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ATTORNEYS FOR THE  
DEBTORS AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>NNN 3500 MAPLE 26, LLC, <i>et al.</i>,</b>	)	
	)	<b>Case No. 13-30402-hdh-11</b>
	)	
<b>Debtors</b>	)	<b>Jointly Administered</b>

**DEBTORS' JOINT PLAN OF REORGANIZATION**

Dated: February 25, 2014

NNN 3500 Maple 1, LLC, NNN 3500 Maple 2, LLC, NNN 3500 Maple 3, LLC, NNN 3500 Maple 4, LLC, NNN 3500 Maple 5, LLC, NNN 3500 Maple 6, LLC, NNN 3500 Maple 7, LLC, NNN 3500 Maple 10, LLC, NNN 3500 Maple 12, LLC, NNN 3500 Maple 13, LLC, NNN 3500 Maple 14, LLC, NNN 3500 Maple 15, LLC, NNN 3500 Maple 16, LLC, NNN 3500 Maple 17, LLC, NNN 3500 Maple 18, LLC, NNN 3500 Maple 20, LLC, NNN 3500 Maple 22, LLC, NNN 3500 Maple 23, LLC, NNN 3500 Maple 24, LLC, NNN 3500 Maple 26, LLC, NNN 3500 Maple 27, LLC, NNN 3500 Maple 28, LLC, NNN 3500 Maple 29, LLC, NNN 3500 Maple 30, LLC, NNN 3500 Maple 31, LLC, NNN 3500 Maple 32, LLC, and NNN 3500 Maple 34, LLC, debtors and debtors in possession herein, hereby propose the following Joint Plan of Reorganization pursuant to subsection 1121(a) of the Bankruptcy Code.

## ARTICLE I.

### DEFINITIONS

#### A. Defined Terms

In addition to such other terms as are defined in other sections of this Plan, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural, masculine and feminine forms of the terms defined).

1.1 “Administrative Expense” includes any cost or expense of administration occurring during the administration of the New Debtors’ chapter 11 cases allowed under subsections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the estates of the Debtors, any actual and necessary expenses of operating the business of the Debtors, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estate of the Debtor under section 1930, chapter 123 of title 28 of the United States Code.

1.2 “Allowed” when used with respect to a Claim (other than an Administrative Expense), means (a) a Claim to the extent it is not Contested; or (b) a Contested Claim, proof of which was filed timely with the Bankruptcy Court, and (i) as to which no objection was filed by the Objection Deadline, or (ii) as to which an Objection was filed by the Objection Deadline, to the extent, if any, such Claim is ultimately allowed by a Final Order; provided however, if a Claim is to be determined in a forum other than the Bankruptcy Court, such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy Court. “Allowed,” when used with respect to an Administrative Expense, shall mean an Administrative Expense approved by application to the Bankruptcy Court.

1.3 “Assets” includes all right, title, and interest in and to all property of every type or nature owned or claimed by each Debtor as of the Petition Date, including the Property, together with all such property of every type or nature subsequently acquired by the Debtors through the Effective Date, whether real or personal, tangible or intangible, and wherever located, and including, but not limited to, property as defined in section 541 of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all claims, causes of action or remedies to pierce the corporate veil of the Debtors or to ignore the corporate structure of the Debtors and all Avoidance Actions.

1.4 “Avoidance Action” means a cause of action assertable by the Debtors or the Reorganized Debtors pursuant to Chapter 5 of the Bankruptcy Code, including without limitation, actions brought or which may be brought under sections 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code.

1.5 “Ballot” means the form of ballot provided to holders of Claims or Interests entitled to vote pursuant to Bankruptcy Rule 3017(d), by which each such holder may accept or reject the Plan.

1.6 “Ballot Deadline” means the last date established by the Bankruptcy Court for the return of Ballots.

1.7 “Bankruptcy Code” means title 11 of the United States Code, as amended from time to time.

1.8 “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

1.9 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, including all applicable local rules of the Bankruptcy Court.

1.10 “Bar Date” is the date established by the Bankruptcy Court, including through any standing order, for filing proofs of claim or proofs of interest against the New Debtors; provided, however, that if the Bankruptcy Court has ordered an extension of the time by which a particular Creditor may file a proof of Claim or proof of interest, the date set with respect to such Creditor shall be the Bar Date with respect to such Creditor, but only as to such Creditor.

1.11 “Business Day” means any day other than Saturday, Sunday, a legal holiday, or a day on which national banking institutions in Texas are authorized or obligated by law or executive order to close.

1.12 “Cash Infusion” means a cash investment in an amount necessary to enable the Reorganized Debtors to fulfill their obligations under the Plan.

1.13 “Claim” means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, legal, equitable, secured or unsecured or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, secured or unsecured.

1.14 “Claimant” means the holder of a Claim.

1.15 “Class” means a category or group of holders of Claims or Interests as designated in Article II of the Plan.

1.16 “Collateral” means any Asset subject to a valid and enforceable Lien to secure payment of a Claim, including any right of offset asserted against any Asset.

1.17 “Confirmation Date” means the date of entry of the Confirmation Order.

1.18 “Confirmation Hearing” means the hearing, as it may be continued from time to time, conducted by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as the same may be amended or supplemented.

1.19 “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

1.20 “Contested,” when used with respect to a Claim, means a Claim (including with respect to an Administrative Expense) against any Debtor, proof of which was timely and properly filed, that is disputed under the Plan or as to which the Debtor has interposed a timely objection and/or request or estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which 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.

1.21 “Creditor” means a “creditor,” as defined in section 101(10) of the Bankruptcy Code.

1.22 “Cure Claim” shall refer to the payment or other performance required to cure any existing default under an executory contract or unexpired lease, including, without limitation, the Tenant Reimbursement.

1.23 “Debtor” means any one of the Debtors, as the context may require.

1.24 “Debtors” means NNN 3500 Maple 1, LLC, NNN 3500 Maple 2, LLC, NNN 3500 Maple 3, LLC, NNN 3500 Maple 4, LLC, NNN 3500 Maple 5, LLC, NNN 3500 Maple 6, LLC, NNN 3500 Maple 7, LLC, NNN 3500 Maple 10, LLC, NNN 3500 Maple 12, LLC, NNN 3500 Maple 13, LLC, NNN 3500 Maple 14, LLC, NNN 3500 Maple 15, LLC, NNN 3500 Maple 16, LLC, NNN 3500 Maple 17, LLC, NNN 3500 Maple 18, LLC, NNN 3500 Maple 20, LLC, NNN 3500 Maple 22, LLC, NNN 3500 Maple 23, LLC, NNN 3500 Maple 24, LLC, NNN 3500 Maple 26, LLC, NNN 3500 Maple 27, LLC, NNN 3500 Maple 28, LLC, NNN 3500 Maple 29, LLC, NNN 3500 Maple 30, LLC, NNN 3500 Maple 31, LLC, NNN 3500 Maple 32, LLC, and NNN 3500 Maple 34, LLC, collectively, in their capacities as debtors and debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

1.25 “Disallowed,” when used with respect to all or any part of a Claim or Interest, means that portion of a Claim or Interest to which an Objection or motion to disallow has been sustained by a Final Order or, as to a Contested Claim, any portion thereof which is not allowed by a Final Order of the Bankruptcy Court.

1.26 “Disclosure Statement” means the written statement, as amended, supplemented, or modified from time to time, describing the Plan that is prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code and Bankruptcy Rule 3018.

1.27 “Effective Date” means the Business Day specified by the Debtors on or after the Confirmation Date on which no stay is in effect and each of the conditions to the effectiveness of the Plan set forth in Article XI below are satisfied or waived.

1.28 “Effective Month” shall mean the calendar month in which the Effective Date occurs.

1.29 “Event of Default” means the failure or neglect of the Reorganized Debtors to perform, keep, or observe any term, covenant, or condition of the Plan, but only if the Event of Default is not cured prior to the expiration of the applicable cure period.

1.30 “Final Order” means an order or judgment of the Bankruptcy Court or any other court or adjudicative body, as to which the time to appeal or seek rehearing or petition for certiorari shall have expired, and for which such order or judgment shall no longer be subject to appeal, rehearing, or certiorari proceeding.

1.31 “Initial Distribution Date,” when used with respect to each Claim, shall mean:

- (a) as to any Allowed Claim, the date on which the first payment is due to the holder of such Allowed Claim pursuant to Article IV of the Plan; or

- (b) as to any Contested Claim, the first day of the first calendar month beginning at least 120 days after the date on which a Contested Claim becomes an Allowed Claim.

