

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)

In re)
) Chapter 7
SOUTHEAST BANKING CORPORATION,)
) Case No. 91-14561-BKC-PGH
Debtor.)
)

**ORDER APPROVING AND IMPLEMENTING GLOBAL SETTLEMENT OF ISSUES
AFFECTING CALCULATION AND PAYMENT OF POST PETITION INTEREST AND
ATTORNEYS' FEES AND RELATED PRIORITY AND SUBORDINATION ISSUES,
AND PROCEDURE FOR INTERIM DISTRIBUTIONS OF POST PETITION INTEREST
ON NEGATIVE NOTICE WITHOUT HEARING**

THIS CAUSE came before the Court for hearing in Fort Lauderdale on Monday, November 3, 2003 at 1:00 p.m., upon the Trustee's Motion for Entry of Order Approving and Implementing Global Settlement of Issues Affecting Calculation and Payment of Post Petition Interest and Attorneys' Fees and Related Priority and Subordination Issues, and Procedure for Interim Distributions of Post Petition Interest on Negative Notice Without Hearing (C.P. 4216) (the "Settlement Motion"), filed by Jeffrey H. Beck, in his capacity as Chapter 7 Trustee (the "Trustee") for the estate of Southeast Banking Corporation (the "Debtor").

By way of the Settlement Motion, the Trustee seeks approval of a comprehensive global settlement of issues pending before this Court and an appeal to the District Court, as well as other issues that may arise between and among various parties in interest in this case.

The Court having read and considered the Settlement Motion and the Response and Limited Objection filed by Former Trustee William A. Brandt, Jr., (the "Brandt Objection"), heard the remarks and argument of counsel for the Trustee and other

parties in interest, and otherwise been duly advised in the premises, finds and determines as follows:¹

A. The Court has jurisdiction over proceeding commenced by the filing of the Settlement Motion, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), and the statutory predicates for the requested relief are 11 U.S.C. §§ 105, 502, 503 and 726.

B. On or about March 25, 2002, the Trustee filed the "Motion to Fix Interest Rate, Determine Applicability of Contractual Subordination Provisions and Statutory Priority Scheme, Establish Method for Calculation and Payment of Post-Petition Interest Under 11 U.S.C. Section 726(A)(5), and Authorize Procedure for Interim Distributions of Post-Petition Interest on Negative Notice Without Hearing" (the "Postpetition Interest Motion"). Responses to the Postpetition Interest Motion were filed by Chase (in which Gabriel Capital joined); the Subordinated Indenture Trustees and the Ad Hoc Committee.

C. On or about January 25, 2001, Gabriel Capital (as defined below) filed the "Motion, and Memorandum of Law in Support Thereof, to Fix and Allow a Claim for Post-Petition Attorneys' Fees and Costs," in which Chase joined (the "Chase/Gabriel Motion"). Objections to the Chase/Gabriel Motion were filed on behalf of the Subordinated Indenture Trustees, the Trustee, and the Ad Hoc Committee.

¹ All capitalized terms used but not otherwise defined in the findings and determinations set forth in paragraphs A through K below have the respective meanings ascribed to them in paragraph 1 of this Order.

D. On or about March 7, 2002, the Court issued its "Memorandum Decision and Order Denying Motion of Gabriel Capital, L.P. and The Chase Manhattan Bank to Fix and Allow a Claim for Post-Petition Attorneys' Fees and Costs" (the "Chase/Gabriel Order"). Chase and Gabriel have appealed from the Chase/Gabriel Order (the "Chase/Gabriel Appeal"), and such appeal has been perfected and is currently pending before the United States District Court for the Southern District of Florida (the "District Court").

E. Subsequent to the filing of the Chase/Gabriel Appeal, the Postpetition Interest Motion, and the various responses to said Motion, the Ad Hoc Committee, Gabriel, Chase and the Trustee agreed to the settlement of the various disputes which are the subject of the Chase/Gabriel Appeal, the Postpetition Interest Motion and the various responses to such Motion (such settlement being sometimes hereafter referred to as the "Global Settlement"), and Chase and the Subordinated Indenture Trustees determined not to object to such settlement. The terms of the Global Settlement are embodied in this Order, the entry and finality of which are conditions precedent to the effectiveness of the Global Settlement.

F. This Order, and the compromises embodied therein, represent the result of extensive, complex, difficult and prolonged negotiations involving, among others, the Trustee, Gabriel, and the Ad Hoc Committee. The parties desire to avoid the need for any further such negotiations regarding the relative rights of the holders of the Senior Notes (collectively, the "Senior Noteholders") and the holders of the Subordinated Notes (collectively, the "Subordinated Noteholders") relating to the subordination provisions of the Subordinated Indentures in the event of various future contingencies, including,

without limitation, any possible conversion of this case to a Chapter 11 case, and the Court agrees that it is appropriate for the parties to address such relative rights in the event of any such contingency, even if it may be remote, at this time. Accordingly, although no motion to convert this case to a Chapter 11 case has been filed or is pending, and although this Order in no way affects the right of any party in interest to file, support, or oppose any such motion, this Order also addresses certain potential issues that might arise in the event of a conversion to Chapter 11.

G. The provisions of this Order represent a comprehensive and integrated compromise of various issues relating to the Chase/Gabriel Appeal and the Postpetition Interest Motion, the terms of which compromise are mutually interdependent and nonseverable.

H. Notice of the proposed Global Settlement which is the subject of this Order and the proposed entry of this Order was given pursuant to this Court's Order Approving Procedures and Form of Notice, Etc., issued on July 30, 2003 (the "Notice Order") (C.P. 4237), as follows:

(1) by U.S. mail to the last known addresses of the 777 known Holders of the U.S. Notes, as defined hereinafter;

(2) by publication of the Court-approved form of Notice in the London Financial Times and the Luxembourg Wort; and

(3) by U.S. mail to all persons and entities having appeared of record in this case and requested notice of any proceedings herein.

As set forth in the foregoing notices, parties in interest were afforded forty-five (45) days from entry of the Notice Order within which to serve and file responses or

objections to the Settlement Motion, and advised of the date, time and place of the hearing before the Court.

Such notice and the opportunity to object to and be heard on the proposed Global Settlement and the entry of this Order are appropriate in the particular circumstance of this case, the Global Settlement and the related disputes; and such notice and opportunity for a hearing given to all parties in interest with respect to the Global Settlement and this Order are fair and reasonable and comply in all respects with all applicable requirements of the Local Rules of Bankruptcy Procedure, the Bankruptcy Code, the Bankruptcy Rules, and the United States Constitution.

I. By Order dated August 27, 2002, District Judge Donald Graham relinquished jurisdiction in the Chase/Gabriel Appeal for the sole and limited purpose of enabling this Court to conduct proceedings relating to consideration of the Settlement Motion, including the entry of the Notice Order.

J. The sole objection to the Settlement Motion is the Brandt Objection, which does not object to the terms of the proposed settlement but merely seeks to establish a sufficient reserve to pay all administrative claims, including compensation and reimbursement of any fees and expenses awarded to him by the Court.

K. The Global Settlement, the entirety of which is embodied in the adjudicative portion of this Order below, constitutes a full and final resolution of the Postpetition Interest Motion and the Responses thereto, the Chase/Gabriel Appeal, and all issues raised by any or all of the foregoing. Accordingly, it is

ORDERED, ADJUDGED and DECREED as follows:

1. Definitions. All capitalized terms used in this Order that are not otherwise defined in this Order shall have the meanings specified in the Postpetition Interest Motion. All capitalized terms used in the foregoing findings and determinations of this Order shall have the meanings set forth in such findings and determinations. In addition, as used herein, the following terms shall have the following meanings:

a. "Ad Hoc Committee" means the Ad Hoc Committee of Subordinated Noteholders formed in the Debtor's Chapter 7 case, which consists of the following entities: Elliott Associates, L.P.; Stonehill Investment Group and Mariner Investment Group, Inc., which entities collectively own the majority of the Subordinated Notes.

b. "Administrative Claim" means any claim of the type described in section 507(a)(1) of the Bankruptcy Code, but only to the extent that such claim is allowed or awarded by this Court and becomes due and payable.

c. "Base Senior Note Interest Distribution," as determined at the time of any Distribution under this Order, means the aggregate amount of the Postpetition Interest that would have been distributed to the Senior Indenture Trustee for the benefit of holders of Senior Notes, under such Distribution and all prior Distributions as their Pro Rata Interest Fraction of all such Distributions, as determined under the provisions of paragraphs 2 and 3 of this Order, before giving effect to the FDIC Subordination Provisions or the provisions of paragraphs 4 and 5 of this Order.

d. "Base Subordinated Notes Interest Distribution," as determined for any Distribution or Distributions under this Order, means the aggregate amount

of the Postpetition Interest that would have been distributed to the Subordinated Indenture Trustees, for the benefit of holders of Subordinated Notes, under such Distribution or Distributions, as their Pro Rata Interest Fraction of such Distribution or Distributions, as determined under the provisions of paragraphs 2 and 3 of this Order, before giving effect to the FDIC Subordination Provisions or the provisions of paragraphs 4 and 5 of this Order.

