

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 03-13369 (BRL)

C.C. MING (U.S.A.) LTD. PARTNERSHIP

Chapter 11

Debtor.  
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER PURSUANT TO 11 U.S.C. §1129(a) OF THE BANKRUPTCY CODE CONFIRMING THE DEBTOR'S PLAN OF REORGANIZATION DATED MARCH 22, 2005**

**WHEREAS**, C.C. Ming (USA) Ltd. Partnership (the "Debtor"), filed a plan of reorganization dated March 22, 2005 (the "Plan") as well as a disclosure statement dated March 22, 2005, which was thereafter modified with non-substantive changes (the "Disclosure Statement");

**WHEREAS**, pursuant to a scheduling order dated March 29, 2005, the Plan and Disclosure Statement were sent to all of the Debtor's creditors; and

**WHEREAS**, upon proper and timely notice to all persons entitled thereto in accordance with section 1128(a) of the Bankruptcy Code and Bankruptcy Rule 2002(b), the court held a hearing on April 20, 2005 to consider approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing"); and

**WHEREAS**, the Board of Managers of Amherst Condominium ("Amherst") filed an objection to confirmation of the Plan (the "Confirmation Objection");

**WHEREAS**, Amherst and the Debtor have entered into a Stipulation so order by the Court (the "Stipulation") pursuant to which the Debtor has agreed to certain undertakings related to the Plan;

**NOW, THEREFORE**, based upon, among other things, a review of the Plan and the Disclosure Statement, the Confirmation Objection and all of the evidence

adduced at the Confirmation Hearing; and it appearing that good and sufficient cause exists, therefore.

### **FINDINGS OF FACT AND CONCLUSION OF LAW**

The Court hereby determines and finds that:

**A. Notice** All persons, entities and agencies entitled or required to receive notice of the Confirmation Hearing have received due, proper and adequate notice thereof. All parties-in-interest have had the opportunity to appear and be heard at the Confirmation Hearing.

**B. Adequate Information Contained in Disclosure Statement (Section 1125)**. The Disclosure Statement contains “adequate information” sufficient to enable a hypothetical reasonable investor to make an informed judgment about the Plan, and therefore, the Disclosure Statement satisfies the requirements of Section 1125 of the Bankruptcy Code.

**C. Plan Complies with the Bankruptcy Code Section 1129(a)(1)-(a)(13)**. The Plan complies with all of the requirements of §1129(a) of the Bankruptcy Code.

**D. Transfer Documents** The making, delivery, and recording of the deed, and any and all related transfer documents and other related instruments, contemplated under the Plan constitute “the making or delivery of an instrument of transfer under a Plan confirmed under section 1129” within the meaning of section 1146(c) of the Bankruptcy Code and will be free from the imposition of taxes of the kind specified in section 1146(c) of the Bankruptcy Code and shall, upon execution and delivery be valid, binding and enforceable agreement and not in conflict with any Federal or State Law.

**E. All Conditions to Confirmation Satisfied** All conditions to confirmation of the Plan as set forth therein have been satisfied.

**F. Jurisdiction** The court may properly retain jurisdiction over the matters set forth in Article XI of the Plan.

### **DECREES**

#### **IT IS THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED**

that:

1. The Disclosure Statement is approved.
2. The Plan annexed hereto as **Exhibit "A"** is hereby confirmed subject to performance of the Stipulation in accordance therewith the terms of which are incorporated in the Plan,
3. Any principal of the Debtor or its designee is hereby authorized, directed and empowered to, on behalf of the Debtor, execute such documents and take such other actions as may be necessary to effectuate the Plan and the transfer of the Property to Hort First Avenue Holdings, LLC. or its designee.
4. This Order and the Plan and its provisions shall be binding upon the Debtor, any entity acquiring Property under the Plan and any holder of a claim against, or interest in, the Debtor whether or not the claim or interest is impaired under the Plan.
5. (a) The sale of the Property<sup>1</sup> under the Plan to Hort First Avenue Holdings, LLC or its designee shall be free and clear of all liens, claims, judgments, encumbrances, mortgages, and interests of any kind and such liens, claims, and encumbrances shall attach only to the proceeds of sale; provided, however, that it is

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan

subject to, and shall not impair or conflict with the Amherst's Condominium Declaration, by-laws, rules and other operative documents and all amendments thereto.

(b) All deeds, mortgages, assignments, agreements, and other instruments of transfer to be executed or delivered under, or as contemplated by, the Plan in connection with the transfer of the Property, shall be recorded or filed, as appropriate, in the Registrar's office of the City of New York, County of New York, if such is required to be recorded or filed.

