

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

In re:

BEACH COMMUNITY BANCSHARES,  
INC.

Debtor.

Chapter 11

Case No. 18-30334-HAC

**DISCLOSURE STATEMENT WITH RESPECT TO  
PLAN OF REORGANIZATION OF  
BEACH COMMUNITY BANCSHARES, INC.**

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August 30, 2018

Beach Community Bancshares, Inc. (“Company” or the “Debtor”) filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Florida on April 9, 2018 and contemporaneously filed a motion for authority to sell its sole asset, 100% of the stock in its subsidiary Beach Community Bank (the “Bank”), in connection with the Bank’s efforts to separately raise new equity capital (the “Sale Motion”). On May 22, 2018, the Court entered an Order allowing the Sale Motion (the “Sale Order”). Subsequently, in accordance with the terms of the Sale Order, the Debtor completed the sale transaction on or about July 5, 2018 and received proceeds of \$850,000 (the “Sale Proceeds”). The Debtor has filed a Plan of Reorganization of Beach Community Bancshares, Inc. (the “Plan”) to provide a means to distribute the Sale Proceeds. Capitalized terms used but not defined in this disclosure statement (the “Disclosure Statement”) shall have the meanings ascribed to them in Article I of the Plan. The Debtor will seek confirmation of the Plan as soon as practicable. A copy of the Plan which the Debtor filed is attached to this Disclosure Statement as Exhibit A.

The Debtor is distributing this Disclosure Statement in connection with its solicitation of votes on the Plan. All holders of Claims against, Interests in, and Warrants relating to the Debtor are urged to read the Disclosure Statement and the Plan in full. The board of directors and the management of the Debtor believe that the Plan is in the best interests of holders of Claims against and Interests in the Debtor. Accordingly, holders of Claims are urged to vote in favor of the Plan.

No person has been authorized to give any information or to make any representation about the Plan not contained in this Disclosure Statement. The statements in this Disclosure Statement are made as of the date hereof. Neither the Disclosure Statement’s distribution nor the Plan’s consummation will, under any circumstance, create any implication that the information herein is correct at any time after the date hereof. All summaries herein are qualified by reference to the Plan as a whole. Unless otherwise indicated, the Debtor’s management has provided the factual information in this Disclosure Statement. The Debtor believes that the information herein is accurate but is unable to warrant that it is without any inaccuracy or omission.

This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and not necessarily in accordance with federal or state securities laws or other laws governing disclosure outside the context of Chapter 11. This Disclosure Statement has been neither approved nor disapproved by the Securities and Exchange Commission (the “SEC”), nor has the SEC passed upon the accuracy or adequacy of the statements contained herein.

In making a decision in connection with the Plan, holders of Claims must rely on their own examinations of the Debtor and the terms of the Plan, including the merits and risks involved. They should not construe the contents of this Disclosure Statement as providing any legal, business, financial, or tax advice and each holder should consult its own advisors with respect to those matters.

### **FORWARD-LOOKING STATEMENTS**

The information presented in this Disclosure Statement includes forward-looking statements in addition to historical information. These statements involve known and unknown risks and relate to future events, our future financial performance, or our projected business results. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “targets,” “potential,” or “continue” or the negative of these terms or other comparable terminology. Forward-looking statements are only predictions. Actual events or results may differ materially from any forward-looking statement as a result of various factors, including those contained in the section entitled “Risk Factors” and other sections of this Disclosure Statement, including the documents incorporated by reference herein. Although the Debtor believes that the expectations reflected in the forward-looking statements are reasonable, the Debtor cannot guarantee future results, events, levels of activity, performance, or achievements.

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## **I. INTRODUCTION**

The Debtor transmits this Disclosure Statement in accordance with section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), for use in the solicitation of votes to accept the Plan. A copy of the Plan is attached to this Disclosure Statement as Exhibit A. It is the judgment of the Debtor’s board of directors, management, and advisors, that the Plan provides the most efficient means to distribute the Sale Proceeds under the circumstances.

The Plan provides for the payment of any administrative obligations that may be allowed by the Court and the distribution of not less than \$500,000 to the unsecured creditors of the estate.

Prior to the Petition Date, the Debtor entered into a written Plan Support Agreement with the beneficial holders of the TruPS Claims. The Plan Support Agreement (“PSA”) incorporates a term sheet describing the treatment set forth in the Plan and commits the Debtor and the holders of the TruPS Claims to support the Plan subject to the terms and conditions of the PSA.

This Disclosure Statement, among other things, (i) contains certain information regarding the Debtor’s prepetition history, (ii) describes the Plan, alternatives to the Plan, effects of confirmation of the Plan, and distributions under the Plan, and (iii) discusses the confirmation process and voting procedures that holders of TruPS Claims must follow for their votes to be counted.

### **A. Notice to Holders of Claims, Interests, and Warrants**

This Disclosure Statement is being transmitted to certain holders of Claims, Interests, and Warrants for the purpose of soliciting votes on the Plan and for informational purposes. The primary purpose of this Disclosure Statement is to provide adequate information to enable those voting on the Plan to make a reasonably informed decision with respect to the Plan prior to exercising their rights to vote to accept or to reject the Plan.

WHEN AND IF CONFIRMED BY THE COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, INTERESTS IN, AND WARRANTS RELATING TO THE DEBTOR, WHETHER OR NOT THEY ARE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT CAREFULLY. IN PARTICULAR, HOLDERS OF TRUPS CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS TO THE PLAN AND DISCLOSURE STATEMENT CAREFULLY AND IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR TO REJECT THE PLAN. ONLY THE HOLDERS OF TRUPS CLAIMS AS OF THE RECORD DATE SHALL BE ALLOWED TO VOTE ON THE PLAN.

THIS DISCLOSURE STATEMENT IS THE PRIMARY DOCUMENT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. NO

SOLICITATION OF VOTES MAY BE MADE UNTIL DISTRIBUTION OF THIS DISCLOSURE STATEMENT, AND NO PERSON HAS BEEN AUTHORIZED TO DISTRIBUTE ANY INFORMATION CONCERNING THE DEBTOR OTHER THAN THE INFORMATION CONTAINED HEREIN.

