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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST,	:	Case No. 17-77690 [REG]
	:	
	:	
Debtor.	:	
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**FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST ("Debtor") hereby proposes the following Plan of Liquidation pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

**ARTICLE I**  
**DEFINITIONS**

For the purposes of this Plan, and the Disclosure Statement simultaneously filed by the Debtor, the following terms shall have the respective meanings set forth below:

1.1 "*Administrative Claim*" shall mean, except as otherwise set forth in this Plan, all or that portion of a Claim for any cost or expense of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate

pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims, which are treated separately in this Plan.

1.2 "*Allowed*" shall mean with respect to any Claim or Interest that portion of such Claim or Interest (i) which has been allowed by a Final Order; (ii) which is allowed under the terms of this Plan; or (iii) (a) which has been scheduled by the Debtor as not disputed, not contingent and not unliquidated, or (b) for which a proof of claim was timely filed and otherwise properly filed on or before the Bar Date, as hereinafter established by the Court (other than with respect to governmental entities on or before December 12, 2017) with the Bankruptcy Court and, with respect to Claims described in (iii) as to which no objection to the allowance thereof has been interposed within the period of time fixed by the Bankruptcy Code, the Plan in Article IX hereof, the Bankruptcy Rules or an order of the Bankruptcy Court, or as to which any objection has been determined by a Final Order of the Bankruptcy Court allowing such Claim or any portion thereof. Except as otherwise specifically set forth in this Plan, each Allowed Claim shall be net of any valid setoff exercised with respect to such Claim pursuant to the provision of the Bankruptcy Code and applicable law.

1.3 "*Allowed Administrative Claim*" shall mean all or that portion of any Administrative Claim which has become allowed by a Final Order or was incurred by the Debtor in the ordinary course of business during the Chapter 11 Case and is due and owing under the terms and conditions of any agreement and applicable law.

1.4 "*Avoidance Actions*" shall mean any cause of action assertable under sections 510, 542, 543, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code or non-bankruptcy law.

1.5 “Asset Purchase Agreement” or “APA” shall mean the unexecuted copy of the purchase and sale agreement (“APA”), as amended and as annexed to the Amended Disclosure Statement as Exhibit “D”. Upon execution by the purchaser, the APA will be electronically filed as a separate exhibit.

1.51.6 “Ballot” shall mean each of the voting forms to be distributed with the Plan and the Disclosure Statement to holders of Claims or Interests in Classes that are impaired under the terms of the Plan and are entitled to vote in connection with the solicitation of acceptances of the Plan.

1.61.7 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§101, et seq., as in effect on the Petition Date.

1.71.8 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Eastern District of New York, a Division.

1.81.9 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

1.91.10 “Listing Broker” shall mean Classic Realty Development Corp.

1.101.11 “Selling Broker” shall mean Coach Real Estate Associates, Inc., or such broker as introduced the successful purchaser of the Property.

1.111.12 “Brokerage Commission” shall mean brokerage commission due Classic Realty Development Corp. of 6% will be assessed against the purchase price of the Property as herein defined, in the expected amount of \$96,000. The Brokerage Commission is expected to be split with the Selling Broker.

~~1.12~~1.13 1.13 “*Business Day*” shall mean any day on which commercial banks are open for business in the City of New York and County of New York, New York, other than, a Saturday, Sunday or legal holiday in the State of New York.

~~1.13~~1.14 1.14 “*Cash*” shall mean the legal tender of the United States of America.

~~1.14~~1.15 1.15 “*Causes of Action*” shall mean any claim, cause of action, controversy, demand, agreement, right (including to legal or equitable remedies), action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, belonging to the Debtor, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state law fraudulent transfer claim.

~~1.15~~1.16 1.16 “*Chapter 11 Case*” shall mean the above-captioned case commenced by the filing of a voluntary petition by the Debtor seeking relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court on the Petition Date.

~~1.16~~1.17 "*Claim*" shall mean a claim as defined in sections 101(5) and 102 of the Bankruptcy Code, including, without limitation, claims arising under section 502 of the Bankruptcy Code.

