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8 UNITED STATES BANKRUPTCY COURT  
9 DISTRICT OF NEVADA

10 —ooOoo—

11 In Re:  
12 THE VILLAGE AT LAKERIDGE,  
LLC, a Nevada limited liability  
13 company,

Case No. BK-N-11-51994-BTB  
Chapter 11

Hearing Date: November 16, 2018  
Hearing Time: 10:00 a.m.

14 Debtor.  
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21 **DEBTOR’S SECOND AMENDED**  
22 **PLAN OF REORGANIZATION**  
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1 **1. INTRODUCTION**

2 Debtor, THE VILLAGE AT LAKERIDGE, LLC, a Nevada limited liability company  
3 (hereinafter “Debtor”), filed its petition for relief under Chapter 11 of the Bankruptcy Code  
4 on **June 16, 2011**. This Second Amended Plan of Reorganization (the “Plan”) is a proposal  
5 to creditors to resolve the debts owed on the date of filing the petition. This Plan has or will  
6 be approved by all creditors, and is 100% consensual.

7 **2. DEFINITIONS**

8 Whenever from the context it appears appropriate, each term stated in either the  
9 singular or the plural shall include the singular and the plural, and pronouns stated in the  
10 masculine, feminine or neuter gender shall include the masculine, the feminine and the  
11 neuter. Any capitalized term not defined herein that is defined in the Bankruptcy Code shall  
12 have the meaning ascribed to it in the Bankruptcy Code. Unless the context requires  
13 otherwise, the following words and phrases shall have the meanings set forth below when  
14 used in this Plan:

15 (A) **“Administrative Claim.”** Claim arising during the administration of Debtor’s  
16 Chapter 11 case entitled to priority under Section 507(a)(1) of the Bankruptcy Code. As  
17 required by the Bankruptcy Code, holders of Allowed Administrative Claims against Debtor  
18 shall receive cash in the amount of such allowed claim on the Effective Date.

19 (B) **“Allowed Claim.”** This term will refer to and mean every claim, including  
20 administrative claims, secured claims, priority claims and unsecured claims: (i) as to which  
21 a proof of claim has been filed with the Court within the time fixed by the Court or, if such  
22 claim arises from the Debtor’s rejection of an unexpired lease or other executory contract,  
23 within thirty (30) days after the Effective Date of the Plan, or (ii) which is scheduled as of  
24 the Confirmation Date of the Plan in the schedules filed by the Debtor or amended by the  
25 Debtor as of said date, and is liquidated in amount and undisputed; and in either of the above  
26 events, as to which no objection to allowance of such claim or request for subordination  
27 thereof has been filed within any applicable time period fixed by the Court or as to which an  
28 order allowing such claim and establishing its priority has become final and non-appealable,

1 or (iii) with respect to administrative claims, as to which an application has been approved  
2 by order of the Bankruptcy Court. For purpose of this Plan, the Class 1 Claim shall be  
3 deemed to be an Allowed Claim pursuant to the terms of the Settlement Agreement.

4 (C) **“Bankruptcy Case.”** This term shall mean the pending Chapter 11 case  
5 entitled *In re The Village at Lakeridge, LLC, a Nevada limited liability company*, Case No.  
6 BK-N-11-51994-BTB.

7 (D) **“Bankruptcy Code.”** This term means the Bankruptcy Code of 1978, as  
8 codified in Title 11 of the United States Bankruptcy Code by Public Law 95-598, including  
9 all amendments thereof and thereto.

10 (E) **“Bankruptcy Court.”** This term means the United States Bankruptcy Court  
11 for the District of Nevada, Reno, or such other court as has jurisdiction of this Chapter 11  
12 case.

13 (F) **“Claim.”** This term means any right to payment, whether or not such right is  
14 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
15 disputed, undisputed, legal, equitable, secured or unsecured; or any right to an equitable  
16 remedy for breach of performance, if such breach gives rise to a right to payment, whether  
17 or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured,  
18 unmatured, disputed, undisputed, secured or unsecured.

19 (G) **“Confirmation Date.”** This term refers to and shall mean the date on which  
20 the Court enters its Order confirming the Plan, or any subsequently amended plan of  
21 reorganization.

22 (H) **“Confirmation Hearing.”** This term shall mean the hearing or hearings in  
23 which the Bankruptcy Court considers confirmation of the Plan.

24 (I) **“Debtor.”** The term Debtor means THE VILLAGE AT LAKERIDGE, LLC,  
25 the Chapter 11 Debtor in Case No. BK-N-11-51994-BTB.

26 (J) **“Disclosure Statement.”** Disclosure Statement means the Disclosure  
27 Statement filed by the Debtor, and as approved by the Bankruptcy Court.

28 (K) **“Effective Date.”** This term shall mean the date which is the first business day

1 following entry of an order confirming this Plan.

2 (L) **“Petition Filing Date.”** This term shall refer to June 16, 2011, the date on  
3 which Debtor filed its voluntary petition commencing the above-captioned Chapter 11 case.

4 (M) **“Plan.”** This term shall refer to Debtor’s Second Amended Plan of  
5 Reorganization, together with any amendments or modifications thereto as may hereafter be  
6 filed by the Debtor.

7 (N) **“Post Confirmation.”** This term shall mean the period of time after the  
8 Confirmation Date.

9 (O) **“Priority Claim.”** This term shall mean any claim entitled to priority pursuant  
10 to Section 507(a) of the Bankruptcy Code.

11 (P) **“Property.”** This term shall mean the commercial complex located at 6900-  
12 6990 S. McCarran Blvd., Reno, Nevada.

13 (Q) **“Reorganized Debtor.”** This term means The Village At Lakeridge, LLC, a  
14 Nevada limited liability company, following the Confirmation Date until the close of escrow  
15 for the sale of the Property in accordance with the Settlement Agreement; provided that the  
16 Reorganized Debtor will be dissolved upon cessation of business operations..

17 (R) **“Settlement Agreement.”** This term means the Settlement Agreement And  
18 Release Of Claims entered into between the Debtor and U.S. Bank, as the same is approved  
19 by the Bankruptcy Court after notice and hearing, a copy of which is attached hereto as  
20 **Exhibit “A,”** and incorporated herein by this reference as though fully set forth herein.

21 (S) **“Unsecured Claim.”** This shall mean a Claim that is not secured by a pledge  
22 of or security interest in any of the Debtor’s property.

23 (T) **“U.S. Bank” or “Bank.”** This term shall mean U.S. Bank National  
24 Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, as  
25 successor by merger to LaSalle Bank National Association, as Trustee for the registered  
26 holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust  
27 2005-GG3, Commercial Mortgage Pass-Through Certificates, Series 2005-GG3, by and  
28 through CWCcapital Asset Management LLC, solely in its capacity as Special Servicer.

1 (U) **“U.S. Bank Deed of Trust.”** This term shall mean the Deed of Trust,  
2 Assignment of Rents and Security Agreement dated as of September 3, 2004, recorded as  
3 Document No. 3094133 in the Official Record of the Washoe County Recorder on  
4 September 7, 2004, and that certain Assignment of Leases and Rents dated September 3,  
5 2004, which was executed by the Debtor in favor of the Original Lender, and recorded in the  
6 Official Records of Washoe County, as Instrument No. 3094134, on September 7, 2004 (the  
7 “Assignment of Rents”), wherein Debtor absolutely and unconditionally assigned to the  
8 Original Lender<sup>1</sup> all of the Debtor’s right, title and interest in all current and future rents.

9 (V) **“U.S. Bank Note.”** This shall mean the Promissory Note dated September 3,  
10 2004, executed by the Debtor in favor of the Original Lender, and having an original  
11 principal balance of \$17,200,000.00.

12 **3. CLAIMS AND INTERESTS**

13 **3.1 Classification of Claims and Interests**

14 Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of  
15 classes of Claims and Interests. Administrative Claims of the kinds specified in Sections  
16 507(a)(2) of the Bankruptcy Code have not been classified and are excluded from the  
17 following classes in accordance with Section 1123(a)(1) of the Bankruptcy Code.