(c) Pursuant to section 1146(c) of the Bankruptcy Code, the transfer of the Property to Hort First Avenue Holdings, LLC. or its designee and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan, and any financing by Hort First Avenue Holdings, LLC. or its designee shall not be subject to any tax under any law imposing a stamp tax, transfer tax, mortgage recording tax, or similar tax, to the fullest extent provided by law, including but not limited to, (i) mortgage recording taxes imposed under Article 11 of the tax law of the State of New York, (ii) the New York State Real Estate transfer tax imposed under Article 31 of the Tax Law of the State of New York, (iii) the New York City Real Property transfer tax imposed under title 11, chapter 21 of the New York City Administrative Code and, (iv) any similar tax on the recording of deeds, transfers or property or ownership interests in property, recording of mortgages or other security instruments imposed by the laws of the State of New York, or any other political subdivision thereof (collectively, the "Exempt Taxes") without limiting the generality of the foregoing, the Register's Office of the City of New York, New York County shall record all such documents upon presentment, free and clear of

any requirement to pay any and all of such stamp taxes or similar taxes described in the preceding sentence. This provision shall apply only to the initial mortgage placed on the Property.

6. The reversal or modification on appeal of any authorization under this order the Plan of the transfer of the Property shall not affect the validity of the transfer made pursuant to such authorization to an entity that acquired the Property in good faith, whether or not such entity knew of the pendency of such appeal, unless such authorization and such transfer was stayed pending appeal.

7. Hort First Avenue Holdings, LLC or its designee is a purchaser for good faith and entitled to the protections of section 363(m) of the Bankruptcy Code.

8. All filing officers (including without limitation, the Register of the City of New York) are hereby authorized to: (a) accept for recording and record, any and all deeds, mortgages and other documents evidencing and/or relating to a conveyance of the Property, which are presented to them for recording, immediately upon presentation thereof, with regard to the transactions effectuated pursuant to the Plan, without the payment of any Exempt Taxes, and without the requirement of presentation of any affidavit or form with respect to any tax with respect to the transactions effectuated pursuant to the Plan; (b) cancel and discharge of record all liens, judgments, encumbrances, claims and other adverse interests in or against the Property; and (c) all governmental authorities and any other taxing authorities shall be permanently enjoined from the commencement or continuation of any action to collect from the Property, any taxes from which the transactions effectuated pursuant to the Plan and the Confirmation Order are exempt, pursuant to and in furtherance of section 1146(c) of the Bankruptcy Code and to the greatest extent provided by law, including, but not limited to, New York State Real Estate Transfer Taxes, and any

mortgage recording tax, and any penalties, interest, or additions to any tax related thereto;

9. The New York County Register's Office is hereby authorized and directed to record any deed, mortgage of the Property and any modification, restatement, amendment or assignment of any mortgages and any other similar conveyance, indenture or other documents contemplated under the Plan without the payment of any of the Exempt Taxes or any other stamp tax, transfer tax or similar tax, and without the presentation of affidavits, instruments or returns otherwise required for recording or filing pursuant to the provisions of Section 1146(c) of the Bankruptcy Code.

10. The sale of the Debtor's property to Jerneb Corporation and its designee, Hort First Avenue Holdings, LLC, or any other designee or transferee is subject to, and shall not impair or conflict with the rights under the Stipulation, or Amherst's Condominium Declaration, by-laws, rules and other operative documents and all amendments thereto and the rights of the Amherst Condominium. Nothing set forth herein shall in any manner or way adversely affect or impair Amherst's rights under the Stipulation and under the Amherst Declaration and by-laws.

11. The Debtor shall not waive any of the Conditions Precedent to the Effectiveness of the Plan required in Article VII of the Debtor's Plan.

12. The Debtor and the Debtor's Real Estate Counsel, Breger & Breger, LLP and Jernab Corporation and its designee, Hort First Avenue Holdings, LLC, are directed at the closing of the sale of the Debtor's property to pay directly to Amherst the full amount of the Amherst Allowed Pre-Petition Secured Claim and the full amount of the Amherst Administrative Claim (each as defined in the Stipulation) from

the proceeds of the sale by good funds or attorneys check prior to payment to the Debtor or its agents and representatives of any of the proceeds of sale.

13. Subject to paragraph 12 above, the Law Firm of Breger & Breger, LLP 400 Park Avenue, 19<sup>th</sup> Floor shall from the closing proceeds deliver to the Disbursing Agent sufficient monies to pay all Allowed Claims and Administrative Expense Claims as provided in the Plan and shall not release any of the sale proceeds to the Reorganized Debtor until the funds are transferred to the Disbursing Agent.

14. The Disbursing Agent may enter into such agreements as it deems to be necessary or appropriate to consummate the Plan without further order of the court.

15. From and after the Effective Date, the Reorganized Debtor shall pay to the office of the United States Trustee any amount through the date of entry of a final decree under 28 U.S.C. §1930.

16. To the extent there is any inconsistency between the Plan, the Stipulation and this Confirmation order, the Confirmation order, subject to the provisions of the Stipulation, shall control.

Dated: New York, New York  
April 25, 2005

/s/Burton R. Lifland  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT "A"**



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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 03-13369 (BRL)

C.C. MING (U.S.A.) LTD. PARTNERSHIP

Chapter 11

Debtor.

