

**UNITED STATES BANKRUPTCY COURT**

**WESTERN DISTRICT OF LOUISIANA**

**LAKE CHARLES DIVISION**

**IN RE:** : **CASE NO. 15-20237**  
:   
**WHITTEN FOUNDATION** :   
:   
:   
:   
**DEBTOR** : **CHAPTER 11**

**POST-CONFIRMATION MODIFICATIONS TO IBERIA BANK'S CHAPTER 11  
LIQUIDATING PLAN**

**INTRODUCTION**

IberiaBank ("Iberia" or "Proponent") is by far the largest creditor of this estate and holds a priming security interest and mortgage against all or substantially all of the assets for Whitten Foundation ("WF" or "Debtor"). Exclusivity for the Debtor to propose a Chapter 11 Plan expired on or about July 29, 2015. On or about August 25, 2015, Iberia force placed insurance coverage on one of the Debtor's properties. A proposed sale of all of the Debtor's assets had been in the works for several months without much noticeable progress. The primary obstacle to liquidating the Debtor had been certain clouds on title caused by a series of tax sales impacting a portion of one of the Debtor's properties which is no longer subject to redemption under applicable Louisiana law. Accordingly, Iberia filed a creditor-sponsored Chapter 11 Liquidating Plan, as amended ("Original Plan"), that recognized the need for the title problems to be cured. Those title problems were cured and the Original Plan was confirmed by the Court by order dated November 30, 2015. The Original Plan called for the sale of all assets to Juniper Investment Group, Ltd. ("Juniper" or "Buyer") for \$12,500,000, but the sales were conditioned upon a due diligence period, financing contingencies and other prerequisites involving successful negotiations to buy individually-owned condominium units.

The Original Plan could not be consummated, as the Buyer informed Iberia that it had elected to withdraw its offers. Based on additional negotiations between Buyer and Proponent, this Post Confirmation Modified Plan, together with any amendments ("Iberia's Plan" or "the Plan"), is designed to consummate a new proposal, with no contingencies of any kind other than Bankruptcy Court approval, to liquidate all of the assets of the Debtor in order to pay creditors, albeit under less favorable terms and conditions that set forth in the Original Plan. ALL CREDITORS AND INTEREST HOLDERS ARE ENCOURAGED TO CONSULT THE DISCLOSURE STATEMENT, AS APPROVED BY THE BANKRUPTCY COURT, BEFORE VOTING TO ACCEPT OR REJECT IBERIA'S PLAN. NO OTHER SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

**ARTICLE I.**  
**DEFINITIONS**

Whenever from the context it appears appropriate, each term stated in either the singular or the plural will include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender will include the masculine, the feminine and the neuter. The words “herein”, “hereof”, “hereunder”, and others of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in Iberia’s Plan. Unless the context requires otherwise, the following words and phrases will have the meanings set forth below when used in initially-capitalized form in this Plan:

- 1.1 Accounts Receivable means any and all accounts as defined under the Uniform Commercial Code owed to the Debtor arising from its operations or otherwise including proceeds thereof.
- 1.2 Administrative Claim means any of the following which have become Allowed: (a) Professional Fees and Expenses under Section 503(b) of the Bankruptcy Code , (b) any and all Section 503(b)(9) claims held by vendors who supplied goods to the Debtor within 20 days before the filing date, (c) the fees payable to the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6), (d) fees or commissions allowed in favor of the Trustee, and (e) claims for actual, necessary costs and expenses incurred after the Filing Date until the closing of the case.
- 1.3 Adversary Proceeding means the complaint filed by the Debtor against Boardwalk and Mack to address the validity of the 2011 tax sales and the extent of the ownership interest, if any, of Boardwalk and Mack in the Courtyard Orleans property.
- 1.4 Allowed means, with respect to Claims, (a) any Claim against the Debtor, proof of which is timely filed or by order of the Bankruptcy Court is not or will not be required to be filed, (b) any Claim that has been or is hereafter listed in the schedules of liabilities filed by the Debtor, as liquidated in amount and not disputed or contingent or (c) any Claim allowed pursuant to this Plan and, in each such case in (a) and (b) above, to which either (i) no objection to allowance has been interposed within the applicable period fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court or (ii) such objection is so interposed and the Claim will have been allowed by a Final Order (but only to the extent so allowed).
- 1.5 Assets means all property of the Debtor as defined in Section 541(a) of the Bankruptcy Code, including but not limited to all real estate, Accounts Receivable, cash, intangibles, inventory, fixtures, furniture, and equipment.
- 1.6 Avoidance Actions means those causes of action, if any, which may be asserted under sections 544-553 of the Bankruptcy Code.
- 1.7 Ballot means with respect to any class of Claims or Interests that are Impaired and entitled to vote under this Plan, the forms being distributed to holders of Claims and Interests to be used for showing acceptance or rejection of this Plan.

