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## I. IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT

This disclosure statement (the "Disclosure Statement") provides information regarding the proposed *Liquidating Plan of FL 6801 Spirits LLC and Its Affiliated Debtors, Under Chapter 11 of the Bankruptcy Code*, dated April 13, 2015 (the "Plan") that the Debtors (as defined below) are seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as Exhibit "A."

On April 13, 2015, the Debtors filed the Plan and this Disclosure Statement with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

On April 13, 2015, the Debtors filed a motion (the "Combined Hearing Motion") for entry of an order under sections 105, 1126(b), and 1128 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2002, 3017, 3018, 3020, and 9006(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3018-1 and 3020-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules") (a) scheduling a combined hearing (the "Combined Hearing") to consider approval of the adequacy of the Disclosure Statement and confirmation of the Plan, (b) establishing procedures for objecting to the Disclosure Statement and Plan, and (c) approving the form, manner, and sufficiency of notice of the Combined Hearing.

Pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code"), FL 6801 Spirits LLC ("FL Spirits"), FL 6801 Collins North LLC ("Collins North"), FL 6801 Collins Central LLC ("Collins Central"), FL 6801 Collins South LLC ("Collins South," and together with Collins North and Collins Central, the "Collins Subsidiaries"), as debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") in jointly administered cases under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") submit this Disclosure Statement to all holders of Claims against and Equity Interests in the Debtors in connection with confirmation of the Plan at the Combined Hearing. The Combined Hearing may be adjourned or continued from time to time.

Approval of this Disclosure Statement as containing adequate information of a kind, and in sufficient detail, to enable a hypothetical investor typical of the holders of Claims against and Equity Interests in the Debtors to make an informed judgment about the Plan does not, however, constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

The Debtors are furnishing this Disclosure Statement as the proponents of the Plan pursuant to section 1125 of the Bankruptcy Code, as such Plan may be amended or supplemented from time to time in accordance with the Bankruptcy Rules. All capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan. The rules of interpretation set forth in Article I.B of the Plan shall govern the interpretation of this Disclosure Statement. The Debtors believe that the Plan is in the best interests of all Holders of Claims and Interests.

Confirmation and Consummation of the Plan are subject to certain material conditions precedent described in Article VIII of the Plan. There is no assurance that the Plan will be confirmed or, if confirmed, that such material conditions precedent will be satisfied or waived. You are encouraged to read this Disclosure Statement in its entirety, including the Plan and the Section in this Disclosure Statement entitled "Risk Factors," before considering filing an objection to the Plan. The Bankruptcy Court's approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained in this Disclosure Statement or an endorsement of the merits of the Plan by the Bankruptcy Court. Summaries of the Plan and statements made in this Disclosure Statement in connection therewith are qualified in their entirety by reference to the Plan, the exhibits and schedules attached to the Plan, and the Plan Supplement. The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there is no assurance that the statements contained in this Disclosure Statement will be correct at any time after such date. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement.

The information contained in this Disclosure Statement is included for purposes of obtaining Confirmation of the Plan and may not be relied upon for any other purpose. The Debtors believe that the summary of certain provisions of the Plan and certain other documents and financial information contained or referenced in this Disclosure Statement is fair and accurate. The summaries of the financial information and the documents attached to this Disclosure Statement, or otherwise incorporated in this Disclosure Statement by reference, are qualified in their entirety by reference to those documents. In the event of any inconsistency between this Disclosure Statement and the Plan, the relevant provision of the Plan, as it relates to such inconsistency, shall govern.

No representations concerning the Debtors or the value of the Debtors' property has been authorized by the Debtors other than as set forth in this Disclosure Statement. Any information, representations, or inducements made to obtain acceptance of the Plan, which are other than or inconsistent with the information contained in this Disclosure Statement and in the Plan, should not be relied upon by any Holder of a Claim or Interest entitled to vote to accept or reject the Plan.

Neither the United States Securities and Exchange Commission nor any similar federal, state, local, or foreign regulatory agency has approved or disapproved of the Plan or passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement. The Debtors have sought to ensure the accuracy of the financial information provided in this Disclosure Statement, but the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been, and will not, be audited or reviewed by the Debtors' independent auditors unless explicitly provided otherwise.

#### **A. Chapter 11: An Overview**

Pursuant to chapter 11 of the Bankruptcy Code, a debtor may reorganize or wind up its affairs for its benefit and the benefit of its creditors and interest holders. In a chapter 11 case, the debtor typically remains in control of the estate as a "debtor in

possession.” Upon filing a petition for chapter 11 relief and during the pendency of a case, the Bankruptcy Code imposes an automatic stay against creditors’ attempts to collect or enforce, through litigation or otherwise, claims against the debtor. The automatic stay provisions of section 362 of the Bankruptcy Code, unless modified by court order, will generally prohibit or restrict attempts by creditors to collect or enforce any claims against the debtor that arose prior to the commencement of the chapter 11 case.

The provisions of the Bankruptcy Code are designed to encourage parties in interest in a chapter 11 proceeding to negotiate the terms of a confirmable plan of reorganization or liquidation. A chapter 11 plan is the vehicle for satisfying or otherwise addressing the claims against and interests in a debtor. After the chapter 11 plan has been filed, the holders of claims against and interests in a debtor, whose claims or interests are impaired under the Plan, may vote to accept or reject the Plan. Section 1125 of the Bankruptcy Code requires that before soliciting acceptances of the proposed plan, a debtor must prepare a disclosure statement containing adequate information of such kind, and in such detail, as to enable a hypothetical reasonable investor to make an informed judgment about the Plan.

## **B. Preliminary Statement**

On June 1, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage their affairs as debtors in possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

Although, the Bankruptcy Code provides for the formation of a statutory committee of unsecured creditors to represent the interests of creditors in the case, the United States Trustee declined to appoint one for the Chapter 11 Cases.

As described below, substantially all of the Debtors’ assets were sold (the “Sale”) to Z Capital Florida Resort, LLC (the “Buyer”) pursuant to the Bankruptcy Court’s Order (i) Authorizing Sale of Debtors’ Property; (ii) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases; and (iii) Granting Related Relief, dated November 26, 2014 (Docket No. 218) (the “Sale Order”). The Sale Order, in addition to approving the Sale, among other things, approved certain terms sheets (the “North Tower Term Sheet” and the “South and Central Term Sheet,” and together, the “Associations Term Sheets”) between the Buyer and North Carillon Beach Condominium Association, Inc. (“North Tower Association”), Central Carillon Beach Condominium Association, Inc. (“Central Tower Association”), and South Carillon Beach Condominium Association, Inc. (“South Tower Association” and, together with the North Association and the Central Association, the “Associations”). The sale closed effective January 14, 2015 (the “Sale Date”).

The primary objective of the Plan is to provide a mechanism to implement the liquidation of the Debtors’ remaining assets, reconciling and fixing the claims asserted against the Debtors, and distributing the net liquidation proceeds, including the Sale Proceeds, in conformity with the distribution scheme provided by the Bankruptcy Code

and prior orders of this Court.

Because the Plan is a plan of liquidation pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtors will not receive a discharge and will not engage in business after an order is entered closing the Chapter 11 Cases. Because the Allowed General Unsecured Claims will be paid in full, there will be distributions made under the Plan on account of Equity Interests.

The purpose of this Disclosure Statement is to provide information (i) summarizing the Plan and alternatives to the Plan, (ii) advising claimholders of their rights under the Plan, and (iii) assisting the Bankruptcy Court in determining whether the Plan complies with the provisions of the Bankruptcy Code and should be confirmed. All parties in interest are encouraged to read this Disclosure Statement and its exhibits carefully and in their entirety.

This Disclosure Statement is the only document authorized by the Bankruptcy Court to be used in connection with the confirmation of the Plan. No Person has been authorized by the Bankruptcy Court or the Debtors to use or disclose any information concerning the Debtors other than the information contained herein. Other than as explicitly set forth in this Disclosure Statement, you should not rely upon any information relating to the Debtors, the Estates, the value of the Debtors' Assets, the nature or amounts of the Debtors' liabilities, Claims against the Debtors, or the amount or value of any distributions to be made under the Plan. All financial information and historical information contained in this Disclosure Statement has been provided by the Debtors. This Disclosure Statement is accurate to the best of the Debtors' knowledge, information, and belief. The Debtors have endeavored to make this Disclosure Statement as clear and comprehensive as possible to furnish creditors with adequate information.

### **C. Questions and Answers Regarding this Disclosure Statement and the Plan.**

The following are some frequently asked questions and corresponding answers regarding this Disclosure Statement and the Plan.

#### **What is the Purpose of the Disclosure Statement?**

The Debtors are seeking to obtain Bankruptcy Court approval of the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a chapter 11 plan. This Disclosure Statement is being submitted in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors' corporate history and corporate structure, business operations, and prepetition capital structure and indebtedness (Article II hereof);
- events leading to the Chapter 11 Cases (Article II hereof);
- significant events in the Debtors' Chapter 11 Cases (Article II hereof);

- activities during the Debtors' Chapter 11 Cases (Article III hereof);
- the classification and treatment of Claims and Interests under the Plan, including who is entitled to vote and how to vote on the Plan (Article IV hereof);
- certain important effects of Confirmation of the Plan (Article V hereof);
- the injunction and releases contemplated by the Plan that are integral to the overall settlement of Claims and Interests pursuant to the Plan (Article V hereof);
- the statutory requirements for confirming the Plan (Article VIII hereof);
- certain risk factors Holders of Claims should consider before accepting or rejecting the Plan and information regarding alternatives to Confirmation of the Plan (Article XI hereof); and
- certain United States federal income tax consequences of the Plan (Article XII hereof).

In light of the foregoing, the Debtors submit the Disclosure Statement contains "adequate information" to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

**Am I entitled to vote to accept or reject the Plan? What percentage of my Claim will I receive from the Debtors if the Plan is consummated?**

Under the Bankruptcy Code, only holders of allowed claims or equity interests in classes that are impaired and are not deemed to reject a proposed chapter 11 plan are entitled to vote. Classes of claims or equity interests which are unimpaired under the Plan are presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

All holders of Claims in Class 1, Class 2, and Class 3 and Equity Interests in Class 4 are unimpaired under the Plan. Accordingly, all holders of Claims against, and Equity Interests in, the Debtors are conclusively presumed to have accepted the Plan and are not entitled to vote.

All classes of Claims and Equity Interests are permitted to object to the Plan or the adequacy of the Disclosure Statement. Objections to the Plan and to the adequacy of the Disclosure Statement must be filed by in accordance with the Combined Hearing Notice.



The table below summarizes the Plan’s treatment of Claims against, and Equity Interests in, the Debtors. **The amounts set forth below are estimates only.** For a complete explanation, please refer to the discussion below entitled “Summary of Classification and Treatment of Claims Under the Plan” and to the Plan itself.

DESCRIPTION	TREATMENT	ENTITLED TO VOTE	ESTIMATED ALLOWED AMOUNTS (\$)	ESTIMATED RECOVERY
Administrative claims (including professional fees)	Unimpaired; payment in full, in cash, of the allowed amount of such Claim (or as otherwise agreed)	No	\$950,000	100%
Priority Tax Claims	Unimpaired, payment in full, in cash, of the allowed amount of such claim (or as otherwise agreed)	No	\$243,000	100%
Class 1- Priority Claims	Unimpaired, payment in full, in cash, of the allowed amount of such claim (or as otherwise agreed)	No	\$0	100%
Class 2 - Secured Claims	Unimpaired, payment in full, in cash, of the allowed amount of such claim (or as otherwise agreed)	No	\$0	100%
Class 3 - General Unsecured Claims	Unimpaired, payment in full (including interest), in cash, of the allowed amount of such claim (or as otherwise agreed) remaining after payment of allowed administrative, allowed priority and allowed secured claims	No	\$1,650,000	100%
Class 4 - Equity Interests	Unimpaired, shall receive <i>pro rata</i> share, if any, of proceeds remaining after payment of allowed administrative, allowed priority, allowed secured and allowed general unsecured claims	No	N/A	N/A%

Although the Debtors believe that their estimation of Claims and recoveries is reasonable, there is no assurance that the ultimate amount of allowed claims in each Class will not materially exceed the estimated aggregate allowed amounts shown

herein.

The Debtors are continuing their review and reconciliation of the claims filed in the Chapter 11 Cases and have not made a final determination of all the claims that may be subject to objections. The actual recoveries under the Plan will be dependent upon a variety of factors as discussed in the Disclosure Statement. Accordingly, no representation can be or is being made as to whether each estimated recovery shown in the table above will be realized by the holder of an Allowed Claim in any particular Class.

No Class is impaired. Therefore, all Classes are presumed to have accepted the Plan. All classes of Claims and Equity Interests are permitted to object to the Plan or the adequacy of the Disclosure Statement. All classes of Claims and Equity Interests will have received the Combined Hearing Notice and a Confirmation Package (as defined in this Disclosure Statement) from the Debtors' notice and claims agent, Prime Clerk, LLC (the "Notice and Claims Agent"). The "Confirmation Package", which was served on the known holders Claims and Equity Interests, as well as parties in interest and those parties requesting notice, included:

- the Disclosure Statement (with any exhibits thereto, including the Plan and any exhibits to the Plan); and
- the Combined Hearing Notice.

The Confirmation Package may also be obtained by (i) visiting <http://cases.primeclerk.com/flspirits/>; (ii) writing to the Notice and Claims Agent, Attn: FL 6801 Spirits LLC, 830 Third Avenue, 9th Floor New York, NY 10022 (iii) calling the Notice and Claims Agent at (212) 257-5450; or (iv) for a fee via PACER.

For more information about the treatment of Claims and Interests, see Article IV.C of this Disclosure Statement entitled "Summary of Classification and Treatment of Claims and Interests Under the Plan."

**If the Plan provides that I get a distribution, when do I get it, and what do you mean when you refer to "Confirmation," "Effective Date," and "Consummation"?**

Confirmation of the Plan refers to the Bankruptcy Court's approval of the Plan. Confirmation of the Plan does not guarantee that you will receive the distribution indicated under the Plan. After Confirmation of the Plan, there are conditions (described in Article VII of the Plan) that need to be satisfied or waived so that the Plan can be Consummated and become effective. References to the Effective Date mean the date that all conditions to the Plan have been satisfied or waived, at which point the Plan may be "consummated." Distributions only will be made after Consummation of the Plan and will be made only to Holders on account of Claims or Interests that are or become Allowed. See Article X in this Disclosure Statement, entitled "Acceptance, Confirmation and Consummation of the Plan Requirements for Confirmation of the Plan," for a discussion of the conditions to Consummation.

### **How will the Debtors fund distributions under the Plan?**

The Debtors will fund distributions under the Plan through one or more of the following: (a) the proceeds of the Sale and (b) any cash on hand from remaining estate assets.

### **How can I object to provisions contained in the Plan?**

The Bankruptcy Court has established May [13,] 2015 at 4:00 p.m., prevailing Eastern Time, as the deadline to object to confirmation of the Plan and this Disclosure Statement (the "Objection Deadline"). All such objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Combined Hearing Notice on or before the Objection Deadline. The Debtors believe the Objection Deadline, as established by the Bankruptcy Court, affords the Bankruptcy Court, the Debtors, and other parties in interest reasonable time to consider the objections to the Plan and Disclosure Statement before the Combined Hearing.

### **When is the hearing on confirmation of the Plan expected to occur?**

The Debtors intend to seek confirmation of the Plan at the Combined Hearing to be scheduled for May [20,] 2015 prevailing Eastern Time, before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, in Courtroom No. 610 of the United States Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408. The Combined Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the entities who have filed objections to the Plan, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before a Combined Hearing, may put in place additional procedures governing that hearing. The Plan may be modified, if necessary, before, during, or as a result of the hearing to confirm the Plan without further notice to parties in interest.

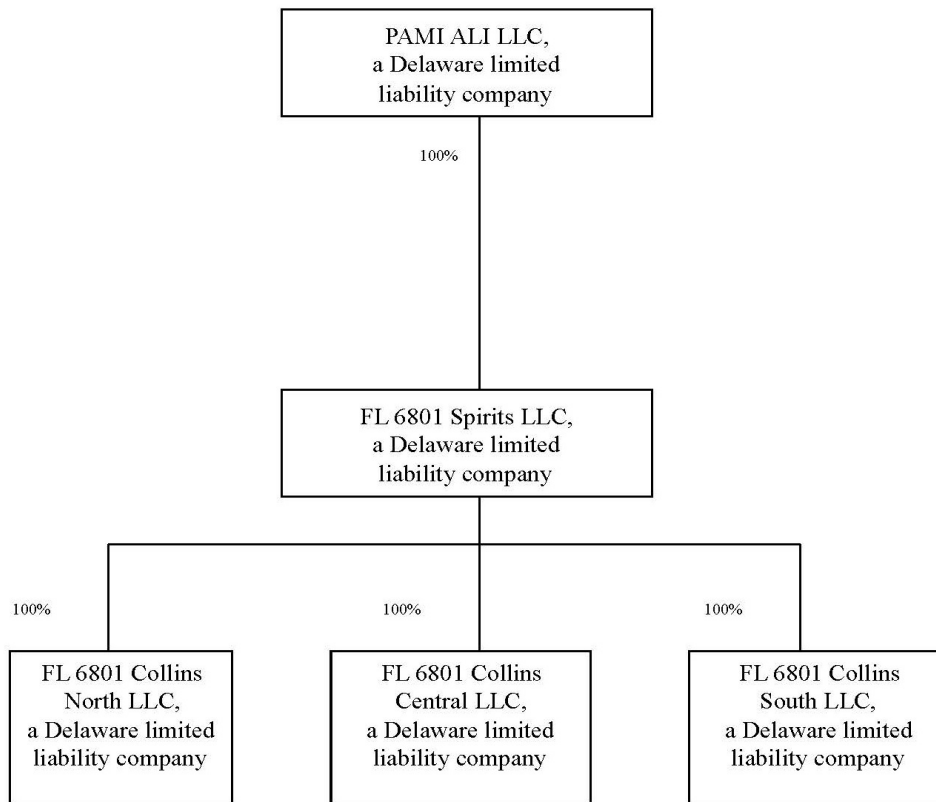
## **II. BACKGROUND**

### **A. The Debtors' History and Businesses**

The Debtors are indirect, wholly-owned subsidiaries of Lehman Brothers Holdings, Inc., which together with certain of its subsidiaries (collectively, "LBHI") are currently debtors in pending cases in the Bankruptcy Court for the Southern District of New York under jointly administered Chapter 11 Case No. 08-13555 (the "LBHI Chapter 11 Case").

On December 6, 2011, the Court entered an order in the LBHI Chapter 11 Case confirming the Modified Third Amended Joint Chapter 11 Plan of LBHI (ECF No. 23023) (the "LBHI Plan"). The LBHI Plan became effective on March 6, 2012 (the "LBHI Plan Effective Date"). The LBHI Plan provides for the appointment of LBHI, as Plan Administrator, to liquidate LBHI's assets, including the assets of LBHI's non-debtor subsidiaries, within three years of the LBHI Plan Effective Date.

