

No. 16-492

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IN THE SUPREME COURT OF THE UNITED STATES

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PEM Entities LLC, Petitioner

v.

Eric M. Levin, et al.

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JOINT MOTION OF PEM ENTITIES LLC AND  
PROVINCE GRANDE OLDE LIBERTY, LLC TO CONFIRM PARTY STATUS

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IN THE SUPREME COURT OF THE UNITED STATES

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PEM Entities LLC, Petitioner

v.

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JOINT MOTION OF PEM ENTITIES LLC AND  
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Pursuant to this Court's Rule 21, PEM Entities LLC (PEM) and Province Grande Olde Liberty, LLC (PGOL) submit this joint motion to confirm that PGOL, the debtor in this bankruptcy case, is a respondent in the above-captioned matter, with a right to defend in this Court the judgment of the court of appeals. See Pierce County v. Guillen, 535 U.S. 1110 (2002) (granting motion "to determine party status" under Rule 12.6). The need for this motion arises from an April 2017 settlement that eliminated the interests of the named respondents, Eric M. Levin and Howard Shareff, in the outcome of the dispute before the Court. Although the petition for certiorari did not list PGOL as a party to the proceedings in the court below due to PGOL's inactivity in those proceedings, PGOL was named as a defendant in the bankruptcy court action and was a party in the court of

appeals. Under this Court's Rule 12.6, PGOL is thus a party before this Court as well. PGOL retains a strong interest in defending the judgment of the court of appeals, and in July 2017 it retained the undersigned Supreme Court counsel to defend that judgment.<sup>1</sup>

#### INTRODUCTION

PGOL, the debtor in the bankruptcy case from which this dispute arises, has an ongoing interest in defending the judgment below, which upheld the bankruptcy court's decision to recharacterize PEM's debt claim as equity and therefore voided a claim of roughly \$7 million against the debtor's estate. The dispute before the Court concerns a note owned by PEM that is secured by a deed of trust on real property that is the sole asset of PGOL. PGOL is a North Carolina limited liability company (LLC) whose members (i.e., investors) include a number of individuals.

Levin and Shareff, through their investment in Lakebound Fixed Return Fund LLC (Lakebound) had disputed claims against PGOL that were junior to PEM's secured claim. Even if Levin and Shareff's claims were sustained, they would have recovered little to nothing if PEM were able to enforce its foreclosure

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<sup>1</sup> Counsel for Levin and Shareff have authorized undersigned counsel to state that Levin and Shareff take no position on this motion.

right under the deed of trust on the property. Levin and Shareff prevailed in an adversary action against PEM and obtained a judgment that extinguished PEM's note and gave PEM instead a roughly 25% equity interest in PGOL. If the bankruptcy court's order is affirmed, PGOL's more junior creditors and member interests will be paid pursuant to the confirmed plan of reorganization, and PGOL will continue as an enterprise, operating for the benefit of the parties who own its equity. PGOL thus has a considerable, concrete interest in the outcome of the appeal. If that order is reversed, the recovery of creditors and member interests junior to PEM will be diminished or eliminated. In addition, most of PGOL's members have no ownership interest in PEM, and those PGOL members also stand to gain if the decision below is affirmed.

PGOL is prepared to take over the defense of the judgment, because Levin and Shareff no longer have a stake in the outcome. In April 2017, after briefing on the petition for certiorari was concluded, but before the Court issued the writ of certiorari, Levin and Shareff settled related state court litigation. In that settlement, Stanley Jacobson, a member of PGOL and PEM, acquired Levin's and Shareff's interests in Lakebound, and Levin and Shareff ceased having any interest in the outcome of the litigation.



The settlement agreement expressly provided that PGOL would have the right to defend the court of appeals' judgment, and Levin and Shareff assigned to PGOL their right to do so. Because PGOL did not actively participate in the court of appeals and was not listed in the petition as among the parties to the proceedings below, PEM and PGOL file this motion to clarify the status of PGOL as a respondent in this Court with an interest and standing to defend the judgment of the court of appeals.<sup>2</sup>

#### BACKGROUND

1. The debtor in this case is Province Grande Olde Liberty, LLC (PGOL), a North Carolina limited liability company (LLC) formed to develop real estate. The members, or investors, of PGOL are a number of individuals and entities who contributed varying amounts of funds to PGOL. AJHRLT Holdings, LLC, a trust benefiting the children of Howard Jacobson, had a nearly 40% interest in PGOL as of 2013. See Ex. A to Mot. Determine Potential Equity Interest, In re Province Grande Olde Liberty, LLC, No. 13-bk-01563-8-SWH (Bankr. E.D.N.C. Feb. 2, 2017) (ECF No. 311). More than ten other individuals owned the remaining 60% interest in PGOL. Ibid.

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<sup>2</sup> PEM and PGOL regret that this matter was not brought to the Court's attention earlier.

2. PGOL purchased the real estate in question in 2009. PGOL struggled financially, and the primary lender for the 2009 purchase (Paragon Commercial Bank, or Paragon) began foreclosure proceedings. Two members of PGOL — Stanley Jacobson (Howard Jacobson's father) and Robert A. Conaty — and AIHL (a trust for the benefit of Stanley Jacobson's grandchildren) formed a new limited liability company, PEM Entities LLC (PEM, the petitioner in this court) to acquire the Paragon loan and prevent foreclosure. In 2012, PEM purchased the original loan from Paragon for \$1.242 million. The \$1.242 million was funded by \$300,000 from PEM, a loan of \$292,000 from Paragon to PEM secured by the PGOL property, and a loan of \$650,000 from two private lenders to PEM, also secured by the PGOL property.

3. PGOL's financial difficulties did not abate, and PGOL filed a voluntary chapter 11 petition in the United States Bankruptcy Court for the Eastern District of North Carolina in March 2013, Case No. 13-1563-8-JRL.

4. Prior to the bankruptcy, on July 19, 2010, Levin and Shareff filed a civil action in the Superior Court for Wake County, North Carolina, Case No. 10-CVS-12062, against PGOL and Howard Jacobson. Howard Jacobson is the manager of Lakebound. Levin and Shareff (who were investors in Lakebound) alleged that Howard Jacobson improperly converted \$188,000 of Lakebound funds by transferring the funds to PGOL. On December 5, 2016, the

Business Court entered a Final Judgment that (i) awarded a judgment in favor of Lakebound against Howard Jacobson in the amount of \$188,000.00 plus interest and (ii) directed PGOL to convey a 2.83% interest in the real property purchased on December 31, 2009 to Lakebound. The Business Court permitted Lakebound to elect between receiving \$188,000.00 in cash or the 2.83% real property interest, but not both. Lakebound, through Levin and Shareff, filed a notice of election with the bankruptcy court and chose to receive a 2.83% interest in PGOL's real property as its exclusive remedy. Both parties then appealed the Business Court's judgment.

5. Levin and Shareff also commenced an adversary proceeding in bankruptcy court. Levin v. Province Grande Old Liberty, LLC, No. 8:13-ap-00122 (Bankr. E.D.N.C. filed July 24, 2013). The adversary complaint named both PEM and PGOL as defendants. The complaint stated three theories of liability: recharacterization of PEM's purchase of the Paragon note as a capital contribution to PGOL; equitable subordination, based on allegedly inequitable conduct by insiders of PGOL and the members of PEM; and fraudulent conveyance. PGOL filed a motion to dismiss the complaint, which was denied. See Order, Levin v. Province Grande Old Liberty, LLC (In re Province Grande Olde Liberty, LLC), No. 8:13-ap-00122 (Bankr. E.D.N.C. Oct. 2, 2013) (ECF No. 13). PEM then appeared and defended against the



substantive claims. PGOL opposed Levin and Shareff's motion for summary judgment only "to the extent [they] seek a remedy from [PGOL]." PGOL Opp'n Mot. Summ. J. at 1, Levin v. Province Grande Old Liberty, LLC (In re Province Grande Olde Liberty, LLC), No. 8:13-ap-00122 (Bankr. E.D.N.C. Oct. 2, 2013) (ECF No. 88). On December 5, 2014, the bankruptcy court issued an order granting summary judgment to Levin and Shareff on the recharacterization claim, but against them on the fraudulent conveyance and equitable subordination claims. Levin v. Province Grande Old Liberty, LLC (In re Province Grande Olde Liberty, LLC), No. 8:13-ap-00122, Nos. 13-bk-01563 and 13-ap-00122, 2014 WL 6901052, at \*8-9 (Bankr. E.D.N.C.). The court's order declared void PEM's secured claim of approximately \$7,000,000 and recharacterized as equity in PGOL the \$300,000 invested in PEM by its members. PEM appealed the bankruptcy court's order to the district court and then the Fourth Circuit, each of which affirmed. The recharacterization aspect of the bankruptcy court's order is the subject of the writ of certiorari.

6. While the adversary action was pending in the bankruptcy court, the bankruptcy court confirmed PGOL's chapter 11 plan of reorganization. Order, In re Province Grande Olde Liberty, LLC, No. 13-bk-01563-8-SWH (Bankr. E.D.N.C. Oct. 2, 2013) (ECF No. 161) (attached hereto as Exhibit 1). The plan



allowed for the possibility that PEM's claim would be upheld in the adversary action or that the resolution of that action might alter the relative priority of PGOL's creditors. In the confirmed plan, PEM's potential secured claim was designated as class 5, sitting above the claims of unsecured creditors and those with an equity interest in PGOL. See Exhibit 1 at 11, 13-14. The contested claims of Levin and Shareff against PGOL were designated unsecured claims in class 9. Because Levin's and Shareff's claims were junior to those of PEM and because PEM's potential secured claims exceeded the value of the estate's property, Levin and Shareff stood to recover only if PEM's claim were disallowed.

7. The bankruptcy court's order in the adversary action extinguished PEM's secured claim of nearly \$7 million and recharacterized the \$300,000 contribution as an equity interest in PGOL, moving it down to class 10 in priority for recovery, together with other equity interests in PGOL. If this Court affirms the bankruptcy court's order, PEM will have an ownership interest in PGOL equal to a contribution of \$300,000 in capital and will share in that percentage with other member-investors of PGOL in class. The "reallocated" equity interests under the bankruptcy court's order, would attribute to PEM a 24.5% equity interest in PGOL, and PGOL's other equity holders would have proportionally reduced interests, as reflected in the chart

attached hereto as Exhibit 2, which the bankruptcy court entered as an order on April 12, 2017. Order, In re Province Grande Olde Liberty, LLC, No. 13-bk-01563-8-SWH (Bankr. E.D.N.C.) (ECF No. 330). If this Court reverses, on the other hand, PEM's secured claim of nearly \$7 million will be treated as a class 5 claim, senior to more junior creditors and to the equity interests of PGOL investors.

