

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**
www.flsb.uscourts.gov

In re:

OCEAN 4660, LLC,

Debtors.

Case No. 13-23165-JKO
Chapter 11

**Plan of Reorganization of Ocean 4660, LLC Filed by
Chapter 11 Trustee Maria Yip**

DATED: February 24, 2014

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INTRODUCTION

Ocean 4660, LLC, by and through the duly appointed Chapter 11 Trustee Maria Yip propose the following Plan of Liquidation pursuant to Section 1121(a) of Title 11 of the United States Code. Adequate information about the Debtor, the case and the Plan is set forth in Article 5 of the Plan.

PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY WITH
RESPECT TO HOW YOUR RIGHTS MAY BE AFFECTED.

ARTICLE 1 **DEFINITIONS AND CONSTRUCTION OF TERMS**

1.1 Definitions. All capitalized terms in the Plan shall have the meanings ascribed to them herein. Any capitalized term used in the Plan that are not defined herein or elsewhere in the Plan shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

1.1.1 Administrative Claim means any Claim constituting a cost or expense of administration of the Debtor's Chapter 11 case under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the estate, and all fees and charges assessed against the bankruptcy estate under Chapter 123 of Title 28, United States Code.

1.1.2 Allowance Date shall mean the date on which a Disputed Claim becomes an Allowed Claim by Final Order.

1.1.3 Allowed Administrative Claim means an Administrative Claim allowed under the Bankruptcy Code.

1.1.4 Allowed Claim means any Claim allowable under Section 502 of the Bankruptcy Code (i) for which a proof of claim was filed on or before the date designated by the Bankruptcy Court as the last date for filing proofs of claim against the Debtor, or (ii) which has been listed in the Debtor's bankruptcy Schedules of Assets and Liabilities as liquidated in amount and not disputed or contingent and as to which a proof of claim is not filed and, in case of (i) and (ii) above, as to which no objection to the allowance thereof has been timely filed, or, if an objection has been timely filed, such Claim is allowed by Final Order, or (iii) which is deemed allowed by the terms of the Plan. For purposes of determining the amount of an Allowed Claim there shall be deducted therefrom an amount equal to the amount of any claim which the Debtor may hold against the Claimant pursuant to Section 553 of the Bankruptcy Code. Unless otherwise specified in this Plan, "Allowed Claim" shall not, for the purposes of computation of Distributions under the Plan, include post-petition interest on the amount of such Claim.

1.1.5 Allowed Professional Fee Claim means a Professional Fee Claim that is an Allowed Claim.

1.1.6 Allowed Secured Claim means a Secured Claim that is an Allowed Claim.

1.1.7 Available Cash means cash generated from the sale and liquidation of Estate Assets available for distribution under this Plan to Creditors holding Allowed Administrative Claims or Allowed Claims.

1.1.8 Avoidance Actions means any causes of action and rights arising under Sections 506, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, but shall not include any claims against Comerica.

1.1.9 Bankruptcy Code means Title 11 of the United States Code, as amended from time to time and made applicable to the Debtor's case.

1.1.10 Bankruptcy Court means the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division, or in the event such court ceases to exercise jurisdiction over a Debtor's Chapter 11 case, such court as may have jurisdiction with respect to the reorganization of the Debtor under Chapter 11 of the Bankruptcy Code.

1.1.11 Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure.

1.1.12 Broward means the Broward County Tourist Development Tax Section.

1.1.13 Broward Secured Claim means the Allowed Secured Claim of Broward.

1.1.14 Broward Subordinated Secured Claim means the Allowed Subordinated Claim of Broward.

1.1.15 Causes of Action means any and all causes of action to recover funds for the benefit of the Estate.

1.1.16 Chapter 11 Trustee means Maria Yip, the duly appointed chapter 11 trustee of the Estate, pursuant to the orders entered by the Bankruptcy Court on July 12 and 15, 2013 [ECF Nos. 57, 60, 61].

1.1.17 Claim shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

1.1.18 Claimant means the holder of a Claim.

1.1.19 Class means a category of holders of Claims or Interests as classified in the Plan.

1.1.20 Comerica means Comerica Bank, N.A.

1.1.21 Comerica Secured Claim means the Allowed Secured Claim of Comerica.

1.1.22 Confirmation Date means the date upon which the Confirmation Order is entered on the docket of the Debtor's Chapter 11 case by the Clerk of the Bankruptcy Court.