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**C.C. MING (U.S.A) LTD. PARTNERSHIP'S PLAN OF  
REORGANIZATION DATED MARCH 22, 2005**

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## ARTICLE I

### INTRODUCTION

C.C. Ming (U.S.A.) Ltd. Partnership (the "Debtor") hereby proposes the following plan of reorganization dated March 22, 2005 (the "Plan") for the resolution of the Debtor's outstanding creditor Claims (as hereinafter defined) and Equity Interests (as hereinafter defined). Reference is made to the Debtor's disclosure statement dated March 22, 2005 (the "Disclosure Statement") for a discussion of the Debtor's history, business and results of operations and a summary and analysis of the Plan and certain related matters.

All holders of Claims and Equity Interests entitled to vote to accept or reject the Plan are encouraged to review the Disclosure Statement and the Plan before voting to accept or reject the Plan. To the extent that the Plan is inconsistent with the Disclosure Statement, the Plan will govern. No materials other than the Disclosure Statement and exhibits and schedules attached thereto or referenced therein have been approved by the United States Bankruptcy Court for the Southern District of New York for use in soliciting acceptances or rejections of this Plan.

## ARTICLE II

### DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION

#### **A. Definitions**

In addition to those capitalized terms that are defined in other Articles of the Plan, the following terms (which appear in the Plan as capitalized terms) have the following meanings as used in the Plan.

**"Administrative Claim"** means any cost or expense of administration of the Chapter 11 Case allowed under Section 503(b) of the Bankruptcy Code that is entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the estate of the Debtor, operating the business of the Debtor, all compensation and reimbursement of expenses of professionals allowed by the Bankruptcy

Court under Sections 330, 331 and 503 of the Bankruptcy Code and any unpaid quarterly fees assessed against the estate of the Debtor under Section 1930 of Title 28 of the United States Code.

**“Allowed Amount”** shall mean the dollar amount of an Allowed Claim.

**“Allowed Claim”** means a Claim against the Debtor to the extent that the Claim is allowed pursuant to the Plan, or (a) a proof of such Claim was (i) timely Filed; or (ii) deemed timely Filed under applicable law or by reason of an order of the Bankruptcy Court; and (b)(i) after the applicable deadlines for filing an objection to the Claim in accordance with the Plan has passed, the Debtor has not Filed an objection or any such objection is withdrawn following the expiration of such applicable deadline(s); (ii) the Claim is allowed (but only to the extent allowed) by a Final Order; or (iii) the Claim is a Class 3 Claim that was Scheduled by the Debtor in accordance with Rule 1007 of the Bankruptcy Rules and not listed as disputed, contingent or unliquidated. Prior to the time that an objection has been or may be timely Filed, for the purposes of this Plan, a Claim shall be considered an Allowed Claim if (a) the Claim has been Scheduled; (b) the amount of the Claim specified in any Filed proof of claim equals or is less than the amount of the Claim Scheduled by the Debtor as other than disputed, contingent or unliquidated; (c) the priority of the Claim specified in any Filed proof of claim is of an equal or more junior priority than the priority of the Claim Scheduled by the Debtor; and (d) the Claim has not been Scheduled as disputed, contingent or unliquidated.

**“Amherst”** means the Board of Managers of Amherst Condominium.

**“Appeal”** means the Debtor’s pending appeal to the Appellate Division First Department from the Judgment.

**“Bankruptcy Code”** means Title 11 of the United States Code, as the same was in effect on the Filing Date, as amended from time to time.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York or such other Court as may hereafter be granted jurisdiction over the Chapter 11 Case.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, the local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New York, and the guidelines and requirements of the Office of the United States Trustee for the Southern District of New York, as the same may from time to time be in effect and applicable to the Chapter 11 Case and proceedings therein.

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

**“Cash”** means lawful currency of the United States and cash equivalents.

**“Chapter 11 Case”** means the Debtor’s case for reorganization under Chapter 11 of the Bankruptcy Code, Case Number 03-13369 (BRL) entitled “In re: C.C. Ming (U.S.A.) Ltd. Partnership”, now pending in the Bankruptcy Court.

**“Claim”** means a claim against the Debtor or its property as defined in Section 101(5) and construed in Section 102(2) of the Bankruptcy Code.

**“Class”** means a group of Claims or Equity Interests consisting of Claims or interests, which are substantially similar to each other as classified pursuant to this Plan.

**“Closing”** means all of the terms and conditions of the Contract, and all of the obligations of the parties and the Contract have been fully performed and title to the Property has been transferred to the Purchaser.

**“Closing Date”** means the date upon which the Closing occurs and title to the Property is transferred to the Purchaser.

**“Conditions Precedent to the Effective Date”** means all of the conditions set forth in Article VII of the Plan.

**“Confirmation”** means entry, within the meaning of Bankruptcy Rules 5003 and 9021, of an order of the Bankruptcy Court confirming this Plan in accordance with the provisions of the Bankruptcy Code.