The Initial Distribution Date shall be separately determined with respect to each Allowed Claim based upon the date each such Claim becomes an Allowed Claim.

1.32 “Insider” means Persons described in section 101(31) of the Bankruptcy Code.

1.33 “Interests” shall refer to any equity or ownership interest in the Debtors including all membership interests of any class in the Debtors.

1.34 “Lien” means any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any Asset, including any right of offset asserted against any Asset.

1.35 “New Debtors” refers to NNN 3500 Maple 1, LLC, NNN 3500 Maple 2, LLC, NNN 3500 Maple 3, LLC, NNN 3500 Maple 4, LLC, NNN 3500 Maple 5, LLC, NNN 3500 Maple 6, LLC, NNN 3500 Maple 7, LLC, NNN 3500 Maple 10, LLC, NNN 3500 Maple 12, LLC, NNN 3500 Maple 13, LLC, NNN 3500 Maple 14, LLC, NNN 3500 Maple 15, LLC, NNN 3500 Maple 16, LLC, NNN 3500 Maple 17, LLC, NNN 3500 Maple 18, LLC, NNN 3500 Maple 20, LLC, NNN 3500 Maple 22, LLC, NNN 3500 Maple 23, LLC, NNN 3500 Maple 24, LLC, NNN 3500 Maple 27, LLC, NNN 3500 Maple 28, LLC, NNN 3500 Maple 29, LLC, NNN 3500 Maple 30, LLC, NNN 3500 Maple 31, LLC, NNN 3500 Maple 32, LLC, and NNN 3500 Maple 34, LLC, collectively, in their capacities as debtors and debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

1.36 “Objection” includes (a) an objection to the allowance of a Claim interposed by any party entitled to do so within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, and (b) as to any Taxing Authority, shall include a proceeding commenced under section 505 of the Bankruptcy Code to determine the legality or amount of any tax.

1.37 “Objection Deadline” means the date which is 180 days after the Effective Date; provided, however, this deadline may be extended by the Court upon the request of the Reorganized Debtors or the Successor Debtor.

1.38 “Original Debtor” refers to NNN 3500 Maple 26, LLC.

1.39 “Original Petition Date” means November 30, 2012, the date on which the Original Debtor filed its bankruptcy case.

1.40 “Person” means any individual, corporation, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, or any political subdivision thereof or other entity.

1.41 “Plan” means this plan of reorganization proposed by the Debtors, as the same may be amended, supplemented or otherwise modified, including the exhibits, schedules and supplements hereto.

1.42 “Plan Documents” shall refer to the documents that aid in effectuating the Plan as specifically identified as such herein and filed with the Bankruptcy Court and filed with the Bankruptcy Court no later than five (5) days prior to the Ballot Deadline, unless otherwise provided herein, provided in the Disclosure Statement, or ordered by the Court.

1.43 “Plan Rate” shall mean the prevailing federal post-judgment rate of interest as set forth in 28 U.S.C. § 1961 as of the Effective Date; provided, however, that if an impaired Class rejects the Plan, the “Plan Rate” for such Class shall be the minimum annual rate of interest that the Bankruptcy Court determines is necessary in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

1.44 “Priority Claim” means a Claim, other than a Claim for an Administrative Expense, to the extent that such Claim is entitled to priority in payment under section 507(a) of the Bankruptcy Code.

1.45 “Professional” means those persons retained pursuant to an order of the Bankruptcy Court in accordance with sections 327 and 1103 of the Bankruptcy Code or who are entitled to compensation or reimbursement pursuant to sections 503(b)(3)(D) or 506(b) of the Bankruptcy Code.

1.46 “Property” shall mean the land, building(s), improvements, and fixtures commonly known as 3500 Maple Avenue, Dallas, Texas 75219 in which each Debtor holds an ownership interest as a tenant in common.

1.47 “Pro Rata Share” means, as the case may be, the proportion that the amount an Allowed Claim (not yet paid) bears to the aggregate amount of all Allowed Claims (not yet paid) with respect to any specific Class, including Contested Claims, but not including Disallowed Claims as calculated on the Initial Distribution Date or Subsequent Distribution Date, as applicable.

1.48 “Rejection Claim” means a Claim arising under section 502(g) of the Bankruptcy Code as a consequence of the rejection of any executory contract or unexpired lease.

1.49 “Reorganized Debtors” means the Debtors from and after the Effective Date.

1.50 “Schedules” means the schedules of assets and liabilities and the statement of financial affairs filed by each of the Debtors as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules or statements have been or may be subsequently amended or supplemented.

1.51 “Secured Claim” shall mean (a) a Claim secured by a Lien against an Asset, to the extent such Lien is valid, perfected and enforceable under applicable non-bankruptcy law and is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and which is duly Allowed, but only to the extent that such Claim does not exceed the value of Debtor's Assets which the Bankruptcy Court finds are valid security for such Claim (except, if the holder of such Claim makes the election provided for in section 1111(b)(2) of the Bankruptcy Code, the entire amount of the Claim shall be a Secured Claim), and (b) any right of offset asserted against the Debtors or any Asset.

1.52 “Secured Creditor” shall mean the holder of a Secured Claim.

1.53 “Subsequent Petition Date” means August 29, 2013, the date on which the New Debtors filed their bankruptcy cases.

1.54 “Successor Debtor” means the limited liability company to be formed pursuant to the Plan into which all of the members of each Debtor and consenting non-Debtor TIC shall contribute its membership interest in such Debtor or consenting non-Debtor TIC, as applicable, which entity shall be subject to an operating agreement or similar formation document that will constitute a Plan Document.

1.55 “Tax Claim” shall refer to any Claim for or relating to any type or form of taxes, whether assessed by the United States of America, the IRS or any Taxing Authority, including without limitation property, ad valorem, excise, sales, fuel, income or franchise taxes, and whether the tax is assessed against the Debtors as a taxpayer or as a holder of trust fund taxes.

1.56 “Taxing Authority” shall include the State of Texas or any subdivision thereof, including without limitation any political subdivision of the State of Texas assessing ad valorem taxes against any of the Assets.

1.57 “Tenant Reimbursement” shall mean the amount owed to the tenants leasing space at the Property for the reimbursement for common area maintenance expenses under the terms of their respective leases.

1.58 “TIC” or “TICs” means the various limited liability companies who hold title to the Property as tenants in common, including the Debtors.

1.59 “TIC Agreement” means that certain Tenants in Common Agreement, effective as of February 15, 2006, which was recorded in the Official Records of the Dallas County Clerk’s Office on February 15, 2006, as Instrument Number 200600057022 to which each of the TICs is a party.

1.60 “Trust” means Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23.

1.61 “Trust Collateral” shall mean all property of every type or nature in which the Trust holds a lien or security interest to secure the payment of the Trust Note pursuant to the Trust Loan Documents, including the Property.

1.62 “Trust Loan Documents” shall refer collectively to the following, together with all loan and security documents related thereto:

- (a) That certain Promissory Note (the “Trust Note”) in the original principal amount of \$47,000,000.00, dated as of December 27, 2005, by and between Wachovia Bank, National Association, as lender, and NNN 3500 Maple, LLC and NNN 3500 Maple VF 2003, LLC, as borrowers.
- (b) That certain Deed of Trust (the “Deed of Trust”), dated as of December 27, 2005, naming Wachovia Bank, National Association as lender and NNN 3500 Maple, LLC and NNN 3500 Maple VF 2003, LLC as borrowers, and recorded in the Official Records of the Dallas County Clerk’s Office on January 9, 2006, as Instrument Number 200600008238.
- (c) That certain Assignment of Leases and Rents (“Assignment of Rents”), dated as of December 27, 2005, executed by NNN 3500 Maple, LLC and NNN 3500 Maple VF 2003, LLC, and recorded in the Official Records of the Dallas County Clerk’s Office on January 9, 2006, as Instrument Number 200600008239.

1.63 “Unclaimed Property” means any cash, distribution, or any other property of the Reorganized Debtors unclaimed for a period of one (1) year after the applicable Initial Distribution Date.

1.64 “Unsecured (General) Claim” means any Claim that is not secured by a valid and enforceable Lien against any Asset, but excluding always therefrom all: (a) Administrative Expenses; (b) Priority Claims; (c) Secured Claims; and (d) claims of other TICs against the Debtor.

1.65 “Valuation Motion” means a motion filed by the Debtors, the Reorganized Debtors or a Secured Creditor seeking to obtain a determination by the Bankruptcy Court of the value of Collateral.

