

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re: * Chapter 11
CREATIVE HAIRDRESSERS, INC., * Case Nos. 20-14583, 20-14584-TJC
et al., * (Jointly Administered)
Debtors.¹ *

* * * * *

**DEBTORS’ MOTION (A) FOR AUTHORIZATION TO TERMINATE THE
EXECUTIVE NONQUALIFIED EXCESS PLAN OF RATNER COMPANIES,
(B) DIRECTING RETURN OF TRUST ASSETS TO THE ESTATES,
(C) REJECTING TRUST AGREEMENT AND (D) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, respectfully state as follows:

I. Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Background and Supporting Facts

2. On April 23, 2020 (the “Petition Date”), the Debtors filed voluntary petitions with this Court for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”)². The Debtors continue to manage their affairs as debtors in possession pursuant to Sections 1107(a) and 1108.

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. (“CHI”) and (ii) Ratner Companies, L.C (“RC” or the “Debtor”).

² All statutory references are to the Bankruptcy Code, 11 U.S.C. § 101 et seq., unless otherwise noted.

3. On June 2, 2020, the Court entered an Order (A) Approving and Authorizing the Sale of Substantially All of Debtors' Assets Pursuant to the Amended and Restated Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief (the "Sale Order") [Dkt. No. 465]. The Debtors closed on the transaction approved in the Sale Order on June 4, 2020.

A. RC Establishes a Deferred Compensation Plan

4. On or about October 1, 2005, and as restated effective July 1, 2009, RC established and adopted The Executive Nonqualified Excess Plan of Ratner Companies (the "Deferred Compensation Plan" or "Plan"). The stated purpose of the Plan was to "provide specified benefits to a select group of management and highly compensated Employees who contribute materially to the continued growth, development, and future business success of Ratner Companies." In what is often referred to as a "top hat" arrangement, participation in the Plan was limited to officers or key employees. *See* Deferred Compensation Plan ¶ 2.1. A true and accurate copy of the Deferred Compensation Plan is attached hereto as **Exhibit A**. As further set forth in the "Purpose" preamble, the Deferred Compensation Plan "shall be unfunded for tax purposes and for purposes of Title 1 of ERISA." *See also Id.* ¶ 13.1 ("Status of Plan" is that it is intended to be not qualified under the Internal Revenue Code and unfunded under ERISA).

5. Under the Deferred Compensation Plan, participants were allowed to defer a certain percentage of their salary, annual bonus and other forms of compensation, plus certain employer discretionary amounts, until a later date. *Id.* ¶¶ 3.1-3.3. Participants were not taxed on such compensation at the time of deferral; such amounts were to be taxed when distributed under

the Deferred Compensation Plan. All compensation deferred under the Deferred Compensation Plan is accounted for in the participant's respective deferral accounts, with benefits payable in a lump sum or annual installment, upon retirement or termination of employment. *Id.* ¶¶ 3.5-3.6, 5.1, 5.3. RC has the right to terminate the Deferred Compensation Plan "at any time with respect to any or all of its participating Employees, by action of [its] Board." *Id.* ¶ 8.1 (stating "there is no guarantee that the Company will continue the Plan or will not terminate the Plan at any time in the future").

6. In order for RC to provide for its deferred compensation obligations, the Deferred Compensation Plan provides that RC may establish a Trust (defined *infra*) to which RC may transfer assets to fund said obligations. *Id.* ¶ 12.1. The Plan acknowledges that the terms of any Trust Agreement itself (discussed *infra*) "shall govern the rights of the Company, Participants and creditors of the Company to the assets transferred to the Trust." *Id.* ¶ 12.2. The Deferred Compensation Plan expressly provides the participants and beneficiaries are general unsecured creditors of RC with respect to their deferred compensation claims: "For purposes of the payment of benefits under the Plan, any and all of the Company's assets shall be, and remain, the general, unpledged unrestricted assets of the Company. The Company's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future." *Id.* ¶ 13.2.

B. RC Creates the Deferred Compensation Plan Trust

7. On or about October 1, 2007, RC established the Ratner Companies Executive Nonqualified Excess Plan Trust (the "Trust") pursuant to the terms of a Trust Agreement, by and between RC and Prudential Bank & Trust, FSB (the "Trustee"). A true and accurate copy of the Trust Agreement is attached hereto as **Exhibit B**. The Trust is a grantor trust (often referred to a

“rabbi trust”³) into which RC may contribute assets for investment to provide a source of funds to meet obligations under the Deferred Compensation Plan, but always subject to the claims of creditors. See Trust Agreement, Recitals (d), (f), and ¶¶ 1(c), (d).

8. Under applicable tax law and the Trust Agreement, to maintain a tax-sheltered status for deferred compensation, the participants' interests in the Trust are expressly subject to the claims of creditors in the event of the contributing debtor's insolvency. *Id.* ¶¶ 1(d), 3(b); see generally *In re Alpha Natural Resources*, 554 B.R. 787, 794 (Bankr.E.D. Va. 2016) (“As a grantor or rabbi trust, the Debtors were deemed to be the owners of the Trust Funds. In order to avoid taxation, the beneficiaries could not have any ownership interest in the deferred compensation. As the Trust Funds remained property of the Debtors, the funds were subject to the Debtors’ creditors.”) (citing *Goodman v. Resolution Trust Co.*, 7 F.3d 1123, 1127 (4th Cir. 1993) (“Federal tax law conditions the beneficial tax treatment of a grantor trust on the requirement that the trust fund remains subject to the claims of the employer's creditors as if the assets were the general assets of the employer.”)); *In re WorldCom, Inc.*, 364 B.R. 538, 543 (Bankr. S.D.N.Y. 2007); *In re Bill Heard Enters., Inc.*, 419 B.R. 858, 864-866 (Bankr.N.D.Ala. 2009). Further, the Trust Agreement provides that the Deferred Compensation Plan “participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust” and “[a]ny rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company.” Trust Agreement ¶ 1(d).

³ The concept originated with a Private Letter Ruling granted by the IRS in 1980 related to a congregation that wanted to offer some level of protection to deferred compensation promised to its rabbi, but without resulting in in current income taxation to the rabbi.

9. Under the Trust Agreement, RC is "insolvent" because it is "subject to a pending proceeding as a debtor under the United States Bankruptcy Code." *Id.* ¶ 3(a). In the event of insolvency, because "the principal and income of the Trust shall be subject to claims of general creditors", the Trustee must cease payments to participants and beneficiaries and hold Trust assets for the benefit of general creditors. *Id.* ¶ 3(b)(3).

