

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**BARBETTA, LLC**

**CASE NO. 11-04370-8-JRL**

**CHAPTER 11**

**DEBTOR**

**PLAN OF REORGANIZATION**

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

**I. SUMMARY OF PLAN**

The Plan contemplates a reorganization of the Debtor's assets and liabilities, and a continuation of the Debtor's rental property business, both for those properties that owned by the Debtor; certain real property owned by Charles E. Hester, a principal of the Debtor; certain real property owned jointly by Charles E. Hester and Barbetta G. Hester ("Hesters"), principals of the Debtor. In accordance with the Plan, the Debtor intends to satisfy certain creditor claims from income earned through the continued operations of the rental property business and the rents received in connection with the rental properties individually owned by the Hesters. Creditors will receive payments from the Debtor described in Article III herein.

**II. DEFINITIONS**

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

2. "ALLOWED CLAIM" 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, and the Local Rules adopted by the Bankruptcy Court for Eastern District of North Carolina.

6. "CLAIM" shall mean a claim that was duly-listed on the Schedules filed by the Debtor or a claim that was timely filed, and 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 Plan.

8. "CONFIRMATION DATE" shall mean the date of entry by the Court of an order confirming the 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 Plan pursuant to 11 U.S.C. § 1129.

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

11. "COURT" shall mean the United States Bankruptcy Court for the Eastern District of North Carolina.

12. "CREDITOR(S)" shall mean any creditor(s) of the Debtor holding a Claim for debts, liabilities, demand or claim of any character whatsoever.

13. "DEBTOR" shall mean the Debtor (or Debtors, if more than one) identified on the first page of this Plan.

14. "DISBURSING AGENT" shall mean the Reorganized Debtor, or that person selected by the Court who shall perform the duties and have the rights and obligations set forth herein.

15. "DISCLOSURE STATEMENT" shall mean the disclosure statement describing this Plan and prepared in accordance with 11 U.S.C. § 1125 of the Bankruptcy Code and approved by order of the Court, to be distributed to the holders of claims whose votes with respect to this Plan are to be solicited.

16. "DISPUTED CLAIM" shall mean any claim (a) that is scheduled by the Debtor as disputed, contingent or unliquidated, or (b) that is scheduled by the Debtor, or proof of which has been filed with the 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 Plan.

18. "EFFECTIVE DATE" shall be that date on which the Order Confirming Plan becomes final and non-appealable, which shall be 14 days from the date of entry of the Order Confirming Plan.

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 expires; or (b) any appeal that has been timely filed has been dismissed or otherwise disposed of in a finally determined.

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

22. "IMPAIRED CLASS" shall mean any class of creditors whose claims or interests are altered by the Plan or who will not receive a distribution under the Plan for the allowed amount of their claim in cash or cash equivalent as of the Effective Date, as defined herein.

23. "PETITION DATE" shall mean the date upon which the Debtor filed its voluntary Chapter 11 petition, to wit, June 6, 2011.

24. "PLAN" shall mean this 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 a 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 claimant in the indicated class to the aggregate dollar amount of Claims in said class, including in each such calculation, the full amount of any 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. "SECURED CREDITOR" shall mean any creditor who holds a lien, security interest or any other encumbrances which have been properly perfected, as required by law with respect to property owned by the Debtor, to the extent of the value of the collateral which secures such interest.

28. "SUBSTANTIAL CONSUMMATION" shall mean the time the reorganized Debtor has commenced the distribution of initial Plan payments to all creditor classes.

29. "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 claim, indicating whether said Class is impaired or unimpaired, and proposes the following treatment for each Class:

**Class 1 - Administrative Costs:**

(1) Classification. Class 1 consists of claims for any cost or expense of administration pursuant to 11 U.S.C. §§ 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
David J. Bradley, CPA	Accountant for the Debtor	To be determined by the Court
Pickett-Sprouse Real Estate	Real Estate Broker for Debtor	To be determined by the Court
NAI BH Commercial	Real Estate Broker for Debtor	To be determined by the Court

(2) Impairment. Class 1 Claims are 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 (10) days of the Effective Date or upon entry of an order allowing such Administrative Claim, whichever is later, except that professional fees shall be paid in full upon entry of an order allowing the same, or pursuant to any agreement between the Debtor and the holder of any Class 1 Allowed Claim.

In the event that funds are not available to pay such administrative class within ten (10) days of the Effective Date, each Class 1 claimant agrees to receive payments over time and will receive payments from the Debtor until paid in full.

Any Class 1 Claims remaining unpaid ten (10) days following the Effective Date shall accrue interest at a rate of six percent (6%) per annum.

**Class 2 – Ad Valorem Taxes:**

(1) Classification. 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 claims in this class:

<u>Claimant</u>	<u>Claim #</u>	<u>Amount</u>
Buncombe County Tax Collector	16	\$35,201.10
Cabarrus County Tax Collector	No Claim Filed	\$16,794.74
Cumberland County Tax Collector	18	\$22,015.61
Durham County Tax Collector	14	\$11,020.24

Town of Harrisburg Tax Coll. No Claim Filed \$ 708.70

(2) Impairment. Class 2 claims are unimpaired.

(3) Treatment. The Debtor proposes to pay Class 2 claimants in quarterly payments to be paid pro-rata over a period of time not to exceed five (5) years from the Petition Date.

Quarterly payments shall commence on the earlier of January 15, April 15, July 15, or October 15 following the Effective Date and shall continue quarterly thereafter, and shall include annual interest at the statutory rate.

**Class 3 – Tax Claims:**

(1) Classification. 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, the North Carolina Department of Revenue or other taxing authorities, plus interest as allowed by law.

*The Debtor is unaware of any claims in this class.*

(2) Impairment. Class 3 Claims are unimpaired.

