

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
www.flsb.uscourts.gov**

In re:

Chapter 11

SPANISH ISLES PROPERTY OWNERS'  
ASSOCIATION, INC.

Case No. 14-34444-EPK

Debtor.

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**AMENDED DISCLOSURE STATEMENT IN CONNECTION WITH TRUSTEE'S  
CHAPTER 11 PLAN OF REORGANIZATION**

Dated: October 27, 2017

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**DISCLOSURE STATEMENT IN CONNECTION WITH TRUSTEE'S CHAPTER 11  
PLAN OF REORGANIZATION**

**I. INTRODUCTION**

Margaret J. Smith (“Trustee” or “Plan Proponent”), Chapter 11 Trustee for the bankruptcy estate of Spanish Isles Property Owners’ Association, Inc. (“Debtor”) provides this Disclosure Statement (the “Disclosure Statement”) for informational purposes only as there are no impaired classes entitled to vote under the Plan. To the extent it is determined that a class of creditors is impaired under the Plan, the Disclosure Statement is provided to those impaired creditors to permit such creditors to make an informed decision in voting to accept or reject the Trustee’s Chapter 11 Plan of Reorganization (the “Plan”) filed on October 20, 2017 with the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”) in connection with the above-captioned case filed pursuant to Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). A copy of the Plan is attached to this Disclosure Statement as **Exhibit “A”**. Capitalized terms used herein but not otherwise defined have the meanings assigned to such terms in the Plan. Whenever the words “include,” “includes” or “including” are used in this Disclosure Statement, they are deemed to be followed by the words “without limitation.” Also attached to this Disclosure Statement, are the Liquidation Analysis (**Exhibit “B”**) and the Feasibility Analysis (**Exhibit “C”**).

This Disclosure Statement is presented to certain Holders of Claims and Interests against the Debtor in accordance with the requirements of § 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). § 1125 of the Bankruptcy Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the Debtor’s creditors and stockholders, to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement may not be relied upon for any purpose other than that described above. This Disclosure Statement has not yet been approved by the Court, and will be considered for approval at the same hearing to consider confirmation of the Trustee’s Plan.

This Disclosure Statement is based on information publicly available and pleadings filed with the Bankruptcy Court, as well as information provided by the Trustee and legal analysis by Tripp Scott, P.A. (“Tripp Scott”), counsel for the Trustee.

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRATED PACKAGE, AND THEY MUST BE CONSIDERED TOGETHER FOR THE READER TO BE ADEQUATELY INFORMED. THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT IN TURN IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN.**

**NO REPRESENTATIONS CONCERNING THE DEBTOR (PARTICULARLY AS TO THE VALUE OF THEIR PROPERTY) ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED IN THIS**

**DISCLOSURE STATEMENT AND ITS EXHIBITS SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR TRUSTEE, WHO WILL IN TURN DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR AND THE OTHER INFORMATION CONTAINED HEREIN, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET FORTH HEREIN. ACCORDINGLY, THE TRUSTEE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONCERNING THE DEBTOR OR IT'S FINANCIAL CONDITION IS ACCURATE OR COMPLETE. THE PROJECTED INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PRESENTED FOR ILLUSTRATIVE PURPOSES ONLY, AND BECAUSE OF THE UNCERTAINTY AND RISK FACTORS INVOLVED, THE DEBTOR'S ACTUAL RESULTS MAY NOT BE AS PROJECTED HEREIN.**

**ALTHOUGH AN EFFORT HAS BEEN MADE TO BE ACCURATE AND THE TRUSTEE BELIEVES IN GOOD FAITH THAT THE INFORMATION HEREIN IS ACCURATE, THE TRUSTEE DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS IS CORRECT. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. EACH CREDITOR IS STRONGLY URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT. THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES IN THIS DISCLOSURE STATEMENT.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH SINCE THE DATE OF THIS DISCLOSURE STATEMENT.**

**A STATEMENT OF THE ASSETS AND LIABILITIES OF THE DEBTOR AS OF THE DATE OF THE COMMENCEMENT OF THIS CHAPTER 11 CASE IS ON FILE WITH THE CLERK OF THE BANKRUPTCY COURT AND MAY BE INSPECTED BY INTERESTED PARTIES DURING REGULAR BUSINESS HOURS.**

**CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT IN ARTICLE 10 OF THE PLAN AND DESCRIBED HEREIN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED, OR IF CONFIRMED, THAT THE CONDITIONS PRECEDENT REQUIRED TO BE SATISFIED WILL BE SATISFIED OR OTHERWISE WAIVED.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH § 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST, INTERESTS IN OR SECURITIES OF, THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT ONLY IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS SUCH COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR OR INTEREST HOLDER SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISERS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN, OR ANY RELATED MATTERS.**

Pursuant to the Bankruptcy Code, this Disclosure Statement and the Plan were filed on October 20, 2017. The Bankruptcy Court will hold a combined hearing on final approval of the Disclosure Statement and confirmation of the Plan at \_\_\_\_\_ (prevailing Eastern time) on \_\_\_\_\_, in the \_\_\_\_\_ (the “Confirmation Hearing”). At that Confirmation Hearing, the Bankruptcy Court will consider whether the Disclosure Statement should be approved; and whether the Plan satisfies the confirmation requirements of the Bankruptcy Code, and will review a ballot report concerning votes cast for the acceptance or rejection of the Plan.

To obtain, at your cost, additional copies of this Disclosure Statement or of the Plan, please contact:

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**A. Overview of the Plan**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN**

**SET FORTH BELOW CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN SECTION IV OF THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT "A" TO THIS DISCLOSURE STATEMENT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. The fundamental purpose of a Chapter 11 case is to formulate a plan to restructure a debtor's finances so as to maximize recoveries to its creditors. With this purpose in mind, businesses sometimes use Chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a Chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and stockholders with respect to their claims against and equity interests in a debtor's bankruptcy estate.

This Chapter 11 Case involves the bankruptcy of the Debtor—a Florida homeowners' association that is responsible for the operation of the Spanish Isles Community. As Trustee for the bankruptcy estate of the Debtor, the Trustee acts as the board of directors of the Debtor and files this Plan in order to allow the Debtor to exit bankruptcy. Through this Plan, the Trustee hopes, among other things, to stop the continuing expenses to the Debtor and the Estate relating to the Chapter 11 Case and to resolve all existing obligations of the Debtor. This summary is designed to provide Owners, Creditors, and other parties in interest a summary of this Plan and its key provisions.

One key feature of the Plan is how it deals with the Debtor's assessment powers and who will have the ability to use and enforce those powers. Under the Governing Documents, the Debtor (through its board of directors) has the power to levy, enforce, and collect general assessments, special assessments, and charges. "Annual assessments" are fixed, but may be increased annually up to 5%. "Special assessments" generally are levied to account for unexpected or infrequent expenses. "Charges" are levied for the use of communities' common areas.

Prior to a hearing seeking confirmation of the Plan, the Trustee, as the board of directors of the Debtor, moved to increase the annual assessment by 5% for the next year (2018) and by 5% each year thereafter, until the Exit Facility and all Creditors entitled to payment under the Plan are paid in full. The Trustee also levied a special assessment in the amount of \$3,000.00 per residence, payable at \$250.00 every quarter for three (3) years.

Another important feature of the Plan is a loan that will be provided by ASM. ASM is a lender who has agreed to lend money necessary for the Plan to work properly. The funds provided by ASM will be used to: (1) fund a claim reserve for the payment of disputed claims; (2) pay a portion of approved Administrative Expenses; and (3) pay all Allowed Claims upon confirmation of the Plan.

The Plan also features the creation of a Creditor Trust, to be run by the Creditor Trustee. As set forth in Article 5 of the Plan, the Creditor Trust will be used to pay off Creditors with

valid, Allowed Claims. On the Effective Date, all of the Creditor Trust Assets will be transferred to, and will vest in, the Creditor Trust. Creditor Trust Assets include, but are not limited to, Cash, recoveries from Causes of Action, and all powers held by the board of directors of Debtor, including but not limited to, the power to levy and collect assessments (both general and special) and charges.

On and after the Effective Date, the Creditor Trustee will retain the rights, powers, and duties of the board of directors or the Debtor. ***First***, the Creditor Trustee will be able to hire professionals (for example, attorneys or accountants) to represent her in connection with her duties under the Plan. ***Second***, the Creditor Trustee will be able to levy, collect, and enforce annual assessments, special assessments, and charges. Although the Creditor Trustee will continue to be the board of directors until the Exit Facility and all Creditors entitled to payment under the Plan are paid in full, the Creditor Trustee will seek to create a management committee of Owners that will be tasked with managerial responsibilities.

***Third***, the Creditor Trustee will retain the Debtor's right to commence, continue, or pursue any Cause of Action on behalf of the Debtor, including the Causes of Action that are currently ongoing before the Bankruptcy Court. Currently, there are two lawsuits pending—one lawsuit is against Kaye Bender Rembaum, P.L. ("Kaye Bender"), a law firm that previously represented the Debtor, and the other is against Donna Don and Carol Cetta, former directors and officers of the Debtor. In the lawsuit against Kaye Bender, the Trustee seeks damages under various theories and also seeks to eliminate the Claim filed by Kaye Bender against the Debtor in the amount of \$132,069.15. In the lawsuit against Don and Cetta, the Trustee successfully obtained final consent judgments against Don and Cetta, and now seeks to recover under the D&O Policies against the insurers. If the Creditor Trustee is successful in pursuing these pending lawsuits and other Causes of Action, recoveries from such Causes of Action will greatly reduce the amount the Creditor Trustee will have to collect through assessments or charges. Following confirmation of the Plan, professionals retained by the Creditor Trustee to pursue or continue the Causes of Action will be compensated on a contingency fee arrangement and will receive 30% of the recoveries, as opposed to an hourly fee.

The Plan divides the Claims against and Interests in the Debtor into Classes. Certain Claims — in particular, Administrative Expense Claims, Statutory Fees, Professional Fee Claims and Priority Tax Claims—remain unclassified in accordance with § 1123(a)(1) of the Bankruptcy Code. The Plan assigns all other Claims and Interests as described below.

Class 1 consists of Allowed Secured Claim of CenterState Bank as it relates to Loan No. 1120341327.

Class 2 consists of Allowed Secured Claim of CenterState Bank as it relates to Loan No. 1120345039.

Class 3 consists of Allowed General Unsecured Claims.

Class 4 consists of Allowed Interests in the Debtor, held by Owners within the Spanish Isles community as provided for by the Declaration.

The Trustee believes that the Distributions under the Plan will provide Creditors of the Debtor a greater recovery on account of Allowed Claims than would Distributions by a Chapter 7 trustee. Further, distributions under the Plan to Creditors of the Debtor would be made more quickly than distributions by a Chapter 7 trustee and a Chapter 7 trustee would charge a substantial fee, reducing the amount, if any, available for distribution on account of Allowed Claims.

**B. Voting Instructions**

**THE TRUSTEE STRONGLY RECOMMENDS THAT EACH CREDITOR, IF ENTITLED TO VOTE, VOTE TO ACCEPT THE PLAN.**

The Bankruptcy Code entitles only holders of impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject that plan. Holders of claims or equity interests that are unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it. Holders of classes of claims or equity interests that will receive no distributions under a proposed plan are conclusively presumed to reject that plan and, therefore, are also not entitled to vote on it.

The Holders of Claims in Class 1 are Unimpaired under the Plan and therefore deemed to have accepted the Plan. Holders of Claims in Class 1 are therefore not entitled to vote.

The Holders of Claims in Class 2 are Unimpaired under the Plan and therefore deemed to have accepted the Plan. Holders of Claims in Class 2 are therefore not entitled to vote.

The Holders of Claims in Class 3 are Unimpaired under the Plan and therefore deemed to have accepted the Plan. Holders of Claims in Class 3 are therefore not entitled to vote.

The Holders of Interests in Class 4 are Unimpaired under the Plan and therefore deemed to have accepted the Plan. Holders of Interests in Class 4 are therefore not entitled to vote.

All Classes of Claims and Equity Interests are unimpaired under the Plan and thus are conclusively deemed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, no Holders of any Claims or Equity Interests are entitled to vote on the Plan. Accordingly, this Disclosure Statement is provided for informational purposes only. If, however, it is determined by the Court that any class or classes are in fact impaired under the Plan, then such class(es) shall be entitled to vote to accept or reject the Plan.

**While the Creditor Trustee believes this provision does not apply, an Impaired class of Claims accepts the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in the Class that actually vote are cast in favor of the Plan.** Whether or not a creditor or Interest holder votes on the Plan, such Person will be bound by the terms and treatment set forth in the Plan if the Plan is accepted by the requisite majorities of the classes of creditors and is confirmed by the Bankruptcy Court. Pursuant to the provisions of § 1126(e) of the Bankruptcy Code, the Bankruptcy Court may disallow any vote accepting or rejecting the Plan.

If the voting members of an Impaired Class do not vote unanimously for the Plan but, nonetheless, vote for the Plan by at least the requisite two-thirds (2/3) in amount and one-half (1/2) in number of Allowed Claims in that Class actually voted, the Plan, at a minimum, must provide that each Holder of a Claim in such Class will receive property of a value, as of the Effective Date, that is not less than the amount such Class members would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

The Debtor or other parties in interest may dispute Proofs of Claim or Proofs of Interest that have been filed or that the Debtor listed as disputed in the Schedules the Debtor filed with the Bankruptcy Court. Persons whose Claims are disputed may vote on or otherwise participate in distributions under the Plan only to the extent that the Bankruptcy Court allows their Claims. The Bankruptcy Court may temporarily allow a Claim for voting purposes only. Allowance of a Claim for voting purposes or disallowance of a Claim for voting purposes does not necessarily mean that all or a portion of that Claim will be allowed or disallowed for distribution purposes.

**C. Confirmation of the Plan by the Bankruptcy Court**

As discussed above, no Holders of Claims or Interests are impaired under the Plan, and therefore no Holders of Claims or Interests are entitled to vote on the Plan. If, however, it is determined by the Court that any class or classes are impaired under the Plan, then such class(es) shall be entitled to vote to accept or reject the Plan. Once it is determined which Impaired Classes have or have not accepted the Plan (if necessary), the Bankruptcy Court will determine whether the Plan may be confirmed.

**II. BACKGROUND OF THE DEBTOR**

**A. Background**

In May of 1979, the Debtor was incorporated as a Florida not-for-profit corporation. The Debtor was formed as a “homeowners association” pursuant to Chapter 720 of the Florida Statutes for the purposes of operating and maintaining the Spanish Isles Community. The Spanish Isles Community consists of several hundred single-family homes and associated common areas located in Palm Beach County, Florida. The Debtor was originally created to provide for the maintenance, preservation and architectural control of the properties described in Official Records Book 3068 at Page 727, of the Public Records of Palm Beach County, Florida, which was amended and recorded in Official Records Book 3077 at Page 1362; Book 3146 at Page 0984; Book 16790 at Page 1893; Book 18215 at Page 0907 of the Public Records of Palm Beach County, Florida. The Debtor is governed by a board of directors and membership includes every person or entity who is a record owner of a home within the community.

**B. Lapse of the Governing Documents**

The Spanish Isles Community is governed by the Association Documents—*i.e.*, the By-Laws, Articles of Incorporation and a Declaration. In or about 2009, The Association Documents lapsed and were thus unenforceable. The Association Documents state the obligations and rights of the Debtor, including but not limited to, the right to enforce architecture restrictions, levy liens for unpaid homeowner dues, and to bring enforcement actions.

The affairs of the Debtor were to be managed by a Board of directors; each director to be a member of the Debtor – *i.e.* an owner of a home in the community in good standing (the “Board”). The Board was to be composed nine (9) members who serve for three (3) year terms, nominated by a committee or by nomination made at the annual meeting of the Debtor. The Association Documents provide that the Debtor has the right to charge an annual assessment, which at all times relevant, was at or about \$350.00 per home (“Dues”). During the applicable time period, in a typical year, the Debtor collected around \$100,000.00 in Dues amounting to almost 100% of the Debtor’s yearly revenue.

Under the Marketable Record Title Act, Chapter 712 of Florida Statutes, residential homeowners’ associations are required to preserve a covenant or restriction (here, the “Declaration”) by “filing for record” a written notice pursuant to § 712.05, Fla. Stat., *et. seq.* within thirty years of the date the covenant or restriction is established. Prior to filing such a notice, preservation of the covenant or restriction must be approved by vote of the board of the interested homeowners’ association.

A covenant or restriction lapses and the rights attendant to such a covenant or restriction cannot be exercised properly in the absence of a timely and substantively complete written notice pursuant to § 712.05, Fla. Stat., *et seq.* In 2009, the Debtor’s Declaration lapsed for failure to timely file the documents necessary to preserve the Declaration and failure to file substantively complete and accurate notice necessary to preserve the Declaration. Lapse of the Declaration rendered the Debtor without legal authority to assess homeowners, enforce covenants and restrictions, or otherwise govern as specified by the Declaration.

### **C. Misconduct by the Board**

Carol Cetta (“Ms. Cetta”) was Treasurer and a Director of the Association’s Board of directors from at least 2009 to 2015. Donna Don (“Ms. Don”) was President and a Director of the Association’s Board of directors from at least 2009 to 2015.

After a review of the Chapter 11 Case and the events leading up to the Chapter 11 Case, Trustee believes that during Ms. Don’s and Ms. Cetta’s tenure on the Board, Ms. Don and Ms. Cetta each breached their duties of care and loyalty to the Association and its members. As more fully set forth in the adversary proceeding styled *Smith v. Cetta and Don*, Adv. Pro. No. 16-01285, Ms. Cetta and Ms. Don’s wrongful conduct included acts of negligence, breaches of fiduciary duty and self-dealing. The result of Ms. Cetta and Ms. Don’s wrongful conduct was the waste and misuse of the Association’s assets, and ultimately, the Association’s financial collapse and bankruptcy.