C. Notice to the Deferred Compensation Plan Participants

10. On June 17, 2020, RC filed its First Amended Schedules of Assets and Liabilities (the "Amended Schedules") [Dkt. No. 531, June 17, 2020] to, *inter alia*, (a) disclose the marketable securities owned by RC and held in the Trust under the Deferred Compensation Plan, and (b) list the claims of eleven (11) Deferred Compensation Plan participants (the "Participants") as general unsecured claims in the RC bankruptcy estate. *See* Amended Schedule A/B at ¶ 14 (listing funds with aggregate value of \$1,431,402.58) and Amended Schedule E/F, Part 2 (listing 11 claimants as "ADDITION" and basis of claim as "DEFERRED COMP PLAN", totaling \$1,431,802.58). On the same date, the Debtors served the Amended Schedules and Notice Per Local Bankruptcy Rule 1009-1(d) (setting forth the claims bar date) on the Participants to provide them ample notice of their rights with respect thereto. *See* Amended Certificate of Service [Dkt. No. 540, June 19, 2020]. A chart listing the Participants' names and respective claim amounts is attached hereto as **Exhibit C**.⁴

⁴ Notwithstanding the lack of direct rights the Participants may have in the funds held in the Trust, they may be entitled to assert an unsecured priority claim against the Debtors under Section 507(a)(4) or (5) of the Bankruptcy Code to the extent (i) their respective Plan contributions are based upon compensation earned and deferred within 180 days of the Petition Date, and (ii) they have not already used up the \$13,650 cap as a result of the payment to them of certain other pre-petition compensation pursuant to the Court's April 28, 2020 Order authorizing the payment of pre-petition wages and compensation [Dkt. No. 76].

11. In the Trust Agreement, the Trustee has not distributed any Trust funds since the Petition Date. The Debtors were advised by the Trustee that as of July 31, 2020, the market value of the assets held in the Trust was \$1,541,640.21. The current aggregate balance of the Trust derives exclusively from contributions to the Trust that were made prior to the Petition Date and unrealized gains on such securities.

III. Bases for Relief and Relief Requested

A. The Debtors Are Authorized To Terminate the Deferred Compensation Plan

12. The Debtors believe that it is in the best interests of all creditors to terminate the Plan and seek a turnover of the Trust assets free and clear of the direct liens, claims or encumbrances of the Participants. If such a proposed termination constitutes a transaction outside the ordinary course of business (assuming *arguendo* that the Debtors' exercise of its discretionary contractual rights may be an ordinary course transaction), such termination should be authorized pursuant to Section 363(b) as a reasonable exercise of the Debtors' business judgment.

13. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts apply the business judgment standard when evaluating transactions under section 363(b) of the Bankruptcy Code. *See In re Modanlo*, 412 B.R. 715, 732 (Bankr. D. Md. 2006) *subsequently aff'd*, 266 F. App'x 272 (4th Cir. 2008); *In re Fischer*, 03-13704, 2010 WL 2746329, at *10 (Bankr. D. Md. July 9, 2010); *In re Global Home Prods., LLC*, 369 B.R. 778, 783 (Bankr. D. Del. 2007). Under the business judgment standard, so long as a debtor's decision is reasonable and in the best interests of the bankruptcy estate, courts generally defer to the business judgment of the debtor's management.

See In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999) (“In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’”); *Lake Monticello Owners' Ass'n v. Lake*, 250 Va. 565, 571, 463 S.E.2d 652, 656 (1995) (articulating business judgment rule under Virginia law).

14. The relevant standard is clearly met in this instance. The Deferred Compensation Plan has been frozen for purposes of distributions as of the Petition Date, and Participants possess nothing more than unsecured claims against the Debtors’ estates arising from their participation in the Deferred Compensation Plan. Termination of the Deferred Compensation Plan will conserve resources related to maintaining thereof, which is in the best interests of the Debtors’ estates. Moreover, because the Deferred Compensation Plan remains subject to the Debtors’ unilateral contractual right to terminate, the Debtors’ decision to terminate is well within their sound business judgment and should be authorized by the Court to the extent such authorization is needed.

15. Section 1114⁵ of the Bankruptcy Code does not impose any restriction on the Debtors’ authority to terminate the Deferred Compensation Plan. *See, e.g., In re WorldCom, Inc.*, 364 B.R. 538, 549 (Bankr. S.D.N.Y. 2007) (“As [section 1114 of the Bankruptcy Code] makes clear, ... the fact that the Deferred Compensation Plan may be used to provide the participant

⁵ Section 1114 of the Bankruptcy Code establishes certain procedures for modifying or terminating “retiree benefits,” which are defined as “payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under [the Bankruptcy Code].” 11 U.S.C. § 1114(a).

with post-retirement income does not, standing alone, render payments under the Deferred Compensation Plan 'retiree benefits.'").

16. Additionally, the Employee Retirement Income Security Act ("ERISA") does not impose any restrictions on the Debtor's authority to terminate the Deferred Compensation Plan. ERISA expressly exempts deferred compensation plans that benefit management or highly compensated employees from its vesting, funding and fiduciary duty requirements. *See* 29 U.S.C. § 1051(2) (providing that ERISA shall not apply to "a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees"). Scrutinizing "top hat" plans such as the Plan that is the subject of this motion, courts have concluded that these unfunded deferred compensation plans maintained for a select group of management or highly compensated employees are indeed exempted from ERISA. *See Alpha Resources*, 554 B.R. at 793-797 (providing extensive analysis of ERISA issues for similar deferred compensation plan); *Bill Heard Enters.*, 419 B.R. at 866-867 (same). As described above, there is no doubt that the Deferred Compensation Plan is unfunded, since both the Deferred Compensation Plan and Trust Agreement by their express terms evidence the clear intent that the participants are only general unsecured creditors. Likewise, under any metric, the participants constitute an elite group of employees, constituting a small portion of the workforce, with average compensation far in excess of non-eligible employees.

B. The Trust Assets are Property of the Estate That Must Be Turned Over

17. Pursuant to Section 541(a)(1), the commencement of a bankruptcy case "creates an estate" consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case."

18. The Trust Agreement expressly states that the Trust Funds are subject to the claims of the general creditors in the event of the bankruptcy. *See* Trust Agreement ¶¶ 1(d) and 3(b). Accordingly, upon the commencement of the Debtor's Chapter 11 case, the Trust assets became property of the Debtor's bankruptcy estate. As the Fourth Circuit held in *Goodman v. Resolution Tr. Co.*:

Federal tax law conditions the beneficial tax treatment of a grantor trust on the requirement that the trust fund remains subject to the claims of the employer's creditors as if the assets were the general assets of the employer. ... The employer is treated as the owner of the trust assets, and the recipients are never assured of a payment because the assets remain subject to the claims of the employer's creditors. "In reality, the recipient receives only the company's unsecured promise to pay benefits and has no right against any assets other than the rights of a general unsecured creditor of the company ... The employer will be treated as the owner of the trust." 7 F.3d 1123, 1127 (1993).

See also Alpha Natural Resources, 555 B.R. at 794 (granting motion to terminate and collect funds held in deferred compensation trusts, because "[t]he Court concluded that applicable law in the Fourth Circuit required this result"); *Bill Heard Enters.*, 419 B.R. at 866-867 (assets held in trust established for purposes of funding deferred compensation plan were included in property of the bankruptcy estate).

19. Section 542⁶ of the Bankruptcy Code requires any entity, other than a custodian, in possession, custody or control of property that (a) a debtor may use, sell or lease under section 363 of the Bankruptcy Code and (b) has more than inconsequential value, to deliver such property to the debtor. The Trustee is required to deliver the Trust assets to the Debtors upon entry of the form of Order submitted herewith. In light of the foregoing, the Debtors request an order directing the turnover of the Trust assets for the benefit of the Debtors' estates.

⁶ Section 543 of the Bankruptcy Code, governing turnover of estate property held by a custodian, may also apply in this instance. To the extent that the Court determines that Section 543, rather than Section 542 applies, the Debtors request that the Court authorize turnover under that provision.

