

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

In re:

COUNCIL OF UNIT OWNERS OF THE  
100 HARBORVIEW DRIVE CONDOMINIUM,

Debtor.

Case No: 16-13049-MMH  
(Chapter 11)

\* \* \* \* \*

**DISCLOSURE STATEMENT FOR CREDITOR'S PLAN OF  
REORGANIZATION PURSUANT TO CHAPTER 11 OF THE  
UNITED STATES BANKRUPTCY CODE**

Dated: February 9, 2018

Respectfully submitted,

/s/ Lisa Bittle Tancredi

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## I. INTRODUCTION

On February 2, 2018, the Council of Unit Owners of the 100 Harborview Drive Condominium (“Debtor”) filed its Third Amended Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Dkt. # 683] (the “**Debtor’s Plan**”). On February 4, 2018, Howard Bank filed its Creditor’s Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Dkt #686] (the “**Creditor’s Plan**”). This document is Howard Bank’s disclosure statement in connection with the Creditor’s Plan (“Disclosure Statement”).

The Creditor and the Debtor have also prepared a joint disclosure statement (“Joint Disclosure Statement”) on matters upon which they agree pertaining to the background of the Debtor, the events leading to the Debtor’s bankruptcy case, a description of the Debtor’s bankruptcy case, and voting procedures. This Disclosure Statement sets forth specific information concerning the Creditor’s Plan.

The terms of the Joint Disclosure Statement are incorporated into the terms of this Disclosure Statement and this Disclosure Statement should be read in conjunction with the Joint Disclosure Statement.

Capitalized terms used and not otherwise defined in this Disclosure Statement shall have the meaning set forth in the Creditor’s Plan, a copy of which is attached hereto as **Exhibit 1** and incorporated herein by reference. In the event a capitalized term is not defined in the Creditor’s Plan, the Bankruptcy Code, or the Bankruptcy Rules, then it shall have the meaning such term has in ordinary usage, and if one or more meaning for such term exists in ordinary usage, then it shall have the meaning that is most consistent with the purposes of this Disclosure Statement, the Creditor’s Plan, and the Bankruptcy Code. The terms of this Disclosure Statement shall not be construed against any Person but shall be given a reasonable construction, consistent with the purposes hereof and of the Creditor’s Plan and the Bankruptcy Code.

As used throughout this Disclosure Statement “Plan Proponent” shall refer to Howard Bank as the proponent of the Creditor’s Plan.

<b>Section</b>	<b>Summary of Contents</b>
I.	Introduction
II.	Disclaimer
III.	A description of the implementation of the Creditor’s Plan
IV.	The treatment of Administrative Expense Claims, Priority Claims and Priority Tax Claims
V.	Classification of Claims against the Debtor
VI.	The treatment of the Classified Claims against Debtor
VII.	Outline of, among other things, how Distributions contemplated under the Creditor’s Plan will be made, how Disputed Claims will be resolved, assumption and rejection of Executory Contracts and unexpired leases, the effect of confirmation of the Creditor’s Plan, and administrative matters
VIII.	Discussion of risks and other considerations Creditors should be aware of prior to voting

- IX. Outline of the procedure for confirming the Creditor's Plan and discussion of the liquidation analysis of the Plan Proponent
- X. Discussion of alternatives to confirmation (including the Debtor's Plan) and consummation of the proposed Creditor's Plan
- XI. Overview of certain federal income and tax consequences of the Creditor's Plan
- XII. Plan Proponent's recommendation to accept the Creditor's Plan and reject the Debtor's Plan

To the extent that the information provided in this Disclosure Statement and the Creditor's Plan (including any attached exhibits and Plan Supplements) are in conflict, the terms of the Creditor's Plan (including any attached exhibits and Plan Supplements) will control.

Creditors should refer only to this Disclosure Statement, the Joint Disclosure Statement, and the Creditor's Plan to determine whether to vote to accept or reject the Creditor's Plan.

The Plan Proponent asserts that approval of the Creditor's Plan is indisputably in the best interests of the Debtor's Creditors.

Creditors may request additional copies of this Disclosure Statement from the Plan Proponent's counsel at the following address:

Lisa Bittle Tancredi Gebhardt & Smith LLP One South Street, Suite 2200 Baltimore, Maryland 21202 <a href="mailto:ltancredi@gebsmith.com">ltancredi@gebsmith.com</a>
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Pursuant to the Bankruptcy Code, only Creditors who actually vote on the Creditor's Plan will be counted for purposes of determining whether the required number of acceptances have been obtained. Failure to deliver a properly completed Ballot by the Voting Deadline will result in an abstention; consequently, the vote will neither be counted as an acceptance nor rejection of the Creditor's Plan.

## II. DISCLAIMER

NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE CREDITOR'S PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE CREDITOR'S PLAN.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE CREDITOR'S PLAN, OTHER EXHIBITS, SUPPLEMENTS TO THE CREDITOR'S PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE

CORRECT AT ANY TIME HEREAFTER. ALL CREDITORS SHOULD READ CAREFULLY AND CONSIDER FULLY THE "RISK FACTORS" SECTION OF THIS DISCLOSURE STATEMENT BEFORE VOTING FOR OR AGAINST THE CREDITOR'S PLAN. TO THE EXTENT OF ANY INCONSISTENCY BETWEEN THE CREDITOR'S PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE CREDITOR'S PLAN SHALL CONTROL.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS, OR ANY FUTURE ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT, LIABILITY, STIPULATION, ESTOPPEL, OR WAIVER.

THIS DISCLOSURE STATEMENT SUMMARIZES CERTAIN PROVISIONS OF THE CREDITOR'S PLAN, STATUTORY PROVISIONS, DOCUMENTS RELATED TO THE PLAN, EVENTS IN THE DEBTOR'S BANKRUPTCY CASE AND FINANCIAL INFORMATION. ALTHOUGH THE PLAN PROPONENT BELIEVES THAT THE CREDITOR'S PLAN AND RELATED SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY PLAN PROPONENT, THE DEBTOR, AND OTHER PARTIES' FILINGS IN THIS CHAPTER 11 CASE, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. ANY VALUE GIVEN AS TO ASSETS OF THE DEBTOR IS BASED UPON AN ESTIMATION OF SUCH VALUE. ADDITIONALLY, BECAUSE THE PLAN PROPONENT IS A CREDITOR OF THE DEBTOR NOT IN CONTROL OF ITS OPERATIONS, PLAN PROPONENT IS RELYING ON INFORMATION PROVIDED TO IT BY THE DEBTOR AND OTHER PARTIES. ACCORDINGLY, ALTHOUGH THE PLAN PROPONENT HAS UNDERTAKEN REASONABLE AND DILIGENT EFFORTS TO PRESENT ACCURATE AND COMPLETE INFORMATION, PLAN PROPONENT IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE FINANCIAL INFORMATION, IS COMPLETELY ACCURATE.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED BY THE PLAN PROPONENT AND NOT BY ITS COUNSEL, AND IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE CREDITOR'S PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST THE DEBTOR. YOU ARE URGED TO CONSULT YOUR OWN COUNSEL AND FINANCIAL TAX ADVISORS ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS.

The Plan Procedures Order and attachments set forth the deadlines, procedures and



instructions for voting to accept or reject the Creditor's Plan and for filing objections to confirmation of the Creditor's Plan. For those who are entitled to vote, a Ballot is also enclosed. Voting instructions accompany each Ballot. Each Holder of a Claim entitled to vote on the Creditor's Plan should read this Disclosure Statement and Creditor's Plan, the Plan Procedures Order, and the instructions accompanying the Ballot in their entirety before voting on the Creditor's Plan. CONSULTATION WITH COUNSEL IS ALSO RECOMMENDED.

### **III. IMPLEMENTATION OF THE PLAN**

#### **A. Purpose of Reorganization**

The Debtor is a condominium regime that contains infrastructure and amenities (capital assets) that are owned in common by all Unit Owners. The Debtor is responsible for operating, maintaining, and replacing these assets.

The Debtor has substantial debt arising from, among other things: (a) the professional fees that it has accrued in these Bankruptcy Proceedings in connection with litigation with Unit Owners and the bankruptcy case; (b) the indebtedness due and owing to Howard Bank, its senior secured lender, for the loan that was used to make substantial repairs to the building; (c) unpaid judgments held by PH4C, LLC; and (d) delays in meeting its legal obligations to the Unit Owners and judgments arising therefrom. There are years-old disputes among Unit Owners and the Debtor relating to the Debtor's obligation to operate and maintain the condominium building. These disputes have resulted and continue to result in the expenditure of substantial professional fees and continue to deplete valuable estate resources that could otherwise be used to pay creditors and maintain the condominium building.

In response to the long-standing acrimony that has burdened the Debtor, the Creditor's Plan appoints a Plan Trustee, an independent, disinterested third party who will be charged with administering the Creditor's Plan and who will temporarily assume the rights, duties and obligations of the Board of Directors. The Creditor's Plan will: (a) ensure that the Debtor's Operating Reserve Fund and a Repair and Replacement Reserve Fund are properly funded so that it can meet its future obligations, including unanticipated obligations; (b) ensure that the Debtor makes prudent capital expenditures for maintenance and repairs; (c) stabilize the Debtor's community; (d) satisfy the large judgments and specific performance obligations entered against it prior to the Petition Date; and (e) pay Holders of Allowed Claims in full.

#### **B. Overview**

Pursuant to § 1141(b) of the Bankruptcy Code, on the Effective Date all Property and rights of the Estate shall vest in the Reorganized Debtor and shall remain in the Estate to be distributed in accordance with the terms of the Creditor's Plan. The Creditor's Plan provides for the appointment of a Plan Trustee, for a period of time beginning on the Effective Date and continuing until the Class 1 Allowed Claim is paid in full, to oversee the Debtor's operations and performance under the Creditor's Plan. The Creditor's Plan will pay all creditors of the Debtor in full.

#### **C. Plan Trustee**

The Plan Trustee shall be appointed effective as of the Effective Date. The Plan Trustee shall have all of the rights and powers of the Debtor's Board of Directors under the Debtor's By-Laws, Condominium Declarations and applicable law until the Holder of the Class 1 Claim shall have been paid in full, which is estimated to occur in 2026.

The Plan Trustee proposed is Monique D. Almy, Esquire. Ms. Almy has in the past been appointed as a Chapter 11 and/or Chapter 7 Trustee by the Bankruptcy Court and is experienced in reorganization matters.

The Debtor's Board of Directors shall report to the Plan Trustee and shall be under the authority of the Plan Trustee. The Debtor's Board of Directors has valuable historical knowledge and familiarity with the condominium and the Unit Owners, and the Plan Proponent anticipates that the Board of Directors will cooperate and work with the Plan Trustee to make the Reorganized Debtor a success. The Plan Trustee may delegate management of certain matters to the Board of Directors, subject to her supervision and authority, in her sole discretion; provided, however, that the Plan Trustee may not delegate the management and oversight of litigation involving the Reorganized Debtor. All litigation involving the Reorganized Debtor shall be managed by the Plan Trustee and the Plan Trustee shall direct all litigation and proceedings during her tenure. For so long as the Plan Trustee is serving her appointment, the Debtor's Board of Directors shall have no authority to bind the Reorganized Debtor or act on behalf of the Reorganized Debtor, except to the extent as may be delegated by the Plan Trustee. The Reorganized Debtor shall pay the Plan Trustee a reasonable compensation for her services. The Plan Trustee may act without notice to or the consent of the Board of Directors. The Plan Trustee's appointment shall expire and the Plan Trustee shall be discharged from all of her duties immediately following payment in full to the Holder of the Class 1 Claim. Upon the Plan Trustee's discharge, the Board of Directors will resume its rights, obligations and duties under the by-laws.

Throughout this Disclosure Statement, references to the "Reorganized Debtor" shall mean the Reorganized Debtor as managed by the Plan Trustee, until the Holder of the Class 1 Claim is paid in full.

#### **D. Funding of the Plan and Implementation**

The Creditor's Plan will be funded from five (5) sources: (1) Cash on hand on the Effective Date, (2) the continued collection of Annual Assessments from Unit Owners, (3) the collection of special assessments, (4) recoveries from the pursuit of any claims, rights, or other legal remedies the Debtor has, or may have in the future, and (5) income derived from Units owned by the Reorganized Debtor or the Plan Trust, including but not limited to Units 907 and 1310 and the PH4C Unit. The Reorganized Debtor reserves the right to use funds from other sources not contemplated herein to fund the Creditor's Plan.