~~1.17~~1.18 "*Class*" shall mean a class of holders of Claims or Interests described in Article III of this Plan.

~~1.18~~1.19 "*Confirmation*" shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court.

~~1.19~~1.20 "*Confirmation Order*" shall mean the order of the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code confirming the Plan.

~~1.20~~1.21 "*Debtor*" shall mean Vincent DiCanio Qualified Residential Residence Trust.

~~1.21~~1.22 "*Disbursing Agent*" shall mean the party that shall open and maintain a separate attorney trust bank account in which all Cash received for purposes of distribution hereunder shall be deposited in accordance with section 345 of the Bankruptcy Code and as otherwise may be required by the Local Rules of the Bankruptcy Court, by the Office of the United States Trustee, or this Plan, and shall distribute payment under the Plan, which Disbursing Agent shall be Rattet, PLLC.

~~1.22~~1.23 "*Disclosure Statement*" shall mean the Disclosure Statement filed simultaneously with this Chapter 11 Plan of Liquidation filed by the Debtor in the Chapter 11 Case.

~~1.23~~1.24 "*Disputed Claim*" shall mean any Claim (i) which is scheduled by the Debtor as disputed, contingent or unliquidated, or (ii) proof of which has been filed with the

Bankruptcy Court and an objection to the allowance has been or is interposed within the period of time set forth in Article IX hereof or by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or an order of the Bankruptcy Court extending such time for the filing of such objections, and as to which, such objection has not been determined by a Final Order of the Bankruptcy Court or withdrawn. Such Claim, or a portion thereof, shall not be deemed an Allowed Claim until and unless and to the extent it is resolved as an Allowed Claim by a Bankruptcy Court order.

~~1.24~~1.25 "*Effective Date*" shall mean the first Business Day that is one (1) Business Day after the date upon which the Confirmation Order becomes a Final Order.

~~1.25~~1.26 "*Estate*" shall mean the estate of the Debtor created by the Chapter 11 Case pursuant to Bankruptcy Code section 541.

~~1.26~~1.27 "*Exculpated Claim*" any claim related to any act or omission in connection with, relating to or arising out of the Debtor's in or out of court restructuring efforts, the Chapter 11 Case, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or this Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or this Plan, the filing of the Chapter 11 Case, the pursuit of confirmation of this Plan, the administration and implementation of this Plan; *provided, however*, that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted gross negligence, willful misconduct or fraud to the extent imposed by applicable non-bankruptcy law. For the avoidance of doubt, no cause of action, obligation or liability expressly set forth in or preserved by this Plan constitutes an Exculpated Claim.

~~1.27~~1.28 “*Exculpated Party*” means, with respect to post Petition Date conduct only, the Debtor and its current and former officers, directors, members, managers, employees, attorneys and advisors, each in their respective capacities as such.

~~1.28~~1.29 “*Fee Claim*” shall mean a Claim by any Professional for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103.

~~1.29~~1.30 “*Final Order*” shall mean an order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court on the docket of the Chapter 11 Case which has not been reversed, vacated or stayed and as to which (a) the time to appeal or seek review or rehearing has expired, and a notice of appeal or request for review or rehearing is not pending, or (b) any appeal that has been taken has been finally determined or dismissed on grounds that affirm the order or judgment, it being further provided that if such appeal or request for a rehearing is pending, that if such order is not stayed pending appeal or rehearing pursuant to Fed.R.Civ.P. 62 as incorporated by Bankruptcy Rule 7062, the order shall be deemed to be a Final Order. The possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed related to such order or judgment shall not cause such order or judgment to not be a Final Order.

~~1.30~~1.31 “*Impaired*” shall mean a Claim or class of Claims that is impaired within the meaning of section 1124 of the Bankruptcy Code.

~~1.31~~1.32 “*Interest*” shall mean the interest of any holder of an equity security of or membership interest in the Debtor, within the meaning of Bankruptcy Code sections 101(16), (17), represented by any issued and outstanding shares of common or preferred stock or other

instrument evidencing a present ownership or membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest.

