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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
PIERSON LAKES HOMEOWNERS ASSOCIATION, INC.,	:	Case No. 18-22463-rdd
Debtor.	:	

DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT

I. INTRODUCTION

This is the first amended disclosure statement (the "Disclosure Statement") in the small business chapter 11 case of Pierson Lakes Homeowners Association (the "Debtor" or "PLHA"). This Disclosure Statement provides information about the Debtor and the first amended plan of reorganization filed on October 16, 2018 (the "Plan"). There are classes under the Plan that are impaired and entitled to vote on the Plan. A copy of the Plan is attached as Exhibit "A." Your rights may be affected. You should read the Plan and this Disclosure Statement carefully. You may wish to consult an attorney about your rights and your treatment under the Plan.

The proposed distributions under the Plan are discussed in Section III of this Disclosure Statement. There are two (2) classes of secured claims which will be paid, in full. General unsecured creditors are classified in Classes 3, 4 and 5 of the Plan. Creditors in each unsecured class will receive a distribution of 100% of their allowed claims.

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case;
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the Plan is confirmed);
- Who can vote on or object to the Plan;
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan;
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation; and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. A separate order has been entered setting forth the following information:

1. Time and Place of Hearing to Approve Disclosure Statement

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on December 17, 2018 at 10:00 a.m. at the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains New York 10601, in Courtroom 118.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Goetz Fitzpatrick LLP, Attn: Gary M. Kushner, Esq., One Penn Plaza, 31st Floor, New York, NY 10119. Your ballot must be received by December 3, 2018 or it will not be counted, unless otherwise agreed to by the Debtor or determined by order of the Court.

3. Deadline for Objecting to the Adequacy of Disclosure Statement and Confirmation of the Plan

Objections to this Disclosure Statement or to confirmation of the Plan must be filed with the Court and served upon the following so as to be received by 5:00 p.m. on December 6, 2018:

(i) the Debtor and Debtor's counsel;

(ii) the Office of the United States Trustee; and

(iii) parties that filed requests for notice in accordance with Bankruptcy Rule 2002(i).

Addresses of all persons or entities who are entitled to notice of any objection to this Disclosure Statement or to confirmation of the Plan can be obtained by request emailed to Scott D. Simon, Esq. at ssimon@goetzfitz.com.

4. Contact Information

If you want additional information about the Plan or the voting procedure, you should contact:

Goetz Fitzpatrick LLP
Attorneys for Debtor
One Penn Plaza, 31st Floor
New York, NY 10119
Attn: Gary M. Kushner – gkushner@goetzfitz.com
or Scott D. Simon – ssimon@goetzfitz.com

C. Disclaimer

The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.

II. BACKGROUND

A. Description and History of the Debtor's Business

The Pierson Lakes Development (the "Development") is an exclusive residential development located in Sloatsburg, New York in the town of Ramapo. The Development is a gated community on approximately 1,064 acres that contains wooded nature areas and two lakes of approximately 100 acres each.

The Development is presently divided into three phases (hereinafter referred to as "Phase I," "Phase II," and "Phase III"). The Development was originally owned by Ramapo Land Company, Inc. On or about July 31, 1989, Ramapo Land Company filed a declaration (the "Declaration"), offering plan and by-laws (the "By-laws") that were accepted by the Attorney General of the State of New York on or about August 2, 1989. Thereafter, the offering plan was recorded in May 1990 in the Rockland County Clerk's Office. Subsequently, the offering plan

has been amended numerous times. (The offering plan, as amended, is hereinafter referred to as the "Offering Plan.")

In 2002, title to nine remaining unsold lots in Phase I, Phase II and an option to purchase Phase III of the Development was sold by Ramapo Land Company to the present sponsors, Pierson Project, LLC, Potake Lake, LLC, and Rock Hill LLC d/b/a Rock Hill Project (collectively, the "Sponsors"). That sale was approved by the Fourteenth Amendment to the Offering Plan on October 24, 2002.

From 2002 through approximately 2006, the Sponsors built high-end, luxury estate homes in Phase I of the Development. Phase I is comprised of 27 lots owned by "Members" or "Homeowners." Two additional lots are physically located outside of the geographic boundary of Phase I and obtain services for which they pay monthly dues.

Phases II and III of the Development are presently owned by the Sponsors, and consist of 49 approved undeveloped Lots. Phases II and III contain vacant land, without necessary infrastructure items such as finished roads, sewers or utilities. The Sponsors also own one developed Lot (Lot 12) situated in Phase I of the Development.

The PLHA is a not-for-profit corporation organized under § 201 of the New York State Not-For-Profit Corporation Law. The PLHA manages the entire Development. The affairs of the PLHA are governed by a board of directors (the "Board") consisting of no fewer than three, nor more than seven persons, each of whom must be a Member of the PLHA. Presently, the Board consists of five (5) Members, four (4) of which are elected representatives of Homeowners and one (1) of which is appointed by the Sponsors.

Each Lot has one membership interest in the PLHA. However, in accordance with the New York State Not-For-Profit Corporation Law, in no event may more than one vote per

Member be cast at any vote of the PLHA. Janet Martin, Sean Rice, Bennett Rice and Melanie Feinman own multiple Lots in the Development, but each is only entitled to one vote per the aforementioned statute. Consequently, there are only twenty-three (23) votes in the Development.

The PLHA owns, operates and maintains the common areas of the Development and the facilities located thereon. The common areas include but are not limited to the security guardhouse, the gatehouse, the boathouse, private roadways, the fire protection system, hiking trails, bridle paths, certain septic tanks, lakes, greenbelt and wooded and landscaped areas.

The Offering Plan gives each Member of the Development an easement in and to the lakes, trails and other facilities comprising the common areas for the Member and its guests. The Offering Plan also makes provision for various easements in favor of the PLHA and the Sponsors including, in the case of the Sponsors, the extension of easements necessary for the completion and sale of the undeveloped Lots in Phase II and Phase III.

The day-to-day management of the Development is handled by Wilkin Management Group, Inc. (“Wilkin” or “Management Company”), a professional management company with which the PLHA has contracted. In turn, the Management Company has contracted with various service providers to maintain, repair and improve the common areas of the Development. The PLHA has sole responsibility for providing essential services like fire protection, security, street lights, snowplowing, landscaping, and garbage disposal. The Town of Ramapo provides no services to the Development.

The use of a Lot and the common areas in the Development are subject to various covenants and restrictions contained in the Declaration and Offering Plan. These covenants include the obligation of each Lot owner to pay maintenance and to fund reserves for

implementing various capital improvement projects required at the Development. Homeowners are responsible for the payment of a *pro rata* portion of the PLHA's expenses arising from the operation and maintenance of the common areas, including the cost of the services rendered by the Management Company. The costs and expenses of operating the PLHA and of making capital improvements, if any, are – with limited exception for the Sponsors – allocated equally among the seventy-four (74) Lots in the Development.

The PLHA establishes an annual budget to address the expected costs of maintaining the Development. The approved budget is funded monthly by the payment of dues collected by the PLHA from Lot owners. The PLHA also has the right to seek Homeowners' approval for the imposition of a special assessment. Special assessments require voting approval from two thirds (2/3) of the Homeowners.[1]

When the Sponsors became involved with the Development in 2001, the PLHA was negotiating the settlement of a lawsuit it had brought against Ramapo Land Co. The lawsuit dealt primarily with repair of the Development's infrastructure. Through the course of the lawsuit and the Sponsors' entry into the Development, the Sponsors entered into several settlement agreements with the PLHA and Ramapo Land Co. These included agreements entered into in 2001 (the "2001 Agreement"), 2002 (the "2002 Agreement"), 2004 (the "2004 Agreement") and 2011 (the "2011 Agreement"). These settlement agreements ultimately became the subject of extensive litigation between the Sponsors and the PLHA, described in more detail below.

