

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN**

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**In re:**

**FIRST PHOENIX-WESTON LLC, *et. al*,**

**Case No. 16-12820-cjf  
Chapter 11  
Jointly Administered<sup>1</sup>**

**Debtors.**

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**JOINT PLAN OF REORGANIZATION**

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**MICHAEL BEST & FRIEDRICH LLP**

Justin M. Mertz, Esq.  
Ann Ustad Smith, Esq.  
Attorneys for the Debtors

100 E. Wisconsin Ave., Suite 3300  
Milwaukee, Wisconsin 53202  
Phone: 414.271.6560  
Facsimile: 414.277.0656  
Email: [jmmertz@michaelbest.com](mailto:jmmertz@michaelbest.com)

Dated: May 16, 2018.

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<sup>1</sup> Jointly administered with *In re FPG & LCD, L.L.C.*, Case No. 16-12821-cjf.

First Phoenix-Weston LLC and FPG & LCD, L.L.C., as Chapter 11 debtors-in-possession (individually “Debtor,” and together, the “Debtors”), propose the following Joint Plan of Reorganization pursuant to 11 U.S.C. § 1121:

## **ARTICLE I** **DEFINITIONS**

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 Code. The rules of construction contained in section 102 of the 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. Any term used in capitalized form in the Plan shall have the same meaning in the Disclosure Statement, unless the context otherwise requires.

**1.1** *Administrative Expense* shall mean any Claim for payment of costs and expenses of administration pursuant to sections 503(b), 507(a)(2) or 507(b) of the Code, including (i) an unpaid or unreimbursed cost or expense of administering the Case allowed under the Code including, without limitation, any actual and necessary expenses of preserving the Estates of the Debtors including Trustee Fees and fees of Professionals; (ii) any actual and necessary expense of operating the business of the Debtors; (iii) any indebtedness or obligation incurred or assumed by the Debtors in connection with the conduct of the business or for the acquisition or lease of property or for the procurement of services; (iv) any costs or expenses of the Debtors for the administration and implementation of the Plan, for the administration, prosecution or defense of any Claim by or against the Debtors, and for administration of the Plan; and (v) any allowances of compensation and reimbursement of expenses to the extent allowed by the Final Order, whether arising before or after the Effective Date.

**1.2** *Allowed or Allowed Claim* shall mean any Claim (a) as to which no objection or request for estimation has been filed on or before any deadline therefor set by the Bankruptcy Court or the expiration of such other applicable period fixed by the Bankruptcy Court or the Plan; (b) as to which any objection has been settled, waived, withdrawn or denied by a Final Order or in accordance with the Plan; or (c) that is allowed (i) by a Final Order, (ii) by an agreement between the holder of such Claim and the Debtors or the Reorganized Debtors or (iii) pursuant to the terms of the Plan; provided, however, that, notwithstanding anything herein to the contrary, by treating a Claim as “Allowed” under (a) above (the expiration of the applicable deadline), the Debtors do not waive their rights to contest the amount and validity of any

disputed, contingent and/or unliquidated Claim in the time, manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Case had not been commenced. An Allowed Claim (x) includes a Disputed Claim to the extent such Disputed Claim becomes Allowed after the Effective Date and (y) shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law. Unless otherwise specified in this Plan, in section 506(b) of the Bankruptcy Code or by Final Order of the Bankruptcy Court, "Allowed" Claims shall not, for purposes of distributions under the Plan, include any interest on such Claim accruing from and after the Petition Date.

**1.3** *Allowed DIP Loan Claims* shall mean the Allowed Claims of (a) Wanxiang pursuant to its loans provided to Weston as approved by the DIP Loan Orders, and (b) Castleberg, pursuant to the terms of his loans provided to FPG as approved by the DIP Loan Orders.

**1.4** *Allowed Priority Claim* shall mean an Allowed Claim for which the holder asserts, and is determined to be entitled to, priority under § 507 of the Code or under any other provision of the Code.

**1.5** *Allowed Secured Claim* shall mean an Allowed Claim secured by a valid and enforceable Lien, security interest, mortgage, or other recognized interest in property in which a Debtor has an interest, which is not void or voidable under any state or federal law or subject to set off under § 553 of the Code, but only to the extent of the value of such Creditor's interest in the Estate's interest in such property, pursuant to § 506(a) of the Code. The portion of an Allowed Claim that is not an Allowed Secured Claim shall be an Allowed Unsecured Claim except as otherwise provided for herein.

**1.6** *Allowed Unsecured Claim* shall mean any Allowed Claim that is not an Administrative Expense, Priority Claim, or Secured Claim.

**1.7** *Assets* shall mean all assets of the Debtors of any nature whatsoever, including, without limitation, all property of the Estate pursuant to Bankruptcy Code section 541, Cash, Causes of Action, equipment, inventory, tax refunds, claims of right, interests, and property interests in real, personal, tangible, and intangible property.

**1.8** *Bar Date* shall mean the date fixed by the Bankruptcy Court for Creditors to file a Claim in the Case, which was December 23, 2016.

**1.9** *Bankruptcy Court* or *Court* shall mean the United States Bankruptcy Court for the Western District of Wisconsin and any federal court with concurrent or appellate jurisdiction.

**1.10** *Case* shall mean the Chapter 11 case of the Debtors, Case No. 16-12820-cjf, jointly administered with Case No. 16-12821-cjf.

**1.11** *Cash* shall mean cash and cash equivalents in certified or immediately available U.S. funds.

1.12 **Castleberg** shall mean Philip Castleberg.

1.13 **Causes of Action** means 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, 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. Causes of Action also include: (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; (c) any claim pursuant to section 362 or Chapter 5 of the 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.

1.14 **Chapter 11** means chapter 11 of the Code.

1.15 **Claim** shall have the meaning as it is defined in § 101(5) of the Code, as it may exist against the Debtors.

1.16 **Class** shall mean the classes specified in Article II of the Plan.