~~1.32~~1.33 *"First Mortgage Claim"* shall mean the claim held and as evidenced by the Mortgage and Note in favor of Pennymac Corp.

~~1.33~~1.34 *"Second Mortgage Claim"* shall mean the claim held and as evidenced by the Mortgage and Note in favor of People's United.

~~1.34~~1.35 *"Net Sale Proceeds"* shall mean the proceeds of the sale of the Property net of the Brokerage Commission and the Relocation Assistance, estimated to be in the amount of \$1,404,000 and other necessary costs of closing.

~~1.35~~1.36 *"Petition Date"* shall mean December 12, 2017.

~~1.36~~1.37 *"Person"* shall mean means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), trust or other entity, including, without limitation, the Debtor.

~~1.37~~1.38 *"Plan"* shall mean this Chapter 11 Plan of Liquidation and any amendments hereto or modifications hereof made in accordance with the provisions of the Bankruptcy Code.

~~1.38~~1.39 *"Plan Distribution Fund"* shall mean such moneys as are advanced by or on behalf of Vincent DiCanio, trustor of the Trust to fund a distribution under the Plan.

~~1.39~~1.40 *"Priority Claim"* shall mean a Claim other than an Administrative Claim that is entitled to priority under section 507 of the Bankruptcy Code.



~~1.40~~1.41 “*Priority Tax Claim*” shall mean any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

~~1.41~~1.42 “*Pro Rata*” shall mean (i) regarding Claims, the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of Allowed Claims in such Class; and (ii) regarding Interests, the ratio of the amount of the Interest to the aggregate amount of Interests.

~~1.42~~1.43 “*Professionals*” shall mean professional persons retained under section 327 or 1103 of the Bankruptcy Code pursuant to a Final Order of the Bankruptcy Court and shall specifically include, (a) Rattet PLLC; and (b) DiCanio Realty, commissioned real estate brokers, as well as any other professionals providing post-Confirmation services to the Debtor.

~~1.43~~1.44 “*Property*” shall mean the Debtor’s ownership interest as lessor to real property and improvements thereon located at 1 Pine Point, Nissequogue, New York, New York.

~~1.44~~1.45 “*Purchaser*” shall mean Craig and Andrea Fina, when determined to be the successful purchaser at the Sale (as defined below).

~~1.45~~1.46 “*Sale*” shall mean the sale of the Debtor’s fee simple interest in the Property and related assets under this Plan subject to the terms of the ~~APA Purchase and Sale Agreement dated March \_\_, 2018 (“APA”) as amended.~~

~~1.46~~1.47 “*Sale Closing Date*” shall mean the date upon which the Debtor closes on the Sale of the Property.

~~1.47~~1.48 *"Sale Order"* shall mean the order of confirmation and/or such separate order approving the sale to be entered by the Bankruptcy Court approving the Sale of the Property to the Purchaser.

~~1.48~~1.49 *"Sale Proceeds"* shall mean the purchase price paid by the Purchaser for the Sale of the Property, after payment of or reserve for actual and necessary closing adjustments and other closing costs or Claims permitted to be paid at the closing.

~~1.49~~1.50 *"Secured Claim"* shall mean a Claim held by creditors secured by mortgages or liens on real and/or personal property owned by the Debtor in accordance with section 506(a) of the Bankruptcy Code.

~~1.50~~1.51 *"Schedules"* shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments thereto

~~1.51~~1.52 *"Relocation Assistance"* shall mean the ~~payment of~~payment of \$100,000 payable to Vincent DiCanio for peaceful surrender of the Property agreed upon prior to the filing of the Chapter 11 proceeding.

~~1.52~~1.53 *"Unimpaired"* shall mean, with respect to any Class, that such Class is not Impaired.

