

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILSON DIVISION

In the Matter of:  
SHEARIN FAMILY INVESTMENTS, LLC  
Debtor

Case No.:  
08-07082-8-JRL  
Chapter 11

**AMENDED AND RESTATED PLAN OF REORGANIZATION**

Pursuant to the provisions of Section 1123 of the Bankruptcy Code (11 U.S.C. § 1123), the Debtor hereby submits the following Amended and Restated Plan of Reorganization:

**I. SUMMARY OF AMENDED AND RESTATED PLAN**

The Amended and Restated Plan contemplates a continuation of the Debtor's business. In accordance with the Amended and Restated Plan, the Debtor intends to satisfy certain creditor claims from income earned through continued operations.

The Debtor's Amended and Restated Plan of Reorganization ("Plan") is based on the Debtor's belief that the interests of its creditors will be best served if it is allowed to reorganize its debts.

**II. DEFINITIONS**

1. "ADMINISTRATIVE CLAIM" shall mean any Claim entitled to priority under Section 507(a)(1) of the Bankruptcy Code.

2. "ALLOWED" shall mean (a) any Claim against the Debtor, proof of which was timely filed or by order of the Bankruptcy Court was not required to be filed; or (b) any Claim that has been listed in the Schedules as liquidated in amount and not disputed or contingent; and in each such case in (a) or (b) above, as to which either (1) no objection to the allowance thereof or other similar pleading has been filed within the applicable period set forth in Section IV, or (2) an objection or other similar pleading has been filed and the Claim has been allowed by a Final Order of the Bankruptcy Court, but only to the extent so allowed.

3. "AVAILABLE CASH" shall mean the total cash available for distribution on the Effective Date.

4. "BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, Title 11 of the United States Code, as enacted in 1978 and thereafter amended. References to "§\_\_\_" herein shall refer to a section of the Bankruptcy Code, 11 U.S.C. §101, et seq.

5. "BANKRUPTCY RULES" shall mean the Federal Rules of Bankruptcy

Procedure, as amended from time to time, as applicable to Chapter 11 cases.

6. "CLAIM" shall mean a duly listed or a timely filed claim which is allowed in order to be paid by the Court.

7. "CLASS" shall mean any one of the Classes of Claims or Interests designated in Article III of the Amended and Restated Plan.

8. "CONFIRMATION DATE" shall mean the date of entry by the Court of an order confirming the Amended and Restated Plan at or after a hearing pursuant to 11 U.S.C. §1129.

9. "CONFIRMATION HEARING" shall mean the hearing conducted by the Court regarding confirmation of the Amended and Restated Plan pursuant to 11 U.S.C. §1129.

10. "CONFIRMATION ORDER" shall mean the order of the Court confirming the Amended and Restated Plan.

11. "COURT" shall mean the United States Bankruptcy Court for the Eastern District of North Carolina, including the United States Bankruptcy Judge presiding in the Chapter 11 case of the Debtors.

12. "CREDITORS" shall mean all creditors of the Debtors holding claims for unsecured debts, liabilities, demand or claims of any character whatsoever.

13. "DEBTOR" shall mean the Debtor identified on the first page of this Amended and Restated Plan.

14. "DISBURSING AGENT" shall mean Trawick H. Stubbs, Jr., attorney, or that person selected by the Court who shall perform the duties and have the rights and obligations described herein.

15. "DISCLOSURE STATEMENT" shall mean the Amended and Restated Disclosure Statement describing this Amended and Restated Plan prepared in accordance with §1125 and approved by order of the Bankruptcy Court, to be distributed to the holders of claims whose votes with respect to this Amended and Restated Plan are to be solicited.

16. "DISPUTED CLAIM" shall mean any claim (a) that is scheduled by the Debtors as disputed, contingent or unliquidated, or (b) that is scheduled by the Debtors, or proof of which has been filed with the Bankruptcy Court and with respect to which a timely objection to allowance, in whole or in part, has been filed and which objections have not been (i) withdrawn or settled, or (ii) determined by a Final Order.

17. "DISTRIBUTION DATE" shall mean the date on which distributions are

to be made under the Debtor's Amended and Restated Plan.

18. "EFFECTIVE DATE" shall be that date on which the Order Confirming Amended and Restated Plan becomes final and non-appealable.

19. "FINAL DECREE" shall mean the order of this Court pursuant to Bankruptcy Rule 3022 closing this case.

20. "FINAL ORDER" shall mean an order of the Court that has been entered and either (a) the time for appeal from such entered order has expired; or (b) any appeal that has been timely filed has been dismissed or otherwise finally determined.

21. "GENERAL UNSECURED CLAIM" shall mean any claim, whether or not liquidated or contingent, other than a priority claim, administrative claim, or secured claim.

22. "IMPAIRED" classes of creditors are those whose claims or interests are altered by the Amended and Restated Plan, or who will not receive under the Amended and Restated Plan the allowed amount of their claims in cash as of the "Effective Date" (as defined in the Plan).

23. "PETITION DATE" shall mean the date upon which the Debtor filed the voluntary Chapter 11 petition.

24. "PLAN" shall mean this Amended and Restated Plan of Reorganization in its present form or as it may be amended or modified.

25. "PRIORITY CLAIM" shall mean any claim to the extent entitled to priority in payment under §507.

26. "PRO-RATA" shall mean the amount of cash or property to be paid or distributed to a claimant with respect to an Allowed Claim on a particular date, in accordance with the ratio, as of such date, of the dollar amount of the Allowed Claim of such person in the indicated class to the aggregate dollar amount of Claims in the indicated class (including, in each such calculation, the full amount of Disputed Claims in the class which have been asserted or are otherwise pending and which have not yet been allowed or otherwise disposed of).

27. "SALE" shall mean the sale of certain assets of the Debtor under this Amended and Restated Plan.

28. "SALE PROCEEDS" means the proceeds of the Sale of certain assets of the Debtor under this Amended and Restated Plan, after payment of all reasonable and ordinary closing costs, (including but not limited to ad valorem taxes, commissions, and any other costs permitted under Section 506(c) of the Code).