**B. Voting Procedures, Ballots, and Voting Deadline**

Accompanying this Disclosure Statement and forming a part of the solicitation package (the "Solicitation Package") are copies of (i) the Plan (Exhibit A); and (ii) for holders of TruPS Claims who are entitled to vote on the Plan (such holders, the "Voting Entities"), one or more ballots. If you did not receive a ballot in your package and believe that you are entitled to vote on the Plan, please contact counsel for the Debtor at the addresses and telephone numbers set forth on the cover of this Disclosure Statement and below.

After carefully reviewing the Plan, this Disclosure Statement, and the instructions on the enclosed ballots, (1) each holder of a TruPS Claim should indicate, by checking the appropriate box on the applicable ballot, (a) whether it votes its TruPS Claim in Class 1 in acceptance or rejection of the Plan, and (2) the Voting Entities must complete and sign their ballots and return them so that they are RECEIVED by the Voting Deadline (as defined below).

IN PARTICULAR, IF YOU ARE A HOLDER OF A TRUPS CLAIM, FOR YOUR VOTE TO BE COUNTED, YOU MUST PROPERLY COMPLETE AND DELIVER YOUR BALLOT SO THAT YOUR VOTE IS RECEIVED BY THE DEBTOR NO LATER THAN 5:00 P.M. (EASTERN TIME) ON \_\_\_\_\_ (THE "VOTING DEADLINE"). IN ORDER TO PROMPTLY TRANSMIT YOUR BALLOT, YOU MUST SEND IT BY MAIL OR OVERNIGHT DELIVERY TO THE FOLLOWING:

Peter J. Haley  
Nelson Mullins Riley & Scarborough LLP  
One Post Office Square  
Boston, Massachusetts 02109  
Phone: (617) 573-4714  
Fax: (617) 573-4750  
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You may obtain additional copies of the Plan, Disclosure Statement, or other material in this Solicitation Package from counsel to the Debtor.

**C. Record Date**

Only the holders of Claims and Interests as of the Record Date, in the Classes entitled to vote on the Plan, shall be allowed to vote on the Plan. In addition, distributions to be made under the Plan shall be made only to the holders of Allowed Claims and Allowed Interests as of the Record Date.

**D. Confirmation Hearing and Deadline for Objections**



The Debtor will ask the Bankruptcy Court to consider the adequacy of this Disclosure Statement and confirmation of the Plan at a hearing (the “Confirmation Hearing”) to be held as soon as practicable at such time that the Bankruptcy Court may designate before the United States Bankruptcy Court for the Northern District of Florida at Pensacola, 100 N Palafox St, Pensacola, Florida. At the Confirmation Hearing, the Debtor will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. See “Confirmation of the Plan – Confirmation Without Acceptance of All Impaired Classes – ‘Cramdown.’” The Debtor may modify the Plan, to the extent permitted by section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, as necessary to confirm the Plan.

Notice of the Confirmation Hearing and the time to present objections will be provided in accordance with the instructions to be provided by the Bankruptcy Court. The Debtor will request that the Bankruptcy Court, among other things, require that any objections to confirmation of the Plan or related matters be filed with the Bankruptcy Court and served so that they are RECEIVED on or before the objection deadline fixed by the Bankruptcy Court by the following:

**The Debtor**

Beach Community Bancshares, Inc.  
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**United States Trustee:**

Office of the U.S. Trustee  
c/o Jason H. Egan

Office of the U.S. Trustee  
110 E. Park Avenue  
Suite 128  
Tallahassee, FL 32301

The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

## **II. PLAN SUMMARY**

The following is a summary of the classification and treatment under the Plan of the Claims against, Interests in, and Warrants relating to the Debtor. The summary contained in the table is qualified in its entirety by reference to the provisions of the Plan, a copy of which is attached hereto as Exhibit A, and by the balance of this Disclosure Statement. The classification and treatment for all Classes of Claims, Interests, and Warrants are described in more detail elsewhere in this Disclosure Statement. *See* “The Plan -Classification and Treatment of Claims, Interests, and Warrants.”

### **Summary of Liabilities**

The Debtor has two creditors holding non-contingent and liquidated claims, U.S. Capital Funding V, Ltd. (“US Cap V”) and U.S. Capital Funding VI, Ltd. (“US Cap VI” and with US Cap V, the “TruPS Holders” ) the holders of certificates issued in accordance with a written indenture (the “Trust Preferred Obligations” or “TruPS”). On June 14, 2006, the Debtor issued \$12,372,000 Floating Rate Junior Subordinated Deferrable Interest Debentures due September 23, 2036, the securities bear interest at a variable rate per annum, reset quarterly, equal to LIBOR plus 1.55 percent, with an outstanding balance as of the petition date of \$14,691,584.

Presidio Recovery Fund, LLC (“Presidio”) holds a disputed, contingent and unliquidated claim against the Debtor arising out of a complaint pending in the Bankruptcy Court against the Debtor, Beach Community Bank (the “Bank”) and certain affiliates of the Bank. [Adversary Proceeding No. 14-03024]. For purposes of distribution, until the Court determines the amount of the claim, the Debtor will estimate the Presidio claim as \$300,000.

## UNCLASSIFIED CLAIMS

### ADMINISTRATIVE CLAIMS

Administrative Claims..... *Unimpaired* – The rights of each holder of an Administrative Claim shall be Reinstated under, and shall not be Impaired by, the Plan. Each holder of an Administrative Claim shall receive Cash equal to the unpaid portion of its Administrative Claim on the date on which its Administrative Claim becomes payable under applicable law or any agreement relating thereto.

**Estimated Recovery – 100%**

### PRIORITY TAX CLAIMS

*Unimpaired* – The rights of each holder of a Priority Tax Claim shall be Reinstated under, and shall not be Impaired by, the Plan. Each holder of a Priority Tax Claim shall receive Cash equal to the unpaid portion of its Priority Tax Claim on the date on which its Priority Tax Claim becomes payable under applicable law or any agreement relating thereto.

**Estimated Recovery – 100%**

## CLASSIFIED CLAIMS

- (i) Class 1: Secured Claims.
  - 1. **Impairment and Voting.** Class 1 is not Impaired by the Plan. Each holder of a Secured Claim is not entitled to vote to accept or reject the Plan and shall be conclusively deemed to have accepted the Plan.
  - 2. **Distribution.** On the Closing Date, each holder of an Allowed Secured Claim shall have its claim Reinstated, and shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Secured Claim, (a) treatment that leaves unaltered the legal, equitable, and contractual rights to which such Allowed Secured Claim entitles the holder of such Claim, or (b) such other treatment as to which the Debtor and such holder shall have agreed upon in writing.

