Qualified Investor submitting the highest and best proposal, as determined by the Company in its sole discretion, shall be deemed the New Investor, if any, under this Plan. The proposed forms of articles of incorporation, bylaws, shareholders rights' agreements and any other corporate documents to implement the Transaction shall be drafted by the New Investor, subject to approval of the Debtor, and contained in the Plan Supplement.

Each Qualifying Letter of Intent must be accompanied by an Earnest Money Deposit. If a Qualified Investor submitting a Qualified Letter of Intent is not selected as the New Investor then (a) the Earnest Money Deposit of any such person that is not selected as a back-up investor shall be returned in full upon the confirmation by the Court of the selection of the New Investor and back up investor, or (b) the Earnest Money Deposit may be continued to be held by the Estate until the Effective Date if such Qualified Investor becomes the New Investor or is designated as a back-up investor. The Earnest Money Deposit of the New Investor shall be applied towards the investment amount of the Transaction, provided that the greater of \$200,000 or the actual amount incurred by the Estate in pursuing the Transaction shall first be deducted from the Earnest Money Deposit and be deemed irrevocably earned by the Estate in order to defray the costs of the Transaction, whether closed or not, and not applied as a credit towards the investment amount.

The Debtor reserves the right to modify and amend the provisions for the selection of a New Investor or not pursue a Transaction.

C. *The Reorganized Company*

The Reorganized Company will continue to exist as a separate corporation and shall retain all of the powers of corporations under applicable non-bankruptcy law, and without prejudice to any right to amend its charter, dissolve, merge or convert into another form of business entity, or to alter or terminate its existence. All Retained Assets will vest in the Reorganized Company free and clear of all Claims, Liens, charges, Causes of Action, other encumbrances and Equity Interests. The Reorganized Company shall be permitted to conduct its business without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules. The Reorganized Company shall be authorized take any corporate action necessary or desirable to administer its affairs, including, without limitation, to acquire and dispose of property. The issuance by the Reorganized Company of common stock, if applicable, is hereby authorized without the need for any further corporate action and without any further action by Holders of Claims or Equity Interests. The corporate charter of the Reorganized Company shall include provisions prohibiting the issuance of nonvoting equity securities. The Reorganized Company shall be deemed to be included in the definition of Debtor Parties for purposes of Article XI according such parties the benefit of the exculpations, injunctions and releases set forth therein.

D. *Securities Exemption*

The exemption from the requirements of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and any state or local law requiring registration or qualification for the offer or sale of a security provided under Bankruptcy Code section 1145 shall apply to all new equity interests issued and distributed under or in accordance with the Plan. To the extent Bankruptcy Code section 1145 does not apply, the Reorganized Company and the New Investor may also rely on Section 4(2) and Regulation D of the Securities Act, and similar provisions of the applicable state securities and “blue sky” laws, to exempt the exchange, issuance and distribution of securities to be issued by the Reorganized Company under the Plan from the registration requirements of the Securities Act of 1933 and applicable state securities and “blue sky” laws.

ARTICLE VII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

Any executory contracts or unexpired leases that have not expired by their own terms on or prior to the Effective Date, which the Debtor has not assumed and assigned or rejected with the approval of the Bankruptcy Court, or that are 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 ***(including the Segregated Account Agreement to the extent that it has not been rejected prior to the Effective Date or consensually amended or modified)*** and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

B. *Rejection Claims; Cure of Defaults*

If the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a Proof of Claim that has been Filed, shall be forever barred and shall not be enforceable against the Debtor Parties unless a Proof of Claim is Filed and served upon (i) the Liquidation Trustee, and (ii) any counsel for the Liquidation Trustee, on or before (x) thirty (30) days after the later to occur of (a) the Effective Date, and (b) the date of entry of an order by the Bankruptcy Court authorizing rejection of a particular executory contract or unexpired lease, or (y) such other date as may be ordered by the Bankruptcy Court.

