

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	)	
In re:	)	Chapter 11
	)	
NEWBURY COMMON	)	Case No. 15-12507 (LSS)
ASSOCIATES, LLC <u>et al.</u> ,	)	
	)	Jointly Administered
Debtors <sup>1</sup> .	)	

**AMENDED JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE  
BANKRUPTCY CODE FOR PROPCO DEBTORS AND HOLDCO DEBTORS**

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Robert S. Brady (No. 2847)  
Sean T. Greecher (No. 4484)  
Ryan M. Bartley (No. 4985)  
Elizabeth S. Justison (No. 5911)  
1000 North King Street  
Wilmington, DE 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

*Attorneys for the Plan Debtors*

Dated: April 10, 2017

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); Tag Forest, LLC (8974); Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); 300 Main Street Associates, LLC (8501); and 220 Elm Street, II (7625). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

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## INTRODUCTION

220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Management, Inc.; 300 Main Street Associates, LLC; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Seaboard Residential, LLC; and Tag Forest, LLC (subject to Section 12.3 of the Plan, each, a “Plan Debtor,” and collectively, the “Plan Debtors”) hereby propose the following joint plan of liquidation under chapter 11 of the Bankruptcy Code (the “Plan”). While they are co-Debtors with the Plan Debtors in the Chapter 11 Cases, the Plan is not a chapter 11 plan for Newbury Common Associates, LLC, Newbury Common Member Associates, LLC or Seaboard Realty, LLC.

Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtors’ history, business, properties, and risk factors, together with a summary and analysis of the Plan. All Holders of Claims and Interests entitled to vote on the Plan are encouraged to review the Disclosure Statement and to read the Plan carefully before voting to accept or reject the Plan.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

Subject to certain restrictions and requirements set forth in the Plan and section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation (as such term is defined in section 1101 of the Bankruptcy Code).

## ARTICLE I

### DEFINED TERMS

Unless otherwise defined in the Plan, or the context otherwise requires, the following terms shall have the respective meaning set forth below.

1.1. “Administrative Claim” means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including (i) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the businesses of the Plan Debtors and (ii) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code. Administrative Claims do not include Professional Claims, which are separately classified.

1.2. “Allow” and derivations thereof means, except as otherwise provided in the Plan, with respect to any Claim or Equity Interest: (i) a Claim or Equity Interest that has been scheduled by the Plan Debtors in their Bankruptcy Schedules, as may be amended by the Plan Debtors or (following the Effective Date) the Wind-Down Administrator or the Investor Trustee, as applicable, other than disputed,

contingent, or unliquidated and as to which no timely Proof of Claim or interest has been Filed; (ii) solely with respect to whether the Holder of a Claim or Equity Interest is entitled to receive a Distribution under the Plan, a filed Claim or Equity Interest that is not Disputed; (iii) a Claim or Equity Interest that is allowed (a) by a Final Order; (b) in any stipulation with the Wind-Down Administrator or the Investor Trustee, as applicable, of amount and nature of Claim or Equity Interest executed on or after the Effective Date; or (c) in or pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; and (iv) a Claim or Equity Interest that is allowed pursuant to the terms hereof; *provided, however*, that Claims or Equity Interests temporarily allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered Allowed Claims; *provided, further*, that any Claim subject to disallowance in accordance with section 502(d) of the Bankruptcy Code shall not be considered an Allowed Claim.

1.3. “Bankruptcy Code” means 11 U.S.C. §§ 101-1532.

1.4. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

1.5. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075.

1.6. “Bankruptcy Schedules” means the schedules of assets and liabilities Filed by each Debtor pursuant to Bankruptcy Rule 1007.

1.7. “Bar Date” means October 21, 2016 at 4:00 p.m. unless an order of the Bankruptcy Court fixes a later date, by which a Person, including governmental units, asserting a Claim against any Debtor is required to file a Claim against such Debtor, which, for the avoidance of doubt, shall include: (u) the Inter-Debtor Bar Date; (v) the Supplemental Administrative Claims Bar Date for Administrative Claims arising on or after September 1, 2016; (w) the Professional Claims Bar Date for all Professional Claims; (x) for any claim relating to a Plan Debtor’s rejection of an executory contract or unexpired lease pursuant to a Court order, the date that is thirty (30) days after the effective date of such Court order if that date is later than October 21, 2016; (y) for any creditor listed in the Bankruptcy Schedules for which the Plan Debtors have filed an amendment or supplement to the Bankruptcy Schedules to modify the undisputed, noncontingent, or liquidated amount of a claim, change the nature or characterization of a claim, or to add a new claim to the Bankruptcy Schedules, twenty-one (21) days after the claimant is served with notice of the applicable amendment or supplement to the Bankruptcy Schedules; and (z) any supplemental bar date established pursuant to section 7.3(d) or section 7.3(e)(5) hereof.

1.8. “Brokerage Firms” means Keen-Summit Capital Partners LLC, Savills Studley, Inc. and FTI Consulting Realty LLC, in their capacity as real estate broker for the Debtors.

1.9. “Business Day” means any day, other than a Saturday, Sunday, or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

1.10. “Cash” means the legal tender of the United States or the equivalent thereof.

1.11. “Chapter 11 Cases” means, with respect to each Debtor, the case initiated under chapter 11 of the Bankruptcy Code by such Debtor’s Filing on the Petition Date of a voluntary petition for relief in the Bankruptcy Court.

1.12. “Claim” means a claim, as defined in section 101(5) of the Bankruptcy Code, against one of the Plan Debtors (or all or some of them) whether or not asserted or Allowed.

1.13. “Claim Objection Deadline” has the meaning set forth in Section 9.2 of the Plan.

1.14. “Claims Agent” means Donlin, Recano & Company, Inc., in its capacity as claims agent approved in the Chapter 11 Cases.

1.15. “Confirmation” means the Bankruptcy Court’s confirmation of the Plan pursuant to the Confirmation Order.

1.16. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order.

1.17. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan.

1.18. “Debtors” means each of 220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Management, Inc.; 300 Main Street Associates, LLC; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; Newbury Common Associates, LLC; Newbury Common Member Associates, LLC; One Atlantic Investor Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Seaboard Realty, LLC; Seaboard Residential, LLC; and Tag Forest, LLC.

1.19. [RESERVED]

1.20. [RESERVED]

1.21. “Disallowed” means any Claim that has either been withdrawn by the Holder, disallowed or expunged by an order of the Bankruptcy Court, or for which the Holder has agreed will be treated as a Disallowed Claim for purposes of the Bankruptcy Case.

1.22. “Disclosure Statement Order” means an order of the Bankruptcy Court approving the Disclosure Statement, authorizing the commencement of solicitation of acceptances and rejections of the Plan, establishing the schedule and deadlines in connection with Confirmation, and establishing related procedures.

1.23. “Disclosure Statement” means the disclosure statement related to the Plan, as such disclosure statement may be amended, modified, or supplemented (including all exhibits and schedules annexed thereto or referenced in the Disclosure Statement).

1.24. “Diserio” means Diserio Martin O'Connor & Castiglioni LLP.

1.25. “Disputed” means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (i) listed on the Bankruptcy Schedules as unliquidated, disputed, or contingent, unless a Proof of Claim has been timely Filed; (ii) included in a Proof of Claim for which the Claim Objection Deadline has not expired, except where the applicable Plan Debtor or Distribution Agent has

affirmatively determined to Allow such claim by notation on the Claims Register; or (iii) which is otherwise disputed by the Plan Debtors or the Wind-Down Administrator in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order.

1.26. “Distribution” means a delivery of Cash by the Investor Trustee or Wind-Down Administrator to the Holder of an Allowed Claim or Allowed Equity Interest pursuant to the Plan

1.27. “Distribution Agent” means: (a) with respect to the Professional Claims Escrow Account, the Distribution Escrow Account, and all Claims, other than Investor Claims against the Investor Trust Debtors and Settling Lender Claims, the Wind-Down Administrator; and (b) with respect to the Investor Trust, Investor Trust Assets, Investor Claims against Investor Trust Debtors and Equity Interests in Investor Trust Debtors, the Investor Trustee.

1.28. “Distribution Escrow Account” means the account that will hold the funds in each Distribution Escrow Sub-Account, as described in Section 7.2(c) of the Plan.

1.29. “Distribution Escrow Sub-Account” means the sub-accounts within the Distribution Escrow Account that will be funded in the amounts set forth on Schedule D to the Disclosure Statement on the Effective Date and utilized as described in Section 7.2(c) of the Plan.

1.30. “Effective Date” means the first business day after the entry of the Confirmation Order on which all conditions precedent to effectiveness of the Plan shall have been satisfied or waived.

1.31. “Entity” means an entity (as that term is defined in section 101(15) of the Bankruptcy Code).

1.32. “Equity Interests” means either (i) the legal, equitable, contractual, or other rights of any Entity with respect to the preferred or common stock, membership interests or any other direct or indirect equity interest in any of the Plan Debtors, including any options, warrants or other securities or other interest in or right to convert or exchange into such equity interest or (ii) the legal, equitable, contractual, or other right of any Entity to acquire or receive any of the foregoing.

1.33. “Escrow Accounts” means the Settling Lender Escrow Account, Distribution Escrow Account and Professional Claims Escrow Account.

1.34. “Estate” means each estate created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

1.35. “Exculpated Parties” means (a) each Professional retained by the Plan Debtors or any official committee appointed in the Chapter 11 Cases after the Petition Date, *provided* that references to retention by the Plan Debtors after the Petition Date in this definition is intended solely to limit who the respective Professionals are and is not intended (and shall not be deemed) to limit the scope of the exculpation of such parties under the Plan, (b) the respective officers, directors, employees, and managers of the Plan Debtors from and after the Petition Date, and (c) for the avoidance of doubt, Marc Beilinson, Mark Murphy, Richard Kapko, and Howard Altschul. Notwithstanding the foregoing, no person or entity that is or was an Insider of the Debtors at any time prior to the Effective Date, other than Marc Beilinson, Howard Altschul, Mark Murphy (to the extent qualifying as an Insider), and Richard Kapko (to the extent qualifying as an Insider), shall be an Exculpated Party in any capacity under the Plan



1.36. “File” and derivations thereof means, with respect to any pleading, entered on the docket of the Chapter 11 Cases and properly served in accordance with the Bankruptcy Rules and Local Bankruptcy Rules.

1.37. “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice.

1.38. “General Unsecured Claim” means an unsecured non-priority Claim against a Plan Debtor that is not an Administrative Claim, a Priority Tax Claim, a Professional Claim, a Settling Lender Claim, an Other Priority Claim, an Other Secured Claim, a Mortgage Claim, an Investor Claim, a Subordinated Claim, or an Intercompany Claim.

1.39. “HoldCo Debtors” means 300 Main Management, Inc.; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Seaboard Residential, LLC; and Tag Forest, LLC.

1.40. “Holder” means an Entity holding a Claim or an Equity Interest.

1.41. “Initial Objection” has the meaning set forth in Section 9.2 of the Plan.

1.42. “Insider” has the meaning set forth in section 101(31) of the Bankruptcy Code.

1.43. “Inter-Debtor Bar Date” means 4:00 p.m. (prevailing Eastern Time) on the day that is thirty (30) calendar days after the Effective Date.

1.44. “Intercompany Claim” means any Claim, of whatever nature and arising at whatever time, held by one Plan Debtor against another Plan Debtor.

1.45. “Intercompany Interests” means any Equity Interest held by another Plan Debtor.

1.46. “Interim Compensation Order” means that certain *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 123], entered by the Bankruptcy Court on January 29, 2016.

1.47. “Investor Claim” means any claim (a) arising out of the actual ownership of an Equity Interest or (b) on account of funds received by a Plan Debtor from a non-Debtor entity or person (i) on account of a funded debt obligation undertaken by a Plan Debtor, (ii) on account of a putative equity investment in a Plan Debtor, or (iii) that was an entity controlled by John J. DiMenna, Jr. or any equityholder or creditor claiming through such a DiMenna-controlled entity. For the avoidance of doubt, Investor Claims exclude any claim or interest that is classified under the Plan as an Equity Interest, Intercompany Claim, Settling Lender Claim, or Mortgage Claim, and additionally excludes any Claim that would constitute an Investor Claim except for the fact that the Bankruptcy Court has determined that such claims is a Subordinated Claim or Interest in Class 10 pursuant to a Final Order.

1.48. “Investor Trust Agreement” means the trust agreement pursuant to which the Investor Trust shall be formed and administered and which will be included in the Plan Supplement and shall be (i) subject to initial approval of the Bankruptcy Court, and (ii) reasonably satisfactory to the Plan Debtors and the Participant Investors.

1.49. “Investor Trust Assets” means (a) the initial cash in the amount of \$1,000,000 transferred to the Investor Trust on the Effective Date, (b) the Investor Trust Causes of Action, (c) any residual funds in the Professional Fee Claim Escrow distributed to the Investor Trust in accordance with Section 7.2(b) of the Plan, and (d) the proceeds, product and offspring of each of the foregoing.