e. "BNY" means the Bank of New York, in its capacity as Indenture Trustee under the 1972 Indenture and the 1989 Indenture.

f. "Chapter 11-Attributable Distribution" means, in the event that (i) this Chapter 7 case is converted to a case under Chapter 11 of the Bankruptcy Code; and (ii) creditors receive any Distributions under a Chapter 11 Plan for the Debtor, a distribution representing all or part of the amount by which (x) the aggregate value of the Distributions received by holders of Qualified Claims under the confirmed plan (valued as of the Plan Effective Date) exceeds (y) the aggregate value of the remaining Distributions which they would have received (valued as of the Plan Effective Date) had the case remained a Chapter 7 case on the Plan Effective Date, taking into account, among other factors, all Chapter 11 Costs. By way of illustration only, and not limitation, if the confirmation of a Chapter 11 Plan resulted in the creation of \$10,000,000 in additional distributable value over and above that which would have been available in the Chapter 7 case, but the Chapter 11 Costs aggregate \$3,000,000, then (a) the Chapter 11 Attributable Distribution would total \$7,000,000 of the \$10,000,000 in additional value (the \$10,000,000 in additional value less the \$3,000,000 in Chapter 11

Costs), not the full \$10,000,000 in additional value; and (b) the first \$3,000,000 of the \$10,000,000 in additional value would be distributed in accordance with paragraphs 2-4, inclusive, of this Order.

g. "Chapter 11 Costs" means, in the event that (i) the Debtor's Chapter 7 case is converted to a case under Chapter 11 of the Bankruptcy Code; and (ii) creditors receive any Distributions under a Chapter 11 Plan for the Debtor, all additional professional fees and expenses, other costs and other claims incurred in or in anticipation of the Chapter 11 case which would not have been incurred in the Chapter 7 case but for the conversion or possible conversion to Chapter 11, including, without limitation, expenditures made by the Debtor's estate or that constitute administrative expenses under §503(b) of the Bankruptcy Code or are required to be paid under §507(a)(1) or §1129(a)(9)(A) of the Bankruptcy Code, that were incurred or made from and after May 1, 2002, to investigate or evaluate matters relating to the use of the Debtor's net operating loss carry forwards, or that were incurred or made in anticipation of, to evaluate the potential benefits of, or subsequent to, or are otherwise related to, the conversion of this case to a case under Chapter 11 of the Bankruptcy Code or the confirmation of a Chapter 11 Plan.

h. "Chapter 11 Plan" means, in the event that this case may be converted to a case under Chapter 11, a plan of liquidation or reorganization for the Debtor confirmed by the Court under 11 U.S.C. § 1129.

i. "Chase" or "Senior Indenture Trustee" means JPMorgan Chase Bank f/k/a The Chase Manhattan Bank, as successor by merger to

Manufacturers Hanover Trust Co., in its capacity as the Indenture Trustee under the Senior Indenture. Any reference to a distribution or other payment being made "to the Senior Indenture Trustee" shall mean a distribution or payment "to the Senior Indenture Trustee, for the benefit of holders of Senior Notes."

j. "Chase/Gabriel Appeal" and "Chase/Gabriel Order" have the meanings set forth in paragraph D of this Order.

k. "Chase/Gabriel Motion" has the meaning set forth in paragraph C of this Order.

l. "Deemed Jacksonville Net Sale Proceeds" means, in the event that this Chapter 7 case is converted to a Chapter 11 case and a Qualified Plan is confirmed, the appraised value of the Jacksonville Property as of the Jacksonville Determination Date (as determined on or after the Jacksonville Determination Date by an appraiser selected jointly by the Ad Hoc Committee and Gabriel or, if they cannot agree on an appraiser, by an appraiser selected by the Trustee from four candidates, two of whom are submitted by each of the Ad Hoc Committee and Gabriel); in all cases: (i) such appraiser shall have been selected prior to the Jacksonville Determination Date, and (ii) if the Ad Hoc Committee or Gabriel fails to submit its two candidates on or before the 30th day prior to the Jacksonville Determination Date, such party shall be deemed to have waived its right to submit two candidates, and the Trustee shall select the appraiser from the two candidates submitted by the party that made a timely submission), less the cost of owning, maintaining, improving and developing the Jacksonville Property from the Plan Effective Date until the Jacksonville Determination Date, and less the

costs (such as brokerage commissions) that would be incurred in selling the Jacksonville Property on the Jacksonville Determination Date.

m. "Distribution" means each distribution to holders of Qualified Claims on account of Postpetition Interest made from and after the date of this Order, all of which Distributions shall be governed by the terms of this Order.

n. "FDIC Claim" means the proof of claim filed on behalf of American Pioneer Federal Savings Bank in receivership of Resolution Trust Corporation consisting of the "Proof of Claim of American Pioneer Federal Savings Bank in Receivership of Resolution Trust Corporation (10.64% Subordinated Note due 2001)," which claim is based upon the FDIC Subordinated Notes, and any claim asserted in such proof of claim, as such claim may be or may have been amended from time to time, and any other claim based on the FDIC Subordinated Notes.

o. "FDIC Notes Fraction" means that fraction which results from subtracting the Subordinated Notes Fraction from one.

p. "FDIC Notes Fraction Shortfall" has the meaning set forth in Paragraph 4(b)(iv) of this Order.

q. "FDIC Postpetition Interest Claim" means the amount of the Postpetition Interest on the FDIC Claim, calculated at the Legal Rate through May 31, 2002, in accordance with the provisions of paragraphs 2 and 3 of this Order, before giving effect to any other provisions of this Order or the FDIC Subordination Provisions, which amount would be \$13,877,424 if the FDIC Claim were allowed in full.

r. "FDIC Subordinated Notes" means the following notes, copies of which are appended to the FDIC Claim:

(i) that certain note entitled "Southeast Banking Corporation 10.64% Subordinated Note due 2001," dated December 28, 1989, in the principal amount of \$3.5 million, which is designated as "No. 1," purportedly issued by the Debtor; and

(ii) that certain note entitled "Southeast Banking Corporation 10.64% Subordinated Note due 2001," dated December 28, 1989, in the principal amount of \$18.6 million, which is designated "No. 2," purportedly issued by the Debtor.

s. "FDIC Subordination Provisions" means any and all provisions of the FDIC Subordinated Notes or any related documents, or any other contractual provisions, which provide for the subordination of all or any portion of the FDIC Subordinated Notes or the FDIC Claim, including, without limitation, the provisions of Article Seven, entitled "Subordination of Securities" of each of the FDIC Subordinated Notes, as set forth in sections 701 through 705, inclusive, of each of the FDIC Subordinated Notes.

t. "Final Order" means an order entered by this Court (or any court of competent jurisdiction) as to which no appeal, petition for certiorari, or other proceeding for reargument or rehearing may be timely filed or is then pending or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment has been affirmed by the highest court to which such order or judgment was appealed, or certiorari, reargument, or

rehearing has been denied, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired, excluding any motions, rehearings or other actions taken pursuant to or under Federal Rule of Civil Procedure 60(b) or Federal Rule of Bankruptcy Procedure 9024.

u. "48% Guarantee Reserve" has the meaning set forth in paragraph 4(b)(ii) of this Order.

v. "Gabriel" or "Gabriel Capital" means Gabriel Capital L.P., a Delaware limited partnership which owns, manages funds which own, and/or is the general partner of partnerships that own, a majority of the Senior Notes, and any entities affiliated with or under common control with Gabriel Capital.

w. "Indenture Trustees" means Chase and the Subordinated Indenture Trustees.

x. "Jacksonville Determination Date" means the date which is 18 months following the Plan Effective Date of a Qualified Plan.

y. "Jacksonville Property" means the interests currently owned by various non-debtor subsidiaries of the Debtor's estate in certain parcels of real property located in Jacksonville, Florida and more particularly described as follows: (i) the Southwest Quadrant Property, consisting of (x) a 20-acre parcel of vacant land owned by Southeast Properties, Inc. ("SEPI"), a non-debtor wholly owned subsidiary of the Debtor's estate, and (y) a 174-acre parcel owned 50% by SWQ Holdings, Inc. ("SWQ"), a non-debtor subsidiary wholly owned by the estate, and 50% by an unrelated joint venture in which the Debtor's estate has no interest, but in respect of which parcel SEPI and SWQ hold the right to receive

70% from the proceeds of any sale; and (ii) approximately 7.3 acres of vacant land owned by Second Pioneer Corporation, a non-debtor subsidiary wholly owned by the estate;

z. "Legal Interest" or "Legal Rate" means simple interest at the rate of 5.57% per annum, without compounding of any type.

aa. "Liquidating Trust" means the liquidating trust that will receive all property of the Debtor's estate and any interest earned thereon, other than any trade names, trademarks, customer lists and similar intellectual property and proprietary business information and the Retained Cash, and which also might not receive the Jacksonville Property (but would, in such event, receive the net proceeds and net income relating to the Jacksonville Property as provided herein and, if applicable, the note referred to in clause (v) of paragraph 1(mm) of this Order), under a Qualified Plan.