(3) Treatment. The Debtor proposes the following treatment, in the event any claims arise:

**Administrative tax claims** which have been incurred since the Petition Date, if any, shall be paid in cash and in full including accruals as of the date of payment within thirty (30) days from the Effective Date.

**Unsecured priority tax claims** as described in Section 507(a)(8) of the Bankruptcy Code 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 earlier of January 15, April 15, July 15, or October 15 following the Effective Date and shall continue quarterly thereafter, with interest at the statutory rate as of the date of confirmation of the Plan, currently four percent (4%) per annum.

**Secured claimants** 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, which at the time of the filing of this Plan is four percent (4%) per annum. The Debtor shall pay these claims over a period not to exceed five (5) years from the Petition Date beginning on the earlier of January 15, April 15, July 15, or October 15 following the Effective Date, and shall continue quarterly thereafter, with interest at the statutory rate. These claims may also be satisfied in whole or in part from the sale of the real or personal property securing such claims allowed as part of this Class after satisfaction of any senior secured claims.

In the event that the Debtor fails to timely make a required payment as to any claim of the North Carolina Department of Revenue ("Department"), then, subject to a ten (10) day right to cure after receipt of a written notice of default from the Department, the Department shall be permitted to exercise any and all of its collection remedies under non-bankruptcy law as to any and all of its Class 3 claims without further order of the Court.

The rights of the Department to setoff under 11 U.S.C. § 553 shall not be altered by the Plan or the confirmation order entered in this matter and are expressly reserved. The claim of the Department is subject to adjustment on account of federal corrections, as required by N.C. Gen. Stat. § 105-130.20. Notwithstanding any other provisions of the Plan and the Confirmation Order, the Department shall retain any and all statutory tax liens that may have arisen by operation of statute prior to the Petition Date, except to the extent that the treatment for the holders of the secured claims in Class 3 expressly states that such tax lien will not be treated as secured or fully secured pursuant to the terms of the terms of the Plan. Absent such express language modifying the treatment for Class 3 claimants with secured claims, any such lien may be ruled unenforceable by the Court only upon the filing of a separate pleading and after notice and hearing.

**Unsecured general tax claims**, if any, will be treated in the section relating to "General Unsecured Claims."

**Class 4 – Bank of the Carolinas ("BOTC"):**

(1) Description of Debt. Class 4 Claims shall consist of the secured claims of the Bank of the Carolinas ("BOTC"). More specifically, this class includes

a. 215 Friendly Road, Asheboro, North Carolina: The Debtor and BOTC entered into a promissory note, dated January 13, 2004, in the original principal amount of \$340,480.00 (the "215 Note"). The 215 Note provides for a variable interest rate equal to the BOTC prime rate plus one percent (1.00%) per annum. The current rate on the 215 Note is five percent (5.00%) based on Proof of Claim # 6 filed on June 14, 2011 by BOTC in the amount of three hundred thirty-three dollars five hundred six dollars and ninety cents (\$333,506.90).

The 215 Note is secured by a deed of trust on the real property known as 215 Friendly Road, Asheboro, North Carolina.

b. 5 Barbetta Drive, Asheville, North Carolina and 8 Barbetta Drive, Asheville, North Carolina: The Debtor and BOTC entered into a promissory note, dated June 22, 2004, in the original principal amount of one million one hundred sixty-five thousand one hundred thirty-six dollars (\$1,165,136.00) (the "Barbetta Note 1"). The Barbetta Note 1 provides for a variable interest rate equal to the BOTC prime rate plus one percent (1.00%) per annum. However, on September 21, 2010, the Barbetta Note 1 was modified such that the interest was to be calculated at a fixed rate of five percent (5.00%) per annum. The note modification agreement called for eleven (11) monthly principal and interest payments in the approximate amount of seven thousand one

hundred ninety-one dollars and sixty-eight cents (\$7,191.68) with a final payment of all outstanding principal and interest due on September 12, 2011. In connection with the Barbetta Note 1, BOTC filed Proof of Claim #5 in the amount of one million one hundred fifty-six thousand, four hundred seventy-nine thousand dollars and fifty-one cents (\$1,156,479.51) on June 14, 2011.

The Debtor and BOTC also entered into a promissory note dated October 21, 2004 in the original principal amount of two hundred eleven thousand dollars (\$211,000.00) ("Barbetta Note 2"). The current interest rate on the Barbetta Note 2 is five percent (5.00%). BOTC filed Proof of Claim #4 in the amount of one hundred ninety-nine thousand forty-eight dollars and eighty-nine cents (\$199,048.89) on June 14, 2011.

The Barbetta Note 1 and Barbetta Note 2 are secured by a deed of trust on real properties commonly known as 5 Barbetta Drive, Asheville, North Carolina and 8 Barbetta Drive, Asheville, North Carolina.

c. 205 Guffey Street, Salisbury, North Carolina: The Debtor and BOTC entered into a promissory note dated August 12, 2004 in the original principal amount of four hundred thousand dollars (\$400,000.00) (the "205 Note"). The 205 Note provides for a variable interest rate equal to the BOTC prime rate plus one percent (1.00%) per annum. However, on September 21, 2010, the 205 Note was modified such that the interest was to be calculated at a fixed rate of five percent (5.00%) per annum. The note modification agreement called for eleven (11) monthly principal and interest payments in the approximate amount of two thousand five hundred six dollars and forty-five cents (\$2,506.45) with a final payment of all outstanding principal and interest due on September 12, 2011.

BOTC filed Proof of Claim #1 in the amount of three hundred ninety-four thousand five hundred thirty-six dollars and sixty-five cents (\$394,536.65) on June 14, 2011.