29. "SECURED CREDITORS" shall mean all creditors who hold a lien, security interest or any other encumbrances which have been properly perfected as required by law with respect to property owned by the Debtors, to the extent of the value of the collateral.

30. "SUBSTANTIAL CONSUMMATION" shall mean the time the reorganized Debtors have commenced the distribution of initial Plan payments to all creditor classes.

31. "TAX CLAIM" shall mean any claim entitled to priority in treatment pursuant to §507(a)(8).

### **III. CLASSIFICATION AND TREATMENT OF CLASSES OF CREDITORS**

The Debtor classifies the following classes of claims, indicating whether said class is impaired or unimpaired, and proposes the following treatment:

**A. Class 1 - Administrative Costs:**

(1) Description of Claims. Class 1 consists of claims for any cost or expense of administration pursuant to Sections 503, 506, and 507 of the Bankruptcy Code.

The following claims of professionals will be paid subject to Court approval:

Stubbs & Perdue, P.A.	Attorney for the Debtor	To be determined by the court
McGladrey & Pullen, LLP	Accountants	To be determined by the court

GreenHawk Partners, LLC, a proposed post-petition lender, filed Claim #60 seeking recovery of an administrative claim in the amount of \$49,943.00. GreenHawk's claim has been paid in full.

(2) Impairment. This class will be impaired.

(3) Treatment. Administrative costs and expenses approved by the Court shall be paid in cash and in full including accruals to date of payment within ten days from the Effective Date of the Plan.

In the event that funds are not available to pay such costs and expenses within ten (10) days of the Effective Date of the Plan, then each holder of such a claim will receive payments from the Debtor until paid in full. Such claims remaining unpaid ten days following the Effective Date shall accrue interest at a rate of eight percent (8%) per annum.

**B. Class 2 – Ad Valorem Taxes:**

(1) Description of Claims. Class 2 consists of claims for taxes owed by the Debtor to any city, county, or other municipality or taxing entity entitled to tax the property of the Debtor based upon the value of the property assessed. The Debtor is aware of the following claim in this Class:

Carteret County Tax Administrator	\$78,335.35
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(2) Impairment. This class will be unimpaired.

(3) Treatment. The Debtor proposes to pay claims in this class with quarterly payments over a period of five (5) years from the Petition Date. Quarterly payments shall commence on the fifteenth day of the first month following the Effective Date, and shall include annual interest at the rate of nine percent (9%) per annum. For feasibility purposes, the Debtor estimates that quarterly payments will be \$4,907.09.

**C. Class 3 – Tax Claims:**

(1) Description of Claims. Class 3 consists of claims against the Debtor for income taxes, withholding taxes, unemployment taxes and/or any and all other taxes levied or entitled to be levied against the Debtor by the Internal Revenue Service or the North Carolina Department of Revenue plus interest as allowed by law. *The Debtor is not aware of any claims in this class.*

(2) Impairment. This class will be unimpaired.

(3) Treatment. The Debtor proposes the following treatment:

**Cost and expenses of administration**, if any, shall be paid in cash and in full including accruals to date of payment within thirty (30) days from the Effective Date. The Debtor does not anticipate any such claims will be filed.

**Unsecured priority tax claims** described in Section 507(a)(8) of the Bankruptcy Code, if any, shall be paid in full in quarterly installments over a period not exceeding five (5) years from the Petition Date and payments shall commence on the fifteenth day of the first full month following the Effective Date, with interest at the statutory rate as of the Effective Date, currently four percent (4%) per annum. The Debtor does not anticipate any such claims will be filed.

**Secured claimants**, if any, shall retain their secured interest in the property of the Debtor. The taxing authority shall retain its lien and secured status as to the underlying secured tax liability, plus accruing interest at the statutory rate, currently four percent (4%) per annum, from the Effective Date. The Debtor shall pay these claims in quarterly installments over a period not to exceed five (5) years from the Petition Date beginning

on the fifteenth day of the first full month following the Effective Date. The Debtor does not anticipate any such claims will be filed.

**Unsecured general tax claims**, if any, will be treated as provided below in the section relating to “General Unsecured Claims.” The Debtor does not anticipate any such claims will be filed.

**D. Class 4 – RBC Real Estate Finance (“RBC”):**

(1) Description of Debts.

a. Pre-Petition Loans:

1. The “Acquisition Loan”. The Debtor is indebted to RBC pursuant to a note in the original principal amount of \$2,400,000.00 and a note in the original principal amount of \$600,000.00. Those notes are secured by a deed of trust on the 11.54 acre tract located on the sound in Indian Beach, North Carolina (the “Nautical Club Property”). RBC has filed claim #2 in the amount of \$1,360,942.00 with respect to these debts.

2. The “Construction Loan”. The Debtor is indebted to RBC pursuant to a note in the original principal amount of \$12,400,000.00, a note in the original principal amount of \$10,900,000.00 and a note in the original principal amount of \$6,000,000.00. Those notes are secured by a deed of trust on the Nautical Club Property. RBC has filed claim #3 in the amount of \$27,006,533.00 with respect to these debts.

b. Post-Petition DIP Financing. The Debtor is indebted to RBC pursuant to a note in the maximum principal amount of \$8,000,000.00, attributable to post-petition financing to fund completion of construction of the Nautical Club project and certain of the Debtor’s operating expenses. This loan is secured by a first priority deed of trust on the Nautical Club property, and a junior deed of trust on the Debtor’s remaining real property. This loan bears interest at a variable rate of LIBOR plus 6% per annum and has an 18-month maturity.

(2) Impairment. This class will be impaired.