## **III. THE CHAPTER 11 CASE**

### **A. Commencement of This Chapter 11 Case**

On the Petition Date, the Debtor filed its voluntary petitions under Chapter 11 of the Bankruptcy Code. This Chapter 11 Case is pending before the Honorable Eric P. Kimball, United States Bankruptcy Judge for the Southern District of Florida, located at the United States

Bankruptcy Court, Flagler Waterview Building, 1515 North Flagler Drive, 8<sup>th</sup> Floor, Courtroom B, West Palm Beach, Florida 33401.

**B. Failure of Kaye Bender's Plan due to Lapsed Governing Documents**

On August 27, 2015, the Court entered its *Order Confirming Kaye Bender Rembaum, PL's Chapter 11 Plan of Reorganization* (the "First Confirmation Order") [ECF No. 266], which confirmed the *Plan of Reorganization* [ECF No. 104], filed by creditor Kaye Bender Rembaum, P.L. Pursuant to the terms of the Confirmation Order, the Debtor was required to file a motion for approval of a special assessment within seven (7) days of the entry of the First Confirmation Order. Instead of filing the motion to approve special assessment, the Debtor, for the first time realizing that the Association Documents had lapsed, filed the *Motion for Approval of Revival Procedure of Declaration Pursuant to the Marketable Record Title Act (MRTA and Florida Statute § 720 as Proposed in Chapter 11 Plan of Reorganization* (the "Revitalization Motion") [ECF No. 283]. The Revitalization Motion was denied by the Court. On January 26, 2016, the Court entered its *Order Granting Kaye Bender Rembaum, PL's, as Plan Proponent and Creditor, Motion to Set Aside Confirmation Order for Debtor's Failure to Satisfy Condition Precedent and Motion to Appoint Trustee* [ECF No. 425], which vacated the First Confirmation Order and directed that the United States Trustee appoint a chapter 11 trustee in this case.

**C. Appointment of the Trustee**

On January 28, 2016, the Court appointed Margaret J. Smith as Chapter 11 Trustee [ECF No. 427]. On February 4, 2016, Trustee moved the Court for authorization to employ Kristopher E. Aungst, Esq. and the law firm of Tripp Scott, P.A. ("General Counsel") to represent the Trustee as General Counsel and, on February 11, 2016, the Court entered an Order Approving Trustee's Ex-Parte Application for Employment of General Counsel. [ECF No. 447].

**D. Revitalization of the Governing Documents**

On or about July 26, 2016, the Trustee sent to every Spanish Isles' homeowner a letter: (a) informing the homeowners that the Trustee would hold a revitalization meeting; and (b) providing each homeowner with a revitalization packet containing, inter alia, amendments to the Debtor's bylaws that had been requested by a revitalization committee of homeowners. On or about August 8, 2016, the Trustee, as the board of the Debtor, conducted a well-attended revitalization meeting. The purpose of the revitalization meeting was to apprise homeowners of the revitalization process and to gather further revitalization ballots.

The majority of the homeowners prior to, during and following the August 2, 2016 meeting, voted to revitalize the Governing Documents, and the Governing Documents were revitalized pursuant to Florida Statute. With the successful revitalization, the Debtor is now operating as a going concern, imbued with the authority to take any action that a properly formed homeowners' association may take under Florida statute, the revitalized governing documents, and other applicable law.

**E. Trustee’s Prosecution of Adversary Proceedings**

*i. Director and Officer Litigation*

On June 13, 2016, Trustee commenced an adversary proceeding styled *Smith v. Cetta et al.*, Adv. Case No. 16-01285-EPK (the “D&O Litigation”) against Donna Don and Carol Cetta for, among other things, breaches of their fiduciary duties and their common law and statutory duties of care throughout their tenures as former directors and officers of the Debtor. Ms. Don and Ms. Cetta both denied the allegations asserted by the Trustee in the D&O Litigation. Thereafter, Trustee pursued discovery against Ms. Don and Ms. Cetta by conducting depositions. Ultimately, the parties mutually agreed to resolve the D&O Litigation through an arm’s length negotiation process, which resulted in a *Consent Final Judgment* [Adv. Case No. 16-01285-EPK, ECF No. 66]. In the Consent Final Judgment, the Bankruptcy Court entered final judgment against both Carol Cetta and Donna Don, jointly and severally, in the amount of nine hundred sixty-seven thousand one hundred thirty-three dollars and fifty-nine cents (\$967,133.59), together with post-judgment interest at the rate of 4.75% per annum.

*ii. Fraudulent Transfer Actions*

On August 2, 2017, Trustee initiated three adversary proceedings against Stephen Sagonas (Adv. Case No. 16-01398-EPK), Christopher George (Adv. Case No. 16-01399-EPK), and Justin Emmanuel (Adv. Case No. 16-01400-EPK) (collectively, the “Fraudulent Transfer Actions”) to recover and avoid alleged fraudulent transfers pursuant to Chapter 5 of the Bankruptcy Code and applicable Florida law. After weighing the likelihood of recovery from each of the defendants involved in the Fraudulent Transfer Actions, Trustee determined that dismissal of each of the actions was in the best interests of the Debtor’s Estate.

*iii. The Malpractice Actions*

In addition to the Consent Final Judgment obtained by the Trustee in the D&O Litigation, the Trustee has also pursued causes of action against two of the Debtor’s former legal counsel— Jay Steven Levine, P.A. (“JSL”) and Kaye Bender Rembaum, P.L (“Kaye Bender”) (collectively, the “Malpractice Actions”). On January 25, 2017, Trustee commenced an adversary proceeding before the Bankruptcy Court against JSL (Adv. Case No. 17-01034-EPK). After extensive, good faith negotiations among the Trustee, JSL, and their respective counsel, the parties amicably agreed to settle the pending litigation (the “JSL Settlement”). Pursuant to the JSL Settlement approved by the Bankruptcy Court on May 22, 2017 [Chapter 11 Case, ECF No. 693], JSL agreed to pay Trustee \$20,000.00 in full and final settlement of the adversary proceeding.

On January 25, 2017, the Trustee commenced an adversary proceeding before the Bankruptcy Court against Kaye Bender (the “KBR Malpractice Action”), and therein brought claims against Kaye Bender for professional negligence, breach of fiduciary duty, the avoidance and recovery of fraudulent transfers, and disallowance of claims. On April 24, 2017, Kaye Bender moved to dismiss the KBR Malpractice Action, which the Bankruptcy Court denied as moot on April 27, 2017. On April 14, 2017, Trustee filed an amended complaint and, *inter alia*, added a claim for breach of contract against Kaye Bender. On April 24, 2017, Kaye Bender again moved to dismiss the KBR Malpractice Action, which the Bankruptcy Court granted

without prejudice to the filing of a second amended complaint. On August 4, 2017, Trustee filed a second amended complaint against Kaye Bender. On August 18, 2017, Kaye Bender filed their third motion to dismiss the KBR Malpractice Action, which motion the Bankruptcy Court has set to be heard on December 13, 2017.

#### **IV. CHAPTER 11 PLAN**

**THE FOLLOWING IS A BRIEF SUMMARY OF CERTAIN OF THE MORE SIGNIFICANT MATTERS CONTEMPLATED BY OR IN CONNECTION WITH THE CONFIRMATION OF THE PLAN. THUS, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT "A". THIS SUMMARY ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, YIELD A THOROUGH UNDERSTANDING OF THE PLAN. SUCH CONSIDERATION IS NOT A SUBSTITUTE FOR A FULL AND COMPLETE READING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS.**

##### **A. Plan Overview**

This Plan contemplates the restructuring and the treatment of the Debtor's obligations in accordance with the Bankruptcy Code resulting in the payment in full of any and all Allowed Claims against the Debtor in accordance with the Plan. Four types of unclassified claims are included in the Plan: Administrative Expense Claims, Statutory Fees, Professional Fee Claims and Priority Tax Claims. In addition, the Plan classifies Claims and Interests as follows: Class 1- Secured Claim of CenterState Bank as it relates to Loan No. 1120341327; Class 2- Secured Claim of CenterState Bank as it relates to Loan No. 1120345039; Class 3-General Unsecured Claims; and Class 4- Interests in the Debtor. Classes 1, 2, 3 and 4 are Unimpaired.

##### **B. Unclassified Claims**

The Unclassified Claims consist of Administrative Expense Claims, Statutory Fees, Professional Fee Claims and Priority Tax Claims. These Claims shall be treated as follows:

**1.1 Administrative Expense Claims.** Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable, the holder of an unpaid Allowed Administrative Expense Claim shall receive from the Creditor Trustee on account of the Allowed Administrative Expense Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Expense Claim, (a) Cash equal to the unpaid portion of such Allowed Expense Administrative Claim, or (b) such other treatment as to which the Plan Proponent or the Creditor Trustee, as applicable, and the Holder of such Allowed Administrative Expense Claim have agreed to writing.

**Statutory Fees.** On or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930 shall be paid in full by the Debtor in Cash. Following the Effective Date, the

Creditor Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930 for post-confirmation periods based upon disbursements made by the Creditor Trustee until the earlier of the closing of the Chapter 11 Case of the Debtor 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 the Chapter 11 Case of the Debtor to another chapter under the Bankruptcy Code.

**Professional Fee Claims.** On or prior to the deadline set by the Bankruptcy Court for Professionals to File final fee applications, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Each Holder of an Allowed Professional Fee Claim shall, in full satisfaction, settlement, discharge and release thereof, and in exchange thereof, be paid the Allowed amount of its Professional Fee Claim, in full, in Cash, on the Effective Date or as soon thereafter as is practicable.

In accordance with the Bankruptcy Code, the Allowed Administrative Expense Claims, Statutory Fees, Professional Claims and Allowed Priority Tax Claims are not classified. Therefore, the claimants holding the aforementioned Claims may not vote on the Plan.

**C. Treatment of Claims and Interests**

**1. Class 1 - Allowed Secured Claim of CenterState Bank, as it relates to Loan No. 1120341327.**

- (a) *Classification.* Class 1 consists of the Allowed Secured Claim of CenterState Bank based on the Promissory Note dated August 1, 2013, in the principal amount of \$20,000.00 (Loan No. 1120341327). CenterState Bank filed Amended Proof of Claim No. 1 in the amount of \$8,006.61 and has claimed a security interest in certain assessments of the Debtor for monies loaned
- (b) *Treatment.* Except to the extent that a Holder of an Allowed Class 1 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 1 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 1 Claim is Allowed by a Final Order of the Bankruptcy Court.
- (c) *Voting.* Class 1 is Unimpaired, and the Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

**2. Class 2 - Allowed Secured Claim of CenterState Bank, as it relates to Loan No. 1120345039.**

- (a) *Classification.* Class 2 consists of the Allowed Secured Claim of CenterState Bank based on the Promissory Note dated August 7, 2014 in the principal amount of \$16,900.00 (Loan No. 1120345039). CenterState Bank filed Amended Proof of Claim No. 2 in the amount of \$12,782.30 and claimed a security interest in certain assessments of the Debtor for monies loaned.
- (b) *Treatment.* Except to the extent that a Holder of an Allowed Class 2 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 2 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 2 Claim is Allowed by a Final Order of the Bankruptcy Court.
- (c) *Voting.* Class 2 is Unimpaired, and the Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

**3. Class 3 – Allowed General Unsecured Claims**

- (a) *Classification.* Class 3 consists of Allowed General Unsecured Claims and includes the following claims (subject to objection by the Trustee):
  - i. Marcia Hintz, Claim No. 3, in the amount of \$35,928.70;
  - ii. Weintraub & Weintraub, Claim No. 4, in the amount of \$12,628.86;
  - iii. Kaye Bender Rembaum, PL, Claim No. 5, in the amount of \$132,069.15. The Trustee has objected to this claim and thus, it will not be paid upon the Effective Date. Instead, a claim reserve representing the potential distribution amount for this claim will be funded upon Confirmation of the Plan; and
  - iv. Linda Scialo, Claim No. 8, in the amount of \$26,058.40.

- (b) *Treatment.* Except to the extent that a Holder of an Allowed Class 3 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 3 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 3 Claim is Allowed by a Final Order of the Bankruptcy Court.
- (c) *Voting.* Class 3 is Unimpaired, and the Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the Plan.

**4. Class 4 – Allowed Interests in the Debtor**

- (a) *Classification.* Class 4 consists of the Allowed Interests in the Debtor, held by Owners of homes within the Spanish Isles Community as provided for by the Declaration.
- (b) *Treatment.* Holders of Allowed Interests in the Debtor shall retain their membership interest in the Reorganized Debtor and their legal, equitable and contractual rights will remain unaltered. Other than retaining their Interests in the Debtor, the Holders of Allowed Interests shall not be entitled to receive a Distribution under the Plan on account of such Interest.
- (c) *Voting.* Class 4 is Unimpaired, and the Holders of Allowed Class 4 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 4 Claims are not entitled to vote to accept or reject the Plan.

**D. Continued Corporate Existence and Vesting of Assets.**

The Debtor will continue to exist after the Effective Date as a corporate entity with all the powers of a not-for-profit corporation under Florida law, and pursuant to its Articles, Declaration, By-Laws or other organizational documents in effect before the Effective Date.

Except as otherwise provided herein, on the Effective Date, all property of the Debtor's Estate will vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and other interests, except for the Liens and Claims established under the Plan, excluding the Creditor Trust Assets which will vest in the Creditor Trust on the Effective Date

**E. Management of the Reorganized Debtor.**

On or after the Effective Date, the Trustee shall continue as the board of directors of the Reorganized Debtor. However, the Trustee may seek to appoint a management committee made up of Owners.

1. Payment of Ordinary Course Expenses of the Reorganized Debtor. The Reorganized Debtor shall submit a yearly budget to the Creditor Trustee containing the projected expenses for the upcoming fiscal year, which must be approved by the Creditor Trustee. Upon approval of the budget, the Creditor Trustee will remit funds, on a quarterly basis, necessary to meet the ordinary course expenses of the Reorganized Debtor, but only to the extent the funds collected from general assessments are sufficient to meet the Reorganized Debtor's expenses.

2. Power to levy, enforce and collect assessments and charges. The Creditor Trustee shall have the power to levy, enforce and collect assessments, general assessments, the Plan Funding Special Assessment and charges.

3. Management Committee. The Creditor Trustee may appoint a management committee, made up of Owners in the Spanish Isles Community, to assist in managing the affairs of the Reorganized Debtor.

4. Reversion of Board Powers to Reorganized Debtor. Upon full payment of all Allowed Claims against the Debtor, Professional Fee Claims, Post-Confirmation Administrative Expense Claims and the Exit Facility, the Trustee shall relinquish control of the board of directors to the Reorganized Debtor.

## **F. The Creditor Trustee**

### **1. Appointment of a Creditor Trustee**

Margaret J. Smith shall act as Creditor Trustee commencing on the Effective Date. The Creditor Trustee shall perform the duties reserved for such person in the Plan. The Creditor Trustee shall be the "representative of the estates" as contemplated by 11 U.S.C. § 1123(b)(3)(B) for all purposes, including to bring or assert Causes of Action, including under the D&O Policies. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. The Creditor Trust, through the Creditor Trustee, shall succeed to all rights and interests provided to, and assume all obligations of, the Debtor.

### **2. Powers and Obligations of the Creditor Trustee**

As of the Effective Date, the Creditor Trustee shall act in a fiduciary capacity for the Holders of all Allowed Claims hereunder, shall be deemed a representative of the Estate pursuant to § 1123 of the Bankruptcy Code, and shall have the power and authority to act in such manner as the Creditor Trustee may deem necessary or appropriate, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust Assets 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 Bankruptcy Court to liquidate the Creditor Trust Assets and otherwise take any action as shall be necessary to administer the Chapter 11 Case of the Debtor and effect the closing of the Debtor's Chapter 11 Case, and shall have the rights and powers of a trustee under §§ 542 through 552 of the Bankruptcy Code and the duties of a trustee under §§ 704(1), (2), (4), (5), (7) and (9) of the Bankruptcy Code. The Creditor Trustee shall administer the Plan, the Creditor Trust and the Creditor Trust Assets, subject to the foregoing duties and powers, which shall include the following:

- (a) To open and maintain accounts in accordance with § 345 of the Bankruptcy Code;
- (b) To prosecute, compromise or settle Objections and to make or direct that Distributions be made to Holders of Allowed Claims and Allowed Interests;
- (c) To make decisions regarding the retention or engagement of Professionals and to pay all reasonable fees and expenses incurred after the Effective Date;
- (d) To make or direct Distributions to Holders of Allowed Claims and Allowed Interests and to otherwise implement and administer the Plan;
- (e) To collect and enforce payment of the Plan Funding Special Assessment by any lawful means;
- (f) To levy, collect and enforce general assessments, special assessments and charges;
- (g) To pay the ordinary course expenses of the Reorganized Debtor pursuant to an approved budget.
- (h) To pursue, litigate or settle all Causes of Action;
- (i) To conduct discovery pursuant to Fed. R. Bankr. P. 2004 or otherwise to investigate any potential Causes of Action;
- (j) To prepare and file tax returns and collect Income Tax Refunds, including tax returns for the Creditor Trust as a grantor trust in accordance with IRC Reg. Sec. 1.671-4(a);
- (k) To File with the Bankruptcy Court the reports and other documents and to pay any and all fees required by the Plan or otherwise required to close the Chapter 11 Case, including the preparation and filing of a motion for a final decree;
- (l) To set off amounts owed to any Debtor against any and all amounts otherwise due to be distributed to the Holder of an Allowed Claim hereunder; and
- (m) To take all other actions not inconsistent with the provisions of the Plan deemed necessary or desirable in connection with administering the Plan.

Engagement of Creditor Trustee Professionals and Compensation to Creditor Trustee and Creditor Trustee Professionals

The Creditor Trustee shall be entitled to be compensated for such services by a 3% surcharge on all distributions made by the Creditor Trustee. Additionally, the Creditor Trustee shall be reimbursed for all necessary costs and expenses incurred in her duties as Creditor Trustee. The Creditor Trustee may engage counsel and other professionals to represent her in connection with her duties hereunder (the “Creditor Trustee Professionals”); *provided, however*, that Creditor Trustee Professionals shall not be precluded from representing the Creditor Trustee

to the extent that certain of their Administrative Expense Claims remain unpaid from the Debtor's Estate. Any fees and expenses of such Creditor Trustee Professionals shall constitute "Post-Confirmation Administrative Expense Claims" and shall be paid from the Creditor Trust Funding, and otherwise from the net proceeds of the Creditor Trust Assets as set forth herein.