The Debtor is unaware of any secured claims.

**Estimated Recovery – 100%**

- (ii) Class 2: Other Priority Claims.

1. **Impairment and Voting.** Class 2 is not Impaired by the Plan. Each holder of an Other Priority Claim is not entitled to vote to accept or reject the Plan and shall be conclusively deemed to have accepted the Plan.
2. **Distribution.** On the Closing Date, each holder of an Allowed Other Priority Claim shall have its claim Reinstated, and shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Other Priority Claim, (a) treatment that leaves unaltered the legal, equitable, and contractual rights to which such Allowed Other Priority Claim entitles the holder of such Claim, or (b) such other treatment as to which the Debtor and such holder shall have agreed upon in writing.

The Debtor is unaware of any priority claims.

**Estimated Recovery – 100%**

(iii) Class 3: General Unsecured Claims.

1. **Impairment and Voting:** Class 3 is Impaired by the Plan. Each holder of an Allowed Unsecured Claim is entitled to vote to accept or reject the Plan.
2. **Distribution:** On the Closing Date, the holders of Allowed Unsecured Claims shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Unsecured Claim, their pro rata share of the Net Sale Proceeds and the Liquidation Dividend.

The claims in this class consist of the claims held by TruPS holders of \$14,691,584 and the contingent and disputed claim of Presidio in the amount of \$300,000.

The Net Sales Proceeds, prior to the allowance and payment of administrative claims total \$850,000.

The Liquidation Dividend is defined in the Plan as an amount equal to \$100,000 that will be payable from the liquidation of an asset, the “Contribution Asset” to be liquidated by the Bank, if the net sales proceeds of that asset exceed \$5,000,000. The asset is identified as the Tyndall Sunset asset and consist of real estate owned by the Bank as a result of commercial foreclosure activity.

The estimated administrative claims and the projected dividend distribution, without inclusion of the Liquidation Dividend, are as follows:

Net Sale proceeds \$850,000

Estimated Admin. Claims

Teneo Holdings	\$150,000
Wilmington Trust Co.	25,000
Nelson Mullins	150,000
<u>Moore, Hill &amp; Westmoreland</u>	<u>20,000</u>

Net for Distribution \$505,000

**Minimum Estimated Recovery – 3.3%**

(iv) Class 4: Preferred Stock Interests

1. **Impairment and Voting.** Class 4 is Impaired by the Plan. For purposes of voting on the Plan, Class 4 has been deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 4 Claims.
2. **Distribution.** On the Effective Date, all Preferred Stock Interests will be cancelled. No distribution will be made to any Class 4 member.

**Estimated Recovery – 0**

(v) Class 5: Common Stock Interests

1. **Impairment and Voting.** Class 5 is Impaired by the Plan. For purposes of voting on the Plan, Class 5 has been deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 5 Claims.
2. **Distribution.** On the Closing Date, all Common Stock Interests will be cancelled. No distribution will be made to any Class 5 member.

**Estimated Recovery – 0**

(vi) Class 6: Warrants.

1. **Impairment and Voting.** Each holder of an Allowed Warrant shall be deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 6 Interests.

2. **Distribution.** On the Effective Date, all Warrants, including outstanding options, will be cancelled. No distribution will be made to any Class 6 member.

#### **Estimated Recovery – 0**

### **III. HISTORY OF THE DEBTOR**

#### **A. Overview of Business Operations**

Capitalized terms not otherwise defined herein are defined in Article I of the Plan, appended hereto as Exhibit A.

The Debtor is a registered bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended, that is incorporated under the laws of the State of Florida. It is engaged in the banking business through its wholly owned banking subsidiary, Beach Community Bank, which was chartered in 2001. The Debtor was incorporated in 2004 for the purpose of enabling the Bank to operate within a bank holding company structure. The Debtor's principal direct activity consists of owning the Bank, through which the Debtor derives substantially all of its revenues.

The Bank is primarily engaged in business in Okaloosa, Santa Rosa, and Escambia counties. As a result of the severe economic recession nationally and the corresponding downturn in the markets served by the Bank in the State of Florida, the Bank's asset values deteriorated during 2009 and 2010.

The Bank and the Debtor are highly regulated entities. The Bank and the Debtor's principal regulators are the Federal Deposit Insurance Corporation ("FDIC"), the State of Florida, Office of Financial Regulation, ("OFR") and the Federal Reserve Bank of Atlanta (the "FRB" and with the OFR and FDIC, the "Regulators"). On March 15, 2010, the Bank, the FDIC and the OFR entered into a written consent order (the "Consent Order"). Among other things, the Consent Order requires the Bank to raise its Tier 1 Leverage Ratio to 8%. As of February 28, 2018, the Tier 1 Leverage Ratio of the Bank was 2.68%.

On June 1, 2010, the Debtor entered into a written agreement with the FRB (the "FRB Agreement"). Among other things, the FRB Agreement required the Debtor to submit to the FRB a written capital plan sufficient to maintain adequate capital on a consolidated basis with the Bank. Following the entry of the Consent Order and the FRB Agreement, the Debtor was been engaged in an effort to secure additional capital to meet the regulatory thresholds.

The Debtor commenced this case in accordance with the requirements of a written Purchase Agreement dated April 6, 2018 (the "Agreement"), which provided for the sale of the Debtor's stock in the Bank and the injection of new capital into the Bank in an amount sufficient to comply with the existing regulatory order. The sale to the David F. Bolger 2018 Irrevocable Stock Trust closed on July 5, 2018 and yielded proceeds of \$850,000.

#### **IV. THE PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR IMPLEMENTATION OF THE PLAN AND OF THE CLASSIFICATION AND TREATMENT OF CLAIMS, INTERESTS, AND WARRANTS UNDER THE PLAN. IT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A.

THE SUMMARIES OF THE PLAN AND OF OTHER DOCUMENTS REFERRED TO HEREIN DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL OF THE TERMS AND PROVISIONS OF THOSE DOCUMENTS, AND REFERENCE IS MADE TO THE PLAN AND THE OTHER DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF THEIR TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST, INTERESTS IN, AND WARRANTS RELATING TO THE DEBTOR UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST, INTERESTS IN, AND WARRANTS RELATING TO THE DEBTOR AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN OR THE OTHER OPERATIVE DOCUMENT, AS APPLICABLE, WILL CONTROL.

