

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

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In re:

MAJORCA ISLES MASTER  
ASSOCIATION, INC.,

Debtor.

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Chapter 11

Case No. 12-19056-BKC-AJC

**DISCLOSURE STATEMENT FOR PLAN OF REORGANIZATION  
PROPOSED BY THE CHAPTER 11 TRUSTEE**

Dated: June 5, 2017

ATTORNEYS FOR THE  
CHAPTER 11 TRUSTEE  
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## ARTICLE I

### **INTRODUCTION AND DESCRIPTION OF DEBTOR**

Barry E. Mukamal, as Chapter 11 Trustee (the “Trustee”)<sup>1</sup> of Majorca Isles Master Association, Inc. (the “Debtor” or the “Master Association”) submits this Disclosure Statement (the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code in support of the Trustee’s Plan of Reorganization for the Debtor (the “Plan”), attached hereto as **Exhibit A**.

This Disclosure Statement sets forth certain information regarding the prepetition operations and financial history of the Debtor, events leading to the Debtor’s bankruptcy, significant events that have occurred during the Bankruptcy Case, and the means for implementing a reorganization of the Debtor’s assets. This Disclosure Statement also describes terms and provisions of the Plan, certain alternatives to the Plan, effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. This Disclosure Statement discusses the confirmation process and the voting procedures and requirements for voting on the Plan (but as stated below, the Trustee believes that voting for this Plan will not be necessary).

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN AND IS INTENDED TO AID AND SUPPLEMENT REVIEW OF THE PLAN. HOWEVER, THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. FURTHER, THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN AND THE PLAN EXHIBITS. IF THERE IS A CONFLICT BETWEEN THE PLAN OR THE PLAN EXHIBITS AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN AND THE PLAN EXHIBITS WILL GOVERN. ALL PARTIES IN INTEREST ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND THE PLAN EXHIBITS, AS WELL AS TO READ CAREFULLY THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, BEFORE DECIDING WHETHER TO SUPPORT CONFIRMATION OF THE PLAN.

#### **A. Summary of Distributions and Releases Under the Plan**

The Plan provides for the creation of a Creditor Trust which will take possession of the Debtor’s assets, including the proceeds of the D.R. Horton Settlement. Each Creditor of the Debtor will receive, in full and final satisfaction of such Creditor’s Claim against the Debtor, a distribution of 100% of its Claim with interest at the federal judgment rate. In connection therewith, such Creditor will receive a Pro Rata Share of the Interests in the Creditor Trust based on the Allowed Amount of the Claim, plus interest at the federal judgment rate. The Creditor Trust, administered by Barry E. Mukamal as Creditor Trustee, will make a Distribution to those

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<sup>1</sup> Except as otherwise provided in this Disclosure Statement, capitalized terms used herein shall have the meaning ascribed to them in the Plan, including the Glossary of Defined Terms attached to the Plan. In the event of any conflict between the terms of the Disclosure Statement and the terms of the Plan, the Plan shall control. Any capitalized term used in this Disclosure Statement that is not defined in the Plan or this Disclosure Statement shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, whichever is applicable.

Interest Holders in the amount of 100% such Holder's Claim, in Cash, from the Property of the Creditor Trust on the First Distribution Date, which will be no later than sixty (60) days after the Effective Date.

The balance of all remaining Property of the Creditor Trust after the occurrence of the First Distribution Date, except for any Disputed Claim Reserve shall be held by the Creditor Trust for the sole benefit of the Debtor. The Creditor Trustee shall work with the Master Association to reconstitute its Board of Directors and ensure that the Master Association is legally prepared to manage its own affairs without oversight. Once the Master Association has come into full compliance with its Declaration and Bylaws with respect to the Master Association's management and constitution, as determined solely in the business judgment of the Creditor Trustee, the Creditor Trust Balance shall be distributed, in Cash, to the Master Association, together with all rights to manage and control the Master Association.

**Articles 8.2 and 8.3 of the Plan contain certain limited release and exculpation provisions. Specifically, the release provisions contained in Article 8.2 of the Plan provide for certain limited releases by the Debtor (on behalf of itself and its Estate) to (i) the Trustee and (ii) Professionals from all claims, causes of actions, and other liabilities arising during the Bankruptcy Cases before the Effective Date from any act or omission in connection with, including, but not limited to, the conduct of the Chapter 11 case, the Plan, this Disclosure Statement, and any matters arising from ambiguities or inconsistencies in the Debtor's Declaration or Bylaws.**

**B. Pre-Petition Structure and Events Leading to Bankruptcy<sup>2</sup>**

In about 2005, D.R. Horton began a project to construct and sell 681 condominium units and single family homes in Miami Gardens, Florida. The project contemplated about 40 condominium buildings consisting of about 9 condominium associations and a homeowners association named Majorca Isles Master Association. The project was to include two swimming pools, two clubhouses, as well as security. Three hundred forty (340) condominium units in building phases I, II, III, IV and V were constructed by about 2009. The units sold for an average of about \$300,000 or more and were generally financed by mortgages from the Federal Housing Authority. Ultimately, three hundred fifty-five (355) units were sold.

As was customary pursuant to Chapter 718 and Chapter 720, Florida Statutes, D.R. Horton created five (5) condominium associations and a master homeowners association, all of which D.R. Horton controlled. D.R. Horton appointed four of its employees as directors of the condominium associations and the homeowners association.

As required by Florida Statute Chapter 718 and 720, Florida Statutes, D.R. Horton began paying the monthly maintenance obligation on the unsold units and paid deficit funding on the project while it still controlled the associations, pending turnover of the associations to the unit owners.

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<sup>2</sup> The following disclosures are adopted from the Court's *Findings of Facts and Conclusions of Law* entered October 21, 2016 in Adv. No. 14-1142-BKC-AJC-A [ECF No. 260].

Shortly thereafter, the national and local economy entered a recession. Condominium sales slowed and stopped. With no market, D.R. Horton stopped building, with 355 units completed, and it withdrew the remaining portion of the Majorca Isles project.

Because of the economic downturn and loss of jobs, many condominium owners were not paying their monthly maintenance assessments. Debtor had a need for about \$40,000 a month to pay its obligations and only \$20,000 a month was coming in. The collections of both the Local Associations and the Master Association monthly maintenance payments were being made by the five Local Associations, and they were obligated to forward the Master Association portion of the assessments to the Debtor. However, there was not enough income to cover the condominium association expenses and the master homeowners association expenses.

With insufficient funds to timely pay its obligations, the Master Association filed this Chapter 11 case.

**C. Filing of the Debtor's Bankruptcy Cases and Appointment of Trustee**

On April 13, 2012 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As of the Petition Date, the Debtor was governed by a five-member Board of Directors, with Osmond Duffis ("Duffis") as its President. On the Petition Date, the Debtor filed a Certificate of Corporate Resolution (DE # 2) signed by Duffis certifying that on April 12, 2012, a special meeting of the Board of Directors was duly called at which a quorum was present and several resolutions were adopted, including the decision to file for chapter 11 relief. The Debtor's petition was signed by Duffis as President of the Debtor's Board of Directors.

Shortly after the Petition Date, a group of equity owners/members of the Debtor calling themselves the Ad Hoc Committee of Equity Security Holders (the "Equity Owners") made an appearance in this case through counsel. The Equity Owners purported to represent 189 owners/members of the Debtor.

On May 17, 2012, the UST conducted the Section 341 meeting of creditors (the "Meeting"). At the Meeting, Duffis appeared as the Debtor's representative. Several homeowners/members of the Debtor, including two representatives of the Equity Owners, were also present and expressed their disapproval of Duffis and the existing Board. They made allegations to counsel for the UST that Duffis and the Board had entered into a contract with John Kinsey (proposed Special Counsel to the Debtor) which was not in the Debtor's best interest. John Kinsey ("Kinsey") was also present at the Meeting and participated extensively in answering the questions posed to Duffis by the UST. At the Meeting, the UST was also informed that on or about April 20, 2012, the Equity Owners filed a Petition for Recall Arbitration against the five members of the Board, including Duffis, as its President. The Petition sought to recall the Board.

Subsequently, the UST presented to the Bankruptcy Court serious allegations of misconduct it had received related to Duffis and/or the Board (ECF No. 61). Specifically, the UST alleged that Duffis and/or the Board:



- (a) failed to hold the required statutory meeting to certify the recall after being served by the Equity Owners with 189 ballots for their recall on April 5, 2012;
- (b) entered into an agreement with Majorca Property Services LLC (“Kinsey’s Company”) on February 15, 2012 (the “Kinsey Agreement”), without properly noticing and holding a meeting to discuss same and without the knowledge of the Equity Owners;
- (c) entered into the Kinsey Agreement which provides, among other things, for Kinsey’s Company to advance funds to the Debtor to allow Kinsey to initiate foreclosure proceedings on delinquent units and take title to those units after sale, and said agreement may not be in the best interest of the Debtor and the Equity Owners;
- (d) failed to properly manage the association by not adequately monitoring the actions of Elite Management Associates, Inc., the property manager and by not adequately informing the Equity Owners of the Debtor’s affairs; and
- (e) lost credibility with the Equity Owners who represent a large constituency of homeowners by engaging in questionable actions. The Equity Owners have lost confidence in the Board’s ability to manage and have lost confidence in the Board members’ integrity as fiduciary officers.

Based on these allegations, the UST asked the Court to appoint a Chapter 11 Trustee.

The Debtor disputed these allegations, including the standing of the Equity Owners to sign the petition and otherwise seek to recall the Board. The Debtor continued advocating reorganization based on the decisions of its existing Board and management.

Initially, the Court appointed Scott Brown as Chapter 11 Examiner. Ultimately, on June 12, 2012, the Court entered an *Order Directing Appointment of Chapter 11 Trustee* [ECF No. 85]. The UST then appointed Barry E. Mukamal as the Debtor’s chapter 11 trustee [ECF No. 86], which appointment was approved by this Court [ECF No. 91].

#### **D. Operations under Trustee**

Upon being appointed, the Trustee’s professionals sought to review the individual unit owner records of Assessments. No such records existed, so the Trustee was unclear as to who owed what, and who had paid what, when, or how much. What little information was available was in hard copy format, instead of the electronic format commonly used for such ledgers, which made it more difficult to manage and extract data. The Trustee’s professionals recreated seven years of unit owner and unit specific financial records from scratch. Not only was a financial record required by statute and the Master Association governing documents, but collection counsel and counsel for the Master Association also stated that it was needed to engage in collection efforts. That ledger had to be verified by the Chapter 11 Trustee for credibility. The summary report alone of the account ledger reconstruction is approximately 1,000 pages. With those records, the Trustee knew who owed the Debtor money, issued estoppel letters, negotiated

payment plans and payoffs, instituted foreclosure proceedings, instructed collection counsel, and made informed decisions as to the Master Association. It took an extraordinary amount of professional time to recreate this historical record because of the condition and non-existence of records left by the D.R. Horton appointed Board. It required several hundreds of thousands of dollars of the Chapter 11 Trustee's professionals' time to recreate these records.

Upon reviewing the records, including the recreated records, the Trustee was able to determine the extent of the collection deficiency and undertake a collection program. For example, of the 355 units, approximately 80 units had never paid any Assessments at all in the history of the Debtor. The collections program included analysis of unpaid Assessments, settlements with unit owners, and management of outside counsel. The Trustee's collection program included 30 foreclosure actions, 79 settlements, and collection of approximately \$800,000. While ensuring that "critical" expenses were paid, the collection program was pursued to increase the collection percentage and work with the homeowners on a one-by-one basis to take into account each member's personal situation. This included 200 to 300 calls a week, sometime duplicate, asking the Trustee's professionals to send them records, asking for discounts, and everything else that it took to pursue negotiations for unpaid Assessments. As a result, the Chapter 11 Trustee doubled the amount of collections so that the Master Association is able to sustain itself on the bare bones budget that has been maintained. Over the past several years of the day-to-day collection management program, the Chapter 11 Trustee accumulated a substantial amount of professional fees.

Under the Chapter 11 Trustee, and Special Collections Counsel Mirza Basulta & Robbins, LLP, the collection rate reached as high as 91 percent, which is up from the previous 50% collection rate before the collection program was instituted.

The Chapter 11 Trustee also performed the ongoing accounting function for the Master Association. This included the monthly operating statements, cash flow management, evaluation of the needs of the community and the Master Association, cost benefit analysis, and the cash probability analysis. The Chapter 11 Trustee further engaged in litigation support, which included analysis of the balance sheets, determining the stripping of budgets, examining the journal entries, uncovering the facts relating to alleged deceptive accounting, and evaluating D.R. Horton's alleged counterclaims.

#### **E. Litigation and Settlement with D.R. Horton**

On January 29, 2014, the Trustee commenced an adversary proceeding against the D.R. Horton Defendants before this Court styled *Barry Mukamal, Chapter 11 Trustee, Plaintiff v. Rafael Roca, Amalia Papadimitriou, Christian Gausman and Karl Albertson and D.R. Horton, Inc.*, Adv. No. 14-01142 (the "D.R. Horton Adversary Proceeding"). The Trustee alleged in the D.R. Horton Adversary Proceeding that the D.R. Horton Defendants committed various torts against the Debtor by, among other things, breaching their fiduciary duties to the Debtor due to conflicts of interest, mismanagement, lack of recordkeeping, negligent collection of funds and misrepresentations, which torts resulted in significant damages to the Debtor and the community.

The litigation with the D.R. Horton Defendants was extensive and at several times, contentious. Based on certain conduct that occurred during the D. R. Horton Adversary

Proceeding relating to the Debtor's pre-petition auditors and accountants, Gladstone & Company ("Gladstone"), on May 2, 2016, the Trustee the commenced an adversary proceeding captioned *Barry Mukamal, Chapter 11 Trustee, Plaintiff v. Gladstone & Company, Steven M Gladstone, DR Horton, Inc, Amalia Papadimitriou*, Adv. No. 16-0120 (the "Gladstone Adversary Proceeding"). In the Gladstone Adversary Proceeding, the Trustee alleged various breaches of duty of confidentiality and malpractice as to Gladstone, and tortious interference and aiding and abetting claims against certain of the D.R. Horton Defendants.

Following a three day trial, on October 21, 2016, the Court entered its 52 page Findings of Fact and Conclusions of Law [ECF No. 260 in Adv. No. 14-01142-AJC] (the "Findings of Fact"). On the same day, this Court entered a Final Judgment in favor of the Trustee and against D.R. Horton in the amount of \$16,321,055.87 [ECF No. 261 in Adv. No. 14-01142-AJC] (the "Judgment"). The Court in the Findings of Fact held that D.R. Horton violated Florida's Deceptive and Unfair Trade Practices Act, Florida Statute 501.201, *et seq.* ("FDUTPA"), that the D.R. Horton Defendants breached their fiduciary duties, conspired to breach fiduciary duties and otherwise aided and abetted the breaching of fiduciary duties to the Debtor. As a result, the Court awarded compensatory damages in the amount of \$3,821,005.87 and punitive damages in the amount of \$12,500,000.

On November 29, 2016, the Court entered its Order denying D.R. Horton's Motion to Amend Findings of Fact, Conclusions of Law and Final Judgment [ECF No. 288 in Adv. No. 14-01142-AJC] (the "Order Denying Motion to Amend"). Thereafter, on December 13, 2016, D.R. Horton filed its Notice of Appeal and Election to Appeal the Judgment and the Order Denying Motion to Amend [ECF No. 291 in Adv. No. 14-01142-AJC]. The appeal of the Judgment is pending before the Hon. Joan A. Lenard of the United States District Court for the Southern District of Florida, Miami Division, under Case No. 1:16-cv-25179-JAL (the "District Court Appeal").

Following a full day of mediation on May 5, 2017, the Trustee and the D.R. Horton Defendants entered into a Settlement Agreement. Pursuant to the Settlement Agreement, as full and final payment and satisfaction of all claims, demands, or defenses that were or could have been raised or asserted between the parties, including the Judgment, the Sanctions Motion and the Gladstone Adversary Proceeding, the D.R. Horton Defendants shall pay, or cause to be paid on their behalf, the total sum of **\$11,000,000.00** (Eleven Million Dollars and 00/100) (the "Settlement Amount"). The Settlement Amount is based upon actual damages necessary to compensate the Master Association with respect to the purpose for which it was constituted and for which it operates. The Settlement Amount is to be funded to the Creditor Trust upon the Effective Date of the Plan.

#### **F. Composition and Present Status of Master Association Board of Directors**

As otherwise set forth herein, the composition and membership of the Debtor's Board of Directors has long been a contentious and confusing issue for the residents of the Master Association. Indeed, a dispute over membership in the Board of Directors was at the heart of the controversy which ultimately led to the appointment of the Trustee in this case. As a result, in order to satisfy the requirements of Chapter 11 with respect to feasibility and the best interests of creditors, it is critical that the Plan provide a mechanism for the Trustee and Creditor Trustee, as

independent fiduciaries, to ensure that the Master Association's Board of Directors will be properly constituted and in compliance with its governing documents, before returning management and control of the Master Association to the Reconstituted Board. The Plan proposes to accomplish through the Creditor Trust. To assist interested parties in evaluating whether to support the Plan, the Trustee makes the following disclosures regarding the Master Association and its Board of Directors.

Membership in Master Association:

Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration provide that the members of the Master Association consist of each Local Association. The Local Association constitutes a Voting Member of the Master Association, as opposed to a unit owner who is a non-voting member of the Master Association.<sup>3</sup>

Local Association Representatives-Voting Member:

Section 4.05 of the Bylaws and Section 3.5 of the Declaration provide the mechanism for appointing/electing the representative of the Local Association who is eligible to vote on its behalf (the Voting Member). Each unit owner is entitled to one vote in connection with the election of the Voting Member for the Local Association. That notwithstanding, a Local Association has the right to adopt alternate methods of appointing the Voting Member. However, all Voting Members must be a unit owner or an officer, director, partner or member of a corporate entity unit owner.

Section 4.03 of the Bylaws and Section 3.3 of the Declaration provide that each Local Association shall give written notice to the Master Association of the person elected or designated to serve as its Voting Member, and the Master Association and all other Voting Members are entitled to rely on the notice as constituting the authorization for that person to vote on behalf of the Local Association.

Master Association Board of Directors

Section 6.01 of the Bylaws provides that there shall be 7 directors on the Board unless there is a contrary determination by the Master Association Members (regardless, Section 5.1 of the Articles and Sections 6.01 and 6.02 of the Bylaws provide that the Board cannot be less than 3 persons and shall always be an odd number). Section 6.04 of the Bylaws provides that Director terms shall be staggered.

Section 3.2 of the Declaration and Section 4.01 of the Bylaws provide that the Board shall consist of the elected or appointed representative from each Local Association (the Voting Member) and the Director at Large. Section 1.25 of the Declaration defines the Voting Member as the member of the Board of Directors who has been elected or appointed by the unit owners of each Local Association and given the right to vote on behalf of those unit owners. Section 1.4 of

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<sup>3</sup> This is contrary to Section 1.04 of the Bylaws which provides that no unit owner who is subject to a Local Association shall be deemed a member of the Master Association. Section 13.6 of the Declaration and Section 12.03 of the Bylaws provide that the Declaration takes precedence over conflicting provisions in the Articles and the Bylaws, and the Articles take precedence over the Bylaws.

the Declaration provides that the Board of Directors are those elected in accordance with the Declaration and with the Bylaws.

Notwithstanding that the aforementioned sections provide that the Master Association Board consists of the Voting Member from each Local Association and the Director at Large, Section 6.03 of the Bylaws provides for the election of Directors at the annual Members' meetings.<sup>4</sup>

Section 3.2 of the Declaration provides that if the Local Association manages more than one Building (defined in Section 1.6 of the Declaration as any structure located on the Property and containing one or more units), then the unit owners shall nominate or appoint one Voting Member for each Building managed by such Local Association.

#### Director at Large:

In addition to the Voting Members on the Board, there is also a Director at Large. Section 3.3 of the Declaration provides that the DAL (who must be a unit owner) shall be elected by a majority of the Voting Members. Bylaws Section 4.03 provides that the Director at Large shall be a unit owner from any Building within the Project and shall be elected by a majority of the Voting Members.

#### Status of Board of Directors

The Trustee, as representative of the estate, has been empowered to take any and all actions on behalf of the Master Association, subject to the requirements of the Bankruptcy Code. In light of that broad authority, the membership and constitution of the Board of Directors has not been a critical issue throughout the Trustee's management of the Master Association. Nonetheless, the Trustee has conducted meetings of the Master Association Board and has sought the input and consent of the Board on various issues throughout the case.

Notwithstanding these efforts, it has been and remains unclear whether the current members of the Board of Directors were properly selected by their Local Associations, respectively. Similarly, it has been and remains unclear whether a Director at Large has been properly selected by the remaining Voting Members of the Board.

In order to ensure that the Plan is feasible, the Trustee must demonstrate to the Court that the Master Association Board will be properly constituted and able to manage the affairs of the Master Association such that further liquidation or reorganization of the Master Association is unlikely. The Plan would accomplish this through the implementation of a Creditor Trust, under the control of the Creditor Trustee as an independent fiduciary, which would first make distributions to Creditors and then work with the Master Association to ensure that its Board is properly constituted and that it is in full compliance with the Declaration and Bylaws with respect to its governance and constitution. Once the Creditor Trustee is satisfied that the Master

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<sup>4</sup> Section 6.03.2 of the Bylaws also provides that a vacancy on the Board can be filled as provided in paragraphs 6.17.2 and 6.18 of the Bylaws. Section 6.18 provides that subject to the requirements of 6.03.5, vacancies in the board may be filled by a majority vote of the directors then in office or by a sole remaining director, and the director so chosen shall hold office until the next annual election unless sooner displaced.

Association has complied with its governing documents, the remaining Creditor Trust Balance would be transferred to the Master Association.

**G. Purpose of Disclosure Statement**

This Disclosure Statement is submitted in accordance with section 1125 of the Bankruptcy Code for the purpose of soliciting approval and confirmation of the Plan. The Bankruptcy Code only requires Acceptances of the Plan to be sought from Claimholders whose Claims are “impaired” (as that term is defined in Bankruptcy Code section 1124) by the Plan and who are receiving or retaining property under the Plan. As set forth herein, the Trustee does not believe any Claimholders are “impaired” by this Plan and therefore does not believe solicitation and voting will be necessary.

The Trustee has prepared this Disclosure Statement pursuant to Bankruptcy Code section 1125, which requires that a copy of the Plan, or a summary thereof, be submitted to all holders of Claims against, and Equity Interests in, the Debtor, along with a written disclosure statement containing adequate information about the Debtor of a kind, and in sufficient detail, as far as is reasonably practicable, that would enable a hypothetical, reasonable investor typical of holders of Claims or Equity Interests to make an informed judgment in determining whether to support or oppose the Plan.

THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. ANY FUTURE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN, OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE MATERIAL CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED SOLELY FOR THE USE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS IN EVALUATING THE PLAN. ACCORDINGLY, THIS DISCLOSURE STATEMENT AND PLAN MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF WHETHER TO OBJECT TO THE PLAN.