FL Spirits holds the liquor license for the Property (described below) and is the sole member and manager for each of the Debtors. As reflected in the corporate organization chart below, PAMI ALI LLC is the sole member of FL Spirits. PAMI ALI LLC is wholly owned by Lehman ALI, Inc., a direct subsidiary of LBHI. PAMI ALI LLC, Lehman ALI, Inc. and LBHI are collectively referred to as the “Equity Owners” of the Debtors.



Before the Sale Date, the Debtors owned interests in property commonly known as the “Canyon Ranch Hotel & Spa, Miami Beach,” a luxury full-service, ocean front condominium hotel located at the site of the old Carillon Hotel in Miami Beach, Florida (the “Property”). The Debtors, as newly formed subsidiaries of LBHI, took ownership of the Property by a deed in lieu of foreclosure, dated November 17, 2009, subject to certain recorded declarations of covenants, restrictions and easements that run with the land (the “Declarations”).

The Property was developed as a mixed-use project comprised of 580 condominium units, located in three towers, with hotel and spa amenities and facilities, as follows: (a) a combination hotel, residential condominium building and spa in the central portion of the Property (the “Central Tower”); (b) a residential condominium building on the south portion of the Property (the “South Tower”); and (c) an additional residential condominium building on the north portion of the Property (the “North Tower”). Of the 580 total condominium units on the Property, 150 units are

“hotel units” and 430 units are standard “residential units.”

As of the Petition Date, the Property was maintained and operated on the Debtors’ behalf by Canyon Ranch, as Manager under the Canyon Ranch Agreements.<sup>1</sup> All obligations arising on or before the Sale Date in connection with the Property operations were paid by and through Canyon Ranch pursuant to the Canyon Ranch Agreements, including, but not limited to, all property and sales and use taxes, utilities, hotel operating expenses and employee related costs.

As discussed below, pursuant to the Sale, the Debtors transferred their interests in the Property free and clear of liens, claims and encumbrances to the Buyer. In connection therewith, the Debtors also terminated the Canyon Ranch Agreements at the Buyer’s request effective as of the Sale Date.

## **B. The Debtors’ Prepetition Capital Structure**

### **1. Prepetition Secured Obligations**

As of the Petition Date, the Debtors’ liabilities consisted primarily of approximately \$1,666,666.67 in obligations under a secured loan extended to the Debtors by PAMI ALI LLC as evidenced by a Promissory Note, dated March 12, 2014 (the “Prepetition Note”). The Prepetition Secured Obligations were satisfied from the Sale Proceeds on the Sale Date in accordance with the Sale Order.

### **2. Prepetition Unsecured Obligations**

As a result of Stipulations and Settlements between the Debtors, the Associations, the Equity Owners, and the Canyon Ranch Entities (the “Associations/CR Settlements”) (Docket No. 297 and 298), which were approved on March 18 and March 19, 2015 and are more fully described below, the Debtors’ remaining outstanding potential unsecured obligations are approximately \$1.65 million, comprised of: (a) a \$1.3 million unsecured claim due and owing to PAMI ALI LLC, (b) the KM/Plaza (defined below) claims that have been limited to the KM Escrow Fund and capped as an unsecured claim in an amount not to exceed \$312,409.30 in excess of such escrow (as described below), and (c) remaining claims of approximately \$40,000.

All obligations arising on or before the Sale Date in connection with the Property operations have been otherwise been paid by and through Canyon Ranch pursuant to the Canyon Ranch Agreements, including, but not limited to, all property and sales and use taxes, utilities, hotel operating expenses and employee related costs.

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<sup>1</sup> Specifically, the Development Agreement, dated as of May 9, 2003 between North Carillon LLC, Carillon South Joint Venture LLC, as owners (collectively, the “Developers”) and CR Miami LLC, CR License LLC and Spa Project Advisors (collectively, the “Canyon Ranch Entities” or “Canyon Ranch”) (the “Development Agreement”); a Carillon Management Agreement, dated as of May 9, 2003, between the Developers, as owners, and CR Miami, LLC, as manager (the “Manager”) (the “Management Agreement”); and a Sublicense Agreement between the Developers and CR License LLC, dated May 9, 2003 (together with the Development Agreement and the Management Agreement, as amended by the Omnibus Amendment, collectively, the “Canyon Ranch Agreements”). The Debtors are the successors to the Developers under the Canyon Ranch Agreements.

### **C. Events Leading to the Chapter 11 Cases**

#### **3. Pre-petition Marketing and Negotiations to Sell the Property**

In furtherance of LBHI's mandate to liquidate its estate within three years of the LBHI Plan Effective Date and to stem the cost to the Debtors of further operating losses, the Debtors determined to take steps to sell the Property to a third party purchaser.

In February 2014, however, the Associations filed lawsuits in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida against the Collins Subsidiaries concerning the Declarations and the Property seeking declaratory relief and damages (collectively, the "Associations Lawsuits").

The Collins Subsidiaries, now the Debtors, disputed the allegations in the Associations Lawsuits and any liability in connection therewith. The commencement of the Associations Lawsuits, however, placed a cloud on title and created an obstacle to a conveyance of the Property.

Following the commencement of the Associations Lawsuits in February 2014, the Debtors negotiated with several of the unit owners on behalf of the Associations in the hopes of resolving their claims and moving forward with a successful sale of the Property.

Ultimately, however, the Debtors received an offer of \$12 million for the Property from 360 Miami (the "Stalking Horse Purchaser"), in a transaction where the Property would be sold free and clear of liens and encumbrances pursuant to section 363 of the Bankruptcy Code, subject to higher or better offers and Bankruptcy Court approval (the "Stalking Horse Sale"). The terms of the Stalking Horse Sale were set forth in a Purchase and Sale Agreement, dated May 28, 2014 (the "Stalking Horse PSA"). The purchase price of \$12 million was expressly conditioned upon a resolution of the Associations Lawsuits and related claims in a manner favorable to the Debtors.

The Stalking Horse PSA contemplated that pending receipt of Bankruptcy Court approval for the sale of the Property, (i) the Property would be operated in the ordinary course so as to avoid disruption to the unit owners and guests and (ii) certain necessary repairs to the North Tower stucco could be evaluated and/or commenced.

### **III. ACTIVITIES DURING THE CHAPTER 11 CASES**

#### **A. First Day Orders and Other Postpetition Orders**

On June 3, 2014, the Bankruptcy Court entered a number of orders granting the Debtors various forms of relief, including:

- (a) an order directing joint administration of the Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b) (Docket No. 19);

- (b) an order authorizing the Debtors to: (i) prepare a list of creditors in lieu of mailing matrix and (ii) file list of 20 largest unsecured creditors and mail notices to creditors (Docket No. 22);
- (c) an order confirming the protections of sections 362 and 365 of the Bankruptcy Code to ensure continued performance by Canyon Ranch under the Canyon Ranch Agreements, as well as performance of other parties in interests during the Chapter 11 Cases (Docket No. 29);
- (d) an order authorizing the Debtors to honor certain prepetition obligations to the rental program participants and otherwise continue the rental program and certain practices with Canyon Ranch in the ordinary course of business (Docket No. 26); and
- (e) an extension of the time to file the Debtors' schedules of assets and liabilities and statements of financial affairs (Docket No. 23);

#### **B. Retention of Professionals**

- (a) On June 25, 2014, the Bankruptcy Court issued an order authorizing the Debtors to employ and retain Togut Segal & Segal LLP as bankruptcy counsel for the Debtors in the Chapter 11 Cases (Docket No. 67); Shutts & Bowen LLP as special real estate counsel for the Debtors in the Chapter 11 Cases (Docket No. 66); and CBRE as the Debtors' real estate brokers (Docket No. 64); and
- (b) On June 3, 2014, the Bankruptcy Court approved the appointment of Prime Clerk as the official claims and noticing agent for the Clerk of the Bankruptcy Court (Docket No. 23).

#### **C. Approval of Debtor in Possession Financing and Cash Management System**

To finance the administration of the Chapter 11 Cases and preserve the Debtors' assets, including, specifically, the assessment of options with respect to certain repairs to the Property, including the repair and remediation of the exterior of the residential condominium building on the North portion of the Property, and, following such assessment, to commence such repairs in accordance with an approved budget, the Debtors negotiated the terms of a postpetition financing facility with its affiliate, and prepetition secured creditor PAMI ALI LLC (the "DIP Loan Lender").

On the Petition Date, the Debtors filed a motion seeking authorization to (i) enter into the debtor in possession financing facility in an aggregate amount not to exceed \$5.0 million, of which up to \$500,000 was to be available upon any basis pursuant to the terms and conditions of that certain Subordinate Mortgage, Loan, and Security Agreement, dated as of June 4, 2014 (as amended, supplemented, restated, or otherwise modified from time to time, the "DIP Agreement"), by and among the Debtors and the DIP Loan Lender; (ii) grant senior secured liens, junior liens, and superpriority

administrative expense claims, (iii) use cash collateral, as such term is defined in section 361(a) of the Bankruptcy Code on the terms and conditions set forth in the DIP Agreement, (iv) provide "adequate protection" to certain prepetition secured parties, and (v) pay statutory fees payable to the U.S. Trustee, certain administrative expense claims, and fees and disbursements incurred by attorneys and financial advisors retained by the Debtors in the Chapter 11 Cases pursuant to an approved budget.

By order dated June 3, 2014, the DIP Agreement was approved on an interim basis (Docket No. 29), and then on a final basis after a hearing on June 25, 2014 (Docket No. 69) after consensually resolving issues raised by Canyon Ranch. Similarly, an order authorizing the Debtors' maintenance and continued use of its existing bank accounts and business forms, and authorizing the continued use of the Debtors' existing cash management system with Canyon Ranch was approved on an interim basis (Docket No. 29) and on a final basis on June 25, 2014 (Docket No. 68).

On the Sale Date, all outstanding amounts owing to the DIP Loan Lender on account of both its Prepetition Secured Obligations and as DIP Loan Lender were satisfied from the Sale Proceeds in accordance with the Sale Order.

#### **D. Sale of the Debtors' Assets**

##### **4. Stalking Horse Sale Process and Auction**

On the Petition Date, the Debtors filed a motion seeking approval of the Stalking Horse Sale (the "Sale Motion"), subject to higher or better offers upon the terms set forth in Stalking Horse PSA dated May 28, 2014 (Docket No. 4). As discussed earlier, as a condition to closing, the Stalking Horse PSA required certain Favorable Resolution Findings.

By order dated July 1, 2014, the Bankruptcy Court approved, *inter alia*, bidding procedures and bid protections in connection with the Stalking Horse Sale and scheduled the date and time of the submission of higher or better offers, the sale objection deadlines, the Auction, and the Sale Hearing (Docket No. 77) (the "Bidding Procedures Order"). Specifically, after a diligence and marketing period, an auction ("Auction") to subject the Stalking Horse PSA to higher or better offers was scheduled for August 19, 2014, and qualified bids ("Qualified Bids") were due August 14, 2014 (the "Bid Deadline").

The Debtors provided notice of the Auction pursuant to the Bidding Procedures Order, which was served on all known creditors, all unit owners, and 319 parties that had expressed interest in purchasing the Property (Docket No. 77). Notice of the Auction was also published in the New York Times (National Edition) (Docket No. 85). Prior to the Auction, 217 parties entered into confidentiality agreements to access the bidder data site; 22 interested parties conducted substantial due diligence; and approximately 70 tours of the Property were conducted.

Pursuant to the Bidding Procedures Order, the Debtors conducted the Auction for the sale of their interests in the Property on August 19, 2014 at the offices of Weil, Gotshal & Manges LLP, counsel to the Debtors' parent and secured lender, PAMI ALI



LLC. Approximately fifty individuals attended the Auction, including two to eight representatives for each of the Qualified Bidders. Canyon Ranch was also permitted to attend the Auction so that it could provide real time responses in the event that questions arose with respect to a Qualified Bidder's proposal to continue with Canyon Ranch as operator.

Seven Qualified Bidders competed in several rounds of spirited bidding which resulted in all-cash high bids of \$21.6 million and \$21.5 million from Z Capital Partners, LLC ("Z Capital") and North Beach Development, LLC ("North Beach"), respectively, and a lower cash bid of \$19 million (subject to a \$2 million credit and other conditions) by 6801 Collins, the Associations' designated bidder.

In the exercise of their business judgment, the Debtors ultimately deemed the \$21.6 million offer by Z Capital to be the highest offer, and Z Capital to be the "Successful Bidder," and the \$21.5 million offer by North Beach to be the "Second Highest Bidder" (Docket No. 113).

#### 5. The Sale to Z Capital

The terms of the Proposed Sale to Z Capital are reflected in the Purchase and Sale Agreement (the "Purchase Agreement") filed with the Bankruptcy Court on August 26, 2014 (Docket No. 203). As noted, the \$21.6 million cash purchase price (which is subject to various credits and adjustments) was the highest price offered for the Property. Pursuant to the Purchase Agreement, the Debtors were required to meet a "Favorable Resolution" requirement (as described in the Purchase Agreement), which was deemed satisfied by entry of the Favorable Resolution Findings set forth in the Sale Order.

After extensive briefing, the Bankruptcy Court held the Sale Hearing on November 24, 2014 to consider the Sale to Z Capital. The Debtors presented evidence establishing that the Sale to Z Capital was best for these estates and provided support for the findings in the Sale Order. Despite having been opposing the Sale for months, the South and Central Towers affirmatively supported the Sale to Z Capital—including this Court's entry of a "Favorable Resolution Findings" concerning the Associations' Lawsuits in the Sale Order. The North Tower opposed the Sale at the start of the Sale Hearing, but at the end of the hearing, the North Tower also supported the Sale to Z Capital. On November 26, 2014, the Bankruptcy Court entered the Sale Order.

On January 14, 2015 and ownership of the Property was transferred to Z Capital Florida Resort LLC, an affiliate of Z Capital (Docket No. 264). In connection with the Sale, the Debtors filed a Motion (the "CR Termination Motion") on shortened notice for approval of the Debtors' termination of the Canyon Ranch Agreements. On January 15, 2015, the Court entered a consensual Order granting the CR Termination Motion (Docket No. 247) ("CR Termination Order").

#### 6. The Settlement Between the Debtors, the Associations, the Equity Owners, and the Canyon Ranch Entities

Notwithstanding statements regarding an agreement to withdraw the

Associations Lawsuits, those lawsuits were not voluntarily withdrawn after the Sale, and the Debtors then filed an omnibus objection to expunge the proofs of claim filed by the Associations<sup>2</sup> in order to resolve the claims asserted in the Associations Lawsuits (Docket No. 229) (the "Objection"). The Associations filed responses on January 20, 2015 (Docket Nos. 248, 252), to which Debtors filed a Reply on January 23, 2015 (Docket No. 261). The hearing on the Objection was subsequently adjourned.

On March 2, 2015, the South Tower Association and Central Tower Association also filed claims seeking payment for the substantial contribution of their professionals and asserting administrative claims for alleged unsupported or improper charges relating to the Property assessed after the Petition Date. The North Tower Association also sought payment for the substantial contribution of their professionals and asserted administrative claims for alleged unsupported or improper charges relating to the Property assessed after the Petition Date (together, the "Associations' Administrative Claims").

Ultimately, the Debtors, the Associations, and Canyon Ranch reached agreements to resolve (i) the Associations' claim arising under the Associations Lawsuits, as well as the asserted Associations' Administrative Claims, and (ii) Canyon Ranch's claims in connection with the Canyon Ranch Agreements and the termination of Canyon Ranch as the Property Manager. On March 19, 2015, pursuant to the Associations/CR Settlements, the Associations' Administrative Claims were fixed by allowing such claims in the amount of \$1,600,000 and by the assignment to the Associations of certain surplus unit owner collections collected by Canyon Ranch in 2014 and transferred to the Debtors in the amount of \$1,080,968. The Associations agreed to support the Plan, in addition to an exchange of releases and a waiver of their remaining claims. Canyon Ranch also received an Allowed Administrative Claim for \$300,000, in addition to an exchange of releases and waiver of its Claims.

#### **E. Exclusivity Periods**

Pursuant to sections 1121(b) and (c)(3) of the Bankruptcy Code, periods within which the Debtors could exclusively file and solicit its plan of liquidation were initially due to expire on September 25, 2014, and November 28, 2014, respectively.

By Order dated October 7, 2014, the Bankruptcy Court extended the initial filing period and the solicitation period through December 1, 2014 and February 2, 2015, respectively. (Docket No. 156). On December 10, 2014, February 13, 2015 and March 30, 2015 the Bankruptcy Court entered orders further extending their exclusive periods. Currently, the Debtors' exclusive periods to file a Chapter 11 plan and solicit acceptances expire on April 30, 2015 and June 30, 2015, respectively. (Docket Nos. 224, 281, and 299).

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<sup>2</sup> Earlier, on September 12, 2014, the Associations filed twelve (12) proofs of claim aggregating to \$341,904,908.40 against each of the Debtors. (Proofs of Claim Nos. 16, 17, 19, 23, 24, 25, 26, 27, 33, 35, 39 and 40, collectively the "Associations Claims").

## **F. Executory Contracts and Unexpired Leases**

In connection with the Sale, the Debtors assumed the Assumed Leases and Contracts (as identified on the Schedule annexed to the Purchase Agreement) and assigned them to the Buyer.

## **G. Bar Date for Filing Prepetition Proofs of Claims**

The Debtors filed their respective Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules") on July 30, 2014.<sup>3</sup> By order dated July 22, 2014 (the "Bar Date Order") (Docket No. 91), the Bankruptcy Court fixed September 12, 2014, as the date by which most proofs of claims for prepetition claims had to be filed (the "Bar Date"). Under the Bar Date Order and the Plan, unless otherwise ordered by the Bankruptcy Court, any person or entity that was required to file a timely proof of claim and failed to do so on or before the Bar Date will not be entitled with respect to such claim to receive any payment or distribution of property from the Debtors, their successors, or assigns, and will be forever barred from asserting such claims against the Debtors' Estates. As of the Bar Date, forty proofs of claim had been filed in the Chapter 11 Cases (including a number of duplicative claims asserted against multiple Debtors).

## **H. Administrative Expense Bar Date**

On December 23, 2014, the Court entered an order setting 45 (forty-five) days after the Sale Date as the deadline to file Administrative Claims (Docket No. 2310). Twelve proofs of claim were filed by the Associations, all of which were resolved pursuant to the Associations/CR Settlement. With the exception of the fees and expenses for Professionals, most administrative obligations arising on or before the Sale Date in connection with the Property operations have been otherwise paid by and through Canyon Ranch pursuant to the Canyon Ranch Agreements, including, but not limited to, all property and sales and use taxes, utilities, hotel operating expenses and employee related costs.