**B. Interpretation.** Unless otherwise specified, all section, article and exhibit references in this Plan are to the respective section in, article of, or exhibit to, the Plan as the same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the provisions hereof. The rules of interpretation set forth in section 102 of the Bankruptcy Code shall apply to the Plan.

**C. Other Terms.** The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. References herein to “after notice and hearing” or other similar language shall have the same meaning as in section 102(1) of the Bankruptcy Code. Otherwise, terms used herein that are not specifically defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code.

**D. Exhibits and Plan Documents.** All Exhibits to the Plan and all Plan Documents are incorporated into the Plan by this reference and are a part of the Plan as if set forth in full herein. All Plan Documents shall be filed with the Clerk of the Bankruptcy Court not less than five (5) days prior to the commencement of the Ballot Deadline. Holders of Claims and Interests may obtain a copy of the Plan Documents, once filed, by a written request sent to the following address: Carolyn Perkins, Andrews Kurth LLP, 1717 Main Street, Suite 3700, Dallas, Texas 75201, Attention: Carolyn Perkins; Fax number (214) 659-4401; email: [carolynperkins@andrewskurth.com](mailto:carolynperkins@andrewskurth.com).

## ARTICLE II.

### CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 The following is a designation of the classes of Claims under this Plan, with the designation of A-AA constituting reference to each of the twenty-seven (27) Debtors. Administrative Expenses and Priority Claims have not been classified and are excluded from the following classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed classified in a particular Class only to the extent that the Claim qualifies within the description of that Class. A Claim is included in a particular Class only to the extent that the Claim is an Allowed Claim in that Class.

2.2 Claims and Interests. Allowed Claims and Interests are classified under this Plan as follows:

- (a) Classes 1A-AA – Secured Tax Claims
- (b) Classes 2A-AA – Secured Claim of the Trust
- (c) Classes 3A-AA – Secured Claim of Comm-Fit, L.P.
- (d) Classes 4A-AA – Secured Claim of Jemm Investments, Inc.
- (e) Classes 5A-AA – Secured Claim of Fast-Trak Construction, Inc.



(f) Classes 6A-AA – Unsecured (General) Claims

(g) Classes 7A-AA – Claims of Other TICs

(h) Classes 8A-AA - Interests in the Debtor

2.3 Impaired Classes of Claims and Interests. With the exception of Classes 7A-AA and 8A-AA, all Classes of Claims and Interests are unimpaired under the Plan.

2.4 Impairment or Classification Controversies. If a controversy arises as to the classification of any Claim or Interest, or as to whether any Class of Claims or Interests is impaired under the Plan, the Bankruptcy Court shall determine such controversy as a part of the confirmation process.

### ARTICLE III.

#### **TREATMENT OF ADMINISTRATIVE EXPENSES AND CERTAIN PRIORITY CLAIMS**

##### 3.1 Administrative Expenses.

(a) Except to the extent that a holder of an Allowed Administrative Expense has been paid prior to the Effective Date or agrees to less favorable treatment, each holder of an Allowed Administrative Expense shall receive, at the Reorganized Debtors' option, (i) the amount of such holder's Allowed Administrative Expense in one cash payment on the later of the Effective Date or the fourteenth (14<sup>th</sup>) day after such Claim becomes an Allowed Claim, or as soon thereafter as reasonably practicable, (ii) the amount of such holder's Allowed Claim in accordance with the ordinary business terms of such expense or cost, or (iii) such other treatment as may be agreed to in writing by such Administrative Expense Creditor and the Reorganized Debtors or as ordered by the Bankruptcy Court.

(b) Unless the Bankruptcy Court orders to the contrary or the Reorganized Debtors agree to the contrary in writing, the holder of a Claim for an Administrative Expense, other than such a Claim by a Professional, a liability incurred and paid in the ordinary course of business by the Debtor, or an Allowed Administrative Expense, shall file with the Bankruptcy Court and serve upon the Debtors and their counsel, a written notice of such Claim for an Administrative Expense within thirty (30) days after the Effective Date. Such notice shall include at a minimum: (i) the name, address, telephone number and fax number (if applicable) of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. Failure to timely and properly file and serve such notice shall result in such Claim for an Administrative Expense being forever barred and discharged.

(c) A Claim for an Administrative Expense, for which a proper notice was filed and served under subsection (b) above, shall become an Allowed Administrative Expense if no objection is filed within thirty (30) days of the filing and service of such notice. If a timely objection is filed, the Claim shall become an Allowed Administrative Expense only to the extent allowed by a Final Order.

(d) Each holder of an Allowed Administrative Expense Claim in the same amount against multiple Debtors shall only be entitled to one satisfaction with respect to its Allowed Administrative Expense Claim.

3.2 Claims by Professionals. The above procedures shall not apply to Professionals, who shall file and submit a final fee application to the Bankruptcy Court no later than sixty (60) days after the Effective Date. Professional fees and expenses to any Professional incurred on or after the Effective Date may be paid without necessity of application to or order by the Court.

3.3 Priority Claims.

(a) Except to the extent that a holder of an Allowed Priority Claim has been paid prior to the Effective Date or agrees to less favorable treatment, Allowed Priority Claims will be paid on the later of the Effective Date or the date which is 14 days after the date on which such Priority Claim is Allowed, or as soon thereafter as reasonably practicable. However, the Debtors do not believe that there are any unpaid Priority Claims.

(b) Each holder of an Allowed Priority Claim in the same amount against multiple Debtors shall only be entitled to one satisfaction with respect to its Allowed Priority Claim.

3.4 Trustee's Fees. All quarterly trustee's fees pursuant to 28 U.S.C. §1930(a)(6) shall be paid by the Reorganized Debtors as of the Effective Date, or as soon thereafter as reasonably practicable, and thereafter as the same may become due.

**ARTICLE IV.**

**TREATMENT OF CLAIMS AND INTERESTS**

4.1 Classes 1A-AA – Secured Tax Claims. Allowed Secured Tax Claims, if any, shall be paid and treated as follows:

(a) Except to the extent that a holder of an Allowed Secured Tax Claim has been paid prior to the Effective Date or agrees to less favorable treatment, Allowed Secured Tax Claims shall be paid in full prior to becoming delinquent pursuant to state law. In the event that such Secured Tax Claims are not paid prior to delinquency, holders of Secured Tax Claims shall be entitled to enforce their rights under state law, but subject in all respects to Section 7.6 of the Plan.

(b) The holders of Allowed Secured Tax Claims shall retain their Liens until such Claims are paid in full.

(c) To the extent the holder of an Allowed Secured Tax Claim is entitled to receive interest on its Claim, such Claim shall accrue interest at the rate determined under applicable nonbankruptcy law in accordance with section 511 of the Bankruptcy Code. In the event nonbankruptcy law does not prescribe an interest rate, such Claim shall accrue interest at the Plan Rate.

(d) To the extent that a Secured Tax Claim is objected to by the Reorganized Debtors or the Successor Debtor, distributions shall commence on the undisputed portion of such claim pursuant to the applicable provisions concerning distributions contained in the Plan.

(e) Notwithstanding any other provision in this section, the Debtors, the Reorganized Debtors or the Successor Debtor and the holder of an Allowed Secured Tax Claim may agree to any alternate treatment of such Allowed Secured Tax Claim, provided that such treatment shall not provide a return to the holder of

such Claim having a present value as of the Effective Date in excess of the amount of such Claim as of the Effective Date.

(f) Each holder of an Allowed Secured Tax Claim in the same amount against multiple Debtors shall only be entitled to one satisfaction with respect to its Allowed Secured Tax Claim.

4.2 Classes 2A-AA – Secured Claim of the Trust. The Secured Claim of the Trust, to the extent Allowed, shall be treated as a Secured Claim secured by liens and security interests in all of the Trust Collateral, including the Property, and shall be paid and treated as follows:

(a) The Trust shall retain its Liens on the Trust Collateral.

(b) The Trust Note shall be cured and reinstated in accordance with Section 1124 of the Bankruptcy Code.

(c) All accrued but unpaid interest and reasonable fees due and owing under the Trust Note, without any prepayment premium, yield maintenance or other penalties, shall be paid on the Effective Date, or as soon thereafter as reasonably practicable.

(d) The Trust's Allowed Secured Claim shall accrue interest from and after the Effective Date at the non-default rate under the Trust Note of 5.77 percent per annum.

(e) The holder of the Allowed Secured Claim of the Trust shall only be entitled to one satisfaction against all Debtors.