The 205 Note is secured by a deed of trust on the real property commonly known as 205 Guffey Street, Salisbury, North Carolina.

d. 362 West Street, Pittsboro, North Carolina: The Debtor and BOTC entered into a promissory note dated November 24, 2004 in the original principal amount of two hundred fifty thousand dollars (\$250,000.00) (the "362 Note"). The 362 Note provides for a variable interest rate equal to the BOTC prime rate plus one percent (1.00%) per annum. The current rate on the 215 Note is five percent (5.00%) based on Proof of Claim #2 filed on June 14, 2011 by BOTC in the amount of two hundred nine thousand seven hundred twenty-six dollars and thirty-one cents (\$209,726.31.).

The 362 Note is secured by the real property known as 362 West Street, Pittsboro, North Carolina.

e. 12 Barbetta Drive, Asheville, North Carolina: The Debtor and BOTC entered into a promissory note dated July 8, 2005 in the original principal amount of six hundred ninety thousand dollars (\$690,000.00) (the "Barbetta Note 3"). The Barbetta Note 3 provides for a variable interest rate equal to the BOTC prime rate plus one percent (1.00%) per annum. The current rate on the Barbetta Note 3 is five percent (5.00%) based on Proof of Claim #3 filed by BOTC on June 14, 2011 in the amount of six hundred seventy-one thousand three hundred seventy-six dollars and twenty cents (\$671,376.20).

The Barbetta Note 3 is secured by a deed of trust on the real property commonly known as 12 Barbetta Drive, Asheville, North Carolina.

(2) Impairment. Class 4 Claims are impaired.

(3) Treatment. Each of the obligations to BOTC shall remain a separate obligation and shall each be treated as fully secured obligations in an amount equal to (a) the outstanding balance due on the Petition Date; plus (b) interest accrued through the Effective Date at the contractual non-default rate of interest; plus (c) costs and expenses approved by the Court pursuant to Section 506(b); less (d) all post-petition payments. BOTC shall retain its liens and other collateral with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until its claims are paid as outlined herein. BOTC shall provide an updated payoff for each loan as of the Effective Date and payments due under the Plan shall be calculated based on these revised payoff numbers. The Debtor proposes to amortize this obligation over a thirty (30) year period with interest at a rate of 4% per annum from and after the Effective Date. Payments will begin on the 15<sup>th</sup> day of the first full month following the Effective Date of the Plan, and with a final payment of all outstanding principal and interest due after 180 months. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court. All prepayment penalties, covenants, reporting requirements, or other such similar terms in the loan documents not expressly set forth herein shall be eliminated.

**Class 5 – Bedford Capital Trust 2001-1 ("Bedford"):**

(1) Description of Debt. The Debtor and Bedford Capital Trust 2001-1 ("Bedford") entered into a promissory note dated December 20, 2001 in the original principal amount of three million five hundred forty thousand four hundred ten dollars and ninety-six cents (\$3,540,410.96) (the "Bedford Note").

The Bedford Note is secured by a deed of trust, security agreement, and assignment of leases and rents on the real properties commonly known as: 97 Rutherford Road, Candler, North Carolina; 11035 Golf Links Drive, Charlotte, North Carolina; and 212 Highway 49 North, Richfield, North Carolina.



As of the Petition Date, the Debtor estimates that the outstanding balance of the Bedford Note was two million four hundred thirty-two thousand eight hundred eighty-five thousand dollars and seventeen cents (\$2,432,885.17).

(2) Impairment. Class 5 Claims are impaired.

(3) Treatment. The obligations to Bedford shall be treated as a fully secured obligation in an amount equal to (a) the outstanding balance due on the Petition Date; plus (b) interest accrued through the Effective Date at the contractual non-default rate of interest; plus (c) costs and expenses approved by the Court pursuant to Section 506(b); less (d) all post-petition payments. Bedford shall retain its liens and other collateral with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until its claims are paid as outlined herein. Bedford shall provide an updated payoff for the loan as of the Effective Date and payments due under the Plan shall be calculated based on these revised payoff numbers. The Debtor proposes to amortize this obligation over a thirty (30) year period with interest at a rate of 4% per annum from and after the Effective Date. Payments will begin on the 15<sup>th</sup> day of the first full month following the Effective Date of the Plan, and with a final payment of all outstanding principal and interest due after 180 months. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court. All prepayment penalties, covenants, reporting requirements, or other such similar terms in the loan documents not expressly set forth herein shall be eliminated.

**Class 6 - Bushwackers Landscaping ("Bushwackers") Judgment Claim:**

(1) Description of Debt. Bushwackers Landscaping ("Bushwackers") obtained a judgment against the Debtor in the amount of twenty one thousand nine hundred fourteen dollars (\$21,914.00) in Case No. 09-CVS-313 before the General Court of Justice, Superior Division of Stanly County, North Carolina. As of the Petition Date, the Debtor estimates that the outstanding balance of this Claim was of twenty-one thousand nine hundred fourteen dollars (\$21,914.00).

As of the filing of the Plan, Bushwackers has not filed a Proof of Claim.

The Debtor owns real property located in Stanly County, North Carolina which is commonly known as 212 Highway 49, Richfield, North Carolina.

(2) Impairment. Class 6 Claims are impaired.

(3) Treatment. The Debtor will treat the Claim of Bushwackers as a secured claim in the amount equal to the balance of this Claim as of the Effective Date, not to exceed twenty-one thousand nine hundred fourteen dollars (\$21,914.00). Bushwackers 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 Class 6 is paid pursuant to the terms of this Plan, any amendment or modification thereto. The Debtor will amortize the Class 6 Claim over seven (7) years, with an

interest rate of 4% per annum and will pay Bushwacker in equal monthly payments. Payments will commence on the fifteenth (15th) day of the first full month following the Effective Date. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court.

Bushwacker shall be required to execute a Notice of Satisfaction of Judgment Lien on a form approved by the Debtor within thirty (30) days of receipt the final payment of its Class 6 Claim.