1.1.23 Confirmation Hearing means the date established by the Bankruptcy Court to consider confirmation of the Plan.

1.1.24 Confirmation Order means the order of the Bankruptcy Court confirming the Plan.

1.1.25 Creditor shall have the meaning set forth in Section 101(10) of the Bankruptcy Code.

1.1.26 Debtor means Ocean 4660, LLC, a Florida limited liability company.

1.1.27 Department of Revenue means the State of Florida Department of Revenue.

1.1.28 Department of Revenue Priority Claim means the Allowed Priority Tax Claim of the Department of Revenue.

1.1.29 Department of Revenue Subordinated Priority Claim means the Allowed Subordinated Priority Claim of the Department of Revenue.

1.1.30 Disputed Claim means any Claim to which an objection is timely filed or any Claim which is listed as disputed, unliquidated or contingent on the Schedules of Assets and Liabilities filed with the Bankruptcy Court and which is not otherwise allowed by the Plan.

1.1.31 Distribution(s) means a distribution of Cash from the Disbursing Agent or the Chapter 11 Trustee.

1.1.32 Effective Date means the business day designated in writing by the Chapter 11 Trustee on which each condition to the occurrence of the Effective Date has been satisfied or waived by the applicable party pursuant to Article IX of the Plan.

1.1.33 Equity Interests means interests arising from or related to a membership interest in the Debtor.

1.1.34 Estate means the bankruptcy estate of the Debtor.

1.1.35 Estate Assets means all legal or equitable interests as defined in Section 541 of the Bankruptcy Code or the Plan belonging to the Estate.

1.1.36 Final Order means an Order as to which (a) the time for appeal has expired, or (b) no stay pending appeal or pending review, rehearing, or certiorari has been issued.

1.1.37 General Unsecured Claim means an Unsecured Claim which is not entitled to priority under the Bankruptcy Code.

1.1.38 Interest means the rights arising from the issued and outstanding membership interest or the right to purchase membership interest in the Debtor.

1.1.39 Lauderdale-by-the-Sea means The Town of Lauderdale-by-the-Sea, Florida.

1.1.40 Lauderdale-by-the-Sea Secured Claim means the Allowed Secured Claim of Lauderdale-by-the-Sea.

1.1.41 Lauderdale-by-the-Sea Subordinated Secured Claim means the Allowed Subordinated Claim of Lauderdale-by-the-Sea.

1.1.42 Person means an individual, corporation, partnership, trust, business trust association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority, or any other form of entity not specifically listed herein.

1.1.43 Petition Date means June 2, 2013, the date of the filing of the Chapter 11 case of the Debtor.

1.1.44 Plan means this plan of reorganization of the Debtor's Estate, as amended, modified, or supplemented from time to time.

1.1.45 Priority Tax Claim means a Claim that is entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

1.1.46 Professional means a professional employed in the Debtor's Chapter 11 case under Section 327 and/or 1103 of the Bankruptcy Code.

1.1.47 Professional Fee Claim means a Claim for compensation or reimbursement of expenses of a Professional retained in the Debtor's case in accordance with the provisions of Section 327 and 328 of the Bankruptcy Code.

1.1.48 Property means all right, title and interest in and to any and all property of every kind or nature, owned by the Debtor as of the Effective Date, including, but not limited to, property as defined in Section 541 of the Bankruptcy Code.

1.1.49 Schedules of Assets and Liabilities means the Schedules of Assets and Liabilities as amended from time to time and filed by Debtor in its Bankruptcy Case.

1.1.50 Secured Claim means a Claim for which a Claimant holds a valid, perfected and enforceable lien, not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, or a Claim for which a Claimant asserts a setoff under Section 553 of the Bankruptcy Code, but only to the extent of the value, determined in accordance with Section 506(a) of the Bankruptcy Code, of the

Claimant's interest in the Debtor's interest in the Property or to the extent of the amount subject to such setoff, as the case may be, unless a timely election has been made under Section 1111(b)(2) of the Bankruptcy Code.

