

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
Baltimore Division

In re:

	*	
EMPIRE HOLDINGS CORPORATION	*	10-34580-JFS
	*	
Debtor		(Chapter 11)
	*	
* * * * *	*	* * * * *

In re:

	*	
EMPIRE TOWERS CORPORATION	*	10-34611-JFS
	*	
Debtor		(Chapter 11)
	*	
* * * * *	*	* * * * *

**JOINT PLAN OF REORGANIZATION OF EMPIRE HOLDINGS CORPORATION AND EMPIRE TOWERS CORPORATION**

Empire Holdings Corporation (“Holdings”) and Empire Towers Corporation (“Towers”) (with Holdings and Towers hereinafter collectively referred to as the “Debtors”) propose the following plan of reorganization pursuant to the provisions of chapter 11 of title 11 of the United States Code.

**ARTICLE I**

**DEFINITIONS**

1.0 For purposes of this Plan, the following terms shall have the meanings set forth unless the context clearly requires otherwise.

1.1 "Administrative Expense" means (a) an unsecured claim, not otherwise defined in the Plan, entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code and

includes, but is not limited to, (i) a claim for any cost or expense of administration in connection with these chapter 11 cases, including, without limitation, any actual, necessary cost or expense of preserving the Debtors' estates and of operating the business of the Debtors, (ii) the full amount of all claims for compensation for legal, accounting and other professional services or reimbursement of costs under sections 330, 331 or 503 of the Bankruptcy Code, (iii) all fees and charges assessed against the Debtors' estates under section 1930 of title 28 of the United States Code, and (iv) any post-petition taxes and related items, including any interest and penalties on such post-petition taxes, or (b) compensation for legal, accounting and other professional services or reimbursement of costs arising from post-confirmation services rendered in connection with the Debtors' bankruptcy cases or in connection with this Plan and incident to such cases.

1.2 "Allowed Claim" means a claim (a) with respect to which a proof of claim was filed with the Bankruptcy Court on or before the Bar Date, or pursuant to section 8.2 of the Plan, or (b) which is listed in the schedules filed by the Debtors pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure and is not listed as disputed, contingent or unliquidated as to amount; and which is not a Disputed Claim or an Administrative Expense. If only a portion of a claim is a Disputed Claim, the remainder shall be an Allowed Claim if the claim otherwise complies with (a) or (b) above. In the event that a proof of claim has been filed in an amount less than the undisputed, noncontingent amount set forth in the schedules of the Debtors, then, absent an objection, the amount set forth in the proof of claim shall constitute the amount of the Allowed Claim.

1.3 "Avoidable Transfers" means any transfer of property of the Debtors that may be avoided pursuant applicable law, including but not limited to sections 544 through 550 of

the Bankruptcy Code.

1.4 "Bankruptcy Code" or "Code" means the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 101 *et seq.*

1.5 "Bankruptcy Court" or "Court" means (a) the United States Bankruptcy Court for the District of Maryland, or such other court as may have jurisdiction over this case, or (b) any court having competent jurisdiction to hear appeals or certiorari proceedings therefrom.

1.6 "Bar Date" means with respect to a governmental unit, March 1, 2011, and with respect to all other creditors, December 7, 2010.

1.7 "Business Day" means a day, which is not a Saturday, Sunday or legal holiday as defined in Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

1.8 "Cash" means United States currency, drafts, checks, deposit accounts or other cash equivalents.

1.9 "Collateral" means property of the Debtors, which secures a Secured Claim.

1.10 [RESERVED]

1.11 "Confirmation" means the entry of an order by the Court confirming the Plan.

1.12 "Confirmation Date" means the date upon which the Court enters the Confirmation Order.

1.13 "Confirmation Order" means the order entered by the Court confirming the Plan.

1.14 "Contribution Claim" means a contingent claim by a Guarantor against the Debtors for contribution based on any payment that such Guarantor may in the future make

towards repayment of the Loan.