##### **A. Overall Structure of the Plan**

Under the Plan, Claims against, Interests in, and Warrants relating to the Debtor are divided into Classes according to their relative seniority and other criteria.

##### **B. Classification and Treatment of Claims, Interests, and Warrants**

Section 1123 of the Bankruptcy Code provides that a plan of reorganization must classify the claims and interests of a debtor's creditors and interest holders. In accordance with section 1123, the Plan divides Claims, Interests, and Warrants into Classes and sets forth the treatment for each Class (other than Administrative Claims and Priority Tax Claims which, pursuant to section 1123(a)(1), need not be and have not been classified). Under section 1122 of the Bankruptcy Code, the Debtor is required to classify Claims against, Interests in, and Warrants relating to the Debtor into Classes which contain Claims, Interests, and Warrants that are substantially similar to the other Claims, Interests, and Warrants in such Class.

The Debtor believes that the Plan has classified all Claims, Interests, and Warrants in compliance with the provisions of section 1122; however, it is possible that a holder of a Claim, an Interest, or a Warrant may challenge the Debtor's classification of Claims, Interests, and Warrants and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In that event, the Debtor intends, to the extent permitted by the Bankruptcy Code, the Plan, and the Bankruptcy Court, to make such reasonable modifications of the classifications under the Plan to permit confirmation and to use the Plan acceptances

received in this solicitation for purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting holder ultimately is deemed to be a member. Any such reclassification could adversely affect the Class in which such holder initially was a member, or any other Class under the Plan, by changing the composition of such Class and the vote required of that Class for approval of the Plan. Furthermore, a reclassification of a Claim, Interest, or Warrant after approval of the Plan could necessitate a re-solicitation of acceptances of the Plan.

## 1. **Unclassified Claims**

### (a) Administrative Claims

Administrative Claims are Claims for payment of an administrative expense of a kind specified in section 503(b) or section 1114(e)(2) of the Bankruptcy Code and entitled to priority under section 507(a)(1) of the Bankruptcy Code, including (a) actual, necessary costs and expenses of preserving the Debtor's Estate and operating its business, including wages, salaries, or commissions for services rendered, and (b) all fees and charges assessed against the Estate under chapter 123 of title 28, United States Code. The rights of each holder of an Administrative Claim shall be Reinstated under, and shall not be Impaired by, the Plan. Each holder of an Administrative Claim shall receive Cash equal to the unpaid portion of its Administrative Claim on the date on which its Administrative Claim becomes payable under applicable law or any agreement relating thereto.

Given that most of the business of the Debtor's corporate enterprise is conducted by its subsidiary Bank, the Debtor expects the Administrative Claims will comprise mostly professional fees and expenses and, in any case, be relatively minimal. The Debtor will satisfy the Administrative Claims in full in the ordinary course of business and in accordance with the Plan. Professional fees will be paid only as provided in Section V(B)(1)(c) below.

Any requests for payment of Administrative Claims must be filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order no later than the Administrative Claims Bar Date. Holders of such Administrative Claims that do not file and serve a request for payment of Administrative Claims by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor, the Reorganized Debtor, the Estate, or their property and such Administrative Claims shall be deemed discharged as of the Effective Date. Any objections to requests for payment of such Administrative Claims must be filed and served on the requesting party within thirty-five (35) days after the Administrative Claims Bar Date. Any such objections that are not consensually resolved may be set for hearing on twenty-one (21) days' notice to the Reorganized Debtor.

### (b) Priority Tax Claims

Priority Tax Claims are a Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code. The rights of each holder of a Priority Tax Claim shall be Reinstated under, and shall not be Impaired by, the Plan. Each holder of a Priority Tax Claim shall receive Cash equal to the unpaid portion of its Priority Tax Claim on the date on which its Priority Tax Claim becomes payable under applicable law or any agreement relating thereto.



## (c) Professional Fees

Except as otherwise provided, each professional requesting compensation and/or expense reimbursement pursuant to sections 330, 331, or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Case prior to the Effective Date shall file with the Bankruptcy Court an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Case on or before the 35th day following the Effective Date. Without limiting the foregoing, the Reorganized Debtor may pay the charges incurred by the Reorganized Debtor on and after the Confirmation Date for any professional's fees, disbursements, expenses, or related support services, without application to or approval by the Bankruptcy Court.

2. **Classified Claims, Interests, and Warrants**

## (i) Class 1: Secured Claims.

1. **Impairment and Voting.** Class 1 is not Impaired by the Plan. Each holder of a Secured Claim is not entitled to vote to accept or reject the Plan and shall be conclusively deemed to have accepted the Plan.
2. **Distribution.** On the Closing Date, each holder of an Allowed Secured Claim shall have its claim Reinstated, and shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Secured Claim, (a) treatment that leaves unaltered the legal, equitable, and contractual rights to which such Allowed Secured Claim entitles the holder of such Claim, or (b) such other treatment as to which the Debtor and such holder shall have agreed upon in writing.

## (ii) Class 2: Other Priority Claims.

1. **Impairment and Voting.** Class 2 is not Impaired by the Plan. Each holder of an Other Priority Claim is not entitled to vote to accept or reject the Plan and shall be conclusively deemed to have accepted the Plan.
2. **Distribution.** On the Closing Date, each holder of an Allowed Other Priority Claim shall have its claim Reinstated, and shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Other Priority Claim, (a) treatment that leaves unaltered the legal, equitable, and contractual rights to which such Allowed Other Priority Claim entitles the holder of such Claim, or (b) such other treatment as to

which the Debtor and such holder shall have agreed upon in writing.

(iii) Class 3: General Unsecured Claims.

1. **Impairment and Voting:** Class 3 is Impaired by the Plan. Each holder of an Allowed Unsecured Claim is entitled to vote to accept or reject the Plan.
2. **Distribution:** On the Closing Date, the holders of Allowed Unsecured Claims shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Unsecured Claim, their pro rata share of the Net Sale Proceeds and the Liquidation Dividend.

(iv) Class 4: Preferred Stock Interests

1. **Impairment and Voting.** Class 4 is Impaired by the Plan. For purposes of voting on the Plan, Class 4 has been deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 4 Claims.
2. **Distribution.** On the Effective Date, all Preferred Stock Interests will be cancelled. No distribution will be made to any Class 4 member.

(v) Class 5: Common Stock Interests

1. **Impairment and Voting.** Class 5 is Impaired by the Plan. For purposes of voting on the Plan, Class 5 has been deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 5 Claims.
2. **Distribution.** On the Closing Date, all Common Stock Interests will be cancelled. No distribution will be made to any Class 5 member.