Beginning Cash Balances. The Creditor's Plan anticipates funding certain Allowed Claims using Cash of the Debtor existing as of the Effective Date. As of the Effective Date, the Reorganized Debtor is estimated to have approximately \$2.53 million of Cash on hand.

Annual Assessments. The main funding source for the Creditor's Plan is the continued



collection of Annual Assessment from the Unit Owners. It is possible that adjustments to income and expenses will be required to meet the needs of the community and to remain in compliance with the Condominium Documents and Creditor's Plan. Therefore, the right of the Reorganized Debtor to adjust Annual Assessments, provided the Reorganized Debtor conforms to the Condominium Documents and the terms of the Creditor's Plan, is reserved.

Special Assessments. The Condominium Documents further authorize the Debtor to implement any additional charges or fees, should the Board of Directors at any time determine that additional funds are required for the operation and maintenance of the Debtor. Pursuant to the terms of the Creditor's Plan, the Reorganized Debtor will impose Special Assessments to fund payments to PH4C in connection with the PH4C Settlement. The projected Special Assessments for each month are set forth in the Plan Proponent's projections, which are attached hereto as Exhibit 2.

The projections under the Creditor's Plan reflect Special Assessments that are larger than those in the Debtor's Plan because they are based upon more conservative assumptions. For example, the projections for the Debtor's Plan do not include any Special Assessments after March of 2020 because the Debtor has assumed that the PH4C Unit will be sold for a profit sufficient to pay the balance of the PH4C Settlement Amount then outstanding. The Plan Proponent's projections account for the possibility that the sale of the PH4C Unit (after payment of costs of any necessary mold remediation and renovations) will not bring a profit, which would necessitate Special Assessments through July 2023, when the PH4C Settlement is paid in full. It is possible that the Plan Trustee will determine after consulting with appropriate experts and contractors, that the cost of remediating and/or renovating the PH4C Unit is higher than the Reorganized Debtor can reasonably bear and that it is not in the best interests of the Unit Owners. Conversely, if the PH4C Unit can be sold by the PH4C Trust for a sufficient profit prior to July 2023, the Special Assessments being raised to pay the PH4C Settlement Amount may be reduced or cease altogether. Thus, the Special Assessments required may be less than those projected. The Reorganized Debtor reserves the right to reduce or implement additional Special Assessments as may be necessary.

PH4C Trust. The Plan Trustee shall form the PH4C Trust for the purpose of receiving title to the PH4C Unit. The Plan Trustee shall be the Trustee of the PH4C Trust during the entirety of the Plan Trustee's appointment, and the beneficiaries of the PH4C Trust shall be the creditors and Unit Owners under the Creditor's Plan. The PH4C Unit has been the subject of extensive mold litigation. While the Debtor paid a judgment in the amount of \$1,252,487 to PH4C in September 2012, it is not known the extent to which the PH4C Unit has been remediated or repaired. The physical condition is unknown to the Plan Proponent at this time, and the Plan Proponent believes that it would be prudent for the Plan Trustee to have an opportunity to conduct diligence before making a determination that it is in the best interests of creditors and the Unit Owners for the PH4C Trust to undertake to remediate, renovate and sell the unit. If the projected costs and risk associated with renovation and sale of the unit exceed the benefit to creditors and the Unit Owners, the Plan Trustee may elect that title not be transferred to the PH4C Trust. If it takes title, the PH4C Trust shall cause the PH4C Unit to be remediated, repaired and sold. The costs and expenses of the PH4C Trust shall be paid from the Debtor's Operating Budget. Following the discharge of the Plan Trustee, the Board of Directors shall appoint a successor for the PH4C Trust.

Causes of Action. The Creditor's Plan contemplates the possibility of future Cash receipts from the pursuit of various Causes of Action. All Causes of Action are preserved and retained by the Reorganized Debtor and on the Effective Date shall become assets of the Reorganized Debtor. On and after the Effective Date, the Reorganized Debtor<sup>1</sup> shall have the exclusive right to enforce any and all Causes of Action retained by the Reorganized Debtor against any Person. The Reorganized Debtor may prosecute, defend, enforce, abandon, settle or release any or all Causes of Action in amounts less than \$250,000, as it deems appropriate without the need to obtain approval or any other or further relief from the Bankruptcy Court. The Reorganized Debtor may, in its sole discretion, offset any such Claim held against a Person, against any payment due such Person under the Creditor's Plan; provided, however, that any Claims of the Debtor arising before the Petition Date shall first be offset against Claims against the Debtor arising before the Petition Date. All defenses and rights of avoidance of the Debtor shall be retained and may be exercised by the Reorganized Debtor. These causes of action include claims and rights existing under insurance policies of the Debtor and the parties involved in or implicated by the pier collapse, and potential claims and defenses related to the failure of the owner of the PH4C Unit to use the proceeds of the money judgment paid by the Debtor to maintain the PH4C Unit in accordance with the By-Laws (unless such claims and defenses are otherwise released by the Plan Trustee in a signed writing pursuant to Art. 5.5(b) of this Creditor's Plan).

#### **E. Continued Operations**

The Creditor's Plan contemplates funding, from the on-going continued operations of the Reorganized Debtor that will produce net-positive Cash receipts after taking into account regular Cash disbursements made in the normal course of business of the Reorganized Debtor, but before taking into account payments contemplated by the Creditor's Plan.

Cash Receipts: The Creditor's Plan anticipates ongoing Cash receipts from the Annual Assessments and Special Assessments, as described supra. The Creditor's Plan further anticipates and projects a customary allowance for uncollectable assessments. Such projections may be adjusted in the event of an increase or decrease of such uncollectable accounts to remain in compliance with the Condominium Documents and Creditor's Plan.

Cash Disbursements: The Creditor's Plan anticipates ongoing Cash disbursements for operational expenses made in the regular course of business and predicted based on similar Cash disbursements in the past and those in Debtor's budget submitted in the Bankruptcy Case. The Debtor has anticipated that Cash disbursements for the Reorganized Debtor's operational expenses would increase by one and a half percent (1.5%) each year (cumulatively) in order to represent adjustments for inflation, and the Plan Proponent has used that assumption for the Creditor's Plan.

#### **F. Reserve Payments**

A necessary component of the Debtor's reorganization is the preservation of its Operating

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<sup>1</sup> During the Plan Trustee's tenure, the Plan Trustee will have all of the authority that the Board of Directors, would otherwise have, and the Reorganized Debtor shall be acting through the Plan Trustee, not the Board of Directors.

Reserve Fund and its Repair and Replacement Reserve Fund, which are collectively referred to as the Reserve Accounts. The Operating Reserve Fund is a fund set aside to stabilize the Debtor's finances by providing for unexpected cash flow shortages, expenses or losses. The Repair and Replacement Reserve Fund is designed to accumulate funds for capital repairs and replacement of the commonly owned assets of the Condominium. The failure to prudently maintain money to repair and maintain the building in the past has been a significant contributor to the Debtor's financial difficulties.

In order to resolve certain litigation, pay its creditors and continue to maintain the building, the Debtor will require substantial cash. It is unlikely that the Debtor will find any source of credit to make the payments necessary to exit bankruptcy, and Howard Bank is not willing to lend any additional money to the Debtor. Therefore, while it is not desirable and impairs the Plan Proponent's collateral position, the Plan Proponent believes that it will be necessary to temporarily withdraw approximately \$900,000 from the Repair and Replacement Reserve Fund to fund any Chapter 11 plan. The Plan Proponent is only willing to permit the Repair and Replacement Reserve Fund to be depleted in the amount of \$900,000 if a Plan Trustee is appointed to administer the Plan, along with certain other protections.

The Repair and Replacement Reserve Fund would be approximately \$271,455.04 at the start of the Creditors' Plan and the reserve would be re-built through monthly reserve contributions in amounts sufficient to fund anticipated capital expenditures and maintenance in accordance with the July 27, 2017 Reserve Study. This will fund projected short-term and long-term capital expenditures during the Creditor's Plan so that the Reorganized Debtor can adequately and reasonably maintain the Condominium until the Repair and Replacement Reserve Fund may be built up to recommended levels. In the event the Reorganized Debtor's expenses are beyond the projections of the Debtor or the July 27, 2017 Reserve Study, the Reorganized Debtor may be required to and reserves the right to utilize funds from either the Operating Reserve Fund or the Repair and Replacement Reserve Fund in order to stabilize the financial condition of the Reorganized Debtor and replenish such funds with adjustments to the Annual Assessments, or if necessary, a Special Assessment, in the sole discretion of the Reorganized Debtor.

Commencing on the Effective Date and until the Allowed Class 1 Claim has been paid in full, the Reorganized Debtor shall be required to maintain all Repair and Replacement Reserve Funds and Operating Reserve Funds at Howard Bank, or, in the sole discretion of the Holder of the Allowed Class 1 Claim, another financial institution subject to one or more deposit account control agreements acceptable to the Holder of the Allowed Class 1 Claim in its sole discretion.

#### **G. Management**

The Reorganized Debtor, pursuant to the Condominium Documents and the Creditor's Plan, has utilized and shall continue to have a management company supervise the daily operations and management of the common areas and facilities.

The Plan Proponent believes that the continued engagement of Barkan is in the best interests of the community at this time, to ensure continuity of operations and to avoid disruptions during this difficult time. The Plan Trustee will have the opportunity to review the terms of

Barkan's management contract at a later time and decide, prior to the expiration of the current term of the management contract, whether it is in the best interests of creditors and the Unit Owners to make a change, again taking into account the benefits of continuity and the efficiency that may be gained by using the same management company.

As part of the Creditor's Plan, the Reorganized Debtor reserves the right to amend the current Condominium Documents.

#### **H. Vesting of Property of Estate in the Reorganized Debtor**

Pursuant to § 1141(b) of the Bankruptcy Code, on the Effective Date all Property and rights of the Estate shall vest in the Reorganized Debtor and shall remain in the Estate to be distributed in accordance with the terms of the Creditor's Plan. As of the Effective Date, the Plan Trustee may operate the Condominium and use, acquire, and dispose of its Property, and settle and compromise Claims without the supervision of, or any authorization from the Bankruptcy Court or the United States Trustee, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by the Creditor's Plan or the Confirmation Order. All privileges with respect to the Property of the Estate, including the attorney/client privilege, to which the Debtor is entitled shall automatically vest in, and may be asserted by or waived on behalf of, the Reorganized Debtor, through the Plan Trustee.

#### **I. Continued Organizational Existence**

The Reorganized Debtor shall continue to exist as an association under the condominium laws of the State of Maryland after the Effective Date, with all of the powers of a condominium thereunder.

#### **J. Corporate Action; Further Acts**

On the Effective Date, all actions contemplated by the Creditor's Plan shall be deemed authorized and approved in all respects by virtue of the entry of the Confirmation Order, in accordance with the Bankruptcy Code and applicable state law and without requirement of further action by the Plan Trustee, Board of Directors of the Debtor or Reorganized Debtor. On the Effective Date, all matters provided for under the Creditor's Plan involving the structure of the Debtor or the Reorganized Debtor, or any formal action to be taken by or required of the Debtor or the Reorganized Debtor in connection with the Creditor's Plan, shall be deemed to have occurred and shall be in effect pursuant to the Bankruptcy Code, without any requirement for further action by the Plan Trustee, Board of Directors of the Debtor or the Reorganized Debtor. On the Effective Date, the Plan Trustee (during the term of her appointment) and the Board of Directors (following the discharge of the Plan Trustee) is authorized and directed pursuant to § 1142(b) of the Bankruptcy Code to implement the provisions of the Creditor's Plan and any other agreements, documents and instruments contemplated by or necessary for the consummation of the Creditor's Plan in the name of and on behalf of the Reorganized Debtor.

### **IV. TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, PRIORITY CLAIMS AND PRIORITY TAX CLAIMS**



In accordance with the provisions of § 1123(a)(1) of the Bankruptcy Code, Administrative Claims, certain Priority Claims, and Priority Tax Claims are deemed “unclassified.” These Claims are not considered Impaired pursuant to § 1129(a)(9)(A) or (C) of the Bankruptcy Code, and Holders of these Claims do not vote on the Creditor’s Plan because they are automatically entitled to specified treatment under the Bankruptcy Code. As such, the Plan Proponent has not placed these Claims in a Class. All Distributions made pursuant to this Article shall be in Cash as described below. Notwithstanding anything to the contrary contained herein, in no event shall the aggregate amount of Distributions with respect to any unclassified Claim exceed the Allowed Amount of such Claim. The treatment of and the consideration to be received by the Holders of these unclassified Claims shall be in full and final satisfaction, settlement, release, extinguishment and discharge of their respective Claims (of any nature whatsoever).