1.17 **Code** shall mean title 11 of the United States Code as amended from time to time.

1.18 **Collateral** means any property or interest in property of a Debtor or its bankruptcy Estate that is subject to an unavoidable Lien to secure the payment or performance of a Claim.

1.19 **Confirmation** shall mean entry of the Confirmation Order.

1.20 **Confirmation Date** shall mean the date on which the Confirmation Order is entered on the Court's docket.

1.21 **Confirmation Order** shall mean the order entered by the Bankruptcy Court confirming the Plan.

1.22 **Confirmation Hearing** shall mean the hearing held by the Court to consider confirmation of the Plan pursuant to Code section 1129.

1.23 **Creditor** shall mean any Person or entity that has a Claim against the Debtors.

1.24 **Cure Amount** shall mean the monetary amount necessary to cure any defaults of an executory contract or unexpired lease through the Confirmation Date.

1.25 **Debtors** shall mean First Phoenix-Weston LLC and FPG & LCD, L.L.C. Reference to Debtor shall mean to such individual debtor, as the case may be.

**1.26** *DIP Loan Orders* shall mean the Orders of the Court entered as Docket No. 137 and Docket No. 159 filed in the Case.

**1.27** *Disclosure Statement* shall mean the disclosure statement filed by the Debtors pursuant to 11 U.S.C. § 1125 after such disclosure statement has been approved by an order entered by the Court.

**1.28** *Disallowed Claim* shall mean any Claim or part of claim, which has been disallowed by a Final Order, or is not otherwise an Allowed Claim.

**1.29** *Disbursing Agent* shall mean the Debtors or Reorganized Debtors.

**1.30** *Disputed Claim* shall mean any Claim that is not yet Allowed and is subject to a claims objection filed before any deadline set by the Bankruptcy Court.

**1.31** *Effective Date* shall mean the date when all of the conditions set forth in Article X of the Plan have been satisfied or waived.

**1.32** *Estate* shall mean the estate of each Debtor created by the filing of the Case.

**1.33** *Executory Contract* shall mean a contract to which a Debtor is a party that is capable of assumption or rejection under § 365 of the Code.

**1.34** *Facility* shall mean the combined campus consisting of the assisted living continuing care center (owned by Weston) and the skilled nursing facility (owned by FPG), located in Weston, Wisconsin.

**1.35** *Facility Lease* shall mean that certain lease between FPG, as tenant, and Weston, as landlord, for the lease of a portion of the Facility as stated therein.

**1.36** *Final Order* shall mean an order entered by the Bankruptcy Court as to which the time to appeal or to seek review or rehearing has expired and as which no appeal or other proceedings for review or rehearing shall then be pending.

**1.37** *FPG* shall mean FPG & LCD, L.L.C., one of the jointly administered Debtors in this Case.

**1.38** *Insider* shall have the meaning as it is defined in 11 U.S.C. § 101(31).

**1.39** *Insurance Policies* shall mean all insurance policies of the Debtors.

**1.40** *Landcastle* shall mean Landcastle Diversified LLC, an equity interest holder of the Debtors.

**1.41** *Lien* has the meaning assigned to it in § 101(37) of the Code.

**1.42 Option Agreement** shall mean that certain agreement attached to Sabra's Proof of Claim No. 16-12, as amended, filed in Weston's Case.

**1.43 Person** means any individual, corporation, general partnership, limited partnership, trust, association, limited liability company, joint stock company, joint venture, estate, unincorporated organization, government or any political subdivision thereof, governmental unit, or other entity.

**1.44 Petition Date** shall mean August 15, 2016.

**1.45 Plan** shall mean this Chapter 11 plan of reorganization and any amendment, modification or alteration thereto in accordance with the Code.

**1.46 Prepetition Loan Documents** means the valid and enforceable promissory notes, mortgages, security agreements, guaranties, and related loan documents in effect as of the Petition Date between a Debtor and one or more Secured Creditors (including Wanxiang as the transferee of Sabra's Claim) as amended by the Plan or an order entered by the Bankruptcy Court during this case, but (a) excluding the effect of any provision described in § 365(b)(2) of the Code that would act as a default immediately before the Effective Date, and (b) subject to the following amendments: (i) any and all provisions in the loan documents that conflict with or are otherwise inconsistent with the Plan, orders entered by the Bankruptcy Court and/or the Debtor's financial projections are deleted, (ii) the Debtor shall have the right to prepay the outstanding amount due to the Secured Lenders at any time without payment of a prepayment penalty and without the Secured Lender's ability to exercise any option to control, purchase, or otherwise buyout the Assets of the Debtor, (iii) all net worth, debt service coverage, debt service reserve, insolvency, capital requirements and other financial performance requirements, covenants and/or ratios are deemed deleted, (iv) the Secured Creditor's determination that there has been a material adverse effect or change in collectability of the loan or that it deems itself insecure shall not constitute a loan default and any such provision or similar subjective provision is deleted, (v) any prepetition defaults under the Prepetition Loan Documents are hereby waived by the Secured Creditors, (vi) prohibitions on secondary liens and indebtedness securing purchases made in the ordinary course of business are deleted, (vii) the Debtor shall have the right to contest and/or remove mechanic's and similar liens, (viii) minimum occupancy requirements and related covenants are deleted and (ix) any reference or incorporation of the Option Agreement is hereby deleted. For the avoidance of any doubt, the Option Agreement shall not be a Prepetition Loan Document, will not be assumed by the Debtors.

**1.47 Professionals** shall mean all professionals employed in the Case by the Debtors.

**1.48 Proof of Claim** shall mean a proof of Claim filed against a Debtor in the Case.

**1.49 Reorganized Debtor(s)** shall mean the Debtor or Debtors after the Plan has been confirmed by the Confirmation Order and after the Effective Date.

**1.50 Resident Contracts** shall mean those certain Executory Contracts for residence

and medical care between residents of the Facility and one or more of the Debtors.