FURTHER, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY STATE REGULATORY AUTHORITY. NEITHER THE SEC NOR ANY STATE REGULATORY AUTHORITY HAS PASSED ON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN, AND ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND IS NOT NECESSARILY IN ACCORDANCE WITH THE REQUIREMENTS OF FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.

THE CONTENTS OF THIS DISCLOSURE STATEMENT MAY NOT BE INTERPRETED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE. HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO THIS DISCLOSURE



STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY.

THE REORGANIZATION OF THE DEBTOR PURSUANT TO THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES, AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN, AS CONTEMPLATED, WILL BE EFFECTUATED.

EXCEPT WHERE SPECIFICALLY NOTED, ANY FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED AND MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.

IN PREPARING THIS DISCLOSURE STATEMENT, THE TRUSTEE RELIED ON CERTAIN FINANCIAL DATA DERIVED FROM INFORMATION PROVIDED TO THE TRUSTEE BY THE DEBTOR THAT WAS AVAILABLE AT THE TIME OF PREPARATION. ALTHOUGH THE ATTORNEYS EMPLOYED BY THE TRUSTEE HAVE PREPARED THIS DISCLOSURE STATEMENT BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS CONCERNING FINANCIAL, BUSINESS, AND ACCOUNTING DATA DERIVED FROM INFORMATION PROVIDED TO THE TRUSTEE BY THE DEBTOR, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY THEREOF. THE ATTORNEYS AND OTHER PROFESSIONALS EMPLOYED BY THE TRUSTEE SHALL HAVE NO LIABILITY FOR THE INFORMATION CONTAINED OR DISCUSSED IN THIS DISCLOSURE STATEMENT.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND ANY OTHER ACTIONS OR CLAIMS, NEITHER THE FILING OF THE PLAN NOR ANY STATEMENT OR PROVISION CONTAINED IN THE PLAN OR IN THE DISCLOSURE STATEMENT, NOR THE TAKING BY ANY PARTY IN INTEREST OF ANY ACTION WITH RESPECT TO THE PLAN, SHALL CONSTITUTE, OR BE CONSTRUED AS, AN ADMISSION OF ANY FACT OR LIABILITY AGAINST INTEREST, OR BE, OR BE DEEMED TO BE, A STIPULATION OR WAIVER OF ANY RIGHTS ANY PARTY IN INTEREST MAY HAVE AGAINST ANY OTHER PARTY IN INTEREST, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

IN THE EVENT THAT THE PLAN IS NOT CONFIRMED OR FAILS TO BECOME EFFECTIVE, NEITHER THE PLAN NOR THIS DISCLOSURE STATEMENT, NOR ANY

STATEMENT CONTAINED IN THE PLAN OR IN THIS DISCLOSURE STATEMENT, SHALL BE USED OR RELIED ON IN ANY MANNER IN ANY SUIT, ACTION, PROCEEDING OR CONTROVERSY, WITHIN, OUTSIDE, OR WITHOUT THE DEBTOR'S BANKRUPTCY CASE, INVOLVING THE DEBTOR OR ANY OTHER ENTITY OR PARTY IN INTEREST.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT AND THE PLAN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

THE TRUSTEE BELIEVES THAT THE PLAN AND THE PROPOSED TREATMENT OF CLAIMS ARE IN THE BEST INTERESTS OF HOLDERS OF CLAIMS, AND THEREFORE URGE ALL CREDITORS WHO ARE ENTITLED TO VOTE TO ACCEPT THE PLAN.

#### **H. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtor, its business, properties and management have either (i) been prepared from information furnished by the Debtor or created by the Trustee or (ii) been adopted from the Court's *Findings of Fact and Conclusions of Law* in the D.R. Horton Lawsuit.

Certain of the materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are digests of other documents. While the Trustee has made every effort to retain the meaning of such other documents or portions that have been summarized, any reliance on information contained in such other documents should depend on a thorough review of the documents themselves. **In the event of a discrepancy between this Disclosure Statement and the actual terms of a document, the actual terms of the document shall govern and apply.**

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtor, the value of the Remaining Assets, or the value of any benefit offered to the holders of Claims or Equity Interests under the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made that is contrary to information contained in



this Disclosure Statement, and any such additional representations or inducements should be immediately reported to counsel for the Trustee, Genovese Joblove & Battista, P.A., Attn: Michael L. Schuster, Esq., 100 SE 2<sup>nd</sup> Street, Suite 4400, Miami, FL 33131, Tel: 305-349-2300, Fax: 305-349-2310, Email: MSchuster@gjb-law.com.

## ARTICLE 1

### **EXPLANATION OF CHAPTER 11**

#### 1.1 Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor in possession attempts to reorganize, or provide for an orderly liquidation of, its business and financial affairs for the benefit of the debtor, its creditors, and other parties in interest.

The commencement of a chapter 11 case creates an estate comprising all of the debtor's legal and equitable interests in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee, Bankruptcy Code sections 1101, 1107 and 1108 provide that a chapter 11 debtor may continue to operate its business and control the assets of its estate as a "debtor in possession." Here the Bankruptcy Court appointed Barry Mukamal as Chapter 11 Trustee.

The filing of a chapter 11 petition also triggers the automatic stay under Bankruptcy Code section 362. The automatic stay essentially halts all attempts to collect prepetition claims from the debtor or to otherwise interfere with the debtor's business or its bankruptcy estate.

Formulation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case.

#### 1.2 Plan, Right to Vote, and Requirements of Confirmation

After a plan has been filed, the holders of claims against, or equity interests in, a debtor generally are permitted to vote on whether to accept or reject the plan. Chapter 11 does not require that each holder of a claim against, or equity interest in, a debtor vote in favor of a plan in order for the plan to be confirmed. At a minimum, however, a plan must be accepted by a majority in number and two-thirds in dollar amount of those claims actually voting from at least one class of claims impaired under the plan. The Bankruptcy Code also defines acceptance of a plan by a class of equity interests as acceptance by holders of two-thirds of the number of shares actually voted.

Classes of claims or equity interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan, and therefore are not entitled to vote. A class is "impaired" if the plan modifies the legal, equitable, or contractual rights attaching to the claims or equity interests of that class. Modification for purposes of impairment does not include curing defaults and reinstating maturity or payment in full in cash.

In this case, as otherwise set forth herein, no class is “impaired” and therefore all classes are deemed as a matter of law to accept the plan. Consequently, the Trustee does not anticipate that any party in interest will be required to vote on this plan or to submit a ballot.

## ARTICLE 2

### CONFIRMATION OF THE PLAN

#### 2.1.1 Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after appropriate notice, to hold a hearing on confirmation of a plan. The Confirmation Hearing will be scheduled by the Court and will be held before the Honorable A. Jay Cristol, United States Bankruptcy Judge, at the United States Bankruptcy Court, 301 N Miami Ave # 150, Miami, FL 33128. You will receive a separate Notice of Hearing setting forth the day and time of the Confirmation Hearing. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjourned hearing.

#### 2.1.2 Objections to Confirmation

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation must:

- be made in writing;
- conform to the Bankruptcy Rules and the Local Rules;
- set forth the name of the objector and the nature and amount of Claims held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds therefor;
- be filed with the Bankruptcy Court electronically;
- if practicable, be accompanied by a proposed modification to the Plan that would resolve such objection; and
- be served in accordance with the Bankruptcy Rules and the Local Rules.

All objections to the Plan must be actually received no later than 4:30 p.m. two (2) business days before the Confirmation Hearing. All objections to Confirmation are governed by Bankruptcy Rule 9014.

#### 2.1.3 Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements set forth in section 1129 of the Bankruptcy Code have been satisfied with respect to

the Plan, in which event the Bankruptcy Court shall enter an order confirming the Plan. For the Plan to be confirmed, the following requirements must be satisfied:

- (a) The Plan complies with the applicable provisions of the Bankruptcy Code;
- (b) The Trustee has complied with the applicable provisions of the Bankruptcy Code;
- (c) The Plan has been proposed in good faith and not by any means forbidden by law;
- (d) Any payment or distribution made or promised by the Trustee, the Debtor, or by a Person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Case or the Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;
- (e) The Trustee has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a Creditor Trustee under the Plan; the appointment to, or continuance in, such office of such individual is consistent with the interests of holders of Claims and Equity Interests and with public policy; and the Committee has disclosed the identity of any insider that will be employed or retained by the Creditor Trustee and the nature of any compensation for such insider;
- (f) Any government regulatory commission with jurisdiction (after confirmation of the Plan) over the rates of the Debtor has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;
- (g) With respect to each impaired Class of Claims or Equity Interests, either each holder of a Claim or Equity Interest of the Class has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under chapter 7 of the Bankruptcy Code. If Bankruptcy Code section 1111(b)(2) applies to the Claims of a Class, each holder of a Claim of that Class will receive or retain under the Plan on account of that Claim property of a value, as of the Effective Date, that is not less than the value of that holder's interest in the Debtor's interest in the property that secures that claim;
- (h) Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code, each Class of Claims or Equity Interests has either accepted the Plan or is not Impaired under the Plan;
- (i) Except to the extent that the holder of a particular Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claim, and Priority Unsecured Tax Claims has agreed to a different treatment of such Claim, such Claims shall be paid in full within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan;

(j) If a Class of Claims or Equity Interests is Impaired under the Plan, at least one such Class of Claims or Equity Interests has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim or Equity Interest in such Class; and

(k) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Trustee believes that the Plan satisfies all of the confirmation requirements set forth in section 1129 of the Bankruptcy Code and that the Plan was proposed in good faith and not by any means forbidden by law. The Committee further believes that it has complied, or will have complied, with all the requirements of the Bankruptcy Code governing confirmation of the Plan.

In addition, and after considering the effect that a chapter 7 liquidation would have on the proceeds ultimately available for Distribution to Creditors in the Bankruptcy Case, including (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (b) additional costs associated with the rapid transfer or cessation of operations at the facilities and the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail, and (c) the substantial increases in claims that would be satisfied on a priority basis, the Trustee has determined that Confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtor under chapter 7.

The Trustee also believes that the value of any distributions to each Class of Allowed Claims in a chapter 7 case would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for one or more years after the completion of such liquidation to resolve Claims and prepare for distributions. In the event litigation was necessary to resolve Claims asserted in a chapter 7 case, the delay could be prolonged and Administrative Claims increased.

Because the Plan contemplates a 100% distribution on account of Allowed Claims, the Trustee has not included a formal liquidation analysis herein.

Further, pursuant to the requirements of section 1129(a)(11) of the Bankruptcy Code, the Plan contemplates that all assets of the Debtor ultimately will be disposed of and all proceeds of the Creditor Trust Assets will be distributed to the Creditors pursuant to the terms of the Plan. The Trustee believes that the Plan meets the feasibility requirement. The Trustee also believes that sufficient funds will exist to make all payments required by the Plan.

**ARTICLE 3**

**POST-BANKRUPTCY OPERATIONS AND  
SIGNIFICANT EVENTS IN BANKRUPTCY**

3.1 Post-Bankruptcy Operations

As set forth herein, the Trustee was appointed approximately two months after the Petition Date. Since that time, the Trustee has operated the Master Association; paid its current obligations in the ordinary course of business; and collected revenues from assessments in accordance with the Declaration and Bylaws.

3.2 First Day Orders

On or shortly after the Petition Date, but prior to the appointment of the Trustee, the Debtor filed a number of motions designed to allow it to continue operating its business in the ordinary course without unnecessary disruption as a result of the bankruptcy filings. Pursuant to those motions, the Bankruptcy Court entered orders that, among other things, granted the Debtor the authority to:

- continue its utility services pursuant to 11 U.S.C. § 364;
- retain Shraiberg Ferrara & Landau, P.A. as its general bankruptcy counsel;
- enter into a tree services contract with The Green Experts, LLC;

3.3 Employment of Professionals

Pursuant to orders entered by the Bankruptcy Court, the following Professionals were retained:

Professional	Retained as:
Shraiberg Ferrara Landau, P.A.	Bankruptcy Counsel to Debtor
Genovese Joblove & Battista, P.A.	Bankruptcy Counsel to Trustee
Arrastia Capote & Phang LLC (later substituted for Genovese Joblove & Battista following John Arrastia joining GJB as partner)	Special Litigation Counsel to Trustee
Mirza Basulta & Robbins, LLP	Collections Counsel
Kane & Company, P.A.	Tax Accountants to Trustee
KapilaMukamal, LLP	Accountant and Advisor to Trustee

Professional	Retained as:
Marcum LLP	Forensic Accountants to Trustee
Fishkind & Associates, Inc.	Expert Consultants
Scott N. Brown	Chapter 11 Examiner
(Tabas Freedman & Soloff, P.A.)	

Prior to the appointment of the Trustee, the Debtor sought to retain other professionals, but those applications were not granted before the Trustee was appointed.

### 3.4 Schedules and Statement of Financial Affairs

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs on May 7, 2012.

### 3.5 Significant Actions Since the Appointment of the Trustee

#### 3.5.1 Collection Program

On October 9, 2012, the Trustee filed his Application to Employ Mirza Basulta & Robbins, LLP as ordinary course professions to implement and enforce a comprehensive collections program, retroactively to September 21, 2012. The Court granted this application by order dated October 19, 2012. Since that time, Mirza Basulta & Robbins, LLP has assisted the Trustee in implementing an aggressive program to collect past due assessments from unit owners. This program has been quite successful, greatly increasing the revenues to the Debtor and promoting the timely payment of regular assessments. Pursuant to its retention order, Mirza Basulta & Robbins, LLP has filed monthly statements detailing its fees and expenses, and has been paid in the ordinary course of business.

#### 4.5.2 Approval of Fee Applications

On October 22, 2012, the Court approved fees for the Chapter 11 Examiner in the amount of \$8,952.50 and expenses of \$11.25. These awards to Scott Brown (through his firm, Tabas Freedman & Soloff, P.A.) were paid pursuant to Order dated November 25, 2013.

On November 15, 2012, the Court approved fees for Shraiberg Ferrara Landau in the amount of \$56,689 and expenses of \$2,197.76.

On January 21, 2016, the Court approved fees for Fishkind & Associates, Inc. in the amount of \$28,900 and expenses of \$167.79.

#### 4.5.3 Gate Project

On April 14, 2017, the Court entered an Order authorizing the Trustee to commence a significant project to reconstruct and improve the security gates at the Master Association. The total cost of the project is estimated to be \$241,698.02. Of this amount, \$75,000 will be financed

at 9.9846%\$ annual interest, payable in thirty-six monthly installments of \$2,419.50 each. The balance will be paid in the ordinary course from funds budgeted by the Master Association. As set forth in the Plan, the Creditor Trustee is authorized to satisfy this obligation from the Creditor Trust Assets.

#### 4.5.4 D.R. Horton Litigation

The most Trustee's most significant action since his appointment has been the prosecution of claims against the D.R. Horton Defendants. Those claims resulted in a judgment in favor of the Estate and against the D.R. Horton Defendants in the amount of \$16,321,055.87. The Trustee has now settled its claim with the D.R. Horton Defendants, subject to Court approval, for \$11 million.

### 3.6 Summary of Claims

The Bar Date for filing proofs of claim in the Bankruptcy Case was October 10, 2012.

Administrative Expense Claims will be comprised of amounts incurred post-petition in the ordinary course of business and professional fee claims. Administrative Expense Claims are estimated to be in excess of \$1.5 million as of the Effective Date.

There are no secured claims or unsecured priority claims (other than the claim of Rapid Security Solutions, LLC, which is being treated as a post-petition obligation of the Debtor which shall be unaffected by the confirmation of this Plan or the occurrence of the Effective Date; the Creditor Trust and the Reorganized Debtor, as applicable, shall honor the obligations of the Debtor to Rapid Security Solutions, LLC in the ordinary course of business. Notwithstanding anything to the contrary, the Trustee or the Creditor Trustee, as applicable, shall have the right to satisfy the Claim of Rapid Security Solutions, LLC in full on or after the Effective Date)

The Unsecured Claims are estimated to be approximately \$1,117,921.80, before interest based on the Debtor's Schedules and Liabilities and the filed proofs of claim. This estimate may differ materially from the ultimate amount of Allowed Unsecured Claims as the reconciliation of claims will be performed by the Creditor Trustee. Further, objections by the Creditor Trustee to any Disputed Claims may or may not be sustained by the Court, or may be sustained only in part, and the estimate does not include any rejection damages for Executory Contracts rejected during the Bankruptcy Case or to be rejected under the Plan (for which a proof of claim is yet to be filed).

## **ARTICLE 4**

### **DESCRIPTION OF THE PLAN**

#### 4.1 Introduction

A summary of the principal provisions of the Plan and the treatment of Classes of Claims and Equity Interests is outlined below. The summary is entirely qualified by the Plan. This Disclosure Statement is only a summary of the terms of the Plan; it is the Plan (and not the Disclosure Statement) that governs the rights and obligations of the parties.



#### 4.2 Designation of Claims and Equity Interests/ Impairment

Pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code, the following is a designation of the classes of Claims and Equity Interests under this Plan for purposes of voting, distribution, and implementation of the terms of this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, and Priority Unsecured Tax Claims have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest, or portion thereof, qualifies within the description of that Class, and is classified in another Class(es) to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class(es). In addition, a Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class, subject to Section 10.1 of the Plan. Notwithstanding anything to the contrary in the Plan, no Distribution shall be made on account of any Claim that is not an Allowed Claim.

#### 4.3 Administrative Expense Claims Bar Date

Except as otherwise provided in Article 3 of the Plan, any application seeking the allowance and payment of an Administrative Expense Claim be filed and served upon counsel for the Trustee and the UST no later than fourteen (14) days prior to the Confirmation Hearing Date, or such other date established by order of the Court (the “Administrative Expense Claim Bar Date”). Any Administrative Expense Claim for which an application or request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

#### 4.4 Professional Compensation Claims Bar Date

All applications or other requests for payment of Professional Compensation Claims arising on or before the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Trustee and the UST no later than twenty-one (21) days prior to the Confirmation Hearing Date, or such other date established by order of the Court (the “Professional Compensation Bar Date”). Any Professional Compensation Claims for which an application or other request for payment is not filed by the Professional Compensation Bar Date, as may be supplemented by filing an amended application or request for payment at any time prior to the hearing on approval of such Professional Compensation Claims (which may include estimated fees and expenses up through the Effective Date), shall be discharged and forever barred from asserting such Professional Compensation Claim against the Debtor, the Estate, the Creditor Trust, or their respective property. The Court’s approval is required prior to any payment of the Professional Compensation Claims.

#### 4.5 Administrative Tax Claims Bar Date

Any application or other request for payment of an Administrative Tax Claim must have been timely and properly filed with the Bankruptcy Court and served on counsel for the Trustee and the UST on or before the Administrative Expense Claim Bar Date. Any Administrative Tax Claim for which an application or other request for payment was not timely and properly filed by



the Administrative Expense Claim Bar Date shall be discharged and forever barred.

#### 4.6 Payment of Administrative Expense Claims

The Trustee, or the Creditor Trustee, as applicable, shall pay Allowed Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, no later than twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan from Cash or Creditor Trust Assets.

#### 4.7 Payment of Priority Unsecured Tax Claims

Priority Unsecured Tax Claims shall be satisfied in full at the election of the Trustee, as follows:

##### (i) Cash Payment

Any Priority Unsecured Tax Claim may be satisfied by the payment of Cash to the holder of such Claim in the amount of its Priority Unsecured Tax Claim plus accrued interest after the Confirmation Date at the Tax Interest Rate on the later of the Allowance Date or the Effective Date of the Plan; or

##### (ii) Other Agreements

Any Priority Unsecured Tax Claim may be satisfied pursuant to an agreement reached with the holder of such Claim.

#### 4.8 UST Fees

The Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days after the Effective Date, for pre-confirmation periods. The Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Trustee until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court or upon the entry of an order by the Bankruptcy Court dismissing or converting this case to another chapter under the United States Bankruptcy Code. After the Confirmation Date, the Trustee shall file a quarterly post-confirmation operating report which shall include, among other things, all payments made under the Plan and payments made in the ordinary course of business. The post-confirmation operating report shall be filed quarterly until the court enters a final decree, dismisses the case, or converts the case to another chapter under the United States Bankruptcy Code.

#### 4.9 Treatment of General Unsecured Claims (Class – 1) – Unimpaired

Each holder of an Allowed General Unsecured Claim shall receive their Pro Rata Share of the beneficial interests in the Creditor Trust and as beneficiary of the Creditor Trust shall receive, on the First Distribution Date, the full amount of their Claim in Cash plus interest from the Petition Date at the rate specified in 28 U.S.C. § 1961, for the calendar week preceding the

First Distribution Date.

Class 1 is Unimpaired and is conclusively deemed to accept this Plan. The Trustee will not solicit any votes from this Class.

4.10 Treatment of Equity Interests (Class – 2) – Unimpaired

The rights of holders of an Interest in the Debtor shall be unaffected by this Plan.

As set forth herein and in the Creditor Trust Agreement, operational control shall be substantially turned over to the Reconstituted Board of the Reorganized Debtor on the Transition Date, and the final distribution from the Creditor Trust Balance to the Reorganized Debtor shall occur on the Turnover Date. As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in compliance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized Debtor's Board of Directors has been properly constituted and appointed. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration.

Class 2 is Unimpaired under this Plan and conclusively deemed to have accepted the Plan. The Trustee will not solicit any votes from this Class.

4.11 Assumption or Rejection of Certain Executory Contracts

Except as set forth in Section 5.3, Executory Contracts or unexpired leases, if any, that were not previously assumed or rejected shall be rejected and terminated as of the Confirmation Date, and such rejected Executory Contracts and unexpired leases shall no longer represent the binding obligations of the Debtor (or the Creditor Trust, or Creditor Trustee) on or after the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejection under sections 365 and 1123 of the Bankruptcy Code.

4.12 Rejection Claims

Any Claim arising out of the rejection of an Executory Contract pursuant to the Confirmation Order must be filed with the Bankruptcy Court on or before the Rejection Claim Bar Date, and shall be served on counsel for the Debtor, the UST, and the Trustee. Any such Claims not properly filed by the Rejection Claim Bar Date shall be discharged and forever barred. Each Allowed Claim arising from the rejection of an Executory Contract shall be treated as an Allowed General Unsecured Claim.

4.13 Insurance Policies

To the extent that any and all insurance policies are considered Executory Contracts, then notwithstanding anything contained in the Plan to the contrary, such insurance policies shall be deemed assumed and assigned to the Reorganized Debtor. Notwithstanding such assignment,

pending the Transition Date and unless otherwise directed by the Creditor Trustee, all insurance policies shall list the Creditor Trust as an additional insured and/or loss payee. Unless otherwise determined by the Bankruptcy Court, pursuant to a Final Order, no payments are required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to each such policy. For the avoidance of any doubt, all rights under any insurance policy that is not an Executory Contract, and all rights under any other insurance policies under which the Debtor may be beneficiary, shall be preserved and shall vest with the Reorganized Debtor as set forth herein and shall remain in full force and effect after the Effective Date for the term thereof; and nothing herein shall alter or adversely affect the rights of any non-Debtor beneficiaries of or covered Persons or Entities under such insurance policies.