1.50. “Investor Trust Causes of Action” means (a) any claim or cause of action held by any Plan Debtor against any third party (other than a Released Party), including claims and causes of action against (i) John J. DiMenna, Jr., William A. Merritt, Jr., and Thomas Kelly, Jr., or (ii) any Insider of the individuals identified in (i) other than a Plan Debtor, and (iii) accounting, legal, and other advisory firms that were retained by the Debtors; (b) those certain claims being prosecuted by UCF Trust I, LLC in the action styled as *UCF I Trust I et al. v. John J. DiMenna, Jr. et al.*, Civ. No. 16-156 (VAB) (D. Conn.); and (c) any direct claim or cause of action held by a Trust Beneficiary that arises out of or is related to an Investor Claim or Equity Interest that is contributed to the Investor Trust.

1.51. “Investor Trust Committee” shall be the five (5) member committee responsible for overseeing the administration and operations of the Investor Trust as set forth in the Investor Trust Agreement.

1.52. “Investor Trust Debtors” means 88 Hamilton Avenue Associates, LLC, 88 Hamilton Avenue Member Associates, LLC, Park Square West Associates, LLC, Park Square West Member Associates, LLC, PSWMA I, LLC, PSWMA II, LLC, Seaboard Hotel Associates, LLC and Seaboard Hotel Member Associates, LLC.

1.53. “Investor Trust Expenses” means all actual and necessary costs and expenses incurred by the Investor Trust in connection with carrying out the obligations of the Investor Trust pursuant to the terms of the Plan and the Investor Trust Agreement.

1.54. “Investor Trust” means the trust established by the Plan and described in Section 7.3 of the Plan and in the Investor Trust Agreement.

1.55. “Investor Trustee” means the Person appointed to act as trustee of the Investor Trust in accordance with the terms of the Plan, the Confirmation Order, and the Investor Trust Agreement, or any successor appointed in accordance with the terms of the Plan and the Investor Trust Agreement.

1.56. “Lien” has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.57. “Local Bankruptcy Rules” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware in effect at the relevant time.

1.58. “Mortgage Claim” means any Claim other than the Settling Lender Claims, to the extent not satisfied by previous order of the Bankruptcy Court approving the sale of the assets of the Plan Debtors, held by any Entity that asserted a claim for money loaned to a Debtor that was allegedly secured by a lien on the real property of the Plan Debtors. For the avoidance of doubt, Mortgage Claims includes any remaining asserted and unpaid Claims, regardless of the asserted priority of such Claims, and whether

such claims be in the nature of secured, unsecured deficiency, or adequate protection, that may be asserted by the following entities or any assignees thereof: People's United Bank; Citizens Bank, N.A., f/k/a RBS Citizens, N.A.; Natixis Real Estate Capital, LLC, the WFCMT 2015-NXS2 Trust (Wilmington Trust, N.A., as Trustee); Webster Bank, N.A.; the Connecticut Housing Finance Authority; First County Bank; and U.S. Bank, National Association, as Trustee for the Registered Holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2007-GG9, Commercial Mortgage Pass-Through Certificates, Series 2007-GG9.

1.59. "Other Priority Claim" means priority Claims against the Plan Debtors under section 507(a), other than Administrative Claims, Professional Claims and Priority Tax Claims.

1.60. "Other Secured Claim" means Claims against any Debtor that are secured by a lien on property in which the Estate of any Debtor has an interest, which liens are valid, perfected, and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code. For the avoidance of doubt, Settling Lender Claims and Mortgage Claims are not Other Secured Claims.

1.61. "Participant Investor Expense Fund" has the meaning set forth in Section 7.1(c) of the Plan.

1.62. "Participant Investors" means (i) James Cabrera, (ii) John Callagy, (iii) Robert Musumeci, (iv) Thomas O'Connor, and (v) Arrowhead Trust f/b/o Christopher O'Connor.

1.63. "Payment Waterfall" has the meaning set forth in Section 7.2(c) of the Plan.

1.64. "Petition Date" means the respective dates on which the Plan Debtors Filed the Chapter 11 Cases.

1.65. "Plan" has the meaning provided in the Introduction.

1.66. "Plan Debtor Release" means the release described in Section 11.3 of the Plan.

1.67. "Plan Debtors" has the meaning provided in the Introduction, and, as set forth in Section 12.3 of the Plan, following the Effective Date, shall mean only those entities identified as Plan Debtors for which the Plan has been confirmed and become effective.

1.68. "Plan Releases" means the Plan Debtor Release and Third Party Release.

1.69. "Plan Settlement" is the settlement described in Section 7.1(a) of the Plan.

1.70. "Plan Supplement" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan. The initial Plan Supplement is Exhibit 3 to the Disclosure Statement and includes (a) the form of Investor Trust Agreement, (b) the identity of the proposed Investor Trustee and Wind-Down Administrator, (c) the preliminary list of executory contracts and unexpired leases being assumed under Section 10.1 of the Plan, and (d) the Notice of Effective Date. The documents included in the initial Plan Supplement remain subject to amendment and the Plan Debtors reserve the right to add additional documents to the Plan Supplement by filing them with the Bankruptcy Court prior to the Confirmation Hearing.

1.71. [RESERVED]

1.72. “Priority Tax Claim” means a Claim against the Plan Debtors under section 507(a)(8) of the Bankruptcy Code; *provided* that any Claims asserted by a governmental unit on account of any penalties and assessments shall not be treated as a Priority Tax Claim and shall be a General Unsecured Claim.

1.73. “Professional Claim Maximum Amount” means 100% of all expenses authorized and approved by the Bankruptcy Court and 85% of fees authorized and approved by the Bankruptcy Court on a final basis; *provided* that for Diserio this amount shall mean 100% of all expenses and fees authorized and approved by the Bankruptcy Court on a final basis.

1.74. “Professional Claim” means a Claim for fees and expenses (including, without limitation, fees or expenses allowed or awarded by the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial advisory, accounting, and other services that are provided by a Professional (other than the Brokerage Firms) and reimbursement of expenses related thereto awardable and allowable under sections 328, 330(a), 331, 363, 503(b), or 1103(a) of the Bankruptcy Code or otherwise and that are incurred prior to the Effective Date or thereafter in connection with (a) applications Filed pursuant to section 330, 331, 363, 503(b), or 1103(a) of the Bankruptcy Code and (b) motions seeking the enforcement of the provisions of the Plan or Confirmation Order with respect to Professional Claims, or appeals relating thereto, by all Professionals retained in the Chapter 11 Cases, except to the extent that (x) the Bankruptcy Court has Disallowed or denied authority to pay or reimburse such fees and expenses by a Final Order or (y) any such fees and expenses have previously been paid, regardless of whether a fee application has been Filed for any such amount. To the extent that any amount of a Professional’s fees or expenses are denied approval and Allowance by a Final Order, then those amounts shall no longer constitute Professional Claims.

1.75. “Professional Claims Bar Date” has the meaning set forth in Section 4.2 of the Plan.

1.76. “Professional Claims Escrow Account” means the escrow account created and funded on the Effective Date to be used for the payment of Professional Claims, as described in Section 7.2(b) of the Plan.

1.77. “Professional Claims Escrow Amount” means the amount of all Cash of the Plan Debtors as of the Effective Date, minus the cash used to fund: (i) \$9,400,000 to the Settling Lender Escrow; (ii) \$1,000,000 funded to the Investor Trust; (iii) \$100,000 to the Wind-Down Administrator pursuant to Section 7.4(c) of the Plan; (iv) up to \$260,000 to fund the Administrative Claims allowed pursuant to Section 7.1(c) of the Plan; (v) the amount required to fund the Distribution Escrow Account pursuant to Section 7.2(c) of the Plan and Schedule D of the Disclosure Statement; and (vi) any reserve determined by the Chief Restructuring Officer of the Plan Debtors, in his sole reasonable discretion, to pay ordinary course operating expenses of the Plan Debtors that have been incurred prior to, but remain outstanding as of, the Effective Date, in an amount not to exceed \$10,000, the excess of which (if any) shall be transferred to the Professional Claims Escrow Account upon satisfaction of the amounts for which the reserve was established.

1.78. “Professional” means any Entity employed by a Debtor or official committee in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and including the Effective Date pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

1.79. “Proof of Claim” means a proof of Claim Filed against a Debtor in the Chapter 11 Cases.

1.80. “PropCo Debtors” means 220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Street Associates, LLC; 88 Hamilton Avenue Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; and Park Square West Associates, LLC; Seaboard Hotel Associates, LLC; and Seaboard Hotel LTS Associates, LLC.

1.81. “Released Parties” means each of, and solely in its capacity as such, (a) the Settling Lenders, (b) Each Holder of a Mortgage Claim that does not reject the Plan, (c) Holders of Investor Claims in each Class 6 that accepts the Plan, (d) Holders of Equity Interests in each Class 7 that accepts the Plan, (e) Dechert LLP, (f) each Professional retained by the Plan Debtors after the Petition Date, *provided* that references to retention by the Plan Debtors after the Petition Date in this definition is intended solely to limit who the respective Professionals are and is not intended (and shall not be deemed) to limit the scope of the Plan Releases to postpetition matters with respect to such Entities, (g) the respective officers, directors, members, employees, partners, managers, shareholders and owners of the parties listed in clauses (a) through (f), (h) the individuals employed by the Plan Debtors after the Petition Date, and (i) for the avoidance of doubt, Marc Beilinson, Mark Murphy, Richard Kapko, and Howard Altschul. Notwithstanding the foregoing, no person or entity that is or was an Insider of the Debtors at any time prior to the Effective Date, other than Marc Beilinson, Howard Altschul, Mark Murphy (to the extent qualifying as an Insider), and Richard Kapko (to the extent qualifying as an Insider), shall be a Released Party in any capacity under the Plan.

1.82. “Releasing Parties” means each of, and solely in its capacity as such, (a) the Settling Lenders, (b) Holders of Mortgage Claims in each Class 3 that accepted the Plan; (c) Holders of Mortgage Claims in each Class 3 that rejected the Plan, except for those who rejected the Plan and affirmatively opted not to grant the Third Party Releases on their ballots, (d) all Holders of General Unsecured Claim, except for those who rejected the Plan and affirmatively opted not to grant the Third Party Releases on their ballots; (e) all Holders of Investor Claims; and (f) all Holders of Equity Interests; *provided* that to the extent that the Plan Debtors have served a Solicitation Package on the Holder of a Claim or Interest and the Solicitation Package is ultimately returned as “undeliverable” such Holder shall be excluded from the definition as a Releasing Party.

1.83. “Settling Lender Claims” means any Claim held by Cedar Hill Capital, LLC, CPR Money, LLC, Annemid Noteholder RI, LLC (as successor in interest to Israel Discount Bank of New York), and UCF I Trust 1 or their successors and assigns arising out of loans made to the Plan Debtors, regardless of whether such claim is secured or unsecured.

1.84. “Settling Lender Escrow Account” means the escrow account described in Section 7.2(a) of the Plan.

1.85. “Settling Lenders” means Cedar Hill Capital, LLC, CPR Money, LLC, Annemid Noteholder RI, LLC (as successor in interest to Israel Discount Bank of New York), and UCF I Trust 1, solely in their capacities as lenders to the Plan Debtors.

1.86. “Solicitation Package” means the Disclosure Statement, including the Plan, notice of the Confirmation Hearing approved by the Court, a ballot to accept or reject the Plan, and such other items as directed by the Disclosure Statement Order.

1.87. “Subordinated Claim” or “Subordinated Interest” means any Claim or Equity Interest that has been subordinated pursuant to a Final Order of the Bankruptcy Court.

1.88. “Supplemental Administrative Claims Bar Date” has the meaning provided in Section 4.1(b) of the Plan.

1.89. “Third Party Releases” means the release described in Section 11.4 of the Plan.

1.90. “Trust Beneficiary” has the meaning provided in Section 7.3(b) of the Plan.

1.91. “Trust Indemnified Party” means the Investor Trustee, the Investor Trust Committee, their respective firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or duly designated agents or representatives.

1.92. “U.S. Trustee Fees” means fees arising under 28 U.S.C. § 1930(a)(6) and any accrued interest thereon arising under 31 U.S.C. § 3717.

1.93. “Unimpaired” means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.94. “United States Trustee” means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in the District of Delaware.

1.95. “Voting Deadline” shall mean the deadline for voting to accept or reject the Plan as established by the Disclosure Statement Order.

1.96. “Wind-Down Administrator” means the person or Entity appointed to carry out the duties and actions set forth in Section 7.4 of the Plan.

## **ARTICLE II INTERPRETATION OF PLAN**

### 2.1. Application of Definitions; Rules of Construction;

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender. For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. A capitalized term that is used but not defined in the Plan shall have the meaning assigned to that term in the Bankruptcy Code or in the Exhibits to the Plan. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Unless otherwise indicated in the Plan, all references to dollars means United States dollars.



2.2. Date of Distributions and Other Actions; Computation of Time

In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006 shall apply

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

3.1. Classification

The following table (a) designates the Classes of Claims against, and Equity Interests in, the Plan Debtors, (b) specifies the Classes of Claims and Equity Interests that are Impaired by the Plan and are either (i) deemed to reject the Plan, (ii) are entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, or (iii) have consensually agreed to accept the Plan under the Plan Settlement, and (c) specifies the Classes of Claims and Equity Interests that are Unimpaired by the Plan and therefore are conclusively presumed to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Each class is a separate Class for each applicable Plan Debtor.