ARTICLE VIII

PROVISIONS REGARDING DISTRIBUTIONS

A. *Time and Method of Liquidation Trust Distributions*

The Liquidation Trustee, on behalf of the Liquidation Trust, or such other Entity as may be designated in accordance with the Liquidation Trust Agreement, will make the distributions to Liquidation Trust Beneficiaries required under the Plan in accordance with the Liquidation Trust Agreement and in accordance with the priorities set forth in and the other provisions of the Plan.

The Liquidation Trustee will make distributions in consultation with the Plan Oversight Committee. Whenever any distribution to be made under the Plan or the Liquidation Trust Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

Distributions will be made by the Liquidation Trustee in the following order of priority: (i) first, to satisfy the expenses of administering the Liquidation Trust, including reasonable fees and expenses of any attorneys, advisors, other professionals and employees employed by the Liquidation Trustee; (ii) second, to fund any reserve accounts deemed necessary by the Liquidation Trustee to implement and otherwise accomplish the Plan; and (iii) third, to make distributions to Liquidation Trust Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement.

B. *Reserve for Disputed Claims*

The Liquidation Trustee shall maintain a reserve for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidation Trust Agreement, as such Disputed Claims are resolved by Final Order or settlement, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date, provided that no interest shall be distributable on account thereof or accrue with respect thereto.

C. *Manner of Payment under the Plan and Liquidation Trust*

Any payment in Cash to be issued hereunder shall, at the election of the issuer, be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

D. *Delivery of Distributions*

Subject to the provisions of Federal Rule of Bankruptcy Procedure 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders on the Record Date of Allowed Claims, and if applicable, Allowed Equity Interests, shall be made at the address of each such Holder set forth on the Debtor's books and records unless a Proof of Claim is timely filed with a different address, which address contained on a timely filed Proof of Claim shall be presumptively correct unless a timely signed writing by such Holder is delivered to the Debtor prior to a distribution; provided, any distribution to be made by the Liquidation Trustee with respect to the Indemnification Pool shall be made to the escrow agent or other third party appointed to make distributions with respect to the Indemnification Pool. By no later than the Effective Date, the Debtor shall provide the Liquidation Trustee with the addresses and other books and records relating to the Liquidation Trust Beneficiaries, including, without limitation, all taxpayer identification information.

E. *Undeliverable Distributions*

1. *Holding of Undeliverable Distributions*

If any distribution hereunder to any Holder is returned as undeliverable, no further distributions shall be made to such Holder, such Holder's Claim or Equity Interest for such distribution shall be discharged, and such Holder shall be forever barred from asserting any such Claim or Equity Interest against the Debtor Parties, except if the issuer of the distribution is timely notified in writing of a valid, deliverable address for such Holder under Section 2 of this paragraph. All Entities ultimately receiving undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan or Liquidation Trust Agreement shall require the issuer of any distribution to attempt to locate any Holder of an Allowed Claim or an Allowed Equity Interest.

2. *Failure to Claim Undeliverable Distributions*

Any Holder of an Allowed Claim or Equity Interest that does not assert its rights pursuant to the Plan or Liquidation Trust Agreement to receive a distribution within forty-five (45) days from and after the date of such distribution, including if such distribution is returned as undeliverable, shall have such Holder's Claim or Equity Interest for such undeliverable distribution discharged and such Holder shall be forever barred from asserting any such Claim or Equity Interest against the Debtor Parties. In such case, any consideration held for distribution on account of such Claim or Equity Interest shall belong to the Liquidation Trust for distribution by the Liquidation Trustee to the Liquidation Trust Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement. After final distributions have been made in accordance with the terms of the Plan and Liquidation Trust Agreement, if the amount of undeliverable Cash remaining is less than \$5,000.00, the Liquidation Trustee, as applicable, in his sole discretion, may donate such amount to a charity.

F. *Compliance with Tax Requirements/Allocation*

The issuer of any distribution under the Plan and the Liquidation Trust shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to any such applicable withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims or Equity Interests will be allocated first to the principal amount of such Claims or Equity Interests, with any excess allocated to unpaid accrued interest.

