

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

In re:

SECURITY NATIONAL PROPERTIES  
FUNDING III, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13277 (KG)

Jointly Administered

**DISCLOSURE STATEMENT FOR JOINT PLAN OF REORGANIZATION  
OF SECURITY NATIONAL PROPERTIES FUNDING III, LLC  
AND ITS DEBTOR AFFILIATES**

**Filed by Co-Proponents: Bank of America, N.A., as Agent for Senior Lenders; and Security  
National Properties Funding III, LLC, and Its Debtor Affiliates**

TROUTMAN SANDERS LLP  
Jeffrey W. Kelley (Ga. Bar No. 412296)  
Thomas E. Reilly (Ga. Bar No. 600195)  
Stephen S. Roach (Ga. Bar No. 463206)  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
Telephone: (404) 885-3000  
Facsimile: (404) 962-6847

-and-

RICHARDS, LAYTON & FINGER, P.A.  
Mark D. Collins (Del. Bar No. 2981)  
Robert J. Stearn, Jr. (Del. Bar No. 2915)  
Cory D. Kandestin (Del. Bar No. 5025)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

*Counsel for Bank of America, N.A., as Agent for  
Senior Lenders*

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
Robert J. Dehney (Del. Bar No. 3578)  
Gregory W. Werkheiser (Del. Bar No. 3553)  
Andrew R. Remming (Del. Bar No. 5120)  
1201 North Market Street, 16<sup>th</sup> Fl.  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989

*Counsel for Security National Properties Funding III,  
LLC, and Its Debtor Affiliates*

Dated: August 22, 2014, Wilmington, Delaware

<sup>1</sup> The debtors in these cases are Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties - Alaska, LLC. The Debtors' address is: Security National Properties Funding III, LLC, c/o Security National Properties, 323 Fifth Street, Eureka, CA 95501.

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## NOTICE

THE PLAN PROPONENTS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR THE JOINT PLAN OF REORGANIZATION OF SECURITY NATIONAL PROPERTIES FUNDING III, LLC AND ITS DEBTOR AFFILIATES FILED BY PLAN PROPONENTS, BANK OF AMERICA, N.A., AS AGENT FOR THE SENIOR LENDERS; AND SECURITY NATIONAL PROPERTIES FUNDING III, LLC, AND ITS DEBTOR AFFILIATES FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY, AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY CONTAIN “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE,” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. THE DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE PLAN PROPONENTS URGE EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT’S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THIS

DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

IT IS THE PLAN PROPONENTS' POSITION THAT THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER. RATHER, HOLDERS OF CLAIMS AND EQUITY INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE REORGANIZED DEBTORS MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE REORGANIZED DEBTORS THE RIGHT TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES, AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE PLAN PROPONENTS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED THEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS FROM INFORMATION PROVIDED BY THE PLAN PROPONENTS AND THE PLAN PROPONENTS' PRIOR STATEMENTS AND PLEADINGS, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED.

TO THE BEST OF THE PLAN PROPONENTS' KNOWLEDGE, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT AND IS BASED, IN PART, UPON INFORMATION PREPARED BY PARTIES OTHER THAN THE PLAN PROPONENTS. ALTHOUGH THE PLAN PROPONENTS HAVE MADE EVERY REASONABLE EFFORT TO BE ACCURATE IN ALL MATERIAL MATTERS, THE PLAN PROPONENTS ARE

UNABLE AND DO NOT WARRANT OR REPRESENT THAT ALL THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE.

THE PLAN PROPONENTS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE PLAN PROPONENTS MAY SUBSEQUENTLY UPDATE THE INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT, THEY HAVE NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE FILING OF THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

## **ARTICLE 1. INTRODUCTION AND BACKGROUND<sup>1</sup>**

### **A. Events Leading to the Filing of the Agreed Plan**

Since the Petition Date, Bank of America and the Debtors have attempted to reach a resolution to these Chapter 11 Cases, including exchanges of proposals and mediation. In August, 2013, Bank of America and the other Senior Lenders reached agreement with the Debtors and their plan sponsors on a term sheet providing for a global resolution to these Chapter 11 Cases. While the parties were working implementing that term sheet, the Debtors began to receive year-end information about the performance of their real estate portfolio. The results, while encouraging overall and reflecting further stabilization of the portfolio, did not fully achieve the performance levels in the projections upon which the August 2013 term sheet was premised. The August 2013 term sheet was never consummated, but the parties continued to discuss various scenarios to conclude the Chapter 11 Cases through a consensual restructuring.

On May 16, 2014, the Agent filed its *Plan of Reorganization of Security National Properties Funding III, LLC and Its Debtor Affiliates Filed by Bank of America, N.A., as Agent for Senior Lenders* [Docket No. 875] (the “Agent Plan”) and related *Disclosure Statement for Chapter 11 Plan of Reorganization of Security National Properties Funding III, LLC and Its Debtor Affiliates Filed by Bank of America, N.A., as Agent for Senior Lenders* [Docket No. 876] (the “Agent Disclosure Statement”).

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<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the glossary contained in Article 8 of this Disclosure Statement.

Notwithstanding the filing of the Agent Plan and Agent Disclosure Statement, the Debtors, certain of their Non-Debtor Affiliates, Bank of America and the other Senior Lenders continued discussions regarding a possible global settlement of matters in the Chapter 11 Cases. The parties ultimately executed the Settlement Agreement dated August 12, 2014. On August 22, 2014, the Bankruptcy Court approved the Settlement Agreement. The Settlement Agreement forms the basis for the Plan and establishes a path for a consensual resolution of the Chapter 11 Cases. A copy of the Settlement Agreement is annexed as Exhibit A to the Plan and is incorporated in the Plan and this Disclosure Statement by referenced.

## **B. Summary**

Pursuant to section 1125 of the Bankruptcy Code, the Plan Proponents submit this Disclosure Statement to Holders of Claims and Equity Interests in connection with (a) the solicitation of votes to accept or reject the Plan dated as of August 22, 2014, a copy of which is annexed hereto as **Exhibit A**, and (b) the Confirmation Hearing, which is presently scheduled for September 30, 2014 at 10:00 a.m. (Prevailing Eastern Time).

The Plan Proponents filed the Plan concurrently with this Disclosure Statement. As described in Article 4.E.2 herein, the Plan implements the Settlement Agreement by providing for two alternative paths to consummate the Plan: (i) the Debtor Confirmation Option and; (ii) the Lender Confirmation Option. Debtor Confirmation Option allows the SN Parties to satisfy and discharge the Senior Lender Claims through the Refinancing Transactions, the Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants. If the SN Parties satisfy all requirements for the Debtor Confirmation Option by the DCO Deadline, then the Debtor Confirmation Option shall be implemented. If the SN Parties do not satisfy all requirements for the Debtor Confirmation Option, then the Lender Confirmation Option shall be implemented. Whichever confirmation path is implemented, upon the occurrence of the Settlement Effective Date, the SN Parties and Senior Lenders will have expressly consented to the Plan.

If the Debtor Confirmation Option is implemented, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date:

1. its Pro Rata Distribution of the proceeds of the Refinancing Transactions actually received by the Agent;
2. its Pro Rata rights to payments of principal, interest and other amounts that may be payable to Agent under the Deficiency Note, the DCO Sponsor Guaranty, or the Net Proceeds Covenant; and
3. its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases.

If the Lender Confirmation Option is implemented, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date:

1. its Pro Rata Distribution of New Senior Debt;

2. its Pro Rata Distribution, subject to the Allocation Election, of (A) New LLC Interests and/or (B) New Sub Debt; and
3. its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases.

The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; *provided, however*, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s), *provided further, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the Refinancing Transactions.

All Holders of Allowed Claims, including all General Unsecured Claims, will be paid in full on the Effective Date or as soon as practicable thereafter, except for the Senior Lender Claims, Intercompany Claims, and Claims of Non-Debtor Affiliates.

If the Debtor Confirmation Option is implemented, then all Holders of Allowed Equity Interests in SNPF III shall retain their Pro Rata Equity Interests in SNPF III. If the Lender Confirmation Option is implemented, all Equity Interests in SNPF III will be canceled on the Effective Date. The equity structure of all Debtors other than SNPF III (the Subsidiaries) will remain the same under either confirmation option.

If the Lender Confirmation Option is implemented, the Plan provides for an Exit Facility in the maximum amount of \$10,000,000, which shall, among other things, be used to make required Distributions under the Plan for all Allowed Claims other than the Senior Lender Claims, the Intercompany Claims, and the Non-Debtor Affiliate Claims. The Senior Lenders have agreed to fund the Exit Facility if the Lender Confirmation Option is implemented, the basic terms of which are included in **Exhibit B** annexed hereto.

**The Plan Proponents believe that the Plan provides the best recoveries possible for Holders of Allowed Claims and strongly recommends that, if such Holders are entitled to vote, they vote to accept the Plan.**

### **C. The Chapter 11 Cases**

On October 13, 2011, the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code. The Plan Proponents submit this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and in connection with the solicitation of acceptances of the Plan.



**D. The Disclosure Statement**

The purpose of this Disclosure Statement is to set forth information that (a) outlines the history of the Debtors and their business and (b) summarizes the Plan. No solicitation for votes on the Plan may be made except pursuant to this Disclosure Statement.

**E. Bankruptcy Court Approval of this Disclosure Statement**

After notice and a hearing, the Bankruptcy Court approved this Disclosure Statement on August 22, 2014 [Docket No. 1021], and found that it contained adequate information of a kind and in sufficient detail to enable each Creditor of the Debtors to make an informed judgment as to whether to vote to accept or reject the Plan.

**F. Holders of Claims Entitled to Vote**

Pursuant to the provisions of the Bankruptcy Code, only Holders of allowed Claims or Equity Interests in Classes of Claims or Equity Interests that are Impaired and that are not deemed to have rejected the Plan are entitled to vote to accept or reject the Plan. Classes of Claims or Equity Interests that are Impaired but will not receive or retain any property under the Plan are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan. Classes of Claims or Equity Interests in which the Holders of Claims or Equity Interests are Unimpaired under the Plan are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. For a detailed description of the treatment of Claims and Equity Interests under the Plan, see Article 3.D of this Disclosure Statement.

Claims in Class 2<sup>2</sup> (Senior Lender Claims) of the Plan are Impaired, and to the extent Claims in Class 2 are Allowed, the Holders of such Claims will receive distributions under the Plan. As a result, Holders of Claims in that Class are entitled to vote to accept or reject the Plan. If, and to the extent any other Class identified as being Unimpaired is Impaired (whether as a result of the terms of the Plan or any modification or amendment thereto), upon such determination, such Class shall then be entitled to vote to accept or reject the Plan.

Claims in Class 1 (Secured Governmental Unit Claims), Class 3 (Other Secured Claims), Class 4 (Unsecured Priority Claims), Class 5 (General Unsecured Claims), and Classes 8B-8I (Equity Interests in the Subsidiaries) are Unimpaired by the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in those Classes are therefore conclusively presumed to have accepted the Plan, and the votes of Holders of such Claims will therefore not be solicited.

Claims in Class 6 (Intercompany Claims) and Class 7 (Non-Debtor Affiliate Claims) will receive no Distribution under the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Claims in those Classes are therefore conclusively presumed to have rejected the Plan, and the votes of Holders of such Claims and Equity Interests will therefore not be solicited.

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<sup>2</sup> As set forth below, the Plan provides for eight primary Classes 1 through 8, which are each further divided into sub-classes A through I. Unless otherwise specified, any reference to a primary Class shall include and be a reference to all sub-classes within such primary Class. For example, a reference to Class 2 shall be considered a reference to Classes 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, and 2I.

Claims in Class 8A (Equity Interests in SNPF III) (i) shall retain their Pro Rata Equity Interests in SNPF III if the Debtor Confirmation Option is implemented or (ii) shall receive no Distribution under the Plan if the Lender Confirmation Option is implemented. If the Debtor Confirmation Option is implemented, Class 8A is Unimpaired by the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Equity Interests in Class 8A will be conclusively presumed to have accepted the Plan, and the votes of Holders of such Equity Interests will not be solicited. If, however, the Lender Confirmation Option is implemented, Class 8A is Impaired by the Plan, and pursuant to section 1126(g) of the Bankruptcy Code, each Holder of Equity Interests in Class 8A will be conclusively presumed to have rejected the Plan and, therefore, the votes of Holders of such Equity Interests will not be solicited.

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the Plan. For a more detailed description of the requirements for confirmation of the Plan, see Article 4 of this Disclosure Statement.

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Plan Proponents reserve the right to, upon the agreement of the Plan Proponents, amend the Plan or request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan of reorganization notwithstanding the rejection of a plan by one or more impaired classes of claims or equity interests. Under that section, a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, see Article 4.A of this Disclosure Statement.

**ARTICLE 2.**  
**THE PLAN PROPONENTS RECOMMEND THAT HOLDERS OF CLAIMS**  
**IN CLASS 2 VOTE TO ACCEPT THE PLAN.**

**A. Overview of Plan Treatment**

The following table summarizes the classification and treatment of Administrative Claims, Claims, and Equity Interests under the Plan:

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount<sup>3</sup></u>	<u>Approximate Percentage Recovery</u>
--	Administrative Claims: Non-Professional Fee Claims	Paid in full, in Cash, without interest, on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Administrative Claim;	\$2,450,000 – 2,700,000	100%

<sup>3</sup> Actual amounts will depend upon the amounts of Claims timely filed before the Administrative Claims Bar Date, final reconciliation and resolution of all Claims, and the negotiation of cure amounts. Accordingly, the actual amounts may vary significantly from the amounts set forth herein.

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount<sup>3</sup></u>	<u>Approximate Percentage Recovery</u>
		provided, however, that Allowed Ordinary Course Administrative Claims shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating to such Ordinary Course Administrative Claims.		
--	Professional Fee Claims	Paid in full, in Cash, without interest in accordance with the Interim Compensation Order or any order of the Bankruptcy Court entered with respect to final fee applications filed by any Professional.	\$250,000 - \$450,000	100%
--	Priority Tax Claims	Unimpaired. As shall have been determined by the Reorganized Debtors, each Holder shall be entitled to receive (a) on the Initial Distribution Date, Cash equal to the unpaid portion of such Allowed Priority Tax Claim, (b) deferred Cash payments over time pursuant to section 1129(a)(9)(C) of the Bankruptcy Code in an aggregate principal amount equal to the Face Amount of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the rate of interest determined under applicable nonbankruptcy law as of the calendar month in which the Plan is confirmed, or (c) such other less favorable treatment as to which the Reorganized Debtors and such Holder shall have agreed upon in writing.	\$245,000 – \$250,000	100%
1	Secured Governmental Unit Claims	Unimpaired. On the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Secured Governmental Unit Claim, the Holder of such Allowed Secured Governmental Unit Claim shall receive at the election of the Reorganized Debtors, in full satisfaction, settlement, release and discharge of and in exchange for, such Allowed Secured Governmental Unit Claim, (a) Cash equal to the value of its Allowed Governmental Unit Claim, (b) the	\$0	100%

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount<sup>3</sup></u>	<u>Approximate Percentage Recovery</u>
		return of the Holder's Collateral securing the Secured Governmental Unit Claim, (c) payment in full as provided under sections 1129(a)(9)(C) and (D) of the Bankruptcy Code on the schedule provided for payment of General Unsecured Claims, or (d) such other less favorable treatment to which the Reorganized Debtors and such Holder shall have agreed upon in writing. To the extent such payments are paid over time, such payments shall be calculated to result in payment in full of the Allowed Secured Governmental Unit Claim with all accrued interest.		
2	Senior Lender Claims	<i>Impaired.</i> Each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Senior Lender Claim the following treatment: (a) If the Debtor Confirmation Option is implemented, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (1) its Pro Rata Distribution of the proceeds of the Refinancing Transactions actually received by the Agent; (2) its Pro Rata rights to payments of principal, interest and other amounts that may be payable to Agent under the Deficiency Note, the DCO Sponsor Guaranty, or the Net Proceeds Covenant; and (3) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases; or (b) If the Lender Confirmation Option is implemented, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (1) its Pro Rata Distribution of New Senior Debt, (2) its Pro Rata Distribution, subject to the Allocation Election, of (A) New LLC Interests and/or (B) New Sub Debt, and (3) its Pro Rata	\$ 164,341,863.11 plus post-petition interests, fees, and costs due under the Prepetition Loan Documents and Allowed under section 506(b) of the Bankruptcy Code	See <b>Exhibit C</b>

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount</u> <sup>3</sup>	<u>Approximate Percentage Recovery</u>
		right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases. The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; provided, however, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s); provided further, however, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the Refinancing Transactions.		
3	Other Secured Claims	Unimpaired. Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Other Secured Claim in Class 3 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Other Secured Claim, at the option of the Plan Proponent or Reorganized Debtors: (a) have its Allowed Class 3 Claim reinstated and rendered not impaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable non-	\$278,851.60	100%

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount<sup>3</sup></u>	<u>Approximate Percentage Recovery</u>
		bankruptcy law that entitles the Holder of such Allowed Class 3 Claim to demand or receive payment of such Allowed Class 3 Claim prior to the stated maturity of such Allowed Class 3 Claim from and after the occurrence of a default; or (b) receive Cash in an amount equal to such Allowed Class 3 Claim, including any interest on such Allowed Class 3 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date, or as soon as practicable thereafter, and the first subsequent Distribution Date, or as soon as practicable thereafter, after such Claim becomes an Allowed Class 3 Claim.		
4	Unsecured Priority Claims	Unimpaired. Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Unsecured Priority Claim in Class 4 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Unsecured Priority Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Unsecured Priority Claim.	\$0	100%
5	General Unsecured Claims	Unimpaired. Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed General Unsecured Claim in Class 5 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed General Unsecured Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date.	\$1,660,525-\$1,750,000	100%
6	Intercompany Claims	Impaired. On the Effective Date, Allowed Intercompany Claims shall be reinstated or	N/A	0%

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Approximate Allowed Amount<sup>3</sup></u>	<u>Approximate Percentage Recovery</u>
		cancelled, at the option of the Debtors (if the Debtor Confirmation Option is implemented) or the Agent (if the Lender Confirmation Option is implemented).		
7	Non-Debtor Affiliate Claims	Impaired. Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall receive no Distributions under the Plan; <i>provided, however,</i> that the Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall retain any rights of setoff or recoupment otherwise available for such Allowed Non-Debtor Affiliate Claims.	N/A	0%
8	Equity Interests	<p>Class 8A: Unimpaired if Debtor Confirmation Option implemented. Impaired if Lender Confirmation Option is implemented. (1) <i>If the Debtor Confirmation Option is implemented,</i> then Holders of Allowed Equity Interest in Class 8A shall retain their Pro Rata Equity Interests in SNPF III; <b>or</b> (2) <i>If the Lender Confirmation Option is implemented,</i> Holders of Allowed Equity Interests in Class 8A shall receive no Distribution under the Plan.</p> <p>Classes 8B-8I: Unimpaired. Each Holder of Allowed Equity Interests in Classes 8B-8I shall retain its equity interests in each respective Subsidiary Debtor.</p>	N/A	N/A

**ARTICLE 3.**  
**THE DEBTORS AND THESE CHAPTER 11 CASES**

**A. Corporate Structure and Ownership**

The Debtors, for purposes of this Disclosure Statement and the Plan, include the following entities:

- Security National Properties Funding III, LLC (SNPF III);
- Security National Properties Funding, LLC;
- Security National Properties Funding II, LLC;
- ITAC 190, LLC;

- Sequoia Investments III, LLC;
- Sequoia Investments V, LLC;
- Sequoia Investments XIV, LLC;
- Sequoia Investments XV, LLC;
- Sequoia Investments XVIII, LLC; and
- Security National Properties Alaska, LLC

SNPF III is an Alaska limited liability company and is majority-owned by non-debtor Security National Properties Holding Company LLC (53.1%). The remaining interests in SNPF III are owned by the following entities in the amounts indicated: Aspen Park, Inc. (.62%); Rangeview Tra-Tel, Inc. (1.42%); SN Commercial, LLC (1.22%); Security National Properties – Alaska, LLC (5.72%); Security National Properties – Atlantic, LLC (.35%); Security National Properties – Bath, LLC (9.74%); Security National Properties – California, LLC (.89%); Security National Properties – Cypress, LLC (2.04%); Security National Properties – Dothan, LLC (.36%); Security National Properties – Louisiana LP (6.74%); Security National Properties – Ventura, LLC (1.82%); Sequoia Investments II, LLC (1.87%); Sequoia Investments IV, LLC (.67%); Sequoia Investments VII, LLC (5.71%); Sequoia Investments VIII, LLC (1.98%); Sequoia Investments XIII, LLC (2.45%); Security National Properties- Norwalk, LLC (2.43%); and Security National Properties Funding II, LLC (.87%).

Non-debtor Security National Properties Holding Company LLC owns 99.9% of the membership interests in Security National Properties-Alaska, LLC.<sup>4</sup>

Seven of the eight remaining Debtors other than SNPF III (the Subsidiaries) are directly owned, in whole or in part, by SNPF III as follows:

- Security National Properties Funding, LLC (100%);
- ITAC 190, LLC (100%);
- Sequoia Investments III, LLC (93%);
- Sequoia Investments V, LLC (83%);
- Sequoia Investments XIV, LLC (95.5%);
- Sequoia Investments XV, LLC (100%); and
- Sequoia Investments XVIII, LLC (97.5%)

Finally, the remaining Subsidiary, Security National Properties Funding II, LLC is 100% directly owned by Security National Properties Funding, LLC, giving SNPF III an indirect ownership of 100% of that Debtor.

## **B. Overview of Assets and Liabilities**

### **1. The Debtors' Assets**

The Debtors, which are headquartered in Eureka, California, are owners and operators of 33 commercial real estate Properties, including 20 office properties and 9 retail assets, as well as

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<sup>4</sup> The complete ownership structure of each Debtor is described in the *List of Equity Security Holders* filed with each Debtor's chapter 11 petition.



mobile home, industrial, and mixed-use assets, in Alabama, Alaska, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, New York, North Carolina, South Carolina, Texas, and Wyoming. In all, the Debtors own more than 4 million square feet of commercial property. Most of the Debtors acquired their respective Properties from 1993 through 2006.

## 2. The Debtors' Liabilities

### (i) *Senior Lender Claims*

On or about October 18, 2006, certain of the Debtors entered into that certain Credit Agreement dated as of such date (the Prepetition Loan Agreement) by and among SNPF III, as borrower, SNP Holding, as parent guarantor, and other guarantors identified therein (including the Subsidiary Debtors, also known as "Qualified Property Owners" or "QPOs"), the Agent, and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (as those terms are defined in the Prepetition Loan Agreement). As of the filing of this Disclosure Statement, the Senior Lenders consist of the following: Bank of America, The Bank of East Asia, Ltd., Top Fund II, LLC, and Banc of America Credit Products. The Prepetition Loan Agreement has been amended since its execution a number of times, most recently when the Seventh Amendment was executed on or about April 20, 2010.

The Prepetition Loan Agreement provides for a revolving credit facility in the principal amount of \$200,000,000, of which \$159,991,940 in principal was owed as of the Petition Date. In addition to principal, \$4,349,923.11 in accrued interest and other fees were owed as of the Petition Date for a total pre-petition claim of \$164,341,863.11 against SNPF III. The Senior Lenders hold properly perfected liens in SNPF III's personal property, as well as a pledge of SNPF III's membership interests in the Subsidiaries.

The Subsidiaries, identified as Qualified Property Owners under the Prepetition Loan Agreement, also signed guaranties supporting the Prepetition Loan Agreement. The Senior Lenders hold mortgages or deeds of trust and assignments of rents on the Properties owned by the Subsidiaries to secure the obligations of SNPF III under the Prepetition Loan Agreement. Although the Senior Lenders' ability to recover from the Qualified Property Owners is limited to their right to collect 95% of the original asset value assigned to such Properties as set forth in the Prepetition Loan Agreement, that limitation creates no material economic impact on the treatment of Claims and Equity Interests under the Plan.

Pursuant to the Settlement Agreement and the Plan, the Senior Lender Claims are Allowed in the amount of \$164,341,863.11, plus all post-petition interest and fees due under the Pre-Petition Loan Documents and Allowed under section 506(b) of the Bankruptcy Code; *provided, however*, that: (a) if the Debtor Confirmation Option is implemented, then the Senior Lender Claims shall be deemed satisfied, settled, released and discharged; or (b) if the Lender Confirmation Option is implemented and the Senior Lenders consent to closing of one or more of the Refinancing Transactions, then the Senior Lender Claims shall be reduced by an amount equal to the Cash proceeds of the Refinancing Transactions actually received by the Agent (including any Cash proceeds of the Soup Lots Sale, whether received by the Agent before, on, or after the Effective Date), *provided further, however*, that if the Lender Confirmation Option is

implemented, the Senior Lenders shall have no obligation to consent to any closing of any Refinancing Transaction and the SN Parties shall have no obligation to proceed with the closing of any Refinancing Transaction.

(ii) *Non-Debtor Affiliate Claims*

Included in the Debtors' Schedules are claims of certain Non-Debtor Affiliates, which are classified in Class 7 under the Plan. Pursuant to the Prepetition Loan Documents, Non-Debtor Affiliate Claims are subordinated to the Senior Lender Claims until paid in full. Because the Senior Lender Claims will not be paid in full under the Plan, the Non-Debtor Affiliate Claims will receive no Distribution under the Plan.

**C. Employees**

None of the Debtors have employees. Operations at the Properties, except for certain of the Debtors' mall Properties that are managed by third-party management service providers, are managed by Security National Properties Servicing Company, LLC ("SNP Servicing"), a Non-Debtor Affiliate. SNP Servicing provides, among other things, all employees necessary for the property management, asset management, and marketing services required for the Properties on behalf of which it acts.

**D. Events Leading to the Filing of the Chapter 11 Cases**

The Prepetition Loan Agreement had a scheduled maturity date of October 31, 2009. As a result of the Debtors' monetary and non-monetary defaults, the Debtors were not eligible for an extension of the maturity date. The Senior Lenders twice agreed to extend the maturity date of the Prepetition Loan Agreement, first to January 29, 2010, and then again to January 29, 2012, pursuant to the terms and conditions of a sixth amendment and a seventh amendment, respectively, to the Pre-Petition Loan Agreement.

The seventh amendment to the Prepetition Loan Agreement was executed on April 10, 2010. At that time, the Prepetition Loan Agreement had matured, and the Agent had noticed certain defaults. Pursuant to the seventh amendment, the Debtors were given a two-year extension of the maturity date, subject to certain financial hurdles and principal curtailments. The Debtors did not meet all of these financial hurdles and principal curtailments and the Debtors were again placed in default under the Prepetition Loan Agreement. The Debtors and the Senior Lenders continued to negotiate and executed four side-letter agreements. These negotiations did not result in a consensual restructuring of the Prepetition Loan Agreement. On October 23, 2011, the Debtors filed the Chapter 11 Cases.

**E. The Debtors' Chapter 11 Cases**

The Debtors have continued to operate their business as Debtors and Debtors-in-Possession as authorized under sections 1107(a) and 1108 of the Bankruptcy Code. Detailed reports of the Debtors' cash flow and operations during the course of these Chapter 11 Cases can be found in the Debtors' monthly operating reports filed in the Chapter 11 Cases. The Debtors' operations during the Debtors' Chapter 11 Cases are described below.

**1. Significant Events in the Debtors' Chapter 11 Cases**

(i) *Cash Collateral*

The Senior Lenders hold a security interest in substantially all cash generated by the Debtors (the Cash Collateral). On October 17, 2011, the Debtors filed a motion seeking the authority to use the Senior Lenders' Cash Collateral. On October 18, 2011, upon agreement by Bank of America, the Bankruptcy Court approved the use of Cash Collateral on an interim basis (the "Interim Cash Collateral Order") [Docket No. 27]. Bank of America has subsequently agreed to, and the Bankruptcy Court has subsequently entered twenty-seven further Interim Cash Collateral Orders [Docket No. 64, 94, 119, 152, 179, 193, 264, 279, 353, 431, 456, 515, 548, 582, 620, 644, 692, 729, 731, 761, 784, 814, 844, 857, 899, 938 and 1023]. At the request of the Debtors and Bank of America, the Bankruptcy Court has continued the final hearing on the Cash Collateral Motion several times and the Debtors' use of Cash Collateral pursuant to the Cash Collateral Motion is currently scheduled for final consideration on September 30, 2014. It is anticipated that the final hearing on the Cash Collateral Motion will be further continued until the Confirmation Hearing.

Pursuant to the Interim Cash Collateral Orders, as of August 8, 2014, the Debtors had paid the Agent and/or the Senior Lenders approximately \$20,458,970.74 in Adequate Protection Payments. Pursuant to the Settlement Agreement and the Plan, the Senior Lenders are entitled to retain the Adequate Protection Payments, which are not subject to clawback or recharacterization.

(ii) *Retention of Professionals*

The Bankruptcy Court entered an order on October 18, 2011, authorizing the Debtors to retain GCG, Inc. to perform certain claims, noticing and balloting functions in the Chapter 11 Cases [Docket No. 22].

The Bankruptcy Court entered an order authorizing the Debtors to retain Morris, Nichols, Arsht & Tunnell LLP, as their general bankruptcy counsel, on December 16, 2011 [Docket No. 93]. The Bankruptcy Court also entered an order on January 13, 2012, establishing compensation procedures for the Debtors' professionals whereby a percentage of fees and expenses of the Debtors' and other professionals may be paid on a monthly basis, subject to objection by certain parties and final approval by the Bankruptcy Court [Docket No. 117].

(iii) *Filing of Schedules of Assets and Liabilities and Statement of Financial Affairs; Intercompany Receivables*

The Debtors filed their Schedules on January 6 and 7, 2012 [Docket No. 100, 101, 102, 103, 104, 105, 106, 107, 108, and 109]. On June 20, 2012, the Debtors amended their Schedules [Docket No. 240, 241, 242, 243, 244, 245, 246, 247 and 248]. The Schedules are available for inspection online.

The Debtors' Schedules and financial records show (1) a receivable listed in the Schedules of SNPF III from SNP Servicing in the amount of \$10,895,061.52; and (2) a receivable listed in the Schedules of Security National Properties Funding, LLC from SNP

Holding in the amount of \$15,382,374.11 (1 and 2 together, the “Affiliate Receivables”). The Debtors’ Schedules and financial records also reflect Non-Debtor Affiliate Claims held by SNP Servicing, SNP Holding and other Non-Debtor Affiliates against various Debtors. Although the SN Parties and Agent have disputed the validity and the amount of the Affiliate Receivables and the Non-Debtor Affiliate Claims, pursuant to the Settlement Agreement and the Plan the Affiliate Receivables and the Non-Debtor Affiliate Claims will be compromised and released.

(iv) *Bar Date for Filing Proofs of Claim and Requests for Allowance of Administrative Expense Claims*

On January 13, 2012, the Debtors filed a motion to establish bar dates for filing proofs of claims [Docket No. 123]. On January 26, 2012, the Court approved this motion and set March 1, 2012, as the Bar Date, among other things [Docket No. 139]. As further set forth in the Plan and Disclosure Statement, the Confirmation Order will identify an Administrative Claims Bar Date and a Professional Fee Claim Bar Date and any other Claims not governed by the bar date motion.

(v) *Expiration of Exclusivity*

The Debtor’s exclusivity period to file a plan pursuant to section 1121(d) of the Bankruptcy Code expired no later than June 13, 2013 (20 months from the Petition Date).

(vi) *Bank of America’s Motion for Relief from the Automatic Stay and Valuation*

On July 27, 2012, the Agent filed the *Motion of Bank of America, N.A. for (A) Valuation of Collateral and (B) Relief from the Automatic Stay* (the “Stay Relief Motion”) [Docket No. 271]. The Stay Relief Motion is currently pending. In the event the Plan is confirmed, the Stay Relief Motion shall be deemed withdrawn.

(vii) *DIP Facility*

On January 2, 2013, the Debtors filed a motion seeking the approval to obtain post-petition financing through the DIP Facility by SNP Holding. The Bankruptcy Court approved the DIP Facility on an interim basis pursuant to its *Interim Order, Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(b) and 503(b)(1) and Fed. R. Bankr. P. 2002 and 4001, (a) Authorizing Debtors to Obtain Post-Petition Financing and Granting Administrative Expense Status and (b) Scheduling a Final Hearing and Establishing Related Notice Requirements* [Docket No. 435], together with sixteen subsequent interim orders. Pursuant to the Settlement Agreement and Plan, no DIP Claim shall be Allowed against any Debtor under the Plan for any purpose other than setoff or recoupment (if otherwise available), and the Reorganized Debtor shall have no liability of any kind regarding any DIP Claim.

(viii) *The Debtors’ Plan*

On January 14, 2013, the Debtors filed their *Third Amended Joint Chapter 11 Plan of Reorganization of Security National Properties III, LLC and Its Debtor Affiliates* [Docket No. 464] (the “Debtors’ Third Amended Plan”), which provides for the restructuring of the Senior

Lenders' Claims under the Prepetition Loan Agreement. The Agent filed an objection to the Third Amended Plan on April 3, 2013. The Debtors' Third Amended Plan is not currently set for a hearing. Pursuant to the Settlement Agreement, the Debtors' Third Amended Plan was withdrawn on August 22, 2014.

(ix) *The Agent Plan and Agent Amended Plan*

On May 16, 2014, the Agent filed the Agent Plan [Docket No. 875] and related Agent Disclosure Statement [Docket No. 876].

On May 30, 2014, the Agent filed a motion to approve the Agent Disclosure Statement and certain notice and voting procedures related to the Agent Plan [Docket No. 886] (the "Agent Procedures Motion"). On July 25, 2014, the Debtors filed the *Debtors' Limited Objection and Reservation of Rights as to Disclosure Statement and Related Plan Procedures Motion Filed by Bank of America, N.A., as Agent* [Docket No. 956]. The Agent Procedures Motion was approved on July 30, 2014, pursuant to an Order [Docket No. 965] that anticipated the Settlement Agreement and provided for this Plan, as an agreed plan of reorganization filed pursuant to the Settlement Agreement, to supersede the Agent Plan. A hearing to consider confirmation of the Agent Plan was scheduled for September 9, 2014, which was likewise subject to being continued if the parties entered into the Settlement Agreement and this Plan was filed.

On July 30, 2014, the Agent filed the *Revised Plan of Reorganization of Security National Properties Funding III, LLC and Its Debtor Affiliates Filed by Bank of America, LLC, N.A., as Agent for Senior Lenders* [Docket No. 967] (the "Amended Agent Plan") and related *Disclosure Statement for Revised Chapter 11 Plan of Reorganization of Security National Properties Funding III, LLC and Its Debtor Affiliates Filed by Bank of America, N.A., as Agent for Senior Lenders* [Docket No. 968] (the "Amended Agent Disclosure Statement"). On August 1, 2014, the Agent filed solicitation versions of the Amended Agent Plan and Amended Agent Disclosure Statement [Docket No. 970, 971]. Pursuant to the Settlement Agreement, the Amended Agent Plan was withdrawn on August 22, 2014.

(x) *The Alleged Swap Causes of Action*

The Debtors have alleged that they hold certain causes of action against Bank of America related to a certain swap transaction dated October 30, 2006, that the Debtors assert may be an asset of the Debtors' Estates. Bank of America disputes the Debtors' allegations. Such causes of action will be compromised and released pursuant to the Settlement Agreement and the Plan.

(xi) *The Settlement Agreement*

As stated above, the Debtors, certain of their Non-Debtor Affiliates, Bank of America and the other Senior Lenders executed the Settlement Agreement on August 12, 2014. As described in the 9019 Motion and the Settlement Agreement, the Settlement Agreement resolves all of the outstanding disputes among the Debtors, certain of their Non-Debtor Affiliates, Bank of America and the other Senior Lenders and paves the way for a consensual restructuring through the Plan. The Bankruptcy Court approved the Settlement Agreement on August 22, 2014 and the Settlement Effective Date occurred on August 22, 2014.

**ARTICLE 4.  
THE PLAN**

**A. Administrative Claims and Priority Claims**

**1. Administrative Claims**

Except as otherwise provided in the Plan or the Confirmation Order, subject to the Administrative Claims Bar Date and other requirements of the Plan, on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Allowed amount of the Allowed Administrative Claim or (b) such other less favorable treatment as to which the Reorganized Debtors and such Holder shall have agreed upon in writing; *provided, however*, that Allowed Ordinary Course Administrative Claims shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating to such Ordinary Course Administrative Claims.

Each Holder of an Administrative Claim (other than an Ordinary Course Administrative Claim, a Section 503(b)(9) Claim, or a Professional Fee Claim) shall file with the Bankruptcy Court by the Administrative Claims Bar Date a request for payment of Administrative Claim by electronic filing, mailing, hand delivering, or delivering by courier service such request for payment of Administrative Claim to the Bankruptcy Court and serve a copy on the Reorganized Debtors and the U.S. Trustee. For the avoidance of doubt, Section 503(b)(9) Claims were required to be filed by the Bar Date of March 1, 2012, and remain subject to such Bar Date.

All objections to allowance of Administrative Claims (excluding Professional Fee Claims) must be filed by any parties in interest no later than (a) the Administrative Claims Objection Deadline or (b) such later date as (i) the Bankruptcy Court shall order upon application made prior to the end of Administrative Claims Objection Deadline or (ii) is agreed between the Reorganized Debtors and the affected Holder of an Administrative Claim.

No DIP Claim shall be Allowed against any Debtor for any purpose other than setoff or recoupment (if otherwise available), and the Reorganized Debtor shall have no liability of any kind regarding any DIP Claim. The Confirmation Order shall provide that any DIP Claim is disallowed for all purposes other than setoff and recoupment (if available).

**2. Professional Fee Claims**

All Professionals employed by the Debtors in these Chapter 11 Cases shall file and serve on the Reorganized Debtors and all other parties entitled to receive notice of the application under the Interim Compensation Order all requests for allowance of compensation and reimbursement of expenses pursuant to sections 328, 330, or 503(b) of the Bankruptcy Code for Professional Fee Claims through the Effective Date by no later than the Professional Fee Claim Bar Date. Objections to Professional Fee Claims for compensation or reimbursement of expenses must be filed by any party in interest and served on counsel for the Reorganized

Debtors and the Professionals or other Entities to whose application the objections are addressed on or before (a) thirty (30) days after the Professional Fee Claims Bar Date or (b) such later date as (i) the Bankruptcy Court shall order upon application made prior to the end of such thirty (30)-day period or (ii) is agreed between the Reorganized Debtors and the affected Professional or other Entity.

As contemplated in the Settlement Agreement, if the Lender Confirmation Option is implemented, none of the SN Parties' costs, including, without limitation, due diligence costs and professional fees, related to the Refinancing Transactions, the Deficiency Note, or the DCO Sponsor Guaranty, will be borne by the Debtors' estates and therefore shall not be Allowed as Professional Fee Claims (or any other Claim against the Debtors); *provided, however*, the foregoing is without prejudice to (i) the ability of the Debtors' Professionals to request allowance and payment of Professional Fee Claims in connection with the administration of the Chapter 11 Cases (including Professional Fee Claims incurred in connection with drafting the Settlement Agreement and this Plan and in seeking Bankruptcy Court approval of the Settlement Agreement, this Plan and the Refinancing Transactions), (ii) Garden City Group fees, and (iii) statutory quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

### **3. Priority Tax Claims**

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Effective Date, each Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, as shall have been determined by the Reorganized Debtors, (a) on the Initial Distribution Date, Cash equal to the unpaid portion of such Allowed Priority Tax Claim, (b) deferred Cash payments over time pursuant to section 1129(a)(9)(C) of the Bankruptcy Code in an aggregate principal amount equal to the face amount of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the rate of interest determined under applicable non-bankruptcy law as of the calendar month in which the Plan is confirmed, or (c) such other less favorable treatment as to which the Reorganized Debtors and such Holder shall have agreed upon in writing.

### **B. Special Provision Governing Unimpaired Claims and Tenant Deposit Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Reorganized Debtors in respect of any Claim classified in an Unimpaired Class, including, without limitation, all rights in respect of objections to such Claims and any legal and equitable defenses to or rights of setoff or recoupment against any such Claim. For the avoidance of doubt, Tenant counterparties to assumed and assumed and assigned real property leases will not receive any distribution relating to Tenant Deposit Claims, if applicable, as Tenant Deposit Claims shall be reinstated and rendered Unimpaired in accordance with section 1124(2) of the Bankruptcy Code.

### **C. Voting and Nonconsensual Confirmation**

**1.** In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have

accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan.

2. The Plan Proponent reserves the right to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code. To the extent that any Class votes to reject the Plan or is deemed to reject the Plan, the Plan Proponent further reserves the right to modify the Plan in accordance with Article 10.C of the Plan.

#### **D. Summary of Classification and Treatment of Classified Claims and Equity Interests**

1. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that such Claim or Equity Interest or any portion thereof qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated hereunder as a distinct Class for voting and Distribution purposes. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Plan Proponents have not classified Administrative Claims or Priority Tax Claims, as described in Article 2 of the Plan.

2. There are eight (8) primary Classes, Classes 1-8, based on the type of Claim or Equity Interest. Each primary Class is further classified into separate sub-Classes based on the Debtor against which such Claim is Scheduled or Filed or Equity Interest held, as applicable. The sub-Classes for each primary Class of Claims and Equity Interests shall be as follows:

<b>Debtor</b>	<b>Applicable Classes of Claims</b>
Security National Properties Funding III, LLC	1A, 2A, 3A, 4A, 5A, 6A, 7A, and 8A
ITAC 190, LLC	1B, 2B, 3B, 4B, 5B, 6B, 7B, and 8B
Security National Properties Funding, LLC	1C, 2C, 3C, 4C, 5C, 6C, 7C, and 8C
Security National Properties Funding II, LLC	1D, 2D, 3D, 4D, 5D, 6D, 7D, and 8D
Sequoia Investments III, LLC	1E, 2E, 3E, 4E, 5E, 6E, 7E, and 8E
Sequoia Investments V, LLC	1F, 2F, 3F, 4F, 5F, 6F, 7F, and 8F
Sequoia Investments XIV, LLC	1G, 2G, 3G, 4G, 5G, 6G, 7G, and 8G
Sequoia Investments XV, LLC	1H, 2H, 3H, 4H, 5H, 6H, 7H, and 8H
Sequoia Investments XVIII, LLC	1I, 2I, 3I, 4I, 5I, 6I, 7I, and 8I



3. A summary of the treatment for each primary Class<sup>5</sup> is set forth in the following table:<sup>6</sup>

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Secured Governmental Unit Claims	Unimpaired	Not Entitled to Vote
2	Senior Lender Claims	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Not Entitled to Vote
4	Unsecured Priority Claims	Unimpaired	Not Entitled to Vote
5	General Unsecured Claims	Unimpaired	Not Entitled to Vote
6	Intercompany Claims	Impaired	Not Entitled to Vote
7	Non-Debtor Affiliate Claims	Impaired	Not Entitled to Vote
8A	Equity Interests (SNPF III only)	Impaired if Lender Confirmation Option implemented; Unimpaired if Debtor Confirmation Option implemented.	Not Entitled to Vote
8B-8I	Equity Interests (Subsidiaries)	Unimpaired	Not Entitled to Vote

4. Each Class shall receive the following treatment:

(i) *Secured Governmental Unit Claims (Class 1)*

(a) *Classification:* Class 1 consists of the Secured Governmental Unit Claims against each respective Debtor.

(b) *Treatment:* On the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Secured Governmental Unit Claim, the Holder of such Allowed Secured Governmental Unit Claim shall receive at the election of the Reorganized Debtors, in full satisfaction, settlement, release and discharge of and in exchange for, such Allowed Secured Governmental Unit Claim, (a) Cash equal to the value of its Allowed Governmental Unit Claim, (b) the return of

<sup>5</sup> Unless otherwise specified, all references to a primary Class shall be construed as a reference to and encompassing all sub-classes within the primary Class. For example, any reference to "Class 1" shall be construed as a reference to Classes 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, and 1I.

<sup>6</sup> The table is for informational purposes only and is qualified in its entirety by Article 3.D of the Plan.

the Holder's Collateral securing the Secured Governmental Unit Claim, (c) payment in full as provided under sections 1129(a)(9)(C) and (D) of the Bankruptcy Code on the schedule provided for payment of General Unsecured Claims, or (d) such other less favorable treatment to which the Reorganized Debtors and such Holder shall have agreed upon in writing. To the extent such payments are paid over time, such payments shall be calculated to result in payment in full of the Allowed Secured Governmental Unit Claim with all accrued interest.

(c) *Voting:* Class 1 is Unimpaired and, therefore, the Holders of Secured Governmental Claims are deemed to have accepted the Plan.

(ii) *Senior Lender Claims (Class 2)*

(a) *Classification:* Class 2 consists of Senior Lender Claims. The Senior Lender Claims are Allowed in the amount of \$164,341,863.11, plus all post-petition interest and fees due under the Pre-Petition Loan Documents and Allowed under section 506(b) of the Bankruptcy Code; *provided, however*, that: (a) if the Debtor Confirmation Option is implemented, then the Senior Lender Claims shall be deemed satisfied, settled, released and discharged; or (b) if the Lender Confirmation Option is implemented and the Senior Lenders consent to closing of one or more of the Refinancing Transactions, then the Senior Lender Claims shall be reduced by an amount equal to the Cash proceeds of the Refinancing Transactions actually received by the Agent (including any Cash proceeds of the Soup Lots Sale, whether received by the Agent before, on, or after the Effective Date), *provided further, however*, that if the Lender Confirmation Option is implemented, the Senior Lenders shall have no obligation to consent to any closing of a Refinancing Transaction and the SN Parties shall have no obligation to proceed with closing any Refinancing Transaction.

(b) *Treatment:* Each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Senior Lender Claim the following treatment:

i. *If the Debtor Confirmation Option is implemented*, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (1) its Pro Rata Distribution of the proceeds of the Refinancing Transactions actually received by the Agent; (2) its Pro Rata rights to payments of principal, interest and other amounts that may be payable to Agent under the Deficiency Note, the DCO Sponsor Guaranty, and the Net Proceeds Guaranty; and (3) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases.

**or**

ii. *If the Lender Confirmation Option is implemented*, then each Holder of a Senior Lender Claim in Class 2 will receive on

the Effective Date: (1) its Pro Rata Distribution of New Senior Debt, (2) its Pro Rata Distribution, subject to the Allocation Election, of (A) New LLC Interests and/or (B) New Sub Debt, and (3) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases. The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; *provided, however*, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s), *provided further, however*, that if the Lender Confirmation Option is implemented, the Senior Lenders shall have no obligation to consent to, and the SN Parties shall have no obligation to proceed with, any closing of the Refinancing Transactions.

(c) *Voting*: Class 2 is Impaired and, therefore, the Holders of the Senior Lender Claims are entitled to vote to accept or reject the Plan.

(iii) *Other Secured Claims (Class 3)*

(a) *Classification*: Class 3 consists of the Other Secured Claims.

(b) *Treatment*: Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Other Secured Claim in Class 3 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Other Secured Claim, at the option of the Plan Proponent or Reorganized Debtors:

- (i) have its Allowed Class 3 Claim reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the Holder of such Allowed Class 3 Claim to demand or receive payment of such Allowed Class 3 Claim prior to the stated maturity of such Allowed Class 3 Claim from and after the occurrence of a default; or
- (ii) receive Cash in an amount equal to such Allowed Class 3 Claim, including any interest on such Allowed Class 3 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the

Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Class 3 Claim.

(c) *Voting:* Class 3 is Unimpaired and, therefore, Holders of Other Secured Claims are deemed to have accepted the Plan.

(iv) *Unsecured Priority Claims (Class 4)*

(a) *Classification:* Class 4 consists of all Unsecured Priority Claims.

(b) *Treatment:* Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Unsecured Priority Claim in Class 4 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Unsecured Priority Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Unsecured Priority Claim.

(c) *Voting:* Class 4 is Unimpaired and, therefore, Holders of Unsecured Priority Claims are deemed to have accepted the Plan.

(v) *General Unsecured Claims (Class 5)*

(a) *Classification:* Class 5 consists of all General Unsecured Claims.

(b) *Treatment:* Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed General Unsecured Claim in Class 5 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed General Unsecured Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date.

(c) *Voting:* Class 5 is Unimpaired and, therefore, Holders of General Unsecured Claims are deemed to have accepted the Plan.

(vi) *Intercompany Claims (Class 6)*

(a) *Classification:* Class 6 Consists of all Intercompany Claims

(b) *Treatment:* On the Effective Date, Allowed Intercompany Claims shall be reinstated or cancelled, at the option of the Debtors (if the Debtor Confirmation Option is implemented) or the Agent (if the Lender Confirmation Option is implemented).

(c) *Voting:* Class 6 will be Impaired by the Plan, and each Holder of an Intercompany Claim will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

(vii) *Non-Debtor Affiliate Claims (Class 7)*

(a) *Classification:* Class 7 Consists of all Non-Debtor Affiliate Claims.

(b) *Treatment:* Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall receive no Distributions under the Plan; *provided, however,* that the Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall retain any rights of setoff or recoupment otherwise available for such Allowed Non-Debtor Affiliate Claims.

(c) *Voting:* Class 7 is Impaired by the Plan, and each Holder of an Affiliate Claim will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

(viii) *Equity Interests (Class 8)*

(a) *Classification:*

(i) Class 8A consists of Equity Interests in SNPF III

(ii) Classes 8B-8I consist of Equity Interests in each of the Subsidiary Debtors.

(b) *Treatment:*

(i) Class 8A:

(1) *If the Debtor Confirmation Option is implemented,* then Holders of Allowed Equity Interest in Class 8A shall retain their Pro Rata Equity Interests in SNPF III.

**or**

(2) *If the Lender Confirmation Option is implemented,* Holders of Allowed Equity Interests in Class 8A shall receive no Distribution under the Plan.

(ii) Classes 8B-8I: Each Holder of Allowed Equity Interests in Classes 8B-8I shall retain its equity interests in each respective Subsidiary Debtor.

(c) *Voting:*

(i) Class 8A:

(1) *If the Debtor Confirmation Option is implemented,* then Class 8A is Unimpaired and, therefore, Holders of Equity Interests in Class 8A are deemed to have accepted the Plan.

**or**

(2) *If the Lender Confirmation Option is implemented*, then Class 8A is Impaired by the Plan, and each Holder of Equity Interests in Class 8A will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

- (ii) Classes 8B-8I: Classes 8B-8I are Unimpaired and, therefore, Holders of Equity Interests in Classes 8B-8I are deemed to have accepted the Plan.

## **E. Implementation of the Plan**

### **1. Nonconsensual Confirmation**

The Plan Proponents will seek to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class of Claims or Equity Interests that does not vote to accept the Plan or is otherwise deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

### **2. The Settlement Agreement**

The Agent, Senior Lenders, and the SN Parties (which include the Debtors) have each entered into the Settlement Agreement, a copy of which is attached as Exhibit “A” to the Plan. The Settlement Agreement, to the extent not inconsistent with this Plan, is incorporated herein by reference. The terms of the Settlement Agreement provide the Debtors with the option to refinance the Senior Lender Claims in accordance with the terms thereof.

This Plan implements the Settlement Agreement by providing for two paths to consummate the Plan: (i) the Debtor Confirmation Option; and (ii) the Lender Confirmation Option. Whichever confirmation path is followed, if the Settlement Effective Date occurs, the SN Parties and Senior Lenders will have expressly consented to this Plan.