1.1.51 Subordinated Claims means the Allowed Subordinated Claim of Lauderdale-by-the-Sea, Allowed Subordinated Claim of Broward, and the Allowed Subordinated Claim of Department of Revenue.

1.1.52 Unsecured Claim means a Claim that is not a Secured Claim. The term specifically includes any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, pursuant to Section 506(a) of the Bankruptcy Code, any Claim of a creditor against the Debtor to the extent that such Creditor's Claim is greater than the value of the Lien securing such Claim, any Claim for damages resulting from rejection of any Executory Contract pursuant to Section 365 of the Bankruptcy Code, and any Claim not otherwise classified under the Plan.

1.1.53 United States Trustee means the Office of the U.S. Trustee for Region 21 located in the Southern District of Florida in Miami, as provided for in 28 U.S.C. § 581 *et. seq.*

1.1.54 U.S. Trustee Fee(s) means fees payable to the U.S. trustee pursuant to 28 U.S.C. § 1930(a)(6).

ARTICLE 2

CLASSIFICATION OF CLAIMS AND INTERESTS; IMPAIRMENT

2.1 Classification. Pursuant to Section 1122 of the Bankruptcy Code, a Claim or Interest is placed in a particular Class for purposes of voting on the Plan and receiving Distributions under the Plan only to the extent the particular Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled before the Effective Date. A Claim or Interest shall be classified in a different Class to the extent that it qualifies within the identification of that different Class.

2.2 Unclassified Claims. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and U.S. Trustee Fees are not classified under the Plan, and the treatment of those Claims is set forth in Article 3.

2.3 Identification of Classes. Classes of Claims against and Interests in the Debtor are designated as follows:

- Class 1* Comerica Secured Claim. Impaired—entitled to vote.
- Class 2* Lauderdale-by-the-Sea Secured Claim. Impaired—entitled to vote.
- Class 3* Broward Secured Claim. Impaired—entitled to vote.
- Class 4* Department of Revenue Priority Claim. Impaired—entitled to vote.

- Class 5* General Unsecured Claims against Debtor. Impaired—entitled to vote.
- Class 6* Comerica Subordinated Secured Claim. Impaired—entitled to vote.
- Class 7* Subordinated Claims of Lauderdale-by-the-Sea, Broward and Department of Revenue. Impaired—entitled to vote.
- Class 8* Interests in the Debtor. Unimpaired— deemed to have accepted.

2.4 Impaired Voting Classes. Claims in Classes 1, 2, 3, 4 and 5 are impaired under the Plan, and therefore, holders of Claims in such Classes are entitled to vote to accept or reject the Plan.

2.5 Impaired Non-Voting Class. Claims in Classes 6 and 7 are deemed to have rejected the Plan by virtue of Section 1126(g) of the Bankruptcy Code and is not entitled to vote to accept or reject the Plan.

2.6 Unimpaired Classes. Claims in Class 8 are not impaired under the Plan. Pursuant to Section 1126(f) of the Bankruptcy Code, Claim holders within Class 8 are conclusively presumed to have accepted the Plan, and therefore are not entitled to vote to accept or reject the Plan.

ARTICLE 3

TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, AND ALLOWED PRIORITY TAX CLAIMS

3.1 Administrative Claims Bar Date. All requests for payment of Administrative Claims and applications for payment of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon the Chapter 11 Trustee at least ten days before the Confirmation Hearing or by such earlier deadline as may apply to such Administrative Claim pursuant to an earlier order of the Bankruptcy Court; provided, however, that each claimant shall have the right to supplement its Administrative Claim and estimate any future expenses and fees to be incurred. Except as provided herein, any Administrative Claim or Professional Fee Claim for which an application or request for payment is not filed within such time period shall be discharged and forever barred.

3.2 Treatment of Administrative Claims, including Professional Fee Claims. Allowed Administrative Claims and Professional Fee Claims incurred through the Confirmation Date shall be completely and fully satisfied by payment in cash by the Chapter 11 Trustee, on the later of the Effective Date or the allowance date except to the extent that any claimant holding an Allowed Administrative Claim or Allowed Professional Fee Claim agrees to treatment different than that proposed under the Plan.