**1.51 Rules** shall mean the Federal Rules of Bankruptcy Procedure, as amended, and the local rules of the Court as they apply to the Case.

**1.52 Sabra** shall mean Sabra Phoenix Wisconsin, LLC, including its related affiliates and subsidiaries.

**1.53 Secured Claim** shall have the meaning as it is defined in 506 of the Code.

**1.54 Trustee Fees** shall mean all fees and charges assessed against the Debtors pursuant to 28 U.S.C. § 1930 of the United States Code.

**1.55 Wanxiang** shall mean Wanxiang America Real Estate Group, LLC, an equity interest holder of the Debtors.

**1.56 Wanxiang Weston** shall mean Wanxiang Weston, LLC, an Illinois limited liability company that is wholly-owned by Wanxiang.

**1.57 Wanxiang Claim** shall mean that certain Claim filed by Sabra against Weston as claim number 16 (as amended), which was assigned and transferred to Wanxiang pursuant to Rule 3001(e)(2), thereby substituting Wanxiang as the holder of such Claim. The Wanxiang Claim may be referred to as the *Claim of Wanxiang*, or other similar uses.

**1.58 Weston** shall mean First Phoenix-Weston LLC, a jointly-administered Debtor.

**ARTICLE II**  
**CLASSIFICATION AND SUMMARY**  
**OF CLAIMS AND INTERESTS**

**2.1** A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of the Class and is classified in a different Class to the extent that the Claim qualifies within the description of that different Class. A Claim is in a particular Class only to the extent that the Claim is an Allowed Claim in that Class and has not been paid, released, withdrawn, waived, or otherwise satisfied under this Plan. Unless this Plan expressly provides otherwise, when a Class includes a subclass, each subclass is a separate Class for all purposes under the Bankruptcy Code, including, without limitation, voting and distribution.

**2.2** All Claims are placed in the following Classes of Claims, pursuant to Code section 1123(a)(1).

<b>Classification</b>	<b>Type</b>	<b>Impairment</b>	<b>Voting</b>
<b>Class 1</b>	Administrative Expenses	Unimpaired	Deemed to Accept
<b>Class 2</b>	Allowed Priority Claims	Unimpaired	Deemed to Accept
<b>Class 3A</b>	Allowed Secured Claim of Wanxiang	Impaired	Entitled to Vote
<b>Class 3B</b>	Allowed Secured Claim of Simplicity	Impaired	Entitled to Vote

<b>Class 3C</b>	Allowed Secured Claim of All-Lines	Impaired	Entitled to Vote
<b>Class 4</b>	Allowed DIP Loan Claims	Impaired	Entitled to Vote
<b>Class 5</b>	Allowed Intercompany Claims	Impaired	Entitled to Vote
<b>Class 6</b>	Allowed Unsecured Claim of Wanxiang	Impaired	Entitled to Vote
<b>Class 7</b>	Allowed General Unsecured Claims	Impaired	Entitled to Vote
<b>Class 8</b>	Allowed Unsecured Insider Claim	Impaired	Entitled to Vote
<b>Class 9</b>	Allowed Equity Interests	Unimpaired	Not Entitled to Vote

**ARTICLE III**  
**TREATMENT OF ADMINISTRATIVE EXPENSES,  
CLAIMS, AND INTERESTS**

Subject to all other applicable provisions of this Plan (including its distribution provisions), classified Claims shall receive the treatment set forth below. This Plan will not provide any distributions on account of a Claim to the extent that such Claim has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date, including, without limitation, payments by third parties. Except as specifically provided herein, this Plan will not provide any distributions on account of a Claim, the payment of which has been assumed by a third party. A global summary of Claims against each Debtor is attached to the Disclosure Statement as **Exhibit 1**. Although this Plan is being filed jointly for administrative convenience, each of the Classes listed below shall retain their Claims only against such individual Debtor that is liable for the Claim. The Debtors shall not pay Claims that are attributed to the other Debtor's Estate; the Estates are not being consolidated as part of the Plan. Treatment of the Debtors' Claims is detailed below.

**3.1 Class 1: Administrative Expenses.** Except as indicated herein, Administrative Expenses are unimpaired under the Plan and shall be paid (i) in full in Cash on or before the Effective Date, (ii) upon such other terms as may be agreed to in writing by the holder of any Allowed Expense and the Debtors, or (iii) if such expense is allowed after the Effective Date, as soon as such expense is allowed. Excepting, however, (x) any Administrative Expense Claim for accrued post-petition real estate taxes owed by Weston may be paid in installments as allowed by Marathon County or the municipality that collects taxes, and (y) any Administrative Expense Claim that one Debtor owes to the other, including but not limited to any amounts owed by FPG to Weston pursuant to the Facility Lease shall be waived and canceled. An Administrative Expense for which notice of intent to assert the Administrative Expense was required to be filed by an order of the Bankruptcy Court and was not filed shall not be paid, and such Administrative Expense shall be forever discharged and barred, and subject to injunctive relief provided for by §§ 1141 and 524 of the Code. Sabra shall have no Class 1 Claim.

**3.2 Class 2: Allowed Priority Claims.** For all Allowed Priority Claims other than Administrative Expenses in Class 1, any Person holding an Allowed Priority Claim will receive (a) payment in Cash in full on the later of the Effective Date or the date such Claim becomes an Allowed Claim, or (b) Cash over a period not exceeding five (5) years after the Petition Date, with interest at the rate specified by § 511 of the Code, unless otherwise agreed to in writing by such Creditor.

**3.3 Classes 3A through 3C: Allowed Secured Claims.**

**3.3.1 Class 3A: Allowed Secured Claim of Wanxiang.**

**3.3.1.1 Amount.** Wanxiang's Allowed Secured Claim shall be \$17,773,439.

**3.3.1.2 Retention of Liens.** Wanxiang will not retain any liens against Weston on account of its Allowed Secured Claim.