1.15 [RESERVED]

1.16 "Debtors" means Empire Holdings Corporation and Empire Towers Corporation, collectively.

1.17 "Disclosure Statement" means the disclosure statement relating to this Plan filed by the Debtors pursuant to section 1125 of the Bankruptcy Code, either as initially filed or as it may be altered, amended or modified as permitted by law.

1.18 "Disputed Claim" means any claim or portion of a claim regarding which either the Debtors or other party has filed a pleading, motion or other paper (regardless of how such is denominated) with the Court (a) disputing the correctness of the amount, priority, secured status or other matter regarding the claim or portion of the claim or (b) seeking disallowance of all or a portion of the claim, and which has not been fixed by a Final Order.

1.19 "Distribution Account" means the account or accounts established by the Debtors pursuant to section 7.1 of the Plan.

1.20 "Effective Date" means \_\_\_\_\_, 2011, or the fifteenth day after the Confirmation Date, whichever is later; unless prior to that date, the effect of the Confirmation Order is stayed, in which case the Effective Date shall be the fifteenth day following the termination of such stay.

1.21 "Executory Contract" means any contract or unexpired lease to which the Debtors are a party and which is executory within the meaning of section 365 of the Bankruptcy Code; except that a lease of personal property whose lessor holds a Secured Claim is not an Executory Contract.

1.22 "Final Order" means an order or judgment, the operation or effect of

which has not been stayed, and as to which order or judgment (or any revision, modification or amendment thereof) the time to appeal or seek an appeal or review has expired, and as to which no appeal, petition for review or motion for leave to appeal has been taken or made or is pending.

1.23 “General Claim” means any prepetition claim against the Debtors which is unsecured, not entitled to priority under the Bankruptcy Code and not otherwise classified in the Plan.

1.24 “Guarantors” means Towers and Wilfred T. Azar, III.

1.25 [RESERVED]

1.26 “Loan” means the loan evidenced by the Loan Agreement, secured by a lien on the Property.

1.27 “Loan Agreement” means that certain Promissory Note Secured by Deed of Trust, Indemnity Deed of Trust, and related documents between Bank of America, NA (as assignee), as lender, and Holdings, as borrower, dated June 7, 2007.

1.28 [RESERVED]

1.29 "Plan" means this Plan of Reorganization dated January \_\_\_\_, 2011, either in its present form or as it may be altered, amended or modified as permitted by law.

1.30 "Proceeds" means the net amount, in whatever form, received by the Debtors from the sale or other disposition of property after payment of all expenses (including any professional fees) associated with such sale or disposition.

1.31 "Professional" means any entity retained or to be compensated pursuant to sections 326, 327, 328, 330 or 331 of the Bankruptcy Code.

1.32 "Pro Rata" means, with respect to a distribution to a holder of a claim, a

payment equal to (A) the total amount available for distribution multiplied by (B) the amount of such holder's claim divided by (C) the total amount of claims (both Allowed and Disputed) to receive a distribution from a particular source of funds ( $A \times B \div C$ ).

1.33 "Property" means the land and building known as 7300-7310 Ritchie Highway, Glen Burnie, MD 21061, titled in the name of Towers.

1.34 "Secured Claim" means any claim secured by a lien, mortgage, security interest, or other encumbrance on property of the Debtors, but only to the extent of the value of the Debtors' interest in property securing such claim, and only to the extent that such lien, mortgage, security interest or other encumbrance is not void or voidable under applicable state or federal law, including the Bankruptcy Code, or subject to setoff under section 553 of the Bankruptcy Code. Classification of a claim in this Plan as a "Secured Claim" is not an admission or representation that the holder of such claim actually holds a Secured Claim. Such classification merely defines the treatment of the Secured Claim should it be found to exist. However, classification in this Plan as other than a Secured Claim shall conclusively exclude such claim from treatment as a Secured Claim. "Secured Claim" includes the claim of a lessor under a lease of personal property if (a) the lessor agrees to treatment of its claim as a Secured Claim, (b) the lessor has filed a proof of claim asserting a secured claim, (c) the Debtors obtain an order of the Court recharacterizing the personal property lease as a secured financing transaction, or (d) the Plan treats the lessor's claim as a Secured Claim.