**“Confirmation Date”** means the date upon which the Confirmation Order is entered in the Bankruptcy Court.

**“Confirmation Hearing”** means the hearing to be held by the Bankruptcy Court to consider confirmation of this Plan.

**“Confirmation Order”** means an Order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

**“Contract”** means the contract of sale dated February 16, 2005 between the Debtor as seller and Jerneb Corp. as buyer for the Property.

**“Debtor”** means “C.C. Ming (U.S.A.) Ltd. Partnership”, the Debtor-in-Possession in the Chapter 11 Case.

**“Debtor-in-Possession”** means the Debtor, as Debtor-in-Possession in the Chapter 11 Case.

**“Disbursing Agent”** shall mean Todtman, Nachamie, Spizz & Johns, P.C.

**“Disclosure Statement”** means the “Debtor's Disclosure Statement to accompany its Plan of Reorganization, dated March 22, 2005 (and all annexes attached thereto or referenced therein) which relates to the Plan and that is approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**“Disputed Claim”** means a Claim or a request for payment of an administrative expense, as the case may be, as to which: (a) a proof of claim or a request for payment of an administrative expense, as the case may be, has been filed with the Court or deemed filed under applicable law or order of the Court; (b) an objection has been timely filed; and (c) such objection has not been (i) withdrawn, (ii) overruled or denied in whole or part by a Final Order, or (iii)

granted in whole or in part by a Final Order. Prior to the time that an objection has been or may be timely filed, for purposes of this Plan, a Claim shall be considered a Disputed Claim: (i) to the extent and only to the extent the amount of the Claim specified in the proof of claim exceeds the amount of any corresponding Claim listed by the Debtor in its Schedules; (ii) any corresponding Claim listed by the Debtor in its Schedules as disputed, contingent or unliquidated, irrespective of the amount scheduled; or (iii) if no corresponding Claim has been listed by the Debtor in its Schedules.

**“Distribution Dates”** means any Business Day on or after the Effective Date on or by which Distributions of Cash are made pursuant to the Plan.

**“Distributions”** means the payments to creditors and others of Cash pursuant to and required by this Plan.

**“Effective Date”** means the date that is ten (10) days after the Confirmation Date, or, if such date is not a Business Day, the next succeeding Business Day; provided, however, that if all Conditions Precedent to the Effective Date have not been satisfied on or prior to such date, then the Effective Date shall be the date on which all such Conditions Precedent to the Effective Date have been satisfied.

**“Equity Interest”** means the rights and interests of a general partner or limited partner pursuant to the Partnership Agreement.

**“Equity Interest Holder”** means the holder of an Equity Interest.

**“Estate”** means the estate created in the Chapter 11 Case under Section 541 of the Bankruptcy Code.

**“Executory Contracts”** means all contracts or unexpired leases to which the Debtor is a party and which is executory within the meaning of Section 365 of the Bankruptcy Code.

**“Face Amount”** means, with respect to any Claim, (a) if the holder of such Claim has not timely filed proof thereof with the Bankruptcy Court, the amount, if any, of such Claims scheduled

and not listed as disputed, contingent or unliquidated, (b) if the holder of such Claim has timely filed proof thereof with the Bankruptcy Court, and the Debtor has not filed an objection, the amount stated in such proof, or (c) if a Claim has become an Allowed Claim pursuant to a Final Order, the amount of such creditor's Allowed Claim.

**"Filing Date"** means May 23, 2003, the date the Debtor filed for relief under Chapter 11.

**"Final Order"** means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction, as entered on the docket of such court which, not having been reversed, modified, amended, or stayed and the time for seeking review of which by way of appeal, petition for certiorari, motion for reargument and rehearing or other review having expired, and as to which no appeal, petition for certiorari, motion for reargument and rehearing or other review is pending, has become conclusive of all matters adjudicated thereby and is in full force and effect.

**"Governmental Unit"** shall have the meaning set forth at Section 101(27) of the Bankruptcy Code.

**"Insider"** shall have the meaning contained in Section 101(31) of the Bankruptcy Code.

**"Judgment"** means the Judgment in the sum of \$414,377.82 in favor of Amherst against the Debtor filed with the New York County Clerk's Office on May 6, 2003.

**"Lien"** means any charge against, or interest in, property to secure payment of a debt or performance of an obligation and includes, without limitation, any judicial lien, security interest, mortgage, deed of trust or statutory lien.

**"Mortgage"** means that certain mortgage modification consolidation and extension agreement dated May 4, 1994 between the Debtor and Well Create Limited.

**"Partnership Agreement"** means the Limited Partnership Agreement pertaining to the Debtor dated December 23, 1991.

**"Person"** shall have the meaning ascribed to such term in Section 101(41) of the Bankruptcy Code.



**“Plan”** means this Plan of Reorganization, as altered, amended or modified from time to time, and all attachments and exhibits thereto.

**“Priority Claim”** means any Allowed Claim entitled to priority pursuant to Section 507(a) of the Bankruptcy Code, other than (a) an Administrative Claim, and (b) a Priority Tax Claim.