**Class 7 - Southern Concrete Materials, Inc. ("SCMI") Judgment Claim:**

(1) Description of Debt. Southern Concrete Materials, Inc. ("SCMI") and the Debtor, Charles E. Hester, Barbetta G. Hester, and Charles E. Hester, Inc. (collectively, the "Defendants") entered into a consent judgment in Case No. 08-CVS-6511 in the General Court of Justice Superior Court Division of Buncombe County whereby the Defendants agreed to the entry of a judgment whereby they would be jointly and severally liable to SCMI in the amount of ninety-one thousand six hundred thirty-six dollars and ninety-eight cents (\$91,636.98), to the award of attorneys fees in the amount of twelve thousand fifty-two dollars and sixty-four cents (\$12,052.64), and to the perfection of the Claim of Lien sought by SCMI in its complaint thereby establishing priority of such Claim of Lien in accordance with Chapter 44A of the North Carolina General Statutes, as of October 15, 2008.

SCMI filed a Proof of Claim on August 2, 2001 in the amount of one hundred fourteen thousand seven hundred seventy-six dollars and forty-four cents (\$114,776.44) with a copy of the consent judgment attached thereto.

The Debtor owns real property located in Buncombe County, North Carolina more commonly known as 5 Barbetta Drive, 8 Barbetta Drive, and 12 Barbetta Drive located in Asheville, North Carolina.

(2) Impairment. Class 7 Claims are impaired.

(3) Treatment. The Debtor will treat the Claim of SCMI as a secured claim, not to exceed, the amount equal to the consent judgment award of ninety-one thousand six hundred thirty-six dollars and ninety-eight cents (\$91,636.98) plus the agreed upon attorneys fees in the amount of twelve thousand fifty-two dollars and sixty-four cents (\$12,052.64) for a total claim of one hundred three thousand six hundred eighty-nine dollars and sixty-two cents (\$103,689.62). SCMI 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 Class 7 is paid pursuant to the terms of this Plan, any amendment or modification thereto.

The Debtor will amortize the Class 7 Claim over seven (7) years, with an interest rate of 4% per annum and will pay SCMI in equal monthly payments. Payments will commence on the 15<sup>th</sup> day of the first full month following the Effective Date. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to

foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court.

SCMI shall be required to execute a Notice of Satisfaction of Judgment Lien on a form approved by the Debtor within thirty (30) days of receipt the final payment of its Class 7 Claim.

Payment of the Claims of this Class pursuant to the terms of this Plan hereby releases the Debtor, Charles E. Hester, Barbetta G. Hester, and Charles E. Hester, Inc. from any additional or further liability in connection with the consent judgment or any other debt owed to SCMI by the Defendants.

**Class 8 - TD Auto Financial ("TD"):**

(1) Description of Debt. The Debtor, Charles E. Hester, and Chrysler Financial entered into a retail installment financing contract ("RIFC") secured by a lien on a 2006 Dodge Ram Truck, VIN: 1D7HA18296J246825. The RIFC provided that the Debtor was to make seventy-two (72) monthly payments of principal and interest in the amount of three hundred fifty-seven dollars and twenty cents (\$357.20).

TD contends that it is the holder of the Secured Claim of Diamler Chrysler Services America LLC and filed its Proof of Claim on July 6, 2011 representing that the amount due in connection with the agreement is four thousand thirty-three dollars and sixty-one cents (\$4,033.61). Attached to the Proof of Claim is a copy of the RIFC and the Certificate of Title.

(2) Impairment. Class 8 Claims are impaired.

(3) Treatment. The Debtor will make monthly payments over a period of twenty-four (24) months, with interest at the lower of the contract rate or five percent (5.0%) per annum until said claim is paid in full. Monthly payments shall commence on the fifteenth (15th) day of the first full month following the Effective Date. For purposes of feasibility, the Debtor estimates payments to be \$176.96. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court.

**Class 9 –CommunityONE Bank, N.A. ("CommunityONE"):**

(1) Description of Debt. This Class of Claims consists of a number of secured obligations due to CommunityONE, successor by merger to First National Bank and Trust Co., ("CommunityONE") and more particularly described as:

a. Loan 6030564 (100 West Anderson Street, Selma, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of two hundred forty-eight thousand eight hundred eleven dollars and sixty-nine cents (\$248,811.69) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for

monthly payments in the amount of two thousand one hundred eighty nine dollars and seventeen cents (\$2,189.17) and a final balloon payment of all outstanding principal and interest due on March 9, 2014.

The note is secured by a deed of trust on the real property known as 100 West Anderson Street, located in Selma, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6030564, the Proof of Claim provides that two hundred fifty-one thousand nine hundred ninety five dollars and sixty-four cents (\$251,995.64) is owed on this obligation.

b. Loan 6030440 (203 South Pollock Street, 205 South Pollock Street, 205A South Pollock Street, and 207 South Pollock Street Kenly, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of two hundred eighty-two thousand seven hundred forty dollars and seventy cents (\$282,740.70) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand four hundred seventy-four dollars and seventy five cents (\$2,474.75) and a final balloon payment of all outstanding principal and interest due on March 9, 2014.

The note is secured by a deed of trust on the real property known as 203 South Pollock Street, 205 South Pollock Street, 205A South Pollock Street, and 207 South Pollock Street located in Kenly, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6030440, the Proof of Claim provides that two hundred eighty-nine thousand three hundred fourteen dollars and twelve cents (\$289,314.12) is owed on this obligation.

c. Loan 6030556 (303 North Church Street, Kenly, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of two hundred eighty-two thousand seven hundred forty dollars and seventy cents (\$282,740.70) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand four hundred seventy-four dollars and seventy five cents (\$2,474.75) and a final balloon payment of all outstanding principal and interest due on March 9, 2014.