**A. Allowed Administrative Claims**

Each Holder of an Allowed Administrative Claim shall be Paid in Full, in Cash, in accordance with the priority of distribution set forth in § 507(a)(2) of the Bankruptcy Code, on the latest of (a) the Effective Date, (b) the tenth (10th) Business Day after the date upon which such Claim becomes an Allowed Claim, (c) the date upon which such Allowed Claim becomes due according to its terms, or (d) as otherwise ordered by a Final Order of the Bankruptcy Court. Any Holder of an Allowed Administrative Claim may agree to a different, but not better, treatment of its Claim, in which event the Reorganized Debtor shall pay such Claim in accordance with such agreement. In the case of a Professional with an Allowed Administrative Claim, that Professional shall be paid first from any retainer held by such Professional, and as to a balance, if any, after application of the retainer, shall be paid from Cash. The Plan Proponent estimates that Chapter 11 Administrative Expenses will be approximately \$760,764 as of the Effective Date, which amount is composed of unpaid professional fees and quarterly fees payable to the United States Trustee.

**B. Allowed Priority Claims**

Each Holder of an Allowed Priority Claim shall be Paid in Full, in Cash, in accordance with the priority of distribution set forth in § 507(a)(2), (a)(3), or (a)(8) of the Bankruptcy Code, on the latest of (a) the Effective Date, (b) the tenth (10th) Business Day after the date upon which such Claim becomes an Allowed Claim, (c) the date upon which such Allowed Claim becomes due according to its terms, or (d) as otherwise ordered by a Final Order of the Bankruptcy Court. Any Holder of an Allowed Priority Claim may agree to a different, but not better, treatment of its Claim, in which event the Reorganized Debtor shall pay such Claim in accordance with such agreement.

**C. Allowed Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive Cash (i) in an amount equal to the amount of such Allowed Priority Tax Claim on the Effective Date or (ii) as soon as reasonably practicable after the date of a Final Order allowing such Priority Tax Claim in accordance with §507(a)(8) as specified in §1129(a)(9)(C) of the Bankruptcy Code. Any Holder of an Allowed Priority Tax Claim may agree to a different, but

not better, treatment of its Claim, in which event the Reorganized Debtor shall pay such Claim in accordance with such agreement.

## **V. CLASSIFICATION OF CLAIMS**

### **A. General Overview**

As required by §§ 1122 and 1123 of the Bankruptcy Code, the Creditor's Plan places Claims into various Classes according to their right to priority and other relative rights. A Claim is in a particular Class for purposes of voting on, and of receiving Distributions pursuant to the Creditor's Plan only to the extent such Claim has not been paid, released or otherwise settled prior to the Effective Date. The table below identifies each Class of Claims under the Plan and whether such Class is Impaired or Unimpaired.

### **B. Designation of Classes**

The Creditor's Plan provides for the establishment of the following Classes of Claims as provided in § 502 of the Bankruptcy Code:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1	Allowed Secured Claim of Howard Bank	Impaired	Yes
2A 2B	Allowed Claims Secured by Unit 907 and 1310, respectively.	Impaired	Yes
3	Allowed Claims for Cure of Assumed Contracts and Unexpired Leases	Impaired	Yes
4	Allowed PH4C Judgments and Monetary Claims	Impaired	Yes
5	Allowed Non-Insider General Unsecured Claims	Impaired	Yes
6	Allowed Harborview Marina & Yacht Club Community Association Claim	Impaired	Yes
7	Allowed Unsecured Claims of Clark, Delorme and Clark, Jr.	Impaired	Yes
8	Allowed Unsecured Unit Owner Claims	Impaired	Yes
9	Allowed Interests	Impaired	Yes

## **VI. TREATMENT OF CLASSIFIED CLAIMS**

Allowed Claims shall be treated under the Creditor's Plan in the manner set forth in this Article VII. Unless otherwise specified, all Distributions made pursuant to the Creditor's Plan



shall be in Cash. Notwithstanding anything to the contrary contained in the Creditor's Plan, in no event shall the aggregate amount of Distributions with respect to any classified Claim exceed the Allowed Amount of such Claim. The treatment of, and the consideration to be received by, Holders of Allowed Claims hereunder shall be in full and final satisfaction, settlement, release, extinguishment and discharge of their respective Allowed Claims (of any nature whatsoever), including any Liens securing such Allowed Claims. Any Holder of an Allowed Claim may agree to a different, but not better, treatment of its Claim, in which event the Reorganized Debtor shall pay such Claim in accordance with such agreement.

Class 1: The Allowed Secured Claim of Howard Bank.

A. Description: Class 1 consists of the Secured Claim of Howard Bank as of the Petition Date, plus any Allowed post-petition attorneys' fees, interest, fees, and/or other charges. As of the Petition Date, the outstanding principal balance owed to Howard Bank on its secured claim was approximately Seven Million Eight Hundred Twenty-One Thousand Eight Hundred Twenty-Three and 73/100 Dollars (\$7,821,823.73). As of February 2, 2018, the unpaid principal balance of the Howard Bank Loan was \$7,451,823.73, and the Debtor is also obligated to Howard Bank for additional costs, fees and expenses under the Howard Bank Loan Documents, including but not limited to Howard Bank's attorneys' fees, consultant fees and litigation expenses, unpaid amounts of which are projected to be approximately \$180,000.

B. Treatment: The Reorganized Debtor shall execute and deliver to Howard Bank a Fourth Amended and Restated Promissory Note in a form acceptable to Howard Bank, the form which shall be included in the Plan Supplement. In accordance with the Fourth Amended and Restated Promissory Note, the Reorganized Debtor shall be obligated to pay even monthly payments of principal in the amount of \$77,623.37, plus monthly payment of interest at a rate of 5% on the outstanding balance. Such monthly payments shall commence on the first day of the first full month following the Effective Date and continue consecutively, and payable on the first of each month until the earlier of (i) the last day of the eighth (8th) full year following the Effective Date, or (ii) the Class 1 Claim is Paid in Full. On the last day of each calendar quarter beginning on March 30, 2023, the Debtor shall bring current any costs and expenses accrued under the Loan Documents, including but not limited to Howard Bank's attorneys' fees. All amounts due and owing under the Howard Bank Loan Documents shall be paid in full on or before a maturity date.

The Howard Bank Loan Documents as modified by the Fourth Amended and Restated Promissory Note shall remain in full force effect as modified. Howard Bank and the Reorganized Debtor may further modify the terms of the Howard Bank Loan Documents without the necessity of further notice or approval of the Court, and any such amendments shall be included in the defined term of "Howard Bank Loan Documents" as set forth in the Creditor's Plan.

The Holder of the Class 1 Claim shall retain its perfected first priority security interest in the Reorganized Debtor's Collateral, including but not limited to all current and future assessments and all funds on deposit in the Debtor's account, including but not limited to the Reserve Accounts.

C. Impairment: Class 1 is Impaired and therefore the Holder of the Class 1 Claim is entitled to vote to accept or reject the Creditor's Plan.

Class 2: Allowed Claims Secured by Units 907 and 1310

Class 2 is divided into two categories: the Class 2A Claim and the Class 2B Claim (each as hereinafter defined, and collectively referred to as “Allowed Claims Secured by Units 907 and 1310” or “Class 2”).

Class 2A – Allowed Claims Secured by Unit 907.

A. Description: Class 2A consists of the Allowed Secured Claim secured by Unit 907, which Unit is owned by the Debtor in fee simple, subject to the various Liens incurred by the prior owner of the Unit. The Lien Holder appears to be The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate holders of CWALT, Inc., Alternative Loan Trust 2005-58, Mortgage Pass-Through Certificates Series 2005-58 (“CWALT”). The mailing address is 101 Barclay Street – 4W, New York, NY 10286.

B. Treatment: In full and complete satisfaction, discharge and release of the Class 2A Claim, the Reorganized Debtor will pay the fair market value for Unit 907, valued by the Bankruptcy Court at Confirmation in the amount of \$320,000 (the “Fair Market Value of Unit 907”), as an Allowed Class 2A Secured Claim. Commencing on the Effective Date, the Allowed Class 2A Secured Claim shall receive equal monthly payments on the market value amortized over a thirty-year period at a 4% rate of interest on an amount equal to the Fair Market Value of Unit 907 beginning on the first day of the month following confirmation of the Plan, until the earlier of a sale of Unit 907 or October 1, 2035 (the original maturity date of the loan extended to the prior unit owner). Any transfer will be in furtherance of the Creditor’s Plan shall be entitled to the full benefits of 11 U.S.C. § 1146. Upon the sooner to occur of a sale of Unit 907 or on October 1, 2035, the Debtor shall pay the remaining balance owed on the Fair Market Value of Unit 907 in full discharge of the Allowed Class 2A Secured Claim. The Allowed Class 2A Secured Claim will retain its perfected priority security interest in Unit 907 until it is satisfied in accordance with the Creditor’s Plan. Any Creditor, Lien Creditor or judgment Creditor who asserts a claim against Unit 907 but who does not have an Allowed Class 2A Secured Claim, shall not receive any Distribution under the Creditor’s Plan unless that Creditor, Lien Creditor or judgment Creditor has recourse against the Reorganized Debtor. Any Creditor, Lien Creditor or judgment Creditor under Class 2A with recourse against the Reorganized Debtor, but whose claim is not an Allowed Class 2A Secured Claim, will have its Allowed Unsecured Claim treated under Class 5. Any Creditor, Lien Creditor or judgment Creditor under Class 2A, whose Claim is not an Allowed Class 2A Secured Claim, and does not have recourse against the Reorganized Debtor shall be discharged, extinguished and receive no Distribution under the Plan.

Upon confirmation of the Creditor’s Plan, the automatic stay shall be lifted to allow the Holder of a Class 2A Secured Claim to exercise any rights that it may have available to it in the event that the Reorganized Debtor defaults in connection with the payment of interest or payment of the Fair Market Value of Unit 907 when due. The Reorganized Debtor shall be entitled to written notice of any default and be provided with thirty (30) days to cure any such default. The Reorganized Debtor shall be responsible to pay any insurance and real estate taxes in connection

with the ownership of Unit 907.

In order to facilitate payments under the Creditor's Plan the Class 2A Secured Creditor shall provide a physical address where payments under the Creditor's Plan may be made as well as bank wiring instructions for electronic payments. The Class 2A Secured Creditor shall establish an account number specific to the Creditor's Plan (or allow the Reorganized Debtor access to the loan under the current loan number) and shall provide statements to the Reorganized Debtor in the normal course that detail the outstanding principal balance and the total interest received and credited to the account of the Reorganized Debtor. The Class 2A Secured Creditor shall add the Reorganized Debtor to the account for purposes of all communications, notices and payment inquiries, as follows:

Council of Unit Owners of the  
100 Harborview Drive Condominium  
c/o General Manager  
100 Harborview Drive  
Baltimore, Maryland 21230

Consistent with the foregoing, the Plan Trustee may determine, in her discretion, that the best interests of creditors and the Unit Owners would be served by ceasing the monthly payments contemplated in this Article 5.3.2.C and permitting the Holder of the Class 2A Claim to exercise its remedies including foreclosure of Unit 907. A factor to be considered in making this determination will be whether the costs of maintaining the unit exceed any revenue realized by the unit. If the Plan Trustee should make such determination, prior to ceasing payments she shall provide at least sixty (60) days written notice to the Holder of the Class 2A Secured Claim of such election. The Plan Trustee and the Holder of the Class 2A Claim may also mutually agree to a transfer title to the Holder of the Class 2A Claim pursuant to a deed in lieu of foreclosure, the cost of which shall be borne by the Holder of the Class 2A Claim. Following the sixty (60) day notice period given by the Plan Trustee, the Reorganized Debtor shall not be obligated maintain insurance or pay real property or other taxes in connection with Unit 907.

C. Impairment: Class 2A is Impaired and therefore Holders of an Allowed Class 2A Claim are entitled to vote to accept or reject the Creditor's Plan.

Class 2B – Allowed Claims Secured by Unit 1310.

A. Description: Class 2B consists of the Allowed Secured Claims secured by Unit 1310, which Unit is owned by Debtor in fee simple, subject to the various Liens incurred by the prior owner of the Unit. The Lien Holder appears to be The Bank of New York Mellon fka The Bank of New York, as Trustee for the Holders of Structured Asset Mortgage Investments II Trust 2006-AR8, Mortgage Pass-Through Certificates Series 2006-AR8 ("Mellon") with an address of C/O BAC, M/C:CA6-914-01-43, 1800 Tapo Canyon Road, Simi Valley, CA 93063.