**3.3.1.3 Treatment.** The Wanxiang Claim shall be converted to equity in the form of an additional capital contribution or preferred equity in Weston, pursuant to Weston's operating agreement, or as otherwise authorized by Wanxiang. The conversion of the Wanxiang Claim shall occur pursuant to Weston's Plan for federal income tax purposes. No payments shall be made to Wanxiang on account of the Allowed Secured Wanxiang Claim pursuant to the Plan; however, payments may be made to Wanxiang based on its additional capital contribution, pursuant to Weston's operating agreement. Wanxiang and Weston mutually agree to sign any documents necessary to effectuate such debt conversion, as reasonably necessary, within 90 days of the Effective Date.

**3.3.1.4 Treatment of Allowed Unsecured Claim.** Wanxiang shall have no Class 6 Unsecured Claim against the Debtors.

**3.3.2 Class 3B: Allowed Secured Claim of Simplicity Credit Union.** Simplicity's Allowed Secured Claim shall equal its total Claim and be paid by Weston in equal monthly installments of principal with fixed interest at the rate of 4% per annum, amortized over 7 years with no pre-payment penalties. The monthly installments will commence on the 1<sup>st</sup> day of the first month following the Effective Date, continuing monthly thereafter until the full principal amount is paid. Simplicity shall retain its valid, existing Liens on its Collateral.

**3.3.3 Class 3C: Allowed Secured Claim of All-Lines Leasing.** All-Lines Leasing's Allowed Secured Claim shall equal its total Claim, as reduced by any payments made during the Case prior to the Effective Date, and be paid by Weston in equal monthly installments of principal with fixed interest at the rate of 4% per annum, amortized over 5 years with no pre-payment penalties. The monthly installments will commence on the 1<sup>st</sup> day of the first month following the Effective Date, continuing monthly thereafter until the full principal amount is paid. All-Lines Leasing shall retain its valid, existing Liens on its Collateral.

**3.4 Class 4: Allowed DIP Loan Claims.** The Allowed DIP Loan Claims are impaired and shall be paid by the Reorganized Debtors according to the terms of the DIP Loan Orders, except that the Debtors shall have 3 years from the Effective Date to pay off their respective DIP Loan Claim, or as otherwise further extended upon the consent of the holders of the Allowed DIP Loan Claims. The Debtors and Reorganized Debtors reserve the right to draw on the remaining balance of each of their DIP Loans to the extent such funds are necessary to effectuate the terms of the Plan. Alternatively, the Allowed DIP Loan Claims may, upon an election made by the holder of the Allowed DIP Loan Claims within 90 days of the Effective

Date, be converted to equity in the Reorganized Debtors in the form of an additional capital contribution or preferred equity, pursuant to the respective Debtor's operating agreement. Such conversion shall occur pursuant to this Plan for federal income tax purposes.

**3.5 Class 5: Intercompany Claims.** The intercompany Claims that the Debtors may have against each other shall be canceled, void, and waived.

**3.6 Class 6: Allowed Unsecured Claim of Wanxiang.** Wanxiang shall have no Class 6 Claim.

**3.7 Class 7: Allowed General Unsecured Claims.** Allowed Claims in Class 7 shall consist of Allowed Unsecured Claims against the Debtors which are not otherwise classified. Unless a Creditor in Class 7 agrees to less favorable treatment, Allowed Claims in Class 7 shall receive four Cash payments, the sum of which shall equal the Creditor's Allowed Class 7 Claim with no interest. First Phoenix Group LLC shall waive distribution on any Claim it has against either Debtor. The first payment to Class 7 Creditors shall be made within three months of the Effective Date; the second payment shall be made within 9 months of the Effective Date; the third shall be made within 15 months of the Effective Date, and the final payment shall be made within 21 months of the Effective Date. Wanxiang shall assume the Debtors' obligations under the Plan afforded to Class 7 Creditors under this Article 3.7.

**3.8 Class 8: Allowed Unsecured Insider Claims.** Class 8 Claims shall consist of the Allowed Unsecured Claims of Castleberg and Anchor Management Group, non-Debtor Insiders of the Debtors. Allowed Claims in Class 8 shall receive no payments under the Plan and such claims shall be canceled and forfeited.

**3.9 Class 9: Allowed Equity Interests.** The interests in Class 9 are unimpaired and unaffected under the Plan. They shall retain their membership interests in the Debtors.

**3.10 Prepayment Without Penalty.** At any time, the Reorganized Debtors may prepay, without penalty, any of their obligations under the Plan to any Creditor if such Debtor or Reorganized Debtor has the ability to do so and otherwise complies with the remaining obligations under the Plan.

**3.11 Miscellaneous Provisions.** The liens of all Creditors that have been discharged or avoided shall be released of record prior to any cash distribution or delivery of any property under the Plan to such Creditors. Unless otherwise provided for in the Plan, no holder of an Allowed Claim shall be entitled to the accrual of post-petition interest on account of such Claim. For the avoidance of doubt, Sabra shall have no claims whatsoever against either of the Debtors, and shall not receive anything under the Plan.

#### **ARTICLE IV** **DISPUTED CLAIM PROCEDURES**

**4.1 Objection to Claims; Prosecution of Disputed Claims.** Either Debtor or Reorganized Debtor shall object to the allowance of any Claims filed with the Bankruptcy Court

with respect to which such Debtor or Reorganized Debtor dispute liability in whole or in part. All objections shall be litigated to a Final Order; provided, however, that the Reorganized Debtor may compromise and settle objections to Claims without notice, unless such notice is requested by any party in interest, and without the approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Reorganized Debtor shall serve and file all objections to Claims within 30 days of the Confirmation Date, unless otherwise allowed by the Bankruptcy Court.