8. After PEM's petition for certiorari was fully briefed, but before the Court considered the case in conference, Levin and Shareff elected to settle the appeal of the Business Court case. Levin, Shareff, PGOL, PEM, Lakebound, and Stanley and Howard Jacobson were all parties to the April 12, 2017 Settlement Agreement, which (as relevant here) provided that Stanley Jacobson would acquire the interests of Levin and Shareff in Lakebound and that Levin and Shareff would release all claims against PEM and PGOL, among others. Settlement Agreement ¶¶ 1a, 3a (attached as Exhibit 3) (Settlement Agreement).

9. The Settlement Agreement expressly provides that "PEM shall retain its right to pursue the appeal of the Bankruptcy Court Order" regarding recharacterization; that Levin and Shareff "will no longer be parties to that appeal"; and that "[t]he right to defend the appeal of the Bankruptcy Court Order and to oppose PEM's secured claim in any further hearings in the

event of reversal or remand of the Bankruptcy Court Order shall be assigned to PGOL." Settlement Agreement ¶ 7a. For the avoidance of doubt, the Agreement provides that "No parties to this Agreement other than PGOL shall take any action in opposition to the [certiorari] petition \* \* \* or otherwise impede or oppose the relief sought by PEM." Ibid. (emphasis added).

#### REASONS TO GRANT THE RELIEF REQUESTED

10. PGOL has had an interest in the result of this case throughout the litigation. PEM was named as a defendant in the bankruptcy court action and thus was a party to the judgment issued by the bankruptcy court. When PEM appealed the bankruptcy court's recharacterization ruling to the district court and later to the court of appeals, PGOL was served with both notices of appeal and was a party in both courts even though PGOL did not actively participate in the litigation in the district court or the court of appeals. See Fed. R. App. P. 3(c), (d)(1) (requiring that the notice of appeal specify only "the party or parties taking the appeal," not the appellees, and requiring that notice of the appeal be served on "each party's counsel of record—excluding the appellant's"). Although the caption to the court of appeals' opinion identifies PGOL as "Defendant" rather than "Appellee" (Pet. App. 1a), the court of appeals had previously recognized PGOL's status as a party.



Indeed, the court issued to PGOL a notice requesting an appearance of counsel and noting that PGOL would be considered to be litigating pro se if it did not identify counsel. Status of Counsel Notice, PEM Entities LLC v. Levin, No. 15-1669 (4th Cir. July 15, 2015) (ECF No. 17) (attached as Exhibit 4). Under this Court's Rule 12.6, PGOL, as a "part[y] to the proceeding in the court whose judgment is sought to be reviewed [is] deemed [a] part[y] entitled to file documents in this Court."

11. Although PGOL let the burden of defending the bankruptcy court's judgment lie with Levin and Shareff while they were parties and did not actively participate in the litigation in the district court or the court of appeals, PGOL has a meaningful stake in the outcome of this litigation. If the bankruptcy court's order is affirmed, because PEM's note would remain extinguished, PGOL will likely continue as an ongoing viable entity seeking to develop the property.

12. In addition to PGOL itself, most of PGOL's equity holders have no interest in PEM and have an interest in PGOL defending the court of appeals' judgment. Not taking into account the reallocation that would occur under the bankruptcy court's order, nearly half of PGOL's equity is held by investors who are wholly unrelated to and have no interest in PEM or its members. Using \$1,242,000 as "the fair value of the real property" to determine the value of equity interests in PGOL, as



the bankruptcy court did in its April 12, 2017 valuation order, see Exhibit 2, those individual investors have material equity interests in PGOL. For example, Francis J. Abdou would hold a 4.77% equity stake if the bankruptcy court's order is affirmed, which could be worth as much as \$59,243.40.

13. For these reasons, although the interests of Shareff and Levin in this case have been eliminated through the Settlement Agreement, PGOL continues to have interests adverse to PEM, is thus properly a respondent in this Court, see Rule 12.6, and will continue to oppose PEM's secured claim.

14. PGOL is serving a copy of this Motion on all members of PGOL and all parties to the bankruptcy case. PGOL will also serve a notice, a copy of which is attached hereto as an appendix, explaining the recent events and requesting that any party or participant who objects to PGOL opposing PEM's arguments in the Supreme Court, or believes that PGOL's interests are not genuinely adverse to those of PEM, notify counsel for PGOL of an intent to object no later than 14 days after the date of the notice. Undersigned counsel for PGOL will notify the Court no later than August 7, 2017, if any such objections or comments have been received.

## CONCLUSION

For the reasons stated above, this Court should grant this Joint Motion to Confirm Party Status and direct that Province Grande Olde Liberty, LLC, is a respondent in this Court.

Respectfully submitted,



Douglas Hallward-Driemeier  
ROPES & GRAY LLP

Counsel for PEM Entities LLC



H. Christopher Bartolomucci  
KIRKLAND & ELLIS LLP

*by authorization  
of Mr. Bartolomucci*

Counsel for Province Grande Olde  
Liberty, LLC

July 21, 2017

# APPENDIX

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

IN RE:

PROVINCE GRANDE OLDE LIBERTY,  
LLC,

Debtor

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Case No. 13-01563-8-SWH  
CHAPTER 11

**NOTICE OF MOTION TO CONFIRM PARTY STATUS**

PEM Entities LLC (“PEM”) has appealed the Bankruptcy Court Order in adversary proceeding No. 13-122 (Dkt. No. 95) (the “Bankruptcy Court Order”), which declared void the scheduled secured claim of PEM in the original principal amount of \$6,465,000 and recharacterized \$300,000 as equity in Debtor Province Grande Olde Liberty, LLC (“PGOL”). Eric M. Levin and Howard Shareff, who held interests in Lakebound Fixed Return Fund, LLC (“Lakebound”), opposed PEM’s appeal. Both the U.S. District Court for the Eastern District of North Carolina and the U.S. Court of Appeals for the Fourth Circuit affirmed the Bankruptcy Court Order. Levin and Shareff opposed PEM’s appeal in each court, though PGOL was a passive party to each level of the appeal. PEM petitioned the United States Supreme Court for review of the case, and Levin and Shareff opposed. The petition for review was granted on June 27, 2017.

While the petition for review was pending at the Supreme Court, Levin and Shareff settled related claims in a state court action. Levin, Shareff, PEM, PGOL, Lakebound, and Stanley and Howard Jacobson were parties to the agreement (the “Settlement Agreement”). As part of the Settlement Agreement, Stanley Jacobson agreed to acquire the interests of Levin and Shareff in Lakebound, and Levin and Shareff agreed to release and/or waive all claims of interest in PGOL. The Settlement Agreement further provides that “[t]he right to defend the appeal of the Bankruptcy Court Order and to oppose PEM’s secured claim in any further hearings in the event of reversal or remand of the Bankruptcy Court Order shall be assigned to PGOL.”

Because they have settled their claims, Levin and Shareff will no longer participate in the Supreme Court case. PGOL has retained counsel to oppose PEM’s attempt to reverse the Bankruptcy Court Order. Counsel for PGOL believes that it is in the interest of the unsecured creditors and equity holders of PGOL (other than PEM) to oppose PEM’s efforts to overturn the recharacterization order. If PEM is successful, PEM will have a senior (*i.e.*, superior or priority) claim to those of PGOL’s unsecured creditors and its equity holders. Under the Bankruptcy Court Order—*i.e.*, under the result that will occur if the Supreme Court affirms the Bankruptcy Court Order—PEM will have an equity share of 24.15% in PGOL, equal in priority to the interest of other PGOL members. To preserve the interests of PGOL’s unsecured creditors and equity holders, PGOL has filed a motion in the Supreme Court to confirm its status as a party. A copy of that motion is attached hereto as Exhibit A.



Any unsecured creditor or equity holder in PGOL who objects to PGOL participating in the Supreme Court to oppose PEM's attempt to overturn the Bankruptcy Court Order or who believes that PGOL's interests are not genuinely adverse to those of PEM shall notify counsel for PGOL of an intent to object no later than 14 days after the date of this notice. Counsel for PGOL can be contacted using the information below.

H. Christopher Bartolomucci  
KIRKLAND & ELLIS LLP  
655 Fifteenth St., NW  
Washington, DC 20005  
Telephone: 202-879-5022  
cbartolomucci@kirkland.com

Dated: July 21, 2017

By: \_\_\_\_\_

The list of equity holders filed by PGOL with its bankruptcy petition in March 2013 is reflected in Exhibit B attached hereto.

# EXHIBIT B

**United States Bankruptcy Court**  
**Eastern District of North Carolina**

In re Province Grande Olde Liberty, LLC,  
 Debtor

Case No. \_\_\_\_\_

Chapter 11

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
<b>A&amp;M, LLC</b> <b>7166 East Desert Moon Loop</b> <b>Tucson, AZ 85750</b>			<b>5.79%</b>
<b>AJHRLT Holdings, LLC</b> <b>1416 Silverling Way</b> <b>Raleigh, NC 27613</b>			<b>39.66%</b>
<b>Entrust Admin of SE</b> <b>FBO Ron Serbin</b> <b>2663 Valleydale Road, #223</b> <b>Birmingham, AL 35244</b>			<b>2.32%</b>
<b>Eric Levin</b> <b>PO Box 1399</b> <b>Severna Park, MD 21146</b>			<b>3.02%</b>
<b>Frances J. Abdou</b> <b>3828 White Chapel Way</b> <b>Raleigh, NC 27615</b>			<b>6.04%</b>
<b>Hayden J. Jr. Silver</b> <b>PO Box 21</b> <b>Wicomico Church, VA 22579</b>			<b>0.91%</b>
<b>Hayden J. Silver III</b> <b>1025 Harvey Street</b> <b>Raleigh, NC 27608</b>			<b>0.91%</b>
<b>MBMO Holdings, LLC</b> <b>4306 Page Road</b> <b>Morrisville, NC 27560</b>			<b>17.5%</b>
<b>Richard E. Wolf</b> <b>4208 White Chapel Way</b> <b>Raleigh, NC 27615</b>			<b>1.19%</b>
<b>Robert B. Conaty</b> <b>207 E. 74th St. Apt 6J</b> <b>New York, NY 10021</b>			<b>3.02%</b>
<b>Robert Breit R. A. Breit RVCBL Trust DTD</b> <b>3716 Heritage Drive</b> <b>Northbrook, IL 60062</b>			<b>3.02%</b>

In re Province Grande Olde Liberty, LLC

Case No. \_\_\_\_\_

Debtor

**LIST OF EQUITY SECURITY HOLDERS**

(Continuation Sheet)

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
<b>Silvervalve LLC</b> <b>707 Evanvale Court</b> <b>Cary, NC 27518</b>			<b>6.04%</b>
<b>Skin Sense Inc.</b> <b>c/o Angela Padgett</b> <b>300 W. Millbrook Road</b> <b>Raleigh, NC 27609</b>			<b>0.60%</b>
<b>Stanley and Rhoda Jacobson</b> <b>7575 Tarpon Cove Circle</b> <b>Lake Worth, FL 33467</b>			<b>4.84%</b>
<b>Terry Perl Revocable</b> <b>7250 E Ventana Canyon Dr.</b> <b>Tucson, AZ 85750</b>			<b>1.21%</b>
<b>Timothy J. Buckley</b> <b>4805 Wynneford Way</b> <b>Raleigh, NC 27614</b>			<b>3.93%</b>

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the Manager of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date March 11, 2013Signature /s/ Richard Wolf

**Richard Wolf**  
**Manager**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C §§ 152 and 3571.



# EXHIBIT 1



SO ORDERED.