B. Treatment: The Holder of the Class 2B Claim has obtained relief from the automatic stay to pursue its remedies against Unit 1310. The Holder of the Class 2B Claim shall

be permitted to exercise its rights and remedies against its collateral in full and complete satisfaction, discharge and release of the Class 2B Claim.

C. Impairment: Class 2B is Impaired and therefore Holders of an Allowed Class 2B Claim are entitled to vote to accept or reject the Creditor's Plan.

Class 3: Allowed Claims for Cure of Assumed Contracts and Unexpired Leases.

A. Description: Class 3 consists of Allowed Claims for the cure of certain Allowed Assumed Contracts and Unexpired Leases that relate to essential contracts necessary for the Reorganized Debtor's operations. Those contracts and the proposed cure amounts are identified in the Plan Supplement.

B. Treatment: In full and complete satisfaction, discharge and release of the Class 3 Claims in the estimated amount of \$643,084.38, the Reorganized Debtor shall pay each Holder one-hundred percent (100%) of its Allowed Claim, without interest, in three (3) equal consecutive monthly installment payments commencing thirty (30) days after the Effective Date.

C. Impairment: Class 3 is Impaired and therefore Holders of an Allowed Class 3 Claim are entitled to vote to accept or reject the Plan.

Class 4: Allowed PH4C Judgments and Monetary Claims.

A. Description: Class 4 consists of all Allowed Judgments and Monetary Claims asserted by PH4C as set forth in Proof of Claim #45.

B. Treatment: PH4C and the Debtor have agreed to terms of a settlement of PH4C's Class 4 Claim, as set forth in the Debtor's Plan. The Plan Proponent proposes to provide PH4C with similar terms. PH4C has not accepted the treatment described below as of the filing of this Disclosure Statement. The Plan Proponent may modify the proposed terms with PH4C after negotiations prior to confirmation.

In full and complete satisfaction, discharge and release of the Class 4 Claims of PH4C, the Reorganized Debtor shall pay a settlement amount to the Holder of the PH4C Claim (the "PH4C Settlement Amount"), as set forth herein, in settlement of all disputes between the Debtor and the Holder of the PH4C Claim as of Effective Date. The PH4C Settlement Amount shall be Four Million One Hundred Thousand Dollars (\$4,100,000) million if both of the following shall occur: (1) the Plan Trustee in her discretion determines that it is in the best interests of creditors and Unit Owners that title of the residential unit known as Unit PH4C located at 100 Harborview Drive, Baltimore, Maryland 21230 (the "PH4C Unit") be transferred to the Plan Trust, and (2) PH4C transfers title of PH4C Unit to the Plan Trust. Otherwise, the PH4C Settlement Amount shall be calculated as Four Million One Hundred Thousand dollars (\$4,100,000) minus the "as-is" value of the PH4C Unit as of the Effective Date. The PH4C Settlement Amount shall be paid by making an initial payment and monthly payments described below. The full principal of the PH4C Settlement Amount shall be paid in full no later than December 31, 2022 and accrued interest on the Settlement Amount shall be paid as set forth herein.



Initial Payment to PH4C. The Reorganized Debtor shall pay Nine Hundred Eighty-Five Thousand Dollars (\$985,000) (the "Initial Settlement Sum") of the PH4C Settlement Amount within fifteen (15) calendar days of the Plan's Effective Date.

Monthly Payments to PH4C. The Reorganized Debtor shall make monthly payments of \$55,000 to the Holder of the PH4C Claim until the balance of the PH4C Settlement Amount and all accrued interest is paid in full as provided herein. After paying the Initial Settlement Sum to the Holder of the PH4C Claim as described above, and after the transfer, if any, of the PH4C Unit to the Plan Trust as described above, the Reorganized Debtor shall continue to pay \$55,000 monthly directly to the Holder of the PH4C Claim no later than the last day of each month until the PH4C Settlement Amount and all accrued interest are paid in full.

Transfer of PH4C Unit to Reorganized Debtor. If the Plan Trustee in her discretion determines that it is in the best interests of creditors and Unit Owners that title of Unit PH4C be transferred to the Plan Trust and PH4C so agrees, PH4C shall transfer the PH4C Unit to the Plan Trust free and clear of liens, claims, and encumbrances, "as is" and without any representations or warranties regarding the condition or value of the PH4C Unit, with the exception of the PH4C Lien described below. In connection with such sale, PH4C shall execute, deliver and file such satisfactions and documents and take such additional steps as may be reasonably necessary to permit the Plan Trust to obtain at closing an owner's title insurance policy satisfactory to the Plan Trustee. The cost of such title insurance policy shall be paid from the proceeds of sale. The risk of loss shall be maintained by PH4C until the transfer. PH4C may remove any and all furniture from the PH4C Unit prior to the transfer of the PH4C Unit to the Plan Trust, and PH4C shall give reasonable access to the Plan Trustee (or her designee) prior to closing of the transfer of the PH4C Unit to allow the Plan Trustee to inspect the PH4C Unit, obtain an appraisal, hygienist's report, estimates to repair the PH4C Unit and any other reasonable diligence that the Plan Trustee believes is warranted. Personal property remaining in the PH4C Unit at the time of the transfer shall convey to the Plan Trust. From the Effective Date through closing on the transfer of the PH4C Unit, if any, PH4C shall continue to pay real property taxes and utilities for the PH4C Unit and shall not contract or sell the PH4C Unit. If PH4C elects to transfer Unit PH4C to the Plan Trust, PH4C and Ancel shall warrant that PH4C holds fee simple title to Unit PH4C and no membership interest in PH4C has been transferred prior to the date of Closing of the PH4C Unit transfer to the Plan Trust (the "PH4C Unit Closing Date"). At closing of the transfer of title to the PH4C Unit, taxes and utilities shall be prorated so that the Plan Trust is responsible for those expenses beginning on the PH4C Unit Closing Date. At closing, the Reorganized Debtor shall execute and deliver a release to PH4C and Ancel of any claims related to the PH4C Unit, including but not limited to any potential claims related to the condition of, and failure to maintain, the PH4C Unit.

Lien in Favor of PH4C. At the PH4C Unit Closing Date, the Plan Trust shall grant a first priority lien to PH4C on the PH4C Unit (the "PH4C Lien") up to the larger of \$1 million or the as-is appraised value of the PH4C Unit, to secure the payment of the PH4C Settlement Amount.

Sale of Unit. Following the PH4C Unit Closing Date, the Plan Trust shall use its reasonable best efforts to sell the PH4C Unit as soon as reasonably practicable. The Plan Trust shall not sell the PH4C Unit for less than \$1 million unless PH4C consents to such sale in writing, which consent

shall not be unreasonably withheld. If the Plan Trust sells the PH4C Unit prior to payment of the PH4C Settlement Amount and accrued interest in full, then the Reorganized Debtor (or its designee) shall pay at closing the net sale proceeds (after payment of any broker's fee, transfer and recordation taxes, or other related expenses arising from the transaction) to PH4C up to the balance then due on the Settlement Amount and any accrued interest. PH4C shall apply the sale proceeds first to the balance due on the PH4C Settlement Amount, then to accrued interest. Any remaining balance of the net sales proceeds from the sale of the PH4C Unit after payment in full of the PH4C Settlement Amount shall be paid to Howard Bank and applied to the Howard Bank Loan. If both the PH4C Settlement Amount and Howard Bank have been paid in full prior to the closing of the sale of Unit PH4C, then the balance of the net proceeds of sale of Unit PH4A shall be applied to the Repair and Replacement Reserve Fund or otherwise as determined by the Board of Directors of the Reorganized Debtor. Regardless of whether the Plan Trust sells the PH4C Unit, the balance of the PH4C Settlement Amount and accrued interest shall remain due and owing.

Interest to PH4C. The Reorganized Debtor shall pay interest on the principal balance of the PH4C Settlement Amount as follows: on the four (4) month anniversary of the Effective Date (estimated to be the last day of June 2018), the then unpaid portion of the PH4C Settlement Amount will begin accruing interest at the rate of five and one-half percent (5.5%) per annum; that accrued interest (and default interest, if any) will then be added to the end of the period designated for payment of the PH4C Settlement Amount (estimated to be December 2022) and shall be paid commencing on such month and each month thereafter in an amount not to exceed \$55,000 per month until the accrued interest is paid in full.

Assessments to PH4C. PH4C shall not be liable to pay any annual or special assessments to the Reorganized Debtor for the period beginning December 1, 2017 through June 30, 2018. PH4C shall be liable to pay annual and special assessments for the periods after June 30, 2018 until the PH4C Closing Date occurs. No PH4C assessments shall be collected from PH4C under the Creditor's Plan for periods after the PH4C Closing Date, should the PH4C Closing Date occur.

Releases and Injunction. Upon the Effective Date and conditioned upon payment of the Initial Settlement Sum, all judgment liens of PH4C and Ancel shall be deemed satisfied and extinguished, and all rights thereunder shall be released, including but not limited to any rights under the specific performance award described in the Majority Arbitration Award issued on November 24, 2011, that directs, in part, the Debtor to cause the removal and replacement of railings at Harborview and confirmed in *Penthouse 4C, LLC v. 100 Harborview Drive Council of Unit Owners*, Circuit Court for Baltimore City, Case Number 24C-10-002003. Promptly after payment of the Initial Settlement Sum, the Reorganized Debtor and PH4C shall cause the Adversary Proceeding to be dismissed with prejudice, and they shall cause satisfactions of judgments to be filed in connection with of all judgments in favor of PH4C and Ancel against the Debtor. The Holder of the Allowed Class 4 Claim shall be enjoined from commencing or continuing any judicial, administrative, or other proceedings related to the PH4C Unit, the condition of the condominium building, judgments in favor of PH4C or Ancel, any and all actions or inactions of the Debtor and its Board of Directors, management company, employees or agents and any and all other claims or causes of action, each as of the Effective Date. Prior to commencing any litigation, proceedings or other actions for causes of action or claims or disputes that arise after the Commencement Date, the Holder of the Allowed Class 4 Claim and Ancel shall be required to



first attempt in good faith to discuss the issue with the Plan Trustee to resolve the dispute amicably and then if such discussions fail, to mediate the issue with the Plan Trustee.

Notice and Rights upon Event of Default. In the event that a party defaults on its obligations as set forth herein, the party asserting the alleged default shall provide the other party with notice of the event of default in writing and the alleged defaulting party shall have ten (10) calendar days after notice to cure such event of default. A defaulting party shall be obligated to pay the expenses incurred by the non-defaulting party (including but not limited to reasonable attorneys' fees) in seeking to enforce its rights hereunder. If a monetary default occurs on the part of the Reorganized Debtor and such noticed default is not cured within ten (10) calendar days of such written notice, then PH4C shall be entitled to seek an order of the Bankruptcy Court compelling the Plan Trustee and the Reorganized Debtor to comply with the Creditor's Plan.

C. Impairment: Class 4 is Impaired and therefore the Holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Creditor's Plan.

Class 5 Non-Insider General Unsecured Claims

A. Description: Class 5 consists of all Allowed Non-Insider General Unsecured Claims.

B. Treatment: In full and complete satisfaction, discharge and release of the Class 5 Allowed Claims, in the estimated amount of Four Hundred and Nine Thousand Five Hundred and Twenty-Four Dollars and Six Cents (\$409,524.06), the Reorganized Debtor shall pay each Holder one-hundred percent (100%) of its Allowed Claim, without interest, in installments, until Paid in Full. The first payment shall be paid on the 12th month after the Effective Date and shall equal the lesser of: (i) the amount of each Class 5 Allowed Claim, or (ii) Three Thousand and 00/100 Dollars (\$3,000.00). Any remaining amounts due to Holders of an Allowed Class 5 Claim that are not Paid In Full following the first payment shall be paid in four equal installment payments and shall be paid on the 24th, 36th, 48th, and 60th month after the Effective Date. Such disbursements shall be allocated to the principal portion of any such Allowed Claim and only after the principal portion of any such Allowed Claim is satisfied in full, to any portion of such Allowed Claim compromising interest or other charges (but solely to the extent that such interest or other charges are an allowable portion of such Allowed Claim).

C. Impairment: Class 5 is Impaired and therefore Holders of the Class 5 Claims are entitled to vote to accept or reject the Plan.

Class 6: Harborview Marina & Yacht Club Community Association.