<b>Class</b>	<b>Description</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)
2	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)
3	Mortgage Claims	Impaired	Yes
4	Settling Lender Claims	Impaired	Yes
5	General Unsecured Claims	Impaired	Yes
6	Investor Claims	Impaired	Yes
7	Equity Interests	Impaired	Yes
8	Intercompany Claims	Impaired	No (deemed to accept pursuant to the Plan Settlement)
9	Intercompany Interest	Impaired	No (deemed to accept pursuant to the Plan Settlement)
10	Subordinated Claims and Subordinated Interests	Impaired	No

ARTICLE IV

**PAYMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL CLAIMS, PRIORITY TAX CLAIMS, AND OTHER UNCLASSIFIED CLAIMS**

4.1. Administrative Claims

(a) Treatment of Administrative Claims

Subject to the Payment Waterfall, unless the Holder has agreed otherwise, each Holder of an Allowed Administrative Claim shall receive a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Allowed Administrative Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(b) Supplemental Administrative Claims Bar Date

Holders of Administrative Claims arising during the period from September 1, 2016 through the Effective Date must file requests for payment of Administrative Claims so as to be actually received on or before 4:00 p.m. (prevailing Eastern Time) on the day that is thirty (30) calendar days after the Effective Date (the "**Supplemental Administrative Claims Bar Date**") by the Claims Agent at the following address:

If sent by first-class mail:

Donlin, Recano & Company, Inc.

Re: Newbury Common Associates, LLC, et al.

P.O. Box 192328

Blythebourne Station

Brooklyn, NY 11219

If sent by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.

Re: Newbury Common Associates, LLC, et al.

6201 15th Avenue

Brooklyn, NY 11219

All such requests for payment must: (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) be written in the English language; (iii) denominate the claim in lawful currency of the United States as of the Supplemental Administrative Claims Bar Date; (iv) indicate the particular Debtor against which the claim is asserted; and (v) include supporting documentation (or, if such documentation is voluminous, include a summary of such documentation) or an explanation as to why such documentation is not available. The notice of the Effective Date delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f), substantially in the form included in the Plan Supplement, shall set forth the Supplemental Administrative Claims Bar Date and shall constitute notice of such bar date.

The following claims are not required to be Filed on or before the Supplemental Administrative Claims Bar Date:



- (1) Professional Claims;
- (2) any Administrative Claims that (i) have been previously paid by the Debtors in the ordinary course of business or otherwise or (ii) have otherwise been satisfied;
- (3) any Administrative Claims previously Filed with the Claims Agent or the Bankruptcy Court;
- (4) any Administrative Claim that has been Allowed by prior order of the Bankruptcy Court;
- (5) any claims held by any Plan Debtor;
- (6) any claims for fees payable to the Clerk of the Bankruptcy Court;
- (7) any U.S. Trustee Fees; and
- (8) any Administrative Claim entitled to administrative expense status pursuant to section 503(b)(1)(D).

Any Person that is required to File a request for payment of an Administrative Claim (other than Professional Claims) under the Plan and fails to do so by the Supplemental Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim, and such Administrative Claim shall not be enforceable against the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, and their respective properties, and the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, and shall not be entitled to any Distribution under the Plan with respect to such Administrative Claim.

**For the avoidance of doubt, the establishment of the Supplemental Administrative Claims Bar Date does not extend the time for parties to file any Administrative Claim (other than Professional Claims) arising prior to September 1, 2016, and any Administrative Claim related to such period shall be subject to the Bar Dates or other orders of the Bankruptcy Court establishing the time period within which parties may file such claims.**

#### 4.2. Professional Claims

All Persons seeking Allowance of Professional Claims under the Plan shall File, on or before the date that is thirty (30) days after the Effective Date (the "Professional Claims Bar Date"), their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred.

Each Holder of an Allowed Professional Claim shall receive pro-rata Distributions from the Professional Claims Escrow Account up to the Professional Claim Maximum Amount, determined based on the Professional Claim Maximum Amount and not solely with regard to Distributions made from the Professional Claims Escrow Account; *provided* that Diserio will be entitled to payment in full of its Professional Claim Maximum Amount and shall not be subject to any limitation on payment that would arise as a result of Diserio sharing in Distributions from the Professional Claims Escrow Account on a pro rata basis. Conditioned upon the occurrence of the Effective Date of the Plan, Holders of Professional Claims shall not have recourse to any other assets of the Plan Debtors for satisfaction of the Professional Claims.

Upon the occurrence of the Effective Date, in addition to the transaction fees and credit bid fees previously approved by the Bankruptcy Court on a final basis, the \$52,118.29 previously paid to the Brokerage Firms for reimbursement of expenses shall be deemed allowed and approved, including with respect to allocation, on a final basis and all amounts owing to the Brokerage Firms by the Debtors shall be deemed satisfied. For the avoidance of doubt, the Brokerage Firms shall have no recourse to the Professional Claims Escrow Account.

#### 4.3. Priority Tax Claims

Subject to the Payment Waterfall, unless the Holder has agreed otherwise, each Holder of an Allowed Priority Tax Claim shall receive a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Priority Tax Claims and Other Secured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Any Claim that is asserted as a secured claim, but would also constitute a Priority Tax Claim, shall be classified and treated as a Priority Tax Claim under the Plan; *provided*, that any lien or security interest securing such claims shall attach to the applicable Distribution Escrow Sub-Account from which such claim will be paid and shall only be released in accordance with the Plan at the time such claim is paid in full.

## ARTICLE V

### TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

The Plan provides for the treatment of Claims and Equity Interests as set forth below. Each Class of Claims shall be a separate Class for each Plan Debtor. For purposes of the Plan, the Classes will be referred to by Plan Debtor in the format of Class 1-X, 2-X, 3-X, et c. with “X” corresponding to the letter for each Plan Debtor identified below:

- A. 220 Elm Street I, LLC (“220 Elm I”)
- B. 220 Elm Street II, LLC (“220 Elm II”)
- C. 300 Main Management, Inc. (“300 Main Management”)
- D. 300 Main Street Associates, LLC (“300 Main”)
- E. 300 Main Street Member Associates, LLC (“300 Main Street Member”)
- F. 316 Courtland Avenue Associates, LLC (“316 Cortland Avenue”)
- G. 600 Summer Street Stamford Associates, LLC (“600 Summer Street”)
- H. 88 Hamilton Avenue Associates, LLC (“88 Hamilton”)
- I. 88 Hamilton Avenue Member Associates, LLC (“88 Hamilton Avenue Member”)
- J. Century Plaza Investor Associates, LLC (“Century Plaza”)
- K. Clocktower Close Associates, LLC; (“Clocktower Close”)
- L. One Atlantic Investor Associates, LLC (“One Atlantic”)

- M. One Atlantic Member Associates, LLC (“One Atlantic Member”)
- N. Park Square West Associates, LLC (“Park Square West”)
- O. Park Square West Member Associates, LLC (“Park Square West Member”)
- P. PSWMA I, LLC (“PSWMA I”)
- Q. PSWMA II, LLC (“PSWMA II”)
- R. Seaboard Hotel Associates, LLC (“Seaboard Hotel”)
- S. Seaboard Hotel Member Associates, LLC (“Seaboard Hotel Member”)
- T. Seaboard Hotel LTS Associates, LLC (“Seaboard Hotel LTS”)
- U. Seaboard Hotel LTS Member Associates, LLC (“Seaboard Hotel LTS Member”)
- V. Seaboard Residential, LLC (“Seaboard Residential”)
- W. Tag Forest, LLC (“Tag Forest”)

5.1. Class 1 – Other Secured Claims

(a) Classification: Class 1 shall consist of Other Secured Claims against the applicable Plan Debtor.

(b) Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Secured Claim shall receive a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Priority Tax Claims and Other Secured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

5.2. Class 2 – Other Priority Claims

(a) Classification: Class 2 shall consist of Other Priority Claims against the applicable Plan Debtor.

(b) Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Priority Claim shall receive a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Allowed Other Priority Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

5.3. Class 3 – Mortgage Claims

(a) Classification: Class 3 shall consist of Mortgage Claims against the applicable Plan Debtor.

(b) Treatment:

(1) If Class 3 accepts the Plan, each Holder of a Mortgage Claim shall receive treatment as a Released Party under the Plan.

(2) If Class 3 rejects the Plan, each Holder of a Mortgage Claim shall receive nothing on account of its Claim.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class 3 at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.4. Class 4 – Settling Lender Claims

(a) Classification: Class 4 shall consist of Settling Lender Claims against the applicable Plan Debtor.

(b) Treatment: Each Holder of a Settling Lender Claim shall receive (i) treatment as a Released Party under the Plan, and (ii) its interest in the Settling Lender Escrow Account, as determined in accordance with the Settling Lender Escrow Account Agreement.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class 4 at each applicable Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.5. Class 5 – General Unsecured Claims

(a) Classification: Class 5 shall consist of General Unsecured Claims against the applicable Plan Debtor.

(b) Treatment: Each Holder of a General Unsecured Claim shall receive its *pro rata* share of the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim it allowed, that remains after all payments are made to senior Classes of Claims (excluding Class 4, Settling Lender Claims) against such Plan Debtor in accordance with the Payment Waterfall, until such Holder has received payment in full of its Allowed Claim. Payment to Holders of Claims in Class 5 will be made: (i) at such time as all Allowed Other General Unsecured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.6. Class 6 – Investor Claims

(a) Classification: Class 6 shall consist of Investor Claims against the applicable Plan Debtor.

(b) Treatment:

(1) If Class 6 accepts the Plan, each Holder of an Investor Claim in Class 6 shall receive treatment as a Released Party under the Plan.

(2) If Class 6 rejects the Plan, each Holder of an Investor Claim in Class 6 shall receive nothing on account of its Claim.

(3) Regardless of whether Class 6 for a Plan Debtor accepts or rejects the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of that Plan Debtor after each Allowed Claim in Classes 1 through 5 (to the extent applicable) for that Plan Debtor have been paid in full, then the Holders of Investor Claims against that Plan Debtor shall share *pro rata* in such remaining amount up to the full Allowed amounts of such Investor Claims.

(4) With respect to each Investor Trust Debtor, regardless of whether Class 6 accepts or rejects the Plan, each Holder of an Investor Claim in Class 6 against such Investor Trust Debtor shall receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

5.7. Class 7 – Equity Interests

(a) Classification: Class 7 shall consist of Equity Interests in the applicable Plan Debtor, other than (i) Intercompany Interests, and (ii) Equity Interests that are subordinated by the Bankruptcy Court which shall be placed in Class 10.

(b) Treatment:

(1) If Class 7 accepts the Plan, each Holder of an Equity Interest in Class 7 shall receive treatment as a Released Party under the Plan. .

(2) If Class 7 rejects the Plan, each Holder of an Equity Interest in Class 7 shall receive nothing on account of its Equity Interest.

(3) Regardless of whether Class 7 for a Plan Debtor accepts or rejects the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of that Plan Debtor after each Allowed Claim in Classes 1 through 6 (to the extent applicable) at that Plan Debtor have been paid in full, then the Holders of Equity Interests against that Plan Debtor shall share *pro rata* in such remaining amounts.

(4) With respect to each Investor Trust Debtor, regardless of whether Class 7 accepts or rejects the Plan, each Holder of an Equity Interest in Class 7 against such Investor Trust Debtor shall receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

5.8. Class 8 – Intercompany Claims

(a) Classification: Class 8 shall consist of Intercompany Claims by other Plan Debtors against the applicable Plan Debtor.

(b) Treatment: All Intercompany Claims shall be deemed compromised and satisfied as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan, and after the Effective Date, all Intercompany Claims shall be deemed

compromised and satisfied and there shall be no Distributions on account of Intercompany Claims except as expressly provided for in the Plan.

5.9. Class 9 – Intercompany Interests

(a) Classification: Class 9 shall consist of Intercompany Interests.

(b) Treatment: All Intercompany Interests shall be deemed compromised and cancelled as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan, and after the Effective Date, all Intercompany Interests shall be deemed cancelled and there shall be no Distributions on account of Intercompany Interests except as expressly provided for in the Plan; *provided, however*, that if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 7 (to the extent applicable) for that Plan Debtor have been paid in full, then the remaining amount shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor(s) holding the Intercompany Interests in the Plan Debtor with such excess funds.

5.10. Class 10 – Subordinated Claims and Subordinated Interests

(a) Classification: Class 10 shall consist of Subordinated Claims against, and Subordinated Interests in, the applicable Plan Debtor.

(b) Treatment: Each Holder of a Subordinated Claim or Subordinated Interest in Class 10 shall receive nothing on account of its Subordinated Claim or Subordinated Interest.

**ARTICLE VI**

**ACCEPTANCE OR REJECTION OF THE PLAN; CLASSIFICATION OF CLAIMS**

6.1. Voting of Claims

(a) Classes Entitled to Vote: Each Claim or Interest in Classes 3 through 7 for each Plan Debtor shall be entitled to vote separately to accept or reject the Plan, as provided in the Disclosure Statement Order or any other applicable order of the Bankruptcy Court.

(b) Classes Conclusively Presumed to Accept: Each of Classes 1 and 2 for each Plan Debtor is Unimpaired under the Plan, and each such Class is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Intercompany Claims and Intercompany Interests in Classes 8 and 9 are being consensually resolved pursuant to the Plan and, as part of the approval of that settlement, they are deemed to accept the Plan.