bb. "1972 Indenture" means the Indenture dated as of October 15, 1972, between the Debtor and Morgan Guaranty Trust Co. of New York, as Trustee, for \$35 million in original principal amount of 4-3/4% Convertible Subordinated Debentures due 1997.

cc. "1984 Indenture" means that certain Indenture between the Debtor and Morgan Guaranty Trust Co. of New York, as Trustee, dated as of December 1, 1984, for \$75 million in original principal amount of Floating Rate Subordinated Notes due 1996.

dd. "1985 Indenture" means that certain Indenture between the Debtor and Morgan Guaranty Trust Co. of New York, as Trustee, dated as of

November 1, 1985, for \$75 million in original principal amount of Floating Rate Subordinated Capital Notes due 1997.

ee. "1987 Indenture" means that certain Indenture between the Debtor and Morgan Guaranty Trust Company of New York, dated as of April 1, 1987 for \$50 million in original principal amount of 6½% Subordinated Capital Notes Due 1999.

ff. "1989 Indenture" means that certain Indenture between the Debtor and Irving Trust Co., as Trustee, dated as of March 15, 1989, for Subordinated Debt Securities.

gg. "Petition Date" means September 20, 1991.

hh. "Other Distributions" has the meaning set forth in clause (vii) of the definition of "Qualified Plan."

ii. "Plan Effective Date" means the effective date of a confirmed Chapter 11 plan for the Debtor, in the event that this Chapter 7 case is converted to a Chapter 11 case and a Chapter 11 plan for the Debtor is confirmed.

jj. "Postpetition Interest" means interest on any claim which accrues or is calculated for the period from and after the Petition Date.

kk. "Pro Rata Interest Fraction" means, as to each Qualified Claim, that fraction, the numerator of which is Postpetition Interest at the Legal Rate on such Qualified Claim calculated through May 31, 2002, and the denominator of which is the aggregate amount of all Postpetition Interest at the Legal Rate on all Qualified Claims calculated through May 31, 2002, in each case as calculated in accordance with the provisions of paragraphs 2 and 3 of this order.

ll. "Qualified Claim" means any claim of the type described in any of sections 726(a)(1)-(4), inclusive, of the Bankruptcy Code, which is entitled to the payment of interest from the Petition Date under section 726(a)(5) of the Bankruptcy Code.

mm. "Qualified Plan" means a Chapter 11 Plan for the Debtor which provides that:

(i) all property of the Debtor's estate (as defined in 11 U.S.C. § 541) and interest earned thereon, other than the Jacksonville Property (or the non-debtor subsidiaries which own the Jacksonville Property) (which may but need not be included in the Liquidating Trust), any trade names, trademarks, customer lists and similar intellectual property and proprietary business information and the Retained Cash will be transferred to the Liquidating Trust on the Plan Effective Date;

(ii) all costs of administration will be paid by the Liquidating Trust out of assets transferred to the Liquidating Trust under the preceding clause (i);

(iii) to the extent that the costs of administration paid by the Liquidating Trust under the preceding clause (ii) constitute Chapter 11 Costs, the Liquidating Trust shall be reimbursed as follows: there shall be transferred to the Liquidating Trust, out of any cash, securities or other property not transferred to the Liquidating Trust under the preceding clause (i) which is to be distributed to the holders of Qualified Claims under the Chapter 11 Plan ("Other Property"), an amount of cash and, to the extent that the Other Property includes insufficient

cash, non-cash assets, with a value (as determined, in the case of non-cash assets, in accordance with the provisions of paragraphs 5(e)-(h), inclusive, of this Order) equal to the amount of the Chapter 11 Costs paid by the Liquidating Trust. If any non-cash assets are to be included in the Other Property to be transferred to the Liquidating Trust under this clause (iii) and consist of more than one type of property (with the different types of property including, without limitation, different types of securities), the non-cash assets to be transferred to the Liquidating Trust from the Other Property under this clause (iii) shall include that percentage of each type of non-cash asset included in the Other Property which is equal to the percentage of the aggregate value of all of the non-cash assets comprising Other Property which is to be transferred to the Liquidating Trust.

(iv) if, rather than transferring the Jacksonville Property (or the non debtor subsidiaries which own the Jacksonville Property) to the Liquidating Trust, the Debtor instead retains the Jacksonville Property and such non-debtor subsidiaries after the effective date of the Chapter 11 Plan, and the Jacksonville Property is sold on or before the Jacksonville Determination Date (it being understood that the Jacksonville Property may be sold during the Chapter 7 case or during the Chapter 11 case and prior to the Plan Effective Date), then all net income earned from the Jacksonville Property until it is sold, and all net proceeds of the sale of the Jacksonville Property, after deducting the cost of owning, maintaining, improving and developing the property from the Plan Effective Date until it is sold, will be paid to the Liquidating Trust (unless the Ad Hoc Committee

and Gabriel agree that a plan which provides for a different distribution of such net proceeds and net income can qualify as a "Qualified Plan");

(v) if neither the Jacksonville Property nor any of the non-debtor subsidiaries which own the Jacksonville Property is transferred to the Liquidating Trust and the Jacksonville Property is not sold on or before the Jacksonville Determination Date, then all net income earned from the Jacksonville Property until the Jacksonville Determination Date will be paid to the Liquidating Trust (unless the Ad Hoc Committee and Gabriel agree that a plan which provides for a different distribution of such net income can qualify as a "Qualified Plan"), and the Reorganized Debtor will issue to the Liquidating Trust a nonrecourse interest-bearing note secured by the Jacksonville Property in a principal amount equal to the Deemed Jacksonville Net Sale Proceeds;

(vi) all Distributions from the Liquidating Trust shall be made to the holders of Qualified Claims in accordance with the provisions of paragraphs 1-4 of this Order, except that: (x) each creditor shall be deemed to have an allowed claim for Postpetition Interest calculated at the rate of 8% per annum, without compounding, through May 31, 2002; and (y) each creditor's share of each Distribution under the plan shall be determined based on a fraction which applies Postpetition Interest at the rate of 8% per annum, rather than at the rate of 5.57% per annum; and

(vii) all other Distributions of cash or other property to the holders of Qualified Claims that are not made from the Liquidating Trust ("Other Distributions") shall be made (x) in accordance with the provisions of paragraphs

1-4 of this Order, to the extent that such Other Distributions do not constitute Chapter 11-Attributable Distributions; and (y) in accordance with the provisions of paragraphs 1-3 and 5 of this Order, to the extent that such Other Distributions constitute Chapter 11-Attributable Distributions, in each case subject to the exceptions contained in subclauses (x) and (y) of the preceding clause (vi); and subject to the irrebuttable presumption that (i) that portion of such Other Distribution which is not a Chapter 11-Attributable Distribution shall be made from the cash included in such Other Distribution (to the extent that such cash is sufficient for that purpose), and shall be made from the non-cash assets included in such Other Distribution only to the extent that the cash included in such Other Distribution is insufficient for that purpose; and (ii) where such Other Distribution includes more than one type of non-cash property (with the different types of non-cash property including, without limitation, different types of securities), the percentage of each type of non-cash property that is deemed to be a Chapter 11-Attributable Distribution shall be the same as the percentage of the total amount of the non-cash property included in such Other Distribution that is determined to be a Chapter 11-Attributable Distribution.

For purposes of applying the foregoing, "net income" earned from the Jacksonville Property shall be computed in accordance with generally accepted accounting principles, and the expenses deducted in determining such net income shall include, without limitation, any interest actually paid on account of debt incurred to finance the cost of owning, maintaining, improving or developing the Jacksonville Property. The "net proceeds" of any sale of the

Jacksonville Property shall be computed by deducting from the gross proceeds of any such sale, any direct costs of sale (including, without limitation, any brokerage commissions) and any costs of owning, maintaining, improving or developing the Jacksonville Property that have not been deducted in computing net income from the Jacksonville Property.

nn. "Reallocated FDIC Distribution" means any distribution (or portion thereof) which would have been made or would be made on account of the FDIC Claim, the FDIC Subordinated Notes or any Postpetition Interest thereon, whether under the terms of this Order, under the terms of any prior order of this Court, or otherwise, in the absence of the FDIC Subordination Provisions, but which is required to be paid over or distributed to the Senior Indenture Trustee, for the benefit of holders of the Senior Notes, or to the holders of Senior Notes, pursuant to the terms of the FDIC Subordination Provisions or the documents underlying the FDIC Claim, or pursuant to agreement between the holder of the FDIC Claim and the Ad Hoc Committee.

oo. "Retained Cash" means, in the event that a Qualified Plan for the Debtor is confirmed, such amount of cash of the Debtor's estate that is held by the estate as of the Plan Effective Date and that does not represent the proceeds of exit financing under such Qualified Plan or other funds that are borrowed under such Qualified Plan, as may be determined by agreement of the Trustee, Gabriel Capital and the Ad Hoc Committee or, absent such agreement, by a Final Order of the Court, to be reasonably necessary for the Reorganized Debtor's

business operations that is not otherwise provided for and that will not be transferred to the Liquidating Trust on the Plan Effective Date.