4.3 Classes 3A-AA – Secured Claim of Comm-Fit, L.P. The Secured Claim of Comm-Fit, L.P., (“Comm-Fit”), to the extent Allowed, shall be treated as a Secured Claim secured by liens and security interests in its prepetition Collateral consisting of certain exercise equipment, including a treadmill, recumbent bike, and related electronic software located at the Property (the “Comm-Fit Collateral”) and shall be paid and treated as follows:

(a) Comm-Fit shall retain its Liens on the Comm-Fit Collateral until its Allowed Secured Claim has been paid in full.

(b) Except to the extent Comm-Fit has been paid prior to the Effective Date or agrees to less favorable treatment, Comm-Fit shall be paid in full, with interest, on the Effective Date or as soon thereafter as reasonably practicable.

(c) The holder of the Allowed Secured Claim of Comm-Fit shall only be entitled to one satisfaction against all Debtors.

4.4 Classes 4A-AA – Secured Claim of Jemm Investments, Inc. The Secured Claim of Jemm Investments, Inc. (“Jemm”), to the extent Allowed, shall be treated as a Secured Claim secured by liens and security interests in its prepetition collateral consisting of certain HVAC equipment located at the Property (the “Jemm Collateral”), and shall be paid and treated as follows:

(a) Jemm shall retain its Liens on the Jemm Collateral until its Allowed Secured Claim has been paid in full.

(b) Except to the extent that Jemm has been paid prior to the Effective Date or agrees to less favorable treatment, Jemm shall be paid in full, with interest, on the Effective Date, or as soon thereafter as reasonably practicable.

(c) The holder of the Allowed Secured Claim of Jemm shall only be entitled to one satisfaction against all Debtors.

4.5 Classes 5A-AA – Mechanic’s Lien Claim of Fast-Trak Construction, Inc. The Mechanic’s Lien Claim of Fast-Trak Construction, Inc. (“Fast-Trak”), to the extent Allowed, shall be treated as a Secured Claim secured by a lien on the Property and shall be paid and treated as follows:

(a) Fast-Trak shall retain its Mechanic’s Lien, if any, on the Property until its Allowed Secured Claim has been paid in full.

(b) Except to the extent that Fast-Trak has been paid prior to the Effective Date or agrees to less favorable treatment, Fast-Trak shall be paid in full, with interest, on the Effective Date, or as soon thereafter as reasonably practicable.

(c) The holder of the Allowed Mechanic’s Lien Claim of Fast-Trak shall only be entitled to one satisfaction against all Debtors.

4.6 Classes 6A-AA – Unsecured (General) Claims. Allowed Unsecured (General) Claims shall be paid and treated as follows:

(a) Except to the extent the holder of an Allowed Class 6A-AA Unsecured (General) Claim agrees to less favorable treatment, each holder of an Allowed Class 6A-AA Unsecured (General) Claim shall be paid in full, with interest at the Plan Rate, on the Effective Date, or as soon thereafter as reasonably practicable.

(b) Each holder of an Allowed Unsecured (General) Claim against multiple Debtors shall only be entitled to one satisfaction with respect to its Allowed Unsecured (General) Claim.

4.7 Classes 7A-AA – Claims of other TICs. Class 7A-AA consists of all Allowed Unsecured Claims against the Debtors by non-Debtor TICs, the co-owners of the Property, and the non-Debtor TICs’ interests in the Property, which TICs are jointly and severally liable on Class 1A-AA, Class 2A-AA, Class 3A-AA, and Class 4A-AA, Class 5A-AA and Class 6A-AA Claims, including those Claims arising before the Effective Date or those which arise under this Plan or the TIC Agreement. On the Effective Date, Class 7A-AA Claims will be deemed satisfied in full by virtue of the issuance of new ownership interests in the Successor Debtor with recoveries to flow to the holders as more fully described in Section 6.2 hereof.

4.8 Classes 8A-AA– Interests in the Debtors. The holder or holders of membership Interests in the Debtors shall receive an interest in the Successor Debtor as of the Effective Date based on the applicable Debtor’s pre-Effective Date ownership interest in the Property.

## ARTICLE V.

### **ACCEPTANCE OR REJECTION OF PLAN**

5.1 Classes Entitled to Vote. Each impaired Class of Claims or Interests shall be entitled to vote separately to accept or reject the Plan. Any unimpaired Class (as defined in Section 2.3) of Claims shall not be entitled to vote to accept or reject the Plan. Any unimpaired Class is deemed to have accepted the Plan under section 1126(f) of the Bankruptcy Code.

5.2 Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan. A Class of Interests shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have voted on the Plan.

5.3 Cramdown. This section shall constitute the request by the Plan proponent, pursuant to section 1129(b), that the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 1129(a)(8) have not been met.

## ARTICLE VI.

### **MEANS OF IMPLEMENTATION AND GENERAL DESCRIPTION OF THE PLAN**

6.1 Assumption of Allowed Claims. The Reorganized Debtors shall assume the liability for and obligation to perform and make all distributions or payments on account of all Allowed Claims in the manner provided in this Plan.

6.2 Recapitalization of the Property. Prior to or on the Effective Date, pursuant to the Confirmation Order, the Debtors and the consenting non-Debtor TICs shall recapitalize and restructure ownership of the Property through a contribution transaction with ASB Acquisitions, LLC or an affiliate thereof (“ASB”). The members of each Debtor and consenting non-Debtor TIC (the “TIC Owners”) and the Debtors and consenting non-Debtor TICs will enter into a contribution agreement with ASB, pursuant to which:

(a) the TIC Owners will form the Successor Debtor to be owned by the TIC Owners, into which their membership interests in the TICs will be contributed. The TIC Owners will receive membership in the Successor Debtor commensurate with the applicable Debtor’s or consenting non-Debtor TIC’s, as applicable, original ownership percentage in the Property. The Successor Debtor shall be managed by a third party manager for fair consideration, to be disclosed on or prior to the Confirmation Hearing. All TICs shall be permitted to elect to participate in the contribution transaction by becoming a member in the Successor Debtor. If less than 100% of the TICs consent to the transaction, either (i) the Debtors shall exercise their “call option” pursuant to section 11.2 of the TIC Agreement and cause each dissenting TIC (the “Dissenting TICs”) to sell its interest in the Property directly to the Reorganized Debtors for cash consideration determined in accordance with the TIC Agreement, or (ii) the Dissenting TIC shall have its interest in the Property be vested in the Reorganized Debtors pursuant to Section 363(h) of the Bankruptcy Code.<sup>1</sup>

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<sup>1</sup> The Debtors have initiated an adversary proceeding before this Court in the event there are Dissenting TICs whose interests in the Property need to be transferred to the Reorganized Debtors in order to consummate the Plan.

(b) ASB shall form an additional, new Delaware limited liability company (the “Newco”) to be owned by the Successor Debtor and ASB. The Successor Debtor shall immediately contribute 100% of the membership interests in the Debtors and the consenting non-Debtor TICs to Newco in consideration of the issuance to the Successor Debtor of a membership interest in Newco, and Newco shall become the sole member of each Debtor and consenting non-Debtor TIC. Concurrently with such contributions and conveyances, ASB will contribute to Newco the Cash Infusion in exchange for a managing member interest in Newco. Notwithstanding anything to the contrary herein, but subject to the last sentence of Section 12.1, after the Effective Date, all TICs shall remain liable for their obligations under the Trust Note.

Under the terms of the Plan, net operating cash flow and proceeds of capital will flow to ASB and the members of the Successor Debtor (via Newco) as follows:

- 1st: 100% to ASB until it has received a 12% IRR;
- 2nd: 20% to the Successor Debtor and 80% to ASB until ASB has received a 20% IRR and a 1.75 times equity multiple on its invested capital; and
- 3rd: 40% to the Successor Debtor and 60% to ASB.

If the Plan is confirmed, on the Effective Date, ASB will pay to Breakwater Equity Partners, LLC (“Breakwater”) an amount equal to \$447,893.13, which amount, however, will not be part of the Cash Infusion and will not be taken into account in connection with calculating the waterfall above. In addition, if the Property is sold in the future, ASB will pay to Breakwater, solely out of ASB’s return in connection with such sale (after paying any amounts owed to the members of the Successor Debtor under the waterfall), an amount equal to one percent (1%) of the recovery to ASB. Breakwater shall receive no equity in the Successor Debtor or Newco and any payments to Breakwater shall have no impact on the recovery to the members of the Successor Debtor.