~~1.53~~1.54 *"Unsecured Claim"* shall mean any Claim which is not an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date and includes, without limitation, Claims based upon pre-petition trade accounts payable or Claims based upon the rejection of an executory contract during the pendency of the Chapter 11 Case.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit or schedule means such document, exhibit or schedule as it may have been amended, restated, revised, supplemented or otherwise modified. If a time or date is specified for any payments or other distribution under the Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral.

**ARTICLE II**  
**DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS**

2.1 Allowed Administrative Claims other than Claims of Professionals. Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor’s estate, and all fees and charges assessed against the Debtor’s estate pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These

Allowed Claims shall be paid in Cash on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter.

2.2 Allowed Administrative Claims of Professionals. These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Allowed Administrative Claims of the Professionals shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, (ii) the Effective Date, or (iii) the Sale Closing Date, unless waived or otherwise agreed by the administrative claimant.

2.3 United States Trustee's Fees. These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor or by Mr. DiCanio personally. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the entry of a final decree closing the Chapter 11 Case.

Allowed Priority Tax Claims. Priority tax claims are unsecured income, employment, sales and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Priority tax claims are unsecured income, employment, sales, and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable

thereafter. The Debtor estimates these Claims to total approximately \$0. The IRS has filed a claim for an estimated tax relating to a previously unfiled return. The return has since been filed, showing no tax due. If the IRS does not withdraw the claim the Debtor will file a motion to expunge it.

**ARTICLE III**  
**DESIGNATION OF CLAIMS AND INTERESTS**

3.1 Classification of Claims. All Claims against the Debtor, of whatever nature, whether or not scheduled or liquidated, absolute or contingent, and all Interests arising from the ownership of the Debtor whether resulting in an Allowed Claim or an Allowed Interest or not, shall be bound by the provisions of the Plan, except those described in Article II of this Plan, are classified in Section 3.2 hereof.

A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class or Classes to the extent any remainder of the Claim or Interest qualifies within the description of that different Class or Classes. Unless otherwise provided, to the extent a Claim or Interest qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

3.2 Classes. For purposes of the Plan, those persons holding Claims against, or Interests in, the Debtor are grouped in accordance with section 1122 of the Bankruptcy Code.

**Class 1: Allowed Non-Tax Priority Claims:** Class 1 consists of Allowed Priority Claims, excluding Allowed Priority Tax Claims, entitled to priority pursuant to any subsections of Bankruptcy Code section 507(a)(3) through (a)(7).

**Class 2: Allowed Secured Claim (Pennymac):** Class 2 consists of the Allowed Secured Claim of consists of the Allowed Secured Claim of Pennymac, scheduled by the Debtor in the amount of \$2,660,516.25.

**Class 3: Allowed Secured Claim (People's United Bank)**

Class 3 consists of the Allowed Secured Claim of People's United scheduled by the Debtor in the amount of \$850,000. People's United has filed a claim in the amount of \$1,291,299.58.

**Class 4: Allowed Priority claims:** Class 4 consists of the priority unsecured claims.

**Class 5 Unsecured nonpriority claim** – Class 5 consists of the nonpriority unsecured claims.

**Class 6: Interests:** Class 6 consists of all Interests in the Debtor. Said interests are deemed cancelled and they are deemed to reject the Plan.

**ARTICLE IV**  
**TREATMENT OF CLASSES UNDER THE PLAN**

**Treatment of Claims and Interests.** The treatment of and consideration to be received by holders of Allowed Claims and Interests pursuant to Article IV of the Plan shall be in full satisfaction, release and discharge of their respective Claims or Interests against the Debtor or, whether or not a holder of a Claim or Interest receives a distribution under the Plan.

4.1 **Class 1:** The Debtor shall pay to the holders of Allowed Class 1 Non-Tax Priority Claims the amount of their Allowed Claim in full and in Cash on the later of the Effective Date or the Sale Closing Date from the Plan Distribution Fund, in full and final satisfaction of such

Claims as against the Debtor. Class 1 Claims are not Impaired under the Plan and are deemed to accept the Plan.