18 Class 1: Allowed Secured Claim of **U.S. Bank.**

19 Class 2: Allowed Claim of **Second Creek, LLC**

20 Class 3: The **membership interest** of the Debtor.

21 **3.2 Impaired Classes**

22 The Classes 1 and 2 are impaired under the Plain.

23 **4. TREATMENT OF CLAIMS AND INTERESTS**

24 Each creditor class shall be treated as follows:

25 **4.1 Class 1 (U.S. Bank Claim)**

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27  
28 <sup>1</sup>All capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Agreement.

1 The U.S. Bank Claim shall be treated under the Plan in accordance with the  
2 Settlement Agreement, and all disbursements to U.S. Bank under the Plan shall be in  
3 accordance with the Settlement Agreement, which is incorporated herein by reference as  
4 though fully set forth herein.

5 **4.2 Class 2 (Unsecured Claim of Second Creek, LLC):**

6 The Class 2 claim shall be paid in accordance with the Amended Stipulation For Plan  
7 Treatment Of Creditor Second Creek, LLC, filed on October 30, 2018, solely from the  
8 Debtor's share of the proceeds of sale of the Property pursuant to the terms of the Settlement  
9 Agreement..

10 **4.3 Class 3 (Membership Interests):**

11 The member shall receive distributions in accordance with the Settlement Agreement.

12 **5. TREATMENT OF UNCLASSIFIED CLAIMS**

13 **5.1 Administrative Claims**

14 Claims arising during the administration of the Debtor's Chapter 11 case and entitled  
15 to priority under Section 507(a)(1) of the Bankruptcy Code are not classified under the Plan.  
16 Holders of such claims shall be paid in accordance with the Settlement Agreement, with the  
17 balance paid in full on the latter of the Effective Date, or fifteen (15) days after entry of an  
18 order creating an Allowed Administrative Claim.

19 **5.2 Fees to the United States Trustee**

20 All fees required to be paid to the United States Trustee will be paid in full, solely  
21 from the Debtor's share of the proceeds from the sale of the Property upon the Effective  
22 Date of the Debtor's Plan, and shall remain current until the case is fully administered,  
23 closed, converted or dismissed, whichever occurs first. In the event that the Property is not  
24 sold in accordance with the terms of the Settlement Agreement, such fees of the United  
25 States Trustee may be paid by cash contributions by the member of the Debtor.

26 **6. EXECUTORY CONTRACTS**

27 All executory contracts of the Debtor are assumed and assigned in connection with  
28 the sale of the Property as described in section 7.2 below.

1 **7. MEANS OF IMPLEMENTING AND FUNDING THE PLAN**

2 **7.1 Continued Operation of the Business**

3 Debtor shall continue to operate its business of leasing the Property post-confirmation  
4 in accordance with the terms of the Settlement Agreement, until close of escrow for the sale  
5 of the Property or other deadline as set forth in the Settlement Agreement. Upon cessation  
6 of business operations the Debtor will be dissolved.

7 **7.2 Sale of Property**

8 The Debtor intends to sell the Property in accordance with the terms of the Settlement  
9 Agreement, with the proceeds of the sale to be distributed in accordance with the Settlement  
10 Agreement and this Plan.

11 **7.3 Compliance With Settlement Agreement**

12 Nothing in this Plan shall supersede, impair, amend or modify any provision of the  
13 Settlement Agreement, and in the event of any inconsistency the Settlement Agreement shall  
14 control. No provision in this Plan shall modify in any way the rights of U.S. Bank, the  
15 proposed distribution of proceeds from the sale of the Property, or the proposed payment of  
16 the Fee Carve Out, under the Settlement Agreement.

17 **7.4 Revesting of Assets in the Debtor**

18 Upon confirmation of the Plan, all property of the estate of the Debtor shall be  
19 revested in the Debtor, pursuant to 11 U.S.C. § 1141(c), which shall retain such property as  
20 the Reorganized Debtor to be managed in accordance with, and subject to, the Settlement  
21 Agreement.

22 **7.5 Disbursing Agent**

23 The escrow company handling the sale of the Property shall serve as disbursing agent  
24 for the creditors under this Plan. To the extent that the escrow company does not make the  
25 disbursements specified in this Plan, such disbursements shall be made by the Debtor.

26 **7.6 Post-Confirmation Litigation**

27 The Debtor does not anticipate any post-confirmation litigation.

28 **7.7 Post-Confirmation Default**



1 In the event the Property is not sold within the time periods specified in the Settlement  
2 Agreement, or in the event the Debtor defaults under the terms of the Settlement Agreement,  
3 the Class 1 creditor shall be entitled to all remedies specified in the Settlement Agreement,  
4 and there shall be no disbursements to Class 2 or 3 creditors.

5 **8. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

6 Pursuant to the Plan, funding will be accomplished by a sale of the Property and  
7 Debtor shall be responsible for payment of such taxes. However, the Debtor shall not be  
8 responsible for the payment of any transfer taxes associated with the sale of the Property,  
9 which shall be discharged under 11 U.S.C. § 1146(c).

10 **9. EXCULPATION**

11 Subject to the terms of the Settlement Agreement, from the Petition Date through the  
12 Effective Date, the Debtor and its officers, directors, attorneys, agents and employees shall  
13 not have any liability to the Debtor or any other claimants or creditors, or other parties in  
14 interest in the Bankruptcy Case for any act or omission in connection with or arising out of  
15 the Bankruptcy Case, including, without limitation, prosecuting confirmation of the Plan,  
16 confirmation of the Plan, and the administration of the estate, the Plan or the property to be  
17 distributed under the Plan, except for gross negligence or wilful misconduct, and in all  
18 respects, such persons will be entitled to rely on the advice of counsel with respect to their  
19 duties and responsibilities with respect to the Chapter 11 Case and the Plan.

20 **10. MISCELLANEOUS PROVISIONS**

21 (A) Following the Effective Date, the Debtor may continue to employ counsel for  
22 necessary legal services. Subject to the terms of the Settlement Agreement, counsel may be  
23 paid from the Debtor without further order of the Court.

24 (B) The estate shall be deemed to be fully administered upon distribution to the  
25 Class 1 and Class 2 creditors.

26 **11. RETENTION OF JURISDICTION**

27 The Bankruptcy Court shall retain jurisdiction for the following specific purposes:

28 (A) For the purpose specified in § 1142 of the Bankruptcy Code;

- 1 (B) The fixing of compensation for the parties entitled thereto;
- 2 (C) To resolve any disputes regarding interpretation of the Plan, or interpretation,  
3 implementation or enforcement of the Settlement Agreement and the order approving the  
4 same;
- 5 (D) To implement the provisions of the Plan and the Settlement Agreement,  
6 including all provisions in the Plan and Settlement Agreement which specify the retention  
7 of jurisdiction, and to make such further orders as will aid in consummation of the Plan and  
8 Settlement Agreement, including, without limitation, enforcement of the Debtor's obligation  
9 to turnover all Cash Collateral and Adequate Protection Payments in accordance with the  
10 Settlement Agreement;
- 11 (E) To enter such orders as may be necessary or appropriate to implement or  
12 consummate the provisions of this Plan and all contracts, instruments, releases and other  
13 agreements or documents created in connection with this Plan, the Disclosure Statement, or  
14 the Confirmation Order, and the Settlement Agreement; and
- 15 (F) Enter a final decree and order closing the case.

16 **DATED** this 13<sup>th</sup> day of November, 2018.

17 LAW OFFICES OF ALAN R. SMITH

18  
19 By:           /s/ Alan R. Smith            
20 ALAN R. SMITH, ESQ.  
21 Counsel for Debtor  
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# Exhibit "A"

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement (hereinafter "Agreement") is entered into by and among The Village at Lakeridge, LLC, f/k/a Magnolia Village, LLC ("Debtor") and U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, N.A., as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2005-GG3, Commercial Mortgage Pass Through Certificates, Series 2005-GG3, by and through CWCapital Asset Management LLC, solely in its capacity as Special Servicer ("U.S. Bank"). Debtor and U.S. Bank shall sometimes be referred to herein each individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. On or about September 3, 2004, Greenwich Capital Financial Products, Inc., a Delaware corporation ("Original Lender"), made a loan to Debtor in the original principal amount of \$17,200,000.00 (the "Loan"). The Loan is evidenced by, among other things, that certain Promissory Note dated September 3, 2004 (the "Note") executed by Debtor in favor of the Original Lender in the original principal amount of \$17,200,000.00.