## **I. Other Litigation Matters**

Prior to filing the Chapter 11 Cases, Katz Meltzer Construction Company and Plaza Contracting Company d/b/a KM/Plaza ("KM/Plaza") asserted it held a construction lien against the Property for services rendered pursuant to a construction management services contract at the Property. On June 2, 2010, KM/Plaza filed suit against Collins North, and various transferees in the matter captioned KM/Plaza v. North Carillon, L.L.C., et al., Miami-Dade County Circuit Court, Case No. 10-31272 CA-11 (the "KM/Plaza State Court Action" or the "Retained Lawsuit" under the Z Capital Purchase Agreement). In the KM/Plaza State Court Action, KM/Plaza asserted claims for breach of contract and foreclosure of the construction lien. KM/Plaza sought

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<sup>3</sup> The date by which the Schedules were to be filed was extended to July 30, 2014 pursuant to an order of the Bankruptcy Court. (Docket No. 90). Amended Schedules were filed for Central and South Debtors on August 21, 2014. Governmental units had until December 1, 2014, to file proofs of claim. No proofs of claim were filed by governmental units.

damages in the amount of its construction lien, plus attorney’s fees and costs pursuant to Chapter 713 of the Florida Statutes, and the contract. After mediation and extensive negotiations, the parties agreed to a release of the construction lien in exchange for Collins North’s deposit into escrow the sum of \$1,731,449.25 (the “KM Escrow Fund”) as security for the amount, if any, ultimately determined to be due in the KM/Plaza State Court Action. As of the Petition Date, the balance of the KM Escrow Fund was \$1,583,636.00.

The commencement of the Debtors’ Chapter 11 Cases stayed the KM/Plaza State Court Action. On August 8, 2014, KM/Plaza filed a motion for relief from the stay “KM/Plaza Stay Relief Motion”) (Docket No. 101) requesting the Bankruptcy Court modify the stay under Bankruptcy Code section 362 to allow the KM/Plaza State Court Action to proceed. KM/Plaza also filed two claims asserting \$3,792,080.60 on account of the disputed litigation claims (the “KM/Plaza Claims”).

The Debtors have negotiated a resolution to the KM/Plaza Stay Relief Motion pursuant to stipulation to modify the automatic stay that provides that the Retained Lawsuit will proceed, and any alleged liability be satisfied initially by the funds already segregated in the KM Escrow Fund. In the event that KM/Plaza obtains a judgment in excess of the Escrow Fund, it has agreed to cap its unsecured claim at \$312,409.30 pursuant to a stipulation so ordered by the Bankruptcy Court (Docket No. 304).

## J. Claims Administration Process

### 1. Overview of Claims

Fifty-two proofs of claim (forty as unsecured claims, and twelve as administrative claims) were filed against the Debtors asserting an aggregate liability of \$1,411,979,084. However, following the Associations/CR Settlement, there are only 14 remaining claims, as follows:

<u>Class</u>	<u>Number</u>	<u>Amount</u>
Administrative Claims	0	0
Secured Claims/Priority Tax	3	\$243,643
Priority Claims	0	\$0
General Unsecured Claims	11	\$5,201,104

### 2. Claims Objections

Of these filed claims, \$3,792,080.60 on account of the KM/Plaza Claims will be resolved, as discussed above, pursuant to the stipulation to limit the alleged liability, if any, to the KM Escrow Funds and a capped unsecured claim. ACE American Insurance

Company had filed an unliquidated claim; however, the policy premium payable to ACE has been paid and the Debtors do not believe there is any liability under the policy concerning the Debtors. Accordingly, the claim was withdrawn. The Debtors are reviewing whether there is a basis to object to any of the other claims as already having been satisfied or duplicative, as well as to the extent to which the claims may otherwise be subject to reduction or disallowance on the basis of the Debtors' defenses, offsets, and counterclaims.

## **II. SUMMARY OF THE PLAN**

### **A. Overview of the Plan**

The Plan provides for substantive consolidation of the Debtors' Estates for purposes of the Plan. The Plan is a joint plan, with all rights to recover to be governed by the terms of the Plan. The Debtors will not pursue their intercompany claims against each other as part of the Plan.

If the Plan is confirmed by the Bankruptcy Court and consummated, holders of Claims will receive the distributions described below. Upon the Effective Date, the treatment of each class of Claims under the Plan will be binding upon the Debtors, all holders of Claims, and all Persons, whether or not such Persons are to receive any payments or other distributions under the Plan.

### **B. Substantive Consolidation of the Debtors for Plan Purposes Only**

The Plan provides that on and after the Effective Date, all assets and liabilities of the Debtors shall be treated as though they were merged into one for all Plan purposes, including voting, Confirmation and distribution pursuant to the Plan.

Multiple facts support consolidation of the Debtors for Plan purposes. Prior to the Petition Date, the Debtors shared a centralized cash management system with Canyon Ranch. Additionally, FL Spirits is the managing member of Collins Central, Collins North, and Collins South. Moreover, each of the operating Debtors was obligated under the Prepetition Note for the Prepetition Secured Obligations. The Debtors also filed their taxes as part of a consolidated tax return.

On the Effective Date: (a) all Assets (and all proceeds thereof) and liabilities of each Debtor shall be merged or treated as though they were merged into and with the Assets and liabilities of the other Debtors, (b) no Distributions shall be made under the Plan on account of intercompany Claims among the Debtors and all such Claims shall be eliminated, (c) all guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated and extinguished so that any Claim against any Debtor and guarantee thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors, (d) each and every Claim filed or to be filed against any Debtor shall be filed against the consolidated Debtors, and shall be deemed one Claim against and obligation of the consolidated Debtors, and (e) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity so that, subject to the other provisions of section 553 of the Bankruptcy Code,

debts due to any of the Debtors may be set off against the debts of the other Debtors. Such substantive consolidation shall not (other than for purposes related to the Plan) affect the legal and corporate structures of the Debtors. Notwithstanding anything in this section to the contrary, all post-Effective Date U.S. Trustee Fees shall be calculated on a separate legal entity basis for any Debtor, so long as its chapter 11 case remains open. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Debtors for Plan purposes.

### **C. Summary of Classification and Treatment of Claims and Interests Under the Plan**

Claims and Interests are divided into four Classes under the Plan, and the proposed treatment of Claims varies among Classes. Administrative Claims and Priority Tax Claims are not classified. The Plan contains (i) three Classes of unimpaired Claims, which consist of Secured Claims, Priority Claims, and General Unsecured Claims (Classes 1, 2, and 3, respectively), (ii) and one Class of unimpaired Equity Interests (Class 4). The meaning of "Impairment" and the consequences of having an impaired claim in connection with voting on the Plan are set forth in Section VIII.B below.

The following section briefly summarizes the classification and treatment of Claims under the Plan.

#### 1. Unclassified Claims

##### a. General

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims against the Debtors are not classified for purposes of voting on, or receiving distributions under, the Plan, and the holders of such unclassified Claims are thus not entitled to vote to accept or reject the Plan. All such Claims are instead treated separately in accordance with the Plan and the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy Code.

##### b. Administrative Claims

An Administrative Claim is defined in the Plan and means any Claim under sections 503(b) and 507(a)(1) of the Bankruptcy Code including, without limitation, (a) the actual and necessary postpetition costs and expenses incurred by the Debtors in preserving the Estates or operating their businesses, (b) Professional Fee Claims, (c) U.S. Trustee Fees, and (d) any Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a final order of the Bankruptcy Court.

Subject to the Bar Date and other provisions in the Plan and except to the extent the Debtors or the Plan Administrator (as applicable) and the holder of an Allowed Administrative Claim agree to different and less favorable treatment, the Plan Administrator shall pay, in full satisfaction and release of such Claim, to each holder of an Allowed Administrative Claim, Cash, in an amount equal to such Allowed

Administrative Claim, on the later of (i) the Effective Date and (ii) the first Business Day after the date that is 30 calendar days after the date on which such Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable. Allowed Administrative Claims shall be paid (i) first, from the funds in the Administrative Claims Fund, and (ii) second, from Available Cash.

c. Administrative Bar Date

i. General Provisions

Except as provided below for (i) Professionals requesting compensation or reimbursement for Professional Fee Claims, and (ii) U.S. Trustee Fees, requests for payment of Administrative Claims must be filed no later than 30 days after notice of entry of the Confirmation Order is filed with the Bankruptcy Court or such later date as may be established by order of the Bankruptcy Court. Holders of Administrative Claims who are required to file a request for payment of such Claims and who do not file such requests by the applicable Bar Date, shall be forever barred from asserting such Claims against the Debtors or their respective property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process, or act to collect, offset, or recover such Administrative Claim.

ii. Professionals

All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Cases) shall file an application for final allowance of compensation and reimbursement of expenses no later than 45 days after the Effective Date (the "Fee Claim Deadline"). Objections to applications of Professionals or other entities for compensation or reimbursement of expenses must be filed no later than 21 days after any such application is filed. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid by the Plan Administrator to the applicable Professional or other entities requesting compensation or reimbursement of Professional Fee Claims as soon as is practicable after any such Professional Fee Claims are allowed. Each Professional or other Person that intends to seek payment on account of a Professional Fee Claim shall provide the Debtors with a statement, by no later than the Confirmation Date, of the amount of estimated unpaid fees and expenses accrued by such Professional up to the date of such statement, the amount of fees and expenses that each such Professional expects to incur from such date through the Effective Date, and the amount of fees and expenses that each such Professional expects to incur from such date in connection with the preparation and prosecution of each such Professional's final fee application.

iii. U.S. Trustee Fees

The Debtors or the Plan Administrator (as applicable) shall pay all any applicable U.S. Trustee Fees, in accordance with the terms of the Plan, until such time as the Bankruptcy Court enters a final decree closing the last of the Debtors' Chapter 11 Cases.

iv. Priority Tax Claims

Priority Tax Claims are claims of a kind specified in section 507(a)(8) of the Bankruptcy Code. Except to the extent the Debtors or the Plan Administrator (as applicable) and the holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Plan Administrator, at its sole option, shall pay, in full satisfaction and release of such Claim, to each holder of a Priority Tax Claim, Cash in an amount equal to such Allowed Priority Tax Claim on the later of (i) the Effective Date and (ii) the first Business Day after the date that is 30 calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable.

As of the filing of the Disclosure Statement, an aggregate amount of approximately of \$243,643 in Priority Tax Claims has been asserted against the Debtors, all of which the Debtors will seek to expunge as having already been satisfied. The Debtors, however, cannot predict the amount of such additional Claims at this time. The actual aggregate amount of Priority Tax Claims may vary from the Debtors' estimates set forth herein.

2. Classified Claims

a. Class 1: Priority Claims

Priority Claims consist of any Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than (a) an Administrative Claim, or (b) a Priority Tax Claim. Holders of Allowed Claims in Class 1 are not Impaired under the Plan. Each holder of an Allowed Priority Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim.

Each holder of an Allowed Priority Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Claim from the Administrative Claims Fund on the later of (i) the Effective Date, or (ii) for Claims in Class 1 that were Disputed Claims and have become Allowed Priority Claims, immediately following the date upon which such Claims became Allowed Priority Claims, or as soon thereafter as is practicable.

b. Class 2: Secured Claims

Secured Claims consist of any Claim secured by a Lien on any Asset of the Debtors, or right of setoff, which Lien or right of setoff, as the case may be, is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, but only to the extent of the value, pursuant to section 506(a) of the Bankruptcy Code, of any interest of the holder of the Claim in property of the Estate securing such Claim. Holders of Allowed Claims in Class 1 are not Impaired under the Plan. Each holder of an Allowed Secured Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim.



Provided that the holder of a Class 2 Claim has not yet been paid, on the later of (i) the Effective Date and (ii) for Claims in Class 2 that were Disputed Claims on the Effective Date and have thereafter become Allowed Secured Claims, immediately following the date upon which such Claims became Allowed Secured Claims, or as soon thereafter as is practicable, holders of each such Allowed Secured Claim shall receive (a) Cash in an amount not to exceed the amount of such Allowed Secured Claim, (b) the Collateral securing such Allowed Secured Claim (in which case any deficiency claim shall become a Class 3 General Unsecured Claim), or (c) such other treatment as may be agreed upon by the Plan Administrator and the holder of such Allowed Secured Claim, or as may otherwise be provided in the Bankruptcy Code, provided that the holder of such Allowed Secured Claim will not receive more than the value of the Collateral securing such Claim.

c. Class 3: General Unsecured Claims

General Unsecured Claims consist of any Claim that is not an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, a Secured Claim, or a Priority Claim. Holders of Claims in Class 3 are not impaired. Each holder of General Unsecured Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim. Provided that the holder of a Class 3 Claim has not yet been paid, on the later of (i) the Effective Date and (ii) for Claims in Class 3 that were Disputed Claims on the Effective Date and have thereafter become Allowed General Unsecured Claims, immediately following the Distribution Date subsequent to the date upon which such Claims became Allowed General Unsecured Claims, or as soon thereafter as is practicable, holders of each such Allowed General Unsecured Claim shall receive (a) Cash in an amount not to exceed the amount of such Allowed General Unsecured Claim, plus post-petition interest provided by contract, or if no contract exists, at the statutory rate provided by 28 U.S.C § 1961, from the Petition Date through the Distribution Date, or (b) such other treatment as may be agreed upon by the Plan Administrator and the holder of such Allowed General Unsecured Claim. On the Effective Date, the PAMI ALI Unsecured Claim will be allowed in the amount of \$1,249,812.

d. Class 4: Equity Interests

Beginning on the Effective Date, PAMI ALI LLC as the holder of the Equity Interests, shall receive Distributions on account of its Class 4 Equity Interests in the Debtors, as provided herein. PAMI ALI LLC will be paid, on account of its equity interest in the Debtors, the greater of (a) the difference between the Available Cash on the Effective Date and the Effective Date Creditor Distributions, and (b) \$3 million. As soon as practicable after any subsequent Distribution Date, Available Cash, if any, shall be paid to PAMI ALI LLC. Upon receipt of the final Distribution to PAMI ALI LLC on account of its Equity Interests, such Equity Interests will be canceled.

**D. Implementation of Plan**

The Plan will be implemented by the Plan Administrator in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. On and

after the Effective Date, except as otherwise provided in the Plan, the Debtors may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

1. Funding for the Plan

The Plan will be funded from the proceeds received from the Sale and any other Assets available to fund the Plan.

2. Establishment of Reserves

At least 3 days prior to the Confirmation Hearing, the Debtors shall file with the Bankruptcy Court a notice that reflects the proposed amounts of the Administrative Claims Fund, the Disputed Claims Reserve, and the Expense Reserve.

3. Vesting of Assets in the Debtors

As of the Effective Date of the Plan, pursuant to the provisions of section 1141(b) and (c) of the Bankruptcy Code, all remaining Assets shall vest in the Debtors free and clear of all Claims, Liens, encumbrances, charges, Equity Interests, and other interests, except as otherwise expressly provided in the Plan or the Confirmation Order, and subject to the terms and conditions of the Plan and the Confirmation Order.

4. Continuing Existence

From and after the Effective Date, the Debtors shall continue in existence for the purposes of (i) winding up their affairs as expeditiously as reasonably possible, (ii) liquidating, by conversion to Cash, or other methods, of any remaining Assets, including, without limitation, the Retained Lawsuit, open receivables and payment refunds, as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights, and privileges of the Debtors including, without limitation, prosecuting Causes of Action, (iv) resolving Disputed Claims, (v) administering the Plan, (vi) filing appropriate tax returns and refund requests, and (vii) performing all such other acts and conditions required by and consistent with consummation of the Plan.

5. Closing of the Chapter 11 Cases

On the Effective Date, pursuant to the Confirmation Order, the Chapter 11 Cases of the Debtors other than Collins North shall be closed. Any Claims against the Collins Subsidiaries that are not satisfied in accordance with this Plan on the Effective Date shall be treated as Claims against Collins North and shall be administered by the Plan Administrator in the Chapter 11 Case of Collins North in accordance with this Plan. Until entry of a final decree closing all of the Chapter 11 Cases, the closing of the Chapter 11 Cases of FL Spirits, Collins Central, and Collins South pursuant to the Confirmation Order shall be for procedural purposes and for purposes of calculating fees payable under 28 U.S.C. § 1930 only, and shall not prejudice the rights of any creditor with respect to such Debtors or their estates.

After all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed, and all Assets have been liquidated and converted into Cash (other than those Assets that have been or may be abandoned), and such Cash has been distributed in accordance with the Plan, or at such earlier time as the Plan Administrator deems appropriate, the Plan Administrator shall seek authority from the Bankruptcy Court to close Collins North's Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

6. Corporate Action

The Plan will be administered by the Plan Administrator and all actions taken under the Plan in the name of the Debtors shall be taken through the Plan Administrator. Upon the distribution of all assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith, *provided, however*, that the Debtors may, but will not be required to, take appropriate action to dissolve under applicable law.

7. Winding Down Affairs

Following the Effective Date, the Debtors shall not engage in any business or take any actions, except those necessary to consummate the Plan and wind down their affairs. On and after the Effective Date, the Plan Administrator may, in the name of the Debtors, take such actions without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than the restrictions imposed by the Plan or the Confirmation Order.

8. Powers and Duties of the Plan Administrator

The Plan Administrator will act for the Debtors in a fiduciary capacity as applicable to a board of directors or trustees, subject to the provisions of the Plan. The powers and duties of the Plan Administrator shall include, without the necessity of a further order of the Bankruptcy Court, without limitation:

- (a) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Allowed Claims and paying taxes and other obligations owed by the Debtors or incurred by the Plan Administrator, from the Expense Reserve, the Administrative Claims Fund, and Available Cash in accordance with the Plan;
- (b) engaging attorneys, consultants, agents, employees, and any other professional persons, to assist the Plan Administrator with respect to the Plan Administrator's responsibilities;

- (c) executing and delivering all documents, and taking all actions, necessary to consummate the Plan and wind up the Debtors' business;
- (d) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained assets;
- (e) coordinating the collection of outstanding accounts receivable not sold to Buyer;
- (f) coordinating the storage and maintenance of the Debtors' books and records to the extent not transferred pursuant to the Sale;
- (g) overseeing compliance with the Debtors' accounting, finance, and reporting obligations;
- (h) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, until such time a final decree has been entered by the Court;
- (i) overseeing the filing of final tax returns, refund requests, audits, and other corporate dissolution documents if required;
- (j) performing any additional corporate actions as necessary to carry out the wind up and liquidation of the Debtors;
- (k) paying the fees and expenses of the attorneys, consultants, agents, employees, and other professional persons engaged by the Debtors and the Plan Administrator, to pay all other expenses for winding up the affairs of the Debtors in accordance with a wind up budget or as otherwise agreed to by the Plan Administrator, and in the event of a dispute that cannot be resolved, resolving such dispute in the Bankruptcy Court, subject to the terms of the Plan;
- (l) disposing of, and delivering title to others of, or otherwise realizing the value of all the remaining assets, including without limitation, the Excluded Assets under the Sale Transaction;
- (m) objecting to, compromising, and settling Claims;
- (n) acting on behalf of the Debtors in all adversary proceedings and contested matters (including, without limitation, any Causes of Action and the Retained Lawsuit) then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute, or adjust any claim and otherwise pursue actions involving assets of the Debtors that could arise or be

asserted at any time under the Bankruptcy Code, unless otherwise waived or relinquished in the Plan;

- (o) implementing and/or enforcing all provisions of the Plan; and
- (p) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or Bankruptcy Court Order or as may be needed or appropriate to carry out the provisions of the Plan.