(3) Treatment. The Debtor proposes to treat these claims as follows:

a. Pre-Petition Loans: These debts will be treated as fully secured. RBC shall retain its liens with the priority thereof as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, except with respect to the senior priority of the RBC Post-Petition DIP Financing deed of trust. Payments to RBC on the pre-petition debts shall be made from the sales of condominium units and the excess acreage located on the Nautical Club Property, and/or from net proceeds of sales of the Debtor’s other real property after

payment of prior liens, if any. Payments shall be applied first to the Post-Petition DIP Financing claim, and then to the Pre-Petition Loan claims. If the Debtor has paid the Post-Petition DIP Financing by the maturity date, the Debtor shall have a period not to exceed thirty-six (36) months from the Effective Date (the "Sellout Period") in which to pay the claims arising from the Pre-Petition Loans. RBC will release the condominium units upon receipt of the release prices set forth in **Section V** of this Plan. Interest shall accrue on the Pre-Petition Loans at a rate equal to the one month LIBOR, as it fluctuates from time to time, plus 3.5%. During the Sellout Period, the Debtor shall keep the property taxes current, and keep the property insured with RBC named as a loss-payee in an amount sufficient to cover the obligations secured by the property. If the Debtor has not paid the claims arising from the Pre-Petition Loans or liquidated the collateral securing the claims within thirty-six (36) months after the Effective Date, RBC shall have the right to exercise any and all remedies available to it upon default, including foreclosure.

b. Post-Petition DIP Financing. The deed of trust on the Nautical Club Property that secures the Post-Petition DIP Financing will have first priority, and the deeds of trust on the Debtor's remaining property will have the priority accorded to them under North Carolina law. Payments to RBC on this claim shall be made from the sales of condominium units and the excess acreage located on the Nautical Club Property, and/or from net proceeds of sales of the Debtor's other real property after payment of prior liens, if any. Payments shall be applied first to the Post-Petition DIP Financing claim, and then to the Pre-Petition Loan claims. If the Debtor has not paid the claim arising from the Post-Petition DIP Financing by the maturity date of that loan, RBC shall have the right to exercise any and all remedies available to it upon default, including foreclosure. Interest will accrue on the Post-Petition DIP Financing at the contract rate. RBC will release the condominium units upon receipt of the release prices set forth in **Section V** of this Plan.

**E. Class 5 – East Carolina Bank ("ECB")**

(1) Description of Debt. The Debtor is indebted to ECB pursuant to a note in the original principal amount of \$4,252,416.51 secured by a first priority deed of trust on oceanfront property located in Indian Beach, North Carolina formerly known as the "Squatters Campsite Property" consisting of approximately 4.37 acres (the "Oceanfront Parcel of the Oceanside Site"). ECB has filed secured claim #4 in the amount of \$4,377,709.37, and claim #5 in the amount of \$8,043.45 for attorney fees.

(2) Impairment. This class will be impaired.

(3) Treatment. These claims shall be treated as secured obligations of the Debtor in an amount equal to the lesser of: (1) the value of the property which secures the debts; or (2) (a) all outstanding principal and interest due on the petition date; plus (b) any interest, costs and expenses which may be approved by the Court pursuant to Section

506(b). The creditor shall retain its liens with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until the secured claims are paid. The Debtor shall have a period not to exceed six (6) months from the Effective Date in which to sell the collateral securing the claims or otherwise pay ECB in full. During this time period, the Debtor shall pay to the creditor the net proceeds of all sales of the collateral that secures the ECB debts, but will make no other payments to the creditor, and interest shall continue to accrue at a rate equal to the one month LIBOR, as it fluctuates from time to time, plus 3.5%. During this time period, the Debtor shall keep the property taxes current. If the Debtor has not paid the claims or liquidated the collateral securing the claims within six (6) months after the Effective Date, ECB shall be entitled to foreclose on the property. In the event of a deficiency claim, the claim shall be treated as a general unsecured claim as set forth below.

**F. Class 6 – Southern Bank & Trust Company (“Southern”):**

(1) Description of Debt. Marvin Shearin and wife, Audrey Shearin are indebted to Southern pursuant to a note in the original principal amount of \$500,000.00 which is secured by a deed of trust given by the Debtor on .896 acres of property located at 1455 Salter Path Road in Indian Beach, North Carolina (the “Roadside Parcel of the Oceanfront Site”). Southern Bank only advanced \$250,000.00. These funds were used by the Debtor to pay for infrastructure for the entire Oceanside Site. Southern has filed secured claim #9 in the amount of \$257,497.36. The debt secured by this property is also secured by certain property owned by Marvin Shearin and wife, Audrey Shearin located in Halifax County, North Carolina.

(2) Impairment. This class will be impaired.

(3) Treatment. This claim shall be treated as a secured obligation of the Debtor in an amount equal to the lesser of: (1) the value of the property which secures the debt; or (2) (a) all outstanding principal and interest due on the petition date; plus (b) any interest, costs and expenses which may be approved by the Court pursuant to Section 506(b). The creditor shall retain its liens with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until the secured claim is paid. The Debtor shall have until April 3, 2010 in which to sell the collateral securing the claim, or otherwise pay the claim in full. During this time period, the Debtor shall pay to the creditor the net proceeds of any sales, but will make no other payments to the creditor. Marvin and Audrey Shearin will continue to make interest payments to the creditor at the current non-default contract rate. During this time period, the Debtor shall keep the property taxes current. If the Debtor has not paid the claim or liquidated the collateral securing the claim by April 3, 2010, Southern shall be entitled to foreclose on the Debtor’s property that secures the debt to Southern. In the event of a deficiency claim, the claim shall be treated as a general unsecured claim as set forth below. The creditor shall retain all rights and remedies with respect to the primary obligors.



**G. Class 7 – Wachovia Bank (“Wachovia”):**

(1) Description of Debt. On or about April 12, 2007, the Debtor entered into a promissory note with Wachovia in the original principal amount of \$1,000,000.00. These funds were used by the Debtor to acquire two parcels located at 1530 and 1540 Salter Path Road comprising 1.54 acres which were formerly the site of a Dairy Queen restaurant (the “DQ Site”). The note is secured by a first priority deed of trust on the DQ Site. Wachovia has filed Claim #39 in the amount of \$1,072,737.87, plus interest.

(2) Impairment. This class will be impaired.