G. *Time Bar to Cash Payments*

Checks issued on account of Allowed Claims or Equity Interests shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the Holder of the Allowed Claim or Equity Interest with respect to which such check originally was issued. Any claim in respect of such a previously issued check shall be made within three (3) months from and after the date of issuance of such check. After such date, all Claims in respect of issued checks shall be discharged and such Holder shall be forever barred from asserting any such Claim or Equity Interest against the Debtor Parties. The Liquidation Trust shall be entitled to void any such check and retain all monies related thereto for distribution to the Liquidation Trust Beneficiaries in accordance with the terms of the Plan and Liquidation Trust Agreement.

H. *Distributions After Effective Date*

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date. Except as otherwise specifically provided in the Plan or the Liquidation Trust Agreement, no interest shall be payable on account of any Claim not paid on the Effective Date.

I. *Fractional Dollars; De Minimis Distributions*

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. No payment shall be made on account of any distribution less than Twenty Five Dollars (\$25) with respect to any Allowed Claim or Equity Interest.

J. *Setoffs*

The Liquidation Trustee may, pursuant to Sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim or Allowed Administrative Claim and the distributions to be made pursuant to the Liquidation Trust Agreement on account thereof (before any distribution is made on account of such Claim), the Claims, rights and Causes of Action of any nature that it may hold against the Holder of such Allowed Claim or Allowed Administrative Claim; provided, however, that neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Liquidation Trust may possess against such Holder.

K. *Preservation by Debtor, the Estate, the Liquidation Trustee and Liquidation Trust of Subordination Rights*

Except as otherwise provided herein, all subordination rights and claims relating to the subordination by the Debtor or the Liquidation Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Section 510 of the Bankruptcy Code or otherwise.

L. *Waiver by Creditors of All Subordination Rights*

Except as otherwise ordered by the Bankruptcy Court, each Holder of a Claim or Equity Interest shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, Section 510(c) of the Bankruptcy Code or otherwise, with respect to any and all distributions to be made under the Plan, and all such contractual, legal or equitable subordination rights that each Holder of a Claim has individually and collectively with respect to any such distribution made pursuant to this Plan shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

M. *Settlement of Claims and Controversies*

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of Claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of any such Allowed Claim or Equity Interest.

ARTICLE IX

PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS

A. *Objections to Claims; Prosecution of Disputed Claims*

The Debtor, prior to the Effective Date, and thereafter the Liquidation Trustee, on behalf of the Liquidation Trust and in accordance with the Liquidation Trust Agreement, shall have the right to object to the allowance of any Claim or Equity Interest Filed with the Bankruptcy Court or otherwise asserted with respect to which it disputes liability or allowance in whole or in part, by no later than the Claim Objection Deadline. The Liquidation Trustee (within any parameters as may be established by the Liquidation Trust Agreement) shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

B. *Estimation of Claims*

The Debtor, prior to the Effective Date, and thereafter the Liquidation Trustee in accordance with the Liquidation Trust Agreement, respectively, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim or Administrative Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Liquidation Trustee has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor or the Liquidation Trustee, as the case may be, may pursue supplementary proceedings to object to the allowance of such Claim in full. All of the aforementioned objection, estimation and resolution procedures are intended to be 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. *Controversy Concerning Impairment*

If a controversy arises as to whether any Claims or Class of Claims are Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine that controversy in connection with the hearing on approval of the Disclosure Statement.

D. *Payments and Distributions on Disputed Claims*

1. Notwithstanding any provision hereof to the contrary, a distribution may be made upon any undisputed portion of an otherwise Disputed Claim. Notwithstanding the foregoing, the Debtor or Liquidation Trustee, as the case may be, will set aside for each Holder of a Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were to become an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

2. At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the Debtor or Liquidation Trustee, as the case may be, shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan or the Liquidation Trust Agreement. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed Claims or with respect to any distribution in satisfaction thereof to a Holder.

ARTICLE X

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

A. *Conditions Precedent to Confirmation*

The following are conditions precedent to confirmation of this Plan that must be (i) satisfied or (ii) waived in accordance with Article X.C below.