1.35 "Tax Claim" means an unsecured claim for taxes owing to a governmental entity entitled to priority pursuant to section 507 the Bankruptcy Code.

1.36 "Unclassified Claim" means any claim belonging to a class of claims not requiring designation pursuant to section 1123(a)(1) of the Bankruptcy Code.

1.37 Unless otherwise defined herein, the terms used in the Plan shall have the meaning(s) ascribed to them in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

## **ARTICLE II**

### **TREATMENT OF UNCLASSIFIED CLAIMS**

2.0 Pursuant to section 1123(a)(1) of the Bankruptcy Code, claims of a kind specified in sections 507(a)(2), 507(a)(3) and 507(a)(8) of the Bankruptcy Code are not designated as classes for voting purposes.

2.1 Unless a holder of an Administrative Expense agrees to less favorable treatment, and except as stated elsewhere in the Plan, all Administrative Expenses accrued and unpaid as of the Effective Date shall be paid in full in Cash on the tenth Business Day after, at the Debtors' discretion, (a) the Effective Date or (b) the date such claim has been allowed pursuant to a Final Order of the Court; provided, however, that (x) Administrative Expenses incurred in the ordinary course of business may be paid in the ordinary course of business, (y) the fees, costs and disbursements of Professionals approved by the Court shall be paid in full on the later of the Effective Date or the tenth day after the entry of an order allowing such payment and (z) fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) shall be paid on the tenth Business Day after the Debtors' receipt of an invoice therefor.

2.2 Unless a holder of a Tax Claim agrees to less favorable treatment, each holders of a Tax Claim which is an Allowed Claim shall receive on Effective Date the allowed amount of its claim.

### **ARTICLE III**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

3.1 Claims of the Debtors' creditors and interests are divided into classes as follows. The identification of a class of claims or interests in this Plan does not imply that claims in such class exist, in fact.

Class 1: Secured Claim of Bank of America, NA.

Class 2: General Unsecured Claims.

Class 3: Membership interests in the Debtors.

### **ARTICLE IV**

#### **TREATMENT OF CLAIMS AND INTERESTS**

4.0 With respect to an Allowed Claim, the holder of such claim shall receive on account of such claim property as set forth below. With respect to a Disputed Claim, the date on which the holder of such claim shall receive property shall be the later of the date set forth below or the tenth Business Day following the resolution of such claim by a Final Order. With respect to all claims, except as retained in this Plan, all contracts and instruments and all rights and remedies stated in any contract or instrument to which either Debtors are a party are cancelled (except Executory Contracts assumed under this Plan); creditors have only the rights and remedies set forth in this Plan.

4.1 Class 1: Unless the holder of the Class 1 claim agrees to less favorable treatment or the lien or security interest of Bank of America, NA is avoided, the holder of the Class 1 claim shall receive at the closing (or as soon thereafter as the funds can be delivered) on a purchase of the Loan Agreement the full amount of its Secured Claim. The holder of the Class 1 claim shall retain its lien on the Property until receipt of payment satisfying the Secured Claim



in full. The Class 1 claim is impaired under the Plan.

4.2 Class 2: Unless the holder of a Class 2 claim agrees to less favorable treatment, holders of Class 2 claims shall receive such holder's Pro Rata share of the distributions from the Distribution Account, in accordance with Article VII of the Plan until either (a) such holder has received 5% of the Class 2 claim or (b) the Distribution Account is without further assets to distribute. No holder of a Class 2 claim shall receive a distribution greater than the amount of such holder's Allowed Claim. The Class 2 claims are impaired under the Plan.