C. The Trust Agreement Should Be Rejected

20. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject an executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365 of the Bankruptcy Code allows a debtor in possession to maximize the value of its estate by assuming executory contracts or unexpired leases that benefit the estate and by rejecting those that do not. *See In re Nat’l Gypsum Co.*, 208 F.3d 498, 505 (5th Cir. 2000) (“[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor in possession to use valuable property of the estate and to ‘renounce title and abandon burden-some property.’”); *Matter of Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994) (noting that section 365 “allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed”).

21. Courts apply a “business judgment” standard when determining whether to authorize rejection of an executory contract. *See Lubrizol Enters. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *In re Cho*, 581 B.R. 452, 456 (Bankr. D. Md. 2018) (“A debtor in possession’s decision to assume or reject an executory contract or unexpired lease is subject to a business judgment standard, and should be ‘accorded the deference mandated by the sound business judgment rule’”). Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate. *In re Chi-Feng Huang*, 23 B.R. 798, 801 (9th Cir. 1982). Moreover, a debtor’s decision to reject an executory contract or unexpired lease should be approved “except upon a finding of bad faith or gross abuse of the [debtor’s] business discretion.” *Lubrizol*, 756 F.2d at 1047 (4th Cir. 1985) *cert. denied*, 475 U.S. 1057

(1986). In addition, “unless a separate provision of the Bankruptcy Code provides a nondebtor party with specific protection, the debtor and its estate’s interests are paramount; adverse effects on the non-debtor contract party arising from the decision to assume or reject are irrelevant.” *In re The Great Atlantic & Pacific Tea Company*, 544 B.R. 43, 49 (Bankr. S.D.N.Y. 2016).

22. Upon the return of the Trust assets to Debtors’ estates, the Debtors will no longer have any need for the Trust. Rejection of the Trust Agreement will save the Debtors from unnecessarily continuing to pay the expenses of administering the Trust and the Deferred Compensation Plan. Accordingly, in the sound exercise of their business judgment, the Debtors have determined that, pursuant to section 365 of the Bankruptcy Code, the rejection of the Trust Agreement, effective as of the date the Trust funds are returned is in the best interests of the Debtors' estates.

Notice

23. Notice of this motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Deferred Compensation Plan Participants, (b) Prudential Bank & Trust, FSB, as the Trustee for the Ratner Companies Executive Nonqualified Excess Plan Trust, (c) counsel to the Official Committee of Unsecured Creditors, (d) the Office of the United States Trustee and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

Statement Pursuant to Local Bankruptcy Rule 9013-2

24. Pursuant to Rule 9013-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland, the Debtors state that, in lieu of submitting a memorandum in support of this Motion, they will rely solely upon the grounds and authorities set forth herein.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: August 28, 2020

/s/ Joel I. Sher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2020, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *foregoing* will be served electronically by the Court's CM/ECF system on the following:

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/s/ Joel I. Sher

Joel I. Sher

EXHIBIT A

**THE EXECUTIVE NONQUALIFIED EXCESS PLAN
OF
RATNER COMPANIES**

Effective as Restated July 1, 2009

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EXECUTIVE NONQUALIFIED EXCESS PLAN

Effective as Restated July 1, 2009

Purpose

The purpose of this Executive Nonqualified Plan, a plan of deferred compensation established effective as of October 1, 2005 and hereby restated July 1, 2009, is to provide specified benefits to a select group of management and highly compensated Employees who contribute materially to the continued growth, development, and future business success of Ratner Companies. The Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA.

ARTICLE 1

Definitions

For purposes of the Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following meanings:

- 1.1 “**Account Balance**” shall mean, with respect to a Participant, a credit on the records of the Company equal to the sum of (i) the Deferral Account balance, (ii) the Employer Discretionary Account balance, and (iii) the Employer Profit Sharing Account balance. The Account Balance shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his Beneficiary, pursuant to the Plan.
- 1.2 “**Affiliated Group**” means (i) the Company and (ii) all entities with which the Company would be considered a single employer under Code Sections 414(b) and 414(c), provided that in applying Code Sections 1563(a)(1), (2) and (3) for purposes of determining whether a controlled group of corporations exists under Code Section 414(b), the language "at least 50 percent" shall be used instead of "at least 80 percent" each place it appears in Code Sections 1563(a)(1), (2) and (3), and in applying Treasury Regulation Section 1.414(c)-2 for purposes of determining whether trades or businesses (whether or not incorporated) are under common control for purposes of Code Section 414(c), the language "at least 50 percent" shall be used instead of "at least 80 percent" each place it appears in Treasury Regulation Section 1.414(c)-2. The term "Affiliated Group" shall be interpreted in a manner consistent with the definition of "service recipient" contained in Code Section 409A.
- 1.3 “**Annual Installment Method**” shall be an annual installment payment over the number of years selected by the Participant in accordance with the Plan, calculated as follows: (i) for the first annual installment, the vested Account Balance of the Participant shall be calculated as of the close of business on or around (a) the last business day of the Plan Year in which the Participant Retires or is deemed to have Retired in accordance with Section 5.4, or (b) the date on which the Participant experiences a Termination of Employment or is deemed to have

experienced a Termination of Employment in accordance with Section 5.4, and (ii) for remaining annual installments, the vested Account Balance of the Participant shall be calculated on every applicable anniversary of (a) the last business day of the Plan Year in which the Participant Retires, is deemed to have Retired in accordance with Section 5.4, or (b) the date on which the Participant experiences a Termination of Employment or is deemed to have experienced a Termination of Employment in accordance with Section 5.4. Each annual installment shall be calculated by multiplying this balance by a fraction, the numerator of which is one and the denominator of which is the remaining number of annual payments due the Participant. By way of example, if the Participant elects a ten (10) year Annual Installment Method, the first payment shall be 1/10 of the vested Account Balance, calculated as described in this definition. The following year, the payment shall be 1/9 of the vested Account Balance, calculated as described in this definition.

For purposes of Section 409A an annual installment payment shall be considered a “single payment” as defined in IRS regulation 1.409A-2(b)(2)(iii).

- 1.4 “**Compensation**” shall mean the annual base rate of cash compensation payable by the Affiliated Group during a calendar year, plus any amount of Bonus, any performance-based compensation, and any commissions. Compensation shall exclude overtime, fringe benefits, stock options, relocation expenses, incentive payments, non-monetary awards, fees, automobile and other allowances, and prior to reduction for compensation voluntarily deferred or contributed by the Participant pursuant to all qualified or non-qualified plans of the Affiliated Group under Code Section 125, 402(e)(3), 402(h), or 403(b). Compensation payable after the last day of a calendar year solely for services performed during the final payroll period described in Code Section 3401(b) containing December 31 of such year shall be treated as earned during the subsequent calendar year.
- 1.5 “**Beneficiary**” shall mean the person or persons, designated in accordance with Article 6, that are entitled to receive benefits under the Plan upon the death of a Participant.
- 1.6 “**Beneficiary Designation Form**” shall mean the form established from time to time by the Board that a Participant completes, signs, and returns to the Board to designate one or more Beneficiaries.
- 1.7 “**Board**” shall mean the board of directors of the Company or a committee appointed by the Board to administer the Plan.
- 1.8 “**Bonus**” shall mean any compensation relating to services performed during any calendar year(s), whether or not paid in a calendar year or included on the Form W-2 for the calendar year, payable to a Participant as an Employee under the Company’s written bonus or cash compensation incentive plans, excluding stock

options and restricted stock . and which qualifies as “performance-based compensation” under IRS regulation 1.409A-1(e)(1).