3.3 U. S. Trustee Fees. Notwithstanding any other provisions of the Plan to the contrary, the United States Trustee shall be paid in cash the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days of the entry of the Order confirming this Plan, for pre-confirmation periods by the Chapter 11 Trustee, and the Chapter 11 Trustee shall simultaneously provide the United State Trustee an appropriate affidavit indicating the cash

disbursements for the relevant period. In addition, the Debtors, through the Chapter 11 Trustee, shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time periods set forth in 29 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Chapter 11 Trustee, until the earlier of the close of this Case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an order by the Bankruptcy Court dismissing this Case or converting this Case to another chapter under the Bankruptcy Code, and the Chapter 11 Trustee shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

3.4 Priority Tax Claims. To the extent not already satisfied by the Chapter 11 Trustee prior to the Effective Date, commencing as soon as reasonably practicable on or after the Effective Date, the Disbursing Agent shall pay to the Holder of an Allowed Priority Tax Claim cash in an amount equal to such Allowed Priority Tax Claim.

ARTICLE 4

PROVISIONS FOR TREATMENT OF ALLOWED CLAIMS AND INTERESTS

Unless explicitly stated to the contrary, the scheme for disbursing the available cash proposed in this Plan is intended to and shall mirror the distribution scheme set forth in Section 726 of the Bankruptcy Code. Therefore, to the extent that any ambiguity in this Plan requires interpretation by the Bankruptcy Court, the principles and provisions of Section 726 of the Bankruptcy Code shall supply the framework for resolving such ambiguity.

4.1 Treatment of Class 1 Secured Claims.

4.1.1 Class 1 consists of the Comerica Secured Claim in the amount of \$2,238,988.01 as set forth in proof of claim 13 filed on February 23, 2014. The Chapter 11 Trustee intends to object to the Comerica Secured Claim to establish the portion of the Comerica Secured Claim, if any, that is entitled to first lien secured status against the Available Cash.

4.1.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, each Holder of an Allowed Class 1 Secured Claim shall be paid (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to the Allowed Amount of its Secured Claim (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Allowed Secured Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.1.3 Class 1 is Impaired and the Holder of the Class 1 Claim is entitled to vote to accept or reject the Plan.

4.2 Treatment of Class 2 Secured Claims.

4.2.1 Class 2 consists of the Lauderdale-by-the-Sea Secured Claim, which corresponds to actual damages incurred by Lauderdale-by-the-Sea.

4.2.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, each Holder of an Allowed Class 2 Secured Claim shall be paid (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to the Allowed Amount of its Secured Claim (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Allowed Secured Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.2.3 Class 2 is Impaired and each Holder of a Class 2 Claim is entitled to vote to accept or reject the Plan.

4.3 Treatment of Class 3 Secured Claims.

4.3.1 Class 3 consists of the Broward Secured Claim, which corresponds to unpaid tourist development taxes owed to Broward.

4.3.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, each Holder of an Allowed Class 3 Secured Claim shall be paid (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to the Allowed Amount of its Secured Claim (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Allowed Secured Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.3.3 Class 3 is Impaired and each Holder of a Class 3 Claim is entitled to vote to accept or reject the Plan.

4.4 Treatment of Class 4 Priority Claims.

4.4.1 Class 4 consists of the Department of Revenue Priority Claim.

4.4.2 The Allowed Class 4 Claims shall correspond to unpaid sales and use taxes owed to Department of Revenue.

4.4.3 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, each Holder of an Allowed Priority Claim shall be paid (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to the Allowed Amount of its Priority Claim, in accordance with § 1129(a)(9)(C) of the Bankruptcy Code, (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Allowed Priority Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.4.4 Class 4 is Impaired and each Holder of a Class 4 Claim is entitled to vote to accept or reject the Plan.

4.5 Treatment of Class 5 General Unsecured Claims Against Debtor.

4.5.1 Class 5 consists of all General Unsecured Claims.

4.5.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, each Holder of an Allowed Class 5 General Unsecured Claim shall be paid ratably until all Allowed Class 5 General Unsecured Claims are paid in full.

4.5.3 Class 5 is Impaired and each Holder of a Class 5 General Unsecured Claim shall be entitled to vote to accept or reject the Plan.