**“Priority Tax Claim”** means a Claim by a governmental unit entitled to priority pursuant to any provision of Section 507(a)(8) of the Bankruptcy Code.

**“Property”** means the real property known as 1388-1440 First Avenue, New York, New York.

**“Pro Rata”** means with respect to the holder of an Allowed Unsecured Claim or Equity Interest of a particular Class, the same proportion that the amount of such Allowed Claim or Equity Interest bears to the aggregate amount of all Allowed Claims or Equity Interests of such Class.

**“Professional”** or **“Professional Person”** means all attorneys, accountants, consultants or other Persons retained under an order of the Court on behalf of the Debtor in accordance with Sections 327 of the Bankruptcy Code and to be compensated for services rendered pursuant to Sections 327, 328, 330 and 331 of the Bankruptcy Code.

**“Purchaser”** means Jerneb Corp. or its Assigns.

**“Reorganized Debtor”** shall mean the Debtor on or after the Effective Date.

**“Scheduled”** means as set forth in the Schedules of Assets and Liabilities.

**“Schedules of Assets and Liabilities”** means the Schedules of Assets and Liabilities and the Statement of Financial Affairs filed by the Debtor as required by Section 521 of the Bankruptcy Code and the Official Bankruptcy Forms of the Bankruptcy Rules, as the same have been or may be amended from time to time prior to the Effective Date.

**“Secured Claim”** means a Claim that is either (a) secured by a valid perfected and enforceable Lien on the property of the Debtor that is not subject to avoidance under the

Bankruptcy Code or applicable nonbankruptcy law, but only to the extent of the value as set forth in an Allowed Claim or as determined by Final Order in accordance with Sections 506(a) or 1111(b) of the Bankruptcy Code, of the interest of the claimant in the Debtor's property securing such Claim, or (b) for which the holder asserts a valid setoff under Section 553 of the Bankruptcy Code. To the extent that the amount claimed by the holder of a Secured Claim exceeds the value of the property securing such Claim, the holder of such Secured Claim shall have an Unsecured Claim equal to the amount of the excess.

**"T.C. Shing Corp."** means the Debtor's corporate general partner.

**"Unsecured Claim"** means a Claim against the Debtor that is not an Administrative Claim, Priority Tax Claim, Priority Claim or Secured Claim.

**"Unsecured Creditor"** means the holder of an Unsecured Claim.

**"Well Create"** means Well Create Limited the holder of the Mortgage on the Property.

**B. Interpretation, Rules of Construction, Computation of Time and Choice of Law**

In the event of a conflict between the Plan and the Disclosure Statement, the contents of the Plan shall control over the contents of the Disclosure Statement.

Any term used in the Plan that is not otherwise defined in the Plan either in Article II.A (Definitions) or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules has the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules. Without limiting the foregoing, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply. The definitions and rules of construction contained herein shall also apply to the Disclosure Statement and to the exhibits to the Plan except to the extent expressly so stated in the Disclosure Statement or in each particular exhibit to the Plan.

The words "herein", "hereof", "hereto", "hereunder", and others of similar import refer to the Plan as a whole and not to any particular Article, Section, Subsection, or Clause contained in the Plan. The word "including" shall mean "including, without limitation."

Any reference in the Plan to an existing document or exhibit means such document or exhibit, as it may have been amended, restated, modified, or supplemented as of the Effective Date.

Captions and headings to Articles, Sections, Subsections, and Clauses in the Plan are inserted for convenience of reference only and shall neither constitute a part of the Plan nor in any way affect the interpretation of the provisions hereof.

Whenever from the context it is appropriate, each term stated in either the singular or the plural shall include both the singular and the plural.

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

All exhibits to the Plan are incorporated into the Plan, and shall be deemed to be included in the Plan, regardless of when they are Filed.

Subject to the provisions of any contract, certificate, bylaws, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with federal law, including the Bankruptcy Code and Bankruptcy Rules.

### **ARTICLE III**

#### **DESIGNATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS**

The following is a designation of the Classes of Claims and Equity Interests under the Plan. Administrative Claims, Priority Tax Claims and statutory fees due to the United States Trustee have not been classified and are excluded from the following Classes in accordance with Section 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest is classified in a particular

Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such different Class.

**A. Class 1 – Well Create’s Secured Claim**

Class 1 consists of the Secured Claim of Well Create which is secured by virtue of the Mortgage.

**B. Class 2 – Amherst's Claim**

Class 2 consists of Amherst’s Allowed Claim which consists of the Judgment plus any and all other Claims Amherst has which arose prior to the Filing Date.

**C. Class 3 – General Unsecured Claims**

Class 3 consists of all Non-Priority Unsecured Claims against the Debtor other than the Amherst Claim.

**D. Class 4 – Equity Interests**

Class 4 consists of the Debtor's Equity Interest Holders.