4.3 Class 3: Unless a holder of a Class 3 interest agrees to less favorable treatment, each holder of the Class 3 interests shall retain his/her interest in the Debtors. Class 3 interests are not impaired under the Plan.

## **ARTICLE V**

### **FUNDING OF PAYMENTS**

5.1 Payments required to be made to the holders of claims in Class 1 shall be made by the Debtors from Proceeds from the sale or refinancing of the Property or sale of the Loan Agreement.

5.2 Funds for payments by the Debtors into the Distribution Account shall come from (a) rents collected by the Debtors from its tenants and (b) any other funds that are received by the Debtors, including the proceeds of any loans to the Debtors.

5.3 The Debtors may prepay at any time without penalty any of the obligations to (a) pay holders of Allowed Claims or (b) make deposits into the Distribution Account.

## **ARTICLE VI**

### **DISPOSITION OF ASSETS**

6.1 Until completion of the payments required by the Plan, all sales or other dispositions of property of the Debtors' estates and the making or delivery of an instrument of transfer with respect to any such sale or disposition may not be taxed under any law imposing a stamp tax or similar tax.

6.2 Until completion of the payments required by the Plan, all sales or other disposition of property of the Debtors shall be free and clear of all liens, security interests, claims and other rights of creditors, which liens, security interests, claims and other rights shall attach to the Proceeds, if any, of such disposition, except as otherwise provided in the Plan or further order of the Court.

6.3 All entities claiming a lien, security interest, or other interests in property sold or otherwise disposed of pursuant to the Plan shall execute such documents as reasonably are requested by the Debtors to evidence the release of such lien, claim or security interest on the property.

## **ARTICLE VII**

### **THE DISTRIBUTION ACCOUNT AND PAYMENT OF CLAIMS**

7.1 Prior to the Effective Date, the Debtors shall open an account to be entitled the "Empire Holdings/Empire Towers Creditor Distribution Account". The Debtors shall deposit into the Distribution Account the funds stated in Article V of the Plan.

7.2 On the Effective Date, the Debtors shall distribute to holders of Allowed Claims or interests entitled to participate in such distribution pursuant to Article IV of the Plan a distribution of funds in the Distribution Account in accordance with the Plan, less all

reserves permitted under the Plan.

7.3 The Debtors may reserve from the Distribution Account sufficient funds to pay the anticipated professional expenses incurred and to be incurred in the discharge of the Debtors' duties set forth in the Plan and amounts necessary to keep the Distribution Account open.

7.4 Wherever the Plan requires payment in full of a particular class of claims, including Administrative Expenses, as a prerequisite to any payment of another class of claims, the Debtors may satisfy such condition by reserving the full amount sought by the holder(s) of such claim(s) for distribution, if required, at a later date.

7.5 Each time the Debtors make a distribution from the Distribution Account in accordance with the provisions of the Plan, the Debtors shall reserve an amount sufficient to make a distribution allocable to all Disputed Claims as if such claims were allowed in the full amount claimed by the creditor.

7.6 Upon resolution of a Disputed Claim by a Final Order, the holder of such formerly Disputed Claim shall receive from the Distribution Account the amount of the Disputed Claim allowed by the Final Order. Funds previously reserved on account of such Disputed Claim in excess of the amounts required to be paid to the holder of such Disputed Claim upon resolution thereof shall be returned to the Debtors.

7.7 Notwithstanding any other provision of the Plan, but at the election of the Debtors, no unsecured creditor holding a note or other instrument evidencing a claim of such creditor against either Debtor may receive any distribution with respect to such creditor's claim unless and until such instrument has been surrendered to the Debtors.

7.8 If a creditor is unable to surrender an instrument evidencing a claim

against the Debtors because such instrument has been lost or destroyed, the creditor may receive a distribution to which it is otherwise entitled under the Plan on account of such claim by presenting in form acceptable to the Debtors: (a) adequate evidence of such creditor's prior possession of such instrument; (b) an affidavit of the loss or destruction of such instrument and the claimant's inability to locate it; and (c) such indemnification as may be required by the Debtors from any loss, action, suit, or claim which may be made as a result of such creditor's receipt of distribution under the Plan.