#### **(i) The Debtor Confirmation Option**

If all Debtor Confirmation Option conditions to the Effective Date set forth in Article 7.B.2 of the Plan are satisfied or waived by the Senior Lenders in accordance with Article 7.C of the Plan, the Debtor Confirmation Option allows the SN Parties to satisfy and discharge the Senior Lender Claims through the Refinancing Transactions, the Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants. If the SN Parties satisfy all requirements for the Debtor Confirmation Option, then, *inter alia*, (i) the Senior Lender Liens on the Refinanced Parcels will be released, (ii) the Net Proceeds of the Refinancing Transactions will be distributed to the Agent for the benefit of the Senior Lenders, (iii) the Senior Lender Claims will be reduced by the amount of Net Proceeds received by the Agent, and (iv) the Deficiency Note, the DCO Sponsor Guaranty, and the Net Proceeds Covenants will be issued to the Agent for the benefit of the Senior Lenders, all in full and final satisfaction, settlement, release and discharge of the

Senior Lender Claims.

(ii) **The Lender Confirmation Option**

If the Debtor Confirmation Option Conditions to the Effective Date set forth in Article 7.B.2 of the Plan are not satisfied or waived by the Senior Lenders in accordance with Article 7.C, but all other conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 of the Plan are satisfied or waived in accordance with Article 7.C of the Plan, then the Plan will be implemented pursuant to the Lender Confirmation Option. Each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (i) its Pro Rata Distribution of New Senior Debt; (ii) its Pro Rata Distribution, subject to the Allocation Election, of (1) New LLC Interests and/or (2) New Sub Debt; and (iii) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases. The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; *provided, however*, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s), *provided further, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the Refinancing Transactions.

The Deficiency Note and DCO Sponsor Guaranty will not be issued if the Plan is implemented pursuant to the Lender Confirmation Option. However, all Equity Interests in Class 8A will be canceled and the Holders of Equity Interests in Class 8A will not receive or retain Cash or other property on account of such Equity Interests.

Under the Lender Confirmation Option, the Senior Lenders may (but shall not be required to) consent to closing of one or more of the Refinancing Transactions. If the Senior Lenders consent to the closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Class 2 Senior Lender Claims shall be reduced by the amount of Net Proceeds actually received by the Agent.

**3. Cooperation of the SN Parties and Senior Lenders**

Upon entry of the Confirmation Order, the SN Parties and Senior Lenders, and each of their Representatives shall reasonably cooperate to take all reasonable acts to implement the terms of the Plan.

Without limiting the foregoing, if the Debtor Confirmation Option is implemented, the Senior Lenders and their Representatives shall reasonably cooperate with the SN Parties and their Representatives to implement the Debtor Confirmation Option, including, without

limitation, taking such actions as are reasonably necessary and desirable to effectuate the release of the Senior Lender Liens and otherwise to consummate the Refinancing Transactions.

Without limiting the foregoing, if the Lender Confirmation Option is implemented, the SN Parties and their Representatives shall reasonably cooperate with the Senior Lenders and their Representatives to implement the Lender Confirmation Option, including, without limitation, taking such actions as are reasonably necessary and desirable to (a) manage the Debtors and their assets in the ordinary course of business so as to preserve the value of the Debtors and their assets until the Effective Date and (b) accomplish the orderly transition of the management, books and records, and the Debtors' other assets to the managers and officers of the Reorganized Debtors.

For the avoidance of doubt, no Entity's duty to cooperate pursuant to Article 4.C of the Plan shall be construed to require such Entity to incur material expense or to provide goods, materials, labor or services without reasonable compensation.

**4. Distributions in Satisfaction**

Except for the obligations expressly imposed by the Plan and the property and rights expressly retained under the Plan (including, without limitation, if the Lender Confirmation Option is implemented, the Liens granted pursuant to the Prepetition Loan Facility as modified by the Plan), the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release of all Claims against, liabilities in, Liens on, obligations of, and Equity Interests in the Debtors, whether known or unknown, that arose or existed prior to the Effective Date.

**5. Enforcement of Subordination**

The classification and manner of satisfying all Claims and Equity Interests and the respective distributions and treatments under the Plan take into account or conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto whether under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, and any and all such rights are settled, compromised, and released pursuant to the Plan.

The Confirmation Order shall enjoin, effective as of the Effective Date, all Entities from enforcing or attempting to enforce any such contractual, legal, and/or equitable rights so satisfied, compromised, and settled. Pursuant to section 510 of the Bankruptcy Code, the Plan Proponents and the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**6. Senior Lender Allocation Election (Applicable Only Under Lender Confirmation Option)**

If the Lender Confirmation Option is implemented, the amount of New LLC Interests and New Sub Debt that each Senior Lender will receive under the Plan is subject to adjustment based on each Senior Lender's Allocation Election. By making an Allocation Election on its ballot, a



Senior Lender may (a) opt out of receiving its Pro Rata Distribution of the New Sub Debt in order to receive, to the extent available, additional New LLC Interests or (b) opt out of receiving its Pro Rata Distribution of New LLC Interests in order to receive, to the extent available, additional New Sub Debt. The ability of a Senior Lender to receive additional New Sub Debt or additional New LLC Interests in accordance with its Allocation Election depends on additional New Sub Debt and/or additional New LLC Interests being eligible for Distribution as a result of another Senior Lender's Allocation Election. In no event shall the Allocation Elections result in the Distribution of less than all of the Converted Senior Lender Debt.

On or as soon as practicable after the Effective Date, the Agent shall allocate the New LLC Interests and New Sub Debt among the Senior Lenders in accordance with the preferences stated in the Allocation Elections. In the event that the Senior Lenders oversubscribe for one form of consideration such that each Allocation Election cannot be fully accommodated, each affected Allocation Election shall be reduced Pro Rata to the extent necessary to fully distribute the New Sub Debt and the New LLC Interests allocated for Distribution to Class 2.

The exchange ratio of New Sub Debt to New LLC Interests for purposes of the Allocation Election shall be \$1 of New Sub Debt for one New LLC Interest and *vice versa*.

Any Senior Lender that does not make an Allocation Election shall receive its Pro Rata Distribution of New LLC Interests or New Sub Debt as set forth in Article 3.

## **7. Implementation of Reorganization**

### **(A) Implementation of Reorganization Generally**

The following steps shall be taken, whether the Plan is implemented pursuant to the Debtor Confirmation Option or the Lender Confirmation Option:

#### *(i) Continuation of Subsidiary Equity Interests*

On the Effective Date, existing Equity Interests in each of the Reorganized Subsidiaries shall continue in full force and effect or as otherwise determined at the sole discretion of the Reorganized Debtors. Notwithstanding the foregoing, no Distributions shall be made on account of existing Equity Interests in the Reorganized Subsidiaries under the Plan.

#### *(ii) Amended and Restated Charter Documents*

On the Effective Date, or as soon thereafter as is practicable, the existing certificates of formation and other formation documents, as applicable, of each of the Debtors shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, including to prohibit the issuance of nonvoting equity securities only so long as, and to the extent that, the issuance of nonvoting equity securities is prohibited by the Bankruptcy Code. The form of amended formation documents, as applicable, shall be included in the Plan Supplement.

**(iii)** *Powers of Officers*

The senior executive officers of the Debtors or the Reorganized Debtors, as the case may be, shall have the power to enter into or execute any documents or agreements that they deem reasonable and appropriate to effectuate the terms of the Plan.

**(iv)** *Corporate Action*

Except as set forth in the Plan, any action under the Plan to be taken by or required of the Debtors or the Reorganized Debtors, including, without limitation, the adoption or amendment of certificates of formation and limited liability company agreements, the issuance of securities and instruments or the selection of senior executive officers, managers, or directors, shall be authorized and approved in all respects, without any requirement of further action by any of the Debtors' or Reorganized Debtors' boards of directors or managers, as applicable, or members.

The Debtors or the Reorganized Debtors, shall be authorized to execute, deliver, file, and record such documents (including those contained in the Plan Supplement), contracts, instruments, releases, and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan, without the necessity of any further Court, corporate, board, or member approval or action.

**(v)** *Continued Corporate Existence*

The Debtors, as Reorganized Debtors, shall continue to exist after the Effective Date with all powers of a limited liability company under the laws of the respective states governing their formation and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under such applicable state law (including, without limitation, the right to change the state in which each Reorganized Debtor is formed), except as such rights may be limited and conditioned by the Plan and the documents and instruments executed and delivered in connection therewith. In addition, the Reorganized Debtors may operate their business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules, or by the Bankruptcy Court, subject only to the terms and conditions of the Plan as well as the documents and instruments executed and delivered in connection therewith, including without limitation, the documents and instruments included in the Plan Supplement. The Reorganized Debtors shall be responsible for filing required post-confirmation reports and each Reorganized Debtor shall pay quarterly fees of such Debtor due to the Office of the United States Trustee until such time as a final decree is entered closing the applicable Chapter 11 Case or the Bankruptcy Code orders otherwise.

**(B) Additional Implementation Steps Under Debtor Confirmation Option**

The following additional steps shall be taken if the Plan is being implemented pursuant to the Debtor Confirmation Option (but not if the Plan is being implemented pursuant to the Lender Confirmation Option):

**(a)** *Consummation of Refinancing Transactions*

On the Effective Date, the Primary Transaction, the Secondary Transaction, and, if not previously consummated, the Soup Lots Sale shall close substantially contemporaneous with the occurrence of the Effective Date; *provided* that, notwithstanding any other provision of the Plan or the Settlement Agreement, the Effective Date shall not occur pursuant to the Debtor Confirmation Option if the Refinancing Transactions have not closed. Notwithstanding any other provision of the Plan or the Settlement Agreement, the Primary Transaction shall not close prior to the Secondary Transaction or the Soup Lots Sale. In connection with closing of the Refinancing Transactions, the Refinanced Parcels shall be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed under a given Refinancing Transaction), to the Entities that are to become the new owners of such Refinanced Parcels in connection with the Refinancing Transactions. Further, any Non-Debtor Affiliates that are pledging equity in commercial real estate properties as additional collateral in connection with any such Refinancing Transactions shall be authorized to do so. Upon closing of the Primary Transaction, the Secondary Transaction and the Soup Lots Sale, the Net Proceeds of each such Refinancing Transaction, the total amount of which shall be no less than \$151.342 million Cash, shall be promptly remitted to the Agent.

(b) *Continuation of SNPF III Equity Interests*

On the Effective Date, existing Equity Interests in SNPF III shall continue in full force and effect.

(c) *Continuation of Senior Executive Officers, Managers, and Directors*

On the Effective Date, the terms of the current managers of the boards of directors or board of managers of the Debtors, as the case may be, shall be unaffected and such directors and managers shall be deemed to continue in such roles (without the need for any further action on the part of, or notice to, any Entity).

(d) *Indemnification of Managers, Directors, Officers, and Employees*

On the Effective Date, as provided for in the existing certificate of formation, limited liability company agreement, and/or other organizational documents of each of the Debtors (a) the personal liability of the Reorganized Debtors' then-present and future directors, managers, and officers for post-Effective Date monetary damages resulting from breaches of their fiduciary duties shall be eliminated to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized; and (b) each Reorganized Debtor, subject to appropriate procedures, shall continue to indemnify the Reorganized Debtor's directors, managers, officers, and other employees serving on or after the Effective Date for all pre-Effective Date and post-Effective Date claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized.

**(C) Additional Implementation Steps Under Lender Confirmation Option**

The following additional steps shall be taken if the Plan is being implemented pursuant to the Lender Confirmation Option (but not if the Plan is being implemented pursuant to the Debtor Confirmation Option):

(i) *Exit Facility*

On the Effective Date, the Reorganized Debtors shall have closed on the Exit Facility, to the extent required. The amounts borrowed under the Exit Facility shall, among other things, be used to (a) make required Distributions under the Plan, (b) satisfy certain Plan-related expenses, and (c) fund the Reorganized Debtors' working capital needs.

(ii) *Issuance of New LLC Interests; Cancellation of Equity Interests in SNPF*

*III*

On the Effective Date, Reorganized SNPF III shall issue the New LLC Interests pursuant to the terms of the Plan and the Plan Supplement Documents. Also on the Effective Date, existing Equity Interests in SNPF III shall be deemed canceled and extinguished and shall be of no further force and effect. Reorganized SNPF III is authorized to issue or cause to be issued the New LLC Interests for Distribution in accordance with the terms of the Plan, the amended certificate of formation, and the New LLC Agreement without the need for any further corporate or member action.

(iii) *Appointment of Senior Executive Officers, Managers, and Directors*

On the Effective Date, the terms of the current managers of the boards of directors or board of managers of the Debtors, as the case may be, shall expire and such directors and managers shall be deemed removed from such boards (without the need for any further action on the part of, or notice to, any Entity). The initial boards of managers of Reorganized SNPF III and the Reorganized Subsidiaries shall be comprised of such members chosen by the Senior Lenders. On the Effective Date, the officers of each of the Reorganized Debtors shall be appointed in accordance with the Amended and Restated Charter Documents and other constituent documents of each Reorganized Debtor. Pursuant to section 1129(a)(5) of the Bankruptcy Code, to the extent known, the identities and affiliations of the initial managers, board members, and senior executive officers of each Reorganized Debtor as of the Effective Date will be disclosed in the Plan Supplement. Any successors to the Reorganized Debtors' initial boards will be appointed in compliance with the applicable Reorganized Debtor's Amended and Restated Charter Documents, and each such manager and officer shall serve from and after the Effective Date pursuant to the terms of the Amended and Restated Charter Documents and other constituent documents of the Reorganized Debtors. In addition, the selection of the Entities who will serve as the initial directors, senior executive officers, and managers of the Reorganized Debtors as of the Effective Date shall be deemed to have occurred and be effective on and after the Effective Date without any requirement of further action by the board of directors, board of managers, or members of the applicable Reorganized Debtor.

(iv) *Indemnification of Managers, Directors, Officers, and Employees*

Upon the Effective Date, the Amended and Restated Charter Documents and the New LLC Agreement shall contain provisions which (a) eliminate the personal liability of the Reorganized Debtors' then-present and future directors, managers, and officers for post-Effective Date monetary damages resulting from breaches of their fiduciary duties to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized;

and (b) require such Reorganized Debtor, subject to appropriate procedures, to indemnify the Reorganized Debtor's directors, managers, officers, and other employees serving on or after the Effective Date for all post-Effective Date claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized.

(v) *New LLC Agreement*

On the Effective Date, Reorganized SNPF III and all of the holders of New LLC Interests (including any options, warrants, or securities convertible into, or exercisable or exchangeable for, New LLC Interests) then outstanding shall be deemed to be parties to the New LLC Agreement, without the need for execution by any such holder other than Reorganized SNPF III. The New LLC Agreement shall be binding on all parties receiving, and all holders of, New LLC Interests (including any options, warrants, or securities convertible into, or exercisable or exchangeable for, New LLC Interests) regardless of whether such parties execute the New LLC Agreement. In the period pending Distribution of the New LLC Interests to any Holder entitled to receive New LLC Interests pursuant to the Plan, including any period during which such New LLC Interests are placed in the Disputed Reserve pending Allowance of such Holder's Claims or Equity Interests, such Holder shall be bound by, have the benefit of, and be entitled to enforce the terms and conditions of the New LLC Agreement and shall be entitled to exercise any voting rights and receive any dividends or other distributions payable in respect of such Holder's New LLC Interests (including receiving any proceeds of permitted transfers of such New LLC Interests) and to exercise all other rights in respect of the New LLC Interests as if the Holder were an owner of the New LLC Interests (so that such Holder shall be deemed for tax purposes to be the owner of the New LLC Interests).

**F. Provisions Governing Voting and Distributions**

**1. Voting of Claims**

Each holder of an Allowed Claim or Equity Interest in an Impaired Class entitled to vote on the Plan shall be entitled to vote to accept or reject the Plan as provided in such order as may be entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

**2. Designation of Party to Make Distributions**

The Reorganized Debtors or a disbursing agent acting on their behalf shall make all Distributions provided for in the Plan. The Reorganized Debtors shall be empowered to take all necessary actions and execute all agreements, instruments, and other documents necessary to perform their duties under the Plan.

**3. Distributions on Allowed Claims**

(i) *Delivery of Distributions*

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made by the Reorganized Debtors or any disbursing agent acting on their behalf

(a) at the addresses set forth on any Proof of Claim filed by such Holder (or at the last known addresses of such Holder if no motion requesting payment or Proof of Claim is filed or the Debtors or the Reorganized Debtors have been notified in writing of a change of address), (b) at the addresses set forth in any written notices of address changes filed with the Bankruptcy Court and served on the Reorganized Debtors by such Holder after the date of any related Proof of Claim, or (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and no written notice of address change has been filed by such Holder with the Bankruptcy Court and served on the Reorganized Debtors.

(ii) *Distribution of Cash*

Any payment of Cash by the Reorganized Debtors or any disbursing agent acting on their behalf pursuant to the Plan shall be made, at the option and sole discretion of the Reorganized Debtors, by (a) Cash, (b) check drawn on a domestic bank, (c) wire transfer, or (d) ACH. Any Cash Distributions or payments will be issued to Holders in whole cents (rounded to the nearest whole cent when and as necessary).

(iii) *Fractional Interests and De Minimis Distributions*

No fractional New LLC Interests shall be issued or distributed pursuant to the Plan. If any fraction of a New LLC Interest would otherwise be required to be distributed, the actual Distribution shall reflect a rounding to the nearest whole interest (up or down), with fractions less than half being rounded down and fractions equal to half interests or more being rounded up.

The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make Cash Distributions of less than \$50. Any Claims affected by Article 5.C.3 of the Plan shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective Properties or Estates.

(iv) *Undeliverable Distributions*

If any Distribution or other payment to the Holder of an Allowed Claim under the Plan is returned for lack of a current address for the Holder or otherwise, no Distribution shall be made unless and until the Reorganized Debtors have determined the then-current address of such Holder, at which time such Distribution shall be made without interest. Such returned Distributions shall be deemed unclaimed property one year after the Effective Date.

After such date, (a) if the Lender Confirmation Option has been implemented, all unclaimed Distributions of New LLC Interests shall be redistributed Pro Rata, and (b) all unclaimed Distributions of Cash shall become the property of the Reorganized Debtors, in each case without the need for a further order of the Bankruptcy Court.

The Allowed Claim on account of which a Distribution could not be made in accordance with Article 5.C.4 of the Plan shall be deemed satisfied and released, with no recourse to the Reorganized Debtors, to the same extent as if the Distribution or payment had been made to the Holder of the Allowed Claim.

(v) *Time Bar for Checks*

Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to Article 5.C.5 of the Plan shall be made directly to the Reorganized Debtors by the Holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall become unclaimed property in accordance with section 347(b) of the Bankruptcy Code.

**4. Interest on Claims**

Unless otherwise specifically provided for in the Plan or the Confirmation Order, no Claims shall be entitled to receive interest accruing on or after the Petition Date on any Claim. Notwithstanding the foregoing, and for the avoidance of doubt, interest and fees accruing after the Petition Date shall be Allowed on the Senior Lender Claims to the extent permitted under section 506(b) of the Bankruptcy Code. For the further avoidance of doubt, the treatment of Class 2 Senior Lender Claims provided for in this Plan shall be in full and final satisfaction of any such interest and fees accruing after the Petition Date.

**5. Establishment of DCO Claims Reserves**

If the Plan is implemented pursuant to the Debtor Confirmation Option, on the Effective Date, the Reorganized Debtors will create and fund the DCO Claims Reserves consisting of the Disputed Reserve and other segregated accounts and/or escrow accounts as contemplated by the Settlement Agreement with Cash and Cash investments in an amount equal to 110% of the Debtors' best estimate of the Cash necessary to make required Distributions under the Plan for the projected aggregate amount of unpaid Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Governmental Unit Claims, Allowed Other Secured Claims, Allowed Unsecured Priority Claims and Allowed General Unsecured Claims.<sup>7</sup> For the avoidance of doubt, the Reorganized Debtors shall not be required to establish DCO Claim Reserves for Senior Lender Claims, Intercompany Claims, Non-Debtor Affiliate Claims or Equity Interests. To the extent that the Claims for which the DCO Claims Reserves are being funded are Refinancing Claims, the source of funding shall be SNP Holding or another Non-Debtor Affiliate and such funds shall not come from the Debtors or their Estates;

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Based on the information available to the Debtors as of the filing of this Disclosure Statement, the Debtors anticipate that the amount necessary to fund the DCO Claims Reserves is not likely to exceed approximately \$5.6 million. Rather, the Debtors believe that the actual amount necessary to fund the DCO Claims Reserves will be substantially less than the foregoing maximum estimated amount, considering several factors, including: (i) the payment or satisfaction of post-petition Claims in the ordinary course of business between the date of filing of the Disclosure Statement and the Effective Date; (ii) pending or contemplated objections to Claims; and (iii) the assumption by non-Debtor Affiliates of certain Claims in connection with the Refinancing Transactions.

*provided, however,* that the SN Parties shall have no obligation to fund the DCO Claims Reserves if the Plan is implemented pursuant to the Lender Confirmation Option.

## **6. Disputed Claims**

### *(i) No Distribution Pending Allowance*

Notwithstanding any other provision of the Plan, no Distributions shall be made on account of any Claim that is Disputed unless and until such Claim, or a portion thereof, becomes Allowed.

### *(ii) Objection and Resolution; Objection Deadline*

After the Effective Date, the Reorganized Debtors shall have the right to make and to file objections to, or otherwise contest the allowance of, Claims (other than Professional Fee Claims) subsequent to the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court, objections to, or other proceedings concerning the allowance of, Claims (other than Professional Fee Claims) shall be filed and served upon the holders of the Claims as to which the objection is made, or otherwise commenced, as the case may be, as soon as practicable, but in no event later than the Claims Objection Deadline. Objections to Professional Fee Claims shall be filed and served within 30 days of the Professional Fee Claim Bar Date (or such longer period as may be allowed by order of the Bankruptcy Court).

Objections to, or other proceedings contesting the allowance of, Claims (other than Professional Fee Claims) may be litigated to judgment, settled, or withdrawn by the Reorganized Debtors. The Reorganized Debtors may settle any such objections or proceedings without Court approval or may seek Court approval without notice to any Entity, except as set forth in the Plan. From and after the Effective Date, the Reorganized Debtors shall have the sole authority to administer and adjust the claims register to reflect such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

In the event any Proof of Claim is permitted to be filed after the Claims Objection Deadline, the Reorganized Debtors shall have ninety (90) days from the date of such order or agreement to object to such Claim, which deadline may be extended one or more times by the Bankruptcy Court on motion of the Reorganized Debtors without a hearing or notice to creditors.

### *(iii) Distributions Following Allowance*

Notwithstanding anything to the contrary set forth in the Plan or in the Confirmation Order, each Holder of a Disputed Claim that is Allowed after the Effective Date shall receive the Distribution to which such Holder of an Allowed Claim is entitled at such time that the Reorganized Debtors determine, in their discretion, to make subsequent Distributions to Holders of other Claims Allowed following the Effective Date, provided that the Reorganized Debtors shall make such Distributions quarterly during the first year after the Effective Date and semi-annually thereafter. Nothing set forth in the Plan is intended to, nor shall it, prohibit the Reorganized Debtors, in their discretion, from making a Distribution on account of any Claim at any time after such Claim becomes an Allowed Claim. For the avoidance of doubt, nothing in



Article 5.F.3 of the Plan shall accelerate payment of Distributions on account of Allowed General Unsecured Claims.

(iv) *Disputed Reserve*

On the Effective Date, the Reorganized Debtors shall establish and fund a segregated and/or escrow account as contemplated by the Settlement Agreement with Cash and Cash investments in an amount equal to 110% of the Debtors' best estimate of the Cash necessary to make required Distributions under the Plan for Disputed Claims that are likely to become Allowed Claims. If the Plan is implemented pursuant to the Debtor Confirmation Option, the initial amount to be funded to the Disputed Reserve shall be determined in the discretion of the Debtors, after consultation with the Agent. If the Plan is implemented pursuant to the Lender Confirmation Option, the initial amount funded to the Disputed Reserve shall be subject to the approval of the Agent, such approval not to be unreasonably withheld. To the extent that the Disputed Claims for which the Disputed Reserve is being funded are Refinancing Claims, the source of funding shall be SNP Holding or another Non-Debtor Affiliate and such funds shall not come from the Debtors or their Estates; *provided, however*, that the SN Parties shall have no obligation to fund the Disputed Reserve if the Plan is implemented pursuant to the Lender Confirmation Option.

**7. Estimation of Claims**

The Plan Proponents or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time, including during the pendency of proceedings concerning such Claim and any appeal thereof. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount may constitute either (a) the Allowed amount of such Claim or (b) a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Reorganized Debtors may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objections, estimations, and resolution procedures are cumulative and not exclusive of one another.

**G. Treatment of Executory Contracts**

**1. Assumption and Rejection of Executory Contracts**

On the Effective Date, except as otherwise provided herein (including, specifically, in Article 6.F of the Plan), all Executory Contracts of the Debtors will be automatically assumed by the Debtors in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts that:

- (i) have been previously assumed, assumed and assigned, or rejected by order of the Bankruptcy Court;
- (ii) are subject to a separate motion to assume, assume and assign, assign or reject under section 365 of the Bankruptcy Code that is pending on the Effective Date; or

(iii) are rejected pursuant to the terms of the Plan and identified on the Contracts Schedule as such.

Except as otherwise provided herein or agreed to by the Reorganized Debtors with the applicable counterparty in writing, each assumed, assumed and assigned, or assigned Executory Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent any provision in any Executory Contract assumed, assumed and assigned, or assigned pursuant to the Plan (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by the assumption, assumption and assignment, or assignment of such Executory Contract, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-debtor party thereto to terminate such Executory Contract or to exercise any other default-related rights with respect thereto. Each Executory Contract assumed, assumed and assigned, or assigned pursuant to Article 6 of the Plan shall vest in and be fully enforceable by the Reorganized Debtors or assignee, as applicable, in accordance with its terms, except as modified by the provisions of the Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, assumption and assignment or assignment, or applicable law. Without amending or altering any prior order of the Bankruptcy Court approving the assumption, assumption and assignment, or rejection of any Executory Contract, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

## **2. Limited Extension of Time to Assume or Reject**

In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Reorganized Debtors, as applicable, to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Bankruptcy Court determining that the contract or lease is executory or unexpired. The deemed assumptions and rejections provided for in Article 6 of the Plan shall not apply to such contract or lease.

In the event the Reorganized Debtors become aware after the Effective Date of the existence of an Executory Contract that was not included in the Schedules, the right of the Reorganized Debtors to move to assume, assume and assign, or assign such Executory Contract shall be extended until the date that is thirty (30) days after the date on which the Reorganized Debtors become aware of the omission of such Executory Contract. The deemed assumptions provided for in Article 6 of the Plan shall not apply to any such Executory Contract.

The Plan Proponents reserve the right to amend the list of Executory Contracts to be rejected or assigned to a transferee other than a Reorganized Debtor at any time prior to the Confirmation Hearing.

### **3. Cure Amounts**

The applicable Reorganized Debtor or assignee, as applicable, will cure any and all undisputed defaults under any Executory Contract that is assumed or assumed and assigned by such Reorganized Debtor under the Plan. At least twenty (20) days prior to the Confirmation Hearing, the Plan Proponents shall file and serve upon counterparties to such Executory Contracts, an Assumption Notice that: (a) lists the applicable Cure Claim amount, if any; (b) lists the proposed assignee of the Executory Contract if an Entity other than the Reorganized Debtor; and (c) describes the procedures for filing objections to the proposed assumption, assumption and assignment, or assignment of the Executory Contract. Any objection by a counterparty to an Executory Contract to a proposed assumption, assumption and assignment, assignment or related Cure Claim amount must be filed, served and actually received by the Plan Proponents at least seven (7) days prior to the Confirmation Hearing. Any counterparty to an Executory Contract that fails to object timely to the proposed assumption, assumption and assignment, assignment or Cure Claim amount related thereto will be deemed to have assented to such matters and will be deemed to have forever released and waived any objection to the proposed assumption (or assumption and assignment or assignment, as applicable) and Cure Claim amount. All such Cure Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 8 of the Plan. In the event of a dispute regarding (a) the amount of any Cure Claim, (b) the ability of the Reorganized Debtors or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract to be assumed, or (c) any other matter pertaining to assumption, such claim shall be deemed a Disputed Claim until the entry of a Final Order or orders resolving the dispute and approving the assumption. All Allowed Cure Claim payments required by section 365(b)(1) of the Bankruptcy Code shall be made within 30 days following the entry of a Final Order or orders resolving the dispute and approving the assumption. If an objection to the proposed Cure Claim or any other term of the proposed assumption, assumption and assignment, or assignment of an Executory Contract is sustained by the Bankruptcy Court, the Plan Proponents or Reorganized Debtors, as applicable, in their sole option, may elect to reject such Executory Contract in lieu of assuming it.

### **4. Rejection Damage Claims**

All Claims for damages arising from the rejection of Executory Contracts pursuant to the Plan or the Confirmation Order must be filed with the Bankruptcy Court in accordance with the terms of the order authorizing such rejection, but in any event no later than 30 days after service of the Effective Date Notice. All Allowed Claims arising from the rejection of Executory Contracts shall be classified as General Unsecured Claims (unless the Bankruptcy Court determines or the Holder of such Claim agrees that such Claims should be subordinated to a priority lower than a General Unsecured Claim pursuant to section 510 of the Bankruptcy Code).

Any counterparty with a Claim arising from the rejection of an Executory Contract that fails to timely file such Claim shall be forever barred, estopped, and enjoined from asserting such

Claim, and such Claim shall not be enforceable against the Debtors, the Reorganized Debtors, or their respective Properties and Estates. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 8 hereof.

#### **5. Previously Assumed Executory Contracts**

Notwithstanding anything to the contrary in an Executory Contract that was assumed by a Debtor by Order of the Bankruptcy Court entered prior to the Confirmation Date (a “Previously Assumed Contract”), upon the occurrence of the Effective Date, the comparable Reorganized Debtor may assign such Previously Assumed Contract to an assignee identified in the Contracts Schedule in accordance with section 365(f) of the Bankruptcy Code.

#### **6. Insurance Policies**

With respect to insurance policies other than D&O Liability Insurance Policies, each such insurance policy whether or not identified as assumed on the Contracts Schedule shall be assumed as of the Effective Date, pursuant to section 365 of the Bankruptcy Code, to the extent such insurance policy is executory, unless such insurance policy (a) previously was rejected by the Debtors pursuant to a Bankruptcy Court order, (b) is identified as rejected on the Contracts Schedule, or (c) is the subject of a motion to reject pending on the Effective Date.

The Debtors do not believe that any D&O Liability Insurance Policies issued to, or entered into by, the Debtors prior to the Petition Date constitute executory contracts. To the extent that such insurance policies or agreements are considered to be executory contracts, then, notwithstanding anything in the Plan to the contrary and notwithstanding whether such D&O Liability Insurance Policies are identified on the Contracts Schedule, the Reorganized Debtors shall be deemed to have assumed all of the Debtors’ unexpired D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court’s approval of the Reorganized Debtors’ foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, confirmation of the Plan shall not discharge, impair or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed. In addition, after the Effective Date, none of the Reorganized Debtors shall terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any “tail policy”) in effect on the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date; *provided, however*, that if the Plan is implemented through the Lender Confirmation Option, the Reorganized Debtors shall have no obligation to renew, extend, amend, or replace any D&O Liability Insurance Policies

The discharge, injunction and release provisions set forth in Article 8 of the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, the Reorganized Debtors, or any other Entity. Notwithstanding anything to the contrary

in this Plan (and without limiting other obligations that may exist if the Plan is implemented pursuant to the Debtor Confirmation Option), Indemnification Obligations owed to a director, officer or employee that is no longer employed by the Reorganized Debtors in such capacity on or after the Effective Date shall be honored to the extent of available coverage under the applicable D&O Liability Insurance Policy; *provided, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Reorganized Debtors shall incur no liability whatsoever in connection with such Indemnification Obligations.

**7. Post-Petition Date Contracts and Leases**

The Debtors shall not be required to assume or reject any contract or lease entered into by the Debtors after the Petition Date. Such contracts and leases will continue in effect after the Effective Date and will be performed by the Reorganized Debtors or assignee thereof in connection with the Refinancing Transactions in the ordinary course of business in accordance with their terms.

**8. Reservation of Rights**

Neither the exclusion nor inclusion of any contract or lease on the Contracts Schedule, nor anything contained in the Plan, shall constitute an admission by the SN Parties, the Senior Lenders or the Reorganized Debtors that any such contract or lease is in fact an Executory Contract or that any Debtor or Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Reorganized Debtors shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

**H. Conditions Precedent to Confirmation and the Effective Date**

**1. Conditions to Confirmation**

Confirmation of the Plan by the Bankruptcy Court is subject to the following conditions precedent:

(i) The Disclosure Statement shall have been approved by the Bankruptcy Court as containing adequate information in accordance with section 1125 of the Bankruptcy Code, and notice having been given to all relevant parties in accordance with applicable Bankruptcy Rules;

(ii) The Plan and Plan Supplement, including any exhibits, schedules, amendments, modifications, or supplements thereto, have been filed in substantially final form; and

(iii) The Settlement Agreement shall have been approved by the Bankruptcy Court by an order in form and substance reasonably acceptable to the Debtors, the DCO Sponsors and the Senior Lenders.

**2. Conditions to the Effective Date**

(A) *General Effective Date Conditions.* Whether the Debtor Confirmation Option or the Lender Confirmation Option is implemented, the Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) The Confirmation Order, in form and substance reasonably satisfactory to the Senior Lenders and the SN Parties, shall have become a Final Order;

(ii) All material authorizations, consents, and regulatory approvals required, if any, in connection with consummation of the Plan shall have been obtained; and

(iii) All material actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

(B) *Debtor Confirmation Option Effective Date Conditions.* For the Plan to be implemented pursuant to the Debtor Confirmation Option, the Plan shall not become effective unless and until it has been confirmed and the following conditions, in addition to those in Article 7.A of the Plan, have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) The Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants shall be executed in a form and substance reasonably acceptable to the Senior Lenders and the Entities required under the Settlement Agreement to execute such documents and delivered to the Agent prior to the closing of either the Primary Transaction or the Secondary Transaction;

(ii) All conditions to closing of the Primary Parcel Sale Agreements (except for the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(iii) All conditions to closing of the Primary Transaction (except for (x) the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option and (y) the closing of the Primary Parcel Sale Agreements) shall have been satisfied or waived by the parties thereto;

(iv) All conditions to closing of the Secondary Parcel Sale Agreements (except for the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(v) All conditions to closing of the Secondary Transaction (except for (x) the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option and (y) the closing of the Secondary Parcel Sale Agreements) shall have been satisfied or waived by the parties thereto;

(vi) The Soup Lots Sale shall have closed or, if closing has not yet occurred, all conditions to closing of the Soup Lots Sale (except for the occurrence of the Effective

Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(vii) The Debtors and DCO Sponsors shall not be in breach of any of their material obligations under the Settlement Agreement; and

(viii) Each of the Plan Supplement Documents that relates to the Debtor Confirmation Option shall be in form and substance satisfactory to the Debtors and DCO Sponsors.

(C) *Lender Confirmation Option Effective Date Conditions.* For the Plan to be implemented pursuant to the Lender Confirmation Option, the Plan shall not become effective unless and until it has been confirmed and the following conditions, in addition to those in Article 7.B.1 of the Plan, have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) One or more of the Debtor Confirmation Option Effective Date conditions in Article 7.B.2 of the Plan have not been satisfied or waived pursuant to Article 7.C of the Plan;

(ii) The Senior Lenders shall not be in breach of any of their material obligations under the Settlement Agreement;

(iii) The Exit Facility Agreement shall be in form and substance reasonably acceptable to Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document and to funding and credit thereunder shall have been satisfied or waived;

(iv) The New Senior Debt Agreement shall be in form and substance reasonably acceptable to Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document and to funding and credit thereunder shall have been satisfied or waived;

(v) The New Sub Debt Agreement shall be in form and substance reasonably acceptable to Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document shall have been satisfied or waived;

(vi) The New Intercreditor Agreement shall be in form and substance reasonably acceptable to Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document shall have been satisfied or waived;

(vii) The Amended and Restated Charter Documents and the New LLC Agreement shall have been amended or entered into as provided in Article 4.G.3 of the Plan, each in form and substance satisfactory to the Senior Lenders;

(viii) The New LLC Interests to be issued pursuant to Article 4.G.3 of the Plan shall be consistent with the Plan;

(ix) The Senior Lenders shall have entered into a binding commitment among each other, conditioned on Confirmation of the Plan and the Plan being implemented pursuant to the Lender Confirmation Option, to provide the Exit Facility to the Reorganized Debtors on terms and conditions reasonably acceptable to the Senior Lenders; and

(x) Each of the Plan Supplement Documents that relates to the Lender Confirmation Option shall be in form and substance satisfactory to the Senior Lenders.

### **3. Waiver of Conditions**

(A) Notwithstanding the foregoing, the Plan Proponents reserve the right to waive the occurrence of condition precedent to Confirmation or the Effective Date or to modify the foregoing conditions precedent in accordance with and as provided in Article 7.C of the Plan. Any such written waiver of a condition precedent set forth Article 7 of the Plan may be effected at any time, without notice (except that given to the other Plan Proponent), without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan.

(B) Notwithstanding the satisfaction or waiver of each condition precedent to the Effective Date, the Effective Date shall not occur until the applicable Plan Proponent (Debtors for Debtor Confirmation Option or Agent for Lender Confirmation Option) files with the Bankruptcy Court a notice stating that the Effective Date has occurred. 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.

(C) The General Conditions to the Effective Date of the Plan set forth in Articles 7.B.1(ii) and (iii) of the Plan are waivable by agreement of the Debtors, the DCO Sponsors and the Senior Lenders.

(D) The Debtor Confirmation Option Conditions to the Effective Date set forth in Article 7.B.2 of the Plan are waivable as follows: (A) Articles 7.B.2(i) through (vii) of the Plan are waivable only by agreement of the Debtors, the DCO Sponsors and the Senior Lenders; and (B) Article 7.B.2(viii) of the Plan is waivable only by agreement of the Debtors and DCO Sponsors.

(E) The Lender Confirmation Option Conditions to the Effective Date set forth in Article 7.B.3 above are waivable as follows: (A) Articles 7.B.3(i) and (ii) of the Plan are each waivable only by agreement of the Debtors, the DCO Sponsors and the Senior Lenders; and (B) Articles 7.B.3(iii) through (x) of the Plan are each waivable only by the Senior Lenders.



(F) Except as expressly stated in Article 7.C of the Plan no other conditions to the confirmation of the Plan or the Effective Date may be waived.

#### **4. Failure of Conditions**

(A) If the Debtor Confirmation Option conditions to the Effective Date set forth in Articles 7.B.2(i) through (viii) of the Plan are not satisfied or waived pursuant to Article 7.C.4 of the Plan on or before the DCO Deadline, then: (i) the Plan may no longer be implemented pursuant to the Debtor Confirmation Option, except as may otherwise be agreed in writing by the Senior Lenders after the Confirmation Date; and (ii) subject to the satisfaction or waiver, as applicable, of the conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 of the Plan, the Plan shall be implemented pursuant to the Lender Confirmation Option.

(B) If the conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 of the Plan have not been satisfied or waived, as applicable, by the DCO Deadline, the Agent, in its sole discretion, may withdraw the Plan by the filing of a Certification of Counsel on the docket of the Chapter 11 Case and serving a copy of the Certification of Counsel upon counsel for the Debtors, the DCO Sponsors and the U.S. Trustee. Immediately upon such notification to the Bankruptcy Court, without the need for further order of the Bankruptcy Court: (a) the Confirmation Order shall be vacated; (b) no Distributions under the Plan shall be made; (c) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (d) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors unless extended by Bankruptcy Court order.

(C) For the avoidance of doubt, the Plan is without prejudice to the right of the SN Parties, pursuant to Section 1.3 of the Settlement Agreement, to request the Bankruptcy Court to order that further Adequate Protection Payments be discontinued if the Effective Date has not occurred by December 31, 2014.

#### **5. Substantial Consummation**

"Substantial Consummation" of the Plan, as defined in section 1102(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

### **I. Discharge, Release, Injunction, and Related Provisions**

Article 8 of the Plan includes certain release, exculpation, and injunction provisions that benefit individuals and entities, including the Debtors, the DCO Sponsors, the Agent, the other Senior Lenders and their respective Representatives, that are actively and integrally involved in the Chapter 11 Cases and the Plan, and who have made, and will continue to make, substantial contributions to the Chapter 11 Cases and the Plan. Furthermore, this Plan is only possible because the Debtors, the DCO Sponsors, the Agent and the other Senior Lenders have been willing to compromise their respective litigation positions and to devote substantial time, funds and other resources to these Chapter 11 Cases.

Under either confirmation option, in order to facilitate the Settlement Agreement and this Plan, the DCO Sponsors, *inter alia*, have agreed to waive (except for setoff and recoupment rights) all Claims relating to the DIP Facility and all Intercompany Claims. Under either confirmation option, the Agent and other Senior Lenders, *inter alia*, have agreed limit their recoveries in accordance with the Plan and not to pursue additional recoveries to which they may otherwise assert they are entitled to receive. Moreover, under either confirmation option, the Debtors, the DCO Sponsors, the Agent, the other Senior Lenders and their respective Representatives will be actively and integrally involved in the confirmation, consummation and implementation of the Plan.

If the Plan is implemented pursuant to the Debtor Confirmation Option, the Debtors and the Debtors, the DCO Sponsors and their respective Representatives will provide additional substantial contributions by, among other things, consummating the Refinancing Transactions, executing and delivering the Deficiency Note, DCO Sponsor Guaranty and Net Proceeds Covenants, and funding, in part, distributions to Claim Holders. Similarly, if the Lender Confirmation Option is implemented, the Agent, the other Senior Lenders, and their respective Representatives, will make further significant contributions to the consummation and implementation of the Plan by, among other things, funding, in part, through the Exit Facility, Distributions to Claim Holders.

The Debtors, the DCO Sponsors, the Agent, the other Senior Lenders and their respective Representatives have agreed to compromise their respective positions and make these substantial contributions in exchange for the releases, exculpation, and injunctions provided for their benefit under the Plan.

**1. Term of Injunctions or Stays**

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

**2. Vesting of Property**

Except as otherwise provided herein, on the Effective Date, the property of the Debtors' Estates shall automatically vest or re-vest in the Reorganized Debtors free and clear of all liens, Claims, charges, or other encumbrances, except, if the Plan is implemented pursuant to the Lender Confirmation Option, for (a) Liens securing the Exit Facility, if applicable; and (b) Liens securing the New Senior Debt, if applicable. Except as specifically provided in the Plan or the Confirmation Order, the Reorganized Debtors and their property shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate the Debtors' business and may use, acquire, or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**3. Cancellation of Notes (Both Confirmation Options) and Equity Interests (Lender Confirmation Option Only)**

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As of the Effective Date, except as set forth herein, all notes and securities evidencing Claims or Equity Interests and the rights thereunder of the Holders thereof shall be deemed canceled, null and void, and of no further force and effect, and the Holders thereof shall have no rights against the Debtors, the Reorganized Debtors, or the Estates except the right to receive the Distributions provided for in the Plan; *provided, however*, if the Plan is implemented pursuant to the Debtor Confirmation Option, then the securities evidencing Equity Interests and the rights thereunder of the Holders thereof shall remain intact and shall be unaffected by the confirmation of the Plan.

**4. Discharge**

(A) The rights afforded herein and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims, Equity Interests, and Causes of Action of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, the Debtors-in-Possession, or any of their respective assets or Properties, arising prior to the Effective Date. Except as otherwise expressly specified in the Plan, the Confirmation Order shall act as of the Effective Date as a discharge of all debts of, Claims or Equity Interest against, and Liens on the Debtors, their respective assets and Properties, arising at any time before the Effective Date, regardless of whether a Proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the Holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any Holder of such discharged Claim shall be precluded from asserting against the Debtors, the Reorganized Debtors, or any of their respective assets or Properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order.

(B) Notwithstanding anything to the contrary in Article 8.D of the Plan, if the Plan is implemented pursuant to the Debtor Confirmation Option, then Equity Interests in the Debtors shall not be discharged, shall remain intact and shall be unaffected by the confirmation of the Plan.

**5. Releases**

(i) *Releases by the Debtors*

**NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE, THE DEBTORS, ON BEHALF OF THEMSELVES AND THEIR ESTATES, SHALL BE DEEMED TO RELEASE UNCONDITIONALLY, THE RELEASED SENIOR LENDER PARTIES AND THE RELEASED SN PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, RIGHTS, SUITS, JUDGMENTS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR**

UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE OR CIRCUMSTANCES, INCLUDING ACTIONS IN CONNECTION WITH INDEBTEDNESS FOR MONEY BORROWED BY THE DEBTORS, EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF ANY OF THE DEBTORS OR ESTATES AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE ESTATES, THE CHAPTER 11 CASES, OR THE PLAN, EXCEPT THAT (I) THE REORGANIZED DEBTORS SHALL NOT RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH ENTITIES ASSERTED AGAINST THE DEBTORS, (II) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY OBLIGATIONS THAT REMAIN OUTSTANDING IN RESPECT OF LOANS OR ADVANCES MADE TO INDIVIDUALS BY THE DEBTORS, AND (III) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE. FOR THE AVOIDANCE OF DOUBT, IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THIS RELEASE SHALL NOT RELEASE ANY ENTITY FROM ITS OBLIGATIONS UNDER THE DCO SPONSOR GUARANTY, THE DEFICIENCY NOTE OR THE NET PROCEEDS COVENANT.

(ii) *Releases by Certain Holders of Claims*

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, EACH ENTITY WHO HAS HELD, HOLDS, OR MAY HOLD A CLAIM, AND WHO (A) VOTED IN FAVOR OF THE PLAN OR (B) IS PRESUMED TO HAVE VOTED IN FAVOR OF THE PLAN UNDER SECTION 1126(F) OF THE BANKRUPTCY CODE, SHALL BE DEEMED TO UNCONDITIONALLY RELEASE AND FOREVER WAIVE ALL CLAIMS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, DEMANDS, LIABILITIES, SUITS, JUDGMENTS, DAMAGES, RIGHTS, AND CAUSES OF ACTION, WHATSOEVER, OTHER THAN THE RIGHT TO ENFORCE THE OBLIGATIONS UNDER THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED THEREUNDER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART UPON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE RESPECTING ANY OF THE

**DEBTORS OR THEIR ESTATES OR IN CONNECTION WITH THE CHAPTER 11 CASES, THE PLAN, THE DISCLOSURE STATEMENT, THE NEGOTIATION OR FOR ANY ACT OR OMISSION THAT OCCURRED OR COULD HAVE OCCURRED ON OR PRIOR TO THE EFFECTIVE DATE AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, (I) THE FOREGOING RELEASE SHALL NOT APPLY TO OBLIGATIONS ARISING UNDER THE PLAN, (II) THE FOREGOING RELEASE SHALL NOT BE CONSTRUED TO PROHIBIT A PARTY IN INTEREST FROM SEEKING TO ENFORCE THE TERMS OF THE PLAN, AND (Iii) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY INDEMNIFICATION AND OTHER SURVIVING OBLIGATION AS SET FORTH IN THE PLAN. FOR THE AVOIDANCE OF DOUBT, IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THIS RELEASE SHALL NOT RELEASE ANY PERSON FROM ITS OBLIGATIONS UNDER THE DCO SPONSOR GUARANTY, THE DEFICIENCY NOTE OR THE NET PROCEEDS COVENANT.**

**(iii) *Mutual Releases Among and By SN Parties and Senior Lenders***

**EXCEPT AS EXPRESSLY PROVIDED IN THE PLAN, ON THE EFFECTIVE DATE, THE SN PARTIES AND THE SENIOR LENDERS SHALL BE DEEMED TO RELEASE ONE ANOTHER AND THEIR RESPECTIVE REPRESENTATIVES, AFFILIATES AND SUBSIDIARIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, RIGHTS, SUITS, JUDGMENTS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE OR CIRCUMSTANCES (INCLUDING ACTIONS IN CONNECTION WITH INDEBTEDNESS FOR MONEY BORROWED BY THE DEBTORS) EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR PROPERTY, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF ANY OF THE DEBTORS OR ESTATES AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE ESTATES, THE CHAPTER 11 CASES, OR THE PLAN, EXCEPT THAT (I) THE FOREGOING RELEASE SHALL NOT APPLY TO THEIR RESPECTIVE OBLIGATIONS ARISING UNDER THE PLAN, (II) NEITHER THE REORGANIZED DEBTORS NOR THE SENIOR LENDERS SHALL RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH ENTITIES ASSERTED AGAINST THE DEBTORS OR THE SENIOR LENDERS, (III) IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THE FORGOING RELEASES SHALL NOT**

**APPLY TO, AND NONE OF THE RELEASED SN PARTIES SHALL BE RELEASED OF, ANY CLAIMS, OBLIGATIONS, OR LIABILITIES OF ANY KIND ANY RELEASED SN PARTY HAS UNDER THE DEFICIENCY NOTE, THE DCO SPONSOR GUARANTY OR A NET PROCEEDS COVENANT, AND (IV) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE.**

**6. Exculpation**

Notwithstanding anything contained in the Plan to the contrary, the Released Parties shall neither have nor incur any liability to any Holder of a Claim or Interest, or a governmental entity on behalf of a Holder of a Claim or Equity Interest, for any postpetition act taken or omitted to be taken in connection with, or related to, the Chapter 11 Cases, including but not limited to the formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or Disclosure Statement or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the Plan; provided, however, that the foregoing provisions of Article 8.F of the Plan shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that each Released Party shall be entitled to rely upon the advice of counsel concerning its duties; provided, further, that the foregoing provisions of Article 8.F of the Plan shall not apply to any acts, omissions, Claims, causes of action, or other obligations expressly set forth in and preserved by the Plan or any defenses thereto.

**7. Preservation of Causes of Action**

The Reorganized Debtors shall retain all Causes of Action, other than as expressly provided in Article 8 of the Plan or in a Final Order of the Bankruptcy Court. Except as expressly provided in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any such Causes of Action. Nothing contained in the Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Petition Date that is not specifically waived or relinquished by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, including all potential Causes of Action under Chapter 5 of the Bankruptcy Code related to payments made by the Debtors to Holders of General Unsecured Claims, rights of setoff, and other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claims that are not specifically waived or relinquished by the Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. Except as expressly provided in the Plan or the Confirmation Order, the Reorganized Debtors may settle any such Causes of Action without Bankruptcy Court approval. Notwithstanding the foregoing,

no Causes of Action may be asserted against the Senior Lenders, except for breach of their obligations under this Plan and/or the Settlement Agreement.

**8. Injunctions**

Except as otherwise expressly provided for in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Parties and Entities who have held, hold, or may hold Claims or Equity Interests against the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from:

(i) commencing or continuing in any manner any action or other proceeding of any kind against any Debtor or Reorganized Debtor, the Released Parties, or their respective successors and assigns and their respective assets and properties, with respect to any such Claim or Equity Interest;

(ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any Debtor, Reorganized Debtor, or Released Party, or their respective successors and assigns and their respective assets and properties, on account of any such Claim or Equity Interest;

(iii) creating, perfecting or enforcing any encumbrance of any kind against any Debtor, Reorganized Debtor, or the property or estate of any Debtor or Reorganized Debtor, on account of such Claim or Equity Interest;

(iv) asserting any right of setoff or subrogation of any kind against any obligation due from any Debtor or Reorganized Debtor, or against the property or estate of any Debtor or Reorganized Debtor, on account of such Claim or Equity Interest, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed Proof of Claim and adjudicated to be valid and enforceable by a Final Order of the Bankruptcy Court; or

(v) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or Cause of Action released or settled hereunder.