(c) Classes Deemed to Reject: Subordinated Claims and Subordinated Interests in Class 10 will not receive or retain any property on account of such Subordinated Claim or Subordinated Interest under the Plan. In accordance with section 1126(g) of the Bankruptcy Code, Class 10 is deemed to have rejected the Plan.

6.2. Manner of Classifying Claims and Interests

(a) Classification for Voting Purposes

Except as provided for to the contrary in the Disclosure Statement Order or another order of the Bankruptcy Court entered prior to Confirmation, (i) the classification set forth in Section 6.2(c) of the Plan shall apply to each Claim or Interest identified and addressed in Section 6.2(c) of the Plan for purposes of voting to accept or reject the Plan, and (ii) each Claim or Interest identified and addressed in Section 6.2(c) of the Plan either (x) to which no objection to the allowance thereof, motion to estimate, or action to equitably subordinate or otherwise limit recovery with respect thereto, has been interposed and remains unresolved or (y) for which the Holder has obtained an order of the Bankruptcy Court temporarily allowing such Claim or Interest for voting purposes under Bankruptcy Rule 3018(a), shall be entitled to vote to accept or reject the Plan.

(b) Classification for All Other Purposes

The Plan shall serve as a motion by each Plan Debtor to classify the Claims and Interests identified and addressed in Section 6.2(c) of the Plan in the manner set forth therein. Confirmation of the Plan, but expressly subject to the occurrence of the Effective Date, shall effect the classifications set forth in Section 6.2(c) of the Plan for each Claim and Equity Interest identified and addressed therein on a final basis, subject only to the following: (i) the Plan Debtors or Wind-Down Administrator shall have the right to object to further reclassify any Administrative Claim, Priority Tax Claim, Other Priority Claim or Other Secured Claim to General Unsecured Claim status or to have a General Unsecured Claim reassigned to another Debtor; and (ii) the Plan Debtors, Investor Trustee, or the Holder of an Investor Claim may file a motion or objection that seeks to re-assign such Holder's Investor Claim to another Debtor, to have such Holder's Investor Claim reclassified to an Equity Interest, or to do both of the foregoing.

For the avoidance of doubt, nothing in Section 6.2 of the Plan (but subject to any other controlling provisions of the Plan) precludes any party from filing a motion or objection that seeks to modify the amount of any Claim identified and addressed in Section 6.2(c) of the Plan (including to reduce the claim to zero) or to subordinate any Claim or Equity Interest.

(c) Proposed Classifications

The Plan Debtors have proposed the following classifications: (i) each Proof of Claim identified in Schedule A to the Disclosure Statement as a Mortgage Claim shall be placed in the respective Class 3 (Mortgage Claims) of the Plan Debtor against which it is currently pending; (ii) any Proof of Claim asserted or held by a Settling Lender shall be placed into the respective Class 4 (Settling Lender Claims) of the Plan Debtor against which it is currently pending; (iii) each Proof of Claim identified in Schedule B to the Disclosure Statement as an Investor Claim shall be placed in the respective Class 6 (Investor Claims) of the Plan Debtor against which it is currently pending; (iv) each remaining Proof of Claim that is not addressed in the foregoing clauses (i) through (iii) that asserts an unsecured, non-priority, non-administrative expense amount shall be placed in the respective Class 5 (General Unsecured Claims) of the Plan Debtor against which it is currently pending; and (v) each Holder identified in Schedule C to the Disclosure Statement as the Holder of an Equity Interest shall be placed in Class 7 (Equity Interests) for the respective Plan Debtor in which it has been identified as holding an Equity Interest.



6.3. Treatment of Vacant Classes

Any Class of Claims or Equity Interests that does not contain a Holder of an Allowed Claim or Allowed Equity Interest shall be deemed deleted from the Plan for all purposes; *provided, however*, that Section 6.3 of the Plan shall not serve to restrict or preclude the ability of the Plan Debtors or applicable Distribution Agent from seeking to subordinate any Claim or Equity Interest and placing such Claim or Equity Interest into Class 10 so long as such action is timely brought, notwithstanding the fact Class 10 may have been vacant at any point in time prior to the commencement of such an action.

Additionally, if as of the Voting Deadline, any Class of Claims or Equity Interests does not contain a Holder of a Claim or Equity Interest that has been Allowed or temporarily allowed for purposes of voting on the Plan, such Class shall be deemed deleted from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

6.4. Deemed Acceptance of Classes that do not Vote

If there are Classes that contain Holders of Claims or Interests, but no Holder timely and properly votes to accept or reject the Plan, the Plan will be deemed accepted by such Class.

6.5. Nonconsensual Confirmation

If any Class of Claims or Interests entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Plan Debtors reserve the right to amend the Plan in accordance with Section 15.5 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes of Claims that are deemed to reject the Plan, the Plan Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

**ARTICLE VII**

**MEANS OF IMPLEMENTATION OF THE PLAN**

7.1. Settlements Implemented under the Plan

(a) Global Plan Settlement

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates the "Plan Settlement," which is a compromise and settlement of numerous debtor-creditor issues designed to achieve an economic resolution of Claims against and Interests in the Plan Debtors (including Intercompany Claims and Intercompany Interests), Claims that may be asserted against the Released Parties, and an efficient resolution of these Chapter 11 Cases. The Plan Settlement effects the following:

- The allowance, compromise, treatment and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Settling Lenders and (ii) all claims asserted or which may be asserted against the Settling Lenders by the Plan Debtors and the other Releasing Parties;
- The compromise, treatment and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Holders of Investor Claims and Equity Interests (other than Subordinated Interests) and (ii) all claims asserted or which may be asserted against the Holders of Investor Claims and



Equity Interests (other than Subordinated Interests) by the Plan Debtors and the other Releasing Parties;

- The compromise, treatment, and satisfaction of all Intercompany Claims that could be asserted by any Plan Debtor against another Plan Debtor, through the allocation of the cash in the various Estates of the Plan Debtors to the various Distribution Escrow Sub-Account of the Plan Debtors;
- The compromise, treatment, and satisfaction of all Mortgage Claims, including the ability of the Holder of a Mortgage Claim to be included as a Released Party, as provided for in the definition of Released Party;
- The compromise, treatment, and satisfaction of all Professional Claims, subject only to approval of such Professional Claims and allowance of such Claims by the Bankruptcy Court pursuant to sections 330 and 363 of the Bankruptcy Code after notice and a hearing;
- The allowance, compromise, treatment, and satisfaction of the Substantial Contribution Claims described in Section 7.1(c) of the Plan;
- Funding (i) the Distribution Escrow Sub-Account of each Plan Debtor, as set forth in Schedule D to the Disclosure Statement, (ii) the Settling Lender Escrow Account in the amount of \$9,400,000, (iii) \$1,000,000 to the Investor Trust, and (iv) funding the Professional Claims Escrow Account in the amount of the Professional Claims Escrow Amount, all from the cash of the various Estates of the Plan Debtors and as an express condition of the Plan Settlement;
- The cancellation of all equity interests in each Plan Debtor;
- The creation of the Investor Trust, primarily, to evaluate and pursue the Investor Trust Causes of Action that will be conveyed to and vested in the Investor Trust; and
- The grant and effectuation of the Plan Releases and an injunction against any action that would violate the Plan Releases and exculpation provisions of the Plan to implement the foregoing.

The Plan Settlement constitutes a settlement of a number of potential litigation issues, including the determination of (i) the priority, classification, and amount of, and the obligors for, the Settling Lender Claims, (ii) the Intercompany Claims (including the nature and amount of any contribution among the Plan Debtors for the Settling Lender Claims) and resulting allocation of Assets among the Estates, and (iv) the potential claims and causes of action held by and against the Released Parties and Releasing Parties, including the Plan Debtors, the Settling Lenders, certain Holders of Mortgage Claims, and certain Holders of Investor Claims and Equity Interests (excluding Holders of Subordinated Interests).

Confirmation will constitute the Bankruptcy Court's approval of the Plan Settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, and shall constitute a finding that the compromises and settlements under the Plan Settlement are in the best interests of the Plan Debtors, their Estates, their creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. Each provision of the Plan Settlement is considered non-severable from each other and from the remaining terms of the Plan. The failure of the Bankruptcy Court to confirm the Plan or for the Effective Date of Plan to occur shall return the parties to the *status quo ante* and pending the occurrence of the Effective Date of the Plan, all parties' rights are expressly reserved and preserved and shall not be affected by the proposed Plan Settlement; provided that upon the occurrence of the Effective Date of the Plan, the Plan Settlement (and all other provisions of the Plan) shall be binding on all creditors and equityholders of the Plan Debtors.

(b) [RESERVED]

(c) Settlement of Certain Substantial Contribution Claims

On the Effective Date, (i) OnBoard Investors, LLC shall be granted and paid, to its counsel, an Allowed Administrative Claim in the amount of \$175,000 on account of the *Application Pursuant To 11 U.S.C. §§ 503(b)(3) And 503(b)(4) For Allowance Of Fees And Expenses Incurred In Making A Substantial Contribution As An Administrative Expense Claim* [Docket No. 1262] in full and final satisfaction of OnBoard Investors, LLC's application; (ii) Ares Management LLC shall be granted and paid an Allowed Administrative Claim in the amount of \$85,000 on account of any claim that has been or could have been asserted against the Debtors, including Proofs of Claim numbered 409-418; and (iii) [RESERVED].

7.2. Establishment, Funding and Distribution of Escrow Accounts

(a) Settling Lender Escrow Account

(1) On the Effective Date, the Settling Lender Escrow Account shall be established, shall be held in the legal name of Seaboard Hotel for administrative purposes only, and shall be funded from the Plan Debtors' Cash with the aggregate amount of \$9,400,000 from the Cash available at all of the Plan Debtors. The Settling Lender Escrow Account shall be governed by the Settling Lender Escrow Account Agreement and the funds therein shall be disbursed in accordance with its terms.

(2) The Settling Lender Escrow Account Agreement shall be in a form acceptable to, and agreed upon by, each of the Settling Lenders and the Plan Debtors in their reasonable discretion; *provided* that if, as of the Effective Date, the Settling Lenders and the Plan Debtors have not agreed upon the terms of a Settling Lender Escrow Account Agreement, a short form Settling Lender Escrow Account Agreement shall be entered into on the Effective Date, which shall contain customary terms for escrow agreements of this type but shall expressly provide that the funds in the Settling Lender Escrow Account will only be distributed either (i) by unanimous agreement among the Settling Lenders or (ii) by order of the Bankruptcy Court. Any subsequent amendment to such short form agreement shall only be made upon express prior written consent of each Settling Lender.

(3) The Bankruptcy Court shall retain subject matter jurisdiction to hear any dispute over the allocation of the funds in the Settling Lender Escrow Account.

(b) Professional Claims Escrow Account

On the Effective Date, the Professional Claims Escrow Account shall be established, shall be held in the legal name of Seaboard Hotel for administrative purposes only, and shall be funded from the Plan Debtors' Cash in the amount of the Professional Claims Escrow Amount; *provided* that at the election of the Professionals, the Professional Claims Escrow Account can be maintained by counsel to the Plan Debtors in its client trust account. The funds in the Professional Claims Escrow Account shall be used solely for the purpose of funding Professional Claims and shall be distributed *pro rata* based on the Professional Claim Maximum Amount of each Professional. Marc Beilinson shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan.

From and after the Effective Date, pending the final Allowance of their Professional Claims, each retained Professional shall be paid from the Professional Claims Escrow Account the interim amount

permitted to be paid under the Interim Compensation Order on account of its Professional Claims, not to exceed the Professional Claim Maximum Amount for such Professional. If there are any funds in the Professional Claims Escrow Account after each Holder of an Allowed Professional Claim has received its Professional Claim Maximum Amount, the balance of such funds shall be transferred to the Investor Trust, *first*, for payment of any unpaid expenses of the Wind-Down Administrator that constitute Investor Trust Expenses, and *second*, to be used as general Investor Trust Assets in accordance with the terms of the Investor Trust Agreement.

(c) Distribution Escrow Account; Payment Waterfall

On the Effective Date, the Distribution Escrow Account shall be established, shall be held in the legal name of Seaboard Hotel for administrative purposes only, shall be divided into Distribution Escrow Sub-Accounts for each PropCo Debtor and each HoldCo Debtor, and shall be funded from the Plan Debtors' Cash with the aggregate amount set forth on Schedule D to the Disclosure Statement. The funds in the Distribution Escrow Account shall be further allocated to the Distribution Escrow Sub-Account for each Plan Debtor in the amounts set forth on Schedule D to the Disclosure Statement; *provided* that if the amount set forth on Schedule D to the Disclosure Statement, is zero, there shall be no Distribution Escrow Sub-Account for such Plan Debtor. If the Plan is not confirmed or does not become effective for any Plan Debtor, the amount allocated to the Distribution Escrow Sub-Account for such Plan Debtor shall be reallocated on a *pro rata* basis to the other Plan Debtors, based on the amounts set forth on Schedule D to the Disclosure Statement. The Wind-Down Administrator shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan.