9. Retention of Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other Professionals that are necessary to assist the Plan Administrator in the performance of its duties as Plan Administrator or otherwise under this Plan. The reasonable fees and expenses of such professionals and the additional expenses of the Plan Administrator incurred in the performance of its duties as Plan Administrator under this Plan shall be paid by the Plan Administrator from Available Cash, and shall not be subject to the approval of the Bankruptcy Court.

10. Appointment of the Plan Administrator

The Confirmation Order shall provide for the appointment of Lehman Brothers Holdings, Inc., as the Plan Administrator. The Plan Administrator shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code.

**E. Distributions to Holders of Claims and Equity Interests**

1. Estimation of Claims

The Plan Administrator may, at any time, request that the Bankruptcy Court (or the District Court, if applicable) estimate any Claim not expressly Allowed by the terms of the Plan and otherwise subject to estimation under section 502(c) of the Bankruptcy Code and for which the Debtors may be liable under the Plan, including any Claim for taxes, to the extent permitted by section 502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim, and the Bankruptcy Court (or the District Court, if applicable) will retain jurisdiction to estimate any Claim pursuant to section 502(c) of the Bankruptcy Code at any time prior to the time that such Claim becomes an Allowed Claim. If the Bankruptcy Court (or the District Court, if applicable) estimates any contingent or unliquidated Claim, the estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court (or the District Court, if applicable). The foregoing objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated by the Bankruptcy Court (or the District Court, if applicable) and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the

Bankruptcy Court (or the District Court, if applicable).

2. No Recourse

Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, the Estates, the Plan Administrator, or any of their respective professionals, consultants, officers, directors, or members or their successors or assigns, or any of their respective property. Except as specifically stated otherwise in the Plan, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code.

**THE ESTIMATION OF CLAIMS AND ESTABLISHMENT OF RESERVES UNDER THE PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS IF THE ESTIMATION IS MADE SOLELY FOR THE PURPOSE OF ESTIMATING A MAXIMUM LIABILITY FOR RESERVE PURPOSES, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

3. Automatic Disallowance and Expungement of Certain Claims

On the Effective Date, all Claims filed after the applicable Bar Date that were required to be filed in advance of such Bar Date under its terms, shall be expunged and disallowed without any further notice to or action, order, or approval of the Bankruptcy Court.

4. Distributions on Account of Allowed Class 3 Claims

(a) Provided that the holder of a Class 3 Claim has not yet been paid, on the later of (i) the Effective Date and (ii) for Claims in Class 3 that were Disputed Claims on the Effective Date and have thereafter become Allowed General Unsecured Claims, immediately following the Distribution Date subsequent to the date upon which such Claims became Allowed General Unsecured Claims, or as soon thereafter as is practicable, holders of each such Allowed General Unsecured Claim shall receive (a) Cash in an amount not to exceed the amount of such Allowed General Unsecured Claim, plus post-petition interest provided by contract, or if no contract exists, at the statutory rate provided by 28 U.S.C § 1961, from the Petition Date through the Distribution Date, or (b) such other treatment as may be agreed upon by the Plan Administrator and the holder of such Allowed General Unsecured Claim.

(b) Allowance of PAMI ALI Unsecured Claim. On the Effective Date, the PAMI ALI Unsecured Claim will be allowed in the amount of \$1,249,812.

5. Distributions on Account of Equity Interests

Beginning on the Effective Date, PAMI ALI LLC as the holder of the Equity

Interests, shall receive Distributions on account of its Class 4 Equity Interests in the Debtors, as provided herein. PAMI ALI LLC will be paid, on account of its equity interest in the Debtors, the greater of (a) the difference between the Available Cash on the Effective Date and the Effective Date Creditor Distributions, and (b) \$3 million. As soon as practicable after any subsequent Distribution Date, Available Cash, if any, shall be paid to PAMI ALI LLC. Upon receipt of the final Distribution to PAMI ALI LLC on account of its Equity Interests, such Equity Interests will be canceled.

6. Disputed Claims Reserve Account

a. Objections to Claims

Unless otherwise ordered by the Bankruptcy Court, on and after the Effective Date, the Plan Administrator shall have the exclusive right to make, file, and prosecute objections to and settle, compromise, or otherwise resolve Disputed Claims, except that as to applications for allowances of Professional Fee Claims, objections may be made in accordance with the applicable Bankruptcy Rules by parties in interest. Subject to further extension by the Bankruptcy Court, the Plan Administrator shall file and serve a copy of any such objection upon the holder of the Claim to which an objection is made on or before the latest to occur of: (i) 60 days after the Effective Date, (ii) 30 days after a request for payment or proof of claim is timely filed and properly served upon the Plan Administrator, and (iii) such other date as may be fixed by the Bankruptcy Court either before or after the expiration of such time periods. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if made (a) in accordance with Federal Rule of Civil Procedure 4, as modified, and made applicable by Bankruptcy Rule 7004; (b) by first-class mail, postage prepaid, on the signatory of the proof of claim or other representative identified in the proof of claim or any attachment thereto at the address of the creditor set forth therein; or (c) by first-class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Chapter 11 Cases. From and after the Effective Date, the Plan Administrator may settle or compromise any Disputed Claim, Cause of Action, or the Retained Lawsuit pursuant to the terms of the Plan without further order of the Bankruptcy Court.

b. Resolution of Disputed Claims

No Distribution or payment shall be made on account of a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

c. Establishment of Disputed Claims Reserve Account

On or before the Effective Date, the Debtors shall establish and fund the Disputed Claims Reserve Account, which shall be administered by the Plan Administrator.

d. Duties in Connection with Disputed Claims

The Plan Administrator, shall (i) deposit in the Disputed Claims Account, Cash in an amount required by order of the Bankruptcy Court or the District Court, if applicable, (including any order estimating the maximum liability of a Disputed Claim)

or, in the absence of such order, Cash equal to the distribution that would have been made to the holder of such Disputed Claim, if it were an Allowed Claim in a liquidated amount, if any, on the Effective Date, (ii) object to, settle, or otherwise resolve Disputed Claims, (iii) make Distributions to holders of Disputed Claims that subsequently become Allowed Claims in accordance with the Plan, and (iv) distribute any Available Cash (including any amounts released from the Disputed Claims Reserve Accounts) to PAMI ALI LLC in respect of its Class 4 Equity Interest in accordance with the Plan.

e. Distributions when a Disputed Claim Is Resolved

On the next Distribution Date following the date upon which a Disputed Claim is ultimately Allowed, the holder of such Claim shall receive from the Disputed Claims Reserve Account any amounts attributable to such Claim, in accordance with the Plan. Any Cash Distributions held in the Disputed Claims Reserve Account for the benefit of a holder of a Disputed Claim, which is subsequently disallowed, in whole or in part, shall become Available Cash available for distribution to PAMI ALI LLC in respect of its Class 4 Equity Interests.

**F. Miscellaneous Distribution Provisions**

1. No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary herein or in the Plan, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the amount of such Allowed Claim plus interest as provided herein.

2. De Minimis Distributions

The Plan Administrator shall not be required to make any Cash payment of less than twenty-five dollars (\$25.00) with respect to any Claim unless a request therefor is made in writing to the Plan Administrator on or before 60 days after the Effective Date. Any de minimis Distributions not subject to a timely request for payment shall revert to the Debtors and be treated as Available Cash.

3. Allocation of Payments

Amounts paid to holders of Allowed Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess allocated to interest that has accrued on such Claims but remains unpaid.

4. Setoffs

The Plan Administrator is authorized, pursuant to and to the extent permitted by applicable law, to set off against any Allowed Claim and the Distributions to be made on account of such Allowed Claim, the claims, rights, and Causes of Action of any nature that the Plan Administrator may hold against the holder of such Allowed Claim; *provided*, that the Plan Administrator gives the holder of such Allowed Claim no fewer than 5 days notice in writing (including email) of the proposed setoff and the holder of such Allowed Claim does not object to the proposed setoff within 30 days of receiving



such notice. If an objection is timely raised to a proposed setoff, the Plan Administrator may seek relief from the Bankruptcy Court to effectuate the setoff. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Plan Administrator of any such claims, rights, and Causes of Action the Debtors may have against such holder.

5. Exemption from Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the assignment or transfer of any lease or sublease, the delivery, making, filing, or recording of any deed or other instrument of transfer, or the issuance, transfer, or exchange of any security, under the Plan, including any deeds, bills of sale, or assignments executed in connection with the Sale Transaction or any other disposition of assets contemplated by the Plan or the Sale Order, shall not be subject to any stamp, real estate transfer, mortgage, recording, or other similar tax to the maximum extent covered by section 1146 of the Bankruptcy Code.

6. Unclaimed Property

All Distributions to any holder of an Allowed Claim shall be made at the Distribution Address unless the Debtors and/or the Plan Administrator, as applicable, have been notified in writing of a change of address. If any Distribution to any holder of an Allowed Claim is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Plan Administrator is notified of such holder's then current address, at which time all eligible missed Distributions shall be made to such holder, without interest. All demands for undeliverable Distributions shall be made on or before 60 days after the date such undeliverable Distribution was initially made. Thereafter, the amount represented by such undeliverable Distribution shall irrevocably revert to the Debtors and be treated as Available Cash. Any entitlement of any holder of any Claim to such Distributions shall be extinguished and forever barred.

Checks issued by the Plan Administrator in respect of Allowed Claims shall be null and void if not negotiated within 60 days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Plan Administrator by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Plan Administrator on or before 60 days after the expiration of the 60 day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Debtors and be treated as Available Cash. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtors, the Estates, or the Plan Administrator.

7. Record Date for Distributions to Holders of Claims

As of the close of business on the Confirmation Date, there shall be no further changes in the record holders of the Claims for purposes of the Distribution of Available Cash. The Debtors and the Plan Administrator shall have no obligation to recognize any transfer of Claims occurring after the Confirmation Date.

8. Disputed Payments

If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Plan Administrator may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account to be held in trust for the benefit of such holder and such Distribution shall not constitute property of the Debtors and the Estates. Such Distribution shall be held in escrow until the disposition thereof shall be determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement signed by all of the interested parties to such dispute.

9. Withholding Taxes

The Plan Administrator shall not be required to withhold taxes or comply with any applicable reporting requirements. The recipients of Distributions will be required to comply with all applicable laws and regulations concerning the reporting and taxing of the Distributions. If requested by the recipient of a Distribution, the Plan Administrator will issue an IRS Form 1099.

10. Resignation of Directors and Officers

Upon the Effective Date of the Plan, the Debtors' respective boards of directors and officers shall be deemed to have resigned.

11. Resignation or Removal of Plan Administrator

If the Plan Administrator resigns or is removed, dissolves, or is incapacitated, the Bankruptcy Court shall designate another Person to become the Plan Administrator and thereupon, the successor Plan Administrator, without further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor, with the compensation of the successor Plan Administrator. No successor Plan Administrator hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

12. No Agency Relationship

The Plan Administrator shall not be deemed to be the agent for any of the holders of Claims in connection with the funds held or distributed pursuant to the Plan. The Plan Administrator shall not be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless arising from gross negligence, willful misconduct, or breach of fiduciary duty. The Plan Administrator shall be indemnified and held harmless, including the cost of defending such claims and attorneys' fees in seeking indemnification, by the Estates against any and all claims arising out of his or her duties under the Plan, except to the extent his or her actions constitute gross negligence, willful misconduct, or breach of fiduciary duty. The Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which he or she believes to be genuine and to have been signed or presented by the proper party or parties. The Plan Administrator may rely

upon information previously generated by the Debtors and such additional information provided to him or her by former employees of the Debtors.

#### **G. Estimated Distributions**

The Debtors estimate that approximately \$6.5 to \$7 million will be available to satisfy Class 3 General Unsecured Claims. All remaining funds after payment of Allowed Class 3 General Unsecured Claims (and not subject to any reserves in accordance with the Plan) will be paid to PAMI ALI in respect of its Class 4 Equity Interest.

### **III. EFFECT OF THE PLAN ON CLAIMS, INTERESTS AND CAUSES OF ACTION**

#### **A. Binding Effect**

Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against the Debtors who held such Claim at any time during the Chapter 11 Cases and its successors and assigns, whether or not the Claim of such holder is Impaired under the Plan and whether or not such holder has accepted (or has been deemed to accept) the Plan.

#### **B. Term of Injunctions or Stays**

Unless otherwise provided in the Plan, all injunctions or stays provided for in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Cases are closed.

#### **C. Retention of Rights and Causes of Action**

Except as provided in the Plan, all present or future rights, claims, or Causes of Action against any Person that existed and have not been released or sold on or prior to the Effective Date are preserved for the Debtors and the Estates; *provided, however*, that on the Effective Date, the Debtors shall be deemed to release any and all rights, claims, and causes of action that a trustee, debtor in possession or other appropriate party in interest would be able to assert on behalf of any of the Debtors under applicable state statutes or the avoidance provisions of chapter 5 of the Bankruptcy Code, including actions under one or more of the provisions of Bankruptcy Code sections 506 and 542 through 551.

On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Debtors shall have possession and control of, and shall retain and have the right to enforce and pursue, any and all present or future rights, claims, or Causes of Action against any Person and with respect to any rights of the Debtors that arose before or after the Petition Date. The Debtors and the Estates have, retain, reserve, and shall be entitled to assert and pursue all such claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and all legal and equitable rights of the Debtors not

expressly released under the Plan may be asserted after the Confirmation Date. The Plan Administrator may abandon, settle or release any or all such claims, rights or Causes of Action, as it deems appropriate, without further Order of the Bankruptcy Court. In pursuing any claim, right, or Cause of Action, the Plan Administrator, as the representative of the Estates, shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Causes of Action shall survive confirmation and the commencement or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.

In reviewing this Disclosure Statement and the Plan, and in determining whether to object to the Plan, creditors and other parties should consider that Causes of Action may exist against them, and that the Plan authorizes the Plan Administrator to prosecute same.

#### **D. Injunction**

##### **1. Satisfaction of Claims**

The treatment to be provided for Allowed Claims shall be in full satisfaction, settlement, and release of each such Claim.

##### **2. Scope of Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that hold a Claim are permanently enjoined from taking any of the following actions against the Debtors, the Equity Owners, the Plan Administrator, or any present and former directors, officers, trustees, agents, attorneys, advisors, members, or employees of the Debtors, the Equity Owners, or the Plan Administrator, or any of their respective successors or assigns, or any of their respective assets or properties, on account of any Claim: (i) commencing or continuing in any manner any action or other proceeding with respect to a Claim or based upon a theory which arises out of such holder's Claim; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order with respect to a Claim; (iii) creating, perfecting or enforcing any lien or encumbrance with respect to a Claim; (iv) asserting a setoff, right of subrogation or recoupment of any kind with respect to a Claim, the assets or other property of the Estates; and (v) commencing or continuing any action that does not comply with or is inconsistent with the Plan. Nothing shall preclude the holder of a Claim from pursuing any applicable insurance after the Chapter 11 Cases are closed, from seeking discovery in actions against third parties or from pursuing third-party insurance that does not cover Claims against the Debtors. For the avoidance of doubt, nothing in this Injunction shall limit the rights of a holder of a Claim to enforce the terms of the Plan.

##### **3. Release of Collateral**

Except as expressly provided herein, unless a holder of a Secured Claim receives a return of its Collateral in respect of such Claim under the Plan: (i) each holder of (a) an Allowed Secured Claim; and/or (b) an Allowed Claim that is purportedly secured,

on the Effective Date shall (x) turn over and release to the Debtors any and all property that secures or purportedly secures such Claim; and (y) execute such documents and instruments as the Plan Administrator requires to evidence such claimant's release of such property; and (ii) on the Effective Date, all claims, rights, title, and interest in such property shall revert to the Debtors, free and clear of all Claims, including (without limitation) Liens, charges, pledges, encumbrances, and/or security interests of any kind. No Distribution shall be made to or on behalf of any holder of such Claim unless and until such holder executes and delivers to the Plan Administrator such release of Liens. Any such holder that fails to execute and deliver such release of Liens within 60 days of any demand thereof shall be deemed to have no further Claim and shall not participate in any Distribution hereunder. Notwithstanding the immediately preceding sentence, a holder of a Disputed Claim shall not be required to execute and deliver such release of Liens until the time such Claim is Allowed or disallowed.

#### 4. Cause of Action Injunction

On and after the Effective Date, all Persons other than the Plan Administrator will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of, or respecting any claim, debt, right, or Cause of Action that the Plan Administrator retains authority to pursue in accordance with the Plan.

#### E. Exculpation

**Except as otherwise set forth in the Plan, neither the Debtors, nor any Released Party, nor any of their respective current or former members, directors, officers, trustees, employees, agents (acting in such capacity), advisors, attorneys, nor representatives of any professional employed by any of them shall have or incur any liability to any Person or entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, the Sale Order, the Purchase Agreement or any contract, release, or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Plan, the administration of the Plan or property to be distributed pursuant to the Plan, the Sale Transaction, and actions taken or omitted to be taken in connection with the Chapter 11 Cases or the operations, monitoring, or administration of the Debtors during the Chapter 11 Cases, and the Plan Administrator shall have no liability for any action taken or omitted to be taken in connection with or related to the winding down and post-confirmation administration of the Estates, except for (i) intentional fraud, gross negligence, or willful misconduct, and (ii) solely in the case of attorneys, to the extent that such exculpation would violate any applicable professional disciplinary rules, including Disciplinary Rule 6-102 of the Code of Professional Conduct**

#### F. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies

resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtors. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estates, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.

#### **G. Releases by the Debtors**

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtors and their Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Plan Supplement, the Disclosure Statement, the Sale Order, the Purchase Agreement or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtors taking place on or before the Effective Date.

#### **H. Releases by Holders of Claims and Interests**

As of the Effective Date, except as otherwise provided in the Plan, the Releasing Parties are deemed to have released the Debtors, their Estates, and the Equity Owners from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any direct claims held by any of the Releasing Parties against the Debtors, their Estates, and/or the Equity Owners or derivative claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each Releasing Party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Debtors' restructuring, the Chapter 11 Cases, the Sale Transaction, the subject matter of, or the transactions or events giving rise to, any claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released

**Party, the restructuring of claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Sale Order, the Purchase Agreement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtors taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.**

#### **I. Post-Confirmation Activity**

As of the Effective Date, the Plan Administrator may conclude the winding down of the Debtors' affairs without supervision of the Bankruptcy Court, other than those restrictions expressly imposed by the Plan and the Confirmation Order. Without limiting the foregoing, the Plan Administrator may pay any charges it incurs for taxes, professional fees, disbursements, expenses, or related support services after the Effective Date without application to and approval of the Bankruptcy Court.