**9. Binding Effect of the Plan**

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, subject to the occurrence of the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against or Equity Interest in the Debtors, the Estates, and their respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not the Holder has Filed a Claim. The rights, benefits, and obligations of any Entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, or assign of such Entity (including, without limitation, any trustee appointed for the Debtors under Chapter 7 or 11 of the Bankruptcy Code).

## **J. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors, the Estates, all property of the Estates, and the Plan as is legally permissible, including, without limitation, jurisdiction to: (1) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests; (2) grant, deny, or otherwise resolve any and all applications of Professionals or Entities retained in the Chapter 11 Cases for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date; (3) resolve any matters related to the assumption, assignment, or rejection of any Executory Contract to which a Debtor was party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom; (4) ensure that Distributions to Holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of the Plan; (5) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, *provided, however,* the right of the Reorganized Debtors to commence actions in all appropriate jurisdictions shall be fully reserved; (6) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures, and other agreements or documents adopted in connection with the Plan or the Disclosure Statement; (7) resolve any cases, controversies, suits, or disputes that may arise in connection with the Effective Date, interpretation, or enforcement of the Plan, including any documents or agreements contained in the Plan Supplement, or any Entity's obligations incurred in connection with the Plan; (8) issue injunctions, enforce them, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan; (9) enforce Article 8.D, Article 8.E, and Article 8.I of the Plan; (10) enforce the Injunctions set forth in Article 8.H of the Plan; (11) resolve any cases, controversies, suits, or disputes with respect to the releases, injunction, and other provisions contained in Article 8 of the Plan, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions; (12) enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked, or vacated; (13) resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and (14) enter an order and/or the decree contemplated in Bankruptcy Rule 3022 concluding the Chapter 11 Cases.



**K. Miscellaneous Provisions**

**1. Final Fee Applications**

The deadline for submission by Professionals of final applications for Bankruptcy Court approval of Accrued Professional Compensation shall be the Professional Fee Claim Bar Date.

**2. Payment of Statutory Fees**

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Reorganized Debtors. On and after the Effective Date, the Reorganized Debtors shall pay any and all such fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each and every one of the Reorganized Debtors shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee until the earliest of that particular Reorganized Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

**3. Modification of the Plan**

Subject to the limitations contained in the Plan: (a) prior to the entry of the Confirmation Order, the Plan Proponent expressly reserves the right to amend the terms of the Plan, subject to compliance with section 1127 of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Plan Proponent or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**4. Revocation or Deferral of the Plan**

(A) Either Plan Proponent shall have the right to revoke or withdraw the Plan prior to entry of the Confirmation Order if the Termination Date (as defined in the Settlement Agreement) has occurred and to file subsequent chapter 11 plans.

(B) If either Plan Proponent revokes or withdraws the Plan as permitted by Article 10.D.1 of the Plan, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts affected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Entity, (ii) prejudice in any manner the rights of the Plan Proponents or any other Entity, or (iii) constitute an admission of any sort by the Plan Proponents or any other Entity.

**5. Successors and Assigns**

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

**6. Governing Law and Construction**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, indenture, or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Delaware, without giving effect to the principles of conflict of laws thereof. Any inconsistency between the Plan and the Confirmation Order shall be construed in favor of and so as to give effect to the Confirmation Order. All exhibits and schedules to the Plan and the Plan Supplement shall be incorporated in the Plan by this reference, as though set forth at length in the Plan.

**7. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained therein, nor the taking of any action by the Plan Proponents or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Plan Proponents, any Senior Lender or any SN Party with respect to the Debtors, Holders of Claims, Equity Interests, or other parties-in-interest; or (b) any Holder of a Claim or other party-in-interest prior to the Effective Date.

**8. Setoffs and Recoupment**

The Reorganized Debtors, as applicable, may, to the extent permitted by sections 502(h), 553, and 558 of the Bankruptcy Code or applicable non-bankruptcy law, set off against or recoup from any Claim or Interest on which payments or distributions are to be made pursuant to the Plan, any Causes of Action of any nature whatsoever that the Debtors, the Reorganized Debtors, or the Estates may have against the Holder of such Claim or Interest; *provided, however*, that neither the failure to effect such offset or recoupment nor the allowance of any Claim or Interest shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Estates of any right of setoff or recoupment that the Debtors, the Reorganized Debtors, or their respective Properties or Estates may have against the Holder of such Claim or Interest, nor of any other Cause of Action; *provided, however*, that neither the failure to effect such offset or recoupment nor the allowance of any Claim or Interest shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any right of setoff or recoupment that the Debtors or the Reorganized Debtors may have against the Holder of such Claim Interest, nor of any other Cause of Action.

**9. Section 1145 Exemption**

Pursuant to, in accordance with, and solely to the extent provided under section 1145 of the Bankruptcy Code, if the Lender Confirmation Option is implemented, the issuance of the New LLC Interests and distribution thereof under the Plan will be exempt from registration under applicable securities laws (including without limitation, Section 5 of the Securities Act or any similar state or local law requiring the registration for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy

Code, and to the extent such issuance is deemed to be a public offering, the New LLC Interests may be sold without registration in accordance with section 1145 of the Bankruptcy Code.

**10. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes**

(A) The Reorganized Debtors, the SN Parties, the Senior Lenders, and their respective designees, as applicable, shall be authorized to: (i) execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan and (ii) certify or attest to any of the foregoing actions.

(B) Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (a) any transaction undertaken to implement the terms of this Plan; (b) the transfer to the Reorganized Debtors of any Reorganized Debtors' assets at any time; (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan (including, if the Debtor Confirmation Option is implemented, the Primary Transaction and the Secondary Transaction); (d) if the Lender Confirmation Option is implemented, (i) the issuance, transfer or exchange under the Plan of New LLC Interests and (ii) the creation, modification, renewal, extension, amendment, or release of any Lien, mortgage, deed of trust, deed to secure debt, or any other document creating a security interest, in favor of the lenders under the Exit Facility, the New Senior Debt, and the New Sub Debt; and (e) the making or assignment of any lease or sublease.

**11. Section 1125(e) Good Faith Compliance**

The Plan Proponents and their respective Representatives shall be deemed to have acted in "good faith" under section 1125(e) of the Bankruptcy Code.

**12. Further Assurances**

The Plan Proponents, the SN Parties, the Senior Lenders, the Reorganized Debtors, all Holders of Claims and Equity Interests receiving Distributions hereunder, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**ARTICLE 5.  
CONFIRMATION PROCEDURES; CONFIRMATION HEARING**

**The Confirmation Hearing will commence on September 30, 2014 at 10:00 a.m. Prevailing Eastern Time**, before the Honorable Kevin Gross, U.S. Bankruptcy Judge, in the U.S. Bankruptcy Court for the District of Delaware, at the U.S. Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801-4908. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing.

The deadline to object to the Plan is 4:00 p.m. Prevailing Eastern Time on September 23, 2014 (the “Plan Objection Deadline”).

All Plan objections must be filed with the Bankruptcy Court and served on counsel for the Plan Proponents and certain other parties, in accordance with the order of the Bankruptcy Court approving the Disclosure Statement, on or before the Plan Objection Deadline.

The proposed schedule will provide Entities with the notice required by Bankruptcy Rule 2002(b). The Plan Proponents believe that the Plan Objection Deadline will afford the Bankruptcy Court and other parties-in-interest reasonable time to consider the Plan objections prior to the Confirmation Hearing.

**THE BANKRUPTCY COURT MAY NOT CONSIDER PLAN OBJECTIONS UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.**

Subject to the limitations contained in the Plan and upon the agreement of the Plan Proponents or the Reorganized Debtor and the Agent, as applicable: (a) prior to the entry of the Confirmation Order, the Plan Proponents expressly reserve the right to amend the terms of the Plan (subject to compliance with section 1127 of the Bankruptcy Code; if the Plan Proponents make material changes in the terms of the Plan, the Plan Proponents will disseminate additional solicitation materials and extend the solicitation period, in each case to the extent required by law or further order of the Court); and (b) after the entry of the Confirmation Order, the Agent or the Reorganized Debtors may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**Plan objections must be served on all of the following parties:**

**Counsel to the Debtors:**

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**  
1201 N. Market St., 16th Fl.  
Wilmington, DE 19801  
Attn: Gregory W. Werkheiser

**Counsel to the Agent:**

**TROUTMAN SANDERS LLP**  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
Attn: Jeffrey W. Kelley

And

**RICHARDS, LAYTON & FINGER, P.A.**  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attn: Mark D. Collins & Robert J. Stearn, Jr.

**Clerk of the Bankruptcy Court:**

**CLERK OF THE BANKRUPTCY COURT**  
U.S. Bankruptcy Court for the District of Delaware  
824 North Market Street  
Third Floor  
Wilmington, Delaware 19801

**United States Trustee:**

**OFFICE OF THE UNITED STATES TRUSTEE**  
844 King Street, Suite 2207  
Lockbox #35  
Wilmington, DE 19801-0035  
Attn: Tiiara N.A. Patton

**A. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Plan Proponents believe:

1. The Plan complies with the applicable provisions of the Bankruptcy Code.
2. The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (a) made before the Confirmation of the Plan is reasonable; or (b) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
5. Each Holder of an Impaired Claim or Interest either has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code.

6. Each Class that is entitled to vote on the Plan has accepted the Plan or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code.

7. Except to the extent the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims and Priority Tax Claims will be paid in full on the later of: (a) the Effective Date (or, if not then due, as soon as practicable after the date when such Allowed Administrative Claim or Priority Tax Claim is due); (b) if such Claim is Allowed after the Effective Date, as soon as practicable after the date such Claim is Allowed (or, if not then due, as soon as practicable after the date such Allowed Administrative Claim or Priority Tax Claim is due); (c) at such time and upon such terms as may be agreed upon by such Holder and the Reorganized Debtors; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

8. The required filing fees have been or will be paid on the Effective Date pursuant to 28 U.S.C. §1930.

9. The Reorganized Debtors will pay quarterly fees to the Office of the U.S. Trustee, when due, until the case is closed, converted, or dismissed, whichever occurs first.

#### **B. Best Interests of Creditors Test/Liquidation Analysis**

Section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each class, that each holder of a claim or an equity interest in such class either (a) has accepted the plan or (b) will receive or retain under the plan property with a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the bankruptcy court must: (a) estimate the Cash liquidation proceeds that a chapter 7 trustee would generate if each Debtor's chapter 11 cases were converted to a chapter 7 case and the assets of such Debtor's estate were liquidated; (b) determine the liquidation distribution that each non-accepting holder of a claim or an equity interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare such holder's liquidation distribution to the Plan distribution that such holder would receive if the Plan were confirmed.

In chapter 7 cases, unsecured creditors and equity interest holders of a debtor are paid from available assets generally in the following order, with no junior class receiving any payments until all amounts due to senior classes have been paid fully or any such payment is provided for: (a) holders of secured claims (to the extent of the value of their collateral); (b) holders of priority claims; (c) holders of unsecured claims; (d) holders of debt expressly subordinated by its terms or by order of the bankruptcy court; and (e) holders of equity interests.

The Plan Proponents believe that the chapter 7 liquidation value available for satisfaction of Claims and Interests in the Debtors would be reduced by: (a) the costs, fees, and expenses of the liquidation under Chapter 7, which would include disposition expenses and the compensation of one or more trustees and their counsel and other retained professionals, (b) the fees of the Chapter 7 trustee(s) and (c) certain other costs arising from conversion of these Chapter 11 Cases

to Chapter 7. Further, in a chapter 7 liquidation, the Debtors' Affiliates that currently provide management would be unlikely to continue providing property management services that are essential to the operation of the properties. It is a reasonable assumption that without the benefit of management services the Properties and rental income flowing therefrom would quickly deteriorate. A chapter 7 trustee faced with 33 deteriorating properties in various locations throughout the United States would likely either abandon them to the Senior Lenders or sell them at fire sale prices. In either scenario, the recovery, especially to unsecured creditors, would be less than could be expected under the Plan.

Attached to this Disclosure Statement at **Exhibit C** is an analysis of the estimated distributions under the Plan and a hypothetical chapter 7 liquidation analysis that has been prepared by the Agent.<sup>8</sup> Assumptions related to both are included with the analysis.

As is evident from the estimated distributions and liquidation analysis, the Plan Proponents believe that Creditors will benefit from the Plan. If the Assets are liquidated by a Chapter 7 trustee, the maximum recovery will be substantially less than the management and disposition of the Assets under the Plan.

It is also anticipated that a Chapter 7 liquidation would result in a significant delay in payments being made to Creditors. Bankruptcy Rule 3002(c) provides that conversion of Chapter 11 cases to Chapter 7 will trigger a new bar date for filing claims against the Estates, and that the new bar date will be more than 90 days after these Chapter 11 Cases convert. Not only would a Chapter 7 liquidation delay distribution to Creditors, but it is possible that additional Claims that were not asserted in these Chapter 11 Cases, or were late-filed, could be filed against the Estates. Reopening the Bar Dates in connection with conversion to Chapter 7 would provide these and other claimants an additional opportunity to timely file Claims against the Estates.

For the reasons set forth above, the Plan Proponents believe that the Plan provides a superior recovery for the Holders of Claims, and the Plan meets the requirements of the Best Interests Test.

Notwithstanding the foregoing, the Plan Proponents believe that any liquidation analysis with respect to the Debtors is inherently speculative. Such a liquidation analysis necessarily contains estimates of the net proceeds that would be received from a forced sale of the Properties and other assets, as well as the amount of Claims that would ultimately become Allowed Claims. Claims estimates would be based solely upon the Plan Proponents' review of the Claims filed and the Debtors' books and records to the extent available and other information filed in the Chapter 11 Cases. In preparing the liquidation analysis, the Plan Proponents have projected an amount of Allowed Claims that represents their best estimate of the Chapter 7 liquidation dividend to Holders of Allowed Claims. The estimate of the amount of Allowed Claims set forth in the liquidation analysis should not be relied upon for any other purpose, including, without limitation, any determination of the value of any Distribution to be made on account of Allowed Claims under the Plan.

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<sup>8</sup> The Debtors accept the Liquidation Analysis solely for the purposes of this Disclosure Statement if the Settlement Effective Date occurs.

### C. Projections/Feasibility

Section 1129(a) (11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation is not likely to be followed by the liquidation of the Debtors or the need for further financial reorganization, unless the Plan contemplates such liquidation.

Attached hereto as **Exhibit D** is an analysis of projected cash flows and expenses of the Reorganized Debtors under the Plan, if implemented pursuant to the Lender Confirmation Option (the “Projections”).<sup>9</sup> These Projections show that if the Lender Confirmation Option is implemented, the Reorganized Debtors, with the aid of the Exit Facility, and the willingness of the Senior Lenders to reduce their Claims to the New Senior Debt and New Sub Debt, will generate enough cash flow to support their obligations and fund their operations.<sup>10</sup> The Plan Proponents believe that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

The Projections are based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; realization of the operating strategy of the Reorganized Debtors; industry performance; no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles; no material adverse changes in general business and economic conditions; no material adverse changes in competition; the Reorganized Debtors’ retention of key management and other key employees; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of the Reorganized Debtors and some or all of which may not materialize.

To the extent that the assumptions inherent in the Projections are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by the Plan Proponents, the assumptions and estimates underlying the Projections are subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond the control of the Reorganized Debtors. Accordingly, the Projections are only estimates and are necessarily speculative in nature. It can be expected that some or all of the assumptions in the Projections will not be realized and that actual results will vary from the Projections, which variations may be material and are likely to increase over time. In light of the foregoing, readers are cautioned not to place undue reliance on the Projections. The Projections were not prepared in accordance with standards for projections promulgated by the American Institute of Certified Public Accountants or with a view to compliance with published guidelines

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<sup>9</sup> No set of projections is provided for the implementation of the Plan pursuant to the Debtor Confirmation Option because the Debtor Confirmation Option contemplates that substantially all of the Properties and relating operating assets of the Debtors will be transferred to non-Debtor Entities and, as described in Article 4.F.5 of the Disclosure Statement, the Plan contemplates that the DCO Claims Reserves will be fully funded at or as soon as practicable after the Effective Date.

<sup>10</sup> While the Plan does not propose to substantively consolidate the Debtors, the Projections analyze feasibility on a consolidated basis because each of the Reorganized Debtors will be a borrower, and the assets and cash flows of each Reorganized Debtor will support and secure the obligations, under the Exit Facility and the New Senior Debt. The Debtors accept the Projections solely for the purpose of this Disclosure Statement if the Settlement Effective Date occurs.



of the SEC regarding projections or forecasts. The Projections have not been audited, reviewed, or compiled by the Agent's or Debtors' independent public accountants. The Reorganized Debtors will be required to adopt "fresh start" accounting upon their emergence from chapter 11. The actual adjustments for "fresh start" accounting that the Reorganized Debtors may be required to adopt upon emergence, may differ substantially from those "fresh start" adjustments in the Projections. The projected financial information contained in this Disclosure Statement should not be regarded as a representation or warranty by the Agent, the Debtors, the Reorganized Debtors, the Senior Lenders, their respective advisors, or any other Person that the Projections can or will be achieved.

The Projections should be read together with the information in Article 6 of this Disclosure Statement entitled "Plan-Related Risk Factors and Alternatives to Confirmation and Consummation of the Plan" which sets forth important factors that could cause actual results to differ from those in the Projections.

The Plan Proponents do not intend to update or otherwise revise the Projections, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Plan Proponents do not intend to update or revise the Projections to reflect changes in general economic or industry conditions.

If the Debtor Confirmation Option has been implemented, then the Debtors have, among other things, consummated the Refinancing Transactions. In connection with the closing of the Refinancing Transactions, the Debtors or the Reorganized Debtors will receive sufficient funds (either directly or through an escrow for the benefit of the Debtors and/or the Reorganized Debtors) to make the Distributions that are anticipated to be required for Claims that are or may be Allowed under the Plan. Furthermore, if the Debtor Confirmation Option is implemented, all Class 2 Senior Lender Claims shall be settled, released and discharged pursuant to the terms of the Plan. Accordingly, the Plan Proponents believe the Plan is feasible if the Debtor Confirmation Option is implemented.

#### **D. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described below, each class of claims or equity interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (a) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (b) cures any default and reinstates the original terms of such obligation; or (c) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled or any fixed price at which the debtor may redeem the security.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired interests as acceptance by holders of at least two-thirds in amount and more than one-half in number of such interests.

The following classes are Impaired under the Plan:

- Class 2 – Senior Lender Claims;
- Class 6 – Intercompany Claims;
- Class 7 – Non-Debtor Affiliate Claims; and
- Class 8A – Equity Interests in SNPF III (if the Lender Confirmation Option is implemented).

**E. Contact for More Information**

Any interested party desiring further information about the Plan may contact legal counsel to the Plan Proponents by writing to (a) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16<sup>th</sup> Fl., Wilmington, DE 19801, Attn: Gregory W. Werkheiser and (b) Troutman Sanders LLP, 600 Peachtree Street, Atlanta, Georgia 30308, Attn: Jeffrey W. Kelley.

**ARTICLE 6.**

**PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS AND/OR EQUITY INTERESTS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

**A. Parties-in-Interest May Object to the Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Plan Proponents believe that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Plan creates eight primary Classes, each with 9 sub-Classes, of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**B. Failure to Satisfy Vote Requirement**

If votes are received in an amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Plan Proponents intend to seek, as promptly as practicable thereafter, confirmation

of the Plan. In the event that sufficient votes are not received, the Plan Proponents may seek to accomplish an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed Claims as those proposed in the Plan.

### **C. The Plan Proponents May Not Be Able to Secure Confirmation of the Plan**

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, including, among other requirements, a finding by the bankruptcy court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization; and (c) the value of distributions to non-accepting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim and/or Equity Interest might challenge whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that the Disclosure Statement, the balloting procedures, and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes.

Confirmation of the Plan is also subject to certain conditions as described in the Plan. If the Plan is not confirmed, it is unclear what Distributions, if any, Holders of Allowed Claims and Equity Interests would receive with respect to their Allowed Claims and/or Equity Interests.

The Plan Proponents, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for confirmation. The Plan Proponents, in conjunction with their advisors, continue to evaluate any and all possibilities to ensure that the best recoveries for all constituencies are realized. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a Distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no Distribution of property whatsoever under the Plan.

### **D. Nonconsensual Confirmation**

In the event that any impaired class does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponent’s request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the

bankruptcy court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired classes. The Plan Proponents believe that the Plan satisfies these requirements and the Plan Proponents will request such nonconsensual Confirmation in accordance with section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion.

**E. The Reorganized Debtors May Object to the Amount or Classification of a Claim**

Except as otherwise provided in the Plan, the Plan Proponents (or the Reorganized Debtors) reserve the right to object to the amount or classification of any Claim. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated Distributions described in this Disclosure Statement.

**F. Risk of Non-Occurrence of the Effective Date**

Although the Plan Proponents believe that the Effective Date will occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

**G. Contingencies Not to Affect Votes of Impaired Classes to Accept or Reject the Plan**

The Distributions available to Holders of Allowed Claims and Equity Interests under the Plan can be affected by a variety of contingencies. The occurrence of any and all such contingencies, which could affect Distributions available to Holders of Allowed Claims and Equity Interests under the Plan, will not affect the validity of the vote taken by the Impaired Class to accept or reject the Plan or require any sort of revote by the Impaired Class.

**H. Risk Factors that May Affect Distributions Under the Plan**

The Claims estimates set forth herein are based on various assumptions. The actual amounts of Allowed Claims may differ significantly from those estimates should one or more underlying assumption prove to be incorrect. Additionally, the Plan Proponents have made certain assumptions, as described herein, regarding liquidation under chapter 7 of the Bankruptcy Code, **which should be read carefully.**

**I. Risk Factors Relating To Securities Laws**

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (a) the securities must be offered and sold under a plan and must be securities of the debtor, an affiliate participating in a joint plan with the debtor, or a successor to the debtor under the plan; (b) the recipients of the securities must hold a prepetition or administrative expense claim against the debtor or an interest in the debtor; and (c) the securities must be issued entirely in exchange for the recipient’s claim against or interest in the debtor, or principally in such exchange and partly for cash or property. To the extent that the New LLC Interests are deemed to constitute securities issued in accordance with the Plan, the Plan

Proponents believe that such interests satisfy the requirements of § 1145(a)(1) of the Bankruptcy Code and, therefore, such interests are exempt from registration under the Securities Act and applicable state securities laws.

**J. Disclosure Statement Disclaimer**

The vote by a Holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Reorganized Debtors, the Agent, or other parties in interest, to object to that Holder's Allowed Claim, or the Reorganized Debtors to bring Causes of Action regardless of whether any Claims or Causes of Action are specifically or generally identified herein.

**K. Liquidation Under Chapter 7**

If the Plan is not confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the assets of the Debtors for Distribution in accordance with the priorities established by the Bankruptcy Code. The Plan Proponents believe that any such conversion would likely reduce any Distribution to Holders of Claims and Equity Interests based on, among other things, (a) the increased costs of a chapter 7 case arising from the fees payable to a chapter 7 trustee and professional advisors to such trustee; (b) substantial increases in claims which would be satisfied on a priority basis; (c) the substantially longer period of time that would elapse until distributions could be made under chapter 7; and (d) the lack of the Exit Facility. The Plan Proponents believe that, in the event of a liquidation pursuant to chapter 7 of the Bankruptcy Code, unsecured Creditors and Holders of Equity Interests will receive no recovery for their Claims and Equity Interests whatsoever.

**L. Alternative Plan of Reorganization**

If the Plan is not confirmed, the Bankruptcy Court may confirm another plan that may be filed by the Debtors, the Agent or another party in interest.

**M. Inherent Uncertainty of Projected Distribution Analysis**

The Projections are based on numerous assumptions, including confirmation and consummation of the Plan in accordance with its terms; the Reorganized Debtors' ability to manage and monetize the Properties if the Lender Confirmation Option is implemented; industry performance; no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles; no material adverse changes in general business and economic conditions; no material adverse changes in competition; the absence of material contingent or unliquidated litigation, indemnity, or other claims; and other matters, many of which will be beyond the control of the Debtors, the Reorganized Debtors and the Agent and some or all of which may not materialize.

To the extent that the assumptions inherent in the estimated distributions are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and are based on assumptions considered reasonable by the Plan Proponents, the assumptions and estimates underlying the estimated distributions are

subject to significant business, economic, and competitive uncertainties and contingencies, many of which will be beyond the control of the Plan Proponents. Accordingly, the Projections are only estimates and are necessarily speculative in nature. It can be expected that some or all of the assumptions in the estimated distributions will not be realized and that actual results will vary from the estimated distributions, which variations may be material and are likely to increase over time. In light of the foregoing, readers are cautioned not to place undue reliance on the estimated distributions. The estimated distributions were not prepared in accordance with standards for projections promulgated by the American Institute of Certified Public Accountants or with a view to compliance with published guidelines of the SEC regarding projections or forecasts. The estimated distributions have not been audited. The estimated distributions information contained in this Disclosure Statement should not be regarded as a representation or warranty by the Plan Proponents, the Plan Proponents' advisors, or any other Entity, that the estimated distributions can or will be achieved.

**ARTICLE 7.**  
**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES**

THE TAX CONSEQUENCES UNDER THE PLAN TO HOLDERS OF CLAIMS OR INTERESTS MAY VARY BASED UPON THE PARTICULAR CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE LAW AND THE TIME THAT MAY ELAPSE BETWEEN THE DATE OF THIS DISCLOSURE STATEMENT AND FINAL DISTRIBUTIONS UNDER THE PLAN. NO RULING HAS BEEN APPLIED FOR OR OBTAINED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN REQUESTED OR OBTAINED BY THE AGENT WITH RESPECT THERETO.

THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION CONCERNING THE MATTERS DESCRIBED. THE PLAN PROPONENTS AND THEIR ADVISORS CANNOT PROVIDE ANY SUCH ADVICE. THERE CAN BE NO ASSURANCE THAT THE INTERNAL REVENUE SERVICE WILL NOT CHALLENGE ANY OR ALL OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE UPHeld. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, OR OTHER TAX CONSEQUENCES OF THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE U.S. INTERNAL REVENUE SERVICE, ANY STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE CODE. STATEMENTS REGARDING TAX IMPLICATIONS CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) ARE NOT WRITTEN TO SUPPORT THE MARKETING OR PROMOTION OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE

DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

TAX CONSEQUENCES MAY VARY BASED ON THE PARTICULAR CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS, HER, OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, AND LOCAL INCOME AND OTHER TAX CONSEQUENCES UNDER THE PLAN.

## **ARTICLE 8. GLOSSARY OF DEFINED TERMS**

### *Defined Terms*

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

1. “Adequate Protection Payments” means the Cash payments made by the Debtors to the Agent and/or the Senior Lenders during the period from the Petition Date through the Effective Date pursuant to any order or other agreement authorizing the Debtors’ use of Cash Collateral in which the Agent and/or Senior Lenders hold or assert an interest, including, without limitation, payments made pursuant to any of the twenty-seven interim cash collateral orders entered in these Chapter 11 Cases as of the filing of the Plan [Docket No. 28, 64, 94, 119, 152, 179, 193, 264, 279, 353, 431, 456, 515, 548, 582, 620, 644, 692, 729, 731, 761, 784, 814, 844, 857, 899, 938 and 1023].

2. “Administrative Claim” means a Claim arising under section 507(a)(2) of the Bankruptcy Code for costs and expenses of administration under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises) and (b) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

3. “Administrative Claims Bar Date” means the first Business Day that is thirty (30) days after the Effective Date, unless otherwise extended by the Reorganized Debtors, and is the deadline for a Holder of an Administrative Claim (other than an Ordinary Course Administrative Claim, a section 503(b)(9) Claim, and a Professional Fee Claim) to file a request with the Bankruptcy Court for payment of such Administrative Claim. Section 503(b)(9) Claims were required to be filed by March 1, 2012 and remain subject to such Bar Date. All fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930 are not subject to the Administrative Claims Bar Date.

4. “Administrative Claims Objection Deadline” shall mean ninety (90) days after the Administrative Expense Claim Bar Date, or as extended pursuant to Article 2.A of the Plan.

5. “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code.

6. “Agent” means Bank of America, N.A., as administrative agent for the Senior Lenders under the Prepetition Loan Agreement.

7. “Allocation Election” means, if the Lender Confirmation Option is implemented, as of the Effective Date, the election by the Senior Lenders to receive, to the extent available, either (a) New LLC Interests in lieu of their Pro Rata Distribution of the New Sub Debt or (b) New Sub Debt in lieu of their Pro Rata Distribution of New LLC Interests, as described more fully in Article 4.F of the Plan.

8. “Allowed” means, with respect to any Claim or Equity Interest, except as otherwise provided in the Plan: (a) as to which no objection to allowance or request for estimation has been interposed on or before the later of (i) the Claims Objection Deadline or (ii) the expiration of such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; (b) a Claim or Equity Interest that has been scheduled by the Debtors in their Schedules as other than disputed, contingent or unliquidated, but only as to the amount listed on the Schedules for such Claim; (c) a Claim or Equity Interest that either is not Disputed or has been allowed by a Final Order; (d) a Claim or Equity Interest that is allowed pursuant to the terms of the Plan; or (e) a Disputed Claim as to which a proof of claim has been timely filed and as to which no objection has been filed by the Claims Objection Deadline. For the avoidance of doubt, notwithstanding any objection to allowance or request for estimation filed or interposed by the Debtors, the Senior Lender Claims shall be Allowed Claims, subject to the terms of the Plan.

9. “Amended and Restated Charter Documents” means the amended and restated certificate of formation, limited liability company agreement, and/or other organizational documents of each of the Reorganized Debtors, substantially in the forms included in the Plan Supplement. The Amended and Restated Charter Documents will become effective only if the Lender Confirmation Option is implemented as of the Effective Date.

10. “Arkley” means Robin P. Arkley, II.

11. “Bank of America” means Bank of America, N.A.

12. “Bankruptcy Code” means sections 101, *et seq.* of title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code, as amended from time to time.

13. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

14. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, and general orders and chambers procedures of the Bankruptcy Court, each as applicable to the Chapter 11 Cases and as amended from time to time.



**15.** “Bar Date” means March 1, 2012, as the date set by the *Order Granting Debtors’ Motion to Establish Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof*, dated January 26, 2012 [Docket No. 139] , as the deadline to file proofs of Claim, except for Administrative Claims.

**16.** “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday” (as that term is defined by Rule 9006(a) of the Federal Rules of Bankruptcy Procedure).

**17.** “Cash” means legal currency of the United States of America or equivalents thereof, including bank deposits and checks.

**18.** “Cash Collateral” has the meaning ascribed to it in section 363(a) of the Bankruptcy Code.

**19.** “Causes of Action” means any and all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, defenses, counterclaims, cross-claims, and the like (including, without limitation, all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code), matured or unmatured, known or unknown, then existing or thereafter arising, of any of the Debtors, the Debtors-in-Possession, and/or the Estates that are or may be pending on the Effective Date against any Entity other than any Debtor, based in law or equity, including, without limitation, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the Confirmation Date; *provided, however*, that “Causes of Action” shall exclude any Causes of Action released under the Plan or the Settlement Agreement.

**20.** “Chapter 11 Cases” means the chapter 11 cases commenced when the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on the Petition Date and assigned the following case numbers: 11-13277 (KG), 11-13278 (KG), 11-13279 (KG), 11-13280 (KG), 11-13281 (KG), 11- 13282 (KG), 11-13283 (KG), 11-13284 (KG), and 11-13285 (KG), which are jointly administered under case number 11-13277 (KG).

**21.** “Claim” means a “claim” (as that term is defined in section 101(5) of the Bankruptcy Code) against a Debtor.

**22.** “Claims Agent” means GCG, Inc., the court-appointed claims agent in these Chapter 11 Cases.

**23.** “Claims Objection Deadline” means the last day for filing objections to Claims, which day shall be the latest of (a) 180 days after the Effective Date, (b) thirty (30) days after entry of a Final Order under section 502(j) of the Bankruptcy Code, or (c) such other later dates as may be established by order of the Bankruptcy Court upon a motion (or subsequent motion) of the Agent or the Reorganized Debtors.

**24.** “Class” means a category of Holders of Claims or Equity Interests as set forth in Article 3 of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

25. “Collateral” means any property or interest in property of a Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

26. “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases subject to all conditions specified in Article 7.A of the Plan having been (a) satisfied or (b) waived pursuant to Article 7.C of the Plan.

27. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases.

28. “Confirmation Hearing” means the hearing before the Bankruptcy Court to consider Confirmation of the Plan.

29. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

30. “Consummation” means the occurrence of the Effective Date.

31. “Contracts Schedule” means the schedule of Executory Contracts: (a) to be rejected pursuant to the Plan; and (b) to be assigned pursuant to the Plan to any Entity other than a Reorganized Debtor. The Contracts Schedule will initially be filed with the Plan Supplement and may be amended, modified, or supplemented (including by adding or removing Executory Contracts) at any time thereafter through and including the Effective Date.

32. “Converted Senior Lender Debt” means the Senior Lender Claims in excess of the \$120 million principal amount of the New Senior Debt.

33. “Creditor” shall have the meaning in section 101(10) of the Bankruptcy Code.

34. “Cure Claim” means a Claim based upon a Debtor’s monetary defaults under an Executory Contract at the time such Executory Contract is assumed by the Debtor under section 365 of the Bankruptcy Code.

35. “D&O Liability Insurance Policies” means all insurance policies of any of the Debtors for directors’, managers’, and officers’ liability.

36. “Debtor Confirmation Option” has the meaning ascribed to such term in Article 4.B.1 of the Plan.

37. “DCO Claim Reserves” means, as described more fully in Article 5.E of the Plan, if the Plan is implemented pursuant to the Debtor Confirmation Option, the Disputed Reserve and other segregated accounts or escrow accounts as contemplated by the Settlement Agreement created by the Reorganized Debtors on the Effective Date with Cash and Cash investments in an amount equal to 110% of the Debtors’ best estimate of the Cash necessary to make required Distributions under the Plan to the projected aggregate amount of unpaid Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Governmental

Unit Claims, Other Secured Claims, Unsecured Priority Claims and General Unsecured Claims. For the avoidance of doubt, the Reorganized Debtors shall not be required to establish DCO Claim Reserves for Senior Lender Claims, Intercompany Claims, Non-Debtor Affiliate Claims or Equity Interests.

**38.** “DCO Deadline” means October 9, 2014, or such later date as is authorized by Section 7.12 of the Settlement Agreement or as the Senior Lenders may agree in writing. The DCO Deadline is the last date by which the Plan may be implemented pursuant to the Debtor Confirmation Option.

**39.** “DCO Sponsor Guaranty” means the guarantees contemplated in the Section 1.5(b) of the Settlement Agreement signed by Arkley.

**40.** “DCO Sponsors” means SNP Holding, SNP Servicing and Arkley.

**41.** “De Minimis Distribution” means any Distribution (other than a Distribution on an Allowed secured Claim) in an amount less than \$50.

**42.** “Debtor,” “Debtors,” or “Debtors-in-Possession” means, individually and collectively, Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

**43.** “Deficiency Note” means the note contemplated in Section 1.5 of the Settlement Agreement, executed by SNP Holding in favor of the Agent for the benefit of the Senior Lenders for the expected remaining balance of the Senior Lender Claim after closing of the Refinancing Transactions, in the amount of approximately \$13 million (with the amount to be fixed based upon the amounts paid to the Agent through consummation of the Refinancing Transactions).

**44.** “DIP Claims” means Claims asserted by SNP Holding on account of the DIP Facility.

**45.** “DIP Facility” means the post-petition financing facility provided by SNP Holding to the Debtors pursuant to that certain Unsecured Promissory Note, between the Debtors, as “Makers,” and SNP Holding, as “Lender,” as amended and/or restated from time to time through the Confirmation Date. The DIP Facility includes all financing available from SNP Holding pursuant to the *Interim Order, Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(b) and 503(b)(1) and Fed. R. Bankr. P. 2002 and 4001, (a) Authorizing Debtors to Obtain Post-Petition Financing and Granting Administrative Expense Status and (b) Scheduling a Final Hearing and Establishing Related Notice Requirements* [Docket No. 435]; and any subsequent interim or final order of the Bankruptcy Court entered on or before the Confirmation Date.

**46.** “Disclosure Statement” means this written disclosure statement that relates to the Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as it may be amended, supplemented, or modified from time to time.

**47.** “Disputed” means, with respect to any Claim or Equity Interest, or any portion thereof: (a) it is listed on the Schedules (as the Schedules may be amended) as unliquidated, disputed, or contingent, unless a Proof of Claim has been timely filed; (b) as to which a Debtor, any other party in interest, or a Reorganized Debtor has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules before the Claims Objection Deadline; (c) as to which a Proof of Claim or interest was required to be filed but as to which a Proof of Claim or interest was not timely or properly filed; or (d) as otherwise disputed by the Debtors, a party in interest, or the Reorganized Debtors in accordance with applicable law or the Plan, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. For the avoidance of doubt, notwithstanding any objection to allowance or request for estimation filed or interposed by the Debtors, the Senior Lender Claims are not Disputed.

**48.** “Disputed Reserve” means, as described more fully in Article 5.F.4 of the Plan, a segregated account created by the Reorganized Debtors on the Effective Date with Cash and Cash investments in an amount equal to 110% of the Debtors’ best estimate of the Cash necessary to make required Distributions under the Plan to Disputed Claims that are likely to become Allowed Claims.

**49.** “Distribution” means the distributions of Cash, New LLC Interests (if the Lender Confirmation Option is implemented), or other consideration to be made under and in accordance with the Plan.

**50.** “Effective Date” means the first Business Day on which all the conditions specified in Article 7.B of the Plan have been satisfied or waived as set forth in Article 7.C of the Plan.

**51.** “Effective Date Notice” means the notice of the occurrence of the Effective Date, which shall be filed within three (3) Business Days after the occurrence of the Effective Date and promptly thereafter served in the manner and on the Entities identified in the Confirmation Order. The Effective Date Notice shall state whether the Plan has been implemented pursuant to the Debtor Confirmation Option or the Lender Confirmation Option.

**52.** “Entity” means an “entity” as that term is defined in section 101(15) of the Bankruptcy Code.

**53.** “Equity Interest” means any equity security within the meaning of section 101(16) of the Bankruptcy Code or any other instrument evidencing an ownership interest in any of the Debtors.

**54.** “Estate” means the estate of each Debtor created on the Petition Date by section 541 of the Bankruptcy Code.

**55.** “Executory Contract” means an agreement, contract, or lease, whether for real or personal property, between or among one or more of the Debtors and a third party, that qualifies as an “executory contract” or “unexpired lease” under section 365 of the Bankruptcy Code.

**56.** “Exit Facility” means the financing or financings that will be made pursuant to the Exit Facility Agreement if the Lender Confirmation Option is implemented.

**57.** “Exit Facility Agreement” means the agreement (or supplement or amendment to the Prepetition Loan Agreement), and all related documents, enabling Exit Facility borrowings by the Reorganized Debtors if the Lender Confirmation Option is implemented. The Exit Facility Agreement shall be included in the Plan Supplement.

**58.** “Exit Facility Lenders” means the Entities agreeing to provide the Exit Facility to the Reorganized Debtors, if the Lender Confirmation Option is implemented.

**59.** “Exit Financing Commitment” means, if the Lender Confirmation Option is implemented, \$10,000,000 (as such amount is reduced from time to time in accordance with the Exit Facility Agreement).

**60.** “File” or “Filed” or “Filing” means, with respect to any pleading, the entry of such pleading on the docket of the Chapter 11 Cases and the proper service of such pleading in accordance with the Bankruptcy Rules.

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

**62.** “Final Order” means an order, determination, or judgment entered on the docket of the Bankruptcy Court, or any other court of competent jurisdiction, that has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, petition for certiorari, or move for reargument, rehearing, or reconsideration has expired and no timely filed appeal or petition for review, rehearing, remand, or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order, determination, or judgment was appealed or from which certiorari was sought, *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

**63.** “General Unsecured Claim” means any Claim against any Debtor that is not an Administrative Claim, a Professional Fee Claim, a Secured Governmental Unit Claim, a Priority Tax Claim, a Senior Lender Claim, an Other Secured Claim, an Unsecured Priority Claim, an Intercompany Claim, or a Non-Debtor Affiliate Claim.

**64.** “Holder” means an Entity holding a Claim or Equity Interest.

**65.** “Impaired” means “impaired” within the meaning of sections 1123(a) and 1124 of the Bankruptcy Code with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

**66.** “Indemnification Obligation” means a Debtor’s obligation to indemnify its Indemnified Parties with respect to or based upon any act or omission taken or omitted in any of the relevant capacities, or for or on behalf of any Debtor, pursuant to and to the maximum extent provided by such Debtor’s respective certificates of incorporation, certificates of formation,

bylaws, similar corporate documents, and applicable law, as in effect immediately before the Effective Date.

**67.** “Indemnified Parties” means the Debtors’ current directors, officers, managers, employees, attorneys, other professionals, and agents, and such current directors’, officers’, managers’, and employees’ respective Affiliates to the extent set forth herein, that were employed in such capacity on or after the Petition Date and that are entitled to be indemnified by the Debtors pursuant to, among other things, the Debtors’ bylaws, certificates of incorporation (or other formation documents), board resolutions, employment contracts, or other agreements.

**68.** “Initial Distribution Date” means the Effective Date or as soon thereafter as practicable, but no later than thirty (30) days after the Effective Date.

**69.** “Insider” has the meaning set forth in section 101(31) of the Bankruptcy Code.

**70.** “Intercompany Claims” means Claims held by a Debtor against another Debtor.

**71.** “Interim Compensation Order” means the Administrative Order Pursuant to 11 U.S.C. §§ 105(a) and 331, Fed. R. Bankr. P. 2016 and Del. Bankr. L.R. 2016-2 Establishing Procedures for Interim Compensation of Fees and Reimbursement of Expenses for Professionals and Official Committee Members [Docket No. 117].

**72.** “Lender Confirmation Option” has the meaning ascribed to such term in Article 4.B.2 of the Plan.

**73.** “Lien” means any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation.

**74.** “Net Proceeds” shall have the meaning ascribed to such term in Section 1.4(g) of the Settlement Agreement.

**75.** “Net Proceeds Covenant” has the meaning ascribed to such term in the Settlement Agreement.

**76.** “New Intercreditor Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the intercreditor agreement entered into on the Effective Date by the Senior Lenders, in form and substance reasonably acceptable to the Senior Lenders.

**77.** “New LLC Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the limited liability company agreement to be entered into by Reorganized SNPF III and the Senior Lenders, to the extent they receive New LLC Interests under the Plan on the Effective Date.

**78.** “New LLC Interests” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the membership interests in Reorganized SNPF III that will be Distributed pursuant to Article 4.G.3 of the Plan on the Effective Date. Each New LLC Interest shall have a

par value of \$1. The total New LLC Interests available for Distribution shall have a value (based on par) equal to 62.5% of the Converted Senior Lender Debt.

**79.** “New Management Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the management services agreement to be entered into between the Reorganized Debtors and new management as selected by the Senior Lenders, which shall be included in the Plan Supplement.

**80.** “New Senior Debt” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the senior secured credit facility to be entered into by the Reorganized Debtors, as borrowers, and the Senior Lenders, on the Effective Date in the principal amount of; (a) in the event that none of the Refinancing Transactions have closed, \$120 million; or (b) in the event that one or more of the Refinancing Transactions have closed in whole or in part (any such closing to be in the sole discretion of the Senior Lenders and the SN Parties), such lesser amount as the Reorganized Debtors and the Senior Lenders shall reasonably determine to be necessary in connection with the ownership and operation of the Properties that the Reorganized Debtors continue to own.

**81.** “New Senior Debt Agreement” means the credit agreement documenting the New Senior Debt, which shall be included in the Plan Supplement.

**82.** “New Sub Debt” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the junior unsecured credit facility to be entered into by SNPF III, as borrower, and certain of the Senior Lenders, in an amount equal to 37.5% of the Converted Senior Lender Debt.

**83.** “New Sub Debt Agreement” means the agreement documenting the New Sub Debt, which shall be included in the Plan Supplement.

**84.** “Non-Debtor Affiliate” means an Affiliate of the Debtors that is not a Debtor.

**85.** “Non-Debtor Affiliate Claim” means a Claim of a Non-Debtor Affiliate against a Debtor.

**86.** “Ordinary Course Administrative Claim” means an Administrative Claim with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases to the extent due and owing in accordance with the terms and conditions of any agreements relating thereto; *provided, however*, that in no event shall a post-petition obligation that is contingent or disputed and subject to liquidation through pending or prospective litigation, including, but not limited to, alleged obligations arising from personal injury, property damage, products liability, tenant complaints, employment law (excluding claims arising under workers’ compensation law), secondary payor liability, or any other disputed legal or equitable claim based on tort, statute, contract, equity, or common law, be considered to be an Ordinary Course Administrative Claim.

**87.** “Other Secured Claim” means a Claim, other than a Secured Governmental Unit Claim or a Senior Lender Claim, against the Debtors that is (a) secured by a Lien on property in which the Estates have an interest, which Liens are valid, perfected, and enforceable under

applicable law or by reason of a Final Order, or (b) that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

**88.** "Person" means "person" as that term is defined in section 101(41) of the Bankruptcy Code.

**89.** "Petition Date" means October 13, 2011.

**90.** "Plan" means this plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or herewith, as the case may be.

**91.** "Plan Proponents" means the Debtors and Bank of America, in its role as Agent. The Plan Proponents are sometimes referred to individually in the Plan as a "Plan Proponent."

**92.** "Plan Supplement" means the supplement to the Plan, containing without limitation: (a) the Amended and Restated Charter Documents; (b) the New LLC Agreement; (c) the New Management Agreement; (d) the Contracts Schedule (as the same may be amended from time to time through the Confirmation Date); (e) the New Senior Debt Agreement; (f) the Exit Facility Agreement; (g) the New Sub Debt Agreement; (h) the identity of the initial directors and officers of the Reorganized Debtors; and (i) such other documents that the Plan Proponents determine are necessary to include in the Plan Supplement for implementation of the Plan. The Plan Supplement shall be filed no later than seven (7) days prior to the deadline set by the Bankruptcy Court to vote to accept or reject the Plan; provided, however, the Plan Proponents reserve the right to supplement and/or modify the Plan Supplement at a later date.

**93.** "Plan Supplement Documents" means the documents contained in the Plan Supplement.

**94.** "Prepetition Loan Agreement" means that certain Credit Agreement, dated as of October 18, 2006, by and among Security National Properties Funding III, LLC, as borrower, Bank of America, N.A., as Administrative Agent, and Banc of America Securities, LLC, as Sole Lead Arranger and Sole Book Manager, as amended from time to time.

**95.** "Prepetition Loan Documents" means the Prepetition Loan Agreement, together with all guarantees (including the SNP Holding Guaranty), security documents, pledge agreements, and all related exhibits, schedules, agreements, forbearance agreements, and other documents, as the same may have been amended from time to time.

**96.** "Prepetition Loan Facility" means the prepetition loan and credit facility, as evidenced by, among other things, the Prepetition Loan Documents.

**97.** "Previously Assumed Contract" has the meaning ascribed to such term in Article 6.E of the Plan.



**98.** “Primary Parcels” means the twenty-eight (28) Properties identified on Exhibit C to the Settlement Agreement that are the subject of the Primary Transaction.

**99.** “Primary Parcel Sale Agreement” means an agreement of sale under which one or more Primary Parcels will be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed pursuant to such Primary Parcel Sale Agreement), to the direct or indirect subsidiary of an SN Party that will become the new owner of such Primary Parcel(s) in connection with the Primary Transaction.

**100.** “Primary Transaction” means the refinancing of the Primary Parcels, which involves, *inter alia*, (i) the transfer by the current Debtor owners thereof of the Primary Parcels to the Entity or Entities that will acquire the Primary Parcels pursuant to the Primary Parcel Sale Agreements, and (ii) a Loan to be made by Colony Capital Acquisitions, LLC, and/or one or more affiliates thereof, or a comparable lender, in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$124.792 million in Cash.

**101.** “Priority Tax Claims” means Claims of governmental units of the kind specified in section 507(a)(8) of the Bankruptcy Code. Priority Tax Claims specifically do not include Claims for payment of real property taxes secured by a Lien on a Debtor’s real or personal property; such secured claims shall be considered Secured Governmental Unit Claims.

**102.** “Pro Rata” means, with respect to any Allowed Claim, at any time, the proportion that the amount of an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in such Class.

**103.** “Professional” means any Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code, and to be compensated for services rendered and awarded reimbursement of expenses incurred prior to and including the Effective Date pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

**104.** “Professional Fee Claim” means a Claim for compensation for services and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, or 503(b) of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 Cases.

**105.** “Professional Fee Claim Bar Date” means the date that is thirty (30) days after the Effective Date.

**106.** “Proof of Claim” means a proof of claim filed in the Chapter 11 Cases pursuant to section 501 of the Bankruptcy Code and/or pursuant to any Order of the Bankruptcy Court, together with supporting documents.

**107.** “Property” or “Properties” means one or more, as appropriate, of those certain 33 commercial real estate properties owned by the Debtors.

**108.** “Refinanced Parcels” means the Primary Parcels, the Secondary Parcels, and the Soup Lots, such Properties being the Properties included in the Refinancing Transactions.

**109.** “Refinancing Claims” means valid liabilities of all kinds incurred in the ownership or operation of a Refinanced Parcel that are outstanding as of the date of closing of Refinancing Transaction with respect to such Refinanced Parcel (including, without limitation, any Cure Claim for any Executory Contract that is assumed and assigned, or assigned, in connection with such Refinancing Transaction to an entity other than a Reorganized Debtor).

**110.** “Refinancing Transactions” means the Primary Transaction, the Secondary Transaction and the Soup Lots Sale. Pursuant to the Refinancing Transactions, the Agent shall be paid no later than the DCO Deadline Cash in an amount no less than a total of \$151.342 million from proceeds of the Refinancing Transactions. For the avoidance of doubt, the description of the Refinancing Transactions is not intended to limit the SN Parties’ ability to raise the funds to pay the \$151.342 million to the Agent through other transactions so long as (i) such transactions involve all of the Refinanced Parcels, and (ii) payment of the \$151.342 million in Cash is made to the Agent by the DCO Deadline.

**111.** “Released Senior Lender Parties” means the Senior Lenders, their Affiliates and each of their respective Representatives.

**112.** “Released Parties” means the Released Senior Lender Parties and the Released SN Parties.

**113.** “Released SN Parties” means the SN Parties, their Affiliates and each of their respective Representatives.

**114.** “Reorganized Debtors” means all of the Debtors, or any successors to the Reorganized Debtors by merger, consolidation, or otherwise, on and after the Effective Date.

**115.** “Reorganized Subsidiaries” means all of the Subsidiaries, or any successors to the Reorganized Subsidiaries by merger, consolidation, or otherwise, on and after the Effective Date.

**116.** “Representatives” means, with regard to an Entity, that Entity’s current and former officers, directors, employees, advisors, members, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents, and other representatives (including each of their respective officers, directors, employees, independent contractors, members, and professionals).

**117.** “Schedules” mean the schedules of assets and liabilities, schedules of executory contracts, and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, each as may be amended from time to time, including after the Effective Date.

**118.** “Secondary Parcel Sale Agreement” means an agreement of sale under which one or more Secondary Parcels will be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed pursuant to such Secondary Parcel Sale Agreement), to the Affiliate or Affiliates of an SN Party that will become the new owner of such Secondary Parcel(s) in connection with the Secondary Transaction.