SIGNED this 2 day of October, 2013.

A handwritten signature in black ink, appearing to read "A. Thomas Small".

A. Thomas Small  
United States Bankruptcy Court Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

IN RE:

CHAPTER 11

**PROVINCE GRANDE OLDE LIBERTY, LLC**

**CASE NO. 13-01563-8-ATS**

Debtor.

**ORDER CONFIRMING PLAN OF REORGANIZATION**

The Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code filed by Province Grande Olde Liberty, LLC on June 10, 2013, and Disclosure Statement filed on June 10, 2013, (hereinafter the "Plan"), having been transmitted to creditors and security holders of the above referenced Debtor (hereinafter the "Debtor"); sufficient and proper notice having been given; and the Plan having come before the court for hearing on confirmation on August 14, 2013; and it appearing to the Court, and the Court finding that:

1. It has been determined that the Disclosure Statement relating to the Plan of Reorganization filed by the Debtor on June 10, 2013, and supplemented on July 25, 2013, contains adequate information as required by 11 U.S.C. § 1125 and was conditionally approved pursuant to an Order of this Court dated June 11, 2013.

2. It having been determined that after hearing on notice that the Plan, as supplemented, meets the requirements for confirmation set forth in 11 U.S.C. § 1129(a) and § 1129(b).

3. A copy of the Plan is attached hereto as Exhibit "A".

IT IS ORDERED THAT:

1. The Disclosure Statement relating to the Plan of Reorganization filed by the Debtor on June 10, 2013, and supplemented on July 25, 2013, contains adequate information about the Plan of Reorganization within the purview of 11 U.S.C. § 1125, and is APPROVED.

2. The Plan of Reorganization filed by the Debtor on June 10, 2013, as supplemented herein, is CONFIRMED.

3. The Debtor shall file Post-Confirmation Reports with the Clerk of the Bankruptcy Court pursuant to 11 U.S.C. § 1106(a)(7) with a copy served on the Bankruptcy Administrator. The first Post-Confirmation Report shall be due for the period ending September 30, 2013. The Debtor shall file subsequent reports at the end of every succeeding quarter (December 31, March 31, or June 30), until the Plan is substantially consummated. Quarterly Reports shall reflect any progress made in consummating the Plan during the period covered by the report. Post-Confirmation Reports shall be filed in the format prescribed by the Bankruptcy Administrator.

4. The deadline for filing objections to claims is established as thirty (30) days after the occurrence of the Effective Date of the Plan. The deadline for filing Administrative Claims is established as thirty (30) days after the Effective Date of the Plan, except that services rendered post-confirmation by professionals employed in the case, in furtherance or

implementation of the Plan, including counsel for the Debtor and accountants, shall not be subject to any deadline.

5. Within thirty (30) days of substantial consummation of the Plan as defined by 11 U.S.C. §1101(2), the Debtor shall file a final report, in a format prescribed by the Bankruptcy Administrator, reflecting the payments made for all costs of administration and each class of creditor, and a motion for the entry of a Final Decree pursuant to Rule 3022 of the Federal Rules of Bankruptcy Procedure. If there are any adversary proceedings pending at the time the motion for a final decree is filed, a final decree can be entered, but closing of the bankruptcy case will be deferred until the adversary proceedings are resolved.

6. The Debtor shall pay to the Clerk, United States Bankruptcy Court the sum of \$0.00 for court costs. The Debtor shall continue to pay quarterly fees until it applies for its Final Decree.

7. The Debtor shall serve a copy of this Order on all creditors within five (5) days of the entry of this Order and promptly file a Certificate of Service with the Clerk.

8. To the extent consistent with the terms of 28 U.S.C. § 1334, this Court retains jurisdiction over this case with respect to the interpretation and implementation of the terms and conditions of this Order and the Plan.

**END OF DOCUMENT**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

IN RE:

CHAPTER 11

PROVINCE GRANDE OLDE LIBERTY, LLC

CASE NO. 13-01563-8-ATS

Debtor.

CHAPTER 11 PLAN

NOW COMES Province Grande Olde Liberty, LLC debtor-in-possession (the “Debtor”) in this Chapter 11 case and files the following Chapter 11 Plan pursuant to § 1121(a) of the Bankruptcy Code. This Plan, as amended and supplemented, serves as an exhibit to the Court’s Order Confirming Plan. Hereinafter, the terms contained in this Chapter 11 Plan, as amended and supplemented, shall apply.

ARTICLE I

DEFINITIONS

The following terms used in the Amended Chapter 11 Plan shall, unless the context otherwise requires, have the meanings specified below:

1.1 Administrative Expense Claim: a cost or expense of administration in the case allowable under § 503(b) of the Bankruptcy Code, including but not limited to any actual, necessary expense of preserving or liquidating the estate, any actual, necessary expense of operating the business of the Debtor, any actual, necessary expense of consummating the Plan and all allowances, costs and fees approved by the Bankruptcy Court in accordance with § 330 of the Bankruptcy Code.

1.2 Levin and Shareff Adversary Proceeding: the adversary proceeding filed by Eric M. Levin and Howard Shareff against PEM Entities LLC and the Debtor and docketed in this Court as Case No. 13-0122-8-ATS.

1.3 Allowed Administrative Expense Claim: any existing or future Administrative Expense Claim either (i) for which a fee application has been filed and which has been allowed by a Final Order, or (ii) as to any other Administrative Expense Claim, an application was filed; and (a) no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by this Plan, or (b) any timely objection thereto has been determined and all or some portion of the claim has been allowed by a Final Order.

1.4 Allowed Claim: any claim (a) which shall have been listed by the Debtor as undisputed, non-contingent and liquidated on the Schedules filed with the Court; (b) which shall have been properly filed as a Proof of Claim with the United States Bankruptcy Court prior to Confirmation, and to the extent that the underlying claim is based on a judgment, such judgment is a final judgment for which no appeal by the Debtor is pending in state or federal court, and to

which Debtor does not file an objection with the United States Bankruptcy Court, or which is ultimately allowed by the Bankruptcy Court over such an objection; or (c) which arose out of the rejection of an executory contract or unexpired lease as provided for by the terms of this Plan, and which shall have been properly filed as a Proof of Claim with the United States Bankruptcy Court on or before the expiration of thirty (30) days after the Effective Date, and to which Debtor does not file an objection or which is ultimately allowed by the Bankruptcy Court over any such objection. Where there is a difference between the amounts scheduled as undisputed by the Debtor in their Schedules and the amount set forth in the Proof of Claim filed by an affected creditor, the amount shown in the Proof of Claim shall govern for purposes of allowance unless objected to by the Debtor, in which case, the Claim shall be the amount allowed by the Bankruptcy Court. Unless otherwise specified in the Plan, Allowed Claim shall not include interest on the principal amount of the claim from and after the Filing Date.

1.5 Allowed Unsecured Claim: an Unsecured Claim that is or has become an Allowed Claim.

1.6 Allowed Priority Tax Claim: a Priority Tax Claim, which is or has become an Allowed Claim.

1.7 Allowed Secured Claim: a Secured Claim, which is or has become an Allowed Claim.

1.8 Ballot: the form or forms which will be distributed to Creditors and the holders of Equity Interests together with a disclosure statement pursuant to § 1125 of the Bankruptcy Code in connection with the Debtor's solicitation of acceptance or rejections of this Plan.

1.9 Bankruptcy Code: the Bankruptcy Reform Act of 1978, as amended, title 11 of the United States Code, in effect on the Filing Date.

1.10 Bankruptcy Court: the United States Bankruptcy Court for the Eastern District of North Carolina, including the United States Bankruptcy Judge presiding in this case.

1.11 Bankruptcy Rules: the Federal Rules of Bankruptcy Procedure, as amended, in effect on the Filing Date.

1.12 Business Court Action: the Business Court Action is the lawsuit captioned Bolton et al. v. Jacobson et al., 10-CVS-12062, Wake County Superior Court.

1.13 Business Day: shall mean any day on which banks are open to carry on their ordinary commercial banking business in the State of North Carolina.

1.14 Chapter 11 Case: the Chapter 11 Case of Province Grande Olde Liberty, case no. 13-01563-8-JRL, commenced under the provisions of Chapter 11 of the Bankruptcy Code on the Filing Date in the Bankruptcy Court.

1.15 Claim: any right to payment, or any right to an equitable remedy for breach of performance if such breach gives rise to right to payment, whether or not such right to payment

or right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

1.16 Class: a class of Claims or Equity Interests as indicated in the Plan.

1.17 Confirmation Date: the date upon which an order confirming this Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code, entered by the Bankruptcy Court, becomes a Final Order.

1.18 Creditor: any Entity that is the holder of a Claim against the Debtor that arose on or before the Filing Date or a Claim against the Debtor's estate of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code.

1.19 Debtor: Province Grande Olde Liberty, LLC, the debtor in the Chapter 11 Case.

1.20 Disclosure Statement: the disclosure statement, as amended and supplemented, and approved by the Bankruptcy Court for use in connection with the solicitation of acceptances of this Plan.

1.21 Disputed Claim: any Claim that is not an Administrative Expense Claim and either (i) is scheduled by a Debtor as disputed, contingent or unliquidated, or (ii) proof of which has been filed with the Bankruptcy Court and an objection to the allowance thereof, in whole or in part, has been or is interposed prior to the final date provided under this Plan for the filing of such objections (or thereafter pursuant to an order of the Bankruptcy Court) and which objection has not been settled or determined by a Final Order.

1.22 Disputed or Unresolved Administrative Expense Claim: any existing or future Claim that is an Administrative Expense Claim and either : (i) (a) an application for payment was or will be filed on or before the date designated by this Plan, or pursuant to any order of the Bankruptcy Court, as the last date for filing the application for payment; and (b) as to which either (I) an objection to the allowance thereto has been interposed within the applicable period of limitation that has not yet been resolved by a Final Order, or (II) no Final Order has been issued if a Final Order is required by § 330 of the Bankruptcy Code; or (ii) an application for payment was filed after the last date designated for such filing as described above, whether or not an objection to the allowance thereof has been interposed.