The 2011 Settlement Agreement resolved two prior lawsuits involving disputes between the PLHA and the Sponsors primarily related to interpretation of the PLHA's Declaration and

[1] In lieu of paying special assessments, the Sponsors are liable to the PLHA for payment of $15,000 per Lot upon the sale of the first 25 Lots in Phases II and III. The Sponsors do not vote on special assessments, as they are exempt from paying special assessments under the 2001 Agreement (as defined herein).

other governing documents. The 2011 Agreement expressly amended the Declaration and set forth the manner in which the parties and the Development would move forward.

The 2011 Agreement (1) specified how the PLHA's budget would be set; (2) incorporated the 2001 Agreement; (3) specified the responsibilities of the Sponsors and the PLHA for Phase I road work; (4) required that the Sponsors use their best efforts to obtain all necessary approvals for the Development while acknowledging that the method for obtaining these approvals was within the sole discretion of the Sponsors; (5) defined "Final Approval" upon which the PLHA's budget structure changed to include the Sponsors' payment of new costs associated with services for Phases II and III; (6) confirmed the provision in the Declaration prohibiting blanket liens; (7) contained a dispute resolution mechanism that included expedited arbitration to resolve disputes regarding, among other things, the payment of additional funds; and (8) provided that in the event of future legal proceedings, the prevailing party would be entitled to receive costs and fees. The 2011 Agreement also addressed the application process with respect to the Sponsors' construction of a new guardhouse, new entrance/exit gates and related roadway modifications for the Development. Most pertinent to the Sponsors, the 2011 Agreement provides, *inter alia*, that the PLHA (i) accepted Sponsors' Preliminary Subdivision Approval; (ii) shall support all applications for Final Approval, as defined in the Agreement, to the Town of Ramapo or any other permitting agency; and (iii) shall not directly or indirectly take a position to oppose, delay or obstruct any applications for Final Approval or any submission to any permitting agency, including the Attorney General's Office. The 2011 Agreement further incorporated and attached the 2001 Agreement, in which the PLHA agreed to "not take any action which will hinder and/or adversely impact the ability of the [Sponsors] to market or sell the Lots or Homes…"

After disputes arose between the PLHA and the Sponsors in 2013-14 regarding interpretation of the 2011 Agreement, which culminated in the PLHA filing a lien for approximately $805,000 against all of the 50 Lots owned by the Sponsors, the Sponsors brought an action to enforce the 2011 Agreement.

By order of the Rockland County Supreme Court, and pursuant to the arbitration clause of the 2011 Agreement, the PLHA was compelled to arbitration and the parties held a 12-day arbitration spanning August 2015 to November 2015, and then two days of hearings in July and August 2016. The arbitration was before Ira Warshawsky, Esq. (the "Arbitrator"), a retired Judge in the Nassau County Supreme Court, Commercial Part. The Arbitrator issued four separate written decisions, dated April 8, 2016 (the "Decision"), December 31, 2016 (the "Damages Decision"), and May 12, 2017 (the "Legal Fee Decision"), and May 26, 2017 (the "Supplemental Decision") (collectively the "Award").

The Arbitrator found that the PLHA breached the 2011 Agreement and the 2001 Agreement by, *inter alia*, (i) contacting the Office of the Attorney General to obstruct the Sponsors' approval process, (ii) asserting improper assessments against the Sponsors, and (iii) interfering with the Sponsors ability to market and sell Lots.

The Arbitrator also found that the Sponsors had breached a provision of the 2011 Agreement requiring them to make certain planning board applications simultaneously.

In the Decision and the Damages Decision, the Arbitrator ruled that the PLHA had forfeited $470,000 in escrow funds under the 2011 Agreement and that it was required to give the Sponsors a credit of $470,000 plus statutory interest of 9% to be credited against future assessment payments due from the Sponsors to the PLHA. The Arbitrator also ruled that in addition to the foregoing credit, the net damages in favor of the Sponsors was **$1,484,331.10**.

In the Legal Fee Decision, the Arbitrator awarded Sponsors, as the prevailing party, legal fees and costs in the amount of $608,278, plus stenographer's fees in the amount of $5,113, plus 50% of all fees paid by the Sponsors to National Arbitration and Mediation, Inc. for a total award of **$664,183.57.**

Then, in the Supplemental Decision, the Arbitrator ruled that the PLHA could not directly or indirectly require the Sponsors or their successors in interests (the future owners of the Sponsors' Lots) to pay any portion of the Award to the Sponsors.

The Supplemental Decision also determined that the Phase I Homeowners do not have joint and several liability for the payment of the Award.

B. Events Leading to Chapter 11 filing.

On July 5, 2017, the Sponsors filed a petition in the Supreme Court of the State of New York, County of Rockland (the "State Court"), bearing index number 032944/2017, to confirm the Award. On or about August 5, 2017, the PLHA filed a cross-petition seeking to vacate the Award.

By Decision and Order of the State Court (Hon. Rolf M. Thorsen) dated February 7, 2018, and entered in the Rockland County Clerk's office on February 8, 2018, the Award was confirmed.

Immediately after the State Court confirmed the Award, the Sponsors submitted a proposed form of judgment to the State Court providing, among other things, for a money judgment in the amount of $2,148,514.67 against the PLHA, plus interest at the rate of nine percent (9%) per annum accruing from and after May 26, 2017, the date of the Awards, to the date of entry of the judgment.

The PLHA filed a proposed counter-judgment in the State Court seeking to challenge various aspects of the Sponsors' proposed judgment. The State Court did not enter either proposed judgment following confirmation of the Award. Entry of a judgment by the State Court was automatically stayed under § 362 of the Bankruptcy Code upon the filing of the Debtor's voluntary chapter 11 petition. Had the State Court entered judgment, the Sponsors would have been empowered to levy on the PLHA's operating and reserve bank accounts. These accounts contain the funds that allow the PLHA to maintain and safeguard the Development's common areas. If the PLHA were unable to access its funds to provide these services, the integrity of the Development would be put at risk.

Following entry of the Award, the PLHA reached out to the Sponsors' counsel in an attempt to negotiate a settlement that included a forbearance agreement. The PLHA's proposal was rejected by the Sponsors, and there was no forbearance offered. As a result, the PLHA's ability to provide essential services to the Development was put in peril. If a judgment was entered against the PLHA in favor of the Sponsors, the PLHA had the choice of either paying it or filing chapter 11. The PLHA did not have sufficient funds available to pay the Award.

Consequently, the Debtor filed a voluntary petition for relief from its creditors on March 27, 2018 (the "Petition Date"). Upon the chapter 11 filing, the Debtor received the benefit of the automatic stay under § 362(a) of the Bankruptcy Code which, among other things, enjoined the Sponsors from entering judgment or otherwise enforcing their claim against the PLHA.

The chapter 11 filing provided the Debtor with a breathing spell to craft a plan of reorganization that accounts for the payment of the Sponsors' allowed claim without hamstringing the PLHA's ability to maintain the Development and secure the well-being of the Homeowners who depend on various essential services.

C. Insiders of the Debtor

The insiders of the Debtor consist of the Members in the Development, which include the Sponsors.

D. Management of the Debtor During the Bankruptcy

The general management of the PLHA during the chapter 11 has been undertaken by the present Board.[2] The Board presently consists of the following individuals:

Name	**Title**
Sean Rice	President
Dennis Grande	Treasurer
Janet Martin	Vice President and Secretary
Al Geis	At-Large
Greg Sarkissian	Sponsor's Representative

Composition of the Board is voted upon at an annual meeting. Future management of the PLHA will be conducted by the reconstituted Board elected at the annual meeting.