1. The entry of the Confirmation Order in form and substance satisfactory to the Proponent

2. The Guaranteed TruPS Holders shall have each consented to the determination of appropriate initial reserves to be established under the Liquidation Trust Agreement, such consent not to be unreasonably withheld; provided, in the event such parties do not consent, the Debtor or the Liquidation Trustee, as the case may be, shall submit such matter to the Court for determination and this condition shall be satisfied by entry of an order of the Court approving or setting such reserves.

B. *Conditions Precedent to Effective Date of the Plan*

The following are conditions precedent to the Effective Date of the Plan that must be (i) satisfied or (ii) waived in accordance with Article X.C below:

1. All actions and documents necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement and, to the extent there is a Transaction, documents necessary to effectuate the Transaction.

2. There shall be sufficient Cash to permit payment of all amounts required to be paid on the Effective Date.

3. The Debtor or Liquidation Trustee shall have received a conformed copy, in form and substance acceptable to them, of a notice dismissing with prejudice the complaint pending in the United States District Court for the Southern District of New York entitled Robert H. Kanner v. Beverly Hills Bancorp Inc., Case No. 1:14-cv-02560-RA.

4. If Treatment Outcome One shall apply, the necessary Holders of Indemnification Claims have entered into an amendment to the Segregated Account Agreement or a new agreement, if required, consistent with the Plan or such an amendment or agreement is otherwise operable by Order of the Court. If Treatment Outcomes Two, Three or Four shall apply, this condition shall be deemed waived.

5. If Treatment Outcome Three shall apply, the Debtor and Liquidation Trustee shall have received commitments from sufficient numbers of Holders of Allowed Indemnification Claims to remit to the estate in the aggregate \$1,000,000 (One Million Dollars) plus any Property of the Estate Determination Costs as set forth in Treatment Outcome Three. If Treatment Outcome One, Two or Four shall apply, this condition shall be deemed waived.

6. The Effective Date shall have occurred within thirty (30) days of entry of the Confirmation Order.

C. *Waiver of Conditions Precedent*

The Proponent may waive the conditions listed in Article X of the Plan in its sole discretion; provided, the consent of the Guaranteed TruPS Holders to the Proponent's waiver of the conditions set forth in Article X.B.4 and 5 shall be required, such consent not to be unreasonably withheld.

D. *Effect of Non-Occurrence of the Effective Date*

If the Confirmation Order is vacated, or the Effective Date is otherwise incapable of occurring, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor; (2) prejudice in any manner the rights of the Debtor or any other party; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtor or any other Person or Entity in any respect.

ARTICLE XI

EXCULPATION, INJUNCTION AND MUTUAL RELEASES

A. Exculpation

The Debtor, the members of the Debtor's board of directors and officers serving on or after the Petition Date, and the Debtor's attorneys, financial advisors and other professionals shall be exculpated and indemnified hereby without further action or order to the maximum extent permitted by applicable law, including under 11 U.S.C. § 1125(e). No such exculpated and indemnified parties will have, or incur any liability to any Person or Entity for any act taken or omitted to be taken in good faith in connection with, or related to negotiating and formulating, soliciting votes upon, confirming or implementing, or otherwise administering the Plan and Disclosure Statement (including all acts taken or omitted in connection with the reorganization of the Reorganized Company), or any agreement or document created or entered into in contemplation thereof or otherwise with respect to the Case, and any and all Causes of Action related thereto will be deemed fully waived, barred, released and discharged in all respects as against such exculpated parties. Such exculpated parties are in all respects entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities under the Plan and the Liquidation Trust Agreement or at law. Provided, this exculpation shall not exculpate, indemnify or release any Person or Entity from any obligations under the Plan or Liquidation Trust Agreement or with respect to any act or omission that is determined by a Final Order to constitute gross negligence, willful misconduct or fraud.