B. The Loan is secured by, among other things, a first priority Deed of Trust, Assignment of Rents and Security Agreement dated as of September 3, 2004 (the "Deed of Trust") recorded in the Official Records of Washoe County, Nevada, on September 7, 2004, as Instrument No. 3094133. The Deed of Trust secures U.S. Bank's interest in Debtor's real property consisting of an approximately 71,500 square foot, mixed-use office and retail center described on Exhibit A thereto, with a common address of 6900-6990 South McCarran Boulevard, Reno, Nevada 89509, together with all fixtures,

buildings, improvements and other property related thereto as more particularly described in the Deed of Trust (collectively, the "Property").

C. The Loan is also secured by that certain Assignment of Leases and Rents dated September 3, 2004, which was executed by the Debtor in favor of the Original Lender, and recorded in the Official Records of Washoe County, as Instrument No. 3094134, on September 7, 2004 (the "Assignment of Rents"), wherein Debtor absolutely and unconditionally assigned to the Original Lender all of the Debtor's right, title and interest in all current and future Rents.

D. The Original Lender assigned the Note, the Deed of Trust, and all other documents pertaining to the Loan, to LaSalle Bank National Association under that certain Assignment and Assumption of Mortgage and Other Loan Documents recorded in the Official Records of Washoe County, as Instrument No. 3337766, on January 19, 2006.

E. Bank of America, N.A., as successor by merger to LaSalle Bank National Association, subsequently assigned the Note, the Deed of Trust, and all other documents pertaining to the Loan to U.S. Bank under that certain Assignment of Deed of Trust, Assignment of Rents and Security Agreement and Assignment of Assignment of Leases and Rents recorded in the Official Records of Washoe County, as Instrument No. 3987677, on March 29, 2011. The Note, Deed of Trust, Assignment of Rents, Assumption and Release Agreement, Personal Guaranty, and all other documents evidencing, securing or relating to the Loan may be collectively referred to herein as the "Loan Documents". U.S. Bank is currently the holder of, and beneficiary under, the Loan Documents.

F. On or about June 16, 2011, Debtor filed its voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Code"), thereby commencing this bankruptcy case entitled *In re The Village at Lakeridge, LLC*, Case No. BK-N-11-

51994-BTB (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Nevada (Reno) (the "Bankruptcy Court").

G. On January 13, 2012, U.S. Bank filed an amended Proof of Claim in the amount of at least \$21,860,052.37.

H. On September 14, 2011, Debtor filed its Disclosure Statement, which was amended on November 16, 2011 (the "Disclosure Statement") and Plan of Reorganization, which was amended on November 4, 2011 and January 12, 2012 (the "2012 Plan"). Under the 2012 Plan, Debtor proposed to modify the note in favor of U.S. Bank to a principal balance in the amount of the value of the Property over a 10-year term at an annual interest rate of 4.25%, with payments amortized over 30 years. The only other impaired class of creditors consisted solely of a claim held by the Debtor's sole member, MBP Equity Partners 1, LLC ("MBP") in the amount of \$2,761,000.00, which was sold and assigned to Dr. Robert Alan Rabkin for \$5,000.00 (the "Rabkin Claim"). Dr. Rabkin subsequently assigned the Rabkin Claim to Second Creek, LLC, an entity controlled by Dr. Rabkin in a transaction not relevant to this Agreement.

I. The 2012 Plan classified the Rabkin Claim as a Class 3 general unsecured claim that would be entitled to share a single distribution of \$30,000.00 on a *pro rata* basis with general unsecured creditors. The 2012 Plan classified the secured portion of U.S. Bank's claim as a Class 1 claim, and U.S. Bank's deficiency claim as a Class 2 claim. The 2012 Plan further provided that in the event that U.S. Bank timely elected to treatment of its claim as fully secured under Code § 1111(b); Class 2 would be deleted.

J. At a hearing on November 7, 2011, the Bankruptcy Court approved the Disclosure Statement. U.S. Bank made a timely "Section 1111(b) election" before the conclusion of the Disclosure Statement hearing.

K. Prior to the hearing on plan confirmation, the Parties entered into (i), a Stipulation as to Value of Property at Plan Confirmation filed on January 12, 2012,

establishing the value of the Property at \$10.8 million (the “2012 Value Stipulation”), and (ii) a Stipulation and Order as to Value of the Lender’s Total Allowed Claim, Resolving Amended Objection to U.S. Bank, and Vacating Hearing Thereon entered by the Court on August 2, 2012, resolving Debtor’s objection to U.S. Bank’s claim providing that the total allowed claim was in the amount of \$17.6 million “less all additional post-petition pre-confirmation payments made to [U.S. Bank]” (the “2012 Claim Order”) (collectively, the “2012 Stipulations”). U.S. Bank asserts that the 2012 Stipulations were intended to determine the value of the Property and of U.S. Bank’s claim for purposes of the plan confirmation hearing scheduled in August 2012, and are no longer binding. The Debtor contends that the 2012 Value Stipulation established the value of the Property as of August 2, 2012, and the 2012 Claim Order resolved the amount of U.S. Bank’s claim for all purposes.

L. On July 1, 2012, U.S. Bank filed a Motion to (A) Designate Claim of Robert Rabkin as Insider Claim and (B) Disallow Such Claim for Voting Purposes on August 1, 2012 (the “Designation Motion”), requesting that the Bankruptcy Court designate the Rabkin Claim as an insider claim, and/or to disallow the Insider Claim for voting purposes under Code §§ 1126(e) and 1129(a)(10). In the Designation Motion, U.S. Bank sought to disallow Dr. Rabkin’s claim from being counted to confirm a cramdown on the basis that, (a) Dr. Rabkin was a statutory insider, having acquired the Rabkin Claim subject to the same voting restrictions that the Rabkin Claim had in MBP’s hands, (b) Dr. Rabkin was a non-statutory insider, and (c) the assignment and subsequent vote by Dr. Rabkin were not made in good faith.

M. On August 1, 2012, after conducting an evidentiary hearing, the Bankruptcy Court granted the Designation Motion in part, finding that the Rabkin Claim held by Dr. Rabkin maintained its status as an insider claim, and could not be considered for purposes of voting in favor of the 2012 Plan. As such, the Bankruptcy Court

determined that the 2012 Plan could not be confirmed over U.S. Bank's objection, and vacated the plan confirmation hearing. However, the Bankruptcy Court held that Dr. Rabkin was not a non-statutory insider, and that Dr. Rabkin did not acquire or vote the claim in bad faith. The Bankruptcy Court entered an order denying the Designation Motion and denying confirmation of the 2012 Plan (the "Designation Order") on August 20, 2012.

N. The Debtor appealed the portion of the Designation Order finding that Dr. Rabkin was a statutory insider because he acquired the Rabkin Claim subject to all disabilities including MBP's inability to vote the Rabkin Claim to accept the plan under the general law of assignment due to MBP's insider status. U.S. Bank cross-appealed the portion of the Designation Order finding that Dr. Rabkin was not a non-statutory insider, and that the assignment of the Rabkin Claim to Dr. Rabkin and subsequent vote were not made in bad faith under Code § 1126(e).

O. Five years and three levels of appeals later, the United States Supreme Court issued its ruling in favor of Debtor solely on the issue regarding the appropriate standard of review to be applied to determine non-statutory insider status. *See U.S. Bank National Association v. Village at Lakeridge, LLC*, 583 U.S. \_\_\_, 138 S. Ct. 960 (2018).