pp. "Senior Indenture" means the Indenture, dated as of March 1, 1983, between the Debtor and Manufacturers Hanover Trust Co., as Trustee.

qq. "Senior Notes" means the Notes issued under the Senior Indenture.

rr. **[INTENTIONALLY OMITTED]**

ss. "Senior Note Shortfall" means, with respect to each Distribution, the difference between (y) \$12,907,043 and (x) the Base Senior Note Interest Distribution.

tt. "Subordinated Indentures" means, collectively, the 1972 Indenture, the 1984 Indenture, the 1985 Indenture, the 1987 Indenture, and the 1989 Indenture.

uu. "Subordinated Indenture Trustees" means, collectively, BNY and U.S. Bank. Any reference to a distribution or other payment being made "to the Subordinated Indenture Trustees" shall mean a distribution or payment "to the Subordinated Indenture Trustees, for the benefit of holders of Subordinated Notes."

vv. "Subordinated Notes" means the notes issued by the Debtor under each of the Subordinated Indentures.

ww. "Subordinated Notes Fraction" means that fraction, the numerator of which is the Subordinated Notes Postpetition Interest Claim, and the denominator of which is the sum of the Subordinated Notes Postpetition Interest Claim and the FDIC Postpetition Interest Claim.

xx. "Subordinated Notes Fraction Shortfall" has the meaning set forth in Paragraph 4(b)(iii) of this Order.

yy. "Subordinated Notes Postpetition Interest Claim" means the aggregate amount of the Postpetition Interest on the Subordinated Note Claims, calculated at the Legal Rate through May 31, 2002, in accordance with the provisions of paragraphs 2 and 3 of this Order, which aggregate amount is \$105,864,234.

zz. "U.S. Bank" means U.S. Bank National Association, in its capacity as successor Indenture Trustee under the 1984 Indenture, the 1985 Indenture, and the 1989 Indenture.

aaa. "U.S. Notes" means the Subordinated Notes issued pursuant to the 1972 Indenture, the 1987 Indenture, and the 1989 Indenture.

Unless otherwise indicated, all references to "paragraphs" herein are to paragraphs of this Order.

2. Computation and Distribution of Postpetition Interest on Qualified Claims.

a. Except as otherwise provided in paragraphs 4, 5, 6 and 7 of this Order, and subject to the effect and enforcement of the FDIC Subordination Provisions, each Distribution with respect to Postpetition Interest on Qualified Claims shall be made ratably to the holders of Qualified Claims, as follows: Each holder of a Qualified Claim shall (subject to the foregoing exceptions) receive its Pro Rata Interest Fraction of each such Distribution. For purposes of calculating the Pro Rata Interest Fraction for each Qualified Claim, Postpetition Interest on each Qualified Claim shall be calculated based on a 365-day year only on the unpaid balance of each Qualified Claim after giving effect

to: (i) the receipt of each interim distribution made by the Trustee on account of allowed claims prior to the date of this Order; and (ii) the receipt of each redirection of each such distribution under principles of subordination or subrogation. In the case of any Administrative Claim, the calculation of interest shall be made by applying the Legal Rate to the unpaid balance of such claim only for the period from and after the date upon which the Administrative Claim is allowed or awarded by a Final Order of the Court, and Postpetition Interest shall not accrue or be calculated for any period prior to such date. Accordingly, and without limiting the foregoing, the calculation of Postpetition Interest on each Qualified Claim shall be made by applying the Legal Rate to the full allowed amount of the Qualified Claim for the number of days from the Petition Date (in the case of all claims other than Administrative Claims) or from the date the claim is allowed and awarded by Final Order of the Court (in the case of Administrative Claims) up to the first payment on that Qualified Claim, and then applying the Legal Rate to the remaining unpaid balance for the number of days up to the second payment on such Qualified Claim, and continuing in the same manner on the successive unpaid balance (or balances) of the Qualified Claim until the allowed amount of the Qualified Claim has been paid in full.

b. In calculating the payment of Postpetition Interest to holders of Senior Notes and Subordinated Notes, principal reductions for the First, Second and Sixth Interim Distributions (as defined and described in the Postpetition Interest Motion and Settlement Motion) will be taken as of the dates shown on checks paid by the Trustee to the Indenture Trustees, and principal reductions for the Third, Fourth and Fifth Interim Distributions (also as defined and described in the Postpetition Interest

Motion and Settlement Motion) will be taken as of the date of the first batch of payments made to individual bondholders for each such Interim Distribution. By way of illustration of the foregoing, and not limitation, Postpetition Interest on the Senior Notes shall cease to accrue as of the date shown on the check paid by the Trustee to the Senior Indenture Trustee under the Second Interim Distribution (as defined and described in the Postpetition Interest Motion and Settlement Motion).

c. Notwithstanding anything to the contrary contained in this Order, except as otherwise specifically ordered by this Court, each Distribution on account of Qualified Claims under the Subordinated Notes or the Subordinated Indentures shall be made to the applicable Subordinated Indenture Trustee, and distributed in accordance with the terms of the applicable Subordinated Indenture (but without reference to the subordination provisions of the Subordinated Indentures), and each Distribution with respect to Qualified Claims under the Senior Notes or the Senior Note Indenture shall be made to the Senior Indenture Trustee, and distributed in accordance with and subject to the terms of the Senior Indenture.

3. Calculations With Respect to Previously Contingent, Disputed, or Unliquidated Claims. With respect to contingent, disputed or unliquidated claims which were settled by the Trustee and the claimant, Postpetition Interest for purposes of applying the Pro Rata Interest Fraction shall be computed as follows: Qualified Claims which were settled by allowance at a negotiated amount shall be entitled to Postpetition Interest using, as the numerator of the Pro Rata Interest Fraction for such Qualified Claim, Postpetition Interest at the Legal Rate on the settlement amount from the Petition Date through date of payment of the settlement amount; provided, however, that in

those instances where the settlement involved the payment of a lump sum to the claimant in full and complete satisfaction of the claim, the Postpetition Interest on such claim shall be deemed to be zero, such claim shall not be deemed a Qualified Claim; and no further distribution of any kind shall be made on such claim. Prior to the first Distribution on account of Postpetition Interest pursuant to the terms of this Order, the Trustee shall file and serve a motion or notice setting forth the intended treatment of each settled claim for purposes of determining whether any Postpetition Interest shall be distributed thereon.

4. Reallocation of Distributions from Subordinated Notes to Senior Notes.

a. Except with respect to any Chapter 11-Attributable Distribution, which shall be governed by paragraph 5 of this Order, after calculating the ratable distribution of Postpetition Interest that would be made to holders of Qualified Claims as part of a Distribution in accordance with paragraphs 2 and 3 of this Order, there shall be paid over to the Senior Indenture Trustee, out of the Base Subordinated Note Interest Distribution that would otherwise have been made to the Subordinated Indenture Trustees out of such Distribution, the lesser of (a) the Base Subordinated Note Interest Distribution made to the Subordinated Indenture Trustees; and (b) that amount which, when added to the aggregate amount of all payments made to the Senior Indenture Trustee out of prior Distributions pursuant to the terms of this paragraph 4 out of amounts that otherwise would have been distributed to the Subordinated Indenture Trustees pursuant to paragraphs 2 and 3 of this Order, totals the Subordinated Notes Fraction of 48% of the Senior Note Shortfall. Such reallocated distributions shall be deemed paid to the Subordinated Indenture Trustees and from the Subordinated

Indenture Trustees to the Senior Indenture Trustee. Provided, however, that if, after giving effect to the Base Senior Note Interest Distribution to be made to the Senior Indenture Trustee as part of any Distribution, the aggregate amount of the payments made to the Senior Indenture Trustee pursuant to this paragraph 4(a) out of amounts that otherwise would have been distributed to the Subordinated Indenture Trustees pursuant to paragraphs 2 and 3 of this Order exceeds the Subordinated Notes Fraction of 48% of the Senior Note Shortfall, such excess shall be paid over to the Subordinated Indenture Trustees from amounts that would otherwise have been paid to the Senior Indenture Trustee as part of such pending Distribution. This reallocation to the Subordinated Indenture Trustees of amounts that would otherwise have been distributed to the Senior Indenture Trustee shall continue in each subsequent Distribution so that, after giving effect to each subsequent Distribution, the aggregate amount of the Base Subordinated Notes Interest Distributions that has been reallocated to the Senior Indenture Trustee under this paragraph 4 shall at no time exceed the Subordinated Notes Fraction of 48% of the Senior Note Shortfall.

b. Notwithstanding anything to the contrary contained in this Order:

(i) Until such time as the allowed amount of the FDIC Claim is determined by a Final Order, the Subordinated Notes Fraction shall be deemed to be .884105, and the FDIC Notes Fraction shall be deemed to be .115895;