The note is secured by a deed of trust on the real property known as 303 North Church Street located in Kenly, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6030440, the Proof of

Claim provides that two hundred eighty-eight thousand nine hundred fourteen dollars and seventy-one cents (\$288,914.71) is owed on this obligation.

d. Loan 6030467 (20 - 30 Noble Street, Smithfield, North Carolina): The Debtor and CommunityONE entered a promissory note in the original principal amount of two hundred thirty-five thousand six hundred eighteen dollars and fifty-three cents (\$235,618.53) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand sixty-two dollars and thirty cents (\$2,062.30) and a final balloon payment of all outstanding principal and interest due on March 9, 2014.

The note is secured by a deed of trust on the real property known as 20 - 30 Noble Street, Smithfield, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6030467, the Proof of Claim provides that two hundred thirty-eight thousand thirty dollars and three cents (\$238,030.03) is owed on this obligation.

e. Loan 6030548 (4312 Western Park Place, Durham, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of nine hundred forty-two thousand four hundred seventy three dollars and eighty-three cents (\$942,473.83) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of eight thousand two hundred forty-nine dollars and twenty-two cents (\$8,249.22) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 4312 Western Park Place, Durham, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6030548, the Proof of Claim provides that nine hundred sixty-six thousand two hundred eighty six dollars and seven cents (\$966,286.07) is owed on this obligation.

f. Loan 6085156 (2615 Alamance Road, Burlington, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of two hundred ninety-seven thousand ninety-five dollars and eighty-two cents (\$297,095.82) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand six hundred dollars and forty cents (\$2,600.40) and a final balloon payment of all outstanding principal and interest due on March 9,

2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 2615 Alamance Road, Burlington, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6085156, the Proof of Claim provides that three hundred one thousand three hundred eighty-seven dollars and fourteen cents (\$301,387.14) is owed on this obligation.

g. Loan 6085148 (427 East Maple Drive, Burlington, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in the original principal amount of four hundred forty-three thousand seven hundred seventy-five dollars and two cents (\$443,775.02) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of three thousand eight hundred eighty-four dollars and twenty-four cents (\$3,884.24) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 427 East Maple Drive, Burlington, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6085148, the Proof of Claim provides that four hundred fifty-four thousand one hundred forty-eight dollars and twenty cents (\$454,148.20) is owed on this obligation.

h. Loan 5964288 (414 Chicago Drive, Fayetteville, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of five hundred forty-five thousand ninety-nine dollars and thirty-one cents (\$545,099.31) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of four thousand seven hundred seventy-one dollars and eleven cents (\$4,771.11) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 414 Chicago Drive, Fayetteville, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 5964288, the Proof of

Claim provides that five hundred sixty-two thousand twenty-eight dollars and twenty-eight cents (\$562,028.27).

i. Loan 6007430 (416 Chicago Drive & 420 Chicago Drive, Fayetteville, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 entered into a promissory note dated March 9, 2009 in original principal amount of two hundred seventy-eight thousand eight hundred sixty-three dollars and seventy-five cents (\$278,863.75) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand four hundred forty dollars and eighty-two cents (\$2,440.82) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 416 Chicago Drive and 420 Chicago Drive which are located in Fayetteville, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6007430, the Proof of Claim provides that two hundred eighty-six thousand seven hundred ninety-nine dollars and eighty-eight cents (\$286,799.88) owed on this obligation.

j. Loan 5963958 (426 Chicago Drive, Fayetteville, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of three hundred twenty thousand nine hundred five dollars and twenty-four cents (\$320,905.24) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of two thousand eight hundred eight dollars and eighty cents (\$2,808.80) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 426 Chicago Drive, Fayetteville, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6007430, the Proof of Claim provides that three hundred thirty-one thousand nine hundred forty-eight dollars and seventy-five cents (\$331,948.75) owed on this obligation.

k. Loan 6060579 (106 Tarheel Court, Elizabeth City, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of one hundred ninety-nine thousand six hundred nineteen dollars and sixty-seven cents (\$199,619.67) with an interest rate of seven and one-half

percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of one thousand seven hundred forty-seven dollars and twenty-two cents (\$1,747.22) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 106 Tarheel Court, Elizabeth City, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6060579, the Proof of Claim provides that two hundred four thousand ten dollars and sixty-eight cents (\$204,010.68).

1. Loan 6057039 (2359 South Highway 105, Boone, North Carolina): The Debtor and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of one million six thousand two hundred eighteen dollars and fifty-cents (\$1,006,218.50) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of eight thousand eight hundred seven dollars and sixteen cents (\$8,807.16) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 2359 South Highway 105, Boone, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6057039, the Proof of Claim provides that one million twenty thousand two hundred twenty-two dollars and thirty-six cents (\$1,020,222.36) is owed on this obligation.

m. Loan 6086993 (2950 West Broad Street, Elizabeth City, North Carolina): The Hester 1996 Family Limited Partnership ("Family LP")<sup>1</sup> and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of three hundred eighty-nine thousand nine-hundred forty-three dollars and twenty-two cents (\$389,943.22) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of three thousand four hundred thirteen dollars and seven cents (\$3,413.07) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

---

<sup>1</sup> Prior to the filing of the voluntary petition for relief under Chapter 11, the Debtor merged with the Family LP. As such, this Plan addresses certain debts of the Family LP.



The note is secured by a deed of trust on the real property known as 2950 West Broad Street, Elizabeth City, North Carolina and owned by the Debtor.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6086993, the Proof of Claim provides that three hundred ninety-nine thousand seven hundred twenty-five dollars and thirteen cents (\$399,725.13) is owed on this obligation.

n. Loan 6052886 (1065 Vinehaven Court, Concord, North Carolina): The Hester 8, LLC ("Hester 8")<sup>2</sup> and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of one million four hundred ten thousand three hundred thirty-six dollars and five cents (\$1,410,336.05) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of twelve thousand three hundred forty-four dollars and twenty-nine cents (\$12,344.29) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 1065 Vinehaven Court, Concord, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6052886, the Proof of Claim provides that one million four hundred sixty-one thousand five hundred twenty-seven dollars and eighty-six cents (\$1,461,527.86) is owed on this obligation.

o. Loan 6085121 (2201 Brewer Road, Winston-Salem, North Carolina): The Family LP and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of nine hundred ninety thousand three hundred twenty-one dollars and thirty cents (\$990,321.30) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of eight thousand six hundred sixty-eight dollars and one cent (\$8,668.01) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 2201 Brewer Road, Winston-Salem, North Carolina and owned by Charles E. Hester, individually.