(3) Treatment. This claim shall be treated as a secured obligation of the Debtor in an amount equal to all outstanding principal and interest due under the Wachovia Note as of the petition date plus post-petition interest and fees allowed under § 506(c), all as set forth in Wachovia’s amended proof of claim (the “Wachovia Claim”). Wachovia shall retain its first-priority lien on the DQ Site pursuant to §1129(b)(2)(A)(i)(I) of the Bankruptcy Code until the Wachovia Claim is paid in full. The Wachovia Claim shall be paid as follows:

(a) The Debtor will have until the earlier of six months following confirmation of the Plan or December 31, 2009 (the “Sale Deadline”) to sell the DQ Site in an amount sufficient to satisfy the Wachovia Claim in full;

(b) The Wachovia Claim must be paid in full upon the earlier of the closing of the sale of the DQ Site or the Sale Deadline; and,

(c) If the Wachovia Claim is not paid in full by December 31, 2009, if a trustee is appointed in these proceedings, if these proceedings are converted to a case under Chapter 7, if for any reason the Debtor has not filed the amended Plan of Reorganization by June 1, 2009 or if it has not confirmed this Amended Plan by June 30, 2009, then the Debtor shall, at Wachovia’s option:

(i) Consent to relief from the automatic stay and/or the confirmation injunction (as applicable) to allow Wachovia to exercise its state law remedies, including foreclosure on the DQ Site as provided in the DQ Deed of Trust; or

(ii) Offer the DQ Site for sale under the provisions of Section 363 of the Bankruptcy Code, with Wachovia retaining credit bidding rights up to and including the full amount of the Wachovia Claim.

Except as set forth above, the Debtor shall make no other payments to Wachovia. Until confirmation of this Amended and Restated Plan, interest shall accrue on the unpaid principal balance of the Wachovia Note at the contract (non-default) rate of interest. After confirmation of the Amended and Restated Plan until payment of the Wachovia Claim in full, interest shall accrue on the unpaid principal balance of the Wachovia Note at a rate equal to Wachovia’s prime rate, as it fluctuates from time to

time, plus 1.0%. The Debtor shall keep all property taxes current with respect to the DQ Site.

**H. Class 8 – Samer Hamad:**

(1) Description of Debt. On or about April 12, 2007, the Debtor entered into a purchase money promissory note with Samer and Sumer Hamad, husband and wife, in the original principal amount of \$118,477.75. These funds represent a portion of the purchase price paid to Mr. and Mrs. Hamad for the DQ Site, and the note is secured by a second deed of trust on the DQ Site. The Hamads filed claim number 37 in the amount of \$134,543.88.

(2) Impairment. This class will be impaired.

(3) Treatment. This claim shall be treated as a secured obligation of the Debtor in an amount equal to the lesser of: (1) the value of the property which secures the debt, minus the amount of Wachovia Bank's claim; or (2) (a) all outstanding principal and interest due on the petition date; plus (b) any interest, costs and expenses which may be approved by the Court pursuant to Section 506(b). This creditor shall retain its liens with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until the secured claim is paid. The Debtor shall have a period ending on the earlier of (i) six (6) months after the Effective Date, or (ii) the date Wachovia Bank sells the collateral pursuant to the provisions of **Section G** (Class 7) above ("Sellout Period"), in which to sell the collateral securing the claim. During the Sellout Period, the Debtor shall pay to the creditor the net proceeds of any sales of the collateral after Wachovia Bank has been paid in full, but will make no other payments to Samar Hamad, and interest shall accrue on the secured claim at a rate equal to the Wachovia Bank prime rate, as it fluctuates from time to time, plus 1.0 %. During the Sellout Period, the Debtor shall keep the property taxes current. If the Debtor has not paid the claim or liquidated the collateral securing the claim within the Sellout Period, then Samar Hamad may foreclose on the collateral. If Wachovia Bank forecloses on or sells the collateral in payment of its claim during the Sellout Period, the claim of Samar Hamad shall be extinguished. In the event of a deficiency, this creditor shall not be entitled to any additional amounts because this is a purchase money loan.

**I. Class 9 – John Hamad ("Hamad"):**

(1) Description of Debt. On or about March 13, 2007, the Debtor entered into a purchase money promissory note with John Hamad in the original principal amount of \$1,160,854.00. These funds represent a portion of the purchase price paid to Mr. Hamad for the Oceanside Site, and the note is secured by a second deed of trust on the Oceanfront Parcel of the Oceanside Site. Mr. Hamad filed claim number 36 in the amount of \$1,292,710.62.

(2) Impairment. This class will be impaired.

(3) Treatment. This claim shall be treated as a secured obligation of the Debtor in an amount equal to the lesser of: (1) the value of the property which secures the debt, minus the amount of ECB's claim; or (2) (a) all outstanding principal and interest due on the petition date; plus (b) any interest, costs and expenses which may be approved by the Court pursuant to Section 506(b). The creditor shall retain its liens with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until the secured claim is paid. The Debtor shall have a period not to exceed six (6) months from the Effective Date ("Sellout Period") in which to sell the collateral securing the claim. During the Sellout Period, the Debtor shall pay to Hamad the net proceeds of any sales after ECB has been paid in full, but will make no other payments to Hamad, and interest shall accrue on the secured claim at a rate equal to the Wachovia Bank prime rate, as it fluctuates from time to time, plus 1.0 %. During the Sellout Period, the Debtor shall keep the property taxes current. If the Debtor has not paid the claim or liquidated the collateral securing the claims within six (6) months after the Effective Date, then Hamad may foreclose on the collateral. If ECB forecloses on the collateral in payment of its claim during the Sellout Period, the claim of Hamad shall be extinguished. In the event of a deficiency, Hamad shall not be entitled to any additional amounts because this is a purchase money loan.

**J. Class 10 – Centurion:**

(1) Description of Class. This class consists of the general contractor for the construction of the Nautical Club project. Centurion filed claim number 41 in the amount of \$3,183,669.84. Since that time, additional work has been performed by Centurion, and Centurion received a payment of \$830,000 from RBC's post-petition financing funds. Centurion perfected its contractor's lien by filing Claims of Lien with the Carteret County Clerk of Courts ("Clerk") on September 29, 2008, and by filing a Notice of Lis Pendens with the Clerk on February 27, 2009. Centurion has filed an adversary proceeding against RBC in which it requests, among other things, that RBC be equitably subordinated to Centurion's claim.