**119.** “Secondary Parcels” means the five (5) Properties referred to by the Debtors as the Alliance Bank Center, Hobby Lobby, Orchards Mall, Greenville Mall, and Heartland Mall that are the subject of the Secondary Transaction.

**120.** “Secondary Transaction” means the refinancing of the five (5) Secondary Parcels, which involves, *inter alia*, (i) the transfer by the current Debtor owners thereof of the Secondary Parcels to the Entity or Entities that will acquire the Secondary Parcels pursuant to the Secondary Parcel Sale Agreements, (ii) the pledging as additional collateral to secure the repayment obligations to the lender in the Secondary Transaction of the equity in certain commercial real estate properties held by Non-Debtor Affiliates, one or more of which may be a subsidiary of a Debtor, and (iii) a Loan to be made by Calmwater Capital 3, LLC, and/or one or more affiliates thereof, or a comparable lender, in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$24.75 million in Cash.

**121.** “Section 503(b)(9) Claim” means a Claim entitled to priority as an Administrative Claim pursuant to section 503(b)(9) of the Bankruptcy Code.

**122.** “Secured Governmental Unit Claim” means a Claim held by a “governmental unit” as such term is defined in section 101(27) of the Bankruptcy Code that is secured by a Lien in a Debtor’s Property, including, but not limited to, those Claims for payment of real property taxes secured by a Lien on a Debtor’s Property.

**123.** “Senior Lender Claims” means the Claims of the Senior Lenders, including all post-petition interest, fees, and costs that may be Allowed under section 506(b) of the Bankruptcy Code, evidenced by the Prepetition Loan Agreement and all guarantees, pledges, assignment(s) of rent, deed(s) of trust, amendments, modifications, and supplements related thereto, including any and all obligations of the Debtors, their affiliates and related entities, both individually and collectively, to the Senior Lenders.

**124.** “Senior Lenders” means Bank of America, N.A., as agent and lender, and other Lenders (as defined in the Prepetition Loan Agreement) *provided, however*, that any Entity that has become a Lender in violation of Section 7.7 of the Settlement Agreement shall not be a Senior Lender under this Plan.

**125.** “Settlement Agreement” means that Settlement Agreement dated August 12, 2014 between the Senior Lenders and the SN Parties, a copy of which is attached to the Plan as Exhibit “A”.

**126.** “Settlement Effective Date” has the meaning ascribed to such term in the Settlement Agreement.

**127.** “SN Parties” means the Debtors, SNP Holding, SNP Servicing, and Arkley.

**128.** “SNP Holding” means Security National Properties Holding Company, LLC, a Non-Debtor Affiliate.

**129.** “SNP Holding Guaranty” means that certain Limited Guaranty executed by SNP Holding in connection with the Prepetition Loan Agreement

**130.** “SNP Servicing” means Security National Properties Servicing Company, LLC, a Non-Debtor Affiliate.

**131.** “SNPF III” means Security National Properties Funding III, LLC, one of the Debtors.

**132.** “Soup Lots” means the property located at 1102 and 1114 Dodge St., Omaha, Nebraska and commonly referred to by the Debtors as the “Soup Lots.”

**133.** “Soup Lots Sale” means the sale pursuant to section 363 of the Bankruptcy Code of the Soup Lots in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$1.8 million.

**134.** “Subsidiaries” means the Debtors other than SNPF III.

**135.** “Tenant” means an Entity that is a tenant or sub-tenant counterparty with a Debtor, as landlord or sub-landlord, to a lease or sub-lease of either (i) non-residential real property or (ii) a residential unit at the Properties known as Aspen Mobile Home Park or Rangeview Mobile Home Park.

**136.** “Tenant Deposit Claim” means a claim held by a Tenant against a Debtor for the return of a security deposit held by a Debtor pursuant to a lease or sub-lease agreement.

**137.** “U.S. Trustee” means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in the District of Delaware.

**138.** “Unencumbered” means, with respect to any asset or other property, not subject to (i) a Lien or (ii) a charge to use such asset or other property for a particular purpose to which the Debtors or the Reorganized Debtors have agreed or are bound.

**139.** “Unimpaired” means not “impaired” within the meaning of section 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

**140.** “Unsecured Priority Claims” means Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

**ARTICLE 9.  
CONCLUSION AND RECOMMENDATION**

The Plan Proponents believe the Plan is in the best interests of all Holders of Claims and urge all Holders of Claims entitled to vote to accept the Plan and to evidence such position by returning their Ballots so they will be received by the Claims Agent no later than 4:00 p.m. (Prevailing Eastern Time) on September 23, 2014.

Dated: August 22, 2014

Respectfully submitted,

TROUTMAN SANDERS LLP  
Jeffrey W. Kelley (Ga. Bar No. 412296)  
Thomas E. Reilly (Ga. Bar No. 600195)  
Stephen S. Roach (Ga. Bar No. 463206)  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
Telephone: (404) 885-3000  
Facsimile: (404) 962-6847

-and-

RICHARDS, LAYTON & FINGER, P.A.  
Mark D. Collins (Del. Bar No. 2981)  
Robert J. Stearn, Jr. (Del. Bar No. 2915)  
Cory D. Kandestin (Del. Bar No. 5025)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

*Counsel for Bank of America, N.A., as Agent  
for Senior Lenders*

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
Robert J. Dehney (Del. Bar No. 3578)  
Gregory W. Werkheiser (Del. Bar No. 3553)  
Andrew R. Remming (Del. Bar No. 5120)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989

*Counsel for Security National Properties Funding III,  
LLC, and Its Debtor Affiliates*

*[signature on following page]*

Dated: August 22, 2014

Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

By: 

Michael Casey, Chief Executive Officer, Security National Properties

Bank of America, as Agent for Senior Lenders

By: \_\_\_\_\_

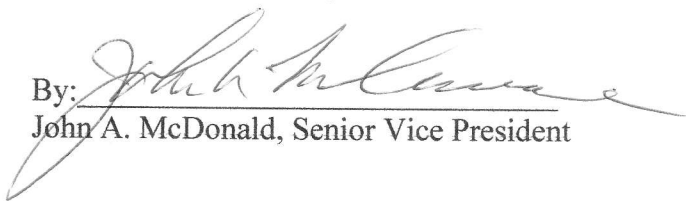
John A. McDonald, Senior Vice President

Dated: August 22, 2014

Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

By: \_\_\_\_\_  
Michael Casey, Chief Executive Officer, Security National Properties

Bank of America, as Agent for Senior Lenders

By:   
John A. McDonald, Senior Vice President

**EXHIBIT A**

**Plan**



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

In re:

SECURITY NATIONAL PROPERTIES  
FUNDING III, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13277 (KG)

Jointly Administered

**JOINT PLAN OF REORGANIZATION OF SECURITY NATIONAL PROPERTIES  
FUNDING III, LLC AND ITS DEBTOR AFFILIATES**

**Filed by Co-Proponents: Bank of America, N.A., as Agent for Senior Lenders; and Security  
National Properties Funding III, LLC, and Its Debtor Affiliates**

TROUTMAN SANDERS LLP  
Jeffrey W. Kelley (Ga. Bar No. 412296)  
Thomas E. Reilly (Ga. Bar No. 600195)  
Stephen S. Roach (Ga. Bar No. 463206)  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
Telephone: (404) 885-3000  
Facsimile: (404) 962-6847

-and-

RICHARDS, LAYTON & FINGER, P.A.  
Mark D. Collins (No. 2981)  
Robert J. Stearn, Jr. (No. 2915)  
Cory D. Kandestin (No. 5025)  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

*Counsel for Bank of America, N.A., as Agent for  
Senior Lenders*

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
Robert J. Dehney (Del. Bar No. 3578)  
Gregory W. Werkheiser (Del. Bar No. 3553)  
Andrew R. Remming (Del. Bar No. 5120)  
1201 North Market Street, 16th Fl.  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989

*Counsel for Security National Properties Funding III,  
LLC, and Its Debtor Affiliates*

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<sup>1</sup> The debtors in these cases are Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, and Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

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## INTRODUCTION

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Security National Properties Funding III, LLC, and its affiliated debtors and debtors-in-possession, and Bank of America, N.A., as agent for the Senior Lenders, propose the following plan of reorganization for the resolution of the outstanding claims against, and equity interests in, the Debtors. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article 1.A. of the Plan. Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtors' history, businesses, properties, results of operations, historical financial information, projections, and future operations, together with a summary and analysis of the Plan.

The Debtors and Bank of America, N.A., as agent for the Senior Lenders, are the co-proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Subject to the provisions of section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and the Settlement Agreement, the Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to the Effective Date.

ALL HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTORS ARE ENCOURAGED TO CONSULT THE DISCLOSURE STATEMENT AND TO READ THE PLAN CAREFULLY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

**ARTICLE 1.  
DEFINITIONS AND RULES OF INTERPRETATION**

**A. Definitions.**

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

1. “Adequate Protection Payments” means the Cash payments made by the Debtors to the Agent and/or the Senior Lenders during the period from the Petition Date through the Effective Date pursuant to any order or other agreement authorizing the Debtors’ use of Cash Collateral in which the Agent and/or Senior Lenders hold or assert an interest, including, without limitation, payments made pursuant to any of the 27 interim cash collateral orders entered in these Chapter 11 Cases as of the filing of the Plan [D.I. 28, 64, 94, 119, 152, 179, 193, 264, 279, 353, 431, 456, 515, 548, 582, 620, 644, 692, 729, 731, 761, 784, 814, 844, 857, 899, 938 and 1023].

2. “Administrative Claim” means a Claim arising under section 507(a)(2) of the Bankruptcy Code for costs and expenses of administration under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises) and (b) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

3. “Administrative Claims Bar Date” means the first Business Day that is thirty (30) days after the Effective Date, unless otherwise extended by the Reorganized Debtors, and is the deadline for a Holder of an Administrative Claim (other than an Ordinary Course Administrative Claim, a section 503(b)(9) Claim, and a Professional Fee Claim) to file a request with the Bankruptcy Court for payment of such Administrative Claim. Section 503(b)(9) Claims were required to be filed by March 1, 2012 and remain subject to such Bar Date. All fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930 are not subject to the Administrative Claims Bar Date.

4. “Administrative Claims Objection Deadline” shall mean ninety (90) days after the Administrative Expense Claim Bar Date, or as extended pursuant to Article 2.A of the Plan.

5. “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code.

6. “Agent” means Bank of America, N.A., as administrative agent for the Senior Lenders under the Prepetition Loan Agreement.

7. “Allocation Election” means, if the Lender Confirmation Option is implemented, as of the Effective Date, the election by the Senior Lenders to receive, to

the extent available, either (a) New LLC Interests in lieu of their Pro Rata Distribution of the New Sub Debt or (b) New Sub Debt in lieu of their Pro Rata Distribution of New LLC Interests, as described more fully in Article 4.F.

8. “Allowed” means, with respect to any Claim or Equity Interest, except as otherwise provided herein: (a) as to which no objection to allowance or request for estimation has been interposed on or before the later of (i) the Claims Objection Deadline or (ii) the expiration of such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; (b) a Claim or Equity Interest that has been scheduled by the Debtors in their Schedules as other than disputed, contingent or unliquidated, but only as to the amount listed on the Schedules for such Claim; (c) a Claim or Equity Interest that either is not Disputed or has been allowed by a Final Order; (d) a Claim or Equity Interest that is allowed pursuant to the terms hereof; or (e) a Disputed Claim as to which a proof of claim has been timely filed and as to which no objection has been filed by the Claims Objection Deadline. For the avoidance of doubt, notwithstanding any objection to allowance or request for estimation filed or interposed by the Debtors, the Senior Lender Claims shall be Allowed Claims, subject to the terms of the Plan.

9. “Amended and Restated Charter Documents” means the amended and restated certificate of formation, limited liability company agreement, and/or other organizational documents of each of the Reorganized Debtors, substantially in the forms included in the Plan Supplement. The Amended and Restated Charter Documents will become effective only if the Lender Confirmation Option is implemented as of the Effective Date.

10. “Arkley” means Robin P. Arkley, II.

11. “Bank of America” means Bank of America, N.A.

12. “Bankruptcy Code” means sections 101, *et seq.* of title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code, as amended from time to time.

13. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

14. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, and general orders and chambers procedures of the Bankruptcy Court, each as applicable to the Chapter 11 Cases and as amended from time to time.

15. “Bar Date” means March 1, 2012, as the date set by the *Order Granting Debtors’ Motion to Establish Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof*, dated January 26, 2012 [D.I. 139], as the deadline to file proofs of Claim, except for Administrative Claims.

**16.** “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday” (as that term is defined by Rule 9006(a) of the Federal Rules of Bankruptcy Procedure).

**17.** “Cash” means legal currency of the United States of America or equivalents thereof, including bank deposits and checks.

**18.** “Cash Collateral” has the meaning ascribed to it in section 363(a) of the Bankruptcy Code.

**19.** “Causes of Action” means any and all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, defenses, counterclaims, cross-claims, and the like (including, without limitation, all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code), matured or unmatured, known or unknown, then existing or thereafter arising, of any of the Debtors, the Debtors-in-Possession, and/or the Estates that are or may be pending on the Effective Date against any Entity other than any Debtor, based in law or equity, including, without limitation, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the Confirmation Date; provided, however, that “Causes of Action” shall exclude any Causes of Action released under the Plan or the Settlement Agreement.

**20.** “Chapter 11 Cases” means the chapter 11 cases commenced when the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on the Petition Date and assigned the following case numbers: 11-13277 (KG), 11-13278 (KG), 11-13279 (KG), 11-13280 (KG), 11-13281 (KG), 11- 13282 (KG), 11-13283 (KG), 11-13284 (KG), and 11-13285 (KG), which are jointly administered under case number 11-13277 (KG).

**21.** “Claim” means a “claim” (as that term is defined in section 101(5) of the Bankruptcy Code) against a Debtor.

**22.** “Claims Agent” means GCG, Inc., the court-appointed claims agent in these Chapter 11 Cases.

**23.** “Claims Objection Deadline” means the last day for filing objections to Claims, which day shall be the latest of (a) 180 days after the Effective Date, (b) thirty (30) days after entry of a Final Order under section 502(j) of the Bankruptcy Code, or (c) such other later dates as may be established by order of the Bankruptcy Court upon a motion (or subsequent motion) of the Agent or the Reorganized Debtors.

**24.** “Class” means a category of Holders of Claims or Equity Interests as set forth in Article 3 herein pursuant to section 1122(a) of the Bankruptcy Code.

25. “Collateral” means any property or interest in property of a Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

26. “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases subject to all conditions specified in Article 7.A having been (a) satisfied or (b) waived pursuant to Article 7.C.

27. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases.

28. “Confirmation Hearing” means the hearing before the Bankruptcy Court to consider Confirmation of the Plan.

29. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

30. “Consummation” means the occurrence of the Effective Date.

31. “Contracts Schedule” means the schedule of Executory Contracts: (a) to be rejected pursuant to the Plan; and (b) to assigned pursuant to the Plan to any Entity other than a Reorganized Debtor. The Contracts Schedule will initially be filed with the Plan Supplement and may be amended, modified, or supplemented (including by adding or removing Executory Contracts) at any time thereafter through and including the Effective Date.

32. “Converted Senior Lender Debt” means the Senior Lender Claims in excess of the principal amount of the New Senior Debt.

33. “Creditor” shall have the meaning in section 101(10) of the Bankruptcy Code.

34. “Cure Claim” means a Claim based upon a Debtor’s monetary defaults under an Executory Contract at the time such Executory Contract is assumed by the Debtor under section 365 of the Bankruptcy Code.

35. “D&O Liability Insurance Policies” means all insurance policies of any of the Debtors for directors’, managers’, and officers’ liability.

36. “Debtor Confirmation Option” has the meaning ascribed to such term in Article 4.B.1 of the Plan.

37. “DCO Claim Reserves” means, as described more fully in Article 5.E, if the Plan is implemented pursuant to the Debtor Confirmation Option, the Disputed Reserve and other segregated accounts or escrow accounts as contemplated by the Settlement Agreement created by the Reorganized Debtors on the Effective Date with Cash and Cash investments in an amount equal to 110% of the Debtors’ best estimate of



the Cash necessary to make required Distributions under the Plan to the projected aggregate amount of unpaid Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Governmental Unit Claims, Other Secured Claims, Unsecured Priority Claims and General Unsecured Claims. For the avoidance of doubt, the Reorganized Debtors shall not be required to establish DCO Claim Reserves for Senior Lender Claims, Intercompany Claims, Non-Debtor Affiliate Claims or Equity Interests.

**38.** “DCO Deadline” means October 9, 2014, or such later date as is authorized by Section 7.12 of the Settlement Agreement or as the Senior Lenders may agree in writing. The DCO Deadline is the last date by which the Plan may be implemented pursuant to the Debtor Confirmation Option.

**39.** “DCO Sponsor Guaranty” means the guarantees contemplated in the Section 1.5(b) of the Settlement Agreement signed by Arkley.

**40.** “DCO Sponsors” means SNP Holding, SNP Servicing and Arkley.

**41.** “De Minimis Distribution” means any Distribution (other than a Distribution on an Allowed secured Claim) in an amount less than \$50.

**42.** “Debtor,” “Debtors,” or “Debtors-in-Possession” means, individually and collectively, Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

**43.** “Deficiency Note” means the note contemplated in Section 1.5 of the Settlement Agreement, executed by SNP Holding in favor of the Agent for the benefit of the Senior Lenders for the expected remaining balance of the Senior Lender Claim after closing of the Refinancing Transactions, in the amount of approximately \$13 million (with the amount to be fixed based upon the amounts paid to the Agent through consummation of the Refinancing Transactions).

**44.** “DIP Claims” means Claims asserted by or on behalf of SNP Holding or any other SN Party on account of the DIP Facility.

**45.** “DIP Facility” means the post-petition financing facility provided by SNP Holding to the Debtors pursuant to that certain Unsecured Promissory Note, between the Debtors, as “Makers,” and SNP Holding, as “Lender,” as amended and/or restated from time to time through the Confirmation Date. The DIP Facility includes all financing available from SNP Holding pursuant to the *Interim Order, Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(b) and 503(b)(1) and Fed. R. Bankr. P. 2002 and 4001, (a) Authorizing Debtors to Obtain Post-Petition Financing and Granting Administrative Expense Status and (b) Scheduling a Final Hearing and Establishing Related Notice Requirements* [D.I. 435]; and any subsequent interim or final order of the Bankruptcy Court entered on or before the Confirmation Date.

46. “Disclosure Statement” means the written disclosure statement that relates to this Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as it may be amended, supplemented, or modified from time to time.

47. “Disputed” means, with respect to any Claim or Equity Interest, or any portion thereof: (a) it is listed on the Schedules (as the Schedules may be amended) as unliquidated, disputed, or contingent, unless a Proof of Claim has been timely filed; (b) as to which a Debtor, any other party in interest, or a Reorganized Debtor has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules before the Claims Objection Deadline; (c) as to which a Proof of Claim or interest was required to be filed but as to which a Proof of Claim or interest was not timely or properly filed; or (d) as otherwise disputed by the Debtors, a party in interest, or the Reorganized Debtors in accordance with applicable law or the Plan, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. For the avoidance of doubt, notwithstanding any objection to allowance or request for estimation filed or interposed by the Debtors, the Senior Lender Claims are not Disputed.

48. “Disputed Reserve” means, as described more fully in Article 5.F.4, a segregated account created by the Reorganized Debtors on the Effective Date with Cash and Cash investments in an amount equal to 110% of the Debtors’ best estimate of the Cash necessary make required Distributions under the Plan to Disputed Claims that are likely to become Allowed Claims.

49. “Distribution” means the distributions of Cash, New LLC Interests (if the Lender Confirmation Option is implemented), or other consideration to be made under and in accordance with the Plan.

50. “Effective Date” means the first Business Day on which all the conditions specified in Article 7.B of the Plan have been satisfied or waived as set forth in Article 7.C.

51. “Effective Date Notice” means the notice of the occurrence of the Effective Date, which shall be filed within three (3) Business Days after the occurrence of the Effective Date and promptly thereafter served in the manner and on the Entities identified in the Confirmation Order. The Effective Date Notice shall state whether the Plan has been implemented pursuant to the Debtor Confirmation Option or the Lender Confirmation Option.

52. “Entity” means an “entity” as that term is defined in section 101(15) of the Bankruptcy Code.

53. “Equity Interest” means any equity security within the meaning of section 101(16) of the Bankruptcy Code or any other instrument evidencing an ownership interest in any of the Debtors.

**54.** “Estate” means the estate of each Debtor created on the Petition Date by section 541 of the Bankruptcy Code.

**55.** “Executory Contract” means an agreement, contract, or lease, whether for real or personal property, between or among one or more of the Debtors and a third party, that qualifies as an “executory contract” or “unexpired lease” under section 365 of the Bankruptcy Code.

**56.** “Exit Facility” means the financing or financings that will be made pursuant to the Exit Facility Agreement if the Lender Confirmation Option is implemented.

**57.** “Exit Facility Agreement” means the agreement (or supplement or amendment to the Prepetition Loan Agreement), and all related documents, enabling Exit Facility borrowings by the Reorganized Debtors if the Lender Confirmation Option is implemented. The Exit Facility Agreement shall be included in the Plan Supplement.

**58.** “Exit Facility Lenders” means the Entities agreeing to provide the Exit Facility to the Reorganized Debtors, if the Lender Confirmation Option is implemented.

**59.** “Exit Financing Commitment” means, if the Lender Confirmation Option is implemented, \$10,000,000 (as such amount may be reduced from time to time in accordance with the Exit Facility Agreement).

**60.** “File” or “Filed” or “Filing” means, with respect to any pleading, the entry of such pleading on the docket of the Chapter 11 Cases and the proper service of such pleading in accordance with the Bankruptcy Rules.

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

**62.** “Final Order” means an order, determination, or judgment entered on the docket of the Bankruptcy Court, or any other court of competent jurisdiction, that has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, petition for certiorari, or move for reargument, rehearing, or reconsideration has expired and no timely filed appeal or petition for review, rehearing, remand, or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order, determination, or judgment was appealed or from which certiorari was sought, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

**63.** “General Unsecured Claim” means any Claim against any Debtor that is not an Administrative Claim, a Professional Fee Claim, a Secured Governmental Unit Claim, a Priority Tax Claim, a Senior Lender Claim, an Other Secured Claim, an Unsecured Priority Claim, an Intercompany Claim, or a Non-Debtor Affiliate Claim.

**64.** “Holder” means an Entity holding a Claim or Equity Interest.

**65.** “Impaired” means “impaired” within the meaning of sections 1123(a) and 1124 of the Bankruptcy Code with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

**66.** “Indemnification Obligation” means a Debtor’s obligation to indemnify its Indemnified Parties with respect to or based upon any act or omission taken or omitted in any of the relevant capacities, or for or on behalf of any Debtor, pursuant to and to the maximum extent provided by such Debtor’s respective certificates of incorporation, certificates of formation, bylaws, similar corporate documents, and applicable law, as in effect immediately before the Effective Date.

**67.** “Indemnified Parties” means the Debtors’ current directors, officers, managers, employees, attorneys, other professionals, and agents, and such current directors’, officers’, managers’, and employees’ respective Affiliates to the extent set forth herein, that were employed in such capacity on or after the Petition Date and that are entitled to be indemnified by the Debtors pursuant to, among other things, the Debtors’ bylaws, certificates of incorporation (or other formation documents), board resolutions, employment contracts, or other agreements.

**68.** “Initial Distribution Date” means the Effective Date or as soon thereafter as practicable, but no later than thirty (30) days after the Effective Date.

**69.** “Insider” has the meaning set forth in section 101(31) of the Bankruptcy Code.

**70.** “Intercompany Claims” means Claims held by a Debtor against another Debtor.

**71.** “Interim Compensation Order” means the Administrative Order Pursuant to 11 U.S.C. §§ 105(a) and 331, Fed. R. Bankr. P. 2016 and Del. Bankr. L.R. 2016-2 Establishing Procedures for Interim Compensation of Fees and Reimbursement of Expenses for Professionals and Official Committee Members [D.I. 117].

**72.** “Lender Confirmation Option” has the meaning ascribed to such term in Article 4.B.2 of the Plan.

**73.** “Lien” means any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation.

**74.** “Net Proceeds” shall have the meaning ascribed to such term in Section 1.4(g) of the Settlement Agreement.

**75.** “Net Proceeds Covenant” has the meaning ascribed to such term in the Settlement Agreement.

**76.** “New Intercreditor Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the intercreditor agreement entered into on the Effective Date by the Senior Lenders, in form and substance reasonably acceptable to the Senior Lenders.

**77.** “New LLC Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the limited liability company agreement to be entered into by Reorganized SNPF III and the Senior Lenders, to the extent they receive New LLC Interests under the Plan on the Effective Date.

**78.** “New LLC Interests” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the membership interests in Reorganized SNPF III that will be Distributed pursuant to Article 4.G.3 of the Plan on the Effective Date. Each New LLC Interest shall have a par value of \$1. The total New LLC Interests available for Distribution shall have a value (based on par) equal to 62.5% of the Converted Senior Lender Debt.

**79.** “New Management Agreement” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the management services agreement to be entered into between the Reorganized Debtors and new management as selected by the Senior Lenders, which shall be included in the Plan Supplement.

**80.** “New Senior Debt” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the senior secured credit facility to be entered into by the Reorganized Debtors, as borrowers, and the Senior Lenders, on the Effective Date in the principal amount of; (a) in the event that none of the Refinancing Transactions have closed, \$120 million; or (b) in the event that one or more of the Refinancing Transactions have closed in whole or in part (any such closing to be in the sole discretion of the Senior Lenders and the SN Parties), such lesser amount as the Reorganized Debtors and the Senior Lenders shall reasonably determine to be necessary in connection with the ownership and operation of the Properties that the Reorganized Debtors continue to own.

**81.** “New Senior Debt Agreement” means the credit agreement documenting the New Senior Debt, which shall be included in the Plan Supplement.

**82.** “New Sub Debt” means, if the Plan is implemented pursuant to the Lender Confirmation Option, the junior unsecured credit facility to be entered into by SNPF III, as borrower, and certain of the Senior Lenders, in an amount equal to 37.5% of the Converted Senior Lender Debt.

**83.** “New Sub Debt Agreement” means the agreement documenting the New Sub Debt, which shall be included in the Plan Supplement.

**84.** “Non-Debtor Affiliate” means an Affiliate of the Debtors that is not a Debtor.

**85.** “Non-Debtor Affiliate Claim” means a Claim of a Non-Debtor Affiliate against a Debtor.

**86.** “Ordinary Course Administrative Claim” means an Administrative Claim with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases to the extent due and owing in accordance with the terms and conditions of any agreements relating thereto; provided, however, that in no event shall a post-petition obligation that is contingent or disputed and subject to liquidation through pending or prospective litigation, including, but not limited to, alleged obligations arising from personal injury, property damage, products liability, tenant complaints, employment law (excluding claims arising under workers’ compensation law), secondary payor liability, or any other disputed legal or equitable claim based on tort, statute, contract, equity, or common law, be considered to be an Ordinary Course Administrative Claim.

**87.** “Other Secured Claim” means a Claim, other than a Secured Governmental Unit Claim or a Senior Lender Claim, against the Debtors that is (a) secured by a Lien on property in which the Estates have an interest, which Liens are valid, perfected, and enforceable under applicable law or by reason of a Final Order, or (b) that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in the Estates’ interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

**88.** “Person” means “person” as that term is defined in section 101(41) of the Bankruptcy Code.

**89.** “Petition Date” means October 13, 2011.

**90.** “Plan” means this plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or herewith, as the case may be.

**91.** “Plan Proponents” means the Debtors and Bank of America, in its role as Agent. The Plan Proponents are sometimes referred to individually in the Plan as a “Plan Proponent.”

**92.** “Plan Supplement” means the supplement to the Plan, containing without limitation: (a) the Amended and Restated Charter Documents; (b) the New LLC Agreement; (c) the New Management Agreement; (d) the Contracts Schedule (as the same may be amended from time to time through the Confirmation Date); (e) the New Senior Debt Agreement; (f) the Exit Facility Agreement; (g) the New Sub Debt Agreement; (h) the identity of the initial directors and officers of the Reorganized Debtors; and (i) such other documents that the Plan Proponents determine are necessary to include in the Plan Supplement for implementation of the Plan. The Plan Supplement shall be filed no later than seven (7) days prior to the deadline set by the Bankruptcy

Court to vote to accept or reject the Plan; provided, however, the Plan Proponents reserve the right to supplement and/or modify the Plan Supplement at a later date.

**93.** “Plan Supplement Documents” means the documents contained in the Plan Supplement.

**94.** “Prepetition Loan Agreement” means that certain Credit Agreement, dated as of October 18, 2006, by and among Security National Properties Funding III, LLC, as borrower, Bank of America, N.A., as Administrative Agent, and Banc of America Securities, LLC, as Sole Lead Arranger and Sole Book Manager, as amended from time to time.

**95.** “Prepetition Loan Documents” means the Prepetition Loan Agreement, together with all guarantees (including the SNP Holding Guaranty), security documents, pledge agreements, and all related exhibits, schedules, agreements, forbearance agreements, and other documents, as the same may have been amended from time to time.

**96.** “Prepetition Loan Facility” means the prepetition loan and credit facility, as evidenced by, among other things, the Prepetition Loan Documents.

**97.** “Previously Assumed Contract” has the meaning ascribed to such term in Article 6.E of the Plan.

**98.** “Primary Parcels” means the twenty-eight (28) Properties identified on Exhibit C to the Settlement Agreement that are the subject of the Primary Transaction.

**99.** “Primary Parcel Sale Agreement” mean an agreement of sale under which one or more Primary Parcels will be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed pursuant to such Primary Parcel Sale Agreement), to the direct or indirect subsidiary of an SN Party that will become the new owner of such Primary Parcel(s) in connection with the Primary Transaction.

**100.** “Primary Transaction” means the refinancing of the Primary Parcels, which involves, *inter alia*, (i) the transfer by the current Debtor owners thereof of the Primary Parcels to the Entity or Entities that will acquire the Primary Parcels pursuant to the Primary Parcel Sale Agreements, and (ii) a Loan to be made by Colony Capital Acquisitions, LLC, and/or one or more affiliates thereof, or a comparable lender, in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$124.792 million in Cash.

**101.** “Priority Tax Claims” means Claims of governmental units of the kind specified in section 507(a)(8) of the Bankruptcy Code. Priority Tax Claims specifically do not include Claims for payment of real property taxes secured by a Lien on a Debtor’s real or personal property; such secured claims shall be considered Secured Governmental Unit Claims.

**102.** “Pro Rata” means, with respect to any Allowed Claim, at any time, the proportion that the amount of an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in such Class.

**103.** “Professional” means any Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code, and to be compensated for services rendered and awarded reimbursement of expenses incurred prior to and including the Effective Date pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

**104.** “Professional Fee Claim” means a Claim for compensation for services and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, or 503(b) of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 Cases.

**105.** “Professional Fee Claim Bar Date” means the date that is thirty (30) days after the Effective Date.

**106.** “Proof of Claim” means a proof of claim filed in the Chapter 11 Cases pursuant to section 501 of the Bankruptcy Code and/or pursuant to any Order of the Bankruptcy Court, together with supporting documents.

**107.** “Property” or “Properties” means one or more, as appropriate, of those certain 33 commercial real estate properties owned by the Debtors.

**108.** “Refinanced Parcels” means the Primary Parcels, the Secondary Parcels, and the Soup Lots, such Properties being the Properties included in the Refinancing Transactions.

**109.** “Refinancing Claims” means valid liabilities of all kinds incurred in the ownership or operation of a Refinanced Parcel that are outstanding as of the date of closing of Refinancing Transaction with respect to such Refinanced Parcel (including, without limitation, any Cure Claim for any Executory Contract that is assumed and assigned, or assigned, in connection with such Refinancing Transaction to an entity other than a Reorganized Debtor).

**110.** “Refinancing Transactions” means the Primary Transaction, the Secondary Transaction and the Soup Lots Sale. Pursuant to the Refinancing Transactions, the Agent shall be paid no later than the DCO Deadline Cash in an amount no less than a total of \$151.342 million from proceeds of the Refinancing Transactions. For the avoidance of doubt, the description of the Refinancing Transactions is not intended to limit the SN Parties’ ability to raise the funds to pay the \$151.342 million to the Agent through other transactions so long as (i) such transactions involve all of the Refinanced Parcels, and (ii) payment of the \$151.342 million in Cash is made to the Agent by the DCO Deadline.

**111.** “Released Senior Lender Parties” means the Senior Lenders, their Affiliates and each of their respective Representatives.



**112.** “Released Parties” means the Released Senior Lender Parties and the Released SN Parties

**113.** “Released SN Parties” means the SN Parties, their Affiliates and each of their respective Representatives.

**114.** “Reorganized Debtors” means all of the Debtors, or any successors to the Reorganized Debtors by merger, consolidation, or otherwise, on and after the Effective Date.

**115.** “Reorganized Subsidiaries” means all of the Subsidiaries, or any successors to the Reorganized Subsidiaries by merger, consolidation, or otherwise, on and after the Effective Date.

**116.** “Representatives” means, with regard to an Entity, that Entity’s current and former officers, directors, employees, advisors, members, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents, and other representatives (including each of their respective officers, directors, employees, independent contractors, members, and professionals).

**117.** “Schedules” mean the schedules of assets and liabilities, schedules of executory contracts, and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, each as may be amended from time to time, including after the Effective Date.

**118.** “Secondary Parcel Sale Agreement” means an agreement of sale under which one or more Secondary Parcels will be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed pursuant to such Secondary Parcel Sale Agreement), to the Affiliate or Affiliates of an SN Party that will become the new owner of such Secondary Parcel(s) in connection with the Secondary Transaction.

**119.** “Secondary Parcels” means the five (5) Properties referred to by the Debtors as the Alliance Bank Center, Hobby Lobby, Orchards Mall, Greenville Mall, and Heartland Mall that are the subject of the Secondary Transaction.

**120.** “Secondary Transaction” means the refinancing of the five (5) Secondary Parcels, which involves, *inter alia*, (i) the transfer by the current Debtor owners thereof of the Secondary Parcels to the Entity or Entities that will acquire the Secondary Parcels pursuant to the Secondary Parcel Sale Agreements, (ii) the pledging as additional collateral to secure the repayment obligations to the lender in the Secondary Transaction of the equity in certain commercial real estate properties held by Non-Debtor Affiliates, one or more of which may be a subsidiary of a Debtor, and (iii) a Loan to be made by Calmwater Capital 3, LLC, and/or one or more affiliates thereof, or a comparable lender, in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$24.75 million in Cash.

**121.** “Section 503(b)(9) Claim” means a Claim entitled to priority as an Administrative Claim pursuant to section 503(b)(9) of the Bankruptcy Code.

**122.** “Secured Governmental Unit Claim” means a Claim held by a “governmental unit” as such term is defined in section 101(27) of the Bankruptcy Code that is secured by a Lien in a Debtor’s Property, including, but not limited to, those Claims for payment of real property taxes secured by a Lien on a Debtor’s Property.

**123.** “Senior Lender Claims” means the Claims of the Senior Lenders, including all post-petition interest, fees, and costs that may be Allowed under section 506(b) of the Bankruptcy Code, evidenced by the Prepetition Loan Agreement and all guarantees, pledges, assignment(s) of rent, deed(s) of trust, amendments, modifications, and supplements related thereto, including any and all obligations of the Debtors, their affiliates and related entities, both individually and collectively, to the Senior Lenders.

**124.** “Senior Lenders” means Bank of America, N.A., as agent and lender, and other Lenders (as defined in the Prepetition Loan Agreement); *provided, however*, that any Entity that has become a Lender in violation of Section 7.7 of the Settlement Agreement shall not be a Senior Lender under this Plan.

**125.** “Settlement Agreement” means that Settlement Agreement dated August 12, 2014 between the Senior Lenders and the SN Parties, a copy of which is attached hereto as Exhibit “A”.

**126.** “Settlement Effective Date” has the meaning ascribed to such term in the Settlement Agreement.

**127.** “SN Parties” means the Debtors, SNP Holding, SNP Servicing, and Arkley.

**128.** “SNP Holding” means Security National Properties Holding Company, LLC, a Non-Debtor Affiliate.

**129.** “SNP Holding Guaranty” means that certain Limited Guaranty executed by SNP Holding in connection with the Prepetition Loan Agreement.

**130.** “SNP Servicing” means Security National Properties Servicing Company, LLC, a Non-Debtor Affiliate.

**131.** “SNPF III” means Security National Properties Funding III, LLC, one of the Debtors.

**132.** “Soup Lots” means the property located at 1102 and 1114 Dodge St., Omaha, Nebraska and commonly referred to by the Debtors as the “Soup Lots.”

**133.** “Soup Lots Sale” means the sale pursuant to section 363 of the Bankruptcy Code of the Soup Lots in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$1.8 million.

134. “Subsidiaries” means the Debtors other than SNPF III.

135. “Tenant” means an Entity that is a tenant or sub-tenant counterparty with a Debtor, as landlord or sub-landlord, to a lease or sub-lease of either (i) non-residential real property or (ii) a residential unit at the Properties known as Aspen Mobile Home Park or Rangeview Mobile Home Park.

136. “Tenant Deposit Claim” means a claim held by a Tenant against a Debtor for the return of a security deposit held by a Debtor pursuant to a lease or sub-lease agreement.

137. “U.S. Trustee” means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in the District of Delaware.

138. “Unencumbered” means, with respect to any asset or other property, not subject to (i) a Lien or (ii) a charge to use such asset or other property for a particular purpose to which the Debtors or the Reorganized Debtors have agreed or are bound.

139. “Unimpaired” means not “impaired” within the meaning of section 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

140. “Unsecured Priority Claims” means Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

**B. Interpretation, Application of Definitions, and Rules of Construction.**

For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender; (b) any reference herein to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit as it may thereafter be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof; (e) the words “herein,” “hereof,” “hereby,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part hereof or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

**C. Controlling Document.**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and a Plan Supplement Document, the terms of the Plan shall control.

**ARTICLE 2.  
ADMINISTRATIVE AND PRIORITY CLAIMS**

**A. Administrative Claims.**

Except as otherwise provided in the Plan or the Confirmation Order, subject to the Administrative Claims Bar Date and other requirements of the Plan, on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Allowed amount of the Allowed Administrative Claim or (b) such other less favorable treatment as to which the Reorganized Debtors and such Holder shall have agreed upon in writing; provided, however, that Allowed Ordinary Course Administrative Claims shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating to such Ordinary Course Administrative Claims.

Each Holder of an Administrative Claim (other than an Ordinary Course Administrative Claim, a Section 503(b)(9) Claim, or a Professional Fee Claim) shall file with the Bankruptcy Court by the Administrative Claims Bar Date a request for payment of Administrative Claim by electronic filing, mailing, hand delivering, or delivering by courier service such request for payment of Administrative Claim to the Bankruptcy Court and serve a copy on the Reorganized Debtors and the U.S. Trustee. For the avoidance of doubt, Section 503(b)(9) Claims were required to be filed by the Bar Date of March 1, 2012, and remain subject to such Bar Date.

All objections to allowance of Administrative Claims (excluding Professional Fee Claims) must be filed by any parties in interest no later than (a) the Administrative Claims Objection Deadline or (b) such later date as (i) the Bankruptcy Court shall order upon application made prior to the end of Administrative Claims Objection Deadline or (ii) is agreed between the Reorganized Debtors and the affected Holder of an Administrative Claim.

No DIP Claim shall be Allowed against any Debtor for any purpose other than setoff or recoupment (if otherwise available), and the Reorganized Debtor shall have no liability of any kind regarding any DIP Claim. The Confirmation Order shall provide that any DIP Claim is disallowed for all purposes other than setoff and recoupment (if available).

**B. Professional Fee Claims.**

All Professionals employed by the Debtors in these Chapter 11 Cases shall file and serve on the Reorganized Debtors and all other parties entitled to receive notice of the application under the Interim Compensation Order all requests for allowance of compensation and reimbursement of expenses pursuant to sections 328, 330, or 503(b) of the Bankruptcy Code for Professional Fee Claims through the Effective Date by no later than the Professional Fee Claim Bar Date. Objections to Professional Fee Claims for compensation or reimbursement of expenses must be filed by any party in interest and served on counsel for the Reorganized Debtors and the Professionals or other Entities to whose application the objections are addressed on or before (a) thirty (30) days after the Professional Fee Claims Bar Date or (b) such later date as (i) the Bankruptcy Court shall order upon application made prior to the end of such thirty (30)-day period or (ii) is agreed between the Reorganized Debtors and the affected Professional or other Entity.

As contemplated in the Settlement Agreement, if the Lender Confirmation Option is implemented, none of the SN Parties' costs, including, without limitation, due diligence costs and professional fees, related to the Refinancing Transactions, the Deficiency Note, or the DCO Sponsor Guaranty, will be borne by the Debtors' estates and therefore shall not be Allowed as Professional Fee Claims (or any other Claim against the Debtors); *provided, however*, the foregoing is without prejudice to (i) the ability of the Debtors' Professionals to request allowance and payment of Professional Fee Claims in connection with the administration of the Chapter 11 Cases (including Professional Fee Claims incurred in connection with drafting the Settlement Agreement and this Plan and in seeking Bankruptcy Court approval of the Settlement Agreement, this Plan and the Refinancing Transactions), (ii) Garden City Group fees, and (iii) statutory quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

**C. Priority Tax Claims.**

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Effective Date, each Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, as shall have been determined by the Reorganized Debtors, (a) on the Initial Distribution Date, Cash equal to the unpaid portion of such Allowed Priority Tax Claim, (b) deferred Cash payments over time pursuant to section 1129(a)(9)(C) of the Bankruptcy Code in an aggregate principal amount equal to the face amount of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the rate of interest determined under applicable non-bankruptcy law as of the calendar month in which the Plan is confirmed, or (c) such other less favorable treatment as to which the Reorganized Debtors and such Holder shall have agreed upon in writing.

**ARTICLE 3.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY  
INTERESTS**

**A. Special Provision Governing Unimpaired Claims and Tenant Deposit Claims.**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Reorganized Debtors in respect of any Claim classified in an Unimpaired Class, including, without limitation, all rights in respect of objections to such Claims and any legal and equitable defenses to or rights of setoff or recoupment against any such Claim. For the avoidance of doubt, Tenant counterparties to assumed real property leases will not receive any distribution relating to Tenant Deposit Claims, if applicable, as Tenant Deposit Claims shall be reinstated and rendered Unimpaired in accordance with section 1124(2) of the Bankruptcy Code.

**B. Voting and Nonconsensual Confirmation.**

1. In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan.

2. The Plan Proponent reserves the right to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code. To the extent that any Class votes to reject the Plan or is deemed to reject the Plan, the Plan Proponent further reserves the right to modify the Plan in accordance with Article 10.C herein.

**C. Summary of Classification and Treatment of Classified Claims and Equity Interests.**

The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that such Claim or Equity Interest or any portion thereof qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated hereunder as a distinct Class for voting and Distribution purposes. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Plan Proponents have not classified Administrative Claims or Priority Tax Claims, as described in Article 2 of the Plan.

There are eight (8) primary Classes, Classes 1-8, based on the type of Claim or Equity Interest. Each primary Class is further classified into separate sub-Classes based on the Debtor against which such Claim is Scheduled or Filed or Equity Interest held, as applicable. The sub-Classes for each primary Class of Claims and Equity Interests shall be as follows:

<b>Debtor</b>	<b>Applicable Classes of Claims</b>
Security National Properties Funding III, LLC	1A, 2A, 3A, 4A, 5A, 6A, 7A, and 8A
ITAC 190, LLC	1B, 2B, 3B, 4B, 5B, 6B, 7B, and 8B
Security National Properties Funding, LLC	1C, 2C, 3C, 4C, 5C, 6C, 7C, and 8C
Security National Properties Funding II, LLC	1D, 2D, 3D, 4D, 5D, 6D, 7D, and 8D
Sequoia Investments III, LLC	1E, 2E, 3E, 4E, 5E, 6E, 7E, and 8E
Sequoia Investments V, LLC	1F, 2F, 3F, 4F, 5F, 6F, 7F, and 8F
Sequoia Investments XIV, LLC	1G, 2G, 3G, 4G, 5G, 6G, 7G, and 8G
Sequoia Investments XV, LLC	1H, 2H, 3H, 4H, 5H, 6H, 7H, and 8H
Sequoia Investments XVIII, LLC	1I, 2I, 3I, 4I, 5I, 6I, 7I, and 8I

A summary of the treatment for each primary Class<sup>3</sup> is set forth in the following table:<sup>4</sup>

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
1	Secured Governmental Unit Claims	Unimpaired	Not Entitled to Vote
2	Senior Lender Claims	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Not Entitled to Vote
4	Unsecured Priority Claims	Unimpaired	Not Entitled to Vote
5	General Unsecured Claims	Unimpaired	Not Entitled to Vote
6	Intercompany Claims	Impaired	Not Entitled to Vote
7	Non-Debtor Affiliate Claims	Impaired	Not Entitled to Vote
8A	Equity Interests (SNPF III only)	Impaired if Lender Confirmation Option implemented; Unimpaired if Debtor Confirmation Option implemented.	Not Entitled to Vote
8B-8I	Equity Interests (Subsidiaries)	Unimpaired	Not Entitled to Vote

<sup>3</sup> Unless otherwise specified, all references to a primary Class shall be construed as a reference to and encompassing all sub-Classes within the primary Class. For example, any reference to "Class 1" shall be construed as a reference to Classes 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, and 1I.

<sup>4</sup> The table is for informational purposes only and is qualified in its entirety by Article 3.D herein.

**D. Classification and Treatment.**

**1. Secured Governmental Unit Claims (Class 1)**

(i) *Classification:* Class 1 consists of the Secured Governmental Unit Claims against each respective Debtor.

(ii) *Treatment:* On the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Secured Governmental Unit Claim, the Holder of such Allowed Secured Governmental Unit Claim shall receive at the election of the Reorganized Debtors, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Governmental Unit Claim, (a) Cash equal to the value of its Allowed Governmental Unit Claim, (b) the return of the Holder's Collateral securing the Secured Governmental Unit Claim, (c) payment in full as provided under sections 1129(a)(9)(C) and (D) of the Bankruptcy Code on the schedule provided for payment of General Unsecured Claims, or (d) such other less favorable treatment to which the Reorganized Debtors and such Holder shall have agreed upon in writing. To the extent such payments are paid over time, such payments shall be calculated to result in payment in full of the Allowed Secured Governmental Unit Claim with all accrued interest.

(iii) *Voting:* Class 1 is Unimpaired and, therefore, the Holders of Secured Governmental Claims are deemed to have accepted the Plan.

**2. Senior Lender Claims (Class 2)**

(i) *Classification:* Class 2 consists of Senior Lender Claims. The Senior Lender Claims are Allowed in the amount of \$164,341,863.11, plus all post-petition interest and fees due under the Pre-Petition Loan Documents and Allowed under section 506(b) of the Bankruptcy Code; *provided, however*, that: (a) if the Debtor Confirmation Option is implemented, then the Senior Lender Claims shall be deemed satisfied, settled, released and discharged; or (b) if the Lender Confirmation Option is implemented and the Senior Lenders consent to closing of one or more of the Refinancing Transactions, then the Senior Lender Claims shall be reduced by an amount equal to the Cash proceeds of the Refinancing Transactions actually received by the Agent (including any Cash proceeds of the Soup Lots Sale, whether received by the Agent before, on, or after the Effective Date); *provided further, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the Refinancing Transactions.

(ii) *Treatment:* Each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date, in full and final satisfaction, settlement, release, and



discharge of and in exchange for such Holder's Senior Lender Claim the following treatment:

(a) *If the Debtor Confirmation Option is implemented*, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (1) its Pro Rata Distribution of the proceeds of the Refinancing Transactions actually received by the Agent; (2) its Pro Rata rights to payments of principal, interest and other amounts that may be payable to Agent under the Deficiency Note, the DCO Sponsor Guaranty, or the Net Proceeds Covenant; and (3) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases.

**or**

(b) *If the Lender Confirmation Option is implemented*, then each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (1) its Pro Rata Distribution of New Senior Debt, (2) its Pro Rata Distribution, subject to the Allocation Election, of (A) New LLC Interests and/or (B) New Sub Debt, and (3) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases. The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; *provided, however*, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s); *provided further, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the Refinancing Transactions.

(iii) *Voting*: Class 2 is Impaired and, therefore, the Holders of the Senior Lender Claims are entitled to vote to accept or reject the Plan.

### **3. Other Secured Claims (Class 3)**

(i) *Classification*: Class 3 consists of the Other Secured Claims.

(ii) *Treatment*: Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Other Secured Claim in Class 3 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Other Secured Claim, at the option of the Plan Proponent or Reorganized Debtors:

(a) have its Allowed Class 3 Claim reinstated and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the Holder of such Allowed Class 3 Claim to demand or receive payment of such Allowed Class 3 Claim prior to the stated maturity of such Allowed Class 3 Claim from and after the occurrence of a default; or

(b) receive Cash in an amount equal to such Allowed Class 3 Claim, including any interest on such Allowed Class 3 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Class 3 Claim.

(iii) *Voting:* Class 3 is Unimpaired and, therefore, Holders of Other Secured Claims are deemed to have accepted the Plan.

**4. Unsecured Priority Claims (Class 4)**

(i) *Classification:* Class 4 consists of all Unsecured Priority Claims.

(ii) *Treatment:* Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed Unsecured Priority Claim in Class 4 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Unsecured Priority Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date or as soon as reasonably practicable after such Claim becomes an Allowed Unsecured Priority Claim.

(iii) *Voting:* Class 4 is Unimpaired and, therefore, Holders of Unsecured Priority Claims are deemed to have accepted the Plan.

**5. General Unsecured Claims (Class 5)**

(i) *Classification:* Class 5 consists of all General Unsecured Claims.

(ii) *Treatment:* Except to the extent a Holder agrees to other, less favorable treatment, each Holder of an Allowed General Unsecured Claim in Class 5 shall, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed General Unsecured Claim, be paid in respect of such Claim the full amount thereof in Cash on the Initial Distribution Date.

(iii) (c) *Voting:* Class 5 is Unimpaired and, therefore, Holders of General Unsecured Claims are deemed to have accepted the Plan.

**6. Intercompany Claims (Class 6)**

(i) *Classification:* Class 6 Consists of all Intercompany Claims.

(ii) *Treatment:* On the Effective Date, Allowed Intercompany Claims shall be reinstated or cancelled, at the option of the Debtors (if the Debtor Confirmation Option is implemented) or the Agent (if the Lender Confirmation Option is implemented).

(iii) *Voting:* Class 6 is Impaired by the Plan, and each Holder of an Intercompany Claim will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

**7. Non-Debtor Affiliate Claims (Class 7)**

(i) *Classification:* Class 7 Consists of all Non-Debtor Affiliate Claims.

(ii) *Treatment:* Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall receive no Distributions under the Plan; *provided, however,* that the Holders of Allowed Non-Debtor Affiliate Claims in Class 7 shall retain any rights of setoff or recoupment otherwise available for such Allowed Non-Debtor Affiliate Claims.

(iii) *Voting:* Class 7 is Impaired by the Plan, and each Holder of an Affiliate Claim will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

**8. Equity Interests (Class 8)**

(i) *Classification:*

(a) Class 8A consists of Equity Interests in SNPF III.

(b) Classes 8B-8I consist of Equity Interests in each of the Subsidiary Debtors.

(ii) *Treatment:*

(a) Class 8A:

(1) *If the Debtor Confirmation Option is implemented,* then Holders of Allowed Equity Interest in Class 8A shall retain their Pro Rata Equity Interests in SNPF III.