---

<sup>2</sup> Prior to the filing of the voluntary petition for relief under Chapter 11, the Debtor merged with Hester 8. As such, this Plan addresses certain obligations of Hester 8.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6085121, the Proof of Claim provides that one million seven thousand one hundred fifty-nine thousand dollars and fourteen cents (\$1,007,159.14) is owed on this obligation.

p. Loan 6086985 (2800 Heart Drive, Asheville, North Carolina): The Family LP and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of six hundred forty-three thousand four hundred three dollars and ninety-six cents (\$643,403.96) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of five thousand six hundred thirty-one dollars and fifty-four cents (\$5,631.54) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 2800 Heart Drive, Asheville, North Carolina and owned by Charles E. Hester and Barbetta G. Hester, as tenants by the entireties.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6086985, the Proof of Claim provides that six hundred sixty-five thousand nine hundred eighty-two dollars and thirteen cents (\$665,982.13) owed on this obligation.

q. Loan 6053009 (5998 Caldwell Park Drive, Harrisburg, North Carolina): Hester 8 and CommunityONE entered into a promissory note dated March 9, 2009 in original principal amount of one million four hundred ten thousand three hundred thirty-six dollars and five cents (\$1,410,336.05) with an interest rate of seven and one-half percent (7.5%) per annum. This note was a renewal note whereby the terms provided for monthly payments in the amount of seven thousand seven hundred sixty-four dollars and thirteen cents (\$7,764.13) and a final balloon payment of all outstanding principal and interest due on March 9, 2014. In addition, this note contained a prepayment penalty provision whereby the Debtor would incur certain charges if the loan was paid in full before its maturity date.

The note is secured by a deed of trust on the real property known as 5998 Caldwell Park Drive, Harrisburg, North Carolina.

CommunityONE filed one Proof of Claim on August 18, 2011 including a detailed description of each of its Claims. With respect to the loan 6053009, the Proof of Claim provides that nine hundred thirty-two thousand seventy-two dollars and twenty-nine cents (\$932,072.29) is owed on this obligation.

(2) Impairment. Class 9 Claims are impaired.

(3) Treatment. Each of the obligations to CommunityONE shall remain a separate obligation and shall each be treated as fully secured obligations in an amount equal to (a) the outstanding balance due on the Petition Date; plus (b) interest accrued through the Effective Date at the contractual non-default rate of interest; plus (c) costs and expenses approved by the Court pursuant to Section 506(b); less (d) all post-petition payments. CommunityONE shall retain its liens and other collateral with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until its claims are paid as outlined herein. CommunityONE shall provide an updated payoff for each loan as of the Effective Date and payments due under the Plan shall be calculated based on these revised payoff numbers. The Debtor proposes to amortize this obligation over a thirty (30) year period with interest at a rate of 4% per annum from and after the Effective Date. Payments will begin on the 15<sup>th</sup> day of the first full month following the Effective Date of the Plan, and with a final payment of all outstanding principal and interest due after 180 months. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court. All prepayment penalties, covenants, reporting requirements, or other such similar terms in the loan documents not expressly set forth herein shall be eliminated.

Release of Liens and Security Interests by CommunityONE: CommunityONE shall be required to release any liens and/or other security interest and execute any documents evidencing such release, including but not limited to a Notice of Satisfaction of Lien, upon receipt of payment in full of each separate Class 9 Claim, notwithstanding any cross-collateralization language that may have been included in the deeds of trust referenced herein.

For the purposes of the payment of Class 9 Claims, each claim is separate and distinct and each deed of trust relates only to the specific obligation described herein and shall be treated as such under the terms of the Plan. Payment of the specific Claim or obligation shall require a release of any security interest held by CommunityONE.

**Class 10 - KS Bank, Inc. ("KS Bank"):**

(1) Description of Debt. The Debtor entered into two loan transactions with KS Bank, Inc. ("KS Bank") and more particularly described as:

Note 1: The Debtor and KS Bank entered into a promissory note dated September 17, 2007 in original principal amount of two million five hundred thousand dollars (\$2,500,000.00) with an interest rate of seven and one-half percent (7.5%) per annum. The note provides for monthly payments in the amount of eighteen thousand seven hundred forty-six dollars and ninety-two cents (\$18,746.92) and a final balloon payment of all outstanding principal and interest due on October 13, 2013.

This obligation was modified on October 31, 2008 to permit interest only payments for a period of ninety (90) days and extend the final payment deadline until January 1, 2009. Subsequently, the note was again modified on July 22, 2009 reducing the interest from seven and one-half percent (7.5%) per annum to seven percent (7%) and

extending the final payment deadline until January 1, 2010. The third modification to the note was made on January 29, 2010 reducing the interest rate to six percent (6%) and reducing the monthly payment to three thousand eight hundred forty-two dollars and twenty-seven cents (\$3,842.27) and extending the call deadline to January 1, 2011. Subsequently, on August 31, 2010, the parties entered into an agreement whereby the interest rate was reduced to five percent (5%), reduce the monthly payments to three thousand six hundred forty-seven dollars and eighteen cents (\$3,647.18), and extend the final payment due date until September 1, 2011. This obligation was again modified on December 21, 2010 whereby the Debtor granted KS Bank a security interest in additional collateral.

Pursuant to the terms of this note, a prepayment penalty provision permitted that KS Bank to assess certain charges if the note was paid in full before its maturity date.