(2) Impairment. This class will be impaired.

(3) Treatment. The Debtor proposes to treat this claim as fully secured. Centurion will be paid from the proceeds of the sale of the Debtor's Nautical Club property. Unless RBC is equitably subordinated to Centurion as a result of the pending adversary proceeding, Centurion will not receive any payments from the sale of the Nautical Club property unless and until RBC has been paid in full. If RBC is equitably subordinated to Centurion as a result of the pending adversary proceeding, Centurion will receive payments from the sale of the Nautical Club as provided in the final judgment or order entered in the adversary proceeding. If RBC is not equitably subordinated to Centurion as a result of the pending adversary proceeding, then after RBC has been paid in full, Centurion will receive an amount equal to the Minimum Release Prices set forth on **Exhibit D** attached hereto. In the event of a deficiency, the claim shall be treated as a general unsecured claim as set forth below.

**K. Class 11 - Thompson Trust Claim.**

(1) Description of Class. Due to a banking and accounting error, the Debtor received the benefit of \$125,000.00 that properly belonged to the trust account of its attorney, James M. Thompson.

(2) Impairment. This class will be impaired.

(3) Treatment. The Debtor proposes to repay this loan from the sale of its property, after payment of all prior claims of secured creditors. After RBC and Centurion have been paid in full, Thompson will receive an amount equal to the Minimum Release Prices set forth on **Exhibit D** attached to the Debtor's Disclosure Statement from the sale of the Nautical Club condominiums. The Debtor will evidence this obligation with a promissory note, which note shall be secured by a junior deed of trust on all of the Debtor's property.

**L. Class 12 – Unit Purchasers Who Paid Full Purchase Price for Existing Units.**

(1) Description of Class. Each member of this class entered into a contract to purchase a unit in the existing Nautical Club Building A and paid 100% of the contract price.

(2) Impairment. This class will be impaired.

(3) Treatment. Each member of this class which is entitled to specific performance will be given the opportunity to have the existing unit in Building A for which it contracted transferred to it subject to RBC's lien in an amount equal to RBC's release price for the unit, as set forth in the RBC post-petition financing order and on **Exhibit D** attached to the Debtor's Disclosure Statement. Any claimant in this class accepting this option will be deemed to have been paid in full, and the Debtor shall have no further liability with respect to such claims. The claims of members of this class who do not elect to exercise this option will be treated as general unsecured claims as set forth below.

**M. Class 13 – Unit Purchasers – Future Phases.**

(1) Description of Class. Members of this class entered into a contract to purchase one or more units in a future phase of the Nautical Club project, and paid amounts toward the purchase of their unit(s) in amounts varying from 5% to 100% of the contract prices.

(2) Impairment. This class will be impaired.

(3) Treatment. The claims of members of this class will be treated as general unsecured claims as set forth below.

**N. Class 14 – Unit Purchasers Who Paid Deposits.**

(1) Description of Class. Each member of this class entered into a contract to purchase a unit in the existing Nautical Club building, and paid a deposit of less than the full purchase price towards the purchase of their unit(s).

(2) Impairment. This class will be impaired.

(3) Treatment. Each member of this class will be given the opportunity to purchase the unit for which it contracted by making a payment to the Debtor in an amount equal to the greater of (i) RBC's release price for the unit, as set forth in the RBC post-petition financing order and on **Exhibit D** attached to the Debtor's Disclosure Statement, or (ii) the original contract price, less ten percent, less the amount of the deposit previously paid to the Debtor. Any claimant in this class accepting this option will be deemed to have been paid in full, and the Debtor shall have no further liability with respect to such claims. The claims of members of this class who do not elect to exercise this option will be treated as general unsecured claims as set forth below; provided, however, certain of such claimants may be entitled to a priority unsecured claim of \$2,425.00 under Code section 507(a)(7) to the extent any such claimants are individuals and can show that the unit(s) was (were) purchased for personal use.

**O. 15 - General Unsecured Claims:**

(1) Description of Class. This class consists of all allowed, undisputed, non-contingent unsecured claims listed in the Debtor's petition or as otherwise approved by the Court.

(2) Impairment. This class will be impaired.

(3) Treatment. The total of general unsecured claims and deficiency claims is \$2,436,475.45 as of the date of the filing of this Plan. As set forth on Exhibit C to the Disclosure Statement, no amount would be distributed to unsecured creditors in a Chapter 7 liquidation. The Debtor proposes to pay to the unsecured creditors an amount equal to five percent (5%) of the net proceeds, after the payment of closing costs and release prices to secured creditors, from the sale of each Nautical Club condominium unit, up to a maximum aggregate amount to all unsecured creditors of \$100,000.00. All such payments shall be distributed pro rata to allowed creditors within this Class.

The Debtor may investigate and pursue avoidance actions pursuant to 11 U.S.C. §§ 547 and 548. Any funds collected through such actions will be distributed in accordance with the priorities established by the Bankruptcy Code and Orders of this Court.

**P. Class 16 - Equity Security Holders:**

(1) Classification. This class consists of the members of the Debtor. The members of the Debtor are James Marvin Shearin, II (50%), James Marvin Shearin, II and Audrey Shearin as Trustees of Irrevocable Trust for A. Megan Shearin (25%), and James Marvin Shearin, II and Audrey Shearin as Trustees of Irrevocable Trust for James Holden Shearin (25%).

(2) Impairment. This class will be unimpaired.

(3) Treatment. The equity security holders shall retain their ownership interest upon confirmation of the Debtor's Plan.

#### **IV. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Except as specified herein, all contracts which exist between the Debtor and any individual or entity, whether such contract be in writing or oral, which have not heretofore been rejected or heretofore been approved by Orders of the Court are hereby specifically rejected; provided, however, that this provision is not intended to reject and does not reject any agreement for the renewal or the extension of any loan or funds, presently binding and in effect between the Debtor and any secured creditor. The Debtor hereby assumes all leases currently in effect, in which the Debtor is the lessor.

Any person with a Claim arising from such rejection shall be deemed to hold a general unsecured claim and shall file a proof of claim within sixty (60) days of the Effective Date or be forever barred from asserting any Claim relating to such rejection.