4.2 Class 2: The Class 2 Claim held by Pennymac shall be paid \$1,500,000.00 less a 6% brokerage commission on closing. Class 2 Claims are Impaired. However they have previously agreed to accept this treatment and are deemed to accept the Plan as a consenting senior class.

4.3 Class 3: The Class 3 Claim held by People's United shall receive no distribution under the Plan. Class 3 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor.

4.4 Class 4: Class 4 consists of allowed priority unsecured creditors. The Debtor does not believe there are such claims. If there are they shall be paid in full on confirmation. See 11 U.S.C. §1129(a)(9)(C).

4.5 Class 5. Class 5 consists of allowed general, nonpriority unsecured creditors. The Debtor does not believe there are such claims. receive no distribution under the Plan. Class 5 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor..

4.6 Class 6: Class 6 iinterests shall receive no property on account of their claims and interest and, as such, are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor.

**ARTICLE V**  
**ACCEPTANCE OR REJECTION OF THE PLAN**

5.1 Impaired Classes Vote. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

5.2 Presumed Acceptance of the Plan. Classes 1 and 4 are not Impaired under the Plan and are, therefore, conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

5.3 Voting Class. Class 2 is Impaired, and the holders of Allowed Claims in Class 2 are entitled to vote on the Plan.

5.4 Deemed Rejecting Classes. Classes 3 and 5 claim holders and Class 6 Interest Holders are deemed to reject the Plan. If the Plan is to be confirmed, the Plan must be confirmed pursuant to 11 U.S.C. §1129(b)

**ARTICLE VI**  
**MEANS FOR EXECUTION**

6.1 Distribution of Cash. Upon sale of the Property, the proceeds shall be distributed to the Class 2 Creditor net of (a) \$100,000 for peacefully vacating the Property; and (b) a 6% brokerage commission to DiCanio Realty.

6.2 Means For Implementation. The Plan will be implemented through the sale of the Property.

**(a) Free and Clear of all Liens, Claims and Encumbrances.** The Purchaser shall acquire upon



the Sale, and the Debtor shall convey, all of the right, title and interest that the Debtor possesses as of the closing in and to the Property and Lease free and clear of all pre-closing liens, Claims, encumbrances, other interests, debts, causes of action, Interests, obligations, liabilities, and charges of any kind, nature or description whatsoever, whether fixed or contingent, legal or equitable, perfected or unperfected except as expressly provided in the APA pursuant to Sections 363(b), (f), (k) and (m) and 1123(b)(4) and 1129 of the Bankruptcy Code (collectively, the “Liens and Claims”). All persons and entities asserting Liens and Claims of any kind or nature whatsoever against or in Debtor or the Property or the Lease, including but not limited to the Class 1 and Class 2 and Class 3 Claim holders and Class 4 Interest holders, arising under or out of, in connection with, or in any way relating to, the Debtor, the Property, the Lease, or the transfer of the Property and the Lease to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting such Liens and Claims against the Purchaser, its successors or assigns, its property, or the Property or Lease.

6.1 **(b) Tax Exemption.** This Plan expressly contemplates the Sale of the Property on or after the Effective Date. The post-Effective Date Sale shall therefore not be taxed under any law imposing a stamp or similar tax as provided for in Section 1146(a) of the Bankruptcy Code including (a) the transfer of the Property; (b) the assignment of the Lease; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest by the Debtor; or (c) the making or delivery of any deed or other instrument or transfer under, in furtherance of, or in connection with the Plan. All such transfers, assignments and sales will not be subject to any stamp tax, or other similar tax held to be a stamp tax or other similar tax by applicable law..

6.2 Continuing Existence. All matters provided under this Plan, including all corporate action to be taken or required to be taken by the Debtor, and the execution of all necessary documents shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement or further action by members of the Debtor. From and after the Effective Date, the Debtor shall continue in existence for the sole purposes of (i) winding up its affairs as expeditiously as reasonably possible, (ii) resolving disputed Claims, if any, (iii) administering this Plan, and (vi) filing appropriate tax returns. Following the Effective Date, the Debtor shall not engage in any business activities or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Debtor.