1.23 Distributable Property: the property distributable to Creditors under this Plan, after deduction for any expenses properly chargeable against the Distributable Property in accordance with this Plan.

1.24 Effective Date: the date occurring fifteen (15) days after the Confirmation Date.

1.25 Entity: an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, an estate, a trust, or an incorporated organization.

1.26 Equity Interest: any equity interest in the Debtor as of the Filing Date.

1.27 Filing Date: March 11, 2013, the date upon which the Debtor filed with the Bankruptcy Court its petition for relief under title 11, commencing the Chapter 11 Case.

1.28 Final Order: an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified or amended and as to which any prescribed time to appeal has expired and no petition for certiorari is pending, or as to which any right to appeal or petition for certiorari has been waived in writing in a manner satisfactory to the Debtor or, if an appeal or certiorari thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, or certiorari has been denied, and the prescribed time to take any further appeal or to seek certiorari or further reargument or rehearing of any appeal has expired.

1.29 Insider: shall refer, separately and collectively, to a partnership in which the Debtor is a general partner; a general partner of the Debtor or relative of a general partner, director, officer, or person in control of the Debtor, or any entity which is an insider as defined in 11 U.S.C. 101(31).

1.30 Net Proceeds: Amount received by the Debtor after all taxes, commissions, and closing costs associated with the sale of real property are disbursed.

1.31 Plan: this Plan of Reorganization, either in its present form or as it may be altered, amended or modified from time to time.

1.32 Priority Tax Claim: any Claim, other than an Administrative Expense claim, which is entitled to priority in payment under § 507(a)(8) of the Bankruptcy Code.

1.33 Pro Rata: the ratio, as of the date of determination thereof, of the amount of the Allowed Claims held by any Creditor in the indicated Classes to the aggregate to the amount of Allowed Claims in the indicated Classes (including, in each such calculation, the full amount of Disputed Claims in the indicated Classes that have been asserted or are otherwise pending and that have not yet been allowed or otherwise disposed of).

1.34 Secured Claim: the portion of any Claim against the Debtor determined in accordance with section 506(a) of the Bankruptcy Code, as of the Confirmation Date, secured by a valid, perfected and unavoidable lien.

1.35 Secured Rate: Simple interest at the rate of 4% per annum, or such interest rate as the Bankruptcy Court finds is necessary for confirmation of this Plan.

1.36 Unclaimed Property: any funds which are unclaimed on the 120<sup>th</sup> day following the date on which such Unclaimed Property was mailed or otherwise sent to the holder of an Allowed Claim or allowed Administrative Expense Claim pursuant to this Plan, and shall include (i) checks (and the funds represented thereby) that have been returned as undeliverable without a proper forwarding address, (ii) funds for checks which have not been presented for payment and paid, and (iii) checks (and the funds represented thereby) that were not mailed or delivered because of the absence of a proper address to which to mail or deliver such property.

1.37 Unsecured Claim: any Claim other than an Administrative Expense Claim, a Priority Tax Claim, a Secured Claim, or an Equity Interest.

1.38 Unsecured Creditor: any Creditor that holds an Unsecured Claim.

## ARTICLE II

### CONSTRUCTION

2.1 Applicability of the Bankruptcy Code and Bankruptcy Rules: Where not inconsistent or in conflict with the provisions of the Plan, the words and phrases used herein shall have the meanings ascribed thereto in the Bankruptcy Code and in the Bankruptcy Rules.

## ARTICLE III

### MEANS FOR IMPLEMENTING PLAN

3.1 Means for Implementing the Plan. Debtor shall make payments, as called for by the Plan, through the orderly liquidation of real property.

3.2 Closing Case. After substantial consummation of the Debtor's Chapter 11 Plan, the Chapter 11 Case will be closed.

3.3 Pre-Payment Penalties. There shall be no pre-payment penalties in the event that the Debtor is able to make Plan payments ahead of any scheduled dates or time frames as set forth in the Plan.



## ARTICLE IV

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

4.1 Classification of Claims and Interests. Claims and Equity Interests shall be classified as follows:

Class 1 – Allowed Administrative Expense Claims

Class 2 – Internal Revenue Service

Class 3 – Ad Valorem Tax Claims

Class 4 – North Carolina Department of Revenue

Class 5 – Allowed Secured Claim of PEM Entities, LLC

Class 6 – Allowed Secured Claim of Paragon Commercial Bank

Class 7 – Allowed Secured Claim of Joseph Deglomini and Joseph Simone

Class 8 – Allowed Unsecured Claims

Class 9 – Disputed Claims of Eric M. Levin and Howard Shareff and Allowed Claim of Lakebound Fixed Return Fund, LLC

Class 10 – Equity Interests

## ARTICLE V

### PROVISIONS FOR TREATMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIMS

#### (Class 1 Claims)

5.1 Description of Class. Class 1 is composed of Allowed Administrative Expense Claims. An Allowed Administrative Expense Claim shall be one that is: (i) an Allowed Administrative Expense Claim as of the Effective Date, or (ii) an Administration Claim that is disputed on the Effective Date which has been allowed by entry of a Final Order approving such Allowed Administrative Expense Claim.

5.2 Treatment. Subject to the terms and conditions of this Article V, (i) each Administrative Expense Claim that is an Allowed Administrative Expense Claim on the Effective Date shall be satisfied in full on the Effective Date, or as otherwise may be agreed by the holder of such Allowed Administrative Expense Claim; and (ii) each Administrative Expense Claim that is disputed on the Effective Date shall be satisfied within ten (10) Business Days after

entry of a Final Order approving such Claim as an Allowed Administrative Expense Claim, or as otherwise may be agreed by the holder of an Allowed Administrative Expense Claim.

5.3 Allowance of Claims. Creditors shall file an application for payment for any Administrative Expense Claim on or before the Effective Date. Failure to file a timely application for payment shall bar any person or Entity for asserting such Claim against the Debtor, except any professional rendering services to the Debtor and required to file an application for compensation pursuant to 11 U.S.C. § 328. The Debtor shall file any objection to an application for payment within thirty (30) days after the Effective Date. Failure to make a timely objection as to a timely filed application for payment of an Administrative Expense Claim shall result in the amount set forth in such timely filed application for payment being an Allowed Administrative Expense Claim.

5.4 Impairment Status. Class 1 is unimpaired.

## ARTICLE VI

### INTERNAL REVENUE SERVICE

#### (Class 2 Claims)

6.1 Description of Class. Class 2 Claims are comprised of the Internal Revenue Service.

6.2 Treatment. Class 2 Claims shall be paid in full with interest at the rate set by Internal Revenue Code sections 6601 and 6621 in equal monthly payments, so that the last payment shall be due within five years of the filing date. The first such payment shall be due on the first day of the month following the Effective Date.

6.3 Impairment Status. Class 2 Claims are impaired.

## ARTICLE VII

### AD VALOREM TAX CLAIMS

#### (Class 3 Claims)

7.1 Description of Class. Class 3 is comprised of Ad Valorem Tax Claims.

7.2 Treatment of Claims. Ad Valorem taxes shall be paid upon the sale of the associated property.

7.3 Impairment Status. Class 3 Claims are impaired under the Plan.

ARTICLE VIII

NORTH CAROLINA DEPARTMENT OF REVENUE

(Class 4 Claims)

8.1 Description of Class. Class 4 is comprised of the Claims of the North Carolina Department of Revenue.

8.2 Treatment of Claims: Class 4 Claims shall be paid in full with interest at the rate set by Internal Revenue Code sections 6601 and 6621 in equal monthly payments, so that the last payment shall be due within five years of the filing date. The first such payment shall be due on the first day of the month following the Effective Date.

8.3 Impairment Status. Class 4 Claims are impaired under the Plan.

ARTICLE IX

TREATMENT OF ALLOWED SECURED CLAIM OF PEM ENTITIES, LLC

(Class 5 Claims)

9.1 Description of Class: Class 5 is comprised of the Allowed Secured Claims of PEM Entities, LLC. The Levin and Shareff Adversary Proceeding seeks to alter the priority of or reduce in amount the security interest of PEM Entities LLC. In the final judgment in the Levin and Shareff Adversary Proceeding, any relief granted by the Court to the plaintiffs in that proceeding may modify this Article IX in the manner determined by the Court or by agreement of those plaintiffs, PEM Entities, LLC, and the Debtor.

9.2 Treatment: The Debtor will sell fourteen (14) developed lots and twenty one (21) undeveloped and partially developed lots within twenty four (24) months of the Effective Date. Such lots are further described in the site map attached hereto as Exhibit "A." The Debtor shall receive all Net Proceeds from such sales, with the exception of the amounts designated to be distributed in Classes 6, 7, and 8. The Debtor shall make no distribution of such Net Proceeds to Class 5 or Class 9 until such time as the Levin and Shareff Adversary Proceeding has been resolved.

9.3 Transfer of Property to PEM Entities, LLC. If it is determined that the Claim of PEM Entities, LLC is (1) secured by a Deed of Trust against the Debtor's property and (2) exceeds \$3,000,000, the Debtor shall surrender all property secured by the Deed of Trust, with the exception of the fourteen (14) developed lots and twenty one (21) undeveloped and partially developed lots described in section 9.2, to PEM Entities, LLC. The Debtor shall surrender such property to PEM Entities, LLC, in exchange for a \$3,000,000 reduction of its Claim. The Debtor shall notify all creditors by filing a notice with the Court announcing the transfer of property. Any creditor objecting to such valuation of the surrendered property shall notify the Debtor in writing within ten (10) days of the filing of the notice. The Debtor will then hold an auction of the property within a reasonable time period. In the event an auction is held, PEM Entities, LLC, will be allowed to credit bid its Claim. If it is determined that the Claim of PEM Entities, LLC is

either (1) not secured by a Deed of Trust against the Debtor's property or (2) less than \$3,000,000, the Debtor shall sell the remaining property in the manner described in section 9.2.

9.4 After the Court determines the amount and priority of the Class 5 and Class 9 claims, the Court by post-confirmation order shall order the distribution of any Net Proceeds held by the Debtor according to the amount and priority of the allowed Class 5 and Class 9 claims. If the Class 5 Claim is allowed as a secured claim, it shall accrue interest at the Secured Rate.

## ARTICLE X

### TREATMENT OF ALLOWED SECURED CLAIM OF PARAGON COMMERCIAL BANK

#### (Class 6 Claims)

10.1 Description of Class. Class 6 is comprised of the Allowed Secured Claim of Paragon Commercial Bank.

10.2 Treatment of Claims. Class 6 shall receive \$11,680.00 from each individual sale of the following lots: lots 555-565, inclusive, and lots 368-380, inclusive, as shown on the plat recorded in the Book of Maps 2008, page 15, Franklin County Registry. Class 6 shall not receive any disbursements from property surrendered by the Debtor to Class 5. Class 6 shall retain its liens on the Debtor's real property. Nothing contained in this Plan shall alter the rights of Paragon Commercial Bank.