Summer Winds Wastewater Agreement. The Debtor owns two parcels between the Atlantic Ocean and Salter Path Road (1455 and 1475 Salter Path Road) comprising a total of 4.996 acres (the "Oceanside Site"). The Nautical Club Project does not yet have access to a wastewater treatment facility. Summer Winds is an existing, unrelated 211-unit condominium development located directly across Salter Path Road from the Nautical Club Site. On or about July 15, 2008, the Debtor and Summer Winds entered into an Agreement with respect to the joint development of a wastewater treatment facility to serve the Summer Winds condominiums and the Nautical Club Project. The Agreement was modified by an Addendum#1 dated August 8, 2008. The Agreement calls for the joint wastewater treatment plant and primary effluent disposal area to be located on the Summer Winds site, and for repair areas for effluent disposal to be located on the Oceanside, DQ and Nautical Club Sites. The Debtor has assumed this Agreement.

#### **V. MEANS OF IMPLEMENTATION AND EXECUTION OF PLAN**

A. The Debtor proposes to make payments under the Plan from funds on hand and any distributions of net income from the operation of its business.

Sale Procedure For The Sale Of Condominium Units in The Nautical Club ("Condo Units" or "Units"). Subject to the sale procedure described herein, any Condo

Unit in the Nautical Club may be sold after the Debtor obtains a certificate of occupancy for the Condominium project. Each Condo Unit shall be sold for a purchase price which will result in receipt by RBC of an amount at least equal to the Minimum Release Price set forth on **Exhibit D** attached to the Debtor's Disclosure Statement. RBC's Post-Petition DIP Financing loan documents provide for the following minimum release price for the Units: the greater of the Net Proceeds (defined below) from the sale of the Unit or the Minimum Release Price set out on **Exhibit D** attached to the Debtor's Disclosure Statement. The term "Net Proceeds" means the difference between (i) the gross sale price for the Unit minus (ii) RBC approved closing costs reflected on the closing settlement statement. In no event will RBC be required to approve closing costs in excess of 7% of the gross sales price. The approved closing costs will include reasonable and customary recording fees paid by buyer, a real estate brokerage commission payable to a third party real estate broker (having no actual or *de facto* connection with the Debtor or any guarantor) no greater than 6% of the gross sale price, proration of ad valorem taxes, proration of HOA dues and fees, and other normal and customary closing costs. If agreed to by RBC, the closing costs may include quarterly fees payable by the Debtor to the bankruptcy court as a result of the sale. Prior to each sale, the Debtor shall cause the proposed settlement statement to be delivered to RBC for its approval. If the release price is approved by RBC, it shall be deemed to be approved by all other creditors and parties in interest. After RBC's Post-Petition Financing loan has been paid in full, RBC shall receive from the proceeds of each sale an amount equal to the Minimum Release Price set forth on **Exhibit D** attached to the Debtor's Disclosure Statement. All sales of Units will be reported in the Debtor's quarterly report filed with the Bankruptcy Administrator.

Sale Free and Clear of Liens. All real and personal property owned by the Debtor that will be sold pursuant to this Plan will be sold free and clear of all liens, encumbrances, claims, interests, or other obligations. In order to expedite the sale process, provide clear title to the properties sold, and satisfy certain anticipated requirements of title insurance companies providing title insurance to purchasers, simultaneous with the entry of the Order Confirming Plan, the Court will enter a free and clear order, which shall provide that all sales will be free and clear of all liens, interests, and other claims or interests. All real or personal property sold by the Debtor shall be sold pursuant to the free and clear order to be entered. No further motions related to the sales of property shall be required; provided however, the Debtor may file such motions and seek such orders to the extent needed to provide reasonable comfort or accommodation to the purchaser(s) or to specify the method of distribution of the sales proceeds.

Distribution of Sales Proceeds. Upon the sale of the real or personal property proposed to be sold by this Plan, the liens secured by such property shall attach to the net proceeds of sale remaining after payment of all reasonable and ordinary closing costs, (including but not limited to ad valorem taxes, commissions, and any other costs permitted under Section 506(c) of the Code), and shall be paid to lienholders in accordance with this Plan and the priorities of the Code.

B. Distributions under the Plan shall be made on the Distribution Date; provided however, that Court approved professionals may be paid as such fees and expenses are approved by the Court. Any distribution required to be made hereunder on a day other than a business day shall be made on the next succeeding business day.

C. De Minimis Distributions. No distribution of less than fifty dollars (\$50.00) shall be required to be made to any holder of an allowed unsecured claim. Instead, the Debtor shall have the option of retaining such funds in the Escrow Account to be distributed at the time of the final distribution in accordance with the Plan.

D. Unclaimed Property. If any distribution remains unclaimed for a period of 90 days after it has been delivered, or attempted to be delivered, such unclaimed property shall be forfeited by such holder of the claim and the Disbursing Agent shall not attempt to make any further distribution of such holder of the claim. Undistributed property shall be returned to the Escrow Account for distribution in accordance with the Plan.

E. The Debtor will execute and deliver all documentation to the Bankruptcy Court and to all parties in interest who are entitled to receive the same as required by the terms of this Plan and the Bankruptcy Code.

F. The Debtor shall take such other action as necessary to satisfy the other terms and requirements of this Plan and the Bankruptcy Code.

G. Except as expressly stated in the Plan, or allowed by a Final Order of the Bankruptcy Court, no interest, penalty, or late charge shall be allowed on any claim subsequent to the Petition Date, unless otherwise required by the Code. No attorney's fees or expenses shall be paid with respect to any claim except as specified herein or as allowed by a Final Order of the Court.

H. Confirmation of this plan shall constitute a finding that the Debtor does not waive, release, or discharge, but rather retain and reserve any and all pre-petition claims and any and all post-petition claims that it could or might assert against any party or entity arising under or otherwise related to any state or federal statute, state or federal common law, and any and all violations arising out of rights or claims provided for by Title 11 of the United States Code, by the Federal Rules of Bankruptcy Procedure, or by the Local Rules of this Court, including all rights to assert and pursue any and all avoidance actions, preference actions, and any other actions pursuant to 11 U.S.C. §§545, 546, 547, 548, 550, except to the extent such avoidance actions, preference actions, or other actions were assigned to a creditor(s) as part of the Debtor's Plan. Further, the Debtor retains all rights to assert and pursue all claims under 11 U.S.C. §542, including without limitation actions to seek turnover of estate assets, actions to recover accounts receivable, and/or actions to invalidate setoffs.