6.3 Vesting of Assets. As of the Effective Date, and except as otherwise provided in the Plan, all Estate assets shall vest in the Debtor with the Property to be transferred to the Purchaser, free and clear of all liens, claims and interests of any kind or nature whatsoever (except as expressly provided in the APA). Except as otherwise set forth in the Plan, all Causes of Action shall survive Confirmation, and the commencement and/or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable or otherwise.

6.4 Payment of Professionals for Post-Confirmation Date Services and Reimbursement of Expenses. The reasonable compensation and out-of-pocket expenses incurred post-Confirmation by the Disbursing Agent and Professionals retained in the Chapter 11 Case for post-Confirmation services (other than services related to Avoidance Actions, compensation for which is exclusively governed by Article IX of this Plan) shall be paid on behalf of the Debtor and/or waived by tsuch Professionals.

**ARTICLE VII**  
**EXECUTORY CONTRACTS**

7.1 The Debtor has no executory contracts to assume or reject other than the Lease. The Lease shall be assumed by the Debtor and assigned to Purchaser under the terms of this Plan.

**ARTICLE VIII**  
**GENERAL AND MISCELLANEOUS PROVISIONS**

8.1 Modification of the Plan. The Debtor reserves the right, in accordance with section 1127(a) of the Bankruptcy Code, to amend or modify the Plan prior to Confirmation. After the Confirmation Date, the Debtor may, upon order of the Bankruptcy Court, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile and inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

8.2 Payment Dates. If any payment or act under the Plan is required to be made or falls on a date which shall be a Saturday, Sunday or a legal holiday, then the making of such payment or performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed timely.

8.3 Notices. Any notices to be forwarded under the Plan shall be in writing and sent by certified mail, return receipt requested, postage pre-paid; or by overnight mail or hand delivery, addressed as follows:

VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST  
c/o RATTET PLLC  
Robert L. Rattet, Esq.  
202 Mamaroneck Avenue  
Suite 300  
White Plains, New York 10601

The above notice parties may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt. Any payment required under the Plan shall be deemed to have been paid on the date when such payment is received.

8.4 Enforceability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any and all other provisions of the Plan.

8.5 Applicable Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the law of the State of New York.

8.6 Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon and inure to the benefit of the successors and assigns of such entity.

8.7 Reservation of Rights. Neither the filing of this Plan, nor any statement or provision contained herein, shall be or be deemed to be an admission against interest. In the event that the Effective Date does not occur, neither this Plan nor any statement contained herein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case.

8.8 U.S. Trustee Fees and Monthly Operating Reports. After Confirmation, the Debtor will pay or cause the payment of fees, and any applicable interest, incurred pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. section 3717 and will file or cause the filing with the Bankruptcy Court and serve or cause service on the U.S. Trustee of monthly operating reports while the Chapter 11 Case remains open, unless the Bankruptcy Court orders otherwise.

**ARTICLE IX**  
**RESOLUTION OF DISPUTED CLAIMS & RESERVES**

9.1 Objections. An objection to either the allowance of a Claim, the cure amount due to the Landlord under 11 U.S.C. § 365(b) or an amendment to the Debtor's Schedules shall be in writing and may either be filed with the Bankruptcy Court or pursued and resolved by other means by the Debtor, at any time on or before the Effective Date, and for a period of 30 days thereafter, or within such other time period as may be fixed by the Bankruptcy Court for cause. The Debtor will object to and settle any Claims and shall settle, compromise or prosecute all Claims objections.

9.2 Amendment of Claims. A Claim may be amended prior to the Effective Date only as agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be amended as agreed upon by the holder thereof and the Debtor to decrease, but not increase, the face amount thereof.

9.3 Distributions to Holders of Subsequently Allowed Claims. Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the

Debtor shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan for such Allowed Claims at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.

**ARTICLE X**  
**AVOIDANCE ACTIONS**

The Debtor's estate will pursue all Avoidance Actions that should be pursued. The Debtor believes there are no such avoidance claims.