The funds in the Distribution Escrow Sub-Account shall be distributed on a *pro rata* basis to Holders of Claims against that Plan Debtor as follows (the "Payment Waterfall"): *first*, to satisfy all Allowed Other Secured Claims against that Plan Debtor and Priority Tax Claims until the Holders of such Claims are paid the full Allowed amount of their Claims; *second*, to satisfy all Allowed Administrative Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *third*, to satisfy all Priority Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fourth*, to satisfy all Allowed General Unsecured Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fifth*, to satisfy all Allowed Investor Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims. Once all Allowed Claims (other than Subordinated Claims) against a Plan Debtor have been satisfied in full, any excess funds in that Plan Debtors' Distribution Escrow Sub-Account, shall be paid on a *pro rata* basis to the Holders of Allowed Equity Interests (but excluding Subordinated Interests) in that Plan Debtor; *provided* that if such Plan Debtor is owned by another Plan Debtor, such excess funds shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor holding the Intercompany Interests in that Plan Debtor. Distributions under Section 7.2(c) of the Plan (if any) to Holders of Allowed Investor Trust Claims against Investor Trust Debtors and Holders of Allowed Equity Interests in Investor Trust Debtors shall be (x) in addition to any distributions to which such Holders might be entitled under Sections 5.6(b)(1) and 5.7(b)(1) of the Plan and the Investor Trust Agreement; and (y) made by transfer of such funds from the Distribution Escrow Sub-Account to the Investor Trust for further Distribution under the terms and conditions of the Investor Trust Agreement.

7.3. The Investor Trust

(a) Establishment of the Investor Trust

On the Effective Date, the Investor Trust will be created, and the Investor Trust Assets will be transferred to and vest in the Investor Trust as of the Effective Date. Pursuant to section 1123(b)(3)(B) of

the Bankruptcy Code, from and after the Effective Date, only the Investor Trust and the Investor Trustee shall have the right to pursue or not to pursue, or, subject to the terms of the Plan and the Investor Trust Agreement, compromise or settle any Investor Trust Causes of Action. From and after the Effective Date, the Investor Trust and the Investor Trustee may commence, litigate, and settle any Causes of Action or Claims relating to the Investor Trust Assets or rights to payment or Claims that belong to the Plan Debtors as of the Effective Date or are instituted by the Investor Trust or Investor Trustee on or after the Effective Date, except as otherwise expressly provided in the Plan and the Investor Trust Agreement. The Investor Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Plan Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code. Without the need for filing any motion for such relief, in connection with the Investor Trust Assets, the Investor Trust or the Investor Trustee (as applicable) hereby shall be deemed substituted (i) for the Plan Debtors (x) in all pending matters including but not limited to motions, contested matters and adversary proceedings in the Bankruptcy Court; and (y) any Investor Trust Causes of Action pending before the Bankruptcy Court or any other court; and (ii) for any plaintiffs, putative plaintiffs or claimants that are not Plan Debtors in any Investor Trust Cause of Action including, but not limited to, that certain Investor Trust Cause of Action styled *UCF I Trust 1 et al. v. John J. DiMenna, Jr. et al.*, Civ. No. 16-156 (VAB) (D. Conn), or such parties shall provide such reasonable assistance as is necessary to effect such substitution. On and after the Effective Date, the Investor Trust shall have no liability on account of any Claims against, or Equity Interests in, the Plan Debtors except as set forth in the Plan and in the Investor Trust Agreement.

(b) Appointment of Investor Trustee

On the Effective Date, the Investor Trustee shall be appointed and shall constitute a representative of the Plan Debtors' estates under section 1123 of the Bankruptcy Code. The Investor Trustee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trustee shall serve in such capacity through the earlier of (i) the completion of the administration of the Investor Trust Assets and the Investor Trust, including the winding up of the Investor Trust, in accordance with Investor Trust Agreement and this Plan; (ii) termination of the Investor Trust in accordance with the terms of the Investor Trust Agreement and this Plan; or (iii) the Investor Trustee's resignation, death, incapacity or removal; *provided, however*, that, in the event of the Investor Trustee's resignation, death, incapacity or otherwise inability to serve, the Investor Trust Committee shall appoint a successor to serve as the Investor Trustee in accordance with the Investor Trust Agreement. Any successor Investor Trustee shall serve in such capacity for the duration set forth in the prior sentence. To the extent that the Investor Trust Committee does not appoint a successor within the time periods specified in the Investor Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Investor Trust, shall approve a successor to serve as the Investor Trustee.

(c) The Investor Trust Committee

The initial members of the Investor Trust Committee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trust Committee shall have the responsibilities set forth in the Investor Trust Agreement. Vacancies on the Investor Trust Committee shall be filled by a Trust Beneficiary designated by the remaining member or members of the Investor Trust Committee according to the terms of the Investor Trust Agreement. The Investor Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing any member of the Investor Trust Committee for cause. Any successor Investor Trustee appointed pursuant to Section 7.3(c) of the Plan and in accordance with the Investor Trust Agreement shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. For the avoidance of doubt, no member

of the Investor Trust Committee shall be compensated for serving as a member of the Investor Trust Committee, *provided, however,* that such members may be reimbursed from the Investor Trust for reasonable out of pocket expenses.

(d) Beneficiaries of the Investor Trust; Beneficial Interests in the Trust

The beneficiaries of the Investor Trust (each a “Trust Beneficiary”) shall be the Holders of Allowed Equity Interests in, and Allowed Investor Claims against, the Investor Trust Debtors. The initial Trust Beneficiaries shall be determined based on the classification provided for in Section 6.2 of the Plan. The Investor Trustee shall have the ability to seek an order of the Bankruptcy Court that Allows, Disallows, or subordinates any Equity Interest in, or Investor Claim against, an Investor Trust Debtor or establishes a supplemental bar date for purposes of determining whether any additional Equity Interests in, or Investor Claims against, the Investor Trust Debtors exist.

Beneficial interests in the Investor Trust shall be allocated among the Trust Beneficiaries by the Investor Trustee based upon the procedures set forth in the Investor Trust Agreement.

For the avoidance of doubt, Holders of Investor Claims against, and Equity Interests in, any Debtor that is a Plan Debtor but is not an Investor Trust Debtor shall not be a Trust Beneficiary on account of such Investor Claim or Equity Interest.

(e) Responsibilities of the Investor Trustee

The Investor Trust’s primary responsibilities shall be as follows, but shall additionally include any other matters set forth in the Investor Trust Agreement:

(1) Pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Investor Trust Causes of Action, subject to any limitations as may be determined by the Investor Trust Committee;

(2) Resolve any disputes over the status of any party as a Trust Beneficiary, including but not limited to whether an Investor Claim filed against an Investor Trust Debtor or Equity Interest asserted against an Investor Trust Debtor has been properly asserted and/or should be allowed against that Debtor;

(3) Determine the amount of beneficial interests in the Investor Trust to which each Trust Beneficiary is entitled;

(4) Determine the amount and timing of the Distributions of the Cash proceeds of the Investor Trust Assets, including the Investor Trust Causes of Action, to the Trust Beneficiaries;

(5) If the Investor Trustee deems necessary or advisable, establish a bar date to determine all Holders of Equity Interests in and/or a supplemental bar date for Investor Claims against the Investor Trust Debtors;

(6) Receive, manage, invest, supervise, protect, and where appropriate, cause the Investor Trust to abandon the Investor Trust Assets; and

(7) Review, and where appropriate, cause the Investor Trust to allow or object to Investor Claims against the Investor Trust Debtors or to proofs of Equity Interest in the

Investor Trust Debtors, and supervise and administer the Investor Trust's commencement, prosecution, settlement, compromise, withdrawal or resolution of all such objections.

(f) Transfer of Investor Trust Assets

Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date, pursuant to the terms and conditions of the Investor Trust Agreement, the Plan Debtors shall be deemed to have automatically transferred to the Investor Trust all of their right, title, and interest in and to all of the Investor Trust Assets in accordance with section 1141 of the Bankruptcy Code, including the Plan Debtors' attorney-client privilege solely to the extent related thereto. All such assets shall automatically vest in the Investor Trust free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims as set forth in the Plan and the expenses of the Investor Trust as set forth in the Plan and in the Investor Trust Agreement. Thereupon, the Plan Debtors shall have no interest in or with respect to the Investor Trust Assets or the Investor Trust.

(g) Treatment of Investor Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Investor Trust shall be established for the primary purpose of liquidating and distributing the assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Investor Trust. Accordingly, the Investor Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Investor Trust Assets, make timely Distributions to the Trust Beneficiaries and not unduly prolong its duration. The Investor Trust shall not be deemed a successor-in-interest of the Plan Debtors for any purpose other than as specifically set forth in the Plan or in the Investor Trust Agreement. The record Holders of beneficial interests shall be recorded and set forth in a register maintained by the Investor Trustee expressly for such purpose.

The Investor Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Trust Beneficiaries treated as grantors and owners of the Investor Trust. For all federal income tax purposes, all parties (including the Plan Debtors, the Investor Trustee, and the Investor Trust Beneficiaries) shall treat the transfer of the Investor Trust Assets by the Plan Debtors to the Investor Trust, as set forth in the Investor Trust Agreement, as a transfer of such assets by the Plan Debtors to the Trust Beneficiaries entitled to Distributions from the Investor Trust Assets, followed by a transfer by such Holders to the Investor Trust. Thus, the Investor Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Investor Trustee shall make a good faith determination of the fair market value of the Investor Trust Assets as of the Effective Date, provided, however, that the Investor Trustee shall not be required to hire an expert to make such a valuation. This valuation shall be used consistently by all parties (including the Plan Debtors, the Investor Trustee, and the Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall hear and finally determine any dispute regarding the valuation of the Investor Trust Assets.

The rights and powers of the Investor Trustee to invest the Investor Trust Assets, the proceeds thereof, or any income earned by the Investor Trust, shall be limited to the rights and powers that a liquidating trust, within the meaning of section 301.7701-4(d) of the Treasury Regulations, is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings or other IRS pronouncements. The Investor Trustee may expend the Cash of the Investor Trust in its discretion (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Investor Trust Assets during liquidation, (ii) to pay the respective reasonable administrative

expenses (including any taxes imposed on the Investor Trust) and (iii) to satisfy other respective liabilities incurred by the Investor Trust in accordance with the Plan and the Investor Trust Agreement (including the payment of any taxes).

(h) Expenses of Investor Trustee; Retention of Advisors

The Investor Trust Expenses, including the fees and expenses of any professionals retained by the Investor Trustee, shall be paid from the Investor Trust Assets.

The Investor Trustee shall have the authority to retain professionals to assist it in carrying out the purposes of the Investor Trust and discharging the trustee's obligations, which shall be paid from the Investor Trust Assets.

(i) Preservation of Privileges and Defenses.

The actions taken by the Plan Debtors or the Wind-Down Administrator in connection with the Plan and the Investor Trust Assets shall not be (or deemed to be) a waiver of any privilege of any of the Plan Debtors or the Wind-Down Administrator, as applicable, including any attaching to any document or communications (whether written or oral) transferred pursuant to section 7.3(f) of the Plan. Notwithstanding any Plan Debtor or any party-in-interest in any Investor Trust Cause of Action providing any privileged information to the Investor Trust, Investor Trustee, Investor Trust Committee or any member thereof, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting the Investor Trust Causes of Action, objections to Investor Claims against Investor Trust Debtors and objections to Equity Interests in Investor Trust Debtors, as applicable, and shall remain privileged.

(j) Insurance; Bond

The Investor Trustee, in his, her or its sole discretion, may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Investor Trustee and the Investor Trust Committee under the Investor Trust Agreement, which shall be an expense of the Investor Trust and paid out of Investor Trust Assets. Notwithstanding any state or other applicable law to the contrary, the Investor Trustee (including any successor Investor Trustee) shall be exempt from giving any bond or other security in any jurisdiction and shall serve under the Investor Trust Agreement without bond.

(k) Fiduciary Duties of the Investor Trustee

Pursuant to the Plan and the Investor Trust Agreement, the Investor Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Equity Interest that will receive Distributions pursuant to the terms of the Plan and Investor Trust Agreement.

(l) Termination of the Investor Trust

The Investor Trust will terminate on the earlier of: (a) the payment of all costs, expenses, and obligations incurred in connection with administering the Investor Trust, and the Distribution of all Investment Trust Assets in accordance with the provisions hereof, the Confirmation Order, and the Investor Trust Agreement; and (b) the fifth (5th) anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed-term extensions can be obtained so long as Bankruptcy Court approval is obtained within six (6) months before the expiration of the term of the Investor Trust and each extended term provided that any further extension would not adversely affect the status of the Investor Trust as an

Investor Trust within the meaning of section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After the termination of the Trust as provided in this section 7.3(1), the Investor Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions, and the Investor Trustee shall have no further responsibility in connection therewith except to the limited extent set forth in the Investor Trust Agreement.