(vi) Class 6: Warrants.

1. **Impairment and Voting.** Each holder of an Allowed Warrant shall be deemed to reject the Plan and the Debtor will not solicit votes on the Plan from the holders of Class 6 Interests.

2. **Distribution.** On the Effective Date, all Warrants, including outstanding options, will be cancelled. No distribution will be made to any Class 6 member. (a) Class 1 – TruPS Claims.

3. **Full Satisfaction**

The Reorganized Debtor shall make, and each holder of a Claim, Interest, or Warrant shall receive, the distributions or treatment provided for in the provisions of Article III of the Plan in full and final satisfaction, settlement, release, and discharge of, and in exchange for, all Claims against, Interests in, and Warrants relating to the Debtor.

4. **Alternative Treatment**

Notwithstanding any provision in the Plan to the contrary, consistent with section 1123(a)(4) of the Bankruptcy Code, any holder of an Allowed Claim may receive, instead of the distribution or treatment to which it is entitled under the Plan, any less favorable distribution or treatment to which it and the Debtor may agree in writing.

**C. Means for Implementation of the Plan**

1. **Continued Corporate Existence**

The Reorganized Debtor shall continue to exist as a corporate entity under its articles of incorporation and bylaws in effect before the Effective Date, except as its articles of incorporation and bylaws are amended by the Plan.

2. **Articles of Incorporation and Bylaws**

The articles of incorporation of the Reorganized Debtor will be amended to permit the distributions to be made under the terms of the Plan and the New Investment and to satisfy the provisions of the Bankruptcy Code.

3. **Sources of Consideration for Plan Distributions**

The Debtor is holding the Sale Proceeds of \$850,000 and will distribute those proceeds in accordance with the Plan on the Effective Date. The Debtor will distribute the Liquidation Dividend as, and if, received.

4. **Cancellation of Securities**

The Plan provides that on and after the Effective Date, except to the extent otherwise provided therein, all indentures, notes, bonds, instruments, guarantees, certificates, agreements (including registration rights agreements), and other documents evidencing the existing preferred, common, and/or other stock of the Debtor, including but not limited to Warrants, will be cancelled, and any obligations of the Debtor there under or in any way related thereto shall be fully satisfied, released, and discharged except as otherwise provided for by the Plan.

On or after the Effective Date, all duties and responsibilities of the Indenture Trustees under the Indentures shall be discharged except to the extent required in order to effectuate the Plan.

**5. Revesting of Assets**

The property of the Debtor's Estate, together with any property of the Debtor that is not property of the Estate and that is not specifically disposed of pursuant to the Plan, shall revest in the Reorganized Debtor on the Effective Date. Thereafter, the Reorganized Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Court. As of the Effective Date, all property of the Reorganized Debtor shall be free and clear of all Claims, Interests, and Warrants, except as specifically provided in the Plan or the Confirmation Order. Without limiting the generality of the foregoing, the Reorganized Debtor may, without application to or approval by the Bankruptcy Court, pay professional fees and expenses incurred after the Confirmation Date.

**6. Preservation of Rights of Action**

Except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtor or the Estate may hold against any Person or entity. The Reorganized Debtor or its successor(s) may pursue such retained claims, rights or causes of action, suits, or proceedings as appropriate, in accordance with the best interests of the Reorganized Debtor or its successor(s) who hold such rights. Notwithstanding the foregoing, the Debtor hereby releases any claims, causes of action, or rights arising under sections 510(c), 544, 545, 547, 548, 549, 550, and 551 of the Bankruptcy Code.

**7. Exemption from Certain Transfer Taxes**

Pursuant to section 1146(c) of the Bankruptcy Code, any transfers or mortgages from or by the Debtor to the Reorganized Debtor or any other Person or entity pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**D. Provisions Governing Distributions**

**1. Delivery of Distributions; Undeliverable or Unclaimed Distributions**

(a) Delivery of Distributions in General

The Reorganized Debtor shall make distributions to each holder of an Allowed Claim and an Allowed Interest at the address for each such holder reflected in the books and records of the Debtor. Distributions under the Plan shall be made only to the holders of Allowed Claims and Allowed Interests as of the Record Date.

(b) Undeliverable and Unclaimed Distributions

(i) Holding of Undeliverable and Unclaimed Distributions

If any holder's distribution is returned as undeliverable, no further distributions to that holder shall be made unless and until the Reorganized Debtor receives notice of the holder's then-current address, at which time all outstanding distributions shall be made to the holder. Undeliverable distributions made through the Reorganized Debtor shall be returned to the Reorganized Debtor until such distributions are claimed. The Reorganized Debtor shall establish a segregated account to serve as the unclaimed distribution reserve, and all undeliverable and unclaimed distributions shall be deposited therein, for the benefit of all similarly situated Persons until such time as a distribution becomes deliverable, is claimed, or is forfeited under the terms of the Plan.

(ii) Failure to Claim Undeliverable Distributions

Any undeliverable or unclaimed distribution under the Plan that does not become deliverable on or before the second anniversary of the Effective Date shall be deemed to have been forfeited and waived, and the Person otherwise entitled thereto shall be forever barred and enjoined from asserting its Claim therefor against, or seeking to recover its distribution from, the Debtor, the Estate, the Reorganized Debtor, or their property. After the second anniversary of the Effective Date, the Reorganized Debtor shall withdraw any amounts remaining in the unclaimed distribution reserve for distribution in accordance with the Plan.

**2. Withholding and Reporting Requirements**

In connection with the Plan and all distributions hereunder, the Reorganized Debtor shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to those requirements. The Reorganized Debtor shall be authorized to take all actions necessary or appropriate to comply with those withholding and reporting requirements. Notwithstanding any other provision of the Plan, (i) each holder of an Allowed Claim that is to receive a distribution of its pro rata share of New Common Stock shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (ii) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such tax obligations or has, to the Reorganized Debtor's satisfaction, established an exemption therefrom. Any distribution of shares of New Common Stock to be made pursuant to the Plan shall, pending the implementation of such arrangements,

be treated as undeliverable pursuant to Article V thereof.

**3. Setoffs**

The Reorganized Debtor may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made in respect of that Claim, claims of any nature whatsoever that the Debtor or the Reorganized Debtor may have against the Claim's holder, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor of any claim that the Debtor or the Reorganized Debtor may have in connection with such Claim.