A. Description: Class 6 consists of the Allowed Unsecured Claim of the Association.

B. Treatment: The Class 6 Claim related to the pier collapse is disputed in part by the Debtor for various reasons, including insurance coverage and the right of indemnity from C.A. Lindman. The Reorganized Debtor asserts that whether or not it is responsible for any damages arising from the pier collapse, no Claim by the Association recoverable directly against the

Reorganized Debtor exists above and beyond insurance proceeds and indemnity payments owed by C.A. Lindman or any third parties other than the Debtor. The pier collapse is also the subject of a pending lawsuit *Harford Ins. Co. v. Harborview Marina & Yacht Club Community Association, Inc.*, Case No. 8:16-cv-00769-PJM (D. Md.) and the result of that lawsuit may determine what, if any, obligations are owed by the Reorganized Debtor, and other litigation has been filed or may be filed involving the Debtor as a party or a prospective party. The Plan Trustee shall monitor and participate appropriately in such lawsuit and any dispute resolution process. To the extent the Reorganized Debtor has any liability arising from this occurrence; it will look to its insurance coverage or any third-party responsible to pay the Allowed Class 6 Claim. The Association is satisfied in light of the evidence including the pro formas and financial attachments to the Creditor's Plan, and the testimony of the expert witnesses at the hearing on confirmation of the Debtor's Second Amended Plan (which was not confirmed), that no reserves exist of any substantial means beyond those contemplated in the Plan. The Reorganized Debtor will not be liable beyond the limits of its insurance coverage. To the extent insufficient insurance or coverage or defenses exist which limit the recovery to restore the pier and all associated costs and expenses, the Association may seek to assess the Association's Owners to pay the same pursuant to the Association's governing documents, but no payments shall be payable by Unit Owners thereunder until after January 1, 2027. The Reorganized Debtor shall not object to any assessment assessed to the Unit Owners for this purpose in accordance with the foregoing terms on the basis that it is barred as a result of this bankruptcy proceeding.

The Class 6 Claim related to certain damages caused to the Association property in the amount of \$20,000 is not disputed and the Reorganized Debtor asserts that it will look to its insurance coverage to pay this portion of the Allowed Class 6 Claim. In the event the claim is not covered, this portion only of the Allowed Class 6 Claim will be treated under Class 5.

C. Pier-Related Litigation: Upon confirmation of the Creditor's Plan, all rights, claims and defenses of the parties to any litigation related to the pier owned by the Association are fully preserved (including the Debtor, the Reorganized Debtor, C.A. Lindman, Coleman Consulting, LLC, Plano-Coudon, LLC and any of their insurers with respect to such claims) in connection with the pier collapse and may be liquidated and litigated to judgment, or by such other dispute resolution process, as may be determined in the ordinary course and shall not be subject to any stay, provided however, no payment by the Debtor or the Reorganized Debtor on account of any finding of liability shall occur except from third parties or Debtor's policy(ies) of liability insurance as provided for in the Creditor's Plan as the case may be.

D. Relief from the Automatic Stay: On December 15, 2017, the Court entered the Order Granting, in part, Motion for Relief from Stay filed by the Association [Dkt. #590] ("Lift Stay Order"). Pursuant to the Lift Stay Order, the Association was granted relief from the automatic stay of § 362(a) to seek to join the Debtor to the two lawsuits currently pending in connection to the collapse of the pier, *Harford Ins. v. Harborview Marina & Yacht Club Community Ass'n. Inc.*, in the United States District Court for the District of Maryland, Case No. 8:16-cv-00769-PJM and *Harborview Marina & Yacht Club Community Ass'n, Inc. v. C.A. Lindeman, et al.*, in the Circuit Court for Baltimore City, Case No. 24C16005758 or such other further civil actions as circumstances may require (together, the "Litigation"). No officers or

directors of the Association or of the Debtor shall be held personally liable for any damages associated with either of the lawsuits.

E. Impairment: Class 6 is Impaired and therefore the Holder of the Class 6 Claim is entitled to vote to accept or reject the Creditor's Plan.

Class 7: Allowed Unsecured Claims of the Clarks:

A. Description: Class 7A consists of the Unsecured Claims of the Clarks as asserted as part of Proofs of Claim numbered #46, 47 and 48.

B. Treatment: The Class 7A Claim shall be Allowed in the amount determined by the Court or agreed by the Clark and the Plan Trustee, subject to approval of the Court ("Clark Allowed Amount"). In full and complete satisfaction, discharge and release of the Class 7A Allowed Claim, the Reorganized Debtor shall pay the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) to Clark on the Effective Date (the "Clark Initial Payment"), and the balance of the Clark Allowed Amount, estimated by the Plan Proponent to be in the amount of Two Hundred and Fifty-Nine Thousand Two Hundred Dollars (\$259,200) shall be paid in five equal annual installments on the 12th, 24th, 36th, 48th, and 60th months after the Effective Date until paid in full. Clark shall cooperate with the Plan Trustee to file stipulations of dismissal of all pending litigation against the Debtor and all of the Debtor's co-defendants within fifteen (15) business days of Clark's receipt of the Clark Initial Payment.

C. Injunction. The Holder of the Allowed Class 7 Claim shall be enjoined from commencing or continuing any judicial, administrative, or other proceedings related to the PH4A Unit, the condition of the condominium building, any and all actions or inactions of the Debtor and its Board of Directors, management company, employees or agents and any and all other claims or causes of action, each as of the Effective Date. Prior to commencing any litigation, proceedings or other actions for causes of action, claims, disputes or problems that arise after the Commencement Date, the Holder of the Allowed Class 7 Claim and Clark shall be required to first attempt in good faith to discuss the issue with the Plan Trustee to resolve the dispute amicably and then if such discussion fail, to mediate the issue with the Plan Trustee.

D. Impairment: Class 7A is Impaired and therefore the Holders of the Class 7A Claims are entitled to vote to accept or reject the Creditor's Plan.

Class 8: Allowed Unsecured Unit Owner Claims

A. Description: Class 8 consists of Allowed Claims by Unit Owners asserted in Proofs of Claims #5, 28-29, 32-33, 35-37, 40 and 44 arising from work performed by a third-party contractor hired by the Debtor that resulted in alleged (1) property damage to the Unit Owner's balcony or personal property located thereon or (2) in incomplete or defective work performed on the common elements.

B. Treatment: The Class 8 Claims, estimated in the amount of Two Million and 00/100 Dollars (\$2,000,000.00), arising from work performed by a third-party contractor are disputed by

the Reorganized Debtor. As a result of the bankruptcy filing, the contractor, C.A. Lindman, Inc., who is owed pre-petition amounts, has ceased to perform any work to repair or correct these damages. The pre-petition amount owed to the contractor will be paid pursuant to Class 3 and the contract reinstated. As such, in full and complete satisfaction, discharge and release of the Class 8 Allowed Claims, the Reorganized Debtor will pursue its contractual rights against the contractor that performed the work to properly repair the Unit Owners' property, fix any incomplete or defective work, and/or any other remedies available under the applicable contracts. Any and all Claims against the Debtor for damages, including, but not limited to, those for diminution in value, damages (whether actual, compensatory, or punitive), and/or negligence, will be extinguished and any further pursuit of such Claim will be permanently enjoined and prohibited. Under no circumstance will the Reorganized Debtor have any payment obligation to Holders of Allowed Class 8 Claims.

C. Impairment: Class 8 is Impaired and therefore the Holders of the Class 8 Claims are entitled to vote to accept or reject the Creditor's Plan.

#### Class 9: Interests.

A. Description: Class 9 consists of all Allowed Interests in the Debtor held by each Unit Owner as set forth in the Condominium Documents.

B. Treatment: In full and complete satisfaction, discharge and release of the Class 9 Allowed Interests, each Holder of an Allowed Interest in the Debtor shall be canceled, released, and extinguished, and will be of no further force or effect and no Holder of Interest in the Debtor shall be entitled to any recovery or distribution under the Plan on account of such Interest in the Debtor. On the Effective Date, in consideration for the payment of the future Assessments and Plan Payment Fees, as necessary, provided by the Unit Owners to fund the Creditor's Plan, all Unit Owners shall acquire their same percentage interest in the Reorganized Debtor as that held previously in the Debtor pursuant to the Condominium Documents.

C. Impairment. Class 9 is Impaired and therefore the Holders of Class 9 Interests are entitled to vote to accept or reject the Creditor's Plan.

## **VII. OTHER PLAN COMPONENTS**

### **A. Distribution Procedures**

Allocation of Distributions. Except as otherwise specifically provided in Section 5.1 and Section 5.2 of the Creditor's Plan for Holder of Claims in Classes 1, 2 and 4, distributions to any Holder of an Allowed Claim shall be allocated first to the principal portion of any such Allowed Claim, and, only after the principal portion of any such Allowed Claim is satisfied in full, to any portion of such Allowed Claim comprising interest or other charges (but solely to the extent that such interest or other charges are an allowable portion of such Allowed Claim). For the avoidance of doubt, the foregoing shall not be interpreted to expand on the payment obligations and/or treatment provisions of any Claims in Article 5 of the Creditor's Plan or to provide for the payment of interest to any Claims except as expressly provided for in Article 5. All payments shall be made



in accordance with the priorities established by the Bankruptcy Code.

Delivery of Distributions and Undeliverable Distributions. Distributions to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address as set forth on the Proofs of Claim filed by such Holders or other writing notifying the Reorganized Debtor of a change of address. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until the Reorganized Debtor is notified of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder, without interest from the date of the first attempted Distribution. All Claims for undeliverable Distributions shall be made on or before sixty (60) days after the date such undeliverable Distribution was initially made. After such date, all unclaimed property shall, in the discretion of the Reorganized Debtor, be used to satisfy the costs of administering and fully consummating the Creditor's Plan, to the extent such costs would otherwise be paid from available Cash, or become available Cash for distribution in accordance with the Creditor's Plan, and the Holder of any such Claim shall not be entitled to such undeliverable Distribution or any other or further Distribution under the Creditor's Plan on account of such Claim.

Time Bar for Check Payments. Checks issued by the Reorganized Debtor for Allowed Claims shall be null and void if not finally negotiated or otherwise presented for payment within sixty (60) days after the date of issuance thereof. The Holder of the Allowed Claim to whom a check originally was issued shall make any request for reissuance of a check so voided to the Reorganized Debtor. Any such request for reissuance shall be made on or before thirty (30) days after the expiration of the sixty (60) day period following the date of issuance of such original check. The Reorganized Debtor shall have thirty (30) days to reissue such check, after which the Holder shall have twenty (20) days to present the same for final payment. The Plan Trustee may, at any time after the original check is declared null and void, combine such original check with any subsequent payment then due to the same Holder into a single check. After such one hundred fortieth (140th) date following original issuance of such check, all funds held on account of both such voided checks shall, in the discretion of the Plan Trustee, be used to satisfy the costs of administering and fully consummating the Creditor's Plan, to the extent such costs would otherwise be paid from available Cash, or become available Cash for Distribution in accordance with the Creditor's Plan, and the Holder of any such Claims shall not be entitled to such voided check or any other or further Distribution under the Creditor's Plan on account of such Claim.

Setoffs. The Reorganized Debtor may, in accordance with § 553 of the Bankruptcy Code and applicable non-bankruptcy law, setoff against any Allowed Claim and the Distributions to be made pursuant to the Creditor's Plan on account of such Claim (before any Distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Reorganized Debtor may hold, whether currently existing or hereinafter arising, against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor of any such claims, rights and causes of action that the Reorganized Debtor may possess against such Holder. The Reorganized Debtor shall have the exclusive right and authority to settle claims and recognize setoff rights.

## **B. Treatment of Disputed Claims**

No Distribution Pending Allowance. Notwithstanding any other provision of the Creditor's Plan to the contrary, no payments shall be distributed to a Holder of a Claim under the Creditor's Plan on account of any Disputed Claim unless and until such Claim becomes an Allowed Claim.

Resolution of Disputed Claims. Notwithstanding any other provision of the Creditor's Plan to the contrary, after the Effective Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Plan Trustee shall have the exclusive right (except as to applications for allowances of compensation and reimbursement of expenses under §§ 330 and 503 of the Bankruptcy Code, and except as to any objections which have been filed prior to the Confirmation Date by any party) to make and file objections to Claims and shall serve a copy of each objection upon the Holder of the Claim to which the objection is made as soon as practicable, but in no event later than ninety (90) days after the Effective Date. From and after the Effective Date, all objections shall be litigated to a Final Order except to the extent the Plan Trustee elects to withdraw any such objection or the Plan Trustee and the Holder elect to compromise, settle or otherwise resolve any such objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim for an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more subject to approval of the Bankruptcy Court and for amounts of Twenty-Four Thousand Nine Hundred Ninety-Nine and 99/100 Dollars (\$24,999.99) or less without approval of the Bankruptcy Court.