P. On May 16, 2018, the Bankruptcy Court held a Status Conference to determine the status of the Bankruptcy Case in light of the appellate decisions. At the Status Conference, the Parties addressed the following contested issues, among others, that the Parties assert will need to be resolved and/or litigated prior to the plan confirmation hearing:

- Debtor asserts that the 2012 Stipulations are binding on U.S. Bank, and that Debtor can proceed with confirmation of the 2012 Plan premised on (a) the 2012 Claim Order, which allowed U.S. Bank's claim in the amount of \$17,600,000.00 less adequate protection payments made to U.S. Bank



during the Bankruptcy Case, and (b) the 2012 Valuation Stipulation, which valued the Property at \$10,800,000.00 as of August 2, 2012. Debtor further asserts that under the 2012 Plan, U.S. Bank is entitled to receive approximately \$11,543,630.00 (less any additional adequate protection payments) from the sale or refinancing of the Property.

- U.S. Bank asserts that the 2012 Stipulations are no longer binding because they were premised on confirmation of the 2012 Plan, which was denied. U.S. Bank further asserts that the 2012 Plan, which was based on a 2012 value and projections, is stale, and that Debtor must file a new Chapter 11 Plan and Disclosure Statement. U.S. Bank further asserts that the current value of the Property is at least \$17 million, and that U.S. Bank is now an oversecured creditor and is entitled to post-petition interest (including default interest) and attorney's fees and costs as part of its claim. Moreover, U.S. Bank asserts that it is entitled to receive appreciation in the value of its collateral as a result of its election under Code § 1111(b).

At the Bankruptcy Court's request, the Parties agreed to mediate this dispute.

Q. On July 2, 2018, the Bankruptcy Court issued an Order Scheduling Settlement Conference, pursuant to which the Parties agreed to mediate this dispute with U.S. Bankruptcy Judge Gregg W. Zive ("Judge Zive") on August 23, 2018 (the "Mediation").

R. The Parties hereby agree to the settlement reached at Mediation as more fully set forth in this Agreement.

S. Subject to the Bankruptcy Court's approval of this Agreement, and given Judge Zive's familiarity with the terms of the settlement, the Parties agree to request Judge Zive's consent to, among other things, retain jurisdiction to interpret, implement and enforce the terms of this Agreement, including presiding over the hearing on the Sale

Motion (defined below) and Auction (defined below), and to serve as the Bankruptcy Judge responsible for determining any matters contemplated herein. In the event that Judge Zive consents to retain jurisdiction over the matters described in this Agreement, the Parties will file a stipulation and proposed order with the Bankruptcy Court authorizing Judge Zive's retention of jurisdiction. In the event that Judge Zive is unable or unwilling to preside over any matters contemplated hereunder, the Parties agree to bring any such matters before Judge Beesley for determination. Unless otherwise indicated, all references herein to the Bankruptcy Court shall refer to both Judge Beesley and Judge Zive, as applicable.

#### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, including the covenants contained herein, it is agreed as follows:

1. Incorporation. The Recitals set forth hereinabove are incorporated herein by reference, solely for the purposes of this Settlement Agreement.
2. Motion to Approve Compromise. Within five (5) business days after execution of this Agreement, Debtor shall file in the Bankruptcy Case and serve a Notice of Motion and Motion to Approve Compromise under Federal Rule of Bankruptcy Procedure 9019 (the "Compromise Motion") requesting entry of an order of the Bankruptcy Court approving this Agreement (the "Compromise Order"). The Compromise Motion and Compromise Order shall be in form and substance acceptable to U.S. Bank. This Agreement shall not become effective unless and until the Bankruptcy Court enters the Compromise Order pursuant to Rule 9019, which becomes a final, non-appealable order.
3. Application to Employ Real Estate Broker. Debtor shall promptly file an application (the "Broker Application") to retain Collier's International (Reno) (the "Broker" or "Colliers") as its real estate broker to list, market and sell the Property on the

terms and conditions set forth herein; provided, however, that Debtor and Broker have agreed, and the Broker Application shall provide, that (i) any sale of the Property in accordance herewith and the Sale Motion (defined below) (the "Sale") and (ii) payment of the Commission (defined below) shall be subject to the Bankruptcy Court's approval of this Agreement and all terms and conditions herein including, without limitation, the closing of the Sale by the Outside Closing Date (defined below) and payment of the U.S. Bank Sale Proceeds (defined below). By virtue of this engagement, all prior terms, rights and obligations are terminated under the prior engagement of Colliers pursuant to the Order Approving Application by Debtor in Possession for Authority to Retain Real Estate Broker entered by the Bankruptcy Court on March 21, 2012 [Dkt No. 158] (the "Prior Broker Application"). The listing agreement to be entered into by and between Debtor and Broker pursuant to this Agreement (the "Listing Agreement") shall acknowledge that the Listing Agreement supersedes all prior agreements entered into by and between Debtor and Colliers including the Prior Broker Application. The Broker Application and order thereon shall similarly provide that the Broker Application and Listing Agreement supersede the Prior Broker Application.

3.1. The Broker Application and Listing Agreement must be in form and substance acceptable to U.S. Bank.

3.2. A brokerage commission of 2.5% of the sales price (the "Commission") shall be paid to the Broker through escrow only from the proceeds of sale of the Property. The Broker can allocate the Commission between itself and the broker or agent, if any, of the Purchaser (defined below) in its discretion to the extent that the Broker believes that such allocation sufficiently incentivizes potential Qualified Bidders (defined below) to submit a Qualified Bid (defined below) and exposes the Property to the greatest number of potential Qualified Bidders. Except as is otherwise set forth herein, neither Debtor nor Debtor's bankruptcy estate, nor U.S. Bank, shall be

responsible for the payment of any broker's fees or commissions charged by a broker or agent retained by the Purchaser. The Broker Application and order thereon shall incorporate by reference the foregoing, and acknowledge that the Broker agrees to be bound by such terms including the amount of the Commission to be paid.

3.3. The Broker shall not be entitled to share the Commission with, or provide any referral fee or other remuneration to, any officer, director, member, manager or other insider of the Debtor or of MBP.

3.4. Debtor shall not withdraw the Broker Application, or retain another broker, without the written consent of U.S. Bank, or an order of the Bankruptcy Court.

4. Listing, Bid Qualifications, and Selection of Highest and Best Bid. Subject to Bankruptcy Court approval of the this Agreement, the Broker Application and the Sale Motion pursuant to Code §§ 105, 363, 365, and 1123(b)(4), the Broker shall list the Property for sale without a listing price, subject to overbids. The Broker shall widely market the Property for sale pursuant to the Broker Application and Listing Agreement subject to the Sale Procedures (defined below), and shall timely forward all Qualified Bids received to U.S. Bank and the Debtor as more particularly set forth in Paragraph 4.2. Upon expiration of the deadline (the "Bid Deadline") for submitting a Qualified Order (defined below) as will more particularly be described in the Sale Procedures Order (defined below), Broker shall make a recommendation to Debtor and U.S. Bank identifying all Qualified Offers with a recommendation regarding the highest and best bid (the "Broker's Recommendation"). Debtor and U.S. Bank must jointly agree to the Debtor's acceptance of the Qualified Bid that is the highest and best bid received by the Bid Deadline; provided, however, that if the Debtor and U.S. Bank cannot reach an agreement regarding the Debtor's selection of the highest and best Qualified Bid, the Bankruptcy Court may resolve any such dispute upon notice and a hearing (which may be brought on shortened notice). Notwithstanding the foregoing, (a) no purchase offer may

be accepted by Debtor in an amount less than \$ [REDACTED]<sup>1</sup> (unless otherwise agreed by the Parties in writing) and (b) the purchase offer must satisfy all other Bid Qualifications. In order to be qualified to submit a bid to purchase the Property, a qualified bidder (each a "Qualified Bidder") must satisfy the following conditions ("Bid Qualifications"):

4.1.1. Deliver a written disclosure of the identity of each entity, including identification of primary affiliated entities and principals holding at least twenty (20%) percent ownership interest in the entity(ies) that will be bidding for the Property or otherwise participating in connection with such bid.