#### 4.14 Reservation of Rights

Nothing contained in the Plan shall constitute an admission that any such contract or lease is in fact an Executory Contract or that any Debtor has any liability thereunder.

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtor under any executory or non-executory contract or any unexpired or expired lease.

Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor under any executory or non-executory contract or any unexpired or expired lease.

## ARTICLE 5

### MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

#### 5.1 Vesting of Remaining Assets in the Creditor Trust

On the Effective Date, except as otherwise expressly provided in the Plan and pending the Transition Date and/or the Turnover Date, as applicable, title to and control in the Estate Property shall vest in the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind, which Estate Property includes: (i) all Cash of the Debtor; (ii) all Accounts Receivable of the Debtor; (iii) all rights to collect assessments owed to the Debtor; (iv) all assets of the Debtor as of the Effective Date; and (v) the rights to the D.R. Horton Proceeds and all beneficial rights under the D.R. Horton Settlement.

The Trustee shall have the power and authority to enter into the Creditor Trust Agreement on the Effective Date. The proposed Creditor Trust Agreement is attached to the Plan as **Exhibit B**.

#### 5.2 Appointment of the Creditor Trustee

Pursuant to 11 U.S.C. § 1129(a)(5), consistent with the interests of creditors and equity security holders, and consistent with public policy, the Confirmation Order shall appoint, effective on the Effective Date, Barry E. Mukamal of KapilaMukamal to act as the Creditor

Trustee. The Creditor Trustee shall be free to act as he deems appropriate, in his discretion, to effectuate the terms of the Plan and the Creditor Trust Agreement.

The Creditor Trustee shall serve for the duration of the Creditor Trust, subject to earlier death, resignation, incapacity or removal as provided in the Creditor Trust Agreement. If Barry Mukamal is not able to serve for the duration of the Creditor Trust, a successor shall be chosen pursuant to the terms of the Creditor Trust Agreement. The Creditor Trustee shall be authorized, without further order of the Bankruptcy Court, to employ such persons, including professionals, as deemed necessary to enable the Creditor Trustee to perform his functions under the Plan, and the costs of such employment and other expenditures shall be paid solely from assets of the Creditor Trust in accordance with the Creditor Trust Agreement.

The Creditor Trustee shall perform his obligations under the Plan with bond. The Creditor Trustee shall have no liability to the Debtor, the Reorganized Debtor, or any person or entity entitled to receive a distribution pursuant to the Plan for any losses, damages, claims or causes of action, other than those resulting from the Creditor Trustee's action or failure to act arising out of, in connection with or resulting from the Creditor Trustee's gross negligence or willful misconduct, as found by a Final Order. The Reorganized Debtor shall indemnify, defend and hold the Creditor Trustee and his agents and advisors harmless from and against any claims, damages, costs, fines, penalties, liabilities, attorneys' and other professional fees and disbursements, suffered, incurred by, or asserted against any such party in connection with the rendition of services to the Creditor Trust, provided that such indemnification shall not apply to the extent any such claims, damages, costs, fines, penalties, liabilities, attorneys' and other professional fees and disbursements, resulted from gross negligence or willful misconduct of the Creditor Trustee, its agent or advisors, as the case may be, as determined by a Final Order. Any such indemnification claims shall be paid prior and in preference to any other payments or distributions to be made from the Creditor Trust.

### 5.3 Purpose of the Creditor Trustee

The Creditor Trustee shall be the "representative of the estate" as contemplated by §1123(b)(3)(B) of the Bankruptcy Code for all purposes. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. Although the Creditor Trustee was not selected by the UST and will not be supervised by the UST, the UST has standing to appear and participate in all aspects of the case and to seek removal of the Creditor Trustee. The Creditor Trustee shall be bonded in favor of the Creditor Trust for the funds held in the Creditor Trust. Such bond shall be cancelable on thirty (30) days' notice to the UST and all costs and expenses related to the bond shall be paid by the Creditor Trust.

### 5.4 Preservation of Litigation Rights and Investigations

Under the Plan, the Creditor Trustee retains all rights of, and on behalf of, the Debtor and the Creditor Trust to commence and pursue any and all Causes of Action, regardless of whether or not such Causes of Action are specifically enumerated herein or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as *res judicata* or limit the Creditor Trustee's rights to commence and pursue any and all Causes of Action to the extent the Creditor Trustee deems appropriate.

Causes of Action and Avoidance Actions may, but need not, be pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date, to the extent warranted.

Creditors should understand that the Creditor Trustee may assert certain Causes of Action, including Avoidance Actions, against them. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim, Causes of Action or Avoidance Actions against a particular creditor in the, Plan, Schedules of Assets and Liabilities, Statement of Financial Affairs; or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtor or the Creditor Trustee do not possess or do not intend to prosecute a particular Causes of Action if a particular Creditor votes to accept the Plan.

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in this Plan, or any Final Order, the Debtor expressly reserves any and all Causes of Action, including Avoidance Actions, for later enforcement and prosecution by the Creditor Trustee (including, without limitation, those not specifically identified herein, in the Plan, or otherwise, or which the Debtor may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time, or facts or circumstances which may change or be different from those which the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to any such Cause of Action or Avoidance Action upon or after the confirmation or consummation or implementation of this Plan. In addition, the Creditor Trustee expressly reserves the right to pursue and/or adopt any Causes of Action, including Avoidance Actions, alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order.

It is not intended and it should not be assumed (nor shall it be deemed) that because any existing or potential Cause of Action or Avoidance Action has not yet been identified or pursued by the Debtor, or the Trustee, or are not set forth in the Plan, or otherwise, that any such Cause of Action or Avoidance Action has been waived or expunged.

Notwithstanding the foregoing, and subject to any additional determinations the Trustee or Creditor Trustee may make, the Trustee does not, in good faith, expect to pursue any such Avoidance Actions.

#### 5.5 Books and Records

On the Effective Date, the books and records (in any form, including all electronic records) that the Debtor is in possession of shall be transferred to the Creditor Trust. The Creditor Trustee shall be free, in his discretion, to release such books and records to the Reorganized Debtor without Court approval in order to effectuate an orderly transition of operations to the Reorganized Debtor. Further, the Creditor Trustee shall succeed in all of the Debtor's rights to access, and therefore shall have access to, the Debtor's books and records.

## 5.6 Creditor Trustee's Powers and Authority

The Creditor Trustee shall have the power and authority to perform the acts described in the Creditor Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Plan, including without limitation any set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Creditor Trustee to act as specifically authorized by any other provision of this Plan, the Creditor Trust Agreement, and/or any applicable law, and to act in such manner as the Creditor Trustee may deem necessary or appropriate to take any act deemed appropriate by the Creditor Trustee, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust or to confer on the Creditors the benefits intended to be conferred upon them by this Plan. The Creditor Trustee shall have the power and authority without further approval by the Court to liquidate the Creditor Trust Assets, to hire and pay ordinary course professional fees and expenses of counsel and other advisors, to prosecute and settle objections to Disputed Claims, to prosecute and settle any Causes of Action and Avoidance Actions, and otherwise take any action as shall be necessary to administer the case and effect the closing of the case, including, without limitation, as follows:

- Open and maintain accounts in accordance with section 345 of the Bankruptcy Code.
- Perfect and secure the Creditor Trustee's right, title and interest to the assets comprising the Creditor Trust Assets.
- Release, convey or assign any right, title or interest in the Creditor Trust Assets.
- Purchase insurance, including "tail" coverage, to protect the Creditor Trustee and the Creditor Trust Assets from liability or for any other purpose.
- Deposit estate funds, draw checks and make disbursements thereof.
- Employ and retain, and discharge and dismiss, appraisers, financial advisors, attorneys, accountants, auctioneers, agents and such other professionals as the Creditor Trustee may deem necessary or appropriate to assist in fulfilling the purposes of the Plan, including payment to its professionals, in connection with any ongoing litigation being pursued or conducted by the Creditor Trustee, and to pay reasonable charges, commissions and compensation to all of the foregoing.
- Exercise any and all powers granted to the Creditor Trustee by any agreements, by common law or any statute which serves to increase the extent of the powers granted to the Creditor Trustee hereunder.
- Take such other action as the Creditor Trustee may determine to be necessary or desirable to carry out the purposes of this Plan.
- Commence or prosecute, for its own account or in the name of the Debtor any Causes of Action and Avoidance Actions, as well as any lawsuit or other legal or equitable action,



including filing objections to Claims, in any court of competent jurisdiction which are necessary to carry out the terms and conditions of the Plan.

- Settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements) any disputes or controversies in favor of, or against, the Creditor Trustee.
- Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable.
- Commence and prosecute all Causes of Action and Avoidance Action which can be brought by a trustee or the Debtor under the Bankruptcy Code or any other law, theory or other manner and prosecute or defend all appeals on behalf of the Debtor or the Creditor Trustee.
- Obtain a bond in favor of the Creditor Trust for the funds held in the Creditor Trust.
- Prepare and file tax returns, as mandated by applicable state and federal law, and collect income tax refunds, or to assign the foregoing tasks to the Reorganized Debtor.
- In general, without in any manner limiting any of the foregoing, deal with the Creditor Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to, or different from, the ways above specified at any time or times hereafter, including without limitation, opening and/or establish escrow accounts, trust accounts or other bank accounts.
- Operate the Reorganized Debtor pending the Turnover Date.

#### 5.7 Privileges

All of the Debtor's privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Privileges") shall be transferred, assigned and delivered to the Creditor Trust, without waiver, limitation or release, and shall vest with the Creditor Trust. The Creditor Trustee shall hold and shall be the beneficiary of all Privileges and entitled to assert all Privileges.

#### 5.8 Operations of the Reorganized Debtor Pending the Transition Date.

The operations of the Master Association shall remain with the Reorganized Debtor. The Creditor Trust will not engage in the conduct of a trade or business. The Creditor Trustee shall manage and control the operations of the Reorganized Debtor until the Transition Date. At such time, the Creditor Trustee shall turn over management and control to the Reconstituted Board of the Reorganized Debtor, as well as such portion of the Creditor Trust Balance that the Creditor Trustee determines is necessary for the Reconstituted Board to direct the operations of the Reorganized Debtor in the ordinary course. Notwithstanding the foregoing, the Creditor Trustee may in his sole discretion assign or relinquish management and control over certain aspects of

operations to the Reconstituted Board of the Reorganized Debtor prior to the Transition Date provided that the Reconstitution Event has occurred. The Creditor Trustee shall also turn over to the Reorganized Debtor any (either originals or copies of) documents or records that the Reorganized Debtor reasonably requires, but the Creditor Trustee may retain any (originals or copies of) documents or records the Creditor Trustee believes is necessary to conclude the administration of the Creditor Trust, and shall have thereafter have the right to turn over the balance of such documents to the Reorganized Debtor.

Pending the Turnover Date, the Creditor Trustee shall oversee the rehabilitation of the Master Association property and, with the input of and consultation with the Reconstituted Board of the Reorganized Debtor, shall act as disbursing agent for all rehabilitative and construction related projects involving the Master Association, and shall disburse funds from the Creditor Trust Balance as necessary for such purposes. Thereafter, at the written election of the Reconstituted Board of the Reorganized Debtor and the occurrence of the Turnover Date, the Creditor Trustee shall turn over the Creditor Trust Balance to the Reorganized Debtor and shall be released of all further obligations or responsibilities to the Reorganized Debtor.

As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in complete accordance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized Debtor's Board of Directors has been properly constituted. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration (the "Reconstitution Event").

**The Creditor Trustee and any Professionals retained by the Creditor Trustee shall not have or incur any liability to the Reorganized Debtor, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Creditor Trustee's management or operations of the Reorganized Debtor pending the Turnover Date; except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.**

**The Creditor Trustee and any Professionals retained by the Creditor Trustee shall not have or incur any liability to the Reorganized Debtor, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Creditor Trustee's management or operations of the Reorganized Debtor pending the Turnover Date; except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.**

#### 5.9 Federal Income Tax Treatment of the Creditor Trust

For federal income tax purposes, it is intended that the Creditor Trust be classified as a liquidating trust under Treasury Regulation section 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a Distribution of an undivided interest in the



Creditor Trust Assets and then contributed such interests to the Creditor Trust. Thus, the beneficiaries of the Creditor Trust shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Creditor Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. The Creditor Trust Agreement shall (i) state that the primary purpose of the Creditor Trust is to liquidate the Creditor Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is not more than five (5) years from the date of creation of the Creditor Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within two (2) months before the beginning of the extended term.

The Creditor Trustee shall be responsible for filing all federal, state and local tax returns for the Creditor Trust. The Creditor Trustee shall file all federal tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4. The Creditor Trustee also will annually send to each beneficiary of the Creditor Trust a separate statement regarding the receipts and expenditures of the Creditor Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Creditor Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Creditor Trust that is required by any governmental unit.

Nothing in this Plan shall compel the Creditor Trustee to treat any Income Tax Refund(s) obtained pursuant to Tax Code section 6411 as unrestricted cash until completion of the associated audit by the relevant authorities.

#### 5.10 Tax Reporting for Creditor Trust

As soon as practical after the Effective Date, the Creditor Trustee shall determine the fair market value, as of the Effective Date, of all other Creditor Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Creditor Trust (including, without limitation, the Debtor, the Trustee, and beneficiaries of the Creditor Trust) for all United States federal income tax purposes.

Allocations of Creditor Trust taxable income among the beneficiaries of the Creditor Trust shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all its assets (valued at their tax book value) to beneficiaries of the Creditor Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent Distributions from the Creditor Trust. Similarly, taxable loss of the Creditor Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating

distribution of the remaining Creditor Trust Assets. The tax book value of the Creditor Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Creditor Trustee, the Debtor, and the beneficiaries of the Creditor Trust) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Creditor Trustee shall be responsible for payment, out of the Creditor Trust Assets, of any Taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such Taxes shall be (A) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (B) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Creditor Trustee shall have full and exclusive authority and responsibility with respect to all Income Tax Refunds to the same extent as if the Creditor Trustee were, as applicable, the Debtor or debtor-in-possession, including the filing of tax returns (including amended tax returns), or requests for refunds for the Debtor.

#### 5.11 Engagement of Post-Confirmation Professionals and Compensation

The Creditor Trustee may engage Post-Confirmation Professionals, such as counsel, financial advisors and other professionals including those engaged by the Trustee during the Chapter 11 Case, to represent him in connection with his duties hereunder. In his capacity as Creditor Trustee, the Creditor Trustee shall be compensated at the rate of 3% of the gross total of all distributions made by the Creditor Trustee of assets from the Creditor Trust. The Creditor Trustee and the Post-Confirmation Professionals shall be entitled to be paid 90% of their fees and 100% of their expenses on a monthly basis prior to filing fee applications. Post-Confirmation Professionals may file periodic fee applications seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts previously paid on a monthly basis. Upon the filing of each such application, the Post-Confirmation Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees.

## ARTICLE 6

### **RETENTION, ENFORCEMENT, COMPROMISE, OR ADJUSTMENT OF THE CAUSES OF ACTION BELONGING TO THE DEBTOR AND THE ESTATE**

#### 6.1 Right to Enforce, Compromise, or Adjust Causes of Action

The Creditor Trustee shall have and retain the full power, authority, and standing to commence, prosecute, compromise, or otherwise resolve any Causes of Action. All proceeds derived from such Causes of Action shall revert in the Creditor Trust.

#### 6.2 Maintenance of Causes of Action

The Debtor transfers and assigns to the Creditor Trust, all rights to commence and pursue, or decline to pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including in an adversary proceeding or contested matter filed in one or more of the Bankruptcy Case. The Debtor, through the Creditor Trustee, reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract during the Bankruptcy Case. In accordance with Bankruptcy Code section 1123(b)(3), any Causes of Action that the Debtor may hold against any Entity shall vest in the Debtor or the Creditor Trust, as the case may be. The Creditor Trustee, as the Debtor's successor and the representative of the Creditor Trust, shall have the exclusive right, authority, standing and sole discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw, or litigate to judgment any and all such Causes of Action, and to decline to do any of the foregoing in the Creditor Trustee's business judgment without the consent or approval of any third party and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 6.3 Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor expressly reserves such Cause of Action for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Cause of Action on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt Causes of Action or Avoidances Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

## ARTICLE 7

### **DISCHARGE, INJUNCTION, LIMITED RELEASE, EXCULPATION AND INDEMNIFICATION PROVISIONS**

#### 7.1 Discharge

Except as otherwise provided in the Plan, the rights granted in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for, and in satisfaction of, all Claims of any nature whatsoever against the Estate and the Estate Property, whether such Claims arose before or during the Bankruptcy Case or in connection with implementation of the Plan. **Pursuant to § 1141(d)(3) of the Bankruptcy Code, confirmation of this Plan will not discharge the Debtor.**

#### 7.2 Releases

**Except as otherwise provided for in the Plan, on the Effective Date the Debtor (on behalf of itself and the Estate), as applicable, shall be deemed to have released Professionals from any and all claims, causes of actions, and other liabilities arising during the Bankruptcy Case before the Effective Date from any act or omission in connection with, relating to, or arising out of the Bankruptcy Case and related proceedings, including, but not limited to, filing of the Bankruptcy Case, administration of the Bankruptcy Case, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan (if any) (including all Distributions thereunder), together with any matters arising from ambiguities or inconsistencies with the Debtor's Declaration and Bylaws; provided, however, that the Debtor (on behalf of itself and the Estate), shall not be deemed to have released any such Entity from liability for willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.**

**The Trustee does not believe that any viable claims exist that would be subject to these releases, and presents these releases solely in an abundance of caution.**

#### 7.3 Exculpation

**Except as otherwise provided for in the Plan, Professionals shall not have or incur any liability to any holder of Claim or Interest, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case and related proceedings, including, but not limited to, filing of the Bankruptcy Case, administration of the Bankruptcy Case, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan and Disclosure (if any), together with any matters arising from ambiguities or inconsistencies with the Debtor's Declaration and Bylaws; except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order. In all such instances, such parties shall be and have been entitled to reasonably rely on the advice of counsel in all respects regarding their duties and responsibilities in connection with the Bankruptcy Case and under the Plan.**

**Nothing contained in Section 8.3 of the Plan shall prevent or limit any party's right to object to any Professional Compensation Claim asserted in the Bankruptcy Case.**

7.4 Term of Existing Injunctions or Stays

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to Bankruptcy Code §§ 105, 362 or 524, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

7.5 Indemnification of Creditor Trustee

The Creditor Trustee and its agents, employees, officers, members, directors, professionals and principals (collectively, the "Indemnified Parties") shall be indemnified and held harmless by the Creditor Trust from the Creditor Trust Assets for any losses, claims, damages, costs, expenses and other liabilities, including, without limitation, reasonable attorneys' fees, disbursements and related expenses, which the Indemnified Parties may incur, or to which the Indemnified Parties may become subject to, in connection with carrying their duties and responsibilities under the Plan and any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of their acts or omissions on or after the date of this Agreement, including as to any matters arising from ambiguities or inconsistencies with the Debtor's Declaration and Bylaws; provided, however, that the Creditor Trust shall have no obligation to indemnify any of the Indemnified Parties for any losses or claims that are adjudicated by the Bankruptcy Court, or other court having jurisdiction, resulting from any act or omission by any of the Indemnified Parties that constitutes gross negligence, recklessness or intentional or willful misconduct; provided further, that nothing in Section 8.5 of the Plan shall be deemed to restrict the Creditor Trustee's right to receive an indemnity based on any act or omission taken in accordance with the provisions of this Plan. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Creditor Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Creditor Trustee in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Creditor Trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to indemnity under the provisions of Section 8.5 of the Plan.

7.6 Injunction Enjoining Holders of Claims Against, and Equity Interests in, Debtor

Except as otherwise expressly provided in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against, or Equity Interests in, the Debtor's Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets arising on or before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets regarding such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan) to the fullest extent provided under Bankruptcy Code section 524:

- (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Estate, the Estate

Property, the Creditor Trust, and the Creditor Trust Assets (including, all suits, actions, and proceedings that are pending on the Effective Date, which shall be deemed withdrawn and dismissed with prejudice);

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;

(iv) asserting any right of subrogation, setoff, or recoupment of any kind, directly or indirectly, against any obligation due the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets; and

(v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

#### 7.7 Derivative Litigation Claims

Claims, Causes of Action, and Avoidance Actions that are derivative of or from the Debtor (the “Derivative Litigation Claim(s)”) are Estate Property under Bankruptcy Code section 541. On and after the Effective Date, all such Derivative Litigation Claims, regardless of whether pending on the Petition Date, will be retained by, vest in, and/or become property of the Creditor Trust and shall be administered by the Creditor Trustee. Unless a Derivative Litigation Claim against a Creditor or other Person is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, such Claims, Causes of Actions, and Avoidance Actions are expressly reserved for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Claims, Causes of Action, and Avoidance Actions on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt any claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor are a defendant or an interested party, against any Person or entity, including the plaintiffs or co-defendants in such lawsuits. All named plaintiffs in the actions pending on the Effective Date relating to any Derivative Litigation Claims and their respective servants, agents, attorneys, and representatives shall, on and after the Effective Date, be permanently enjoined, stayed, and restrained from pursuing or prosecuting any Derivative Litigation Claim and the Creditor Trustee shall be, without need of further order, substituted as plaintiff upon his request. Nothing herein shall impair claims or causes of action that any Person may have directly (as opposed to derivatively) against any other Person.



## ARTICLE 8

### **RESOLUTION OF OBJECTIONS TO PROOFS OF CLAIM; ESTIMATION OF CLAIMS**

#### 8.1 Right to Object to Claims

On and after the Effective Date, the Creditor Trustee shall have the sole authority and discretion to examine, object to, contest the allowance of, compromise, settle, or otherwise resolve, or withdraw any objections to, any Claims, Equity Interests, Disputed Claims or Disputed Equity Interests (except those Claims specifically Allowed by the Plan) without approval of the Bankruptcy Court.

#### 8.2 Deadline for Objecting to Claims

After the Effective Date, objections to, and requests for estimation of, Claims against and Equity Interests in the Debtor may be interposed and prosecuted only by the Creditor Trustee. Such objections and requests for estimation including, without limitation, any reduction, recharacterization, subordination or other modification in whole or in part, which may be brought by motion, objection or adversary proceeding, shall be served on the respective Claimant or Interestholder and filed with the Bankruptcy Court by the Claim Objection Deadline; otherwise such Claims and Equity Interests shall be deemed allowed in accordance with Bankruptcy Code section 502.

#### 8.3 Deadline for Responding to Claim Objections

Within thirty (30) days after service of an objection, the Claimholder or Interestholder whose Claim or Equity Interest was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Creditor Trustee and the parties identified in Section 13.2 of the Plan. Failure to file a written response within the thirty (30) day time period shall constitute a waiver and release of the subject Claim or Equity Interest, and shall cause the Bankruptcy Court to enter a default judgment against the non-responding Claimholder or Interestholder granting the relief requested in the claim objection.