**or**

(2) *If the Lender Confirmation Option is implemented,* Holders of Allowed Equity Interests in Class 8A shall receive no Distribution under the Plan.

(b) Classes 8B-8I: Each Holder of Allowed Equity Interests in Classes 8B-8I shall retain its equity interests in each respective Subsidiary Debtor.

**(iii) Voting:**

(a) Class 8A:

(1) *If the Debtor Confirmation Option is implemented*, then Class 8A is Unimpaired and, therefore, Holders of Equity Interests in Class 8A are deemed to have accepted the Plan.

or

(2) *If the Lender Confirmation Option is implemented*, then Class 8A is Impaired by the Plan, and each Holder of Equity Interests in Class 8A will be conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and will not be entitled to vote to accept or reject the Plan.

(b) Classes 8B-8I: Classes 8B-8I are Unimpaired and, therefore, Holders of Equity Interests in Classes 8B-8I are deemed to have accepted the Plan.

**ARTICLE 4.  
IMPLEMENTATION OF THE PLAN**

As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. Except as otherwise provided in the Plan, all Distributions made to holders of Allowed Claims or Equity Interests in any Class are intended to and shall be final.

**A. Nonconsensual Confirmation.**

The Plan Proponents will seek to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class of Claims or Equity Interests that does not vote to accept the Plan or is otherwise deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

**B. The Settlement Agreement.**

The Agent, Senior Lenders, and the SN Parties (which include the Debtors) have each entered into the Settlement Agreement, a copy of which is attached as Exhibit “\_\_\_” hereto. The Settlement Agreement, to the extent not inconsistent with this Plan, is incorporated herein by reference. The terms of the Settlement Agreement provide the

Debtors with the option to refinance the Senior Lender Claims in accordance with the terms thereof.

This Plan implements the Settlement Agreement by providing for two paths to consummate the Plan: (i) the Debtor Confirmation Option; and (ii) the Lender Confirmation Option. Whichever confirmation path is followed, if the Settlement Effective Date occurs, the SN Parties and Senior Lenders will have expressly consented to this Plan.

**1. The Debtor Confirmation Option**

If all Debtor Confirmation Option conditions to the Effective Date set forth in Article 7.B.2 are satisfied or waived by the Senior Lenders in accordance with Article 7.C, the Debtor Confirmation Option allows the SN Parties to satisfy and discharge the Senior Lender Claims through the Refinancing Transactions, the Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants. If the SN Parties satisfy all requirements for the Debtor Confirmation Option, then, *inter alia*, (i) the Senior Lender Liens on the Refinanced Parcels will be released, (ii) the Net Proceeds of the Refinancing Transactions will be distributed to the Agent for the benefit of the Senior Lenders, (iii) the Senior Lender Claims will be reduced by the amount of Net Proceeds received by the Agent, and (iv) the Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants will be issued to the Agent for the benefit of the Senior Lenders, all in full and final satisfaction, settlement, release and discharge of the Senior Lender Claims.

**2. The Lender Confirmation Option**

If the Debtor Confirmation Option Conditions to the Effective Date set forth in Article 7.B.2 are not satisfied or waived by the Senior Lenders in accordance with Article 7.C, but all other conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 are satisfied or waived in accordance with Article 7.C, then the Plan will be implemented pursuant to the Lender Confirmation Option. Each Holder of a Senior Lender Claim in Class 2 will receive on the Effective Date: (i) its Pro Rata Distribution of New Senior Debt; (ii) its Pro Rata Distribution, subject to the Allocation Election, of (1) New LLC Interests and/or (2) New Sub Debt; and (iii) its Pro Rata right to retain the Adequate Protection Payments received by the Agent during the Chapter 11 Cases. The New LLC Interests and New Sub Debt issued to the Senior Lenders on account of Class 2 Claims shall have a total value equal to the Converted Senior Lender Debt. The Adequate Protection Payments shall not be subject to clawback or recharacterization. The Senior Lenders shall retain their prepetition Liens on the Properties and other assets of the Debtors as modified in the New Senior Debt Agreement; *provided, however*, that if the Senior Lenders consent to closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Senior Lenders shall not retain any Liens on the Properties involved in such Refinancing Transaction(s); *provided further, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Senior Lenders shall have no obligation to consent to closing of the Refinancing Transactions and the SN Parties shall have no obligation to proceed with closing of the

#### Refinancing Transactions.

The Deficiency Note and DCO Sponsor Guaranty will not be issued if the Plan is implemented pursuant to the Lender Confirmation Option. However, all Equity Interests in Class 8A will be canceled and the Holders of Equity Interests in Class 8A will not receive or retain Cash or other property on account of such Equity Interests.

Under the Lender Confirmation Option, the Senior Lenders may (but shall not be required to) consent to closing of one or more of the Refinancing Transactions. If the Senior Lenders consent to the closing of one or more of the Refinancing Transactions, such Refinancing Transaction(s) are consummated and the Net Proceeds of such Refinancing Transaction(s) are turned over to the Agent, then the Class 2 Senior Lender Claims shall be reduced by the amount of Net Proceeds actually received by the Agent.

#### **C. Cooperation of the SN Parties and Senior Lenders.**

Upon entry of the Confirmation Order, the SN Parties and Senior Lenders, and each of their Representatives shall reasonably cooperate to take all reasonable acts to implement the terms of the Plan.

Without limiting the foregoing, if the Debtor Confirmation Option is implemented, the Senior Lenders and their Representatives shall reasonably cooperate with the SN Parties and their Representatives to implement the Debtor Confirmation Option, including, without limitation, taking such actions as are reasonably necessary and desirable effectuate the release of the Senior Lender Liens and otherwise to consummate the Refinancing Transactions.

Without limiting the foregoing, if the Lender Confirmation Option is implemented, the SN Parties and their Representatives shall reasonably cooperate with the Senior Lenders and their Representatives to implement the Lender Confirmation Option, including, without limitation, taking such actions as are reasonably necessary and desirable to (a) manage the Debtors and their assets in the ordinary course of business so as to preserve the value of the Debtors and their assets until the Effective Date and (b) accomplish the orderly transition of the management, books and records, and the Debtors' other assets to the managers and officers of the Reorganized Debtors.

For the avoidance of doubt, no Entity's duty to cooperate pursuant to this Article 4.C shall be construed to require such Entity to incur material expense or to provide goods, materials, labor or services without reasonable compensation.

#### **D. Distributions in Satisfaction.**

Except for the obligations expressly imposed by the Plan and the property and rights expressly retained under the Plan (including, without limitation, if the Lender Confirmation Option is implemented, the Liens granted pursuant to the Prepetition Loan Facility as modified by the Plan), the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release of all Claims against, liabilities in,

Liens on, obligations of, and Equity Interests in the Debtors, whether known or unknown, that arose or existed prior to the Effective Date.

**E. Enforcement of Subordination.**

The classification and manner of satisfying all Claims and Equity Interests and the respective distributions and treatments under the Plan take into account or conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto whether under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, and any and all such rights are settled, compromised, and released pursuant to the Plan.

The Confirmation Order shall enjoin, effective as of the Effective Date, all Entities from enforcing or attempting to enforce any such contractual, legal, and/or equitable rights so satisfied, compromised, and settled. Pursuant to section 510 of the Bankruptcy Code, the Plan Proponents and the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**F. Senior Lender Allocation Election (Applicable Only Under Lender Confirmation Option).**

If the Lender Confirmation Option is implemented, the amount of New LLC Interests and New Sub Debt that each Senior Lender will receive under the Plan is subject to adjustment based on each Senior Lender's Allocation Election. By making an Allocation Election on its ballot, a Senior Lender may (a) opt out of receiving its Pro Rata Distribution of the New Sub Debt in order to receive, to the extent available, additional New LLC Interests or (b) opt out of receiving its Pro Rata Distribution of New LLC Interests in order to receive, to the extent available, additional New Sub Debt. The ability of a Senior Lender to receive additional New Sub Debt or additional New LLC Interests in accordance with its Allocation Election depends on additional New Sub Debt and/or additional New LLC Interests being eligible for Distribution as a result of another Senior Lender's Allocation Election. In no event shall the Allocation Elections result in the Distribution of less than all of the Converted Senior Lender Debt.

On or as soon as practicable after the Effective Date, the Agent shall allocate the New LLC Interests and New Sub Debt among the Senior Lenders in accordance with the preferences stated in the Allocation Elections. In the event that the Senior Lenders oversubscribe for one form of consideration such that each Allocation Election cannot be fully accommodated, each affected Allocation Election shall be reduced Pro Rata to the extent necessary to fully distribute the New Sub Debt and the New LLC Interests allocated for Distribution to Class 2.

The exchange ratio of New Sub Debt to New LLC Interests for purposes of the Allocation Election shall be \$1 of New Sub Debt for one New LLC Interest and *vice versa*.

Any Senior Lender that does not make an Allocation Election shall receive its Pro Rata Distribution of New LLC Interests or New Sub Debt as set forth in Article 3.

**G. Implementation of Reorganization.**

**1. Implementation of Reorganization Generally**

The following steps shall be taken, whether the Plan is implemented pursuant to the Debtor Confirmation Option or the Lender Confirmation Option:

**(i)** *Continuation of Subsidiary Equity Interests.*

On the Effective Date, existing Equity Interests in each of the Reorganized Subsidiaries shall continue in full force and effect or as otherwise determined at the sole discretion of the Reorganized Debtors. Notwithstanding the foregoing, no Distributions shall be made on account of existing Equity Interests in the Reorganized Subsidiaries under the Plan.

**(ii)** *Amended and Restated Charter Documents.*

On the Effective Date, or as soon thereafter as is practicable, the existing certificates of formation and other formation documents, as applicable, of each of the Debtors shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, including to prohibit the issuance of nonvoting equity securities only so long as, and to the extent that, the issuance of nonvoting equity securities is prohibited by the Bankruptcy Code. The form of amended formation documents, as applicable, shall be included in the Plan Supplement.

**(iii)** *Powers of Officers,*

The senior executive officers of the Debtors or the Reorganized Debtors, as the case may be, shall have the power to enter into or execute any documents or agreements that they deem reasonable and appropriate to effectuate the terms of the Plan.

**(iv)** *Corporate Action.*

Except as set forth herein, any action under the Plan to be taken by or required of the Debtors or the Reorganized Debtors, including, without limitation, the adoption or amendment of certificates of formation and limited liability company agreements, the issuance of securities and instruments or the selection of senior executive officers, managers, or directors, shall be authorized and approved in all respects, without any requirement of further action by any of the Debtors' or Reorganized Debtors' boards of directors or managers, as applicable, or members.

The Debtors or the Reorganized Debtors shall be authorized to execute, deliver, file, and record such documents (including those contained in the Plan Supplement), contracts, instruments, releases, and other agreements, and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan,



without the necessity of any further Court, corporate, board, or member approval or action.

(v) *Continued Corporate Existence.*

The Debtors, as Reorganized Debtors, shall continue to exist after the Effective Date with all powers of a limited liability company under the laws of the respective states governing their formation and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under such applicable state law (including, without limitation, the right to change the state in which each Reorganized Debtor is formed), except as such rights may be limited and conditioned by the Plan and the documents and instruments executed and delivered in connection therewith. In addition, the Reorganized Debtors may operate their business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules, or by the Bankruptcy Court, subject only to the terms and conditions of the Plan as well as the documents and instruments executed and delivered in connection therewith, including without limitation, the documents and instruments included in the Plan Supplement. The Reorganized Debtors shall be responsible for filing required post-confirmation reports and each Reorganized Debtor shall pay quarterly fees of such Debtor due to the Office of the United States Trustee until such time as a final decree is entered closing the applicable Chapter 11 Case or the Bankruptcy Code orders otherwise.

**2. Additional Implementation Steps Under Debtor Confirmation Option.**

The following additional steps shall be taken if the Plan is being implemented pursuant to the Debtor Confirmation Option (but not if the Plan is being implemented pursuant to the Lender Confirmation Option):

(i) *Consummation of Refinancing Transactions.*

On the Effective Date, the Primary Transaction, the Secondary Transaction, and, if not previously consummated, the Soup Lots Sale shall close substantially contemporaneous with the occurrence of the Effective Date; *provided* that, notwithstanding any other provision of this Plan or the Settlement Agreement, the Effective Date shall not occur pursuant to the Debtor Confirmation Option if the Refinancing Transactions have not closed. Notwithstanding any other provision of this Plan or the Settlement Agreement, the Primary Transaction shall not close prior to the Secondary Transaction or the Soup Lots Sale. In connection with closing of the Refinancing Transactions, the Refinanced Parcels shall be transferred, pursuant to section 363(f) of the Bankruptcy Code free and clear of all Liens and Claims (except for those expressly assumed under a given Refinancing Transaction), to the Entities that are to become the new owners of such Refinanced Parcels in connection with the Refinancing Transactions. Further, any Non-Debtor Affiliates that are pledging equity in commercial real estate properties as additional collateral in connection with any such Refinancing Transactions shall be authorized to do so. Upon closing of the Primary Transaction, the Secondary Transaction and the Soup Lots Sale, the Net Proceeds of each such Refinancing Transaction, the total amount of which shall be no less than \$151.342

million Cash, shall be promptly remitted to the Agent.

(ii) *Continuation of SNPF III Equity Interests.*

On the Effective Date, existing Equity Interests in SNPF III shall continue in full force and effect.

(iii) *Continuation of Senior Executive Officers, Managers, and Directors.*

On the Effective Date, the terms of the current managers of the boards of directors or board of managers of the Debtors, as the case may be, shall be unaffected and such directors and managers shall be deemed to continue in such roles (without the need for any further action on the part of, or notice to, any Entity).

(iv) *Indemnification of Managers, Directors, Officers, and Employees.*

On the Effective Date, as provided for in the existing certificate of formation, limited liability company agreement, and/or other organizational documents of each of the Debtors (a) the personal liability of the Reorganized Debtors' then-present and future directors, managers, and officers for post-Effective Date monetary damages resulting from breaches of their fiduciary duties shall be eliminated to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized; and (b) each Reorganized Debtor, subject to appropriate procedures, shall continue to indemnify the Reorganized Debtor's directors, managers, officers, and other employees serving on or after the Effective Date for all pre-Effective Date and post-Effective Date claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized.

**3. Additional Implementation Steps Under Lender Confirmation Option.**

The following additional steps shall be taken if the Plan is being implemented pursuant to the Lender Confirmation Option (but not if the Plan is being implemented pursuant to the Debtor Confirmation Option):

(i) *Exit Facility.*

On the Effective Date, the Reorganized Debtors shall have closed on the Exit Facility, to the extent required. The amounts borrowed under the Exit Facility shall, among other things, be used to (a) make required Distributions under the Plan, (b) satisfy certain Plan-related expenses, and (c) fund the Reorganized Debtors' working capital needs.

(ii) *Issuance of New LLC Interests; Cancellation of Equity Interests in SNPF III.*

On the Effective Date, Reorganized SNPF III shall issue the New LLC Interests pursuant to the terms of the Plan and the Plan Supplement Documents. Also on the Effective Date, existing Equity Interests in SNPF III shall be deemed canceled and extinguished and shall be of no further force and effect. Reorganized SNPF III is authorized to issue or cause to be issued the New LLC Interests for Distribution in accordance with the terms of the Plan, the amended certificate of formation, and the New LLC Agreement without the need for any further corporate or member action.

**(iii)** *Appointment of Senior Executive Officers, Managers, and Directors.*

On the Effective Date, the terms of the current managers of the boards of directors or board of managers of the Debtors, as the case may be, shall expire and such directors and managers shall be deemed removed from such boards (without the need for any further action on the part of, or notice to, any Entity). The initial boards of managers of Reorganized SNPF III and the Reorganized Subsidiaries shall be comprised of such members chosen by the Senior Lenders. On the Effective Date, the officers of each of the Reorganized Debtors shall be appointed in accordance with the Amended and Restated Charter Documents and other constituent documents of each Reorganized Debtor. Pursuant to section 1129(a)(5) of the Bankruptcy Code, to the extent known, the identities and affiliations of the initial managers, board members, and senior executive officers of each Reorganized Debtor as of the Effective Date will be disclosed in the Plan Supplement. Any successors to the Reorganized Debtors' initial boards will be appointed in compliance with the applicable Reorganized Debtor's Amended and Restated Charter Documents, and each such manager and officer shall serve from and after the Effective Date pursuant to the terms of the Amended and Restated Charter Documents and other constituent documents of the Reorganized Debtors. In addition, the selection of the Entities who will serve as the initial directors, senior executive officers, and managers of the Reorganized Debtors as of the Effective Date shall be deemed to have occurred and be effective on and after the Effective Date without any requirement of further action by the board of directors, board of managers, or members of the applicable Reorganized Debtor.

**(iv)** *Indemnification of Managers, Directors, Officers, and Employees.*

Upon the Effective Date, the Amended and Restated Charter Documents and the New LLC Agreement shall contain provisions which (a) eliminate the personal liability of the Reorganized Debtors' then-present and future directors, managers, and officers for post-Effective Date monetary damages resulting from breaches of their fiduciary duties to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized; and (b) require such Reorganized Debtor, subject to appropriate procedures, to indemnify the Reorganized Debtor's directors, managers, officers, and other employees serving on or after the Effective Date for all post-Effective Date claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized.

**(v) New LLC Agreement.**

On the Effective Date, Reorganized SNPF III and all of the holders of New LLC Interests (including any options, warrants, or securities convertible into, or exercisable or exchangeable for, New LLC Interests) then outstanding shall be deemed to be parties to the New LLC Agreement, without the need for execution by any such holder other than Reorganized SNPF III. The New LLC Agreement shall be binding on all parties receiving, and all holders of, New LLC Interests (including any options, warrants, or securities convertible into, or exercisable or exchangeable for, New LLC Interests) regardless of whether such parties execute the New LLC Agreement. In the period pending Distribution of the New LLC Interests to any Holder entitled to receive New LLC Interests pursuant to the Plan, including any period during which such New LLC Interests are placed in the Disputed Reserve pending Allowance of such Holder's Claims or Equity Interests, such Holder shall be bound by, have the benefit of, and be entitled to enforce the terms and conditions of the New LLC Agreement and shall be entitled to exercise any voting rights and receive any dividends or other distributions payable in respect of such Holder's New LLC Interests (including receiving any proceeds of permitted transfers of such New LLC Interests) and to exercise all other rights in respect of the New LLC Interests as if the Holder were an owner of the New LLC Interests (so that such Holder shall be deemed for tax purposes to be the owner of the New LLC Interests).

**ARTICLE 5.  
VOTING AND DISTRIBUTIONS**

**A. Voting of Claims.**

Each holder of an Allowed Claim or Equity Interest in an Impaired Class entitled to vote on the Plan shall be entitled to vote to accept or reject the Plan as provided in such order as may be entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

**B. Designation of Party to Make Distributions.**

The Reorganized Debtors or a disbursing agent acting on their behalf shall make all Distributions provided for in the Plan. The Reorganized Debtors shall be empowered to take all necessary actions and execute all agreements, instruments, and other documents necessary to perform their duties under the Plan.

**C. Distributions on Allowed Claims.****1. Delivery of Distributions.**

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made by the Reorganized Debtors or any disbursing agent acting on their behalf (a) at the addresses set forth on any Proof of Claim filed by such Holder (or at the last known addresses of such Holder if no motion requesting payment or

Proof of Claim is filed or the Debtors or the Reorganized Debtors have been notified in writing of a change of address), (b) at the addresses set forth in any written notices of address changes filed with the Bankruptcy Court and served on the Reorganized Debtors by such Holder after the date of any related Proof of Claim, or (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and no written notice of address change has been filed by such Holder with the Bankruptcy Court and served on the Reorganized Debtors.

**2. Distribution of Cash.**

Any payment of Cash by the Reorganized Debtors or any disbursing agent acting on their behalf pursuant to the Plan shall be made, at the option and sole discretion of the Reorganized Debtors, by (a) Cash, (b) check drawn on a domestic bank, (c) wire transfer, or (d) ACH. Any Cash Distributions or payments will be issued to Holders in whole cents (rounded to the nearest whole cent when and as necessary).

**3. Fractional Interests and De Minimis Distributions.**

No fractional New LLC Interests shall be issued or distributed pursuant to the Plan. If any fraction of a New LLC Interest would otherwise be required to be distributed, the actual Distribution shall reflect a rounding to the nearest whole interest (up or down), with fractions less than half being rounded down and fractions equal to half interests or more being rounded up.

The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make Cash Distributions of less than \$50. Any Claims affected by this Article 5.C.3 shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective Properties or Estates.

**4. Undeliverable Distributions.**

If any Distribution or other payment to the Holder of an Allowed Claim under the Plan is returned for lack of a current address for the Holder or otherwise, no Distribution shall be made unless and until the Reorganized Debtors have determined the then-current address of such Holder, at which time such Distribution shall be made without interest. Such returned Distributions shall be deemed unclaimed property one year after the Effective Date.

After such date, (a) if the Lender Confirmation Option has been implemented, all unclaimed Distributions of New LLC Interests shall be redistributed Pro Rata, and (b) all unclaimed Distributions of Cash shall become the property of the Reorganized Debtors, in each case without the need for a further order of the Bankruptcy Court.

The Allowed Claim on account of which a Distribution could not be made in accordance with this Article 5.C.4 shall be deemed satisfied and released, with no recourse to the Reorganized Debtors, to the same extent as if the Distribution or payment had been made to the Holder of the Allowed Claim.

**5. Time Bar for Checks.**

Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Article 5.C.5 shall be made directly to the Reorganized Debtors by the Holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall become unclaimed property in accordance with section 347(b) of the Bankruptcy Code.

**D. Interest on Claims.**

Unless otherwise specifically provided for in the Plan or the Confirmation Order, no Claims shall be entitled to receive interest accruing on or after the Petition Date on any Claim. Notwithstanding the foregoing, and for the avoidance of doubt, interest and fees accruing after the Petition Date shall be Allowed on the Senior Lender Claims to the extent permitted under section 506(b) of the Bankruptcy Code. For the further avoidance of doubt, the treatment of Class 2 Senior Lender Claims provided for in this Plan shall be in full and final satisfaction of any such interest and fees accruing after the Petition Date.

**E. Establishment of DCO Claims Reserves.**

If the Plan is implemented pursuant to the Debtor Confirmation Option, on the Effective Date, the Reorganized Debtors will create and fund the DCO Claims Reserves consisting of the Disputed Reserve and other segregated accounts and/or escrow accounts as contemplated by the Settlement Agreement with Cash and Cash investments in an amount equal to 110% of the Debtors' best estimate of the Cash necessary to make required Distributions under the Plan for the projected aggregate amount of unpaid Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Governmental Unit Claims, Allowed Other Secured Claims, Allowed Unsecured Priority Claims and Allowed General Unsecured Claims. For the avoidance of doubt, the Reorganized Debtors shall not be required to establish DCO Claim Reserves for Senior Lender Claims, Intercompany Claims, Non-Debtor Affiliate Claims or Equity Interests. To the extent that the Claims for which the DCO Claims Reserves are being funded are Refinancing Claims, the source of funding shall be SNP Holding or another Non-Debtor Affiliate and such funds shall not come from the Debtors or their Estates; *provided, however*, that the SN Parties shall have no obligation to fund the DCO Claims Reserves if the Plan is implemented pursuant to the Lender Confirmation Option.

**F. Disputed Claims.**

**1. No Distribution Pending Allowance.**

Notwithstanding any other provision of the Plan, no Distributions shall be made on account of any Claim that is Disputed unless and until such Claim, or a portion thereof, becomes Allowed.

**2. Objection and Resolution; Objection Deadline.**

After the Effective Date, the Reorganized Debtors shall have the right to make and to file objections to, or otherwise contest the allowance of, Claims (other than Professional Fee Claims) subsequent to the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court, objections to, or other proceedings concerning the allowance of, Claims (other than Professional Fee Claims) shall be filed and served upon the holders of the Claims as to which the objection is made, or otherwise commenced, as the case may be, as soon as practicable, but in no event later than the Claims Objection Deadline. Objections to Professional Fee Claims shall be filed and served within 30 days of the Professional Fee Claim Bar Date (or such longer period as may be allowed by order of the Bankruptcy Court).

Objections to, or other proceedings contesting the allowance of, Claims (other than Professional Fee Claims) may be litigated to judgment, settled, or withdrawn by the Reorganized Debtors. The Reorganized Debtors may settle any such objections or proceedings without Court approval or may seek Court approval without notice to any Entity, except as set forth herein. From and after the Effective Date, the Reorganized Debtors shall have the sole authority to administer and adjust the claims register to reflect such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

In the event any Proof of Claim is permitted to be filed after the Claims Objection Deadline, the Reorganized Debtors shall have ninety (90) days from the date of such order or agreement to object to such Claim, which deadline may be extended one or more times by the Bankruptcy Court on motion of the Reorganized Debtors without a hearing or notice to creditors.

**3. Distributions Following Allowance.**

Notwithstanding anything to the contrary set forth herein or in the Confirmation Order, each Holder of a Disputed Claim that is Allowed after the Effective Date shall receive the Distribution to which such Holder of an Allowed Claim is entitled at such time that the Reorganized Debtors determine, in their discretion, to make subsequent Distributions to Holders of other Claims Allowed following the Effective Date, provided that the Reorganized Debtors shall make such Distributions quarterly during the first year after the Effective Date and semi-annually thereafter. Nothing set forth herein is intended to, nor shall it, prohibit the Reorganized Debtors, in their discretion, from making a Distribution on account of any Claim at any time after such Claim becomes an Allowed

Claim. For the avoidance of doubt, nothing in this Article 5.F.3 shall accelerate payment of Distributions on account of Allowed General Unsecured Claims.

#### **4. Disputed Reserve.**

On the Effective Date, the Reorganized Debtors shall establish and fund a segregated and/or escrow account as contemplated by the Settlement Agreement with Cash and Cash investments in an amount equal to 110% of the Debtors' best estimate of the Cash necessary to make required Distributions under the Plan for Disputed Claims that are likely to become Allowed Claims. If the Plan is implemented pursuant to the Debtor Confirmation Option, the initial amount to be funded to the Disputed Reserve shall be determined in the discretion of the Debtors, after consultation with the Agent. If the Plan is implemented pursuant to the Lender Confirmation Option, the initial amount funded to the Disputed Reserve shall be subject to the approval of the Agent, such approval not to be unreasonably withheld. To the extent that the Disputed Claims for which the Disputed Reserve is being funded are Refinancing Claims, the source of funding shall be SNP Holding or another Non-Debtor Affiliate and such funds shall not come from the Debtors or their Estates; *provided, however*, that the SN Parties shall have no obligation to fund the Disputed Reserve if the Plan is implemented pursuant to the Lender Confirmation Option.

#### **G. Estimation of Claims.**

The Plan Proponents or the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time, including during the pendency of proceedings concerning such Claim and any appeal thereof. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount may constitute either (a) the Allowed amount of such Claim or (b) a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Reorganized Debtors may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objections, estimations, and resolution procedures are cumulative and not exclusive of one another.

### **ARTICLE 6. TREATMENT OF EXECUTORY CONTRACTS, UNEXPIRED LEASES, AND INSURANCE POLICIES**

#### **A. Assumption and Rejection of Executory Contracts.**

On the Effective Date, except as otherwise provided herein (including, specifically, in Article 6.F below), all Executory Contracts of the Debtors will be automatically assumed by the Debtors in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts that:



(i) have been previously assumed, assumed and assigned, or rejected by order of the Bankruptcy Court;

(ii) are subject to a separate motion to assume, assume and assign, assign or reject under section 365 of the Bankruptcy Code that is pending on the Effective Date; or

(iii) are rejected pursuant to the terms of the Plan and identified on the Contracts Schedule as such.

Except as otherwise provided herein or agreed to by the Reorganized Debtors with the applicable counterparty in writing, each assumed, assumed and assigned, or assigned Executory Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent any provision in any Executory Contract assumed, assumed and assigned, or assigned pursuant to the Plan (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by the assumption, assumption and assignment, or assignment of such Executory Contract, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-debtor party thereto to terminate such Executory Contract or to exercise any other default-related rights with respect thereto. Each Executory Contract assumed, assumed and assigned, or assigned pursuant to this Article 6 shall vest in and be fully enforceable by the Reorganized Debtors or assignee, as applicable, in accordance with its terms, except as modified by the provisions of the Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, assumption and assignment or assignment, or applicable law. Without amending or altering any prior order of the Bankruptcy Court approving the assumption, assumption and assignment, or rejection of any Executory Contract, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

**B. Limited Extension of Time to Assume or Reject.**

In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Reorganized Debtors, as applicable, to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Bankruptcy Court determining that the contract or lease is executory or unexpired. The deemed assumptions and rejections provided for in this Article 6 shall not apply to such contract or lease.

In the event the Reorganized Debtors become aware after the Effective Date of the existence of an Executory Contract that was not included in the Schedules, the right of the Reorganized Debtors to move to assume, assume and assign, or assign such Executory Contract shall be extended until the date that is thirty (30) days after the date on which the Reorganized Debtors become aware of the omission of such Executory Contract. The deemed assumptions provided for in this Article 6 shall not apply to any such Executory Contract.

The Plan Proponents reserves the right to amend the list of Executory Contracts to be rejected or assigned to a transferee other than a Reorganized Debtor at any time prior to the Confirmation Hearing.

### **C. Cure Amounts.**

The applicable Reorganized Debtor or assignee, as applicable, will cure any and all undisputed defaults under any Executory Contract that is assumed or assumed and assigned by such Reorganized Debtor under the Plan. At least twenty (20) days prior to the Confirmation Hearing, the Plan Proponents shall file and serve upon counterparties to such Executory Contracts, an Assumption Notice that: (a) lists the applicable Cure Claim amount, if any; (b) lists the proposed assignee of the Executory Contract if an Entity other than the Reorganized Debtor; and (c) describes the procedures for filing objections to the proposed assumption, assumption and assignment, or assignment of the Executory Contract. Any objection by a counterparty to an Executory Contract to a proposed assumption, assumption and assignment, assignment or related Cure Claim amount must be filed, served and actually received by the Plan Proponents at least seven (7) days prior to the Confirmation Hearing. Any counterparty to an Executory Contract that fails to object timely to the proposed assumption, assumption and assignment, assignment or Cure Claim amount related thereto will be deemed to have assented to such matters and will be deemed to have forever released and waived any objection to the proposed assumption (or assumption and assignment or assignment, as applicable) and Cure Claim amount. All such Cure Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 8 hereof. In the event of a dispute regarding (a) the amount of any Cure Claim, (b) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract to be assumed, or (c) any other matter pertaining to assumption, such claim shall be deemed a Disputed Claim until the entry of a Final Order or orders resolving the dispute and approving the assumption. All Allowed Cure Claim payments required by section 365(b)(1) of the Bankruptcy Code shall be made within 30 days following the entry of a Final Order or orders resolving the dispute and approving the assumption. If an objection to the proposed Cure Claim or any other term of the proposed assumption, assumption and assignment, or assignment of an Executory Contract is sustained by the Bankruptcy Court, the Plan Proponents or Reorganized Debtors, as applicable, in their sole option, may elect to reject such Executory Contract in lieu of assuming it.

**D. Rejection Damage Claims.**

All Claims for damages arising from the rejection of Executory Contracts pursuant to the Plan or the Confirmation Order must be filed with the Bankruptcy Court in accordance with the terms of the order authorizing such rejection, but in any event no later than 30 days after service of the Effective Date Notice. All Allowed Claims arising from the rejection of Executory Contracts shall be classified as General Unsecured Claims (unless the Bankruptcy Court determines or the Holder of such Claim agrees that such Claims should be subordinated to a priority lower than a General Unsecured Claim pursuant to section 510 of the Bankruptcy Code).

Any counterparty with a Claim arising from the rejection of an Executory Contract that fails to timely file such Claim shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Debtors, the Reorganized Debtors, or their respective Properties and Estates. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 8 hereof.

**E. Previously Assumed Executory Contracts.**

Notwithstanding anything to the contrary in an Executory Contract that was assumed by a Debtor by Order of the Bankruptcy Court entered prior to the Confirmation Date (a "Previously Assumed Contract"), upon the occurrence of the Effective Date, the comparable Reorganized Debtor may assign such Previously Assumed Contract to an assignee identified in the Contracts Schedule in accordance with section 365(f) of the Bankruptcy Code.

**F. Insurance Policies.**

With respect to insurance policies other than D&O Liability Insurance Policies, each such insurance policy whether or not identified as assumed on the Contracts Schedule shall be assumed as of the Effective Date, pursuant to section 365 of the Bankruptcy Code, to the extent such insurance policy is executory, unless such insurance policy (a) previously was rejected by the Debtors pursuant to a Bankruptcy Court order, (b) is identified as rejected on the Contracts Schedule, or (c) is the subject of a motion to reject pending on the Effective Date.

The Debtors do not believe that any D&O Liability Insurance Policies issued to, or entered into by, the Debtors prior to the Petition Date constitute executory contracts. To the extent that such insurance policies or agreements are considered to be executory contracts, then, notwithstanding anything in the Plan to the contrary and notwithstanding whether such D&O Liability Insurance Policies are identified on the Contracts Schedule, the Reorganized Debtors shall be deemed to have assumed all of the Debtors' unexpired D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the

contrary contained in the Plan, confirmation of the Plan shall not discharge, impair or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed. In addition, after the Effective Date, none of the Reorganized Debtors shall terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any "tail policy") in effect on the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date; *provided, however*, that if the Plan is implemented through the Lender Confirmation Option, the Reorganized Debtors shall have no obligation to renew, extend, amend, or replace any D&O Liability Insurance Policies

The discharge, injunction and release provisions set forth in Article 8 of the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, the Reorganized Debtors, or any other Entity. Notwithstanding anything to the contrary in this Plan (and without limiting other obligations that may exist if the Plan is implemented pursuant to the Debtor Confirmation Option), Indemnification Obligations owed to a director, officer or employee that is no longer employed by the Reorganized Debtors in such capacity on or after the Effective Date shall be honored to the extent of available coverage under the applicable D&O Liability Insurance Policy; *provided, however*, that if the Plan is implemented pursuant to the Lender Confirmation Option, the Reorganized Debtors shall incur no liability whatsoever in connection with such Indemnification Obligations.

**G. Post-Petition Date Contracts and Leases.**

The Debtors shall not be required to assume or reject any contract or lease entered into by the Debtors after the Petition Date. Such contracts and leases will continue in effect after the Effective Date and will be performed by the Reorganized Debtors or assignee thereof in connection with the Refinancing Transactions in the ordinary course of business in accordance with their terms.

**H. Reservation of Rights.**

Neither the exclusion nor inclusion of any contract or lease on the Contracts Schedule, nor anything contained in the Plan, shall constitute an admission by the SN Parties, the Senior Lenders or the Reorganized Debtors that any such contract or lease is in fact an Executory Contract or that any Debtor or Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Reorganized Debtors shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

**ARTICLE 7.**  
**CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

**A. Conditions to Confirmation.**

Confirmation of the Plan by the Bankruptcy Court is subject to the following conditions precedent:

1. The Disclosure Statement shall have been approved by the Bankruptcy Court as containing adequate information in accordance with section 1125 of the Bankruptcy Code, and notice having been given to all relevant parties in accordance with applicable Bankruptcy Rules;

2. The Plan and Plan Supplement, including any exhibits, schedules, amendments, modifications, or supplements thereto, have been filed in substantially final form; and

3. The Settlement Agreement shall have been approved by the Bankruptcy Court by an order in form and substance reasonably acceptable to the Debtors, the DCO Sponsors and the Senior Lenders.

**B. Conditions to the Effective Date.**

1. *General Effective Date Conditions.* Whether the Debtor Confirmation Option or the Lender Confirmation Option is implemented, the Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) The Confirmation Order, in form and substance reasonably satisfactory to the Senior Lenders and the SN Parties, shall have become a Final Order;

(ii) All material authorizations, consents, and regulatory approvals required, if any, in connection with consummation of the Plan shall have been obtained; and

(iii) All material actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

2. *Debtor Confirmation Option Effective Date Conditions.* For the Plan to be implemented pursuant to the Debtor Confirmation Option, the Plan shall not become effective unless and until it has been confirmed and the following conditions, in addition to those in Article 7.B.1, have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) The Deficiency Note, the DCO Sponsor Guaranty and the Net Proceeds Covenants shall be executed in a form and substance reasonably

acceptable to the Senior Lenders and the Entities required under the Settlement Agreement to execute such documents and delivered to the Agent prior to the closing of either the Primary Transaction or the Secondary Transaction;

(ii) All conditions to closing of the Primary Parcel Sale Agreements (except for the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(iii) All conditions to closing of the Primary Transaction (except for (x) the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option and (y) the closing of the Primary Parcel Sale Agreements) shall have been satisfied or waived by the parties thereto;

(iv) All conditions to closing of the Secondary Parcel Sale Agreements (except for the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(v) All conditions to closing of the Secondary Transaction (except for (x) the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option and (y) the closing of the Secondary Parcel Sale Agreements) shall have been satisfied or waived by the parties thereto;

(vi) The Soup Lots Sale shall have closed or, if closing has not yet occurred, all conditions to closing of the Soup Lots Sale (except for the occurrence of the Effective Date of this Plan pursuant to the Debtor Confirmation Option) shall have been satisfied or waived by the parties thereto;

(vii) The Debtors and DCO Sponsors shall not be in breach of any of their material obligations under the Settlement Agreement; and

(viii) Each of the Plan Supplement Documents that relates to the Debtor Confirmation Option shall be in form and substance satisfactory to the Debtors and DCO Sponsors.

**3. Lender Confirmation Option Effective Date Conditions.** For the Plan to be implemented pursuant to the Lender Confirmation Option, the Plan shall not become effective unless and until it has been confirmed and the following conditions, in addition to those in Article 7.B.1, have been satisfied in full or waived pursuant to Article 7.C of the Plan:

(i) One or more of the Debtor Confirmation Option Effective Date conditions in Article 7.B.2 have not been satisfied or waived pursuant to Article 7.C of the Plan;

(ii) The Senior Lenders shall not be in breach of any of their material obligations under the Settlement Agreement;

**(iii)** The Exit Facility Agreement shall be in form and substance reasonably acceptable to the Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document and to funding and credit thereunder shall have been satisfied or waived;

**(iv)** The New Senior Debt Agreement shall be in form and substance reasonably acceptable to the Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document and to funding and credit thereunder shall have been satisfied or waived;

**(v)** The New Sub Debt Agreement shall be in form and substance reasonably acceptable to the Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document shall have been satisfied or waived;

**(vi)** The New Intercreditor Agreement shall be in form and substance reasonably acceptable to the Senior Lenders, and to the extent that any of such documents contemplate execution by one or more Entities, any such document shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document shall have been satisfied or waived;

**(vii)** The Amended and Restated Charter Documents and the New LLC Agreement shall have been amended or entered into as provided in Article 4.G.3, each in form and substance satisfactory to the Senior Lenders;

**(viii)** The New LLC Interests to be issued pursuant to Article 4.G.3 shall be consistent with the Plan;

**(ix)** The Senior Lenders shall have entered into a binding commitment among each other, conditioned on Confirmation of the Plan and the Plan being implemented pursuant to the Lender Confirmation Option, to provide the Exit Facility to the Reorganized Debtors on terms and conditions reasonably acceptable to the Senior Lenders; and

**(x)** Each of the Plan Supplement Documents that relates to the Lender Confirmation Option shall be in form and substance satisfactory to the Senior Lenders.

**C. Waiver of Conditions.**

1. Notwithstanding the foregoing, the Plan Proponents reserve the right to waive the occurrence of condition precedent to Confirmation or the Effective Date or to modify the foregoing conditions precedent in accordance with and as provided in this Article 7.C. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice (except that given to the other Plan Proponent), without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan.

2. Notwithstanding the satisfaction or waiver of each condition precedent to the Effective Date, the Effective Date shall not occur until the applicable Plan Proponent (Debtors for Debtor Confirmation Option or Agent for Lender Confirmation Option) files with the Bankruptcy Court a notice stating that the Effective Date has occurred. 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.

3. The General Conditions to the Effective Date of the Plan set forth in Articles 7.B.1(ii) and (iii) above are waivable by agreement of the Debtors, the DCO Sponsors and the Senior Lenders.

4. The Debtor Confirmation Option Conditions to the Effective Date set forth in Article 7.B.2 above are waivable as follows: (A) Articles 7.B.2(i) through (vii) are waivable only by agreement of the Debtors, the DCO Sponsors and the Senior Lenders; and (B) Article 7.B.2(viii) is waivable only by agreement of the Debtors and DCO Sponsors.

5. The Lender Confirmation Option Conditions to the Effective Date set forth in Article 7.B.3 above are waivable as follows: (A) Articles 7.B.3(i) and (ii) are each waivable only by agreement of the Debtors, the DCO Sponsors and the Senior Lenders; and (B) Articles 7.B.3(iii) through (x) are each waivable only by the Senior Lenders.

6. Except as expressly stated in this Article 7.C no other conditions to the confirmation of the Plan or the Effective Date may be waived.

**D. Failure of Conditions.**

1. If the Debtor Confirmation Option Conditions to the Effective Date set forth in Articles 7.B.2(i) through (viii) are not satisfied or waived pursuant to Article 7.C.4 above on or before the DCO Deadline, then: (i) the Plan may no longer be implemented pursuant to the Debtor Confirmation Option, except as may otherwise be agreed in writing by the Senior Lenders after the Confirmation Date; and (ii) subject to the satisfaction or waiver, as applicable, of the conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 of the Plan, the Plan shall be implemented pursuant to the Lender Confirmation Option.



2. If the conditions to the Effective Date set forth in Articles 7.B.1 and 7.B.3 have not been satisfied or waived, as applicable, by the DCO Deadline, the Agent, in its sole discretion, may withdraw the Plan by the filing of a Certification of Counsel on the docket of the Chapter 11 Case and serving a copy of the Certification of Counsel upon counsel for the Debtors, the DCO Sponsors and the U.S. Trustee. Immediately upon such notification to the Bankruptcy Court, without the need for further order of the Bankruptcy Court: (a) the Confirmation Order shall be vacated; (b) no Distributions under the Plan shall be made; (c) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (d) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors unless extended by Bankruptcy Court order.

3. For the avoidance of doubt, the Plan is without prejudice to the right of the SN Parties, pursuant to Section 1.3 of the Settlement Agreement, to request the Bankruptcy Court to order that further Adequate Protection Payments be discontinued if the Effective Date has not occurred by December 31, 2014.

**E. Substantial Consummation.**

"Substantial Consummation" of the Plan, as defined in section 1102(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

**ARTICLE 8.**  
**DISCHARGE, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Term of Injunctions or Stays.**

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

**B. Vesting of Property.**

Except as otherwise provided herein, on the Effective Date, the property of the Debtors' Estates shall automatically vest or revert in the Reorganized Debtors free and clear of all liens, Claims, charges, or other encumbrances, except, if the Plan is implemented pursuant to the Lender Confirmation Option, for (a) Liens securing the Exit Facility, if applicable; and (b) Liens securing the New Senior Debt, if applicable. Except as specifically provided in the Plan or the Confirmation Order, the Reorganized Debtors and their property shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate the Debtors' business and may use, acquire, or dispose of property and compromise or settle any Claims or Causes of Action without supervision or

approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**C. Cancellation of Notes (Both Confirmation Options) and Equity Interests (Lender Confirmation Option Only).**

As of the Effective Date, except as set forth herein, all notes and securities evidencing Claims or Equity Interests and the rights thereunder of the Holders thereof shall be deemed canceled, null and void, and of no further force and effect, and the Holders thereof shall have no rights against the Debtors, the Reorganized Debtors, or the Estates except the right to receive the Distributions provided for in the Plan; *provided, however*, if the Plan is implemented pursuant to the Debtor Confirmation Option, then the securities evidencing Equity Interests and the rights thereunder of the Holders thereof shall remain intact and shall be unaffected by the confirmation of the Plan.

**D. Discharge.**

1. The rights afforded herein and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims, Equity Interests, and Causes of Action of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, the Debtors-in-Possession, or any of their respective assets or Properties, arising prior to the Effective Date. Except as otherwise expressly specified in the Plan, the Confirmation Order shall act as of the Effective Date as a discharge of all debts of, Claims or Equity Interest against, and Liens on the Debtors, their respective assets and Properties, arising at any time before the Effective Date, regardless of whether a Proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the Holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any Holder of such discharged Claim shall be precluded from asserting against the Debtors, the Reorganized Debtors, or any of their respective assets or Properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order.

2. Notwithstanding anything to the contrary in this Article 8.D, if the Plan is implemented pursuant to the Debtor Confirmation Option, then Equity Interests in the Debtors shall not be discharged, shall remain intact and shall be unaffected by the confirmation of the Plan.

**E. Releases.**

**1. Releases by the Debtors.**

**NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE, THE DEBTORS, ON BEHALF OF THEMSELVES AND THEIR ESTATES, SHALL BE DEEMED TO RELEASE UNCONDITIONALLY, THE RELEASED SENIOR LENDER PARTIES AND**

THE RELEASED SN PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, RIGHTS, SUITS, JUDGMENTS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE OR CIRCUMSTANCES, INCLUDING ACTIONS IN CONNECTION WITH INDEBTEDNESS FOR MONEY BORROWED BY THE DEBTORS, EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF ANY OF THE DEBTORS OR ESTATES AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE ESTATES, THE CHAPTER 11 CASES, OR THE PLAN, EXCEPT THAT (I) THE REORGANIZED DEBTORS SHALL NOT RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH ENTITIES ASSERTED AGAINST THE DEBTORS, (II) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY OBLIGATIONS THAT REMAIN OUTSTANDING IN RESPECT OF LOANS OR ADVANCES MADE TO INDIVIDUALS BY THE DEBTORS, AND (III) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE. FOR THE AVOIDANCE OF DOUBT, IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THIS RELEASE SHALL NOT RELEASE ANY ENTITY FROM ITS OBLIGATIONS UNDER THE DCO SPONSOR GUARANTY, THE DEFICIENCY NOTE OR THE NET PROCEEDS COVENANT.

2. Releases by Certain Holders of Claims.

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, EACH ENTITY WHO HAS HELD, HOLDS, OR MAY HOLD A CLAIM, AND WHO (A) VOTED IN FAVOR OF THE PLAN OR (B) IS PRESUMED TO HAVE VOTED IN FAVOR OF THE PLAN UNDER SECTION 1126(F) OF THE BANKRUPTCY CODE, SHALL BE DEEMED TO UNCONDITIONALLY RELEASE AND FOREVER WAIVE ALL CLAIMS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, DEMANDS, LIABILITIES, SUITS, JUDGMENTS, DAMAGES, RIGHTS, AND CAUSES OF ACTION,

WHATSOEVER, OTHER THAN THE RIGHT TO ENFORCE THE OBLIGATIONS UNDER THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED THEREUNDER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART UPON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE RESPECTING ANY OF THE DEBTORS OR THEIR ESTATES OR IN CONNECTION WITH THE CHAPTER 11 CASES, THE PLAN, THE DISCLOSURE STATEMENT, THE NEGOTIATION OR FOR ANY ACT OR OMISSION THAT OCCURRED OR COULD HAVE OCCURRED ON OR PRIOR TO THE EFFECTIVE DATE AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, (I) THE FOREGOING RELEASE SHALL NOT APPLY TO OBLIGATIONS ARISING UNDER THE PLAN, (II) THE FOREGOING RELEASE SHALL NOT BE CONSTRUED TO PROHIBIT A PARTY IN INTEREST FROM SEEKING TO ENFORCE THE TERMS OF THE PLAN, AND (III) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY INDEMNIFICATION AND OTHER SURVIVING OBLIGATION AS SET FORTH IN THE PLAN. FOR THE AVOIDANCE OF DOUBT, IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THIS RELEASE SHALL NOT RELEASE ANY PERSON FROM ITS OBLIGATIONS UNDER THE DCO SPONSOR GUARANTY, THE DEFICIENCY NOTE OR THE NET PROCEEDS COVENANT.

**3. Mutual Releases Among and By SN Parties and Senior Lenders**

EXCEPT AS EXPRESSLY PROVIDED IN THE PLAN, ON THE EFFECTIVE DATE, THE SN PARTIES AND THE SENIOR LENDERS SHALL BE DEEMED TO RELEASE ONE ANOTHER AND THEIR RESPECTIVE REPRESENTATIVES, AFFILIATES AND SUBSIDIARIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, RIGHTS, SUITS, JUDGMENTS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE OR CIRCUMSTANCES (INCLUDING ACTIONS IN CONNECTION WITH INDEBTEDNESS FOR MONEY BORROWED BY THE DEBTORS) EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR PROPERTY, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM OR EQUITY

**INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF ANY OF THE DEBTORS OR ESTATES AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE ESTATES, THE CHAPTER 11 CASES, OR THE PLAN, EXCEPT THAT (I) THE FOREGOING RELEASE SHALL NOT APPLY TO THEIR RESPECTIVE OBLIGATIONS ARISING UNDER THE PLAN, (II) NEITHER THE REORGANIZED DEBTORS NOR THE SENIOR LENDERS SHALL RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH ENTITIES ASSERTED AGAINST THE DEBTORS OR THE SENIOR LENDERS, (III) IF THE PLAN IS IMPLEMENTED PURSUANT TO THE DEBTOR CONFIRMATION OPTION, THE FOREGOING RELEASES SHALL NOT APPLY TO, AND NONE OF THE RELEASED SN PARTIES SHALL BE RELEASED OF, ANY CLAIMS, OBLIGATIONS, OR LIABILITIES OF ANY KIND ANY RELEASED SN PARTY HAS UNDER THE DEFICIENCY NOTE, THE DCO SPONSOR GUARANTY OR A NET PROCEEDS COVENANT, AND (IV) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE.**

**F. Exculpation.**

**Notwithstanding anything contained in the Plan to the contrary, the Released Parties shall neither have nor incur any liability to any Holder of a Claim or Interest, or a governmental entity on behalf of a Holder of a Claim or Equity Interest, for any postpetition act taken or omitted to be taken in connection with, or related to, the Chapter 11 Cases, including but not limited to the formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or Disclosure Statement or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the Plan; provided, however, that the foregoing provisions of this Article 8.F shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that each Released Party shall be entitled to rely upon the advice of counsel concerning its duties; provided, further, that the foregoing provisions of this Article 8.F shall not apply to any acts, omissions, Claims, causes of action, or other obligations expressly set forth in and preserved by the Plan or any defenses thereto.**

**G. Preservation of Causes of Action.**

The Reorganized Debtors shall retain all Causes of Action, other than as expressly provided in this Article 8 of the Plan or in a Final Order of the Bankruptcy Court. Except as expressly provided in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any

such Causes of Action. Nothing contained in the Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Petition Date that is not specifically waived or relinquished by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, including all potential Causes of Action under Chapter 5 of the Bankruptcy Code related to payments made by the Debtors to Holders of General Unsecured Claims, rights of setoff, and other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claims that are not specifically waived or relinquished by the Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. Except as expressly provided in the Plan or the Confirmation Order, the Reorganized Debtors may settle any such Causes of Action without Bankruptcy Court approval. Notwithstanding the foregoing, no Causes of Action may be asserted against the Senior Lenders, except for breach of their obligations under this Plan and/or the Settlement Agreement.