#### **IV. EXECUTORY CONTRACTS**

##### **A. Executory Contracts and Unexpired Leases**

To the extent not previously rejected, on the Confirmation Date, but subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors entered into prior to the Petition Date that have not previously been assumed or rejected, and that have not been assumed and assigned to Buyer, shall be deemed rejected by the Debtors pursuant to the provisions of section 365 of the Bankruptcy Code. Pursuant to the Bidding Procedures Order, the final list of Assigned Contracts in connection with Sale was filed with Court on January 22, 2015 (Docket No. 259), and notice of same was provided to the counterparties (Docket No. 282).

##### **B. Rejection Damages Bar Date**

If rejection by the Debtors, pursuant to the Plan, of an executory contract or unexpired lease, results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the Debtors, their Estates, or the Plan Administrator unless a proof of claim is filed with the clerk of the Bankruptcy Court and served upon the Debtors and/or the Plan Administrator, as applicable, not later than 30 days after the date of service of notice of entry of the Confirmation Order, or such other period set by the Bankruptcy Court.

##### **C. Effect of Post-Confirmation Rejection**

The entry by the Bankruptcy Court on or after the Confirmation Date of an Order authorizing the rejection of an executory contract or unexpired lease of the Debtors entered into prior to the Petition Date shall result in such rejection being a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code.

**V. CONDITIONS TO CONFIRMATION  
AND OCCURRENCE OF EFFECTIVE DATE**

**A. Conditions to Confirmation**

The Plan may not be confirmed unless the Confirmation Order is entered in a form reasonably acceptable to the Plan Proponent.

**B. Conditions to Occurrence of Effective Date**

The Effective Date for the Plan may not occur unless each of the conditions set forth below is satisfied. Any one or more of the following conditions may be waived in whole or in part at any time by the Plan Proponent:

(a) The Bankruptcy Court shall have entered the Confirmation Order and it shall have become a Final Order.

(b) The Confirmation Order shall provide for the releases, injunctions and exculpation of the Persons provided for the Plan.

(c) Lehman Brothers Holding, Inc. or its designee shall have been appointed as Plan Administrator and shall have accepted to act in such capacity in accordance with the terms and conditions of the Plan.

**C. Effect of Nonoccurrence of the Conditions to  
Occurrence of Effective Date**

If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the date which is no later than the first Business Day after 14 days after the Confirmation Date, or by such later date as is approved, after notice and a hearing, by the Bankruptcy Court, then upon motion by any party in interest made before the time that each of the conditions has been satisfied or duly waived, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to occurrence of the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant the Plan, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any claims by or against the Debtors, or (b) prejudice in any manner the rights of the Debtors or of any other party in interest.

**VI. CONFIRMABILITY AND SEVERABILITY OF A PLAN**

**A. Confirmability and Severability of a Plan**

Subject to the Plan, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan. If the Debtors revoke or withdraw the Plan then nothing contained herein or in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, or to prejudice in any manner the rights of the



Debtors or any persons in any further proceedings involving the Debtors. A determination by the Bankruptcy Court that the Plan is not confirmable pursuant to section 1129 of the Bankruptcy Code shall not limit or affect the Debtors' ability to modify the Plan to satisfy the confirmation requirements of section 1129 of the Bankruptcy Code. Each provision of the Plan shall be considered separable and, if for any reason any provision or provisions therein are determined to be invalid and contrary to any existing or future law, the balance of the Plan shall be given effect without relation to the invalid provision, to the extent it can be done without causing a material change in the Plan.

## **VII. ADMINISTRATIVE PROVISIONS**

### **A. Retention of Jurisdiction**

Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction and authority for all purposes permitted under applicable law, including, without limitation, the following purposes:

- (a) To determine any motion, adversary proceeding, avoidance action, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date;
- (b) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;
- (c) To ensure that Distributions to holders of Allowed Claims are accomplished as provided herein;
- (d) To hear and determine objections to the allowance of Claims, whether filed, asserted, or made before or after the Effective Date, including, without limitation, to hear and determine objections to the classification of Claims and the allowance or disallowance of Disputed Claims, in whole or in part;
- (e) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim; provided, however, that the District Court shall have jurisdiction to estimate any Claim that cannot be estimated by the Bankruptcy Court;
- (f) To enter, implement, or enforce such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (g) To issue injunctions, enter and implement other Orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other Order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all Professional Fee Claims;

(j) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order or any transactions or payments contemplated hereby or thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) To take any action and issue such Orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release or injunction provisions set forth herein, or to maintain the integrity of the Plan following consummation;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

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

(n) To enter a final decree closing the Chapter 11 Cases;

(o) To recover all assets of the Debtors and property of the Estates, wherever located;

(p) To hear and determine any matters for which jurisdiction was retained by the Bankruptcy Court pursuant to prior Orders; and

(q) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code, title 28 of the United States Code, and other applicable law.

## **B. Governing Law**

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the rights and obligations arising under the Plan shall be governed by the laws of the State of New York, without giving effect to principles of conflicts of law of New York.

## **C. Effectuating Documents, Further Transactions**

The Debtors or the Plan Administrator, as applicable, shall be 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 and further evidence the terms and conditions of the Plan.

#### **D. Waiver of Bankruptcy Rules 3020(e) and 7062**

The Debtors may request that the Confirmation Order include (i) a finding that Bankruptcy Rule 7062 shall not apply to the Confirmation Order, and (ii) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

#### **E. No Admissions**

Notwithstanding anything herein or in the Plan to the contrary, nothing contained in the Plan or in this Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

#### **F. Payment of Statutory Fees**

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court on the Confirmation Date, shall be paid on the Effective Date. Any statutory fees accruing after the Confirmation Date shall be paid in accordance with the Plan.

#### **G. Disposal of Books and Records**

The Debtors' and Plan Administrator's rights to seek authorization from the Bankruptcy Court for the destruction of books and records prior to the expiration of any statutory period requiring that such records be maintained are preserved.

#### **H. Amendments**

##### **1. Pre-confirmation Amendment**

The Debtors may modify the Plan at any time prior to the entry of the Confirmation Order provided the modified Plan and the Disclosure Statement pertaining thereto meet applicable Bankruptcy Code requirements, including those set forth in section 1125.

##### **2. Post-confirmation Amendment**

After the entry of the Confirmation Order, the Debtors may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided: (i) the Debtors obtain Bankruptcy Court approval of such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, or treatment of any Class under the Plan.

#### **I. Successors and Assigns**

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

## **J. Confirmation Order and Plan Control**

To the extent the Confirmation Order and/or the Plan is inconsistent with this Disclosure Statement or any other agreement entered into between the Debtors and any third party, the Plan controls the Disclosure Statement and any such agreements, and the Confirmation Order controls the Plan.

## **VIII. ACCEPTANCE, CONFIRMATION, AND CONSUMMATION OF THE PLAN**

### **A. General**

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtors, including: (i) the Plan classifies Claims in a permissible manner; (ii) the Plan complies with the applicable provisions of the Bankruptcy Code; (iii) the Debtors comply with the applicable provisions of the Bankruptcy Code; (iv) the Debtors have proposed the Plan in good faith and not by any means forbidden by law; (v) the disclosures required by section 1125 of the Bankruptcy Code have been made; (vi) the Plan has been accepted by the requisite votes of holders of Claims, (vii) the Plan is feasible and confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtors, unless such liquidation is proposed under the Plan; (viii) the Plan is in the “best interests” of all holders of Claims in an impaired Class by providing to such holders on account of their Claims property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a chapter 7 liquidation, unless each holder of a Claim in such Class has accepted the Plan (*see below, “Best Interests of Creditors”*); (ix) all fees and expenses payable under 28 U.S.C. § 1930 (relating to bankruptcy fees payable to the clerk of the Bankruptcy Court and U.S. Trustee Fees) have been paid or the Plan provides for the payment of such fees on the Effective Date; (x) if applicable, the Plan provides for the continuation after the Effective Date of all retiree benefits, as defined in section 1114 of the Bankruptcy Code, at the level established at any time prior to confirmation of the Plan pursuant to section 1114 of the Bankruptcy Code, for the duration of the period that the Debtors have obligated themselves to provide such benefits; and (xi) the Debtors must have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of the Debtors or as successor to the Debtors under the Plan, and the appointment to or continuance in such office by such individual must be consistent with public policy. Certain of the requirements for confirmation of chapter 11 plans are inapplicable here.

The Debtors believe that the Plan satisfies all of the applicable statutory requirements of chapter 11 of the Bankruptcy Code. Certain of these requirements are discussed in more detail below.

### **B. No Need to Solicit Votes**

Pursuant to the Bankruptcy Code, only classes of claims against or interests of a debtor that are “impaired” (within the meaning of section 1124 of the Bankruptcy Code) under the terms and provisions of a plan of reorganization or liquidation are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or

contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of claims and interests that are not impaired are not entitled to vote on a plan and, under section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted a plan. Section IV.C of this Disclosure Statement provides a summary of the classification and treatment of Claims under the Plan.

Under the Plan, all holders of Claims and Equity Interests are unimpaired and therefore not entitled to vote to accept or reject the Plan.

### **C. Estimation and Temporary Allowance of Claims**

Under the Plan, holders of Allowed Class 1, 2, and 3 Claims and Allowed Class 4 Equity Interests are not entitled to vote to accept or reject the Plan so there is no need to estimate and temporarily allow a Claim for voting.

### **D. Acceptance Requirements**

Under the Plan, all Classes of Claims and Equity Interests are unimpaired and, therefore, are deemed to have accepted the Plan. Consequently, no solicitation or voting is necessary.

### **E. Feasibility of the Plan**

In connection with confirmation of the Plan, the Bankruptcy Court will have to determine that the Plan is feasible pursuant to section 1129(a)(11), which means that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors unless the Plan provides for the liquidation of the Debtors. Since the Plan provides for the liquidation of the Debtors, the Bankruptcy Court will find that the Plan is feasible if it determines the Debtors will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet their post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan, including sufficient funds for the Plan Administrator to liquidate the Debtors' remaining assets. The Debtors believe the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code.

## **IX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain of the material federal income tax consequences expected to result from the implementation of the Plan. This summary does not address the federal income tax consequences to holders whose claims are entitled to payment in full in Cash under the Plan (*e.g.*, holders of Allowed Administrative Claims, Secured Claims, and Priority Claims). This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the "IRS"). There can be no assurance that the IRS will not take a contrary view, and no ruling from the IRS has been or will be sought. Legislative, judicial, or administrative changes or interpretations may be forthcoming that could alter or modify the statements and

conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to, among others, the Debtors and the holders of Claims.

The following summary is for general information only. The federal income tax consequences of the Plan are complex and subject to significant uncertainties. This summary does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all of the federal income tax consequences of the Plan. This summary also does not purport to address the federal income tax consequences of the Plan to taxpayers subject to special treatment under the federal income tax laws, such as broker-dealers, tax exempt entities, financial institutions, insurance companies, S corporations, small business investment companies, mutual funds, regulated investment companies, foreign corporations, and non-resident alien individuals.

**EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE POTENTIAL FEDERAL, STATE, LOCAL, OR FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS in Circular 230, you are hereby informed that (i) any tax advice contained in this Disclosure Statement is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Tax Code, (ii) the advice is written to support the promotion or marketing of the transactions or matters addressed in the Disclosure Statement, and (iii) each holder of a Claim should seek advice based on its particular circumstances from an independent tax advisor.**

#### **A. Federal Income Tax Consequences to the Debtors**

The Debtors do not anticipate that confirmation of the Plan will result in the Debtors being assessed or owing any Federal Income Tax. Confirmation will not trigger a taxable event. Moreover, the elimination of intercompany payables/receivables will not give rise to any cancellation of indebtedness income.

#### **B. Withholding and Reporting**

The Plan Administrator will not withhold taxes or comply with any applicable reporting requirements, and will issue an IRS Form 1099 to the recipient of a Distribution if requested.

#### **X. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

The Plan affords the holders of Claims a full recovery and, thus, is in the best interests of such holders. If the Plan is not confirmed, however, the alternative would be the liquidation of the Debtors' remaining Assets and distribution to creditors under chapter 7 which will reduce recoveries due to the additional expenses attendant thereto. The Debtors believe that the Plan is better for creditors than a chapter 7 liquidation.

**XI. ALTERNATIVE PLANS OF REORGANIZATION**

If the Plan is not confirmed, the Debtors or any other party in interest in the Chapter 11 Cases could propose a different plan or plans (subject to limitations during the time within which the Debtors have the exclusive right to do so). Since substantially all of the Debtors' assets have been sold and the Plan is a plan of liquidation, the Debtors do not believe an alternative plan could provide greater recoveries than those provided in the Plan. Moreover, the filing of alternative plans would result in additional costs in administering the Chapter 11 Cases and significant delays in distributions.

**XII. CONFIRMATION HEARING**

The Combined Hearing at which confirmation of the Plan will be considered has been scheduled for May [20], 2015 at 2:00 pm. (prevailing Eastern Time), before the Honorable Shelley C. Chapman in the United States Bankruptcy Court for the Southern District of New York. The Combined Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Combined Hearing or any adjourned hearing. Any objection to confirmation must be made in writing, filed with the Clerk of the Bankruptcy Court and served upon the following parties, together with proof of service thereof, so as to be ACTUALLY RECEIVED on or before May [13], 2015, at 4:00 p.m. (prevailing Eastern Time):

For the Debtors and the Equity Owners:

c/o LEHMAN BROTHERS HOLDINGS, INC.  
1271 Avenue of the Americas  
New York, New York 10020  
Attn: Anthony Barsanti

with copies for the Debtors to:

TOGUT, SEGAL & SEGAL LLP  
Attorneys for the Debtors and Debtors in  
Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
Facsimile: (212) 967-4258  
Attn: Frank A. Oswald, Esq.  
Steven S. Flores, Esq.

with copies for the Equity Owners to:

WEIL, GOTSHAL & MANGES LLP  
Attorneys for the Equity Owners  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Attn: Jacqueline Marcus, Esq.  
Doron Kenter, Esq.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.  
UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT

WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

At the Combined Hearing, the Bankruptcy Court must determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied and, upon demonstration of such compliance, the Bankruptcy Court will enter the Confirmation Order.

[CONCLUSION AND SIGNATURE PAGES IMMEDIATELY TO FOLLOW]



CONCLUSION

The Debtors submit that the Plan complies in all respects with chapter 11 of the Bankruptcy Code.

Dated: New York, New York  
April 13, 2015

Respectfully Submitted,

FL 6801 SPIRITS LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS CENTRAL LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS NORTH LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS SOUTH LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

**Exhibit A**

**Liquidating Plan of FL 6801 Spirits LLC and Its Affiliated Debtors  
Under Chapter 11 of the Bankruptcy Code**

TOGUT, SEGAL & SEGAL LLP  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
Albert Togut  
Frank A. Oswald  
Steven S. Flores

Attorneys for the Debtors and  
Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
*In re:* : Chapter 11  
: :  
FL 6801 SPIRITS LLC, *et al.*, : Case No. 14-11691 (SCC)  
: :  
Debtors. : Jointly Administered  
: :  
-----X

**LIQUIDATING PLAN OF FL 6801 SPIRITS LLC  
AND ITS AFFILIATED DEBTORS UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: New York, New York  
April 13, 2015

**LIQUIDATING PLAN OF FL 6801 SPIRITS LLC AND ITS AFFILIATED DEBTORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**INTRODUCTION**

Debtors FL 6801 Spirits LLC, FL 6801 Collins North LLC, FL 6801 Collins Central LLC, and FL 6801 Collins South LLC propose the following liquidating plan (the "Plan") pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I.A of the Plan. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, as well as a summary and analysis of the Plan and other related matters, including distributions to be made under the Plan. The Debtors are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

**SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, FEDERAL RULE OF BANKRUPTCY PROCEDURE 3019 AND THIS PLAN, THE PLAN PROPONENT RESERVES THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE, OR WITHDRAW THIS PLAN PRIOR TO ITS EFFECTIVE DATE.**

**ARTICLE I - DEFINITIONS, RULES OF  
INTERPRETATION, AND CONSTRUCTION**

A. Defined Terms. As used herein, the following terms have the respective meanings specified below, except as expressly provided in other Sections of the Plan, unless the context otherwise requires (such meanings to be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined). Any capitalized term used in the Plan but not defined herein that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules.

1. Administrative Claim means any Claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation: (a) the actual, necessary costs and expenses incurred by the Debtors after the Petition Date of preserving the Estates or operating the Debtors' business; (b) Professional Fee Claims; (c) U.S. Trustee Fees; (d) the Break-up Fee; and (e) any Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court.

2. Administrative Claims Fund means a fund to be established by the Debtors on the Effective Date, and administered thereafter by the Plan Administrator, in an amount sufficient to pay Allowed Administrative Claims (including Professional Fee Claims), Allowed Priority Claims, and Allowed Priority Tax Claims.

3. Allowed, with respect to a Claim, means the extent to which a Claim: (a) is not disallowed or expunged by stipulation or Final Order of the Bankruptcy Court; (b) is not objected to within the period fixed by the Plan or

established by the Bankruptcy Court, if the Claim (i) was scheduled by a Debtor pursuant to the Bankruptcy Code and the Bankruptcy Rules in a liquidated amount and not listed as contingent, unliquidated, or disputed, or (ii) was timely filed (or deemed timely filed) pursuant to the Bankruptcy Code, the Bankruptcy Rules, or any applicable orders of the Bankruptcy Court; (c) for which an objection has been filed, but such objection has been withdrawn or determined by a Final Order (but only to the extent such Claim has been allowed); (d) determined to be valid by the Plan Administrator; (e) is the PAMI ALI General Unsecured Claim; (f) is the Secured Lender Pre-Petition Claim; or (g) is otherwise allowed by Final Order, including, without limitation, the Confirmation Order, after notice and a hearing. A proof of Claim that is not timely filed (or not deemed timely filed) shall not be "Allowed" for purposes of distribution under the Plan.

4. Assets means all assets of the Debtors of any nature whatsoever, including, without limitation, all property of the Estates pursuant to section 541 of the Bankruptcy Code, Cash (including proceeds from the Sale), Causes of Action, accounts receivable, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds of all of the foregoing.

5. Available Cash means, as of any given Distribution Date, all of the Debtors' Cash, less the remaining balances in the Disputed Claims Reserve, the Expense Reserve, and the Administrative Claims Fund.

6. Bankruptcy Code means title 11 of the United States Code, as now in effect or as hereafter amended, as applicable to the Chapter 11 Cases.

7. Bankruptcy Court means the United States Bankruptcy Court for the Southern District of New York, which has jurisdiction over the Chapter 11 Cases.

8. Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court pursuant to section 2075 of title 28 of the United States Code, and any local rules of the Bankruptcy Court, as amended from time to time and as applicable to the Chapter 11 Cases.