4.6 Treatment of Class 6 Subordinated Claims Against Debtor.

4.6.1 Class 6 consists of the Lauderdale-by-the-Sea Subordinated Secured Claim, Broward Subordinated Secured Claim, and Department of Revenue Subordinated Priority Claim, corresponding to any fine, penalty, forfeiture, or damages of the Lauderdale-by-the-Sea Secured Claim, Broward Secured Claim and Department of Revenue Priority Claim other than actual compensation for any pecuniary loss suffered by Lauderdale-by-the-Sea, Broward and Department of Revenue.

4.6.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, Lauderdale-by-the-Sea, Broward, and Department of Revenue shall be paid, on a *pro rata* basis, (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to the Allowed Amount of its Subordinated Claim, (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Allowed Subordinated Claim, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.6.3 Class 6 is Impaired each Holder of a Class 6 Claim shall be entitled to vote to accept or reject the Plan.

4.7 Treatment of Class 7 Interests in the Debtor.

4.7.1 Class 7 comprises all Equity Interests in the Debtor. All Class 8 Equity Interests shall remain in effect.

4.7.2 To the extent there is any Available Cash after payment or reserve for Claims of senior priority, Class 7 shall be paid (a) on the Effective Date, an amount, in Cash, by the Chapter 11 Trustee equal to any excess Available Cash after the satisfaction of Claims of senior priority, (b) as otherwise agreed to by the Chapter 11 Trustee and the Holder of an Equity Interest, or (c) as otherwise ordered by a Final Order of the Bankruptcy Court.

4.7.3 Class 8 is Unimpaired. Pursuant to Section 1126(f) of the Bankruptcy Code, Class 7 is deemed to have accepted the Plan and, thus, Holders of Class 7 Interests are not entitled to vote.

ARTICLE 5
MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 Liquidation of the Debtor's Estate.

The Debtor's Estate was primarily comprised of certain real property Located At 4660 N. Ocean Drive, Lauderdale-by-the-Sea, Florida 33308. Prior to filing for bankruptcy, and post-petition, the Debtor owned and operated a hotel on the beachfront property. The hotel featured a beach-front location, two five-story interior corridor buildings, 147 guest rooms, a beach front tike bar and grill, a large adjoining restaurant and commercial kitchen. In addition, the Debtor's Estate consisted of a sublease of the adjacent parking lot running through the year 2055.

The Court's *Order (A) Approving the Sale of Substantially all of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances and Interests and (B) Approving the Assumption and Assignment of Contracts and Leases* [ECF No. 135] ("**Sale Order**") was entered on December 11, 2013. In accordance with the Sale Order, substantially all assets of the Debtor's Estate were sold to a third party bidder at auction for \$17,000,000.00. The remaining sale proceeds total approximately \$3,600,000.00, which sum provides the means for implementing the Plan.

5.2 Request for "Cramdown" of Plan. If the Bankruptcy Court determines that Classes of Interests are impaired and any such Classes of Interests vote to reject the Plan, the Chapter 11 Trustee requests that the Bankruptcy Court confirm the Plan pursuant to the provisions of § 1129(b)(1) and (2)(c) of the Bankruptcy Code.

5.3 Designation of Disbursing Agent. Upon the Effective Date, the Chapter 11 Trustee will serve as the Disbursing Agent under the terms of the Plan. In order to effectuate the terms of the Plan, all Estate Assets will remain in the Chapter 11 Trustee's escrow account until they are disbursed in accordance with the provisions of the Plan.

5.4 Existing Equity Interests. On the Effective Date, all agreements, documents and instruments relating to the Equity Interests shall remain in full force and effect, unaltered and unmodified, and shall remain vested with the existing Equity Interest Holders.

5.5 Abandonment of Estate Causes of Action. On the Effective Date, all Estate Causes of Action shall be deemed abandoned without further action or order of the Bankruptcy Court, except as set forth in Section 9.1.

ARTICLE 6
PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Date of Distributions. Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon as practicable thereafter and deemed to be made on the Effective Date. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the

making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.2 Disbursing Agent. All distributions under this Plan shall be made by Maria M. Yip, as Disbursing Agent, who shall not be required to give any bond or surety or other security for the performance of his duties.

6.3 Rights and Powers of Disbursing Agent.

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

(b) Expenses Incurred on or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in cash by the Disbursing Agent.