**4.2 *Payments and Distributions on Disputed Claims.*** From and after the Effective Date, each Reorganized Debtor shall hold and reserve in a segregated account, for the benefit of each holder of a Disputed Claim, Cash in an amount equal to the distribution that would have been made to the holder of any Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the amount of the Disputed Claim or (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to § 502 of the Code for purposes of allowance. Any Cash reserved and held for the benefit of a holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing (a) any additional amounts to be paid in Cash in the event the Disputed Claim ultimately becomes an Allowed Claim or (b) any interest payable in accordance with the Plan by the Debtor with respect to such Disputed Claim at the time or times such cash is reserved. Any Cash reserved for the benefit of holders of Disputed Claims shall be held by the Reorganized Debtor in an interest-bearing account. No payment or distribution shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution of the Claim by a Final Order.

At the time a Disputed Claim becomes, in whole or in part, an Allowed Claim, the holder of the Allowed Claim shall receive the payment(s) and distribution(s) to which it is then entitled under the Plan, together with any interest that has accrued on the amount of cash so reserved, but only to the extent that the interest is attributable to the amount of the Allowed Claim. Such payment(s) shall be made as soon as practicable after the date the Bankruptcy Court enters a Final Order allowing such Claim but in no event later than 30 days after the date of the Final Order. Any cash reserved for but not necessary to pay an Allowed Claim shall be retained by the Reorganized Debtor. Disputed Claims which are disallowed shall receive nothing to the extent they are disallowed. The liens of every Creditor with a Claim that is disallowed or whose lien is avoided shall be void and shall be rendered void by the recording in the appropriate place of record of a certified copy of any order disallowing the Claim or avoiding the lien.

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

**5.1 *Cash for Payments to Creditors on and after the Effective Date.*** Except as otherwise provided for herein, payments to Creditors shall be from the regular business income of the Reorganized Debtors and/or cash infusion by Wanxiang. The Debtors shall not pay each other's Claims, and their Estates and operations after the Effective Date shall remain separated. Cash flow budgets prepared internally by the Debtors are attached to the Disclosure Statement as **Exhibit 2**. These budgets are forward looking, contain estimates and assumptions, and may not reflect actual outcomes of the Reorganized Debtors' operations. The Debtors may file a revised

cash budget at any time prior to the Confirmation Date. In addition, Wanxiang shall assume the Debtors' obligations under the Plan afforded to Class 7 Creditors under Article 3.7.

**5.2 Management of the Reorganized Debtors.** Except as otherwise provided for herein, the Reorganized Debtors shall manage their affairs after the Effective Date. The Reorganized Debtors shall continue to exist as limited liability companies pursuant to Wisconsin law. The Reorganized Debtors, through their owners and agents, including Wanxiang Weston, will be responsible for management of the Facility's activities, negotiating and communicating with residents and providers, collecting revenues, paying expenses, contracting with third-parties for services and materials to operate, and maintaining the books and records. The Reorganized Debtors may enter into a management agreement for the Facility with Wanxiang Weston, an Insider of the Debtors, or some other management company of equal skill and qualification, at a reasonably competitive market rate or lower. Such management agreement may be documented by the Reorganized Debtors and such management company as the Reorganized Debtors deem necessary.

**5.3 Ownership of Reorganized Debtors.** The existing members of the Reorganized Debtors shall continue to be the members of the Reorganized Debtors, in such level and amount as may be determined by the members, or otherwise consistent with the terms and provisions of such Reorganized Debtor's operating agreement. The members may transfer or exchange their ownership shares to each other or their affiliates, or purchase such shares from each other without violating any provision of the Prepetition Loan Documents, so long as Wanxiang or Landcastle or their affiliates continue to remain a majority interest holder in the Debtors.

**5.4 Withholding Taxes.** The Reorganized Debtors shall withhold from distributions under the Plan any property which must be withheld for taxes payable by the Person entitled to such property to the extent required by applicable law.

**5.5 Professional Fees and Expenses.** Each Professional or other Person retained or requesting compensation in this case pursuant to §§ 327, 328, 330, 503(b), or 1103 of the Code shall be entitled to file an application for allowance of final compensation and reimbursement of expenses in the case by the date set by the Bankruptcy Court.

**5.6 Mailing and Unclaimed Distributions.** All distributions made by mail will be made to (a) the latest mailing address filed of record with the Court for the party entitled thereto, (b) if no such mailing address has so been filed, the mailing address reflected in the schedule of assets and liabilities filed by the Debtors, or (c) any other address known to Debtors or Reorganized Debtors. Any unclaimed distributions which would otherwise have been disbursed to a Creditor with respect to an Allowed Claim shall be retained as property of the Reorganized Debtors if the Creditor cannot be located after a reasonable effort.

**5.7 Responsible Person.** Except as otherwise may be provided herein, the Reorganized Debtors shall be responsible for the execution and implementation of the Plan, including managing and executing distributions to be made under the Plan.

**5.8 Debtors' Property After Confirmation.** The Reorganized Debtors shall retain

possession all of their property of the Debtors' Estates, including all Causes of Action, which shall be free and clear of all liens, claims, and encumbrances, except encumbrances of governmental authorities and utilities for easements and services, and as otherwise provided in the Plan. The Reorganized Debtors may use, acquire, dispose of, settle, liquidate or otherwise sell any of their property without further necessary approval from the Court.

**5.9 Settlement of Actions Brought by the Debtors.** The Reorganized Debtors may settle or compromise any action brought by them without notice or Bankruptcy Court approval, unless such notice is requested by any party in interest.

**5.10 Preference, Fraudulent Conveyances and Avoidance Actions.** Except for (i) causes of action against a Person or entity which is not a Creditor and (ii) causes of action included in any objection by the Debtor or Reorganized Debtor to a proof of claim filed by the date for such objections set by the Court or otherwise disclosed in the Disclosure Statement, the Debtor will not bring any preferential transfer, fraudulent conveyance, or other avoidance action under chapter 5 of the Code against any Creditor. All avoidance actions under chapter 5 of the Code against Creditors preserved in the Plan vest in the Reorganized Debtor, including but not limited to any Cause of Action against Browns Living and/or First Phoenix Group, LLC.