- 1.9 “**Change in Control**” shall mean the occurrence of a "change in the ownership," a "change in the effective control," or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Code Section 409A.
- 1.10 “**Code**” shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.
- 1.11 “**Company**” shall mean Ratner Companies and any successor to all or substantially all of the Company’s assets or business.
- 1.12 “**Deferral Account**” shall mean (i) the sum of all of a Participant’s Deferral Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Deferral Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to his Deferral Account.
- 1.13 “**Deferral Amount**” shall mean that portion of a Participant’s Compensation that a Participant elects to have, and is deferred, in accordance with Article 3, for any one Plan Year. In the event of a Participant’s Retirement, Disability, death or a Termination of Employment prior to the end of a Plan Year, such year’s Deferral Amount shall be the actual amount withheld prior to such event.
- 1.14 “**Deferral Election**” shall mean a Participant's election on an Election Form to defer a portion of his Compensation, or both, in accordance with the provisions of Article 3.
- 1.15 “**Disability**” shall mean the occurrence of circumstances under which a Participant meets one of the following requirements (a) the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (b) the Participant is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant’s employer.
- 1.16 “**Disability Benefit**” shall mean the benefit set forth in Section 5.4.
- 1.17 “**Election Form**” shall mean the form established from time to time by the Board that a Participant completes, signs, and returns to the Board to make a Deferral Election under the Plan.

- 1.18 “**Employee**” shall mean a person who is designated as an employee by the Company.
- 1.19 “**Employer Discretionary Account**” shall mean (i) the sum of the Participant’s Employer Discretionary Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Employer Discretionary Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to the Participant’s Employer Discretionary Account.
- 1.20 “**Employer Discretionary Amount**” shall mean, for any one Plan Year, the amount determined in accordance with Section 3.3.
- 1.21 “**Employer Profit Sharing Account**” shall mean (i) the sum of the Participant’s Employer Profit Sharing Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of the Plan that relate to the Participant’s Employer Profit Sharing Account, less (iii) all distributions made to the Participant or his Beneficiary pursuant to the Plan that relate to the Participant’s Employer Profit Sharing Account
- 1.22 “**Employer Profit Sharing Amount**” shall mean, for any one Plan Year, the amount determined in accordance with Section 3.4.
- 1.23 “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.
- 1.24 “**Participant**” shall mean any Employee (i) who is selected to participate in the Plan, (ii) who elects to participate in the Plan, (iii) who signs an Election Form and a Beneficiary Designation Form, (iv) whose signed Election Form and Beneficiary Designation Form are accepted by the Board, (v) who commences participation in the Plan, and (vi) whose participation in the Plan has not terminated. A spouse or former spouse of a Participant shall not be treated as a Participant in the Plan or have an account balance under the Plan, even if he has an interest in the Participant’s benefits under the Plan as a result of applicable law or property settlements resulting from legal separation or divorce.
- 1.25 “**Plan**” shall mean the Executive Nonqualified Excess Plan of Ratner Companies, as amended from time to time.
- 1.26 “**Plan Year**” shall mean a period beginning on January 1 of each calendar year and continuing through December 31 of such calendar year.
- 1.27 “**Pre-Retirement Survivor Benefit**” shall mean the benefit set forth in Section 5.2.

- 1.28 “**Retirement**,” “**Retire(s)**,” or “**Retired**” shall mean, with respect to an Employee, severance from employment from the Company for any reason other than a leave of absence, death or Disability on or after the attainment of age sixty-five (65).
- 1.29 “**Retirement Benefit**” shall mean the benefit set forth in Section 5.1.
- 1.30 “**Termination Benefit**” shall mean the benefit set forth in Section 5.3.
- 1.31 “**Termination of Employment**” shall mean a termination of employment with the Affiliated Group in such a manner as to constitute a "separation from service" as defined under Code Section 409A, voluntarily or involuntarily, for any reason other than Retirement, Disability, or death. For this purpose, the employment relationship is treated as continuing while a Participant is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months or, if longer, so long as the individual retains a right to reemployment with the Affiliated Group under an applicable statute or by contract. A leave of absence constitutes a bona fide leave of absence only if there is a reasonable expectation that the Participant will return to perform services for the Affiliated Group. If the period of leave exceeds six months and the Participant does not retain a right to reemployment under an applicable statute or by contract, the employment relationship is deemed to terminate on the first day immediately following such six-month period. A Termination of Employment will occur if there is a reasonable expectation that the level of services by the Participant for the Affiliated Group will permanently decrease to 20% or less of the average level of services during the previous 36 months (or, if shorter, the actual period of services).
- 1.32 “**Trust**” shall mean one or more rabbi trusts established by the Company in accordance with Article 12 of the Plan as amended from time to time.
- 1.33 “**Unforeseeable Emergency**” shall mean a severe financial hardship to the Participant resulting from (i) an illness or accident of the Participant or Beneficiary or his spouse or dependent (as defined in Code Section 152(a) without regard to Code Sections 152(b)(1), 152(b)(2), and 152(d)(1)(B)), (ii) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to the home not otherwise covered by insurance), or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The term "Unforeseeable Emergency" shall be interpreted in a manner consistent with the definition of "unforeseeable emergency" contained in Code Section 409A.

ARTICLE 2
Selection, Enrollment, Eligibility

- 2.1 **Selection by Board.** Participation in the Plan shall be limited to those Employees who (i) are officers or key employees and (ii) are selected and approved for participation in the Plan by the Board, in its sole discretion.
- 2.2 **Enrollment Requirements.** As a condition to participation, each selected Employee shall complete, execute and return to the Board an Election Form and a Beneficiary Designation Form, all within 30 days (or such shorter time as the Board may determine) after he is selected to participate in the Plan. In addition, the Board shall establish from time to time such other enrollment requirements as it determines in its sole discretion are necessary.
- 2.3 **Eligibility; Commencement of Participation.** Provided an Employee selected to participate in the Plan has met all enrollment requirements set forth in the Plan and required by the Board, including returning all required documents to the Board within thirty (30) days (or such shorter time as the Board may determine) after he is selected to participate in the Plan, that Employee shall commence participation in the Plan as of the date determined by the Board.
- 2.4 **Termination of Deferrals.** If the Board determines in good faith that a Participant no longer qualifies as a member of a select group of management or highly compensated employees, as membership in such group is determined in accordance with Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, the Participant's entitlement to defer Compensation shall cease with respect to calendar years following the calendar year in which such determination is made, although the Participant shall remain subject to all terms and conditions of the Plan for as long as he remains a Participant.