(m) Liability of Investor Trust, Investor Trustee and Investor Trust Committee; Indemnification

Neither the Trustee nor the Investor Trust Committee, nor their respective firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or duly designated agents or representatives, nor any of such Person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with this Plan or the Investor Trust Agreement, whether sounding in tort, contract, or otherwise, except for fraud, gross negligence, or willful misconduct that is found by a final judgment (not subject to further appeal or review) of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Trust. In no event shall the Trustee, the Investor Trust Committee or any member thereof be liable for indirect, punitive, special, incidental or consequential damage or loss (including but not limited to lost profits) whatsoever, even if it has been informed of the likelihood of such loss or damages and regardless of the form of action, excluding any instance where such party has been found by a final judgment (not subject to further appeal or review) of a court of competent jurisdiction to have acted fraudulently or with gross negligence or willful misconduct. The Investor Trustee and/or the Investor Trust Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its counsel, agents or advisors, and shall not be liable for any action taken, omitted, or suffered in reliance upon the advice of such counsel, agents, or advisors regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Investor Trustee nor the Investor Trust Committee shall be under any obligation to consult with its counsel, agents, or advisors, and their determination not to do so shall not result in the imposition of liability on the Investor Trustee, the Investor Trust Committee or its respective members or designees, unless such determination is based on willful misconduct, gross negligence or fraud.

The Investor Trust shall indemnify and hold harmless the Trust Indemnified Parties (in their capacity as such), from and against and in respect of all liabilities, losses, claims, costs, expenses or damages of any kind, type or nature, whether sounding in tort, contract, or otherwise, that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Investor Trust or the Plan or the discharge of their duties under the Investor Trust Agreement or hereunder including, without limitation, the costs of counsel or others in investigating, preparing, defending, or settling any action or claim (whether or not litigation has been initiated against the Trust Indemnified Party) or in enforcing the Investor Trust Agreement (including its indemnification provisions); *provided, however*, that no such indemnification will be made to such persons for actions or omissions finally determined by a final judgment (not subject to further appeal or review) of a court of competent jurisdiction to result directly and primarily from the willful misconduct, gross negligence, or fraud of the Trust Indemnified Party. Persons dealing or having any relationship with the Investor Trust, Investor Trustee or the Investor Trust Committee shall have recourse only to the Investor Trust Assets and shall look only to the Investor Trust Assets, after reserving for all actual and anticipated expenses and liabilities of the Investor Trust, to satisfy any liability or other obligations incurred by the Investor Trustee, the Investor Trust Committee or the members thereof to such person in carrying out the terms of



the Plan and the Investor Trust Agreement, and no Person shall look to the Investor Trustee or other Trust Indemnified Parties personally for the payment of any such expense or liability. Neither the Investor Trustee nor the Investor Trust Committee shall be liable whatsoever except for the performance of such duties and obligations as are specifically set forth in the Plan, and no implied covenants or obligations shall be read into the Investor Trust Agreement against any of them. The Investor Trust shall promptly pay expenses reasonably incurred by any Trust Indemnified Party in defending, participating in, or settling any action, proceeding or investigation in which such Trust Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Investor Trust Agreement or the duties, acts or omissions of the Investor Trustee or otherwise in connection with the affairs of the Investor Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Trust Indemnified Party hereby undertakes, and the Investor Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such party is not entitled to be indemnified therefor under the Investor Trust Agreement. The foregoing indemnity in respect of any Trust Indemnified Party shall survive the termination of such Trust Indemnified Party from the capacity for which they are indemnified.

7.4. Wind-Down of the Plan Debtors; Wind-Down Administrator

(a) Appointment and Authority of Wind-Down Administrator

Each Plan Debtor shall be deemed to have appointed a Wind-Down Administrator. In accordance with applicable Delaware and Connecticut limited liability company law, the Wind-Down Administrator shall act as Sole Manager of each Plan Debtor and have all power and authority that may be or could have been exercised, with respect to the Plan Debtors, by any officer, director, shareholder, member, manager or other party acting in the name of such Plan Debtor or its Estate with like effect as if duly authorized, exercised and taken by action of such officer, director, shareholder, member, manager or other party.

The identity of the Wind-Down Administrator will be disclosed in the Plan Supplement and the appointment of the Wind-Down Administrator shall be approved in the Confirmation Order. The position of Wind-Down Administrator may be filled by the Investor Trustee (including any successor Investor Trustee), and the Investor Trust Agreement will permit the Investor Trustee to fulfil the role of and discharge the duties of the Wind-Down Administrator.

(b) Duties of Wind-Down Administrator

The Wind-Down Administrator will be responsible for:

- (1) Winding up the Plan Debtors' affairs as is appropriate under the circumstances;
- (2) Administering the Plan and taking such actions as are necessary to effectuate the Plan;
- (3) Effecting the dissolution and cancellation of each of the Plan Debtors;
- (4) Filing all appropriate (including final) tax returns;

(5) Ensuring that all reports required by the United States Trustee through the date each Plan Debtor's Chapter 11 Case is closed are Filed and the resulting U. S. Trustee Fees are paid;

(6) As to all Claims other than Investor Claims against Investor Trust Debtors, resolving any Claim filed against a Plan Debtor that is not Allowed as of the Effective Date, including prosecuting any objections to claims pending as of the Effective Date;

(7) Administering Distributions to Holders of Allowed Claims (other than Investor Claims and Subordinated Claims) from the Distribution Escrow Account in accordance with the Plan; and

(8) Seeking entry of an order closing the Chapter 11 Case and obtaining a final decree for each Plan Debtors, subject to obtaining the consent to the Investor Trustee in each instance.

(c) Expenses of the Wind-Down Administrator

The Wind-Down Administrator will be provided \$100,000 to carry out the duties of the Wind-Down Administrator, including the payment of U.S. Trustee Fees for any Plan Debtor through the date such Plan Debtor's Chapter 11 Cases are closed. Any amount that remains after the Wind-Down Administrator has fully discharged its duties shall be contributed to the Investor Trust as Investor Trust Assets. In the event that such amount is insufficient to satisfy the compensation and expenses of the Wind-Down Administrator, such shortfall shall be treated as an Investor Trust Expenses and shall be paid *first*, from any excess amounts in the Professional Claim Escrow Account after all Professionals have received their respective Professional Claim Maximum Amount, and *second*, from the general Investor Trust Assets.

The Wind-Down Administrator shall have the authority to retain professionals or employ individuals to assist it in carrying out its duties as Wind-Down Administrator or, alternatively, may utilize the professionals or individuals employed by the Investor Trustee with the Investor Trustee's consent.

(d) Corporate Existence and Dissolution or Cancellation of Plan Debtors

Any officer, director or manager of each Plan Debtor shall be deemed to have resigned upon the occurrence of the Effective Date.

Immediately after the Effective Date, the Wind-Down Administrator shall be authorized to take, in his or her sole and absolute discretion, all actions reasonably necessary to dissolve or cancel the limited liability company existence of the Plan Debtors under applicable laws, including under the laws of the jurisdictions in which they may be organized or registered, and to pay all reasonable costs and expenses in connection with such dissolutions, including the costs of preparing or filing any necessary paperwork or documentation. The Wind-Down Administrator shall be authorized to file any certificate of dissolution or cancellation or other documents as may be necessary or desirable to terminate the legal existence of the Plan Debtors.

The Wind-Down Administrator and Plan Debtors shall not be required to pay any stamp tax or similar tax in connection with any instrument effecting the dissolution or cancellation of the Plan Debtors.

7.5. Effectuating Documents; Further Transactions

The appropriate officer or director of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, and Confirmation of the Plan shall constitute all necessary corporate or limited liability company authorizations necessary to carry out such actions.

7.6. Cancellation of Instruments and Stock

On the Effective Date, all instruments evidencing or creating any indebtedness or obligation of the Plan Debtors, except such instruments that are authorized or issued under the Plan, shall be canceled and extinguished. Additionally, as of the Effective Date, all Equity Interests in all of the Plan Debtors, and any and all warrants, options, rights, or interests with respect to such Equity Interests that have been issued, could be issued, or that have been authorized to be issued but that have not been issued, shall be deemed cancelled and extinguished without any further action of any party; *provided, however*, that each Plan Debtor shall be deemed to have issued one (1) share of common stock or 100% of its membership interests, as the case may be, to the Wind-Down Administrator to be held and exercised solely for purposes of the Wind-Down Administrator carrying out its duties as set forth in Section 7.4 of the Plan.

The holders of, or parties to, the cancelled notes, membership interests, share certificates, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan and Investor Trust Agreement.

7.7. Disposition of Books and Records

After the Effective Date, the Plan Debtors shall transfer the Plan Debtors' books and records in the Plan Debtors' actual possession and otherwise assign their rights and interest in such books and records to the Investor Trustee. From and after the Effective Date, the Investor Trustee shall continue to preserve and maintain all documents and electronic data transferred to the Investor Trustee by the Plan Debtors, and the Investor Trustee shall not destroy or otherwise abandon any such documents and records (in electronic or paper format) absent further order of the Bankruptcy Court after a hearing upon notice to parties-in-interest; *provided, however*, that the Investor Trustee may destroy or abandon such books and records upon dissolution of the Investor Trust.

**ARTICLE VIII**

**DISTRIBUTIONS UNDER THE PLAN**

8.1. Timing of Distributions

(a) Distributions on Account of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims.

Subject to the Payment Waterfall, the Wind-Down Administrator shall make Distributions on account of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims against each Plan Debtor from its respective Distribution Escrow Sub-Account on the later of (i) the Effective Date, or as soon as reasonably practicable thereafter, and (ii) the date such Claims become Allowed.

(b) Distributions on Account of Allowed General Unsecured Claims.

Subject to the Payment Waterfall, the Wind-Down Administrator shall make Distributions on account of Allowed General Unsecured Claims against each Plan Debtor from its respective Distribution Escrow Sub-Account, as soon as practicable after all General Unsecured Claims asserted against such Plan Debtor have either been Allowed or Disallowed.

(c) Distributions on Account of Allowed Investor Claims and Equity Interests.

Distributions to Holders of Allowed Investor Claims against Investor Trust Debtors and Equity Interests against Investor Trust Debtors shall be made as set forth in the Investor Trust Agreement.

8.2. Delivery of Distributions

Subject to Bankruptcy Rule 9010, all Distributions to any Holder of an Allowed Claim or Equity Interest shall be made at the address of such Holder as set forth on the Bankruptcy Schedules filed with the Bankruptcy Court if no Proof of Claim has been filed and otherwise at the address of such Holder as set forth in the most-recently filed Proof of Claim; *provided* that the applicable Distribution Agent shall use any address identified to it in writing, including by a filing with the Bankruptcy Court, by the Holder of a Claim or Equity Interest. Nothing in the Plan shall require the Plan Debtors or applicable Distribution Agent to attempt to locate any Holder of an Allowed Claim or Equity Interest.

8.3. Undeliverable and Unclaimed Distributions

(a) Holding Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim or Equity Interest is returned as undeliverable or is otherwise unclaimed, no additional Distributions shall be made to such Holder unless and until the applicable Distribution Agent is notified in writing of such Holder's then-current address. Nothing contained in the Plan shall require the applicable Distribution Agent to attempt to locate any Holder of an Allowed Claim.

(b) Failure to Claim Unclaimed/Undeliverable Distributions

Subject to Sections 8.6 and 8.12 of the Plan, any Holder of an Allowed Claim that does not contact the applicable Distribution Agent to claim an undeliverable or unclaimed Distribution within one hundred twenty (120) days after the Distribution is made shall be deemed to have forfeited its right to such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution on account of its Allowed Claims against the Plan Debtors, their Estates, their property, the Distribution Escrow Account, the Investor Trust, or the respective assets of or in any of the foregoing. In such cases, such unclaimed/undeliverable Distributions shall be redistributed and paid to Holders of Allowed Claims and Equity Interests in accordance with the Plan, free of any restrictions thereon and notwithstanding any federal or state escheatment laws to the contrary.

8.4. Transfer of Claims

The claims register shall remain open after the Effective Date and the applicable Distribution Agent shall recognize any transfer of Claims in accordance with Bankruptcy Rules 3001(e) at any time thereafter, provided that for purposes of each Distribution, the applicable Distribution Agent is not

obligated to recognize (and will have no liability if it does not recognize) any transfer during the period commencing thirty (30) calendar days prior to making any Distribution. Except as otherwise provided in the Plan, any transfer of a Claim, whether occurring prior to or after the Confirmation Date, shall not affect or alter the classification and treatment of such Claim under the Plan and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim were held by the transferor who held such Claim on the Petition Date.

8.5. Manner of Payment

At the option of the applicable Distribution Agent, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

8.6. Time Bar to Cash Payments by Check

Checks issued pursuant to the Plan on account of Allowed Claims or Equity Interests shall be null and void if not negotiated within one hundred twenty (120) days after the date of issuance thereof, following which date the applicable Distribution Agent may void and cancel such check without any recourse to the party to which such check was issued, subject only to Section 8.3(b) of the Plan.

8.7. Setoffs and Recoupment

The applicable Distribution Agent may, but shall not be required to, set off against or recoup from any Distribution on account of an Allowed Claim or Equity Interest, any rights to payment of any nature whatsoever that the Plan Debtors may have against the claimant, except where expressly released by the Plan Releases; *provided, however*, neither the failure to do so nor the allowance of any Claim or Equity Interest under the Plan shall constitute a waiver or release by the Plan Debtors, Wind-Down Administrator or Investor Trust of any such right to payment they may have against such claimant.

8.8. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such Distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

8.9. Interest on Claims

Except as specifically provided for in the Plan, the Confirmation Order or a Final Order of the Bankruptcy Court, interest shall not accrue on Claims, Equity Interests or Distributions to be made under the Plan, and no Holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date on any Claim or Equity Interest, and no Claim shall be Allowed to the extent that it is for post-petition interest or other similar charges.