**5.11 Confirmation of the Plan Without Approval of Classes Entitled to Priority Over Class 9.** If any Class is entitled to vote and votes to reject the Plan, the Debtors shall request that the Bankruptcy Court approve the Plan pursuant to § 1129(b)(1) of the Code.

**5.12 Payment of U.S. Trustee Fees.** The Reorganized Debtors shall pay all fees due after the Confirmation Date pursuant to 28 U.S.C. § 1930 until the case is closed.

**5.13 Professional Fees.** The Reorganized Debtors shall not pay any professional fees or costs incurred before the Confirmation Date except as approved by the Bankruptcy Court or otherwise allowed by law. The payment of any professional fees or costs after the Confirmation Date to implement the Plan shall only be made if such fees and costs are reasonable.

## **ARTICLE VI** **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **6.1 Assumed Leases and Executory Contracts.**

**6.1.1 The Facility Lease.** Pursuant to Rule 6006(a), the Facility Lease shall be assumed by each Debtor, provided that the following modifications are made:

**6.1.1.1 Shared Costs.** The total percentage of shared costs, more fully described in Section 3 of the Facility Lease, shall be 39 percent.

**6.1.1.2 Rent.** In Section 3.1.1 of the Facility Lease, the "Loan Payment" shall be tied to Weston's continuing obligations to Wanxiang on a monthly basis pursuant to Wanxiang's Class 3 Allowed Secured Claim. Any Administrative Expense Claim owed by FPG to Weston pursuant to such assumption, shall be waived by Weston and nothing shall be owed by

FPG.

**6.1.1.3 Notices.** Any notices shall be given to the following:

If to Weston: First Phoenix-Weston LLC  
c/o Wanxiang America Real Estate Group, LLC  
88 Airport Road  
Elgin, IL 60123

If to FPG: FPG & LCD, L.L.C.  
c/o Landcastle Diversified LLC  
7805 Birch Street  
Weston, WI 54476

**6.1.1.4 Other.** The following sentence shall be added to the end of Section 38: The parties agree that they are both bound to the terms of that certain Joint Plan of Reorganization, approved by the Bankruptcy Court in the Western District of Wisconsin. Except for the requirements of Lessee to pay Lessor any amount under this Lease, to the extent the terms and provisions of this Lease are inconsistent with, or frustrate the material provisions or goals of the Joint Plan of Reorganization, the parties agree that the Joint Plan of Reorganization will control.

**6.1.2 Resident Contracts.** Any and all Resident Contracts that have not otherwise (i) expired by their own terms prior to the Confirmation Date, or (ii) been rejected by the Debtor by motion or within this Plan, shall be assumed by the Debtors on the Confirmation Date (and assigned to the Reorganized Debtors). All parties to each Resident Contract shall retain their contractual rights pursuant to the terms of such Resident Contract. The Debtors are not in default of the Resident Contracts and therefore there are no Cure Amounts due.

**6.1.3 Miscellaneous Contracts.** Any and all executory contracts or leases that the Debtors may have for utilities (garbage, internet, cable television, water, electricity, etc.), other services related to the day-to-day operations of the Facility, and the Insurance Policies, shall be assumed and assigned to the Reorganized Debtors. The Debtors are not in default of such contracts and therefore there are no Cure Amounts due.

**6.1.4 Post-Petition Contracts.** Any and all executory contracts or leases that the Debtors entered into after the Petition Date in the ordinary course of their businesses shall be unaffected by the Plan.

**6.1.5 FPG's Medicare Provider Agreement.** Provided that all issues regarding Debtor FPG's assumption and cure of any defaults under its Medicare provider agreement on the Confirmation Date and the immediate assignment of that Medicare provider agreement to the Reorganized Debtor FPG on that same date are addressed to the satisfaction of Centers for Medicare & Medicaid Services ("CMS"), the Reorganized Debtor FPG will be deemed to have assumed Debtor FPG's Medicare provider agreement on the Confirmation Date. Addressing issues to CMS's satisfaction may include an assumption agreement, compromise and/or extended

liquidation schedule that CMS and the Medicare provider may – but are not required to – agree to. With respect to FPG’s continued participation in the Medicare program:

**6.1.5.1 Compliance with Program Requirements.** Debtor and Reorganized Debtor FPG will comply with all applicable Medicare program requirements as set forth in Title XVIII the Social Security Act, 42 U.S.C. § 1395 *et seq.* (“Medicare Act”), and all relevant regulations, rules and CMS manual provisions.

**6.1.5.2 Cure.** Nothing withstanding anything to the contrary in the Plan or in the Order confirming the Plan, the term “cure,” for purposes of FPG’s assumption of the Medicare provider agreement includes the agreement by FPG to continue its participation in the Medicare program in the ordinary course of business; to be governed by, and subject to, the terms and conditions of its Medicare provider agreement and the incorporated statutes, regulations, policies and procedures; and to remain liable for any debt to CMS as if the bankruptcy case had not occurred. Except as otherwise provided by mutual agreement in an assumption agreement, compromise and/or extended liquidation schedule that FPG and CMS may (but are not obligated to) enter into prior to the Confirmation Date, FPG must cure all defaults – including monetary defaults – under the Medicare provider agreement before assuming it on the Confirmation Date. Thus, absent such an aforementioned agreement providing otherwise, cure would include making full payment of the current identified Medicare debts at the time of assumption. In addition, CMS’s right to cure will be in addition to and without limitation upon its right to recoup of Medicare debts or its other rights and authorities under the Medicare Act.

**6.1.5.3 Potential Agreements Between CMS and FPG.** Nothing in the Plan will operate to bar the Debtor from submitting a proposed compromise, extended liquidation schedule, or other terms or conditions, that otherwise complies with the Medicare Act, the relevant regulations, and CMS manual provisions. Similarly, nothing in this Plan, or any subsequent order related to the Plan, shall create any additional requirement for CMS to review, accept, or reject any compromise, extended liquidation schedule, or other terms and conditions proposed by the Debtor as to the repayment of the Medicare debts, except as CMS is otherwise required to do under non-bankruptcy law. The process for consideration of any such proposal will remain governed by the Medicare Act, as well as all relevant regulations, rules, and CMS manual provisions.