- 1.8 Balloting Deadline means the date and time by which all Ballots must be received.
- 1.9 Bankruptcy Code means Title 11 of the United States Code, as amended from time to time.
- 1.10 Bankruptcy Court means the United States Bankruptcy Court for the Western District of Louisiana, or any court having jurisdiction under Title 28 of the United States Code over this case.
- 1.11 Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure, as amended, promulgated under 28 U.S.C. §2075 and the Local Rules of the Bankruptcy Court, as applicable from time to time.
- 1.12 Bar Date means any date fixed by the Bankruptcy Court, pursuant to Bankruptcy Rule 3003(c)(3), by which all Entities asserting Claims against the Debtor (other than Administrative Claims or Rejection Claims) are required to file proofs of claim or be forever barred from asserting such claims against the Debtor. The Bar Date approved by the Bankruptcy court in this case was **July 31, 2015**.
- 1.13 Boardwalk means Boardwalk Investors US Bank, d/b/a Boardwalk Investors, one of the Tax Purchasers.
- 1.14 Business Day means any day other than a Saturday, Sunday or "legal holiday" as defined in Bankruptcy Rule 9006(a).
- 1.15 Cash means cash, cash equivalents, and readily marketable securities or instruments, including but not limited to, bank deposits, certified or cashiers' checks, timed certificates of deposit issued by any bank, commercial paper, and readily marketable direct obligations of the United States of America or agencies or instrumentalities thereof. Cash shall include the Cash Reserve and any other cash. Cash shall not be part of the Sale Assets, as all Cash will be utilized to pay allowed claims in accordance with priorities established by the Bankruptcy Code.
- 1.16 Cash at Closing means the consideration due from Purchaser on the Closing Date, which in no event shall be less than \$11,251,000.00 in the aggregate for the Properties.
- 1.17 Causes of Action means all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, other than those causes of action included within the definition of Avoidance Actions.
- 1.18 Chapter 11 Case means the above entitled and numbered voluntary case Filed by the Debtor pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

- 1.19 Chapter 11 Professionals means the professionals retained by the Debtor, wherever they are referred to collectively in the Plan, the retention of which has been approved by the Bankruptcy Court, and any other professionals that are authorized to be compensated from the Estate by Final Order of the Bankruptcy Court.
- 1.20 Claim means (a) any right to (i) payment from the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) an equitable remedy for breach of performance if such breach causes a right to payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, or (b) any claim arising any time before the Confirmation Date for the alleged responsibility of the Debtor for any environmental conditions arising from an event that occurred before the Confirmation Date, despite when the cleanup of such environmental condition commenced. When used with respect to any litigation, the term "Claim" will also include any claim that has been or could be asserted in such litigation. Notwithstanding anything to the contrary set forth in this Plan, for purposes of this Plan, the term "Claim" will have the broadest possible meaning permitted by applicable law.
- 1.21 Claimant means the holder of any Claim.
- 1.22 Class means all of the holders of Claims against or Interests with respect to the Debtor that have been designated as a class in this Plan.
- 1.23 Closing or Closing Date means the date upon which the Sale Transaction with Juniper is consummated, anticipated to occur no later than April 30, 2016.
- 1.24 Confirmation Date means the date upon which the Confirmation Order will be entered on the docket maintained by the Clerk of the Bankruptcy Court confirming Iberia's Plan.
- 1.25 Confirmation Hearing means the date or dates on which the Bankruptcy Court conducts a hearing on confirmation of this Plan.
- 1.26 Confirmation Order means the Order of the Bankruptcy Court confirming this Plan.
- 1.27 Contingent Claim means any claim that has not matured and is dependent upon an event that has not occurred or may never occur.
- 1.28 Date of Allowance means the date that an order allowing a Claim, to which an objection has been filed, or which has been scheduled as disputed or contingent or unliquidated or is otherwise Disputed, has become final and non-appealable.
- 1.29 Debtor means Whitten Foundation.
- 1.30 Deficiency Claim means the unsecured portion of the Allowed Claim of a Secured Creditor; provided however, that if the holder of a Secured Claim or the class of which such Claim is a member makes the election provided in section 1111(b)(2) of the Bankruptcy Code, there shall be no Deficiency Claim in respect of such Claim.

- 1.31 Disallowed Claim means a Claim, or any portion thereof, (i) that has been disallowed by Final Order, (ii) proof of which has been untimely Filed and as to which no Order of allowance has been entered by the Bankruptcy Court, or (iii) listed as disputed, contingent or unliquidated and as to which no proof of claim or proof of interest has been timely Filed.
- 1.32 Disclosure Statement means the Disclosure Statement approved by the Bankruptcy Court, as modified or amended by the Proponent, filed in connection with this Plan.
- 1.33 Disputed or Disputed Claim means with respect to Claims, any Claim that is not Allowed.
- 1.34 Distributions means distributions to the various classes of Claims as provided in Iberia's Plan.
- 1.35 Effective Date means the date after the entry of the Confirmation Order confirming this Plan when the conditions to the effectiveness of Iberia's Plan have been satisfied or waived.
- 1.36 Entity means any person, individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint stock company, estate, entity, trust, trustee, United States Trustee, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code), agency or political subdivision thereof.
- 1.37 Equity Interests means the extent to which any rights to control the Debtor, a Louisiana non-profit corporation, is deemed to constitute an Equity Interest under the Bankruptcy Code.
- 1.38 Estate means all property and property rights of the Debtor under the Bankruptcy Code and bankruptcy laws.
- 1.39 Excess Cash means the remaining cash available, if any, from cash on hand in the DIP bank accounts from operations combined with the net proceeds realized from the Sale Transaction on the Closing Date over and above the amounts necessary to pay all allowed Administrative Claims, Priority Claims, the Class 2 distribution, the minimum \$9,900,000 payment to Class 3, and the agreed-upon payment due Class 4.
- 1.40 Filed means filed with the Bankruptcy Court.
- 1.41 Filing Date means March 31, 2015, the date the bankruptcy was commenced as a voluntary petition by the Debtor.
- 1.42 Final Order means an order, ruling or judgment of the Bankruptcy Court or other court of competent jurisdiction that may hear appeals from the Bankruptcy Court (i) which is not stayed, (ii) the time to appeal or to seek review having expired without a pending appeal, motion for rehearing, petition for certiorari or application for review having been filed, and (iii) which is in full force and effect.