**ARTICLE XI**  
**EFFECT OF CONFIRMATION, DISCHARGE,**  
**SURRENDER AND CANCELLATION OF CLAIMS**

11.1 No Discharge Under the Plan. Since the Plan provides for the liquidation of the Debtor's assets, the Confirmation Order shall not include a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

11.2 Exculpation. *Except as otherwise specifically provided in this Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, or obligation, cause of action or liability for any Exculpated Claim, and shall be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. Each Exculpated Party and their respective affiliates, agents, directors, members, officers, officials, employees, advisors*

*and attorneys have, and upon the Effective Date shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and applicable non-bankruptcy law and shall not be liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute and may be submitted as a complete defense to any claim or liability satisfied, enjoined or subject to exculpation pursuant to Article XI of the Plan; provided, however, that nothing in the Plan shall, or shall be deemed to, release Debtor, the members of the Debtor, or exculpate the Debtor, the members of the Debtor with respect to, its obligations or covenants arising from bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Upon Confirmation, Creditors will be unable to pursue any claims that are satisfied, enjoined or subject to exculpation under the Plan, but creditors may pursue claims against the Debtor that may arise in the future, or pursuant to the Plan. Any such liability against the Debtor's professionals will not be limited to their respective clients contrary to the requirement of DR 6-102 of the Code of Professional Responsibility.*

11.3 Confirmation Injunction. Effective on Confirmation, all persons who have held, hold or may hold Claims, with regard to all Classes of Claims are enjoined from taking any of the following actions against or affecting the Debtor or assets of the Debtor with respect to such Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:

- (i) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtor;
- (ii) Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor;
- (iii) Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or the Purchaser, the assets of the Debtor; and
- (iv) Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.

11.4 Nothing herein shall effect the terms and conditions of any separate order approving the sale of the Property, the Sale Order and all such terms and conditions shall be preserved and remain in full force and effect.

**ARTICLE XII**  
**DUTIES AND RIGHTS OF THE DISBURSING AGENT**

12.1 If the Debtor funds a confirmation fund, the Disbursing Agent shall be Rattet, PLLC.

12.2 The Disbursing Agent shall make and effectuate all distributions required under the Plan and be responsible for the liquidation of the Debtor's remaining assets and administration of the Plan.

12.3 The Disbursing Agent shall open and maintain, in accordance with this Plan, an interest bearing bank account in which all Cash received for purposes of distribution shall be deposited in accordance with section 345 of the Bankruptcy Code and as provided herein. The Disbursing Agent shall not be liable for any distributions made in accordance with this Plan.



Unless otherwise ordered by a Final Order of the Bankruptcy Court or otherwise provided in this Plan, the record date for distributions shall be the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

12.4 To the extent that the Disbursing Agent shall maintain the Plan Distribution Funds in an attorney escrow account, there is no need for the Disbursing Agent to obtain a bond.

12.5 The Disbursing Agent shall not be liable to the Debtor, the Buyer, any creditor or any other person, firm or corporation, for any error of judgment or for any mistake of law or fact or any act done, caused to be done, or omitted to be done, by the Disbursing Agent or any of its agents. The Disbursing Agent shall be liable only for acts of willful misconduct, gross negligence or breach of fiduciary duty by itself or such agents.

**ARTICLE XIII**  
**DISTRIBUTIONS AND UNCLAIMED PAYMENTS**

9.1 Distributions to holders of Allowed Claims shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court, or, if no proof of claim is filed, on the Schedules, or to such other address as may be designated by such Creditor in writing to the Debtor or the Disbursing Agent. A payment is to be deemed unclaimed if the payment on the distribution is not negotiated by the particular claimholder within 120 days of it being sent by the Debtor.

9.2 If, after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under

the Plan, and such unclaimed distributions shall be distributed in accordance with Article III of this Plan unless and until such unclaimed distributions total less than \$5,000, at such time will be deemed available for post-Effective Date Professional Fees., with the balance to be paid to holders of Class 4 Interests.