The day-to-day management of the PLHA's business and affairs has been handled by Wilkin, whose present duties include:

1. Bill and collect maintenance charges and, when authorized by the Board, to demand and/or file suit for any arrears.

2. Cause the common areas of the Development to be maintained, repaired or altered as may be necessary.

3. Engage and pay all help or employees which the Board deems necessary to operate and maintain the common areas of the Development.[3]

[2] Although the Sponsors are designated as a perpetual member of the Board, the Board will not affirmatively seek the Sponsors' participation on voting matters due to the contentious nature of the relationship unless (a) the Sponsors' vote is required to break a voting deadlock; or (b) a Board proposal requires unanimous consent. For purposes of all other voting scenarios, it will be assumed that the Sponsors' vote will be opposite to the majority vote on all matters brought before the Board for approval.

4. Purchase all supplies and equipment and provide all services necessary and pay for all insurances as directed by the Board.

5. Maintain the PLHA's books and records and attend the meetings of the Board and meetings of the Members of the PLHA.

6. Furnish monthly reports of receipts and disbursements to the president and treasurer of the Board.

7. Assist chapter 11 counsel in the administration of the Debtor's chapter 11 case.

E. Significant Events During the Bankruptcy Case

1. **Pre-Petition Events and Secured Debt Structure**

The Debtor and Popular Bank f/k/a Banco Popular of North America ("PB" or "Lender") entered into two (2) loan transactions prior to the Petition Date.

The first transaction concerned a non-revolving line of credit which closed on October 1, 2013 in the principal amount of $650,000. The line of credit was subsequently converted into a term loan (the "First Loan"). The proceeds from the First Loan were utilized by the PLHA for a significant road improvement project within the Development.

The second transaction with PB concerned a term loan dated December 17, 2015 in the principal amount of $250,000 (the "Second Loan"). The proceeds of the Second Loan were utilized by the PLHA to pay legal fees incurred in connection with the arbitration with the Sponsors.

The PLHA has acknowledged that as of the Petition Date, the aggregate amount of indebtedness to PB totals $434,495.73 in principal, plus accruing interest and potential attorneys' fees. The Debtor was current in paying the First Loan and the Second Loan (collectively, the "PB Loans") as of the Petition Date. The Debtor has continued to make monthly payments on the PB

[3] The PLHA presently has no employees. All maintenance work at the Development is performed by independent contractors hired by the Management Company.

Loans since the Petition Date in accordance with the Final Cash Collateral Agreement (as defined herein).

PB has a first priority perfected security interest in and lien on the Debtor's assets including certain bank accounts maintained by the PLHA at PB, Mutual of Omaha and the post-petition debtor-in-possession accounts maintained at TD Bank.

The PLHA has the right to prepay the First Loan. However, in the event that the Debtor wishes to prepay the Second Loan, it will be required to pay PB a yield maintenance fee ("Prepayment Fee") equal to the present value of the daily lost cash flow to PB resulting from such prepayment based upon the difference between the interest accrued upon the unpaid principal balance in accordance with a formula more particularly explained in the underlying note. Notwithstanding the above, the Prepayment Fee would not be due from the PLHA if the funds used to prepay the Second Loan come from proceeds generated from an assessment against the Homeowners.

The term of the First Loan ends on October 1, 2024. The Debtor makes principal and interest payments in the amount of $3,472.38 per month. Interest on the First Loan is floating, but in no event less than four (4%) percent per annum. The term of the Second Loan ends on January 1, 2026. The Debtor makes principal and interest payments on the Second Loan in the amount of $2,626.01 per month. Interest on the Second Loan is fixed at the rate of 5.125%. Combined, the Debtor pays PB the sum of $6,148.39 per month in connection with the PB Loans.

2. **Post-Petition Events**

(a) Order Setting Bar Date

In accordance with the requirements of Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtor filed its schedule of assets and liabilities, including schedules of all of its known creditors and the amounts and priorities of claims the Debtor believes are

owed to such creditors. Under Section 501 of the Bankruptcy Code, any creditor may also file a proof of claim or interest and, unless disputed by the Debtor, such filed proof of claim or interest supersedes the amount and priority set forth in the Debtor's schedules.

On April 19, 2018, the Debtor filed an application seeking an order establishing a deadline by which pre-petition creditors of the Debtor would be required to file claims against the estate [ECF No 26, the "Bar Date Application"]. By order dated April 23, 2018 [ECF No. 28, the "Bar Date Order"], the Court established June 28, 2018 as the last day for creditors to file claims against the estate (the "Bar Date"). Creditors are no longer entitled to file proofs of claim against the Debtor's estate. The Debtor is now evaluating whether any claims are subject to disallowance, in whole or in part.

(b) Applications to Employ Professionals

Section 327(a) of the Bankruptcy Code provides that a debtor, with Bankruptcy Court approval, may employ one or more professional persons that do not hold or represent an interest adverse to a debtor's estate and are "disinterested" persons. During the course of the chapter 11 case, the Debtor has retained various professionals to assist it in carrying out its duties under the Bankruptcy Code (collectively, "Professionals").

On March 28, 2018, the Debtor filed an application to retain Goetz Fitzpatrick LLP ("GF") as its chapter 11 counsel [ECF No. 6]. GF's retention application was approved by order of the Bankruptcy Court dated May 2, 2018 [ECF No. 31].

On May 11, 2018, the Debtor filed an application to retain Watkins & Watkins, LLP ("Watkins") as Special Tax Certiorari counsel [ECF No. 36]. Watkins' retention application was granted by order of the Bankruptcy Court dated July 17, 2018 [ECF No. 49].

Compensation to all Professionals cannot be paid unless and until there is an order of the Bankruptcy Court approving such compensation. None of the Professionals have filed applications for allowance of interim compensation or reimbursement of expenses. The Professionals expect to file interim fee applications to be heard no later than the same day set for the hearing on confirmation of the Plan.

After the Effective Date of the Plan, the Debtor will continue to utilize its retained Professionals or employ additional Professionals, as needed, in order to administer its business and affairs.

(c) Use of Cash Collateral

As of the Petition Date, all cash and accounts receivable in the Debtor's possession or in which the Debtor has an ownership interest constitutes "cash collateral" of PB within the meaning of Sections 363(a) and 363(c)(2) of the Bankruptcy Code. Under the Bankruptcy Code, the Debtor was prohibited from utilizing cash collateral in order to operate its business after the Petition Date without either the express consent of PB or an order of the Bankruptcy Court.

By emergency motion filed on March 27, 2018, the Debtor sought approval from the Bankruptcy Court to use cash collateral on an emergency basis [ECF No. 3]. An emergency hearing on the Debtor's motion to use cash collateral was conducted by the Bankruptcy Court on March 30, 2018, at which time the Debtor was authorized to use cash collateral for a 15-day period. On April 11, 2018, the Bankruptcy Court entered an order approving the Debtor's continued use of cash collateral through April 26, 2018 [ECF No. 23, the "First Interim Cash Collateral Order"].

A second interim hearing on the Debtor's application to use cash collateral was held before the Bankruptcy Court on April 25, 2018. The Bankruptcy Court further approved the

Debtor's use of cash collateral at that hearing. A second interim cash collateral order was entered on May 7, 2018 extending the Debtor's right to use cash collateral on an interim basis through June 1, 2018 [ECF No. 35, the "Second Interim Cash Collateral Order"].

By stipulation negotiated in late April 2018, the Debtor and PB entered into a final agreement and consent order authorizing the Debtor to permanently use cash collateral and granting adequate protection to PB. The Bankruptcy Court approved the final cash collateral agreement on May 30, 2018 [ECF No. 40, "Final Cash Collateral Agreement"]. A true copy of the Final Cash Collateral Agreement is annexed hereto as Exhibit "B."

Under the Final Cash Collateral Agreement, the Debtor submits monthly budgets to PB for approval. The Debtor may use cash collateral in accordance with each approved budget. The Final Cash Collateral Agreement also provides the Debtor with flexibility to make emergency expenditures up to $10,000. The Debtor has agreed to provide PB with monthly compliance reports. The Debtor has also agreed to continue to make monthly payments to the Lender in an amount equal to the monthly payments due under the PB Loans.