Steelbridge Capital, LLC (“Steelbridge”) or an affiliate thereof will agree to provide a replacement non-recourse carve-out guaranty of the Trust Note provided that all TICs agree to and participate in the recapitalization described above.

The Plan contemplates that the Property will be managed by by Jones Lang LaSalle (“JLL”) following the Effective Date on a market basis.<sup>2</sup>

On the Effective Date, pursuant to the Confirmation Order, all ownership interests of the Debtors in and to the Property will be conveyed to the Reorganized Debtors. From and after the Effective Date, the Reorganized Debtors and the consenting non-Debtor TICs will own the Property, in its entirety and in fee simple, subject only to Allowed Secured Claims as provided by the Plan. In return for the transfer of their TIC membership interests, in complete satisfaction of their Class 7A-AA Claims against the Debtors, the members of the consenting non-Debtor TICs will receive ownership interests in the Successor Debtor.

6.3 Vesting of Assets. As of the Effective Date, ownership of the Property shall vest in the Reorganized Debtors and consenting non-Debtor TICs free and clear of all Liens and Claims and all rights, title and interests, except as expressly set forth in this Plan. Ownership interests of non-Debtor TICs in the Property (holders of Class 7A-AA Claims) that vote to accept the Plan shall be deemed

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<sup>2</sup> Subject to definitive documentation, it is contemplated that JLL would receive compensation equaling approximately 3.5% of gross revenues in exchange for its property management services.

transferred/contributed to the Successor Debtor, for all purposes. Ownership interests in the Property of non-Debtor TICs that do not consent to confirmation of this Plan shall be deemed sold to the Reorganized Debtors pursuant to Section 11.2 of the TIC Agreement and/or 11 U.S.C. § 363(h).

6.4 Funding of Plan. The payments to be made under this Plan shall be funded from (1) the net operational profits (positive cash flow) generated by the Property, after allowance of operational expenses (vendor costs, management fees and taxes) and reserves, (2) a Cash Infusion from ASB of no less than \$8.5 million, and (3) to the extent necessary, other sources of funds, including a cash infusion from the Debtors and/or the non-Debtor TICs or future borrowings or equity infusions, subordinate to the Trust. The Cash Infusion shall be used to fund, *inter alia*, payment of Allowed Administrative Expenses and Allowed Claims. After the Effective Date, ASB shall also fund capital improvements, deferred maintenance, tenant improvement costs and leasing commissions with respect to the Property, and operating shortfalls, as needed.

6.5 General Corporate Actions. Upon the Effective Date, all actions contemplated by the Plan will be deemed authorized and approved in all respects, including (i) the execution and consummation of all documents necessary and appropriate to effectuate the Cash Infusion and the Roll-Up; and (ii) all other actions contemplated by such documents or the Plan (whether to occur before, on or after the Effective Date). All matters and transactions provided for in the Plan concerning the structure of the Debtors, the Reorganized Debtors or the Successor Debtor, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Cash Infusion and the Plan will be deemed to have occurred and will be in effect, without any requirement of further action by the members, managers, or officers of the Debtors or the Reorganized Debtors. On or (as applicable) prior to the Effective Date, the appropriate officers or managers of the Debtors or the Reorganized Debtors, as applicable, will be authorized and directed to issue, execute and deliver the agreements, documents, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors. Such authorizations and approvals will be effective notwithstanding any requirements under non-bankruptcy law.

6.6 Attorneys Fees and Costs. To the extent any holder of a Secured Claim asserts a right to attorney's fees and costs pursuant to section 506(b) of the Bankruptcy Code, unless otherwise agreed between the Debtors, the Reorganized Debtors or the Successor Debtor and such Secured Creditor, the allowance of such fees and expenses shall be handled as set forth in this paragraph. Within twenty-one (21) days after the Effective Date, the Secured Creditor shall file an application with the Bankruptcy Court for allowance of such fees and expenses. Such application will follow the same rules and guidelines as a fee application for a Professional seeking compensation from the Debtors, including the U.S. Trustee's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses. Within twenty-one (21) days after such application is filed, the Reorganized Debtors or the Successor Debtor may file any objections thereto, and the Secured Creditor shall file any response within fourteen (14) days thereafter. If the Secured Creditor and the Reorganized Debtors or the Successor Debtor are unable to reach agreement, the matter shall then be submitted to the Bankruptcy Court for determination on no less than twenty-one (21) days notice of the hearing.

6.7 Avoidance Actions. The Reorganized Debtors shall not assert any Avoidance Actions against any Person.

## ARTICLE VII.

### **PROVISIONS GOVERNING DISTRIBUTION AND PERFORMANCE OF THE PLAN**

7.1 Date of Distributions. No payment or distribution shall be made pursuant to this Plan except on account of an Allowed Claim, except as otherwise ordered by the Bankruptcy Court pursuant to a Final Order. No payment shall be made on account of any Contested Claim until such Claim is Allowed. Any payments or distributions to be made by the Reorganized Debtors or the Successor Debtor pursuant to the Plan shall be made on the respective Initial Distribution Dates applicable to each such Allowed Claim except as otherwise provided in the Plan or ordered by the Bankruptcy Court. Any Unclaimed Property may be paid into the registry of the Court or otherwise distributed in accordance with the Orders of the Court.

7.2 Distributions Under Plan. Distributions to be made to any Creditor under the Plan shall be made by the Reorganized Debtors, the Successor Debtor, or their authorized agent.

7.3 Means of Cash Payment. Cash payments pursuant to this Plan shall be made by check drawn on, or by wire transfer from, a domestic bank.

7.4 Delivery of Distributions. Distributions and deliveries to the holder of an Allowed Claim shall be made at the addresses set forth on the respective proofs of Claim filed in these cases. If no proof of Claim is filed, distribution shall be made to the Creditor at the last known address or as reflected in the Schedules. If any distribution is returned as undeliverable, no further distribution shall be made on account of such Allowed Claim unless and until the Reorganized Debtors or the Successor Debtor are notified of such holder's then current address, at which time all missed distributions shall be made to the holder of such Allowed Claim. All claims for undeliverable distributions shall be made on or before the first anniversary of the attempted distribution. After such date, all Unclaimed Property shall revert to the Reorganized Debtors or the Successor Debtor, and the Claim of any holder with respect to such property shall be discharged and forever barred.

7.5 Time Bar to Cash Payments. Checks issued in respect of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Reorganized Debtors or the Successor Debtor by the holder of the Allowed Claim with respect to which such check originally was issued. Any claim in respect of such a voided check shall be made on or before the later of the first anniversary of the Initial Distribution Date or ninety (90) days after the date of issuance of such check. After such date, all Claims in respect of void checks shall be discharged and forever barred.

7.6 Cure Period. Except as otherwise set forth herein, the failure by the Reorganized Debtors or the Successor Debtor to timely perform any term, provision or covenant contained in this Plan, or to make any payment required by this Plan to any Creditor, or the failure to make any payment or perform any covenant on any note, instrument or document issued pursuant to this Plan, shall not constitute an Event of Default unless and until the Reorganized Debtors or the Successor Debtor has been given thirty (30) days written notice of such alleged default in the manner provided in this Plan, and provided an opportunity to cure such alleged default. Until the expiration of such thirty (30) day cure period, the Reorganized Debtors or the Successor Debtor shall not be in default, and performance during such thirty (30) day cure period shall be deemed as timely for all purposes. Such written notice and passage of the thirty (30) day cure period shall constitute conditions precedent to declaring or claiming any default under this Plan or bringing any action or legal proceeding by any Person to enforce any right granted under this Plan.



7.7 Pre-Payment of Claims. Any other term of this Plan notwithstanding on or after the Effective Date, the Reorganized Debtors or the Successor Debtor may prepay any Allowed Claim, other than that of the Trust, in whole or in part without penalty.

## **ARTICLE VIII.**

### **PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND CONTINGENT CLAIMS**

8.1 Objection Deadline. All objections to Claims shall be served and filed by the Objection Deadline, if one is set by the Bankruptcy Court, although nothing contained herein shall require the fixing of an Objection Deadline; provided, however, the Objection Deadline shall not apply to Claims which are not reflected in the claims register, including any alleged informal proofs of claim. If an Objection Deadline is fixed, it may be extended one or more times by the Bankruptcy Court pursuant to a motion filed on or before the then applicable Objection Deadline. Any proof of claim filed more than sixty (60) days after the Effective Date shall be of no force and effect and need not be objected to by the Reorganized Debtors. Any Contested Claims may be litigated to Final Order. The Reorganized Debtors or the Successor Debtor may compromise and settle any Contested Claim without the necessity of any further notice or approval of the Bankruptcy Court. Bankruptcy Rule 9019 shall not apply to any settlement of a Contested Claim after the Effective Date.