4.1.2. Submit an all cash offer in writing signed by the Qualified Bidder by a bid deadline to be proposed by the Broker in consultation with the Parties that satisfies the Bid Qualifications (the "Qualified Offer"), with no due diligence, financing, appraisal or other contingencies including no request for a break-up fee or expense reimbursement unless otherwise agreed by the Parties in writing. The Qualified Offer shall be irrevocable until the selection of the winning bidder (the "Winning Bidder" or "Purchaser") approved by the Bankruptcy Court pursuant to the Sale Order (defined below).

4.1.3. Provide a hard money deposit in the form of a wire transfer (to a bank account specified by Broker), certified check or such other form acceptable to the Parties, payable to the order of the Debtor in an amount that is not less than \$500,000.00, or such higher amount as is recommended by the Broker.

4.1.4. Acknowledge and agree that the Sale is on an "as is, where is" basis without any representations or warranties.

4.1.5. Provide evidence to the Broker of the Qualified Bidder's financial ability to timely close the Sale in the form of bank statements, cashier's checks,

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<sup>1</sup> Debtor shall file a motion under seal with respect to the minimum purchase price agreed to by the Parties.

or such other evidence that indicates an ability of the Qualified Bidder to pay the purchase price on or before the Closing Date.

4.1.6. Identify with particularity which contracts and leases the Qualified Bidder wishes to assume, and provides details of the Qualified Bidder's proposal for the treatment of related amounts necessary to cure all monetary defaults, and the provision of adequate assurance of future performance to the counterparties to such contracts and leases.

4.1.7. Satisfy any additional requirements as recommended by the Broker and agreed to by the Parties.

4.2. Communication and Delivery of Offers. All communications to or from the Broker shall include Alan Smith, Esq., as counsel for Debtor, and Keith Owens, as counsel for U.S. Bank. The Broker shall promptly deliver to the above-named attorneys for Debtor and U.S. Bank, all offers, supporting documents, and correspondence received from or sent to a Qualified Bidder not less than two (2) business days after receipt.

5. Sale Procedures and Sale Motion. Within five (5) business days after expiration of the Bid Deadline and the Debtor's and U.S. Bank's receipt of the Broker's Recommendation to proceed with a Sale to a Qualified Bidder that submits the highest and best bid, or if no agreement can be reached, upon order of the Bankruptcy Court as more particularly set forth in Paragraph 4, above (the "Initial Bidder"), Debtor shall file a motion for entry of an order (a) approving the form asset purchase agreement (the "Purchase Agreement"), (b) authorizing Debtor to sell the Property to the Initial Bidder, subject to the right of any other Qualified Bidder to submit overbids, (c) approving the Sale Procedures (defined below) for the sale of the Property, (d) scheduling an auction (the "Auction") at the hearing on the motion to approve the Sale (the "Sale Hearing"), (e) establishing procedures for the assumption and assignment of executory contracts and

unexpired leases in connection with the Sale, including notice of the proposed amount necessary to cure any monetary defaults thereunder, and (f) granting related relief, all as will be more fully described in the motion and all other pleadings and documents, all of which shall be in form and substance satisfactory to U.S. Bank (the "Sale Motion") pursuant to Code §§ 105, 363, 365, and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure, and notice of hearing thereon.

5.1. The Sale Motion shall seek Bankruptcy Court approval of certain sale procedures (the "Sale Procedures") including, among other things, a minimum overbid of \$25,000.00 and subsequent bidding increments of at least \$10,000.00, qualifications for prospective bidders including the foregoing Bid Qualifications, a provision requiring Qualified Bidders to make a hard money deposit in an amount that equals or exceeds the amount of the deposit for the Initial Bidder set forth in Paragraph 4.1.3, and such other sale procedures as agreed upon between the Parties. If the Parties cannot reach an agreement on reasonable Sale Procedures, the Parties agree to request a hearing on shortened time requesting the Bankruptcy Court to resolve the dispute before the Sale Hearing.

5.2. The Bankruptcy Court shall have entered an order approving the Sale Procedures (the "Sale Procedures Order") in form and substance acceptable to U.S. Bank on or before [REDACTED] (the "Sale Procedures Deadline").

5.3. The Bankruptcy Court shall have entered an order (the "Sale Order") granting the Sale Motion and approving the Sale on or before [REDACTED] (the "Sale Approval Deadline").

5.4. U.S. Bank retains its right to credit bid at any Sale Hearing subject to all the terms of this Settlement Agreement.

6. Closing. The Sale shall close, and the U.S. Bank Sale Proceeds (defined below) shall be paid from escrow to U.S. Bank or its designated agents in accordance

with this Agreement, within [REDACTED] days after the Sale Approval Deadline (“Outside Closing Date”); provided, however, that Debtor shall be entitled to seek a one-time extension of Outside Closing Date not to exceed [REDACTED] (the “Closing Extension Request”) if (i) U.S. Bank consents in writing, or (ii) the Bankruptcy Court determines that such an extension is reasonable and necessary to close the Sale, with such motion to be filed by the Debtor and determined by the Bankruptcy Court on shortened notice prior to expiration of the Outside Closing Date. U.S. Bank shall be entitled to object to any Closing Extension Request. Notwithstanding the Bankruptcy Court’s entry of an order granting a Closing Extension Request (the “Closing Extension Order”), any such extension agreed to by the Parties or approved by the Bankruptcy Court is not intended to be, nor shall be construed as, an agreement by the Debtor or U.S. Bank to accept less than the Qualified Bid submitted by the Winning Bidder. Any further extensions of the Outside Closing Date or any additional time granted by the Bankruptcy Court pursuant to a Closing Extension Order, shall only be granted upon written consent of U.S. Bank in its sole discretion.

7. Professional Fee Carve Out. U.S. Bank agrees to the payment of a professional fee carve out from a combination of Cash Collateral (defined below) held by Debtor and from the proceeds of sale of the Property in an amount not to exceed \$100,000.00 (the “Fee Carve Out”) to pay the allowed fees and expenses of Debtor’s general bankruptcy counsel, The Law Offices of Alan R. Smith (“Smith”). The Fee Carve Out shall be paid on the following terms and conditions:

7.1. Smith must file and serve a final fee application (the “Smith Fee Application”) seeking the allowance and payment of fees and reimbursement of expenses under Code § 330 on or before February 4, 2019, and the Bankruptcy Court shall have entered an order approving the Smith Fee Application and allowing such fees and expenses (the “Allowed Fees”) on or before [REDACTED]



7.2. Any Allowed Fees owed to Smith, as approved by the Bankruptcy Court pursuant to an order approving the Smith Fee Application, shall be paid in the following order, as applicable:

- First, out of pre-petition retainer held by Smith in the amount of approximately \$288,000.00 (the “Retainer”);
- Second, the unpaid portion of the Allowed Fees, if any, remaining after application of the Retainer, up to \$50,000.00 of the Fee Carve Out (“Initial Carve Out Payment”) from U.S. Bank’s cash collateral (the “Cash Collateral”) held and/or received by Debtor pursuant to the Amended Second Interim Order Approving Use of Cash Collateral entered on January 26, 2012 [Dkt. No. 114] (the “Cash Collateral Order”).
- Third, the unpaid portion of the Allowed Fees, if any, remaining after application of (i) the Retainer, and (ii) the Initial Fee Carve Out, up to \$50,000.00 of the remaining Fee Carve Out, from the proceeds of Sale of the Property in accordance with the waterfall set forth in Paragraph 8 below.
- Fourth, any unpaid portion of the Allowed Fees after application of (i) the Retainer, and (ii) the Fee Carve Out, from the Debtor’s portion of the Debtor Shared Proceeds from the Sale of the Property in accordance with the waterfall set forth in Paragraph 8, below.
- Any portion of the Fee Carve Out remaining after payment of the Allowed Fees in accordance with the foregoing waterfall in this Paragraph 7.2 constitutes Cash Collateral and shall be turned over to U.S. Bank along with all other Cash Collateral as set forth in this Agreement.

7.3. U.S. Bank shall not seek to disgorge any portion of the Retainer or the Fee Carve Out paid to Smith in the event that the Sale does not close in accordance with this Agreement.