- 1.43 General Unsecured Claim means any Claim against the Debtor, excluding Administrative Claims, Priority Claims, Secured Claims, and Insider Claims.
- 1.44 Iberia means IberiaBank.
- 1.45 Insider Claims means the claims of Lamond Whitten and/or Louisiana Rental Investors. These claims are disputed by the Debtor.
- 1.46 Impaired means any Claim or Interest impaired within the meaning of Section 1124 of the Bankruptcy Code.
- 1.47 Juniper means Juniper Investment Group, Ltd., the proposed Purchaser of the Sale Assets.
- 1.48 Lawsuit means the pending suit filed by Boardwalk in the 19<sup>th</sup> Judicial District Court, East Baton Rouge Parish to quiet title to a portion of the Courtyard Orleans property.
- 1.49 Lien means all valid and enforceable liens, security interests, claims and encumbrances against any property of the Estate that are permitted by, or not avoided pursuant to, the Bankruptcy Code.
- 1.50 Mack means Josie Mack, one of the two Tax Purchasers.
- 1.51 Multifamily means Multifamily Management, Inc., the management company currently managing the Properties.
- 1.52 Order means an order or judgment of the Bankruptcy Court.
- 1.53 Penalty Claims means all Claims under Section 726(a)(4) of the Bankruptcy Code, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of the Trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such Claim, to the extent they become Allowed Claims.
- 1.54 Plan means Iberia's Post-Confirmation Modified Chapter 11 Liquidating Plan, as it may be amended or modified from time to time as permitted herein or in accordance with section 1127 of the Bankruptcy Code.
- 1.55 Post-Petition means that time period commencing after the Filing Date (*i.e.*, March 31, 2015) until the occurrence of the Effective Date.
- 1.56 Priority Claim means any Claim, or portion thereof, to the extent it is Allowed, which is entitled to priority pursuant to Sections 507(a)(1) through Section 507(a)(9) of the Bankruptcy Code except an Administrative Claim or a Tax Claim.
- 1.57 Professional Fees and Expenses means the interim and/or final fees and expenses of Chapter 11 Professionals approved by Order.

- 1.58 Properties means the tracts or parcels of land situated at (a) 4444-4548 Tigerland Avenue, Baton Rouge, East Baton Rouge Parish, Louisiana 70820, commonly referred to as “Courtyard Orleans Apartments” , (b) Unit 9 of Courtyard Orleans Condominium Phase I, 4444 Tigerland Avenue, Baton Rouge, East Baton Rouge Parish, Louisiana 70820, and (c) 3619 Texas Street, Lake Charles, Calcasieu Parish, Louisiana 70605, commonly referred to as “The Embers Apartments.”, together with all improvements thereon, and all other right, title and interest as more specifically set forth in the Purchase Agreements. Properties also includes the portions of Courtyard Orleans allegedly adjudicated to Boardwalk via tax sale and quit claimed back to the Debtor via settlement or pursuant to judgment in the Adversary Proceeding.
- 1.59 Proponent means IberiaBank, a secured creditor and party in interest.
- 1.60 Pro Rata Share or Pro Rata means a proportionate share, so that the ratio of the consideration distributed on account of an Allowed Claim in a class to the amount of such Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in such class to the amount of all Allowed Claims in such class, or if the context so requires, to the amount of all Allowed Claims in a designated portion of such class.
- 1.61 Purchase Agreements mean the three documents styled “Agreement of Purchase and Sale Whitten Foundation, as Seller, and Juniper Investment Group, Ltd., or its Permitted Assignee, as Buyer involving the two Properties.
- 1.62 Purchase Price means the consideration to be paid for the Sale Assets.
- 1.63 Purchaser means Juniper or its lawful assignee.
- 1.64 Rejection Claim means any Claim arising out of the rejection of a lease or executory contract pursuant to Section 365 of the Bankruptcy Code.
- 1.65 Sale Assets means the assets to be sold by the estate to Purchaser, as set forth in the asset purchase agreement executed by the Purchaser.
- 1.66 Sale Transaction means the sale of the Sale Assets to Purchaser.
- 1.67 Secured Claims means those claims against the Debtor that are secured, in whole or in part, by collateral within the meaning of section 506(a)(1) of the Bankruptcy Code.
- 1.68 Tax Claim means any Claim, or portion thereof, entitled to priority pursuant to 11 U.S.C. §507(a)(8) of the Bankruptcy Code.
- 1.69 Tax Purchasers means Boardwalk and Mack.
- 1.70 Transaction Documents means all contracts and any related Sale Transaction documents necessary to consummate the Sale Transaction and implement Iberia’s Plan.