6.4 Withholding and Reporting Requirements. In connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim or Interest that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution.

ARTICLE 7
PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Date of Distributions. Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon as practicable thereafter and deemed to be made on the Effective Date. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the

making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

7.2 Disbursing Agent. All distributions under this Plan shall be made by Maria M. Yip, as Disbursing Agent, who shall not be required to give any bond or surety or other security for the performance of his duties.

ARTICLE 8

CONDITIONS TO EFFECTIVE DATE

8.1 Conditions. The occurrence of the Effective Date shall be subject to the satisfaction or waiver by the Chapter 11 Trustee of each of the following conditions:

8.1.1 The Confirmation Order, in form and substance satisfactory to the Chapter 11 Trustee, has been entered on the docket maintained by the Clerk of the Bankruptcy Court.

8.1.2 The Confirmation Order is a Final Order, unless the Bankruptcy Court has waived the Debtor's compliance with Bankruptcy Rule 6004(h).

8.2 Satisfaction of Conditions. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Chapter 11 Trustee determines that one of the conditions precedent set forth in Section 9.1 hereof cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Chapter 11 Trustee shall file a notice of the failure of the Effective Date with the Bankruptcy Court and the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this Section, this Plan shall be null and void in all respects, and nothing contained in this Plan shall constitute a waiver or release of any Claims against the Debtor or the allowance of any Claim as an Allowed Claim.

ARTICLE 9

PROVISIONS FOR THE RESOLUTION OF OBJECTIONS TO PROOFS OF CLAIM

9.1 Right to Object to Claims. The Chapter 11 Trustee shall have the right to examine and object to any Claims scheduled by the Debtor or filed in Debtor's case, to object to and contest the allowance of any such Claims filed with the Bankruptcy Court, and shall file any such objections no later than 25 days prior to Confirmation Hearing or any other such date as the Court may order. Notwithstanding the waiver of Estate Causes of Action in Section 5.5 of this Plan, the Chapter 11 Trustee may assert all applicable Estate Causes of Action as the basis for her objection to any Claims.

9.2 Deadline for Responding to Claim Objections. A Claimant whose Claim has been objected to in accordance with Section 9.1, must file with the Court and serve upon the Chapter 11 Trustee a response to such claim objection within 30 days after service of any objection to its Claim. Failure to file such a response within the 30-day time period shall be

cause for the Bankruptcy Court to enter a default judgment against the non-responding Claimant and to thereby grant the relief requested in the Claim objection.

9.3 Estimation of Claims. After the Effective Date, the Trustee may request the Bankruptcy Court to estimate any Claim for purposes of Allowance pursuant to Section 502(c) of the Bankruptcy Code.

ARTICLE 10

EFFECT OF CONFIRMATION

10.1 Discharge of Debtor. Under the terms of the Plan, only Allowed Claims that are paid in full shall be discharged under Section 1141 of the Bankruptcy Code.

10.2 Binding Effect. Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of this Plan shall bind any Holder of a Claim against, or Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is impaired under this Plan, whether or not such Holder has accepted this Plan, and whether or not such Holder is entitled to a Distribution under this Plan.

10.3 Injunction Enjoining Certain Actions.

Except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims against or Interests in the Debtors arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Property:

(i) commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind arising before the Confirmation Date against the Debtor, the Estate, or the Property (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date, shall be deemed to be withdrawn or dismissed with prejudice);

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against the Debtors, their Estate, or the Property relating to any obligation which arose prior to the Effective Date;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance against the Debtor, the Estate, or the Property;

(iv) asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due the Debtor, the Estate, or the Property; and

(v) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

ARTICLE 11
RETENTION OF JURISDICTION

11.1 Retention of Jurisdiction. The Bankruptcy Court, even after the case has been closed, shall have jurisdiction to the fullest extent of the law over all matters arising under, arising in, or relating to the Debtor's chapter 11 cases, including proceedings to:

- (a) ensure that the Plan is carried out;
- (b) enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan;
- (c) consider any modification of the Plan under Section 1127 of the Bankruptcy Code;
- (d) hear and determine all Claims, controversies, suits and disputes against Debtors to the extent permitted under 28 U.S.C. § 1334;
- (e) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- (f) hear, determine, and adjudicate any litigation involving any claims or causes of action constituting Estate Property;
- (g) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving Debtors that may be pending on or commenced after the Effective Date;
- (h) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any entity's obligations incurred in connection with the Plan, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;
- (i) hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any and all subordination and similar agreements among various creditors pursuant to Section 510 of the Bankruptcy Code;
- (j) hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;
- (k) enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;
- (l) enter an order concluding and terminating this case;

- (m) correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order;
- (n) determine all questions and disputes regarding title to the assets of the Debtors;
- (o) take any action described in the Plan involving the post-confirmation Debtors;
- (p) enter a final decree in Debtors' case as contemplated by Bankruptcy Rule 3022;
- (q) enforce, by injunction or otherwise, the provisions set forth in the Plan, the Confirmation Order, any final decree, and any Final Order that provides for the adjudication of any issue by the Bankruptcy Court; and
- (r) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

11.2 Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains or exercises discretion not to hear any matter within the scope of its jurisdiction, nothing herein shall prohibit or limit the exercise of jurisdiction by any other tribunal of competent jurisdiction.

ARTICLE 12 **GENERAL PROVISIONS**

12.1 Notices. Whenever the Plan requires notice to be given, such notice shall be given to the following parties at their respective addresses unless a prior notice of change of address has been served indicating a new address:

Chapter 11 Trustee Maria M. Yip on behalf of the Debtor

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Drew M. Dillworth, Esq.

Email: ddillworth@stearnsweaver.com

Eric J. Silver, Esq.

Email: esilver@stearnsweaver.com

150 West Flagler Street, Suite 2200

Miami, FL 33130

Tel: (305) 789-3200

Fax: (305) 789-3395

United States Trustee

Office of the United States Trustee

Steven D. Schneiderman, Esq.

51 S.W. First Avenue, Suite 1204

Miami, Florida 33130

Tel: (305) 536-7285
Fax: (305) 536-7360
Email: steven.d.schneiderman@usdoj.gov

12.2 Dates. The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Plan, except as otherwise provided.

12.3 Further Action. Nothing contained in the Plan shall prevent the Chapter 11 Trustee from taking such actions as may be necessary to consummate the Plan, even though such actions may not specifically be provided for within the Plan.

12.4 Attachments. All attachments to the Plan are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Plan. All exhibits to the Plan and Asset Purchase Agreement shall be filed with the Bankruptcy Court no later than ten days before the Confirmation Date or such other date as is agreed to by the Chapter 11 Trustee.

12.5 Plan Amendments. Before the Confirmation Date, the Chapter 11 Trustee may modify, amend or withdraw the Plan, without approval of the Bankruptcy Court. After the Confirmation Date, Proponents may subject to Bankruptcy Court approval and so long as it does not materially or adversely affect the rights set forth in the Plan of creditors and other parties in interest, amend or modify the Plan to remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner that may be necessary to carry out the purposes and intent of the Plan.

12.6 Binding Effect. Upon occurrence of the Effective Date, the Plan shall be binding on, and inure to the benefit of, the Debtor, the Chapter 11 Trustee, Comerica, and the Claim holders and Interest holders, and their respective successors and assigns, regardless of whether those parties voted to accept the Plan.

12.7 Governing Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to any conflicts of law principles.

12.8 No Admissions. Notwithstanding anything here and to the contrary, nothing contained in the Plan shall be deemed as an admission by any person with respect to any matter set forth herein.

ARTICLE 13 **SUBSTANTIAL CONSUMMATION**

13.1 Substantial Consummation. The Plan shall be deemed substantially consummated immediately on the completion of all material actions required to be undertaken at the Effective Date.

13.2 Notice of Effective Date. Promptly after occurrence of the Effective Date, the Chapter 11 Trustee shall file with the clerk of the Bankruptcy Court a notice that the Plan has

become effective; *provided, however*, that the failure to file such notice shall not affect the effectiveness of the Plan or the rights or substances obligations of any entity hereunder.

13.3 Final Decree. On substantial consummation, the Debtor or the Trustee may move for a final decree closing the case and requesting such other orders as may be necessary and appropriate.

Respectfully submitted,

**STEARNS WEAVER MILLER WEISSLER
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