The Creditor Trustee and the Creditor Trustee Professionals shall be paid 90% of their fees and 100% of their costs on a monthly basis, unless such fees relate to the pursuit of potential recoveries from the Creditor Trust Assets on a contingency fee basis as agreed upon between the Creditor Trustee and the Creditor Trustee Professional (the "Contingency Fees"), in which case payment of such Contingency Fees (which are Post Confirmation Administrative Expense Claims) shall be paid from any such recoveries within thirty (30) days of receipt by the Creditor Trustee of such recoveries. Creditor Trust Professionals retained on a contingency fee basis shall receive 30% from both cash recoveries and claim reductions. The Creditor Trustee and the Creditor Trustee Professionals shall File fee applications no less frequently than every 120 days seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts paid on a monthly basis. Upon the filing of each such application, the Creditor Trustee Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees. The Bankruptcy Court shall retain jurisdiction to allow or disallow all Post-Confirmation Administrative Claims of the Creditor Trustee and the Creditor Trustee Professionals. The invoices for services rendered and out-of-pocket expenses incurred which are to be submitted shall be sufficiently detailed to identify the hours worked, the rates charged and the work performed.

The Creditor Trustee may employ such staff as is reasonably necessary to carry out his/her functions and duties, store the books and records of the Debtor and compensate such staff.

### **3. Bond**

Creditor Trustee, if requested by the U.S. Trustee, shall post a bond in favor of the Debtor in an amount equal to 100% of the book value of the Creditor Trust Assets determined as of 30 days from the Effective Date; *provided, however*, that the book value of the Causes of Action for purposes of the bond shall be zero.

### **4. Resignation, Death or Removal of the Creditor Trustee**

Creditor Trustee may resign at any time; *provided, however*, that she shall File a motion with the Bankruptcy Court in connection therewith and request that a successor or replacement be appointed in accordance herewith, which motion shall be on notice to the top twenty (20) unsecured creditors holding Allowed Claims and the U.S. Trustee. The U.S. Trustee, by motion Filed with the Bankruptcy Court, or the Bankruptcy Court on its own order to show cause, may seek to remove the Creditor Trustee for cause, including under § 324 of the Bankruptcy Code, for the violation of any material provision of the Plan, or in the event the Creditor Trustee becomes incapable of acting hereunder as a result of physical or mental disability and such physical or mental disability continues for a period in excess of thirty (30) days (except in the case of death, in which instance the procedures for replacement will begin immediately). In the event of a resignation or removal, the Creditor Trustee, unless she is incapable of doing so, shall

continue to perform her duties hereunder until such a time as a successor is approved by a Final Order of the Bankruptcy Court. In the event the Creditor Trustee resigns or is removed, the successor shall be elected in the manner prescribed by § 1104(b) of the Bankruptcy Code.

**G. Objections to Claims and Interests**

Before the Effective Date, the Trustee or any other party in interest will be entitled to object to any Claim (in whole or in part) appearing on the Schedules, filed in this Chapter 11 Case, or estimated by the Bankruptcy Court for voting purposes with respect to which the Trustee disputes liability in whole or in part. After the Effective Date, the Creditor Trustee will be entitled object to, or shall be substituted for the Estate for purposes of any pending objection to, the allowance of any Claim appearing on the Schedules, filed in the Chapter 11 Case, or estimated by the Bankruptcy Court with respect to which the Creditor Trustee disputes liability in whole or in part. The Creditor Trustee shall retain all rights of the Debtor (including all defenses, counterclaims, rights to setoff, rights to recoupment, and/or right to seek equitable subordination). All objections that are filed and prosecuted by the Debtor or the Creditor Trustee, as the case may be, as provided herein shall be litigated to Final Order or settled.

**H. Distributions Under the Plan**

In accordance with Article 9 of the Plan, the Creditor Trust Agreement shall govern Distributions by the Creditor Trust and shall be deemed to include the terms Article 9 of the Plan and other relevant provisions of the Plan. The payment of Distributions under the Creditor Trust Agreement shall be made in the ordinary course of business under those agreements and without any requirement for prior approval of the Bankruptcy Court.

Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth in the Proofs of Claim Filed by such Holders; (b) at the addresses set forth in any written notices of address change filed with the Bankruptcy Court or delivered to the Creditor Trustee after the date on which any related Proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no Proof of Claim has been Filed and the Creditor Trustee has not received a written notice of a change of address.

No payment in an amount of less than \$10.00 shall be required to be made on account of any Allowed Claim.

Unless otherwise expressly set forth herein with respect to a specific Claim or Class of Claims, for the purpose of the provisions of this Article, the "Face Amount" of a Disputed Claim means the amount set forth on the proof of Claim unless the Disputed Claim has been estimated for distribution purposes or, in the alternative, if no proof of Claim has been timely Filed or deemed Filed, zero.

If any Distribution to any Holder of Allowed Claim made by the Creditor Trustee is returned as undeliverable, the Creditor Trust shall use commercially reasonable efforts to determine the current address of each Holder, but no Distribution to such Holder shall be made unless and until the Creditor Trust has determined the then current address of such Holder; *provided, however*, that all Distributions to Holders of Allowed Claims made by, or attempted to be made by, the Creditor Trustee that are unclaimed for a period of 120 days after the date of the

first attempted Distribution shall have its, his, or her Claim for such undeliverable Distribution deemed satisfied and will be forever barred from asserting any such Claim against the Creditor Trust, the Creditor Trustee, or the Creditor Trust Assets. Any Distributions which are undeliverable or have not be negotiated within the time period set forth above shall be deemed unclaimed property under § 347(b) of the Bankruptcy Code and reinvested in the Creditor Trust.

In connection with the Plan and the distributions made in accordance therewith, if and to the extent applicable, the Creditor Trustee shall comply with all tax withholding and reporting requirements imposed by any Governmental Unit and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Creditor Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**I. Conditions to Confirmation**

The Confirmation Order shall be in form and substance reasonably satisfactory to the Trustee.

**J. Conditions to the Effective Date**

1. The Effective Date of the Plan shall not occur unless and until the following conditions shall have been satisfied or waived by the Trustee, as determined in her sole discretion: (a) the Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Plan Proponent, and such Confirmation Order shall not have been appealed within fourteen (14) calendar days of entry or, if such Confirmation Order is appealed, shall not have been stayed pending appeal, and there shall not have been entered by any court of competent jurisdiction any reversal, modification or vacation, in whole or in part, of such Confirmation Order; (b) the Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to § 1125 of the Bankruptcy Code; (c) all documents, instruments and agreements provided for hereunder or necessary to implement the Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby, in form and substance satisfactory to the Plan Proponent; (d) there is sufficient available Cash to pay all Allowed Administrative Claims (including Allowed Professional Claims), Allowed Priority Claims and Allowed Priority Tax Claims, as applicable; and (e) no order of a court restraining the Trustee from consummating the Plan shall have been entered and shall remain in effect.

2. The conditions precedent specified above may be waived in whole or in part by the Plan Proponent. Subject to the foregoing, any such written waiver of a condition precedent set forth in this Section may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Trustee decides that one of the foregoing conditions cannot be satisfied, and the occurrence of such condition is not waived in writing by the Trustee, then the Trustee shall file a notice of the failure of the Effective Date with the Bankruptcy Court, at which time the Plan and the Confirmation Order shall be deemed null and void.

**3. Notice of Effective Date.** On the Effective Date, the Trustee or Creditor Trustee shall file a notice of the occurrence of the Effective Date with the Bankruptcy Court.

**K. Modification of the Plan**

Subject to the restrictions on Plan modifications set forth in § 1127 of the Bankruptcy Code, the Trustee reserves the right to alter, amend or modify the Plan before its substantial consummation.

**L. Effect of Confirmation**

Pursuant to §§ 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the subject matters set forth in Article 12 of the Plan.

Except as otherwise provided in § 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against or Interest in the Debtor, and its respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

**M. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Assets to the Creditor Trustee, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case after the Effective Date to the fullest extent legally permissible, including jurisdiction to, among other things:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of all Claims;

(b) Hear and determine any and all Causes of Action against any Person and rights of the Debtor that arose before or after the Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Person whatsoever, including, but not limited to, all avoidance powers granted to the Debtor under the Bankruptcy Code and all causes of action and remedies granted pursuant to Chapter 5 of the Bankruptcy Code;

(c) Grant or deny any applications for allowance of compensation for professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(d) Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a

party or with respect to which the Debtor may be liable, including, without limitation, the determination of whether such contract is executory for the purposes of § 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;

(e) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(f) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor that may be pending in the Chapter 11 Case on the Effective Date;

(g) Hear and determine matters concerning state, local or federal taxes in accordance with §§ 346, 505 or 1146 of the Bankruptcy Code;

(h) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, Exit Facility and the Confirmation Order;

(i) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, Exit Facility or the Confirmation Order;

(j) Permit the Debtor, to the extent authorized pursuant to § 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan, or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;

(k) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(l) Enter and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(m) Determine any other matters that may arise in connection with or relating to the Plan or any agreement or the Confirmation Order or any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(n) Enter any orders in aid of prior orders of the Bankruptcy Court; and

(o) Enter a final decree closing the Chapter 11 Case.

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

On the Effective Date, all executory contracts and unexpired leases that exist between the Debtor and any Entity which (i) have not previously been assumed and assigned to the Purchaser pursuant to the terms of the Sale Order and Asset Purchase Agreement or (ii) are not the subject of pending motions to assume, assume and assign or reject as of the Confirmation Date, will be

deemed rejected in accordance with the provisions and requirements of § 365 of the Bankruptcy Code. The Confirmation Order (except as otherwise provided therein) shall constitute an order of the Bankruptcy Court pursuant to § 365 of the Bankruptcy Code, effective as of the Effective Date, approving such rejections. The listing of a contract or lease to be rejected pursuant to Section 6.1 of the Plan shall not constitute an admission by the Debtor that such contract or lease is an executory contract or unexpired lease or that the Debtor have any liability thereunder.

To the extent that any and all D&O Policies are considered Executory Contracts, then notwithstanding anything herein to the contrary, such D&O Policies shall be deemed assumed and assigned to the Creditor Trust. 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 the D&O Policies. For the avoidance of any doubt, all rights under the D&O Policies shall be preserved and shall vest with the Creditor Trust 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, including the D&O Policies.

**Proofs of Claim for alleged damages arising from the rejection pursuant to the Plan, the Confirmation Order or any subsequent Order of the Bankruptcy Court, of any executory contract or any unexpired lease shall be Filed with the Bankruptcy Court and served on counsel for the Debtor or the Creditor Trustee not later than thirty (30) days after the service of the earlier of: (i) notice of entry of the Confirmation Order or (ii) other notice that the executory contract or unexpired lease has been rejected (including service of an Order of the Bankruptcy Court providing for such rejection). Any Holder of a Claim arising from the rejection of any executory contract or any unexpired lease that fails to File a Proof of Claim on or before the date specified in this paragraph shall be forever estopped and enjoined from asserting such Claims in any manner against the Debtor, its Estate, any other Person or Entity or the Purchaser (or Filing Proofs of Claim with respect thereof) or their Property and the Debtor shall be forever discharged from all indebtedness or liability with respect to such Claims, and, if applicable, such Holders shall not be permitted to vote on the Plan or to participate in any distribution in this Chapter 11 Case on account of such Claims or to receive further notices regarding such Claims and shall be bound by the terms of the Plan.**

The Bankruptcy Court shall determine any Objections to any Proofs of Claim Filed in accordance with Article 6.3 of the Plan at a hearing to be held at a date to be determined by the Bankruptcy Court. Allowed Claims arising out of the rejection of executory contracts and unexpired leases shall, pursuant to § 502(g) of the Bankruptcy Code, be Class 3 General Unsecured Claims.

**O. Preservation of Rights of Setoffs**

The Creditor Trustee, may, but shall not be required to, set off against any Claim, and the payment or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor and/or the Trustee may have against the Holder of such Claims; but neither the failure to do so nor the allowance of any Claim under the Plan shall

constitute a waiver or release by the Debtor and/or the Trustee of any such claim that the Debtor and/or the Trustee may have against such Holder.

**P. Exculpation and Limitation of Liability**

Except as otherwise provided in the Plan, the Confirmation Order, or any other Final Order of this Court, as of the Effective Date, the Debtor, the Trustee, nor any of their respective employees, attorneys, representatives, financial advisors, investment bankers, advisors or agents, in their capacities as such (collectively, the “Exculpated Parties”), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, or arising out of, the Case, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud or the willful misconduct or gross negligence of any such party. With respect to Professionals, the foregoing provision shall also exclude claims of professional negligence arising from the services provided by such Professionals during the Chapter 11 Case. Any such claims shall be governed by the standard of care otherwise applicable to the standard of negligence claims outside of bankruptcy. The Confirmation Order shall enjoin the prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any such claim, obligation, suit, judgment, damage, loss, right, remedy, cause of action, charge, cost, debt, indebtedness, or liability which arose or accrued during such period or was or could have been asserted against any of the Exculpated Parties, except as otherwise provided in the Plan or in the Confirmation Order. Each of the Exculpated Parties shall have the right to independently seek enforcement of this release provision. All such Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities hereunder and under the Bankruptcy Code. Notwithstanding anything herein to the contrary, the exculpation and limitation of liability provided for herein shall not apply to any acts of omissions that occurred prior to the Petition Date. The rights granted hereunder are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Exculpated Parties have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained herein, the provisions of this section shall not release any of the Causes of Action.

**V. CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

The Bankruptcy Court has scheduled the Confirmation Hearing for confirmation of the Plan (and for final approval of the Disclosure Statement) for \_\_\_\_\_ at \_\_\_\_\_.m. (prevailing Eastern time) before the Honorable Eric P. Kimball, United States Bankruptcy Judge for the Southern District of Florida, located at the United States Bankruptcy Court, Flagler Waterview Building, 1515 North Flagler Drive, 8<sup>th</sup> Floor, Courtroom B, West Palm Beach, Florida 33401.

The Confirmation Hearing may be adjourned from time to time without notice except as given at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing. The

Bankruptcy Court has directed that objections, if any, to the confirmation of the Plan be served on or before \_\_\_\_\_ at \_\_\_\_\_.m. (prevailing Eastern time) in the manner prescribed in the Notice accompanying this Disclosure Statement.

**B. Confirmation Standards**

For a plan to be confirmed, the Bankruptcy Court requires, among other things, that a plan be proposed in good faith and comply with the applicable provisions of Chapter 11 of the Bankruptcy Code. § 1129 of the Bankruptcy Code also imposes requirements that at least one class of impaired claims accept a plan, that confirmation of a plan is not likely to be followed by the need for further financial reorganization, that a plan be in the best interest of creditors, and that a plan be fair and equitable with respect to each class of claims or interests which is impaired under the plan.

The Bankruptcy Court will confirm a plan only if it finds that all of the requirements enumerated in § 1129 of the Bankruptcy Code have been met. The Trustee believes that the Plan satisfies all of the requirements for confirmation.

**VI. FUNDING AND FEASIBILITY OF THE PLAN**

**A. Funding of the Plan**

All distributions required to be made pursuant to the terms of this Plan, and the costs of administering such distributions incurred by the Creditor Trustee, shall be obtained from the Creditor Trust Assets and Exit Facility.

**B. Feasibility**

§ 1129(a)(11) of the Bankruptcy Code requires that the Debtor be able to perform their obligations under the Plan. For the purposes of determining whether the Plan meets this requirement, the Debtor analyzed its ability to meet their obligations under the Plan. The Debtor believes that they have adequate funding to be able to meet their obligations under the Plan.

**C. Risk Factors Associated with the Plan**

Holders of Claims against the Debtor should read and consider carefully the information set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. As discussed below in Article VII, if the Bankruptcy Court does not confirm the Plan, the Debtor could be forced to pursue a different plan with attendant costs to the Estates that could decrease distributions or could be forced to convert to Chapter 7, which could also diminish recoveries.

**VII. ALTERNATIVES TO THE PLAN**

Although this Disclosure Statement is intended to provide information to assist a Claim Holder in determining whether to vote for or against the Plan, a summary of alternatives to confirmation of the Plan may be helpful.

If the Plan is not confirmed, the following alternatives are available: (a) conversion of this Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or (b) dismissal of this Chapter 11 Case leaving creditors and interest holders to pursue available non-bankruptcy remedies. These alternatives to the Plan are very limited and not likely to benefit creditors. The most likely result if the Plan was not confirmed is that this Chapter 11 Case would be converted to a case under Chapter 7 of the Bankruptcy Code. The Trustee believes that conversion of this Chapter 11 Case to Chapter 7 case would result in (i) significant delay in distributions to all creditors who could have received a distribution under the Plan and (ii) diminished or no recoveries for certain creditors and/or Interest Holders. If this Chapter 11 Case is dismissed, creditors would be free to pursue nonbankruptcy remedies in their attempts to satisfy claims against the Debtors. However, in that event, creditors would be faced with the costs and difficulties of attempting, each on its own, to collection claims from a non-operating entity.

## **VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

### **A. In General**

The following discussion summarizes certain material U.S. federal income tax consequences expected to result from the consummation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service.(the “IRS”). There can be no assurance that the IRS will not take a contrary view, no ruling from the IRS has been or will be sought nor will any counsel provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to the beneficial owners of Claims (each a “Holder” and collectively, the “Holders”) of Claims or the Debtor. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences described herein.