10.3 Impairment Status. Class 6 Claims are unimpaired under the Plan.

## ARTICLE XI

### TREATMENT OF ALLOWED SECURED CLAIM OF JOSEPH DEGLOMINI AND JOSEPH SIMONE

#### (Class 7 Claims)

11.1 Description of Class. Class 7 is comprised of the Allowed Secured Claims of Joseph Deglomini and Joseph Simone.

11.2 Treatment of Claims. Class 7 shall receive \$15,000, from each individual sale of the following lots: lots 546-565, inclusive, and lots 368-392, inclusive, as shown on the plat recorded in the Book of Maps 2008, Page 15, Franklin County Registry. Class 7 shall not receive any disbursements from property surrendered by the Debtor to Class 5. Class 7 shall retain its liens on the Debtor's real property. Nothing contained in this Plan shall alter the rights of Joseph Deglomini or Joseph Simone.

11.3 Impairment Status. Class 7 Claims are unimpaired under the Plan.

## ARTICLE XII

**TREATMENT OF GENERAL UNSECURED CLAIMS**

**(Class 8 Claims)**

12.1 Description of Class. Class 8 is comprised of the General Unsecured Claims of the Debtor and all Claims of Creditors that are not included in Classes 1 through 7 or Class 9.

12.2 Treatment of Claims. The Debtor shall make disbursements of \$714.29 each time a lot is sold, to be shared Pro Rata by Class 8. Such disbursements will result in a total payment of \$25,000 to Class 8, in full satisfaction of such claims. Class 8 claims shall accrue interest at the Federal Judgment Rate.

12.3 Impairment Status. Class 8 Claims are impaired under the Plan.

**ARTICLE XIII**

**TREATMENT OF DISPUTED CLAIMS OF ERIC M. LEVIN AND HOWARD SHAREFF  
AND ALLOWED CLAIM OF LAKEBOUND FIXED RETURN FUND, LLC**

**(Class 9 Interests)**

13.1 Description of Class. Class 9 is comprised of the Disputed Claims of Eric M. Levin and Howard Shareff and the Allowed Claim of Lakebound Fixed Return Fund, LLC. Because the Business Court Action was brought by Eric M. Levin and Howard Shareff both as individuals and derivatively on behalf of Lakebound Fixed Return Fund, LLC and the amount that is characterized as a debt to Lakebound Fixed Return Fund, LLC in the Debtor's schedules is at issue in the Business Court Action, both the Disputed Claims of Eric M. Levin and Howard Shareff and the Allowed Claim of Lakebound Fixed Return Fund, LLC are included in this class.

13.2 Treatment. The amount and treatment of the Disputed Claims of Eric M. Levin and Howard Shareff may be determined by two pending actions, the Business Court Action brought by Eric M. Levin and Howard Shareff against the Debtor and others and the Levin and Shareff Adversary Proceeding.

13.3 After the Court determines the amount and priority of the Class 5 and Class 9 claims, the Court by post-confirmation order shall order the distribution of the Net Proceeds according to the amount and priority of the allowed Class 5 and Class 9 claims.

13.4 Constructive Trust. If the Business Court Action results in a constructive trust being imposed over the profits of the Debtor, Class 9 will be paid before any distributions are made to Class 10. The amount and mechanism for such distributions shall be pursuant to a post-confirmation Order of the Court.

13.5 Impairment Status. Class 9 Interests are impaired under the Plan.

**ARTICLE XIV**

**EQUITY INTERESTS**



(Class 10 Interests)

14.1 Description of Class. Class 10 is comprised of Equity Interests in the Debtor.

14.2 Treatment. The existing Allowed Equity Interests in the Debtor shall remain the same as pre-petition.

14.3 Impairment Status. Class 9 Interests are unimpaired under the Plan.

ARTICLE XV

PROVISION FOR TREATMENT OF ALLOWED CLAIMS UNDER  
UNEXPIRED LEASES AND EXECUTORY CONTRACTS

15.1 Unexpired Leases and Executory Contracts. The confirmation of the Plan shall act as an acceptance of all other executory contracts and leases, other than those rejected prior to confirmation of the Plan. All parties shall have thirty (30) days from the Effective Date to file proofs of claim for rejection damages.

ARTICLE XVI

CAUSES OF ACTION

16.1 Except as expressly provided otherwise in this Plan, the Debtor may pursue any causes of action arising under §§ 544, 545, 547, 548, 549, 550, or 553(b) of the Bankruptcy Code, or under any similar provisions of applicable state law to recover any preferences or fraudulent conveyances from any person. Funds recovered as a result of such actions shall be applied first in reimbursement of attorney's fees and other costs of such actions, and then the remainder shall be the property of the Debtor. **The Debtor intends to pursue those adversary proceedings and contested matters pending at the time of confirmation.**

ARTICLE XVII

CONFIRMATION AS WAIVER AND RELEASE

17.1 Waiver against and Release of Debtor. Confirmation shall constitute waiver and release of the right to pursue litigation and causes of action against the Debtor, with the exception of those actions that are pending at confirmation of the Plan. This release is supported by the requirements of this Plan and covenants contained herein.

ARTICLE XVIII

POST-CONFIRMATION OPERATIONS

18.1 Professional Compensation. Professional fees and expenses will be paid on the Effective Date or as soon thereafter as they are approved by the Bankruptcy Court. Fees and

expenses occurring following confirmation will be paid without prior Bankruptcy Court approval.

## ARTICLE XIX

### EXECUTION OF THE PLAN

19.1 Payments. The Debtor will make payments of the Allowed Claims as provided in this Plan.

19.2 Events of Default. The occurrence of any of the following shall constitute an Event of Default of this Plan.

(i) Failure to make payment as such payment comes due under the Plan.

19.3 Remedies Upon Default. Upon the occurrence of any Event of Default which is not excused, postponed, modified, or waived, and after giving notice to the Debtor and an opportunity to cure within 15 days, holders of claims and parties in interest may exercise all rights and remedies available under this Plan and the Code and state law.

19.4 Revesting of Property of the Debtor. All of the assets of the Debtor will be retained by the Debtor and on the day of entry of an order confirming the Plan, the Debtor will hold all right, title and interest of the property of the Debtor.

## ARTICLE XX

### MODIFICATION OF THE PLAN

20.1 Modification Prior to the Confirmation. Modification of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that such Plan, as modified, meets the requirements of §§1122 and 1123 of the Code, and that the Debtor has complied with §1125 of the Code.

20.2 Modification After Confirmation. This Plan may be modified at any time after the Confirmation Date and before its substantial consummation, provided that such Plan, as modified, meets the requirements of §§1122 and 1123 of the Code, and that the Court, after notice and a hearing confirms such Plan as modified.

20.3 Deemed Acceptance or Rejection of Modification. A holder of a claim or interest that has accepted or rejected the Plan, as the case may be, is deemed to have accepted the Plan as modified unless such holder files a notice to the contrary within the time period for such notice affixed by the Court.

20.4 Defects or Omissions. After confirmation, the Proponents may, with approval of the Court, remedy any defect or omission or reconcile any inconsistencies in the Plan, Disclosure Statement or the Confirmation Order in such manner as may be necessary to carry out the purposes and effect of the Plan, Disclosure Statement or Confirmation Order, so long as the such

remedy does not materially or adversely affect the interests of creditors and other parties in interest.

## ARTICLE XXI

### OTHER PROVISIONS

21.1 Extension of Payment Dates. If any payment under the Plan falls due on a Saturday, Sunday, or other day which is not a Business Day, then such due date shall be extended to the next following Business Day.

21.2 Notices. Any notice to the Debtor under any obligations created or governed by this plan must be in writing and sent by registered or certified mail, postage pre-paid, and addressed as follows (and to such other address as the Debtor may notify the creditor in writing):

Province Grande Olde Liberty, LLC  
Attn: Richard Wolf  
P.O. Box 98566  
Raleigh, NC 27624-8566

With Copies to:

William P. Janvier, Esq.  
Janvier Law Firm, PLLC  
1101 Haynes Street, Suite 102  
Raleigh, NC 27604

21.3 Reduction of Notice Periods. The notice period applicable to service of any notices on the creditors otherwise applicable, pursuant to the provisions of the Code or this Plan, including any notice of hearing on application or allowance of compensation of professional persons pursuant to Section 330 of the Code, is reduced to a fifteen (15) day period, inclusive of the three days for mailing pursuant to Rule 9006(f) of the Bankruptcy Rules with the exception of any applicable notice period relating to modification of the Plan prior to or after confirmation pursuant to Sections 1122 and 1123 of the Code. If no objections are filed in writing with the Court within said fifteen (15) day notice period, any said motion may be allowed by the Court without the necessity of further notice or hearing.

21.4 Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under the Plan, the creation of any mortgage, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, deeds, or bills of sale or assignments of personal property executed in connection with any of the transactions contemplated under the Plan, will not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax. All sale transactions consummated by the Debtor and approved by the Bankruptcy Court on and after the Petition Date through and including the Effective Date, including, without limitation, the sale by the Debtor of owned property pursuant to section 363(b) of the Bankruptcy Code and the assumption, assignment and sale by the Debtor of unexpired leases of non-

residential real property pursuant to section 365(a) of the Bankruptcy Code, will be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, will not be subject to any stamp, real estate transfer, mortgage recording or other similar tax. In addition, each of the relevant state or local governmental officials or agents will forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment consistent with the applicable provisions of this Plan.

21.5 Procedure for Payment of Professional Fees and Expense Reimbursement.

Current counsel for the Debtor and Reorganized Debtor, and the current Court approved accountants for the Debtor and Reorganized Debtor shall not be subject to the fee application process for services rendered post-confirmation in furtherance or implementation of the confirmed Plan.

21.6 No Representations or Warranties Concerning Tax Attributes/Consequences.

Debtor makes no representations or warranties to any creditor of the Debtor concerning the tax consequence of confirmation of this Plan of Reorganization, the effect of this Chapter 11 case, or as to the status of tax attributes of the Debtor.

21.7 Transfer of Claims. Claims may be transferred and will be honored only in accordance with Bankruptcy Rule 3001.

ARTICLE XXII

RETENTION OF JURISDICTION

22.1 The Bankruptcy Court shall, after Confirmation, retain jurisdiction of this case to hear and determine the allowance of claims and all claims against the Debtor pursuant to Section 502 of the Code; to determine the allowance of timely filed claims resulting from the rejection of executory contracts; to determine any issues in pending adversary proceedings, and in adversary proceedings commenced post-confirmation, including, but not limited to, avoidance or turnover actions; to determine any dispute as to the classification or allowance of claims; to fix and determine all pre-confirmation professional fees and other costs of administration; to require the performance of any act contemplated by the provisions of this Plan necessary for the consummation of the Plan; to resolve all the matters as may be set forth in the Order of Confirmation. In the event an appeal is perfected from the Order confirming the Plan, the Bankruptcy Court shall also retain jurisdiction to enter such Orders regarding the disbursement of funds under the Plan or the consummation thereof as may be necessary to protect the interest of the Debtor, its creditors and parties in interest.