7.9 Distributions to holders of Allowed Claims and Administrative Expenses shall be made by first class mail to the address of each claim holder as set forth on, in order of priority: (a) the most recent notice of address delivered by such claim holder to the Debtors; (b) the most recent proof of claim filed by such claim holder; (c) the Schedules of Assets and Liabilities filed by the Debtors in accordance with Rule 1007 of the Federal Rules of Bankruptcy Procedure; or (d) the Debtors' books and records.

7.10 If a distribution to a claim holder is returned to the Debtors as undeliverable, no further distribution shall be made to such claim holder unless and until the Debtors receive notification in writing of the correct, current address of such claim holder. Monies which would otherwise be distributed to such claim holder shall be held by the Debtors in the Distribution Account, or any separate account which the Debtors may, in their sole discretion, choose to open, until the earlier of (a) the time such distribution becomes deliverable or (b) the time such distribution is treated as unclaimed in accordance with section 7.11.

7.11 Any distribution to a claim holder which the Debtors are unable to make, through no fault of the Debtors, within six months following the date of attempted distribution shall be treated as unclaimed and distributed to the Debtors. Any claim holder

whose distribution is distributed to the Debtors pursuant to this section, shall be deemed conclusively to have waived and relinquished all rights to distribution pursuant to the Plan and shall have no further claim against Debtors or the estates.

7.12 No distribution in an amount less than five dollars shall be distributed from the Distribution Account to any creditor. Funds not distributed pursuant to this section shall be treated as unclaimed in accordance with section 7.11.

7.13 All funds remaining in the Distribution Account after payment of the full amount of the Allowed Claims of creditors shall be distributed to the Debtors and may be used by the Debtors for any lawful purpose.

7.14 After the Confirmation Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Debtors shall have the right to make and file objections to claims or interests and shall serve a copy of each objection upon the holder of the claim or interest to which the objection is made as soon as practicable, but in no event later than ninety (90) days after the Effective Date. From and after the Effective Date, all objections shall be litigated to a Final Order except to the extent the Debtors elect to withdraw any such objection or the Debtors and the claimant elect to compromise, settle or otherwise resolve any such objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim or interest subject to approval of the Bankruptcy Court.

## **ARTICLE VIII**

### **EXECUTORY CONTRACTS**

8.1 Any Executory Contract not previously rejected by the Debtors or for which a motion seeking approval or rejection is not pending shall be assumed by the Debtors as of the Effective Date.

8.2 Each claim arising from the rejection of an Executory Contract for which a proof of claim is not filed with the Court and a copy of such proof of claim is not received by the Debtors on or before the thirtieth day after the date of such rejection shall not be an Allowed Claim. A claim arising from the rejection of an Executory Contract shall not become an Allowed Claim (provided that it is otherwise within the definition of "Allowed Claim") until 30 days after it is filed.

8.3 If an Executory Contract pursuant to which the Debtors leased equipment is rejected, the owner of such equipment shall take physical possession of the equipment within ten Business Days after the later of (a) the Effective Date or (b) the date the rejection of the lease is approved by the Bankruptcy Court. Any previously leased equipment of which the owner does not take possession within ten Business Days after the Effective Date may be disposed of by the Debtors. The owner of such equipment shall reimburse the Debtors for the full cost of such disposal. If any leased equipment is not in possession of the Debtors, the Debtors shall cooperate with the owner's efforts to take possession of the equipment, but the Debtors shall not be required to turn over possession of the equipment.

## **ARTICLE IX**

### **ABANDONMENT OF PROPERTY**

9.1 Except as may be provided in any order entered by the Bankruptcy Court, the Debtors do not abandon any property.

**ARTICLE X**

**MODIFICATION OF PLAN**

10.1 The Debtors may modify this Plan at any time before the Confirmation Date but may not modify the Plan so that the Plan, as modified, fails to meet the requirements of sections 1122, 1123 and 1129 of the Bankruptcy Code.