The following summary is for general information only. The tax treatment of a Holder may vary depending upon such Holder’s particular situation. This summary does not address all of the tax consequences that may be relevant to a Holder, including any alternative minimum tax consequences and does not address the tax consequences to a Holder that has made an agreement to resolve its claim in a manner not explicitly provided for in the Plan. This summary also does not address the U.S. federal income tax consequences to persons not entitled to vote on the Plan or Holders subject to special treatment under the U.S. federal income tax laws, such as brokers or dealers in securities or currencies, certain securities traders, tax-exempt entities, financial institutions, insurance companies, foreign persons, partnerships and other pass-through entities, Holders that hold Claims as a position in a “straddle” or as part of a “synthetic security,” “hedging,” “conversion” or other integrated transaction, Holders that have a “functional currency” other than the United States dollar and Holders that have acquired Claims in connection with the performance of services. The following summary assumes that the Claims are held by Holders as “capital assets” within the meaning of § 1221 of the IRC and that all

Claims denominated as indebtedness are properly treated as debt for U.S. federal income tax purposes.

The tax treatment of Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Holder in exchange for the Claim and whether the Holder receives distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii) whether the Holder has previously included in income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the “market discount” rules are applicable to the Holder. Therefore, each Holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

**THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, TAXPAYERS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**B. U.S. Federal Income Tax Consequences to the Debtor**

If there is a discharge of a debt obligation by a debtor (in the case of indebtedness with multiple obligors, indebtedness that is allocable to such debtor) for an amount less than the

adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments), such discharge generally would give rise to cancellation of debt (“COD”) income, which must be included in the debtor’s income. However, the Debtor should be able to utilize a special tax provision which excludes from income debts discharged in a Chapter 11 case (the “Bankruptcy Exception”).

### **C. U.S. Federal Income Tax Consequences to Holders of Claims**

The U.S. federal income tax consequences of the implementation of the Plan to the Holder of a Claim or Interest, will depend on a number of factors, including: (i) whether the Claim constitutes a “security” for U.S. federal income tax purposes, (ii) the nature and origin of the Claim, (iii) the manner in which the holder acquired the Claim, (iv) the length of time the Claim has been held, (v) whether the Claim was acquired at a discount, (vi) whether the Holder has taken a bad debt deduction or loss with respect to the Claim (or any portion thereof) in the current year or in any prior year, (vii) whether the Holder has previously included in its taxable income accrued but unpaid interest with respect to the Claim, (viii) the Holder’s method of tax accounting, (ix) whether the Claim is an installment obligation for U.S. federal income tax purposes, and (x) the timing of any distributions under the Plan.

#### **1. Gain or Loss Recognition on the Satisfaction of Claims and Character of Gain or Loss**

Holders of a Claim will generally not recognize gain, but may recognize loss, with respect to the amount in which the Holders receive on their Claims (generally, the amount of cash and the fair market value of any other property received in satisfaction of the Debtor’s obligations) that either exceeds, on one hand, or is less than, on the other hand, the Holder’s basis in the Claim. Thus, it is possible that certain Holders may recognize a gain or loss as a result of distributions under the Plan.

In general, gain or loss is recognized by any such Holder is either capital or ordinary in character. The character is dependent upon the underlying nature of the Claim and whether such Claim, in the hands of the Holder, constitutes a capital asset. To the extent that a debt instrument is acquired after its original issuance for less than the issue price of such instrument, it will have market discount. A Holder of a Claim with market discount must treat any gain recognized on the satisfaction of such Claim as ordinary income to the extent that it does not exceed the market discount that has already been accrued with respect to such Claim. There may also be state, local or foreign tax considerations applicable to particular Holders of Claims, none of which are discussed herein. **Holders should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequences to them of the transactions contemplated by the Plan.**

#### **2. Interest Income with respect to Allowed Claims**

Holders of Allowed Claims will be treated as receiving a payment of interest (includible in income in accordance with the Holder’s method of accounting for tax purposes) to the extent that any cash or other property received (or deemed received) pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of

cash or other property should be attributable to accrued but unpaid interest is unclear. The Creditor Trustee intends to take the position, and the Plan provides, that such cash or property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Holder should consult its tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any). A Holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

**THE FOREGOING DISCUSSION OF CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN DESCRIBED HEREIN AND THE APPLICATION OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS. NEITHER THE DEBTOR NOR its PROFESSIONALS SHALL HAVE ANY LIABILITY TO ANY PERSON OR HOLDER ARISING FROM OR RELATED TO THE U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN OR THE FOREGOING DISCUSSION.**

#### **IX. CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that confirmation of the Plan is preferable to all other alternatives. Consequently, in the event that the Court determines that any class or classes of claims are impaired under the Plan, the Trustee recommends all Holders of Class 1, 2 and Claims and Class 4 Interests to vote to ACCEPT the Plan.

Dated: October 27, 2017

Respectfully Submitted,

**TRIPP SCOTT, P.A.**

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**EXHIBIT A – PLAN OF REORGANIZATION**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Chapter 11

SPANISH ISLES PROPERTY OWNERS'  
ASSOCIATION, INC.

Case No. 14-34444-EPK

Debtor.

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**TRUSTEE'S AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

Dated: October 27, 2017

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## INTRODUCTION

Margaret J. Smith (“Trustee” or “Plan Proponent”), Chapter 11 Trustee of the Spanish Isles Property Owners’ Association, Inc. (“Debtor”) proposes the following *Trustee’s Chapter 11 Plan of Reorganization* (as amended from time to time, and including all Plan Documents and other attachments hereto, as any of the same may be amended from time to time, all of which are incorporated herein by reference and are a part of, the “Plan”), pursuant to the provisions of Chapter 11 of the Bankruptcy Code. Capitalized terms used herein shall have the meanings set forth in Article 1. All interested parties are encouraged to read the Plan in its entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in § 1127 of the Bankruptcy Code, Federal Bankruptcy Rule 3019 and provisions of the Plan, the Plan Proponent expressly reserves the right to alter, amend, modify, revoke, or withdraw the Plan prior to the Effective Date.

For a discussion of the Debtor’s history, business, operations, assets and liabilities, and for a summary and analysis of the Plan, preservation of Causes of Action, risk factors, liquidation analysis, tax implications and alternatives to the Plan, reference should be made to the *Disclosure Statement for the Trustee’s Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, filed contemporaneously with the Plan, as such disclosure statement may be amended, modified or supplemented (the “Disclosure Statement”).

## ARTICLE 1

### DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION

**1.1 Scope of Definitions.** For the purposes of the Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article 1 of the Plan. Any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, respectively. Whenever the context requires, capitalized terms shall include the plural as well as the singular, terms in the masculine gender shall include the feminine, and terms in the feminine gender shall include the masculine, unless otherwise so stated in the Plan or Disclosures Statement

**1.2 Definitions.** In addition to such other terms as are defined in other sections of the Plan, the following terms (which appear in the Plan as capitalized terms) used herein shall have the respective defined below.

**1.2.1 Administrative Expense Claim** means a right to payment for any cost or expense of administration of this Chapter 11 Case asserted or arising under §§ 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code, including, any (i) actual and necessary cost or expense of preserving the Debtor’s Estate or operating the Debtor’s business arising on or after the Petition Date, (ii) payment to be made under the Plan to cure a default on an executory contract or unexpired lease that is assumed pursuant to § 365 of the Bankruptcy Code, (iii) cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtor in the ordinary course of business arising on or after the Petition Date, (iv) Professional Fee Claims, (v)

Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under § 546(2)(A) of the Bankruptcy Code, and (vi) fees or charges assessed against the Debtor's Estate under § 1930 of title 28 of the United States Code.

**1.2.2 Administrative Expense Claim Bar Date** means the date to be fixed by the Bankruptcy Court as the last date for filing applications or motions for allowance and payment of Administrative Expense Claims; provided, however, that the Administrative Expense Claim Bar Date shall not apply to (a) Professional Claims or other Persons requesting compensation or reimbursement pursuant to §§ 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including any compensation requested by any professional or any other Person for making a substantial contribution in the Chapter 11 Case); or (b) liabilities incurred by the Debtor in the ordinary course of business after the Administrative Expense Claim Bar Date but before the Effective Date.

**1.2.3 Affiliate** shall have the meaning as set forth in § 101(2) of the Bankruptcy Code.

**1.2.4 Allowed Claim or Allowed Interest** means, in reference to any Claim or Interest, a Claim or Interest (a) arising on or before the Effective Date as to which (i) no objection to allowance or priority, and no request for estimation or other challenge, including, without limitation, pursuant to § 502(d) of the Bankruptcy Code or otherwise, has been filed or interposed and not withdrawn within the applicable period fixed by the Plan or applicable law, or (ii) an objection that has been determined in favor of the Holder of the Claim or Interest by a Final Order, (b) that is compromised, settled, or otherwise resolved pursuant to Final Order of the Bankruptcy Court, (c) as to which the liability of the Debtor, and the amount thereof are determined by a Final Order of a court of competent jurisdiction, or (d) expressly allowed hereunder; provided, however, that notwithstanding the foregoing, and unless expressly waived by the Plan, the Allowed amount of Claims or Interests shall be subject to and shall not exceed the limitations or maximum amounts permitted by the Bankruptcy Code, including §§ 502 or 503 of the Bankruptcy Code, to the extent applicable.

**1.2.5 Articles of Incorporation** means the Articles of the Debtor as recorded in the Public Records of Palm Beach County.

**1.2.6 ASM** means ASM Capital.

**1.2.7 Assets** means all property of the Estate as defined under and included in § 541(a) of the Bankruptcy Code, including without limitation, all legal or equitable prepetition and postpetition interests of the Debtor in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, tax refunds, cash, deposit accounts, reserves, deposits, equity interests, contractual rights, intellectual property rights, claims, causes of actions, assumed executory contracts and unexpired leases, other general intangibles, and the proceeds, products, offspring, rents or profits thereof.

**1.2.8 Association Documents** means the Debtor's Declaration, Articles of Incorporation and By-Laws.

**1.2.9 Avoidance Action** means any Cause of Action assertable by the Debtor or its Estate under Chapter 5 of the Bankruptcy Code, including without limitation, actions brought under §§ 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code.

**1.2.10 Ballot** means the form or forms distributed to each holder of an Impaired Claim or Interest entitled to vote on the Plan, on which the acceptance or rejection of the Plan is to be indicated.

**1.2.11 Bankruptcy Code** means title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, as applicable in this Chapter 11 Case.

**1.2.12 Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Florida (West Palm Beach Division).

**1.2.13 Bankruptcy Rules** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under § 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under § 2072 of title 28 of the United States Code, (c) the Local Rules of the United States Bankruptcy Court for the Southern District of Florida and the guidelines and requirements of the Office of the United States Trustee, and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Chapter 11 Case or proceedings herein, as the case may be.

**1.2.14 Business Day** means any day other than a Saturday, Sunday or a Legal Holiday (as such term is defined in the Federal Rules of Bankruptcy Procedure, Rule 9006(a)).

**1.2.15 By-Laws** means the By-Laws of the Debtor, as recorded in the Public Records of Palm Beach County.

**1.2.16 Cash** means lawful currency of the United States of America or its equivalents, including, but not limited to, wire transfers and checks.

**1.2.17 Claims Bar Date** means, as applicable, (1) May 1, 2015, as to Governmental Units and March 10, 2015, as to non-Governmental Units, and (2) any other date(s) established by the Bankruptcy Court as the last date(s) for filing Claims against the Debtor

**1.2.18 Causes of Action** means any and all claims, choses in action, causes of action suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payments and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether assertable directly or derivatively, in law, equity or otherwise, which are owned or held by, or have accrued to, the Debtor, whether arising before or after the Petition Date, including, without limitation, those

which are: (i) property of the Estate under and pursuant to § 541 of the Bankruptcy Code; (ii) for subrogation, contribution, set off and recoupment; (iii) for turnover; (iv) for Avoidance Actions; (v) to determine the extent, validity and priority of liens and encumbrances; (vi) for surcharge under § 506(c) of the Bankruptcy Code; (vii) for subordination under § 510 of the Bankruptcy Code; (viii) related to federal or state securities laws; (ix) direct or derivative claims or causes of action of any type or kind; (x) for any professional malpractice action under and pursuant to any policies of insurance maintained by the Debtor; (xi) direct or derivative claims or causes of action of any type or kind; (xii) against any and all current and/or former officers and directors of the Debtor, and any of their affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, corporate waste, deepening insolvency or breach of contract, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, or elsewhere; (xiii) under and pursuant to any policies for insurance (including for bad faith) maintained by the Debtor, including, without limitation, any liability insurance policy and/or D&O Policies; (xiv) for collection on accounts, accounts receivables, loans, notes receivables or other rights to payment; (xv) for the right to seek a determination by the Bankruptcy Court of any tax, fine or penalty relating to a tax, or any addition to a tax, under § 505 of the Bankruptcy Code; (xvi) related to or which arise under or as a result of any section of the Bankruptcy Code, including § 362; and (xvii) or may be available to the Debtor against any third party(ies) under any legal or equitable theory, whether or not specifically identified or described herein or in the Disclosure Statement.

**1.2.19 Chapter 11 Case** means this Chapter 11 case captioned *In re Spanish Isles Property Owners' Association, Inc.*, Case No. 14-34444-BKC-EPK, pending before the Bankruptcy Court.

**1.2.20 Claim** means a “claim,” as defined in § 105(5) of the Bankruptcy Code, against the Debtor.

**1.2.21 Class** means a group of Claims or Interests as classified in a particular class under the Plan pursuant to § 1122 of the Bankruptcy Code.

**1.2.22 Confirmation** means the entry of an order of the Bankruptcy Court confirming the Plan in accordance with § 1129 of the Bankruptcy Code.

**1.2.23 Confirmation Date** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket pursuant to Bankruptcy Rule 5003(a).

**1.2.24 Confirmation Hearing** means the duly noticed hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code § 1128 of the Bankruptcy Code, including any continuances thereof.

**1.2.25 Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code, as such order may be amended, modified or supplemented.

**1.2.26 Creditor** means any Person or Entity who holds a Claim against the Debtor.

**1.2.27 Creditor Trust** means the grantor trust to be created on the Effective Date pursuant to the Plan under the control of the Creditor Trustee and into which the Creditor Trust Assets will vest.

**1.2.28 Creditor Trust Agreement** means that certain grantor trust agreement to be executed and delivered by and between the Debtor and the Creditor Trustee on the Effective Date, the form of which trust agreement will be filed with the Bankruptcy Court on or before the Effective Date.

**1.2.29 Creditor Trustee** means Margaret J. Smith.

**1.2.30 Creditor Trust Assets** means all (i) Cash, (ii) Cash collected from the Plan Funding Special Assessment (iii) Cash collected from future general assessments, special assessments and charges; (iv) the power to levy, enforce and collect general assessments; (v) the power to levy, enforce and collect special assessments; (vi) the power to levy, enforce and collect the Plan Funding Special Assessment; (vii) the power to levy, enforce and collect general assessments and charges; (viii) D&O Claims (ix) Avoidance Actions, and (x) Causes of Action, which Assets shall be transferred to and vest in the Creditor Trust pursuant to the terms of the Plan on the Effective Date.

**1.2.31 D&O Claims** means all Causes of Action against all current and/or former officers and directors of the Debtor, and any of its affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract.

**1.2.32 D&O Policies** means all insurance policies of any or all of the Debtor providing coverage for claims against directors, officers, executives, or employees, including but not limited to the following insurance policies: (a) RSUI Directors and Officers Liability Policy No. HP664225, predecessors, renewals and related contracts; and (b) Travelers Community Association Management Liability Coverage Policy No. 105950886, predecessors, renewals and related contracts

**1.2.33 Debtor** has the meaning set forth in the Introduction hereof.

**1.2.34 Declaration** means the Declaration of Covenants, Conditions and Restrictions for the Debtor, as recorded in the Public Records of Palm Beach County.

**1.2.35 Disallowed** means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which (i) has been disallowed, in whole or part, by a Final Order of the Bankruptcy Court, (ii) has been withdrawn by agreement of the Debtor and the Holder thereof, in whole or in part, (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as Disputed, contingent or unliquidated and in respect of which a Proof of Claim or a Proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law, (v) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any Proof of Claim or Proof of Interest, or (vi) is deemed to be Filed under applicable law or order of the

Bankruptcy Court or which is required to be Filed by order of the Bankruptcy Court but as to which such Proof of Claim or Proof of Interest was not timely or properly Filed. In each case a Disallowed Claim or Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

**1.2.36 Disallowed Claim** means a Claim, or any portion thereof, that is Disallowed.

**1.2.37 Disallowed Interest** means an Interest, or any portion thereof, that is Disallowed.

**1.2.38 Disclosure Statement** means that certain *Disclosure Statement in Connection with Trustee's Chapter 11 Plan of Reorganization*, including the schedules and exhibits attached thereto, as amended, modified or supplemented from time to time, that is prepared and will be distributed (upon approval of the Bankruptcy Court) in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law.

**1.2.39 Disputed** means with respect to a Claim or Interest, (a) any such Claim or Interest to the extent neither Allowed nor Disallowed under the Plan or a Final Order nor deemed Allowed under § 502, 503, or 1111 of the Bankruptcy Code, or (b) to the extent the Debtor or any party in interest has interposed a timely objection or request for estimation before the Confirmation Date in accordance with the Plan, which objection or request for estimation has not been withdrawn or determined by a Final Order. To the extent the Debtor disputes only a portion of the Allowed amount of a Claim, such Claim shall be deemed Allowed in the amount the Debtor does not dispute, if any, and Disputed as to the balance of such Claim or Interest.

**1.2.40 Disputed Claim** means a Claim, or any portion thereof, that is Disputed.

**1.2.41 Disputed Interest** means an Interest, or any portion thereof, that is Disputed.

**1.2.42 Distribution** means each distribution of Cash to Holders of Allowed Claims or Allowed Interests pursuant to and under the terms of the Plan by the Creditor Trustee on each Distribution Date.

**1.2.43 Distribution Date** means the dates on which a Holder of an Allowed Claim or Holder of an Allowed Interest shall receive a Distribution of Cash under the terms of the Plan, which dates shall be (a) the Effective Date, and (b) such other dates designated in the Confirmation Order or as determined by the Creditor Trustee.