(ii) Until such time as a Final Order or Final Orders of this Court or settlement or settlements determining the allowed amount of the FDIC Claim and resolving the enforcement of the FDIC Subordination Provisions have been entered, so that the Subordinated Notes Fraction Shortfall and the FDIC Notes

Fraction Shortfall can be finally determined, and except with respect to any Chapter 11-Attributable Distribution (which shall be governed by paragraph 5 of this Order), the Trustee shall withhold from amounts that would otherwise have been distributed to the Subordinated Indenture Trustees out of each Distribution, and reserve in an interest bearing escrow (the "48% Guarantee Reserve") an amount equal to the lesser of (a) that portion of the Base Subordinated Notes Interest Distribution (if any) that would otherwise have been distributed to the Subordinated Indenture Trustees out of such Distribution after giving effect to the reallocation required by paragraph 4(a) of this Order; and (b) that amount which, when added to all prior payments made to the 48% Guarantee Reserve out of prior Distributions pursuant to the terms of this paragraph 4(b)(ii), totals the FDIC Notes Fraction of 48% of the Senior Note Shortfall. Provided, however, that (x) in no event shall the amount withheld from amounts that would otherwise have been distributed to the Subordinated Indenture Trustees as part of any Distribution, and added to the 48% Guarantee Reserve, exceed the amount necessary to cause the aggregate amount in the 48% Guarantee Reserve to equal the FDIC Notes Fraction of 48% of the Senior Note Shortfall, calculated after giving effect to such Distribution; and (y) In the event that, after giving effect to the Base Senior Note Interest Distribution to be made to the Senior Indenture Trustee as part of any Distribution, the aggregate amount of the payments deposited into the 48% Guarantee Reserve pursuant to this paragraph 4(b)(ii) out of amounts that otherwise would have been distributed to the Subordinated Indenture Trustee pursuant to paragraphs 2 and 3 of this Order exceeds the

FDIC Notes Fraction of 48% of the Senior Note Shortfall, such excess shall be paid over to the Subordinated Indenture Trustees from the 48% Guarantee Reserve, and no further payments shall be made into the 48% Guarantee Reserve. The payment to the Subordinated Indenture Trustees of amounts in the 48% Guarantee Reserve, as provided for in the foregoing proviso, shall continue in each subsequent Distribution so that, after giving effect to each subsequent Distribution, the aggregate amount remaining in the 48% Guarantee Reserve shall at no time exceed the FDIC Notes Fraction of 48% of the Senior Note Shortfall, calculated after giving effect to the latest pending Distribution.

(iii) In the event that, following the entry of a Final Order or settlement determining the allowed amount of the FDIC Claim, the result of calculating the Subordinated Notes Fraction based on such finally allowed amount is that the Subordinated Notes Fraction is greater than .884105, then the amount by which (x) the aggregate amount that would have been paid over to the Senior Indenture Trustee from all prior Distributions pursuant to paragraph 4(a) of this Order, had such greater amount of the Subordinated Notes Fraction been used to calculate the amount to be paid over to the Senior Indenture Trustee pursuant to said paragraph 4(a) exceeds (y) the amount which has, in fact, been paid over to the Senior Indenture Trustee from all prior Distributions pursuant to paragraph 4(a) of this Order (the "Subordinated Notes Fraction Shortfall"), shall be paid to the Senior Indenture Trustee out of the 48% Guarantee Reserve and shall be deemed to have been paid to the Subordinated Indenture Trustees and from the Subordinated Indenture Trustees to the Senior Indenture Trustee;

(iv) In the event that, as a result of any Final Order or settlement resolving the enforcement of the FDIC Subordination Provisions, the aggregate amount of the Reallocated FDIC Distribution will be less than the FDIC Notes Fraction of 48% of the Senior Note Shortfall (as determined following the entry of a Final Order determining the allowed amount of the FDIC Claim), the amount of any such deficiency (the "FDIC Notes Fraction Shortfall") shall be paid to the Senior Indenture Trustee out of the 48% Guarantee Reserve and shall be deemed to have been paid to the Subordinated Indenture Trustees and from the Subordinated Indenture Trustees to the Senior Indenture Trustee;

(v) Following (x) the entry of a Final Order or Final Orders of this Court or a settlement or settlements resolving both the allowed amount of the FDIC Claim and the enforcement of the FDIC Subordination Provisions, and (y) the payment out of the 48% Guarantee Reserve of the amounts required to be paid under the foregoing clauses (iii) and (iv), the Trustee shall promptly distribute any funds remaining in the 48% Guarantee Reserve (including, without limitation, any interest earned thereon) to the Subordinated Indenture Trustees, for the benefit of holders of the Subordinated Notes.

(vi) Notwithstanding anything to the contrary contained in this Order, the aggregate amount paid to the Senior Indenture Trustee out of the 48% Guarantee Reserve pursuant to clauses (iii) and (iv) above shall not exceed the amount which remains after subtracting: (y) the sum of (i) the amount distributed to the Senior Indenture Trustee from the Reallocated FDIC Distribution under clause (i) of Paragraph 7(a) of this Order; and (ii) the amount paid over to the

Senior Indenture Trustee out of the Base Subordinated Note Interest Distribution that would otherwise have been made to the Subordinated Indenture Trustees pursuant to Paragraph 4(a) of this Order, from (x) 48% of the Senior Note Shortfall.

(vii) Notwithstanding anything to the contrary contained in this Order, in the event that, after giving effect to the Base Senior Note Interest Distribution to be made to the Senior Indenture Trustee as part of a Distribution, the sum of (x) the aggregate amount of the payments made to the Senior Indenture Trustee pursuant to Paragraph 4(a) out of amounts that otherwise would have been distributed to the Subordinated Indenture Trustees pursuant to paragraphs 2 and 3 of this Order, plus (y) the amount distributed to the Senior Indenture Trustee from the Reallocated FDIC Distribution under clause (i) of Paragraph 7(a); plus (z) the aggregate amount paid to the Senior Indenture Trustee out of the 48% Guarantee Reserve pursuant to clauses (iii) and (iv) of Paragraph 4(b), exceeds 48% of the Senior Note Shortfall, such excess shall be paid over to the Subordinated Indenture Trustees from amounts that would otherwise have been paid to the Senior Indenture Trustee as part of such pending Distribution. This reallocation to the Subordinated Indenture Trustees of amounts that would otherwise have been distributed to the Senior Indenture Trustee shall continue in each subsequent Distribution so that, after giving effect to each subsequent Distribution, the sum of: (i) the aggregate amount of the payments made to the Senior Indenture Trustee pursuant to Paragraph 4(a) out of amounts that otherwise would have been distributed to the Subordinated Indenture Trustees

pursuant to Paragraphs 2 and 3 of this Order; plus (II) the amount distributed to the Senior Indenture Trustee from the Reallocated FDIC Distribution under clause (i) of Paragraph 7(a); plus (III) the aggregate amount paid to the Senior Indenture Trustee out of the 48% Guarantee Reserve pursuant to clauses (iii) and (iv) of Paragraph 4(b), shall not exceed 48% of the Senior Note Shortfall.

5. Provisions In The Event Of Conversion to Chapter 11 Case and Reallocation of Chapter 11-Attributable Distributions Otherwise Payable to Subordinated Indenture Trustees. This paragraph 5 of this Order is intended to address the contingency that a party might, in the future, file a motion to convert this Chapter 7 case to a Chapter 11 case and that such motion might be granted. However, notwithstanding anything herein to the contrary, nothing contained in this Order is intended or shall be construed to require any party to file or support, or to prevent any party from opposing, a motion to convert this Chapter 7 case to a Chapter 11 case, or to affect, limit or modify the ability of the Court to grant or deny any such motion. If and only if the Debtor's Chapter 7 case is converted to a case under Chapter 11 of the Bankruptcy Code, the following provisions shall apply in such Chapter 11 case for the Debtor:

a. The allowed claim of each creditor in such Chapter 11 case shall include an amount equal to the difference between: (i) the Postpetition Interest on the amount of such creditor's allowed claim in the Chapter 7 case, calculated at the rate of eight percent (8%) per annum (rather than at the rate of 5.57% per annum), without compounding, through May 31, 2002, and (ii) the distribution made to such creditor for Postpetition Interest under all of the terms of this Order prior to the date upon which this

case is converted from a Chapter 7 case to a Chapter 11 case. Each creditor's share of each Distribution under the plan of reorganization in such Chapter 11 case shall be determined on the basis of a fraction which uses interest at the rate of 8% per annum, rather than at the rate of 5.57% per annum, as the rate of Postpetition Interest.

b. In the event that any Distribution is made in such Chapter 11 case which is, in whole or in part, a Chapter 11-Attributable Distribution, only that portion of such Distribution which is not a Chapter 11-Attributable Distribution shall be subject to paragraph 4 of this Order, and that portion of such Distribution which is a Chapter 11-Attributable Distribution shall be subject to the provisions of this paragraph.