ARTICLE XXIII

DISCLOSURE STATEMENT

The attention of holders of claims and interests is directed to the Disclosure Statement.

ARTICLE XXIV

CONFIRMATION FOR IMPAIRED CLASS NOT ACCEPTING THE PLAN

With respect to any impaired class of creditors not accepting the Plan by the requisite majority in number and two-thirds (2/3) in amount, the proponent of this Plan requests the Court to find that the Plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interests that is impaired under the Plan and that the Court should confirm the Plan without such acceptances by said impaired class or classes.

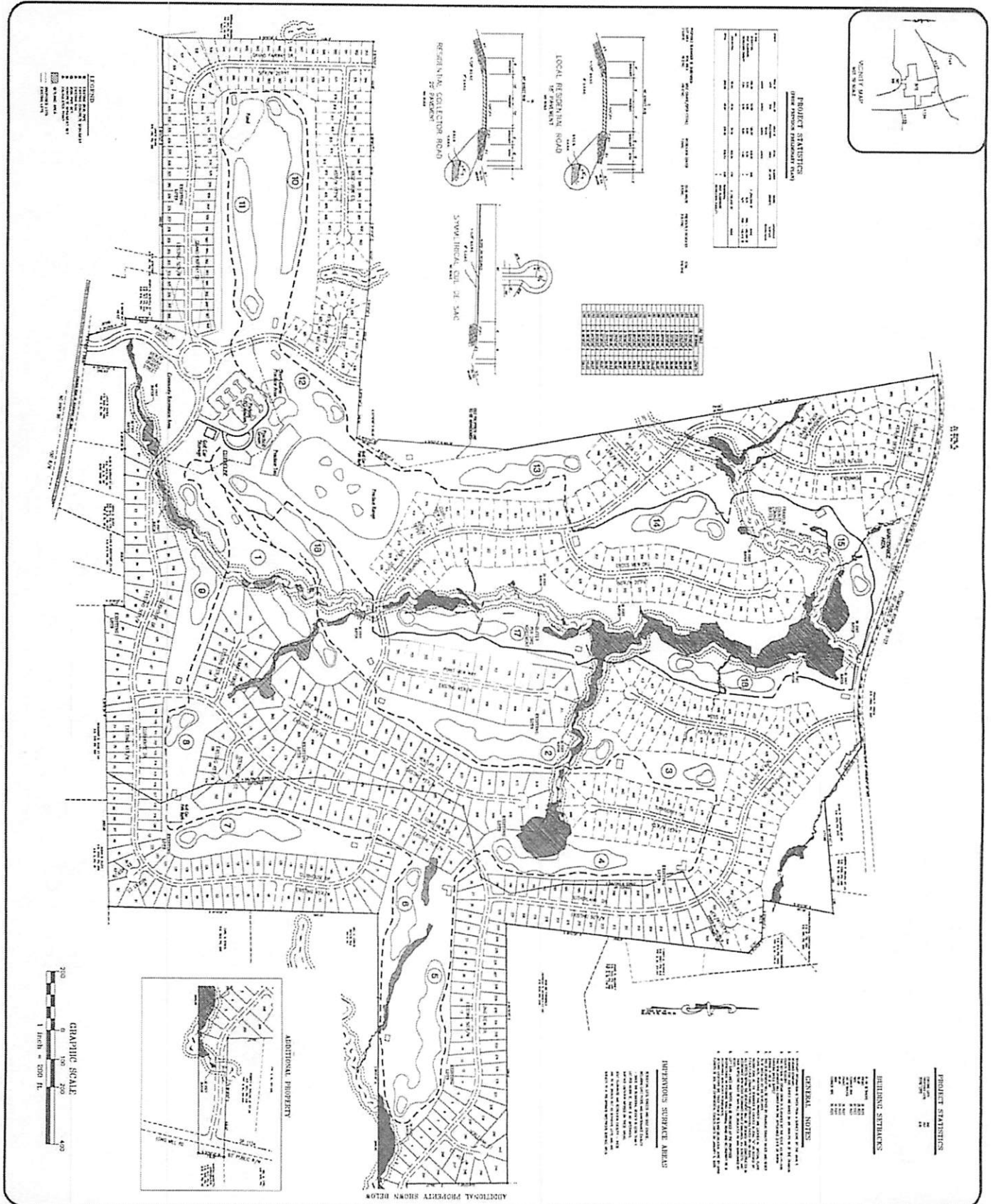
Respectfully submitted this the 23rd day of September, 2013.

/s/Richard Wolf  
Richard Wolf  
Province Grande Olde Liberty, LLC

**JANVIER LAW FIRM, PLLC**

/s/ William P. Janvier  
William P. Janvier  
N.C.S.B. No. 21136  
Blake P. Barnard  
N.C.S.B. No. 44198  
1101 Haynes Street, Suite 102  
Raleigh, NC 27604  
Telephone: (919) 582-2323





# EXHIBIT 2



**SO ORDERED.**

**SIGNED this 12 day of April, 2017.**

Stephani H. Humrickhouse

**Stephani W. Humrickhouse**  
**United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**PROVINCE GRANDE OLDE LIBERTY,  
LLC,**

## Debtor

**CASE NUMBER: 13-01563-8-SWH**  
**CHAPTER 11**

### Order Determining Potential Equity Interest

This matter came before the Court on April 6, 2017 in Raleigh, NC to consider the Motion to Determine Potential Equity Interest (Dkt. 311, the “Motion”) filed by PEM Entities, LLC, and after considering the matters set forth in the Motion and the official file, no objections having been filed or raised at the hearing, the Court finds as follows:

1. On December 5, 2014, the Bankruptcy Court entered an Order (Dkt. 95, the “Bankruptcy Court Order”) which declared void the scheduled secured claim of PEM Entities, LLC (“PEM”), the holder by assignment of the Debtor’s Paragon Loan in the original principal amount of \$6,465,000, and recharacterized as equity in the Debtor \$300,000 of the \$1,242,000 paid by PEM to Paragon to purchase the Paragon Loan. PEM appealed the Bankruptcy Court Order to the U.S. District Court, which affirmed the Bankruptcy Court by Order filed June 1, 2015 (the “District Court Order”). PEM appealed the District Court Order to the Court of Appeals for the Fourth Circuit, which affirmed the District Court by Order filed August 12, 2016 (the “Fourth Circuit Order”). A request for rehearing was denied by the Fourth Circuit on September 9, 2016, and PEM filed a petition for a writ of certiorari to the U.S. Supreme Court

which is currently under consideration.

2. In the Bankruptcy Court Order, the Court found that Paragon Bank had sold the Debtor's Paragon Loan to PEM for the sum of \$1,242,000, of which \$300,000 was contributed by PEM from equity contributed to PEM by its members and the balance was contributed by PEM from loans made to PEM (as evidenced by the Paragon Loan of \$292,000 and the Deglomini-Simone Loan of \$650,000). The Court recharacterized the \$300,000 of PEM member equity as an equity contribution to the Debtor without determining the percentage of membership interest in the Debtor that PEM purchased and declared the PEM secured claim void.

3. A portion of the Debtor's real property is subject to existing liens securing the Paragon Bank Loan and the Deglomini-Simone Loan, which are valid loans secured by valid deeds of trust. The remainder of the Debtor's real property is unencumbered by liens but may be subject to a judicially imposed constructive trust purportedly giving joint ownership of the Debtor's land to the Lakebound Fixed Return Fund, LLC ("Lakebound") by reason of the Final Judgment entered by the North Carolina Business Court on December 5, 2016 (the "Business Court Judgment"), which is presently on appeal to the North Carolina Court of Appeals.

4. In order for PEM, the Debtor and other parties in interest to evaluate and respond to any proposed sale of assets or other developments, such parties will need to know their respective share of the potential distributions. The outcome of the pending appeal of the Final Judgment would not affect the determination of PEM's potential member interest, as distributions to members on account of equity interests would remain subordinate to payment of any claim that Lakebound may have.

5. On March 11, 2013, the Debtor filed a List of Equity Security Holders (Dkt. 1, at pages 37-38) with the names, addresses and respective interests of its members, consistent with the K-1's prepared as part of the 2010 federal income tax return filed by the Debtor. On May 17, 2013, the Debtor filed an Amendment (Dkt. 72) to remove Eric Levin as having an ownership interest, stating that Eric Levin's ownership interest was disputed, apparently on the basis that Mr. Levin had not made a required capital contribution of \$50,000.

6. Although the recharacterization of PEM's secured claim as equity is still subject to review and possible reversal, this Court and all parties in interest would benefit from a determination of the percentage interest in the Debtor that PEM would receive as a result of the recharacterization of its \$300,000 payment to Paragon as an equity contribution to the Debtor as

set forth in the Bankruptcy Court Order, assuming no reversal by the Supreme Court.

7. Attached to the Motion is a spreadsheet reflecting (i) the list of members and their respective interests as set forth in the Debtor's 2010 tax return, (ii) the list of members and their respective interests as set forth in the Debtor's List of Equity Security Holders, reflecting the transfer by Mr. Deckelbaum of his interest to AJHRLT Holdings, LLC, and (iii) the reallocated membership interests as proposed by PEM, reflecting the deletion of Eric Levin's member interest as set forth in the Amendment, the addition of PEM based on the Bankruptcy Court Order, and a reallocation of the member interests among the existing members.

8. Counsel for Mr. Levin has confirmed that Mr. Levin has no objection to the deletion of his disputed member interest in the Debtor, provided that he is released from the disputed obligation to the Debtor as set forth in the filed schedules of the Debtor's assets.

9. The proposed reallocation of member interests was calculated on the following basis:

- a. As of the inception of this case, the only assets listed in the filed schedules were the Debtor's real property and \$50,000 due from Eric Levin as an unpaid capital contribution.
- b. All the Debtor's real property was subject to PEM's first mortgage securing the Paragon Loan with an outstanding balance of approximately \$7,000,000. The unpaid capital contribution was eliminated by cancellation of Mr. Levin's member interest.
- c. Paragon Bank sold the Paragon Loan to PEM in an arm's length transaction for \$1,242,000, thereby providing evidence of the fair value of the real property at that time.
- d. PEM contributed \$300,000 towards the purchase of the Paragon Loan, which amount the Bankruptcy Court later converted to an equity interest in the Debtor.
- e. In order to determine the amount of PEM's equity interest under the Bankruptcy Order, PEM calculated that the percentage that its \$300,000 contribution bears to the \$1,242,000 purchase price is 24.15%, giving PEM a 24.15% membership interest in the Debtor.
- f. The remaining member interests in the aggregate amount of 75.85% are then reallocated among the existing members as set forth on the spreadsheet attached to the Motion.