**1.2.44 Effective Date** means the date that is one (1) day after the Confirmation Date, as such date may be extended by Trustee.

**1.2.45 Entity** means an entity as defined in § 101(15) of the Bankruptcy Code.

**1.2.46 Estate** means, the estate that was created by the commencement by the Debtor of its Chapter 11 Case pursuant to § 541 of the Bankruptcy Code.

**1.2.47 Exculpated Parties** means (i) the Debtor; (ii) the Trustee; and (iii) the professionals engaged by the Trustee through order of the Bankruptcy Court.

**1.2.48 Exit Facility** means the exit credit facility provided by ASM in the principal amount of up to \$540,000.00 as described in the Exit Facility Term Sheet.

**1.2.49 Exit Facility Credit Agreement** means that certain credit agreement, dated as of the Effective Date, governing the Exit Facility (as may be amended, restated, amended and restated, supplemented, or modified from time to time, solely in accordance with the terms thereof) and containing terms consistent with the Exit Facility Term Sheet and which otherwise shall be in form and substance acceptable to the Plan Proponent and ASM in their respective discretion.

**1.2.50 Exit Facility Documents** means, collectively, the Exit Facility Credit Agreement and each other agreement, security agreement, pledge agreement, collateral assignments, mortgages, control agreements, guarantee, certificate, document or instrument executed and/or delivered in connection with any of the foregoing, whether or not specifically mentioned herein, as the same may be modified, amended, restated, supplemented or replaced from time to time and which shall be in form and substance consistent with the Exit Facility Term Sheet and otherwise acceptable to the Plan Proponent and ASM in their respective discretion.

**1.2.51 Exit Facility Term Sheet** means the term sheet for the Exit Facility annexed to the Plan as Exhibit A.

**1.2.52 File or Filed** means file or filed with the Bankruptcy Court in this Chapter 11 Case.

**1.2.53 Final Decree** means the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to § 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

**1.2.54 Final Order** means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Case, which has not been reversed, vacated, or stayed, and as to which: (i) the time to appeal, petition for certiorari, or move for a new trial, re-argument, or rehearing has expired, and as to which no appeal, petition for certiorari, or other proceedings for a new trial, re-argument, or rehearing shall then be pending; or (ii) if an appeal, writ of certiorari, new trial, re-argument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, re-argument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, re-argument, or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to § 502(j) or 1144 of the Bankruptcy Code, or pursuant to Rule 60 of the Federal Rules of Civil Procedure, or pursuant to Bankruptcy Rules 9024 or Rule 8002(d) has been or may be filed with respect to such order or judgment.

**1.2.55 General Unsecured Claim** means any Claim against the estate of the Debtor other than an Administrative Expense Claim, a Secured Claim, a Priority Claim or a Priority Tax Claim.

**1.2.56 Holder** means the holder of a Claim or Interest (and, when used in conjunction with a Class or type of Claim or Interest, means a Holder of a Claim or Interest in such Class or of such type).

**1.2.57 Impaired** shall have the meaning ascribed to it in § 1124 of the Bankruptcy Code when used with reference to a Claim or an Interest.

**1.2.58 Interests** means the membership interest in the Debtor of an Owner.

**1.2.59 IRC** means the Internal Revenue Code of 1986, as amended from time to time.

**1.2.60 Lien** means any: (i) judicial lien contemplated in § 101(36) of the Bankruptcy Code; (ii) mortgage, lien, pledge, security interest or other charge or encumbrance or security device of any kind affecting any asset or any property of the Debtor contemplated by § 101(37) of the Bankruptcy Code; (iii) security interest contemplated in § 101(51) of the Bankruptcy Code; (iv) statutory lien contemplated in § 101(53) of the Bankruptcy Code; and (v) other lien, interest, charge or encumbrance.

**1.2.61 Litigation Proceeds** means the gross recoveries resulting from the prosecution and/or settlement of the Causes of Action, less all professional fees and costs incurred in connection with each such Cause of Action.

**1.2.62 Local Rules** means the Local Rules of the United States Bankruptcy Court for the Southern District of Florida and the guidelines and requirements of the Office of the United States Trustee for the Southern District of Florida.

**1.2.63 Objection** means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to Disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than a Claim or an Interest that is Allowed.

**1.2.64 Owner** shall have the same meaning as provided in Article 1, Section 2 of the Declaration and shall mean the record owners of the individual residences within the Spanish Isles Community, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties of the community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**1.2.65 Person** means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organizations, financial institution government or any political subdivision thereof (as defined in §101(41) of the Bankruptcy Code).

**1.2.66 Petition Date** means November 2, 2014.

**1.2.67 Plan** means the Chapter 11 plan, as set forth and defined in the preamble hereof, including all appendices, exhibits, schedules, and supplements hereto (including, without limitation, any appendices, schedules, and supplements to the Plan contained in the Plan Supplement), as the same may be amended, supplemented, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

**1.2.68 Plan Documents** means all documents that aid in effectuating the Plan, including, without limitation, all addenda, exhibits, schedules, and the Plan Supplement, which documents (as may be amended, modified or supplemented from time to time) shall be in form and substance reasonably acceptable to the Plan Proponent.

**1.2.69 Plan Funding Special Assessment** means the special assessment in the amount of \$3,000.00, per home, to be paid over a period of three (3) years in twelve (12) quarterly installments of \$250.00, and which will be duly authorized by the Board of Directors of the Debtor at a special board meeting to be held on September 26, 2017.

**1.2.70 Plan Supplement** means, collectively, those material documents executed or to be executed in order to consummate the transactions contemplated under the Plan, which will be filed within the Bankruptcy Court on or before the date that is fourteen (14) days before the Confirmation Hearing.

**1.2.71 Post-Confirmation Administrative Claim** means a Claim for services rendered or expenses incurred after the Effective Date in connection with this Chapter 11 Case by the Creditor Trustee and/or the Professionals employed by the Creditor Trustee.

**1.2.72 Priority Claim** means a Claim to the extent that it is of a kind described in, and entitled to priority under, § 507(a)(2),(a)(3), (a)(4), (a)(5), (a)(6), (a)(7) or (a)(9) of the Bankruptcy Code, that is not a Priority Tax Claim.

**1.2.73 Priority Tax Claim** means an unsecured Claim of a Governmental Unit of the kind specified in § 507(a)(8) of the Bankruptcy Code.

**1.2.74 Professional** means any professional employed or to be compensated pursuant to §§ 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

**1.2.75 Professional Fee Claim** means a Claim of a Professional retained in this Chapter 11 Case by the Debtor pursuant to a Final Order in accordance with § 327 or 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of actual and necessary costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date; *provided*, for the avoidance of doubt, that fees and expenses incurred by the Creditor Trustee and the Professionals employed by the Creditor Trustee shall be Post Confirmation Administrative Claims.

**1.2.76 Proof of Claim** means any proof of Claim Filed with the Bankruptcy Court with respect to the Debtor pursuant to Bankruptcy Rules 3001 or 3002.

**1.2.77 Proof of Interest** means any proof of Interest Filed with the Bankruptcy Court with respect to the Debtor pursuant to Bankruptcy Rule 3002.

**1.2.78 Pro Rata** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims and Disputed Claims in a particular Class and other Classes entitled to share in the same recovery as such Class under the Plan.

**1.2.79 Rejection Claim** means a Claim for damages resulting from the rejection of an executory contract by the Debtor pursuant to **Section 6.3** of the Plan.

**1.2.80 Reorganized Debtor** means the Debtor and any successors thereto, as reorganized as of the Effective Date in accordance with the Plan and after giving effect to the mergers, conversion, and/or substantive consolidation as set forth in the Plan.

**1.2.81 Scheduled** means as set forth on the Schedules.

**1.2.82 Schedules** means the Schedules of Assets and Liabilities Filed by the Debtor in accordance with § 521 of the Bankruptcy Code and Federal Bankruptcy Rule 1007, as the same may be amended from time to time prior to the Effective Date in accordance with Federal Bankruptcy Rule 1009.

**1.2.83 Secured Claim** means any Claim: (i) secured by collateral, to the extent of the value of such collateral (a) as set forth in the Plan, (b) as agreed to by the Holder of such Claim and the Debtor, (c) as determined by a Final Order in accordance with § 506 of the Bankruptcy Code; or (ii) in the event that such Claim is subject to a permissible setoff under § 553 of the Bankruptcy Code, to the extent of such permissible setoff.

**1.2.84 Security** has the meaning set forth in § 101(49) of the Bankruptcy Code.

**1.2.85 Spanish Isles Community** means the residential community of Spanish Isles located in Palm Beach County, Florida that is managed by the Debtor.

**1.2.86 Statutory Fees** means the fees due the United States Trustee pursuant to 28 U.S.C. § 1930.

**1.2.87 Taxes** means all income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, excise, sales, use, employment, withholding, property, payroll or other taxes, assessments, or governmental charges, together with any interest, penalties, additions to tax, fines, and similar amounts relating thereto, imposed or collected by any federal, state, local or foreign governmental authority on or from the Debtor.

**1.2.88 U. S. Trustee** means the Office of the United States Trustee.

**1.2.89 Unimpaired** means, with respect to a Class of Claims, a Claim that is “unimpaired” within the meaning of § 1124 of the Bankruptcy Code.

**1.3 Rules of Interpretation.**

**1.3.1** In the event of an inconsistency, (a) the provisions of the Plan shall control over the contents of the Disclosure Statement, and (b) the provisions of the Confirmation Order shall control over the contents of the Plan.

A. For the purposes of the Plan:

(1) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; provided, however, that any change to such form, terms or conditions that is material to a party to such document shall not be modified without such party's consent unless such document expressly provides otherwise;

(2) any reference in the Plan to an existing document, exhibit or schedule Filed or to be Filed means such document, exhibit or Plan schedule, as it may have been or may be amended, modified or supplemented as of the Effective Date;

(3) unless otherwise specified, all references in the Plan to "Sections," "Articles," "Exhibits" and "Plan Schedules" are references to Sections, Articles, Exhibits and Plan Schedules of or to the Plan;

(4) unless otherwise specified, the words "herein," "hereof," "hereto," "thereunder" and others of similar import, refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(5) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect interpretations of the Plan; and

(6) the word "including" means "including without limitation."

B. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date or as soon as reasonably practicable thereafter.

C. All exhibits to the Plan are incorporated into the Plan and shall be deemed to be included in the Plan, regardless of when they are Filed.

D. Subject to the provisions of any contract, certificate, bylaws, instrument, release or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

**1.4 Computation of Time.** In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Federal Bankruptcy Rule 9006(a) shall apply.

## ARTICLE 2

### TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, AND STATUTORY FEES

**2.1 Administrative Expense Claims.** Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable, the holder of an unpaid Allowed Administrative Expense Claim shall receive from the Creditor Trustee on account of the Allowed Administrative Expense Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Expense Claim, (a) Cash equal to the unpaid portion of such Allowed Expense Administrative Claim, or (b) such other treatment as to which the Plan Proponent or the Creditor Trustee, as applicable, and the Holder of such Allowed Administrative Expense Claim have agreed to writing.

**2.2 Statutory Fees.** On or before the Effective Date, all fees due and payable pursuant to 28 U.S.C. § 1930 shall be paid in full by the Debtor in Cash. Following the Effective Date, the Creditor Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930 for post-confirmation periods based upon disbursements made by the Creditor Trustee until the earlier of the closing of the Chapter 11 Case of the Debtor 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 the Chapter 11 Case of the Debtor to another chapter under the Bankruptcy Code.

**2.3 Professional Fee Claims.** On or prior to the deadline set by the Bankruptcy Court for Professionals to File final fee applications, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Each Holder of an Allowed Professional Fee Claim shall, in full satisfaction, settlement, discharge and release thereof, and in exchange thereof, be paid the Allowed amount of its Professional Fee Claim, in full, in Cash, on the Effective Date or as soon thereafter as is practicable.

## ARTICLE 3

### CLASSIFICATION, IMPAIRMENT AND VOTING OF CLASSIFIED CLAIMS AND INTERESTS

**3.1 General.** Pursuant to § 1122 of the Bankruptcy Code, below is a designation of the Classes of Claims against and Interests in the Debtor. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class. A Claim or Interest is also placed in a particular Class for purposes of receiving a Distribution under the Plan, but only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest and has not been paid, released, or otherwise settled prior to the Effective Date. Except as otherwise expressly set forth in the Plan, a Claim or Interest which is not an Allowed Claim or Allowed Interest shall not receive any payments, rights or Distributions under the Plan. In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Claims specified in §§ 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code have not been classified and are treated as set forth in Article 2 above.

**3.2 Classification and Impairment.** The following table designates the Classes of Claims against and the Interests in the Debtor and specifies which of those Classes are (a) Impaired or Unimpaired by the Plan and (b) entitled to vote to accept or reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Status</b>	<b>Entitled to Vote</b>
Class 1	Allowed Secured Claim of CenterState Bank as it relates to Loan No. 1120341327	Unimpaired	No. Deemed to Accept
Class 2	Allowed Secured Claim of CenterState Bank as it relates to Loan No. 1120345039	Unimpaired	No. Deemed to Accept
Class 3	Allowed General Unsecured Claims	Unimpaired	No. Deemed to Accept
Class 4	Allowed Interests in the Debtor	Unimpaired	No. Deemed to Accept

#### **ARTICLE 4**

#### **TREATMENT OF CLAIMS AND INTERESTS**

##### **4.1 Class 1 – Allowed Secured Claim of CenterState Bank, as it relates to Loan No. 1120341327.**

(a) *Classification.* Class 1 consists of the Allowed Secured Claim of CenterState Bank based on the Promissory Note dated August 1, 2013, in the principal amount of \$20,000.00 (Loan No. 1120341327). CenterState Bank filed Amended Proof of Claim No. 1 in the amount of \$8,006.61 and has claimed a security interest in certain assessments of the Debtor for monies loaned.

(b) *Treatment.* Except to the extent that a Holder of an Allowed Class 1 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 1 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 1 Claim is Allowed by a Final Order of the Bankruptcy Court.

(c) *Voting.* Class 1 is Unimpaired, and the Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

##### **4.2 Class 2 – Allowed Secured Claim of CenterState Bank, as it relates to Loan No. 1120345039.**

(a) *Classification.* Class 2 consists of the Allowed Secured Claim of CenterState Bank based on the Promissory Note dated August 7, 2014 in the principal amount of \$16,900.00 (Loan No. 1120345039). CenterState Bank filed Amended Proof of Claim No. 2 in the amount of \$12,782.30 and claimed a security interest in certain assessments of the Debtor for monies loaned.

(b) *Treatment.* Except to the extent that a Holder of an Allowed Class 2 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 2 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 2 Claim is Allowed by a Final Order of the Bankruptcy Court.

(c) *Voting.* Class 2 is Unimpaired, and the Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

#### **4.3 Class 3 – Allowed General Unsecured Claims.**

(a) *Classification.* Class 3 consists of Allowed General Unsecured Claims and includes the following claims (subject to objection by the Trustee):

- i. Marcia Hintz, Claim No. 3, in the amount of \$35,928.70;
- ii. Weintraub & Weintraub, Claim No. 4, in the amount of \$12,628.86;
- iii. Kaye Bender Rembaum, PL, Claim No. 5, in the amount of \$132,069.15. The Trustee has objected to this claim and thus, it will not be paid upon the Effective Date. Instead, a claim reserve representing the potential distribution amount for this claim will be funded upon Confirmation of the Plan; and
- iv. Linda Scialo, Claim No. 8, in the amount of \$26,058.40.

(b) *Treatment.* Except to the extent that a Holder of an Allowed Class 3 Claim has agreed to less favorable treatment of such Claim, each Holder of an Allowed Class 3 Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash, including the payment of interest allowable under § 506(b) of the Bankruptcy Code, on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which a Class 3 Claim is Allowed by a Final Order of the Bankruptcy Court.

(c) *Voting.* Class 3 is Unimpaired, and the Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the

Bankruptcy Code. Therefore, Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the Plan.

#### **4.4 Class 4 – Allowed Interests in the Debtor.**

(a) *Classification.* Class 4 consists of Allowed Interests in the Debtor, held by Owners of homes within the Spanish Isles community as provided for by the Declaration.

(b) *Treatment.* Holders of Allowed Interests in the Debtor shall retain their membership interest in the Reorganized Debtor and their legal, equitable and contractual rights will remain unaltered. Other than retaining their Interests in the Debtor, the Holders of Allowed Interests shall not be entitled to receive a Distribution under the Plan on account of such Interest.

(c) *Voting.* Class 4 is Unimpaired, and the Holders of Allowed Class 4 Claims are conclusively presumed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 4 Claims are not entitled to vote to accept or reject the Plan.

### **ARTICLE 5**

#### **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**5.1 Plan Summary.** This Chapter 11 Case involves the bankruptcy of the Debtor—a Florida homeowners’ association that is responsible for the operation of the Spanish Isles Community. As Trustee for the bankruptcy estate of the Debtor, the Trustee acts as the board of directors of the Debtor and files this Plan in order to allow the Debtor to exit bankruptcy. Through this Plan, the Trustee hopes, among other things, to stop the continuing expenses to the Debtor and the Estate relating to the Chapter 11 Case and to resolve all existing obligations of the Debtor. This summary is designed to provide Owners, Creditors, and other parties in interest a summary of this Plan and its key provisions.

One key feature of the Plan is how it deals with the Debtor’s assessment powers and who will have the ability to use and enforce those powers. Under the Governing Documents, the Debtor (through its board of directors) has the power to levy, enforce, and collect general assessments, special assessments, and charges. “Annual assessments” are fixed, but may be increased annually up to 5%. “Special assessments” generally are levied to account for unexpected or infrequent expenses. “Charges” are levied for the use of the communities’ common areas.

Prior to a hearing seeking confirmation of the Plan the Trustee, as the board of directors of the Debtor, moved to increase the annual assessment by 5% for the next year (2018) and by 5% each year thereafter, until the Exit Facility and all Creditors entitled to payment under the Plan are paid in full. The Trustee also levied a special assessment in the amount of \$3,000.00 per residence, payable at \$250.00 every quarter for three (3) years.