9. Bar Date means such date(s) established by the Bankruptcy Court as the last date for filing proofs of Claim or requests for allowance of Administrative Claims, as applicable, against the Debtors.

10. Bidding Procedures Order means the order of the Bankruptcy Court under sections 105 and 363 of the Bankruptcy Code, approving the Bidding Procedures, dated July 1, 2014 [Docket No. 77].

11. Break-Up Fee means the break-up fee paid to 360 Miami Hotel & Spa LLC as an Administrative Expense pursuant to the Bidding Procedures Order in an amount equal to three hundred twenty thousand dollars (\$320,000.00) plus any third party costs and expenses actually incurred by 360 Miami Hotel & Spa LLC (including,

but not limited to, reasonable attorneys' fees and reasonable inspection expenses) in the amount of one hundred twenty thousand dollars (\$120,000.00).

12. Business Day means any day except a Saturday, Sunday, or "legal holiday" as such term is defined in Bankruptcy Rule 9006(a).

13. Buyer means Z Capital Florida Resort LLC together with its affiliated designee(s).

14. Cash means cash and cash equivalents in U.S. dollars.

15. Causes of Action means any and all claims, rights, and causes of action that could have been brought or can be brought now by or on behalf of the Debtors or the Estates arising before, on or after the Petition Date, whether they are known or unknown, direct or indirect, reduced or not reduced to judgment, disputed or undisputed, suspected or unsuspected, in contract or in tort, at law or in equity or under any theory of law, including, but not limited to: (i) those referred to in the Disclosure Statement, including, without limitation, the Retained Lawsuit; (ii) derivative claims, and (iii) right of setoff or recoupment, and claims on contracts or breaches of duty imposed by law.

16. Chapter 11 Cases means the cases commenced under chapter 11 of the Bankruptcy Code by the Debtors, and jointly administered for procedural purposes under *In re FL 6801 Spirits LLC, et al.*, Chapter 11 Case No. 14-11691 (SCC), currently pending before the Bankruptcy Court.

17. Claim means a "claim," as defined in section 101(5) of the Bankruptcy Code, against a Debtor, whether or not asserted, whether or not the facts of or legal bases therefor are known or unknown, and specifically including, without express or implied limitation, any rights under sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, any claim of a derivative nature, any potential or unmatured contract claims, and any other contingent claim.

18. Class means a category of Claims or Equity Interests set forth in Article III of the Plan.

19. Collateral means any property or interest in property of the Estates subject to an unavoidable Lien to secure the payment or performance of a Claim.

20. Collins Central means FL 6801 Collins Central LLC, one of the Debtors.

21. Collins North means FL 6801 Collins North LLC, one of the Debtors.

22. Collins South means FL 6801 Collins South LLC, one of the Debtors.
23. Collins Subsidiaries means, collectively, Collins Central, Collins North and Collins South, three of the Debtors.
24. Confirmation Date means the date on which the Confirmation Order is entered on the docket of the Chapter 11 Cases.
25. Confirmation Hearing means the hearing or hearings conducted by the Bankruptcy Court to consider confirmation of the Plan as it may be modified hereafter from time to time.
26. Confirmation Order means the Order(s) confirming the Plan in accordance with the provisions of the Bankruptcy Code.
27. Debtors means, collectively, FL 6801 Spirits LLC, FL 6801 Collins North LLC, FL 6801 Collins Central LLC and FL 6801 Collins South LLC.
28. DIP Lender means PAMI ALI LLC.
29. Disclosure Statement means the disclosure statement for the Plan filed with the Bankruptcy Court by the Debtors in accordance with section 1125 of the Bankruptcy Code, including all exhibits and schedules thereto, as it may be amended from time to time.
30. Disclosure Statement Order means the order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code.
31. Disputed Claim means a Claim that is not an Allowed Claim nor a disallowed Claim, and is any Claim, proof of which was filed, or an Administrative Claim or other unclassified Claim, which is the subject of a dispute under the Plan or as to which Claim a Debtor or the Plan Administrator has interposed a timely objection and/or a request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018 or other applicable law, which dispute, objection, and/or request for estimation has not been withdrawn or determined by a Final Order, and any Claim, proof of which was required to be filed by order of the Bankruptcy Court, but as to which a proof of claim was not timely or properly filed (or deemed timely or properly filed).
32. Disputed Claims Reserve Accounts means an account or accounts established and funded by the Debtors and administered by the Plan Administrator for the payment of Disputed Claims that become Allowed Claims after the Effective Date, and which shall hold Cash and/or other Assets as applicable, for the benefit of the holders of Disputed Claims.

33. Distribution means the distribution to holders of Allowed Claims in accordance with the Plan of any Assets, or other consideration distributed under Article IV herein.

34. Distribution Address means the address set forth in the applicable proof of claim, as such address may have been updated pursuant to Bankruptcy Rule 2002(g). If no proof of claim is or has been filed in respect of a particular Claim, "Distribution Address" means the address set forth in the applicable Debtor's Schedules, as such address may have been updated pursuant to Bankruptcy Rule 2002(g).

35. Distribution Date means any date on which the Plan Administrator determines that a Distribution, under or in accordance with the Plan, should be made to holders of Allowed Claims (or to a particular holder of an Allowed Claim) in light of, inter alia, resolutions of Disputed Claims, liquidation of Assets (including aggregate recoveries on account of Causes of Action), and the administrative costs of such a distribution.

36. District Court means the United States District Court for the Southern District of New York.

37. Effective Date means a Business Day, selected by the Plan Proponent, on which all conditions to the Effective Date have been satisfied or, if permitted, waived by the Plan Proponent, and on which no stay of the Confirmation Order shall be pending.

38. Effective Date Creditor Distributions means the amount to be distributed on the Effective Date to holders of Allowed Class 2 Secured Claims and Allowed Class 3 General Unsecured Claims.

39. Equity Interest means any equity interest or proxy related thereto, direct or indirect, in any of the Debtors, and represented by duly authorized, validly issued and outstanding shares of preferred stock or common stock, stock appreciation rights, membership interests, partnership interests, or any other instrument evidencing a present ownership interest, direct or indirect, inchoate or otherwise, in any of the Debtors, or right to convert into such an equity interest or acquire any equity interest of the Debtors, whether or not transferable, or an option, warrant or right, contractual or otherwise, to acquire any such interest, which was in existence prior to or on the Petition Date.

40. Equity Owners means collectively, Lehman Brothers Holdings, Inc., Lehman ALI Inc., and PAMI ALI LLC.

41. Estate means the estate of each Debtor as created under section 541 of the Bankruptcy Code.



42. Excluded Assets shall have the meaning ascribed to such term in the Purchase Agreement.

43. Exhibit Filing Date means the last date by which forms of the exhibits to the Plan shall be filed with the Bankruptcy Court, which date shall be not later than fourteen (14) days prior to the date of commencement of the Confirmation Hearing.

44. Expense Reserve means a reserve to be established by the Debtors on the Effective Date to be utilized by the Plan Administrator to effectuate the liquidation of the remaining Assets hereunder, including, without limitation, to fund any necessary or appropriate litigation against third parties, in accordance with the Plan. The Plan Administrator may replenish the Expense Reserve from Available Cash from time to time.

45. Face Amount means (a) with respect to any Claim for which a proof of claim is filed, an amount equal to: (i) the liquidated amount, if any, set forth therein; and/or (ii) any other amount estimated by the Bankruptcy Court in accordance with section 502(c) of the Bankruptcy Code and the relevant provisions of the Plan; (b) if no proof of claim is filed and such Claim is scheduled in the applicable Debtor's Schedules, the amount of the Claim scheduled as undisputed, fixed, and liquidated; or (c) if a proof of claim has been filed in an unliquidated amount, or the applicable Debtor's Schedules reflect a Claim in an unliquidated amount, the amount estimated by the Debtor or Plan Administrator to be the amount for which such claim may ultimately be Allowed.

46. Final Claims Resolution Date means the date on which the last Disputed Claim has been resolved, either by consent, order of the Bankruptcy Court, or otherwise.

47. Final Order means an order as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, move for re-argument, or rehearing shall have been waived in writing or, in the event an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied, or from which re-argument or rehearing was sought, and the time to take any further appeal, petition for *certiorari*, or motion for re-argument or rehearing shall have expired.

48. FL Spirits means FL 6801 Spirits LLC, one of the Debtors.

49. General Unsecured Claim means a Claim that is not an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, a Secured Claim, or a Priority Claim.

50. Impaired means any Class of Claims or Equity Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.
51. KM/Plaza means Katz Meltzer Construction Company and Plaza Contracting Company d/b/a KM/Plaza.
52. KM Escrow Fund means that certain escrow fund into which Collins North deposited \$1,731,449.25 as security for the amount, if any, ultimately determined to be due in the Retained Lawsuit.
53. Lien means any charge against, security interest in, encumbrance upon, or other interest in property to secure payment of a debt or performance of an obligation.
54. Litigation Claim means any prepetition Claim against the Debtors relating to arbitrations, mediations, lawsuits, and other prosecutions.
55. PAMI ALI General Unsecured Claim means the pre-petition General Unsecured Claim of PAMI ALI LLC.
56. Person means an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, governmental authority, governmental unit or any agency or political subdivision thereof, or any entity of whatever nature.
57. Petition Date means June 1, 2014, the date upon which the chapter 11 petitions of each of the Debtors were filed with the Bankruptcy Court.
58. Plan means this liquidating plan under chapter 11 of the Bankruptcy Code, including, without limitation, the exhibits and schedules hereto, as such may be altered, amended, or otherwise modified from time to time.
59. Plan Administrator means Lehman Brothers Holdings, Inc., or such other Person designated by Lehman Brothers Holdings, Inc., as the representative of the Debtors and the Estates for purposes of administering and consummating the Plan.
60. Plan Proponent means the Debtors.
61. Prepetition Claim means any Claim arising prior to the Petition Date.
62. Priority Claim means any Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than (a) an Administrative Claim, or (b) a Priority Tax Claim.

63. Priority Tax Claim means any Claim entitled to priority pursuant to sections 502(i) and 507(a)(8) of the Bankruptcy Code.

64. Professional Fees means any unpaid fees and expenses of Professionals, as such fees and expenses are allowed by the Bankruptcy Court.

65. Professional Fee Claim means a Claim for compensation, indemnification, or reimbursement of expenses pursuant to sections 328, 330, 331, or 503(b) of the Bankruptcy Code in connection with the Chapter 11 Cases incurred on or after the Petition Date and prior to the Effective Date.

66. Professionals mean the attorneys, accountants, financial advisors, and other professionals whose retention in the Chapter 11 Cases has been approved by the Bankruptcy Court.

67. Purchase Agreement means that certain purchase and sale agreement between the Collins Subsidiaries and the Buyer annexed to the Disclosure Statement.

68. Released Party means each of the following in its capacity as such: (a) the Equity Owners; (b) the Secured Lender; (c) the DIP Lender; and (d) with respect to each of the foregoing entities in clauses (a) through (c), such entity's current and former managed and controlled Affiliates as of the Confirmation Date, and such entity's and its current and former Affiliates' subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; and (e) each the Debtors' current and former Affiliates, and each of Debtors' and its current and former Affiliates' subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

69. Releasing Party means each of the following in its capacity as such: (a) the Equity Owners; (b) the Secured Lender; (c) the DIP Lender; (d) those Holders of Claims and Interests that are deemed to accept the Plan; (e) all Holders of Claims and Interests who vote to accept the Plan; (f) with respect to each of the foregoing entities in clauses (a) through (e), such entity's current and former managed and controlled Affiliates, and such entity's and its Affiliates' subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; and (g) each of the Debtors' current and former Affiliates, and each of the Debtors' and its current and former Affiliates' subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

70. Retained Lawsuit means *KM/PLAZA, a joint venture comprised of Katz Meltzer Construction Company, a Florida corporation, and Plaza Contracting Company, a*

*Delaware limited liability company, Plaintiff, v. FL 6801 COLLINS NORTH, LLC, Defendant, KM/Plaza, Third Party Plaintiff, v. BCI, INCORPORATED, a Florida corporation; BAKER CONCRETE CONSTRUCTION, INC., an Ohio corporation; DELTA PAINTING, INC., a Florida corporation; J.D. WATERPROOFING, INC., a dissolved Florida corporation; DECKTIGHT ROOFING SERVICES, INC., a Florida corporation; and MIAMI DRYWALL & STUCCO, INC., a Florida corporation, Third Party Defendants, Case No. 10-31272 CA 01 (25) (General Jurisdiction Division), pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.*

71. Sale means the Sale Transaction approved by the Sale Order.

72. Sale Order means the order of the Bankruptcy Court approving the Sale Transaction, dated November 24, 2014 [Docket No. 218].

73. Sale Proceeds means the proceeds received by the Debtors from the Sale Transaction.

74. Sale Transaction means the transaction between the Collins Subsidiaries and the Buyer pursuant to which the Collins Subsidiaries shall sell certain of their Assets to the Buyer free and clear of all Liens, Claims, Interests, and encumbrances pursuant to sections 363 and 1123 of the Bankruptcy Code, as set forth in the Purchase Agreement and the Sale Order.

75. Schedules means, unless otherwise specified, the respective schedules of assets and liabilities, the list of holders of Equity Interests, and the statements of financial affairs filed by the Debtors in accordance with section 521 of the Bankruptcy Code and the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended on or prior to the Confirmation Date.

76. Secured Claim means a Claim secured by a Lien on any Asset of the Debtors, or right of setoff, which Lien or right of setoff, as the case may be, is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, but only to the extent of the value, pursuant to section 506(a) of the Bankruptcy Code, of any interest of the holder of the Claim in property of the Estate securing such Claim.

77. Secured Lender means PAMI ALI LLC.

78. Secured Lender Pre-Petition Claim means the Debtors' pre-petition obligation to the Secured Lender in the amount of \$1,684,220.67.

79. Tax Code means the Internal Revenue Code of 1986, as amended from time to time.

80. U.S. Trustee means the office of the United States Trustee for the Southern District of New York.

81. U.S. Trustee Fees means all fees and charges assessed against the Estate by the U.S. Trustee and due pursuant to section 1930 of title 28 of the United States Code.

B. Rules of Construction.

1. Generally. For purposes of the Plan: (i) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified or supplemented; (ii) unless otherwise specified, all references in the Plan to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; and (iii) the rules of construction set forth in section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply unless superseded herein or in the Confirmation Order.

2. Exhibits. All exhibits are incorporated into and are a part of the Plan as if set forth in full herein. Copies of filed exhibits are available upon written request to Togut, Segal & Segal LLP, One Penn Plaza, New York, New York 10119 (Attn: Frank A. Oswald, Esq.), counsel to the Debtors, or may be obtained from the Debtors' noticing agent, Prime Clerk on the website: <http://cases.primeclerk.com/flspirits>.

3. Time Periods. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

4. Miscellaneous Rules. (i) The words "herein," "hereof," "hereunder," and other words of similar import refer to the Plan as a whole, not to any particular Section, subsection, or clause, unless the context requires otherwise; (ii) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine, and the neuter; and (iii) captions and headings to Articles and Sections of the Plan are inserted for convenience of reference only and are not intended to be a part or to affect the interpretation of the Plan.

**ARTICLE II - TREATMENT OF UNCLASSIFIED CLAIMS**

A. Administrative Claims.

1. General. Subject to the Bar Date and other provisions herein and except to the extent the Debtors, or the Plan Administrator, as applicable, and the holder of an Allowed Administrative Claim agree to different and less favorable treatment, the Plan Administrator shall pay, in full satisfaction and release of such Claim, to each holder of an Allowed Administrative Claim, Cash, in an amount equal to such Allowed Administrative Claim, on the later of (i) the Effective Date and (ii) the first Business Day after the date that is 30 calendar days after the date on which such

Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable. Allowed Administrative Claims shall be paid (i) *first*, from the funds in the Administrative Claims Fund, and (ii) *second*, from Available Cash.

B. Administrative Bar Date.

1. General Provisions. Except as provided below for (i) Professionals requesting compensation or reimbursement for Professional Fee Claims, and (ii) U.S. Trustee Fees, requests for payment of Administrative Claims must be filed no later than 30 days after notice of entry of the Confirmation Order is filed with the Bankruptcy Court or such later date as may be established by Order of the Bankruptcy Court.

**Holders of Administrative Claims who are required to file a request for payment of such Claims and who do not file such requests by the applicable Bar Date, shall be forever barred from asserting such Claims against the Debtors or their property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, or recover such Administrative Claim.**

2. Professionals. All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Cases) shall file an application for final allowance of compensation and reimbursement of expenses no later than 45 days after the Effective Date (the "Fee Claim Deadline"). Objections to applications of Professionals or other entities for compensation or reimbursement of expenses must be filed no later than 21 days after any such application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid by the Plan Administrator to the applicable Professional or other entities requesting compensation or reimbursement of Professional Fee Claims as soon as is practicable after any such Professional Fee Claims are allowed. Each Professional or other Person that intends to seek payment on account of a Professional Fee Claim shall provide the Debtors with a statement, by no later than the Confirmation Date, of the amount of estimated unpaid fees and expenses accrued by such Professional up to the date of such statement, the amount of fees and expenses that each such Professional expects to incur from such date through the Effective Date, and the amount of fees and expenses that each such Professional expects to incur from such date in connection with the preparation and prosecution of each such Professional's final fee application.

3. U.S. Trustee Fees. The Debtors or the Plan Administrator (as applicable) shall pay all U.S. Trustee Fees, in accordance with the terms of the Plan, until such time as the Bankruptcy Court enters a final decree closing the Chapter 11 Cases.

C. Priority Tax Claims. Except to the extent the Debtors or the Plan Administrator, as applicable, and the holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Plan Administrator shall pay, in full satisfaction and release of such Claim, to each holder of a Priority Tax Claim, Cash, in

an amount equal to such Allowed Priority Tax Claim, on the later of: (i) the Effective Date and (ii) the first Business Day after the date that is 30 calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable.

**ARTICLE III - CLASSIFICATION AND  
TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. General Notes on Classification and Treatment of Classified Claims and Equity Interests. Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Equity Interests (other than Claims arising under sections 507(a)(2) or 507(a)(8) of the Bankruptcy Code, which Claims do not require classification pursuant to section 1123(a) of the Bankruptcy Code and are receiving the treatment set forth in Article II) are classified for all purposes, including, without limitation, voting, confirmation, and distribution pursuant to the Plan, as set forth herein. 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.

B. Classification and Treatment of Classified Claims and Equity Interests

<u>Class</u>	<u>Treatment</u>	<u>Entitled to Vote</u>
Class 1 – Priority Claims	Unimpaired	No
Class 2 – Secured Claims	Unimpaired	No
Class 3 – General Unsecured Claims	Unimpaired	No
Class 4 – Equity Interests	Unimpaired	No

1. Class 1: Priority Claims.

(a) Class 1 Treatment. Each holder of an Allowed Priority Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Claim from the Administrative Claims Fund on the later of (i) the Effective Date, and (ii) for Claims in Class 1 that were Disputed Claims and thereafter became Allowed Priority Claims, immediately following the date upon which such Claims became Allowed Priority Claims, or as soon thereafter as is practicable.