ARTICLE 3
Deferral Elections

- 3.1 **Elections to Defer Compensation.**
- (a) **Deferral Election.**
- (i) **New Participant.** In connection with a Participant's commencement of participation in the Plan, a Participant may elect to defer Compensation by filing with the Board an Election Form that conforms with the requirements of Article 2 within the time period specified in Section 2.3, and the Deferral Election shall become irrevocable at the end of such time period, unless the conditions specified in Section 3.1(a)(ii) apply. The Deferral Election shall apply only to Compensation earned during the first Plan Year beginning with the first payroll period that begins immediately after the date the Deferral Election becomes irrevocable. If a Participant does not make a

deferral election with respect to the first Plan Year for which the Participant is eligible to participate in the Plan, the Participant may elect to defer Compensation for any subsequent Plan year by filing with the Board an Election Form that conforms with the requirements of Article 2 before the start of that Plan Year.

(ii) **Annual Deferral Election.** Unless Section 3.1(a)(i) applies, each Participant may elect to defer Compensation for a Plan Year by filing a Deferral Election with the Board within the timeframes specified by the Board for the Plan Year for which such Compensation is earned. However, the Deferral Election becomes irrevocable as of such December 31 preceding the Plan Year for which such Compensation is earned, provided, however that such election may be cancelled if any of the following events shall occur:

- a. The participant receives a payment due to an unforeseeable emergency,
- b. The cancellation is needed for the Participant to obtain a hardship withdrawal from a qualified plan, or
- c. The Participant suffers a Disability.

(b) **Amount of Deferral.** A Participant shall designate on the Deferral Election form the amount of Compensation that is to be deferred in accordance with this Article 3. The amount may be a flat dollar amount or percentage, as selected by the Participant, which, unless otherwise determined by the Board, shall not exceed 100 percent of the Participant's Compensation; provided that the total amount deferred by a Participant shall be limited in any calendar year, if necessary, to satisfy FICA, income tax, and employee benefit plan withholding requirements as determined in the sole and absolute discretion of the Board.

(c) **Duration of Deferral Election.** A Participant's Deferral Election shall remain in effect for subsequent Plan Years until the Deferral Election is changed or revoked. A Participant may change or revoke a Deferral Election for any subsequent Plan Year by filing a new Election Form with the Board prior to the beginning of such Plan Year, at such time as the Board may require, which Deferral Election shall be effective on the first day of the next following Plan Year.

3.2 **Withholding of Deferral Amounts.** For each Plan Year, the Deferral Amount shall be withheld from each regularly scheduled payroll in equal amounts, as adjusted from time to time for increases and decreases in Compensation.

3.3 **Employer Discretionary Amount.** For each Plan Year, the Board, in its sole discretion, may, but is not required to, credit an amount to any Participant's Employer Discretionary Account under the Plan, which amount shall equal the Employer Discretionary Amount for that Participant for that Plan Year. The

amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive an Employer Discretionary Amount for that Plan Year.

- 3.4 **Employer Profit Sharing Amount.** For each Plan Year, the Board, in its sole discretion, may, but is not required to, credit an amount to any Participant's Employer Profit Sharing Account under the Plan, which amount shall equal the Employer Profit Sharing Amount for that Participant for that Plan Year. The amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive an Employer Profit Sharing Amount for that Plan Year.
- 3.5 **Vesting.**
- (a) A Participant shall at all times be 100% vested in his Deferral Account. A Participant shall become 100% vested in his Employer Profit Sharing Account after he has been employed by the Company for a period of five years. A Participant shall become 100% vested in each Employer Discretionary Amount as of the fifth anniversary of the date such amount was credited to him. The above schedules notwithstanding, the Company shall have the right, at any time and with respect to any contribution, to establish, at its discretion, alternative vesting provisions for that contribution, provided that such alternative provisions will be more liberal than those provided above, and that the affected Participants will be notified of the change.
- (b) Notwithstanding anything to the contrary contained in this Section 3.5, a Participant shall immediately become 100% vested (if not already vested in accordance with the above vesting schedule) in his Employer Discretionary Account and Employer Profit Sharing Account as of the earliest of the following: 1) his attainment of age 65, 2) his suffering a Disability, 3) his death, or 4) a Change in Control.
- (c) Notwithstanding subsection (a), the vesting schedules for a Participant's Employer Discretionary and Profit Sharing Accounts shall not be accelerated to the extent that the Board determines that such acceleration would cause the deduction limitations of Code Section 280G to become effective. In the event that all of a Participant's Employer Discretionary and Profit Sharing Accounts are not vested pursuant to such a determination, the Participant may request independent verification of the Board's calculations with respect to the application of Code Section 280G. In such case, the Board must provide to the Participant within 15 business days of such a request an opinion from a nationally recognized accounting firm selected by the Participant (the "Accounting Firm"). If the Accounting Firm's opinion is in agreement with the Board's determination, the opinion shall state that

any limitation in the vested percentage hereunder is necessary to avoid the limits of Code Section 280G and contain supporting calculations. The cost of such opinion shall be paid for by the Company.

- 3.6 **Employee Accounts.** The Company shall establish a Deferral Account, an Employer Discretionary Account, and an Employer Profit Sharing Account for each Participant under the Plan. Each Participant's accounts shall be further divided into separate subaccounts ("investment fund subaccounts"), each of which corresponds to an investment fund elected by the Participant. A Participant's accounts shall be credited as follows:
- (a) After amounts are withheld from a Participant's Compensation, the Company shall credit the investment fund subaccounts of the Participant's Deferral Account with an amount equal to the amount of Compensation deferred by the Participant as of the date that the Compensation would have been paid to the Participant, and each portion of the Participant's deferred Compensation that the Participant has deemed to be invested in a certain type of investment fund shall be credited to the investment fund subaccount corresponding to that investment fund.
 - (b) The Company shall credit the investment fund subaccounts of the Participant's Employer Discretionary and Profit Sharing Accounts with amounts equal to the Employer Discretionary and Profit Sharing Amounts, if any, for that Participant, on the date or dates to be determined by the Board in its sole discretion, and the portions of the Participant's Employer Discretionary and Profit Sharing Amounts that the Participant has deemed to be invested in a certain type of investment fund shall be credited to the investment fund subaccount corresponding to that investment fund.
 - (c) Each business day, each of the Participant's investment fund subaccounts shall be credited with earnings or losses in an amount equal to that determined by multiplying the balance credited to such investment fund subaccount as of the prior day plus contributions allocated to the investment fund subaccount that day by the rate of net gain or loss for the corresponding investment fund for that day.
 - (d) Each of the Participant's investment fund subaccounts shall be reduced pro rata by the amount of any distributions made to the Participant, as of the date of the distribution.

3.7 **Investment Elections.**

- (a) The Board shall select from time to time, in its sole and absolute discretion, commercially available investment funds to be used to determine the amount of earnings or losses to be credited to the Participant's Accounts under Section 3.6(c).
- (b) At the time of making a Deferral Election, a Participant shall designate, on the Election Form, the investment fund or funds in which the Participant's Account

Balance will be deemed to be invested for purposes of determining the amount of earnings or losses to be allocated to the Participant's Account. The Participant may specify the deemed investment, in whole percentage increments, in one or more of the investment Funds as communicated from time to time by the Board. Effective as of any business day, a Participant may change this investment designation by filing a change of election and making a new designation as permitted by the Board.

- (c) Notwithstanding any other provision of the Plan that may be interpreted to the contrary, the investment funds selected by the Board or designation of investment funds by a Participant shall not be considered or construed in any manner as an actual investment of the Participant's Account Balance in any such investment fund. In the event that the Company or the Trustee, in its sole and absolute discretion, shall invest funds in any or all of the selected investment funds, no Participant shall have any rights in or to such investments. Without limiting the foregoing, a Participant's Account Balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his behalf by the Company or the Trust; the Participant shall remain at all times an unsecured creditor of the Company.