8. Allocation and Payment of Sale Proceeds. The proceeds of Sale of the Property shall be paid in accordance with the following waterfall:

8.1. First, costs of sale of the Property including the Commission (the "Costs") shall be paid from escrow on the date that the Sale closes (the "Closing Date"), which shall not be later than the Outside Closing Date (and any Extension Orders); provided, however, that nothing contained herein shall preclude either Party from contesting the reasonableness of the Costs; provided, further that the Parties agree that the Commission in the amount of 2.5% is reasonable.

8.2. Second, the Fee Carve Out as set forth in Paragraph 7, above.

8.3. Third, the first \$12,600,000.00 (the "Minimum U.S. Bank Proceeds") to U.S. Bank from the net proceeds of Sale to be paid from escrow on the Closing Date.

8.4. Fourth, all net proceeds of Sale in excess of the Minimum U.S. Bank Proceeds shall be shared (the "Shared Proceeds") equally (50%-50%) by Debtor (the "Debtor Shared Proceeds") and U.S. Bank (the "U.S. Bank Shared Proceeds"), respectively, with the U.S. Bank Shared Proceeds to be paid to U.S. Bank from escrow on the Closing Date. (The Minimum U.S. Bank Proceeds specified in Paragraph 8.3, above, and the U.S. Bank Shared Proceeds specified in this Paragraph 8.4, are collectively referred to herein as the "U.S. Bank Sale Proceeds").

8.5. Fifth, any unpaid secured claims for real property taxes, transfer taxes resulting from the sale of the Property, or any other obligations that must be made as a matter of law, shall be paid from escrow solely from the Debtor Shared Proceeds. U.S. Bank shall not be responsible for the payment of any such claims for taxes, transfer

taxes, or other obligations, which shall be the Debtor's sole responsibility to be paid solely from the Debtor Shared Proceeds.

9. Adequate Protection Payments and Cash Collateral. Debtor shall be required to continue to pay U.S. Bank or its designated agents as the case may be monthly adequate protection payments (the "Adequate Protection Payments") pursuant to the Cash Collateral Order.

9.1. No Adequate Protection Payments that have been paid, or that will be paid, by Debtor to U.S. Bank during the pendency of the Bankruptcy Case, or Cash Collateral held or received by or on behalf of the Debtor (which shall be turned over by the Debtor to U.S. Bank or its agent or designee contemporaneous with the Closing), shall be credited against any portion of the U.S. Bank Sale Proceeds, or otherwise withheld from U.S. Bank. For the avoidance of doubt, and for purposes of illustration only, if the net proceeds of Sale of the Property is \$20,000,000.00 after payment of the Costs (including the Commission) and the Fee Carve Out, U.S. Bank shall be paid from escrow upon Closing \$16,300,000.00 from the net proceeds of Sale of the Property, comprised of (i) the Minimum U.S. Bank Proceeds in the amount of \$12,600,000.00, plus (ii) the U.S. Bank Shared Proceeds (i.e., 50% percent of the Shared Proceeds) in the amount of \$3,700,000.00. The U.S. Bank Sale Proceeds shall be paid to U.S. Bank in addition to all Cash Collateral and Adequate Protection Payments that must be turned over to U.S. Bank pursuant to this Agreement.

9.2. The Bankruptcy Case shall not be dismissed or converted prior to the Closing of the Sale, and payment to U.S. Bank of the U.S. Bank Sale Proceeds and all monthly Adequate Protection Payments due in accordance with the Cash Collateral Order, and all Cash Collateral held by or on behalf of the Debtor. For the avoidance of doubt, any unpaid Adequate Protection Payments and Cash Collateral held by or on

behalf of Debtor shall be paid in full to U.S. Bank on or before entry of any order dismissing or converting the Bankruptcy Case.

10. The Rabkin Claim. Debtor represents and warrants that it has obtained Dr. Rabkin's consent to, and support for, the Sale of the Property in accordance with the terms hereof, and the Sale Order. Debtor shall secure Dr. Rabkin's approval (on behalf of himself and his successors or assigns including Second Creek) in writing to this Agreement and support for the Sale. Debtor hereby agrees to pay Dr. Rabkin or his successors or assigns on account of the Rabkin Claim solely from Debtor's portion of the Shared Proceeds in an amount to be agreed upon by Debtor and Dr. Rabkin or otherwise ordered by the Court. In no event shall the Rabkin Claim be paid from any portion of the U.S. Bank Sale Proceeds, Adequate Protection Payments, Cash Collateral, or any other collateral, or by U.S. Bank, and neither U.S. Bank nor any portion of the U.S. Bank Sale Proceeds, Adequate Protection Payments, Cash Collateral, or any other collateral, shall be subject to surcharge under 11 U.S.C. § 506(c). Notwithstanding the foregoing, neither Dr. Rabkin nor Second Creek are a party hereto, or a third-party beneficiary under this Agreement.

11. Plan of Liquidation. The Debtor shall have the right, but not the obligation, to file a Chapter 11 plan of liquidation and corresponding disclosure statement (the "Plan"); provided, however, that the filing of a Plan or entry of an order confirming the Plan (the "Confirmation Order") is not a condition to Closing or otherwise required under this Agreement. Notwithstanding the foregoing, the Debtor agrees, and the Compromise Order and the Sale Order shall expressly provide, that neither the Plan nor Confirmation Order shall be inconsistent with this Agreement, the Sale Procedures Order, the Sale Order or any other documents or transactions contemplated herein or thereunder, and that this Agreement, the Compromise Order and the Sale Order shall govern in the event of any inconsistencies with the Plan and the Confirmation Order.

12. Condition Precedent. Except as is otherwise provided herein, the condition precedent to this Agreement (the "Condition Precedent") shall be the Bankruptcy Court's entry of an order approving this Agreement (the "Compromise Order") not later than December 20, 2018 (the "Compromise Approval Deadline"), the form and substance of which must be acceptable to U.S. Bank, which becomes a final, non-appealable order.

13. Event of Default. An event of default shall occur ("Events of Default" and each an "Event of Default") if:

13.1. The Bankruptcy Court has not entered the Sale Procedures Order in form and substance acceptable to U.S. Bank on or before [REDACTED] (the "Sale Procedures Approval Deadline").

13.2. The Bankruptcy Court has not entered the Sale Order in form and substance acceptable to U.S. Bank by the Sale Approval Deadline, which Sale Order shall have become a final, non-appealable order; provided, however, that U.S. Bank may agree to waive the finality requirement and proceed with Closing upon entry of a Sale Order that does not become a final order if (a) the Bankruptcy Court makes a finding that the Winning Bidder is a good faith purchaser under 11 U.S.C. § 363(m), and (b) no creditor or party-in-interest timely appeals the Sale Order or obtains a stay pending appeal.

13.3. The Sale does not close, and the U.S. Bank Sale Proceeds are not received by U.S. Bank or its successors, assigns or designee in accordance with this Agreement, by the Outside Closing Date, as may be modified by a Closing Extension Order.

13.4. Debtor breaches any other provision of this Agreement, the Compromise Order, the Sale Procedures Order, or the Sale Order, which breach is not timely cured or is not otherwise capable of cure.

14. Cure Period. Debtor shall have five (5) calendar days (the "Cure Period") after service of a notice of default in writing upon the Debtor by U.S. Bank to cure any

curable Event of Default; provided, however, that (i) the failure of the Bankruptcy Court to enter a Sale Order by the Sale Approval Deadline, (ii) the failure of Debtor to close a Sale by the Outside Closing Date (as may be modified by any Closing Extension Order), or (iii) the failure to pay from escrow the U.S. Bank Sale Proceeds to U.S. Bank or its successor, assign, agent or designee by the Outside Closing Date (as may be modified by any Closing Extension Order), are incurable defaults. No notice is required for an incurable Event of Default. Notice on Debtor may be served on Debtor's counsel by email, facsimile, hand delivery or mail pursuant to the notice provision set forth in Paragraph 30 of this Agreement.