Another important feature of the Plan is a loan that will be provided by ASM. ASM is a lender who has agreed to lend money necessary for the Plan to work properly. The funds provided by ASM will be used to: (1) fund a claim reserve for the payment of disputed claims;

(2) pay a portion of approved Administrative Expenses; and (3) pay all Allowed Claims upon confirmation of the Plan confirmation.

The Plan also features the creation of a Creditor Trust, to be run by the Creditor Trustee. As set forth in Article 5 of the Plan, the Creditor Trust will be used to pay off Creditors with valid, Allowed Claims. On the Effective Date, all of the Creditor Trust Assets will be transferred to, and will vest in, the Creditor Trust. Creditor Trust Assets include, but are not limited to, Cash, recoveries from Causes of Action, and all powers held by the board of directors of Debtor, including but not limited to, the power to levy and collect assessments (both general and special) and charges.

On and after the Effective Date, the Creditor Trustee will retain the rights, powers, and duties of the board of directors or the Debtor. ***First***, the Creditor Trustee will be able to hire professionals (for example, attorneys or accountants) to represent her in connection with her duties under the Plan. ***Second***, the Creditor Trustee will be able to levy, collect, and enforce annual assessments, special assessments, and charges. Although the Creditor Trustee will continue to be the board of directors until the Exit Facility and all Creditors entitled to payment under the Plan are paid in full, the Creditor Trustee will seek to create a management committee of Owners that will be tasked with managerial responsibilities.

***Third***, the Creditor Trustee will retain the Debtor's right to commence, continue, or pursue any Cause of Action on behalf of the Debtor, including the Causes of Action that are currently ongoing before the Bankruptcy Court. Currently, there are two lawsuits pending—one lawsuit is against Kaye Bender Rembaum, P.L. ("Kaye Bender"), a law firm that previously represented the Debtor, and the other is against Donna Don and Carol Cetta, former directors and officers of the Debtor. In the lawsuit against Kaye Bender, the Trustee seeks damages under various theories and also seeks to eliminate the Claim filed by Kaye Bender against the Debtor in the amount of \$132,069.15. In the lawsuit against Don and Cetta, the Trustee successfully obtained final consent judgments against Don and Cetta, and now seeks to recover under the D&O Policies against the insurers. If the Creditor Trustee is successful in pursuing these pending lawsuits and other Causes of Action, recoveries from such Causes of Action will greatly reduce the amount the Creditor Trustee will have to collect through assessments or charges. Following confirmation of the Plan, professionals retained by the Creditor Trustee to pursue or continue the Causes of Action will be compensated on a contingency fee arrangement and will receive 30% of the recoveries, as opposed to an hourly fee.

**5.2 Continued Corporate Existence and Vesting of Assets.** The Debtor will continue to exist after the Effective Date as a corporate entity with all the powers of a not-for-profit corporation under Florida law, and pursuant to its Articles, Declaration, By-Laws or other organizational documents in effect before the Effective Date.

Except as otherwise provided herein, on the Effective Date, all property of the Debtor's Estate will vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and other interests, except for the Liens and Claims established under the Plan, and excluding the Creditor Trust Assets which will vest in the Creditor Trust on the Effective Date

**5.3 Management of the Reorganized Debtor.** On or after the Effective Date, the Trustee shall continue as the board of directors of the Reorganized Debtor. However, the Trustee may seek to appoint a management committee made up of Owners.

**5.3.1 Payment of Ordinary Course Expenses of the Reorganized Debtor.** The Reorganized Debtor shall submit a yearly budget to the Creditor Trustee containing the projected expenses for the upcoming fiscal year, which must be approved by the Creditor Trustee. Upon approval of the budget, the Creditor Trustee will remit funds, on a quarterly basis, necessary to meet the ordinary course expenses of the Reorganized Debtor, but only to the extent the funds collected from general assessments are sufficient to meet the Reorganized Debtor's expenses.

**5.3.2 Power to levy, enforce and collect assessments and charges.** The Creditor Trustee shall have the power to levy, enforce and collect assessments, general assessments, the Plan Funding Special Assessment and charges.

**5.3.3 Management Committee.** The Creditor Trustee may appoint a management committee, made up of Owners in the Spanish Isles Community, to assist in managing the affairs of the Reorganized Debtor.

**5.3.4 Reversion of Board Powers to Reorganized Debtor.** Upon full payment of all Allowed Claims against the Debtor, Professional Fee Claims, Post-Confirmation Administrative Expense Claims and the Exit Facility, the Trustee shall relinquish control of the board of directors to the Reorganized Debtor.

**5.4 Exit Facility.** On the Effective Date, the Creditor Trust will enter into the Exit Facility, providing not less than \$540,000.00 that shall be used in part to satisfy Allowed Claims.

**5.5 Creditor Trust Funding.** The Creditor Trust will be funded by the Creditor Trust Assets and Exit Facility.

**5.6 Vesting of Remaining Assets in the Creditor Trust.** On the Effective Date, except as otherwise expressly provided in the Plan, the Creditor Trust Assets shall be transferred to and vest in the Creditor Trust, free and clear of all Liens, encumbrances, or interests of any kind. On the Effective Date or as soon as practicable thereafter, the Debtor and the Trustee shall take all actions reasonably necessary to transfer control of the Creditor Trust Assets to the Creditor Trust and Creditor Trustee.

**5.7 Appointment of a Creditor Trustee.** Margaret J. Smith shall act as Creditor Trustee commencing on the Effective Date. The Creditor Trustee shall perform the duties reserved for such person in the Plan. The Creditor Trustee shall be the "representative of the estates" as contemplated by 11 U.S.C. § 1123(b)(3)(B) for all purposes, including to bring or assert Causes of Action, including under the D&O Policies. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. The Creditor Trust, through the Creditor Trustee, shall succeed to all rights and interests provided to, and assume all obligations of, the Debtor.

**5.8 Preservation of Investigation and Litigation Rights.** The Creditor Trustee, on behalf of the Creditor Trust, shall retain all rights of, and on behalf of, the Debtor and the Creditor Trust to investigate, conduct discovery on, pursuant to Fed. R. Bankr. P. 2004 or otherwise, and to commence and pursue any and all Causes of Action, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, 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 investigate, conduct discovery on pursuant to Fed. R. Bankr. P. 2004 or otherwise, and to commence and pursue any and all Causes of Action to the extent the Creditor Trustee deems appropriate.

**5.9 Derivative Litigation Claims.** Causes of Action that are derivative of or from the Debtor (the "Derivative Litigation Claims") are property of the Estate under § 541 of the Bankruptcy Code. 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. 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, the Creditor Trustee shall be, without need of further order, substituted as plaintiff upon her request.

**5.10 Powers and Obligations of the Creditor Trustee.** As of the Effective Date, the Creditor Trustee shall act in a fiduciary capacity for the Holders of all Allowed Claims hereunder, shall be deemed a representative of the Estate pursuant to § 1123 of the Bankruptcy Code, and shall have the power and authority to act in such manner as the Creditor Trustee may deem necessary or appropriate, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust Assets or to confer on the Creditors the benefits intended to be conferred upon them by the Plan. The Creditor Trustee shall have the power and authority without further approval by the Bankruptcy Court to liquidate the Creditor Trust Assets and otherwise take any action as shall be necessary to administer the Chapter 11 Case of the Debtor and effect the closing of the Debtor's Chapter 11 Case, and shall have the rights and powers of a trustee under §§ 542 through 552 of the Bankruptcy Code and the duties of a trustee under §§ 704(1), (2), (4), (5), (7) and (9) of the Bankruptcy Code. The Creditor Trustee shall administer the Plan, the Creditor Trust and the Creditor Trust Assets, subject to the foregoing duties and powers, which shall include the following:

- (a) To open and maintain accounts in accordance with § 345 of the Bankruptcy Code;
- (b) To prosecute, compromise or settle Objections and to make or direct that Distributions be made to Holders of Allowed Claims and Allowed Interests;
- (c) To make decisions regarding the retention or engagement of Professionals and to pay all reasonable fees and expenses incurred after the Effective Date;

- (d) To make or direct Distributions to Holders of Allowed Claims and Allowed Interests and to otherwise implement and administer the Plan;
- (e) To collect and enforce payment of the Plan Funding Special Assessment by any lawful means;
- (f) To levy, collect and enforce general assessments, special assessments and charges;
- (g) To pay the ordinary course expenses of the Reorganized Debtor pursuant to an approved budget.
- (h) To pursue, litigate or settle all Causes of Action;
- (i) To conduct discovery pursuant to Fed. R. Bankr. P. 2004 or otherwise to investigate any potential Causes of Action;
- (j) To prepare and file tax returns and collect Income Tax Refunds, including tax returns for the Creditor Trust as a grantor trust in accordance with IRC Reg. Sec. 1.671-4(a);
- (k) To File with the Bankruptcy Court the reports and other documents and to pay any and all fees required by the Plan or otherwise required to close the Chapter 11 Case, including the preparation and filing of a motion for a final decree;
- (l) To set off amounts owed to any Debtor against any and all amounts otherwise due to be distributed to the Holder of an Allowed Claim hereunder; and
- (m) To take all other actions not inconsistent with the provisions of the Plan deemed necessary or desirable in connection with administering the Plan.

**5.11 Engagement of Creditor Trustee Professionals and Compensation to Creditor Trustee and Creditor Trustee Professionals.** The Creditor Trustee shall be entitled to be compensated for such services by a 3% surcharge on all distributions made by the Creditor Trustee. Additionally, the Creditor Trustee shall be reimbursed for all necessary costs and expenses incurred in her duties as Creditor Trustee. The Creditor Trustee may engage counsel and other professionals to represent her in connection with her duties hereunder (the “Creditor Trustee Professionals”); *provided, however*, that Creditor Trustee Professionals shall not be precluded from representing the Creditor Trustee to the extent that certain of their Administrative Expense Claims remain unpaid from the Debtor’s Estate. Any fees and expenses of such Creditor Trustee Professionals shall constitute “Post-Confirmation Administrative Expense Claims” and shall be paid from the Creditor Trust Funding, and otherwise from the net proceeds of the Creditor Trust Assets as set forth herein.

The Creditor Trustee and the Creditor Trustee Professionals shall be paid 90% of their fees and 100% of their costs on a monthly basis, unless such fees relate to the pursuit of potential recoveries from the Creditor Trust Assets on a contingency fee basis (the “Contingency Fees”), in which case payment of such Contingency Fees (which are Post Confirmation Administrative Expense Claims) shall be paid from any such recoveries within thirty (30) days of receipt by the

Creditor Trustee of such recoveries. Creditor Trust Professionals retained on a contingency fee basis shall receive 30% from both cash recoveries and claim reductions. The Creditor Trustee and the Creditor Trustee Professionals shall File fee applications no less frequently than every 120 days seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts paid on a monthly basis. Upon the filing of each such application, the Creditor Trustee Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees. The Bankruptcy Court shall retain jurisdiction to allow or disallow all Post-Confirmation Administrative Claims of the Creditor Trustee and the Creditor Trustee Professionals. The invoices for services rendered and out-of-pocket expenses incurred which are to be submitted shall be sufficiently detailed to identify the hours worked, the rates charged and the work performed.

The Creditor Trustee may employ such staff as is reasonably necessary to carry out his/her functions and duties, store the books and records of the Debtor and compensate such staff.

**5.12 Bond.** Creditor Trustee, if requested by the U.S. Trustee, shall post a bond in favor of the Debtor in an amount equal to 100% of the book value of the Creditor Trust Assets determined as of 30 days from the Effective Date; *provided, however*, that the book value of the Causes of Action for purposes of the bond shall be zero.

**5.13 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 be the beneficiary of all Privileges and entitled to assert all Privileges.

**5.14 Taxpayer Identification Numbers.** Creditor Trustee may require any Creditor with an Allowed Claim or Holder of an Allowed Interest entitled to a Distribution under the Plan to furnish its, his or her employer or taxpayer identification number (the "TIN") assigned by the Internal Revenue Service. Any Distribution under the Plan may be conditioned on the receipt of such TIN. If any such Holder of an Allowed Claim or an Allowed Interest entitled to a Distribution hereunder fails to provide a requested TIN within forty-five (45) days after the request thereof, then such failure shall be deemed to be a waiver of such Holder's interest in any future Distributions, including the right to receive any future Distributions.

**5.15 Resignation, Death or Removal of the Creditor Trustee.** The Creditor Trustee may resign at any time; *provided, however*, that she shall File a motion with the Bankruptcy Court in connection therewith and request that a successor or replacement be appointed in accordance herewith, which motion shall be on notice to the top twenty (20) unsecured creditors holding Allowed Claims and the U.S. Trustee. The U.S. Trustee, by motion Filed with the Bankruptcy Court, or the Bankruptcy Court on its own order to show cause, may seek to remove the Creditor Trustee for cause, including under § 324 of the Bankruptcy Code, for the violation of any material provision of the Plan, or in the event the Creditor Trustee becomes incapable of acting hereunder as a result of physical or mental disability and such physical or mental disability continues for a period in excess of thirty (30) days (except in the case of death, in

which instance the procedures for replacement will begin immediately). In the event of a resignation or removal, the Creditor Trustee, unless she is incapable of doing so, shall continue to perform her duties hereunder until such a time as a successor is approved by a Final Order of the Bankruptcy Court. In the event the Creditor Trustee resigns or is removed, the successor shall be elected in the manner prescribed by § 1104(b) of the Bankruptcy Code.

**5.16 Post-Effective Date Settlements.** Except as otherwise set forth in the Plan or the Confirmation Order, on and after the Effective Date, the Creditor Trustee shall obtain approval of the Bankruptcy Court to settle Objections and/or Causes of Action, if any.

**5.17 Post-Effective Date Reporting.** As promptly as practicable after the making of any distributions that are required under the Plan to be made on the Effective Date or as soon as practicable thereafter in recognition of the applicable claims reconciliation process, but in any event no later than ten (10) Business Days after the making of such distributions, the Creditor Trustee shall File with the Bankruptcy Court and serve on the U.S. Trustee a report setting forth the amounts and timing of all such distributions and the recipients thereof. Thereafter, the Creditor Trustee shall File with the Bankruptcy Court and serve on the U.S. Trustee quarterly reports summarizing the disbursements of the Debtor for the immediately preceding three-month period. Quarterly reports shall be provided by the twentieth (20th) day of each January, April, July and October until all Distributions under the Plan have been made.

## **ARTICLE 6**

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

**6.1 Treatment of Executory Contracts and Unexpired Leases.** Pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, upon the Effective Date, all executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed rejected by the Debtor, except for any executory contract or unexpired lease (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date or (iii) that is specifically designated as a contract to be assumed on Schedule 6.1; provided, however, that the Debtor reserves the right, on or prior to the Confirmation Date, to amend Schedule 6.1 to delete any executory contract therefrom, or add any executory contract, in which event such executory contract(s) shall be deemed to be, respectively, either rejected or assumed as of the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such assumption or rejection pursuant to § 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption or rejection is in the best interests of the Debtor, its Estate, and all parties in interest in this Chapter 11 Case.

**6.2 Cure of Defaults.** Except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract to be assumed pursuant to Article 6.1 of the Plan, the Plan Proponent shall, pursuant to the provisions of §§ 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of § 365 of the Bankruptcy Code, within at least fourteen (14) days prior to the Confirmation Hearing, file with the Bankruptcy Court and serve by first class mail on each non-debtor party to such executory

contracts to be assumed pursuant to Article 6.1 of the Plan, an Assumption Notice, which shall list the cure amount as to each executory contract to be assumed. The parties to such executory contracts to be assumed or assumed and assigned by the Debtor shall have ten (10) days from the date of service of the Assumption Notice to file and serve any objection to assumption or the cure amounts listed by the Debtor. If there are any objections filed, the Bankruptcy Court shall hear the objections at the Confirmation Hearing or on such other date as may be set by the Bankruptcy Court. Notwithstanding Article 6.1 of the Plan, the Debtor shall retain its rights to reject any of its executory contracts that are subject to a dispute concerning amounts necessary to cure any defaults through the Confirmation Date.

### **6.3 Claims Based on Rejection of Executory Contracts and Unexpired Leases.**

Proofs of Claim for alleged damages arising from the rejection pursuant to the Plan, the Confirmation Order or any subsequent Order of the Bankruptcy Court, of any executory contract or any unexpired lease shall be Filed with the Bankruptcy Court and served on counsel for the Debtor not later than thirty (30) days after the service of the earlier of: (i) notice of entry of the Confirmation Order or (ii) other notice that the executory contract or unexpired lease has been rejected (including service of an Order of the Bankruptcy Court providing for such rejection). Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Article 6.1 herein for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, the Estate, the Creditor Trustee, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article 14 herein. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article 3 herein.

## **ARTICLE 7**

### **POSTCONFIRMATION LITIGATION**

**7.1 Transfer and Enforcement of Causes in Action.** Pursuant to § 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order, the Creditor Trustee will have the exclusive right to investigate, pursue, enforce, litigate and settle any and all Causes of Action against any Person or Entity and rights of the Debtor that arose before or after the Petition Date, including but not limited to the rights and powers of a trustee and debtor-in-possession, against any Person or Entity whatsoever, including but not limited to all avoidance powers granted to the Debtor under the Bankruptcy Code and all Causes of Action and remedies granted pursuant to Chapter 5 of the Bankruptcy Code, and in the sole and absolute discretion of the Creditor Trustee to prosecute such Causes of Action in any and all jurisdictions as permitted by law.