In consideration for PB's agreement to allow the Debtor to use cash collateral, the Debtor has granted PB certain adequate protection liens which are described in greater detail in the Final Cash Collateral Agreement. *See* Exhibit "B," at ¶ "4."

(d) Removal of State Court Litigation with EONS Properties, LLC

On October 16, 2017, the Debtor commenced litigation in the Supreme Court of the State of New York, County of Rockland, against EONS Properties, LLC ("EONS"). The case was assigned Index No. 035039/2017 (the "EONS Action").

The Debtor's complaint in the EONS Action alleged that EONS is the owner of a lot in the Development, that EONS was invoiced for maintenance and special assessments and, since

March 8, 2017, EONS has failed and refused to pay the Debtor the amounts of such assessments. As of October 1, 2017, EONS owed the Debtor $30,539.46 in delinquent assessments, which amount was increasing at the rate of $1,755 per month, plus late fees of $9.92 per month, plus additional fees and attorneys' fees.

On January 28, 2018, EONS filed an answer with counterclaims in the EONS Action. EONS' counterclaims sought $900,000 plus interest based upon allegations that the Debtor's Board (as then constituted) breached its fiduciary duties to Homeowners and committed waste of its Members' and Homeowners' assets. Since the Petition Date, the EONS Action has been stayed by operation of the automatic stay arising under section 362(a) of the Bankruptcy Code.

On June 25, 2018, EONS filed a proof of claim in the Bankruptcy Case, asserting a claim for breach of fiduciary duty and waste in the amount of $900,000 (the "EONS Proof of Claim"). The EONS Proof of Claim was assigned Claim No. 11 by the Clerk of the Court.

On August 1, 2018, the Debtor filed a Notice of Removal of the EONS Action in the United States District Court for the Southern District of New York. Pursuant to Bankruptcy Rule 9027, the Debtor also filed a copy of the Notice of Removal in the state court where the action was pending. The EONS Action is now pending in the Bankruptcy Court under Adversary Proceeding No. 18-08278(rdd).

(e) Miscellaneous Events

The Sponsors filed an application dated May 7, 2018 requesting certain discovery of the Debtor pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") [ECF No. 34, the "Sponsors' Rule 2004 Application"]. The purported reason for the discovery sought by the Sponsors was to investigate the Debtor's financial information, including its transactions with the Lender.

On June 21, 2018, the Bankruptcy Court entered an order directing the Debtor to produce documents to the Sponsors [ECF No. 45]. On August 1, 2018, the Debtor produced documents to the Sponsors in compliance with the Rule 2004 order.

F. Projected Recovery of Avoidable Transfers and Other Causes of Action

The Debtor has investigated potential causes of action that could benefit the estate, including, among others, whether the Debtor can assert a claim against Chris Harrison ("Harrison") for providing substandard legal advice in connection with the Debtor's prior dealings with the Sponsors.

Harrison convinced the Board, as it existed in 2013, to provide him with an indemnification agreement which shielded him from any claims arising from his advice. The PLHA's Board has since been reconstituted.

The Debtor believes that it does not have viable claims against Harrison due to an indemnification agreement given by the Board as then constituted. The PLHA may also be unable to prosecute claims against Harrison because his legal advice to the PLHA Board occurred beyond the applicable statute of limitations for legal malpractice. The Debtor has investigated other actions arising under the Bankruptcy Code and believes it has no basis for pursuing preference, fraudulent conveyance or other avoidance actions.

The Debtor will continue to undertake collection activity against Homeowners who are delinquent on their dues. The Debtor has already removed the EONS Action, in which the Debtor asserts a claim for unpaid dues. The Debtor is also considering filing a lawsuit against Deborah Kurtzman, a homeowner who is several months late on dues.

G. Claims Objection

Except to the extent that a claim is already allowed pursuant to a final, non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed

for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The following claims have preliminarily been identified as objectionable:

- **Claim No. 3** filed by the IRS in the amount of $10,122.69 – of which $4,486.90 is filed as a priority claim. The Debtor is a not-for-profit entity which is not liable for income taxes at the federal, state or local level. It appears that Claim No. 3 is an estimated claim filed by the taxing authority because of one or more missing tax returns. Once the delinquent return(s) are filed, the Debtor believes that Claim No. 3 should be withdrawn without any liability to the estate.

- **Claim Nos. 8, 9 and 10** filed by the Sponsors, each in the amount of $2,903,469.75. The Sponsors are only entitled to one (1) single claim. Consequently, all but one of these claims should be expunged on the basis that they are duplicative. As to any remaining claim in favor of the Sponsors, it is the Debtor's belief that the amount of the filed claim is overstated. It is the Sponsors' position that their allowed claim totals $2,903,469.75 based upon the following items: (i) $1,484,331.10 (net award to Sponsors from arbitration); (ii) $608,278 (legal fees awarded to Sponsors in arbitration); (iii) $5,113 (Debtor's share of stenographers' fees advanced by Sponsors during Arbitration); (iv) $50,792.57 (50% of Sponsors' fees paid to arbitrator); (v) $161,580.08 (interest claimed by Sponsors between May 26, 2017 to Petition Date) (the "Interest Component"); and (vi) $593,375, representing the Debtor's replenishment of a reserve fund that had been established and funded by the Sponsors pursuant to the 2011 Agreement (the "Escrow Fund"). The Arbitrator held that the PLHA prematurely took $470,000 from the Escrow Fund. The Arbitrator further ruled that the Escrow Fund should be "repaid" to the Sponsors, with interest, by granting the Sponsors a credit against the payment of dues.

The Sponsors' Proof of Claim asserts that they are entitled to $593,375 in maintenance credits, which includes $123,375 in interest for the period February 1, 2014 through December 31, 2016. The Debtor believes that the Sponsors' Proof of Claim is overstated because the Sponsors did not pay dues to the PLHA from June 1, 2014 to the Petition Date. Thus, because the Sponsors have already taken maintenance credits as of the Petition Date, the remaining credit due to the Sponsors in connection with the Escrow Fund is less than the amount set forth in the Sponsors' Proof of Claim. Consequently, it is the Debtor's position that the Sponsors' Proof of Claim as filed must be reduced. The Sponsors recently notified the Debtor that they believe the remaining credit due as of the Petition Date is $339,043.00. The Debtor is presently reviewing the Sponsors' calculations.

In addition, the Debtor is investigating whether the Interest Component of the Sponsors' Claim in the amount of $161,580.08 is allowable. In the event the Interest Component is successfully challenged by the PLHA, the Sponsors' Proof of Claim should be further reduced. Claim No. 11 filed by EONS in the amount of $900,000. This claim was alleged as a "counterclaim" against the PLHA in connection with the EONS Action. EONS filed a proof of claim against the Debtor's estate in the amount of $900,000. This claim was alleged as a "counterclaim" against the PLHA in connection with the EONS Action, in which the Debtor has asserted a claim against EONS for unpaid HOA dues. The Debtor believes EONS' counterclaim has no basis in law or in fact and was merely alleged in retaliatory fashion. The Debtor further believes that the claim should be expunged in total.

The Debtor has submitted the EONS claim against the PLHA to its insurance carrier for coverage under a Director's and Owner's Liability Policy ("D&O"). Coverage under the D&O has been requested by the Debtor for legal fees incurred by the Debtor in defending the EONS

counterclaim as well as for any liability on the counterclaim. The Debtor has received preliminary indication that defense of the EONS Action is a covered claim under the D&O. The Debtor believes EONS' counterclaim has no basis in law or in fact and was merely alleged in retaliatory fashion. The Debtor further believes that the claim should be expunged in total. The Debtor has submitted the EONS claim against the PLHA to its insurance carrier for coverage under a Director's and Owner's Liability Policy ("D&O"). Coverage under the D&O has been requested by the Debtor for legal fees incurred by the Debtor's Board in defending the EONS counterclaim as well as for any liability on the counterclaim. The Debtor has received preliminary indication that defense of the EONS Action is a covered claim under the D&O.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in Exhibit "C." The source of this information comes from the Debtor's petition and schedules.