Estimation. The Plan Trustee may, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to § 502(c) of the Bankruptcy Code regardless of whether the Debtor or Plan Trustee have previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, the estimated amount may constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Plan Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claim objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Confirmation Date, Claims that have been estimated subsequently may be compromised, settled, withdrawn or otherwise resolved subject to approval by the Bankruptcy Court as provided in the Creditor's Plan.

Reserve Accounts for Disputed Claims. The Reorganized Debtor shall hold in the Disputed Claims Reserve, funds in an aggregate amount sufficient to pay to each Holder of a Disputed Claim, but not for any sum claimed by the Holder of a Class 6, Class 7 or Class 8 Claim the amount that such Holder would have been entitled to receive under the Creditor's Plan if such Claim had been an Allowed Claim on the Effective Date. The Reorganized Debtor will not hold in any account, nor will Reorganized Debtor reserve any funds for payment of Class 6, Class 7 or Class 8 Claims. Funds withheld and reserved for payments to Holders of Disputed Claims, other than Class 6, Class 7 or Class 8 Claims, shall be held and deposited by the Reorganized Debtor in one or more segregated interest-bearing reserve accounts (each a "Dispute Claims Reserve"), as determined by the Plan Trustee, to be used to satisfy such Claims if and when such Disputed Claims become Allowed Claims.



Investment of Disputed Claims Reserve. The Reorganized Debtor shall be permitted, from time to time, in its sole discretion, to invest all or a portion of the funds in the Disputed Claims Reserve in interest-bearing savings accounts, United States Treasury Bills, interest-bearing certificates of deposit, tax exempt securities or investments permitted by § 345 of the Bankruptcy Code or otherwise authorized by the Bankruptcy Court, using prudent efforts to enhance the rates of interest earned on such funds without inordinate credit risk or interest rate risk. All interest earned on such funds shall be held in the Disputed Claims Reserve and, after satisfaction of any expenses incurred in connection with the maintenance of the Disputed Claims Reserve, including taxes payable on such interest income, if any, shall be transferred out of the Disputed Claims Reserve and, in the discretion of the Plan Trustee, be used to satisfy the costs of administering and fully consummating the Creditor's Plan or become available Cash for distribution in accordance with the Creditor's Plan.

Release of Funds from Disputed Claims Reserve. If at any time or from time to time after the Effective Date, there shall be funds in the Disputed Claims Reserve in an amount in excess of the Reorganized Debtor's maximum remaining payment obligations to the Holders of then-existing Disputed Claims under the Creditor's Plan, such excess funds shall become available to the Reorganized Debtor generally and shall be used by the Plan Trustee to satisfy the costs of administering and fully consummating the Creditor's Plan or become available Cash for distribution in accordance with the Creditor's Plan.

### **C. Instruments**

(1) Rights of Persons Holding Instruments. Except as otherwise provided herein, as of the Effective Date, and whether or not surrendered by the holder thereof, all instruments evidencing or relating to any Claim, other than for an Allowed Class 1 or Allowed Class 2 Claim, shall be deemed automatically cancelled and deemed void and of no further force or effect, without any further action on the part of any Person, and any Claims evidenced by or relating to such instruments shall be deemed discharged.

(2) Cancellation of Liens. Except as otherwise provided herein, as of the Effective Date, any Lien securing an Allowed Secured Claim, other than those securing Allowed Class 1 and Class 2 Claim (which are fully preserved in accordance with their respective loan documents), shall be deemed released and discharged, and the Holder of each such Allowed Secured Claim, (other than the Holders of Allowed Class 1 and Class 2 Claims), shall be authorized and directed to release any Collateral or other property of the Debtor (including, without limitation, any cash collateral) held by such Holder and to take such actions as may be reasonably requested by the Plan Trustee to evidence release of such Lien, including without limitation, by the execution, delivery, and filing or recording of such releases as may be requested by the Plan Trustee.

### **D. Executory Contracts and Unexpired Leases.**

Assumption Certain Executory Contracts. As reflected in Section 5.3 of the Creditor's Plan, effective as of, and conditioned on, the occurrence of the Effective Date, the Reorganized Debtor shall assume certain Executory Contracts and Unexpired Leases of the Debtor. A list of contracts that the Reorganized Debtor shall assume, along with the cure amounts if any for each contract, will be provided in the Plan Supplement filed on or before February 28, 2018.

Approval of Assumption of Executory Contracts. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval pursuant to § 365 of the Bankruptcy Code, of the assumption of each contract assumed pursuant to § 8.1 of the Creditor's Plan.

Assumption Procedures: Any monetary defaults existing under each Executory Contract or Unexpired Lease to be assumed under the Creditor's Plan will be cured pursuant to the Claim treatment of Class 3 as set forth in Section 5.3 of the Creditor's Plan.

Insurance Policies. All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto are treated as Executory Contracts that will be assumed under the Creditor's Plan.

Rejection of Certain Executory Contracts. The Plan Proponent does not currently contemplate the rejection of any Executory Contracts.

Indemnification Rights. All Claims for Indemnification Rights against the Debtor not specifically assumed by the Debtor, in the Debtor's sole discretion, will be deemed rejected as of the Effective Date unless such Claims are otherwise Allowed Claims or arise after the Confirmation Date in accordance with the Condominium Documents.

#### **E. Effect of Confirmation**

Discharge of Claims. Except as otherwise expressly provided in the Creditor's Plan or in the Confirmation Order, the Confirmation Order shall operate as a discharge, pursuant to § 1141(d) of the Bankruptcy Code, to the fullest extent permitted by applicable law, as of the Confirmation Date, of the Debtor, the Reorganized Debtor, and the Estate, and any of their respective successors and assigns, and the assets and Property of any of them, from any and all Debts, Liabilities or Claims of any nature whatsoever against the Debtor that arose at any time prior to the Effective Date, including any and all Claims for principal and interest, whether accrued before, on or after the Petition Date. Except as otherwise expressly provided herein or in the Confirmation Order, but without limiting the generality of the foregoing, on the Effective Date under its Condominium Documents, the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them, shall be discharged, to the fullest extent permitted by applicable law, from any Claim or Debt that arose prior to the Effective Date and from any and all Debts of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such Debt was filed pursuant to § 501 of the Bankruptcy Code, (b) a Claim based on such Debt is an Allowed Claim pursuant to § 502 of the Bankruptcy Code, or (c) the Holder of a Claim based on such Debt has voted to accept the Creditor's Plan. Except for the rights provided for under the confirmed Creditor's Plan, as of the Effective Date all Persons, including all Holders of Claims and Interests, shall be forever precluded and permanently enjoined from asserting directly or indirectly against any of the Debtor, the Reorganized Debtor, Plan Trustee, Plan Proponent and the Estate, and any of their respective successors and assigns, and the assets and Property of any of them, any other or further Claims, rights of arbitration, Debts, rights, causes of action,

remedies, Liabilities or interests based upon any act, omission, document, instrument, transaction, event, or other activity of any kind or nature that occurred prior to the Effective Date or that occurs in connection with implementation of the Creditor's Plan, and the Confirmation Order shall contain appropriate injunctive language to that effect. In accordance with the foregoing, except as otherwise expressly provided in the Creditor's Plan or in the Confirmation Order, the Confirmation Order shall be a judicial determination of the discharge or termination of all such Claims and other Debts, rights of arbitration, and Liabilities against the Debtor, pursuant to §§ 524 and 1141 of the Bankruptcy Code, to the fullest extent permitted by applicable law, and such discharge shall void any judgment or arbitration award obtained against the Debtor, at any time, to the extent that such judgment relates to a discharged or terminated Claim, Liability, Debt, arbitration award or Interest. Notwithstanding the foregoing, the Reorganized Debtor shall remain obligated to make payments and Distributions to Holders of Allowed Claims as required pursuant to the Plan and govern its post-performance affairs in accordance with the Condominium Documents (as amended).

**Release and Exculpations relating to the Chapter 11 Case.** Neither the Plan Trustee or Plan Proponent, nor their respective directors, officers, employees, members, attorneys, attorneys of the members, consultants, advisors and agents (acting in such capacity) shall have or incur any liability to any Holder of a Claim or Interest for any act taken or omitted to be taken in connection with or arising out of the commencement of the Chapter 11 Case, the formulation, preparation, dissemination, implementation, confirmation or approval of this Confirmed Plan, any other plan of reorganization or any compromises or settlements contained herein, any disclosure statement related thereto or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the transactions set forth in the Confirmed Plan or in connection with any other proposed plan; provided, however, that the foregoing provisions shall not affect the liability that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct. Each of the foregoing parties in all respects shall have been and shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities during the Chapter 11 Case and under this Confirmed Plan. This exculpation from liability provision is an integral part of the Confirmed Plan and is essential to its implementation. The Plan Proponent anticipates that the foregoing injunction will be modified by the Confirmation Order to carve out from the scope of injunction acts committed in bad faith (in addition to gross negligence and willful misconduct).

**Injunction against Certain Actions for Protected Parties and Release of Board of Directors.**

The rights provided to the Debtor's Officers and Board of Directors pursuant to applicable law and Article VII. of the By-laws and are hereby incorporated into the Confirmed Plan, and modified on the Effective Date, as follows:

**LIMITED LIABILITY AND INDEMNITY  
OF OFFICERS AND DIRECTORS**

No Plan Trustee appointed pursuant to Creditor's Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan"), officer or director of the Council serving on or following the Effective Date (as defined in the Plan) shall be liable to any unit owner for any mistake in judgment, negligence or otherwise, unless attributable to willful misconduct or bad faith. Further, no Plan Trustee, officer or director shall be personally liable for any agreement made by such officer or the Board for and on behalf of the Council; provided, however, that during the tenure of the Plan Trustee, this limitation of liability shall not apply to acts that were not authorized by the Plan Trustee. To the maximum extent permitted by Maryland law, the Council shall indemnify and defend the Plan Trustee and the Council's directors serving on and following the Effective Date against any and all liabilities and expenses incurred in connection with their services in such capacities, shall indemnify and defend officers serving on and following the Effective Date to the full extent that indemnification and defense shall be provided to directors, and shall indemnify and defend, to the same extent, the Council's employees, agents and persons who serving the Council on and following the Effective Date, at its request, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture or other enterprise; provided, however, that during the tenure of the Plan Trustee, no officer or director shall be indemnified for any act that was not authorized by the Plan Trustee. The Council shall advance expenses to its directors, officers, Plan Trustee and other persons referred to above to the extent permitted by Maryland law. The Board may, by resolution or agreement, make further provision for indemnification and defense of directors, officers, employees and agents to the extent permitted by Maryland law; provided, however, that during the tenure of the Plan Trustee, the Plan Trustee must approve any resolution or agreement made by the Board. Neither the repeal or amendment of this paragraph, nor any other amendment to these By-laws, shall eliminate or reduce the protection afforded to any person by the foregoing provisions of this paragraph with respect to any act or omission which shall have occurred prior to such repeal or amendment.

The responsibility or liability to any unit owner, to any third party, to any officer of the Council, or to members of the Board, under any contract made by such officer or the Board, or under any indemnity or defense to the officers or directors on account thereof, shall not exceed his percentage interest factor of the total liability. Further each agreement made by the officers of the Council or by the Board on behalf of the Council shall provide that such officers and the Board are acting solely as agent for the Council and that the responsibility or liability of each unit owner upon said agreement shall not exceed such portion of the total liability under the contract as shall equal the interest of such unit owner in the common elements (his percentage interest factor).

For the avoidance of doubt, the Plan Trustee shall be afforded the same protections under the Reorganized Debtor's By-Laws and the Confirmation Order as the officers and directors of the Board of Directors.

**General Injunction.** Pursuant to §§ 105, 524, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for herein, as of the Confirmation Date, except as otherwise expressly provided herein or in the Confirmation Order, all Persons that have held, currently hold or may hold a Claim, Debt, Lien, judgment, arbitration award or Liability that is discharged or terminated pursuant to the terms of the Creditor's Plan are and shall be permanently enjoined and forever barred from taking any actions on account of any such discharged or terminated Claims, Debts, Liens, judgments, arbitration award or Liabilities, including but not limited to:

- (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them;
- (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, arbitration award or order against the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them;
- (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them;
- (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them;
- (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; or
- (f) interfering with or in any manner whatsoever disturbing the rights and remedies the Debtor, the Reorganized Debtor, the Estate, and any of their respective successors and assigns, and the assets and Property of any of them, under the Plan and the Plan Documents and the other documents executed in connection therewith.