**ARTICLE IV**

**TREATMENT OF CLASSES OF CLAIMS, INTERESTS,  
AND UNCLASSIFIED CLAIMS OR INTERESTS**

**A. Unclassified Claims**

**1. United States Trustee Fees**

All fees payable by the Debtor under Section 1930 of Title 28 of the United States Code that have not been paid prior to the Effective Date shall be paid by the Debtor on the Effective Date. In addition, the Debtor, or any successor thereto by merger, consolidation or otherwise, on or after the Effective Date, shall be liable for and the Disbursing Agent on behalf of the Debtor shall pay such fees until the entry of a final decree in this case or until the case is converted or

dismissed. The Disbursing Agent shall file post-confirmation operating reports with the Bankruptcy Court and the United States Trustee until a final decree is entered.

**2. Administrative Claims**

**(a) Generally.** Except as provided otherwise in this Article IV of the Plan, each holder of an Allowed Administrative Claim (including, without limitation, the professionals' fees and expenses incurred by the Professional Persons and allowed in a Final Order of the Bankruptcy Court) shall be paid in full, in Cash, by the Disbursing Agent (i) on the later to occur of the Effective Date or the date the order allowing such Administrative Claim becomes a Final Order, or (ii) upon such other terms as may exist in the ordinary course of business of the Debtor; or (iii) upon such terms as may exist pursuant to Order of the Bankruptcy Court or an agreement between such Allowed Administrative Claimholder and the Debtor or Reorganized Debtor.

**(b) Administrative Expenses Incurred After Confirmation Date.**

Administrative Claims representing obligations incurred by the Debtor after the Confirmation Date shall not be subject to application to the Bankruptcy Court and may be paid by the Reorganized Debtor in the ordinary course of business and without further Bankruptcy Court approval. As more fully set forth herein, after the Confirmation Date, the Reorganized Debtor shall, in the ordinary course of business and without the necessity for any approval by the Court, pay the reasonable fees and expenses of the Professional Persons employed by the Reorganized Debtor in connection with the implementation and consummation of this Plan, the claims reconciliation process and any other matters as to which such Professionals may be engaged. The fees and expenses of such Professionals shall be submitted monthly to the Reorganized Debtor and the Office of the United States Trustee by such professionals in the form of a detailed invoice therefor, and shall be paid by the Disbursing Agent within ten (10) Business Days after such submission. If the Reorganized Debtor disputes the reasonableness

of any such invoice within ten (10) days of receipt of such proposed fees, the Disbursing Agent shall timely pay the undisputed portion of such invoice, and the Reorganized Debtor, or the affected Professional may, after attempting to resolve the dispute, submit such dispute to the Bankruptcy Court for a determination of the reasonableness of such invoice.

**3. Priority Tax Claims**

Each holder of a Priority Tax Claim that has not been paid prior to the Effective Date shall be paid in full the Allowed Amount of its Priority Tax Claim on the Effective Date.

**B. Classified Claims**

**1. Treatment of Class 1 Claimholder**

Class 1 is unimpaired under the Plan. Well Create's Allowed Claim shall be paid in full plus all interest provided in the loan documents on the Effective Date.

**2. Treatment of Class 2 Claimholder**

Class 2 is unimpaired under the Plan. The Amherst Allowed Claim shall be paid in full plus applicable interest on the latter of (i) the Effective Date; or (ii) within five (5) Business Days from the entry of an order from the Appellate Division First Department deciding the Appeal if the Allowed Amount of Amherst's Claim is readily ascertainable from the Appellate Division's decision. Otherwise, Amherst's Allowed Claim shall be paid within five (5) Business Days from the entry of an order of the state court establishing its Allowed Claim or upon an agreement between the Reorganized Debtor and Amherst establishing the Allowed Claim. The Reorganized Debtor shall deposit the sum of \$700,000.00 in escrow with the firm of Todtman, Nachamie, Spizz & Johns, PC in order to insure that sufficient funds will be available to pay Amherst's Allowed Claim. The funds shall not be released from escrow until the entry of an order of the Bankruptcy Court directing such release or upon an agreement between Amherst and the Reorganized Debtor. If Amherst objects to the amount of the escrow, the Bankruptcy

Court shall determine the appropriate amount necessary to insure that sufficient funds will be available to pay Amherst's Allowed Claim.

**3. Treatment of Allowed Class 3 Claims (general unsecured claims)**

Class 3 is unimpaired. On the Effective Date, holders of Allowed Class 3 Claims shall be paid 100% of their Allowed Claim plus interest at 5% from the Filing Date.

**4. Treatment of Class 4 Equity Interests and Rights Related Thereto**

Class 4 is unimpaired under the Plan. Class 4 Equity Interest Holders shall retain their Equity Interests in the Reorganized Debtor and shall be entitled to receive their Pro Rata Share of the net proceeds from the sale of the Property after all Distributions are made to all Creditors and Administrative Claimholders under the Plan.

**C. Controversy with Respect to Impairment**

In the event of a controversy as to whether a Claimant or holder of an Equity Interest is impaired, the Court shall, after notice and a hearing, determine such controversy.