3.8 **FICA and Other Taxes.**

- (a) **Deferral Amounts.** For each Plan Year in which a Deferral Amount is being withheld from a Participant, the Company shall withhold from that portion of the Participant's Compensation that is not being deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes on such Deferral Amount. If necessary, the Board may reduce the Deferral Amount in order to comply with this Section 3.8(a).
- (b) **Employer Discretionary and Profit Sharing Amounts.** When a Participant becomes vested in a portion of his Employer Discretionary and Profit Sharing Accounts, the Company shall withhold from the Participant's Compensation that is not deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes. If necessary, the Board may reduce the vested portion of the Participant's Employer Discretionary and Profit Sharing Accounts in order to comply with this Section 3.8(b).
- (c) **Distributions.** The Company, or the trustee of the Trust, shall withhold from any payments made to a Participant under the Plan all federal, state and local income, employment and other taxes required to be withheld by the Company, or the trustee of the Trust, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Company and the trustee of the Trust.

ARTICLE 4

Change in Control and Unforeseeable Emergencies

- 4.1 **Payout as a Result of a Change in Control.** If the Company undergoes a Change in Control, the Account Balance of each Participant who opted at the time of their Deferral Election to receive a distribution upon a Change in Control, shall be distributed in the form of a lump sum payment or pursuant to an Annual Installment Method not to exceed 10 years.
- 4.2 **Payout/Suspensions for Unforeseeable Emergencies.** If the Participant experiences an Unforeseeable Emergency, the Participant may petition the Board to receive a partial or full payout from the Plan. The payout shall not exceed the lesser of the Participant's Account Balance, calculated as if such Participant were receiving a Termination Benefit, or the amount reasonably needed to satisfy the Unforeseeable Emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the payout, after taking into account the extent to which such Unforeseeable Emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent such liquidation would not itself cause severe financial hardship). If, subject to the sole discretion of the Board, the petition for a suspension and/or payout is approved, suspension shall take effect upon the date of approval and any payout shall be made within 60 days of the date of approval.

ARTICLE 5

Benefits

- 5.1 **Retirement Benefit.** A Participant who Retires shall receive, as a Retirement Benefit, his Account Balance.
- (a) **Payment of Retirement Benefit.** A Participant, in connection with his commencement of participation in the Plan, shall elect on an Election Form to receive the Retirement Benefit in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years. Notwithstanding the preceding sentence, if the Participant's Account Balance at the time of his Retirement is less than \$10,000, payment of his Retirement Benefit shall be made in a lump sum on or before the later of (a) December 31 of the calendar year in which occurs the Participant's separation from service or (b) the date 2-1/2 months after the Participant's separation from service. If a Participant does not make any election with respect to the payment of the Retirement Benefit, then such benefit shall be payable in a lump sum. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the last day of the Plan Year in which the Participant Retires.

- (b) **Death Prior to Completion of Retirement Benefit.** If a Participant dies after Retirement but before the Retirement Account is paid in full, the Participant's unpaid Retirement Benefit payments shall be paid to the Participant's Beneficiary in a lump sum.
- 5.2 **Pre-Retirement Survivor Benefit.** The Participant's Beneficiary shall receive a Pre-Retirement Survivor Benefit equal to the Participant's Account Balance if the Participant dies before he Retires, experiences a Termination of Employment or suffers a Disability. A Participant's Beneficiary shall receive the Pre-Retirement Survivor Benefit in a lump sum. The lump sum payment shall be made no later than 60 days after the last day of the Plan Year in which the Board is provided with proof that is satisfactory to the Board of the Participant's death.
- 5.3 **Termination Benefit.** The Participant shall receive a Termination Benefit, which shall be equal to the Participant's Account Balance, if a Participant experiences a Termination of Employment prior to his Retirement, death or Disability. If the Participant's Account Balance at the time of his Termination of Employment is less than \$10,000, payment of his Termination Benefit shall be paid in a lump sum on or before the later of (a) December 31 of the calendar year in which occurs the Participant's separation from service or (b) 2-1/2 months after the Participant's separation from service. If his Account Balance at such time is equal to or greater than \$10,000, the Termination Benefit shall be paid in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years, as elected by the Participant for the payment of the Retirement Benefit with respect to such amount. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the Participant experiences the Termination of Employment.
- 5.4 **Disability Benefit.** A Participant suffering a Disability shall, for benefit purposes under the Plan, be deemed to have experienced a Termination of Employment. A disabled Participant who is eligible to Retire will be deemed to have Retired, as soon as practicable after such Participant is determined to be suffering a Disability, in which case the Participant shall receive a Disability Benefit equal to his Account Balance provided, however, that should the Participant otherwise have been eligible to Retire, he shall be paid in accordance with Section 5.1. The Disability Benefit shall be paid in a lump sum or pursuant to an Annual Installment Method not to exceed 10 years. The lump sum payment shall be made, or installment payments shall commence within sixty (60) days of the Participant's deemed Termination of Employment.
- 5.5 **Change in Time or Form of Payment.** Notwithstanding the method of payment for the Retirement Benefit or Termination Benefit elected by a Participant on an Election Form with respect to the Compensation, or both, deferred pursuant to such Election Form, the Participant may elect to change the time or form of such payment under a subsequent election that meets the following requirements:

- (a) The subsequent election may not take effect until at least 12 months after the date on which the subsequent election is made.
 - (b) The first payment with respect to which the subsequent election is made must be deferred for a period of not less than five years from the date such payment would otherwise have been made.
 - (c) The subsequent election may not accelerate the time of any payment.
- The form of payment elected in a subsequent election must be a lump sum or an Annual Installment Method not to exceed 10 years.

5.6 **Limitation on Key Employees.** Notwithstanding any other provision of the Plan to the contrary, the payment of a Retirement Benefit, Disability Benefit, or Termination Benefit with respect to a “key employee” of the Company, within the meaning of Code Section 416(i)(1), if at that time any stock of the Company is publicly traded on an established securities market or otherwise, shall not be made within six months following his separation from service with the Company, except in the event of death.

ARTICLE 6

Beneficiary Designation

- 6.1 **Beneficiary.** Each Participant shall have the right, at any time, to designate his Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under the Plan may be the same as or different from the Beneficiary designation under any other plan of the Company in which the Participant participates.
- 6.2 **Beneficiary Designation; Change.** A Participant shall designate his Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Board. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Board’s rules and procedures, as in effect from time to time. Upon the acceptance by the Board of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Board shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Board prior to his death.
- 6.3 **Acknowledgment.** No designation or change in designation of a Beneficiary shall be effective until received and acknowledged in writing by the Board.
- 6.4 **No Beneficiary Designation.** If a Participant fails to designate a Beneficiary as provided in Sections 6.1, 6.2 and 6.3 above or, if all Beneficiaries predecease the

Participant or die prior to complete distribution of the Participant's benefits, then the Participant's Beneficiary shall be deemed to be his surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the Participant's estate.