**Actions brought to enforce any rights or obligations under the Creditor's Plan or the Plan Documents are not enjoined herein. The Plan Trustee shall have the right to seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Creditor's Plan and is essential to its implementation.**

Term of Certain Injunctions and Automatic Stay.

All injunctions or automatic stays for the benefit of the Debtor pursuant to §§ 105, 362 or other applicable provisions of the Bankruptcy Code, or otherwise provided for in the Bankruptcy Case or Order of the Court, and in existence on the Confirmation Date, shall remain in full force and effect following the Confirmation Date, unless otherwise ordered by the Bankruptcy Court.

With respect to lawsuits, if any, pending in courts in any jurisdiction (other than the Bankruptcy Court) that seek to establish the Debtor's liability on Prepetition Claims asserted therein and that are stayed pursuant to § 362 of the Bankruptcy Code, such lawsuits shall be deemed dismissed as of the Effective Date, unless the Plan Trustee affirmatively elects to have such liability established by such other courts, and any pending motions seeking relief from the automatic stay for purposes of continuing any such lawsuits in such other courts shall be deemed denied as of the Effective Date, and the automatic stay shall continue in effect, unless the Plan Trustee affirmatively elects to have the automatic stay lifted and to have such liability established by such other courts; and the Prepetition Claims at issue in such lawsuits, if any, shall be determined and either Allowed or disallowed in whole or part by the Bankruptcy Court pursuant to the applicable provisions of the Plan, unless otherwise elected by the Plan Trustee as provided herein.

**F. Exemption from Certain Transfer Taxes**

Pursuant to § 1146(a) of the Bankruptcy Code: (i) the issuance, distribution, transfer or exchange of interests or other Property; (ii) the creation, modification, consolidation or recording of any deed of trust or other security interest, the securing of additional indebtedness by such means or by other means in furtherance of or in connection with the Plan, the Confirmation Order, and any related documents; (iii) the making, assignment, modification or recording of any lease or sublease; (iv) the sale or transfer of assets shall be deemed exempt from all taxes arising from such sale or transfer which would otherwise be imposed at the time of transfer or sale, which are determined by consideration for or value of the Property being transferred, or as a percentage thereof, including taxes imposed by the State of Maryland or other applicable law, or (v) the making, delivery or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, the Confirmation Order, any related documents or any transaction contemplated above or any transactions arising out of, contemplated by or in any way related to the foregoing, including without limitation the Property or transfer of Units 907, 1310 and PH4C as set forth in the Creditor's Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local government officials or agents shall be, and hereby are, directed to forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without



the payment of any such tax or governmental assessment.

## **G. Administrative Provisions**

### **1. Retention of Jurisdiction**

Unless otherwise provided by a prior Order in the Bankruptcy Case, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to, the Bankruptcy Case and the Creditor's Plan pursuant to, and for the purposes of §§ 105(a) and 1142 of the Bankruptcy Code and for, among other things the following purposes until such time as the Plan Trustee's, Debtor's and Reorganized Debtor's obligations, respectively, under the Creditor's Plan are fully discharged:

- (a) To hear and determine any motions for the assumption or rejection of any executory contracts or unexpired leases, and the allowance of any Claims resulting therefrom;
- (b) To determine any and all pending adversary proceedings, applications and contested matters;
- (c) To hear and determine any objection to any Claims;
- (d) To liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated Claim;
- (e) To adjudicate all Claims to any lien on any of the Debtor's assets or any proceeds thereof;
- (f) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated, and/or if the Effective Date never occurs;
- (g) To issue such orders in aid of execution of the Creditor's Plan to the extent authorized by § 1142 of the Bankruptcy Code;
- (h) To consider any modifications of the Creditor's Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (i) To hear and determine all applications for compensation and reimbursement of expenses of Professionals under §§ 330, 331 and 503(b) of the Bankruptcy Code;
- (j) To enforce and interpret the Plan and to hear and determine any dispute or any other matter arising out of or related to the Creditor's Plan;
- (k) To recover all assets of the Debtor and Property of the Estate, wherever located;
- (l) To hear and determine matters concerning state, local and federal taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code;
- (m) To enforce and interpret the discharge of Claims effected by the Creditor's Plan and to enter and implement such orders as may be appropriate with regard thereto;
- (n) To hear any other matter consistent with the provisions of the Bankruptcy Code;

- (o) To enter a final decree closing the Bankruptcy Case; and
- (p) To hear and determine such other issues as the Court deems necessary and reasonable to carry out the intent and purposes of the Creditor's Plan including, but not limited to, seeking the Court's prior approval to bring such claims against the Exculpated Parties as described in Section 11.2.

## **2. Professional Fees and Expenses**

After the Effective Date, the Reorganized Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of the Plan Trustee and of the Professionals employed by the Plan Trustee in connection with the implementation and consummation of the Creditor's Plan. The Plan Trustee shall be authorized, but not required, to employ the professionals that were employed by the Debtor during the Bankruptcy Case, in her discretion, to assist her with the implementation and consummation of the Creditor's Plan.

## **3. Waiver of Certain Fees**

Unless otherwise provided in the Creditor's Plan, all claims for penalties, default interest and/or late fees that may have accrued on Claims are extinguished.

## **4. U.S. Trustee Fees**

The Debtor is, and shall remain, current in paying all fees owed to the U.S. Trustee until the Bankruptcy Case is closed.

## **5. Payment of Statutory Fees**

All fees payable pursuant to Chapter 123 of Title 28, United States Code, as determined by the Bankruptcy Court on the Confirmation Date, shall be paid by the Reorganized Debtor.

## **6. Modification of the Plan**

The Plan Proponent reserves the exclusive right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Creditor's Plan and to solicit acceptances of any amendments or modifications hereto, at any time prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Plan Trustee may, upon order of the Bankruptcy Court, amend or modify the Creditor's Plan, in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Creditor's Plan in such manner as may be necessary to carry out the purpose and intent of the Creditor's Plan. A Holder of an Allowed Claim that is deemed to have accepted the Creditor's Plan shall be deemed to have accepted the Creditor's Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder.

## **7. Withdrawal or Revocation of the Plan**

The Plan Proponent may amend, withdraw or revoke the Creditor's Plan at any time prior to the Confirmation Date. If the Plan Proponent withdraws or revokes the Creditor's Plan prior to the Confirmation Date or if the Confirmation Date does not occur for any reason, then the Creditor's Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any other Person in any further proceedings involving the Debtor.

#### **8. Cram Down**

The Plan Proponent may utilize the provisions of § 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan over the rejection, if any, of any Class entitled to vote to accept or reject the Plan.

#### **9. Governing Law**

Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Creditor's Plan shall be governed by, and construed and enforced in accordance with, the laws of the United States of America and, when applicable, the State of Maryland, without giving effect to the principles of conflicts of law thereof.

### **VIII. RISKS AND CONSIDERATIONS**

#### **A. Risk Factors**

Prior to deciding whether and how to vote on the Creditor's Plan, each Holder of a Claim should consider carefully all of the information in this Disclosure Statement and should particularly consider the risk factors inherent in the Debtor's reorganization. These risk factors relate primarily to the Debtor's reorganization.

#### **B. Bankruptcy Considerations**

Although the Plan Proponent believes that the Creditor's Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Creditor's Plan as proposed. Moreover, there can be no assurance that modifications of the Creditor's Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

### **IX. PLAN CONFIRMATION AND CONSUMMATION**

#### **A. Confirmation Hearing**

Bankruptcy Code § 1128(a) requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a Plan. On, or as promptly as practicable after, the filing of the Creditor's Plan and this Disclosure Statement, the Plan Proponent will request that the Court enter

a Plan Procedures Order to establish dates and deadlines for consideration of both the Debtor's Plan and the Creditor's Plan, including a confirmation hearing date. A copy of the Plan Procedures Order and notice of the Confirmation Hearing will be provided to all known Creditors, Interest Holders or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Pursuant to Bankruptcy Code § 1128(b), any party-in-interest may object to confirmation of a plan of reorganization. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds of the objection, and must be filed with the Bankruptcy Court, with a copy to Chambers, together with proof of service thereof, and served upon (i) counsel for Howard Bank, Lisa Bittle Tancredi, Esquire, Gebhardt & Smith LLP, One South Street, Suite 2200, Baltimore, Maryland 21201; (ii) the U.S. Trustee's Office; (iii) counsel for Debtor, Paul Sweeney, Esquire, Yumkas, Vidmar, Sweeney & Mulrenin, LLC, 10211 Wincopin Circle, Suite 500, Columbia, Maryland 21044; and (iv) such other parties as the Bankruptcy Court may order.

Bankruptcy Rule 9014 governs objections to confirmation of the Plan.

**UNLESS AN OBJECTION TO CONFIRMATION OF THE PLAN IS TIMELY SERVED UPON THE PARTIES LISTED ABOVE AND FILED WITH THE BANKRUPTCY COURT, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT IN DETERMINING CONFIRMATION OF THE CREDITOR'S PLAN.**

**B. Plan Confirmation Requirements under the Bankruptcy Code**

At the Confirmation Hearing, the Bankruptcy Court will consider the terms of the Creditor's Plan and determine whether the Plan terms satisfy the requirements set out in § 1129 of the Bankruptcy Code.

**C. Plan Consummation**

Upon confirmation of the Creditor's Plan by the Bankruptcy Court, the Creditor's Plan will be deemed consummated on the Effective Date. Distributions to Holders of Claims receiving a Distribution pursuant to the terms of the Creditor's Plan will follow consummation of the Creditor's Plan. Post-confirmation Estate expenses will be paid by the Reorganized Debtor.

**D. Best Interests Test and Liquidation Analysis**

The Bankruptcy Code requires that, with respect to an Impaired Class of Claims or Interests, each Holder of an Impaired Claim or Interest in such Class either (i) accept the Creditor's Plan or (ii) receive or retain under the Creditor's Plan property of a value, as of the Effective Date of the Plan, that is not less than the amount (value) such Holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. Chapter 7 is not desirable as it would result in a termination of the Debtor's operation and the termination

of services by the Debtor to the Unit Owners.

The Debtor's costs of a Chapter 7 liquidation would include the expenses incurred during the Bankruptcy Case and allowed by the Bankruptcy Court in the Chapter 7 case, such as reimbursable compensation for the Debtor's Professionals, including, but not limited to, attorneys, financial advisors, appraisers, and accountants. In addition, Claims would arise by reason of the Debtor's breach or rejection of contractual obligations and unexpired leases and Executory Contracts assumed or entered into by the Debtor during the pendency of the Bankruptcy Case.

The foregoing types of claims, costs, expenses, and fees that may arise in a Chapter 7 liquidation case would be paid in full from the proceeds of the sale of the Debtor's assets before the balance of those sales proceeds would be made available to pay pre-Chapter 11 priority and unsecured claims.

For the Bankruptcy Court to be able to confirm the Creditor's Plan, the Bankruptcy Court must find that all Holders of a Claim or Interest who do not accept the Creditor's Plan will receive at least as much under the Plan as such Holders would receive under a Chapter 7 liquidation. The Plan Proponent maintains that this requirement is met here because, in a Chapter 7, the full amount of the Allowed Secured Claim of Howard Bank would have to be paid before payment to any other Creditors. In a Chapter 7, it is likely there would not be sufficient funds available for the payment to Howard Bank. As such, there likely would be no funds available for any other Creditors.

Under the Best Interests Test, all that is required is for Holders of a Claim or Interest to receive as much as they would under Chapter 7 of the Bankruptcy Code. The Plan Proponent believes that the Best Interests Test has been met in thatm under the Creditor's Plan, Holders of an Allowed Claim or Interest will receive a substantial Distribution over time in contrast to little to no recovery under Chapter 7.

Below is a demonstration provided by the Debtor in the Debtor's Disclosure Statement dated December 21, 2016 evidencing that, in a Chapter 7 liquidation,<sup>2</sup> only Howard Bank would be paid in a Chapter 7 liquidation.

**Assets Valued at Liquidation Values**

<b>ASSETS AT LIQUIDATION VALUE</b>	<b>LIQUIDATION VALUE</b>
Cash on Hand	\$1,300,000.00
Accounts Receivable	\$21,000.00
(Past due Assessments from homeowners estimated at \$70,000, liquidation value represents 30%)	

<sup>2</sup> Since the Debtor performed this liquidation analysis, it has obtained additional Cash. However, even adjusting for additional Cash on hand, a liquidation of the Debtor's assets would not result in payments to any creditors other than Howard Bank.