#### 8.4 Estimation of Claims

The Creditor Trustee may, at any time, request that the Bankruptcy Court estimate any contingent, disputed, or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether the Debtor or the Creditor Trustee have previously objected to such Claim or Equity Interest, or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Equity Interest at any time during the litigation concerning any objection to any Claim or Equity Interest, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, disputed, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the

aforementioned Claims objections, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Creditor Trustee may compromise, settle or resolve any such Claims without Bankruptcy Court approval.

#### 8.5 Adjustment to Claims Without Objection

Any Claim that has been paid and/or satisfied pursuant to the terms of the Plan or a Final Order, or any Claim that has been amended or superseded, may be adjusted and/or expunged on the official claims register by the Creditor Trustee without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 8.6 Disallowance of Claims

Any and all Claims held by an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553, or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, and 724(a), shall be deemed disallowed pursuant to Bankruptcy Code section 502(d), and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, both consequences to be in effect until such time as Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due to the Debtor, the Estate or Creditor Trust by that Entity have been turned over to the Debtor or Creditor Trustee. Any and all proofs of claim filed after the relevant Bar Date shall be disallowed and expunged for all purposes, and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, unless such Creditors request on or before the Confirmation Hearing that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006. All Claims filed after the relevant Bar Date and are (a) not deemed timely filed pursuant to Bankruptcy Rule 9006 on or before the Confirmation Hearing or (b) not the subject of a request that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006 as of the Confirmation Hearing shall be deemed disallowed and expunged as of the Effective Date without any further notice to that Entity, or action, order, or approval of the Bankruptcy Court.

### **ARTICLE 9**

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

The Creditor Trustee shall make all Distributions required under the Plan.

#### 9.1 In General

The Creditor Trustee shall make all Distributions required under the Plan.

#### 9.2 Distributions on Allowed Claims Only

Distributions under the Plan shall be made only to the holders of Allowed Claims. Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be



made as soon as practicable after the Effective date and as appropriate thereafter; provided however, that the Creditor Trustee shall have sole and absolute discretion as to the timing of any Distribution until all Allowed Claims are satisfied under the Plan. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive any consideration. If a Disputed Claim becomes an Allowed Claim, in whole or in part, by a Final Order, the Creditor Trustee shall distribute the portion of the Distribution reserved for the particular Disputed Claim in accordance with the Plan on the next Distribution Date. If a Disputed Claim is disallowed in whole or in part, then the portion of the Distribution reserved for such Disputed Claim shall be distributed on the next Distribution Date to holders of Allowed Claims so that such holders receive their Pro Rata Share of such portion of the Distribution.

### 9.3 Interest

Post-petition interest shall accrue on Claims at the rate specified in 28 U.S.C. § 1961, for the calendar week preceding the First Distribution Date.

### 9.4 Place and Manner of Payments of Distributions

Distributions to holders of Allowed Claims shall be made by mailing such Distribution to the Claimholder at the address listed in any proof of claim filed by the Claimholder or at such other address as such Claimholder shall have specified for payment purposes in a written notice received by the Debtor at least twenty (20) days before a Distribution Date. If a Claimholder has not filed a proof of claim or interest or sent the Creditor Trustee a written notice of payment address, then the Distribution(s) for such Claimholder will be mailed to the address identified in the Schedules of Assets and Liabilities. The Creditor Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Claimholders, at the request of the Creditor Trustee, must provide appropriate taxpayer identification numbers, related withholding information, and any appropriate forms required by the Internal Revenue Service to the Creditor Trustee; otherwise, the Creditor Trustee may suspend Distributions to any Claimholders who have not provided such taxpayer identification numbers and related withholding information until the Creditor Trustee receives any information and/or document requests.

### 9.5 No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

### 9.6 Disputed Claims Reserve

In determining the amount of Distributions to be made under the Plan to holders of Allowed Claims, the Creditor Trustee shall hold Cash in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the

Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

#### 9.7 Distribution After Allowance

As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive from its Disputed Claims Reserve a Distribution in an amount equal to the Distribution that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made, without interest, in accordance with the Class of Claims to which such Claim belongs.

#### 9.8 Distribution After Disallowance

If and when a Disputed Claim or any portion thereof becomes a Disallowed Claim, the Pro Rata Share of the Distributions to which each holder of an Allowed Claim in the Class of Claims to which such Claim belongs is entitled, shall increase commensurately. Accordingly, the Creditor Trustee shall have the right to make subsequent Distributions in accordance with the provisions of the Plan.

#### 9.9 Undeliverable Distributions

If a Distribution to any Claimholder is returned as undeliverable, the Creditor Trustee shall use reasonable efforts to determine such Claimholder's then current address. After reasonable efforts, if the Creditor Trustee still cannot determine such Claimholder's then-current address, then unless and until the Creditor Trustee is notified of such Claimholder's then-current address, no further Distributions shall be made to such Claimholder, unless and until the Creditor Trustee is notified of such Claimholder's then-current address. Such Distributions shall be set aside and held in a segregated interest bearing account. If the Creditor Trustee is notified of such Claimholder's then-current address, then such Distribution, together with any interest earned thereon and proceeds thereof (less any withholding pursuant to Section 7.11) shall be paid or distributed to such Claimholder within ten (10) Business Days. If the Creditor Trustee cannot determine, or is not notified of, a Claimholder's then-current address within six (6) months after the Effective Date, the Distribution reserved for such Claimholder shall be deemed an unclaimed Distribution, and Section 7.10 of the Plan shall be applicable thereto.

#### 9.10 Unclaimed Distributions

If the current address for a Creditor entitled to a Distribution under the Plan has not been determined within six (6) months after the Effective Date or such Creditor has otherwise not been located, then such Creditor (i) shall no longer be a Creditor and (ii) shall be deemed to have released such Claim. If such Creditor was entitled to a portion of the Distribution, then that Claimholder's Distribution shall be distributed Pro Rata in accordance with the Plan to the other holders of Allowed Claims receiving the Distribution on the next Distribution Date to the extent that holders of Allowed Claims have not been satisfied in full, in which case such funds will be distributed to the Reorganized Debtor on the Turnover Date.

#### 9.11 Withholding

The Creditor Trustee may at any time withhold from a Distribution to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Creditor Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Creditor Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of Section 7.11 of the Plan. Notwithstanding the foregoing but without prejudice to the Debtor's rights, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution under the Plan.

#### 9.12 No De Minimis Distributions

Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$100 will be made to any Entity. No consideration will be provided in lieu of the *de minimis* distributions that are not made under Section 7.12, and the Creditor Trustee shall be authorized to remit such amounts to a charitable organization pursuant to Section 7.14.

#### 9.13 Compliance with Tax Requirements

To the extent applicable, the Creditor Trustee in making Distributions under this Plan shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Creditor Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides to the Creditor Trustee the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Creditor Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the Creditor Trustee with any information necessary to comply with any withholding requirement of any governmental unit within sixty (60) days after the date of first notification by the Creditor Trustee to the holder of the need for such information, then the holder's Distribution shall be treated as an unclaimed Distribution. The Creditor Trustee may be required to identify, by tax identification number, each holder of a Claim that receives a Distribution pursuant to the Plan. To ensure that the Creditor Trustee has a tax identification number for each holder of a Claim, Claimants will be sent a Form W-9 (or may download one at [www.irs.com](http://www.irs.com)). Claimants must return the completed and signed Form W-9 to the Creditor Trustee at the following address, postage pre-paid:

Barry E. Mukamal  
Kapila Mukamal  
1 SE 3<sup>rd</sup> Ave, Suite 2150  
Miami, Florida 33131

Facsimile: (786) 517-5772  
Email: bmukamal@kapilamukamal.com

With a copy to:

Genovese Joblove & Battista, P.A.  
Attn: Michael L. Schuster, Esq.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Facsimile: (305) 349-2310  
Email: mschuster@gjb-law.com

If a Claimant does not return the completed Form W-9 to the Creditor Trustee, the Creditor Trustee is allowed to retain Distributions to Allowed Claims until the appropriate tax identification information is provided. If the Creditor Trustee requests a tax identification number from a Claimant, and the Claimant does not respond by providing it within sixty (60) days of the first request by the Creditor Trustee, the Claimant shall lose the right to receive a Distribution pursuant to the Plan.

9.14 Authority to Reserve Funds to Close These Bankruptcy Case and to Donate Any Balance to a Charitable Organization

If at any time the Creditor Trustee determines in his sole discretion that the expense of administering the Creditor Trust so as to make a final Distribution to the beneficiaries of the Creditor Trust is likely to exceed the value of the assets remaining in the Creditor Trust, the Creditor Trustee shall apply to the Court for authority to (i) reserve any amounts necessary to close the Bankruptcy Case, (ii) donate any balance to a charitable organization exempt from federal income tax under 501(c)(3) of the Internal Revenue Code, and (iii) close the Bankruptcy Cases in accordance with the Bankruptcy Code and Bankruptcy Rules.

9.15 Setoffs and Recoupments

The Creditor Trustee may, pursuant to Bankruptcy Code section 553 or applicable non-bankruptcy law, setoff and/or recoup against any Allowed Claim the Distributions to be made pursuant to this Plan (before any Distribution is made on account of such Claim) and the Causes of Action or Avoidance Actions that the Creditor Trustee may hold against the holder of such Allowed Claim. Neither the failure to effectuate such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Creditor Trustee of any such Causes of Action or Avoidance Actions that the Creditor Trustee may hold under Bankruptcy Code section 553 or applicable non-bankruptcy law.

## ARTICLE 10

### CERTAIN FACTORS TO BE CONSIDERED

A Claimholder should carefully consider the following factors, as well as the other information contained in this Disclosure Statement and the Plan (as well as the documents delivered herewith or incorporated by reference herein), before deciding whether to support or object to the Plan.

The principal purpose of the Debtor's Bankruptcy Cases is the formulation of the Plan, which provides for an orderly liquidation of the Debtor's business and operations and establishes how Claims against and Equity Interests in the Debtor will be satisfied. Under the Plan, certain Claims may receive partial distributions, and other Claims may not receive any distributions at all. For example, Equity Interests will receive no distributions.

#### 10.1 Failure to Confirm or Consummate the Plan

If the Plan is not confirmed and consummated, it is possible that an alternative plan can be negotiated and presented to the Bankruptcy Court for approval, however, there is no assurance that the alternative plan will be confirmed, that the Bankruptcy Case will not be converted to a liquidation under chapter 7 of the Bankruptcy Code, or that any alternative plan of liquidation could or would be formulated on terms as favorable to the Claimholders as terms of the Plan.

#### 10.2 Claims Estimates May Be Incorrect

There can be no assurance that the estimated Claim amounts set forth herein are correct. The actual allowed amounts of Claims may differ materially from the estimates.

## ARTICLE 11

### ALTERNATIVES TO PLAN AND LIQUIDATION ANALYSIS

There are three possible consequences if the Plan is rejected or if the Bankruptcy Court refuses to confirm the Plan: (a) the Bankruptcy Court could dismiss the Debtor's chapter 11 Bankruptcy Case, (b) the Debtor's chapter 11 Bankruptcy Case could be converted to a liquidation case under chapter 7 of the Bankruptcy Code, or (c) the Bankruptcy Court could consider an alternative plan of reorganization proposed by the Debtor, the Trustee, or by some other party.

#### 11.1 Dismissal

The most remote possibility is dismissal. If the Debtor's Bankruptcy Case were to be dismissed, the Debtor would no longer have the protection of the Bankruptcy Court and the applicable provisions of the Bankruptcy Code. Dismissal would force a race among creditors to take over and dispose of the Debtor's available assets. Even the most diligent unsecured creditors would likely fail to realize any significant recovery on their claims.

## 11.2 Chapter 7 Liquidation

A straight liquidation bankruptcy, or chapter 7 case, requires liquidation of the bankruptcy debtor's assets by an impartial trustee. In a chapter 7 case, the amount unsecured creditors receive depends on the net estate available after all assets of the debtor have been reduced to cash. The cash realized from liquidation of the debtor's assets would be in accordance with the order of distribution prescribed in Bankruptcy Code section 507.

If the Plan is not confirmed, it is likely that the Debtor's Bankruptcy Case will be converted to cases under chapter 7 of the Bankruptcy Code, in which case a trustee would be appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Whether a bankruptcy case is one under chapter 7 or chapter 11, Secured Claims, Administrative Claims, Priority Unsecured Non-Tax Claims, and Priority Unsecured Tax Claims are entitled to be paid in full before unsecured creditors receive any funds.

If the Debtor's Bankruptcy Case was converted to chapter 7, the present Administrative Claims may have a priority lower than priority claims generated by the chapter 7 case, such as the chapter 7 trustee's fees or the fees of attorneys, accountants and other professionals engaged by the trustee.

If the Bankruptcy Case was converted, the Bankruptcy Court would appoint a trustee to liquidate the Debtor's property and assets and distribute the proceeds to creditors in accordance with the Bankruptcy Code's priority scheme. It is likely that the chapter 7 trustee would have little or no experience or knowledge of the Debtor's businesses or their records or assets. A substantial period of education would be required in order for any chapter 7 trustee to wind the case up effectively.

The chapter 7 trustee would be entitled to receive the compensation allowed under Bankruptcy Code section 326. The trustee's compensation is based on 25% of the first \$5,000 or less; 10% of any amount in excess of \$5,000 but not in excess of \$50,000; 5% of any amount in excess of \$50,000 but not in excess of \$1 million; and reasonable compensation not to exceed 3% of any amount in excess of \$1 million, on all funds disbursed or turned over in the bankruptcy case by the trustee to parties in interest (excluding the Debtor, but including the holders of Secured Claims). The trustee's compensation would be paid as a cost of administration of the chapter 7 estate, and may have priority over the costs and expenses incurred in the chapter 11 case and any payment to unsecured creditors.

It is also likely that the chapter 7 trustee would retain his own professionals (including attorneys and financial advisors) whose fees would also constitute priority claims in the chapter 7 case, with a priority that may be higher than those claims arising as part of the administration of the chapter 11 case.

The Trustee believes that liquidation under chapter 7 would result in smaller distributions being made to Claimholders than those provided for in the Plan. As previously noted, conversion to chapter 7 would give rise to (a) additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee and (b)



additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations. In a chapter 7 liquidation, it is a virtual certainty that general unsecured creditors would receive a substantially reduced recovery on their claims.

### 11.3 Alternative Plan

The Trustee believes that any alternative plan would not be viable and would not provide the same recovery to Creditors as that proposed under the current Plan.

## ARTICLE 12

### **CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

A summary description of certain material United States federal income tax consequences of the Plan is provided below. This description is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal United States federal income tax consequences of the Plan to the Debtor and to holders of Claims who are entitled to vote or to accept or reject the Plan are described below. No rulings or determination of the IRS or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtor or any holder of the Claim. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the United States federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations, judicial authorities, published positions of the IRS and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the United States federal income tax consequences of the Plan to special classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, Person that are, or hold their Claims through, pass-through entities, Persons whose functional currency is not the United States dollar, foreign Persons, dealers in securities or foreign currency, employees, Persons who received their Claims pursuant to the exercise of an employee stock option or otherwise as compensation and Persons holding Claims that are hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale or conversion transaction). Furthermore, the following discussion does not address United States federal taxes other than income taxes.



Each Claimholder is strongly urged to consult its own tax advisor regarding the United States federal, state, and local and foreign tax consequences of the transactions described herein and in the Plan. The following summary is not a substitute for careful tax planning and advice based on individual circumstances. All creditors are advised to consult their own tax advisors.

12.1 Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIMHOLDERS ARE STRONGLY URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN, INCLUDING WITH RESPECT TO TAX REPORTING AND RECORD KEEPING REQUIREMENTS.

**ARTICLE 13**

**CONCLUSION**

This Disclosure Statement provides information regarding the Debtor's Bankruptcy Case and the potential benefits that might accrue to holders of Claims against and Equity Interests in the Debtor under the Plan as proposed. The Plan is the result of extensive efforts by the Trustee to provide the holders of Allowed Claims with a 100% dividend. The Trustee believes that the Plan is feasible and will provide each holder of a Claim against the Debtor with an opportunity to receive greater benefits than those that would be received by any other alternative. The Trustee, therefore, urges interested parties support confirmation of the Plan.

Respectfully submitted this 5th day of June, 2017.

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**EXHIBIT A**

**PLAN OF REORGANIZATION FOR THE DEBTOR PROPOSED  
BY THE CHAPTER 11 TRUSTEE**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

MAJORCA ISLES MASTER  
ASSOCIATION, INC.,

Debtor.

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Chapter 11

Case No. 12-19056-BKC-AJC

**PLAN OF REORGANIZATION FOR THE DEBTOR  
PROPOSED BY THE CHAPTER 11 TRUSTEE**

Dated: June 5, 2017

ATTORNEYS FOR THE  
CHAPTER 11 TRUSTEE  
BARRY E. MUKAMAL

**GENOVESE, JOBLOVE & BATTISTA, P.A.**  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Telephone: (305) 349-2300

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Barry E. Mukamal, as Chapter 11 Trustee (the “Trustee”), proposes this *Plan of Reorganization for the Debtor* (the “Plan”) pursuant to section 1121(a) of the Bankruptcy Code for the resolution of Claims and Equity Interests of Majorca Isles Master Association, Inc. (the “Debtor”).

## ARTICLE 1

### DEFINITIONS, RULES OF INTERPRETATION AND CONSTRUCTION OF TERMS

#### 1.1 Definitions

All capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Glossary of Defined Terms attached as **Exhibit A** hereto, the Bankruptcy Code, or the Bankruptcy Rules.

#### 1.2 Rules of Interpretation and Construction

For purposes of the Plan, (i) any reference in the Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, supplemented, or otherwise modified; (ii) unless otherwise specified, all references in the Plan to sections, articles, and exhibits are references to sections, articles, or exhibits of the Plan; (iii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety and not to any particular portion of the Plan; (iv) captions and headings contained in the Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the meaning or interpretation of the Plan; (v) wherever appropriate from the context, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (vi) the rules of construction outlined in Bankruptcy Code section 102 and in the Bankruptcy Rules apply to the Plan; (vii) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; and (viii) the use of the word “including” shall not in any manner exclude, and in all cases shall mean “including without limitation,” whether or not followed by such words. The duties, rights and obligations of any person or entity named or referred to in the Plan shall be binding upon, inure to the benefit of, and shall be the responsibility of, the successors and assigns of such person or entity.

## ARTICLE 2

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS; IMPAIRMENT

#### 2.1 Summary

Pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code, the following is a designation of the classes of Claims and Equity Interests under this Plan for purposes of voting, distribution, and implementation of the terms of this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, and Priority Unsecured Tax Claims have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified

in a particular Class only to the extent that the Claim or Equity Interest, or portion thereof, qualifies within the description of that Class, and is classified in another Class(es) to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class(es). In addition, a Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class, subject to Section 10.1 of this Plan. Notwithstanding anything to the contrary in the Plan, no Distribution shall be made on account of any Claim that is not an Allowed Claim.

## 2.2 Classification

Claims against and Equity Interests in the Debtor are classified as follows:

### **Class – 1 – General Unsecured Claims:**

This class consists of all Claims against the Debtor which are not Secured Claims, Administrative Expense Claims (including Professional Compensation Claims and Administrative Tax Claims) or Priority Unsecured Tax Claims.

### **Class - 2 – Equity Interests:**

This class consists of all Equity Interest in the Debtor.

## 2.3 Unimpaired Classes

Classes 1 and 2 are not Impaired under the Plan. Under Bankruptcy Code section 1126(f), holders of Claims or Interests in those Classes are conclusively presumed to have accepted the Plan, and are not entitled to vote to accept or reject the Plan.

## **ARTICLE 3**

### **TREATMENT OF UNCLASSIFIED CLAIMS AND CERTAIN POSTPETITION CLAIMS**

#### 3.1 Administrative Expense Claims Bar Date

Except as otherwise provided in Article 3 herein, any application seeking the allowance and payment of an Administrative Expense Claim be filed and served upon counsel for the Trustee and the UST no later than fourteen (14) days prior to the Confirmation Hearing Date, or such other date established by order of the Court (the “Administrative Expense Claim Bar Date”). Any Administrative Expense Claim for which an application or request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

#### 3.2 Professional Compensation Claims Bar Date

All applications or other requests for payment of Professional Compensation Claims arising on or before the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Trustee and the UST no later than fourteen (14) days prior to the Confirmation

Hearing Date, or such other date established by order of the Court (the “Professional Compensation Bar Date”). Any Professional Compensation Claims for which an application or other request for payment is not filed by the Professional Compensation Bar Date, as may be supplemented by filing an amended application or request for payment at any time prior to the hearing on approval of such Professional Compensation Claims (which may include estimated fees and expenses up through the Effective Date), shall be discharged and forever barred from asserting such Professional Compensation Claim against the Debtor, the Estate, the Creditor Trust, or their respective property. The Court’s approval is required prior to any payment of the Professional Compensation Claims.

### 3.3 Administrative Tax Claims Bar Date

Any application or other request for payment of an Administrative Tax Claim must have been timely and properly filed with the Bankruptcy Court and served on counsel for the Trustee and the UST on or before the Administrative Expense Claim Bar Date. Any Administrative Tax Claim for which an application or other request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

### 3.4 Payment of Administrative Expense Claims

The Trustee, or the Creditor Trustee, as applicable, shall pay Allowed Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, no later than twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan from Cash or Creditor Trust Assets.

### 3.5 Payment of Priority Unsecured Tax Claims

Priority Unsecured Tax Claims shall be satisfied in full at the election of the Trustee, as follows:

#### (i) Cash Payment

Any Priority Unsecured Tax Claim may be satisfied by the payment of Cash to the holder of such Claim in the amount of its Priority Unsecured Tax Claim plus accrued interest after the Confirmation Date at the Tax Interest Rate on the later of the Allowance Date or the Effective Date of the Plan; or

#### (ii) Other Agreements

Any Priority Unsecured Tax Claim may be satisfied pursuant to an agreement reached with the holder of such Claim.

### 3.6 UST Fees

The Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days after the Effective Date, for pre-confirmation periods. The Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth

in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Trustee until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court or upon the entry of an order by the Bankruptcy Court dismissing or converting this case to another chapter under the United States Bankruptcy Code. After the Confirmation Date, the Trustee shall file a quarterly post-confirmation operating report which shall include, among other things, all payments made under the Plan and payments made in the ordinary course of business. The post-confirmation operating report shall be filed quarterly until the court enters a final decree, dismisses the case, or converts the case to another chapter under the United States Bankruptcy Code.

### 3.7 Claim of Rapid Security Solutions, LLC

The claim of Rapid Security Solutions, LLC arising from this Court's Order dated April 14, 2017 *Granting Trustee's Motion to Incur Post-Petition Secured Debtor for Security Gate Construction Project* is not classified by this Plan, but instead, shall be treated as a post-petition obligation of the Debtor which shall be unaffected by the confirmation of this Plan or the occurrence of the Effective Date. The Creditor Trust and the Reorganized Debtor, as applicable, shall honor the obligations of the Debtor to Rapid Security Solutions, LLC in the ordinary course of business. Notwithstanding anything to the contrary, the Trustee or the Creditor Trustee, as applicable, shall have the right to satisfy the Claim of Rapid Security Solutions, LLC in full on or after the Effective Date.