## ARTICLE II.

**CLASSIFICATION OF CLAIMS**  
**AND TREATMENT OF UNCLASSIFIED CLAIMS**

2.1. ADMINISTRATIVE CLAIMS.

(a) Treatment of Administrative Claims.

Administrative Claims are not classified. Administrative Claims will be paid by the Trustee out of the Cash Reserve (a) in cash, in full, on the later of the Effective Date and the Date of Allowance; or (b) in such amounts and on such terms as agreed upon by the Claimant and Trustee.

(b) Time for Filing Administrative Claims.

Other than (i) the fees payable to the U.S. Trustee under 28 U.S.C. § 1930, (ii) previously-allowed administrative claims (iii) costs and expenses related to Distributions, (iv) the fees and expenses of the Debtor's attorneys, accountants and other professionals approved by the Bankruptcy Court (v) payments for goods and services provided to Debtor in the ordinary course of business after the order for relief, and (vi) and any other costs or expenses approved in writing by the Debtor, one must file with the Bankruptcy Court and serve on the Debtor, a request for payment of such Administrative Claim within thirty days after the Confirmation Date or be forever barred. Such request must set forth at a minimum (i) the name of the holder of the Claim, (ii) the amount of the Claim, and (iii) the basis of the Claim. Failure to file this request timely and properly shall result in the Administrative Claim being forever barred and discharged. Unless not required by the Bankruptcy Code and Rules, the holder of an Administrative Claim for fees and expenses set forth in Section 2.1.b.(i) – (vii) above may submit to the Bankruptcy Court for approval from time to time when said claims arise and are due and payable. All of the costs and expenses set forth in Section 2.1.b.(i) – (vii) may be paid by the Debtor in the ordinary course of business until the closing of the case, subject to any restrictions set forth in the Plan or any order of the Court.

2.2. Except as provided above with respect to Administrative Claims, all other Claims and Equity Interests are divided into the following Classes under the Plan:

2.3.1 CLASS 1: PRIORITY CLAIMS. Class 1 consists of all Priority Claims to the extent that they become Allowed Claims. Upon information and belief, one such claim exists in favor of the East Baton Rouge Sheriff for unpaid property taxes in the amount of \$35,000.00.

2.3.2 CLASS 2: GENERAL UNSECURED CLAIMS. Class 2 consists of all allowed general unsecured claims. Class 2 does not include the disputed claims asserted by Class 5 Insiders, but to the extent those disputed claims become allowed, such claims will be treated in Class 2. Based on the Debtor's schedules and the claims register, Class 2 Claims are approximately \$953,412.00.

- 2.3.3 CLASS 3: SECURED CLAIM OF IBERIA. Class 3 consists of the secured claims of Iberia in the amount of \$10,215,424.08, together with post-petition interest and contractual attorneys' fees and costs to the extent allowed under section 506 of the Bankruptcy Code.
- 2.3.4 CLASS 4: SBA SECURED CLAIM. Class 4 consists of the Small Business Administration's Secured Claim in the principal amount of \$1,493,131.23, together with post-petition interest. The Class 4 Claim is subordinate to the Class 3 Secured Claim insofar as it relates to the Embers.
- 2.3.5 CLASS 5: DISPUTED INSIDER CLAIMS OF LAMOND WHITTEN AND LOUISIANA RENTAL INVESTORS, LLC. Class 5 is comprised of the disputed insider claims of Lamond Whitten and Louisiana Rental Investors, LLC in the aggregate amount of \$4,355,796.80. The Plan proposes to pay Class 5 nothing, as no proofs of claim were filed by the bar date and the claims were listed as disputed on the schedules.
- 2.3.6 CLASS 6: EQUITY INTERESTS. As a Louisiana non-profit corporation, the Debtor has no equity interests per se.

**ARTICLE III.**  
**TREATMENT AND IMPAIRMENT OF CLAIMS**

The following treatment will be accorded to Claims and Interests in Class 1 through Class 6:

3.1 CLASS 1 : (NON-VOTING) PRIORITY CLAIMS

(a) **Treatment.** Priority Claims, estimated to total \$35,000.00, shall be paid in full as soon as practicable on or after the Closing Date but in no event later than the Effective Date from the sales proceeds of the sale to Juniper.

(b) **Impairment.** Class 1 Priority Claims are unimpaired and are deemed to accept the Plan.

3.2 CLASS 2: GENERAL UNSECURED CLAIMS

(a) **Treatment.** General Unsecured Claims which are Allowed or become Allowed will be paid a Pro Rata distribution in the amount of \$100,000.00. The distributions will be without interest. Payment will be in no event later than the Effective Date.

(b) **Impairment.** Class 2 General Unsecured Claims are Impaired and shall have the right to vote to accept or reject the Plan.

### 3.3 CLASS 3: SECURED CLAIM OF IBERIA

(a) **Treatment.** Iberia's claim in the pre-petition amount of \$10,215,424.08, together with continuing post-petition interest and reasonable attorneys' fees, as set forth in its timely-filed proof of claim, is fully secured by the value of the Sale Assets. By the anticipated Closing Date, the total Class 3 claim will be approximately \$10,600,000.00. However, by agreement Class 3 will receive a minimum \$9,900,000, together with 100% of the Excess Cash in exchange for cancellation of its mortgages. The claim will be paid in cash on or after the Closing Date but in no event later than the Effective Date.