- 6.5 **Doubt as to Beneficiary.** If the Board has any doubt as to the proper Beneficiary to receive payments pursuant to the Plan, the Board shall have the right, exercisable in its discretion, to cause the Company to withhold such payments until this matter is resolved to the Board's satisfaction.
- 6.6 **Discharge of Obligations.** The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge the Company and the Board from all further obligations under the Plan with respect to the Participant, and that Participant's participation in the Plan shall terminate upon such full payment of benefits.

ARTICLE 7

Leave of Absence

- 7.1 **Paid Leave of Absence.** If a Participant is authorized by the Company for any reason to take a paid leave of absence from the employment of the Company, the Participant shall continue to be considered employed by the Company and the Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.1.
- 7.2 **Unpaid Leave of Absence.** If a Participant is authorized by the Company for any reason to take an unpaid leave of absence from the employment of the Company, the Participant shall continue to be considered employed by the Company and the Participant shall be excused from making deferrals until the Participant returns to a paid employment status. Upon such return, deferrals shall resume for the remaining portion of the Plan Year in which the return occurs, based on the deferral election, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld.

ARTICLE 8

Termination, Amendment or Modification

- 8.1 **Termination.** Although the Company anticipates that it will continue the Plan for an indefinite period of time, there is no guarantee that the Company will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, the Company reserves the right to terminate the Plan at any time with respect to any or all of its participating Employees, by action of the Board. Upon the termination of the Plan, further deferrals under the Plan shall terminate but, unless the conditions

specified below are satisfied, all Account Balances shall remain subject to the terms of the Plan and the elections made in the applicable Election Forms. Account balances may be distributed to Participants upon a Plan termination if any of the following conditions apply:

- (a) The Plan termination is within 30 days preceding, or 12 months following, a Change in Control,
- (b) The termination is within 12 months of a corporate dissolution or has the approval of a bankruptcy court,
- (c) The voluntary termination of the Plan is for reasons other than the financial health of the Company. All nonqualified plans of the Affiliated Group must also be terminated and no new nonqualified plans established by the Affiliated Group for at least 3 years. No payments other than those due under the Plan may be made within 12 months of the termination date, and all other Plan assets will be distributed within 24 months of the termination date.

8.2 **Amendment.** The Company may, at any time, amend or modify the Plan in whole or in part by the action of the Board; provided, however, that no amendment or modification shall be effective to decrease or restrict the value of a Participant's Account Balance in existence at the time the amendment or modification is made, calculated as if the Participant had experienced a Termination of Employment as of the effective date of the amendment or modification or, if the amendment or modification occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired as of the effective date of the amendment or modification. The amendment or modification of the Plan shall not affect any Participant or Beneficiary who has become entitled to the payment of benefits under the Plan as of the date of the amendment or modification. The Company specifically reserves the right to amend the Plan to conform the provisions of the Plan to the guidance issued by the Secretary of the Treasury with respect to Code Section 409A, in accordance with such guidance.

8.3 **Effect of Payment.** The full payment of the applicable benefit under Articles 4 or 5 of the Plan shall completely discharge all obligations to a Participant and his Beneficiaries under the Plan and the Participant's participation in the Plan shall terminate.

ARTICLE 9 **Administration**

9.1 **Administrative Duties.** To the extent that ERISA applies to the Plan, the Company shall be the "named fiduciary" of the Plan and the "plan administrator" of the Plan. The Board shall be responsible for the general administration of the Plan. The Board will, subject to the terms of the Plan, have the authority to: (i)

approve for participation employees who are recommended for participation by the president and Chief Executive Officer of the Company, (ii) adopt, alter, and repeal administrative rules and practices governing the Plan, (iii) interpret the terms and provisions of the Plan, and (iv) otherwise supervise the administration of the Plan. All decisions by the Board will be made with the approval of not less than a majority of its members. The Board may delegate any of its authority to any other person or persons that it deems appropriate.

- 9.2 **Agents.** In the administration of the Plan, the Board may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel who may be counsel to the Company.
- 9.3 **Binding Effect of Decisions.** All decisions by the Board, and by any other person or persons to whom the Board has delegated authority, shall be final and conclusive and binding upon all persons having any interest in the Plan.
- 9.4 **Indemnity of Board.** The Company shall indemnify and hold harmless the members of the Board and any Employee to whom the duties of the Board may be delegated against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to the Plan, except in the case of willful misconduct by the Board, any of its members, or any such Employee.
- 9.5 **Information.** To enable the Board to perform its functions, the Company shall supply full and timely information to the Board on all matters relating to the compensation of its Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Board may reasonably require.

ARTICLE 10

Other Benefits and Agreements

- 10.1 **Coordination with Other Benefits.** The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Company. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

ARTICLE 11

Claims Procedures

- 11.1 **Procedures for Handling Claims.** In accordance with the provisions of Section 503 of ERISA, the Company shall provide a procedure for handling claims for benefits under the Plan. The procedure shall be in accordance with the regulations issued by the Secretary of Labor and provide adequate written notice within a reasonable period of time with respect to a claim denial. The procedure shall also

provide for a reasonable opportunity for a full and fair review by the Company of any claim denial.

ARTICLE 12

Trust

- 12.1 **Establishment of the Trust.** The Company may establish one or more Trusts to which the Company may transfer such assets as the Company determines in its sole discretion to assist in meeting its obligations under the Plan.
- 12.2 **Interrelationship of the Plan and the Trust.** The provisions of the Plan and the Participant's Election Forms shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Company, Participants and the creditors of the Company to the assets transferred to the Trust.
- 12.3 **Distributions From the Trust.** The Company's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Company's obligations under the Plan.

ARTICLE 13

Miscellaneous

- 13.1 **Status of Plan.** The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employee" within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. The Plan shall be administered and interpreted to the extent possible in a manner consistent with that intent.
- 13.2 **Unsecured General Creditor.** Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Company. For purposes of the payment of benefits under the Plan, any and all of the Company's assets shall be, and remain, the general, unpledged unrestricted assets of the Company. The Company's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.
- 13.3 **Company's Liability.** The Company's liability for the payment of benefits shall be defined only by the Plan and the Participant's Election Forms. The Company shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his Election Forms.
- 13.4 **Nonassignability.** Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise

encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency or be transferable to a spouse as a result of a property settlement or otherwise.

- 13.5 **Not a Contract of Employment.** The terms and conditions of the Plan shall not be deemed to constitute a contract of employment between the Company and the Participant, either expressed or implied. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, unless expressly provided in a written employment agreement. Nothing in the Plan shall be deemed to give a Participant the right to be retained in the service of the Company, or to interfere with the right of the Company to discipline or discharge the Participant at any time.
- 13.6 **Furnishing Information.** A Participant or his Beneficiary will cooperate with the Board by furnishing any and all information requested by the Board and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Board may deem necessary.
- 13.7 **Terms.** Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.
- 13.8 **Captions.** The captions of the articles, sections and paragraphs of the Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
- 13.9 **Governing Law.** Subject to ERISA, the provisions of the Plan shall be construed and interpreted according to the internal laws of the State of Virginia without regard to its conflicts of laws principles.
- 13.10 **Notice.** Any notice or filing required or permitted to be given to the Board under the Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

Ratner Companies
1577 Spring Hill Road, Suite 500
Vienna, VA 22182

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under the Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

- 13.11 **Successors**. The provisions of the Plan shall bind and inure to the benefit of the Company and its successors and assigns and the Participant and the Participant's Beneficiaries.
- 13.12 **Spouse's Interest**. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.
- 13.13 **Validity**. In case any provision of the Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but the Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.
- 13.14 **Incompetent**. If the Board determines in its discretion that a benefit under the Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Board may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Board may require proof of minority, incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.
- 13.15 **Court Order**. The Board is authorized to make any payments directed by court order in any action in which the Plan or the Board has been named as a party. In addition, if a court determines that a spouse or former spouse of a Participant has an interest in the Participant's benefits under the Plan in connection with a property settlement or otherwise, the Board, in its sole discretion, shall have the right, notwithstanding any election made by a Participant, to immediately

distribute the spouse's or former spouse's interest in the Participant's benefits under the Plan to that spouse or former spouse.