8.2 Responsibility for Objecting to Claims. The Reorganized Debtors or the Successor Debtor shall have the sole right and responsibility for objecting to the allowance of Claims following the Effective Date.

8.3 Distributions on Account of Contested Claims. If a Claim is Contested, then the Initial Distribution Date as to such Contested Claim shall be determined based upon its date of Allowance, and thereafter distribution shall be made on account of such Allowed Claim pursuant to the provisions of the Plan. No distribution shall be made on account of a Contested Claim until Allowed. Until such time as a contingent Claim becomes fixed and absolute by a Final Order allowing such Claim, such Claim shall be treated as a Contested Claim for purposes of estimates, allocations, and distributions under the Plan. Any contingent right to contribution or reimbursement shall continue to be subject to section 502(e) of the Bankruptcy Code.

8.4 No Waiver of Right to Object. Except as expressly provided in this Plan, nothing contained in the Disclosure Statement, this Plan or the Confirmation Order shall waive, relinquish, release or impair the Reorganized Debtors' or the Successor Debtor's right to object to any Claim.

8.5 Rights Under Section 505. All Tax Claims shall remain subject to section 505 of the Bankruptcy Code. The Reorganized Debtors or the Successor Debtor shall retain the right to a determination of the amount or legality of any tax pursuant to section 505 of the Bankruptcy Code as to any Tax Claim. The Reorganized Debtors or the Successor Debtor may seek relief pursuant to section 505 of the Bankruptcy Code as a part of, and in conjunction with, any objection to any Tax Claim.

8.6 Allowance of Contested Claims. This section shall apply to all Contested Claims. Nothing contained in the Plan, Disclosure Statement or Confirmation Order shall change, waive or alter any requirement under applicable law that the holder of a Contested Claim must file a timely proof of Claim, and the Claim of any such Contested Creditor who is required to file a proof of Claim and fails to do so shall be discharged and shall receive no distribution through the Plan. The adjudication and liquidation of a Contested Claim is a determination and adjustment of the debtor/creditor relationship, and is therefore an exercise of the

Bankruptcy Court's equitable power to which the legal right of trial by jury is inapplicable. The holder of any Contested Claim shall not have a right to trial by jury before the Bankruptcy Court in respect of any such Claim. Exclusive venue for any Contested Proceeding shall be in the Bankruptcy Court or a court of competent jurisdiction located in Dallas County, Texas. Contested Claims shall each be determined separately, except as otherwise ordered by the Bankruptcy Court. Texas Rule of Civil Procedure 42 and Federal Rule of Civil Procedure 23 shall not apply to any Contested Proceeding. The Reorganized Debtors shall retain all rights of removal to federal court as to any Contested Proceeding.

8.7 Allowance of Certain Claims. All Contested Claims shall be liquidated and determined as follows:

(a) Application of Adversary Proceeding Rules. Unless otherwise ordered by the Bankruptcy Court or provided by the Bankruptcy Rules, any objection to a Contested Claim shall be treated as a contested proceeding subject to Bankruptcy Rule 9014 of the Rules of Bankruptcy Procedure. However, any party may move the Bankruptcy Court to apply the rules applicable to adversary proceedings to any Claim Objection. The Reorganized Debtors or the Successor Debtor, however, may at their election, make and pursue any Objection to a Claim in the form of an adversary proceeding.

(b) Scheduling Order. Unless otherwise ordered by the Bankruptcy Court, or if the Objection is pursued as an adversary proceeding, a scheduling order shall be entered as to each Objection to a Claim. The Debtors shall tender a proposed scheduling order with each Objection and include a request for a scheduling conference for the entry of a scheduling order. The scheduling order may include (i) discovery cut-off, (ii) deadlines to amend pleadings, (iii) deadlines for designation of and objections to experts, (iv) deadlines to exchange exhibit and witness lists and for objections to the same, and (v) such other matters as may be appropriate.

(c) Mediation. The Court may order the parties to mediate in connection with any Objection to a Claim. The Debtors may include a request for mediation in its Objection, and request that the Court require mediation as a part of the Scheduling Order.

8.8 Substantial Consummation. Substantial consummation of the Plan under Section 1101(2) of the Bankruptcy Code shall be deemed to occur on the Effective Date. All distributions of any kind made to any of the Creditors after substantial consummation of the Plan and any and all other actions taken under this Plan after substantial consummation of the Plan shall not be subject to relief, reversal or modification by any court unless the implementation of the Confirmation Order is stayed by an order granted under Bankruptcy Rule 8005.

8.9 Offsets. The Reorganized Debtors or the Successor Debtor shall be vested with and retain all rights of offset or recoupment and all counterclaims against any Claimant. Assertion of counterclaims by the Reorganized Debtors against Claimants shall constitute a "core" proceeding.

## ARTICLE IX.

### EXECUTORY CONTRACTS AND LEASES

9.1 Executory Contracts Assumed. All executory contracts or unexpired leases shall be deemed as assumed upon the Effective Date, unless expressly rejected as set forth in section 9.1(a) below. This Plan shall constitute a motion to assume all executory contracts or unexpired leases unless otherwise expressly rejected. However, the Debtors may file a separate motion for the assumption or rejection of any executory contract or unexpired lease.

(a) Rejections. The following executory contracts and unexpired leases shall be deemed rejected as of the Effective Date:

Management Agreement, dated November 23, 2006, with Triple Net Properties Realty, Inc., a California corporation, as Property Manager, and as the corporate name of the Property Manager has been subsequently changed to Daymark Realty Advisors, Inc., a Delaware corporation (the “Management Agreement”). The order of the Court confirming the Plan shall constitute an order approving the rejection of the Management Agreement (if and to the extent that it is an executory contract). The Management Agreement shall be deemed terminated as of the earlier of: (a) the date it was terminated pursuant to any valid notice of termination given by or on behalf of any Debtor or other TIC; or (b) the Effective Date.

9.2 Cure Payments and Release of Liability. All cure payments which may be required by section 365(b)(1) of the Bankruptcy Code under any executory contract or unexpired lease that is assumed or assumed and assigned under this Plan, including without limitation the Tenant Reimbursement, shall be made by or on behalf of the Reorganized Debtors or the Successor Debtor on the later of the assumption date or the Effective Date, or as soon thereafter as reasonably practicable, or as otherwise agreed between the Debtors and the other party to the contract being cured; provided, however, in the event of a dispute regarding the amount of any Cure Claim, the cure of any other defaults, the ability of the Reorganized Debtors or the Successor Debtor to provide adequate assurance of future performance, or any other matter pertaining to assumption or assignment, the Reorganized Debtors or the Successor Debtor shall make such cure payments and cure such other defaults and provide adequate assurance of future performance, all as may be required by section 365(b)(1) of the Bankruptcy Code, following the entry of a Final Order by the Bankruptcy Court resolving such dispute.

9.3 Bar to Rejection Damages. Except as otherwise ordered by the Bankruptcy Court, any Rejection Claim based on the rejection of an executory contract or an unexpired lease shall be forever barred and shall not be enforceable against the Reorganized Debtors, the Successor Debtor or the Assets, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtors by the earlier of thirty (30) days after the Effective Date or entry of the Final Order approving rejection of such contract or lease.

9.4 Rejection Claims. Any Rejection Claim not barred by paragraph 9.3 of the Plan shall be classified as a Class 6A-AA Unsecured (General) Claim subject to the provisions of section 502(g) of the Bankruptcy Code; provided, however, that any Rejection Claim based upon the rejection of an unexpired lease of real property, either prior to the Confirmation Date or upon the entry of the Confirmation Order, shall be limited in accordance with section 502(b)(6) of the Bankruptcy Code and state law mitigation requirements. Nothing contained herein shall be deemed an admission by the Reorganized Debtors or the

Successor Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Reorganized Debtors or the Successor Debtor of any objections to such Claim if asserted.

## **ARTICLE X.**

### **MAINTENANCE OF CAUSES OF ACTION**

10.1 **Generally.** Unless expressly waived or released by the Reorganized Debtors or the Successor Debtor, the Reorganized Debtors or the Successor Debtor shall retain, receive and shall be vested in any cause of action, counterclaims and rights of offset or recoupment.