8.10. No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim.

#### 8.11. Reserves

Subject to the Payment Waterfall, if at a time that Distribution may be made, there exists one or more Disputed Claims or Equity Interests within the Class of Claims or Equity Interests to which such Distribution will be made, the applicable Distribution Agent shall establish and maintain reserves for the benefit of Holders of Disputed Claims or Equity Interest within that Class, which reserves shall include an amount of Cash equal to the Distributions that would have been made to the Holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (a) the amount of the Disputed Claim, (b) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (c) such other amount as may be agreed upon by the Holder of such Disputed Claim and the applicable Distribution Agent.

#### 8.12. Payment of Taxes on Distributions Received Pursuant to the Plan; Required Compliance with Withholding and Reporting Obligations

In connection with the Plan and all Distributions under the Plan, the applicable Distribution Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements. The applicable Distribution Agent may withhold from amounts distributable to any Person any and all amounts, determined in the applicable Distribution Agent's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. Notwithstanding the above, each Holder of an Allowed Claim or Equity Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution. The applicable Distribution Agent has the right, but not the obligation, to refrain from making a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

As an express condition to receiving a Distribution, each Holder of an Allowed Claim or Equity Interest must furnish any information that the applicable Distribution Agent believes, in good faith, it is required to obtain prior to making a Distribution in order to allow the applicable Distribution Agent to comply with tax-reporting and other regulatory obligations, including furnishing a Taxpayer Identification Number or Employer Identification Number (*i.e.*, social security number for an individual and employer identification number for a business) and a completed Form W-9 or, if not a US company, Form W-8, which may be obtained from the Internal Revenue Service.

The applicable Distribution Agent shall make an initial request for the information required under Section 8.12 of the Plan as soon as reasonably practicable after the Effective Date and shall specify a period of 120 days to respond, and such request shall specify that the information is being requested for purposes of potential Distributions under the Plan and that the failure to respond will result in disallowance of the Claim or Equity Interest in accordance with Section 8.12 of the Plan. A second request shall be made (i) for Claims other than General Unsecured Claims or Investor Claims, after the expiration of the initial 120 day period, and (ii) for General Unsecured Claims, Investor Claims or Equity Interests, at the time that the applicable Distribution Agent proposes to make initial Distributions to Holders of Claims or Equity Interests within such Class, and such request shall specify that the information is being requested for purposes of potential Distributions under the Plan and that the failure to respond will result in disallowance of the Claim or Equity Interest in accordance with Section 8.12 of the Plan. Any party that fails to respond a second request within sixty (60) days of the applicable

Distribution Agent mailing such request, shall have their Claim or Equity Interest Disallowed and expunged and shall not be entitled to receive any further Distributions under the Plan on account of such Claim or Equity Interest.

#### 8.13. Minimum Distribution Amounts; Rounding

The applicable Distribution Agent shall not be required to make any distribution that is less than \$50.00 (“De Minimis Distribution”). Any De Minimis Distribution shall continue to be held for the benefit of the Holders of Allowed Claims or Equity Interests entitled to such De Minimis Distributions until such time that the aggregate amount of De Minimis Distributions held by the applicable Distribution Agent for the benefit of a Holder of a Claim or Equity Interest equals or exceeds \$50.00, at which time the applicable Distribution Agent will distribute such De Minimis Distributions to such Holder. If, at the time that the final Distribution under the Plan is to be made to a particular Class of Claims or Equity Interests, the De Minimis Distributions held by the applicable Distribution Agent for the benefit of a Holder of a Claim or Equity Interest totals less than \$50.00, such funds shall not be distributed to such Holder, but rather, such Claim or Equity Interest shall be deemed expunged and such Distribution shall be reallocated for Distribution to the other Holders of Allowed Claims or Equity Interests in such affected Class.

On or about the time that a final Distribution to is made to a Class and upon the applicable Distribution Agent determining that there are insufficient funds remaining to cost-effectively make any further Distribution to Holders of Claims or Equity Interests in that Class, the applicable Distribution Agent may donate any undistributed funds to the American Bankruptcy Institute Endowment Fund.

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down) with amounts equal to or greater than \$0.50 being rounded up and fractions less than \$0.50 being rounded down.

## ARTICLE IX

### PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

#### 9.1. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan and the Investor Trust Agreement, after the Effective Date, the applicable Distribution Agent shall have the sole authority (a) to file, withdraw, or litigate to judgment objections to Claims or Equity Interests, (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

#### 9.2. Claims Objections

The Plan Debtors’, the Investor Trustee’s, or the Wind-Down Administrator’s failure to object to any Claim or Equity Interest in the Chapter 11 Cases shall be without prejudice to the Investor Trustee’s or the Wind-Down Administrator’s rights to contest or otherwise defend against such Claim or Equity Interest in the Bankruptcy Court when and if such Claim or Equity Interest is sought to be enforced by the



Holder thereof. For the avoidance of doubt, nothing included in Section 9.1 of the Plan limits the standing or rights that any party may have to object to Professional Claims.

Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections to Claims (including Administrative Claims and Priority Tax Claims but excluding Professional Claims) or Equity Interests by the applicable Distribution Agent shall be Filed not later than 180 days after the later of (i) the Effective Date or (ii) the date such Claim is Filed (the “Claims Objection Deadline”), *provided* that the applicable Distribution Agent may request (and the Bankruptcy Court may grant) an extension of such deadline by Filing a motion with the Bankruptcy Court, based upon a reasonable exercise of the applicable Distribution Agent’s business judgment; *provided further* that with respect to Claims that, as of the Claims Objection Deadline, are subject to a pending objection (an “Initial Objection”) wherein the objection to such Claim or Equity Interest is ultimately denied, the Claims Objection Deadline shall be extended to the later of sixty (60) calendar days from the date on which (a) the Bankruptcy Court enters an order denying such Initial Objection or (b) any appellate court enters a Final Order reversing or vacating an order of the Bankruptcy Court granting such Initial Objection. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan.

### 9.3. Estimation of Claims

The applicable Distribution Agent may (but is not required to) at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Plan Debtors or the applicable Distribution Agent previously objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim or Equity Interest at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent Claim, unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the applicable Distribution Agent may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

### 9.4. Adjustment to Claims or Equity Interests Without Objection

Any Claim or Equity Interest that has been paid, satisfied, amended, settled or superseded may be adjusted or expunged on the Claims Register by the Claims Agent at the direction of the applicable Distribution Agent without the need for any application, motion, complaint, claim objection, or any other legal proceeding seeking to object to such Claim or Equity Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

### 9.5. No Distributions Pending Allowance

Notwithstanding any other provision hereof, if any portion of a Claim or Equity Interest is Disputed, no payment or Distribution provided under the Plan shall be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Equity Interest becomes Allowed.



9.6. Distributions After Allowance

To the extent that a Disputed Claim or Equity Interest ultimately becomes an Allowed Claim or Equity Interest, Distributions (if any) shall be made to the Holder of such Allowed Claim or Equity Interest in accordance with the provisions of the Plan.

9.7. Disallowance of Certain Claims

Any Claims or Equity Interests held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or by a Person that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and such Persons may not receive any Distributions on account of their Claims or Equity Interest until such time as such Causes of Action against such Persons have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Plan Debtors by such Person have been turned over or paid to the Investor Trust.

9.8. Amendments to Claims

On or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or the applicable Distribution Agent and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full and expunged without any further action; *provided, however*, that Section 9.8 of the Plan shall not prohibit or restrict the applicable Distribution Agent from seeking to establish any additional or supplemental bar dates for filing Investor Claims or proofs of Equity Interests.

9.9. Claims Paid and Payable by Third Parties

A Claim shall be Disallowed without a Claim Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a source other than the Distribution Escrow Account or the Investor Trust; *provided* that the applicable Distribution Agent shall provide 21 days' notice of the proposed disallowance to the Holder of such Claim during which period the Holder may object to such disallowance. If the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Any and all rights of the applicable Distribution Agents to seek return or repayment of a distribution under the Plan from the Holder of a Claim on account of any payment on account of such Claim from a source other than the Plan Debtors, the Distribution Escrow Account or the Investor Trust are reserved.

Distributions under the Plan shall be made on account of any Allowed Claim that is payable pursuant to one of the Plan Debtors' insurance policies solely up to the amount of, and in full and complete satisfaction of, the portion of such Allowed Claim that is within the deductible or self-insured retention under such insurance policy. Except as provided in Section 9.9 of the Plan, no Person shall have any other recourse against the Plan Debtors, the Estates, the Investor Trust, or any of their respective properties or assets on account of such deductible or self-insured retention under an insurance policy.

9.10. Inter-Debtor Bar Date

Each Debtor that is not a Plan Debtor shall have until the Inter-Debtor Bar Date to file a proof of claim or request for administrative expense on account of any claim against the Plan Debtors. Such proof of claim or request for administrative expense shall be filed with the Claims Agent. Any Debtor that is

not a Plan Debtor that fails to file a proof of claim or request for administrative expense by the Inter-Debtor Bar Date shall not be treated as a creditor with respect to Distributions occurring under the Plan.

## ARTICLE X

### EXECUTORY CONTRACTS AND LEASES

#### 10.1. Executory Contracts and Unexpired Leases Deemed Rejected

On the Effective Date, all of the Plan Debtors' executory contracts and unexpired leases will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except to the extent that (a) the Plan Debtors previously have assumed, assumed and assigned, or rejected such executory contract or unexpired lease, (b) prior to the Effective Date, the Plan Debtors have Filed a motion to assume, assume and assign, or reject an executory contract or unexpired lease on which the Bankruptcy Court has not ruled, or (c) an executory contract and unexpired lease is specifically identified in the Plan Supplement as an executory contract or unexpired lease to be assumed pursuant to the Plan, in which case such executory contract or unexpired lease shall be assumed by the applicable Plan Debtor(s) and assigned to the Investor Trust. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections, assumptions and assignments of executory contracts and unexpired leases pursuant to Section 10.1 of the Plan and sections 365(a) and 1123 of the Bankruptcy Code.

#### 10.2. Bar Date For Rejection Damages

If the rejection by the Plan Debtors of an executory contract or an unexpired lease pursuant to Section 10.1 of the Plan results in damages to the other party or parties to such executory contract or unexpired lease, a Proof of Claim asserting those damages that arise from such rejection (a "Rejection Claim") must be submitted to the Claims Agent so as to actually be received on or before the date that is the thirty (30) days after the occurrence of the Effective Date. Nothing set forth in the Plan shall extend the deadline to file a Rejection Claim if an earlier deadline was established under the Bar Date Order.

Any Person that is required to file a Proof of Claim for a Rejection Claim and that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, the Investor Trust Assets and the Distribution Escrow Account and funds therein unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan.

#### 10.3. Cure Amounts and Objection to Assumption

In the event that the Plan Debtors elect to assume an executory contract or unexpired lease pursuant to clause (c) of Section 10.1 of the Plan, the Plan Debtors shall include in the Plan Supplement the amount that they believe is required to be paid under section 365(b) of the Bankruptcy Code as cure in connection with the assumption of such executory contract or unexpired lease (a "Cure Amount"), and they shall contemporaneously with such filing (or amendment) of the Plan Supplement, serve a notice of such Cure Amount on each affected counterparty contemporaneous with the filing of the Plan Supplement (each such notice a "Contract Notice"). The Plan Debtors shall have the right to revise the Cure Amount through the commencement of the Confirmation Hearing. The affected counterparties shall have (14) fourteen days from the service of the last-served Contract Notice to object to the proposed Cure Amount or the proposed assumption and assignment (the "Contract Objection Period"). If no objection is timely-Filed during the Contract Objection Period, than the Cure Amount shall be fixed as set forth in the Plan Supplement, such Cure Amount shall promptly be paid by the Investor Trustee as an Investor Trust

Expense, and such executory contract shall be deemed assumed as of the later of the Effective Date and the expiration of the Contract Objection Period. If an objection is timely-Filed within the Contract Objection Period, such executory contract and lease shall neither be assumed or rejected until (i) the Plan Debtors (or Investor Trustee if such objection is not resolved prior to the Effective Date) enter into a written agreement resolving the Cure Amount, (ii) the Plan Debtors file a notice that they are withdrawing their request to assume the executory contract or unexpired lease that is subject to the objection, or (iii) a Final Order is entered by the Bankruptcy Court resolving the objection.

## ARTICLE XI

### EFFECT OF CONFIRMATION

#### 11.1. Binding Effect

Subject to the occurrence of the Effective Date, the provisions of the Plan, the Plan Supplement, and the Confirmation Order shall bind (a) any Holder of a Claim against, or Equity Interest in, the Plan Debtors and such Holder's respective successors and assigns (whether or not the Claim or Equity Interests are Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder is entitled to a Distribution under the Plan), (b) all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, (c) each Person acquiring property under the Plan or the Confirmation Order, and (d) any and all non-Debtor parties to executory contracts and unexpired leases with the Plan Debtors.

#### 11.2. Reservation of Causes of Action/Reservation of Rights

Except where expressly released or exculpated in the Plan, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any claim or cause of action that the Plan Debtors or the Investor Trust, as applicable, may have or may choose to assert against any Person, including but not limited to the Investor Trust Causes of Action.