The most recent post-petition operating report filed in the Debtor's bankruptcy case is set forth in Exhibit "D." The remainder of the Debtor's operating reports are available from Debtor's counsel or via the Court's electronic filing system.

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Bankruptcy Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. Therefore, the Debtor has **not** placed the following claims in any class:

1. Administrative Expenses, Involuntary Gap Claims, and Quarterly Fees Due to the Office of the United States Trustee ("UST")

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case that are allowed under § 503(b) of the Bankruptcy Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition, and compensation for services and reimbursement of expenses awarded by the court under § 330(a) of the Bankruptcy Code. The Bankruptcy Code requires that all administrative expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment. Involuntary gap claims allowed under § 502(f) of the Bankruptcy Code are entitled to the same treatment as administrative expense claims. The Bankruptcy Code also requires that fees owed under section 1930 of title 28, including quarterly and court fees, have been paid or will be paid on the Effective Date of the Plan.

The following chart lists the Debtor's estimated administrative expenses, and quarterly and court fees, and their proposed treatment under the Plan:

Type	**Estimated Amount Owed**	**Proposed Treatment**
Administrative Expenses (Debtor's Professionals)	$200,000 (estimated)	Paid, in full, on the Effective Date of the Plan, unless the holder of a particular claim has agreed to different treatment

Statutory Quarterly Fees to the UST	$1,625 (estimated)	Paid, in full, on the Effective Date of the Plan[4]

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Bankruptcy Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim pursuant to 11 U.S.C. § 511, in regular installments paid over a period not exceeding five (5) years from the order of relief. The Debtor believes that there are no allowed priority claims.

C. Classes of Claims and Equity Interests

1. Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Bankruptcy Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim. The Debtor has included two (2) Classes of Secured Claims under the Plan, which are provided for in Class 1 and Class 2. The holders of Secured Claims are fully secured and their claims will not be bifurcated.

2. Classes of Priority Unsecured Claims

The Bankruptcy Code requires that with respect to a class of claims of a kind referred to in §§ 507(a)(1), (4), (5), (6), and (7), each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim, unless a particular claimant agrees to

[4] The Debtor shall continue to pay quarterly statutory fees to the UST until the entry of a final decree and closure of the chapter 11 case.

a different treatment or the class agrees to deferred cash payments. There are no classes of priority unsecured claims under the Plan.

3. Classes of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Bankruptcy Code. There are three (3) classes of general unsecured creditors under the Plan which are provided for in Class 3, Class 4 and Class 5.

4. Classes of Interest Holders

Interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. The Debtor is a not-for-profit corporation. The Members of the Debtor may be considered Interest holders and the treatment of their Interests are provided for in Class 6 of the Plan.

5. Summary of Proposed Treatment Under Plan

The following sets forth the Plan's proposed treatment of the classes of claims and interest holders:

(a) Class 1 - <u>Secured Claim of Popular Bank (First Loan)</u>

Class 1 consists of the Allowed Secured Claim of Popular Bank on the First Loan in the present principal amount of $225,176.85 (the "Allowed Class 1 Claim"). The Allowed Class 1 Claim shall be paid, inclusive of contract (non-default) interest set forth in the applicable loan documents, at the rate of $3,472.38 per month. These payments commenced in April 2018 and shall continue after the Effective Date of the Plan on the first day of each consecutive month thereafter until October 2024.

The holder of the Allowed Class 1 Claim shall retain its lien and security interest in the Debtor's property in accordance with the Final Cash Collateral Agreement [ECF No. 40; *see*

Exhibit "B" herein). The Debtor maintains the right to prepay the Allowed Class 1 Claim without prepayment penalty.

Class 1 is impaired under the Plan insofar as it will receive the contract rate of interest rather than the default rate of interest under the applicable loan documents. Class 1 is entitled to vote to accept or reject the Plan.

(b) Class 2 - Secured Claim of Popular Bank (Second Loan)

Class 2 consists of the Allowed Secured Claim of Popular Bank on the Second Loan in the present principal amount of $200,880.28 (the "Allowed Class 2 Claim"). The Allowed Class 2 Claim shall be paid in full, inclusive of contract (non-default) interest set forth in the applicable loan documents, at the rate of $2,626.01 per month. These payments commenced in April 2018 and shall continue after the Effective Date of the Plan on the first day of each consecutive month thereafter until January 2026.

The holder of the Allowed Class 2 Claim shall retain its lien and security interest on the Debtor's property in accordance with the Cash Collateral Agreement [ECF No. 40; *see* Exhibit "B" herein). The Debtor maintains the right to prepay the Allowed Class 2 Claim without prepayment penalty, so long as the funds to be used for such prepayment are generated from assessment(s) to Phase I Homeowners (excepting Lot 12).

Class 2 is impaired under the Plan insofar as it will receive the contract rate of interest rather than the default rate of interest under the applicable loan documents. Class 2 is entitled to vote to accept or reject the Plan.

(c) Class 3 - General Unsecured Convenience Creditors (Designated Under § 1122(b) of the Bankruptcy Code)

Class 3 consists of Allowed General Unsecured Convenience Claims. General Unsecured Convenience Claims means Allowed Claims that would otherwise be classified as General

Unsecured Claims but, with respect to each Allowed Claim either (i) the aggregate amount of such claim is less than $2,500.00; or (ii) the aggregate amount of such claim is reduced to $2,500.00 by agreement with holder of such claim.

Each holder of an Allowed Claim in Class 3 shall receive a 100% distribution on the Effective Date of the Plan in full and final satisfaction of their Allowed Claims. Class 3 claims are not entitled to interest on their Allowed Claims as they are being paid, in full, on the Effective Date of the Plan.

Class 3 is unimpaired under the Plan and is not entitled to vote to accept or reject the Plan.

(d) Class 4 - <u>General Unsecured Claim of the Sponsors</u>

Class 4 consists of the Allowed Claim of the Sponsors (the "Allowed Class 4 Claim"). The Sponsors shall receive a 100% distribution on the Allowed Class 4 Claim, plus post–Confirmation Date interest at the rate of 4.36%.

The Allowed Class 4 Claim shall be satisfied by giving the Sponsors a credit not greater than $339,043.00, representing the balance of the maintenance credit claimed by the Sponsors as of the Petition Date (the "Remaining Escrow Fund Credit") running from the Petition Date through and including approximately December 2019.[5] The remaining balance of the Allowed Class 4 Claim shall be paid in semi-annual installments commencing six (6) months after the Effective Date of the Plan, for a period of no greater than ten (10) consecutive years (the "Plan Term"), with interest at 4.36% (the "Semi-Annual Payments"). The Semi-Annual payments shall come from the proceeds of a special assessment, which must be approved by at least two-thirds (2/3) of the Members, and, if approved, will be levied following the Confirmation Date against all Lots situated in Phase I (excepting Lot 12 which is owned by the Sponsors) in the aggregate

[5] The Debtor believes that the Remaining Escrow Fund Credit is $332,623.00 The Debtor will attempt to reconcile this minor discrepancy with the Sponsors without the need to file an objection to the Sponsors' Claim.

principal amount of no less than $88,850.00 per Lot, plus interest to be amortized and billed semi-annually by the PLHA to the Phase I Lot owners (except Lot 12 owned by the Sponsors), in such amount as is required to pay accrued interest, including post–Confirmation Date interest, on the Allowed Class 4 Claim over the Plan Term (the "Special Plan Assessment"). The principal balance on the Allowed Class 4 Claim may be prepaid by the Debtor, in whole or in part, during the Plan Term without penalty or premium. The interest due on the Allowed Class 4 Claim over the Plan Term shall be readjusted semi-annually to account for any prepayments made by the Debtor. The first two (2) Semi-Annual Payments due on the Allowed Class 4 Claim shall be in the amount of up to $140,360.56 each. Thereafter, the amount of each remaining Semi-Annual Payment due on the Allowed Class 4 Claim during the Plan Term shall be readjusted annually to account for any pre-payments that may be made during the Plan Term.[6]

Class 4 is impaired under the Plan and is entitled to vote to accept or reject the Plan.