B. Injunction

The Plan is the sole means for resolving, paying or otherwise dealing with Claims and Equity Interests. The rights afforded herein and the treatment of all Claims and Equity Interests herein, shall be in exchange for and in complete satisfaction and release of, all Claims and Equity Interests of any nature whatsoever (including any interest accrued from and after the Petition Date), against the Debtor Parties. On the Effective Date, all such Claims against, and Equity Interests in, any of the Debtor Parties shall be satisfied and released in full in exchange for treatment under the Plan and receipt of beneficial interests, if any, in the Liquidation Trust. All Persons are thereafter precluded from asserting and hereby are without further action or order permanently enjoined from commencing, continuing or pursuing in any manner any Cause of Action against any of the Debtor Parties, any other or further Claims, Equity Interests or Causes of Action that relates to any time period prior to the Effective Date. To that end, except as expressly provided in the Plan, at all times on and after the Effective Date, all Persons who have been, are, or may be Holders of Claims against or Equity Interests in the Debtor arising prior to the Effective Date, are hereby without further action or order permanently enjoined from taking any of the following actions, on account of any such Claim or Equity Interest or Cause of Action against any of the Debtor Parties (other than actions brought to enforce any rights or obligations under the Plan and Liquidation Trust Agreement):

(1) *commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind against any of the Debtor Parties;*

(2) *enforcing, levying, attaching, executing, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against any of the Debtor Parties;*

(3) *creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien, security interest or encumbrance against any of the Debtor Parties; and*

(4) *proceeding in any manner in any place whatsoever against any of the Debtor Parties that does not conform to or comply with the provisions of the Plan.*

C. Mutual Releases by Releasing Parties

For good and valuable consideration, the adequacy of which is hereby confirmed, upon the Effective Date, to the fullest extent permissible under applicable law, each Releasing Party on behalf of itself and all of its Related Parties, will be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release, waive and discharge each of the other Releasing Parties and their respective Related Parties from and with respect to any and all Causes of Action, other than the Preserved Matters, from the beginning of time through the Effective Date, including without limitation any Causes of Action that are based in whole or in part on any act, omission, transaction, agreement, event or other occurrence taking place before the Effective Date in any way relating to any of the Debtor Parties or the Chapter 11 Case, all without further notice to or action by any court, provided, only those Holders of Allowed Claims (other than the Holders of Guaranteed TruPS Claims and the Holders of Convenience Class Claims, which Holders of Claims are deemed to automatically provide and receive the releases herein) who elect on a ballot to provide a release shall be deemed to be released hereby and to provide a release pursuant hereto; further, provided, a Holder of an Allowed Indemnification Claim shall only be deemed to be released hereby or to provide a release pursuant hereto if such Holder has satisfied the Release Conditions and Class 4 is accorded Treatment Outcome One, Two or Three. For the avoidance of doubt, if Class 4 is accorded Treatment Outcome Four, none of the Holders of Indemnification Claims shall be released hereby (whether or not the Release Conditions are met) and all rights are reserved with respect to such Holders and their respective Claims.

Each of the Releasing Parties certify that they have read Section 1542 of the California Civil Code, set forth below:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each of the Releasing Parties waives application of Section 1542 of the California Civil Code and any other statutes, common law rights, rules or the like under any applicable choice of law or jurisdiction which may operate to limit the scope of claims and Causes of

Action released above. Each of the Releasing Parties understands and acknowledges the significance and consequence of this waiver is that even if they should eventually suffer additional damages or discover additional Causes of Action after the date hereof, they will not be permitted to make any claim for such additional damages or Causes of Action.

D. Discharge of Reorganized Company

To the extent a Transaction is consummated under the Plan on the Effective Date, pursuant to Section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in the Plan or in the Confirmation Order, the distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of any and all Claims and causes of action (whether known or unknown) against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in the Debtor Parties or the Reorganized Company and their respective assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, rights, and Equity Interests, including, but not limited to, Claims and Equity Interests that arose before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (a) a Proof of Claim or Equity Interest based upon such Claim, debt, right, or Equity Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (b) a Claim or Equity Interest based upon such Claim, debt, right, or Equity Interest is allowed under Section 502 of the Bankruptcy Code, or (c) the Holder of such a Claim, right, or Equity Interest accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Equity Interests in the Debtor Parties and the Reorganized Company, subject to the occurrence of a Transaction on the Effective Date.