#### 11.3. Releases by the Plan Debtors of Certain Parties

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH PLAN DEBTOR, IN ITS INDIVIDUAL CAPACITY AND AS A DEBTOR IN POSSESSION FOR ITSELF AND ON BEHALF OF ITS ESTATE, AND ANY PERSON CLAIMING THROUGH, ON BEHALF OF, OR FOR THE BENEFIT OF EACH PLAN DEBTOR AND ITS ESTATE, SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS AND THE CHAPTER 11 CASES. THE INVESTOR TRUST, INVESTOR TRUSTEE AND WIND-DOWN ADMINISTRATOR, SHALL BE BOUND, TO THE SAME EXTENT THAT THE DEBTORS ARE BOUND, BY THE RELEASES AND DISCHARGES SET FORTH ABOVE.**

11.4. Releases by Non-Debtors

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTIONS 105(A) AND 1123(B)(5) AND (6) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH RELEASING PARTY SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS AND THE CHAPTER 11 CASES. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING RELEASE SHALL NOT WAIVE OR RELEASE ANY RIGHT THAT A RELEASING PARTY HAS UNDER THE PLAN TO RECEIVE A DISTRIBUTION UNDER THE PLAN, INCLUDING FROM THE INVESTOR TRUST, THE DISTRIBUTION ESCROW ACCOUNT, OR THE SETTLING LENDER ESCROW ACCOUNT.**

11.5. Exculpation

**EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, NO EXCULPATED PARTY SHALL HAVE OR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE FILING OF THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, NEGOTIATION, DISSEMINATION, FILING, IMPLANTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE EXHIBITS TO THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT DOCUMENTS, ANY INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED, MODIFIED, AMENDED OR ENTERED INTO IN CONNECTION WITH THE PLAN, EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER AND EXCEPT WITH RESPECT TO OBLIGATIONS ARISING UNDER CONFIDENTIALITY AGREEMENTS, JOINT INTEREST AGREEMENTS, OR PROTECTIVE ORDERS, IF ANY, ENTERED DURING THE CHAPTER 11 CASES.**

11.6. Plan Injunction

**SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, CONFIRMATION OF THE PLAN SHALL ACT AS A PERMANENT INJUNCTION AGAINST ANY ENTITY COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS, OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM, INTEREST, OR CAUSE OF ACTION SATISFIED OR RELEASED UNDER THE PLAN TO THE FULLEST EXTENT AUTHORIZED OR PROVIDED BY THE BANKRUPTCY CODE.**

**WITHOUT LIMITING THE FOREGOING, FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS AND INTERESTS SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE INVESTOR TRUST, INVESTOR TRUSTEE, WIND-DOWN ADMINISTRATOR, RELEASED PARTIES OR EXCULPATED**

**PARTIES: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY SUCH CLAIMS OR INTERESTS; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (C) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (D) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, EXCULPATED, OR SETTLED PURSUANT TO THE PLAN.**

11.7. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect following Confirmation of the Plan, for the maximum period permitted under the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules.

11.8. Setoff

Notwithstanding anything in the Plan, in no event shall any Holder of a Claim be entitled to setoff any Claim against any claim, right, or cause of action of the Plan Debtors, unless such Holder preserves its right to setoff by (i) including in a timely-filed Proof of Claim that it intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise or (ii) filing a motion for authority to effect such setoff on or before the Confirmation Date (regardless of whether such motion is heard prior to or after the Confirmation Date).

11.9. Preservation of Insurance

Except as otherwise provided in the Plan, Confirmation of the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Plan Debtors, including their officers and current and former directors, or any other person or entity.

**ARTICLE XII**

**CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE; EFFECT OF FAILURE OF CONDITIONS**

12.1. Conditions Precedent to Confirmation

Acceptance of the Plan by each of Class 3 (Mortgage Claims), Class 4 (Settling Lender Claims), and Class 5 (General Unsecured Claims) shall be a condition for each Plan Debtor to seek Confirmation of the Plan with respect to itself, *provided* that if one of those Classes is vacant, then that Class shall be treated as having accepted the Plan for purposes of determining if the condition to Confirmation in Section 12.1 of the Plan has been satisfied.

A Plan Debtor, in its sole discretion, may waive this condition to Confirmation solely with respect to itself.

12.2. Conditions Precedent to the Effective Date

The Effective Date shall not occur, and the Plan shall not become effective with respect to each Plan Debtor, unless and until the following conditions are satisfied in full or waived in accordance with Section 12.2 of the Plan:

(a) The Confirmation Order shall have been entered with respect to such Plan Debtor, without any material modification that would require re-solicitation, and shall not be subject to any stay or appeal period;

(b) The Investor Trust Agreement shall have been executed and delivered consistent with the Plan;

(c) The Investor Trust shall have been funded in the amount of \$1,000,000;

(d) The Wind-Down Administrator shall have received \$100,000 to fund the expenses of the Wind-Down Administrator;

(e) The Distribution Escrow Account and Professional Claims Escrow Account shall have been funded in the amounts identified in the Plan;

(f) The Settling Lender Escrow Account shall have been funded in the amount of \$9,400,000;

(g) The Plan shall have been confirmed with respect to the Investor Trust Debtors; and

(h) The Plan Releases shall have been granted by each Holder of Investor Claims against, and Equity Interests in, the applicable Plan Debtor.

A Plan Debtor, in its sole discretion, may waive any of the conditions to the Effective Date solely with respect to itself, except that: (1) condition (g) may not be waived; (2) conditions (b), (c), and (d) may not be waived without the consent of the Participant Investors; and (3) conditions (f) and (h) may not be waived without the prior written consent of the Settling Lenders.

12.3. Satisfaction of Conditions

Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

In the event that the condition specified in Section 12.1 of the Plan or Section 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Plan Debtor that is not an Investor Trust Debtor, (a) the Plan shall be deemed withdrawn with respect to that specific Plan Debtor and such entity shall no longer be treated as a Plan Debtor for purposes of the Plan and (if applicable) the Confirmation Order shall be vacated with respect to that specific Plan Debtor, (b) all Holders of Claims and Equity Interests against that specific Plan Debtor shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered as to that specific Plan Debtor, and (c) that specific Plan Debtor's obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against that specific



Plan Debtor or any other Person or prejudice in any manner the rights of that specific Plan Debtor or any Person in any further proceedings involving that specific Plan Debtor.

In the event that the conditions specified in Sections 12.1 and 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Investor Trust Debtor, (a) the Plan shall be deemed withdrawn and (if applicable) the Confirmation Order shall be vacated, (b) all Holders of Claims and Equity Interests against the Plan Debtors shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered, and (c) the Plan Debtors' obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan Debtors or any other Person or prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

If a condition to Confirmation or the Effective Date is not satisfied or waived with respect to an entity identified as a Plan Debtor, such entity shall be deemed revised to exclude that entity from (i) the definition of Plan Debtor and (ii) the Plan.

### **ARTICLE XIII**

#### **RETENTION OF JURISDICTION**

The Bankruptcy Court shall have exclusive jurisdiction of all matters in connection with, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to:

- (a) hear and determine pending motions for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom;
- (b) hear and determine any and all adversary proceedings, applications and contested matters;
- (c) hear and determine all applications for compensation and reimbursement of expenses under sections 330, 331 and 503(b) of the Bankruptcy Code;
- (d) hear and determine any objections (including requests for estimation) in connection with Disputed Claims or Equity Interests, in whole or in part;
- (e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (f) issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (g) consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including the Confirmation Order;
- (h) hear and determine disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, the Investor Trust Agreement, any transactions or payments contemplated hereby or thereby, any agreement, instrument, or

other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;

(i) hear and determine (i) matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any request by the Plan Debtors), prior to the Effective Date or (ii) requests by the Investor Trustee after the Effective Date for an expedited determination of tax issues under section 505(b) of the Bankruptcy Code;

(j) issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(k) hear and determine such other matters as may be provided in the Confirmation Order;

(l) hear and determine any rights, Claims or Causes of Action, including, for the avoidance of doubt, the Investor Trust Causes of Action, held by or accruing to the Plan Debtors or Investor Trust pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(m) recover all assets of the Plan Debtors and property of the Plan Debtors' Estates, wherever located;

(n) enforce the terms of the Investor Trust Agreement;

(o) hear and determine any disputes arising out of the allocation of the Settling Lender Escrow Account or the Settling Lender Escrow Agreement;

(p) enforce the releases granted and injunctions issued pursuant to the Plan and the Confirmation Order;

(q) enter a final decree closing the Chapter 11 Cases; and

(r) hear and determine any other matter not inconsistent with the Bankruptcy Code.

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#### **ARTICLE XIV**

##### **MISCELLANEOUS PROVISIONS**

###### **14.1. Effectuating Documents and Further Transactions**

The appropriate officers or directors of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.



14.2. Corporate Action

On the Effective Date, all matters provided for under the Plan that would otherwise require approval of shareholders, directors, members, or managers of one or more of the Plan Debtors shall be in effect from and after the Effective Date pursuant to the applicable general business, corporation or limited liability company law of the states in which the Plan Debtors are incorporated or organized, without any requirement of further action by the shareholders, directors, members, or managers of the Plan Debtors.

14.3. Modification of Plan

Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Plan Debtors at any time prior to the Confirmation Date; *provided*, that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code and the Plan Debtors have complied with section 1125 of the Bankruptcy Code. The Plan may be altered, amended, or modified at any time after the Confirmation Date and before substantial consummation; provided, that the Plan, as altered, amended, or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended, or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments, or modifications. A Holder of a Claim or Equity Interest that has accepted the Plan prior to any alteration, amendment, or modification will be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Holders of the Claims.

Prior to the Effective Date, the Plan Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not materially change the treatment of Holders of Claims or Equity Interests.

14.4. Revocation or Withdrawal of the Plan

The Plan Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. Subject to the foregoing sentence, if the Plan Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan Debtors or any other Person or to prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

14.5. Plan Supplement

The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full in the Plan. The documents initially included in the Plan Supplement as an Exhibit to the Disclosure Statement may thereafter be amended and supplemented, prior to execution, so long as such amendment or supplement does not materially and adversely change the treatment of Holders of Claims.

14.6. Payment of Statutory Fees

Each and every Plan Debtor shall remain responsible for the payment of U.S. Trustee Fees until the earlier of such time that a particular case is closed, dismissed or converted. For the avoidance of doubt, all U.S. Trustee Fees coming due after the Effective Date of the Plan shall be paid by the Wind-Down Administrator as set forth in Section 7.4(c) of the Plan.

14.7. Exemption from Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan shall not be taxed under any law imposing a stamp tax or similar tax.

14.8. Expedited Tax Determination

The Plan Debtors, Investor Trustee and Wind-Down Administrator (as applicable) are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Plan Debtors for any and all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

14.9. Exhibits/Schedules

All exhibits and schedules to the Plan, including the Plan Supplement, and Schedules A through D to the Disclosure Statement are incorporated into and are a part of the Plan as if set forth in full in the Plan.

14.10. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

14.11. Severability of Plan Provisions

In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall, at the request of the Plan Debtors have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

14.12. Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without giving effect to its principles of conflict of law.

14.13. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement conflicts with or is in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

14.14. Reservation of Rights

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties-in-interest in the Chapter 11 Cases are and will be reserved in full. Any concessions or settlements reflected in the Plan, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Chapter 11 Cases shall be bound or deemed prejudiced by any such concession or settlement.

14.15. Limiting Notices

Only Persons that file renewed requests to receive documents pursuant to Bankruptcy Rule 2002 on or after the Effective Date shall be entitled to receive notice under Bankruptcy Rule 2002. After the Effective Date, the Wind-Down Administrator and Investor Trustee are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have Filed such renewed requests.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, each Plan Debtor has executed the Plan this 10th day of April, 2017.

220 ELM STREET I, LLC  
220 ELM STREET II, LLC  
300 MAIN MANAGEMENT, INC.  
300 MAIN STREET ASSOCIATES, LLC  
300 MAIN STREET MEMBER ASSOCIATES, LLC  
316 COURTLAND AVENUE ASSOCIATES, LLC  
600 SUMMER STREET STAMFORD ASSOCIATES, LLC  
88 HAMILTON AVENUE ASSOCIATES, LLC  
88 HAMILTON AVENUE MEMBER ASSOCIATES, LLC  
CENTURY PLAZA INVESTOR ASSOCIATES, LLC  
CLOCKTOWER CLOSE ASSOCIATES, LLC  
ONE ATLANTIC INVESTOR ASSOCIATES, LLC  
ONE ATLANTIC MEMBER ASSOCIATES, LLC  
PARK SQUARE WEST ASSOCIATES, LLC  
PARK SQUARE WEST MEMBER ASSOCIATES, LLC  
PSWMA I, LLC  
PSWMA II, LLC  
SEABOARD HOTEL ASSOCIATES, LLC  
SEABOARD HOTEL MEMBER ASSOCIATES, LLC  
SEABOARD HOTEL LTS ASSOCIATES, LLC  
SEABOARD HOTEL LTS MEMBER ASSOCIATES, LLC  
SEABOARD RESIDENTIAL, LLC  
TAG FOREST, LLC

By: /s/ Marc Beilinson  
Name: Marc Beilinson  
Title: Chief Restructuring Officer