c. With respect to any Chapter 11-Attributable Distribution, there shall be paid to the Senior Indenture Trustee, out of the Base Subordinated Notes Interest Distribution that would otherwise have been made to the Subordinated Indenture Trustees out of such Chapter 11-Attributable Distribution, the lesser of: (x) the amount which results from subtracting (i) the Pro Rata Interest Fraction of such Chapter 11-Attributable Distribution that would be distributed to the Senior Indenture Trustee based on a pro rata distribution, as determined under the provisions of paragraphs 2 and 3 of this Order, from (ii) fifty percent (50%) of the aggregate amount of the Pro Rata Interest Fractions of the Chapter 11-Attributable Distribution of the Senior Noteholders and the Subordinated Noteholders that would be distributed to their respective Indenture Trustees for their benefit based on a pro rata distribution, as determined under the provisions of paragraphs 2 and 3 of this Order; and (y) the amount which, when added to the sum of (i) the value of all prior Distributions to the Senior Indenture Trustee out of any Chapter 11-Attributable Distributions (including both those calculated in accordance

with paragraphs 2 and 3 and those resulting from reallocations under this paragraph 5(c)) plus (ii) the value of the Senior Noteholders' Pro Rata Interest Fraction of a pending Chapter 11-Attributable Distribution, produces a value of \$16 million in the aggregate. Such reallocated distributions shall be deemed to have been paid to the Subordinated Indenture Trustees and from the Subordinated Indenture Trustees to the Senior Indenture Trustee.

d. In no event shall the sum of: (x) the Pro Rata Interest Fraction of all Chapter 11-Attributable Distributions that would have been distributed to the Senior Indenture Trustee, as determined under the provisions of paragraphs 2 and 3 of this Order, plus (y) the amounts that are reallocated from the Subordinated Indenture Trustees to the Senior Indenture Trustees pursuant to paragraph 5(c) out of the Base Subordinated Notes Interest Distributions that would otherwise have been made to the Subordinated Indenture Trustees out of all such Chapter 11-Attributable Distributions, have a value in excess of \$16 million in the aggregate. In the event of any such excess, the amount of such excess shall be repaid to the Subordinated Indenture Trustees, out of the next Distribution that would otherwise be made to the Senior Indenture Trustee pursuant to any provision of this Order. At such time as the total value of the Distributions made to the Senior Indenture Trustee out of Chapter 11-Attributable Distributions (whether on account of the pro-rata distribution calculated in accordance with paragraphs 2 and 3 or the reallocation provisions of paragraph 5(c)) reaches \$16 million, no further amounts will be distributed to the Senior Indenture Trustee from Chapter 11-Attributable Distributions, and any such Distributions that would otherwise

have been made to the Senior Indenture Trustee under paragraphs 2 and 3 of this Order will be made instead to the Subordinated Indenture Trustees.

e. For purposes of applying the provisions of paragraphs 5(a)-(d) and clause (iii) of paragraph 1(mm) of this Order: (i) All non-cash Distributions and the rights to Distributions under a confirmed Chapter 11 plan for the Debtor shall be valued as of the Plan Effective Date; (ii) in the case of a Qualified Plan, the amount and/or value of the Chapter 11-Attributable Distributions will be deemed to equal the value of all cash and non-cash Distributions other than interests in or Distributions (whether cash or non-cash) from the Liquidating Trust and minus (x) the amount of the Retained Cash; and (y) the Chapter 11 Costs; (iii) that portion of the non-cash Distribution under any Qualified Plan (including without limitation any securities of the Reorganized Debtor) which has a value equal to the amount of the Retained Cash shall be distributed in accordance with paragraphs 2, 3 and 4 of this Order and shall not constitute a Chapter 11-Attributable Distribution, and any interests in or Distributions from the Liquidating Trust shall be distributed in accordance with paragraphs 2, 3 and 4 of this Order, in each case as the provisions of paragraphs 2 and 3 are modified in a Chapter 11 case by the provisions of paragraph 5(a) of this Order; and (iv) the determination of Chapter 11-Attributable Distributions in the event that a Chapter 11 plan for the Debtor other than a Qualified Plan is confirmed shall be made in a manner designed to approximate as closely as possible the principles underlying the determination of the Chapter 11-Attributable Distribution in connection with a Qualified Plan under the provisions of the foregoing clauses (i)-(iii).

f. For purposes of applying the provisions of paragraphs 5(a)-(e) and clause (iii) of paragraph 1(mm) of this Order, any non-cash Distributions will be valued as of the Plan Effective Date, either: (i) by agreement of Gabriel Capital and the Ad Hoc Committee, if there is no successful objection to such agreement by any party in interest following negative notice under Local Rule 9013-1(D), which notice shall specify, without limitation, the nature of the non-cash Distribution under the confirmed Chapter 11 plan, the agreed-upon value of such non-cash Distribution and the calculation of the Chapter 11-Attributable Distribution under such confirmed plan resulting from such valuation; or (ii) absent such agreement of Gabriel Capital and the Ad Hoc Committee, or in the event that a party in interest objects to such agreement and the objection is sustained by the Court, in accordance with the dispute resolutions procedure described in subparagraphs (g) and (h) below.

g. For purposes of applying the provisions of paragraphs 5(a)-(e) and clause (iii) of paragraph 1(mm) of this Order, in the event that a Qualified Plan is confirmed and clause (ii) or (iii) of paragraph 5(e) of this Order applies, any non-cash Distribution (such as, without limitation, any equity securities or any debt or debt securities) shall be valued at fair market value as of one business day after the Plan Effective Date, taking into account, without limitation, relevant market indications for such securities (such as actual trades, bids to purchase and offers to sell) ("Market Indications") or, if necessary to take into account such Market Indications, as soon after the Plan Effective Date as practicable, but in no event as of a date which is later than seven (7) days after the Effective Date, by one of the following independent third parties, at the expense of the Debtor's estate (which shall constitute a Chapter 11 Cost),

in the following order of preference: (x) CIBC; (y) Kroll Zolfo Cooper; and (z) Houlihan Lokey Howard & Zukin. In the event that none of such independent third parties is willing or able to undertake such a valuation, then such a valuation shall be performed by another independent third party which is mutually acceptable to the Ad Hoc Committee and Gabriel Capital or, in the event that the Ad Hoc Committee and Gabriel Capital cannot agree upon such other independent third party, by an independent third party who is selected jointly by an independent third party selected by Gabriel Capital and an independent third party selected by the Ad Hoc Committee.

h. For purposes of applying the provisions of paragraphs 5(a)-(e) and clause (iii) of paragraph 1(mm) of this Order, in the event that a Chapter 11 plan for the Debtor other than a Qualified Plan is confirmed, clause (iv) of paragraph 5(e) will apply, and any dispute as to the value of the non-cash Distribution and/or the amount of the Chapter 11-Attributable Distribution shall be resolved by binding arbitration among Gabriel Capital, the Ad Hoc Committee, the Senior Indenture Trustee, the Subordinated Indenture Trustees and any party in interest who successfully objects to any agreement between Gabriel and the Ad Hoc Committee (if such objecting party in interest elects to participate in such binding arbitration). Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other administrator as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. All disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration shall be conducted at a location in New York selected by the AAA or other administrator. If there is any inconsistency between the terms of this Order and any such rules, the terms and

procedures set forth herein shall control. All discovery activities shall be expressly limited to matters directly relevant to the dispute being arbitrated. The arbitrator's determination shall be subject to enforcement by this Court.

i. The Ad Hoc Committee (and its individual members) shall not, without the consent of Gabriel Capital, and Gabriel Capital shall not, without the consent of a majority of the Ad Hoc Committee (measured by principal amount of holdings of Subordinated Notes), support, vote for, or solicit acceptances of any Chapter 11 plan that is not a Qualified Plan; provided, however, that the foregoing prohibition shall not limit Gabriel Capital or any member of the Ad Hoc Committee in the exercise of its fiduciary duty in its capacity as a member of an official creditors' committee in a Chapter 11 case in voting to have the Committee propose, support, or solicit acceptances for a particular plan. Accordingly, Gabriel Capital and any member of the Ad Hoc Committee may, solely in its capacity as a member of an official creditors' committee in a Chapter 11 case, vote to have the committee oppose a Qualified Plan or support a Chapter 11 plan which is not a Qualified Plan; however, regardless of how Gabriel Capital or any member of the Ad Hoc Committee votes in its capacity as a member of an official creditors' committee, neither Gabriel Capital, nor any member of the Ad Hoc Committee, nor any of their respective counsel, may in any way propose, support, solicit acceptances or vote for a plan which is not a Qualified Plan.