(e) Class 5 – <u>General Unsecured Claim of EONS</u>

Class 5 consists of the Allowed Claim of EONS.

The Allowed Class 5 Claim of EONS, if any, shall be paid from the proceeds of the D&O policy. In the event that the Allowed Class 5 Claim of EONS, if any, is not covered under the D&O policy, payment shall come from the proceeds of a special assessment of the Members and levied against all Lots situated in Phase I (excepting Lot 12 which is owned by the Sponsors)

[6] In the event the Debtor's objection to the Sponsors' proof of claim is not sustained such that the Allowed Class 4 Claim is greater than $2,552,744.75, the principal amount of the Special Plan Assessment chargeable to each Lot in Phase I of the Development shall be increased to enable the Debtor to make the necessary payments under the Plan. In the event that the Debtor's objection to the Sponsors' proof of claim results in an Allowed Class 4 Claim which is less than $2,552,744.75, the Special Plan Assessment may be reduced proportionally by the PLHA, at the PLHA's sole discretion. The PLHA shall prepare and submit to the holder of the Allowed Class 4 Claim annual schedules reflecting the proposed amortization of the Allowed Class 4 Claim by no later than sixty (60) days before the first Semi-Annual Payments due in each calendar year throughout the Plan Term. All unresolved disputes between the holder of the Allowed Class 4 Claim and the Debtor concerning the amortization schedule(s) shall be determined by further order of the Bankruptcy Court upon application of either party.

(the "EON Assessment") in the same proportional increments and payment terms described in Class 4 of the Plan.

Class 5 is unimpaired under the Plan and is not entitled to vote to accept or reject the Plan.

(f) Class 6 - Interest Holders

Class 6 consists of the Members of the PLHA. All present and future Members of the Development shall retain their ownership interest in their respective Lots and shall remain subject to the terms and conditions of the Declaration, the Offering Plan and the By-laws, as each may be amended. The Debtor believes that the Members of the PLHA are Unimpaired under the Plan and are not entitled to vote to accept or reject the Plan.

D. Means of Implementing the Plan

1. Source of Plan Payments

All assets and property of the Debtor shall revest in the reorganized Debtor on the Effective Date of the Plan including, without limitation, Causes of Action and all of the Debtor's rights, powers and duties under the Declaration, Offering Plan and the By-laws. Nothing shall be deemed or construed to alter, amend, modify or change the provisions of the Declaration, Offering Plan or the By-laws, except as otherwise expressly provided for in the Plan.

Distributions under the Plan will be funded by the collection of maintenance dues under authorized budgets approved by the Board, the Special Plan Assessment, recovery under the D&O Policy and/or the EONS Assessment, if required.

(a) Annual Budgets

Budgets are developed by the Board on an annual basis. Expenses covered under the annual budgets include short-term infrastructure maintenance, security services, property management services, accounting and legal services and long-term infrastructure replacement. In

preparing the budget each year, the Board's treasurer recommends those items that will be funded, in whole or in part, from reserves. A majority of the Board must approve the budget.[7]

(b) Special Assessments

In addition to establishing the annual budget, the PLHA may levy, in any assessment year, a special assessment (which must be fixed at a uniform rate for all Lots) applicable to that year only, in an amount no higher than the maximum annual assessment then permitted to be levied for purposes of capital improvements – that is, defraying, in whole or in part, the cost of any construction, unexpected repair or replacement of a described capital improvement, provided that any assessment shall have the consent of two thirds (2/3) of the vote of the Members. The Board shall continue to monitor the capital improvement needs of the Development and exercise its right to levy special assessments in accordance with the By-laws as and when such need arises. There are no special assessments for capital improvements required under the Plan. Between the collection of dues and special assessments, if any, the PLHA will be able to pay all of its future ordinary course debts and capital improvement projects as they become due or necessary.

Funding of remaining Plan obligations shall be made from the following sources:

(a) Administrative fee expenses including those owed for the Allowed Claims of Professionals shall be funded by an increase in the budget for the months of January, February, March and April 2019 payable by all Members of the Development. Payments to Professionals shall be made in accordance with orders of the Bankruptcy Court approving such Professional's compensation, after notice and hearing on a Professional's application for allowance of fees and expenses in accordance with Sections 327, 328 and 330 of the Bankruptcy Code. The anticipated

[7] The PLHA is mindful of certain budget item exemptions imposed by the Arbitrator in favor of the Sponsors. Nothing contained in this Plan shall alter the Arbitrator's rulings in this regard.

budget increase required for payment of allowed Professional fees is estimated to be approximately $3,000.00 for each of the 74 Lots in the Development.

(b) Class 1 and Class 2 of the Plan will be paid in the ordinary course of the Debtor's business from regular dues collected from Homeowners.[8] In the event the Debtor elects to prepay the Allowed Claim in either Class 1, Class 2 or both, the funds will come from the proceeds of a special assessment that must be approved by at least two-thirds (2/3) of the Phase I Homeowners and, if approved, shall be levied after the Confirmation Date against each Lot in Phase I of the Development (except Lot 12 which is owned by the Sponsors).

(c) Class 3 of the Plan consists of general unsecured convenience claims not exceeding $2,500.00. Each holder of an Allowed Class 3 Claim provided pre-petition work, labor or services that are ordinarily paid from the collection of regular dues. The Debtor estimates that the Allowed Claims in Class 3 of the Plan will not exceed $8,000.00. The Board intends to increase the annual budget for calendar year 2019 in order to generate funds needed to pay all Allowed Claims in Class 3, in full, on the Effective Date of the Plan.

(d) Class 4 of the Plan shall be paid through the Remaining Escrow Fund Credit and through the Special Plan Assessment.

The Remaining Escrow Fund Credit: As part of the Arbitration Award, the Sponsors' regular payment of maintenance was abated until such time that the Sponsors received maintenance credits in the amount of $470,000, plus interest. The Sponsors' Proof of Claim calculates interest on the $470,000 awarded by the Arbitrator from February 2014 (when the PLHA prematurely took the Escrow Fund) through December 31, 2016 (when the Arbitration

[8] The Debtor acknowledges that the Sponsor is not responsible for the payment of the First Loan or the Second Loan. Future maintenance bills to be generated to the Sponsors by the Debtor will account for the foregoing exemption.

Awards issued) to be $123,375. Thus, the total maintenance credit due to the Sponsors for the Escrow Fund is $593,375. The Sponsors did not pay their entire share of maintenance to the PLHA from June 1, 2014 through the Petition Date. The Sponsors have calculated the Remaining Escrow Fund Credit to be $339,043.00 as of the Petition Date. The Debtor calculated the Remaining Escrow Fund Credit to be $332,623.00. The Debtor is attempting to reconcile this minor discrepancy with the Sponsors. The Debtor intends to honor the Remaining Escrow Fund Credit under the Plan by giving the Sponsors additional maintenance credits until the Remaining Escrow Fund Credit is fully exhausted. The Debtor estimates that the Sponsors' Remaining Escrow Fund Credit will be fully exhausted in or about December 2019.[9]

The Special Plan Assessment: The Homeowners previously agreed to the Special Plan Assessment on the basis that the interest rate to be paid to the holders of the Allowed Class 4 Claim is the federal interest rate. At a hearing held on September 13, 2018, the Court indicated that the federal interest rate may not be fair and equitable to the holders of the Allowed Class 4 Claim. The Debtor intends to notice a special meeting of Homeowners – to be held prior to the confirmation hearing – for the purpose of voting to approve the Special Plan Assessment on the basis that the interest rate to be paid to the holders of the Allowed Class 4 Claim is 4.36%. The Debtor believes an interest rate of 4.36% is fair and equitable and the highest rate that the Homeowners will approve.