(b) **Impairment.** The Class 3 Claim is Impaired and shall have the right to vote to accept or reject the Plan.

### 3.4 CLASS 4: SECURED CLAIM OF THE SBA.

(a) **Treatment.** The Class 4 secured claim in the principal amount of \$1,493,131.23 is secured by a subordinated (to Iberia), second mortgage on the Embers property located in Lake Charles. The quoted payoff as of November 12, 2015 was \$1,586,090.49. By agreement, however, Class 4 will, in exchange for cancellation of its mortgage, receive payment of \$1,000,000.00 in cash on or after the Closing Date but in no event later than the Effective Date.

(b) **Impairment.** The Class 4 Claim is Impaired and shall have the right to vote to accept or reject the Plan.

### 3.5 CLASS 5: INSIDER CLAIMS OF LAMOND WHITTEN AND LOUISIANA RENTAL INVESTORS, LLC.

(a) **Treatment.** Class 5 will receive nothing on account of its claims. The claims were listed as disputed and no proofs of claim were filed by the bar date.

(b) **Impairment.** Class 5 is not entitled to vote and is deemed to reject the Plan.

### 3.5 CLASS 6: EQUITY INTERESTS.

(a) **Treatment.** To the extent there are equity interests in this non-profit corporation, the Iberia Plan calls for the extinguishment or termination of such interests. Class 6 will neither retain nor receive anything under Iberia's Plan.

(b) **Impairment.** Class 6 is not entitled to vote and is deemed to reject the Plan.

## **ARTICLE IV.** **IMPAIRMENT OF CLASSES AND VOTING**

Each holder of an Allowed Claim in an impaired Class of Claims shall be entitled to vote separately to accept or reject the Plan as provided in such Order as is 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.

**ARTICLE V.**  
**MEANS FOR IMPLEMENTATION OF THE PLAN**

**5.1 INTRODUCTION**

The Plan proposes to sell substantially all of the assets of the Debtor to Juniper for \$11,251,000.00. Prior to the sale, two significant clouds on title had to be resolved. Specifically, Boardwalk and Mack purchased small but critical portions (including the parking lot that arguably blocks access to the facility) of the Courtyard Orleans property at a tax sale in 2011. The time to redeem expired well before the Petition Date. As evidenced by the allegations set forth in the pending Adversary Proceeding filed by the Debtor on or about August 28, 2015, (See, A.P. No. 15-02011), the Debtor challenged the validity of the tax sales, certain due process violations and notice rights, as well as the extent of Boardwalk's encroachment on its rights of passage and ultimately, Boardwalk's ownership interest, if any, in the property.

The claims of both Boardwalk and Mack have been resolved for an aggregate sum of \$141,500.00. The settlements have been approved by the Bankruptcy Court. The Debtor has paid these settlements from operating cash and the pending quiet title lawsuit filed by Boardwalk in the 19<sup>th</sup> Judicial District Court, East Baton Rouge Parish (Lawsuit) has been dismissed in exchange for quit claim transfers by Boardwalk and Mack to the Debtor of all their respective rights, titles and interests. The adversary proceeding has been dismissed and closed.

The Cash at Closing will be utilized to pay creditors under the Plan. Juniper has agreed to pay \$11,251,000 for the Sale Assets. Iberia anticipates that the Cash at Closing will be more than sufficient to pay all allowed Administrative Claims, including all closing costs, real estate commissions, Class 1 Priority Claims, as well as the Class 2 distribution, the Class 3 minimum payment and the Class 4 compromised secured claim. The Excess Cash, if any exists, will be distributed to Class 3.

**5.2 TRANSACTIONS AUTHORIZED BY COURT ORDER OR UNDER THE PLAN**

- 5.2.1 Immediately upon reaching a settlement with Boardwalk and Mack, the Debtor and Iberia filed joint motions for approval of the settlements pursuant to Bankruptcy Rule 9019. Both settlements have been approved. Further, a resolution was reached with Berkadia, the real estate company with the listing agreements, such that the listing agreements shall be assumed with a reduced real estate commission of 2% rather than the contractual rate of 3%. The proposed agreement with Berkadia was approved. But in light of the post-confirmation reduction in the offer by Juniper, Berkadia has further agreed to discount its commission from \$250,000 down to a flat fee of \$150,000. The reduction below 2% only applies to a sale to Juniper.
- 5.2.2 Except as otherwise provided in Iberia's Plan, the terms of the Sale Transaction, described in summary detail in the Disclosure Statement, shall dictate how the sale will be consummated.
- 5.2.3 The Sale Transaction proceeds will be distributed in accordance with this Plan, together with an order in aid of consummation that may become necessary.

- 5.2.4 The closing of the Sale Transaction will occur on the Closing Date, expected to occur by April 30, 2016.
- 5.2.5 The Bankruptcy Court shall retain jurisdiction until such time as the Debtor seeks and obtains a final decree.
- 5.2.6 As of the Effective Date, except as otherwise provided for in the Plan, (a) all notes, bonds, indentures, or other instruments or documents evidencing or creating any indebtedness, obligations of or interests in the Debtor or its assets that are Impaired under the Plan shall be canceled, and (b) the obligations of the Debtor under any agreements, indentures or certificates of designation governing Interests or Claims or any notes, bonds, indentures, or other instruments or documents evidencing or creating any Interests in or Claims against the Debtor that are Impaired under the Plan shall be discharged. However, claims by any person or entity against any other person or entity guaranteeing or otherwise liable for the obligations of the Debtor shall not be Impaired as a result of the confirmation of the Plan or its effectiveness.