## ARTICLE 8

### PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS GOVERNING DISTRIBUTIONS

**8.1 Objections to Claims and Interests.** Before the Effective Date, the Trustee or any other party in interest will be entitled to object to any Claim (in whole or in part) appearing on the Schedules, filed in this Chapter 11 Case, or estimated by the Bankruptcy Court for voting purposes with respect to which the Trustee disputes liability in whole or in part. After the Effective Date, the Creditor Trustee will be entitled object to, or shall be substituted for the Estate for purposes of any pending objection to, the allowance of any Claim appearing on the Schedules, filed in the Chapter 11 Case, or estimated by the Bankruptcy Court with respect to which the Creditor Trustee disputes liability in whole or in part. The Creditor Trustee shall retain all rights of the Debtor (including all defenses, counterclaims, rights to setoff, rights to recoupment, and/or right to seek equitable subordination). All objections that are filed and prosecuted by the Debtor or the Creditor Trustee, as the case may be, as provided herein shall be litigated to Final Order or settled.

**8.2 Amendments to Claims and Requests for Payment of Administrative Expense Claims; Claims Filed After the Bar Dates.** Unless otherwise provided in a Final Order of the Bankruptcy Court:

(a) after the Claims Bar Date, a Claim on account of which a Proof of Claim is not timely Filed in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules or an Order of the Bankruptcy Court, may not be Filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the Holder of such Claim solely to decrease, but not to increase, the face amount or priority;

(b) except as otherwise provided herein, after the Administrative Expense Claims Bar Date, a Claim on account of which a request for payment of Administrative Expense Claims is not timely Filed may not be Filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the Holder of such Claim solely to decrease, but not to increase, the face amount or priority; and

(c) Except as otherwise provided in the Plan, any new or amended Claim Filed after the Claims Bar Date or the Administrative Claims Bar Date (as applicable) shall be deemed Disallowed in full and expunged without any action by the Creditor Trustee, unless the Holder of such Claim has obtained prior Bankruptcy Court authorization for the Filing. The Holder of a Claim which is Disallowed pursuant to this **Section 8.2** shall not receive any distribution on account of such Claim. The Creditor Trustee shall File with the Bankruptcy Court and serve on the Holder of any Claim whose Claim is deemed Disallowed pursuant to this **Section 8.2**, but whose Proof of Claim or request for payment of an Administrative Expense Claim is subsequently deemed timely Filed or Allowed notwithstanding this **Section 8.2** by a Final Order of the Bankruptcy Court, any Objection to such Claim or request for estimation thereof within thirty (30) days (or such later date as the Bankruptcy Court shall approve) after any such order becomes a Final Order.

**8.3 No Payment of Distribution Pending Allowance.** All references to Claims or Interests and amounts of Claims and Interests refer to the amount of the Claim or Interest Allowed by operation of law, Final Order of the Bankruptcy Court or the Plan. Accordingly, notwithstanding any other provision in the Plan, no payment or Distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim. Notwithstanding the foregoing, on or as soon as practicable after the Claim Objection Deadline, as applicable, the Creditor Trustee shall make distributions to Holders of Disputed Claims to the extent, and only to the extent, the portion of such Claim is not subject to a pending Objection.

**8.4 Disallowance or Expungement of Claims.** Except as otherwise provided by order of the Bankruptcy Court, all Claims marked or otherwise scheduled as contingent, unliquidated, or disputed on the Bankruptcy Schedules and for which no proof of claim has been filed shall be deemed Disallowed Claims, and such Disallowed Claims shall be expunged as of the Effective Date without the necessity of filing a claim objection and without further notice to, or action, order or approval of the Bankruptcy Court.

## **ARTICLE 9**

### **DISTRIBUTIONS**

**9.1 Timing and Delivery of Distributions by the Creditor Trust.** The Creditor Trust Agreement shall govern Distributions by the Creditor Trust and shall be deemed to include the terms of this Article 9 and other relevant provisions of the Plan. The payment of Distributions under the Creditor Trust Agreement shall be made in the ordinary course of business under those agreements and without any requirement for prior approval of the Bankruptcy Court.

**9.2 Method of Cash Distributions.** Any payment to be made pursuant to the Plan or the Creditor Trust Agreement may be made by check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of and in the discretion of the Creditor Trustee.

**9.3 Undeliverable and Unclaimed Distributions; Failure to Negotiate.** If any Distribution to any Holder of Allowed Claim made by the Creditor Trustee is returned as undeliverable, the Creditor Trust shall use commercially reasonable efforts to determine the current address of each Holder, but no Distribution to such Holder shall be made unless and until the Creditor Trust has determined the then current address of such Holder; *provided, however*, that all Distributions to Holders of Allowed Claims made by, or attempted to be made by, the Creditor Trustee that are unclaimed for a period of 120 days after the date of the first attempted Distribution shall have its, his, or her Claim for such undeliverable Distribution deemed satisfied and will be forever barred from asserting any such Claim against the Creditor Trust, the Creditor Trustee, or the Creditor Trust Assets. Any Distributions which are undeliverable or have not been negotiated within the time period set forth above shall be deemed unclaimed property under § 347(b) of the Bankruptcy Code and reinvested in the Creditor Trust.

**9.4 Setoffs and Recoupments.**

- (a) The Trustee or the Creditor Trustee, as applicable, or such person's designee shall have the right, without prior approval of the Bankruptcy Court, to set off or recoup against any Claim, and any Distribution to be made on account of such Claim, any and all claims, rights, and Causes of Action of any nature whatsoever that the Trustee, the Reorganized Debtor, or the Creditor Trust may have against the Holder of such Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law, including, but not limited to, all unpaid amounts owed for Pre-Petition Default Amounts.
- (b) In no event shall any Holder of Claims or Interests be entitled to set off any Claim or Interest against any Claim, right, or cause of action of the Debtor or Reorganized Debtor, as applicable, unless such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to § 553 of the Bankruptcy Code or otherwise.
- (c) No payment or Distribution shall be made on account of any Claim or Interest where the Holder has any unresolved liability to the Trustee, the Debtor, the Estate, or the Creditor Trust within the scope of Bankruptcy Code § 502(d), including, but not limited to, any actual or potential defendant with respect to any Cause of Action.
- (d) Except as provided in the Plan and/or the Confirmation Order, any Holder of Claim or Interest shall not be entitled to recoup any Claim or Interest against any Claim, right or cause of action of the Debtor, the Creditor Trust, or the Reorganized Debtor, as applicable.

## **ARTICLE 10**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS OF PLAN**

#### **10.1 Conditions Precedent to Effectiveness of the Plan.**

**10.1.1** The Effective Date of the Plan shall not occur unless and until the following conditions shall have been satisfied or waived by the Trustee, as determined in her sole discretion: (a) the Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Plan Proponent, and such Confirmation Order shall not have been appealed within fourteen (14) calendar days of entry or, if such Confirmation Order is appealed, shall not have been stayed pending appeal, and there shall not have been entered by any court of competent jurisdiction any reversal, modification or vacation, in whole or in part, of such Confirmation Order; (b) the Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to § 1125 of the Bankruptcy Code; (c) all documents, instruments and agreements provided for hereunder or necessary to implement the Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby, in form and substance satisfactory to the Plan Proponent; (d) there is sufficient available Cash to pay all Allowed Administrative Claims (including Allowed Professional Claims), Allowed Priority Claims and Allowed Priority

Tax Claims, as applicable; and (e) no order of a court restraining the Trustee from consummating the Plan shall have been entered and shall remain in effect.

**10.1.2** The conditions precedent specified above may be waived in whole or in part by the Plan Proponent. Subject to the foregoing, any such written waiver of a condition precedent set forth in this Section may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Trustee decides that one of the foregoing conditions cannot be satisfied, and the occurrence of such condition is not waived in writing by the Trustee, then the Trustee shall file a notice of the failure of the Effective Date with the Bankruptcy Court, at which time the Plan and the Confirmation Order shall be deemed null and void.

**10.2 Notice of Effective Date.** On the Effective Date, the Trustee or Creditor Trustee shall file a notice of the occurrence of the Effective Date with the Bankruptcy Court.

## **ARTICLE 11**

### **EFFECT OF CONFIRMATION**

**11.1 Binding Effect.** Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind the Debtor, the Reorganized Debtor, the Creditor Trust, and any Holder of a Claim against, or Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

**11.2 Discharge of Claims.** Except as provided herein, the rights afforded in the Plan and the payments and Distributions to be made hereunder shall discharge all existing debts and Claims, except for ASM, of any kind, nature, or description whatsoever against or in the Debtor or any of their assets or properties to the fullest extent permitted by § 1141 of the Bankruptcy Code. Except as provided herein, upon the Effective Date, all existing Claims against the Debtor, except for ASM, shall be discharged and terminated, and all Holders of Claims and Interests, except for ASM, shall be precluded and enjoined from asserting against the Reorganized Debtor or the Creditor Trust, their respective successors or assignees, or any of their respective assets or properties, any other or further Claim or Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such Holder has filed a proof of claim or proof of equity interest, and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to § 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or Interest in the Debtor, the Reorganized Debtor, or the Creditor Trust. Nothing in this Article 11.4 should be interpreted as a discharge of the Debtor's or Reorganized Debtor's rights or obligations under the Plan.

**11.3 Discharge of the Debtor.** Pursuant to § 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in the Confirmation Order, the Distributions and rights that are provided in the Plan will be in complete satisfaction, discharge, and release, of any and all Claims, except the Exit Facility, whether known or unknown, against the Debtor, the Creditor Trust, or the Reorganized Debtor or any of their assets or properties, regardless of whether the property has been distributed or retained pursuant to the Plan and termination of all Interests. Without limiting the generality of the foregoing, the Debtor, the Creditor Trust, and the Reorganized Debtor will be discharged from any and all Claims and debts of the kind specified in §§ 502(g), 502(h) of 502(i) of the Bankruptcy Code, except the Exit Facility, in each case whether or not (a) a proof of claim is filed or deemed filed under § 501 of the Bankruptcy Code, (b) a Claim is allowed under § 502 of the Bankruptcy Code, or (c) the Holder of such a Claim accepted the Plan. Except as otherwise provided in the Plan, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor arising before the Effective Date, except for the Exit Facility. Under § 524 of the Bankruptcy Code, the discharge granted under this Section shall avoid any judgment against the Debtor at any time obtained (to the extent it relates to a discharged Claim), and operates as an injunction against the prosecution of any action against the Debtor or the Estate (to the extent such action relates to a discharged claim). Nothing in this Section should be interpreted as a discharge of the Debtor's or Reorganized Debtor's rights or obligations under the Plan.

**11.4 Injunction.** Except as otherwise expressly provided in the Plan, all Persons or Entities who have held, hold or may hold Claims or Interests and all Persons who have held, hold or may hold claims or causes of action that have been subject to exculpation pursuant to Section 11.7 hereof ("Exculpation"), and all other parties in interest, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing, conducting or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Interest, or such released or exculpated claim or cause of action, against the Trustee, the Debtor, the Reorganized Debtor, or the Released Parties or any of their respective property or assets or any interest therein, (b) the enforcement, attachment, levying, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor, the Reorganized Debtor, or the Released Parties or any of their respective property or assets or any interest therein, (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against the Debtor, the Reorganized Debtor, or the Released Parties or any of their respective property or assets or any interest therein, or (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor, the Reorganized Debtor, the Released Parties or against any of their respective property or assets, or any interest therein, with respect to any such Claim or Interest, or such released or exculpated claim or cause of action. Such injunction shall be included in the Confirmation Order and shall extend to any successors of the Debtor, the Reorganized Debtor, and the Released Parties and their respective properties and interest in properties.

**11.5 Term of Bankruptcy Injunctions or Stays.** Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under § 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, other than injunctions issued pursuant to the Plan (including injunctions under Section 11.6

(“Injunction”), shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

**11.6 Injunction Against Interference With Plan of Reorganization.** Upon the entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

**11.7 Exculpation.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL NEITHER HAVE NOR INCUR ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER ASSERTION OF LIABILITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN SINCE THE PETITION DATE IN CONNECTION WITH, RELATED TO, OR OTHERWISE ARISING OUT OF, THE CHAPTER 11 CASE, THE FORMULATION, NEGOTIATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, CONFIRMATION, CONSUMMATION, OR ADMINISTRATION OF THE PLAN, PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, OR ANY OTHER ACT OR OMISSION IN CONNECTION WITH THE CHAPTER 11 CASE, THE PLAN, THE DISCLOSURE STATEMENT OR, IN EACH CASE, ANY CONTRACT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT RELATED THERETO, INCLUDING; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT AFFECT THE LIABILITY OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY SUCH ACT OR OMISSION TO THE EXTENT SUCH ACT OR OMISSION IS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION TO HAVE CONSTITUTED WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; PROVIDED, FURTHER, THAT EACH RELEASED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THE ABOVE REFERENCED DOCUMENTS, ACTIONS OR INACTIONS.

## **ARTICLE 12**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Assets to the Creditor Trustee, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case after the Effective Date to the fullest extent legally permissible, including jurisdiction to, among other things:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of all Claims;

(b) Hear and determine any and all Causes of Action against any Person and rights of the Debtor that arose before or after the Petition Date, including, but not limited to, the

rights and powers of a trustee and debtor-in-possession, against any Person whatsoever, including, but not limited to, all avoidance powers granted to the Debtor under the Bankruptcy Code and all causes of action and remedies granted pursuant to Chapter 5 of the Bankruptcy Code;

(c) Grant or deny any applications for allowance of compensation for professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(d) Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which the Debtor may be liable, including, without limitation, the determination of whether such contract is executory for the purposes of § 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;

(e) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(f) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving any Debtor that may be pending in the Chapter 11 Case on the Effective Date;

(g) Hear and determine matters concerning state, local or federal taxes in accordance with §§ 346, 505 or 1146 of the Bankruptcy Code;

(h) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, Exit Facility and the Confirmation Order;

(i) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, Exit Facility or the Confirmation Order;

(j) Permit the Debtor, to the extent authorized pursuant to § 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan, or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;

(k) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(l) Enter and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(m) Determine any other matters that may arise in connection with or relating to the Plan or any agreement or the Confirmation Order or any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

- (n) Enter any orders in aid of prior orders of the Bankruptcy Court; and
- (o) Enter a final decree closing the Chapter 11 Case.

### **ARTICLE 13**

#### **ACCEPTANCE OR REJECTION OF THE PLAN**

**13.1 Persons Entitled to Vote.** Classes 1, 2, 3 and 4 are Unimpaired and are therefore deemed to have accepted the Plan and are not entitled to vote.

**13.2 Acceptance by Impaired Classes.** An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under § 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders (other than any Holder designated under § 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. There is no Impaired Class of Claims under the Plan.

### **ARTICLE 14**

#### **MISCELLANEOUS PROVISIONS**

**14.1 Modification of the Plan.** Subject to the restrictions on Plan modifications set forth in § 1127 of the Bankruptcy Code, the Trustee reserves the right to alter, amend or modify the Plan before its substantial consummation.

**14.2 Revocation of the Plan.** The Trustee reserves the right to revoke or withdraw the Plan prior to the Confirmation Date, provided the Creditor Trustee has not received funds under the Exit Facility. If the Trustee revokes or withdraws the Plan, or if Confirmation does not occur or if the Plan does not become effective, then the Plan shall be null and void, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or the Trustee; (b) constitute an admission of any fact or legal conclusion by the Trustee or any other Entity; or (c) prejudice in any manner the rights of the Trustee in any further proceedings involving the Debtor.

**14.3 Governing Law.** Unless a rule of law or procedure is supplied by (i) federal law (including the Bankruptcy Code and Bankruptcy Rules), or (ii) an express choice of law provision in any agreement, contract, instrument or document provided for, or executed in connection with the Plan, the rights and obligations arising under the Plan and any agreements, contracts, documents and instruments executed in connection with the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to the principles of conflict of laws thereof.

**14.4 No Admissions.** If Confirmation or the Effective Date does not occur, nothing contained in the Plan or Disclosure Statement shall be deemed as an admission by the Trustee with respect to any matter set forth herein or therein including, without limitation, liability on any Claim or the propriety of any Claims classification.

**14.5 Severability of Plan Provisions.** If prior to Confirmation any term or provision of the Plan that does not govern the treatment of Claims or Interests is held by the Bankruptcy Court to be invalid, void or unenforceable, at the request of the Trustee the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, Impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**14.6 Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

**14.7 Exemption from Certain Transfer Taxes.** Pursuant to § 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security or the making or delivery of any instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any Asset occurring after or upon the Effective Date shall be deemed to be in furtherance of the Plan.

**14.8 Preservation of Rights of Setoffs.** The Debtor, through the Creditor Trustee, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the Holder of such Claims; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claim that the Debtor may have against such Holder.

**14.9 Defenses with Respect to Unimpaired Claims.** Except as otherwise provided in the Plan, nothing shall affect the rights and legal and equitable defenses of the Debtor with respect to any Unimpaired Claim, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

**14.10 No Injunctive Relief.** Except as otherwise provided in the Plan or Confirmation Order, no Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

**14.11 Saturday, Sunday or Legal Holiday.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**14.12 Entire Agreement.** The Plan sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtor's Estate shall not be bound by any terms, conditions, definitions, warranties,

understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein, *provided, however*, that nothing herein shall abrogate or derogate any right of any party in interest in the Chapter 11 Case provided for in any order of the Bankruptcy Court entered in connection with the Chapter 11 Case.