## ARTICLE 4

### TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

#### 4.1 Treatment of General Unsecured Claims (Class – 1) – Unimpaired

Each holder of an Allowed General Unsecured Claim shall receive their Pro Rata Share of the beneficial interests in the Creditor Trust and as beneficiary of the Creditor Trust shall receive, on the First Distribution Date, the full amount of their Claim in Cash plus interest from the Petition Date at the rate specified in 28 U.S.C. § 1961, for the calendar week preceding the First Distribution Date.

Class – 1 is Unimpaired and is conclusively deemed to accept this Plan. The Trustee will not solicit any votes from this Class.

#### 4.2 Treatment of Equity Interests (Class – 2) – Unimpaired

The rights of holders of an Interest in the Debtor shall be unaffected by this Plan.

As set forth herein and in the Creditor Trust Agreement, operational control shall be substantially turned over to the Reconstituted Board of the Reorganized Debtor on the Transition Date, and the final distribution from the Creditor Trust Balance to the Reorganized Debtor shall occur on the Turnover Date. As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in compliance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized

Debtor's Board of Directors has been properly constituted and appointed. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration.

Class – 2 is Unimpaired under this Plan and conclusively deemed to have accepted the Plan. The Trustee will not solicit any votes from this Class.

## ARTICLE 5

### EXECUTORY CONTRACTS

#### 5.1 Assumption or Rejection of Executory Contracts

Except as set forth in Section 5.3, Executory Contracts or unexpired leases, if any, that were not previously assumed or rejected shall be rejected and terminated as of the Confirmation Date, and such rejected Executory Contracts and unexpired leases shall no longer represent the binding obligations of the Debtor (or the Trustee or Creditor Trustee) on or after the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejection under sections 365 and 1123 of the Bankruptcy Code.

#### 5.2 Rejection Claims

Any Claim arising out of the rejection of an Executory Contract pursuant to the Confirmation Order must be filed with the Bankruptcy Court on or before the Rejection Claim Bar Date, and shall be served on counsel for the Trustee and the UST. Any such Claims not properly filed on or before the Rejection Claim Bar Date shall be discharged and forever barred. Each Allowed Claim arising from the rejection of an Executory Contract shall be treated as an Allowed General Unsecured Claim.

#### 5.3 Insurance Policies

To the extent that any and all insurance policies are considered Executory Contracts, then notwithstanding anything contained in the Plan to the contrary, such insurance policies shall be deemed assumed and assigned to the Reorganized Debtor. Notwithstanding such assignment, pending the Transition Date and unless otherwise directed by the Creditor Trustee, all insurance policies shall list the Creditor Trust as an additional insured and or loss payee. Unless otherwise determined by the Bankruptcy Court, pursuant to a Final Order, no payments are required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to each such policy. For the avoidance of any doubt, all rights under any insurance policy that is not an Executory Contract, and all rights under any other insurance policies under which the Debtor may be beneficiary, shall be preserved and shall vest with the Reorganized Debtor as set forth herein and shall remain in full force and effect after the Effective Date for the term thereof; and nothing herein shall alter or adversely affect the rights of any non-Debtor beneficiaries of or covered Persons or Entities under such insurance policies.

5.4 Reservation of Rights

Nothing contained in the Plan shall constitute an admission that any such contract or lease is in fact an Executory Contract or that any Debtor has any liability thereunder.

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtor under any executory or non-executory contract or any unexpired or expired lease.

Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor under any executory or non-executory contract or any unexpired or expired lease.

**ARTICLE 6**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

6.1 Vesting of Remaining Assets in the Creditor Trust

On the Effective Date, except as otherwise expressly provided in the Plan and pending the Transition Date and/or the Turnover Date, as applicable, title to and control in the Estate Property shall vest in the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind, which Estate Property includes: (i) all Cash of the Debtor; (ii) all Accounts Receivable of the Debtor; (iii) all rights to collect assessments owed to the Debtor; (iv) all assets of the Debtor as of the Effective Date; and (v) the rights to the D.R. Horton Proceeds and all beneficial rights under the D.R. Horton Settlement..

The Trustee shall have the power and authority to enter into the Creditor Trust Agreement on the Effective Date. The proposed Creditor Trust Agreement is attached hereto as **Exhibit B**.

6.2 Appointment of the Creditor Trustee

Pursuant to 11 U.S.C. § 1129(a)(5), consistent with the interests of creditors and equity security holders, and consistent with public policy, the Confirmation Order shall appoint, effective on the Effective Date, Barry Mukamal of Kapila Mukamal to act as the Creditor Trustee. The Creditor Trustee shall be free to act as he deems appropriate, in his discretion, to effectuate the terms of the Plan and the Creditor Trust Agreement.

The Creditor Trustee shall serve for the duration of the Creditor Trust, subject to earlier death, resignation, incapacity or removal as provided in the Creditor Trust Agreement. If Barry Mukamal is not able to serve for the duration of the Creditor Trust, a successor shall be chosen pursuant to the terms of the Creditor Trust Agreement. The Creditor Trustee shall be authorized, without further order of the Bankruptcy Court, to employ such persons, including professionals, as deemed necessary to enable the Creditor Trustee to perform his functions under the Plan, and the costs of such employment and other expenditures shall be paid solely from assets of the Creditor Trust in accordance with the Creditor Trust Agreement.



The Creditor Trustee shall perform his obligations under the Plan with bond. The Creditor Trustee shall have no liability to the Debtor, the Reorganized Debtor, or any person or entity entitled to receive a distribution pursuant to the Plan for any losses, damages, claims or causes of action, other than those resulting from the Creditor Trustee's action or failure to act arising out of, in connection with or resulting from the Creditor Trustee's gross negligence or willful misconduct as found by a Final Order. The Reorganized Debtor shall indemnify, defend and hold the Creditor Trustee and his agents and advisors harmless from and against any claims, damages, costs, fines, penalties, liabilities, attorneys' and other professional fees and disbursements, suffered, incurred by, or asserted against any such party in connection with the rendition of services to the Creditor Trust, provided that such indemnification shall not apply to the extent any such claims, damages, costs, fines, penalties, liabilities, attorneys' and other professional fees and disbursements, resulted from gross negligence or willful misconduct of the Creditor Trustee, its agent or advisors, as the case may be, as determined by a Final Order. Any such indemnification claims shall be paid prior and in preference to any other payments or distributions to be made from the Creditor Trust.

### 6.3 Purpose of the Creditor Trustee

The Creditor Trustee shall be the "representative of the estate" as contemplated by §1123(b)(3)(B) of the Bankruptcy Code for all purposes. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. Although the Creditor Trustee was not selected by the UST and will not be supervised by the UST, the UST has standing to appear and participate in all aspects of the case and to seek removal of the Creditor Trustee. The Creditor Trustee shall be bonded in favor of the Creditor Trust for the funds held in the Creditor Trust. Such bond shall be cancelable on thirty (30) days' notice to the UST and all costs and expenses related to the bond shall be paid by the Creditor Trust.

### 6.4 Preservation of Litigation Rights and Investigations

Under the Plan, the Creditor Trustee retains all rights of, and on behalf of, the Debtor and the Creditor Trust to commence and pursue any and all Causes of Action, regardless of whether or not such Causes of Action are specifically enumerated herein or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as *res judicata* or limit the Creditor Trustee's rights to commence and pursue any and all Causes of Action to the extent the Creditor Trustee deems appropriate. Causes of Action and Avoidance Actions may, but need not, be pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date, to the extent warranted.

Creditors should understand that the Creditor Trustee may assert certain Causes of Action, including Avoidance Actions, against them. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim, Causes of Action or Avoidance Actions against a particular creditor in the, Plan, Schedules of Assets and Liabilities, Statement of Financial Affairs; or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtor or the Creditor Trustee do not possess or do not intend to prosecute a particular Causes of Action if a particular Creditor votes to accept the Plan.



Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in this Plan, or any Final Order, the Debtor expressly reserves any and all Causes of Action, including Avoidance Actions, for later enforcement and prosecution by the Creditor Trustee (including, without limitation, those not specifically identified herein, in the Plan, or otherwise, or which the Debtor may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time, or facts or circumstances which may change or be different from those which the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to any such Cause of Action or Avoidance Action upon or after the confirmation or consummation or implementation of this Plan. In addition, the Creditor Trustee expressly reserves the right to pursue and/or adopt any Causes of Action, including Avoidance Actions, alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order.

It is not intended and it should not be assumed (nor shall it be deemed) that because any existing or potential Cause of Action or Avoidance Action has not yet been identified or pursued by the Debtor, or the Trustee, or are not set forth in the Plan, or otherwise, that any such Cause of Action or Avoidance Action has been waived or expunged.

#### 6.5 Books and Records

On the Effective Date, the books and records (in any form, including all electronic records) that the Debtor is in possession of shall be transferred to the Creditor Trust. The Creditor Trustee shall be free, in his discretion, to release such books and records to the Reorganized Debtor without Court approval in order to effectuate an orderly transition of operations to the Reorganized Debtor. Further, the Creditor Trustee shall succeed in all of the Debtor's rights to access, and therefore shall have access to, the Debtor's books and records.

#### 6.6 Creditor Trustee's Powers and Authority

The Creditor Trustee shall have the power and authority to perform the acts described in the Creditor Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Plan, including without limitation any set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Creditor Trustee to act as specifically authorized by any other provision of this Plan, the Creditor Trust Agreement, and/or any applicable law, and to act in such manner as the Creditor Trustee may deem necessary or appropriate to take any act deemed appropriate by the Creditor Trustee, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust or to confer on the Creditors the benefits intended to be conferred upon them by this Plan. The Creditor Trustee shall have the power and authority without further approval by the Court to liquidate the Creditor Trust Assets, to hire and pay ordinary course professional fees and expenses of counsel and other advisors, to prosecute and settle objections to Disputed Claims, to prosecute and settle any Causes of Action

and Avoidance Actions, and otherwise take any action as shall be necessary to administer the case and effect the closing of the case, including, without limitation, as follows:

- Open and maintain accounts in accordance with section 345 of the Bankruptcy Code.
- Perfect and secure the Creditor Trustee's right, title and interest to the assets comprising the Creditor Trust Assets.
- Release, convey or assign any right, title or interest in the Creditor Trust Assets.
- Purchase insurance, including "tail" coverage, to protect the Creditor Trustee and the Creditor Trust Assets from liability or for any other purpose.
- Deposit estate funds, draw checks and make disbursements thereof.
- Employ and retain, and discharge and dismiss, appraisers, financial advisors, attorneys, accountants, auctioneers, agents and such other professionals as the Creditor Trustee may deem necessary or appropriate to assist in fulfilling the purposes of the Plan, including payment to its professionals, in connection with any ongoing litigation being pursued or conducted by the Creditor Trustee, and to pay reasonable charges, commissions and compensation to all of the foregoing.
- Exercise any and all powers granted to the Creditor Trustee by any agreements, by common law or any statute which serves to increase the extent of the powers granted to the Creditor Trustee hereunder.
- Take such other action as the Creditor Trustee may determine to be necessary or desirable to carry out the purposes of this Plan.
- Commence or prosecute, for its own account or in the name of the Debtor any Causes of Action and Avoidance Actions, as well as any lawsuit or other legal or equitable action, including filing objections to Claims, in any court of competent jurisdiction which are necessary to carry out the terms and conditions of the Plan.
- Settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements) any disputes or controversies in favor of, or against, the Creditor Trustee.
- Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable.
- Commence and prosecute all Causes of Action and Avoidance Action which can be brought by a trustee or the Debtor under the Bankruptcy Code or any other law, theory or other manner and prosecute or defend all appeals on behalf of the Debtor or the Creditor Trustee.
- Obtain a bond in favor of the Creditor Trust for the funds held in the Creditor Trust.

- Prepare and file tax returns, as mandated by applicable state and federal law, and collect income tax refunds, or to assign the foregoing tasks to the Reorganized Debtor.
- In general, without in any manner limiting any of the foregoing, deal with the Creditor Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to, or different from, the ways above specified at any time or times hereafter, including without limitation opening and/or establishing escrow accounts, trust accounts or other bank accounts.
- Operate the Reorganized Debtor pending the Turnover Date.

#### 6.7 Privileges

All of the Debtor's privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Privileges") shall be transferred, assigned and delivered to the Creditor Trust, without waiver, limitation or release, and shall vest with the Creditor Trust. The Creditor Trustee shall hold and shall be the beneficiary of all Privileges and entitled to assert all Privileges.

#### 6.8 Operations of the Reorganized Debtor Pending the Transition Date.

The operations of the Master Association shall remain with the Reorganized Debtor. The Creditor Trust will not engage in the conduct of a trade or business. The Creditor Trustee shall manage and control the operations of the Reorganized Debtor until the Transition Date. At such time, the Creditor Trustee shall turn over management and control to the Reconstituted Board of the Reorganized Debtor, as well as such portion of the Creditor Trust Balance that the Creditor Trustee determines is necessary for the Reconstituted Board to direct the operations of the Reorganized Debtor in the ordinary course. Notwithstanding the foregoing, the Creditor Trustee may in his sole discretion assign or relinquish management and control over certain aspects of operations to the Reconstituted Board of the Reorganized Debtor prior to the Transition Date provided that the Reconstitution Event has occurred. The Creditor Trustee shall also turn over to the Reorganized Debtor any (either originals or copies of) documents or records that the Reorganized Debtor reasonably requires, but the Creditor Trustee may retain any (originals or copies of) documents or records the Creditor Trustee believes is necessary to conclude the administration of the Creditor Trust, and shall have thereafter have the right to turn over the balance of such documents to the Reorganized Debtor.

Pending the Turnover Date, the Creditor Trustee shall oversee the rehabilitation of the Master Association property and, with the input of and consultation with the Reconstituted Board of the Reorganized Debtor, shall act as disbursing agent for all rehabilitative and construction related projects involving the Master Association, and shall disburse funds from the Creditor Trust Balance as necessary for such purposes. Thereafter, at the written election of the Reconstituted Board of the Reorganized Debtor and the occurrence of the Turnover Date, the Creditor Trustee shall turn over the Creditor Trust Balance to the Reorganized Debtor and shall be released of all further obligations or responsibilities to the Reorganized Debtor.

As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in complete accordance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized Debtor's Board of Directors has been properly constituted. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration (the "Reconstitution Event").

**The Creditor Trustee and any Professionals retained by the Creditor Trustee shall not have or incur any liability to the Reorganized Debtor, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Creditor Trustee's management or operations of the Reorganized Debtor pending the Turnover Date; except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.**

#### 6.9 Federal Income Tax Treatment of the Creditor Trust

For federal income tax purposes, it is intended that the Creditor Trust be classified as a liquidating trust under Treasury Regulation section 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a Distribution of an undivided interest in the Creditor Trust Assets and then contributed such interests to the Creditor Trust. Thus, the beneficiaries of the Creditor Trust shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Creditor Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. The Creditor Trust Agreement shall (i) state that the primary purpose of the Creditor Trust is to liquidate the Creditor Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is not more than five (5) years from the date of creation of the Creditor Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within two (2) months before the beginning of the extended term.

The Creditor Trustee shall be responsible for filing all federal, state and local tax returns for the Creditor Trust. The Creditor Trustee shall file all federal tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4. The Creditor Trustee also will annually send to each beneficiary of the Creditor Trust a separate statement regarding the receipts and expenditures of the Creditor Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Creditor Trustee shall also file (or cause to be filed) any other

statement, return or disclosure relating to the Creditor Trust that is required by any governmental unit.

Nothing in this Plan shall compel the Creditor Trustee to treat any Income Tax Refund(s) obtained pursuant to Tax Code section 6411 as unrestricted cash until completion of the associated audit by the relevant authorities.

#### 6.10 Tax Reporting for Creditor Trust

As soon as practical after the Effective Date, the Creditor Trustee shall determine the fair market value, as of the Effective Date, of all other Creditor Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Creditor Trust (including, without limitation, the Debtor, the Trustee, and beneficiaries of the Creditor Trust) for all United States federal income tax purposes.

Allocations of Creditor Trust taxable income among the beneficiaries of the Creditor Trust shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all its assets (valued at their tax book value) to beneficiaries of the Creditor Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent Distributions from the Creditor Trust. Similarly, taxable loss of the Creditor Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Creditor Trust Assets. The tax book value of the Creditor Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Creditor Trustee, the Debtor, and the beneficiaries of the Creditor Trust) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Creditor Trustee shall be responsible for payment, out of the Creditor Trust Assets, of any Taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such Taxes shall be (A) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (B) to the extent such Disputed Claims have subsequently been resolved,

deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Creditor Trustee shall have full and exclusive authority and responsibility with respect to all Income Tax Refunds to the same extent as if the Creditor Trustee were, as applicable, the Debtor or debtor-in-possession, including the filing of tax returns (including amended tax returns), or requests for refunds for the Debtor.

#### 6.11 Engagement of Post-Confirmation Professionals and Compensation

The Creditor Trustee may engage Post-Confirmation Professionals, such as counsel, financial advisors and other professionals including those engaged by the Trustee during the Chapter 11 Case, to represent him in connection with his duties hereunder. In his capacity as Creditor Trustee, the Creditor Trustee shall be compensated at the rate of 3% of the gross total of all distributions made by the Creditor Trustee of assets from the Creditor Trust. The Creditor Trustee and the Post-Confirmation Professionals shall be entitled to be paid 90% of their fees and 100% of their expenses on a monthly basis prior to filing fee applications. Post-Confirmation Professionals may file periodic fee applications seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts previously paid on a monthly basis. Upon the filing of each such application, the Post-Confirmation Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees.

## ARTICLE 7

### PROVISIONS GOVERNING DISTRIBUTIONS

#### 7.1 In General

The Creditor Trustee shall make all Distributions required under the Plan.

#### 7.2 Distributions on Allowed Claims Only

Distributions under the Plan shall be made only to the holders of Allowed Claims. Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be made as soon as practicable after the Effective date and as appropriate thereafter; provided however, that the Creditor Trustee shall have sole and absolute discretion as to the timing of any Distribution until all Allowed Claims are satisfied under the Plan. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive any consideration. If a Disputed Claim becomes an Allowed Claim, in whole or in part, by a Final Order, the Creditor Trustee shall distribute the portion of the Distribution reserved for the particular Disputed Claim in accordance with the Plan on the next Distribution Date. If a Disputed Claim is disallowed in whole or in part, then the portion of the Distribution reserved for such Disputed Claim shall be distributed on the next Distribution Date to holders of Allowed Claims so that such holders receive their Pro Rata Share of such portion of the Distribution.



### 7.3 Interest

Post-petition interest shall accrue on Claims at the rate specified in 28 U.S.C. § 1961, for the calendar week preceding the First Distribution Date.

### 7.4 Place and Manner of Payments of Distributions

Distributions to holders of Allowed Claims shall be made by mailing such Distribution to the Claimholder at the address listed in any proof of claim filed by the Claimholder or at such other address as such Claimholder shall have specified for payment purposes in a written notice received by the Debtor at least twenty (20) days before a Distribution Date. If a Claimholder has not filed a proof of claim or interest or sent the Creditor Trustee a written notice of payment address, then the Distribution(s) for such Claimholder will be mailed to the address identified in the Schedules of Assets and Liabilities. The Creditor Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Claimholders, at the request of the Creditor Trustee, must provide appropriate taxpayer identification numbers, related withholding information, and any appropriate forms required by the Internal Revenue Service to the Creditor Trustee; otherwise, the Creditor Trustee may suspend Distributions to any Claimholders who have not provided such taxpayer identification numbers and related withholding information until the Creditor Trustee receives any information and/or document requests.

### 7.5 No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

### 7.6 Disputed Claims Reserve

In determining the amount of Distributions to be made under the Plan to holders of Allowed Claims, the Creditor Trustee shall hold Cash in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

### 7.7 Distribution After Allowance

As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive from its Disputed Claims Reserve a Distribution in an amount equal to the Distribution that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made, without interest, in accordance with the Class of Claims to which such Claim belongs.



#### 7.8 Distribution After Disallowance

If and when a Disputed Claim or any portion thereof becomes a Disallowed Claim, the Pro Rata Share of the Distributions to which each holder of an Allowed Claim in the Class of Claims to which such Claim belongs is entitled, shall increase commensurately. Accordingly, the Creditor Trustee shall have the right to make subsequent Distributions in accordance with the provisions of the Plan.

#### 7.9 Undeliverable Distributions

If a Distribution to any Claimholder is returned as undeliverable, the Creditor Trustee shall use reasonable efforts to determine such Claimholder's then current address. After reasonable efforts, if the Creditor Trustee still cannot determine such Claimholder's then-current address, then unless and until the Creditor Trustee is notified of such Claimholder's then-current address, no further Distributions shall be made to such Claimholder, unless and until the Creditor Trustee is notified of such Claimholder's then-current address. Such Distributions shall be set aside and held in a segregated interest bearing account. If the Creditor Trustee is notified of such Claimholder's then-current address, then such Distribution, together with any interest earned thereon and proceeds thereof (less any withholding pursuant to Section 7.11) shall be paid or distributed to such Claimholder within ten (10) Business Days. If the Creditor Trustee cannot determine, or is not notified of, a Claimholder's then-current address within six (6) months after the Effective Date, the Distribution reserved for such Claimholder shall be deemed an unclaimed Distribution, and Section 7.10 of the Plan shall be applicable thereto.

#### 7.10 Unclaimed Distributions

If the current address for a Creditor entitled to a Distribution under the Plan has not been determined within six (6) months after the Effective Date or such Creditor has otherwise not been located, then such Creditor (i) shall no longer be a Creditor and (ii) shall be deemed to have released such Claim. If such Creditor was entitled to a portion of the Distribution, then that Claimholder's Distribution shall be distributed Pro Rata in accordance with the Plan to the other holders of Allowed Claims receiving the Distribution on the next Distribution Date to the extent that holders of Allowed Claims have not been satisfied in full, in which case such funds will be distributed to the Reorganized Debtor on the Turnover Date.

#### 7.11 Withholding

The Creditor Trustee may at any time withhold from a Distribution to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Creditor Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Creditor Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of Section 7.11 of the Plan. Notwithstanding the foregoing but without prejudice to the Debtor's rights, such

Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution under the Plan.

7.12 No De Minimis Distributions

Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$100 will be made to any Entity. No consideration will be provided in lieu of the *de minimis* distributions that are not made under Section 7.12, and the Creditor Trustee shall be authorized to remit such amounts to a charitable organization pursuant to Section 7.14.