10.2 **Causes of Action Against Claimants.** Except as expressly set forth herein, the Reorganized Debtors or the Successor Debtor shall retain all claims, causes of action, defenses, and offsets as against all Claimants. Nothing in this Plan shall waive or impair any such claim, cause of action, defense or offset. Claims by the Debtors, the Reorganized Debtors or the Successor Debtor against Creditors filing Claims in these cases shall constitute core proceedings.

## **ARTICLE XI.**

### **CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF PLAN**

11.1 **Conditions to Confirmation and Effectiveness of Plan.** The Plan shall not become effective until the following conditions shall have been satisfied or waived by the Debtors, as determined in their sole discretion: (a) the Confirmation Order shall have been entered, in form and substance acceptable to the Debtors; (b) all documents necessary to effectuate the Cash Infusion have been duly executed and the Cash Infusion has been funded to the extent required to pay Allowed Administrative Expenses and Allowed Claims as of the Effective Date; (c) all other conditions precedent have been satisfied to the satisfaction of the Debtors; (d) the Bar Date has passed, and no additional Claims have been filed which, in the sole discretion of the Debtors, adversely impact the Plan; and (f) a notice of the Effective Date has been filed by the Debtors and thereafter served upon all Creditors and parties in interest. Any or all of the above conditions may be waived at any time by the Debtors, in their sole discretion.

11.2 **Revocation of Plan.** The Debtors may revoke and withdraw this Plan at any time before the Effective Date. If the Debtors revoke or withdraw this Plan, or if confirmation of this Plan does not occur, then, this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, as the case may be, or any other Person or to prejudice in any manner the rights of such Debtors, or Person in any further proceedings involving such Debtors.

## **ARTICLE XII.**

### **DISCHARGE**

12.1 **Discharge of Debtors.** The terms, covenants and consideration under the Plan shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims of any nature whatsoever against the Debtors and/or the Assets, including, without limitation, the Secured Claims, and all Unsecured Claims. Except as otherwise expressly provided herein, upon the Effective Date, both the Debtors and their successors in interest and assigns shall be deemed discharged and released pursuant to section 1141(d)(1)(A)

of the Bankruptcy Code from any and all Claims and Interests, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code; (c) the holder of a Claim based upon such debt has accepted this Plan; or (d) the Claim has been Allowed, Disallowed, or estimated pursuant to section 502(c) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of discharge of all liabilities of both the Debtors, and their successors in interest and assigns other than those obligations specifically set forth pursuant to this Plan. The discharge provided for herein shall apply to the Debtors only. Nothing herein shall be construed as granting a discharge, injunction, or release of any claims or causes of action against any non-debtor party, including the non-debtor TICs. Absent a court order to the contrary or consent of the Trust, non-Debtor TICs shall remain liable for the Trust Note; provided, however, nothing herein will affect any rights of the Trust against any non-Debtor third party (other than non-Debtors who elect to become members in the Successor Debtor in accordance herewith), provided that so long as the Reorganized Debtors are not in default of their obligations to the Trust under the Trust Note, (i) a default by any non-Debtor third party shall not result in a claim by the Trust under the Trust Note against the Property, the Reorganized Debtors, Newco or any new guarantor, and (ii) no non-Debtor third party shall be entitled to assert any claim in connection with the Trust Note against the Property, the Reorganized Debtors, Newco or any new guarantor.

12.2 Injunction. From and after the Effective Date, all holders of Claims shall be and are hereby permanently restrained and enjoined from: (a) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any such Claim against the Debtors, the Reorganized Debtors, the Successor Debtor or the Assets; (b) enforcing, attaching, collecting, or recovering on account of any Claim by any manner or means, any judgment, award, decree, or order against the Debtors, the Reorganized Debtors, the Successor Debtor or the Assets except pursuant to and in accordance with this Plan; (c) creating, perfecting, or enforcing any encumbrance of any kind against either the Assets, the Debtors, the Reorganized Debtors or the Successor Debtor; (d) asserting any control over, interest, rights or title in or to any of the Assets except as provided in this Plan; (e) asserting any setoff, or recoupment of any kind against any obligation due the Debtors, the Reorganized Debtors or the Successor Debtor, as assignee, except upon leave of the Bankruptcy Court; and (f) performing any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; provided, however, that this injunction shall not bar any Creditor from asserting any right granted pursuant to this Plan; provided further, however, that each holder of a Contested Claim shall be entitled to enforce its rights under the Plan, including seeking Allowance of such Contested Claim pursuant to the Plan; provided further, however, that this injunction shall apply to Claims against the Debtors only and shall not prevent any Creditor from pursuing any claims or causes of action it may have against any non-debtor party, including the non-debtor TICs.

12.3 Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code, except as previously modified by the Bankruptcy Court, shall remain in effect until the Effective Date of the Plan as to the Debtors and all Assets. As of the Effective Date, the discharge and injunction in Sections 12.1 and 12.2 of the Plan shall become effective.

### **ARTICLE XIII.**

#### **CONSUMMATION OF THE PLAN**

13.1 **Retention of Jurisdiction.** Pursuant to sections 1334 and 157 of title 28 of the United States Code, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to these Chapter 11 cases and the Plan, for the purposes of sections 105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

(a) To hear and determine any and all Objections to or applications concerning the allowance of Claims or the allowance, classification, priority, compromise, estimation, or payment of any Administrative Expense or Claim;

(b) To hear and determine any and all applications for payments of fees and expenses from the Reorganized Debtors' estates made by attorneys or any other Professional pursuant to sections 330 or 503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed from the Reorganized Debtors' estates under the Bankruptcy Code, and any and all objections thereto;

(c) To hear and determine pending applications for the rejection, assumption, or assumption and assignment of unexpired leases and executory contracts and the allowance of Claims resulting therefrom, and to determine the rights of any party in respect to the assumption or rejection of any executory contract or unexpired lease;

(d) To hear and determine any and all adversary proceedings, applications, or contested matters, including any remands or appeals;

(e) To hear and determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan, including without limitation, (i) adjudication of all rights, interests or disputes relating to any of the Assets, (ii) the valuation of all Collateral, including hearing all Valuation Motions, (iii) the determination of the validity of any Lien or claimed right of offset; (iv) determinations of Objections to Contested Claims; and (v) adjudication of any disputes relating to the assumption or rejection of any executory contracts or unexpired leases, including the determination of the amount of a Cure Claim associated with any executory contract or unexpired lease;

(f) To liquidate and administer any disputed, contingent, or unliquidated Claims, including the allowance of all Contested Claims;

(g) To administer distributions to holders of Allowed Claims as provided herein;

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

(i) To enable the Reorganized Debtors or the Successor Debtor to prosecute any and all proceedings which may be brought to set aside Liens or encumbrances and to recover any transfers, assets, properties or damages to which the Reorganized Debtors or the Successor Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws, including causes of action, controversies, disputes and conflicts between the Reorganized Debtors or the Successor Debtor and

any other party, including but not limited to, any causes of action or Objections to Claims, preferences of fraudulent transfers and obligations or equitable subordination.

(j) To consider any modification of the Plan pursuant to section 1127 of the Bankruptcy Code, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation the Confirmation Order;

(k) To enforce the discharge and injunction contained in paragraphs 12.1 and 12.2, above;

(l) To the extent necessary, to approve the sale after the Effective Date of any of the Assets free and clear of all Liens, claims and interests, or to approve any borrowings (either secured or unsecured) by the Reorganized Debtors or the Successor Debtor;

(m) To enter and implement all such orders as may be necessary or appropriate to execute, interpret, implement, consummate, or enforce the terms and conditions of the Plan and the transactions required or contemplated pursuant hereto;

(n) To hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan;

(o) To determine proceedings pursuant to section 505 of the Bankruptcy Code; and

(p) To enter a final decree closing these Chapter 11 cases.

13.2 Abstention and Other Courts. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to these Chapter 11 cases, this paragraph of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

13.3 Non-Material Modifications. The Debtors, the Reorganized Debtors or the Successor Debtor, as applicable, may, with the approval of the Bankruptcy Court and without notice to all holders of Claims and Interests, correct any defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable. The Debtors, the Reorganized Debtors or the Successor Debtor, as applicable, may undertake such nonmaterial modification pursuant to this paragraph insofar as it does not adversely change the treatment of the Claim of any Creditor or the interest of any Interest Holder who has not accepted in writing the modification.