10.2 The Debtors may modify this Plan at any time after the Confirmation Date and before substantial consummation of this Plan, but may not modify the Plan so that the Plan, as modified, fails to meet the requirements of sections 1122, 1123 and 1129 of the Bankruptcy Code.

10.3 Before or after Confirmation, or in the Confirmation Order, the Debtors may, with approval of the Bankruptcy Court, and so long as it does not materially adversely affect the interests of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or amend the Plan, in such manner as may be necessary to carry out the purposes and intent of the Plan.

**ARTICLE XI**

**VESTING OF PROPERTY IN THE DEBTORS**

11.1 On the Confirmation Date, title to all property of the estate shall revert in the Debtors free and clear of all claims, except as set forth in this Plan.

11.2 All creditors are enjoined from commencing or continuing any action, employment of process or act to collect or recover any claim from property of the estate which reverts in the Debtors pursuant to this Article, except as set forth in this Plan.

## ARTICLE XII

### RETENTION OF JURISDICTION AND EFFECT OF CONFIRMATION

12.1 The Court shall retain jurisdiction of this Chapter 11 case to issue orders necessary to the consummation of the Plan, to determine the allowance of compensation to Professionals, to determine all controversies relating to Avoidable Transfers, to determine motions for assumption of Executory Contracts and to determine claims resulting therefrom, to determine disputes as to the classification or allowance of claims or interests, to enforce the provisions of the Plan, to correct any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, to resolve any dispute between or among any of the parties to this Chapter 11 case, and to determine such other matters as may be set forth in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code.

12.2 Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against, or Interests in, the Debtors and its respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under this Plan and whether or not such holder has accepted this Plan.

12.3 Except as otherwise provided in this Plan or the Confirmation Order, effective on the Effective Date, the Plan shall discharge and terminate all liability for any debt of or Claim against the Debtors that arose before the Effective Date, and any debt or claim of a kind specified in §§502(g), 502(h), or 502(I) of the Bankruptcy Code, whether or not:

- (a) a proof of claim based on such debt or Claim was filed, or deemed filed, under §501 of the Bankruptcy Code;



(b) such Claims are Allowed or Disallowed under §502 of the Bankruptcy Code;

(c) such Claim was properly scheduled, if such claim holder had notice of this Chapter 11 Case before the Effective Date; or

(d) the holder of such Claim has accepted or rejected the Plan.

12.4 Upon the closing contemplated by this Plan, Bank of America, NA will execute a release whereby Bank of America, NA will release the Debtors and Guarantors from any and all liability relating to the Loan Agreement and related documents.

12.5 Upon the closing contemplated by this Plan, the Debtors and Bank of America, NA shall exchange mutual releases in the form to be set forth in a plan supplement.

### **ARTICLE XIII**

#### **GENERAL PROVISIONS**

13.1 Timing. If under this Plan an act is required to occur on a date which is not a Business Day, such act shall occur on the next following Business Day.

13.2 Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland.

13.3 Successors and Assigns. The rights and obligations of the Debtors, each creditor and any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors, assigns and transferees of such entity.

13.4 Completion of Administration. This Plan will be deemed fully administered under Rule 3022 of the Federal Rules of Bankruptcy Procedure on the later of (a) the first Business Day falling after payments under the Plan have commenced or (b) the tenth

day after all motions, contested matters, and adversary proceedings have been resolved by Final Order.

Dated: January \_\_, 2011

Empire Holdings Corporation

BY: /s/ Wilfred T. Azar, III  
Wilfred T. Azar, III  
President

Empire Towers Corporation

BY: /s/ Wilfred T. Azar, III  
Wilfred T. Azar, III  
President

/s/ Aryeh E. Stein  
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