15. Remedies Upon Event of Default. In addition to all of U.S. Bank's rights and remedies under the Loan Documents and applicable law, which are expressly preserved, U.S. Bank is granted the following additional remedies in the event of a curable Event of Default that is not timely cured within the Cure Period or an incurable Event of Default:

15.1. U.S. Bank shall be granted automatic relief from the automatic stay pursuant to the order granting the Compromise Motion and approving this Agreement without further notice, motion practice or hearing (the "Automatic Stay Relief"). Debtor hereby consents to, and shall not oppose, the Automatic Stay Relief. U.S. Bank may file a declaration attesting to the Event(s) of Default and contemporaneously upload an order granting the Automatic Stay Relief for entry by the Bankruptcy Court. Although not required, in the event that U.S. Bank files a motion for relief from stay after an Event of Default that has not been cured within the Cure Period or an incurable Event of Default, Debtor and the Debtor Released Parties agree not to oppose any such motion.

15.2. U.S. Bank shall have the right to foreclose on the Property and to exercise all of its rights, remedies and claims against Debtor or the Property in accordance with the Loan Documents and applicable non-bankruptcy law. The Debtor Releasing

Parties agree (a) not to oppose any actions by U.S. Bank or its agents, servicers, professionals, representatives, officers, directors, members, managers, investors, trustees, predecessors, successors, assigns or designees (the "U.S. Bank Parties") (i) to foreclose on the Property, or (ii) to seek the appointment of a receiver, (b) not to challenge the validity, amount or priority of any lien, claim or interest held and/or asserted by any the U.S. Bank Parties in the Property under the Loan Documents and applicable law as set forth in any notice of default, notice of sale, or any other notices or required documents, (c) not to challenge the right to credit bid, or the amount of credit bid, by any of the U.S. Bank Parties in connection with any such foreclosure sale, and (d) not to otherwise claim or assert any legal or equitable right, claim or interest in the Property or the proceeds of any foreclosure sale, deed in lieu of foreclosure sale, receiver sale, or any other disposition of the Property or other collateral including, without limitation, any right of reinstatement or redemption.

15.3. Debtor shall not file another bankruptcy petition and shall oppose any involuntary bankruptcy petition that might be filed against it. Any bankruptcy filing by the Debtor (or any of its successors or assigns) (a) while the Bankruptcy Case is pending, (b) prior to satisfaction of all Conditions in this Agreement including payment of the U.S. Bank Sale Proceeds, Cash Collateral and any unpaid Adequate Protection Payments, and/or (c) prior to the U.S. Bank Parties' completion of their efforts to foreclose on or otherwise dispose of the Property under applicable law, shall be deemed to have been made in bad faith, and shall be dismissed without notice or a hearing under Code §§ 362(d)(1), (d)(2), (d)(3) and (d)(4), 1112(b) and 105(a). Debtor agrees that U.S. Bank shall be entitled to file an emergency motion for relief from the automatic stay, which neither Debtor nor the Debtor Releasing Parties, or their respective successors or assigns, will oppose.

16. Retention of Security Interest. U.S. Bank shall retain its Deed of Trust and such other liens against the Property and all other collateral as more particularly set forth in the Loan Documents including the Cash Collateral until (a) such liens are released in conjunction with the Sale of the Property, and (b) receipt of payment by U.S. Bank or its designee, successors or assigns of the U.S. Bank Sale Proceeds, Adequate Protection Payments, and the Cash Collateral as set forth herein.

17. Preservation of Rights, Remedies and Claims Under Loan Documents. Nothing contained in this Agreement is intended to be, nor shall be construed as, an election of remedies, amendment, modification, forbearance, abrogation, waiver or release of any rights, remedies and claims of U.S. Bank under the Loan Documents and applicable law. The Loan Documents shall remain in full force and effect, and U.S. Bank's rights, remedies, and claims thereunder and under applicable law are expressly preserved unless and until (i) all Conditions have been satisfied, and (ii) U.S. Bank has been paid the U.S. Bank Sale Proceeds from escrow on or before the Outside Closing Date (as may be modified by an Extension Order), all Cash Collateral held by or received by the Debtor (excluding the Professional Fee Carve Out), and all unpaid Adequate Protection Payments.

18. Waiver and Release of Claims.

18.1. Debtor Releasing Parties.

18.1.1. Except as to those obligations of each of the Parties created by or expressly reserved under this Agreement, Debtor, MBP, and each and all of their respective successors, assigns, predecessors, representatives, agents, attorneys, servicers, accountants, insurers, shareholders, members, managers, subsidiaries, affiliates, partners and related entities the ("Debtor Releasing Parties") do by this Agreement fully and forever remise, release and discharge the U.S. Bank Releasing Parties (defined below) from any and all sums of money, accounts, claims, demands, contracts, actions, debts,



controversies, agreements, liabilities, obligations, damages and causes of action whatsoever, of whatever kind or nature, whether known or unknown, fixed or contingent, or suspected or unsuspected by them which any of them now owns, holds, has or claims to have, or at any prior time owned, held, had or claimed to have related to the Loan, the Property, or otherwise, at any time from the beginning of time up through and including the date of the execution of this Agreement (collectively, the "Debtor Released Claims"). For the avoidance of doubt, the Debtor Released Claims include a release and waiver of right to surcharge the U.S. Bank Releasing Parties, the Property, Cash Collateral or any other collateral under 11 U.S.C. § 506(c).

18.2. U.S. Bank Releasing Parties.

18.2.1. Except as to those obligations of each of the Parties created by or expressly reserved under this Agreement, U.S. Bank, on behalf of itself, and its employees, successors, predecessors, assigns, representatives, attorneys, servicers, accountants, insurers, shareholders, members, subsidiaries, affiliates, partners, insiders, and related entities as well as all predecessors, successors and assigns (the "U.S. Bank Releasing Parties"), do by this instrument fully and forever remise, release and discharge the Debtor Releasing Parties from any and all sums of money, accounts, claims, demands, contracts, actions, debts, controversies, agreements, liabilities, obligations, damages and causes of action whatsoever, of whatever kind or nature, whether known or unknown, fixed or contingent, or suspected or unsuspected by them which any of them now owns, holds, has or claims to have, or at any prior time owned, held, had or claimed to have related to the Loan, the Property or otherwise at any time from the beginning of time up through and including the date of the execution of this Agreement (collectively, the "U.S. Bank Released Claims").

19. Waiver of Unknown Claims by Parties. The Parties, and each of them, acknowledge that there is a risk that subsequent to the execution of this Agreement, one

or more of them will discover facts or will discover, claims, debts, liabilities, demands, obligations, costs, expenses, attorney's fees, actions or causes of action which were unknown or unanticipated at the time of this Agreement which may have materially affected their/its/his respective decisions to give the releases contained in and only to the extent of the U.S. Bank Released Claims and the Debtor Released Claims (individually, an "Unknown Claim" and collectively the "Unknown Claims"). Despite this knowledge and understanding, and except as is otherwise set forth in this Agreement, the Parties understand and agree: (a) that he, she and/or it is assuming the risk of each and every Unknown Claim, and (b) that he, she and/or it is releasing all claims of every kind or nature whatsoever, known or unknown, suspected or unsuspected, which could have been brought prior to the date of this Agreement, and in connection herewith, each expressly waives all rights under applicable law including, without limitation, Section 1542 of the Civil Code of California, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

20. No Surcharge. Neither U.S. Bank nor the Property, the U.S. Bank Sale Proceeds, the Adequate Protection Payments, the Cash Collateral, or any other collateral of U.S. Bank, including any collateral that is held by or for the benefit of Debtor, shall be subject to surcharge under Code § 506(c) or other applicable law.

21. Parties Bound. This Agreement and the Compromise Order is and shall be binding upon and shall inure to the benefit of all the Parties hereto, and their respective attorneys, agents, successors, and assigns, and shall remain in full force in effect and binding on Debtor's bankruptcy estate and any subsequently-appointed trustee, notwithstanding dismissal of the Bankruptcy Case, conversion of the Bankruptcy Case,

the appointment of a trustee, or confirmation of any Chapter 11 plan. Upon the Bankruptcy Court's entry of the Compromise Order, this Agreement and Compromise Order will be binding on the Debtor's bankruptcy estate, and any trustee appointed in the Bankruptcy Case notwithstanding conversion or dismissal of the Bankruptcy Case, the appointment of a trustee, or confirmation of a Chapter 11 plan.