6. No Further Claims Against Subordinated Noteholders. Except as expressly provided in paragraphs 4 and 5 of this Order with respect to the reallocation to the Senior Indenture Trustee of certain distributions that would otherwise be made to the Subordinated Indenture Trustees, and in paragraph 7 of this Order with respect to

Reallocated FDIC Distributions: (a) neither the Senior Indenture Trustee, the holders of Senior Notes, nor any other party shall have any other or further rights against the Subordinated Indenture Trustees or the holders of Subordinated Notes under, on account of or with respect to any contractual subordination provisions contained in the Subordinated Indentures or the Subordinated Notes or any other contractual subordination rights against the Subordinated Indenture Trustees or the holders of Subordinated Notes on any grounds whatsoever, whether in law, equity, or otherwise; (b) neither the Subordinated Indenture Trustees, the holders of Subordinated Notes, nor any other party shall have any other or further rights against the Senior Indenture Trustee or the holders of Senior Notes under, on account of or with respect to any contractual subordination provisions contained in the Subordinated Indentures or the Subordinated Notes or any other contractual rights against the Senior Indenture Trustee or the holders of the Senior Notes on any grounds whatsoever, whether in law, equity, or otherwise; (c) all distributions to the Subordinated Indenture Trustees or to the holders of Subordinated Notes shall not be subject to levy, garnishment, attachment, other legal process, reallocation or redirection by the Senior Indenture Trustee, the holders of Senior Notes or any other party by reason of claimed contractual subordination rights or any other rights; (d) all distributions to the Senior Indenture Trustee or to the holders of Senior Notes shall not be subject to levy, garnishment, attachment, other legal process, reallocation or redirection by the Subordinated Indenture Trustees, the holders of Subordinated Notes or any other party by reason of claimed contractual subordination rights or any other rights; and (e) any and all rights arising or alleged to arise on account of or with respect to any contractual subordination

provisions contained in the Subordinated Indentures or the Subordinated Notes shall be deemed waived and of no further force or effect.

7. Distribution of Reallocated FDIC Distributions.

a. The Senior Indenture Trustee shall allocate and distribute each Reallocated FDIC Distribution to which the Senior Indenture Trustee or the holders of Senior Notes are entitled as follows: (i) an amount equal to the lesser of (x) the amount of such Reallocated FDIC Distribution and (y) the FDIC Notes Fraction of 48% of the Senior Note Shortfall shall be retained by the Senior Indenture Trustee for distribution to the holders of Senior Notes; and (ii) any amount of such Reallocated FDIC Distribution in excess of the amounts allocated under clause (i) shall be paid over by the Senior Indenture Trustee to the Subordinated Indenture Trustees; and the Senior Indenture Trustee shall be deemed to have accomplished such distribution by directing the Trustee to retain the amount of any Reallocated FDIC Distribution covered by clause (ii) that otherwise would have been paid over to the Senior Indenture Trustee, and distributing such funds instead to the Subordinated Indenture Trustees, for distribution to the holders of Subordinated Notes in accordance with the terms of the Subordinated Indentures, without giving effect to any subordination provisions contained therein or any of the provisions of Paragraphs 4 and 5 of this Order.

b. The Ad Hoc Committee shall have the sole and exclusive control over the enforcement of the FDIC Subordination Provisions, the commencement or prosecution of any related litigation, and the settlement of any claims under the FDIC Subordination Provisions, and shall have the sole and exclusive power to enforce, prosecute, litigate and settle such claims, in its sole discretion, either (a) in its own

name, or (b) on behalf of and in the name of the Senior Indenture Trustee; provided, however, that (i) if the Ad Hoc Committee elects to prosecute such claims in its own name, then (x) the Ad Hoc Committee shall have all of the right, power, standing and authority to prosecute such claims as the Senior Indenture Trustee would have had in its capacity as indenture trustee under the Senior Indenture to enforce, prosecute, litigate and settle such claims, and (y) any action or proceeding commenced by the Ad Hoc Committee to prosecute or enforce such claims shall be treated in all respects as if it had been commenced and prosecuted in the name of the Senior Indenture Trustee; and (ii) if the Ad Hoc Committee elects to prosecute such claims on behalf of and in the name of the Senior Indenture Trustee, then (x) the Ad Hoc Committee shall have all of the same rights and privileges to direct the Senior Indenture Trustee with respect to the prosecution of any such claims as Gabriel would have had under the Senior Indenture, and (y) the Senior Indenture Trustee and its counsel shall have the right to review and comment on all of the relevant documentation relating thereto as to any matters in such documentation that could adversely affect the Senior Indenture Trustee. Notwithstanding any election by the Ad Hoc Committee to enforce, prosecute, litigate or settle such claims in its own name, or on behalf of and in the name of the Senior Indenture Trustee, as the case may be, the Ad Hoc Committee may, at any time, elect to change to such other alternative, in its sole and absolute discretion.

c. The Subordinated Indenture Trustees shall retain counsel designated by the Ad Hoc Committee who is acceptable to the Subordinated Indenture Trustees ("Special Counsel") to represent the Ad Hoc Committee and the Senior Indenture Trustee in connection with the matter described in paragraph 7(b) and shall

withhold from amounts distributed to the Subordinated Indenture Trustees other than under paragraph 9 an amount agreed upon by the Ad Hoc Committee and the Subordinated Indenture Trustees and utilize such funds to establish a special reserve fund (the "Special Reserve"), from which any fees and expenses of the foregoing Special Counsel shall be paid. The Subordinated Indenture Trustees shall have no obligation to pay fees and expenses to such Special Counsel, other than out of funds held in the Special Reserve. The attorneys' fees and expenses of such Special Counsel in the enforcement, prosecution, litigation and settlement of all claims under the FDIC Subordination Provisions shall constitute expenses under the Subordinated Indentures.

8. Reservation of Rights Regarding FDIC Claims. Nothing contained in this Order, and no previous failure or omission of any party in interest to raise any issue, objection or defense with respect to the allowance or subordination of the FDIC Claims or any distribution thereon (including, without limitation, in response to the Postpetition Interest Motion), shall in any way prevent any party in interest from, or prejudice any party in interest with respect to, objecting to any of the FDIC Claims, seeking to enforce any FDIC Subordination Provision, or otherwise seeking to subordinate the FDIC Claims, and all parties shall be deemed to have preserved any and all rights to object to the allowance of the FDIC Claims or to seek to enforce any contractual subordination provision pertaining to the FDIC Claims. Until such time as this Court enters a Final Order determining the scope and effect of the FDIC Subordination Provisions, or the holder of the FDIC Claims and the Ad Hoc Committee (or the Senior Indenture Trustee, at the direction of the Ad Hoc Committee) agree in writing upon a settlement of any subordination claims arising out of the FDIC Subordination Provisions, any distributions

which the Trustee would otherwise make or have made with respect to the FDIC Claims, whether under the terms of this Order, any prior order of the Court, or otherwise, shall be retained by the Trustee in a segregated account and not distributed. The amounts so retained shall be distributed only in accordance with a Final Order of this Court or settlement approved by Final Order of this Court, as described in the prior sentence.

9. Limited Allowance of Claims for Indenture Trustee Fees and Expenses. In full and complete satisfaction of any claim of any of the Indenture Trustees for attorneys' fees and expenses and indenture trustee fees and expenses under any of the Subordinated Indentures or the Senior Indenture, as applicable, for the period from the Petition Date through and including July 31, 2002, the Indenture Trustees shall be allowed only the following claims:

a. Chase shall have an allowed claim in the amount of \$972,039.09 for attorneys' fees and expenses under the Senior Indenture for the period through and including July 31, 2002.

b. BNY shall have an allowed claim in the amount of \$1,923,771.22 for attorneys' fees and expenses under the 1972 Indenture and the 1989 Indenture for the period through July 31, 2002.

c. U.S. Bank shall have an allowed claim in the amount of \$1,914,214.93 for attorneys' fees and expenses under the 1984 Indenture, the 1985 Indenture, and the 1987 Indenture for the period through July 31, 2002.

The payment of the claims allowed pursuant to this paragraph 9 shall be made by the Trustee to Chase, BNY and U.S. Bank, respectively, on behalf of the Debtor within 10

days from the date upon which this Order becomes a Final Order. As part of the compromises embodied in this Order: (i) any claim of the Indenture Trustees for their respective Indenture Trustee fees and expenses (other than attorneys' fees and expenses) under the Subordinated Indentures or Senior Indenture, as applicable, which the Court has been advised aggregate in excess of \$1 million, shall be disallowed (without prejudice to any right of an Indenture Trustee to recover such amounts from distributions to be made to holders of debt securities issued under the applicable indenture); and (ii) notwithstanding anything to the contrary contained in this Order, no Postpetition Interest shall be paid on any of the claims which are being allowed pursuant to this paragraph 9. The disallowance of the Indenture Trustee fees and expenses in the preceding sentence is as a result of the compromises reflected herein, and does not evidence a finding by the Court as to the reasonableness or legitimacy, or lack thereof, of such fees and expenses.

10. Reimbursement of Attorneys' Fees and Expenses Incurred by Ad Hoc Committee. In full and complete satisfaction of any claim which the Ad Hoc Committee might assert against any distributions payable to the holders of Subordinated Notes or against the estate to recover any fees and expenses incurred by the Ad Hoc Committee from the Petition Date through July 31, 2002, whether asserted in this Chapter 7 case or in the event that the case is converted to a case under Chapter 11, the estate shall reimburse the Ad Hoc Committee for attorneys' fees and expenses in the aggregate amount of \$852,520 within ten days following the date upon which this Order becomes a Final Order; and the Ad Hoc Committee and its individual members shall assert no further claim against any person, entity or fund for any attorneys' fees or expenses

incurred by the Ad Hoc Committee for the period from the Petition Date through and including July 31, 2002.