#### **H. Injunctions.**

**1.** Except as otherwise expressly provided for in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Parties and Entities who have held, hold, or may hold Claims or Equity Interests against the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from:

- (i)** commencing or continuing in any manner any action or other proceeding of any kind against any Debtor or Reorganized Debtor, the Released Parties, or their respective successors and assigns and their respective assets and properties, with respect to any such Claim or Equity Interest;
- (ii)** enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any Debtor, Reorganized Debtor, or Released Party, or their respective successors and assigns and their respective assets and properties, on account of any such Claim or Equity Interest;
- (iii)** creating, perfecting or enforcing any encumbrance of any kind against any Debtor, Reorganized Debtor, or the property or estate of any Debtor or Reorganized Debtor, on account of such Claim or Equity Interest;
- (iv)** asserting any right of setoff or subrogation of any kind against any obligation due from any Debtor or Reorganized Debtor, or against the property or estate of any Debtor or Reorganized Debtor, on account of such Claim or Equity Interest, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed Proof of Claim and adjudicated to be valid and enforceable by a Final Order of the Bankruptcy Court; or

- (v) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or Cause of Action released or settled hereunder.

**I. Binding Effect of the Plan.**

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, subject to the occurrence of the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against or Equity Interest in the Debtors, the Estates, and their respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not the Holder has Filed a Claim. The rights, benefits, and obligations of any Entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, or assign of such Entity (including, without limitation, any trustee appointed for the Debtors under Chapter 7 or 11 of the Bankruptcy Code).

**ARTICLE 9.  
RETENTION OF JURISDICTION**

**A. Retention of Jurisdiction.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors, the Estates, all property of the Estates, and the Plan as is legally permissible, including, without limitation, jurisdiction to: (1) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests; (2) grant, deny, or otherwise resolve any and all applications of Professionals or Entities retained in the Chapter 11 Cases for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date; (3) resolve any matters related to the assumption, assignment, or rejection of any Executory Contract to which a Debtor was party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom; (4) ensure that Distributions to Holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of the Plan; (5) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, provided, however, the right of the Reorganized Debtors to commence actions in all appropriate jurisdictions shall be fully reserved; (6) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures, and other agreements or documents adopted in connection with the Plan or

the Disclosure Statement; (7) resolve any cases, controversies, suits, or disputes that may arise in connection with the Effective Date, interpretation, or enforcement of the Plan, including any documents or agreements contained in the Plan Supplement, or any Entity's obligations incurred in connection with the Plan; (8) issue injunctions, enforce them, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan; (9) enforce Article 8.D, Article 8.E, and Article 8.I hereof; (10) enforce the Injunctions set forth in Article 8.H hereof; (11) resolve any cases, controversies, suits, or disputes with respect to the releases, injunction, and other provisions contained in Article 8 hereof, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions; (12) enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked, or vacated; (13) resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and (14) enter an order and/or the decree contemplated in Bankruptcy Rule 3022 concluding the Chapter 11 Cases.

**ARTICLE 10.**  
**MISCELLANEOUS PROVISIONS**

**A. Final Fee Applications.**

The deadline for submission by Professionals of final applications for Bankruptcy Court approval of Accrued Professional Compensation shall be the Professional Fee Claim Bar Date.

**B. Payment of Statutory Fees.**

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Reorganized Debtors. On and after the Effective Date, the Reorganized Debtors shall pay any and all such fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each and every one of the Reorganized Debtors shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee until the earliest of that particular Reorganized Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

**C. Modification of the Plan.**

Subject to the limitations contained in the Plan: (a) prior to the entry of the Confirmation Order, the Plan Proponent expressly reserves the right to amend the terms of the Plan, subject to compliance with section 1127 of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Plan Proponent or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any



defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**D. Revocation or Deferral of the Plan.**

1. Either Plan Proponent shall have the right to revoke or withdraw the Plan prior to entry of the Confirmation Order if the Termination Date (as defined in the Settlement Agreement) has occurred and to file subsequent chapter 11 plans.

2. If either Plan Proponent revokes or withdraws the Plan as permitted by Article 10.D.1 hereof, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts affected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Entity, (ii) prejudice in any manner the rights of the Plan Proponents or any other Entity, or (iii) constitute an admission of any sort by the Plan Proponents or any other Entity.

**E. Successors and Assigns.**

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

**F. Governing Law and Construction.**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, indenture, or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Delaware, without giving effect to the principles of conflict of laws thereof. Any inconsistency between the Plan and the Confirmation Order shall be construed in favor of and so as to give effect to the Confirmation Order. All exhibits and schedules to the Plan and the Plan Supplement shall be incorporated in the Plan by this reference, as though set forth at length herein.

**G. Reservation of Rights.**

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by the Plan Proponents or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Plan Proponents, any Senior Lender or any SN Party with respect to the Debtors, Holders of Claims, Equity Interests, or other parties-in-interest; or (b) any Holder of a Claim or other party-in-interest prior to the Effective Date.

**H. Setoffs and Recoupment.**

The Reorganized Debtors, as applicable, may, to the extent permitted by sections 502(h), 553, and 558 of the Bankruptcy Code or applicable non-bankruptcy law, set off against or recoup from any Claim or Interest on which payments or distributions are to be made pursuant to the Plan, any Causes of Action of any nature whatsoever that the Debtors, the Reorganized Debtors, or the Estates may have against the Holder of such Claim or Interest; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim or Interest shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Estates of any right of setoff or recoupment that the Debtors, the Reorganized Debtors, or their respective Properties or Estates may have against the Holder of such Claim or Interest, nor of any other Cause of Action; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim or Interest shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any right of setoff or recoupment that the Debtors or the Reorganized Debtors may have against the Holder of such Claim Interest, nor of any other Cause of Action.

**I. Section 1145 Exemption.**

Pursuant to, in accordance with, and solely to the extent provided under section 1145 of the Bankruptcy Code, if the Lender Confirmation Option is implemented, the issuance of the New LLC Interests and distribution thereof under the Plan will be exempt from registration under applicable securities laws (including without limitation, Section 5 of the Securities Act or any similar state or local law requiring the registration for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy Code, and to the extent such issuance is deemed to be a public offering, the New LLC Interests may be sold without registration in accordance with section 1145 of the Bankruptcy Code.

**J. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes.**

1. The Reorganized Debtors, the SN Parties, the Senior Lenders, and their respective designees, as applicable, shall be authorized to: (i) execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan and (ii) certify or attest to any of the foregoing actions.

2. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (a) any transaction undertaken to implement the terms of this Plan; (b) the transfer to the Reorganized Debtors of any Reorganized Debtors' assets at any time; (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan (including, if the Debtor Confirmation Option is

implemented, the Primary Transaction and the Secondary Transaction); (d) if the Lender Confirmation Option is implemented, (i) the issuance, transfer or exchange under the Plan of New LLC Interests and (ii) the creation, modification, renewal, extension, amendment, or release of any Lien, mortgage, deed of trust, deed to secure debt, or any other document creating a security interest, in favor of the lenders under the Exit Facility, the New Senior Debt, and the New Sub Debt; and (e) the making or assignment of any lease or sublease.

**K. Section 1125(e) Good Faith Compliance.**

The Plan Proponents and their respective Representatives shall be deemed to have acted in “good faith” under section 1125(e) of the Bankruptcy Code.

**L. Further Assurances.**

The Plan Proponents, the SN Parties, the Senior Lenders, the Reorganized Debtors, all Holders of Claims and Equity Interests receiving Distributions hereunder, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**M. Service of Documents.**

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Plan Proponent, in addition to any direction of service of notice by any order, shall be sent by first class U.S. mail, postage prepaid as follows:

To the Debtors, as Plan Co-Proponent:

c/o Security National Properties  
323 Fifth Street  
Eureka, CA 95501 Attn: Mike Casey,  
Chief Executive Officer

*with a copy to:*

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market St., 16th Fl.  
Wilmington, DE 19801  
Attn: Gregory W. Werkheiser

To the Agent, as Plan Co-Proponent:

Bank of America, N.A.  
1 Financial Plaza  
RI-537-09-02  
Providence, RI 02903  
Attn: John A. McDonald

with a copy to:

Troutman Sanders LLP  
600 Peachtree St., Suite 5200  
Atlanta, GA 30308  
Attn: Jeffrey W. Kelley

**N. Filing of Additional Documents.**

On or before the Effective Date, the Plan Proponents may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**O. No Stay of Confirmation Order.**

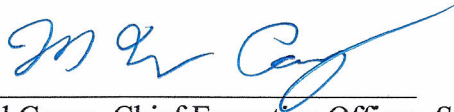
The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

*[signature on following page]*

Dated: August 22, 2014

Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

By: \_\_\_\_\_



Michael Casey, Chief Executive Officer, Security National Properties

Bank of America, as Agent for Senior Lenders

By: \_\_\_\_\_

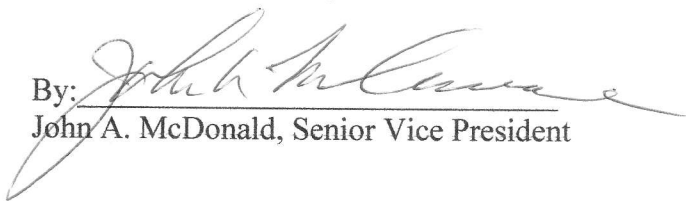
John A. McDonald, Senior Vice President

Dated: August 22, 2014

Security National Properties Funding III, LLC, ITAC 190, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, and Security National Properties-Alaska, LLC.

By: \_\_\_\_\_  
Michael Casey, Chief Executive Officer, Security National Properties

Bank of America, as Agent for Senior Lenders

By:   
John A. McDonald, Senior Vice President

**EXHIBIT A**  
**[Settlement Agreement]**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the “**Agreement**”) is dated as of August 12, 2014 and entered into pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). This Agreement is made by and among Security National Properties Funding III, LLC (“**SNPF III**”), Security National Properties Funding, LLC (“**SNPF**”), Security National Properties Funding II, LLC (“**SNPF II**”), Sequoia Investments III, LLC (“**Sequoia III**”), Sequoia Investments V, LLC (“**Sequoia V**”), Sequoia Investments XIV, LLC (“**Sequoia XIV**”), Sequoia Investments XV, LLC (“**Sequoia XV**”), Sequoia Investments XVIII, LLC (“**Sequoia XVIII**”), ITAC 190, LLC (“**ITAC**”), Security National Properties—Alaska, LLC (“**SNP Alaska**” and together with all of the foregoing entities, collectively, the “**Debtors**”), Security National Properties Holding Company, LLC (“**SNP Holding**”), Security National Properties Servicing Company, LLC (“**SNP Servicing**”), Robin P. Arkley (“**Arkley**” and together with the Debtors, SNP Holding, and SNP Servicing, the “**SN Parties**”), and Bank of America, N.A., in its capacity as agent to the Senior Lenders (as defined herein) (the “**Agent**”) and its capacity as a Senior Lender, Top Fund II, LLC, Banc of America Credit Products, and The Bank of East Asia, Limited – New York Branch (all parties referenced above, collectively, the “**Settling Parties**”).

### **RECITALS**

A. WHEREAS, on October 13, 2011 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) jointly administered under Case No. 11-13277 (KG) (the “**Chapter 11 Case**”). The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession. No trustee or examiner has been appointed in the Chapter 11 Case.

B. WHEREAS, on or about October 18, 2006, SNPF III, as borrower, the Agent, and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (as those terms are defined in the Prepetition Loan Agreement), entered into that certain Credit Agreement dated as of such date (the “**Prepetition Loan Agreement**”) together with other lender parties thereto from time to time (the “**Senior Lenders**”).

C. WHEREAS, as of the date hereof, the Senior Lenders consist of the following: Agent, The Bank of East Asia, Limited – New York Branch, Top Fund II, LLC, and Banc of America Credit Products.

D. WHEREAS, the Prepetition Loan Agreement provided for a revolving credit facility in the principal amount of \$200,000,000, of which \$159,991,940 in principal was owed to the Senior Lenders as of the Petition Date, and \$4,349,923.11 in accrued interest and other fees were owed to the Senior Lenders as of the Petition Date for a total claim against SNPF III as of the Petition Date of \$164,341,863.11 (the “**Prepetition Claim**”). The Agent filed in the Chapter 11 Case proofs of claim numbers 22-30, 120-28, and 137 with respect to the Prepetition Claim (the “**Agent POCs**”).



E. WHEREAS, the Debtors other than SNPF III and SNP Alaska (also known as “**Qualified Property Owners**” or “**QPOs**”) are guarantors of the obligations of SNPF III under the Prepetition Loan Agreement.

F. WHEREAS SNP Holding executed a limited guaranty of certain obligations of SNPF III under the Prepetition Loan Agreement.

G. WHEREAS, the QPOs, between them, own 33 predominantly commercial real estate properties as set forth more fully in the attached Exhibit “**A**” (the “**Properties**”).

H. WHEREAS, to secure the obligations of the Debtors owed under the Prepetition Loan Agreement and related guarantees, the Agent asserts that it holds properly perfected, first-priority liens on all of the Properties and other assets of the Debtors, other than SNP Alaska.

I. WHEREAS, pursuant to twenty-five interim orders entered in the Chapter 11 Case authorizing the use of cash collateral of the Senior Lenders (the “**Cash Collateral Orders**”), as of August 8, 2014, the Debtors have paid approximately \$20,458,970.74 in adequate protection payments to the Agent and/or the Senior Lenders as of the date of this Agreement (the “**Paid Adequate Protection Payments**”); provided, however, that Paid Adequate Protection Payments were made subject to the reservations stated in the applicable Cash Collateral Orders. The Paid Adequate Protection Payments and any subsequent adequate protection payments made pursuant to any further orders authorizing the use of cash collateral of the Senior Lenders or the terms of this Agreement are collectively referred to herein as the “**Adequate Protection Payments**”.

J. WHEREAS, pursuant to fifteen interim orders entered in the Chapter 11 Case authorizing the Debtors to obtain post-petition financing (the “**DIP Financing Orders**”), the Debtors have been authorized to obtain up to \$5,000,000 of principal in post-petition financing from SNP Holding (the “**DIP Facility**”). As of August 8, 2014, the Debtors have drawn approximately \$4,805,012.64 on the DIP Facility.

K. WHEREAS, on January 14, 2013, the Debtors filed their Third Amended Joint Chapter 11 Plan of Reorganization of Security National Properties Funding III, LLC and Its Debtor Affiliates [Dkt. No. 464] (the “**Debtor Plan**”). The Debtor Plan is currently not set for a hearing.

L. WHEREAS, on February 16, 2013, the Debtors filed in the Chapter 11 Case a preliminary objection to and request to estimate the Agent POCs [Dkt. No. 497] (the “**Claim Objection**”).

M. WHEREAS, no later than June 18, 2013, the exclusive period for the Debtors to file a plan of reorganization expired.

N. WHEREAS, on May 16, 2014, the Agent filed its Chapter 11 Plan of Reorganization of Security National Properties Funding III, LLC and Its Affiliated Debtors Filed by Bank of America, N.A., as Agent for Senior Lenders [Dkt. No. 875] (the “**Agent Plan**”) and related Disclosure Statement [Dkt. No. 876] (the “**Agent Disclosure Statement**”).

O. WHEREAS, on May 30, 2014, the Agent filed a motion to approve the Agent Disclosure Statement and certain notice and voting procedures related to the Agent Plan [Dkt. No. 886] (the “**Agent Procedures Motion**”). The Bankruptcy Court granted the Agent Procedures Motion by order dated July 30, 2014.

P. WHEREAS, a hearing on confirmation of the Agent Plan is currently scheduled for September 9, 2014.

Q. WHEREAS, the Settling Parties have concluded that because of, among other things, the complexity, inherent delay, and substantial expense of litigating the issues associated with the Debtor Plan, the Claim Objection, and the Agent Plan, the length of time, complexity, and uncertainty involved in the resolution of each of the issues presented therein, it is in their respective best interests to resolve their disputes and related matters on the terms set forth in this Agreement and as embodied in the Agreed Plan (defined below). The Debtors further believe that the compromise and settlement provided herein is fair and reasonable, and in the best interests of the Debtors, their respective estates, and their respective creditors.

**NOW, THEREFORE**, the Settling Parties, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows, subject to Bankruptcy Court approval:

## **ARTICLE I SETTLEMENT TERMS**

### Section 1.1. **Agreed Plan; Commitments of Settling Parties.**

(a) The Settling Parties hereby approve the joint plan of reorganization, of which the Settling Parties will be co-proponents, substantially in the form attached hereto as Exhibit “**B**” (the “**Agreed Plan**”). Promptly after execution of this Agreement by all of the Settling Parties, the Agent will file the Agreed Plan. To the fullest extent permissible under the Bankruptcy Code, Bankruptcy Rules and rules and procedures of the Bankruptcy Court, the Settling Parties hereby expressly consent to confirmation of the Agreed Plan, such consent being subject only to the occurrence of the Settlement Effective Date and the nonoccurrence of the Termination Date; *provided, however*, that the filing of the Agreed Plan and the Senior Lenders’ consent to confirmation of the Agreed Plan shall not be construed as a withdrawal of the Agent Plan, which shall be withdrawn only in the circumstances set forth in Section 1.1(b)

(b) Effective immediately upon the Settlement Effective Date, (i) the SN Parties shall be deemed to have withdrawn the Debtor Plan and shall promptly file a notice of withdrawal thereof on the docket of the Chapter 11 Case and (ii) the Agent shall be deemed to have withdrawn the Agent Plan and shall promptly file a notice of withdrawal thereof on the docket of the Chapter 11 Case.

(c) Effective immediately upon the Settlement Effective Date, subject to the terms and conditions of this Agreement and the terms and conditions set forth in the

Agreed Plan, each Senior Lender (severally and not jointly), on its behalf and on behalf of its controlled affiliates, agrees that:

(i) So long as it has been properly solicited pursuant to sections 1125 and 1126 of the Bankruptcy Code, each Senior Lender shall vote all claims now or hereafter beneficially owned by such Senior Lender or for which it now or hereafter serves as the nominee, investment manager or advisor for beneficial holders thereof, in favor of the Agreed Plan in accordance with the applicable procedures approved by the Bankruptcy Court, and timely return a duly executed ballot in connection therewith;

(ii) it shall not withdraw or revoke its tender, consent or vote with respect to the Agreed Plan (as applicable), except as otherwise expressly permitted pursuant to this Agreement; and

(iii) it shall negotiate in good faith the definitive documentation contemplated by this Agreement or otherwise necessary to effectuate the Agreed Plan and Refinancing Transactions, including, but not limited to the Disclosure Statement and Agreed Plan related documents.

(d) Effective immediately upon the Settlement Effective Date, subject to (x) the terms and conditions of this Agreement, (y) the terms and conditions set forth in the Agreed Plan, and (z) the Debtors' fiduciary duties under applicable law, each of the SN Parties agree to use their reasonable best efforts to:

(i) support and complete in good faith the Refinancing Transactions and all transactions contemplated under this Agreement, the Agreed Plan and other Agreed Plan related documents; and

(ii) take any and all necessary and appropriate actions in furtherance of the foregoing.

Section 1.2. **Allowance of Prepetition Claim; Withdrawal of Claim Objection.** Immediately upon the Settlement Effective Date, (i) the Prepetition Claim, as evidenced by the Agent POCs, shall be an allowed claim for all purposes in the Chapter 11 Case in an amount of no less than \$164,341,863.11 and as set forth in the Agreed Plan, and (ii) the Claim Objection shall be deemed withdrawn.

Section 1.3. **Adequate Protection Payments.** The Debtors shall continue making adequate protection payments on the terms set forth in the Cash Collateral Orders (4.5% interest rate on the outstanding principal balance of the Prepetition Claim, such balance to be reduced by the amount received pursuant to the Refinancing Transactions (as defined herein)) through the effective date of the Agreed Plan (the "**Agreed Plan Effective Date**"); *provided, however,* that (i) nothing in this Section 1.3 requires the Debtors to continue making adequate protection payments after the Termination Date (as defined herein) and (ii) if the Agreed Plan Effective Date has not occurred by December 31, 2014, the SN Parties may request that the Bankruptcy Court order that such adequate protection payments be discontinued (and the Senior Lenders may oppose any such request). Subject to the occurrence of the Settlement Effective Date, the Agent and/or the Senior Lenders shall be entitled to keep all Adequate Protection

Payments as post-petition interest and shall not be required to apply any Adequate Protection Payments to the Prepetition Claim, *provided, however*, that the Senior Lenders and the SN Parties shall retain all of their rights and defenses with respect to the Adequate Protection Payments in the event the Settlement Effective Date does not occur.

Section 1.4. **The Refinancing Transactions.** As contemplated in the Agreed Plan, and otherwise subject to the terms hereof, including, without limitation, Section 1.5, the Debtors shall have the option to pay the Prepetition Claim on the following terms:

(a) No later than October 9, 2014, the Agent shall be paid no less than a total of \$151.342 million cash from proceeds of the following transactions (the **“Refinancing Transactions”**):

(i) The refinancing (the **“Primary Transaction”**) of the twenty-eight (28) Properties identified on Exhibit **“C”** hereto (the **“Primary Parcels”**), which involves *inter alia* (A) the transfer by the current Debtor owners thereof of the Primary Parcels to certain newly created special purpose entities that are or will be at closing direct or indirect subsidiaries of an SN Party, and (B) a loan to be made by Colony Capital Acquisitions, LLC and/or one or more affiliates thereof, or a comparable lender (such lender(s), the **“Primary Lender”**), in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$124.792 million cash;

(ii) The refinancing (the **“Secondary Transaction”**) of the five (5) Properties referred to as the Alliance Bank Center, Hobby Lobby, Orchards Mall, Greenville Mall, and Heartland Mall (the **“Secondary Parcels”**), which involves *inter alia* (A) the transfer by the current Debtor owners thereof of the Secondary Parcels to certain newly created special purpose entities that are or will be at closing affiliates of an SN Party, and (B) a loan to be made by Calmwater Capital 3, LLC, and/or one or more affiliates thereof, or a comparable lender (such lender(s), the **“Secondary Lender,”** and collectively with the Primary Lender, the **“Refinancing Lenders”**), in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$24.75 million cash; and

(iii) The sale (the **“Soup Lots Sale”**) of the lots commonly referred to by the Settling Parties as the “Soup Lots” in an amount sufficient to generate proceeds that are paid to the Agent no less than approximately \$1.8 million cash.

The Properties comprising the Primary Parcels, the Secondary Parcels and the Soup Lots are sometimes referred to herein collectively as the **“Refinanced Parcels”** and individually as a **“Refinanced Parcel.”**

For the avoidance of doubt, the description of the Refinancing Transactions is not intended to limit the Debtors’ ability to raise the funds to pay the \$151.342 million to the Agent through other transactions so long as (1) such transactions involve all of the Refinanced Parcels, and (2) payment of \$151.342 million cash is made to the Agent by October 9, 2014.

(b) Notwithstanding any other provisions of this Agreement or the Agreed Plan, the Primary Transaction shall not close prior to the Secondary Transaction or the Soup Lots Sale. So long as the SN Parties are not then in material default of any of their

obligations under this Agreement and the Termination Date has not occurred, the Soup Lots Sale may close any time prior to October 9, 2014, whether or not the Settlement Effective Date has occurred, provided that proceeds of no less than approximately \$1.8 million are paid to the Agent at closing of the Soup Lots Sale.

(c) With respect to all valid claims against the Debtors of any kind relating to the Refinanced Parcels that are outstanding as of the date of closing of any of the Refinancing Transactions (including, without limitation, any obligation, liability, or claim that exists or may arise in connection with any executory contracts or unexpired leases (as those terms are used in the Bankruptcy Code)) (the “**Refinancing Claims**”), at or prior to the closing of each of the Refinancing Transactions, the SN Parties shall, to the reasonable satisfaction of the Senior Lenders, either (x) satisfy all such Refinancing Claims that were incurred in connection with the ownership or operation of the Refinanced Properties at issue in such Refinancing Transaction so that such Refinancing Claims are no longer claims against any of the Debtors or their estates, and/or (y) place in escrow with a reputable financial institution that is not an affiliate of any of the SN Parties or any of the Senior Lenders an amount sufficient to pay any unsatisfied Refinancing Claims (the “**Refinancing Escrow**”). The Refinancing Escrow shall be used only to pay any unsatisfied Refinancing Claims pursuant to (1) the Agreed Plan, or (2) an order of the Bankruptcy Court approving such payment. All claims (as defined in section 101(15) of the Bankruptcy Code) relating to a Property included in a Refinancing Transaction that are incurred after the closing of a transaction including such Property shall not be liabilities of the Debtors or any of their respective estates.

(i) Any Potentially Assumable Refinancing Claim (as defined herein) shall be deemed satisfied in accordance with clause (x) of the first sentence of the foregoing Section 1.4(c) if (A) such Potentially Assumable Refinancing Claim is assumed by the non-Debtor entity that will acquire the Refinanced Parcel to which the Refinancing Claim relates, (B) the assumption by such non-Debtor entity of such Potentially Assumable Refinancing Claim is approved by an Order of the Bankruptcy Court; and (C) the assumption by such non-Debtor entity of such Potentially Assumable Refinancing Claim is approved by the Refinancing Lender for the related Refinancing Transaction in a signed writing that identifies the Potentially Assumable Refinancing Claim to the reasonable satisfaction of such Refinancing Lender. As used herein, the term “**Potentially Assumable Refinancing Claim**” means as to a Refinanced Parcel (1) any claim relating to a security deposit received from a tenant or subtenant for a lease or sublease relating to such Refinanced Parcel and any interest earned thereon required to be paid to any tenant or subtenant pursuant to the applicable lease or applicable law; (2) any real estate taxes or assessments with respect to a Refinanced Parcel or rents therefrom that are not yet due and payable at closing of the Refinancing Transaction; (3) any tenant allowance or capital expenditure cost required under any lease or sublease relating to a Refinanced Parcel solely with respect to any services or labor not yet fully performed or goods or materials not yet received; and (4) any unsecured amount incurred for or in respect of the operation of a Refinanced Parcel in the ordinary course and that would under applicable accounting principles be regarded as an ordinary expense (including amounts payable to suppliers, vendors, contractors, mechanics, materialmen or other persons or entities providing property or services to or for the Refinanced Parcels and the capitalized amount of any ordinary-course financing leases), but only to the extent that such unsecured amount (A) is not represented by a note, (B) is customarily paid within 60 days of incurrence and is in fact not more than 60

days outstanding, (C) is in an amount reasonable and customary for a similar property, and (D) together with all similar claims described in this Section 1.4(c)(i)(4) owing by the relevant non-Debtor affiliates of all Refinanced Parcels involved in any Refinancing Transaction, in the aggregate, do not exceed two percent (2.0%) of the unpaid principal balance of the loan made in connection with such Refinancing Transaction.

(ii) Any Refinancing Claim shall be deemed satisfied in accordance with clause (x) of the first sentence of the foregoing Section 1.4(c) if the Agreed Plan provides for payment to the holder of such Refinancing Claim of 100% of the face amount of such Refinancing Claim (without postpetition interest, fees and charges, if such Refinancing Claim is an unsecured nonpriority claim) and the Agreed Plan provides for reserve(s) to be established and funded in an amount sufficient to make required distributions under the Agreed Plan on account of Refinancing Claims that are likely to become allowed unsecured nonpriority claims under the Agreed Plan.

(d) At each closing of the Refinancing Transactions, the principal amount of the Prepetition Claim will be credited in the amount of the proceeds actually received by the Agent without reduction for any fees, charges or other amounts that the Agent may deduct from such proceeds before distribution to the Senior Lenders.

(e) At or before, and as a condition to, each closing of the Primary Transaction and the Secondary Transaction, each SN Party shall execute an agreement in the form attached hereto as Exhibit “**D**” (the “**Net Proceeds Covenant**”), pursuant to which the applicable SN Party shall covenant and agree that, until the Deficiency Note is paid in full, such SN Party shall immediately deliver any Net Proceeds it receives relating to the Refinanced Parcels that are included in such Refinancing Transaction to the Agent for application to the obligations in accordance with the terms of the Deficiency Note, regardless of when such Net Proceeds arise or are payable (the “**Refinancing Net Proceeds**”); *provided further*, that, in the event that ownership of a Refinanced Parcel is transferred to a third party that is not an SN Party or any affiliate of an SN Party in connection with any such transaction, the obligation to pay to the Agent any Refinancing Net Proceeds with respect to such Refinanced Property shall apply only to the extent any Refinancing Net Proceeds are received by or payable to an SN Party or any affiliate of an SN Party. For the avoidance of doubt, (i) nothing in this Section 1.4(e) or any Net Proceeds Covenant is intended to or shall create a recordable lien (as defined in section 101(37) of the Bankruptcy Code) in favor of the Agent or other Senior Lenders with respect to the Net Proceeds, and (ii) in no event shall the defined term “SN Party” include any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or SNP Holding).

(f) In exchange for the receipt of the proceeds specified in Section 1.4(a) hereof and the applicable SN Party’s execution of the Net Proceeds Covenant (with respect to the Refinancing Transaction), the Agent will release the Senior Lenders’ liens on the Refinanced Parcels included in such Refinancing Transaction.

(g) “**Net Proceeds**” shall mean any of the following:

(i) With respect to any incurrence of indebtedness for borrowed money, the aggregate amount of all cash proceeds (less only reasonable and necessary closing costs, any payments required to be made to a lender, servicer, or other non-affiliated third party in the applicable Refinancing Transaction and any reserves or escrows required to be maintained under the Refinancing Transaction or otherwise and funded out of the Refinancing Transaction or otherwise, and, in the case of any refinancing, less the proceeds applied to the repayment of the indebtedness so refinanced) received by the respective SN Party or affiliate thereof from the respective incurrence of such indebtedness for borrowed money. For the avoidance of doubt, nothing in this paragraph shall limit the ability of a Refinancing Lender (other than an SN Party or an affiliate thereof) to recover any origination, exit, yield maintenance, prepayment and/or structuring fees, out-of-pocket closing costs or similar amounts to which it is contractually entitled under the loan documents (including any term sheet, commitment letter or fee letter) for such Refinancing Lender's Refinancing Transaction;

(ii) With respect to any equity issuance, sale, or capital contribution, the aggregate amount of all cash proceeds received by such party in respect of such equity issuance net of reasonable and necessary third party investment banking fees, legal fees, accountants' fees, underwriting discounts and commissions, and other reasonable, customary, and actual third-party out-of-pocket fees and expenses actually incurred by such party in connection with such equity issuance, sale, or capital contribution and not payable to any SN Party or affiliate of an SN Party;

(iii) With respect to any asset sale, the aggregate amount of all cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable, subsequent liquidation to cash of any non-cash proceeds received in respect of such asset sale, or otherwise, but only as and when received and only to the extent permitted hereby) received from such asset sale net of (A) the actual and reasonable out-of-pocket costs of such sale customarily paid for by the seller in the local area (including reasonable, customary, and actual out-of-pocket fees and commissions paid to third parties), (B) payments of certain unassumed liabilities relating to the assets sold and (C) required payments or prepayments of any indebtedness which is secured by the respective assets which were sold); *provided, however*, that (x) aggregate fees and commissions shall not exceed 5% of gross sales price; (y) all other deductions from gross proceeds shall otherwise be reasonably acceptable to the Agent, and (z) no deductions from gross proceeds shall be payable to any SN Party or affiliate of an SN Party; and

(iv) Notwithstanding anything to the contrary in subsections (i), (ii) and (iii) immediately above and without limiting any other exclusions from the definition of "Net Proceeds," the term "Net Proceeds" does not include any cash or cash equivalents actually paid or required to be paid to a Refinancing Lender, including, but not limited to, (A) any net cash flows from a Refinanced Parcel or any cash proceeds, in either case, applied or required to be applied to the indebtedness owed to a Refinancing Lender, (B) capital contributions made as an equity cure of any default under the terms of any indebtedness for borrowed money owed to a Refinancing Lender, (C) proceeds of an asset sale paid or required to be paid to a Refinancing Lender, (D) insurance proceeds or condemnation proceeds applied or required to be applied to the indebtedness owed to a Refinancing Lender or the repair or restoration of a Refinancing Parcel, and (E) rents or other amounts paid for use or occupancy of a Refinanced Parcel that are applied or required to be applied to indebtedness owed to a Refinancing Lender. For the

avoidance of doubt, the failure of any SN Party or affiliate thereof to pay, remit or turn over cash or cash equivalents to a Refinancing Lender in violation of the terms of such Refinancing Lender's loan and/or security documents shall not, without more, cause such cash or cash equivalents to become "Net Proceeds".

For the avoidance of doubt, a fixed management fee payable to an SN Party in an amount approved as reasonable by a third-party lender shall not be considered Net Proceeds, *provided, however,* that the management fee shall not exceed 5% of gross revenues of Properties managed by such SN Party, plus market rate fees for construction management and leasing commissions; *provided further, however,* that in the event there is no initial third-party lender with respect to a Refinanced Parcel managed by an SN Party, any management fee for such Refinanced Parcel must be approved by the holder of the Deficiency Note (defined below), the approval of which shall not be unreasonably withheld.

For the further avoidance of doubt, the Primary Lender (as to the Primary Transaction) and the Secondary Lender (as to the Secondary Transaction) are intended third party beneficiaries of this "Net Proceeds" definition and shall have standing to enforce any limitation or exclusion on what cash or cash equivalents are "Net Proceeds" received by, intended to be received by or entitled to be received by any owners of the Refinanced Parcels and the direct equity owners of such entities (other than Arkley or SNP Holding).

Section 1.5. **The Deficiency Note; Guaranty of Deficiency Note.**

(a) As a condition to closing either the Primary Transaction or the Secondary Transaction, SNP Holding shall execute a note in favor of the Agent for the benefit of the Senior Lenders to be delivered to the Agent prior to closing either the Primary Transaction or the Secondary Transaction, in the form attached hereto as Exhibit "**E**" (the "**Deficiency Note**") for the expected remaining balance of the Prepetition Claim after closing of the Refinancing Transactions, in the amount of approximately \$13 million (with the amount to be fixed based upon the aggregate amount actually paid to the Agent from the proceeds of the Refinancing Transactions), with the following terms:

- (i) 6 year term;
- (ii) Interest shall PIK monthly until the end of the 6 year term at 5% per annum;
- (iii) Balance (which shall be adjusted to account for the actual proceeds of the Refinancing Transactions that have been or may be received by the Agent) due at maturity;
- (iv) Any and all Net Proceeds shall be paid to the Agent until the Deficiency Note is paid in full (for the avoidance of doubt there shall be no distributions of Net Proceeds to the SN Parties or any affiliated persons or entities (other than the owners of the Refinanced Parcels and the direct equity owners of such entities (other than Arkley or SNP Holding)) from the Refinanced Parcels until the Deficiency Note is paid in full); and



(v) All other terms shall be to the reasonable satisfaction of the Senior Lenders.

(b) As a condition to closing either the Primary Transaction or the Secondary Transaction, Arkley, in his individual capacity, shall execute (i) a guaranty of payment of the outstanding balance of the Deficiency Note at its maturity on or about, but in no event prior to October 9, 2020, (ii) a “bad boy” guaranty and (iii) a guaranty of payment of Net Proceeds, in the form of the Guaranty attached hereto as Exhibit “**F**,” to be delivered to the Agent prior to closing either the Primary Transaction or the Secondary Transaction. The guarantees provided for in this section are referred to as the “**Arkley Guaranty**.”

(c) For the avoidance of doubt, if upon the occurrence of the Agreed Plan Effective Date, the Agreed Plan will be implemented through the Lender Confirmation Option (as defined in the Agreed Plan), then (i) the Settling Parties shall not be required to close the Primary Transaction or the Secondary Transaction and such closings will proceed, if at all, in the sole discretion of the Settling Parties, and (ii) the SN Parties shall be under no obligation to execute or deliver to the Agent the Deficiency Note, the Arkley Guaranty or the Net Proceeds Covenants.

Section 1.6. **Management Fee.** SNP Servicing shall continue to receive a management fee in the amount of \$350,000 per month until the Agreed Plan Effective Date. If for any reason the Agreed Plan Effective Date occurs without all of the Refinancing Transactions closing prior to or substantially contemporaneous with the Agreed Plan Effective Date, then the Settling Parties shall confer in good faith to agree on an appropriate Management Fee for any Properties that have not become Refinanced Parcels.

Section 1.7. **Costs Not Borne By Estate.** None of the SN Parties’ costs, including, without limitation, due diligence costs and professional fees, related to the Refinancing Transactions, the Deficiency Note, or the Arkley Guaranty, will be borne by the Debtors; *provided, however*, the administrative expenses of the bankruptcy cases shall continue to be paid by the Debtors, including the professional fees and expenses of Debtors’ professionals (including Debtors’ counsel fees and expenses incurred in connection with documenting this Agreement and the Agreed Plan and in seeking Bankruptcy Court approval of the forgoing and relief in connection with the Refinancing Transactions), Garden City Group fees as the claims and noticing agent for the Chapter 11 Case, and statutory quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

Section 1.8. **Access to Due Diligence.** Upon execution of such reasonable non-disclosure agreement as may be required, the SN Parties shall provide to the Senior Lenders a copy of all due diligence materials provided by the SN Parties, or any of them, to any potential lending sources with respect to the Refinancing Transactions.

Section 1.9. **Satisfaction of Prepetition Claim.** Notwithstanding anything to the contrary in this Agreement (including the Agreed Plan and all exhibits hereto), the Prepetition Claim shall be fully satisfied, released and discharged when each of the following have occurred (the “**Prepetition Claim Satisfaction Date**”) (a) the Agreed Plan Effective Date, (b) the Agent has received all Net Proceeds from the Refinancing Transactions in an amount no less than

\$151.342 million, and (c) the Deficiency Note, Arkley Guaranty and Net Proceeds Covenants have been fully executed and delivered to the Agent.

Section 1.10. **Settlement Obligation Satisfaction Date.** For the avoidance of doubt, subject to the occurrence of the Prepetition Claim Satisfaction Date, from and after the date (the “**Settlement Obligation Satisfaction Date**”) of repayment in full of all principal and interest due and owing under the Deficiency Note, (a) the Deficiency Note shall be deemed discharged, released and satisfied, (b) the Arkley Guaranty shall be deemed discharged, released and satisfied, (c) the Senior Lenders shall have no further rights or interest pursuant to the Net Proceeds Covenants or otherwise in Net Proceeds and (d) the SN Parties shall have no further obligation to pay over Net Proceeds to the Agent or any Senior Lender.

## ARTICLE II RELEASES

Section 2.1. **Releases of the Senior Lenders.** Effective as of the Settlement Effective Date (as defined below), and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, to the fullest extent permissible under the Bankruptcy Code and legal precedents governing the Bankruptcy Court, the SN Parties, including the Debtors’ estates, for and on behalf of themselves and each of their respective subsidiaries and affiliates, the predecessors, successors, and assigns of any of them, and any other person that claims or might claim through, on behalf of or for the benefit of any of the foregoing, whether directly or derivatively (collectively, the “**SN Party Releasers**”) shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the Agent and the Senior Lenders, their respective past or present parent entities, subsidiaries, affiliates, directors, officers, employees, professionals, and the predecessors, successors, and assigns of any of them (collectively, the “**Senior Lender Releasees**”) from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character, or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the SN Party Releasers, or any of them, or anyone claiming through them, on their behalf or for their benefit, have or may have or claim to have, now or in the future, against any Senior Lender Releasee that in any way arise in, relate to, or are in connection with the Prepetition Loan Agreement or the Chapter 11 Case. Notwithstanding anything contained in this Section 2.1 or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Senior Lender Releasees from the performance of their obligations in accordance with this Agreement and the Agreed Plan.

Section 2.2. **Releases of SN Parties.** Notwithstanding anything to the contrary in this Agreement, effective as of the Settlement Obligation Satisfaction Date, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, to the fullest extent permissible under the Bankruptcy Code and legal precedents governing the Bankruptcy Court, Agent and the Senior Lenders, for and on behalf of themselves and each of their respective subsidiaries and affiliates, the predecessors, successors, and assigns of any of them, and any other person that claims or might claim through, on behalf of or for the benefit of any of the foregoing, whether directly or derivatively

(collectively, the “**Senior Lender Releasers**”) shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the SN Parties (including the Debtors’ estates), their respective past or present parent entities, subsidiaries, affiliates, directors, officers, employees, professionals, and the predecessors, successors, and assigns of any of them (collectively, the “**SN Party Releasees**”) from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character, or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the Senior Lender Releasers, or any of them, or anyone claiming through them, on their behalf or for their benefit, have or may have or claim to have, now or in the future, against any SN Party Releasee that in any way arise in, relate to, or are in connection with the Prepetition Loan Agreement, the Chapter 11 Case, the Prepetition Claim, the Deficiency Note, the Arkley Guaranty, the Properties, or the proceeds of the Properties. Notwithstanding anything contained in this Section 2.2 or elsewhere to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the SN Party Releasees from the performance of their obligations in accordance with this Agreement and the Agreed Plan.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Section 3.1. **Representations and Warranties of the SN Parties.** The SN Parties hereby represent and warrant that: (a) they are duly organized and validly existing under the laws of the jurisdiction of organization with all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (b) subject to any necessary approval by the Bankruptcy Court, they have full requisite power and authority to execute and deliver this Agreement and to perform their obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by them in connection herewith, (i) have been duly and validly authorized by them and (ii) are not in contravention of their organization documents or any material agreement specifically applicable to them or to which they are a party; (c) to the best of their actual knowledge, no proceeding, litigation or adversary proceeding before any court, arbitrator, or administrative or governmental body is pending against them which would adversely affect their ability to enter into this Agreement or to perform their obligations hereunder; and (d) they, directly or indirectly, and subject to approval by the Bankruptcy Court, have the power and authority to bind themselves to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on their behalf.

Section 3.2. **Representations and Warranties of the Senior Lenders.** The Senior Lenders hereby represent and warrant that: (a) they are duly organized and validly existing under the laws of the jurisdiction of organization with all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (b) subject to any necessary approval by the Bankruptcy Court, they have full requisite power and authority to execute and deliver this Agreement and to perform their obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by them in connection herewith, (i) have been duly and validly authorized by them and (ii) are not in contravention of their organization documents or any

material agreement specifically applicable to them or to which they are a party; (c) to the best of their actual knowledge, no proceeding, litigation or adversary proceeding before any court, arbitrator, or administrative or governmental body is pending against them which would adversely affect their ability to enter into this Agreement or to perform their obligations hereunder; and (d) they, directly or indirectly, and subject to approval by the Bankruptcy Court, have the power and authority to bind themselves to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on their behalf.

Section 3.3. **Representations of the Settling Parties.** Each Settling Party represents and acknowledges that: (a) in executing this Agreement, it does not rely, and has not relied, upon any representation or statement made by any other party or any of such other party's representatives, agents, or attorneys, with regard to the subject matter, basis, or effect of this Agreement or otherwise, other than as may be stated specifically in this Agreement; (b) in executing this Agreement, it has relied entirely upon its own judgment, beliefs, and interest and upon the advice of its counsel and that it has had a reasonable period of time to consider the terms of this Agreement before entering into it; and (c) it has reviewed this Agreement and that it fully understands and voluntarily accepts all of the provisions contained herein. Each Settling Party further represents, acknowledges, and agrees that this Agreement was the product of negotiations among the Parties and that any rule of construction as to ambiguities being resolved against the drafting party shall not apply in the interpretation of this Agreement.

#### **ARTICLE IV COVENANTS**

Section 4.1. **Covenants of the Settling Parties.** The Settling Parties each hereby covenant and agree that they shall support, and shall not object to or otherwise take any action (or cause any parent, subsidiary, or affiliate to take any action) to impede or preclude, approval of (i) any disclosure statement or procedures order filed in connection with the Agreed Plan, (ii) the entry of an order, in form and substance reasonably satisfactory to the Settling Parties, confirming the Agreed Plan, and (iii) the consummation, implementation, and administration of the Agreed Plan, provided that the Agreed Plan (and its consummation, implementation, and administration) and any related disclosure statement or procedures order are consistent with the terms herein.

Section 4.2. **Covenants of the SN Parties.** The SN Parties hereby covenant and agree as follows:

(a) That promptly after the execution of this Agreement by all Settling Parties, the Debtors shall seek Bankruptcy Court approval and entry of an order approving the terms hereof as a compromise pursuant to Bankruptcy Rule 9019 (the "**9019 Motion**"), provided that the Debtors must file a 9019 Motion and request the Bankruptcy Court to set such motion for a hearing to be held no later than August 22, 2014, or as soon thereafter as the Bankruptcy Court will hear the 9019 Motion.

Section 4.3. **Covenants of the Senior Lenders.** The Agent and the Senior Lenders hereby covenant and agree that they shall support, and otherwise take no action to impede or preclude, the closing of the Refinancing Transactions, or approval of the 9019 Motion,

provided that such Refinancing Transactions and 9019 Motion are consistent with the terms herein.

**ARTICLE V**  
**EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

Section 5.1. **Effective Date.** This Agreement shall become effective on the first date on which each of the following has occurred (the “**Settlement Effective Date**”):

(a) **Execution.** This Agreement has been fully executed; and

(b) **9019 Order.** The Bankruptcy Court enters an order, which order shall be in form and substance reasonably satisfactory to the Agent, the Senior Lenders, and the SN Parties, approving the terms of this Agreement in accordance with Bankruptcy Rule 9019 (the “**9019 Order**”), neither the operation nor effect of which has been reversed, stayed, modified, or amended (a “**Final Order**”). For the avoidance of doubt, for the purpose of this Agreement, the 9019 Order may be a Final Order notwithstanding that the applicable time period has not elapsed during which a person or entity may timely file a notice of appeal, file a motion of the type specified in Bankruptcy Rule 8002(b), or file a motion for a stay pending appeal.

Section 5.2. **Termination Date.**

(a) If the Debtors fail to file a 9019 Motion and to request the Bankruptcy Court to set such 9019 Motion for a hearing to be held no later than August 22, 2014, or if the Settlement Effective Date has not occurred by the later of (x) August 29, 2014 and (y) seven (7) calendar days after the hearing on the 9019 Motion concludes, unless such dates are extended by a writing signed by all Settling Parties (the “**Termination Date**”), then this Agreement shall become null and void, subject to and in accordance with Section 5.3 below, and the Settling Parties shall be returned to the status *quo ante* as if this Agreement had never been executed.

(b) If the Bankruptcy Court does not enter the Final Orders, or if the Bankruptcy Court enters a Final Order and appellate review is sought and, on such review, the entry of the Final Order is finally vacated, modified or reversed, then this Agreement and the settlement incorporated herein shall be cancelled and terminated, unless all parties who are adversely affected thereby, in their sole discretion within ten (10) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the settlement under the terms of the Final Order as modified by the Bankruptcy Court or on appeal; ***provided, however,*** that no order of the Bankruptcy Court concerning any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party which is not adversely affected by any such modification or reversal.

Section 5.3. **Effect of Termination.** Unless otherwise ordered by the Bankruptcy Court, in the event that this Agreement shall not become effective on or prior to the Termination Date or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the settlement as described herein is not approved by the Bankruptcy Court or the Final Order is reversed or

vacated following any appeal taken therefrom, then:

(a) to the extent reasonably practicable, the Settling Parties shall be restored to their respective positions as of the date of this Agreement with all of their respective claims and defenses, preserved as they existed on that date. The Settling Parties shall take such steps and file such documents as are necessary to cause such claims and defenses to be restored;

(b) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in any action or proceeding for any purpose; and

(c) any judgment or order entered by the Bankruptcy Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

## ARTICLE VI NO ADMISSIONS

Section 6.1. **No Admissions.** The Settling Parties intend this Agreement and the settlement described herein to be a final and complete resolution of all disputes between them with respect to the Chapter 11 Case, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense with respect to these claims.

Section 6.2. **Agreement Inadmissible.** Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement is, or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Settling Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purpose, except to seek approval of or to enforce the terms of the settlement.

Section 6.3. **Recitals Not Binding.** In the event that the settlement is terminated, does not receive preliminary or final Bankruptcy Court approval or the Settlement Effective Date does not occur, the recitals set forth in the agreement shall not constitute binding admissions, statements against interest or be admissible as evidence in any proceedings between or involving one or more of the Settling Parties to establish any fact, waiver, estoppel, contention, assertion or allegation of any kind or nature whatsoever.

## ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.1. **Good Faith.** The Settling Parties agree that the Agreement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with each of the Settling Parties' representative competent legal counsel.

Section 7.2. **Integration.** Any exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

Section 7.3. **Amendments.** This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties, as the case may be, or their respective successors-in-interest.

Section 7.4. **Authority.** Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

Section 7.5. **Counterparts.** This Agreement may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Bankruptcy Court.

Section 7.6. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the successors of the Settling Parties hereto, including any corporation or other entity into or with which any Settling Party merges, consolidates or reorganizes.

Section 7.7. **Transfer of Agent / Senior Lender Claims.** Effective from and after the date it executes this Agreement, the Agent and each Senior Lender agrees that until the occurrence of the Termination Date, it shall not sell, assign, transfer, convey, pledge, hypothecate or otherwise dispose of, directly or indirectly (each such transfer, a "**Transfer**") its share of, rights to or interests in (including any voting rights associated with the foregoing) the Prepetition Claim, the Agent POCs, any Obligations (as defined in the Prepetition Loan Agreement), or any distribution (or expectancy thereof) under the Prepetition Loan Agreement unless the transferee thereof (i) agrees in writing to assume and be bound by this Agreement, and to assume the rights and obligations of such Senior Lender under this Agreement and (ii) promptly delivers such writing to the SN Parties. Any Transfer by the Agent or any Senior Lender that does not comply with the procedure set forth in the first sentence of this Section 7.7 shall be deemed void *ab initio*.

Section 7.8. **Jurisdiction.** The United States Bankruptcy Court for the District of Delaware shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of such Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in this Agreement. The Settling Parties expressly reserve their jurisdictional rights to any action, suit or proceeding commenced outside the terms of this Agreement.

Section 7.9. **Further Assurances.** Each of the Settling Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Settling Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

Section 7.10. **Governing Law.** This Agreement and any exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Delaware, and the rights and obligations of the parties to this Agreement shall be

construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Delaware without giving effect to that state's choice of law principles.

Section 7.11. **Entire Agreement.** This Agreement (together with the Exhibits hereto) constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any Settling Party concerning this Agreement or any of its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each Settling Party or believed by such Settling Party to be true; each Settling Party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

Section 7.12. **Anticipated Schedule for Bankruptcy Court Proceedings.** The Settling Parties agree to the best of their ability, taking into account any scheduling limitations the Bankruptcy Court may have, to adhere to the following schedule in connection with implementing this Agreement and the transactions it contemplates:

DATE	EVENT
August 22, 2014, or as soon thereafter as the Bankruptcy Court will hear such matters if the Debtors have requested theme to be heard on August 22, 2014.	If 9019 Motion, Agreed Plan and related disclosure statement have been filed, hearing date for (i) approval of disclosure statement and related solicitation procedures in connection with Agreed Plan and (ii) approval of Soup Lots Sale; <i>provided, however</i> , that any order approving the Soup Lots Sale shall provide that authority to consummate the Soup Lots Sale is subject to occurrence of the Settlement Effective Date.
The later of September 2, 2014, and three (3) business days' after the SN Parties have received written notice from the Agent of the occurrence of the Termination Date.	SN Parties' deadline to object to confirmation of Agent Plan if the Agent Plan is not deemed withdrawn pursuant to this Agreement.
September 9, 2014	Hearing date for confirmation of Agent Plan if (i) the Termination Date has occurred, or (ii) the Agreed Plan and related disclosure statement were not filed.
September 24, 2014 (Approx.), or as soon thereafter as the Bankruptcy Court will hear such matters (such hearing, the " <u>Agreed Plan and Refinancing Transaction Hearing</u> ")	Target hearing date (not yet scheduled) for (i) hearing to confirm Agreed Plan and (ii) approval of Property transfers in connection with Primary Transaction and Secondary Transaction.