**E. Treatment of Executory Contracts and Unexpired Leases**

**1. Assumed Contracts and Leases**

Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, as of the Effective Date, the Reorganized Debtor shall be deemed to have rejected each Executory Contract and Unexpired Lease to which it is a party unless such Executory Contract (other than the Investment Agreements) or Unexpired Lease: (1) was assumed or rejected previously by the Debtor; (2) expired or terminated pursuant to its own terms before the Effective Date; (3) is the subject of a motion to assume filed on or before the Effective Date; or (4) is otherwise identified as an Executory Contract or Unexpired Lease to be assumed before the Effective Date.

All Assumed Agreements shall remain in full force and effect for the benefit of the Reorganized Debtor, and be enforceable by the Reorganized Debtor in accordance with their terms notwithstanding any provision in such Assumed Agreement that prohibits, restricts or conditions such assumption, assignment or transfer. Any provision in the Assumed Agreements that purports to declare a breach or default based in whole or in part on commencement or continuance of this Chapter 11 Case is hereby deemed unenforceable, and the Assumed Agreements shall remain in full force and effect. Any provision of any agreement or other document that permits a person to terminate or modify an agreement or to otherwise modify the rights of the Debtor based on the filing of the Chapter 11 Case or the financial condition of the Debtor shall be unenforceable.

**2. Payments Related to Assumption of Contracts and Leases**

Any monetary amounts by which any executory contract and unexpired lease to be assumed under the Plan is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure in the ordinary course of business.

**3. Indemnification Obligations**

Except as otherwise specifically provided in the Plan, any obligations or rights of the Debtor to indemnify its present and former directors, officers, or employees under its articles of incorporation, bylaws, or employee-indemnification policy, or under state law or any agreement

with respect to any claim, demand, suit, cause of action, or proceeding, shall survive and be unaffected by the Plan's confirmation, and remain an obligation of the Reorganized Debtor, regardless of whether the right to indemnification arose before or after the Petition Date.

**4. Treatment of Change of Control Provisions**

The entry of the Confirmation Order, consummation of the Plan, and/or any other acts taken to implement the Plan shall not constitute a "change in control" under any provision of any contract, agreement or other document which provides for the occurrence of any event, the granting of any right, or any other change in the then-existing relationship between the parties upon a change in control of the Debtor.

**F. Conditions Precedent to the Plan's Confirmation and Effective Date**

**1. Conditions to Confirmation**

The Plan's Confirmation is subject to the satisfaction of the following conditions precedent:

- a) The proposed Confirmation Order shall be in a form and substance satisfactory to the Debtor.

**2. Conditions to Effective Date**

Effectiveness of the Plan is subject to the satisfaction of each of the following conditions precedent:

- a) Each of the conditions to entry of the Confirmation Order shall have been satisfied.
- b) The Bankruptcy Court shall have entered the Confirmation Order, in form and substance reasonably satisfactory to the Debtor, confirming the Plan, as the same may have been modified.

**G. Modification; Withdrawal**

The Debtor reserves the right to modify the Plan either before or after Confirmation to the fullest extent permitted under section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. The Debtor may withdraw the Plan at any time before the Effective Date.

**H. Retention of Jurisdiction**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to the Chapter 11 Case and the Plan, to the fullest extent permitted by law, including jurisdiction to

1. Enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;
2. Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan and all contracts, instruments, and other agreements executed in connection with the Plan;
3. Hear and determine any request to modify the Plan or to cure any defect or omission or reconcile any inconsistency in the Plan or any order of the Bankruptcy Court;
4. Issue and enforce injunctions or other orders, or take any other action that may be necessary or appropriate to restrain any interference with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;
5. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;
6. Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;
7. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case;
8. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
9. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Effective Date the payment of fees and expenses of the Reorganized Debtors, including professional fees, shall be made in the



ordinary course of business and shall not be subject to the approval of the Bankruptcy Court; and

10. Enter a final decree closing the Chapter 11 Case.

## **I. Effects of Confirmation**

### **1. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former holders of Claims, Interests, and Warrants, and their respective successors and assigns, and all other parties in interest in this Chapter 11 Case.

### **2. Discharge of the Debtor**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, release, and discharge, effective as of the Effective Date, of all Claims, Interests, Warrants, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, Interests in, or Warrants relating to, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, Interests, or Warrants, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (1) a proof of claim or interest based upon such Claim, debt, right, Interest, or Warrant is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim, Interest, or Warrant based upon such Claim, debt, right, Interest, or Warrant is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim, Interest, or Warrant has accepted the Plan. Except as otherwise provided in the Plan, any default by the Debtor with respect to any Claim, Interest, or Warrant that existed before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims, Interests, and Warrants subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

### **3. Exculpation and Limitation of Liability**

As of the Effective Date, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, obligation, cause of action, or liability for any Exculpated Claim, except for any act or omission that is determined in a Final Order to have constituted gross negligence, intentional fraud, or willful misconduct, but in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Exculpated Claims shall be limited to those claims

arising after the Petition Date and through the Effective Date. The Debtor and the Reorganized Debtor (and each of their respective Affiliates, agents, directors, officers, employees, advisors, and attorneys) have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Plan securities pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Notwithstanding any provision of this Article or the Plan, the Plan shall not effect a release, discharge, exculpation, injunction against the exercise of, or other impairment or extinction of (i) any rights or claims of the New Investors or the Debtor under the Investment Agreements or (ii) any claims by the United States Government or any of its agencies, or any state or local authority, including, without limitation, any claim arising under applicable securities or banking laws or regulations.

#### **4. Releases by Debtor**

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, on the Effective Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtor and the implementation of the restructuring contemplated in the Plan, the Debtor shall provide a full discharge and release to each Released Party (and each such Released Party so released shall be deemed fully released and discharged by the Debtor) and their respective properties from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing claims arising after the Petition Date and through the Effective Date as of the Effective Date in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, arising from or related in any way to the Debtor, including, without limitation, those Causes of Action that the Debtor or the Reorganized Debtor would have been legally entitled to assert in its own right or that any holder of a Claim, an Interest, or a Warrant or other entity would have been legally entitled to assert on behalf of the Debtor or its Estate, and further including those Causes of Action in any way related to the Chapter 11 Case or the Plan; provided, however, that the foregoing release shall not operate to waive or release any Causes of Action of the Debtor arising from claims for gross negligence, intentional fraud, or willful misconduct by a Released Party.