Initially, the Debtor granted KS Bank a security interest, through the execution of a deed of trust, in the real property commonly known as 100 South Pollock Street, Selma, North Carolina. As part of the December 2010 modification agreement, the Debtor granted KS Bank a security interest, in the second priority position, in the additional collateral, including the real property known as 329A Brightleaf Boulevard, Smithfield, North Carolina; 329B Brightleaf Boulevard, Smithfield, North Carolina; 329D Brightleaf Boulevard, Smithfield, North Carolina; 109 East Oak Street, Selma, North Carolina, 501 West Railroad Street, Selma, North Carolina; 311 East Lizzie Street, Selman, North Carolina; and 214 West Edgerton Street, Dunn, North Carolina.

In connection with this note, KS Bank filed a proof of claim, identified as claim number 10 on the claims docket, in the amount of four hundred thirty six thousand three hundred nineteen dollars and sixty-eight cents (\$436,319.68).

(b). Note 2: The Debtor and KS Bank entered into a promissory note dated March 1, 2004 in original principal amount of one hundred forty-five thousand dollars (\$145,000.00) with an variable interest rate that had a floor of three and three-fourths percent (3.75%) and a cap of eleven and three-fourths percent (11.75%) per annum. This obligation was modified on May 14, 2009 to fix the interest at six and eight hundred seventh-fifths percent (6.875%) per annum. The modification provided for monthly payments in the amount of one thousand one hundred ten dollars and sixty-four cents (\$1,101.64).

This obligation is secured by a deed of trust with a first priority lien position as to the real property located at on 2009 Mesa Court, Clayton, North Carolina.

KS Bank filed a proof of claim, docketed as claim number 11, in the amount of one hundred twelve thousand one hundred forty dollars and ninety-five cents (\$112,140.95).

(2) Impairment. Class 10 Claims are impaired.

(3) Treatment. Each of the two obligations to KS Bank shall remain a separate obligation and shall each be treated as fully secured obligations in an amount equal to (a) the outstanding balance due on the Petition Date; plus (b) interest accrued through the Effective Date at the contractual non-default rate of interest; plus (c) costs and expenses approved by the Court pursuant to Section 506(b); less (d) all post-petition payments. KS Bank shall retain its liens and other collateral with the priority thereof, as existed on the Petition Date pursuant to § 1129(b)(2)(A)(i)(I) of the Bankruptcy Code, until its claims are paid as outlined herein. KS Bank shall provide an updated payoff for each loan as of the Effective Date and payments due under the Plan shall be calculated based on these revised payoff numbers. The Debtor proposes to amortize this obligation over a thirty (30) year period with interest at a rate of 4% per annum from and after the Effective Date. Payments will begin on the 15<sup>th</sup> day of the first full month following the Effective Date of the Plan, and with a final payment of all outstanding principal and interest due after 180 months. Failure to make any payment within 15 days of the due date shall constitute an event of default. The creditor shall be entitled to foreclose on its collateral after providing the Debtor with notice of default and 15 days to cure such default without the need for further approval of this Court. All prepayment penalties, covenants, reporting requirements, or other such similar terms in the loan documents not expressly set forth herein shall be eliminated. Each Class 10 Claim shall remain a separate obligation and shall be treated as a fully secured Claim in an amount equal to:

Release of Liens and Security Interests by KS Bank: KS Bank shall be required to release any liens and/or other security interest and execute any documents evidencing such release, including but not limited to a Notice of Satisfaction of Lien, upon receipt of payment in full of each separate Class 10 Claim, notwithstanding any cross-collateralization language that may have been included in the deeds of trust referenced herein.

For the purposes of the payment of Class 10 Claims, each claim is separate and distinct and each deed of trust relates only to the specific obligation described herein and shall be treated as such under the terms of the Plan. Payment of the specific Claim or obligation shall require a release of any security interest held by KS Bank.

**Class 11 - Assumption of Executory Contracts and Unexpired Leases**

(1) Classification. The Debtor is a party to certain unexpired leases and/or executory contracts to as more particularly described below and on Schedule G filed by the Debtor or any amendments thereto:

Adrian Ball Land Survey
Alcohol Law Enforcement
Alternative Care Treatment Sys
Attending Angels
Bailey's Respite Care, Inc.
Charles E. Hester, Jr.
Child Development Svs Agency
Deaf Resources/Hrg Impaired

Dewaele, David
Division of Veterans Affairs
Emminger, Ken
Finiello, Dorothy
Guy, Sue
Hester Properties
Holmes by Greg Johnson
Johnston City Mental Health
Keen, Terry
Morris, Dwight
NC Dept of Corrections
NC Dept of Transportation
NC Div of Vocational Rehab
Primary Health Choice, Inc.
Randolph County
Small Blessings Daycare
State Bureau of Investigation
Touch of Class
United States Postal Service

(2) Impairment. Class 11 Claims are unimpaired.

(3) Treatment. Pursuant to Section 365, the Debtor hereby assumes all unexpired leases which have not already expired according to their terms or which have not been specifically rejected by the Debtor. Furthermore, the Debtor hereby assumes any and all leases and executory contracts described herein.

### **Class 12 – General Unsecured Claims**

(1) Classification. This Class consists of all allowed, undisputed, non-contingent, liquidated General Unsecured Claims listed on the Schedules filed by the Debtor, any Claims filed as an unsecured Claim and not objected to by the Debtor prior to the Confirmation Hearing, and unsecured any Claims otherwise allowed by the Court, as well as any deficiency claims known to or anticipated by the Debtor as of the filing of this Plan.

(2) Impairment. Class 12 Claims are impaired.