22. Costs and Attorney's Fees. In the event of any disputes between the Parties arising out of or relating to the enforcement of this Agreement, including any motions to compel performance of this Agreement and any appeals, the prevailing party shall be entitled to all reasonable attorneys' fees and costs incurred.

23. No Admission of Liability. Nothing contained herein shall be deemed an admission of liability.

24. Further Assurances. The Parties agree to provide such further assurances as may be reasonably necessary to implement this Agreement, and to execute any and all additional and supplementary documents which may be necessary and appropriate to do the same, including, by way of example, support for the Compromise Motion, Sale Procedures, Sale Motion, and any reconveyances or releases, as necessary.

25. Authority. Each Party hereby represents and warrants to the other Party that it is authorized to enter into this Agreement, and to settle and release the Debtor Released Claims, the U.S. Bank Released Claims, and the Unknown Claims referred to herein, and that it/he/she has not assigned, sold, encumbered, transferred, hypothecated, pledged or otherwise disposed of any such claims being released in this Agreement.

26. Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed an original, and each of which shall constitute together one and the same instrument. The counterparts will be binding on each of the Parties, even though the various Parties may have executed separate counterparts. A signature transmitted electronically and photocopies of signatures shall be deemed an original.

27. Subject Headings. The subject headings of the paragraphs of this Agreement are included solely for purposes of convenience and reference only, and shall not be deemed to explain, modify, limit, amplify or aid in the meaning, construction or interpretation of any of the provisions of this Agreement.

28. Applicable Law. This Agreement shall be governed exclusively by and construed and enforced exclusively in accordance with and subject to the law of the State of Nevada without regard to its choice of law provisions, provided, however, that the Bankruptcy Court of the United States for the District of Nevada shall have jurisdiction to interpret and enforce this Agreement.

29. Representation by Counsel. Each Party has had the opportunity to be represented by counsel of its choice with regard to the negotiation of this Agreement. Each Party is entering into this Agreement deliberately, advisedly, and of its own free will and volition. The Parties agree that each Party and its counsel, if any, have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement.

30. Notice. Any notices under this Agreement shall be sent by hand, mail, facsimile or e-mail to:

**For the Debtor:**

Alan R. Smith  
THE LAW OFFICES OF ALAN R. SMITH  
505 Ridge Street  
Reno, Nevada 89501  
Telephone: (775) 786-4579  
Facsimile: (775) 786-3066  
E-mail: [mail@asmithlaw.com](mailto:mail@asmithlaw.com)

**U.S. Bank:**

Keith C. Owens  
VENABLE LLP  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067  
Telephone: (310) 229-9900  
Facsimile: (310) 229-9901  
E-mail: [kowens@venable.com](mailto:kowens@venable.com)

and

Louis M. Bubala III, Esq.  
KAEMPFER CROWELL  
50 West Liberty Street, Suite 700  
Reno, Nevada 89501  
Telephone: (775) 398-4741  
Facsimile: (775) 327-2011  
Email: [lbubala@kcnvlaw.com](mailto:lbubala@kcnvlaw.com)

31. Entire Agreement and Waiver. This Agreement contains the entire agreement between and among the Parties and supersedes all prior and contemporaneous agreements, arrangements, negotiations and understandings between such Parties, relating to the subject matter of this Agreement including, without limitation, any agreement read into the record at Mediation.

T. Retention of Jurisdiction. The Parties agree, and the Compromise Order shall provide, that the Bankruptcy Court shall retain jurisdiction to interpret, implement and enforce the terms of this Agreement and the Compromise Order. The Parties further agree to request Judge Zive's consent to, among other things, retain jurisdiction to interpret, implement and enforce the terms of this Agreement, including presiding over the hearing on the Sale Motion and Auction, and to serve as the Bankruptcy Judge responsible for determining any matters contemplated herein. In the event that Judge Zive consents to retain jurisdiction over the matters described in this Agreement, the Parties will file a stipulation and proposed order with the Bankruptcy Court authorizing Judge Zive's retention of jurisdiction. In the event that Judge Zive is unable or unwilling to preside over any matters contemplated hereunder, the Parties agree to bring any such matters before Judge Beesley for determination. Unless otherwise indicated, all

references herein to the Bankruptcy Court shall refer to both Judge Beesley and Judge Zive, as applicable.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized officers or representatives as of October \_\_\_\_, 2018.

**DEBTOR**

THE VILLAGE AT LAKERIDGE, LLC,  
Debtor and Debtor-in-Possession

By: MBP Equity Partners 1, LLC  
Its: Sole Member

\_\_\_\_\_  
Kathleen Bartlett  
Managing Member of MBP Equity Partners 1,  
LLC

**U.S. BANK**

U.S. BANK NATIONAL ASSOCIATION, *ET AL.*, by and through CWCAPITAL ASSET MANAGEMENT, LLC, solely in its capacity as special servicer

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM AND SUBSTANCE:**

THE LAW OFFICES OF ALAN SMITH

BY: \_\_\_\_\_  
Alan R. Smith, Esq.  
General Bankruptcy Counsel for Debtor and  
Debtor-in-Possession

[SIGNATURES CONTINUED ON NEXT PAGE]

VENABLE LLP

By: \_\_\_\_\_  
Keith Owens, Esq.  
Attorneys for U.S. Bank, *et al.*,  
By and through CWCapital Asset Management, LLC,  
solely in its capacity as special servicer

references herein to the Bankruptcy Court shall refer to both Judge Beesley and Judge Zive, as applicable.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers or representatives as of October 11<sup>th</sup>, 2018.

**DEBTOR**

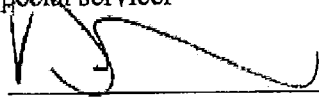
THE VILLAGE AT LAKERIDGE, LLC,  
Debtor and Debtor-in-Possession

By: MBP Equity Partners 1, LLC  
Its: Sole Member

\_\_\_\_\_  
Kathleen Bartlett  
Managing Member of MBP Equity Partners 1,  
LLC

**U.S. BANK**

U.S. BANK NATIONAL ASSOCIATION, *ET AL.*, by and through CWCAPITAL ASSET MANAGEMENT, LLC, solely in its capacity as special servicer

By:   
Name: \_\_\_\_\_  
Title: **Alex Killick**  
Senior Vice President

**APPROVED AS TO FORM AND SUBSTANCE:**

THE LAW OFFICES OF ALAN SMITH

BY: \_\_\_\_\_  
Alan R. Smith, Esq.  
General Bankruptcy Counsel for Debtor and  
Debtor-in-Possession

[SIGNATURES CONTINUED ON NEXT PAGE]



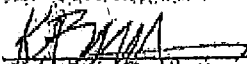
references herein to the Bankruptcy Court shall refer to both Judge Beesley and Judge Zive, as applicable.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers or representatives as of October \_\_\_\_, 2018.

DEBTOR

THE VILLAGE AT LAKERIDGE, LLC,  
Debtor and Debtor-In-Possession

By: MBP Equity Partners I, LLC  
Its: Sole Member

  
Kathleen Banlett  
Managing Member of MBP Equity Partners I,  
LLC  
*Board of Managers*

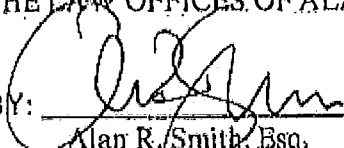
U.S. BANK

U.S. BANK NATIONAL ASSOCIATION, ET  
AL., by and through CWCAPITAL ASSET  
MANAGEMENT, LLC, solely in its capacity  
as special servicer

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM AND SUBSTANCE:


THE LAW OFFICES OF ALAN SMITH

BY:   
Alan R. Smith, Esq.

General Bankruptcy Counsel for Debtor and  
Debtor-in-Possession

[SIGNATURES CONTINUED ON NEXT PAGE]

VENABLE LLP

By:   
Keith Owens, Esq.  
Attorneys for U.S. Bank, *et al.*,  
By and through CWCapital Asset Management, LLC,  
solely in its capacity as special servicer