**ARTICLE VI.**  
**PROCEDURE FOR RESOLVING DISPUTED CLAIMS**

- 6.1 **OBJECTION DEADLINE.** As soon as practicable, but in no event later than sixty (60) days after the Confirmation Date, unless otherwise authorized by the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court by any interested party and served upon the holders of each of the Claims to which objections are made.
- 6.2 **NO DISTRIBUTIONS PENDING ALLOWANCE.** Notwithstanding any other provision in the Plan, no payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Claim becomes an Allowed Claim.
- 6.3 **DETERMINATION BY BANKRUPTCY COURT.** The amount of any Disputed Claim, and the rights of the holder of such Claim, if any, to payment in respect thereof shall be determined by the Bankruptcy Court, unless it shall have sooner become an Allowed Claim.
- 6.4 **TREATMENT OF DISPUTED CLAIMS.** Cash remaining from operations and the sale to Juniper after satisfaction of allowed administrative expense claims, Class 1, Class 2, the minimum payment to Class 3 and Class 4 Claims (i.e., Excess Cash) shall be distributed by the Debtor to Class 3. However, a holder of a disputed administrative claim or Disputed Claim when, and to the extent that, such disputed administrative claim or Disputed Claim becomes an Administrative Claim or Allowed Claim pursuant to a Final Order and pursuant to the terms of this Plan, it shall be paid in accordance with priorities established under the Bankruptcy Code. Such distribution shall be made in accordance with the Plan to the holder of such Claim based upon the amount in which such disputed administrative claim or Disputed Claim becomes an Administrative Claim or Allowed Claim, as the case may be.
- 6.5 **TREATMENT OF CONTINGENT OR UNLIQUIDATED CLAIMS.** Until such time as a contingent or unliquidated Claim becomes fixed and Allowed, such Claim shall be treated as a contested Claim for purposes related to voting, allowances, and distributions under the Plan.

The Bankruptcy Court, upon request by the Trustee, in a summary proceeding for each such contingent or unliquidated Claim, by estimation shall determine the allowance of each such contingent or unliquidated Claim for purposes of voting on the Plan.

**ARTICLE VII.**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 **ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

Based on the schedules filed by the Debtor, there are multiple unexpired leases (i.e., tenants for the complexes) that will be assumed and assigned to Juniper. Further, the Debtor has management contracts with Multifamily. Those contracts were assumed by Court Order dated June 25, 2015, with Multifamily agreeing to continue managing the Properties without a cure of defaults. Iberia's Plan calls for the rejection of these management contracts. As described in Section 5.2.1 above, the listing agreements with Berkadia will be assumed on compromised terms. Berkadia's real estate commission for the listings has been reduced from 3% to 2%, and now further reduced to a flat commission of \$150,000 on the Juniper transaction only. In the event the Properties are sold to someone other than Juniper, the Berkadia commission remains 2%. All other executory contracts or unexpired leases have already been rejected under the Original Plan and any such party to a rejected lease or contract, including Multifamily, had 30 days from entry of the original confirmation order (November 30, 2015) to file an unsecured damage claim. Upon information and belief, no such damage claims were timely filed.

**ARTICLE VIII.**  
**VESTING OF PROPERTY, RELEASES AND DISCHARGE**

8.1 **VESTING.** As of the Closing Date, the Purchaser will be vested with all estate assets, except Cash, free and clear of all Claims, liens, security interests, assignments, encumbrances, charges, and interests. Cash on hand, together with remaining cash from the sales proceeds after satisfaction of allowed administrative expense claims, including but not limited to the super-priority loan made by Iberia, Class 1, Class 3 and Class 4 claims, will vest and shall be retained and reserved for Pro Rata distribution by the Debtor to Class 2 Claims.

8.2 **RELEASES.** Iberia, the Debtor and its members, parents, subsidiaries, affiliates, directors, officers, employees, agents and professional persons (collectively "Released Parties") are released and discharged from any and all claims, lawsuits or demands that have been, could have been, or which may in the future be asserted by the estate or any creditor of the estate, or by any third party for any act or omission in connection with or arising out of the transactions, relationships, or dealings relating to the negotiation or implementation of the Plan, the settlement of Claims and releases incorporated in the Plan, the solicitation of votes for or confirmation of the Plan, any pre-petition or Post-Petition Claim of any kind, and any other matter pertaining to the Debtor or this Chapter 11 Case, except willful misconduct or violation of federal securities laws as determined by a Final Order. The release provisions of the Plan shall not be effective as to any claims, lawsuit or demand raised as a defense to an affirmative action brought by the Debtor. Neither the release provisions of the Plan nor any other provision of the Plan shall be or

be deemed to be a release of any Person or Entity of any liability as a guarantor or co-maker of any obligation of the Debtor to any creditor.