13.4 Material Modifications. Modifications of this Plan may be proposed in writing by the Debtors at any time before confirmation, provided that this Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. This Plan may be modified at any time after confirmation and before its Substantial Consummation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modification. A holder of a Claim or Interest that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

## ARTICLE XIV.

### MISCELLANEOUS PROVISIONS

14.1 Severability. Should the Bankruptcy Court determine that any provision of the Plan is unenforceable either on its face or as applied to any Claim or Interest or transaction, the Debtors, Reorganized Debtors or the Successor Debtor, as applicable, may modify the Plan in accordance with paragraph 13.3 and 13.4 of the Plan so that such provision shall not be applicable to the holder of any Claim or Interest. Such a determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan or (b) require the resolicitation of any acceptance or rejection of the Plan.

14.2 Oral Agreements; Modification of Plan; Oral Representations or Inducements. The terms of the Plan, Disclosure Statement and Confirmation Order may not be changed, contradicted or varied by any oral statement, agreement, warranty or representation. The Plan may only be modified, amended or supplemented in writing signed by an authorized representative of the Debtors, the Reorganized Debtors or the Successor Debtor, as applicable. Neither the Debtors nor their attorneys have made any representation, warranty, promise or inducement relating to the Plan or its confirmation except as expressly set forth in this Plan, the Disclosure Statement, or the Order of Confirmation or other order of the Court.

14.3 Waiver. The Debtors, the Reorganized Debtors and the Successor Debtor shall not be deemed to have waived any right, power or privilege pursuant to the Plan unless the waiver is in writing and signed by an authorized representative of same. There shall be no waiver by implication, course of conduct or dealing, or through any delay or inaction of any right pursuant to the Plan, including the provisions of this anti-waiver section. The waiver of any right under the Plan shall not act as a waiver of any other or subsequent right, power or privilege.

14.4 Construction. This Plan shall control over any inconsistent term of the Disclosure Statement. The Confirmation Order shall control over any inconsistent provision of the Plan.

14.5 Notice. Any notice or communication required or permitted by the Plan shall be given, made or sent as follows:

(a) If to a Creditor, notice may be given as follows: (i) if the Creditor has filed no proof of Claim, then to the address reflected in the Schedules, or (ii) if the Creditor has filed a proof of Claim, then to the address reflected in the proof of claim.

(b) If to the Reorganized Debtors, notice shall be sent to the following address:

Mubeen M. Aliniazee  
Highpoint Management Solutions, LLC  
320 W. Lone Cactus Drive, #12  
Phoenix, AZ 85027

Concurrently with service of such notice on Reorganized Debtors, a copy thereof shall be served in the same manner on the following legal counsel:



Michelle Larson  
ANDREWS KURTH LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201  
Facsimile: (214) 659-4401  
[michellelarson@andrewskurth.com](mailto:michellelarson@andrewskurth.com)

(c) Any Creditor desiring to change its address for the purpose of notice may do so by giving notice to the Reorganized Debtors of its new address in accordance with the terms of this section.

(d) Any notice given, made or sent as set forth above shall be effective upon being (i) deposited in the United States Mail, postage prepaid, addressed to the addressee at the address as set forth above; (ii) delivered by hand or messenger to the addressee at the address set forth above; (iii) telecopied to the addressee as set forth above, with a hard confirmation copy being immediately sent through the United States Mail; or (iv) delivered for transmission to an expedited or overnight delivery service such as FedEx.

14.6 Setoffs. The Debtors, the Reorganized Debtors or the Successor Debtor may, but shall not be required to, set off against any Claim and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Reorganized Debtors or the Successor Debtor of any such Claim that they may have against such holder.

14.7 Compliance with All Applicable Laws. If notified by any governmental authority that it is in violation of any applicable law, rule, regulation, or order of such governmental authority relating to its business, the Reorganized Debtors shall comply with such law, rule, regulation, or order; provided that nothing contained herein shall require such compliance if the legality or applicability of any such requirement is being contested in good faith in appropriate proceedings and, if appropriate, an adequate reserve has been set aside on the books of the Reorganized Debtors.

14.8 Exculpations. No agent, representative, accountant, financial advisor, attorney, shareholder, officer, affiliate, member or employee of the Debtors, the Reorganized Debtors or the Successor Debtor shall ever have any liability to any Person (including any Creditor) other than the Debtors, the Reorganized Debtors and the Successor Debtor, as applicable, for any act, omission, or event in connection with, or arising out of, or relating to, any of the following: (a) the bankruptcy cases, including all matters or actions in connection with or relating to the administration of the estate, (b) the Plan, including the proposal, negotiation, confirmation and consummation of the Plan, or (c) the administration of the Plan on a post-confirmation basis. Notwithstanding anything contained in this paragraph, this exculpation provision shall not extend to any act, omission, or event that is the result of willfulness or gross negligence. Additionally, with regard to attorneys, accountants, and financial advisors, the exculpatory language set forth in this paragraph extends only to the extent allowed by the applicable ethical standards governing such professionals.

14.9 Binding Effect. The Plan shall be binding upon, and shall inure to the benefit of the Reorganized Debtors, the holders of the Claims or Liens, the holders of Interests, and their respective successors in interest and assigns.

14.10 Interpretation. In the event of any inconsistency among the Plan, the Disclosure Statement, any exhibit or schedule to the Disclosure Statement, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall govern.

14.11 Payment of Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid on or before the Effective Date, or as soon thereafter as reasonably practicable, and thereafter as such statutory fees become due.

14.12 Filing of Additional Documents. On or before Substantial Consummation of the Plan, the Reorganized Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

14.13 Computation of Time. If the final day for any distribution, performance, act or event under the Plan is not a Business Day, then the time for making or performing such distribution, performance, act or event shall be extended to the next Business Day. Any payment or distribution required to be made hereunder on a day other than a Business Day shall be due and payable on the next succeeding Business Day.

14.14 Elections by the Reorganized Debtors. Any right of election or choice granted to the Debtors, the Reorganized Debtors or the Successor Debtor under this Plan may be exercised, at their election, separately as to each Claim, Creditor or Person.

14.15 Release of Liens. Except as otherwise provided in this Plan or the Confirmation Order, all Liens against any of the Assets shall be deemed to be released, terminated and nullified.

14.16 Reorganized Debtors' Management. At or prior to the Confirmation Hearing, the Debtors shall disclose the Reorganized Debtors' and the Successor Debtor's post-Effective Date management.

14.17 Compensation of Reorganized Debtors' Management. The sole members of the Reorganized Debtors shall not be compensated for their continued management of the Reorganized Debtors.

14.18 Indemnification Obligations. Any other term of the Plan notwithstanding, the respective obligations of the Reorganized Debtors to indemnify their present and former members or managers or officers or directors pursuant to any regulations, charters, by-laws, and/or applicable state law shall be deemed to be, and shall be treated as though they are, executory contracts assumed under the Plan, and such obligation shall survive confirmation of the Plan and remain unaffected thereby, irrespective of whether indemnification is owed in connection with an occurrence that occurred prior to or after the Original Petition Date or the Subsequent Petition Date.

14.19 Compromise of Controversies. In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

14.20 Section 1146 Exemption. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, distribution, transfer or exchange of any security or the making, delivery or recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, or the revesting, transfer or sale of any real or personal property of, by or in the TICs, the Debtors, the Reorganized Debtors or the Successor Debtor pursuant to, in implementation of or as contemplated by the Plan, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall be, and

hereby are, directed to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

14.21 Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Texas, without giving effect to the principles of conflict of laws that would require application of the laws of another jurisdiction

14.22 No Governmental Releases. Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

Dated: February 25, 2014

Respectfully submitted,

NNN 3500 Maple 1, LLC  
NNN 3500 Maple 2, LLC  
NNN 3500 Maple 3, LLC  
NNN 3500 Maple 4, LLC  
NNN 3500 Maple 5, LLC  
NNN 3500 Maple 6, LLC  
NNN 3500 Maple 7, LLC  
NNN 3500 Maple 10, LLC  
NNN 3500 Maple 12, LLC  
NNN 3500 Maple 13, LLC  
NNN 3500 Maple 14, LLC  
NNN 3500 Maple 15, LLC  
NNN 3500 Maple 16, LLC  
NNN 3500 Maple 17, LLC  
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NNN 3500 Maple 26, LLC  
NNN 3500 Maple 27, LLC  
NNN 3500 Maple 28, LLC  
NNN 3500 Maple 29, LLC  
NNN 3500 Maple 30, LLC  
NNN 3500 Maple 31, LLC  
NNN 3500 Maple 32, LLC  
NNN 3500 Maple 34, LLC

By: /s/ Mubeen Aliniaze  
Mubeen Aliniaze, Restructuring Officer