Collection Judgments	\$98,130.88
(Total judgments entered in favor of the Debtor total \$98,130.88 could be sold as assets pursuant to Section 11-109(d)(6) of the Maryland Condominium Act)	
Mechanical Equipment (50% valuation per Bankruptcy Schedules)	\$2,292,624.00
Personal Property	\$75,000.00
Condominium Units #907 and #1310	\$0.00
Unit 907: tax value: \$239,000. Mortgage value as of October 2014 per foreclosure action was \$650,00.00 Unit 1310: tax value: \$158,600.00. Original mortgage (2006) \$356,800.00	
Post-Confirmation Causes of Action	Unknown Recovery
<b>Total Assets at Liquidation Value</b>	<b>\$3,786,754.88</b>
<b>LESS LIABILITIES IN CHAPTER 7 CASE</b>	
Howard Bank's Secured Claim	(\$7,849,782.00)
Chapter 7 trustee's compensation	(\$136,650.00)
Chapter 7 professional fees	(\$250,000.00)
Chapter 11 estimated administrative expenses	(\$500,000.00)
Priority Claims	(\$200.00)
<b>Total Liabilities in Chapter 7</b>	<b>(\$8,736,632.00)</b>
<b>Funds Available to Remaining Claims in Chapter 7</b>	<b>\$0.00</b>
<b>% of their Claims that Unsecured Creditors would receive or retain in a Chapter 7 liquidation</b>	<b>0%</b>

In contrast, under the Creditor's Plan, Holders of Allowed Claims are projected to be paid in full (without interest, unless there is an interest component to the Allowed Claim).

#### **E. Feasibility**

Another requirement for confirmation involves the feasibility of the Creditor's Plan. Pursuant to § 1129(a)(11) of the Bankruptcy Code, the plan proponent must demonstrate that a bankruptcy court's confirmation of a plan, is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or its successor under the plan, unless such liquidation or reorganization is proposed under the plan.

Howard Bank avers that the Debtor will have sufficient Cash over the life of the Creditor's Plan to make the required payments, and in support of this, has provided the plan projections attached hereto. THESE ATTACHED PROJECTIONS ARE NOT AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND ARE PROJECTED FINANCIAL STATEMENTS, ACTUAL RESULTS OF OPERATIONS MAY VARY. SUCH

STATEMENTS ARE PROVIDED AS EVIDENCE OF THE DEBTOR'S CAPABILITY OF CONSUMMATING THE PLAN AND ARE PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL STATEMENTS.

The financial projections demonstrate, the Debtor will have sufficient cash flow for the life of the Creditor's Plan and that the Court's confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtor. The Plan Proponent contends the Plan is feasible.

#### **F. Section 1129(b)**

Section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may confirm a plan even if a class of impaired claims or interests votes to reject the plan if the plan does not unfairly discriminate and is fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan.

##### **1. No Unfair Discrimination**

The "no unfair discrimination" test requires that the plan not provide for unfair treatment with respect to classes of claims or interests that are of equal priority, but are receiving different treatment under the plan.

##### **2. Fair and Equitable**

The fair and equitable requirement applies to classes of claims of different priority and status, such as secured versus unsecured. The plan satisfies the fair and equitable requirement if no class of claims receives more than 100% of the allowed amount of the claims in such class. Further, if a class of claims is considered a dissenting class ("Dissenting Class"), i.e., a class of claims that is deemed to reject the plan because the required majorities in amount and number of votes is not received from the class, the following requirements apply:

##### **a. Class of Secured Claims:**

Each holder of an impaired secured claim either (i) retains its liens on the subject property, to the extent of the allowed amount of its secured claim and receives deferred cash payments having a value, as of the effective date of the plan, of at least the allowed amount of such claim, (ii) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof) or (iii) receives the "indubitable equivalent" of its allowed secured claim.

##### **b. Class of Unsecured Creditors:**

Either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the Dissenting Class will not receive any property under the plan.

#### **X. ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

Howard Bank believes the Creditor's Plan is in the best interests of the Debtor's Creditors and should accordingly be accepted and confirmed. If the Creditor's Plan, however, is not confirmed, the following alternatives may be available to the Debtor: (a) a reorganization pursuant to the terms of the Debtor's Plan; (b) a liquidation of the Debtor's assets pursuant to Chapter 7 of the Bankruptcy Code, (c) another plan of reorganization may be proposed and confirmed, or (d) the Debtor's assets may be sold pursuant to Bankruptcy Code § 363.

The Debtor has filed the Debtor's Plan seeking to reorganize pursuant to its terms. The Plan Proponent submits that the Creditor's Plan is preferable to the Debtor's Plan for the following reasons:

- Under the Creditor's Plan, the Plan Trustee will be appointed and serve as a disinterested third-party to oversee the operations of the Reorganized Debtor. In light of the substantial acrimony that exists between members of the Board of Directors and certain of the Unit Owners and Creditors, as manifested by millions of attorney's fees being spent in litigation, the Plan Proponent submits that a Plan Trustee will contribute to the stabilization of the community and give Creditors (including the Plan Proponent) and Unit Owners confidence in the ability of the Debtor to reorganize. The Plan Trustee will have considerable experience in reorganization and turnarounds. The appointment of the Plan Trustee will increase the likelihood of a successful reorganization.
- The Creditor's Plan is based on conservative assumptions, restoring the financial health of the community. While the assumptions contemplate larger assessments than presented in the Debtor's Plan, the larger assessments will afford the condominium community more stability.
- The Debtor's Plan contemplates that the Debtor or its designee would quickly receive title to the PH4C Unit, and the unit would then be renovated and sold. The PH4C Unit has been the subject of a body of blog posts, articles, and publicly-reported Court decisions concerning alleged mold in the unit. Undertaking the remediation and renovation of the PH4C Unit may require substantially more cash than the Debtor anticipates or that the association can afford. The Creditor Plan gives the Plan Trustee the opportunity perform appropriate diligence before title is transferred, in order to determine whether the purchase of PH4C is prudent.
- Under the Creditor's Plan, Howard Bank is projected to be paid over eight years. In the Debtor's Plan, Howard Bank would not be paid for nine years. In addition, the Creditor's Plan requires level monthly payments of principal in the amount of \$77,623.37, rather than utilizing a typical amortization schedule. By making larger principal payments at the beginning of the repayment period and shortening the repayment period, the Reorganized Debtor will reduce its debt more quickly and accrue less interest compared to the Debtor's Plan.
- The Creditor's Plan provides for a more prompt payment to the Clarks. Given the past acrimony between the Debtor and the Clarks, as manifested by the ongoing litigation between these parties, prompt payment to the Clarks is in the best interest of the Estate.
- The Creditor's Plan does not grant a lien on the Assessments and Special

Assessments to PH4C, to secure the Debtor's payments to PH4C. The Debtor's Plan requires such a lien. Granting a lien on assessments, the lifeblood of the association, to PH4C could have catastrophic consequences to creditors and the community if the Reorganized Debtor were to default under the Debtor's Plan.<sup>3</sup> In order to provide assurance to all creditors that the Reorganized Debtor will comply with the Debtor's Plan, the Creditor's Plan appoints the Plan Trustee.

- The Creditor's Plan restores and maintain cash reserves more quickly than the Debtor's Plan, shortening the period during which the Debtor will be most vulnerable to unanticipated events and expenses.

Accordingly, Howard Bank urges Creditors to vote in favor of the Creditor's Plan and against the Debtor's Plan. If both plans obtain the requisite support from parties in interest and meet the confirmation requirements of the Bankruptcy Code, the Bankruptcy Court will determine which plan is in the best interest of the Estate.

If a plan pursuant to Chapter 11 of the Bankruptcy Code is not confirmed by the Bankruptcy Court, the Chapter 11 Case may be converted to a liquidation case under Chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed, pursuant to applicable provisions of Chapter 7 of the Bankruptcy Code, to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effect that a Chapter 7 liquidation would have on the recoveries of Holders of Claims is set forth in Section XII.D hereof. Howard Bank believes that such a liquidation would result in smaller Distributions being made to the Debtor's Creditors than those provided for in the Creditor's Plan because (i) the likelihood that Debtor's primary assets would have to be sold or otherwise disposed of in a less orderly fashion, and (ii) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations. In a Chapter 7 liquidation, the Plan Proponent believes that there would be little or no Distribution to Holders of Allowed Claims other than Howard Bank.

## **XI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Each Holder of a Claim should consult its own tax advisor to determine what effect, if any, the treatment afforded its respective Claim by the Creditor's Plan may have under federal, state and local tax laws and the laws of any applicable foreign jurisdictions.

No statement in this Disclosure Statement should be construed as legal or tax advice. Neither the Creditor's Plan proponents nor their Professionals assume any responsibility or liability for the tax consequences the Holder of a Claim may incur as a result of the treatment afforded its Claim under the Creditor's Plan or the structure of the Creditor's Plan, including the but not limited to the formation and utilization of the PH4C Trust.

The principal income tax consequence for a Creditor relates to its ability to deduct a portion of its Claim in the event the Creditor does not receive full payment of its Allowed Claim.

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<sup>3</sup> PH4C's garnishment of the Reorganized Debtor's bank accounts precipitated this bankruptcy case.

Section 166 of the Internal Revenue Code of 1986, as amended (“IRC”) (relating to the deductibility of bad debts) generally provides that:

- (a) a totally worthless business bad debt is deductible only in the tax year in which it becomes worthless;
- (b) a partially worthless business bad debt is deductible in an amount not in excess of the part charged off on the taxpayer’s within the taxable year; and
- (c) in the case of a taxpayer other than a corporation, a nonbusiness bad debt which becomes completely worthless during that taxable year is deductible as a short-term capital loss and is subject to the limitations imposed on the deductibility of such losses.

For purposes of IRC section 166, a “nonbusiness debt” means a debt other than (a) one created or acquired in connection with the taxpayer-creditor’s trade or business or (b) the loss from the worthlessness of which was incurred during the operation of the taxpayer-creditor’s trade or business.

Pursuant to Treas. Reg. § 1.166-2(c), a bankruptcy filing is generally an indication of the worthlessness of at least a part of an unsecured and unperfected debt. In bankruptcy cases, a debt may become worthless before settlement in some instances, and in others only when a settlement has been reached. In either case, the mere fact that bankruptcy proceedings are terminated in a later year, thereby confirming the conclusion that the debt is worthless, does not authorize the shifting of the deduction under IRC section 166 to such later year. Pursuant to Treas. Reg. § 1.166-1(2)(ii), only the difference between the amount received in distribution of assets of a debtor, and the amount of the claim may be deducted under IRC § 166 as a bad debt.

Generally, a taxpayer is entitled to a bad debt deduction with respect to accounts receivable only if the taxpayer has recognized as income the accounts receivable in the year in which the bad debt deduction is claimed or a prior taxable year. Thus, bad debt deductions for worthless or partially worthless accounts receivable are normally available only to accrual method taxpayers. Likewise, worthless debts arising from unpaid wages, salaries, fees, rents and similar items of taxable income are not allowed as a bad debt deduction unless such items have been reported as income in the year for which the deduction as a bad debt is claimed or for a prior taxable year.

Business bad debts deductible under IRC § 166 generally may be deducted using either the specific charge-off method or, if certain requirements are met, the nonaccrual-experience method. Under the specific charge-off method, specific business bad debts that become either partially or totally worthless during the tax year may be deducted in the manner permitted by IRC § 166.

If a deduction is taken for a bad debt which is recovered in whole or part in a latter tax year, the taxpayer may have to include in gross income the amount recovered, except, under limited circumstances, the amount of the deduction that did not reduce taxes in the year deducted.



## **XII. RECOMMENDATION AND CONCLUSION**

Howard Bank believes the Creditor's Plan is in the best interests of all Creditors and the Estate and urges the Holders of Impaired Claims entitled to vote to accept the Creditor's Plan and to evidence such acceptance by properly voting and timely returning their Ballots.

### **HOWARD BANK**

Dated: February 8, 2018

By: /s/ Wendy Andrus  
Name: Wendy Andrus  
Title: Vice President

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9<sup>th</sup> day of February, 2018, I electronically filed the foregoing Disclosure Statement for Creditor's Plan of Reorganization, which will send notice of the filing via CM/ECF to those parties on the attached service list.

*Lisa Bittle Tancredi*

Lisa Bittle Tancredi

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