(b) Class 1 Impairment. Holders of Allowed Priority Claims in Class 1 are not Impaired under the Plan. Each holder of an Allowed Priority Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim.

2. Class 2: Secured Claims.

(a) Class 2 Treatment. Provided that the holder of a Class 2 Claim has not yet been paid, on the later of (i) the Effective Date and (ii) for Claims in Class 2 that were Disputed Claims on the Effective Date and have thereafter become Allowed Secured Claims, immediately following the date upon which such Claims became Allowed Secured Claims, or as soon thereafter as is practicable, holders of each such Allowed Secured Claim shall receive (a) Cash in an amount not to exceed the amount of such Allowed Secured Claim, (b) the Collateral securing such Allowed Secured Claim (in which case any deficiency claim shall become a Class 3 General Unsecured Claim), or (c) such other treatment as may be agreed upon by the Plan Administrator and the holder of such Allowed Secured Claim, or as may otherwise be provided in the Bankruptcy Code, provided that the holder of such Allowed Secured Claim will not receive more than the value of the Collateral securing such Claim.

(b) Class 2 Impairment. Holders of Allowed Claims in Class 2 are not Impaired under the Plan. Each holder of an Allowed Secured Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim.

3. Class 3: General Unsecured Claims.

(a) Class 3 Treatment. Provided that the holder of a Class 3 Claim has not yet been paid, on the later of (i) the Effective Date and (ii) for Claims in Class 3 that were Disputed Claims on the Effective Date and have thereafter become Allowed General Unsecured Claims, immediately following the Distribution Date subsequent to the date upon which such Claims became Allowed General Unsecured Claims, or as soon thereafter as is practicable, holders of each such Allowed General Unsecured Claim shall receive (a) Cash in an amount not to exceed the amount of such Allowed General Unsecured Claim, plus post-petition interest provided by contract, or if no contract exists, at the statutory rate provided by 28 U.S.C § 1961, from the Petition Date through the Distribution Date, or (b) such other treatment as may be agreed upon by the Plan Administrator and the holder of such Allowed General Unsecured Claim.

(b) Allowance of PAMI ALI Unsecured Claim. On the Effective Date, the PAMI ALI Unsecured Claim will be allowed in the amount of \$1,249,812.

(c) Class 3 Impairment. Holders of General Unsecured Claims are not Impaired under the Plan. Each holder of General Unsecured Claim is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Claim.

(d) Class 3 Priority of Payment. Notwithstanding any other provision of the Plan, holders of Allowed General Unsecured Claims shall not be



entitled to receive any payment of Cash on account of Allowed General Unsecured Claims until the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Priority Claims have received payment in full on account of such Allowed Claims or such Allowed Claims have been reserved for in accordance with the Plan, and any Disputed Claims have been reserved for in accordance with the Plan.

4. Class 4: Equity Interests.

(a) Class 4 Treatment. Beginning on the Effective Date, PAMI ALI LLC as the holder of the Equity Interests, shall receive Distributions on account of its Class 4 Equity Interests in the Debtors, as provided herein. PAMI ALI LLC will be paid, on account of its equity interest in the Debtors, the greater of (a) the difference between the Available Cash on the Effective Date and the Effective Date Creditor Distributions, and (b) \$3 million. As soon as practicable after any subsequent Distribution Date, Available Cash, if any, shall be paid to PAMI ALI LLC. Upon receipt of the final Distribution to PAMI ALI LLC on account of its Equity Interests, such Equity Interests will be canceled.

(b) Class 4 Impairment. The holder of the Equity Interests is not Impaired under the Plan, and is conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code and is therefore not entitled to vote to accept or reject the Plan in its capacity as a holder of such Equity Interests.

**ARTICLE IV – VOTING AND DISTRIBUTIONS UNDER THE PLAN**

A. Voting of Claims and Interests. No Class is impaired under the Plan. Unimpaired Classes are presumed to have accepted the Plan. All classes of Claims and Equity Interests are permitted to object to the Plan or the adequacy of the Disclosure Statement. Objections to the Plan and to the adequacy of the Disclosure Statement must be filed no later than May [13], 2015, at 4:00 p.m. (Eastern Time).

B. Distributions Under the Plan. Whenever any Distribution to be made pursuant to the Plan shall be due on a day other than a Business Day, such Distribution shall instead be made on the immediately succeeding Business Day, but shall be deemed to have been made on the date due. As of the close of business on the Confirmation Date, there shall be no further changes in the record holders of the Claims for purposes of the Distribution of Available Cash. The Debtors and the Plan Administrator shall have no obligation to recognize any transfer of Claims occurring after the Confirmation Date.

C. Distribution Deadlines. Any Distribution to be made by the Plan Administrator pursuant to the Plan shall be deemed to have been timely made if made within 30 days after the time therefor specified in the Plan or such other agreements. No interest shall accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the date specified therefor herein.

D. Manner of Payment Under the Plan. Unless the Person receiving a payment agrees otherwise, any payment in Cash to be made by the Plan Administrator shall be made by check drawn on a domestic bank or by automated clearing house transfer.

E. De Minimis Distributions. The Plan Administrator shall not be required to make any Cash payment of less than twenty-five dollars (\$25.00) with respect to any Claim unless a request therefor is made in writing to the Plan Administrator on or before 60 days after the Effective Date. Any de minimis Distributions not subject to a timely request for payment shall revert to the Debtors and be treated as Available Cash.

F. Unclaimed Property. All Distributions to any holder of an Allowed Claim shall be made at the Distribution Address unless the Debtors and/or the Plan Administrator, as applicable, have been notified in writing of a change of address. If any Distribution to any holder of an Allowed Claim is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Plan Administrator is notified of such holder's then current address, at which time all eligible missed Distributions shall be made to such holder, without interest. All demands for undeliverable Distributions shall be made on or before 60 days after the date such undeliverable Distribution was initially made. Thereafter, the amount represented by such undeliverable Distribution shall irrevocably revert to the Debtors and be treated as Available Cash. Any entitlement of any holder of any Claim to such Distributions shall be extinguished and forever barred.

G. Time Bar to Cash Payments. Checks issued by the Plan Administrator in respect of Allowed Claims shall be null and void if not negotiated within 60 days after the date of issuance thereof. Requests for reissuance of any check shall be in writing to the Plan Administrator by the holder of the Allowed Claim to whom such check originally was issued. Any such written claim in respect of such a voided check must be received by the Plan Administrator on or before 60 days after the expiration of the 60 day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Debtors and be treated as Available Cash. Any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtors, the Estates, or the Plan Administrator.

#### **ARTICLE V - IMPLEMENTATION OF PLAN**

A. Implementation. The Plan Administrator will implement the Plan in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. On and after the Effective Date, except as otherwise provided in the Plan, the Debtors may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

B. Substantive Consolidation of the Debtors for Plan Purposes Only. On the Effective Date: (a) all Assets (and all proceeds thereof) and liabilities of each Debtor shall be merged or treated as though they were merged into and with the Assets and liabilities of the other Debtors, (b) no Distributions shall be made under the Plan on account of intercompany Claims among the Debtors and all such Claims shall be eliminated, (c) all guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated and extinguished so that any Claim against any Debtor and guarantee thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors, (d) each and every Claim filed or to be filed against any Debtor shall be filed against the consolidated Debtors, and shall be deemed one Claim against and obligation of the consolidated Debtors, and (e) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity so that, subject to the other provisions of section 553 of the Bankruptcy Code, debts due to any of the Debtors may be setoff against the debts of the other Debtors. Such substantive consolidation shall not (other than for purposes related to the Plan) affect the legal and corporate structures of the Debtors. Notwithstanding anything in this section to the contrary, all post-Effective Date U.S. Trustee Fees shall be calculated on a separate legal entity basis for each Debtor. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Debtors for Plan purposes.

C. Funding for the Plan. The Plan will be funded from the Sale Proceeds, as well as the proceeds from the Debtors' share of any litigation proceeds recovered in the Retained Lawsuit, and any other Assets available to fund the Plan.

D. Establishment of Reserves. At least 3 days prior to the Confirmation Hearing, the Debtors shall file with the Bankruptcy Court a notice that reflects the proposed amounts of the Administrative Claims Fund, the Disputed Claims Reserve, and the Expense Reserve.

E. Vesting of Assets in the Debtors. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, all Assets shall vest in the Debtors free and clear of all Claims, Liens, encumbrances, charges, Equity Interests, and other interests, except as otherwise expressly provided in the Plan or the Confirmation Order, and subject to the terms and conditions of the Plan and the Confirmation Order.

F. General Settlement of Claims. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

G. Continuing Existence. From and after the Effective Date, the Debtors shall continue in existence for the purposes of (i) winding up their affairs as expeditiously as reasonably possible, (ii) liquidating, by conversion to Cash, or other methods, of any

remaining Assets, including, without limitation, the Retained Lawsuit, open receivables and payment refunds, as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights, and privileges of the Debtors including, without limitation, prosecuting Causes of Action, (iv) resolving Disputed Claims, (v) administering the Plan, (vi) filing appropriate tax returns and refund requests, and (vii) performing all such other acts and conditions required by and consistent with consummation of the Plan.

H. Closing of the Chapter 11 Cases. After all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed, and all Assets have been liquidated and converted into Cash (other than those Assets that have been or may be abandoned), and such Cash has been distributed in accordance with the Plan, or at such earlier time as the Plan Administrator deems appropriate, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

I. Corporate Action. The Plan will be administered by the Plan Administrator and all actions taken under the Plan in the name of the Debtors shall be taken through the Plan Administrator. Upon the distribution of all Assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith, *provided, however*, that the Debtors may, but will not be required to, take appropriate action to dissolve under applicable law.

J. Winding Down Affairs. Following the Effective Date, the Debtors shall not engage in any business or take any actions, except those necessary to consummate the Plan and wind down their affairs. On and after the Effective Date, the Plan Administrator may, in the name of the Debtors, take such actions without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than the restrictions imposed by the Plan or the Confirmation Order.

K. Powers and Duties of the Plan Administrator. The Plan Administrator will act for the Debtors in a fiduciary capacity as applicable to a board of directors or trustees, subject to the provisions of the Plan. The powers and duties of the Plan Administrator shall include, without limitation:

(a) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Allowed Claims and paying taxes and other obligations owed by the Debtors or incurred by the Plan Administrator in connection with winding down the Estates, from the Expense Reserve, the Administrative Claims Fund, and Available Cash in accordance with the Plan;

(b) engaging attorneys, consultants, agents, employees, and any other professional persons, to assist the Plan Administrator with respect to the Plan Administrator's responsibilities;

(c) executing and delivering all documents and taking all actions necessary to consummate the Plan and wind up the Debtors' business;

(d) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained assets;

(e) coordinating the collection of outstanding accounts receivable not sold to Buyer;

(f) coordinating the storage and maintenance of the Debtors' books and records;

(g) overseeing compliance with the Debtors' accounting, finance, and reporting obligations;

(h) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, until such time a final decree has been entered;

(i) overseeing the filing of final tax returns, refund requests, audits, and other corporate dissolution documents, as required;

(j) performing any additional corporate actions as necessary to carry out the wind up and liquidation of the Debtors;

(k) paying the fees and expenses of the attorneys, consultants, agents, employees, and other professional persons engaged by the Debtors and the Plan Administrator and to pay all other expenses for winding down the affairs of the Debtors, subject to the terms of the Plan;

(l) disposing of, and delivering title to others of, or otherwise realizing the value of, all the remaining Assets, including, without limitation, the Excluded Assets;

(m) objecting to, compromising, and settling Claims;

(n) acting on behalf of the Debtors in all adversary proceedings and contested matters (including, without limitation, any Causes of Action and the Retained Lawsuit), then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute, or adjust any claim and otherwise pursue actions involving the Debtors' Assets that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived or relinquished in the Plan;

(o) implementing and/or enforcing all provisions of the Plan;  
and

(p) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or other Order of the Bankruptcy Court, or as may be needed or appropriate to carry out the provisions of the Plan.

L. Retention of Professionals. The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other Professionals that are necessary to assist the Plan Administrator in the performance of its duties as Plan Administrator or otherwise under this Plan. The reasonable fees and expenses of such professionals and the additional expenses of the Plan Administrator incurred in the performance of its duties as Plan Administrator under this Plan shall be paid by the Plan Administrator from Available Cash, and shall not be subject to the approval of the Bankruptcy Court.

M. Appointment of the Plan Administrator. The Confirmation Order shall provide for the appointment of Lehman Brothers Holdings, Inc., as the Plan Administrator. The Plan Administrator shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code.

N. Distributions to Holders of Claims and Equity Interests.

1. Estimation of Claims. The Plan Administrator may, at any time, request that the Bankruptcy Court (or the District Court, if applicable) estimate any Claim not expressly Allowed by the terms of the Plan and otherwise subject to estimation under section 502(c) of the Bankruptcy Code and for which the Debtors may be liable under the Plan, including any Claim for taxes, to the extent permitted by section 502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim, and the Bankruptcy Court (or the District Court, if applicable) will retain jurisdiction to estimate any Claim pursuant to section 502(c) of the Bankruptcy Code at any time prior to the time that such Claim becomes an Allowed Claim. If the Bankruptcy Court (or the District Court, if applicable) estimates any contingent or unliquidated Claim, the estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court (or the District Court, if applicable). The foregoing objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated by the Bankruptcy Court (or the District Court, if applicable) and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court (or the District Court, if applicable).

2. No Recourse. Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value

to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, the Estates, the Plan Administrator, or any of their respective professionals, consultants, officers, directors, or members or their successors or assigns, or any of their respective property. Except as specifically stated otherwise in the Plan, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code.

**THE ESTIMATION OF CLAIMS AND ESTABLISHMENT OF RESERVES UNDER THIS PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS IF THE ESTIMATION IS MADE SOLELY FOR THE PURPOSE OF ESTIMATING A MAXIMUM LIABILITY FOR RESERVE PURPOSES, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

3. Automatic Disallowance and Expungement of Certain Claims. On the Effective Date, all Claims filed after the applicable Bar Date that were required to be filed in advance of such Bar Date under its terms, shall be expunged and disallowed without any further notice to or action, order, or approval of the Bankruptcy Court.

4. Distributions on Account of Equity Interests. To the extent Allowed Class 3 Claims are paid in full or reserved, the Plan Administrator shall make Distributions of Available Cash to PAMI ALI LLC in respect of its Class 4 Equity Interests.

O. Disputed Claims Reserve Account.

1. Objections to Claims. Unless otherwise ordered by the Bankruptcy Court, on and after the Effective Date, the Plan Administrator shall have the exclusive right to make, file, and prosecute objections to and settle, compromise, or otherwise resolve Disputed Claims, except that as to applications for allowances of Professional Fee Claims, objections may be made in accordance with the applicable Bankruptcy Rules by parties in interest. Subject to further extension by the Bankruptcy Court, the Plan Administrator shall file and serve a copy of any such objection upon the holder of the Claim to which an objection is made on or before the latest to occur of: (i) 60 days after the Effective Date, (ii) 30 days after a request for payment or proof of claim is timely filed and properly served upon the Plan Administrator, and (iii) such other date as may be fixed by the Bankruptcy Court either before or after the expiration of such time periods. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Plan Administrator effects service in any of the following manners (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) by first-class mail, postage prepaid, on the signatory of the proof of Claim or other representative identified in the proof of claim or any attachment thereto at the address of the creditor set forth therein; or (c) by first-class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Chapter 11 Cases. From and after the Effective Date, the Plan Administrator may settle or compromise any Disputed

Claim, Cause of Action, or the Retained Lawsuit pursuant to the terms of the Plan without further order of the Bankruptcy Court.

2. Resolution of Disputed Claims. No Distribution or payment shall be made on account of a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

3. Establishment of Disputed Claims Reserve Account. On or before the Effective Date, the Debtors shall establish and fund the Disputed Claims Reserve Account, which shall be administered by the Plan Administrator.

4. Duties in Connection with Disputed Claims. The Plan Administrator shall (i) deposit in the Disputed Claims Account Cash in an amount required by order of the Bankruptcy Court or the District Court, if applicable, (including any order estimating the maximum liability of a Disputed Claim) or, in the absence of such order, Cash equal to the Distributions that would have been made to the holder of such Disputed Claim, if it were an Allowed Claim in a liquidated amount, if any, on the Effective Date (ii) object to, settle or otherwise resolve Disputed Claims, (iii) make Distributions to holders of Disputed Claims that subsequently become Allowed Claims in accordance with the Plan, and (iv) distribute any remaining assets of the Disputed Claims Reserve Accounts, after resolving all Disputed Claims, to PAMI ALI LLC in respect of its Class 4 Equity Interests in accordance with the Plan.

5. Distributions when Disputed Claim Is Resolved. On the next Distribution Date following the date upon which a Disputed Claim is ultimately Allowed, the holder of such Claim shall receive from the Disputed Claims Reserve Account any amounts attributable to such Claim, in accordance with the Plan. Any Cash Distributions held in the Disputed Claims Reserve Account for the benefit of a holder of a Disputed Claim, which is subsequently disallowed, in whole or in part, shall become Available Cash available for distribution to PAMI ALI LLC in respect of its Class 4 Equity Interests.

P. Release of KM Escrow Fund. To the extent that any amounts remain in the KM Escrow Fund after resolution of the Retained Lawsuit and after any required payments are made to KM/Plaza from the KM Escrow Fund, such amounts shall become Available Cash.

Q. Miscellaneous Distribution Provisions.

1. Method of Cash Distributions. All Distributions shall be made by the Plan Administrator or a duly-appointed disbursing agent to the holders of Allowed Claims. Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn on a domestic bank selected by the Plan Administrator or by wire transfer from a domestic bank, at the option of the Plan Administrator; *provided, however,* that Cash payments made to foreign creditors, if any, holding Allowed Claims may be (but are not required to be) paid, at the option of the Plan Administrator in such



funds and by such means as are necessary or customary in a particular foreign jurisdiction.

2. No Distribution in Excess of Allowed Amount of Claim.

Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the amount of such Allowed Claim plus interest as provided herein.

R. Allocation of Payments. Amounts paid to holders of Allowed Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess allocated to any interest that has accrued on such Claims but remains unpaid.

S. Setoffs. The Plan Administrator is authorized, pursuant to and to the extent permitted by applicable law, to set off against any Allowed Claim and the Distributions to be made on account of such Allowed Claim, the claims, rights, and Causes of Action of any nature that the Plan Administrator may hold against the holder of such Allowed Claim; *provided*, that the Plan Administrator gives the holder of such Allowed Claim no fewer than 5 days' notice, in writing (including by email), of the proposed setoff and the holder of such Allowed Claim does not object to the proposed setoff within 30 days of receiving such notice. If an objection is timely raised to a proposed setoff, the Plan Administrator may seek relief from the Bankruptcy Court to effectuate the setoff. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Plan Administrator of any such claims, rights, and Causes of Action the Debtors may have against such holder.

T. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the assignment or transfer of any lease or sublease, the delivery, making, filing, or recording of any deed or other instrument of transfer, or the issuance, transfer, or exchange of any security, under the Plan, including any deeds, bills of sale, or assignments executed in connection with the Sale Transaction or any other disposition of assets contemplated by the Plan or the Sale Order, shall not be subject to any stamp, real estate transfer, mortgage, recording, or other similar tax to the maximum extent covered by section 1146 of the Bankruptcy Code.

U. Record Date for Distributions to Holders of Claims. As of the close of business on the Confirmation Date, there shall be no further changes in the record holders of the Claims for purposes of the Distribution of Available Cash. The Debtors and the Plan Administrator shall have no obligation to recognize any transfer of Claims occurring after the Confirmation Date for purposes of the Distribution of Available Cash.

V. Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Plan Administrator may, in lieu of making such Distribution to such Person, make such Distribution into an escrow

account to be held in trust for the benefit of such holder and such Distribution shall not constitute property of the Debtors or the Estates. Such Distribution shall be held in escrow until the disposition thereof shall be determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement signed by all of the interested parties to such dispute.

W. Withholding Taxes. The Plan Administrator shall not be required to withhold taxes or comply with any applicable reporting requirements. The recipients of Distributions will be required to comply with all applicable laws and regulations concerning the reporting and taxing of the Distributions. If requested by the recipient of a Distribution, the Plan Administrator will issue an IRS Form 1099.

X. Resignation of Directors and Officers. Upon the Effective Date, the Debtors' respective boards of directors and officers shall be deemed to have resigned.

Y. Resignation or Removal of Plan Administrator. If the Plan Administrator resigns or is removed, dies, dissolves, or is incapacitated, the Bankruptcy Court shall designate another Person to become the Plan Administrator and thereupon the successor Plan Administrator, without further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor, with the compensation of the successor Plan Administrator. No successor Plan Administrator hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

Z. No Agency Relationship. The Plan Administrator shall not be deemed to be the agent for any of the holders of Claims in connection with the funds held or distributed pursuant to the Plan. The Plan Administrator shall not be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless it constitutes gross negligence or willful misconduct or breach of fiduciary duty. The Plan Administrator shall be indemnified and held harmless, including the cost of defending such claims and attorneys' fees in seeking indemnification, by the Estates against any and all claims arising out of his or her duties under the Plan, except to the extent his or her actions constitute gross negligence or willful misconduct or breach of fiduciary duty. The Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which he or she believes to be genuine and to have been signed or presented by the proper party or parties. The Plan Administrator may rely upon information previously generated by the Debtors and such additional information provided to him by former employees of the Debtors.

**ARTICLE VI - EFFECT OF PLAN ON CLAIMS,  
INTERESTS AND CAUSES OF ACTION**

A. Binding Effect. Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against the Debtors who held such Claim at any time during

the Chapter 11 Cases and its respective successors and assigns, whether or not the Claim of such holder is Impaired under the Plan and whether or not such holder has accepted (or has been deemed to accept) the Plan.

**B. Term of Injunctions or Stays. Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Chapter 11 Cases are closed.**

**C. Retention of Rights and Causes of Action. Except as provided in the Plan, all present or future rights, claims, or Causes of Action against any Person that existed and have not been released or sold on or prior to the Effective Date are preserved for the Debtors and the Estates. On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Debtors shall have possession and control of, and shall retain and have the right to enforce and pursue, any and all present or future rights, claims, or Causes of Action against any Person and with respect to any rights of the Debtors that arose before or after the Petition Date. The Debtors and the Estates have, retain, reserve, and shall be entitled to assert and pursue all such claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and all legal and equitable rights of the Debtors not expressly released under the Plan may be asserted after the Confirmation Date. The Plan Administrator may abandon, settle or release any or all such claims, rights or Causes of Action, as it deems appropriate without further Order of the Bankruptcy Court. In pursuing any claim, right, or Cause of Action, the Plan Administrator, as the representative of the Estates, shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Causes of Action shall survive confirmation and the commencement or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.**

**D. Releases by the Debtors. Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtors and their Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Plan Supplement, the Disclosure Statement, the Sale**

Order, the Purchase Agreement or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtors taking place on or before the Effective Date.

E. Releases by Holders of Claims and Interests. As of the Effective Date, except as otherwise provided in the Plan, the Releasing Parties are deemed to have released the Debtors, their Estates, and the Equity Owners from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any direct claims held by any of the Releasing Parties against the Debtors, their Estates, and/or the Equity Owners or derivative claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each Releasing Party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the Debtors' restructuring, the Chapter 11 Cases, the Sale Transaction, the subject matter of, or the transactions or events giving rise to, any claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Sale Order, the Purchase Agreement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence relating to the Debtors taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

F. Injunction.

1. Satisfaction of Claims. The treatment to be provided for Allowed Claims shall be in full satisfaction, settlement, and release of each such Claims.

2. Scope of Injunction. Except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that hold a Claim are permanently enjoined from taking any of the following actions against the Debtors, the Equity Owners, the Plan Administrator, or any present and former directors, officers, trustees, agents, attorneys, advisors, members, or employees of the Debtors, the Equity Owners, or the Plan Administrator, or any of their respective successors or assigns, or any of their respective assets or properties, on account of any Claim: (i) commencing or continuing in any manner any action or other proceeding with respect to a Claim or based upon a theory which arises out of such holder's Claim; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order with respect to a Claim; (iii) creating, perfecting or enforcing any lien or encumbrance with respect to a Claim; (iv) asserting a setoff, right of subrogation or recoupment of any kind with respect to a Claim, the assets or other

property of the Estates; and (v) commencing or continuing any action that does not comply with or is inconsistent with the Plan. Nothing shall preclude the holder of a Claim from pursuing any applicable insurance after the Chapter 11 Cases are closed, from seeking discovery in actions against third parties or from pursuing third-party insurance that does not cover Claims against the Debtors. For the avoidance of doubt, nothing in this Injunction shall limit the rights of a holder of a Claim to enforce the terms of the Plan.

3. Release of Collateral. Except as expressly provided herein, unless a holder of a Secured Claim receives a return of its Collateral in respect of such Claim under the Plan: (i) each holder of (a) an Allowed Secured Claim; and/or (b) an Allowed Claim that is purportedly secured, on the Effective Date shall (x) turn over and release to the Debtors any and all property that secures or purportedly secures such Claim; and (y) execute such documents and instruments as the Plan Administrator requires to evidence such claimant's release of such property; and (ii) on the Effective Date, all claims, rights, title, and interest in such property shall revert to the Debtors, free and clear of all Claims, including (without limitation) Liens, charges, pledges, encumbrances, and/or security interests of any kind. No Distribution shall be made to or on behalf of any holder of such Claim unless and until such holder executes and delivers to the Plan Administrator such release of Liens. Any such holder that fails to execute and deliver such release of Liens within 60 days of any demand thereof shall be deemed to have no further Claim and shall not participate in any Distribution hereunder. Notwithstanding the immediately preceding sentence, a holder of a Disputed Claim shall not be required to execute and deliver such release of Liens until the time such Claim is Allowed or disallowed.

4. Cause of Action Injunction. On and after the Effective Date, all Persons other than the Plan Administrator will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of, or respecting any claim, debt, right, or Cause of Action that the Plan Administrator retains authority to pursue in accordance with the Plan.

G. Exculpation. Except as otherwise set forth in the Plan, neither the Debtors, nor any Released Party, nor any of their respective current or former members, directors, officers, trustees, employees, agents (acting in such capacity), advisors, attorneys, nor representatives of any professional employed by any of them shall have or incur any liability to any Person or entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, the Sale Order, the Purchase Agreement or any contract, release, or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Plan, the administration of the Plan or property to be distributed pursuant to the Plan, the Sale Transaction, and actions taken or omitted to be taken in connection with the Chapter 11 Cases or the operations, monitoring, or administration of the Debtors during the Chapter 11

**Cases, and the Plan Administrator shall have no liability for any action taken or omitted to be taken in connection with or related to the winding down and post-confirmation administration of the Estates, except for (i) intentional fraud, gross negligence, or willful misconduct, and (ii) solely in the case of attorneys, to the extent that such exculpation would violate any applicable professional disciplinary rules, including Disciplinary Rule 6-102 of the Code of Professional Conduct.**

H. Preservation and Application of Insurance. The provisions of the Plan shall not diminish or impair in any manner the enforceability of coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtors, any directors, trustees, or officers of the Debtors, or any other Person, including, without limitation, insurance for the Debtors' directors and officers.

I. Compromise of Controversies. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to, or in connection with the business or affairs of or transactions with the Debtors. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estates, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.

J. Post-Confirmation Activity. As of the Effective Date, the Plan Administrator may conclude the winding down of the Debtors' affairs without supervision of the Bankruptcy Court, other than those restrictions expressly imposed by the Plan and the Confirmation Order. Without limiting the foregoing, the Plan Administrator may pay any charges it incurs for taxes, professional fees, disbursements, expenses, or related support services after the Effective Date without application to and approval of the Bankruptcy Court.

K. Avoidance Actions. On the Effective Date, the Debtors shall be deemed to release any and all rights, claims, and causes of action that a trustee, debtor in possession or other appropriate party in interest would be able to assert on behalf of any of the Debtors under applicable state statutes or the avoidance provisions of chapter 5 of the Bankruptcy Code, including actions under one or more of the provisions of Bankruptcy Code sections 506 and, 542 through 551.

## ARTICLE VII - EXECUTORY CONTRACTS

A. Executory Contract and Unexpired Leases. To the extent not previously rejected, on the Confirmation Date, but subject to the occurrence of the Effective Date, all of the Debtors' executory contracts and unexpired leases entered into prior to the Petition Date that have not previously been assumed or rejected, and have not been assumed and assigned to the Buyer, shall be deemed rejected by the Debtors pursuant to the provisions of section 365 of the Bankruptcy Code.

B. Rejection Damages Bar Date. If rejection, pursuant to the Plan, of an executory contract or unexpired lease, results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the Debtors or their property or the Plan Administrator unless a proof of claim is filed with the Bankruptcy Court and served upon the Debtors and/or Plan Administrator, as applicable, not later than 30 days after the date of service of notice of entry of the Confirmation Order, or such other period set by the Bankruptcy Court.

C. Effect of Post-Confirmation Rejection. The entry by the Bankruptcy Court on or after the Confirmation Date of an order authorizing the rejection of an executory contract or unexpired lease entered into prior to the Petition Date shall result in such rejection being a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code.

## ARTICLE VIII - CONDITIONS TO CONFIRMATION AND OCCURRENCE OF EFFECTIVE DATE

A. Conditions to Confirmation. The Plan may not be confirmed unless the Confirmation Order is entered in a form reasonably acceptable to the Plan Proponent.

B. Conditions to Occurrence of Effective Date. The Effective Date for the Plan may not occur unless each of the conditions set forth below is satisfied. Any one or more of the following conditions may be waived in whole or in part at any time by the Plan Proponent:

(a) The Bankruptcy Court shall have entered the Confirmation Order and it shall have become a Final Order.

(b) The Confirmation Order shall provide for the releases, injunctions and exculpation of the Persons provided for the Plan.

(c) Lehman Brothers Holding, Inc. or its designee shall have been appointed as Plan Administrator and shall have accepted to act in such capacity in accordance with the terms and conditions of the Plan.

C. Effect of Nonoccurrence of the Conditions to Occurrence of Effective Date. If each of the conditions to the occurrence of the Effective Date has not been satisfied or

duly waived on or before the date which is no later than the first Business Day after 14 days after the Confirmation Date, or by such later date as is approved, after notice and a hearing, by the Bankruptcy Court, then upon motion by any party in interest made before the time that each of the conditions has been satisfied or duly waived, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to occurrence of the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant the Plan, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall:

(i) constitute a waiver or release of any claims by or against the Debtors, or (ii) prejudice in any manner the rights of the Debtors or of any other party in interest.

D. Closing of the Chapter 11 Cases. On the Effective Date, pursuant to the Confirmation Order, the Chapter 11 Cases of the Debtors other than Collins North shall be closed. Any Claims against the Collins Subsidiaries that are not satisfied in accordance with this Plan on the Effective Date shall be treated as Claims against Collins North and shall be administered by the Plan Administrator in the Chapter 11 Case of Collins North in accordance with this Plan. Until entry of a final decree closing all of the Chapter 11 Cases, the closing of the Chapter 11 Cases of FL Spirits, Collins Central, and Collins South pursuant to the Confirmation Order shall be for procedural purposes and for purposes of calculating fees payable under 28 U.S.C. § 1930 only, and shall not prejudice the rights of any creditor with respect to such Debtors or their estates.

#### **ARTICLE IX - CONFIRMABILITY AND SEVERABILITY OF THE PLAN**

The Plan Proponent reserves the right to alter, amend, modify, revoke, or withdraw the Plan. If the Plan Proponent revokes or withdraws from the Plan, then nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, or to prejudice in any manner the rights of the Plan Proponent or any persons in any further proceedings involving the Plan Proponent. A determination by the Bankruptcy Court that the Plan, as it applies to the Debtors, is not confirmable pursuant to section 1129 of the Bankruptcy Code shall not limit or affect the Plan Proponent's ability to modify the Plan to satisfy the confirmation requirements of section 1129 of the Bankruptcy Code. Each provision of the Plan shall be considered severable and, if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, the balance of the Plan shall be given effect without relation to the invalid provision, to the extent it can be done without causing a material change in the Plan.

The Plan Proponent shall have the right to request the Bankruptcy Court to confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.



**ARTICLE X - ADMINISTRATIVE PROVISIONS**

A. Retention of Jurisdiction. Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction and authority for all purposes permitted under applicable law, including, without limitation, the following purposes:

(a) To determine any motion, adversary proceeding, avoidance action, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date;

(b) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(c) To ensure that Distributions to holders of Allowed Claims are accomplished as provided herein;

(d) To hear and determine objections to the allowance of Claims, whether filed, asserted, or made before or after the Effective Date, including, without limitation, to hear and determine objections to the classification of Claims and the allowance or disallowance of Disputed Claims, in whole or in part;

(e) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim; provided, however, that the District Court shall have jurisdiction to estimate any Claim that cannot be estimated by the Bankruptcy Court;

(f) To enter, implement, or enforce such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(g) To issue injunctions, enter and implement other Orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other Order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all Professional Fee Claims;

(j) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order or any transactions or payments contemplated hereby or thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) To take any action and issue such Orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release or injunction provisions set forth herein, or to maintain the integrity of the Plan following consummation;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

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

(n) To enter a final decree closing the Chapter 11 Cases;

(o) To recover all assets of the Debtors and property of the Estates, wherever located;

(p) To hear and determine any matters for which jurisdiction was retained by the Bankruptcy Court pursuant to prior Orders; and

(q) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code, title 28 of the United States Code, and other applicable law.

B. Governing Law. Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the laws of the State of New York shall govern the rights and obligations arising under the Plan, without giving effect to principles of conflicts of law of New York.

C. Continuing Effect of Sale Order. Notwithstanding anything in the Plan to the contrary, the Sale Order and any and all related documents shall not be modified, limited, or amended by the Plan.

D. Effectuating Documents and Further Transactions. The Debtors or the Plan Administrator, as applicable, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

E. Waiver of Bankruptcy Rule 7062. The Plan Proponent may request the Confirmation Order include (i) a finding that Bankruptcy Rule 7062 shall not apply to

the Confirmation Order; and (ii) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

F. No Admissions. Notwithstanding anything herein to the contrary, nothing contained in the Plan or the Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

G. Payment of Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court on the Confirmation Date, shall be paid on the Effective Date. Any statutory fees accruing after the Confirmation Date shall be paid in accordance with the Plan.

H. Disposal of Books and Records. The Debtors' and the Plan Administrator's rights to seek authorization from the Bankruptcy Court for the destruction of books and records prior to the expiration of any statutory period requiring that such records be maintained are preserved.

I. Amendments.

1. Pre-Confirmation Amendment. The Plan Proponent may modify the Plan at any time prior to the entry of the Confirmation Order provided that the Plan, as modified, and the Disclosure Statement pertaining thereto meet applicable Bankruptcy Code requirements, including those set forth in section 1125.

2. Post-Confirmation Amendment Not Requiring Resolicitation. After the entry of the Confirmation Order, the Plan Proponent may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided (i) the Plan Proponent obtain approval of the Bankruptcy Court for such modification, after notice and a hearing, and (ii) such modification shall not materially and adversely affect the interests, rights, or treatment, of any Class under the Plan.

3. Post-Confirmation Amendment Requiring Resolicitation. After the Confirmation Date and before the Effective Date of the Plan, the Plan Proponent may modify the Plan in a way that materially or adversely affects the interests, rights, treatment, or Distributions of a class of Claims provided: (i) the modified Plan meets applicable Bankruptcy Code requirements; (ii) the Plan Proponent obtains Bankruptcy Court approval for such modification, after notice to all creditors entitled to receive notice pursuant to the Bankruptcy Code and the Bankruptcy Rules and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims voting in each Class affected by such modification; and (iv) the Plan Proponent complies with section 1125 of the Bankruptcy Code with respect to the modified Plan.

J. Successors and Assigns. The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor, or assign of such Person.

K. Confirmation Order and Plan Control. To the extent the Confirmation Order and/or the Plan is inconsistent with the Disclosure Statement or any other agreement entered into between the Debtors and any third party, the Plan controls the Disclosure Statement and any such agreements and the Confirmation Order controls the Plan.

L. Notices. Any notice required or permitted to be provided under the Plan, unless otherwise provided herein, shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) overnight delivery service, postage prepaid, and addressed as follows:

For the Debtors and the Equity Owners:

c/o LEHMAN BROTHERS HOLDINGS, INC.  
1271 Avenue of the Americas  
New York, New York 10020  
Attn: Anthony Barsanti

with copies to:

TOGUT, SEGAL & SEGAL LLP  
Attorneys for the Debtors and Debtors in  
Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
Facsimile: (212) 967-4258  
Attn: Frank A. Oswald, Esq.  
Steven S. Flores, Esq.

WEIL, GOTSHAL & MANGES LLP  
Attorneys for the Equity Owners  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Attn: Jacqueline Marcus, Esq.  
Doron Kenter, Esq.

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

N. Deemed Acts. Whenever an act or event is expressed under the Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party, by virtue of the Plan and the Confirmation Order.

[SIGNATURE PAGES IMMEDIATELY TO FOLLOW]

Dated: New York, New York  
April 13, 2015

Respectfully Submitted,

FL 6801 SPIRITS LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS CENTRAL LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS NORTH LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory

FL 6801 COLLINS SOUTH LLC  
Debtor and Debtor in Possession

By: /s/Anthony Barsanti  
Anthony Barsanti  
Authorized Signatory