The Released Parties are those parties serving as directors and officers of the Debtor as described above and any professional employed by the estate after application to and approval by the Court.

Notwithstanding any provision of this Article or the Plan, the Plan shall not effect a release, discharge, exculpation, injunction against the exercise of, or other impairment or extinction of any rights or claims of the Debtor under the Stock Purchase Agreements.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval,

pursuant to Bankruptcy Rule 9019, of the foregoing releases by the Debtor, and further, shall constitute the Bankruptcy Court's finding that the foregoing releases are: (i) in exchange for good and valuable consideration provided by the Released Parties, a good faith settlement, and compromise of the Claims released by such release; (ii) in the best interests of the Debtor and all holders of Claims, Interests, and Warrants; (iii) fair, equitable, and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to the Debtor or the Reorganized Debtor asserting any Claim released by such release against any of the Released Parties.

## 5. Injunction

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL PERSONS WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, OR WARRANTS THAT HAVE BEEN DISCHARGED PURSUANT TO ARTICLE XI.B OF THE PLAN, RELEASED PURSUANT TO ARTICLE XI.D OF THE PLAN, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE XI.C OF THE PLAN, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR WARRANTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR WARRANTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATES OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR WARRANTS; AND (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR WARRANTS RELEASED, SETTLED, OR DISCHARGED PURSUANT TO THE PLAN.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS, INTERESTS, AND WARRANTS IN THE PLAN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS, INTERESTS, AND WARRANTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR OR ANY OF ITS ASSETS, PROPERTY, OR ESTATE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, ALL SUCH CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED ON THE EFFECTIVE DATE, AND THE INTERESTS AND WARRANTS WILL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE PLAN OR IN OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL CLAIMS AGAINST THE

DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED FROM AND AFTER THE EFFECTIVE DATE, AND ALL INTERESTS AND WARRANTS WILL BE CANCELLED, AND THE DEBTOR'S LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502 OF THE BANKRUPTCY CODE. ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE DEBTOR'S ESTATE, THE REORGANIZED DEBTOR, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY CLAIMS, INTERESTS, OR WARRANTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

**J. Miscellaneous Provisions**

**1. Payment of Statutory Fees**

All fees payable under Section 1930 of Title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Case shall be paid from funds otherwise available for distribution hereunder.

**2. Severability of Plan Provisions**

If, before Confirmation, the Bankruptcy Court holds that any provision of the Plan is invalid, void, or unenforceable, the Debtor, at its option, may amend or modify the Plan to correct the defect, by amending or deleting the offending provision or otherwise, or may withdraw the Plan. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been amended or modified in accordance with the foregoing, is valid and enforceable.

**3. Successors and Assigns**

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

**4. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case, either by virtue of sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, shall remain in full force and effect until the Reorganized Debtor has made all distributions contemplated by the Plan and the Bankruptcy Court has entered an order closing the Chapter 11 Case.

**K. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), (i) the laws of the State of Florida shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (ii) the laws of the state of incorporation of the Debtor shall govern corporate governance matters with respect to the Debtor, in either case without giving effect to the principles of conflicts of law thereof.

## **V. CERTAIN RISK FACTORS TO BE CONSIDERED**

Parties in interest should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), including the “Risk Factors” and other matters discussed in the Financial Statements attached hereto, before deciding whether to vote to accept or to reject the Plan.

### **A. Failure to Confirm the Plan**

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Case will continue rather than be converted to Chapter 7 for liquidation. In fact, the Debtor believes that, absent confirmation of the Plan, the likely result may be liquidation. In the event of a liquidation, holders of TruPS Claims and all other creditors and stockholders likely would receive nothing. *See* “Alternatives to Confirmation and Consummation of the Plan.”

### **B. Potential Adverse Effects of Chapter 11**

While the Debtor will seek to have the stay in Chapter 11 as brief as practicable so as to minimize any potential disruption to its operations, it is possible that, despite the belief and intent of the Debtor, the commencement of the Chapter 11 Case could materially adversely affect relationships between the Debtor and its customers and applicable regulatory agencies and bodies.

## **VI. CONFIRMATION OF THE PLAN**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the substantive requirements of Chapter 11, including, among other things, that (a) the Plan properly classifies Claims, Interests, and Warrants, (b) the Plan complies with applicable provisions of the Bankruptcy Code, (c) the Debtor has complied with applicable provisions of the Bankruptcy Code, (d) the Debtor has proposed the Plan in good faith and not by any means forbidden by law, (e) disclosure of “adequate information” as required by section 1125 of the Bankruptcy Code has been made, (f) the Plan has been accepted by the requisite votes of creditors (except to the extent that “cramdown” is available under section 1129(b) of the Bankruptcy Code), (g) the Plan is in the “best interests” of all holders of Claims, Interests, or Warrants in each Impaired Class, (h) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date, and (i) the Plan provides for the continuation after the Effective Date of any retiree benefits, as defined in section 1114 of the Bankruptcy

Code, at the level established at any time before Confirmation in accordance with sections 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code, for the duration of the period that the Debtor has obligated itself to provide such benefits.

#### **A. Voting Requirements**

Under the Bankruptcy Code, only Classes of Claims, Interests, and Warrants that are “impaired” (as that term is defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is Impaired if the Plan modifies the legal, equitable, or contractual rights of holders of Claims, Interests, or Warrants in the Class (other than by curing defaults and reinstating debt). Under section 1126(f) of the Bankruptcy Code, Classes of Claims, Interests, and Warrants that are Unimpaired are conclusively presumed to have accepted the Plan and are not entitled to vote on the Plan. Under section 1126(g) of the Bankruptcy Code, Classes of Claims, Interests, and Warrants whose holders will not receive or retain any property under the Plan are deemed to have rejected the Plan and are not entitled to vote on the Plan.

An Impaired Class of Claims, Interests, or Warrants shall have accepted the Plan if (i) the holders of at least two-thirds in amount of the Allowed Claims, Allowed Interests, or Allowed Warrants actually voting in the Class have voted to accept the Plan, and (ii) the holders of more than one-half in number of the Allowed Claims, Allowed Interests, or Allowed Warrants actually voting in the Class have voted to accept the Plan, in each case not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code.

Ballots submitted by holders of Allowed TruPS Claims shall be counted individually and separately.