8.3 FULL SATISFACTION. Furthermore, but in no way limiting the generality of the foregoing, except as otherwise specifically provided by this Plan, the Distributions and rights that are provided in this Plan will be in complete satisfaction, discharge and release, effective as of the Effective Date of all Causes of Action, whether known or unknown, either directly or derivatively through the Debtor, or the successors and assigns of the Debtor based on the same subject matter as any Claim, regardless of whether a proof of Claim was filed, whether or not Allowed, and whether or not the holder of the Claim has voted on this Iberia's Plan, or based on any act or omission, transaction or other activity or security, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Confirmation Date that was or could have been the subject of any Claim regardless of whether a proof of Claim was filed, whether or not Allowed and whether or not the holder of the Claim has voted on this Iberia's Plan.

8.4 INJUNCTION THROUGH EFFECTIVE DATE. All injunctions, liens or stays entered in the Bankruptcy Case and existing immediately before the Confirmation Date will remain in full force and effect until the Effective Date.

8.5 PERMANENT INJUNCTION. Except as expressly provided for in Iberia's Plan, all Entities which hold Claims or Interests, including, but not limited to, the holders of any and all charges, debts, liens, assignments, liabilities, encumbrances, security interests, Claims, contingent or unliquidated, known or unknown, foreseen or unforeseen, existing or hereafter arising, or other Causes of Action (including any claims of successor liability), will be precluded and permanently enjoined from assertion against the Debtor, Iberia, the Purchaser, and/or the Assets of the Debtor, including without limitation, any Claim based on any document, instrument, judgment, award, act, omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date. Such injunction will also preclude any act, in any manner, at any place whatsoever, which does not conform to or comply with the provisions of Iberia's Plan. This permanent injunction does not provide an injunction applicable to any officers, directors, members, employees, or managing agents of the Debtor or the Purchaser, its parents, or any affiliates of either, for any actions by any parties whatsoever.

8.6 BINDING EFFECT. On the Effective Date, according to Section 1141 of the Bankruptcy Code, the provisions of Iberia's Plan will bind the Debtor, the Purchaser, and any holder of a Claim or Interest, whether or not the Claim or Interest is Impaired under the Plan and whether or not the holder of the Claim or Interest has accepted the Plan.

8.7 RELEASE ON EFFECTIVE DATE. On the Effective Date, the Debtor will be released and discharged from any Claims or Causes of Action in any way related to this Bankruptcy Case, except as specifically otherwise provided herein.

## ARTICLE IX. TREATMENT OF AVOIDANCE ACTIONS

Avoidance Actions will not be prosecuted if Iberia's Plan is confirmed and the Confirmation Order shall have become a Final Order.

**ARTICLE X.**  
**MODIFICATION OF THE PLAN**

10.1 Iberia reserves the right, according to the Bankruptcy Code, to amend or modify the Plan before the Effective Date. After the Effective Date, Iberia may, upon order of the Bankruptcy Court, and according to Section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistencies in Iberia's Plan in such manner as may be necessary to carry out the purposes and intentions of Iberia's Plan.

10.2 A Claimant that has accepted or rejected Iberia's Plan will be deemed to have either accepted or rejected, as the case may be, Iberia's Plan as modified or amended, even if the modifications or amendments are made after the solicitation of votes of acceptance or rejection of Iberia's Plan, unless the Bankruptcy Court orders that such Claimant may change its previous vote within a time established by the Bankruptcy Court for such change to be made.

**ARTICLE XI.**  
**CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE OF THE PLAN**

11.1 CONDITIONS TO ENTRY OF CONFIRMATION ORDER. Iberia's Plan shall not be confirmed unless the Confirmation Order and the Plan as confirmed pursuant to the Confirmation Order shall be in a form and substance satisfactory to Iberia.

11.2 CONDITIONS TO OCCURRENCE OF THE EFFECTIVE DATE. The Effective Date of Iberia's Plan shall occur automatically upon the filing by Iberia or the Debtor, with Iberia's concurrence, of a notice stating that the conditions set forth below have been satisfied or waived in writing by Iberia:

(a) In the opinion of the Iberia, the Debtor and the Purchaser, in their reasonable discretion, all documents necessary to consummate Iberia's Plan, including the resolution of the Tax Purchaser Lawsuit and consummation of the Sale Transaction, shall have been executed and delivered by all appropriate parties thereto;

(b) The Confirmation Order shall have been entered; and

(c) The Confirmation Order shall not be stayed and shall have become a Final Order. Notwithstanding the foregoing, the Purchaser, in its sole discretion, may waive any of the conditions in Section 11.2.

11.3 REVOCATION OR WITHDRAWAL OF IBERIA'S PLAN.

(a) Iberia may revoke or withdraw the Plan prior to the Confirmation Date.

(b) If Iberia's Plan is revoked or withdrawn prior to the Confirmation Date in accordance with Section 11.3(a) hereof, or the Effective Date does not occur because the

conditions precedent thereto have not been satisfied, then Iberia's Plan shall be deemed null and void. In such event, (i) Iberia, the Debtor, and all holders of Claims shall be restored to the status quo ante as of the day immediately preceding the filing of Iberia's Plan, and (ii) all the Debtor's respective obligations with respect to the Claims shall remain unchanged, all of the Debtor's rights against all Persons shall be fully preserved and nothing contained herein or in the Disclosure Statement shall be deemed an admission or statement against interest or to constitute a waiver or release of any claims by or against the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor, Iberia or any Entity in any further proceedings involving the Debtor or any Entity.