I. Administrative claims unpaid on the Effective Date will be paid from funds on hand or as the parties otherwise agree.



J. All objections to claims, fee applications, and adversary proceedings will be filed with the Court within 60 days of the Effective Date; provided however, that the Debtor retains the right to object or otherwise pursue any claims against secured creditors relating to the payoff and/or satisfaction of their secured claims.

#### **VI. SIMILAR TREATMENT FOR EACH CLAIM WITHIN A CLASS**

The claims stated herein, by modification, Court Order, or other legally appropriate manner, might be modified throughout the course of payment under this Plan. The Debtor, upon full payment as called for under the notes and deeds of trust, shall be entitled to have the note marked paid and satisfied and the deed of trust canceled as a matter of record, by the Trustee, or by appropriate application to this Bankruptcy Court, and upon a showing that the full amount of the monthly payments were made by the Debtor.

#### **VII. PROVISIONS GOVERNING DISTRIBUTIONS**

A. Delivery of Distributions in General. Distributions to holders of allowed claims shall be made: (i) at the addresses set forth in the proofs of claim filed by such holders; (ii) at the addresses set forth in any written notices of address change submitted to the Court or Attorney for the Debtor after the date on which any related proof of claim was filed; or, if the information described in clauses (i) or (ii) is not available, (iii) at the addresses reflected in the Debtor's schedules of liabilities.

B. Distribution Dates. It is the intent of this Plan that the distribution shall occur as early as practicable following the Effective Date.

#### **VIII. ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION BY AN IMPAIRED CLASS**

A. Each Impaired Class Entitled to Vote Separately. Each impaired class of claims shall be entitled to have the holders of claims therein vote separately as a class to accept or reject the Plan.

B. Acceptance by a Class of Creditors. Consistent with §1126(c) of the Bankruptcy Code, and except as provided in §1126(e) of the Bankruptcy Code, a class of claims shall have accepted the Plan if the Plan is accepted by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that have timely and properly voted to accept or reject the Plan.

C. Claimants Entitled to Vote. Holders of impaired claims shall be entitled to vote if:

- (1) Such claim has been filed against the Debtor in a liquidated amount or has been listed on the Debtor's schedules other than as contingent, unliquidated or disputed, and as to which no proof of claim has

been filed. The claim shall be allowed solely for the purpose of voting on the Plan in the amount in which such claim has been filed or listed on the Debtor's schedules;

(2) Such claim has been filed against the Debtor or listed on the Debtor's schedules and is the subject of an existing objection filed by the Debtor, and is temporarily allowed for voting purposes by order of the Court in accordance with Bankruptcy Rule 3018;

(3) Such claim has been filed in an undetermined amount, in which case the creditor shall not be entitled to vote unless the Debtor and the holder of the claim agree on an amount for voting purposes or the Court enters an order setting the amount of the claim that the creditor may ballot.

(4) Any entity holding two or more duplicate claims shall be entitled to vote only one claim.

D. Confirmation Hearing. The Court will set a hearing on the confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied.

E. Acceptances Necessary to Confirm the Plan. At the hearing of confirmation of the Plan, the Court shall determine, among other things, whether the Plan has been accepted by each impaired class. Under §1126 of the Bankruptcy Code, an impaired class of Creditors is deemed to accept the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number vote to accept the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired class, the Court must also determine that class members will receive property with a value, as of the Effective Date of the Plan, that is not less than the amount that such class member would receive or retain if the Debtor was liquidated as of the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code.

F. Confirmation of Plan Without Necessary Acceptances. The Bankruptcy Code provides that the Plan may be confirmed even if it is not accepted by all impaired Classes. In order to be confirmed without the requisite number of acceptances of each impaired class, the Court must find that at least one impaired class has accepted the Plan without regard to the acceptances of insiders, and the Plan does not discriminate unfairly against, and is otherwise fair and equitable, to such impaired class. In the event that any class votes against the plan, the Debtor hereby requests and moves the Court under the provisions of this Plan outlined in Section IX herein, for confirmation pursuant to the "cramdown" provisions of §1129(b) of the Bankruptcy Code. In connection therewith, the Debtor shall be allowed to modify the proposed treatment of the allowed claims in any class that votes against the Plan consistent with §1129(b)(2)(A).

**IX. "CRAMDOWN" FOR IMPAIRED CREDITORS  
NOT ACCEPTING THE PLAN**

In respect to any class of creditors impaired but not accepting the Plan by the requisite majority in number or two-thirds in amount, the proponent of this Plan requests the Court to find that the Plan does not discriminate unfairly and is fair and equitable in respect to each class of claims or interests that are impaired under the Plan and that the Court confirm the Plan without such acceptances by the said impaired classes. The Debtor will also request that the Court establish a value for any assets, the value of which is in dispute between the Debtor and any secured creditor, at a valuation hearing under Section 506 of the Bankruptcy Code, to be scheduled at the same time as the hearing on confirmation of the Plan.

**X. EFFECT OF CONFIRMATION**

A. Except as otherwise provided in the Plan, the confirmation of the Plan vests all of the property of the estate in the Debtor.