For the avoidance of doubt, to the extent the Debtor's Plan implements a liquidation, and a Transaction is not consummated, the Debtor shall not receive a discharge under Section 1141(d) of the Bankruptcy Code.

ARTICLE XII

RETENTION AND PRESERVATION OF CAUSES OF ACTION

A. *Retention of Causes of Action*

Except as otherwise expressly provided in the Plan, all Causes of Action that the Debtor and its Estate may hold against any Person or Entity and not released hereby (including but not limited to the Preserved Matters to the extent applicable) shall, on the Effective Date, automatically vest in the Liquidation Trust free and clear of Liens, Claims, Causes of Action, encumbrances and interests, including Equity Interests. The Liquidation Trustee, on behalf of the Liquidation Trust, shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Causes of Action without the consent or approval of any third party and without any further order of the Bankruptcy Court, except as otherwise provided herein or in the Liquidation Trust Agreement. From and after the Effective Date, the Liquidation Trustee, in accordance with Section 1123(b)(3) of the Bankruptcy Code, and on behalf of the Liquidation Trust, shall serve as a representative of the Debtor's Estate and

shall retain and possess the sole and exclusive right to commence, pursue, settle, compromise or abandon, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal. On the Effective Date, the Liquidation Trustee shall be automatically substituted for the Company, as plaintiff in any litigation commenced by the Company.

B. Preservation of All Causes of Action Not Expressly Settled or Released

The Debtor is currently investigating potential Causes of Action against certain Persons or Entities but has not yet completed its investigations. Therefore, on the Effective Date, all Causes of Action (including but not limited to the Preserved Matters to the extent applicable) shall vest in the Liquidation Trust, which shall hold and possess all rights on behalf of the Debtor, its Estate and the Liquidation Trust to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal). The Liquidation Trustee, on behalf of the Liquidation Trust, shall have the sole and exclusive right to commence, prosecute, pursue, settle, compromise or abandon such Causes of Action as set forth herein and in the Liquidation Trust Agreement.

The potential Causes of Action which may be pursued by the Liquidation Trustee, on behalf of the Liquidation Trust, after the Effective Date, include, without limitation, the Causes of Action listed or described on the non-exclusive Schedule of Causes of Action attached to the Disclosure Statement as an Exhibit. The Debtor and, after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, reserves all rights to pursue any and all Causes of Action, whether or not listed or described on the non-exclusive Schedule of Causes of Action attached to the Disclosure Statement as an exhibit other than any claims released pursuant to the Plan. In addition to the Causes of Action listed on the non-exclusive Schedule of Causes of Action attached to the Disclosure Statement as an exhibit, the Debtor hereby reserves the rights of the Liquidation Trust and the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue, administer, settle, litigate, enforce and liquidate:

- (a) Any other Causes of Action, whether legal, equitable or statutory in nature;
- (b) Any and all actions and Causes of Action arising under the Bankruptcy Code, including, without limitation, Sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b) and/or 724(a) of the Bankruptcy Code; and
- (c) Any and all Unknown Causes of Action. The failure to list or describe any such Unknown Cause of Action herein, or in the non-exclusive Schedule of Causes of Action, is not intended to limit the rights of the Liquidation Trustee, on behalf of the Liquidation Trust, to pursue any Unknown Causes of Action.

Unless Causes of Action against a Person or Entity are expressly waived, relinquished, released, compromised or settled in the Plan in writing, or any Final Order, the Debtor (before the Effective Date) and the Liquidation Trustee, on behalf of the Liquidation Trust (post-Effective Date), expressly reserve all Causes of Action (including the Unknown Causes of Action and Preserved Matters to the extent applicable) 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 and the Liquidation Trustee, on behalf of the Liquidation Trust, and any successors-in-interest thereto, 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.