## **ARTICLE XII.**

### **GENERAL PROVISIONS**

12.1 NOTICES. Except as otherwise specified, all notices and requests will be given by any written means, including but not limited to, email, ECF notification, facsimile, first class mail, express mail or similar overnight delivery service and hand delivered letters, and any such notice or request will be deemed to have been given when received. Notices will be delivered as follows:

To: IBERIA

BRETT P. FURR  
MICHAEL A. CRAWFORD  
TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.  
Post Office Box 2471  
451 Florida Street, 8th Floor  
Baton Rouge, Louisiana 70821-2471

To: WHITTEN FOUNDATION

GERALD CASEY  
Attorney at Law  
613 Alamo Street  
Lake Charles, LA 70601

12.2 EXTENSION OF PAYMENT DATES. If any Distributions fall due on any day that is not a Business Day, then such payment date will be extended to the next Business Day.

12.3 CONFIRMATION BY NON-ACCEPTANCE METHOD. In the event Iberia's plan is not accepted, Iberia hereby reserves the right to amend, or, if necessary, reserves the right to request confirmation of Iberia's Plan pursuant to Bankruptcy Code Section 1129(b) with respect to any Impaired Class that does not vote to accept the Plan. The "cram down" provisions require that the Bankruptcy Court find that a plan "does not discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class.

12.4 PAYMENT OF STATUTORY FEES. All fees payable pursuant to Section 1930 of Title 28 of the United States Code will continue to be paid until the Court enters a Final Decree.

12.5 HEADINGS. The headings used in Iberia's Plan are inserted for convenience only and do not constitute part of Iberia's Plan nor in any manner affect the provisions or interpretations of the Plan.

12.6 ENFORCEABILITY. Should any provision of Iberia's Plan be determined to be unenforceable for any reason, such determination will in no way limit or affect the enforceability and operative effect of any other provision of Iberia's Plan.

12.7 NON-VOTING EQUITY SECURITIES. Pursuant to 11 U.S.C. § 1123(a)(6) and to the extent applicable, the Debtor is prohibited from and shall not issue nonvoting equity securities.

12.8 PAYMENTS MADE TO PLAN PROPONENT. Pursuant to 11 U.S.C. § 1129(a)(4), any payment made or to be made by Iberia, as the proponent, or by a person issuing securities or acquiring property under Iberia's Plan, for services or for costs, or in connection with Iberia's Plan and incident to the case, is subject to Bankruptcy Court approval as reasonable.

12.9 RETIREMENT BENEFITS. The Debtor has no retiree benefits as defined by 11 U.S.C. § 1114 which are being modified by the Plan; as such, provision therefor under 11 U.S.C. 1129(a)(13) is not required.

### **ARTICLE XIII.** **RETENTION OF JURISDICTION**

13.1 The Bankruptcy Court will retain jurisdiction of all matters arising out of or related to the Bankruptcy Case and Iberia's Plan as long as necessary for the purposes of Sections 105(a), 1127, 1142(b) and 1144 of the Bankruptcy Code and for, *inter alia*, the following non-inclusive purposes:

- (a) to enforce consummation of the Sale Transaction;
- (b) to recover any or all Assets of the Debtor, wherever located, including but not limited to resolution or adjudication to judgment of the pending adversary proceeding against Boardwalk;
- (c) to decide any objections to the allowance, disallowance or subordination of Claims or a controversy as to the classification of Claims;
- (d) to decide and fix (i) all Administrative Claims, (ii) Claims arising from the rejection of any executory contracts or unexpired leases, (iii) Liens on any Assets or any proceeds thereof, and (iv) any other fee and expense authorized to be paid or reimbursed under the Bankruptcy Code;
- (e) to liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any disputed, contingent or unliquidated Claims;

- (f) to adjudicate any matters as may be provided for in the Confirmation Order;
- (g) to effectuate Distributions under and enforce the provisions of Iberia's Plan;
- (h) to hear and determine any pending applications, adversary proceedings or contested matter including all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of Iberia's Plan, and matters concerning state, local and federal taxes according to Sections 346, 505 and 1146 of the Bankruptcy Code;
- (i) to amend or to correct any defect, cure any omission or reconcile any inconsistency in Iberia's Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of Iberia's Plan;
- (j) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated;
- (k) to consider any modification of Iberia's Plan pursuant to Section 1127 of the Bankruptcy Code or modification of the Plan after substantial consummation, as such terms is defined in Section 1101(2) of the Bankruptcy Code;
- (l) to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code to the maximum extent of its jurisdiction; and
- (m) to enter a final decree closing the Bankruptcy Case.

**ARTICLE XIV.**  
**MISCELLANEOUS PROVISIONS**

14.1 Nothing in Iberia's Plan or in the Disclosure Statement filed by Iberia shall be construed to prohibit Iberia or the Debtor from objecting to any claim in accordance with orders and time deadlines set by this Court.

14.2 Following the Effective Date, the monthly financial reports required of the Debtor pursuant to this Court's Order shall no longer be required. However, until the entry of the Final Decree, the Debtor will provide monthly cash disbursement reports to the United States Trustee for purposes of determining quarterly fees.

**Dated: February 29, 2016.**

RESPECTFULLY SUBMITTED:

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

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***Vice President, IberiaBank***  
***Special Asset Department***