Only the holders of Claims and Interests as of the Record Date, in the Classes entitled to vote on the Plan, shall be allowed to vote on the Plan. In addition, distributions to be made under the Plan shall be made only to the holders of Allowed Claims and Allowed Interests as of the Record Date.

#### **B. Feasibility of the Plan**

In connection with confirmation of the Plan, section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. This is the so-called “feasibility” test. As the Plan simply provides for the distribution of the sale Proceeds and, is itself, a liquidating plan, no further need for liquidation is likely.

#### **C. Best Interests Test**

Even if the Plan were to be accepted by each class of holders of Claims, Interests, and Warrants, the Bankruptcy Code requires a Bankruptcy Court to find that the Plan is in the “best interests” of all holders of Claims or Interests that are impaired by the Plan and that have not accepted the Plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that (i) all members of an impaired class of

claims or interests have accepted the plan or (ii) the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To calculate the probable distribution to members of each impaired class of holders of claims or interests if a debtor were liquidated under Chapter 7, a Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the debtor's assets if its Chapter 11 case were converted to a Chapter 7 case under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the debtor's assets by a Chapter 7 trustee.

Costs of a liquidation under Chapter 7 of the Bankruptcy Code would include the compensation of a Chapter 7 trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the debtor in the Chapter 11 case (such as compensation of attorneys, financial advisors, and accountants) that are allowed in the Chapter 7 case, litigation costs, and claims arising from the operations of the debtor during the pendency of the bankruptcy case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity interests. The liquidation would also prompt the rejection of executory contracts and unexpired leases and thereby create a significantly greater amount of unsecured claims.

Once the bankruptcy court ascertains the recoveries in liquidation of the secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under a debtor's plan, then such plan is not in the best interests of creditors and equity security holders.

#### 1. Liquidation Analysis

The sole material asset of the Debtor is the Sales proceeds, which will be distributed under the Plan. Conversion of the case to a case under Chapter 7 would only lessen the amount available for creditors as a result of the imposition of the Chapter 7 expenses.

The Debtor believes that each member of each Class of Claims, Interests, and Warrants will receive at least as much, if not more, under the Plan as they would receive if the Debtor was liquidated in a Chapter 7 case. More specifically, a liquidation of the Debtor would significantly impair recoveries to all stakeholders and clearly is not in the best interests of estate constituencies.

#### **D. Confirmation Without Acceptance of All Impaired Classes – "Cramdown"**

The Debtor will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code, and it reserves the right to modify the

Plan to the extent, if any, that confirmation in accordance with section 1129(b) of the Bankruptcy Code requires modification. Under section 1129(b) of the Bankruptcy Code, the Court may confirm a plan over the objection of a rejecting class, if, among other things, (a) at least one impaired class of claims has accepted the plan (not counting the votes of any “insiders” as defined in the Bankruptcy Code) and (b) if the plan “does not discriminate unfairly” against and is “fair and equitable” to each rejecting class.

A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a rejecting impaired class is treated equally with respect to other classes of equal rank. A plan is fair and equitable as to a class of secured claims that rejects the plan if, among other things, the plan provides (a) (i) that the holders of claims in the rejecting class retain the liens securing those claims (whether the property subject to those liens is retained by the debtor or transferred to another entity) to the extent of the allowed amount of such claims and (ii) that each holder of a claim of such class receives on account of that claim deferred cash payments totaling at least the allowed amount of that claim, of a value, as of the effective date of the plan, of at least the value of the holder’s interest in the estate’s interest in such property; (b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of the liens, with the liens to attach to the proceeds of the sale, and the treatment of the liens on proceeds under clause (a) or (c) of this paragraph; or (c) for the realization by such holders of the indubitable equivalent of such claims.

A plan is fair and equitable as to a class of unsecured claims that rejects the plan, if, among other things, the plan provides that (a) each holder of a claim in the rejecting class will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of the claim; or (b) no holder of a claim or interest that is junior to the claims of the rejecting class will receive or retain under the plan any property on account of such junior claim or interest.

A plan is fair and equitable as to a class of interests that rejects the plan if the plan provides, among other things that (a) each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (b) that no holder of an interest that is junior to the interests of such class will receive or retain under the plan any property on account of such junior interest.

The Debtor’s Plan is premised upon the acceptance of the Plan by Class 3(which comprises the TruPS Claims). Thus, the cramdown provisions of section 1129(b), if Class 3 votes to accept the Plan, would not apply to this class. The Claims in Class 1 (Secured Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan. Thus, the cramdown provisions of section 1129(b) also do not apply to these classes.

Classes 4, 5 and 6 (Preferred Stock Interests, Common Stock Interests and Warrants) are deemed to reject the Plan and, accordingly, the Debtor will seek cramdown under section 1129(b)(2)(C)(ii) of the Bankruptcy Code with respect to Classes 4, 5 and 6. Such cramdown is justified because no junior class of stakeholders will receive any recovery under the Plan. The



liquidation analysis would otherwise yield no return for any equity holders.

#### **VII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed, the alternative will be a liquidation of the Debtor's assets in a liquidation under Chapter 7.

**THE DEBTOR THEREFORE BELIEVES THAT THE PLAN AFFORDS SUBSTANTIALLY GREATER BENEFITS TO CREDITORS THAN WOULD ANY OTHER ALTERNATIVE AND THAT IT SHOULD BE CONFIRMED PROMPTLY.**

#### **VIII. OTHER MATTERS**

If you have any questions or require further information about the voting procedures for voting your Claim, or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, the Disclosure Statement, or any exhibits to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d)), please contact counsel to the Debtor.

#### **IX. RECOMMENDATION AND CONCLUSION**

THE DEBTOR BELIEVES THAT THE PLAN'S CONFIRMATION IS IN THE BEST INTERESTS OF THE DEBTOR, ITS ESTATE, AND ITS CREDITORS. FOR THESE REASONS, THE DEBTOR URGES ALL HOLDERS OF CLAIMS AND INTERESTS TO VOTE TO ACCEPT THE PLAN AND TO EVIDENCE THEIR ACCEPTANCE BY DULY COMPLETING AND RETURNING THEIR BALLOTS SO THAT THEY WILL ACTUALLY BE RECEIVED BY THE DEBTOR ON OR BEFORE 5:00 P.M. (EASTERN TIME) ON.

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Dated: August 30, 2018

BEACH COMMUNITY BANCSHARES, INC.

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Exhibit A

[Plan of Reorganization]