ARTICLE XIII

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall to the fullest extent permitted by law retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Case or the 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, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status 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 allowance or priority of Claims or Equity Interests;
2. Grant or deny any applications for allowance of Professional Fee Claims for periods ending on or before the Effective Date;
3. Resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including with respect to the Segregated Account Agreement;
4. Ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions hereof;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action, objections or estimations to Claims or Equity Interests, and grant or deny any applications that may be pending in the Bankruptcy Case on the Effective Date, or that, pursuant to the Plan, may be instituted by (i) the Liquidation Trustee or the Liquidation Trust, or (ii) any other Person or Entity after the Effective Date; provided, however, that the Liquidation Trustee and the Liquidation Trust shall reserve the right to prosecute the Causes of Action in all proper jurisdictions;
6. Enter such orders as may be necessary or appropriate to implement, consummate or interpret the provisions hereof and of all reserves, contracts, instruments, releases, indentures and other matters, agreements or documents created in connection with or under the Plan, the

Plan Supplement, the Confirmation Order, the Disclosure Statement, or the Liquidation Trust Agreement;

7. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or the Liquidation Trust Agreement, or any Person's or Entity's obligations incurred in connection with the Plan or the Liquidation Trust Agreement, including, relating to determining the scope and extent of the Liquidation Trust Assets and making a Property of the Estate Determination;

8. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation or enforcement of the Plan, except as otherwise provided herein;

9. Resolve any cases, controversies, suits or disputes with respect to the releases, injunction and other provisions contained in Article XI hereof and enter any orders that may be necessary or appropriate to implement such releases, injunction and other provisions;

10. Enter and implement any orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

11. Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Liquidation Trust Agreement, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Liquidation Trust Agreement;

12. Resolve any issues that arise in connection with the administration of and distributions from the Liquidation Trust;

13. Enter an order and/or final decree concluding the Chapter 11 Case; and

Notwithstanding any other provision in this Article to the contrary, nothing herein shall prevent the Liquidation Trustee 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 parties thereto and nothing herein shall restrict any such courts or judicial bodies from hearing and resolving such matters.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

A. *Plan Supplement*

The Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement by contacting the Balloting Agent. The documents contained in the Plan Supplement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order, and are subject to the consent of the Guaranteed TruPS Holders (such consent not to be unreasonably withheld) and shall include, but not be

limited to, the following: (i) the Company's designation of the Liquidation Trustee should Bradley D. Sharp be unwilling or unable to serve in such capacity; (ii) a form of Liquidation Trust Agreement; (iii) all exhibits and schedules to the Plan; (iv) an amendment to the Segregated Account Agreement (or new agreement if required); (v) the designation by the Company and the Guaranteed TruPS Holders of the persons nominated to serve upon the Plan Oversight Committee; (vi) the identity of any New Investor, together with a list of new board members and management of the Reorganized Company, proposed forms of articles of incorporation, bylaws, shareholders rights' agreements or any other documents necessary or desirable to consummate a Transaction; and (vii) any executory contracts or unexpired leases that the Debtor intends to assume under 11 U.S.C. § 365 and pursuant to the Plan.

B. *Effectuating Documents, Further Transactions and Corporation Action*

The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and provisions hereof.

Prior to, on or after the Effective Date (as appropriate), all matters provided for hereunder that would otherwise require approval of the shareholders or directors of the Debtor shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the general corporation laws of the applicable state without any requirement of further action by the shareholders or directors of the Debtor.

C. *Payment of Statutory Fees*

All fees payable pursuant to Section 1930(a) of Title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to Section 1128 of the Bankruptcy Code, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Case is converted, dismissed or closed, whichever occurs first, shall be paid by the Liquidation Trustee.

D. *Modification of Plan*

Subject to the limitations contained in the Plan:

1. The Proponent reserves the right, and in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; provided, the Guaranteed TruPS Holders shall have the right to consent to the modification of any provision of the Plan that would have a material and adverse effect upon the treatment of such Holders under the Plan, such consent not to be unreasonably withheld.

2. After the entry of the Confirmation Order, the Proponent may amend or modify, upon order of the Bankruptcy Court, the Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan; provided, the Guaranteed TruPS Holders shall have the right to consent to the modification of any provision of the Plan that would have a material and adverse effect upon the treatment of such Holders under the Plan, such consent not to be unreasonably withheld.