Based on the foregoing findings, the Court concludes that the proposed reallocation of



equity among PEM and the existing members as proposed in the Motion, in the event the Bankruptcy Court Order is not reversed or remanded, is fair, equitable and consistent with the Bankruptcy Court Order, it is hereby ORDERED as follows:

1. Pursuant to the Bankruptcy Court Order, PEM shall have a member interest of 24.15% and the remaining 75.85% shall be reallocated among the existing members, all as set forth on the attached Exhibit A.

2. Mr. Levin's disputed member interest in the Debtor is extinguished, and Mr. Levin is released from the disputed obligation to the Debtor as set forth in the filed schedules of the Debtor's assets.

3. This Order is and shall be without prejudice to the petition for a writ of certiorari to the U.S. Supreme Court, or to any subsequent reversal or remand for further hearings with respect to the Bankruptcy Court Order.

4. Counsel for PEM shall serve a copy of this Order on all parties in interest and file a certificate of such service with the Court.

[END OF DOCUMENT]

<b>EXHIBIT A to Order</b>	
<b><u>Members</u></b>	<b><u>Reallocated %</u></b>
Robert A. Breit	2.38%
Robert B. Conaty	2.38%
Stanley Jacobson and Rhoda Jacobson	3.82%
Skin Sense, Inc.	0.48%
AJHRLT Holdings, LLC	31.28%
Timothy J. Buckley	3.10%
Silervale, LLC	4.77%
Francis J. Abdou	4.77%
Terry Perl Revocable Trust	0.95%
Entrust Admin of SE f/b/o Ron Serbin	0.95%
Hayden J. Silver, III	0.72%
Richard E. Wolf	0.95%
MBMO Holdings, LLC	13.81%
A&M, LLC	4.77%
Hayden J. Silver, Jr.	0.72%
PEM Entities, LLC	24.15%
Total	100.00%

# EXHIBIT 3

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (the “Agreement”), is made and executed as of April 12, 2017 (the “Effective Date”), by and among Stanley Jacobson (“S. Jacobson”), Eric M. Levin (“Levin”), Howard Shareff (“Shareff”), Lakebound Fixed Return Fund, LLC (“Lakebound”), PEM Entities, LLC (“PEM”), and Province Grande Olde Liberty, LLC (“PGOL”). Howard Jacobson (“H. Jacobson”) joins in the execution of this Agreement for the limited purpose set forth below.

### **BACKGROUND**

A. On July 19, 2010, Levin and Shareff, individually (and later, derivatively in the right of Lakebound), commenced a civil action in the Superior Court for Wake County, North Carolina (the “Business Court”), Case No. 10 CVS 12062 (the “Lakebound Action”). On December 5, 2016, the Business Court entered a Final Judgment (the “Business Court Judgment”), which (i) awarded a judgment in favor of Lakebound against Howard Jacobson in the amount of \$188,000.00 plus interest, (ii) directed PGOL to convey a 2.83% interest in the real property purchased on December 31, 2009 to Lakebound, and (iii) provided that Lakebound may recover either the damages under the money judgment or the conveyance of the interest in the real property, but not both. The Business Court Judgment and other rulings in the Lakebound Action are currently being appealed by all parties to the North Carolina Court of Appeals; however, Levin and Shareff, on behalf of Lakebound, filed a notice electing the remedy of a 2.83% interest in the real property.

B. On March 11, 2013, PGOL filed a voluntary petition in the United States Bankruptcy Court for the Eastern District of North Carolina (the “Bankruptcy Court”), Case No. 13-01563 (the “Bankruptcy Case”). In the schedules filed in the Bankruptcy Case, the Debtor scheduled (i) PEM as holding a secured claim in the amount of \$7,000,000.00, (ii) Lakebound as holding an unsecured claim in the amount of \$188,000.00, (iii) Levin as holding a disputed unsecured claim in an unknown amount and a disputed equity interest, and (iv) Shareff, Howard Shareff, DDS PA, and Shareff & Associates as holding disputed unsecured claims in unknown amounts. Howard Shareff, DDS PA and Shareff & Associates did not file proofs of claim and the time for filing such claims has expired. Levin and Shareff filed proofs of claim, PGOL filed objections to such claims, the Bankruptcy Court determined that the objections should be determined by the Business Court, and the Business Court subsequently entered an Order which dismissed the

claims of Levin and Shareff against PGOL (which Order is on appeal to the North Carolina Court of Appeals). On October 2, 2013, the Bankruptcy Court entered an Order Confirming Plan of Reorganization (the “Confirmation Order”). The Plan became effective by its terms on October 17, 2013, but has not been substantially consummated.

C. On July 24, 2013, Levin and Shareff commenced an Adversary Proceeding (AP No. 13-00122) in the Bankruptcy Court. On December 5, 2014, the Bankruptcy Court entered an Order (Dkt. 95, the “Bankruptcy Court Order”) which (i) declared void the scheduled secured claim of PEM, the holder by assignment of the Debtor’s Paragon Loan in the original principal amount of \$6,465,000, and (ii) recharacterized as equity in the Debtor \$300,000 of the \$1,242,000 paid by PEM to Paragon to purchase the Paragon Loan. PEM appealed the Bankruptcy Court Order to the U.S. District Court, which affirmed the Bankruptcy Court by Order filed June 1, 2015 (the “District Court Order”). PEM appealed the District Court Order to the Court of Appeals for the Fourth Circuit, which affirmed the District Court by Order filed August 12, 2016 (the “Fourth Circuit Order”). A request for rehearing was denied by the Fourth Circuit on September 9, 2016, and PEM filed a petition for a writ of certiorari to the U.S. Supreme Court which is currently under consideration.

D. The parties to this Agreement have now agreed to settle and resolve all claims, disputes, actions, defenses and causes of action of any nature which have or could have been brought or asserted by any of them against the other prior to the Effective Date, upon the terms and subject to the conditions more particularly set forth below.

**NOW, THEREFORE**, for and in consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Terms of Settlement.

- a. S. Jacobson will offer to purchase all the member interests in Lakebound for an aggregate purchase price of \$188,000.
  - i. Levin and Shareff each agree to transfer their member interests to S. Jacobson for the sum of \$47,837.15, respectively. Levin and Shareff agree to execute an assignment of membership interest for their interests in Lakebound.

- ii. S. Jacobson shall transfer the sum of \$95,674.30 in immediately available funds to the Parry Tyndall White Trust Account no later than Friday, April 14, 2017.
  - iii. James C. White as counsel for Levin and Shareff shall disburse \$47,837.15 to Levin and Shareff upon execution of this settlement agreement by all parties and execution by both Levin and Shareff of an assignment of membership interest.
  - iv. John Northen as counsel for S. Jacobson shall immediately communicate the offer to the remaining members of Lakebound.
  - v. S. Jacobson shall transfer the sum of \$92,325.70 in immediately available funds to the Northen Blue Trust Account no later than Friday, April 14, 2017.
  - vi. Upon acceptance of such offer by a member and execution of an assignment of member interest, Mr. Northen shall disburse directly to such member a share of the purchase price in proportion to the member's interest as set forth in Exhibit A.
  - vii. If any member of Lakebound declines to accept or fails to respond to such offer by May 30, 2017, the offer to such member shall be deemed withdrawn and the share of the sale proceeds attributable to such member's interest shall be refunded to S. Jacobson.
2. The Bankruptcy Court shall enter a consent order authorizing the sale of certain PGOL property to AVH Carolinas, LLC (the "Consent Order") no later than Friday, April 14, 2017.
- a. The Consent Order shall be executed by William Janvier as counsel for PGOL, James White as counsel for Levin and Shareff in their capacity as plaintiffs in a derivative action brought on behalf of Lakebound, Howard Jacobson as manager of Silverdeer Management, the manager of Lakebound, and John Northen as counsel for PEM/Stanley Jacobson.
  - b. The Consent Order shall authorize and direct Lakebound to join in the sale and conveyance by PGOL of certain property pursuant to the confirmed Plan of Reorganization and in accordance with the existing contract with AVH Carolinas,



LLC, with the deed and closing documents to be executed by Howard Jacobson as manager of Silverdeer Management, the manager of Lakebound, provided that:

- i. Lakebound will be entitled to 2.83% of the sale proceeds, net of customary closing costs.
- ii. Lakebound's share of the net sale proceeds will be deposited and held in the Northen Blue Trust Account, and will be paid to Lakebound after the sale of member interests to Stanley Jacobson as set forth above.

3. Releases:

- a. PEM, PGOL and S. Jacobson for themselves and all persons acting on their behalf forever release, acquit, and discharge Shareff, Levin and all persons acting on their behalf from any and all claims, actions, causes of action, demands, damages of any kind (whether actual, compensatory, special, punitive or statutory), costs, judgments, expenses, liabilities, attorneys' fees and legal costs, or any other claims for compensation whatsoever (whether arising in tort, in contract, under statute or by any other theory of law or equity), which they now have, of any type or kind, whether known or unknown, suspected or unsuspected, matured or contingent, arising prior to the date of this Settlement Agreement including, without limitation, those claims which concern, arise out of or are in any way connected with the Lakebound Action or the Bankruptcy Case.
- b. Levin and Shareff, for themselves and all persons acting on their behalf forever release, acquit, and discharge PEM, PGOL, S. Jacobson, Lakebound, SilverDeer and SilverDeer Management and all persons acting on their behalf from any and all claims, actions, causes of action, demands, damages of any kind (whether actual, compensatory, special, punitive or statutory), costs, judgments, expenses, liabilities, attorneys' fees and legal costs, or any other claims for compensation whatsoever (whether arising in tort, in contract, under statute or by any other theory of law or equity), which they now have, of any type or kind, whether known or unknown, suspected or unsuspected, matured or contingent, arising prior to the date of this Settlement Agreement including, without limitation, those claims which concern, arise out of or are in any way connected with the Lakebound Action or the Bankruptcy Case.