**ARTICLE V**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Treatment of Executory Contracts And Unexpired Leases**

In the event there are any executory contracts or unexpired leases that have not been either (a) assumed and assigned, or (b) rejected, all executory contracts and unexpired leases that exist as of the Confirmation Date between the Debtor and any Person shall be deemed assumed as of the Confirmation Date. The Debtor reserves the right to reject any lease or executory contract as to which motion to reject has been filed prior to the Confirmation Date. The Confirmation Order shall constitute an order of assumption of all executory contracts. In connection with such assumption, the Debtor shall cure all defaults required to be cured pursuant to section 365(b) of the Bankruptcy Code and provide such compensation for actual pecuniary loss required to be paid pursuant to such provision of the Bankruptcy Code.

## **ARTICLE VI**

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

**A. Source of Payments**

The funds necessary to make the payments required under the Plan shall be from the proceeds of the sale of the Property.

**B. Transfer of the Property**

Pursuant to the Contract, the Property shall be transferred to Jerneb Corp. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Property shall be free and clear of all liens, claims, and encumbrances of any kind with such liens, claims and encumbrances attaching only to the sale proceeds.

**C. Transfer Taxes**

Pursuant to section 1146(c) of the Bankruptcy Code, the transfer of the Property and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan, shall not be subject to any tax under any law imposing a stamp tax, transfer tax, mortgage recording tax, or similar tax, to the fullest extent provided by section 1146(c) of the Bankruptcy Code.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THE PLAN**

The date on which all of the following conditions precedent have been fulfilled or waived shall be the Effective Date of this Plan.

- (a) The Confirmation Order shall have been entered and become a Final Order; and
- (b) The Closing Date shall have occurred.



## **ARTICLE VIII**

### **PROCEDURES FOR RESOLVING AND TREATING CLAIMS**

#### **A. Resolution of Disputed Claims**

Objection to Disputed Claims shall be filed with the Bankruptcy Court by the Debtor and served upon each holder of such Disputed Claim to which objections are made not later than thirty (30) days subsequent to the Effective Date. Disputed Claims shall be divided into two (2) portions: the "non-disputed portion" and the "disputed portion". The Disbursing Agent shall pay the non-disputed portion of a Disputed Claim in accordance with Plan provisions for payment of a Claim in its Class.

#### **B. Estimation**

The Debtor may, at any time, request that the Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor has previously objected to such Claim. The Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. In the event that the Court estimates any Disputed Claim, that estimated amount may constitute either the Allowed Amount of such Claim, the amount on which a reserve is to be calculated for purposes of the Disputed Claims Reserve, or a maximum limitation on such Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation of such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

#### **C. Allowance of Disputed Claims**

If, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall, within thirty (30) days after the date on which the Claim becomes an Allowed Claim, or as soon thereafter as is practicable, distribute from the Disputed Claims

Reserve to the holder of such Allowed Claim (i) the amount of Cash that such holder would have been entitled to receive under this Plan if such disputed portion of such Claim had been an Allowed Claim on the Effective Date, which shall not exceed the amount of Cash reserved on account of such Claim. Notwithstanding anything to the contrary contained in this Plan, the Disbursing Agent shall make a distribution on the non-disputed portion of an Unsecured Claim in accordance with the provisions of the Plan.

## **ARTICLE IX**

### **PROVISIONS CONCERNING CAUSES OF ACTION**

Except as otherwise provided by this Plan, on the Effective Date, the Debtor shall retain all rights, claims and causes of action that have been or may be commenced by the Debtor including, but not limited to, those arising out of Sections 544 through 550 of the Bankruptcy Code or any similar provisions of state law or any statute or legal theory. Recoveries from such causes of action shall remain property of the Reorganized Debtor and shall not be distributed to Claimholders.

## **ARTICLE X**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Disbursing Agent**

Todtman, Nachamie, Spizz & Johns, P.C. shall be the Disbursing Agent with respect to the Distributions. The Disbursing Agent shall not be required to obtain a bond.

#### **B. Unclaimed Distributions**

Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the Proofs of Claim filed by such holders unless no Proof of Claim has been filed, in which case then to the address set forth on the Schedules filed with the Court, unless superceded by a written notice to the Disbursing Agent providing actual knowledge to the Disbursing Agent of a change of address.

If any holder's Distribution is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Disbursing Agent is notified in writing of such holder's then current address, at which time all Distributions shall be made to such holder, without interest.

All Claims for undeliverable Distributions shall be made on or before the earlier of one hundred and twenty (120) days after the date such undeliverable Distribution was initially made. If any Claim for an undeliverable Distribution is not timely made as provided in the foregoing sentence, such Claim shall be forever barred.

**C. Professional Fees and Expenses**

Each of the Professionals requesting compensation in the Chapter 11 Case shall file an application for an allowance of final compensation and reimbursement of expenses in the Chapter 11 Case incurred through the Confirmation Date within thirty (30) days after the Confirmation Date.

**D. Rounding**

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect the rounding of such fraction to the nearest whole cent with the one-half cent being rounded up to the nearest whole cent.