B. Injunction. As of the Confirmation Date, except as otherwise provided in the Plan or the Confirmation Order, all persons that have held, currently hold, or may hold a claim, equity interest, or other debt or liability that is treated pursuant to the terms of the Plan or that is otherwise enjoined pursuant to Section 1141 of the Code, are enjoined from taking any of the following actions on account of any such claims, equity interests, debtors or liabilities, other than actions brought to enforce obligations under the Plan: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any lien or encumbrance; (iv) asserting a setoff or right of recoupment of any kind against any debt, liability, or obligation; (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation order. Notwithstanding the foregoing,

**XI. RELEASE OF TITLE TO PROPERTY**

A. Vehicles. Upon the satisfaction or other discharge of a security interest in a motor vehicle, mobile home, or in any other property of this estate in bankruptcy for which the certificate of title is in the possession of the secured party, the secured party shall within ten (10) days after demand and, in any event, within thirty (30) days of receipt of the payment in full pursuant to the Plan, execute a release of its security interest on the said title or certificate, in the space provided therefore on the certificate or as the Division of Motor Vehicles prescribes, and mail or deliver the certificate and release to the Debtor. Confirmation of this Plan shall impose an affirmative and direct duty on each such secured party to comply with the provision. This provision shall be enforced in a proceeding filed before the Bankruptcy Court and each such creditor consents to such jurisdiction by failure to file any timely objection to this Plan. Such an enforcement proceeding may be filed by the Debtor in this case either before or after the

closing of this case. The debtor(s) specifically reserve the right to file a motion to reopen this case under Section 350 of Title 11 of the United States Code to pursue the rights and claims provided for herein.

B. Real Property. Pursuant to N.C.G.S. § 45-36.9, upon the satisfaction or other discharge of a security interest in real property for which a creditor holds a properly secured mortgage, the secured party shall within thirty (30) days after demand or within thirty (30) days of payment in full pursuant to the Plan, submit for recording with the Office of the Register of Deeds for the applicable County a satisfaction of its security interest and mail or deliver the recorded satisfaction document or documents to the Debtor. The failure of any such party to comply with this section shall results in the imposition of statutory damages of \$1,000.00, actual damages, costs and legal fees as provided for by Section 45-36.9(c) of the N.C. General Statutes. Confirmation of this Plan shall impose an affirmative and direct duty on each such secured party to comply with this provision. This provision shall be enforced in a proceeding filed before the Bankruptcy Court and each such creditor consents to such jurisdiction by failure to file any timely objection to this plan. Such an enforcement proceeding may be filed by the Debtor in this case either before or after the closing of this case. The Debtor specifically reserves the right to file a motion to reopen this case under Section 350(b) of Title 11 of the United States Code to pursue the rights and claims provided for herein including all remedies for damages and attorney fees under applicable State and Federal statutes.

## **XII. APPLICATION OF PLAN PAYMENTS**

A. All payments made by the Debtor shall be applied as indicated in the respective treatment for each creditor, or if no such application of payments is specified, then payments shall be applied to principal and interest on a monthly basis according to the amortization schedule proposed for each creditor. In the event that a creditor is entitled to costs and/or attorneys fees post-petition under Section 506(b) of the Code, such creditor must file an application in accordance with the Code and/or Bankruptcy Rules pertaining to approval of costs and/or attorney fees prior to such costs and/or attorneys fees becoming part of the creditor's allowed claim. Confirmation of the Plan shall impose an affirmative duty and legal obligation on the holders and/or the servicers of any claims secured by liens, mortgages and/or deeds of trust to apply payments in the manner set forth in the Plan in accordance with Section 524(i).

B. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the Debtor to the month in which they were made under the plan or directly by the Debtor, whether such payments are immediately applied to the loan or placed into some type of suspense account and to otherwise comply with 11 U.S.C. Section 524(i).

## **XIII. RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction of these proceedings pursuant to and for the purposes of Sections 105(a) and 1127 of the Code and for, without limitation,

the following purposes, inter alia:

1. to determine any and all objections to the allowance of claims and/or interests;
2. to determine any and all applications for allowance of compensation for periods prior to or after the Confirmation Date;
3. to determine any and all applications pending on the Confirmation Date for the rejection and disaffirmance or assumption or assignment of executory contracts and the allowance of any claim resulting therefrom;
4. to determine all controversies and disputes arising under or in connection with the Plan;
5. to determine all applications, adversary proceedings and litigated matters pending on the Confirmation Date;
6. to effectuate payments under, and performance of, the provisions of the Plan, including, but not limited to, future sales of personal and real property retained by the Estate;
7. to determine such other matters and for such other purposes as may be provided for in the confirmation order;
8. to determine all disputes regarding property of the estate;
9. to establish and adjust procedures for the orderly administration of the estate;
10. to determine matters that are subject to proceedings duly removed to the Bankruptcy Court; and
11. to replace the Debtor-in-Possession with a Trustee for good cause shown.

#### **XIV. MISCELLANEOUS PROVISIONS**

A. Survival of Terms. The covenants, representations and agreements made in this Plan shall survive the Confirmation Date and the transactions contemplated herein.

B. Successors Bound. This Plan shall on the Consummation Date be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Debtors, and the holders of claims and interests.

C. Controlling Law. This Plan shall be read and construed and take effect in

all respects in accordance with the law as set forth in the United States Bankruptcy Code and the Rules promulgated thereunder.

D. Further Assurance. If at any time, the Debtor shall consider, or be advised, that any further releases, assurances or documents are reasonably necessary or desirable to carry out the provisions hereof, and the transactions contemplated herein, the holders of claims and the holders of interest shall, upon reasonable request, execute and deliver any and all documents and assurances, and do all things necessary or appropriate to carry out fully the provisions hereof.

E. Liens. All liens remaining in favor of any creditor in this action against the real property conveyed prior to the filing of the petition shall be deemed to be released upon confirmation of the Plan. The Debtor shall request and all parties shall provide such additional documentation as may be necessary to effectuate these releases.

F. Incorporation of Disclosure. All the terms and conditions of the Disclosure Statement are incorporated herein by reference.

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Respectfully submitted, this the 18<sup>th</sup> day of November, 2009.

s/Trawick H. Stubbs, Jr.  
TRAWICK H. STUBBS, JR.  
N.C. State Bar #4221

s/Amy M. Currin  
AMY. M. CURRIN  
N.C. State Bar #26031

STUBBS & PERDUE, P.A.  
P.O. Box 1654  
New Bern, NC 28563-1654  
(252) 633-2700  
Attorneys for Debtor

SHEARIN FAMILY INVESTMENTS, LLC

By: s/James Marvin Shearin, II  
James Marvin Shearin, II  
Member-Manager