In the event that the Bankruptcy Court is unwilling or unable to schedule hearings as anticipated by the foregoing schedule, the Settling Parties agree to extend the October 9, 2014 deadline in this Agreement as necessary to afford the SN Parties fifteen (15) calendar days from the conclusion of the Agreed Plan and Refinancing Transaction Hearing to consummate the Refinancing Transactions and pay cash proceeds thereof to the Agent in the approximate amount not less \$151.342 million; *provided, however*, that the October 9, 2014 deadline shall not be extended beyond October 22, 2014 without the further written agreement of the Senior Lenders.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date set forth above.

BANK OF AMERICA, N.A., Agent

By: 

Name: John A. McDonald

Title: Senior Vice President

TOP FUND II, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE BANK OF EAST ASIA, LIMITED –  
NEW YORK BRANCH

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BANC OF AMERICA CREDIT PRODUCTS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date set forth above.

BANK OF AMERICA, N.A., Agent

By: \_\_\_\_\_  
Name: John A. McDonald  
Title: Senior Vice President

TOP FUND II, LLC

By: JMello  
Name: Jennifer Mello  
Title: Vice President

THE BANK OF EAST ASIA, LIMITED –  
NEW YORK BRANCH

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANC OF AMERICA CREDIT PRODUCTS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.


BANK OF AMERICA, N.A., Agent

By: \_\_\_\_\_  
Name: John A. McDonald  
Title: Senior Vice President


TOP FUND II, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE BANK OF EAST ASIA, LIMITED –  
NEW YORK BRANCH

By:  \_\_\_\_\_  
Name: ANTHONY WONG  
Title: SVP

THE BANK OF EAST ASIA, LIMITED –  
NEW YORK BRANCH

By:  \_\_\_\_\_  
Name: KITTY SIN  
Title: SVP

BANC OF AMERICA CREDIT PRODUCTS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date set forth above.

BANK OF AMERICA, N.A., Agent

By: \_\_\_\_\_  
Name: John A. McDonald  
Title: Senior Vice President


TOP FUND II, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

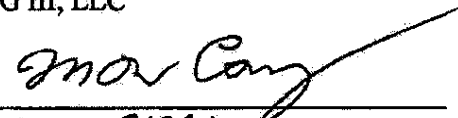
THE BANK OF EAST ASIA, LIMITED –  
NEW YORK BRANCH

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

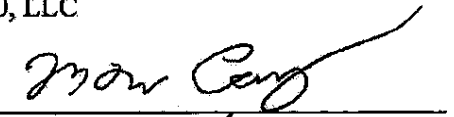
BANC OF AMERICA CREDIT PRODUCTS

By:  \_\_\_\_\_  
Name: **SETH DENSON**  
Title: **VICE PRESIDENT**

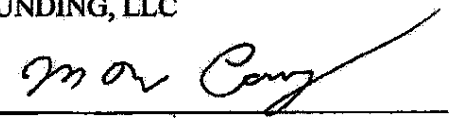
SECURITY NATIONAL PROPERTIES  
FUNDING III, LLC

By:   
Name: M W CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

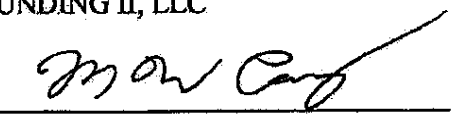
ITAC 190, LLC

By:   
Name: M W CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

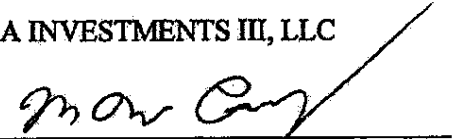
SECURITY NATIONAL PROPERTIES  
FUNDING, LLC

By:   
Name: M W CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SECURITY NATIONAL PROPERTIES  
FUNDING II, LLC

By:   
Name: M W CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SEQUOIA INVESTMENTS III, LLC

By:   
Name: M W CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SEQUOIA INVESTMENTS V, LLC

By:   
Name: MW CASBY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SEQUOIA INVESTMENTS XIV, LLC

By:   
Name: MW CASBY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SEQUOIA INVESTMENTS XV, LLC

By:   
Name: MW CASBY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

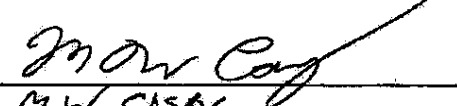
SEQUOIA INVESTMENTS XVIII, LLC

By:   
Name: MW CASBY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC


SECURITY NATIONAL PROPERTIES-  
ALASKA, LLC

By:   
Name: MW CASBY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

SECURITY NATIONAL PROPERTIES  
HOLDING COMPANY, LLC

By:   
Name: M.W. CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

SECURITY NATIONAL PROPERTIES  
SERVICING COMPANY, LLC

By:   
Name: M.W. CASEY  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

---

Robin P. Arkley, Individually



SECURITY NATIONAL PROPERTIES  
HOLDING COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

SECURITY NATIONAL PROPERTIES  
SERVICING COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title: Executive Vice President Real Estate of  
Security National Master Manager, LLC

  
\_\_\_\_\_  
Robin P. Arkley, Individually

**Exhibit "A"****Properties**

<b><u>Debtor</u></b>	<b><u>Asset Name</u></b>	<b><u>Address</u></b>	<b><u>Prop Type</u></b>
ITAC 190, LLC	Guilford	2306 Meadowview Road Greensboro, NC	Office
Security National Properties Funding, LLC	Central Park/Plaza Park Fair	222 S. 15th Street & 201 S. 16th Street Omaha, NE	Office
Security National Properties Funding, LLC	Alliance Bank Center, f/k/a Fifth Street (Norwest Tower)	55 E 5TH Street & 56 E 6TH Street Saint Paul, MN	Office
Security National Properties Funding, LLC	Golds Building	1033 "O" Street Lincoln, NE	Office
Security National Properties Funding, LLC	Greenville Mall	1651 Ms. HWY 1 South Greenville, MS	Retail
Security National Properties Funding, LLC	Leigh Mall	1404 Old Aberdeen Road Columbus, MS	Retail
Security National Properties Funding, LLC	Northway Mall	3101 Penland Parkway Anchorage, AK	Retail
Security National Properties Funding II, LLC	Aspen Trailer Park	299 East Lathrop Road Evansville, WY	Other
Security National Properties Funding II, LLC	Bank of America Building – Topeka	534 S Kansas Topeka, KS	Office
Security National Properties Funding II, LLC	Bath Iron Works	580 Washington St. Bath, ME	Office
Security National Properties Funding II, LLC	Dothan Building	1001 Commons Drive Dothan, AL	Retail

<u>Debtor</u>	<u>Asset Name</u>	<u>Address</u>	<u>Prop Type</u>
Security National Properties Funding II, LLC	Freeport Building	34 Sunrise Highway Freeport, NY	Retail
Security National Properties Funding II, LLC	Heartland Mall	300 Early Blvd Early, TX	Retail
Security National Properties Funding II, LLC	Holiday Village Mall	1753 Highway 2 West Havre, MT	Retail
Security National Properties Funding II, LLC	National Oil Well Property	10330 Old Seward Hwy. Anchorage, AK	Industrial
Security National Properties Funding II, LLC	Rangeview Trailer Park	705 Muldoon Rd. Anchorage, AK	Other
Sequoia Investments III, LLC	Hobby Lobby	4 Oak Creek Plaza Mundelein, IL	Retail
Sequoia Investments V, LLC	Orchards Mall	1800 Pipestone Road Benton Harbor, MI	Retail
Sequoia Investments XIV, LLC	Asheville	1500 Pinecroft Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Boone	2211 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Henderson	2301 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Hickory	3 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Kinston	2303 Meadowview Road Greensboro, NC	Office

<u>Debtor</u>	<u>Asset Name</u>	<u>Address</u>	<u>Prop Type</u>
Sequoia Investments XIV, LLC	Lenoir	5 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Morehead	2302 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	PineHurst	2 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Republic	University Parkway & North Point Boulevard Winston-Salem, NC	Office
Sequoia Investments XIV, LLC	Rockingham	1 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wilmington	2216 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	WinGate	4900 Koger Boulevard Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wrightsville	2300 Meadowview Road Greensboro, NC	Office
Sequoia Investments XV, LLC	Sunset	2315 Sunset Court West Columbia, SC	Retail
Sequoia Investments XVIII, LLC	Atrium Building	1200 North Street Lincoln, NE	Office

**Exhibit "B"**

Agreed Plan

Intentionally Omitted

**Exhibit "C"****Primary Parcels**

<b><u>Debtor</u></b>	<b><u>Asset Name</u></b>	<b><u>Address</u></b>	<b><u>Prop Type</u></b>
ITAC 190, LLC	Guilford	2306 Meadowview Road Greensboro, NC	Office
Security National Properties Funding, LLC	Central Park/Plaza Park Fair (excluding Soup Lots)	222 S. 15th Street & 201 S. 16th Street Omaha, NE	Office
Security National Properties Funding, LLC	Golds Building	1033 "O" Street Lincoln, NE	Office
Security National Properties Funding, LLC	Leigh Mall	1404 Old Aberdeen Road Columbus, MS	Retail
Security National Properties Funding, LLC	Northway Mall	3101 Penland Parkway Anchorage, AK	Retail
Security National Properties Funding II, LLC	Aspen Trailer Park	299 East Lathrop Road Evansville, WY	Other
Security National Properties Funding II, LLC	Bank of America Building – Topeka	534 S Kansas Topeka, KS	Office
Security National Properties Funding II, LLC	Bath Iron Works	580 Washington St. Bath, ME	Office
Security National Properties Funding II, LLC	Dothan Building	1001 Commons Drive Dothan, AL	Retail
Security National Properties Funding II, LLC	Freeport Building	34 Sunrise Highway Freeport, NY	Retail
Security National Properties Funding II, LLC	Holiday Village Mall	1753 Highway 2 West Havre, MT	Retail

<u>Debtor</u>	<u>Asset Name</u>	<u>Address</u>	<u>Prop Type</u>
Security National Properties Funding II, LLC	National Oil Well Property	10330 Old Seward Hwy. Anchorage, AK	Industrial
Security National Properties Funding II, LLC	Rangeview Trailer Park	705 Muldoon Rd. Anchorage, AK	Other
Sequoia Investments XIV, LLC	Asheville	1500 Pinecroft Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Boone	2211 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Henderson	2301 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Hickory	3 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Kinston	2303 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Lenoir	5 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Morehead	2302 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	PineHurst	2 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Republic	University Parkway & North Point Boulevard Winston-Salem, NC	Office
Sequoia Investments XIV, LLC	Rockingham	1 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wilmington	2216 Meadowview Road Greensboro, NC	Office

<b><u>Debtor</u></b>	<b><u>Asset Name</u></b>	<b><u>Address</u></b>	<b><u>Prop Type</u></b>
Sequoia Investments XIV, LLC	WinGate	4900 Koger Boulevard Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wrightsville	2300 Meadowview Road Greensboro, NC	Office
Sequoia Investments XV, LLC	Sunset	2315 Sunset Court West Columbia, SC	Retail
Sequoia Investments XVIII, LLC	Atrium Building	1200 North Street Lincoln, NE	Office



**Exhibit "D"**

Net Proceeds Covenant

Attached

NET PROCEEDS COVENANT

This Net Proceeds Covenant (this “Covenant”), dated as of \_\_\_\_\_, 2014, is executed by [SELLER/HOLDER OF EQUITY INTERESTS], a [JURISDICTION AND TYPE OF ENTITY] (the “Covenant Provider”), in favor of **BANK OF AMERICA, N.A.**, a national banking association (the “Agent”), as Agent for itself and the other lenders who are now or hereafter become Lenders under the Note referenced below.

WHEREAS, pursuant to that certain Promissory Note, dated \_\_\_\_\_, 2014 (as amended or modified from time to time, the “Note”), made by Security National Properties Holding Company, LLC (“Borrower”) to the order of Bank of America, N.A., in its capacity as Agent for itself and the other Lenders, the Lenders agreed to make certain loans and other financial accommodations to the Borrower, subject to the terms and conditions thereof;

WHEREAS, Covenant Provider [transferred [Property] to [TRANSFeree] in connection with a [sale/refinancing transaction] pursuant to [DESCRIBE AGREEMENT]]/[owns [100%] of the issued and outstanding Equity Interests of [TRANSFeree/OWNER OF PROPERTY], which entity owns [Property] (the “Issuer”)] and may now or hereafter receive Net Proceeds of such Property pursuant to that certain [Purchase Agreement]/[partnership/LLC agreement of the Issuer], dated [\_\_\_\_\_] (the “Specified Agreement”),

WHEREAS, the terms of the Note require Borrower to pay or cause to be paid all Net Proceeds of the Properties to the Agent for the benefit of the Lenders to be applied to the Obligations and to cause any Subsidiary or Affiliate of Borrower who may receive or become entitled to receive Net Proceeds, including, without limitation, [proceeds attributable to the sale of the Property][distributions paid or payable to Covenant Provider in respect of its Equity Interests in the Issuer,] to the Agent, for the benefit of the Agent and the Lenders, as security for the Obligations; and

WHEREAS, Covenant Provider is a [Subsidiary/Affiliate] of Borrower and has directly and materially benefitted from the Loan made pursuant to the Note;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein but not defined have the meaning given to such terms in the Note. All terms defined in the Uniform Commercial Code of the State of New York (or other applicable Uniform Commercial Code) but not specifically defined herein shall have the meanings assigned to them therein.

2. Covenant to Pay Net Proceeds.

(a) Covenant Agreement. Covenant Provider hereby agrees and covenants to pay to Agent, as security for the payment and performance in full when due of all of the Obligations and all of its obligations under this Covenant, all the right, title, and interest of Covenant Provider, in and to any and all Net Proceeds received by Covenant Provider (collectively, the “Covenant Obligation”).

(b) Termination of Covenant. This Agreement shall terminate upon payment in full of the Obligations arising under the Note.

3. Application of Net Proceeds. Any Net Proceeds received by Covenant Provider under the Specified Agreement or otherwise shall be immediately delivered to Agent in the form received for application to the Obligations in accordance with the terms of the Note.

4. Representations, Warranties, and Covenants of Covenant Provider.

(a) Representations and Warranties. Covenant Provider hereby represents and warrants to Agent as follows:

(i) The Issuer is duly organized, validly existing, and in good standing under the laws of [\_\_\_\_\_]. **[Covenant Provider owns 100% of the issued and outstanding Equity Interests of the Issuer; Covenant Provider's Equity Interests in the Issuer were validly issued and are non-assessable and fully paid.]**

(ii) No consents are necessary for the consummation of the transactions contemplated in this Covenant.

(iii) A true, correct, and complete copy of the Specified Agreement (together with all amendments, if any, through the date hereof) is attached hereto as Exhibit A, and such Specified Agreement has not been amended or modified in any respect, except for such amendments or modifications as are attached.

(iv) Covenant Provider (x) is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization as specified in the opening paragraph of this Covenant, and (y) has full right, power, and authority to make this Covenant under the Specified Agreement and under applicable law, without the consent, approval, or authorization of, or notice to, any Person.

(v) The execution, delivery, and performance of this Covenant and the transactions contemplated hereby (A) have been duly authorized by all necessary action on behalf of Covenant Provider, (B) do not conflict with or result in any breach or contravention of any applicable law, regulation, judicial order, or decree to which such Covenant Provider **[or the Issuer]** is subject, (C) do not conflict with or violate any provision of the limited partnership certificate or agreement of Covenant Provider **[or the Issuer]**, and (D) to the best of Covenant Provider's knowledge do not violate, conflict with, constitute a default or event of default under, or result in any rights to accelerate or modify any obligations under any agreement, instrument, lease, mortgage, or indenture to which Covenant Provider or the Issuer is party or subject, or to which any of its assets are subject.

(vi) Covenant Provider has duly executed and delivered this Covenant and this Covenant is the legal, valid, and binding obligation of such Covenant Provider enforceable against it in accordance with the terms hereof except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any case or proceeding therefor may be brought.

(vii) Covenant Provider's principal place of business, chief executive office, and the place where its records are kept is located at [\_\_\_\_\_].

(viii) **[Except as otherwise provided in the Issuer's Specified Agreement, Covenant Provider has no obligation to make any payment, contribution, capital call, or other payment to the Issuer with respect to its Equity Interests in the Issuer, and Covenant Provider is not in arrears with regard to the foregoing payment obligations.]**

(b) Covenants. Covenant Provider covenants to Agent as follows:

(i) Covenant Provider will not sell, dispose of, or assign, beneficially or of record, or grant, create, permit, or suffer any lien or encumbrance on, any of its rights in the Specified

Agreement, or its right to Net Proceeds (except this pledge to Agent)[, or withdraw as a **[member/limited partner] of the Issuer**].

(ii) Covenant Provider will comply with all laws, regulations, judicial orders, or decrees applicable to it[, **its Equity Interests in the Issuer,**] and this Covenant or any portion thereof, and perform and observe its duties under the Specified Agreement.

(iii) Without the prior written consent of Agent, Covenant Provider shall not cast any vote or give or grant any consent, waiver, or ratification or take any other action which could reasonably be expected to (A) have the result of materially and adversely affecting any of Covenant Provider's rights under this Covenant or under any of the other Loan Documents, or (B) violate the terms of this Covenant or any of the other Loan Documents.

(iv) Covenant Provider will keep and maintain at its own cost and expense at its principal place of business satisfactory and complete records of any Net Proceeds **[and of its Equity Interests in the Issuer]**, including a record of all payments received and all other dealings of a material nature.

(v) Covenant Provider will pay promptly when due any taxes, assessments, and governmental charges or levies imposed upon any Net Proceeds **[, its Equity Interests in the Issuer]** or in respect of its income or profits therefrom, as well as all claims of any kind.

(vi) Covenant Provider will advise Agent promptly, in reasonable detail, of (A) any lien, charge, claim, or other encumbrance made or asserted against any Net Proceeds; and (B) any bankruptcy or litigation case or proceeding relating to any Net Proceeds **[ or the Issuer]**.

(vii) Covenant Provider will not change its name, identity, jurisdiction of formation, or organizational structure in any matter that will make any financing statement filed hereunder misleading or invalid, unless Covenant Provider shall have notified Agent thereof.

(viii) Covenant Provider shall do or cause to be done all things necessary to preserve, renew, and keep in full force and effect its legal existence and, the power and authority of Covenant Provider **[ and the Issuer, respectively,]** to own its property and carry on its business, its qualification to do business in its jurisdiction of organization, and its qualification to do business in each other jurisdiction where such qualification is necessary to conduct its business except where the failure so to qualify would not have a material adverse effect on the rights and interests of Agent hereunder.

5. Rights of Agent.

(a) Distributions. Upon request by Agent, Covenant Provider shall irrevocably direct **[the Issuer/its counterparty under the Specified Agreement]** to deposit Net Proceeds otherwise payable to Covenant Provider from and after the date hereof to Agent into an account designated by Agent.

(b) No Assignment of Duties. This Covenant constitutes an agreement of the parties hereto regarding payment of Net Proceeds only and not an assignment of any duties or obligations of Covenant Provider with respect thereto, and by its acceptance hereof and whether or not Agent shall have exercised any of its rights or remedies hereunder, Agent does not undertake to perform or discharge, and shall not be responsible or liable for the performance or discharge of, any such duties or responsibilities under the Specified Agreement. Covenant Provider agrees that, notwithstanding any rights of Agent hereunder, Covenant Provider shall remain liable for the full and prompt performance of all of Covenant Provider's obligations and liabilities under the Specified Agreement. Under no circumstances shall Agent or any holder of any of the Obligations as such be deemed to be a party to the Specified Agreement **[or**

**member or partner of the Issuer]** by virtue of the provisions of this Covenant. In furtherance of the foregoing, Agent shall indemnify, protect, defend and hold Agent and each Lender harmless from and with respect to any claims or demands by any party to the Specified Agreement thereunder.

6. Covenant Not Affected. Covenant Provider acknowledges and agrees that the agreements herein provided for shall remain in full force and effect and shall not be impaired by any acceptance by Agent of any other collateral security for or guaranty of any of the Obligations, or by any failure or neglect or omission on the part of Agent to realize upon, collect, or protect any Obligations or any collateral. The agreements and covenants herein provided for shall not in any manner be affected or impaired by any renewal, extension, modification, amendment, waiver, or restatement of any of the Obligations or of any collateral security therefor, or of any guaranty thereof.

7. Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Any Event of Default shall have occurred under the Note;

(b) Covenant Provider shall fail to comply with, observe, or perform any obligation, covenant, or term of this Covenant, and such failure shall continue for a period of ten (10) days after Agent delivers written notice to Covenant Provider indicating the nature of such failure; or

(c) Any representation or warranty made or furnished to Agent by or on behalf of Covenant Provider in connection with this Covenant, proves to have been untrue in any material respect when so made or furnished.

8. Remedies. During the continuance of an Event of Default, Agent shall have, in addition to the rights, powers, and authorizations to collect the sums described hereunder, including, without limitation, the following rights and remedies:

(a) Agent may, in its sole discretion, demand, sue for, collect, compromise, or settle any rights or claims in respect of the Covenant Obligations; and

(b) Agent may, in its sole discretion, set off against the Obligations or the obligations of any Covenant Provider under this Covenant or place an administrative hold or freeze on any and all sums deposited with it or held by it.

9. Remedies Not Exclusive. No single or partial exercise by Agent of any right, power, or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. Each right, power, and remedy herein specifically granted to Agent or otherwise available to it shall be cumulative, and shall be in addition to every other right, power, and remedy herein specifically given or now or hereafter existing at law, in equity, or otherwise. Each such right, power, and remedy, whether specifically granted herein or otherwise existing, may be exercised at any time and from time to time and as often and in such order as may be deemed expedient by Agent in its sole discretion.

10. Additional Instruments and Assurances. Covenant Provider hereby agrees, at its own expense, to execute and deliver, and to cause the Issuer to execute and deliver, from time to time, any and all further, or other, instruments, and to perform such acts, as Agent may reasonably request to effect the purposes of this Covenant and to secure to Agent the benefits of all rights and remedies conferred upon Agent by the terms of this Covenant.

11. Filing. Covenant Provider irrevocably authorizes Agent to file and maintain, at Covenant Provider’s expense, any such Uniform Commercial Code financing statements with respect to the Net Proceeds and the negative pledge with respect thereto pursuant to Section 4(b)(i) to be filed in such a

manner and in such places as may be necessary or desirable in order to fully protect the rights of Agent hereunder, provided, however, such authorization is subject to further approval by any existing lenders of Covenant Provider, Owner or any entity that owns a direct Equity Interest in any Owner (other than Arkley or Borrower). For the avoidance of doubt, nothing in this Covenant or any other Loan Document is intended to or shall create a recordable lien (as defined in section 101(37) of the Bankruptcy Code) in favor of the Agent or other Senior Lenders with respect to the Net Proceeds.

12. Release. Upon payment in full of the Obligations, this Covenant shall automatically terminate without any further action by Agent or Covenant Provider.

13. No Waiver, Etc. Any term of this Covenant may be amended or modified with, but only with, the written consent of Covenant Provider and Agent. Any term of this Covenant may be waived by a writing executed by the party to be charged with such waiver. No act, failure, or delay by Agent shall constitute a waiver of its rights and remedies hereunder or otherwise. No single or partial waiver by Agent of any default, right, or remedy that it may have shall operate as a waiver of any other default, right, or remedy or of the same default, right, or remedy on a future occasion.

14. Suretyship Waivers. Covenant Provider hereby waives: (i) notice of acceptance of this Covenant by Agent; (ii) notice of the creation, existence, acquisition, extension, or renewal of any of the Obligations; (iii) notice of the amount of the Obligations outstanding from time to time; (iv) notice of any default or event of default under any of the Loan Documents or with respect to any of the Obligations or notice of any other adverse change in Borrower's financial condition or means or ability to pay any of the Obligations or perform its obligations under any of the Loan Documents or notice of any other fact which might increase Covenant Provider's risk hereunder; (v) notice of presentment, demand, protest, and notice of dishonor or nonpayment as to any instrument; and (vi) notice of any acceleration or other demand for payment of any of the Obligations.

15. Notices. Any notice or other communication in connection with this Covenant shall be in writing and (i) deposited in the United States mail, postage prepaid by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service such as Federal Express, or (iii) sent by facsimile transmission, if a facsimile number is designated below, provided a copy is also sent by first-class mail, addressed as follows:

If to Covenant Provider:

[\_\_\_\_\_]

with copies by regular mail or such hand delivery or facsimile transmission to:

C. Richard Rayburn, Jr.  
Rayburn Cooper & Durham, P.A.  
227 W. Trade St., Suite 1200  
Charlotte, NC 28202-1675  
Telephone: (704) 334-0891  
Fax: (704) 377-1897

If to Agent:

Bank of America, N.A., as Agent  
1 Financial Plaza.  
RI1-537-09-02  
Providence, RI 02903  
Tel: 401-278-8068

Fax: 401-278-8316  
Attention: John A. McDonald, Senior Vice President

with copies by regular mail or such hand delivery or facsimile transmission to:

Troutman Sanders LLP  
600 Peachtree St NE, Suite 5200  
Atlanta, GA 30308  
Fax: (404) 962-6847  
Attention: Jeffrey W. Kelley, Esq.

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

All periods of notice shall be measured from the deemed date of delivery. A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by such certified or registered mail, on the third business day following the date of post-mark; (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; (iii) if so mailed, on the date of actual receipt (or tender of delivery) as evidenced by the return receipt; or (iv) if so delivered, upon actual receipt; or (v) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation.

16. Governing Law. This Covenant and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law.

17. Consent to Jurisdiction; Waiver of Venue; Service of Process.

(a) COVENANT PROVIDER HEREBY IRREVOCABLY SUBMITS GENERALLY AND UNCONDITIONALLY FOR ITSELF AND IN RESPECT OF ITS PROPERTY TO THE JURISDICTION OF ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN THE COUNTY OF NEW YORK AND STATE OF NEW YORK OVER ANY DISPUTE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST COVENANT PROVIDER IN ANY OTHER COURT OR JURISDICTION.

(b) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (A) OF THIS SECTION 17. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 15. NOTHING IN THIS COVENANT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

18. WAIVER OF JURY TRIAL. EACH OF COVENANT PROVIDER AND AGENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY PROCEEDING

ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS COVENANT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

19. Severability and Enforceability. All provisions hereof are severable and the invalidity or unenforceability of any of such provisions shall in no manner affect or impair the validity and enforceability of the remaining provisions hereof.

20. Successors and Assigns. Covenant Provider shall not assign its rights or obligations under this Agreement without Agent's prior written consent. This Covenant shall be binding upon Covenant Provider and upon the legal representatives, successors, and assigns of such Covenant Provider and shall inure to the benefit of Agent and its successors and assigns.

21. Counterparts. This Covenant may be executed in any number of counterparts, each constituting an original, but all together one and the same instrument.

22. Entire Agreement. This Covenant and the other Loan Documents express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Covenant nor any terms hereof may be changed, waived or terminated except by a writing signed by each party hereto.

23. Loan Document. This Covenant is a Loan Document for all purposes under the Note.

[Signature Page Follows]



**IN WITNESS WHEREOF**, Covenant Provider has executed this Net Proceeds Covenant as of the date first above written.

**COVENANT PROVIDER:**

[NAME],  
a [\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**AGENT:**

**BANK OF AMERICA, N.A.,**  
as Agent

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

Specified Agreement

Attached

**Exhibit "E"**

Deficiency Note

Attached

PROMISSORY NOTE

\$ \_\_\_\_\_, 2014

FOR VALUE RECEIVED, **SECURITY NATIONAL PROPERTIES HOLDING COMPANY, LLC**, an Alaska limited liability company with an office at \_\_\_\_\_ ("Borrower"), hereby promises to pay to the order of **BANK OF AMERICA, N.A.**, in its capacity as Agent for itself and each of the other Lenders who are now or hereinafter become party to the Syndication Agreement (as defined below) (in such capacity, together with its successors and assigns, the "Agent"), the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), together with interest on so much of the principal balance of this Promissory Note (this "Note") as may be outstanding and unpaid, calculated on the basis of a 360-day year and actual days elapsed, at the rate of five percent (5.00%) per annum, all payable as hereinafter provided.

WHEREAS, pursuant to the Settlement Agreement, the Agent, the Lenders party thereto, the Borrower, the other SN Parties (as defined in the Settlement Agreement) and other parties thereto agreed, among other things, to compromise and settle certain claims and disputes as provided therein, including, without limitation, the Prepetition Claim (as defined in the Settlement Agreement) of the Senior Lenders (as defined in the Settlement Agreement) in the amount of \$164,341,863.11 arising in connection with that certain Credit Agreement, dated as of October 18, 2006, by and among Security National Properties Funding III, LLC ("SNPF III"), as borrower, Bank of America, N.A., as administrative agent and a lender, the other lenders party thereto (as amended, the "Prepetition Loan Agreement");

WHEREAS, Borrower is an Affiliate of SNPF III and guaranteed certain obligations of SNPF III under the Prepetition Loan Agreement;

WHEREAS, pursuant to the Settlement Agreement, the parties thereto agreed, among other things, (i) that the SN Parties would pay to the Senior Lenders the net cash proceeds of the Refinancing Transactions (as defined in the Settlement Agreement) in respect of a portion of the Prepetition Claim, and (ii) the Senior Lenders would accept this Note issued by Borrower in respect of the remaining portion of the Prepetition Claim after giving effect to such prepayment and make a new loan to Borrower on the date hereof refinancing such remaining portion of the Prepetition Claim;

WHEREAS, on \_\_\_\_\_, 2014, the SN Parties paid \$ \_\_\_\_\_ to Agent in respect of the Soup Lots Sale, on \_\_\_\_\_, 2014, the SN Parties paid \$ \_\_\_\_\_ to Agent in respect of the Primary Financing, and on \_\_\_\_\_, 2014, the SN Parties paid \$ \_\_\_\_\_ to Agent in respect of the Secondary Financing; and

WHEREAS, the Lenders constitute all of the Senior Lenders (or assignees thereof) as of the date hereof;

1. Certain Definitions. As used herein, the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person.

"Arkley" means Robin P. Arkley II, a resident of the State of Louisiana.

"Arkley Guaranty" means the Guaranty, dated of even date herewith, executed by Arkley in favor of the Agent, for the benefit of itself and the other Lenders.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covenant Provider” means each Affiliate of Borrower who executes a Net Proceeds Covenant in favor of the Agent, for the benefit of the Agent and the Lenders.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“Event of Default” means a Payment Event of Default, an Insolvency Event of Default, a Limited Remedies Event of Default, or any of them.

“Indebtedness” means, as applied to any Person at any time, (a) all indebtedness, obligations or other liabilities of such Person (i) for borrowed money or evidenced by debt securities, debentures, acceptances, notes or other similar instruments, and any accrued interest, fees and charges relating thereto; (ii) under profit payment agreements or similar agreements; (iii) with respect to letters of credit issued for such Person's account; (iv) to pay the deferred purchase price of property or services, except unsecured accounts payable and accrued expenses arising in the ordinary course of business which are less than 30 days past due; or (v) lease obligations which are, under generally accepted accounting principles applicable to such Person, required to be capitalized on the balance sheet of such Person; (b) all indebtedness, obligations or other liabilities of such Person or others secured by a Lien on any property of such Person, whether or not such indebtedness, obligations or liabilities are assumed by such Person, all as of such time; (c) all indebtedness, obligations or other liabilities of such Person in respect of any foreign exchange contract or interest rate hedge agreements, net of liabilities owed to such Person by the counterparties thereon; (d) all Equity Interests of such Person subject (upon the occurrence of any contingency or otherwise) to mandatory redemption by such Person prior to the Maturity Date; (e) Indebtedness of others directly or indirectly guaranteed by such Person.

“Lien” means any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing)

“Loan” means the indebtedness owed to the Agent for the benefit of the Agent and the Lenders by Borrower in the original principal amount of \$\_\_\_\_\_ evidenced by this Note.

“Loan Documents” means, singly and collectively, this Note, the Arkley Guaranty, any other guaranty of the Obligations, each Net Proceeds Covenant, and any and all other documents, instruments, or agreements executed or delivered in connection herewith or therewith.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, affairs, properties, assets, liabilities (actual or contingent), condition (financial or otherwise), prospects, performance, current capital structure or existence of Borrower or Borrower’s Subsidiaries (other than any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower)); (b) a material impairment of the ability of any Obligor to perform its obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Obligor of any Loan Document to which it is a party or the ability of the Agent and the Lenders to enforce their rights and remedies under any of the Loan Documents; provided, however, the meaning of “Material Adverse Effect” shall expressly exclude those items set forth on Schedule 2 hereto.

“Maturity Date” means \_\_\_\_\_, 2020, or any earlier date on which the Obligations are declared to be, or become, due and payable pursuant to the terms hereof.

“MCBA” means modified cash basis accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Net Proceeds” means

(i) with respect to any incurrence of Indebtedness for borrowed money, the aggregate amount of all cash proceeds (less only reasonable and necessary closing costs, any payments required to be made to a lender, servicer, or other non-affiliated third party in the applicable Refinancing Transaction, or otherwise, and any reserves or escrows required to be maintained under the Refinancing Transaction and funded out of the Refinancing Transaction or otherwise, and, in the case of any refinancing, less the proceeds applied to the repayment of the Indebtedness so refinanced) received by the respective SN Party or Affiliate thereof from the respective incurrence of such Indebtedness for borrowed money. For the avoidance of doubt, nothing in this paragraph shall limit the ability of a Refinancing Lender (other than an SN Party or an Affiliate thereof) to recover any origination, exit, yield maintenance, prepayment and/or other structuring fees, out-of-pocket closing costs or similar amounts to which it is contractually entitled under the loan documents (including any term sheet, commitment letter or fee letter) for such Refinancing Lender’s Refinancing Transaction;

(ii) with respect to any equity issuance, sale, or capital contribution, the aggregate amount of all cash proceeds received by such party in respect of such equity issuance net of reasonable and necessary third party investment banking fees, legal fees, accountants’ fees, underwriting discounts and commissions, and other reasonable, customary, and actual third-party out-of-pocket fees and expenses actually incurred by such party in connection with such equity issuance, sale, or capital contribution and not payable to any SN Party or Affiliate of an SN Party;

(iii) with respect to any asset sale, the aggregate amount of all cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable, subsequent liquidation to cash of any non-cash proceeds received in respect of such asset sale, or otherwise, but only as and when received and only to the extent permitted hereby) received from such

asset sale net of (A) the actual and reasonable out-of-pocket costs of such sale customarily paid for by the seller in the local area (including reasonable, customary, and actual out-of-pocket fees and commissions paid to third parties), (B) payments of certain unassumed liabilities relating to the assets sold and (C) required payments or prepayments of any Indebtedness which is secured by the respective assets which were sold); *provided, however*, that (x) aggregate fees and commissions shall not exceed 5% of gross sales price; (y) all other deductions from gross proceeds shall otherwise be reasonably acceptable to the Agent, and (z) no deductions from gross proceeds shall be payable to any SN Party or Affiliate of an SN Party; and

(iv) notwithstanding anything to the contrary in subsections (i), (ii) and (iii) immediately above and without limiting any other exclusions from the definition of “Net Proceeds,” the term “Net Proceeds” does not include any cash or cash equivalents actually paid or required to be paid to a Refinancing Lender, including, but not limited to, (A) any net cash flows from a Property or any cash proceeds, in either case, applied or required to be applied to the Indebtedness owed to a Refinancing Lender, (B) capital contributions made as an equity cure of any default under the terms of any Indebtedness for borrowed money owed to a Refinancing Lender, (C) proceeds of an asset sale paid or required to be paid to a Refinancing Lender, (D) insurance proceeds or condemnation proceeds applied or required to be applied to the Indebtedness owed to a Refinancing Lender or the repair or restoration of a Refinancing Parcel, and (E) rents or other amounts paid for use or occupancy of a Property that are applied or required to be applied to Indebtedness owed to a Refinancing Lender. For the avoidance of doubt, the failure of any SN Party or affiliate thereof to pay, remit or turn over cash or cash equivalents to a Refinancing Lender in violation of the terms of such Refinancing Lender’s loan and/or security documents shall not, without more, cause such cash or cash equivalents to become “Net Proceeds.”

For the avoidance of doubt, a fixed management fee payable to an SN Party in an amount approved as reasonable by a third-party lender shall not be considered Net Proceeds, *provided, however*, that the management fee shall not exceed 5% of gross revenues of Properties managed by such SN Party plus market rate fees for construction management and leasing commissions, *provided further, however*, that in the event there is no initial third-party lender with respect to a Property managed by an SN Party, any management fee for such Property must be approved by the holder of this Note, the approval of which shall not be unreasonably withheld.

For the further avoidance of doubt, the Primary Lender (as to the Primary Transaction) and the Secondary Lender (as to the Secondary Transaction) are intended third party beneficiaries of this “Net Proceeds” definition and shall have standing to enforce any limitation or exclusion on what cash or cash equivalents are “Net Proceeds” received by, intended to be received by or entitled to be received by any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower).

“Net Proceeds Covenant” means an agreement in the form attached hereto as Exhibit “A,” pursuant to which any SN Party or Affiliate of an SN Party shall covenant and agree that, subject to the superior rights of the Primary Lender (as to the Primary Transaction) and the Secondary Lender (as to the Secondary Transaction), until this Note is paid in full, such SN Party or Affiliate shall immediately deliver any Net Proceeds it receives relating to the Properties that are included in such Refinancing Transaction to the Agent for application to the Obligations in accordance with the terms hereof, regardless of when such Net Proceeds arise or are payable; *provided further*, that, in the event that a Property is transferred to a third party that is not an SN Party or any Affiliate of an SN Party in connection with any such transaction, the obligation to pay to the Agent any Refinancing Net Proceeds with respect to such Property shall apply only to the extent any Refinancing Net Proceeds are received by or payable to an SN Party or any affiliate of an SN Party. For the avoidance of doubt, nothing in the Net Proceeds Covenant is intended to or shall create a recordable lien (as defined in section 101(37) of the Bankruptcy Code) in favor of the Agent or other Senior Lenders with respect to the Net Proceeds.

“Obligations” means all principal, interest, debts, liabilities, obligations, covenants and duties of, Borrower or any other Obligor arising under any Loan Document or otherwise with respect to this Note or the Loan whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Obligor or any Affiliate thereof of any proceeding under any bankruptcy or insolvency laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Obligor” means Borrower, Arkley, each Covenant Provider, and any other Person who guarantees or otherwise becomes obligated with respect to the Obligations (other than any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower)).

“Owner” means any Affiliate of Borrower that owns one or more Properties.

“Person” means and includes any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal, or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Properties” means the thirty-three (33) properties listed on Schedule 1 hereto and incorporated herein by reference.

“Settlement Agreement” means that certain Settlement Agreement, dated as of \_\_\_\_\_, 2014, by and among SNPF III, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, ITAC 190, LLC, Security National Properties – Alaska, LLC, Security National Properties Holding Company, LLC, Security National Properties Servicing Company, LLC, Robin P. Arkley, II, and Bank of America, N.A., in its capacity as agent to the Senior Lenders (as defined in the Settlement Agreement) and as a Senior Lender, Top Fund II, LLC, Banc of America Credit Products, The Bank of East Asia, Limited – New York Branch, and any other parties thereto, (as amended or modified from time to time).

“SN Party” means Borrower, Arkley, Security National Properties Funding III, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, ITAC 190, LLC, Security National Properties—Alaska, LLC, and Security National Properties Servicing Company, LLC.

“Subsidiary” of any Person means any corporation, partnership, limited liability company, or other entity of which at least 50% of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

“Syndication Agreement” means the Syndication Agreement, dated of even date herewith, by and among the Agent and the Lenders with respect to the Loan and the Loan Documents.

Any capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Settlement Agreement.



2. Interest. Interest will be payable in arrears monthly, commencing on \_\_\_\_\_, 20\_\_<sup>1</sup> and on the \_\_\_ day of each month thereafter (each such date being referred to herein as an “Interest Payment Date”). Notwithstanding any provision in this Note to the contrary, through the date the principal amount of this Note is repaid in full, in lieu of paying in cash the interest accrued to any Interest Payment Date, any accrued but unpaid interest shall be capitalized and added as of such Interest Payment Date to the principal amount of this Note (the “PIK Amount”). Such PIK Amount shall bear interest from the applicable Interest Payment Date at the same rate per annum and be payable in the same manner as in the case of the original principal amount of this Note and shall otherwise be treated as principal of this Note for all purposes. From and after each Interest Payment Date, the principal amount of this Note shall, without further action on the part of the SN Parties or the Agent, for the benefit of itself and the other Lenders, be deemed to be increased by the PIK Amount so capitalized and added to principal in accordance with the provisions hereof.

3. Payments. All unpaid principal on this Note (including, for the avoidance of doubt, the principal of the PIK Amount described in Section 2 above) shall be due and payable on the Maturity Date. All payments on this Note shall be paid to Agent, for the benefit of the Lenders, in United States Dollars in immediately available funds, at the office of Agent at \_\_\_\_\_, or such other place as the Agent shall designate to Borrower in writing. All payments under this Note shall be made without any set-off, counterclaim or deduction whatsoever, and Borrower hereby irrevocably waives all rights of set-off, counterclaim and deduction. To the extent any payment made by Borrower hereunder shall be subject to any present or future tax, levy, cost or charge of any nature imposed by any government or any authority or political subdivision thereof, excluding taxes on or measured by the net income of Agent or any Lender imposed by any jurisdiction in which the principal or relevant lending office of Agent or such Lender is located (all such non excluded taxes being hereinafter referred to as “Taxes”), such payment shall be accompanied by an additional payment by Borrower of such amount as may be necessary so that the net amount received by Agent or the Lender to whom such payment is being made (after deducting all applicable Taxes) is the same as such Person would have received had such payment not been subject to such Tax. Upon any payment of Taxes by Borrower, Borrower shall promptly (and in any event within 30 days) furnish to Agent and the applicable Lender such tax receipts, certificates and other evidence of such payment as Borrower may have or Agent or the applicable Lender may reasonably request.

During the existence of any Event of Default (as defined below) under this Note, the unpaid principal balance of this Note shall thereafter bear interest at the rate of twelve percent (12%) per annum, until paid (“Default Interest”). Default Interest shall be capitalized and added as of each Interest Payment Date to the principal amount of this Note in accordance with the terms of Section 2 above.

This Note may be prepaid in whole or in part, without premium or penalty, at any time, upon not less than five (5) days prior written notice to Agent, provided that each such voluntary prepayment of principal shall be in an amount at least equal to \$500,000, and each such voluntary prepayment shall be made together with interest accrued on the amount prepaid. The interest accrual will be adjusted based on the outstanding principal balance after any prepayments.

All payments or prepayments on this Note shall be applied as follows:

- (i) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent) payable to the Agent in its capacity as such;

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<sup>1</sup> First calendar month end after date of Note.

- (ii) Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loan and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;
- (iii) Third, to payment of that portion of the Obligations constituting unpaid principal of the Loan, ratably among the Lenders in proportion to the respective amounts described in this clause Third held by them.

4. Mandatory Prepayments. In the event and on each occasion that any Net Proceeds are received by or on behalf of, or otherwise payable to, Borrower, any SN Party or any Affiliate thereof (other than any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower)) in respect of any Property, Borrower shall in each case immediately repay the Obligations in an aggregate amount equal to 100% of such Net Proceeds (regardless of when such Net Proceeds arise or are payable, and regardless of whether such Net Proceeds are actually distributed to, paid to, or received by Borrower).

5. Credit Support. This Note has been guaranteed by Arkley pursuant to the Arkley Guaranty and supported by, and entitled to the benefits of, each Net Proceeds Covenant. To the extent that (i) any Property is sold, transferred or otherwise disposed of, (ii) any SN Party or Affiliate of a SN Party issues Indebtedness secured by any Property or any direct or indirect Equity Interests of an Owner, or (iii) any Owner issues or sells any Equity Interests, in each case Borrower shall, upon the Agent's reasonable request, cause the applicable SN Party or Affiliate with rights to any Net Proceeds in connection therewith (other than (i) any Owner, or (ii) any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower)), to execute and deliver to the Agent, for the benefit of itself and the Lenders, a Net Proceeds Covenant, pursuant to which such Person shall assign any and all rights to any Net Proceeds.

6. Representations and Warranties. Borrower hereby represents and warrants to Agent and each of the Lenders as follows: (a) Borrower is duly formed and existing under the laws of the State of Alaska; (b) this Note and each of the Loan Documents are within Borrower's powers, have been duly authorized, and do not conflict with any of its organizational documents; (c) this Note and each of the Loan Documents is a legal, valid and binding agreement of each Obligor party thereto, enforceable against each such Obligor in accordance with its terms; (d) neither this Note nor any of the Loan Documents conflicts with any law, agreement, or obligation by which any Obligor is bound; (e) no instrument, document, agreement, financial statement or certificate furnished to Agent or any Lender by or on behalf of Borrower, any Obligor, or any of their respective Affiliates in connection herewith contains an untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or omits to state any fact which may in the future have a Material Adverse Effect; (f) since the date of the most recent financial statements provided to Agent for the benefit of the Agent and the Lenders, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of any Obligor; (g) except as set forth on Schedule 2 hereto, there is no lawsuit, tax claim or other dispute pending or threatened against Borrower or any Obligor which, if lost, would reasonably be expected to have a Material Adverse Effect; (h) each Obligor possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights, copyrights, and fictitious name rights necessary to enable it to conduct the business in which it is now engaged; (i) Borrower is not in material default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation; (j) Borrower has no knowledge of any pending assessments or adjustments of its income tax for any year and all taxes due have been paid; (k) no event has occurred which constitutes, or with the giving of notice or lapse of time or both would constitute, a default or Event

of Default under this Note or any of the other Loan Documents; and (l) Borrower has obtained, and maintained in effect, the insurance coverage required by the terms of this Note and the other Loan Documents.

7. Affirmative Covenants. Borrower agrees, so long as any Obligations remain outstanding under this Note and the other Loan Documents, that it shall, and it shall cause its Subsidiaries (other than any Owner or any entity that owns any direct Equity Interest in any Owner) to, unless Agent otherwise agrees in writing:

- (a) Deliver to the Agent, in form and detail satisfactory to the Agent:
  - (i) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of Borrower, (a) a consolidated balance sheet of Borrower as at the end of such fiscal year, (b) consolidating balance sheets of each Owner as at the end of such fiscal year, and (c) with respect to both (a) and (b), the related consolidated and consolidating statements of income or operations, members' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with MCBA; such consolidating statements to be certified by a financial officer of Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Subsidiaries and each other Property Owner;
  - (ii) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year, a consolidated and consolidating balance sheet of Borrower and each Owner as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations, members' equity and cash flows for such fiscal quarter and for the portion of the fiscal year then ended, such consolidating statements to be certified by a financial officer of Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of Borrower and each Property Owner;
  - (iii) as soon as available, but in any event within fifteen (15) days after the beginning of each January and July of each fiscal year, a projection of all sales and refinancing of Properties or other transactions which may result in Net Proceeds payable to the Agent and Lenders hereunder which Borrower projects will occur during the 6-month period beginning on January 1 or July 1, as applicable;
  - (iv) not less than forty-five (45) days prior to consummating any refinancing, sale or other disposition of any Property or any Equity Interest in a Owner or other transaction expected to result in Net Proceeds payable to the Agent and Lenders hereunder, a detailed summary of such transaction, together with copies of any term sheets, letters of intent, purchase agreements, loan agreements, finance agreements, offering documents and indentures, as applicable, relating to such transaction, as well as the balance sheets, cash flow statements, operating statements, and rent rolls with respect to the Property or Properties subject to such transaction;

- (v) concurrently with the delivery of the financial statements referred to in Sections 7(a)(i) and 7(a)(ii), a certificate signed by a financial officer of Borrower which shall include (A) a statement that no default or Event of Default has occurred hereunder or under any of the other Loan Documents, (B) a certification that there has been no distribution of funds or Net Proceeds received in connection with any Property except to the Agent, for the benefit of the Lenders, pursuant to the terms of this Note, and (C) rent rolls on any Properties subject to a Net Proceeds Covenant;
  - (vi) at least ten (10) Business Days prior to the refinancing, sale or other disposition of any Property or any Equity Interest in an Owner or other transaction expected to result in Net Proceeds payable to the Agent for the benefit of the Agent and the Lenders hereunder, a statement of the expected Net Proceeds of such refinancing, sale or other disposition of such Property or Equity Interest; and
  - (vii) promptly, such additional information regarding any Property or the business, financial, or corporate affairs of Borrower as Agent may from time to time reasonably request.
- (b) Promptly notify the Agent:
- (i) of the occurrence of any default or Event of Default hereunder or under any other Loan Document; and
  - (ii) of any transfer of any ownership interests in any Borrower or in any Owner.

Each notice pursuant to this Section 7(b) shall be accompanied by a statement of a responsible officer of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7(b) shall describe with particularity any and all provisions of this Note and any other Loan Document that have been breached.

(c) Maintain adequate insurance as to amount, nature and carrier covering property damage (including loss of use and occupancy) to any of the properties of Borrower and its Subsidiaries and each other Owner, business interruption insurance, public liability insurance including coverage for contractual liability, product liability and workers' compensation, and any other insurance which is usual for Borrower's business;

(d) Comply with the laws, regulations, and orders of any government body with authority over the business of Borrower;

(e) Maintain ownership and control of a majority of the Equity Interest of each of its Subsidiaries and each other Owner existing on the date hereof and, in the case of any Person becoming a Subsidiary of Borrower after the date hereof, not less than the percentage of the equity interest of such Subsidiary or other Owner held (directly or indirectly) by Borrower on the date such Person first becomes a Subsidiary or Affiliate of Borrower, other than a change of control resulting from a foreclosure of any pledge of Equity Interests in a Subsidiary;

(f) File all tax returns and other reports that Borrower or any of its Subsidiaries and each other Owner is required by law to file;

(g) Maintain adequate books and records; and

(h) Take any action reasonably requested by Agent to carry out the intent of this Note and the other Loan Documents.

8. Negative Covenants. Borrower agrees that, so long as any Indebtedness remains outstanding under this Note, it shall not, and it shall not permit any of its Subsidiaries (other than any Owner or any entity that owns any direct Equity Interest in any Owner) to:

(a) Declare or pay, directly or indirectly, any dividends, redeem any of its Equity Interests, or otherwise make any distributions in respect of its Equity Interests, except that Subsidiaries of Borrower may pay dividends and make distributions to Borrower or any other Subsidiary of Borrower and other Owners that are owned directly or indirectly by Borrower may make pro rata dividends and distributions to holders of their Equity Interests;

(b) Have outstanding or incur any Indebtedness, or become liable for the Indebtedness of others, other than (i) the Obligations, (ii) Indebtedness existing on the date hereof and listed on Schedule 8(b) (and any refinancing thereof), (iii) Indebtedness incurred to refinance one or more Properties to the extent that the Net Proceeds of such Indebtedness are applied to reduce the Obligations, (iv) Indebtedness incurred in the ordinary course of business (including, but not limited to, operating expenses or obligations and guarantees of operating expenses of Subsidiaries), and (v) guarantees of Indebtedness of Subsidiaries otherwise permitted hereunder;

(c) Create, assume, or allow any Lien on property of Borrower, or on any of its respective Equity Interests, except: (i) Liens in favor of Agent securing the Obligations; (ii) Liens for taxes not yet due; (iii) Liens outstanding on the date hereof and listed on Schedule 8(c); (iv) Liens securing Indebtedness permitted by Section 8(b); (v) Liens resulting from any litigation listed on Schedule 2; and (vi) mechanics' Liens and other statutory Liens arising in the ordinary course of business that would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect;

(d) Sell, assign, lease, transfer or otherwise dispose of any part of its business or the assets of Borrower except (i) in the ordinary course of business, and (ii) sales of Properties for fair market value to the extent the Net Proceeds of such sales are applied to reduce the Obligations as provided in the Net Proceeds Covenant concurrently therewith;

(e) Make any change in the business conducted by Borrower as of the date hereof or enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); and

(f) Enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service or the payment of management or other service fees, with any Affiliate (other than the payment of a fixed management fee for services actually performed payable to Borrower or any of its Affiliates in an amount approved as reasonable by a third-party holder of Indebtedness permitted hereunder; provided, however, that such management fee shall not exceed 5% of gross revenues of Properties managed by Borrower or any such Affiliate plus market rate fees for construction management and leasing commissions; provided further, however, that in the event there is no third-party lender with respect to a Property managed by Borrower or any of its Affiliates, any management fee for such Property must be approved by the Agent which approval shall not be unreasonably withheld) except in the ordinary course of and pursuant to the reasonable requirements of such Borrower's or such Subsidiary's business and upon fair and reasonable terms which are no less favorable to Borrower or such Subsidiary or other Property Owner than those which would prevail in a comparable arm's-length transaction with a Person other than an Affiliate.