3. After the Effective Date, the Liquidation Trustee, may amend or modify, upon order of the Bankruptcy Court, the Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

E. *Revocation of Plan*

The Proponent reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization or liquidation. If the Proponent revokes or withdraws the Plan, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, any Debtor or any other Person, (ii) prejudice in any manner the rights of such Debtor or any other Person, or (iii) constitute an admission of any sort by any Debtor or any other Person.

F. *Successors and Assigns*

The rights, benefits and obligations of any Person or Entity named or referred to herein shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

G. *Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court shall enter the Confirmation Order. None of the filing of this Plan or Disclosure Statement, any statement or provision contained herein or therein, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

H. *Section 1146 Exemption*

Pursuant to Section 1146(a) of the Bankruptcy Code, under this Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtor; (ii) the creation, modification, consolidation or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment or recording of any lease or sublease; or (iv) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan shall not be subject to any document recording tax, mortgage recording tax, stamp tax or similar government assessment, and the appropriate state or local government official or agent shall be directed by the Bankruptcy Court to forego the collection of any such

tax or government assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment.

All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtor in the Chapter 11 Case, whether in connection with a sale under Section 363 of the Bankruptcy Code or otherwise, shall be deemed to be or have been done in furtherance of this Plan.

I. *Further Assurances*

The Holders of Claims or Equity Interests receiving distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Liquidation Trust Agreement.

J. *Service of Documents*

Any pleading, notice or other document required by the Plan to be served on or delivered upon the Debtor shall be filed with the Court and sent by first class U.S. mail, postage prepaid, as follows:

To the Debtor:

Winston & Strawn LLP
Attn: Eric E. Sagerman, Esq.
Justin E. Rawlins, Esq.
333 S. Grand Ave., 38th Floor
Los Angeles, CA 90071

With copies to:

Young Conaway Stargatt & Taylor, LLP
Attn: Robert S. Brady, Esq.
Joseph M. Barry, Esq.
Laurel D. Roglen, Esq.
Rodney Square, 1000 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Beverly Hills Bancorp Inc.
c/o Development Specialists Inc.
Attn: Mr. Bradley Sharp
333 South Grand Avenue, Ste 4070
Los Angeles, CA 90071
Telephone: (213) 617-2717
Facsimile: (213) 617-2718

K. *Transactions on Business Days*

If the date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

L. *Filing of Additional Documents*

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and provisions hereof.

M. *Post-Effective Date Fees and Expenses*

From and after the Effective Date, the Liquidation Trustee, on behalf of the Liquidation Trust, 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 Liquidation Trust, and any professionals retained by the Liquidation Trust, related to the consummation and to the implementation of this Plan, except as otherwise provided in the Liquidation Trust Agreement.

N. *Severability*

The provisions of this Plan shall not be severable unless such severance is approved by the Bankruptcy Court or, if after the Effective Date, approved by the Liquidation Trustee, on behalf of the Liquidation Trust, and such severance would constitute a permissible modification of this Plan pursuant to Section 1127 of the Bankruptcy Code.

O. *Conflicts*

To the extent any provision of the Liquidation Trust Agreement, the Disclosure Statement, or any document executed in connection therewith or any documents executed in connection with the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with, or is in any way inconsistent with, the terms of this Plan, the terms and provisions of the Confirmation Order and Plan shall govern and control in that order.

P. *Term of Injunctions or Stays*

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and still extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the closing of the Chapter 11 Case in accordance with Article XIII.13 of the Plan. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

Q. *Entire Agreement*

This Plan and the Plan Supplement (as amended) supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into this Plan.

R. *Closing of the Chapter 11 Case*

The Liquidation Trustee shall promptly, upon the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by the Bankruptcy Rules and any applicable orders of the Bankruptcy Court to close the Chapter 11 Case.

Dated: June 25, 2014

DEBTOR:

BEVERLY HILLS BANCORP INC.,

BY: DEVELOPMENT SPECIALISTS INC.

By: /s/ Bradley D. Sharp

Bradley D. Sharp

Solely in his capacity as the Debtor's
Chief Restructuring Officer