[9] It is the Debtor's belief that notwithstanding the Award, the Sponsors are not entitled to set off their obligation to pay dues after the Petition Date as a matter of applicable bankruptcy law. The Sponsors have not paid any post-petition dues to the Debtor despite due demand. The Debtor has considered commencing litigation against the Sponsors in order to collect delinquent post- petition dues. However, given the cost of litigation and the time it would take to obtain an order compelling the Sponsors' payment of any post-petition delinquency, the most efficient and economical way to collect this money is to allow the Sponsors to take additional post-petition credits until the Remaining Escrow Fund Credit is fully exhausted. The Sponsors are required to resume paying their proportionate share of dues, as approved by the PLHA when the Remaining Escrow Funds Credit is exhausted. The Debtor reserves all of its rights and remedies against the Sponsors, including without limitation the right to collect maintenance dues which have come due since the Petition Date pending confirmation of the Plan.

The Board will seek approval of the Plan, the Special Plan Assessment and the Annual Interest Assessment (as defined below) through such a vote of all Homeowners in Phase I of the Development at a special meeting of Homeowners noticed for that purpose. At the special meeting, the Board will advise Homeowners that while the Arbitration Awards in favor of the Sponsors were not assessed as a personal liability of any Homeowner in Phase I of the Development, the Board believes that the levy of the Special Plan Assessment, inclusive of interest at 4.36%, is now necessary to avoid dissolution and preserve the integrity of the Development. Approval of the Plan and Special Plan Assessment must be by the vote of at least two-thirds (2/3) of the Phase I Homeowners.

If the Board obtains the necessary vote of at least two-thirds of Phase I Homeowners (excluding the Sponsors), once the Plan is approved, the Special Plan Assessment shall be billed to each of the Lots in Phase I of the Development (except Lot 12 owned by the Sponsors). Each Lot in Phase I of the Development (except Lot 12 owned by the Sponsors) shall pay the Special Plan Assessment as follows: (i) the sum of no less than $5,400 per Lot to be received by the PLHA on or before June 1, 2019; (ii) the sum of no less than $5,400 per Lot to be received by the PLHA on or before December 1, 2019; and (iii) additional payment(s) of no less than $740 per month commencing January 1, 2019 and continuing for each consecutive month thereafter until the end of the Plan Term or until the principal balance of the Special Plan Assessment associated with that Lot is paid in full, whichever first occurs. In addition, the Board shall prepare and deliver a separate bill for each Lot in Phase I of the Development settling the amount of annual interest which must be paid to the holder of the Allowed Class 4 Claim during the Plan Term (the "Annual Interest Assessment"). The Annual Interest Assessment billed to each Lot shall be paid to the PLHA, in full, within thirty (30) days of delivery of billing. The Special Plan

Assessment and the Annual Interest Assessment paid by each Lot in Phase I shall be deposited into a segregated bank account maintained by the Management Company designated for the payment of the Allowed Class 4 Claim (the "Plan Reserve Account"). To ensure the timely collection and payment of the Allowed Class 4 Claim, the Special Plan Assessment, the Annual Interest Assessment, and the cost of collection thereof shall be a personal obligation of the person who was the record owner of such Lot in Phase I of the Development (except Lot 12 which is owned by the Sponsors) as of the Effective Date of the Plan. Upon either (i) the closing of title to a future sale of a Lot in Phase I (except Lot 12 owned by the Sponsors), or (ii) the transfer of record title of a Lot in Phase I from and after the Effective Date for any other purpose (each a "Lot Transfer"), the principal balance of the remaining pro-rata share of the Special Plan Assessment as to that Lot shall be paid, in full, to the Management Company, together with unpaid Annual Interest Assessment due as of the Lot Transfer, if any.

The proceeds collected in connection with a Lot Transfer shall be deposited into the Plan Reserve Account and thereafter, promptly paid by the Management Company to the holder of the Allowed Class 4 Claim. Upon the full payment of the remaining principal balance of the Special Plan Assessment and unpaid Annual Interest Assessment due as of the Lot Transfer, if any, the Lot shall have no further obligation to pay the Special Plan Assessment or any additional Annual Interest Assessment. Each Lot in Phase I may voluntarily prepay its pro-rata share of the Special Plan Assessment independent of a Lot Transfer. All funds held in the Plan Reserve Account shall remain property of the reorganized Debtor and shall be utilized for the payment of the Allowed Class 4 Claim.

Except as otherwise specifically provided in the Plan, nothing contained herein shall or may be construed to relieve present or future Members of the Development, including the

Sponsors, from paying any annual dues, special assessments and fees which may be lawfully imposed by the PLHA. The rights of collection afforded to the PLHA against any Member, including the Sponsors, as provided in the By-laws are incorporated by reference in the Plan and shall apply, in all respects, to the enforcement of Plan obligations imposed upon the Lots in Phase I including the collection of the Special Plan Assessment, the Annual Interest Assessment and any other assessment or budget expenditure arising under the Plan.

The Confirmation Order shall specifically provide that the Sponsors are prohibited from setting off, or attempting to set off, any future maintenance dues that are due to the PLHA subsequent to exhaustion of the Remaining Escrow Fund Credit. In the event the Sponsors fail to pay any future maintenance due with respect to their Lots within thirty (30) days of billing without first obtaining an order of the Bankruptcy Court or the written consent of the PLHA, the PLHA, in its sole discretion, may credit the amount of unpaid dues owed by the Sponsors, plus interest at the statutory rate in the State of New York, against the Semi-Annual Payments due to the holder of the Allowed Class 4 Claim.

2. Post-Confirmation Management

The Post-Confirmation management of the Debtor (including officers, directors, managing members, and other persons in control), and their compensation, shall be as follows and shall continue through and including December 31, 2019 until the next regular election is conducted by the Homeowners in accordance with the provisions of the By-laws:

Name	Position	Compensation
Sean Rice	President	No Compensation
Dennis Grande	Treasurer	No Compensation
Janet Martin	Vice President and Secretary	No Compensation
Al Geis	At-Large	No Compensation

Greg Sarkissian	Sponsors' Representative	No Compensation

E. Risk Factors

The Plan is incapable of confirmation unless the Homeowners in Phase I vote to approve the Special Plan Assessment and the Annual Interest Assessment. However, once the Special Plan Assessment and the Annual Interest Assessment is approved, the Debtor submits that the risk of default under Plan is minimal.

The Homeowners already agreed to the Special Plan Assessment on the basis that the interest rate to be paid to the holders of the Allowed Class 4 Claim is the federal interest rate. At a hearing held on September 13, 2018, the Court indicated that the federal interest rate may not be fair and equitable to the holders of the Allowed Class 4 Claim. The debtor intends to notice a special meeting of homeowners – to be held prior to the confirmation hearing – for the purpose of voting to approve the Special Plan Assessment on the basis that the interest rate to be paid to the holders of the Allowed Class 4 Claim is 4.36%. The Debtor believes an interest rate of 4.36% is fair and equitable and the highest rate that the Homeowners will approve.

Should the Court determine at the confirmation hearing that the fair and equitable interest rate to be paid on the Allowed Class 4 Claim is higher than 4.36%, the Debtor will seek the Court's approval for a 30-day extension of the Debtor's time to confirm its plan to allow the Board to schedule another special meeting of Homeowners to approve whatever interest rate the Court determines is fair and equitable. Homeowners may not vote to approve an interest rate higher than 4.36%.