**6.1.5.4 Claims Unimpaired.** Except for specific Medicare overpayments debts fully cured to the satisfaction of CMS under this Section 6.1.5 upon assumption of the Medicare provider agreement, all of CMS’s claims shall be unimpaired under 11 U.S.C. § 1124 and shall pass through the bankruptcy case unaffected by the Plan and/or any other court order in the Chapter 11 Case. Any amounts due shall be collected in the ordinary course of business, and the United States, on behalf of CMS, shall not be required to file any separate claim in the bankruptcy to collect any amounts due to CMS under the Medicare program, whether via proof of claim, claim for cure, or administrative claim. Thus, for example, if CMS determines there are any Medicare overpayments or underpayments – whether arising from medical services furnished pre-petition, post-petition or after the effective date of confirmation – CMS may adjust ongoing payments to the Debtor or otherwise recover

any overpayments and pay any underpayments in accordance with the Medicare statute, regulations, policies and procedures. Nothing contained in this Plan shall release (or operate to enjoin) any claim of the United States, on behalf of CMS, against the Debtor or against any non-debtor.

**6.1.5.5 *Post-Confirmation.*** Notwithstanding any other provision of this Plan hereunder or in the Order confirming the Plan, all agreements, issues, and disputes arising under the Medicare Act, 42 U.S.C. § 1395, *et seq.* shall be governed exclusively by Medicare statutes, regulations, policies and procedures, without regard to the Bankruptcy Code or Bankruptcy Rules. Thus, for example, if CMS determines that there are any Medicare overpayments or underpayments to the Debtor – whether arising from medical services furnished pre-petition, post-petition or after the effective date of confirmation – the Secretary may adjust ongoing payments to the Debtor to recoup overpayments or otherwise recover any overpayments and pay out any underpayments in accordance with the Medicare statute, regulations, policies and procedures.

**6.1.5.6 *Other Claims of the United States Unaffected.*** Nothing in the Plan, including this Section 6.1.5 pertaining to FPG's Medicare provider agreement, shall be construed as or be given the effect of exculpating any third parties with respect to any acts, omissions or other violations of the laws, regulations, or otherwise governing provisions as they may relate to any department, agency or other subdivision of the United States government. Moreover, nothing in the Plan shall be construed to be a waiver of the United States as to FPG with respect to any acts, omissions, or other violations of the laws, regulations, or otherwise governing provisions as they may relate to any department, agency, or other subdivision of the United States government, except as provided by bankruptcy law.

**6.1.5.7 *Anti-Assignment Provisions.*** If any lender (or any other entity) were to seek direct payment of Medicare reimbursement due Debtor FPG, it must do so in accordance with the applicable anti-assignment provisions of the Medicare Act and CMS's implementing regulations. 42 U.S.C. §§ 1395g(c) & 1395(u)(b)(6); 42 C.F.R. §§ 424.73 & 424.90.

**6.1.5.8 *Jurisdictional Limitations.*** Notwithstanding any provision in the Plan or in the Order confirming the Plan, or the exhibits thereto (now or as amended), the jurisdictional limitations of the Medicare Act shall apply. 42 U.S.C. §§ 405(h) & 1395ii. Such limitations include, but are not limited to Medicare provider enrollment, certification and reimbursement determinations, and they apply whether the dispute arises from events occurring pre-petition, post-petition or after the effective date of confirmation. Thus, for example, judicial review of any final Medicare reimbursement determinations after exhaustion of jurisdictionally required administrative remedies would lie in the District Court in accordance with the Medicare Act. *See* 42 U.S.C. §§ 405(g), 1395ff, 1395oo.

**6.2 *Rejected Leases and Executory Contracts.*** If not already rejected, the Debtors hereby reject any and all other Leases and/or Executory Contracts that are not assumed herein, unless otherwise assumed by a motion filed prior to closing this Case. Pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, such rejection shall be deemed to have occurred

immediately prior to the Petition Date. The Option Agreement with Sabra is null, void, unenforceable, and otherwise of no force or effect, in accordance with the Bankruptcy Court's Memorandum Decision and Order in this Case, filed as Docket Nos. 372 and 373, respectively.

**6.3 Bar Date for Claims Relating to Rejected Leases or Executory Contracts.** Unless otherwise ordered by the Bankruptcy Court, Proofs of Claim(s) for damages arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Bankruptcy Court no later than thirty (30) days after the Confirmation Date. **All such Claim(s) not filed within the time set forth in this section shall be forever barred and extinguished against the Debtors, their Estates, and the Reorganized Debtors.**

## **ARTICLE VII** **AMENDMENTS, WAIVER, REVOCATION**

Except as otherwise provided in the Plan and § 1127 of the Code, any non-material term of the Plan may be amended or modified at any time, and the enforcement and observance of any term of the Plan may be waived at any time provided that all holders of Claims affected by the amendment or waiver have received notice of the proposed non-material amendment or waiver and have not objected in writing within a reasonable period of time and, in any event, any period of time which may be set by the Bankruptcy Court. The Debtors reserve the right to revoke or withdraw this Plan at any time prior to the Effective Date.

## **ARTICLE VIII** **EFFECT OF CONFIRMATION**

**8.1 Discharge of Debtors.** Except as otherwise provided in the Plan or in the Confirmation Order, the Debtor will obtain a discharge as provided in § 1141 of the Code upon making final payments as indicated in this Plan. The discharge of the Debtors and Reorganized Debtors shall be effective as to each Claim regardless of whether a proof of claim was filed for such Claim, whether the Claim is an Allowed Claim, or whether the holder of the Claim, debt or liability has accepted the Plan.