**ARTICLE XI**

**RETENTION OF JURISDICTION**

**A. Retained Jurisdiction**

Following Confirmation, except as provided below, the Bankruptcy Court may retain such jurisdiction as is legally permissible after Confirmation, including, without limitation, for the following purposes:

1. To hear and determine any dispute relating to the Plan or any property described in the Plan and to enforce its provisions.

2. To hear and determine all issues arising out of any motions, applications, adversary proceedings or contested or litigated matters in the Chapter 11 Case pending at the Confirmation Date or commenced thereafter.

3. To order recovery of any assets of the Debtor, whether title is presently held in the name of the Debtor or a third party.

4. To hear and determine motions to approve the sale of assets of the Debtor under Section 363 of the Bankruptcy Code and/or the rejection or affirmation of executory contracts under Section 365 of the Bankruptcy Code.

5. To hear and determine all issues relating to any purchases, sales or contracts made or undertaken by the Debtor during the pendency of the Chapter 11 Case.

6. To hear and determine all Claims arising from the rejection of executory contracts or unexpired leases.

7. To hear and determine all objections to Claims and all controversies concerning classification, allowance, valuation, liquidation, estimation, or satisfaction of Claims.

8. To make orders allowing amendment of the schedules filed in the Chapter 11 Case for any purpose including, without limitation, to perfect objections to Claims not previously listed as disputed, contingent or unliquidated.

9. To hear and determine all applications for compensation of professional and similar fees and reimbursement of expenses arising out of or relating to the case or any Claims.

10. To hear and determine any and all motions to abandon property of the Debtor's estate.

11. To make such other orders or give such directions as permitted by Section 1142 of the Bankruptcy Code.

12. To consider and order any modifications or amendments requested to the Plan.

13. To remedy any defect or omission or reconcile any inconsistency in the Plan or the Confirmation Order in such manner as may be necessary or desirable to carry out the purposes and intent of the Plan.

14. To make all orders necessary or appropriate to carry out the provisions of the Plan.

15. To enforce all orders previously entered by the Bankruptcy Court.

16. To determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the Bankruptcy Code.

## **ARTICLE XII**

### **NOTICES**

Except as otherwise herein provided, all notices required to be made in or under the Plan shall be in writing and shall be mailed by registered or certified mail, return receipt requested:

If to the Debtor: C.C. Ming (U.S.A.) Ltd. Partnership  
43-23 Colden Street, 26J  
Flushing, NY 11355  
Attn: Alfred Sim

With a copy to: Todtman, Nachamie, Spizz & Johns, P.C.  
425 Park Avenue  
New York, New York 10022  
Attn: Scott S. Markowitz, Esq.

If to Jerneb Corp.: Philip Brody, Esq.  
Time Equities, Inc.  
55 Fifth Avenue, 15<sup>th</sup> Floor  
New York, NY 10003

With a copy to: Robert Michaelsen, Esq.  
Kirkpatrick & Lockhart, Nicholson Graham, LLP  
599 Lexington Avenue  
New York, NY 10022

Any person may change the address at which he is to receive notices for purposes of this Plan by sending written notice pursuant to this provision to the Debtor. Furthermore, notice shall be given to all of the above and their successors.

### **ARTICLE XIII**

#### **MISCELLANEOUS PROVISIONS**

**A. Applicable Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights and obligations arising under this Plan are governed under New York law.

**B. Unenforceability of Particular Provisions**

Should any provision in this Plan be determined to be unenforceable in whole or in part, such determination shall in no way limit or affect the enforceability and operative effect of the remainder of this Plan, including any of its provisions to the extent not determined be unenforceable

**C. Amendment and Modification**

The Debtor may propose amendments to, or modification of, this Plan at any time at or before Confirmation. After Confirmation of the Plan, the Debtor may, with the approval of the Bankruptcy Court and so long as it does not materially adversely affect the treatment of any Claim or Equity Interest, amend the Plan to remedy any defect or omission or reconsider any inconsistencies in the Plan or in the order of Confirmation as necessary or desirable to carry out the purpose and effect of the Plan.

**D. Post-Confirmation Professional Fees**

Subsequent to the Confirmation Date, the Debtor shall be authorized and directed to pay reasonable professional fees and expenses relating to the post-confirmation administration of its estate and this Plan incurred by its professionals and by professionals without further order by the court.

**E. Successors and Assigns**

The rights, duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

**F. Binding Effect of Plan**

Upon the Effective Date, all of the provisions of the Plan shall be binding on the Debtor, on all Creditors, on all Equity Interest Holders, and on all other entities who are affected (or whose interests are affected) in any manner by this Plan.

Dated: New York, New York  
March 22, 2005

**C.C. MING (U.S.A.) LTD. PARTNERSHIP**  
Debtor and Debtor in Possession

**TODTMAN, NACHAMIE, SPIZZ & JOHNS, P.C.**  
Attorneys for the Debtor and Debtor in Possession

By: /s/ Alfred Sim  
Alfred Sim, Vice-President  
Its: Corporate Managing Agent

By: /s/ Scott Markowitz  
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