- c. Lakebound, SilverDeer and SilverDeer Management, for themselves and all persons acting on their behalf forever release, acquit, and discharge S. Jacobson, Levin, Shareff, and all persons acting on their behalf from any and all claims, actions, causes of action, demands, damages of any kind (whether actual, compensatory, special, punitive or statutory), costs, judgments, expenses, liabilities, attorneys' fees and legal costs, or any other claims for compensation whatsoever (whether arising in tort, in contract, under statute or by any other theory of law or equity), which they now have, of any type or kind, whether known or unknown, suspected or unsuspected, matured or contingent, arising prior to the date of this Settlement Agreement including, without limitation, those claims which concern, arise out of or are in any way connected with the Lakebound Action or the Bankruptcy Case.
  - d. As a condition of the purchase of their shares by S Jacobson, Lakebound, SilverDeer and SilverDeer Management will execute a mutual release with those members listed on Exhibit A who accept the purchase offer.
  - e. Levin and Shareff shall waive and release any claims they may have against PGOL, and Levin shall waive and release any member interest he may have in PGOL.
4. Dismissal of the Business Court Action. Howard Jacobson, PGOL, Shareff and Levin will execute stipulations of dismissal, with prejudice, of the pending action in the Business Court and dismiss all appeals pending before the Court of Appeals, without admitting the merit of any claims or appeals.
5. Release of Levin Interest and PGOL Claim. Levin hereby releases any membership interest in PGOL and PGOL release any claim against Levin for any allegedly unpaid capital contribution.
6. No Express Release of Claims. Nothing in this agreement constitutes a release by H. Jacobson of any claims he may have individually against any person or entity. Nothing in this agreement constitutes a release by any person or entity of any claims that person or entity may have individually against H. Jacobson.
7. The parties shall execute and deliver to Northen Blue, in trust, any additional documentation reasonably necessary to consummate the transactions set forth above,

which transactions shall occur simultaneously and the consummation of each of them shall be a condition precedent to the consummation of all of them.

a. PEM shall retain its right to pursue the appeal of the Bankruptcy Court Order and any further hearings in the event of reversal or remand of the Bankruptcy Court Order. The right to defend the appeal of the Bankruptcy Court Order and to oppose PEM's secured claim in any further hearings in the event of reversal or remand of the Bankruptcy Court Order shall be assigned to PGOL. Levin and Shareff, individually or derivatively in the right of Lakebound, will no longer be parties to that appeal. No parties to this Agreement other than PGOL shall take any action in opposition to the petition for further review, file any brief or other response in opposition to the brief filed by PEM, or otherwise impede or oppose the relief sought by PEM. Levin and Shareff make no representations about whether or not this appeal is now moot.

8. Effectiveness of Agreement. It shall be a condition precedent to the effectiveness of this Agreement that this Agreement shall have been executed and delivered by each of the parties hereto.

9. Merger. The parties further agree and acknowledge that this Agreement sets forth all of the terms and conditions between the parties concerning the subject matter of this Agreement, superseding all prior oral and written statements and representations, and that there are no terms or conditions between the parties and relating to the subject matter hereof except as specifically set forth in this Agreement.

10. Modification or Waiver. No modification or waiver of any provision of this Agreement shall be effective unless it is in writing. Any modification or waiver must be signed by authorized representatives of the parties.

11. No Strict Interpretation against Draftsman. Each of the parties has participated in the drafting of this Agreement and has had the opportunity to consult with counsel concerning its terms. This Agreement shall not be interpreted strictly against any one party on the ground that it, he or she drafted the Agreement. This Agreement will be governed by and construed under the laws of the State of North Carolina without regard to its conflicts of laws principles.

12. No Admission of Liability. The Parties agree that this Settlement Agreement constitutes the settlement of disputed claims for the purpose of avoiding the expense and inconvenience of

litigation. Execution of this Settlement Agreement shall not be construed as an admission of fault or liability of any kind, and this Settlement Agreement shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that any of the Parties acted illegally, improperly, or in breach of law, contract or proper conduct

13. Authority to Settle. Each party signing this Agreement represents and warrants to each other party it, he or she is authorized to enter into this Agreement on behalf of such party.

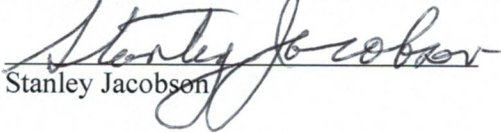
14. Voluntary Execution. Each party hereby warrants that: (a) no representation about the nature or the extent of any claims, demands, damages or rights that he, she or it has, or may have had, against the other party has been made to him, her or it or to anyone acting on his, her or its behalf to induce him, her or it to execute this Agreement; (b) that he, she or it relies on no such representations; and (c) that he, she or it has fully read and understood this Agreement before signing it, his or her name.

15. Counterparts. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement. This Agreement may be executed and delivered by telecopies or other facsimile transmission or in "pdf" all with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

16. Attorneys' Fees. Each party shall bear its own legal and other expenses in connection with the negotiation, preparation, execution and delivery of this Agreement. In the event of any litigation between the parties based upon or arising out of this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses (including, without limitation, reasonable attorney's fees) incurred in connection with the litigation from the non-prevailing party.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

  
Stanley Jacobson

\_\_\_\_\_  
Eric M. Levin

\_\_\_\_\_  
Howard Shareff

Lakebound Fixed Return Fund, LLC  
By: SilverDeer Management, LLC, its manager

By: \_\_\_\_\_  
Howard Jacobson, its manager

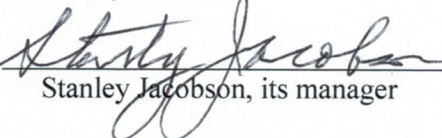
SilverDeer LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer Management, LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

PEM Entities, LLC

By:   
Stanley Jacobson, its manager

Province Grande Olde Liberty, LLC

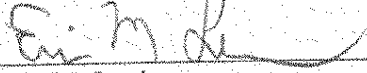
By: \_\_\_\_\_  
Richard E. Wolf, its manager

Howard Jacobson, in his individual capacity, joins in the execution of this Agreement solely for the purpose of Section 4 and Section 6.

\_\_\_\_\_  
Howard Jacobson

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Stanley Jacobson



Eric M. Levin

Howard Shareff

Lakebound Fixed Return Fund, LLC

By: SilverDeer Management, LLC, its manager

By:

Howard Jacobson, its manager

SilverDeer LLC

By:

Howard Jacobson, its manager

SilverDeer Management, LLC

By:

Howard Jacobson, its manager

PEM Entities, LLC

By:

Stanley Jacobson, its manager

Province Grande Olde Liberty, LLC

By:

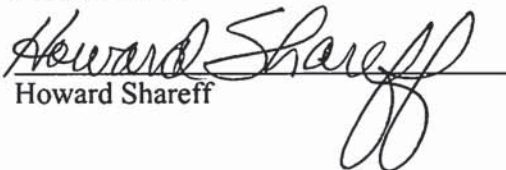
Richard E. Wolf, its manager



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\_\_\_\_\_  
Stanley Jacobson

\_\_\_\_\_  
Eric M. Levin

  
Howard Shareff

Lakebound Fixed Return Fund, LLC  
By: SilverDeer Management, LLC, its manager

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer Management, LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

PEM Entities, LLC

By: \_\_\_\_\_  
Stanley Jacobson, its manager

Province Grande Olde Liberty, LLC

By: \_\_\_\_\_  
Richard E. Wolf, its manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

\_\_\_\_\_  
Stanley Jacobson

\_\_\_\_\_  
Eric M. Levin

\_\_\_\_\_  
Howard Shareff

Lakebound Fixed Return Fund, LLC  
By: SilverDeer Management, LLC, its manager

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer LLC  
By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer Management, LLC  
By: \_\_\_\_\_  
Howard Jacobson, its manager

PEM Entities, LLC  
By: \_\_\_\_\_  
Stanley Jacobson, its manager

Province Grande Olde Liberty, LLC  
By: \_\_\_\_\_  
Richard E. Wolf, its manager

Howard Jacobson, in his individual capacity, joins in the execution of this Agreement solely for the purpose of Section 4 and Section 6.

\_\_\_\_\_  
Howard Jacobson

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

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Stanley Jacobson

\_\_\_\_\_  
Eric M. Levin

\_\_\_\_\_  
Howard Shareff

Lakebound Fixed Return Fund, LLC  
By: SilverDeer Management, LLC, its manager

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

SilverDeer Management, LLC

By: \_\_\_\_\_  
Howard Jacobson, its manager

PEM Entities, LLC

By: \_\_\_\_\_  
Stanley Jacobson, its manager

Province Grande Olde Liberty, LLC

By: \_\_\_\_\_  
Richard E. Wolf, its manager

Howard Jacobson, in his individual capacity, joins in the execution of this Agreement solely for the purpose of Section 4 and Section 6.

\_\_\_\_\_  
Howard Jacobson

## EXHIBIT “A”

### Members of Lakebound Fixed Return Fund LLC

Name	Capital Contribution	Percentage	Payment
Allan Woltman	\$ 90,000.00	4.6%	\$ 8,610.69
Betsy H. Sawicki	\$ 100,000.00	5.1%	\$ 9,567.43
James & Janice Farrell	\$ 100,000.00	5.1%	\$ 9,567.43
Edward & Andrea Burns	\$ 100,000.00	5.1%	\$ 9,567.43
Richard Cimino	\$ 100,000.00	5.1%	\$ 9,567.43
Walter Powell	\$ 100,000.00	5.1%	\$ 9,567.43
Constance & Michael Utecht	\$ 175,000.00	8.9%	\$ 16,743.00
Gail & Stephen Dwyer	\$ 200,000.00	10.2%	\$ 19,134.86
Eric M. Levin	\$ 500,000.00	25.4%	\$ 47,837.15
Howard Shareff	\$ 500,000.00	25.4%	\$ 47,837.15
	\$ 1,965,000.00		

# EXHIBIT 4

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

1100 East Main Street, Suite 501, Richmond, Virginia 23219

July 15, 2015

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**STATUS OF COUNSEL NOTICE**

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No. 15-1669, PEM Entities LLC v. Eric M. Levin  
5:14-cv-00889-D,8:13-01563, 8:13-00122

TO: Province Grande Olde Liberty, LLC

**STATUS OF COUNSEL FORM DUE: July 27, 2015**

We note that your attorney has indicated an intention to withdraw from further representation on appeal.

Please complete and return the enclosed status of counsel form indicating whether you intend to retain new counsel or to represent yourself on appeal.

If you do not respond to this notice by the due date shown, the case will proceed on a pro se basis.

Joy Hargett Moore, Deputy Clerk  
804-916-2702

Copies: Howard Jacobson  
John Paul Hughes Cournoyer  
William Peak Janvier  
Samantha Y. Moore  
John Arlington Northen  
Vicki L. Parrott  
Michelle Merck Walker  
James C. White



**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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**STATUS OF COUNSEL FORM**

---

No. 15-1669, PEM Entities LLC v. Eric M. Levin  
5:14-cv-00889-D,8:13-01563, 8:13-00122

I make the following election with respect to counsel for appeal (please check one):

1. ☐ I do not desire an attorney to represent me in the above case now pending in the United States Court of Appeals.
2. ☐ I have arranged to be represented in this case by counsel whose name, address, and phone number are listed below:

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_