9. Events of Default. Each of the following events shall constitute an event of default (each, an “Payment Event of Default”) hereunder with specific remedies available as provided:

- (i) Non-Payment. Borrower or any other Obligor fails to pay (i) when and as required to be paid herein, any amount of principal of the Loan, or (ii) within five (5) days after the same becomes due, any interest on the Loan, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document.

Upon the occurrence of a Payment Event of Default, Agent, at its option, without demand or notice of any kind, may exercise any and all other rights and remedies available to it under the Loan Documents, at law or in equity, **provided, however**, for the avoidance of doubt, the Note shall not be accelerated except to the extent of payments due under Sections 3 or 4 above.

(b) Each of the following events shall constitute an event of default (each, an “Acceleration Event of Default”) hereunder with specific remedies available as provided:

- (i) Insolvency Proceedings, Etc. Borrower or any other Obligor institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or
- (ii) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or Borrower, any other Obligor, or any other Affiliate of Borrower (other than any Owner or any entity that owns any direct Equity Interest in any Owner (other than Arkley or Borrower)) contests in any manner the validity or enforceability of any provision of any Loan Document; or Borrower or any Obligor denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document.

Upon the occurrence of an Acceleration Event of Default, (A) the principal amount of this Note and the other Obligations, without demand, notice or declaration by Agent of any kind, shall automatically and immediately become due and payable; and (B) Agent, at its option, without demand or notice of any kind, may exercise any and all other rights and remedies available to it under the Loan Documents, at law or in equity.

(c) Each of the following events shall constitute an event of default (each, a “Limited Remedies Event of Default”) and, together with the Payment Event of Default, the “Events of Default”) hereunder with specific remedies available as provided

- (i) Covenants. Borrower or any other Obligor fails to perform or observe any term, covenant or agreement contained herein or in any of the other Loan Documents (not otherwise specified in this Section 9) and such failure continues for thirty (30) days after the first to occur of (i) the receipt by such Obligor of written notice from Agent of such failure, or (ii) the date when such Obligor otherwise acquires actual knowledge of such failure; or
- (ii) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Obligor herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or
- (iii) Inability to Pay Debts; Attachment. (i) Borrower or any other Obligor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person (excluding any Property or any direct Equity Interest in any Owner) and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or
- (iv) Judgments. Other than a judgment resulting from litigation listed on Schedule 2 attached hereto, there is entered against Borrower or any other Obligor (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding \$500,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) here is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or
- (v) Settlement Agreement. Any of the SN Parties fails to perform or observe any term, covenant or agreement contained in the Settlement Agreement.

Upon the occurrence of a Limited Remedies Event of Default, Agent, at its option, upon five (5) days' notice, may declare an Event of Default, after which time Default Interest shall accrue on the then-outstanding principal balance of this Note.

(d) After the exercise of remedies following the occurrence of any Event of Default, any amounts received on account of the Obligations shall be applied by the Agent in the following order:

- (i) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent) payable to the Agent in its capacity as such;
- (ii) Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

- (iii) Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loan and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;
- (iv) Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loan, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and
- (v) Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by applicable law.

10. Indemnity. Borrower will indemnify and hold Agent and each Lender harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (a) this Note, the Loan Documents or any other document required hereunder or thereunder, (b) any loan or other financial accommodation extended or committed by Agent or any Lender to Borrower hereunder, and (c) any litigation or proceeding related to or arising out of this Note, any Loan Document, any such other document, or any such loan or other financial accommodation. This indemnity includes but is not limited to attorneys' fees. This indemnity extends to Agent, each Lender, and its respective parent, Subsidiaries, Affiliates, and all of their directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive repayment of the Obligations and the termination of the Loan Documents. All sums due to Agent or any Lender hereunder shall be obligations of Borrower, due and payable immediately without demand, set-off or counterclaim.

11. Syndication Agreement. The powers and duties of the Agent with respect to the Obligations and the Loan Documents and the relationship among the Agent and the Lenders shall be governed by the Syndication Agreement. The provisions of the Syndication Agreement are solely for the benefit of the Agent and the Lenders and neither Borrower nor any other Obligor shall have rights as a third party beneficiary of any such provisions.

12. Notices. Any notice or other communication in connection with this Note shall be in writing and (i) deposited in the United States mail, postage prepaid by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service such as Federal Express, or (iii) sent by facsimile transmission, if a facsimile number is designated below, provided a copy is also sent by first-class mail, addressed as follows:

If to Borrower:

Security National Properties Holding Company, LLC  
3665 Bleckely Street  
Mather, Ca. 95655  
Tel: (916) 779-2246  
Fax: (916) 779-2346  
Attention: Michael Casey, Chief Executive Officer, Security National Properties

with copies by regular mail or such hand delivery or facsimile transmission to:

Rayburn Cooper & Durham, P.A.  
227 W. Trade Street, Suite 1200  
Charlotte, NC 28207



Fax: (704) 377-1897  
Attention: C. Richard Rayburn, Jr., Esq.

If to Agent:  
Bank of America, N.A., as Agent  
1 Financial Plaza.  
RI1-537-09-02  
Providence, RI 02903  
Tel: 401-278-8068  
Fax: 401-278-8316  
Attention: John A. McDonald, Senior Vice President

with copies by regular mail or such hand delivery or facsimile transmission to:

Troutman Sanders LLP  
600 Peachtree St NE, Suite 5200  
Atlanta, GA 30308  
Fax: (404) 962-6847  
Attention: Jeffrey W. Kelley, Esq.

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

All periods of notice shall be measured from the deemed date of delivery. A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by such certified or registered mail, on the third business day following the date of post-mark; (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; (iii) if so mailed, on the date of actual receipt (or tender of delivery) as evidenced by the return receipt; or (iv) if so delivered, upon actual receipt; or (v) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation.

13. Miscellaneous.

Borrower hereby expressly waives presentment for payment, demand for payment, notice of dishonor, protest, notice of protest, notice of non-payment, and all lack of diligence or delays in collection or enforcement of this Note and the Obligations.

Agent may extend the time of payment of this Note, postpone the enforcement hereof, release any collateral securing this Note, or grant any other indulgences whatsoever without affecting or diminishing Agent's right of recourse against Borrower, as provided herein, which right is hereby expressly reserved. The failure to assert any right by Agent shall not be deemed a waiver thereof.

This Note is binding upon Borrower and its successors and assigns; provided, however, that Borrower shall not be entitled to assign or delegate any rights or obligations under this Note without the prior written consent of Agent. Agent and each Lender may sell, transfer or assign its interest under this Note and the Loan Documents (or any interest therein) at any time without the consent of the Borrower or any other Person. Upon any assignment of this Note by Agent, the assignee shall have all of the rights of Agent to enforce any term of this Note and the other Loan Documents.

This Note may be amended, modified or supplemented only by written agreement signed by Agent and Borrower.

The headings and captions of the numbered paragraphs of this Note are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. Time is of the essence of this Note.

Agent and Borrower intend this Note to comply in all respects with all provisions of law and not to violate, in any way, any legal limitations on interest charges. Accordingly, if, for any reason, Borrower is required to pay, or has paid, interest at a rate in excess of the highest rate of interest which may be charged by Agent or which Borrower may legally contract to pay under applicable law (the "Maximum Rate"), then the interest rate shall be deemed to be reduced, automatically and immediately, to the Maximum Rate, and interest payable hereunder shall be computed and paid at the Maximum Rate and the portion of all prior payments of interest in excess of the Maximum Rate shall be deemed to have been payments in reduction of the outstanding principal of this Note and applied as partial prepayments.

Borrower agrees to pay all costs, fees and expenses of collection, including, without limitation, Agent's reasonable attorneys' fees and disbursements, in the event that any action, suit or proceeding is brought by the Agent to collect this Note or if an Event of Default shall have occurred.

This Note shall be governed by and construed and enforced in accordance with the laws of the State of New York.

BORROWER IRREVOCABLY CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING AGAINST IT UNDER ARISING OUT OF OR IN ANY MANNER RELATING TO THIS NOTE MAY BE BROUGHT IN ANY COURT OF THE STATE OF NEW YORK OR ANY UNITED STATES DISTRICT COURT IN EACH CASE LOCATED IN THE BOROUGH OF MANHATTAN, STATE OF NEW YORK. BORROWER, BY ITS EXECUTION AND DELIVERY OF THIS NOTE, EXPRESSLY AND IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY OF SUCH COURT IN ANY SUCH ACTION OR PROCEEDING. BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY CLAIM OR DEFENSE IN ANY SUCH ACTION OR PROCEEDING BASED ON ANY ALLEGED LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS OR ANY SIMILAR BASIS. BORROWER SHALL NOT BE ENTITLED IN ANY SUCH ACTION OR PROCEEDING TO ASSERT ANY DEFENSE GIVEN OR ALLOWED UNDER THE LAWS OF ANY STATE OTHER THAN THE STATE OF NEW YORK, UNLESS SUCH DEFENSE IS ALSO GIVEN OR ALLOWED BY THE LAWS OF THE STATE OF NEW YORK. NOTHING IN THIS PARAGRAPH SHALL AFFECT OR IMPAIR IN ANY MANNER OR TO ANY EXTENT THE RIGHT OF AGENT TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY JURISDICTION OR TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT BORROWER MAY HAVE UNDER ANY APPLICABLE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT OR LEGAL ACTION WHICH MAY BE COMMENCED BY OR AGAINST AGENT OR ANY LENDER CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT OR PERFORMANCE OF

THIS NOTE OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION  
HEREWITH.

[Signature page follows]

IN WITNESS WHEREOF, Borrower has duly executed this Note on the date first above written.

SECURITY NATIONAL PROPERTIES  
HOLDING COMPANY, LLC, an Alaska  
limited liability company

By: \_\_\_\_\_

Name: Michael Casey

Title: Chief Executive Officer

**Exhibit A**

Form of Net Proceeds Covenant

Attached

**Schedule 1****Properties**

<b><u>Debtor</u></b>	<b><u>Asset Name</u></b>	<b><u>Address</u></b>	<b><u>Prop Type</u></b>
ITAC 190, LLC	Guilford	2306 Meadowview Road Greensboro, NC	Office
Security National Properties Funding, LLC	Central Park/Plaza Park Fair	222 S. 15th Street & 201 S. 16th Street Omaha, NE	Office
Security National Properties Funding, LLC	Alliance Bank Center, f/k/a Fifth Street (Norwest Tower)	55 E 5TH Street & 56 E 6TH Street Saint Paul, MN	Office
Security National Properties Funding, LLC	Golds Building	1033 "O" Street Lincoln, NE	Office
Security National Properties Funding, LLC	Greenville Mall	1651 Ms. HWY 1 South Greenville, MS	Retail
Security National Properties Funding, LLC	Leigh Mall	1404 Old Aberdeen Road Columbus, MS	Retail
Security National Properties Funding, LLC	Northway Mall	3101 Penland Parkway Anchorage, AK	Retail
Security National Properties Funding II, LLC	Aspen Trailer Park	299 East Lathrop Road Evansville, WY	Other
Security National Properties Funding II, LLC	Bank of America Building – Topeka	534 S Kansas Topeka, KS	Office
Security National Properties Funding II, LLC	Bath Iron Works	580 Washington St. Bath, ME	Office
Security National Properties Funding II, LLC	Dothan Building	1001 Commons Drive Dothan, AL	Retail
Security National Properties Funding II, LLC	Freeport Building	34 Sunrise Highway Freeport, NY	Retail
Security National Properties Funding II, LLC	Heartland Mall	300 Early Blvd Early, TX	Retail
Security National Properties Funding II, LLC	Holiday Village Mall	1753 Highway 2 West Havre, MT	Retail

<u>Debtor</u>	<u>Asset Name</u>	<u>Address</u>	<u>Prop Type</u>
Security National Properties Funding II, LLC	National Oil Well Property	10330 Old Seward Hwy. Anchorage, AK	Industrial
Security National Properties Funding II, LLC	Rangeview Trailer Park	705 Muldoon Rd. Anchorage, AK	Other
Sequoia Investments III, LLC	Hobby Lobby	4 Oak Creek Plaza Mundelein, IL	Retail
Sequoia Investments V, LLC	Orchards Mall	1800 Pipestone Road Benton Harbor, MI	Retail
Sequoia Investments XIV, LLC	Asheville	1500 Pinecroft Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Boone	2211 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Henderson	2301 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Hickory	3 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Kinston	2303 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	Lenoir	5 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Morehead	2302 Meadowview Road Greensboro, NC	Office
Sequoia Investments XIV, LLC	PineHurst	2 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Republic	University Parkway & North Point Boulevard Winston-Salem, NC	Office
Sequoia Investments XIV, LLC	Rockingham	1 Centreview Drive Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wilmington	2216 Meadowview Road Greensboro, NC	Office

<b><u>Debtor</u></b>	<b><u>Asset Name</u></b>	<b><u>Address</u></b>	<b><u>Prop Type</u></b>
Sequoia Investments XIV, LLC	WinGate	4900 Koger Boulevard Greensboro, NC	Office
Sequoia Investments XIV, LLC	Wrightsville	2300 Meadowview Road Greensboro, NC	Office
Sequoia Investments XV, LLC	Sunset	2315 Sunset Court West Columbia, SC	Retail
Sequoia Investments XVIII, LLC	Atrium Building	1200 North Street Lincoln, NE	Office



**Schedule 2**

Disclosures

Grushkin v. Security National Properties Holding Company, LLC, et al., Case No. 13-cv-5457-NJV, N.D. Cal., claims for breach of promissory note, money had and received, money lent and accounting.

**Schedule 7(b)**

Existing Indebtedness

**Schedule 7(c)**

Existing Liens

**Exhibit "F"**

Arkley Guaranty

Attached

GUARANTY

This unconditional Guaranty (this "Guaranty") is given, as of the \_\_\_ day of \_\_\_\_\_, 2014, pursuant to the terms and conditions of (i) that certain Settlement Agreement, dated as of \_\_\_\_\_, 2014 (as amended or modified from time to time, the "Settlement Agreement"), by and among Security National Properties Funding III, LLC, Security National Properties Funding, LLC, Security National Properties Funding II, LLC, Sequoia Investments III, LLC, Sequoia Investments V, LLC, Sequoia Investments XIV, LLC, Sequoia Investments XV, LLC, Sequoia Investments XVIII, LLC, ITAC 190, LLC, Security National Properties—Alaska, LLC, Security National Properties Holding Company, LLC, Security National Properties Servicing Company, LLC, Robin P. Arkley, II, and Bank of America, N.A., in its capacity as agent to the Senior Lenders (as defined in the Settlement Agreement) and as a Senior Lender, Top Fund II, LLC, Banc of America Credit Products, The Bank of East Asia, Limited – New York Branch, and any other parties thereto, and (ii) that certain Promissory Note, dated \_\_\_\_\_, 2014 (as amended or modified from time to time, the "Note"), made by Security National Properties Holding Company, LLC ("Borrower") to the order of Bank of America, N.A., in its capacity as agent (the "Agent") for itself and the other Lenders.

WHEREAS, pursuant to the Note, the Lenders agreed to make certain loans and other financial accommodations to the Borrower, subject to the terms and conditions thereof; and

WHEREAS, this Guaranty is required under the terms of the Settlement Agreement and the Note and is a condition to the Agent and Lenders accepting the Note.

CAPITALIZED TERMS USED HEREIN AND NOT OTHERWISE SPECIFICALLY DEFINED HEREIN SHALL HAVE THE SAME MEANING HEREIN AS IN THE NOTE.

FOR VALUE RECEIVED, and to induce Lenders to enter into the Settlement Agreement and to accept the Note and make the loans and financial accommodations to the Borrower evidenced thereby, the undersigned ROBIN P. ARKLEY, II, an individual resident of the State of Louisiana, having an address at 13702 Coursey Blvd., Bldg. 2, Baton Rouge, LA 70817 (the "Guarantor"), hereby unconditionally agrees as follows:

1. Guaranty.

1.1 Guarantor, as a primary party and not merely as a surety, unconditionally and irrevocably guaranties the prompt and full payment (and not merely the collectability) of all of the Obligations of the Borrower under the Note, as the same may be hereafter amended, modified, extended, renewed or recast, including, but not limited to the payment of all principal that is payable under the Note, together with all interest and other charges thereon, all other amounts provided for in the Note (all of which together with those obligations described in Sections 1.2 and 14 below, are herein collectively called the "Guaranteed Obligations"); provided, however, that unless and until an Enforcement Event, as defined below, occurs, Guarantor shall have no obligation to pay the Guaranteed Obligations or any portion thereof (other than those Guaranteed Obligations described in Section 1.2 below).

For purposes of this Guaranty, the term "Enforcement Event" shall mean the occurrence of one or more of the following events:

- (a) (I) Borrower, Guarantor, or any SN Party shall become a debtor in a voluntary bankruptcy or insolvency proceeding; or (II):

- (i) a voluntary bankruptcy or insolvency proceeding allegedly commenced without proper corporate authorization by Borrower, Guarantor, or any SN Party that is not dismissed within sixty (60) days from the date of filing; provided, however, that if a court of competent jurisdiction finds that any such voluntary bankruptcy or insolvency proceeding was commenced with proper corporate authorization of Borrower, Guarantor, or any SN Party, as applicable, an Enforcement Event shall occur, or;
- (ii) an involuntary bankruptcy or insolvency proceeding that is not dismissed within sixty (60) days from the date of filing, which (A) is commenced by Borrower, Guarantor, or any SN Party or by a third party with the collusion of any such Person, or (B) in which Borrower, Guarantor, or such other SN Party acquiesces or which Borrower, Guarantor, or such other SN Party fails to contest, or (C) in which Borrower, Guarantor or any SN Party objects to a motion by the Agent or any Lender for relief from any stay or injunction prohibiting or restraining the foreclosure, collection or enforcement of any security or any other remedial action which is permitted under the Note or any of the other Loan Documents or applicable law.

(b) Borrower or Guarantor shall make a general assignment for the benefit of creditors in any action initiated by, or consented to by, Borrower, Guarantor, or any SN Party.

Upon the occurrence of any Enforcement Event, Agent may at its option proceed directly and at once, without further notice, against Guarantor hereunder, without proceeding against Borrower, any SN Party or against any other Person or collateral for the obligations secured by this Guaranty. Any sums payable by Guarantor hereunder shall bear interest at the default rate as provided in the Note from the date of demand until the date paid.

1.2 In addition to the foregoing, Guarantor, as a primary party and not merely as a surety, unconditionally and irrevocably guaranties the prompt and full payment (and not merely the collectability), of (i) all principal, interest, and other amounts due under the Note on or after [\_\_\_\_\_], 2020<sup>1</sup> (collectively, the “Payment Obligations”), and (ii) all Net Proceeds to the extent those proceeds are payable to the Agent for the benefit of the Lenders in accordance with the terms of the Note. Guarantor’s liability under this Section 1.2 for the due and punctual payment of all Payment Obligations and all Net Proceeds shall be effective without notice, demand, or any other action by Agent.

This Guaranty shall survive and continue in full force and effect, subject to the limitations contained herein, beyond and after the payment and satisfaction of the Guaranteed Obligations and the Obligations of Borrower in the event that by final judgment of court of competent jurisdiction Agent or any Lender is required to disgorge or return any payment or property received as a result of any laws pertaining to preferences, fraudulent transfers, fraudulent conveyances or other avoidable transactions.

This Guaranty is a guaranty of payment and performance and not of collection.

2. Waivers. Guarantor hereby waives and relinquishes to the fullest extent now or hereafter not prohibited by applicable law:

2.1 All suretyship defenses and defenses in the nature thereof;

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<sup>1</sup> The scheduled maturity date of the Note that is the six year anniversary of the date on the face of the Note.

2.2 Any right or claim of right to cause a marshalling of the assets of Borrower, or any other guarantor of the Obligations or any portion thereof, or any other SN Party or of any collateral, or to cause Agent to proceed against any of the other security for the Guaranteed Obligations or the Obligations of Borrower, or any other guarantor of the Obligations or any portion thereof, before proceeding under this Guaranty against Guarantor, or to require Agent to proceed against Borrower or any such guarantor in any particular order;

2.3 After an Enforcement Event and until such time as all Obligations of the Borrower to Agent and Lenders have been paid in full, all rights and remedies against Borrower and their respective property arising out of any payments made by Guarantor on account of its obligations hereunder, including, but not limited to, any rights in respect of subrogation, contribution, reimbursement, exoneration or indemnification pursuant to any agreement with Borrower, express or implied, or now or hereafter accorded by applicable law to indemnitors, guarantors, sureties or accommodation parties; provided, however, unless Agent otherwise expressly agrees in writing, such waiver by Guarantor shall not be effective to the extent that by virtue thereof Guarantor's liability under this Guaranty or under any other Loan Document is rendered invalid, voidable, or unenforceable under any applicable state or federal law dealing with the recovery or avoidance of so-called preferences or fraudulent transfers or conveyances or otherwise; and

2.4 Notice of the acceptance hereof and, except for notices and demands specifically required to be given to Guarantor hereunder or under the other Loan Documents, presentment, demand for payment, protest, notice of protest, or any and all notice of nonpayment, nonperformance, nonobservance or default, or other proof or notice of demand whereby to charge Guarantor hereunder.

GUARANTOR, AND BY ITS ACCEPTANCE OF THE BENEFITS HEREOF AGENT AND EACH LENDER, MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS GUARANTY, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER IS GIVEN AS A MATERIAL INDUCEMENT TO GUARANTOR TO EXECUTE THIS GUARANTY, TO AGENT TO ACCEPT THIS GUARANTY AND TO AGENT AND LENDERS TO ACCEPT THE NOTE.

3. Cumulative Rights. Agent's and each Lender's rights under this Guaranty shall be in addition to and not in limitation of all of the rights and remedies of Agent and/or Lenders under the Note and the other Loan Documents. All rights and remedies of Agent and/or Lenders shall be cumulative and may be exercised before or after the occurrence of an Enforcement Event, in such manner and combination as Agent and/or Lenders may determine. Suit may be brought or demand may be made against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Agent or Lenders against any party hereto or against any other guarantor of all or any part of the Guaranteed Obligations.

4. No Impairment. The liability of Guarantor hereunder shall in no way be limited or impaired by, and Guarantor hereby assents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Agent and/or Lenders by Borrower, but no such amendment or modification shall operate so as to increase the scope of Guarantor's liability hereunder unless such amendment or modification is consented to in a writing signed by Guarantor expressly referencing this Guaranty. In addition, subject to the limitations contained in Section 1, the liability of Guarantor under this Guaranty shall in no way be limited or impaired by:

Document; 4.1 Any extensions of time for performance required by the Note or any other Loan

4.2 Any amendment to or modification of the Note or any other Loan Document;

4.3 Any sale or assignment of the Loan or any interest therein;

4.4 Any exculpatory, or nonrecourse, or limited recourse, provision in any of the Loan Documents;

4.5 The accuracy or inaccuracy of any of the representations or warranties made by or on behalf of Borrower, or any principal or agent of Borrower, or any other guarantor of the Obligations or any portion thereof, or Guarantor under any Loan Document or otherwise;

4.6 The release of Borrower, or any other guarantor of the Obligations or any portion thereof, or any other Person, from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, by Agent's or any Lender's voluntary act, or otherwise;

4.7 The filing of any bankruptcy or reorganization proceeding by or against Borrower or any Affiliate;

4.8 The release or substitution in whole or part of any security for Borrower's Obligations or for the Guaranteed Obligations; or

4.9 The release of any other party now or hereafter liable upon or in respect of this Guaranty or any of the other Loan Documents.

Any of the foregoing may be accomplished with or without notice to Borrower or to Guarantor, and with or without consideration.

5. Delay Not Waiver. No delay on Agent's part in exercising any right, power or privilege hereunder or under any of the Loan Documents shall operate as a waiver of any such privilege, power or right. No waiver by Agent or any Lender in any instance shall constitute a waiver in any other instance.

6. Warranties and Representations. Guarantor warrants and represents to Agent and Lenders for the express purpose of inducing Agent and Lenders to accept the Note, to accept this Guaranty, to otherwise consummate the transactions contemplated by the Note, and to induce Lenders to make the Loan and other financial accommodations under the Note and the other Loan Documents, that as of the date of this Guaranty:

6.1 No Violation. The execution and delivery of this Guaranty and the payment and performance by Guarantor of Guarantor's obligations under this Guaranty and the other Loan Documents do not and shall not constitute a violation of any law, order, or regulation, or any contract or agreement to which Guarantor is a party or by which Guarantor or Guarantor's property may be bound.

6.2 Valid and Binding. This Guaranty constitutes Guarantor's legal, valid and binding obligation and is enforceable in accordance with the respective terms thereof, subject to bankruptcy, insolvency and similar laws of general application affecting the rights and remedies of creditors and, with respect to the availability of remedies of specific enforcement, subject to the discretion of the court before which proceedings therefor may be brought.



6.3 Solvency. Guarantor is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty. Guarantor is not contemplating either the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of Guarantor's property, and Guarantor has no knowledge of any such petition or proceeding being filed against Guarantor.

6.4 Material Economic Benefit. The Loan and other financial accommodations made to Borrower under or in connection with the Note will constitute a material economic benefit to Guarantor.

6.5 Other Agreements. Guarantor is not a party to any indenture, loan or loan agreement or any lease or other agreement or instrument, or subject to any restriction, which could materially impair the ability of Guarantor to pay and perform Guarantor's obligations under this Guaranty; and Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which it is bound.

6.6 Statement of Personal Assets and Liabilities. Guarantor shall provide the Agent with a statement of his personal assets and liabilities as a condition to closing and thereafter on each anniversary of the date hereof or as reasonably requested by the Agent.

6.7 Guarantor's Financial Condition. True and complete copies of the financial statements of Guarantor have been delivered to Lenders and Agent and each of the same are true, accurate and complete and fairly present Guarantor's financial condition as of the dates thereof and no material and adverse change has occurred in Guarantor's financial condition or business since the respective dates thereof; and each financial statement of Guarantor submitted in the future shall be true, accurate and complete and shall fairly present Guarantor's financial condition as of the dates thereof.

7. Notices. Any notice or other communication in connection with this Guaranty shall be in writing and (i) deposited in the United States mail, postage prepaid by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service such as Federal Express, or (iii) sent by facsimile transmission, if a Fax number is designated below, provided a copy is also sent by first-class mail, addressed as follows:

If to Guarantor:

Robin P. Arkley, II  
13702 Coursey Blvd., Bldg. 2  
Baton Rouge, LA 70817  
Fax: (916) 231-2500

with copies by regular mail or such hand delivery or facsimile transmission to:

C. Richard Rayburn, Jr.  
Rayburn Cooper & Durham, P.A.  
227 W. Trade St., Suite 1200  
Charlotte, NC 28202-1675  
Telephone: (704) 334-0891  
Fax: (704) 377-1897

If to Agent:

Bank of America, N.A., as Agent  
1 Financial Plaza.  
RI1-537-09-02  
Providence, RI 02903  
Tel: 401-278-8068  
Fax: 401-278-8316  
Attention: John A. McDonald, Senior Vice President

with copies by regular mail or such hand delivery or facsimile transmission to:

Troutman Sanders LLP  
600 Peachtree St NE, Suite 5200  
Atlanta, GA 30308  
Fax: (404) 962-6847  
Attention: Jeffrey W. Kelley, Esq.

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

All periods of notice shall be measured from the deemed date of delivery. A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by such certified or registered mail, on the third business day following the date of post-mark, or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address, or (iii) if so mailed, on the date of actual receipt (or tender of delivery) as evidenced by the return receipt, or (iv) if so delivered, upon actual receipt, or (v) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation.

8. No Oral Change. No provision of this Guaranty may be changed, waived, discharged, or terminated orally (in person or by telephone) or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver or discharge or termination is sought.

9. Parties Bound; Benefit. This Guaranty shall be binding upon Guarantor and Guarantor's respective heirs, successors and assigns (provided that Guarantor may not assign any of its obligations hereunder without the prior written consent of Lenders); and shall be for the benefit of Agent, Lenders and any subsequent Agent and/or any subsequent holder of any Lender's interest in the Loan and any owner of a participation interest therein.

10. Joint and Several. Agent and Lenders may, in their sole and absolute discretion, enforce any of the provisions of this Guaranty or any of the other Loan Documents against any one or more of Borrower, any other guarantor of the Obligations or any portion thereof, and the Guarantor and shall not be required to proceed against any or all of them jointly or to seek payment from them ratably. In addition, Agent and Lenders may, in their sole and absolute discretion, select the collateral of one or more of the Borrower or any other guarantor of the Obligations or any portion thereof for sale or application to the Obligations and shall not be required to make any such selection ratably. The release or discharge of Borrower or any other guarantor of the Obligations or any portion thereof from any of the Obligations shall not release or discharge Guarantor until the payment in full of the Obligations.

11. Partial Invalidity. Each of the provisions hereof shall be enforceable to the fullest extent now or hereafter not prohibited by applicable law. The invalidity or unenforceability of any provision hereof shall not limit the validity or enforceability of each other provision hereof.

12. Governing law. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law. In addition, the fact that portions of the Loan Documents may include provisions drafted to conform to the laws of the State of Alaska or any other state, is not intended, nor shall it be deemed, in any way to derogate the parties' choice of law as set forth herein. Agent may enforce its rights hereunder and under the other Loan Documents, including, but not limited to, its rights to sue Guarantor or to collect any outstanding indebtedness in accordance with applicable law. It is understood and agreed that this Guaranty and all of the other Loan Documents were drafted, negotiated and delivered in the State of New York which state the parties agree has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

13. FORUM. GUARANTOR HEREBY IRREVOCABLY SUBMITS GENERALLY AND UNCONDITIONALLY FOR HIS SELF AND IN RESPECT OF HIS PROPERTY TO THE JURISDICTION OF ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN THE COUNTY OF NEW YORK AND STATE OF NEW YORK OVER ANY DISPUTE. GUARANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT GUARANTOR MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. GUARANTOR HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SPECIFIED ABOVE MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT HIS ADDRESS FOR NOTICE SET FORTH IN THIS GUARANTY, OR AT A SUBSEQUENT ADDRESS OF WHICH LENDER RECEIVED ACTUAL NOTICE FROM GUARANTOR IN ACCORDANCE WITH THE NOTICE SECTION OF THIS GUARANTY, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST GUARANTOR IN ANY OTHER COURT OR JURISDICTION.

14. LEGAL FEES, COSTS AND EXPENSES. GUARANTOR FURTHER AGREES TO PAY UPON WRITTEN DEMAND ALL REASONABLE COSTS AND EXPENSES INCURRED BY AGENT AND LENDERS OR THEIR SUCCESSORS OR ASSIGNS IN CONNECTION WITH ENFORCING ANY OF THE RIGHTS OR REMEDIES OF AGENT AND/OR LENDERS, OR SUCH SUCCESSORS OR ASSIGNS, UNDER OR WITH RESPECT TO THIS GUARANTY INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND THE REASONABLE OUT-OF-POCKET EXPENSES AND DISBURSEMENTS OF SUCH ATTORNEYS. ANY SUCH AMOUNTS WHICH ARE NOT PAID WITHIN TEN (10) DAYS OF WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF DEMAND UNTIL PAID.

15. Counterparts. This Guaranty may be executed in counterparts.

16. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

17. Entire Agreement. This Guaranty embodies the entire agreement between Agent and Lenders and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations.

[Guarantor signature on following page.]

WITNESS the execution and delivery of this Guaranty as an instrument under seal as of the date first above written.

GUARANTOR:

\_\_\_\_\_  
ROBIN P. ARKLEY, II

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

In said County and State on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared the above-named Robin P. Arkley, II, the person executing the foregoing instrument, and said individual acknowledged said instrument by him executed to be said individual's free act and deed.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT B**  
**SUMMARY OF BASIC TERMS OF NEW SENIOR DEBT, NEW SUB DEBT, AND EXIT FACILITY UNDER THE LENDER CONFIRMATION OPTION**

The basic terms of the New Senior Debt, the New Sub Debt, and the Exit Facility set forth in this Exhibit or elsewhere in the Disclosure Statement are provided for summary purposes only and are subject in their entirety to the New Senior Debt Agreement, the New Sub Debt Agreement, and the Exit Facility Agreement (the “New Debt Agreements”), respectively, which will be provided in the Plan Supplement. If any terms in this Exhibit or the Disclosure Statement conflict with any terms of the New Debt Agreements, the New Debt Agreements shall control.

<b>New Senior Debt</b>	
Borrower(s):	All Debtors
Principal:	\$120,000,000
Term:	3 years with one (1) 1-year extension option if certain conditions met
Amortization:	25 years
Interest Rate:	Floating rate of 30-day LIBOR plus 450 BPS (with a 75 BPS floor)
Collateral:	All Assets of the Debtors
Recourse:	Fully Recourse to all Debtors
Payments:	Monthly principal and interest payments

<b>New Sub Debt</b>	
Borrower(s):	SNPF III
Principal:	An amount equal to 37.5% of the Converted Senior Lender Debt.
Term:	5 years with one (1) 1-year extension option if certain conditions met.
Interest Rate:	2% per annum payable only in the event of a Distribution to holders of New LLC Interests
Collateral:	Unsecured
Recourse:	Payable on a <i>pari passu</i> basis only when Distributions are made to the holders of New LLC Interests

<b>Exit Facility</b>	
Borrower(s):	All Debtors
Principal:	Maximum balance of \$10,000,000 in the first 12 months and \$6,000,000 thereafter until maturity.
Term:	2 years.
Interest Rate:	Floating rate of 30-day LIBOR plus 250 BPS (with a 75 BPS floor)
Collateral:	All Assets of the Debtors
Recourse:	Fully recourse to all Debtors

**EXHIBIT C**  
**ESTIMATED DISTRIBUTIONS/LIQUIDATION ANALYSIS**

**Chapter 11 Plan and Chapter 7 Liquidation Comparison**

The following summarizes the potential recovery range for Administrative, Priority, Tax, Secured and Unsecured claims excluding the secured lender claim under the Chapter 11 Plan and a Chapter 7 liquidation scenario.

	<b>Estimated Assets Available for Distribution to Administrative, Priority, Tax, Secured, and Unsecured Claims</b>	
	Low	High
Chapter 11 Proposed Plan	\$5,132,220	\$5,332,220
Chapter 7 Liquidation	\$0	\$0



**Security National Properties Funding III, LLC and Affiliated Debtors  
Chapter 11 Proposed Plan Estimated Recovery Range**

	Estimate Range	
	Low	High
<b>Cash</b>		
Bank Balance - As of estimated confirmation of 9-3-2014 <sup>1</sup>	\$306,000	\$1,567,000
Funding of Exit Facility <sup>2</sup>	\$3,106,000	\$3,106,000
<b>Asset Recoveries</b>		
Estimated Recovery from Real Property <sup>3</sup>	\$171,465,000	\$171,465,000
Estimated Recovery from claims against Non-Debtor Affiliates	TBD	TBD
<b>ESTIMATED ASSETS AVAILABLE FOR DISTRIBUTION</b>	<b>\$174,877,000</b>	<b>\$176,138,000</b>
<b>Administrative, Priority, Tax, Secured and Unsecured Claims <sup>4</sup></b>		
Administrative Claims: Non-Professional Fee Claims	\$2,720,796	\$2,720,796
Administrative Claims: Professional Compensation and Reimbursement Claims	\$400,000	\$600,000
Priority Tax Claims	\$143,235	\$143,235
Secured Governmental Unit Claims	\$27,091	\$27,091
Unsecured Priority Claims	\$83,268	\$83,268
General Unsecured Claims	\$1,653,051	\$1,653,051
Debtor in Possession Facility Repayment <sup>2</sup>	TBD	TBD
Other Secured Claims	\$104,779	\$104,779
Totals	<b>\$5,132,220</b>	<b>\$5,332,220</b>
<b>ESTIMATED ASSETS AVAILABLE FOR DISTRIBUTION TO SECURED CLAIM <sup>5</sup></b>	<b>\$169,744,780</b>	<b>\$170,805,780</b>

**NOTES:**

[1] The low and high were determined by the minimum and maximum cash balances from the previous 12 month period.

[2] Required funding exclusive of Debtor in Possession (DIP) repayment. The DIP balance is assumed to be \$5,500,000; however, the actual amount to be repaid in cash is subject to determination as set forth in Section 1(vii) - page 16 of the Disclosure Statement.

[3] Estimated recoveries are equal to the stipulated values between Debtors and Bank of America, as administrative agent, as contained in the Stipulated Properties Value confirmed on 3-28-2013.

[4] As contained in the Disclosure Statement.

[5] The net estimated amounts for distribution will change upon resolution of the line items that are yet to be

**Security National Properties Funding III, LLC and Affiliated Debtors  
Chapter 7 Liquidation Estimated Recovery Range**

	Estimate Range	
	Low	High
<b>Cash</b>		
Bank Balance - As of estimated confirmation of 9-3-2014 <sup>1</sup>	\$306,000	\$1,567,000
<b>Asset Recoveries</b>		
Estimated Recoveries from Asset Sales <sup>2</sup>	\$117,305,750	\$134,452,250
Asset Disposition Fees/ Sales Costs (10%) <sup>3</sup>	\$11,730,575	\$13,445,225
Estimated Recovery from claims against Non-Debtor Affiliates	TBD	TBD
<b>ESTIMATED ASSETS AVAILABLE FOR DISTRIBUTION</b>	<b>\$105,881,175</b>	<b>\$122,574,025</b>
<b>Liquidating Trustee, Priority, Tax and Secured Claims</b>		
Chapter 7 Liquidating Trustee Fees (3%) <sup>4</sup>	\$3,176,435	\$3,677,221
Secured Governmental Unit Claims <sup>5</sup>	\$27,091	\$27,091
Senior Lender Secured Claim (\$164,341,863) <sup>6</sup>	\$102,677,649	\$118,869,713
<b>ESTIMATED RECOVERY AMOUNT for ADMINISTRATIVE, PRIORITY, TAX, SECURED and UNSECURED CLAIMS</b>	<b>\$0</b>	<b>\$0</b>
<b>Administrative, Priority, Tax, Secured and Unsecured Claims <sup>7</sup></b>		
Priority Tax Claims (\$143,235)	\$0	\$0
Administrative Claims: Non-Professional Fee Claims (\$2,720,796)	\$0	\$0
Administrative Claims: Professional Compensation and Reimbursement Claims (\$400,000-\$600,000)	\$0	\$0
Other Secured Claims (\$104,779)	\$0	\$0
Unsecured Priority Claims (\$83,268)	\$0	\$0
General Unsecured Claims (\$1,653,051)	\$0	\$0
Non-Debtor Affiliate Claims (TBD)	\$0	\$0
<b>Totals</b>	<b>\$0</b>	<b>\$0</b>

**NOTES:**

[1] The low and high were determined by the minimum and maximum cash balances from the previous 12 month period.

[2] The recoveries are based upon various discount factors applied to each of the 33 properties that comprise the portfolio based upon the Stipulated Properties Value.

[3] The costs of disposition / sale includes brokerage fees, marketing expenses, and other related sales expenses. These expenses are expected to be approximately 10% of the transaction value.

[4] Maximum trustee fee permitted by Bankruptcy code. Does not include potential counsel fees incurred by trustee.

[5] These are claims by a "governmental unit" as defined in section 101(27) of the Bankruptcy Code that is secured by a Lien in a Debtor's Property, including, but not limited to, those Claims for payment for real property taxes secured by a Lien on a Debtor's Property as provided for Article 7 section 98 of the Disclosure Statement for

[6] Total amount of secured claim is \$164,341,863. No remaining assets available for distribution.

[7] Parenthetical amounts as contained in the Disclosure Statement.

**EXHIBIT D**  
**PROJECTIONS**  
**(Lender Confirmation Option)**

**Security National Properties Funding III and Affiliated Debtors  
Cash Flow and Debt Service  
(\$000s)**

Lenders Plan  
 NOI Based on SNFF's 2014 Budget (Dated February 2014)  
 Notes: Includes Partial Pay down  
 Scenario: I (33 Properties)

	Year 1 2014 / 2015	Year 2 2015 / 2016	Year 3 2016 / 2017	Year 4 2017 / 2018	Grand Total 2014 / 2018
<b>1 FOR THE CALENDAR MONTH</b>					
2 Total Operating Revenue	38,164	34,586	33,209	33,209	139,168
3 Total Operating Expenses	22,096	19,558	18,846	18,846	79,344
4 Total Net Operating Income (Before Management and Landlord Leasing Fees)	16,068	15,029	14,363	14,363	59,824
5 Property Management Fee	1,145	1,038	996	996	4,175
6 Landlord Leasing Commission Allowance	572	519	498	498	2,088
7 Net Operating Income	14,351	13,472	12,869	12,869	53,561
8 Company and Asset Management Expenses	1,050	900	600	600	3,150
9 Modified Net Operating Income	13,301	12,572	12,269	12,269	50,411
10 Extension and Exit Fees	0	0	0	1,666	1,666
11 Emergence Expenses	2,106	0	0	0	2,106
12 Pre-Petition Payables	1,000	0	0	0	1,000
13 Allowed Administrative Claims-Professional Fees	5,500	0	0	0	5,500
14 DIP Repayment	0	0	0	0	0
15 Other	0	0	0	0	0
16 Total Emergence Expenses	8,606	0	0	0	8,606
17 Funding of Emergence Expenses from Outside Sources	0	0	0	0	0
18 Net Bankruptcy Related Expenses Paid From NOI	8,606	0	0	0	8,606
19 Net Cash Flow Before Tenant Improvement Costs and Capital Expenditures	4,695	12,572	12,269	10,603	40,139
21 Tenant Improvements	2,182	1,978	1,899	1,899	7,959
22 Third Party Leasing Commissions	64	58	56	56	234
23 Total Tenant Improvement Costs	2,246	2,036	1,955	1,955	8,193
24 General Property- Capital Expenditures	963	873	838	838	3,511
25 Disposition of Assets					
26 Gross Proceeds	11,845	21,410	0	0	33,255
27 Cost of Sale	1,185	2,141	0	0	3,326
28 Net Proceeds	10,661	19,269	0	0	29,930
29 Cash Flow for Payments on Post-Emergence Capital Structure	12,146	28,933	9,476	7,809	58,364

Security National Properties Funding III and Affiliated Debtors  
Cash Flow and Debt Service  
(\$000s)

NOI Based on SNPF's 2014 Budgets (Dated February 2014)  
Notes: Includes Partial Pay down  
Scenario: I (33 Properties)

1 FOR THE CALENDAR MONTH

30 Available Cash Flow based on Payment Priority

31 Operating Cash Flow

- 32 Expenses Funded from Exit Facility
- 31 Cash Flow Available for Exit Facility Debt Service
- 33 Cash Flow Available for Interest on Restructured Loan
- 34 Cash Flow Available for Repayment of Exit Facility
- 35 Cash Flow Available for Funding Reserve Account
- 36 Cash Flow Available for Repayment of Restructured Loan
- 37 Residual Cash Flow Available

38 Cash Flow From Asset Monetization

- 39 Total Available Cash Flow
- 40 Maximum Amount Available to Repay the Exit Facility
- 41 Cash Flow Available for Funding Reserve Account
- 42 Amount Available to Repay the Restructured Loan
- 43 Residual Cash Flow Available

44 Post-Emergence Capital Structure

45 EXIT FACILITY

- 46 Beginning Balance
- 47 Draws
- 48 Interest Paid on Exit Facility (from Portfolio Cash Flow or Accrued if Necessary)
- 49 Repayment
- 50 Ending Balance

51 RESERVE ACCOUNT

- 52 Beginning Balance
- 53 Deposits to Reserve Account
- 54 Interest Earned
- 55 Withdrawals from Reserve Account
- 56 Ending Balance

57 RESTRUCTURED LOAN

- 58 Beginning Balance
- 59 Total Payment Due
- 60 Interest
- 61 Monthly Amortization
- 62 Repayment in Addition to Amortization
- 63 Ending Balance

64 DEBT METRICS

- 65 On Total Exit Facility and Restructured Loan
- 66 Debt Yield (Using Modified NOI)
- 67 DSCR (Using Modified NOI)
- 68 Solely on Restructured Loan
- 69 Debt Yield (Modified NOI less interest on Exit Fac.)
- 70 DSCR (Modified NOI less interest on Exit Fac.)

	Year 1 2014 / 2015	Year 2 2015 / 2016	Year 3 2016 / 2017	Year 4 2017 / 2018	Grand Total 2014 / 2018
30 Available Cash Flow based on Payment Priority	10,123	1,422	1,155	2,235	14,935
31 Operating Cash Flow	11,609	11,086	10,630	10,044	43,369
32 Expenses Funded from Exit Facility	11,374	11,051	10,630	10,044	43,099
31 Cash Flow Available for Exit Facility Debt Service	2,745	2,942	3,428	2,672	11,788
33 Cash Flow Available for Interest on Restructured Loan	0	0	1,907	(698)	1,308
34 Cash Flow Available for Repayment of Exit Facility	0	1,165	1,429	2,048	4,642
35 Cash Flow Available for Funding Reserve Account	0	0	0	0	0
36 Cash Flow Available for Repayment of Restructured Loan	0	0	0	0	0
37 Residual Cash Flow Available	0	0	0	0	0
38 Cash Flow From Asset Monetization	0	0	0	0	0
39 Total Available Cash Flow	10,661	19,269	0	0	29,930
40 Maximum Amount Available to Repay the Exit Facility	3,550	6,417	0	0	9,967
41 Cash Flow Available for Funding Reserve Account	0	1,000	0	0	1,000
42 Amount Available to Repay the Restructured Loan	7,111	11,852	0	0	18,963
43 Residual Cash Flow Available	0	0	0	0	0
44 Post-Emergence Capital Structure	0	0	0	0	0
45 EXIT FACILITY	0	3,828	0	0	0
46 Beginning Balance	0	0	1,000	2,909	2,312
47 Draws	10,123	1,422	0	0	11,545
48 Interest Paid on Exit Facility (from Portfolio Cash Flow or Accrued if Necessary)	235	35	0	0	270
49 Repayment	6,295	5,250	0	0	11,545
50 Ending Balance	3,828	0	0	0	0
51 RESERVE ACCOUNT	0	0	0	0	0
52 Beginning Balance	0	0	1,000	2,909	2,312
53 Deposits to Reserve Account	0	1,000	3,061	715	4,776
54 Interest Earned	0	0	2	3	5
55 Withdrawals from Reserve Account	0	0	1,155	2,236	3,391
56 Ending Balance	0	1,000	2,909	1,391	1,391
57 RESTRUCTURED LOAN	120,000	110,516	96,063	93,268	120,000
58 Beginning Balance	8,629	8,108	7,202	7,372	31,311
59 Total Payment Due	6,256	5,508	5,089	4,865	21,717
60 Interest	2,373	2,601	2,113	2,507	9,594
61 Monthly Amortization	7,111	11,852	681	2,672	22,317
62 Repayment in Addition to Amortization	110,516	96,063	93,268	88,089	88,089
63 Ending Balance	128,341	114,024	95,897	88,089	88,089
64 DEBT METRICS	11,848%	13,42%	13,50%	14,69%	13,50%
65 On Total Exit Facility and Restructured Loan	1,50	1,54	1,70	1,66	1,62
66 Debt Yield (Using Modified NOI)	110,516	96,063	93,268	88,089	88,089
67 DSCR (Using Modified NOI)	12,05%	13,38%	13,50%	14,69%	13,50%
68 Solely on Restructured Loan	1,51	1,55	1,70	1,66	1,62
69 Debt Yield (Modified NOI less interest on Exit Fac.)					
70 DSCR (Modified NOI less interest on Exit Fac.)					

The analysis of Plan feasibility uses cash flows generated from the portfolio to determine the performance of the Restructured Loan over its term.

Key assumptions in the analysis include:

- Cash flows are based on 2014 building-by-building monthly budgets provided by the Company. The cash flows were provided in March 2014. The cash flows are kept flat for each year in the projection period.
- The analysis includes a third party management fee of 3.0% of gross revenue collected and an allowance for landlord leasing commission of 1.5% of gross revenue collected. An asset management fee that declines over time is included as well (it totals \$1.05 million in Year One.)
- An allowance for Tenant Improvements, Tenant Leasing Commissions and Capital Expenditures of \$3.3 million per year was included. The \$3.3 million level is based on the three-year average for the portfolio. The amount declines as assets are sold.
- The following eight (8) assets are assumed to be sold over the first 21 months following Confirmation. The date following each asset is the month following Confirmation the asset is assumed sold; once sold the net operating income from that asset is removed from the projection. To allow for an adequate marketing period, the first asset is not assumed to be sold until the 7<sup>th</sup> month:
  - Alliance Bank Center (9<sup>th</sup> Month)
  - Aspen Mobile Home Park (21<sup>st</sup> Month)
  - Dothan (15<sup>th</sup> Month)
  - Hobby Lobby (13<sup>th</sup> Month)
  - National Oil (19<sup>th</sup> Month)
  - Orchards Mall (7<sup>th</sup> Month)
  - Rangeview Mobile Home Park (15<sup>th</sup> Month)
  - Sunset (19<sup>th</sup> Month)
- The assets are assumed to be sold at the asset's value in the Valuation Stipulation. A 10% cost of sale is deducted.
- The sale of these assets generates \$33.2 million of gross proceeds and approximately \$30.0 million of net proceeds over the 21-month time period. One-third of the net proceeds from asset dispositions are used to pay down the Exit Loan.

- The above achieves the following:
  - Pre-Petition Payables and Allowed Administrative Claims, including the DIP assuming it is determined to be an Allowed Administrative Claim, are paid.
  - Pays the Exit Loan down to \$3.8 million by the end of Year One; the Exit Facility's maximum availability is reduced from \$10 million to \$6.0 million at the end of Year One.
  - Pays off the Exit Loan by the end of Year Two.
  - Funds the Reserve Account to \$1.0 million by the end of Year Two.
  - Over Years Three and Four, the Reserve Account is built up to the \$3.0 million maximum and fluctuates over the period.
  - There is sufficient cash flow to pay all property-level operating expenses, assumed capital expenditures and principal and interest on the Restructured Loan.
  - In Year Four, the Restructured Loan will be paid down to \$88.1 million.
  
- It appears that the Restructured Loan can be repaid or refinanced at the end of Year Four, for the reasons noted below:
  - The Restructured Loan is secured by 25 properties with assumed market value \$138 million (\$171 less \$33 million), a 64% Loan to Value.
  - During Year Four, the 25 properties remaining in portfolio generate a 14.8 % debt yield and a 1.66 Debt Service Coverage Ratio.
  - The balance in the Reserve Account is \$1.4 million.
  
- Based on the above, it is highly likely that the Restructured Loan can be refinanced at maturity.