If the Plan is not confirmed for this – or any other – reason, the PLHA will dissolve in accordance with the provisions of the Declaration. Section 3 of the Declaration provides that upon dissolution of the PLHA, the common areas of the Development shall be dedicated to an

appropriate public agency or utility to be devoted to the purposes as nearly as practical that were required to be devoted to the PLHA.

Pursuant to the By-laws, if an assessment is not paid on the date when due as fixed by the Board, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, thereupon become a continuing lien on the Homeowner's Lot which shall bind such property in the hands of the defaulting Homeowner, his heirs, devises, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax assessment liens on the Lot by the taxing subdivision of any governmental authority, including, but not limited to, State, County and School District taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering the Lot. The personal obligations of the Member who was the owner of the Lot when the assessment fell due shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days of billing, the assessment shall bear interest from the date of the delinquency at the maximum permissible rate in the State of New York and the PLHA may bring an action at law against the Member or former Member personally obligated to pay the same and may foreclose the lien against the Lot. There shall be added to such assessment the costs of preparing and filing the complaint, the preparing and filing of motions and any court appearances associated therewith, and in the event a judgment is obtained, such judgment shall include interest at the statutory rate in the State of New York, on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action. Given the remedies afforded to the PLHA by the By-laws, the risk of collecting funds required to fund Plan obligations is significantly reduced, if not eliminated.

The historical rate of default in the payment of dues and special assessments has been *de minimis*, except for the Sponsors themselves who have, as determined in the Award, repeatedly failed to pay these obligations as they came due. The Debtor believes that the Homeowners in Phase I will continue to pay dues and that the Special Plan Assessment and Annual Interest Assessment will be approved and paid as and when they become due.

F. Executory Contracts and Unexpired Leases

The Plan in Article IX lists all executory contracts and unexpired leases that the Debtor will assume and, if applicable assign under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Bankruptcy Code, if any. Article IX also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption and, if applicable, the assignment of your unexpired lease or executory contract under the Plan, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article IX or have not previously been assumed and, if applicable, assigned, or are not the subject of a pending motion to assume and, if applicable, assign will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The deadline for filing a Proof of Claim based on a claim arising from the rejection of a lease or contract is thirty (30) days after entry of the Confirmation Order. Any claim

based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

G. Tax Consequences of Plan

Creditors and equity interest holders concerned with how the Plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors. As a New York State non-profit corporation, the Debtor is a tax-exempt entity and, therefore, the Plan does not have any tax consequences to the Debtor.

IV. Confirmation Requirements and Procedures

To be confirmable, the Plan must meet the requirements listed in § 1129 of the Code.

These include the requirements that:

- the Plan must be proposed in good faith;
- if a class of claims is impaired under the Plan, at least one impaired class of claims must accept the Plan, without counting votes of insiders;
- the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and
- the Plan must be feasible.

These requirements are **not** the only requirements listed in § 1129, and they are not the only requirements for confirmation.

Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. Many parties in interest, however, are not entitled to vote to accept or reject the Plan. Except as stated in Part IV.A.3 below, a creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both:

1. allowed or allowed for voting purposes and

2. impaired.

In this case, the Debtor believes that several classes under the Plan are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.

1. What is an Allowed Claim or an Allowed Equity Interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either:

1. the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or

2. the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

2. What is an Impaired Claim or Impaired Equity Interest?

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered *impaired* if the Plan alters the legal, equitable, or contractual rights of the members of that class. The Debtor believes that there are no impaired claims under the Plan.

3. Who is Not Entitled to Vote?

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;

- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes;
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and administrative expenses.

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the Plan and to the adequacy of the Disclosure Statement.

4. Who can Vote in More than One Class?

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

Generally, if impaired classes exist, the Court cannot confirm the Plan unless:

(1) all impaired classes have voted to accept the Plan; or

(2) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and the Plan is eligible to be confirmed by "cram down" of the non-accepting classes, as discussed later in Section B.2. Here, these rules do not apply, as there are no impaired classes under the Plan.

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if both of the following occur:

(1) the holders of more than 1/2 of the allowed claims in the class, who vote, cast their votes to accept the Plan, and

(2) the holders of at least 2/3 in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least 2/3 in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Non-Accepting Classes of Secured Claims, General Unsecured Claims, and Interests

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan upon the request of the Plan proponent if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a *cram down* plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not *discriminate unfairly*, and is *fair and equitable* toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a *cram down* confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation.

The Debtor's assets consist primarily of the common areas in Phase I of the Development.[10] These areas include but are not limited to the security guardhouse, the gatehouse, the boathouse, private roadways, the fire protection system, hiking trails, bridle paths, certain septic tanks, lakes, greenbelt and wooded and landscaped areas. However, these

[10] The Sponsors hold title to the common areas in the undeveloped Phases II and III of the Development.

segregated parcels of real estate would have little-to-no value to a disinterested third party in the context of a liquidation. The liquidation of these assets would not generate sufficient cash to pay the Allowed Claims under the Plan, particularly when the proceeds are reduced by the cost of a chapter 7 trustee.

Creditors will, therefore, receive more under the Plan because of the voluntary commitment of the Homeowners to pay the Special Plan Assessment and the Annual Interest Assessment. A liquidation analysis is annexed hereto as Exhibit "E."

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to Initially Fund Plan

The Debtor believes that it will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the Effective Date of the Plan, and the sources of that cash, are attached to this Disclosure Statement as Exhibit "F."

2. Ability to Make Future Plan Payments and Operate Without Further Reorganization

The Debtor must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the Debtor's business. The Debtor has provided projected financial information. Those projections are also listed in Exhibit "F."

The final Plan payment is expected to be paid on or before July 2029.

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections

3. Alternative to the Plan

The Debtor believes that acceptance of the Plan is in the best interest of the Debtor and its creditors and affords creditors the greatest opportunity for the realization of value from the assets of the Debtor. As set forth in the Arbitration Award dated May 12, 2017, Phase I Homeowners are **not** personally liable for the payment of the Allowed Claim in Class 4 of the Plan and the PLHA has no independent ability to pay the Allowed Class 4 claim without the voluntary assistance of the Phase I Homeowners. Absent voluntary contribution of the Special Plan Assessment and the Annual Interest Assessments, the PLHA would be required to liquidate and dissolve as a matter of law.

The By-laws of the PLHA provide for the disposition of the PLHA's assets in the event of a liquidation. Article XI, section 3 of the By-laws provides as follows:

> "Section 3. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association [PLHA], its real and personal assets including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to the purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or easement to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants, deeds or other documents applicable to The Properties [Lots], except as may be otherwise provided in this Declaration or said covenants, deeds or other documents, as the case may be, nor shall any other party under any such deeds, covenants or other documents be deprived of any rights thereunder on account of such disposition."

Should the PLHA dissolve, pre-petition claims will not be paid in full (as they will be under the Plan) and the Debtor's assets transferred to a public agency. In that case, the private nature of the Development will be destroyed and value of the Lots are bound to plummet. For this reason, the Debtor believes that there are no viable alternatives to the Plan.

V. Effect of Confirmation of Plan

A. Discharge of Debtor

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt:

(i) imposed by the Plan, or

(ii) to the extent provided in 11 U.S.C. § 1141(d)(6).

B. Modification of Plan

The Debtor may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

The Debtor may also seek to modify the Plan at any time after confirmation only if

(1) the Plan has not been substantially consummated and

(2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Dated: October 16, 2018
New York, New York

/s/ Sean Rice
Sean Rice (in his capacity of President of the Board of Directors of the Pierson Lakes Homeowners Association, Inc.)

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Exhibit A

Copy of Proposed Plan of Reorganization

Exhibit B

Final Cash Collateral Agreement

Exhibit C

Debtor's Balance Sheet of Assets and Liabilities

Exhibit D

Most Recently Filed Post-Petition Operating Report

Exhibit E

Liquidation Analysis

Exhibit F

Projected Cash Flow Over Life of the Plan