11. Dismissal Of Chase/Gabriel Appeal. Within ten days following the entry of this Order, or, at the option of Chase and Gabriel, within five days of the date upon which this Order becomes a Final Order, Chase and Gabriel shall file a pleading with the United States District Court for the Southern District of Florida withdrawing the Chase/Gabriel Appeal, with prejudice. Gabriel specifically waives any claim to, and shall not attempt to recover, any attorneys' fees and expenses incurred in connection with this Chapter 7 case (or any Chapter 11 case to which it is converted) against the estate or any creditor; provided, however, that in the event that this case is converted to a case under Chapter 11 of the Bankruptcy Code, and a plan of reorganization for the Debtor is confirmed in such Chapter 11 case, then (and only in such event) nothing contained in this Order or the Chase/Gabriel Order shall affect any right of Gabriel to seek the allowance of an administrative expense for fees and expenses incurred subsequent to July 31, 2002 for a "substantial contribution" under section 503(b)(3)(D) and section 503(b)(4) of the Bankruptcy Code, provided that such claim of Gabriel shall not exceed \$100,000 in the aggregate and that the services for which such claim may be asserted shall be limited to services which enhance the aggregate overall distribution to creditors in a Chapter 11 case, and provided further, that nothing in this Order shall limit Gabriel from seeking reimbursement of expenses, other than attorneys fees and expenses, as a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code; and the payment of any such expenses as a member of such

official committee shall not be counted nor applied against the \$100,000 substantial contribution claim limit of this paragraph.

12. Right of Other Creditors to Seek Allowance Of Claim For Attorneys' Fees.

Except as specifically set forth in paragraphs 9, 10, 11, 12 and 13 of this Order, nothing contained in this Order shall affect the right (if any) of any creditor to seek the allowance of a claim against, or recovery from, the Debtor's estate with respect to attorneys' fees and expenses of that creditor incurred prior to July 31, 2002, or the right of any party in interest to object to any such claim or request for payment. Notwithstanding the foregoing: (i) unless this Chapter 7 case is converted to a case under Chapter 11 of the Bankruptcy Code, no creditor shall be allowed or paid from the Debtor's estate any claim for attorneys' fees or expenses incurred subsequent to July 31, 2002; and (ii) any claim or request for payment from the estate of attorneys' fees and expenses incurred by any creditor for the period prior to July 31, 2002, shall be filed with the Court and served on the Trustee prior to the thirtieth (30th) day following the entry of this Order, or be forever barred and unrecoverable from the Debtor's estate; provided, however, that the limitation contained in the foregoing clauses (i) and (ii) shall not apply with respect to any creditor whose proof of claim is currently the subject of an unresolved objection to claim, or as to whose claim the Trustee subsequently files an objection, until such claim is resolved by a Final Order of this Court. Upon the entry of a Final Order of this Court adjudicating such objection, the provisions of clauses (i) and (ii) of the preceding sentence shall apply to such creditor, with the following modifications: the 30-day period described in clause (i) shall run from the date upon which the order resolving such objection becomes a Final Order, and the reference to "July 31, 2002" in clause (ii)

shall be replaced with a reference to the last day of the month in which such order becomes a Final Order.

13. Limitation On Assertion Of Claims for Post-July 31, 2002 Fees And Expenses By The Ad Hoc Committee And The Indenture Trustees. Unless this Chapter 7 case is converted to a case under Chapter 11 of the Bankruptcy Code, the Ad Hoc Committee and the Indenture Trustees shall not be allowed or paid any amounts from the Debtor's estate on account of fees and expenses incurred subsequent to July 31, 2002; provided, however, that in the event that this case is converted to a case under Chapter 11 of the Bankruptcy Code, and a plan of reorganization for the Debtor is confirmed in such Chapter 11 case, then (and only in such event) nothing contained in this Order or the Chase/Gabriel Order shall affect any right of the Ad Hoc Committee or any of the Indenture Trustees to seek the allowance of a claim or administrative expense against, or recovery from, the Debtor's estate with respect to attorneys fees and expenses incurred after July 31, 2002, or the right of any party in interest to object to any such claim or request for payment. Accordingly, if a Chapter 11 Plan for the Debtor is confirmed, the Indenture Trustees, the Ad Hoc Committee and other creditors (but in the case of Gabriel, subject to the limitations in Paragraph 11) may seek the allowance of a claim (including, without limitation, a claim for administrative expense) against the Debtor's estate to recover attorneys fees and costs incurred after July 31, 2002, on any appropriate grounds. In addition, in light of the fact that the Chase/Gabriel Appeal is being voluntarily withdrawn pursuant to this settlement, without an opportunity for a full adjudication on the merits of the issues raised in that appeal, if and only if this Chapter 7 case is converted to a Chapter 11

case and a plan of reorganization for the Debtor is confirmed, then the Chase/Gabriel Order shall in no way preclude any Indenture Trustee or the Ad Hoc Committee from seeking the allowance or recovery of any attorneys fees and expenses incurred after July 31, 2002, whether under principles of *res judicata*, collateral estoppel or law of the case, but shall be fully preclusive as against Gabriel, except as provided in Paragraph 11.

14. Distributions To Be Made On Negative Notice. Any interim or final Distribution with respect to Postpetition Interest under the terms of this Order, including, without limitation, any Distribution with respect to any Reallocated FDIC Distribution pursuant to paragraph 7, shall be made by the Trustee on negative notice under Local Rule 9013-1(D), without the necessity of an individual hearing on each such Distribution in the absence of any objection. Such notice shall specify, without limitation: (i) the amount of the Base Subordinated Note Interest Distribution that would otherwise have been made to the holders of Subordinated Notes if distribution were calculated solely in accordance with the provisions of paragraphs 2 and 3 of this Order; (ii) the amount of such Base Subordinated Note Interest Distribution that will be reallocated and distributed to the Senior Indenture Trustee, for the benefit of holders of the Senior Notes, and shall be deemed to have been paid to the Subordinated Indenture Trustees and from the Subordinated Indenture Trustees to the Senior Indenture Trustee, pursuant to the provisions of paragraphs 4 and 5 of this Order, along with the underlying calculations; (iii) amounts allocated to the 48% Guarantee Reserve; and (iv) such other and further information as shall be reasonably necessary to advise the Court and

holders of Qualified Claims of the amount, timing and terms of the proposed Distribution.

15. Successors and Assigns. This Order shall be binding on all creditors, including, without limitation, the Senior Indenture Trustee, the Subordinated Indenture Trustees, all holders of Senior Notes and Subordinated Notes, the Trustee and each of their respective successors, assigns and transferees (including, without limitation, any person or entity who receives a "transfer" of any claim, as "transfer" is defined in 11 U.S.C. § 101(54)).

16. Continued Effect In Chapter 11. The provisions of this Order shall continue to be binding in the event of a conversion of this case to a case under Chapter 11 of the Bankruptcy Code, and any distributions in any such Chapter 11 case shall conform in all respects to the requirements and provisions of this Order.

17. In connection with the settlement embodied in this Order, Chase and the Subordinated Indenture Trustees have each (i) fulfilled their fiduciary responsibilities under their respective Indentures and under applicable law and (ii) have used the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

18. Waiver Of Any Otherwise Applicable Ten-Day Stay. To the extent, if any, that the ten-day stay of Rule 6004(g) of the Federal Rules of Bankruptcy Procedure or any other rule providing for an automatic stay of this Order might otherwise be applicable, no such stay shall apply to this Order, and this Order shall be effective and enforceable and, in the event that the Trustee, in his sole discretion, files with the Court a written waiver of the requirement that this Order become a Final Order in paragraphs

9 and 10 of this Order, shall be complied with by the parties immediately upon its entry. In the event of such a waiver by the Trustee, any requirement for a "Final Order" contained in paragraph E of this Order shall be deemed to be deleted, and the time for making the payments required under paragraphs 9 and 10 of this Order shall be 10 days from the date upon which this Order is entered, rather than the date upon which this Order becomes a Final Order.

19. Retention of Jurisdiction. This Court retains exclusive jurisdiction throughout the duration of this case to construe, interpret, modify (but, in the case of any modification, only with the consent of each of Gabriel Capital, the Ad Hoc Committee and the Trustee, and the non-objection of the Indenture Trustees, but not otherwise) and enforce the terms of this Order.

ORDERED in the Southern District of Florida, this 3rd day of Nov, 2003.

PAUL HYMAN

HONORABLE PAUL G. HYMAN, JR.
UNITED STATES BANKRUPTCY JUDGE

Copies furnished to:
Mark D. Bloom, Esq.
Jeffrey H. Beck, Trustee

(Attorney Bloom is directed to serve conformed copies of this Order upon all parties in interest, immediately upon receipt thereof and to file a Certificate of Service with the Court confirming same.)

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