**ARTICLE X**  
**CONDITIONS PRECEDENT TO CONFIRMATION OF PLAN**  
**AND EFFECTIVE DATE**

10.1 Conditions to the Occurrence of Confirmation. The occurrence of Confirmation shall be subject to the entry of the Confirmation Order.

10.2 Conditions to the Occurrence of the Effective Date. The Plan may not be effective until the entry of the Confirmation Order as a Final Order that remains in full force and effect and shall not have been stayed or reversed.

10.3 Non-Occurrence of the Effective Date; Non-Waiver of Conditions. In the event that the Debtor determines that the conditions to the Effective Date set forth in the immediately foregoing paragraph of this Plan cannot be satisfied, the Debtor may propose a new plan, may modify this Plan as permitted by law, or may request other appropriate relief.

**ARTICLE XI**  
**EVENTS OF DEFAULT**

11.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under the Plan (“Event of Default”):

(a) The failure of the Debtor, after receipt of fourteen (14) business days written notice, to make any payment required to be made under the Plan, which failure, prior to the receipt of the fourteen (14) days written notice, shall have remained uncured for a period of thirty (30) days after the date such payment is required to be made, unless the time for such payment has been extended in accordance with the Plan.

(b) The failure of the Debtor to comply with any of the other covenants contained in the Plan, which failure shall remain uncured for a period of thirty (30) days after the Debtor has received fourteen (14) days written notice of such failure.

(c) The failure to close on the Sale on or before June 30, 2018.

16.2 Effect of Default. In the event that the Debtor defaults under the provisions of the Plan, and such default is not cured, then, at the option of any creditor or the United States Trustee, a motion may be filed with the Bankruptcy Court seeking an Order of the Bankruptcy Court compelling the Debtor to make such payment or act in a manner consistent with the provisions of the Plan or seeking the conversion of the Chapter 11 Case to a Chapter 7 proceeding.

**ARTICLE XII**  
**VOTING**

12.1 Blank Ballots. Any ballot which is executed by the holder of an Allowed Claim or Interest but which does not indicate an acceptance or rejection of the Plan shall be deemed to be an acceptance of the Plan.

12.2 Deemed Acceptance. Any Impaired Class which fails to vote either to accept or reject the Plan shall be deemed to accept the Plan.

**ARTICLE XIII**  
**POST-CONFIRMATION REPORTS**

13.1 The Debtor, through the Disbursing agent, shall be responsible for filing post-Confirmation reports with the Bankruptcy Court and shall pay all quarterly fees required under 28 U.S.C. section 1930 until the earlier of (a) conversion or dismissal of the Chapter 11 Case or (b) entry of a final decree closing the Chapter 11 Case.

**ARTICLE XIV**  
**RETENTION OF JURISDICTION**

- 14.1 The Bankruptcy Court shall retain jurisdiction of the Chapter 11 case:
- (a) To determine all controversies relating to or concerning the allowance of Claims upon objection to such Claims by the Debtor;
  - (b) To determine requests for payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees;
  - (c) To determine any and all applications, adversary proceedings, and contested or

litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 157 and 1334;

(d) To determine all Disputed Claims and amendments to the Debtor's Schedules;

(e) To adjudicate controversies or interpretations pursuant to any order or stipulation entered by the Bankruptcy Court prior to Confirmation;

(f) To modify this Plan pursuant to section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Code;

(g) To make such orders as are necessary or appropriate to carry out the provisions of this Plan;

(h) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of this Plan;

(i) To determine any issues concerning the APA and to issue and enforce injunctions or take other actions necessary to implement the APA, this Plan, and the transfers of the Assets to the Buyer free and clear of all liens, claims, encumbrances and other interests; and

(j) To enter a final decree closing the Chapter 11 Case.

Dated: Nissequogue, New York  
April 18, 2018

VINCENT DICANIO QUALIFIED PERSONAL  
RESIDENTIAL TRUST

By: Vincent DiCanio  
Vincent DiCanio, Managing Member

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By: /s/ Robert L. Rattet  
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