**14.13 Notices.** Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Counsel for the Trustee  
TRIPP SCOTT, P.A  
110 Southeast 6<sup>th</sup> Street  
Fifteenth Floor  
Fort Lauderdale, FL 33301  
Tel: (305) 525-7500  
Fax: (305) 397-1021  
Attn: Kristopher E. Aungst

Dated: October 27, 2017

Respectfully Submitted,

**Margaret J. Smith, Chapter 11 Trustee**

By: /s/ Margaret J. Smith  
Name: Margaret J. Smith  
Title: Chapter 11 Trustee

**EXHIBIT "A"**

**EXIT FINANCING TERM SHEET**

**DRAFT FOR DISCUSSION PURPOSES ONLY**

**[\$540,000] Senior-Secured First Lien Exit Facility  
("Exit Facility")**

**Summary of Principal Terms and Conditions  
September 5, 2017**

*The terms set forth in this Exit Facility Term Sheet (this "Term Sheet") are being provided on a confidential basis. This Term Sheet is for discussion purposes only and is not a commitment to provide the Exit Facility or any other financing arrangement. Any agreement to provide the Exit Facility or any other financing arrangement will be subject to definitive documentation satisfactory to the Lender (as defined below) acting in their sole discretion, and approval from their internal credit committees. The Lender cannot guarantee that any such approval will be sought or obtained by it on these terms. The Borrower (as defined below) is not authorized to disclose this Term Sheet to any person other than its professional advisors, who shall agree to maintain its confidentiality. This Term Sheet is proffered in the nature of a settlement proposal in furtherance of settlement discussions, and is intended to be entitled to the protections of Federal Rule of Evidence 408 and any other applicable statutes or doctrines protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions.*

- Borrower:** **Creditor Trust created pursuant to confirmed Chapter 11 Plan filed by Trustee** Spanish Isles Property Owners' Association, Inc., currently Debtor-in-Possession in case number 14-34444 in the United States Bankruptcy Court for the Southern District of Florida (the "**Court**")
- Lender:** ASM Capital and its affiliates ("**Lender**").
- Exit Facility:** A senior-secured, first-lien term credit facility (the "**Exit Facility**") in an aggregate principal amount of up to [\$540,000] (the "**Exit Facility Commitments**").
- Interest:** Interest on the Loans shall be payable quarterly in kind at a rate equal to 15% per annum, compounded quarterly.
- Origination Fee:** An origination fee of 1% of the Exit Facility Commitments, paid in cash on the Closing Date.
- Make-Whole Premium:** In the event that Borrower should repay the Exit Facility prior to one year following the Closing Date, Lender will be due all interest and fees as if the Exit Facility had been repaid on the day one year from the Closing Date.
- Exit Facility Collateral:** The obligations of the Borrower under the Exit Facility shall, at all times, be secured by a first-priority, perfected security interest in, and a lien upon the Creditor Trust Assets, as defined in the Trustee's Chapter 11 Plan of Reorganization, including the Litigation Proceeds and the Deposit Account.

**Representations and Warranties:**

Usual and customary representations and warranties for financings of this type (subject to scheduled exceptions and customary qualifications and limitations for materiality to be negotiated), including:

(a) organization; requisite power and authority; qualification; (b) roster of members of the Association; (c) due authorization; (d) no conflict (law or material post-petition obligations);; (e) binding obligation of Loan Documents; (f) financial statements; (g) no (unstayed) adverse proceedings; (h) taxes; (i) owned property;; (j) no default; (k) material contracts; (l) related agreements; (m) compliance with statutes; (n) accuracy of disclosure; (o) Patriot Act; (p) location of property; (q) collateral documents including liens and intellectual property; (r) insurance; and (s) Financing Orders (as defined below) not having been (i) vacated, reversed, or stayed, or (ii) amended or modified except as otherwise agreed to in writing by the Lender (after the Closing Date) each acting in their sole discretion.

**Affirmative Covenants:**

Usual and customary affirmative covenants for financings of this type (subject to exceptions and other qualifications and limitations for materiality to be negotiated), including:

(a) financial statements and other reports, including collateral reports, notices of default, litigation, ERISA, etc.; (b) existence; (c) payment of taxes; (d) maintenance of property; (e) insurance; (f) maintenance of books and records; rights of the Lender to inspect; (g) Lender meetings; (h) compliance with laws; (i) environmental; (j) subsidiaries; (k) security interests; (l) further assurances; (m) non-consolidation; (n) cash management systems; (o) miscellaneous business covenants; (p) information regarding collateral; (q) reasonable access to the financial advisors of the Borrower; (r) payment of material post-petition obligations; (s) delivery of insurance certificates, loss payable and additional insured endorsements; (t) certain post-closing collateral matters to be agreed; (u) use of proceeds; and (v) prior to the Closing, the Borrower shall have executed and delivered security documents with respect to the Exit Facility satisfactory to the Lender (w) Borrower shall promptly pursue payment of any delinquent amounts due to Borrower in the form of maintenance/dues and or special assessments.

**Financial Reporting:**

Usual and customary reporting requirements for financings of this type (subject to scheduled exceptions and customary qualifications and limitations for materiality to be negotiated).

In addition, Borrowers shall deliver to the Lender, each in form and substance reasonably satisfactory to the Lender (and as

modified or supplemented from time to time with the prior written consent of the Lender in its discretion, including any modifications or supplements covering additional time periods), the following:

(a) On the Closing Date, a 13-week budget and forecast of cash receipts, disbursements (including, without limitation, ordinary course operating expenses, all bankruptcy-related expenses, fees and expenses related to the transactions contemplated by the Loan Documents (including the fees and expenses of the Lender (including counsel therefor)), net cash flow, set forth on a weekly basis, (together with the updates required below, each a “**Budget**”); provided that the Borrower will provide a revised Budget substantially in the form set forth in Exhibit A attached hereto on every fourth Thursday following the Closing Date to extend the Budget period by an additional four weeks.

(b) Beginning six weeks following the Closing Date, a monthly variance report on or before the [ ] of each month showing variances of actual results of the Borrower to the applicable Budget, which shall: (i) compare actual results for the immediately preceding month for each line item contained in the Budgets (including, without limitation, net cash flow, total operating disbursements, total cash receipts and total loan balance), to the applicable Budget for such line items for such month; (ii) compare actual results for the period beginning on the Closing Date and ending on the last day of the immediately preceding month for each line item contained in the Budgets (including, without limitation, net cash flow, total operating disbursements, total cash receipts and total loan balance), to the applicable Budget for such line items for such cumulative period; (iii) explain all material variances set forth therein; and (iv) be certified by a financial officer of the Borrower.

(c) As soon as available, but in any event within 30 days following the end of each fiscal month, a monthly reporting package in the form separately agreed between the Lender and the Borrower, certified by a financial officer of the Borrower.

**Negative Covenants:**

Usual and customary negative covenants for financings of this type (taking into account the Chapter 11 Case), including limitations on (subject to exceptions, qualifications and baskets, as appropriate, to be negotiated):

(a) indebtedness; (b) liens; (c) equitable liens; (d) negative pledges; (e) restricted payments; (f) restricted subsidiary distributions; (g) investments (including acquisitions), loans and advances; (h) fundamental changes, including mergers, consolidations, liquidations, dissolutions; (i) disposition of

property; (j) sale and leaseback transactions; (k) transactions with shareholders and affiliates; (l) amendments to material agreements in a manner adverse to the Lender in any material respect; (m) appointments of any person to the board of directors of the Borrower; (n) amendments to organizational documents of the Borrower; (o) optional payments and modifications of subordinated and other debt instruments; (p) changes in fiscal year; (q) hedging agreements; (r) activities of the Borrower; (s) other claims or liens which are superior to or *pari passu* with those granted under the Facility Documents to the Lender in connection with the Exit Facility, except as expressly permitted by the Exit Facility.

**Financial Covenants:**

Borrower shall operate within the approved applicable Budget

**Events of Default:**

Usual and customary events of default for financings of this type (subject to exceptions, limitations, baskets and materiality and other qualifications to be negotiated), including: (a) nonpayment of principal when due; (b) nonpayment of interest, fees or other amounts; (c) cross-default to the occurrence of a default in respect of any post-petition material indebtedness; (d) breach of covenants; (e) breach of representations and warranties in any material respect; (f) other defaults under the Loan Documents (or same shall cease to be in full force and effect); (g) (i) the termination by any party thereto other than the Borrower of or (ii) the termination of or the filing of a motion terminating or rejecting, in each case by or on behalf of the Borrower, any material lease, material contract or other material agreement, document or instrument on or after the Petition Date to which the Borrower is a party if, in the case of clause (ii) only, the result of such termination or rejection would be adverse to the Lender in any material respect; (h) dissolution; (i) certain ERISA events; (j) a change of control; (k) issues with enforceability of and validity of guaranties, collateral documents or other credit documents, including any assertion of the invalidity of any of the foregoing by or on behalf of the Borrower; (l) suspension by the Borrower of operation of its business; (m) non-compliance by the Borrower with the terms of the Facility Documents; (n) any claim or lien which is superior to or *pari passu* with those granted under the Financing Orders to the Lender in connection with the Exit Facility (or the Borrower seeking or supporting such grant), except as expressly permitted by the Exit Facility; (o) the filing of Bankruptcy by the Borrower; and (p) the filing of an involuntary Bankruptcy against the Borrower.

**Conditions Precedent to Closing:**

1) Entry of Confirmation in a form reasonably acceptable to Lender; 2) execution of Loan Documents in a form acceptable to Lender

**Expenses and**

The Borrower will pay all of the reasonable and documented and

**Indemnity:**

invoiced out-of-pocket expenses and customary and reasonable administrative charges incurred by the Lender, including, without limitation, appraisal fees, filing and search charges, recording taxes, and legal costs and expenses of the Lender (and, following the occurrence and during the continuance of an Event of Default, reasonable legal costs and expenses of Lender in connection with obtaining payment of the obligations under and otherwise enforcing the provisions of the Loan Documents).

The Borrower shall indemnify and hold harmless the Lender (and their affiliates and their respective officers, directors, employees, advisors, representatives and agents) against, any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof; provided that the Borrower shall have no obligation to indemnify any indemnified person against any such loss, liability cost or expense (x) to the extent they are found by a final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such indemnified party or (y) to the extent arising from any dispute solely among indemnified persons other than (i) any claims against the Lender acting in such capacity or in fulfilling such role or any similar role under the Exit Facilities and (ii) any claims arising out of any act or omission on the part of the Borrower. The Lender shall not be responsible or liable to the Borrower or any other person for consequential or punitive damages.

**Defaulting Lender:**

Customary defaulting lender provisions.

**Governing Law:**

Florida and, as applicable, the Bankruptcy Code but excluding any principles of conflict of laws or other rule of law that would cause the application of the law of any jurisdiction other than the State of Florida

**Other:**

This Term Sheet has been produced for discussion and illustrative purposes only and is not intended to be, and does not constitute, a legally binding obligation of any party to enter into the Exit Facility. Any agreement by the Lender to provide the Exit Facility or any other financing arrangement will be subject to the Lender completion of due diligence and obtaining investment committee approval in their sole and absolute discretion.

**EXHIBIT B – LIQUIDATION ANALYSIS**

**Spanish Isles Property Owners Association****Case: 14-34444-EPK****Liquidation Analysis****Assets Available for Liquidation**

	<b>Book Value</b>	<b>Liquidation Value</b>
Cash	\$ 15,000	\$ 15,000
Accounts Receivable (Note 1)	14,663	8,798
Litigation Claims	Unknown	Unknown
<b>Total Assets Available for Liquidation</b>	<b>29,663</b>	<b>23,798</b>

**Administrative Claims:**

Professionals (Note 2)	\$ 800,000	Case is administratively insolvent and it is unlikely any cash will be available to bankruptcy creditors in a liquidation.
Trustee	20,000	
<b>Total Administrative Claims</b>	<b>\$ 820,000</b>	
<b>Bankruptcy Claims:</b>		
CenterState Bank of Florida, N.A.	20,789	
Marcia Hintz	35,929	
Weintraub & Weintraub PA	6,314	
Kaye Bender Rembaum, PL	132,069	
Linda Scialo	26,058	
<b>Total Bankruptcy Claims</b>	<b>\$ 221,159</b>	

**EXHIBIT C - FEASIBILITY ANALYSIS**

**Spanish Isles Property Owners Association**  
**Case: 14-34444-EPK**

**2018 Reorganized Debtor Operating Cash Budget**

Description	2018 Month Ending												Total	2019	2020		
	January	February	March	April	May	June	July	August	September	October	November	December					
<b>Cash Receipts</b>																	
Association Dues (Note 1)	\$ 5,921	\$ 78,940	\$ 19,735	\$ 6,315	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 110,911	\$ 116,456	\$ 122,279	
Miscellaneous Receipts	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 900	\$ 900	\$ 900	
<b>Total Receipts</b>	<b>\$ 6,071</b>	<b>\$ 78,940</b>	<b>\$ 19,885</b>	<b>\$ 6,315</b>	<b>\$ 150</b>	<b>\$ -</b>	<b>\$ 150</b>	<b>\$ 111,811</b>	<b>\$ 117,356</b>	<b>\$ 123,179</b>							
<b>Operating Cash Disbursements (Note 2)</b>																	
Liability Insurance	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 2,200	\$ 600	\$ 600	\$ 8,800	\$ 9,000	\$ 10,000		
D&O and Crime Insurance	\$ 1,330	\$ 1,330	\$ 1,330	\$ 1,330	\$ 1,330	\$ 1,330	\$ -	\$ -	\$ 3,300	\$ 1,400	\$ 1,400	\$ 1,400	\$ 15,480	\$ 16,000	\$ 17,000		
Utilities	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 13,200	\$ 15,000	\$ 16,000		
Landscaping	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 1,700	\$ 20,400	\$ 22,000	\$ 24,000		
Pond Maintenance	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 225	\$ 2,700	\$ 3,200	\$ 3,700		
Neighborhood Monitoring and Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 24,000	\$ 30,000	\$ 36,000		
UST Fees	\$ 650	\$ -	\$ -	\$ 650	\$ -	\$ -	\$ 650	\$ -	\$ -	\$ 650	\$ -	\$ -	\$ 2,600	\$ 3,000	\$ 3,000		
Other	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 14,400	\$ 19,000	\$ 23,000		
<b>Total Operating Disbursements</b>	<b>\$ 8,805</b>	<b>\$ 8,155</b>	<b>\$ 8,155</b>	<b>\$ 8,805</b>	<b>\$ 8,155</b>	<b>\$ 8,155</b>	<b>\$ 7,475</b>	<b>\$ 6,825</b>	<b>\$ 10,125</b>	<b>\$ 10,475</b>	<b>\$ 8,225</b>	<b>\$ 8,225</b>	<b>\$ 101,580</b>	<b>\$ 117,200</b>	<b>\$ 132,700</b>		
<b>Cash Beginning</b>	<b>\$ 15,000</b>	<b>\$ 12,266</b>	<b>\$ 83,051</b>	<b>\$ 94,781</b>	<b>\$ 92,291</b>	<b>\$ 84,286</b>	<b>\$ 76,131</b>	<b>\$ 68,806</b>	<b>\$ 61,981</b>	<b>\$ 52,006</b>	<b>\$ 41,531</b>	<b>\$ 33,456</b>	<b>\$ 15,000</b>	<b>\$ 25,231</b>	<b>\$ 25,387</b>		
<b>Cash Ending</b>	<b>\$ 12,266</b>	<b>\$ 83,051</b>	<b>\$ 94,781</b>	<b>\$ 92,291</b>	<b>\$ 84,286</b>	<b>\$ 76,131</b>	<b>\$ 68,806</b>	<b>\$ 61,981</b>	<b>\$ 52,006</b>	<b>\$ 41,531</b>	<b>\$ 33,456</b>	<b>\$ 25,231</b>	<b>\$ 25,231</b>	<b>\$ 25,387</b>	<b>\$ 15,866</b>		

**Note 1:** Association dues for 2018 are \$394.70 per household and will increase 5% per year for 2019 and 2020.

**Note 2:** Cash Disbursements are based on historical disbursements. Estimated increases in the historical costs are included for all years.

**Spanish Isles Property Owners Association****Case: 14-34444-EPK****Creditor Trust Operating Budget**

Description	Year Ending			
	2018	2019	2020	Total
<b>RECEIPTS</b>				
ASM Loan Proceeds	\$ 540,000.00	\$ -	\$ -	\$ -
Less: Origination Fee	\$ (5,400.00)	\$ -	\$ -	\$ -
Reserve for Lender Costs	\$ (30,000.00)	\$ -	\$ -	\$ -
Net Loan Proceeds	\$ 504,600.00	\$ -	\$ -	\$ -
Special Assessment Payments	\$ 281,000.00	\$ 281,000.00	\$ 281,000.00	\$ 843,000.00
Litigation Proceeds/Settlements (Note 1)	\$ -	\$ -	\$ -	\$ -
<b>Total Receipts</b>	<b>\$ 785,600.00</b>	<b>\$ 281,000.00</b>	<b>\$ 281,000.00</b>	<b>\$ 843,000.00</b>
<b>DISBURSEMENTS</b>				
Special Assessment Debt Repayment	\$ 281,000.00	\$ 281,000.00	\$ 221,000.00	\$ 783,000.00
Effective Date Distributions				\$ -
CenterState Bank of Florida, N.A.	\$ 20,788.93	\$ -	\$ -	\$ 20,788.93
Marcia Hintz	\$ 35,928.70	\$ -	\$ -	\$ 35,928.70
Weintraub & Weintraub PA	\$ 6,314.43	\$ -	\$ -	\$ 6,314.43
Linda Scialo	\$ 26,058.40	\$ -	\$ -	\$ 26,058.40
Tripp Scott PA Professional Fees	\$ 245,600.00	\$ -	\$ -	\$ 245,600.00
Trustee Fees	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
Disputed Claim Reserve	\$ 132,069.15	\$ -	\$ -	\$ 132,069.15
<b>Total Disbursements</b>	<b>\$ 767,759.61</b>	<b>\$ 281,000.00</b>	<b>\$ 221,000.00</b>	<b>\$ 1,269,759.61</b>
<b>Cash Ending</b>	<b>\$ 17,840.39</b>	<b>\$ 17,840.39</b>	<b>\$ 77,840.39</b>	<b>\$ 77,840.39</b>

**Note 1: Due to the speculative nature of predicting litigation results, litigation recoveries have been listed in this budget at \$0.00. Although the Trustee believes that the Creditor Trust will realize a recovery in the litigation matters, The Trustee believes that the Plan is nonetheless feasible without factoring in recoveries from litigation.**

Special Assessment Total	\$ 843,000
Number of Homeowners	281
Number of Years	3
Number of Payments Per Year	4
Assessment Per Owner	\$ 3,000.00
Assessment Due Each Year	\$ 1,000.00
Payment Amount (Paid in four installments per year)	\$ 250.00