7.13 Compliance with Tax Requirements

To the extent applicable, the Creditor Trustee in making Distributions under this Plan shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Creditor Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides to the Creditor Trustee the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Creditor Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the Creditor Trustee with any information necessary to comply with any withholding requirement of any governmental unit within sixty (60) days after the date of first notification by the Creditor Trustee to the holder of the need for such information, then the holder's Distribution shall be treated as an unclaimed Distribution. The Creditor Trustee is required to identify, by tax identification number, each holder of a Claim that receives a Distribution pursuant to the Plan. To ensure that the Creditor Trustee has a tax identification number for each holder of a Claim, Claimants will be sent a Form W-9 (or may download one at [www.irs.com](http://www.irs.com)). Claimants must return the completed and signed Form W-9 to the Creditor Trustee at the following address, postage pre-paid:

**Barry Mukamal**  
**c/o Genovese Joblove & Battista, P.A.**  
**Attn: Michael L. Schuster, Esq.**  
**100 SE 2<sup>nd</sup> Street, Suite 4400**  
**Miami, FL 33131**  
**Tel: (305) 349-2300**  
**Fax: (305) 349-2310**  
**Email: [MSchuster@gjb-law.com](mailto:MSchuster@gjb-law.com)**

If a Claimant does not return the completed Form W-9 to the Creditor Trustee, the Creditor Trustee is allowed to retain Distributions to Allowed Claims until the appropriate tax identification information is provided. If the Creditor Trustee requests a tax identification number from a Claimant, and the Claimant does not respond by providing it within sixty (60) days of the first request by the Creditor Trustee, the Claimant shall lose the right to receive a Distribution pursuant to the Plan.

7.14 Authority to Reserve Funds to Close These Bankruptcy Case and to Donate Any Balance to a Charitable Organization

If at any time the Creditor Trustee determines in his sole discretion that the expense of administering the Creditor Trust so as to make a final Distribution to the beneficiaries of the Creditor Trust is likely to exceed the value of the assets remaining in the Creditor Trust, the Creditor Trustee shall apply to the Court for authority to (i) reserve any amounts necessary to close the Bankruptcy Case, (ii) donate any balance to a charitable organization exempt from federal income tax under 501(c)(3) of the Internal Revenue Code, and (iii) close the Bankruptcy Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

7.15 Setoffs and Recoupments

The Creditor Trustee may, pursuant to Bankruptcy Code section 553 or applicable non-bankruptcy law, setoff and/or recoup against any Allowed Claim the Distributions to be made pursuant to this Plan (before any Distribution is made on account of such Claim) and the Causes of Action or Avoidance Actions that the Creditor Trustee may hold against the holder of such Allowed Claim. Neither the failure to effectuate such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Creditor Trustee of any such Causes of Action or Avoidance Actions that the Creditor Trustee may hold under Bankruptcy Code section 553 or applicable non-bankruptcy law.

## ARTICLE 8

### EXTINGUISHMENT OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; RELEASE, EXCULPATION AND INDEMNIFICATION

8.1 Discharge

Except as otherwise provided in the Plan, the rights granted in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for, and in satisfaction of, all Claims of any nature whatsoever against the Estate and the Estate Property, whether such Claims arose before or during the Bankruptcy Case or in connection with implementation of the Plan. **Pursuant to § 1141(d)(3) of the Bankruptcy Code, confirmation of this Plan will not discharge the Debtor.**

8.2 Releases

**Except as otherwise provided for in the Plan, on the Effective Date the Debtor (on behalf of itself and the Estate), as applicable, shall be deemed to have released the Trustee and the estate Professionals from any and all claims, causes of actions, and other liabilities arising during the Bankruptcy Case before the Effective Date from any act or omission in connection with, relating to, or arising out of the Bankruptcy Case and related proceedings, including, but not limited to, filing of the Bankruptcy Case, administration of the Bankruptcy Case, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan (if any) (including all Distributions thereunder), together with any matters arising from ambiguities or inconsistencies with the Debtor's**

**Declaration and Bylaws; provided, however, that the Debtor (on behalf of itself and the Estate), shall not be deemed to have released any such Entity from liability for willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.**

### **8.3 Exculpation**

**Except as otherwise provided for in the Plan, Professionals shall not have or incur any liability to any holder of Claim or Interest, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case and related proceedings, including, but not limited to, filing of the Bankruptcy Case, administration of the Bankruptcy Case, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan and Disclosure (if any); except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order. In all such instances, such parties shall be and have been entitled to reasonably rely on the advice of counsel in all respects regarding their duties and responsibilities in connection with the Bankruptcy Case and under the Plan. Nothing contained in Section 8.3 of the Plan shall prevent or limit any party's right to object to any Professional Compensation Claim asserted in the Bankruptcy Case.**

### **8.4 Term of Existing Injunctions or Stays**

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to Bankruptcy Code §§ 105, 362 or 524, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

### **8.5 Indemnification of Creditor Trustee**

The Creditor Trustee and its agents, employees, officers, members, directors, professionals and principals (collectively, the "Indemnified Parties") shall be indemnified and held harmless by the Creditor Trust from the Creditor Trust Assets for any losses, claims, damages, costs, expenses and other liabilities, including, without limitation, reasonable attorneys' fees, disbursements and related expenses, which the Indemnified Parties may incur, or to which the Indemnified Parties may become subject to, in connection with carrying their duties and responsibilities under the Plan and any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of their acts or omissions on or after the date of this Agreement; provided, however, that the Creditor Trust shall have no obligation to indemnify any of the Indemnified Parties for any losses or claims that are adjudicated by the Bankruptcy Court, or other court having jurisdiction, resulting from any act or omission by any of the Indemnified Parties that constitutes gross negligence, recklessness or intentional or willful misconduct; provided further, that nothing in Section 8.5 of the Plan shall be deemed to restrict the Creditor Trustee's right to receive an indemnity based on any act or omission taken in accordance with the provisions of this Plan. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Creditor Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Creditor Trustee in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the

amounts so advanced to the Creditor Trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to indemnity under the provisions of Section 8.5 of the Plan.

## ARTICLE 9

### INJUNCTION AGAINST ENFORCEMENT OF PRECONFIRMATION CLAIMS AND EQUITY INTERESTS

#### 9.1 Injunction Enjoining Holders of Claims Against, and Equity Interests in, Debtor

Except as otherwise expressly provided in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against, or Equity Interests in, the Debtor's Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets arising on or before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets regarding such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan) to the fullest extent provided under Bankruptcy Code section 524:

- (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets (including, all suits, actions, and proceedings that are pending on the Effective Date, which shall be deemed withdrawn and dismissed with prejudice);
- (ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;
- (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;
- (iv) asserting any right of subrogation, setoff, or recoupment of any kind, directly or indirectly, against any obligation due the Estate, the Estate Property, the Creditor Trust, and the Creditor Trust Assets; and
- (v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

#### 9.2 Derivative Litigation Claims

Claims, Causes of Action, and Avoidance Actions that are derivative of or from the Debtor (the "Derivative Litigation Claim(s)") are Estate Property under Bankruptcy Code section 541. On and after the Effective Date, all such Derivative Litigation Claims, regardless of whether pending on the Petition Date, will be retained by, vest in, and/or become property of the Creditor Trust and shall be administered by the Creditor Trustee. Unless a Derivative Litigation Claim against a Creditor or other Person is expressly waived, relinquished, released,

compromised or settled in the Plan or any Final Order, such Claims, Causes of Actions, and Avoidance Actions are expressly reserved for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Claims, Causes of Action, and Avoidance Actions on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt any claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor are a defendant or an interested party, against any Person or entity, including the plaintiffs or co-defendants in such lawsuits. All named plaintiffs in the actions pending on the Effective Date relating to any Derivative Litigation Claims and their respective servants, agents, attorneys, and representatives shall, on and after the Effective Date, be permanently enjoined, stayed, and restrained from pursuing or prosecuting any Derivative Litigation Claim and the Creditor Trustee shall be, without need of further order, substituted as plaintiff upon his request. Nothing herein shall impair claims or causes of action that any Person may have directly (as opposed to derivatively) against any other Person.

## ARTICLE 10

### RESOLUTION OF OBJECTIONS TO PROOFS OF CLAIM; ESTIMATION OF CLAIMS

#### 10.1 Right to Object to Claims

On and after the Effective Date, the Creditor Trustee shall have the sole authority and discretion to examine, object to, contest the allowance of, compromise, settle, or otherwise resolve, or withdraw any objections to, any Claims, Equity Interests, Disputed Claims or Disputed Equity Interests (except those Claims specifically Allowed by the Plan) without approval of the Bankruptcy Court.

#### 10.2 Deadline for Objecting to Claims

After the Effective Date, objections to, and requests for estimation of, Claims against and Equity Interests in the Debtor may be interposed and prosecuted only by the Creditor Trustee. Such objections and requests for estimation including, without limitation, any reduction, recharacterization, subordination or other modification in whole or in part, which may be brought by motion, objection or adversary proceeding, shall be served on the respective Claimant or Interest holder and filed with the Bankruptcy Court by the Claim Objection Deadline; otherwise such Claims and Equity Interests shall be deemed allowed in accordance with Bankruptcy Code section 502.

#### 10.3 Deadline for Responding to Claim Objections

Within thirty (30) days after service of an objection, the Claimholder or Interestholder whose Claim or Equity Interest was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Creditor Trustee and the parties identified in Section 13.2 of the Plan. Failure to file a written response within the thirty (30) day time period shall constitute a waiver and release of the subject Claim or Equity Interest, and shall cause the



Bankruptcy Court to enter a default judgment against the non-responding Claimholder or Interestholder granting the relief requested in the claim objection.

#### 10.4 Estimation of Claims

The Creditor Trustee may, at any time, request that the Bankruptcy Court estimate any contingent, disputed, or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether the Debtor or the Creditor Trustee have previously objected to such Claim or Equity Interest, or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Equity Interest at any time during the litigation concerning any objection to any Claim or Equity Interest, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, disputed, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Creditor Trustee may compromise, settle or resolve any such Claims without Bankruptcy Court approval.

#### 10.5 Adjustment to Claims Without Objection

Any Claim that has been paid and/or satisfied pursuant to the terms of the Plan or a Final Order, or any Claim that has been amended or superseded, may be adjusted and/or expunged on the official claims register by the Creditor Trustee without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 10.6 Disallowance of Claims

Any and all Claims held by an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553, or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, and 724(a), shall be deemed disallowed pursuant to Bankruptcy Code section 502(d), and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, both consequences to be in effect until such time as Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due to the Debtor, the Estate or Creditor Trust by that Entity have been turned over to the Debtor or Creditor Trustee. Any and all proofs of claim filed after the relevant Bar Date shall be disallowed and expunged for all purposes, and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, unless such Creditors request on or before the Confirmation Hearing that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006. All Claims filed after the relevant Bar Date and are (a) not deemed timely filed pursuant to Bankruptcy Rule 9006 on or before the Confirmation Hearing or (b) not the subject of a request that the Bankruptcy Court deem such



late Claim as being timely filed pursuant to Bankruptcy Rule 9006 as of the Confirmation Hearing shall be deemed disallowed and expunged as of the Effective Date without any further notice to that Entity, or action, order, or approval of the Bankruptcy Court.

## ARTICLE 11

### RETENTION, ENFORCEMENT, COMPROMISE, OR ADJUSTMENT OF CAUSES OF ACTION BELONGING TO THE DEBTOR AND THE ESTATE

#### 11.1 Right to Enforce, Compromise, or Adjust Causes of Action

The Creditor Trustee shall have and retain the full power, authority, and standing to commence, prosecute, compromise, or otherwise resolve any Causes of Action. All proceeds derived from such Causes of Action shall revert in the Creditor Trust.

#### 11.2 Maintenance of Causes of Action

The Debtor transfers and assigns to the Creditor Trust, all rights to commence and pursue, or decline to pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including in an adversary proceeding or contested matter filed in one or more of the Bankruptcy Case. The Debtor, through the Creditor Trustee, reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract during the Bankruptcy Case. In accordance with Bankruptcy Code section 1123(b)(3), any Causes of Action that the Debtor may hold against any Entity shall vest in the Debtor or the Creditor Trust, as the case may be. The Creditor Trustee, as the Debtor's successor and the representative of the Creditor Trust, shall have the exclusive right, authority, standing and sole discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw, or litigate to judgment any and all such Causes of Action, and to decline to do any of the foregoing in the Creditor Trustee's business judgment without the consent or approval of any third party and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 11.3 Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor expressly reserves such Cause of Action for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Cause of Action on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt Causes of Action or Avoidances Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

## ARTICLE 12

### RETENTION OF JURISDICTION

#### 12.1 Retention of Jurisdiction

The Bankruptcy Court, even after the Bankruptcy Case has been closed, shall have jurisdiction over all matters arising under, arising in, or relating to the Bankruptcy Case, including proceedings to:

- (a) ensure that the Plan is fully consummated and implemented;
- (b) enter such orders that may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;
- (c) consider any modification of the Plan under Bankruptcy Code section 1127;
- (d) hear and determine all Claims, controversies, suits, and disputes against the Debtor to the full extent permitted under 28 U.S.C. §§ 157 and 1334;
- (e) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- (f) hear, determine, and adjudicate any litigation involving the Causes of Action and Avoidance Actions or other claims constituting Estate Property;
- (g) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any motions or applications involving the Debtor that are pending on or commenced after the Effective Date;
- (h) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, the Creditor Trust Agreement including the operation of the Creditor Trust or the Reorganized Debtor pending the Turnover Date, or any entity's obligations incurred in connection with the Plan, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;
- (i) hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any subordination and similar agreements among Creditors under Bankruptcy Code section 510;
- (j) hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;

(k) enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;

(l) enter an order concluding and terminating the Bankruptcy Case;

(m) correct any defect, cure any omission, or reconcile any inconsistency in the Plan, or the Confirmation Order, or any other document or instruments created or entered into in connection with the Plan;

(n) determine all questions and disputes regarding title to the Estate Property;

(o) classify the Claims of any Claimholders and the treatment of those Claims under the Plan, re-examine Claims that may have been allowed for purposes of voting, and determine objections that may be filed to any Claims;

(p) take any action described in the Plan involving the Debtor;

(q) enter and implement such orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(r) hear, determine and adjudicate any motions, contested or litigated motions brought pursuant to Bankruptcy Code section 1112;

(s) hear, determine, and adjudicate all matters the Bankruptcy Court has authority to determine under Bankruptcy Code section 505, including determining the amount of any unpaid liability of the Debtor or the Estate for any tax incurred or accrued during the calendar year in which the Plan is confirmed;

(t) enter a final decree as contemplated by Bankruptcy Rule 3022; and

(u) hear, determine, and adjudicate any and all claims brought pursuant to the Plan.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 Confirmation Order

The Confirmation Order shall contain all injunctions and other orders that may be necessary to implement the Plan. To the extent necessary, the Confirmation Order shall contain any provisions necessary to provide for the substantial consummation of the Plan on the Effective Date.

#### 13.2 Notices

Except as otherwise specifically provided for in the Plan, whenever a notice is required to be given under the Plan or otherwise, such notice shall be given to the following parties at their

respective addresses, unless a prior notice of change of address has been served on the parties identified in this Section 13.2 indicating a new address:

Creditor Trustee:

Barry E. Mukamal  
Kapila Mukamal  
1 SE 3<sup>rd</sup> Ave, Suite 2150  
Miami, Florida 33131  
Facsimile: (786) 517-5772  
Email: bmukamal@kapilamukamal.com

With a copy to:

Genovese Joblove & Battista, P.A.  
Attn: Michael L. Schuster, Esq.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Facsimile: (305) 349-2310  
Email: mschuster@gjb-law.com

The Office of the United States Trustee:

Office of the United States Trustee  
51 S.W. First Avenue  
Room 1204  
Miami, Florida 33130  
Facsimile: (305) 536-7360  
Email: johanna.armengol@usdoj.gov  
Attn: Johanna Armengol, Esquire

### 13.3 Dates

The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Plan.

### 13.4 Further Action

Nothing contained in the Plan shall prevent the Debtor or the Creditor Trustee from taking any actions that may be necessary to consummate the Plan, even though such actions may not specifically be provided for in the Plan.

### 13.5 Exhibits

All exhibits attached to the Plan are incorporated in the Plan by reference and are an integral part of the Plan as though fully set forth herein.

### 13.6 Binding Effect

The Plan shall be binding on, and inure to the benefit of, the Debtor, the Claimholders and Interestholders, all other parties in interest and their respective executors, successors, heirs, and assigns, regardless of whether those parties voted, or had a right to vote, to accept the Plan.

### 13.7 Deemed Consent

By submitting a Ballot or receiving a Distribution under, or any benefit pursuant to, the Plan, each holder of a Claim shall be deemed to have specifically consented to the terms of the Plan, including treatment and any release and exculpation provisions contained herein.

### 13.8 Governing Law

Except to the extent that the Bankruptcy Code, Bankruptcy Rules, or other non-bankruptcy federal law are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to any conflicts of law principles.

### 13.9 Severability

If the Bankruptcy Court determines that any provision of this Plan is unenforceable either on its face or as applied to any Claim transaction, the Plan Proponent may modify this Plan in accordance with Section 13.14. Such a determination of unenforceability shall not (i) limit or effect the enforceability and operative effect of any other provision of this Plan or (ii) require the solicitation (or re-solicitation, as applicable) of any acceptance or rejection of this Plan.

### 13.10 Waiver of Taxes

The making or delivery of an instrument of transfer under this Plan, including, but not limited to, the issuance, transfer or exchange of any security under this Plan, may not be taxed under any law imposing a stamp or similar tax.

### 13.11 Rounding of Amounts

Notwithstanding anything to the contrary in the Plan, the Creditor Trustee may round down all Distribution amounts payable in Cash under the Plan to the next lowest whole dollar amount.

### 13.12 Withdrawal or Revocation of the Plan

The Plan Proponent reserves the right to revoke or withdraw the Plan before the Confirmation Date. If the Plan Proponent revokes or withdraws the Plan, then the Plan shall be null and void, and nothing contained in the Plan shall constitute a waiver or release of any Claims, or prejudice in any manner to the rights of the Plan Proponent, the Debtor or any other Entity.

### 13.13 Reservation of Rights

Neither the filing of the Plan nor any statement or provision contained in the Plan, nor the taking of any action with respect to the Plan, shall (i) be or be deemed to be an admission against interest and (ii) until the Effective Date, be or be deemed to be a waiver of any rights (a) against any other person or (b) in any of the property and assets of any other Person, and, until the Effective Date, all such rights are specifically reserved.

### 13.14 Defects, Omissions, and Amendments

The Plan Proponent may, with the approval of the Bankruptcy Court and without notice to holders of Claims, insofar as it does not materially and adversely affect holders of Claims, correct any defect, omission, or inconsistency in the Plan in such a manner and to such extent necessary or desirable to expedite the execution of the Plan. The Plan Proponent may propose amendments or alterations to the Plan before or after confirmation as provided in Bankruptcy Code section 1127 if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123 and the Plan Proponent has complied with Bankruptcy Code section 1125. The Plan Proponent may propose amendments or alterations to the Plan before or after the Confirmation Date but prior to substantial consummation, in a manner that, in the opinion of the Bankruptcy Court, does not materially and adversely affect holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123, the Plan Proponent has complied with Bankruptcy Code section 1125, and after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under Bankruptcy Code section 1129.

### 13.15 Good Faith

The Plan Proponent will seek a finding in the Confirmation Order that (i) the Plan has been proposed in good faith and in compliance with the provisions of the Bankruptcy Code and (ii) the solicitation of acceptances or rejections of the Plan by all Persons and the offer, issuance, sale, or purchase of any security offered or sold under the Plan (if any) has been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

## **ARTICLE 14**

### **CONDITIONS TO EFFECTIVENESS OF THE PLAN**

#### 14.1 Conditions Precedent to Effective Date of Plan

The occurrence of the Effective Date and the Consummation of the Plan are subject to satisfaction of the following conditions precedent:

1. Confirmation Order. The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect.
2. Creditor Trust and Appointment of Creditor Trustee. The Creditor Trust shall be created pursuant to the terms of the Plan, and the appointment of the Creditor Trustee shall be

approved by the Bankruptcy Court.

3. Execution of Documents; Other Actions. All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed, including the Creditor Trust Agreement.

## ARTICLE 15

### REQUEST FOR CONFIRMATION OF THE PLAN

#### 15.1 Request for Confirmation of the Plan

The Trustee requests confirmation of the Plan under sections 1129(a) and/or 1129(b) of the Bankruptcy Code, as appropriate.

Respectfully submitted this 5th day of June, 2017.

GENOVESE JOBLOVE & BATTISTA, P.A.  
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**EXHIBIT A**

**GLOSSARY OF DEFINED TERMS**

Defined terms appear below:

1) “Account Receivable” means any debt owed to the Debtor by any third party, including (without limitation) the Assessments and any rights (including liens) acquired by the Master Association in connection with its efforts to collect the Assessments.

2) “Administrative Expense Claim” means any right to payment constituting a cost or expense of administration of Bankruptcy Cases under sections 330, 503(b), and 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtor’s Estate, (b) any actual and necessary costs and expenses of operating the Debtor’s businesses, (c) any indebtedness or obligations incurred or assumed by the Debtor during the Bankruptcy Case, and (d) Professional Compensation Claims; (e) all obligations designated as Allowed Administrative Expense Claims pursuant to an order of the Bankruptcy Court; and (f) any fee or charge assessed against the Debtor’s Estate under section 1930 of chapter 123 of Title 28 of the United States Code; provided, however, such Administrative Expense Claims must be filed by the Administrative Expense Claim Bar Date or the Professional Compensation Bar Date, as applicable.

3) “Administrative Expense Claim Bar Date” means fourteen days prior to the Confirmation Hearing Date or such other date established by Order of the Court; provided, however, that the Administrative Expense Claim Bar Date does not apply to Professional Compensation Claims.

4) “Administrative Tax Claim” means an Administrative Expense Claim held by a Governmental Unit for taxes (and for any interest related to such taxes) for any tax year or period, all or any portion of that accrued or became due on or after the Petition Date through and including the Effective Date.

5) “Allowance Date” means (a) as to a Disputed Claim, the date on which such Disputed Claim becomes an Allowed Claim by Final Order; (b) as to a Claim Allowed by Final Order, the date on which the Claim becomes an Allowed Claim under the Final Order; and (c) as to any other Claim, the date on which such Claim became an Allowed Claim in accordance with the Plan.

6) “Allowed” means, subject to Section 10.1 of the Plan, with respect to any Claim against or Equity Interest in the Debtor, a Claim or Equity Interest allowable under 11 U.S.C. § 502(a), (a) any Claim against any Debtor that has been listed by the Debtor in the Schedules (as such Schedules may be amended by the Debtor from time-to-time in accordance with Bankruptcy Rule 1009) as liquidated in amount and not disputed or contingent and for which no contrary proof of Claim has been filed or no timely objection to allowance or request for estimation has been interposed, (b) any timely filed proof of Claim as to which no objection has been or is interposed in accordance with Section 10.2 of the Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules,

or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder of such Claim, (c) any Claim expressly allowed by a Final Order or under the Plan, (d) any Claim that is compromised, settled or otherwise resolved pursuant to a Final Order of the Bankruptcy Court, or under Section 10.1 of the Plan. For purposes of determining the amount of an Allowed Claim (other than a Claim specifically Allowed under the Plan), there shall be deducted therefrom an amount equal to the amount of any claim that the Debtor may hold against the Creditor under 11 U.S.C. § 553.

7) “Assessment” means any income or payment Majorca Isles is entitled to receive pursuant to the Declaration and Bylaws.