**8.2 Injunction.** The Confirmation Order will provide, *inter alia*, that, except as otherwise provided for in the Plan, all Persons who have held, hold, or may hold Claims are permanently enjoined from and after the Effective Date from:

(a) commencing and continuing in any manner any action or other proceeding of any kind with respect to any such Claim against the Reorganized Debtors, or any of their agents, employees, representatives, financial advisors, attorneys, accountants or affiliates of any such parties (collectively, the "Related Entities"), but solely in the Related Entities' representative capacities as agents or employees of the Reorganized Debtors;

(b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Reorganized Debtors or any Related Entities, but solely in the Related Entities' representative capacities as agents or employees of the Reorganized Debtors, or the property of such parties with respect to such Claim;

(c) creating, perfecting, or enforcing any encumbrance of any kind against the Reorganized Debtors or any Related Entities, but solely in the Related Entities' representative capacities as agents or employees of the Reorganized Debtors, or against the property of any such party or property of the Debtors and the Reorganized Debtors, with respect to any such Claim; and

(d) asserting any right of set-off, right of subrogation, or recoupment of any kind against any obligation due the Reorganized Debtors or any Related Entities, but solely in the Related Entities' representative capacities as agents, employees, representatives, financial advisors, attorneys, accountants, or any affiliates of any such parties, or against the property of any such parties of the property of their affiliates, with respect to such Claim.

**8.3 Consummation.** Upon substantial consummation of the Plan, the Reorganized Debtors may move for a final decree(s) closing the Case and requesting such orders as may be just and equitable.

## **ARTICLE IX** **RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction over this Case, until the Plan has been fully consummated, for all appropriate purposes including, but not limited to, the following:

**9.1** To hear and determine all applications for compensation of professionals under §§ 330 and 331 of the Code.

**9.2** To classify or reclassify the Claim of any Creditor and to resolve any and all objections filed against any Claim. Any failure of the Reorganized Debtors to object to or to examine any Claim for purposes of voting shall not be deemed a waiver of the Reorganized Debtor's right to object to or to re-examine any Claim in whole or in part.

**9.3** To determine all questions and disputes arising under the Plan including those regarding title to or interests in the Reorganized Debtors' Assets as well as the resolution of all Claims, causes of action, controversies, disputes, or conflicts, including any preference, fraudulent conveyance, or avoidance action pending as of the Confirmation Date and for which jurisdiction is specifically retained in the Plan.

**9.4** To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order necessary to carry out the purposes and intent of the Plan.

**9.5** To modify the Plan after confirmation.

**9.6** To enforce and interpret the terms and conditions of the Plan and to enforce all of the orders entered by the Bankruptcy Court.

**9.7** To enter any order, including orders for injunctive relief, necessary to enforce the

title, rights, and powers of the Debtors or Reorganized Debtors as well as the imposition of such restrictions, limitations, terms, and conditions as the Bankruptcy Court may deem necessary.

**9.8** To supervise or approve any aspect of any Claim that might be pursued on behalf of the Debtors or Reorganized Debtors or any Creditor.

**9.9** To resolve all adversary actions brought in the Debtors' Case.

**9.10** To enter any order concluding and terminating the case.

## **ARTICLE X** **CONDITIONS PRECEDENT TO EFFECTIVENESS**

**10.1 *Conditions Precedent.*** The Effective Date of the Plan shall occur when each of the following conditions has been met:

**10.1.1** The Confirmation Order shall have been entered by the Bankruptcy Court and shall not be subject to any stay.

**10.1.2** There has not been an appeal of the Confirmation Order filed.

**10.1.3** Ten business days have passed after the last date for an appeal of the Confirmation Order to be filed.

**10.2 *Waiver of Conditions.*** The conditions precedent to effectiveness, except 10.1.1, may be waived by the Debtors, in writing, filed with the Court.

## **ARTICLE XI** **MISCELLANEOUS**

**11.1 *Headings.*** The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the text of the Plan.

**11.2 *Interpretation.*** The rules of construction used in § 102 of Code shall apply to the construction of the Plan.

**11.3 *Plan Controls.*** Any orders entered or agreements approved by the Bankruptcy Court for the use of cash collateral, for adequate protection, or for payments in lieu of the lifting of the automatic stay shall be terminated upon entry of the Confirmation Order. At that time, the relationship between the respective parties shall be governed by the Plan.

**11.4 *Closing of the Case.*** The Debtors or Reorganized Debtors may file a motion with the Court for a final decree closing the Case upon substantial consummation of the Plan.

**11.5 *Notices.*** Any notice or other request with respect to this Plan shall be in writing and mailed to the Debtors' counsel, Michael Best & Friedrich LLP, c/o Justin M. Mertz, 100 E.

Wisconsin Ave. #3300, Milwaukee, Wisconsin 53202.

**11.6 Governing Law.** Unless federal law controls, the laws of the State of Wisconsin shall govern the rights, obligations, and construction of the Plan.

**ARTICLE XII**  
**CONCLUSION**

The Plan reflects the Debtors' best efforts to reorganize their businesses in a manner that preserves their continued viability, advances the interests of creditors, and complies in all aspects with the requirements of the Code.

Dated: May 16, 2018.

**MICHAEL BEST & FRIEDRICH LLP**

By: /s/ Justin M. Mertz

Justin M. Mertz  
100 E. Wisconsin Ave. #3300  
Milwaukee, Wis. 53202  
Phone: 414.271.6560  
Fax: 414.277.0656  
[jmmertz@michaelbest.com](mailto:jmmertz@michaelbest.com)

Ann Ustad Smith  
One South Pinckney Street, Suite 700  
P.O. Box 1806  
Madison, Wis. 53701-1806  
Phone: 608.257.3501  
Fax: 608.283.2275  
[ausmith@michaelbest.com](mailto:ausmith@michaelbest.com)

Attorneys for the Debtors,  
First Phoenix-Weston LLC and  
FPG & LCD, L.L.C.

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