(3) Treatment. The total of general unsecured claims and known or projected deficiency claims is \$260,363.69<sup>3</sup>, as of the date of the filing of this Plan. The last day for

---

<sup>3</sup> On September 23, 2011, Snow Creek Landscaping filed a proof of claim indicated that it held a secured claim in the amount of twenty-eight thousand eight hundred seventy eight dollars and fourteen cents (\$28,878.14). The Debtor disputes that this claim is secured and intends to file an objection prior to the confirmation hearing unless the parties are able to reach an agreement as to the unsecured status of this claim. For the purposes of the chapter 11 plan, the claim of Snow Creek Landscaping is included as an unsecured, class 12 claim.

creditors to file proofs of claim is October 11, 2011, and December 5, 2011 for governmental agencies. For Plan feasibility purposes, the Debtors propose to pay this class in full, in quarterly installments of \$13,018.18 per quarter, over a period of five (5) years. Quarterly payments shall commence on the fifteenth day of the March, June, September, or December that is one year following the Effective Date, and shall continue quarterly thereafter for a period of five years until this class is paid as provided herein. All such payments shall be distributed pro rata to allowed creditors within this Class. The Debtors will execute a promissory note to this class in the amount equal to the amount to be paid to this class.

The Debtors 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.

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

Except as specified herein in Class 11, all executory 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 an 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 or lender.

Any person with a Claim arising from such rejection shall be deemed to hold an 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.

As set forth in Class 11, the Debtor hereby assumes all leases currently in effect in which the Debtor is the lessor, except as may be otherwise specifically stated herein.

#### **V. MEANS OF EXECUTION**

A. The Debtor proposes to make payments under the Plan from the income derived from the continued operation of its business.

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. **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, the Debtor may elect to seek the entry of a separate Order providing for the sale of such property free and clear of all liens, with liens to attach to the proceeds. 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 title insurance companies to the extent needed or requested.

D. Penalties, Late Charges, and Attorneys' Fees. 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. 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. All payments, distributions, or transfer to be made under the Plan, except as expressly provided by the Plan or the Court, shall be made without interest.

E. De Minimis Distributions. No distribution of less than twenty-five dollars (\$25.00) shall be required to be made to any General Unsecured Creditor. Instead, the Debtor, through its Disbursing Agent, shall have the option of retaining such funds to be distributed at the time of the final distribution in accordance with the terms of the Plan.

F. 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 Debtor for distribution in accordance with the Plan.

G. Preservation of Avoidance Transactions for the Benefit of the Estate. All transactions avoided or otherwise set aside pursuant to Sections 544, 547, 548, and/or 549, if any, shall be preserved for the benefit of the estate pursuant to Section 551 and applicable case law. Funds received from such transactions shall be distributed to creditors according to the priorities of the Bankruptcy Code. In the case of any lien that has been avoided which may have encumbered any property of the Debtor and has since been avoided, the lien shall remain on the public record and shall remain an encumbrance upon the real property. However, all distributions to be paid to a creditor in connection with an obligation secured by a deed of trust or other security instrument that has been avoided, shall be distributed not to the named beneficiary of such deed of trust or other security instrument, but said funds shall instead be paid to the Disbursing Agent for distribution to creditors in accordance the priorities of the Bankruptcy Code and the terms of this Plan.

Upon completion of the Plan or sale of property encumbered by an avoided lien, the creditors shall file release its lien and execute the appropriate documents to be filed with the Registry of Deeds evidencing such satisfaction.

H. Preservation of Avoided Transactions for the Benefit of the Estate. All transactions avoided or otherwise set aside pursuant to §§ 544, 547, 548, and/or 549, if any, shall be preserved for the benefit of the Estate pursuant to § 551 and applicable case law. Funds received from such transactions shall be distributed to creditors according to the priorities of the Code. In the case of any lien that has been avoided which encumbered certain properties of the Debtor and has since been avoided, the lien shall remain on the public record and shall remain an encumbrance upon the real property. However, all distributions made towards such deed of trust



shall be distributed not to the named beneficiary of such deed of trust, but shall instead be paid to the Disbursing Agent for distribution to creditors.

I. 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 the Plan and the Bankruptcy Code.

J. Except as expressly stated in the Plan, or allowed by a Final Order of the 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.

K. Confirmation of this Plan shall constitute a finding that the Debtor does not waive, release, or discharge, but rather retains and reserves 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 any 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, and 550, except to the extent such avoidance actions, preference actions, or other actions were assigned to any creditor(s) as part of this 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 setoff made by any creditor pursuant to 11 U.S.C. § 553.

L. Administrative claims that unpaid as of the Effective Date shall be paid from funds on hand or as the parties otherwise agree.

M. All objections to Claims, fee applications, and adversary proceedings shall be filed with the Court within sixty (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 outside of this sixty (60) day deadline.

N. Procedure for Payment of Professional Fees. Court-approved professionals shall not be subject to the fee application process for services rendered post-confirmation in furtherance of implementation or execution of any confirmed Plan.

## **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 entitled "Cramdown," 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. "CRAMDOWNS" 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 § 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 § 1141 of the Code, are enjoined from taking any of the following actions with respect to the Debtor 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; and/or (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, the Plan does not release or waive any claims it may have against any party in interest.

## **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 result in the imposition of statutory damages of \$1,000.00, actual damages, costs and legal fees as provided for by § 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 § 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 § 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 § 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. § 524(i).

## **XIII. RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction of these proceedings pursuant to and for the purposes of §§ 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 Debtor, 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 Statement. All the terms and conditions of the Disclosure Statement are incorporated herein by reference.

(This space intentionally left blank.)

Respectfully submitted, this the 18th day of October, 2011.

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

s/Laurie B. Biggs  
LAURIE B. BIGGS  
N.C. State Bar #31845

STUBBS & PERDUE, P.A.  
9208 Falls of Neuse Road, Suite 111  
Raleigh, NC 27615  
(919) 870-6258  
(919) 870-6259 Facsimile  
Attorneys for Debtors

BARBETTA, LLC

By: s/Charles E. Hester  
CHARLES E. HESTER  
Member Manager, Barbetta, LLC