8) “Assumed Executory Contracts” means, collectively, the Executory Contracts that (a) will or have been assumed by a Final Order, including the Confirmation Order; (b) are deemed assumed pursuant to the Plan; or (c) are the subject of a motion to assume pending on or before the Effective Date.

9) “Avoidance Action(s)” means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under Chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, sections 506, 510, 522, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, and the proceeds thereof, or otherwise to exercise the avoidance powers provided under the Bankruptcy Code. All such Avoidance Actions are expressly preserved for post-confirmation investigation and prosecution under the Plan.

10) “Bankruptcy Case” means the bankruptcy case filed by the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

11) “Bankruptcy Code” means title 11 of the United States Code.

12) “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the Southern District of Florida, Miami Division, or, in the event that court ceases to exercise jurisdiction over the Bankruptcy Case, such court that may have jurisdiction over the reorganization of the Debtors under chapter 11 of the Bankruptcy Code.

13) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Local Rules.

14) “Bar Date” means the deadline established by the Bankruptcy Court for filing proofs of claim in the Bankruptcy Cases for creditors, and July 12, 2010.

15) “Board of Directors” or “Board” means the Board of Directors of Majorca Isles Master Association, Inc.

16) “Business Day” means any day other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

17) “Bylaws” means the Bylaws of Majorca Isles Master Association, Inc., as amended.

18) “Cash” means legal tender of the United States of America and equivalents thereof, including readily marketable direct obligations of the United States of America, certificates of deposit issued by federally insured banks, and money market accounts of federally insured banks.

19) “Cause(s) of Action” means (except as expressly provided otherwise in the Plan, the Confirmation Order, or any document, instrument, release, or agreement entered into in connection with the Plan) all claims, third-party claims, counterclaims, cross-claims, setoff, offset, or other defenses, all choate and inchoate actions, rights of action, causes of action, causes in action, choses in action, Avoidance Actions, suits, debts, dues, sums of money, accounts, rights to payment, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, whether fixed, contingent, matured or unmatured, disputed or undisputed, secured or unsecured, and whether asserted or unasserted, known or unknown, direct or indirect, derivative, or otherwise, and the proceeds thereof, of, or belonging to, the Debtor or the Estate, that are or may be pending on the Effective Date, or instituted by the Creditor Trustee (on behalf of the Creditor Trust) after the Effective Date, against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code or any applicable state law, whether asserted, commenced, or filed in the Bankruptcy Court, or any other court or tribunal;

20) “Claim” has the meaning specified in 11 U.S.C. § 101(5) and includes, without limitation, (a) any right to payment from a Debtor whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; (b) any right to an equitable remedy for breach of performance if such performance gives right to a right of payment from a Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;

21) “Claimant” or “Claimholder(s)” means the holder(s) of a Claim.

22) “Class” means a category of Claims or Equity Interests as described in the Plan.

23) “Confirmation Date” means the date the Confirmation Order is entered on the docket of the Bankruptcy Cases.

24) “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of the Plan.

25) “Confirmation Hearing Date” means the date established by the Bankruptcy Court for the Confirmation Hearing.

26) “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of chapter 11 of the Bankruptcy Code.

27) “Consummation” means the occurrence of the Effective Date.

28) “Creditor” has the meaning specified in 11 U.S.C. § 101(10).

29) “Creditor Trust” means the trust to be created on the Effective Date pursuant to the Creditor Trust Agreement and this Plan.

30) “Creditor Trust Agreement” means the trust agreement that documents the powers, duties and responsibilities of the Creditor Trust and the Creditor Trustee.

31) “Creditor Trust Assets” means all assets transferred to or acquired by the Creditor Trust including without limitation (i) all Estate Property as of the Effective Date; (ii) all Cash of the Debtor; (iii) all Accounts Receivable of the Debtor; (iv) all rights to collect assessments owed to the Debtor; (v) the D.R. Horton Proceeds; and (vi) all beneficial rights under the D.R. Horton Settlement.

32) “Creditor Trust Balance” means all Property of the Creditor Trust following the satisfaction of all Claims, including Professional Compensation Claims, the fees and costs of the Creditor Trustee and the Post-Confirmation Professionals, and all other obligations of the Creditor Trust.

33) “Creditor Trustee” means Barry Mukamal, the trustee for the Creditor Trust pursuant to the terms of, and for the purposes set forth in, the Plan, the Creditor Trust Agreement, and the Confirmation Order.

34) “Cure” means the amount of Cash required to cure defaults necessary to assume or assume and assign an Executory Contract under 11 U.S.C. § 365(b) as determined by the Bankruptcy Court or pursuant to any agreement among the Debtors and the other Party(ies) to the Executory Contract.

35) “Debtor” means Majorca Isles Master Association, Inc.

36) “Declaration” means the Declaration of Master Association Covenants, Easements and Restrictions for Majorca Isles, originally recorded in the Public Records of Miami-Dade County, Florida on March 30, 2006, together with all subsequent amendments thereto.

37) “Deficiency Claim” means any portion of a Claim (a) to the extent the value of the holder’s interest in the Estate Property securing such Claim is less than the amount of such Claim or (b) to the extent the amount of a Claim subject to setoff is less than the amount of the Claim, each as determined by the Bankruptcy Court under 11 U.S.C. § 506(a).

38) “Derivative Litigation Claim” means any claim, cause of action, demand, or any other right to payment derivative of or from the Debtor that are property of the Estate under 11 U.S.C. § 541.

39) “Disclosure Statement” means the disclosure statement (including all exhibits and schedules thereto or referenced therein) regarding the Plan, as may be amended, modified, or supplemented and as approved by the Bankruptcy Court.

40) “Disputed Claim” means, subject to Section 10.1 of the Plan, (i) a Claim in a particular Class as to which a proof of claim has been filed or scheduled is deemed to have been

filed under applicable law or (ii) an Administrative Expense Claim, as to which an objection has been or is filed in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of the Plan, a Claim is a Disputed Claim prior to any objection to the extent that (a) the amount of a Claim specified in a proof of claim exceeds the amount of any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities; (b) any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; or (c) no corresponding Claim has been scheduled by the applicable Debtor in the Schedules of Assets and Liabilities.

41) “Disputed Claim Reserve” means Cash that the Creditor Trustee shall hold in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

42) “Disputed Equity Interest” means, subject to Section 10.1 of the Plan, (i) an Equity Interest in a particular Class as to which a proof of interest has been filed or scheduled is deemed to have been filed under applicable law, as to which an objection has been or is filed in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of the Plan, an Equity Interest is a Disputed Equity Interest prior to any objection to the extent that (a) the amount of an Equity Interest specified in a proof of interest exceeds the amount of any corresponding Equity Interest scheduled by the applicable Debtor in the Schedules of Equity Interests; (b) any corresponding Equity Interest scheduled by the applicable Debtor in the Schedules of Equity Interests has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; or (c) no corresponding Equity Interest has been scheduled by the applicable Debtor in the Schedules of Equity Interests.

43) “Distribution(s)” means the disbursement of Cash or non-Cash consideration, or other assets of the Estate, or corpus of the Creditor Trust to holders of Allowed Claims pursuant to the Plan.

44) “Distribution Date” means any date that a Distribution is made under the Plan.

45) “Distribution Record Date” means the record date for determining entitlement to receive Distributions under the Plan on account of Allowed Claims, which date shall be the date that is thirty (30) calendar days prior to each Distribution Date.

46) “D.R. Horton Defendants” means, collectively, Rafael Roca, Amalia Papadimitriou, Christian Gausman and Karl Albertson and D.R. Horton, Inc.

47) “D.R. Horton Proceeds” sometimes also referred to as the “Settlement Amount”

means \$11,000,000.00, received or to be received pursuant to the D.R. Horton Settlement.

48) “D.R. Horton Settlement” means the compromise of controversy between the Trustee on behalf of the Estate and the D.R. Horton Defendants.

49) “Effective Date” means the first Business Day following the Confirmation Date on which (a) the Confirmation Order is not stayed and (b) all conditions to the effectiveness of the Plan have been satisfied or waived as provided in the Plan.

50) “Entity” means an “entity” as the term is defined in section 101(41) of the Bankruptcy Code.

51) “Equity Interest” means, subject to Section 10.1 of the Plan, (a) all issued, unissued, authorized or outstanding capital stock, partnership interests, membership interests, and any other equity security (as defined in 11 U.S.C. § 101(16)) in any of the Debtor and (b) all warrants, options, and rights (whether fixed or contingent, matured or unmatured, disputed or undisputed), whether contractual, legal, equitable, or otherwise to acquire such equity interests.

52) “Estate” means the bankruptcy estate of the Debtor and all Estate Property comprising the bankruptcy estate of the Debtor within the meaning of 11 U.S.C. § 541.

53) “Estate Property” means all right, title, and interest in and to any and all property of every kind or nature, owned by the Debtor or its Estate on the Effective Date as defined by 11 U.S.C. § 541 and includes, without limitation, Avoidance Actions, Causes of Action, Remaining Assets, Income Tax Refunds, and all rights.

54) “Executory Contracts” means executory contracts and unexpired leases as such terms are used in 11 U.S.C. § 365, including all operating leases, capital leases, and contracts to which any Debtor is a party or beneficiary on the Confirmation Date.

55) “Final Order” means an order or judgment (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired; or (b) in the event an appeal, writ of certiorari, or motion for reargument or rehearing has been filed, such judgment or order has not been reversed, modified, stayed, or amended.

56) “Final Decree” means an order closing the Bankruptcy Cases and indicated that the Estates are fully administered.

57) “First Distribution Date” means a date no later than sixty (60) days after the Effective Date.

58) “GAAP” means the generally accepted accounting principles described in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or in such other statements by such other entity as approved by a significant segment of the accounting profession that are in effect in the United States).

59) “General Unsecured Claim” means an Unsecured Claim against any of the



Debtors that is not (a) an Administrative Expense Claim, (b) an Administrative Tax Claim, (c) a Professional Compensation Claim, (d) a Secured Claim, (e) a Priority Unsecured Tax Claim, (f) a Priority Unsecured Non-Tax Claim, or (g) an Equity Interest.

- 60) “Governmental Unit” has the meaning prescribed in 11 U.S.C. § 101(27).
- 61) “Governmental Unit Bar Date” means the deadline for Governmental Units to file proofs of claim in the Bankruptcy Cases.
- 62) “Impaired” or “Impairment” has the meaning prescribed in 11 U.S.C. § 1124.
- 63) “Insider” has meaning prescribed in 11 U.S.C. § 101(31).
- 64) “Interestholder” means the holder of an Equity Interest.
- 65) “IRS” means the United States Internal Revenue Service.
- 66) “Lien” means a lien, security interest, or other interest or encumbrance as defined in 11 U.S.C. § 101(37) asserted against any Estate Property.
- 67) “Local Rules” means the local bankruptcy rules prescribed by the Bankruptcy Court.
- 68) “Local Association” means (individually and collectively) Majorca Isles I Condominium Association, Inc., Majorca Isles II Condominium Association, Inc., Majorca Isles III Condominium Association, Inc., Majorca Isles IV Condominium Association, Inc. and Majorca Isles V Condominium Association, Inc.
- 69) “Master Association” means the Debtor or the Reorganized Debtor, respectively.
- 70) “Order” means an order or judgment of the Bankruptcy Court.
- 71) “Person” means a “person” as the term is defined in section 101(41) of the Bankruptcy Code and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, regardless of whether they are governments, agencies, or political subdivisions thereof.
- 72) “Petition Date” means April 13, 2012, the date of filing of the Bankruptcy Case.
- 73) “Plan” means the Plan of Reorganization for the Debtor Proposed by the Trustee, as such document may be periodically amended or modified in accordance with its terms.
- 74) “Plan Proponent” means the Trustee.
- 75) “Post-Confirmation Professionals” means any professionals engaged after the Confirmation Date by the Creditor Trustee.
- 76) “Priority Unsecured Non-Tax Claim” means an Unsecured Claim, or that portion



thereof, that is entitled to priority in payment under 11 U.S.C. § 507(a)(2)-(7) and 507(a)(9)-(10).

77) “Priority Unsecured Tax Claim” means an Unsecured Claim, or that portion thereof, that is entitled to priority in payment under 11 U.S.C. § 507(a)(8).

78) “Proceeds” means the funds realized by the Estates or the Creditor Trust from a sale, lease, settlement, adjudication, or other disposition of the Estate Property, Remaining Assets, or Creditor Trust Assets.

79) “Professional” means any professional employed in the Bankruptcy Cases under 11 U.S.C. §§ 327, 328, or 1103, or seeks compensation or reimbursement of expenses in connection with the Bankruptcy Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

80) “Professional Compensation Claim(s)” means (a) a Claim under 11 U.S.C. §§ 326, 327, 328, 330, 331, 503(b), or 1103.

81) “Pro Rata Share” means, as to a particular holder of a particular Claim, the ratio that the amount of such Claim held by such Claimholder bears to the aggregate amount of all Claims in the particular Class or category. Such ratio shall be calculated as if all Claims in the particular Class or category asserted against all Debtors are Allowed Claims as of the Effective Date, unless specifically provided otherwise in the Plan.

82) “Reconstituted Board” means the Board of Directors of the Reorganized Debtor following the Reconstitution Event.

83) “Reconstitution Event” means that date in which the Creditor Trustee determines that the Reorganized Debtor has properly constituted its Board of Directors in complete accordance with the Debtor’s Declaration and Bylaws. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor’s Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration.

84) “Rejection Claim Bar Date” means the first Business Day that is thirty (30) days after the Confirmation Date or such earlier date that may be set by the Bankruptcy Court concerning a particular Executory Contract.

85) “Remaining Assets” means any and all Cash, assets, Estate Property, or other property of the Debtor of every kind and character as of the Effective Date.

86) “Reorganized Debtor” means the Debtor after the Effective Date.

87) “Schedules of Assets and Liabilities” means the schedules of assets and liabilities filed by the Debtor in the Bankruptcy Cases, as may be amended, modified, or supplemented.

88) “Schedule of Equity Interests” means the schedule of holders of Equity Interests in the Debtor filed by the Debtor in the Bankruptcy Case, as amended, modified or supplemented.

89) “Secured Claim” means a Claim for which a Claimant asserts a valid, perfected, and enforceable Lien, not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, or a Claim for which a Claimant asserts a setoff under Bankruptcy Code section 553, but only to the extent of the value, determined in accordance with Bankruptcy Code section 506(a), of the Claimant’s interest in the Debtor’s interest in Estate Property or to the extent of the amount subject to such setoff, as the case may be, unless a timely election has been made under 11 U.S.C. § 1111(b)(2).

90) “Secured Tax Claim” means a Secured Claim for taxes held by a governmental unit, including cities, counties, school districts, and hospital districts, (a) entitled by statute to assess taxes based on the value or use of real and personal property and to obtain an encumbrance against such property to secure payment of such taxes or (b) entitled to obtain an encumbrance on property to secure payment of any tax Claim specified in 11 U.S.C. § 507(a)(8). Secured Tax Claims shall not include any such Claims secured by liens/security interests that are avoidable, unperfected, subject to subordination, or otherwise unenforceable.

91) “Statement of Financial Affairs” means the statement of financial affairs filed by the Debtor in the Bankruptcy Case, as may be amended, modified, or supplemented.

92) “Subordinated Claim(s)” means any Claim that is subordinated pursuant to section 510(a), (b), or (c) of the Bankruptcy Code, or other applicable law, or the Plan, or a Final Order declaring that such Claim is subordinated in right of payment, or a contract or agreement of the holder of such Claim, to the General Unsecured Claims. Subordinated Claims specifically include any Claim for punitive damages provided for under applicable law.

93) “Treasury Regulations” means the regulations promulgated under the Internal Revenue Code by the Department of the Treasury of the United States.

94) “Tax Interest Rate” means applicable tax interest rate as provided under the Internal Revenue Code of 1986, as amended from time to time (the “Tax Code”).

95) “Transition Date” means the date the Creditor Trustee turns over management and control to the Reorganized Debtor, as well as such portion of the Creditor Trust Balance that the Creditor Trustee determines is necessary for the Reorganized Debtor to operate in the ordinary course.

96) “Turnover Date” means the date that the Creditor Trustee transfers the remaining Creditor Trust Balance as well as oversight of the rehabilitation over the Majorca Isles property to the Reorganized Debtor, at which time the Creditor Trustee shall be released from all further obligations or responsibilities to and in respect of the Reorganized Debtor.

97) “Unsecured Claim(s)” means any Claim against any of the Debtor that is not (a) an Administrative Expense Claim, (b) an Administrative Tax Claim, (c) a Professional Compensation Claim, (d) a Priority Unsecured Tax Claim, or (e) a Priority Unsecured Non-Tax Claim. The term specifically includes any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, pursuant to 11 U.S.C. § 506(a), any Claim of a Creditor against the Debtor to the extent that such Creditor’s Claim is greater than the value of the Lien securing such Claim, any Claim for damages resulting from rejection of any Executory

Contract under 11 U.S.C. § 365, and any Claim not otherwise classified under the Plan.

98) “UST” means the Office of the United States Trustee.

**EXHIBIT B**

## **CREDITOR TRUST AGREEMENT**

THIS CREDITOR TRUST AGREEMENT (the “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2017, by and among (1) Barry E. Mukamal, not individually but in his capacity as Chapter 11 Trustee for the estate of Majorca Isles Master Association, Inc. and (2) Barry Mukamal, not individually but in his capacity as the Creditor Trustee of the Majorca Isles Creditor Trust (the “Creditor Trustee”) (collectively, the “Parties”).

### **WITNESSETH:**

WHEREAS, on April 13, 2012 (the “Petition Date”), the Debtor filed a voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”), Case No. 12-19056 (the “Bankruptcy Case”).

WHEREAS, on June 5, 2017, the Trustee filed its Plan of Reorganization for the Debtor (the “Plan”); and

WHEREAS, together with certain other provisions, the Plan provides for the Trustee and the Creditor Trustee to enter into this Agreement;

WHEREAS, the Creditor Trustee is willing to accept the duties of Creditor Trustee upon such terms and conditions as are hereinafter set forth.

NOW, THEREFOR, for and in consideration of the premises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS; INTERPRETIVE RULES**

1.1 **Terms.** For purposes of this Agreement all capitalized terms shall have the meanings ascribed to them herein.

1.2 **Terms Defined in Plan.** Any capitalized term not defined herein shall have the meaning ascribed to it in the Glossary attached as Exhibit A to the Plan.

1.3 **Interpretive Rules.** For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles,” “Sections” and other subdivisions, without reference to a document, are to designated Articles, Sections and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to any particular provision. The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting the same. The singular shall include the plural, and the plural the singular, wherever the context so requires, and the masculine, the feminine, and the neuter genders shall be mutually inclusive.

## ARTICLE 2

### CREATION OF CREDITOR TRUST

2.1 Creation of the Creditor Trust. Pursuant to the Plan and the Confirmation Order, the Parties hereby establish an irrevocable trust, which trust shall be known as the “Majorca Isles Creditor Trust” (the “Creditor Trust”). The Creditor Trustee hereby accepts such designation in trust for the purposes and on the conditions set forth in the Plan and this Agreement. On the Effective Date, the Creditor Trust Assets are hereby absolutely and irrevocably transferred, conveyed, assigned and set over to the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind. This Agreement and the Creditor Trust created hereunder are hereby declared to be irrevocable, and the Debtor and the Trustee shall not have any right at any time to withdraw any of the property held hereunder, to revoke, annul, or cancel the Creditor Trust created hereunder, in whole or in part, or to alter, amend, or modify this Agreement in any respect.

2.2 Creditor Trust Assets. On the Effective Date, except as otherwise expressly provided in the Plan and pending the Transition Date and/or the Turnover Date, as applicable, title to and control in the Estate Property shall vest in this Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind, which Estate Property includes: (i) all Cash of the Debtor; (ii) all Accounts Receivable of the Debtor; (iii) all rights to collect assessments owed to the Debtor; (iv) all assets of the Debtor as of the Effective Date; and (v) the rights to the D.R. Horton Proceeds and all beneficial rights under the D.R. Horton Settlement.

## ARTICLE 3

### PERMITTED INVESTMENTS

3.1 Permitted Investments. The Creditor Trustee shall be permitted to invest any funds in any of the following: (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing within 180 days from the date of acquisition thereof; (ii) certificates of deposit, maturing no more than 180 days from the date of creation thereof, issued by commercial banks incorporated under the laws of the United States of America or any state thereof or the District of Columbia having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder, each of which has combined capital, surplus and undivided profits of not less than \$750,000,000; (iii) time deposits, maturing no more than 30 days from the date of creation thereof with commercial banks or savings banks each having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder; (iv) money market funds managed by nationally recognized firms and making only investments qualified under (i), (ii), (iii) or (v) herein; (v) variable rate demand notes with a rating from S&P of “A-1” or better or from Moody’s of “P-1” or better; (vi) demand deposits at any bank or savings institution organized under the laws of the United States of America or any state thereof or the District of Columbia having membership in the Federal Deposit Insurance Corporation, each of which has capital, surplus and undivided profits aggregating at least \$50,000,000, provided, however, such demand deposits shall be in amounts not to exceed the maximum amounts insured by the Federal Deposit Insurance Corporation (collectively, the “Permitted

Investments”). For the avoidance of any doubt, the Creditor Trustee shall not invest or reinvest any Creditor Trust Assets in a security or instruments that do not constitute a Permitted Investment.

## ARTICLE 4

### PURPOSE, ADMINISTRATION

4.1 Purpose of Agreement. The Parties hereby enter into this Agreement for the sole purposes of (a) liquidating the Creditor Trust Assets and resolving the Claims, (b) distributing the net proceeds therefrom in accordance with the terms of the Plan, and (c) engaging in any and all other activities which shall be incidental thereto, with no objective to continue or engage in the conduct of a trade or business in accordance with Treasury Regulations Section 301.7701-4(d). All activities of the Creditor Trustee shall be as determined, in the discretion of the Creditor Trustee, reasonably necessary to, and consistent with the accomplishment of, these purposes.

4.2 Tax Treatment of Creditor Trust. For United States federal and applicable state income tax purposes, the transfer of the Creditor Trust Assets to the Creditor Trust pursuant to and in accordance with the Confirmation Order, which is incorporated into this Agreement and made a part hereof by this reference, shall be treated as a disposition of such assets directly to and for the benefit of the beneficiaries. The beneficiaries will be treated as the grantors and owners of the Creditor Trust. All earnings of the Creditor Trust shall be currently taxable to the beneficiaries in the year in which such earnings are realized. The Creditor Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Creditor Trustee shall use its best efforts to operate and maintain the Creditor Trust in compliance with Internal Revenue Service Revenue Procedure 94-95, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service.

4.3 Administration of the Creditor Trust Assets. From and after the Effective Date, the Creditor Trustee shall take all steps necessary to liquidate all of the Creditor Trust Assets and distribute the proceeds in accordance with and pursuant to the Plan and this Agreement, all as it deems to be reasonable and in the best interests of the beneficiaries.

## ARTICLE 5

### DEBTOR’S ESTATE, BOARD OF DIRECTORS

5.1 Continued Corporate Existence. Pursuant to the terms of the Plan and this Agreement, from and after the Effective Date, and notwithstanding any applicable non-bankruptcy law to the contrary, the Debtor shall remain in existence for all purposes as the Reorganized Debtor.

5.2 Debtor’s Officers and Directors. After the Effective Date and until the Transition Date, the Creditor Trustee shall serve as the sole officer and director of the Reorganized Debtor



for all purposes. The Reconstituted Board of the Reorganized Debtor shall take over management and control of the Debtor on the Transition Date.

5.3 Post-Effective Date Management. As provided for in the Plan and herein, at all times after the Effective Date but prior to the Transition Date, the Creditor Trustee shall have the exclusive right to manage the Estate, all Creditor Trust Assets, and fulfill the duties of the former Board of Directors and officers, subject, however, to certain limitations of liability as set forth herein and in the Plan.

5.4 Reconstitution of Debtor's Board of Directors

Operational control shall be substantially turned over to the Reconstituted Board of the Reorganized Debtor on the Transition Date, and the final distribution from the Creditor Trust Balance to the Reorganized Debtor shall occur on the Turnover Date. As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in compliance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized Debtor's Board of Directors has been properly constituted and appointed. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration.

## ARTICLE 6

### DUTIES, POWERS AND AUTHORITY OF CREDITOR TRUSTEE

6.1 Creditor Trustee's Duties. The Creditor Trustee shall be the "representative of the estate" as contemplated by §1123(b)(3)(B) of the Bankruptcy Code for all purposes prior to the Transition Date. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of the Plan. Further, this Agreement shall not limit or modify the right of the Creditor Trustee to commenced or prosecute any Cause of Action. The Creditor Trustee shall be a party-in-interest as to all matters over which the Court has jurisdiction and shall be the only party to have standing to file, prosecute, settle, or compromise any Cause of Action. Although the Creditor Trustee was not selected by the UST, will not be supervised by the UST, the UST has standing to appear and participate in all aspects of the cases and to seek removal of the Creditor Trustee. The Creditor Trustee shall be bonded in favor of the Creditor Trust for the funds held in the Creditor Trust. Such bond shall be cancelable on thirty (30) days notice to the UST and all costs and expenses related to the bond shall be paid by the Creditor Trust.

6.2 Creditor Trustee's Powers and Authority. The Creditor Trustee shall have the power and authority to perform the acts described herein (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of

the Plan, including without limitation any set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Creditor Trustee to act as specifically authorized by any other provision of this Plan, the Creditor Trust Agreement, and/or any applicable law, and to act in such manner as the Creditor Trustee may deem necessary or appropriate to take any act deemed appropriate by the Creditor Trustee, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust or to confer on the Creditors the benefits intended to be conferred upon them by this Plan. The Creditor Trustee shall have the power and authority without further approval by the Court to liquidate the Creditor Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, to prosecute and settle objections to Disputed Claims and Disputed Equity Interests, to prosecute and settle any Causes of Action and Avoidance Actions, and otherwise take any action as shall be necessary to administer the case and effect the closing of the case, including, without limitation, as follows:

- Open and maintain accounts in accordance with section 345 of the Bankruptcy Code.
- Perfect and secure the Creditor Trustee's right, title and interest to the assets comprising the Creditor Trust Assets.
- Release, convey or assign any right, title or interest in the Creditor Trust Assets.
- Purchase insurance, including "tail" coverage, to protect the Creditor Trustee and the Creditor Trust Assets from liability or for any other purpose.
- Deposit estate funds, draw checks and make disbursements thereof.
- Employ and retain, and discharge and dismiss, appraisers, financial advisors, attorneys, accountants, auctioneers, agents and such other professionals as the Creditor Trustee may deem necessary or appropriate to assist in fulfilling the purposes of the Plan, including payment to its professionals, in connection with any ongoing litigation being pursued or conducted by the Creditor Trustee, and to pay reasonable charges, commissions and compensation to all of the foregoing.
- Exercise any and all powers granted to the Creditor Trustee by any agreements, by common law or any statute which serves to increase the extent of the powers granted to the Creditor Trustee hereunder.
- Take such other action as the Creditor Trustee may determine to be necessary or desirable to carry out the purposes of this Plan.
- Commence or prosecute, for its own account or in the name of the Debtor any Causes of Action and Avoidance Actions, as well as any lawsuit or other legal or equitable action, including filing objections to Claims, in any court of competent jurisdiction which are necessary to carry out the terms and conditions of the Plan.

- Settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements) any disputes or controversies in favor of, or against, the Creditor Trustee.
- Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable.
- Commence and prosecute all Causes of Action and Avoidance Action which can be brought by a trustee or the Debtor under the Bankruptcy Code or any other law, theory or other manner and prosecute or defend all appeals on behalf of the Debtor or the Creditor Trustee.
- Obtain a bond in favor of the Creditor Trust for the funds held in the Creditor Trust.
- Prepare and file tax returns, as mandated by applicable state and federal law, and collect income tax refunds, or to assign the foregoing tasks to the Reorganized Debtor.
- In general, without in any manner limiting any of the foregoing, deal with the Creditor Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to, or different from, the ways above specified at any time or times hereafter, including without limitation opening and/or establishing escrow accounts, trust accounts or other bank accounts.
- Operate the Reorganized Debtor pending the Transition Date and Turnover Date, as applicable.

6.3 Limitations on Creditor Trustee's Liabilities as to Losses. The Creditor Trustee shall not be responsible, and shall have no liability whatsoever to any person for any loss to the Debtor or the amount of interest thereon resulting from the investment thereof in any Permitted Investments. The Creditor Trustee shall not invest or reinvest any Creditor Trust Assets in a security or instrument that does not constitute a Permitted Investment.

6.4 Operations of the Reorganized Debtor Pending the Transition Date.

The operations of the Master Association shall remain with the Reorganized Debtor. The Creditor Trust will not engage in the conduct of a trade or business. The Creditor Trustee shall manage and control the operations of the Reorganized Debtor until the Transition Date. At such time, the Creditor Trustee shall turn over management and control to the Reconstituted Board of the Reorganized Debtor, as well as such portion of the Creditor Trust Balance that the Creditor Trustee determines is necessary for the Reconstituted Board to direct the operations of the Reorganized Debtor in the ordinary course. Notwithstanding the foregoing, the Creditor Trustee may in his sole discretion assign or relinquish management and control over certain aspects of operations to the Reconstituted Board of the Reorganized Debtor prior to the Transition Date provided that the Reconstitution Event has occurred. The Creditor Trustee shall also turn over to the Reorganized Debtor any (either originals or copies of) documents or records that the Reorganized Debtor reasonably requires, but the Creditor Trustee may retain any (originals or copies of) documents or records the Creditor Trustee believes is necessary to conclude the

administration of the Creditor Trust, and shall have thereafter have the right to turn over the balance of such documents to the Reorganized Debtor.

Pending the Turnover Date, the Creditor Trustee shall oversee the rehabilitation of the Master Association property and, with the input of and consultation with the Reconstituted Board of the Reorganized Debtor, shall act as disbursing agent for all rehabilitative and construction related projects involving the Master Association, and shall disburse funds from the Creditor Trust Balance as necessary for such purposes. Thereafter, at the written election of the Reconstituted Board of the Reorganized Debtor and the occurrence of the Turnover Date, the Creditor Trustee shall turn over the Creditor Trust Balance to the Reorganized Debtor and shall be released of all further obligations or responsibilities to the Reorganized Debtor.

As a condition precedent to the occurrence of each of the Transition Date and the Turnover Date, the Reorganized Debtor must reconstitute its Board of Directors in complete accordance with the Debtor's Declaration and Bylaws, and the Reorganized Debtor must provide evidence sufficient to satisfy the Creditor Trustee, in his sole discretion, that the Reorganized Debtor's Board of Directors has been properly constituted. This includes, without limitation, proof that all Local Associations have designated their representative to the Debtor's Board of Directors pursuant to Section 3.01 of the Bylaws and Sections 1.21 and 3.1 of the Declaration; and that a Director at Large has been properly elected by a majority of the other Voting Members of the Board of Directors pursuant to Section 3.3 of the Declaration.

6.5 Selection of Agents. The Creditor Trustee may select, determine compensation for, and employ counsel, brokers, consultants, custodians, investment advisors, asset services, auditors, accountants, and other agents. Subject to the Plan and Section 6.12 herein, the Creditor Trustee may pay the salaries, fees, and expenses of such agents or consultants out of the Creditor Trust Assets. The Creditor Trustee shall not be liable for any loss to the Estate or any person interested therein by reason of any mistake or default of any such agent or consultant unless such mistake or default breaches the standards set forth in Section 6.8.

6.6 Signature. As of the Effective Date of the Plan, the Creditor Trustee shall have the sole signature power and authority to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; (d) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties; (e) complete and file federal and state tax returns on behalf of the Estate; and (f) to the extent permitted by law, execute any and all leases in connection with any real estate, and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Creditor Trustee then entitled to make such decision.

6.7 Maintenance of Register. The Creditor Trustee shall at all times maintain a register of the names, addresses, and amount of the Claims as in effect on the Effective Date and as revised from time to time thereafter.

6.8 Liability of Creditor Trustee.

(a) No Liability for Acts of Predecessor. No successor Creditor Trustee shall be in any way responsible for the acts or omissions of any Creditor Trustee in office prior to the date on which such person becomes a Creditor Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Creditor Trustee expressly assumes such responsibility. Any successor Creditor Trustee shall be entitled to accept as conclusive any final accounting and statement of the Creditor Trust Assets furnished to such successor Creditor Trustee by such predecessor Creditor Trustee and shall further be responsible only for those Assets included in such statement.

(b) No Implied Obligations. The Creditor Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and in the Plan and/or the Confirmation Order, and no other or further covenants or obligations shall be implied into this Agreement. The Creditor Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Creditor Trust Assets. The Creditor Trustee makes no representations as to the value of the Creditor Trust Assets or any part thereof, nor as to the validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Creditor Trustee shall incur no liability or responsibility with respect to any such matters.

(c) Reliance by Creditor Trustee on Documents or Advice of Counsel or Other Persons. Except as otherwise provided herein, the Creditor Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report notice, request, consent, order, and other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity. None of the provisions hereof shall require the Creditor Trustee to expend or risk his own funds or otherwise incur financial liability or expense in the performance of any duties hereunder. The Creditor Trustee may consult with legal counsel and shall not be liable for any action taken or suffered in good faith in reliance upon the advice of such counsel.

(d) No Personal Obligation for Liabilities. Claims holders and other persons dealing with the Creditor Trustee in his capacity as Creditor Trustee within the scope of this Agreement, shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Agreement, and the Creditor Trustee shall have no personal or individual obligation to satisfy any such liability.

(e) Indemnity. The Creditor Trustee and his agents, employees, officers, members, directors, professionals and principals (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Trust from the Creditor Trust Assets for any losses, claims, damages, costs, expenses and other liabilities, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses, which the Indemnified Parties may incur, or to which the Indemnified Parties may become subject to, in connection with carrying their duties and responsibilities under the Plan and any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of their acts or omissions

on or after the date of this Agreement; provided, however, that the Trust shall have no obligation to indemnify any of the Indemnified Parties for any losses or claims that are adjudicated by the Bankruptcy Court, or other court having jurisdiction, resulting from any act or omission by any of the Indemnified Parties that constitutes gross negligence, recklessness or intentional or willful misconduct; provided further, that nothing in this Section 6.8(e) shall be deemed to restrict the Creditor Trustee's right to receive an indemnity based on any act or omission taken in accordance with the provisions of Sections 6.1 through 6.3 hereof. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Creditor Trustee in his capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to indemnity under the provisions of this Section 6.8.

6.9 Reports. As soon as practicable after the end of every three months, the Creditor Trustee shall submit to the Bankruptcy Court a quarterly report on the Creditor Trustee's activities.

6.10 Tax Returns. From and after the Effective Date, the Creditor Trustee shall be responsible for the filing of any and all federal and state tax returns as required by law to be filed on behalf of the Creditor Trust, including the final tax returns, and shall pay all tax liabilities arising from such tax returns out of the Creditor Trust Assets, provided however, that the Creditor Trustee may assign the foregoing tasks to the Reorganized Debtor.

6.11 Final Decree. After the Creditor Trust is fully administered pursuant to the terms of the Plan, the Confirmation Order, and this Agreement, and all distributions have been made, the Creditor Trustee shall file with the Bankruptcy Court a motion requesting the entry of a Final Decree.

6.12 Creditor Trustee's Compensation and Reimbursement. The Creditor Trustee may engage Post-Confirmation Professionals, such as counsel, financial advisors and other professionals including those engaged by the Trustee during the Chapter 11 Case, to represent him in connection with his duties hereunder. In his capacity as Creditor Trustee, the Creditor Trustee shall be compensated at the rate of 3% of the gross total of all distributions made by the Creditor Trustee of assets from the Creditor Trust. The Creditor Trustee and the Post-Confirmation Professionals shall be entitled to be paid 90% of their fees and 100% of their expenses on a monthly basis prior to filing fee applications. Post-Confirmation Professionals may file periodic fee applications seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts previously paid on a monthly basis. Upon the filing of each such application, the Post-Confirmation Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees.

6.13 Unknown Property and Liabilities. The Creditor Trustee shall be responsible for only that property and assets delivered to it and shall have no duty to make, nor incur any liability for failing to make, any search for unknown property or for any liabilities.



6.14 Notice and Opportunity for Hearing. For purposes of this Agreement, “notice and opportunity for a hearing” shall mean notice, in writing, sent by first class mail, postage prepaid, or other method approved by the Bankruptcy Court, to the United States Trustee and to all parties who have filed a notice of appearance in the Case, of the Creditor Trustee’s intention to take an action, describing with particularity (i) the action proposed to be taken, (ii) the identity of each and every payee, transferee, or beneficiary of the contemplated action, (iii) the amount of dollars or book value or estimated value of assets being transferred, (iv) any liability reasonably anticipated to be incurred in connection with the proposed action, (v) any other facts or circumstances material to the Creditor Trustee’s decision to propose the action, and (vi) the date by which such action shall be taken, which date shall, in no event, be less than ten (10) days from the date any such notice is mailed, first-class postage prepaid; provided, however, that upon motion to the Bankruptcy Court, and for good cause shown, the Bankruptcy Court may authorize an action by the Creditor Trustee and find notice and opportunity for a hearing to be sufficient without compliance with the above procedures.

## **ARTICLE 7**

### **BENEFICIARIES AND THEIR RIGHTS**

7.1 Identification of Beneficiaries. The Creditor Trust is created for the benefit of the holders of Allowed Claims (the “Beneficiaries”). The Beneficiaries shall each have an undivided beneficial interest in the right to receive a pro-rata Distribution of assets of the Creditor Trust (“Beneficial Interest”).

7.2 Rights of Beneficiaries. Each Beneficiary shall take and hold its Beneficial Interest subject to all of the terms and provisions of the Plan and this Agreement. The Beneficial Interests shall not be certificated and shall not be transferable, assignable, pledged or hypothecated in whole or in part. Any such transfer shall not be effective. No Beneficiary shall have legal title to any part of the Trust Assets. A Beneficiary shall have no title to, or any right to possess, manage or control, the Trust Assets, or any portion thereof or interest therein. The interest of a Beneficiary of the Creditor Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary’s Beneficial Interest shall pass to the legal representative of such Beneficiary. No surviving spouse, heir or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Trust Assets, but the whole title to all the Trust Assets shall be vested in the Creditor Trustee and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement.

7.3 Beneficiaries After the First Distribution Date. After the occurrence of the First Distribution Date, subject to any Disputed Claims Reserve, the remaining Creditor Trust Balance shall be held for the sole benefit of the Reorganized Debtor, which shall have a 100% beneficial interest in the remaining Creditor Trust Balance.



## ARTICLE 8

### DISTRIBUTIONS

8.1 Distributions. The Creditor Trustee shall make Distributions to holders of Allowed Claims pursuant to the terms of the Plan. Furthermore, the Creditor Trustee shall make subsequent Distributions under the Plan at such times and in such amounts as required thereby and shall make such additional Distributions as are deemed appropriate in accordance with the Plan.

8.2 Legal Proceedings. If Claims or Causes of Actions are asserted and if such claims or any other legal proceedings are initiated or prosecuted against any Creditor pursuant to the Plan and this Agreement or asserted as an objection to any Claim, then notwithstanding anything to the contrary contained in the Plan, until such proceeding or contested matter is finally resolved and all payments to the Estate required by such resolution have been made, such Creditor shall only receive Distributions under the Plan to the extent that the Distributions to which such Creditor is otherwise entitled exceed the maximum liability of such Creditor to the Estate asserted in such proceedings.

## ARTICLE 9

### APPOINTMENT, REMOVAL, AND RESIGNATION OF CREDITOR TRUSTEE

9.1 Appointment of Creditor Trustee; Acceptance of Appointment. Barry E. Mukamal is hereby appointed to serve as the initial Creditor Trustee hereunder, pursuant to the Plan and the Confirmation Order. Barry E. Mukamal is willing, and does hereby accept the appointment, to serve as the Creditor Trustee, and to hold and administer the Creditor Trust Assets pursuant to the terms of the Plan and this Agreement.

9.2 Removal of Creditor Trustee. A Creditor Trustee appointed pursuant to this Agreement may be removed for cause by order of the Bankruptcy Court after notice and opportunity for a hearing. If a Creditor Trustee is removed for cause, such Creditor Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. For purposes of this Agreement, the term "cause" shall mean (a) the Creditor Trustee's gross negligence or willful failure to perform his duties under this Agreement, or (b) the Creditor Trustee's misappropriation or embezzlement of any Creditor Trust Assets or the proceeds thereof, or (c) the Creditor Trustee's continued or repeated negligence or failure to perform his duties hereunder.

9.3 Resignation of Creditor Trustee. A Creditor Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Bankruptcy Court, contemporaneous with the appointment of a successor Creditor Trustee. If a Creditor Trustee resigns from his position hereunder, subject to a final accounting, such Creditor Trustee shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any out-

of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Creditor Trustee.

9.4 Successor Creditor Trustee. In the event of a vacancy in the position of the Creditor Trustee (whether by resignation, removal, death or disability), the vacancy shall be filled by the appointment of a successor Creditor Trustee by approval of the Bankruptcy Court. The appointment of the success Creditor Trustee shall be evidenced by the filing with the Bankruptcy Court of a motion for appointment, which motion shall include the name, address and telephone number of the successor Creditor Trustee; and immediately upon appointment of any successor Creditor Trustee, all rights, powers, duties, authority and privileges of the predecessor Creditor Trustee hereunder shall be vested in and undertaken by the successor Creditor Trustee without any further act; and no successor Creditor Trustee shall be liable personally for any act or omission of the predecessor Creditor Trustee.

## **ARTICLE 10**

### **EFFECT OF AGREEMENT ON THIRD PARTIES**

10.1 Effect of Agreement on Third Parties. There is no obligation on the part of any purchaser or purchasers from the Estate, the Debtor or the Creditor Trustee or any agent of the Creditor Trustee, or on the part of any other person dealing with the Estate, the Debtor or the Creditor Trustee, or any agent of the Creditor Trustee, to see to the application of the purchase money or other consideration paid or delivered to the Creditor Trustee, or any agent of the Creditor Trustee, or to inquire into the validity, expediency, or propriety of any such transaction, or the authority of the Creditor Trustee, or any agent of the Creditor Trustee, to enter into or consummate the same upon such terms as the Creditor Trustee may deem advisable.

## **ARTICLE 11**

### **WAIVER**

11.1 Waiver. No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

## **ARTICLE 12**

### **TERMINATION OF AGREEMENT AND AMENDMENT**

12.1 Termination of Agreement. The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Effective Date, provided, however, that, on or prior to the date six (6) months prior to such termination, the Bankruptcy Court, upon motion by the Creditor Trustee or a party in interest, may extend the term of the Creditor Trust for a fixed period if it is necessary to facilitate or complete the liquidation and distribution of the Creditor Trust Assets. Notwithstanding the foregoing, additional extensions can be obtained so long as approval of the Bankruptcy Court is obtained at least six (6) months prior to the expiration of each previously

extended term; provided, however, that the aggregate of all such extensions shall not exceed five (5) years, unless the Creditor Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Creditor Trust as a grantor trust for federal income tax purposes.

12.2 Early Termination. At the discretion of the Creditor Trustee, if the First Distribution Date, the Transition Date and the Turnover Date have occurred, and any Disputed Claim Reserve resolved so that there are no remaining Creditor Trust Assets, the Creditor Trustee may seek Bankruptcy Court approval to terminate the Creditor Trust.

12.3 Amendment of Agreement. Except as otherwise set forth herein, any provisions of the Agreement may be amended, modified, terminated, revoked, or altered with approval of the Bankruptcy Court.

## ARTICLE 13

### MISCELLANEOUS

13.1 Severability. If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not be in any way impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

13.2 Entire Agreement. This Agreement (including the recitals and the schedules hereto), the Plan, and the Confirmation Order constitute the entire agreement of the parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between this Agreement, the Plan, and the Confirmation Order, the Confirmation Order shall govern. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

13.3 Tax Identification Numbers. The Creditor Trustee may require any beneficiary to furnish to the Creditor Trustee, (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records, or documents necessary to satisfy the Creditor Trustee's tax reporting obligations (including certificates of non-foreign status). The Creditor Trustee may condition the payment on any Distribution to any beneficiary upon receipt of such identification number and requested documents.

13.4 Privilege. The attorney-client privilege, work product doctrine or other privileges or immunities inuring to the benefit of the Debtor and the Trustee or attaching to documents or communications of the Debtor and the Trustee shall be transferred to the Creditor Trust. The Creditor Trustee is authorized to assert or waive any such privilege or doctrine, as necessary or appropriate for the administration of the Creditor Trust, provided that, to the extent any such privilege or doctrine is waived in connection with information requested of any Professional previously employed by the Debtor and the Trustee, the Creditor Trustee agrees that such information request shall be made solely for the purpose of carrying out the Creditor Trustee's duties hereunder, that the Creditor Trustee shall act in good faith and shall use their best efforts to tailor as narrowly as possible any request so as not to be unduly invasive or burdensome to the Professional upon whom the request is made.

13.5 Jurisdiction; Venue. Each party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement may be brought in the United States Bankruptcy Court for the Southern District of Florida, and if for any reason such submission to jurisdiction is invalid, then such action, suit or proceeding may be brought in the Courts of the State of Florida or of the United States of America for the Southern District of Florida, and by execution and delivery of this Agreement, each party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection which it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which such party is subject by a suit upon such judgment, provided that service of process is effected as otherwise permitted by law.

13.6 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

13.7 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

13.8 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Creditor Trustee, shall survive (i) the termination or revocation of this Agreement, and (ii) as to any person who has served as Creditor Trustee, the resignation or removal of such person as Creditor Trustee.

13.9 Successors and Assigns. All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of the Trustee, the Debtor, the Creditor Trustee and its successors, all as herein provided.

13.10 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have either executed and acknowledged this Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the day and year first above written.

CREDITOR TRUSTEE

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

CHAPTER 11 TRUSTEE

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