- 13.16 **Insurance**. The Company, on its own behalf or on behalf of the trustee of the Trust, and, in its sole discretion, may apply for and procure insurance on the life of the Participant, in such amounts and in such forms as the Trust may choose. The Company or the trustee of the Trust, as the case may be, shall be the sole owner and beneficiary of any such insurance. The Participant shall have no interest whatsoever in any such policy or policies, and at the request of the Company shall submit to medical examinations and supply such information and execute such documents as may be required by the insurance company or companies to whom the Company has applied for insurance.
- 13.17 **No Acceleration of Benefits**. The acceleration of the time or schedule of any payment under the Plan is not permitted, except as provided in regulations by the Secretary of the Treasury.
- 13.18 **Compliance with Code Section 409A**. The Plan is intended to provide for the deferral of compensation in accordance with Code Section 409A for compensation earned, vested, or deferred after December 31, 2004. Notwithstanding any provisions of the Plan or any Election Form to the contrary, no otherwise permissible election under the Plan shall be given effect that would result in the taxation of any amount under Code Section 409A.

IN WITNESS WHEREOF, the Company has signed this Plan document on _____, 2009.

**RATNER COMPANIES LC
(Creative Hairdressers, Inc.)**

By: _____

Title: _____

EXHIBIT B

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- (a) This Agreement made this 1st day of January 2007, by and between Ratner Companies, LC (the “Company”) and Prudential Bank & Trust, FSB, a federal savings bank with its principal office and place of business in Hartford, Connecticut (the “Trustee”);
- (b) WHEREAS, Company has adopted the Ratner Companies Executive Nonqualified Excess Plan (the “Plan”);
- (c) WHEREAS, Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals participating in such Plan;
- (d) WHEREAS, Company wishes to establish the Ratner Companies Executive Nonqualified Excess Plan Trust (hereinafter called “Trust” or “Trust Fund”) and to contribute to the Trust assets that shall be held herein, subject to the claims of Company’s creditors in the event of Company’s insolvency, as herein defined, until paid to Plan participants and their beneficiaries in such manner and at such times as specified in the Plan;
- (e) WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation and/or benefits for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974;
- (f) WHEREAS, it is the intention of Company to make contributions to the Trust to provide itself with a source of funds to assist in the meeting of its liabilities under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of Trust.

- (a) Company hereby deposits with Trustee in trust certain good and valuable consideration, which shall become the principal of the Trust to be held, administered and disposed of by Trustee as provided in this Trust Agreement.
- (b) The Trust hereby established shall be irrevocable.
- (c) The Trust is intended to be a grantor trust, of which Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (d) The principal of the Trust, and any earnings thereon shall be held separate and

apart from other funds of Company and shall be used exclusively for the uses and purposes of Plan participants and general creditors as herein set forth. Plan participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of Company's general creditors under federal and state law in the event of insolvency, as defined in Section 3(a) herein.

- (e) Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither Trustee nor any Plan participant or beneficiary shall have any right to compel such additional deposits.

Section 2. Payments to Plan Participants and Their Beneficiaries.

- (a) Company shall deliver to Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Plan participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, Trustee shall make payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. The Trustee shall make provisions for reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Company.
- (b) The entitlement of a Plan participant or his or her beneficiaries to benefits under the Plan shall be determined by Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.
- (c) Company may make payment of benefits directly to Plan participants or their beneficiaries as they become due under the terms of the Plan. Company shall notify Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. Trustee shall require Company to provide reasonable written documentation that such payments have been made directly to such participant or beneficiary. In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan, Company shall make the balance of each such payment as it falls due. Trustee shall notify Company where principal and earnings are not sufficient.

Section 3. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company is Insolvent.

- (a) Trustee shall cease payment of benefits to Plan participants and their beneficiaries if the Company is insolvent. Company shall be considered “insolvent” for purposes of this Trust Agreement if (i) Company is unable to pay its debts as they become due, (ii) Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, or (iii) Company is determined to be insolvent by a federal or state regulatory agency with jurisdiction to make that determination.

- (b) At all times during the continuance of this Trust, as provided in Section 1(d) hereof, the principal and income of the Trust shall be subject to claims of general creditors of Company under federal and state law as set forth below.
 - (1) The Board of Directors and the Chief Executive Officer of Company shall have the duty to inform Trustee in writing of Company’s insolvency. If a person claiming to be a creditor of Company alleges in writing to Trustee that Company has become insolvent, Trustee shall determine whether Company is insolvent and, pending such determination, Trustee shall discontinue payment of benefits to Plan participants or their beneficiaries.

 - (2) Unless Trustee has actual knowledge of Company’s insolvency, or has received notice from Company or a person claiming to be a creditor alleging that Company is insolvent, Trustee shall have no duty to inquire whether Company is insolvent. Trustee may in all events rely on such evidence concerning Company’s solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Company’s solvency.

 - (3) If at any time Trustee has determined that Company is insolvent, Trustee shall discontinue payments to Plan participants or their beneficiaries and shall hold the assets of the Trust for the benefit of Company’s general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Plan participants or their beneficiaries to pursue their rights as general creditors of Company with respect to benefits due under the Plan or otherwise.

 - (4) Trustee shall resume the payment of benefits to Plan participants or their beneficiaries in accordance with Section 2 of this Trust Agreement only after Trustee has determined that Company is not insolvent (or is no longer insolvent).

- (c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan participants or their beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan participants and their beneficiaries by Company in lieu of the payments provided for hereunder during any such period of discontinuance.

Section 4. Payments to Company.

Except as provided in Section 3 hereof, after the Trust has become irrevocable, Company shall have no right or power to direct Trustee to return to Company or to divert to others any of the Trust assets before all payment[s] of benefits have been made to Plan participants and their beneficiaries pursuant to the terms of the Plan.

Section 5. Investment Authority.

Trustee shall have the power to invest the assets of the Trust Fund in such investment vehicles as directed by the Company, including insurance policies or securities (including stock or rights to acquire stock) or obligations issued by Company. All rights associated with assets of the Trust shall be exercised by Trustee or the person designated by Trustee pursuant to the Company's direction, and shall in no event be exercisable by or rest with Plan participants.

Section 6. Disposition of Income.

During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

Section 7. Accounting by Trustee.

The Trustee has accepted this Trust on the condition that the Company has entered or is entering into a service agreement with an affiliate of the Trustee whereby an affiliate of the Trustee will provide recordkeeping services for all assets held pursuant to this Trust Agreement. The Trustee shall be required to forward to the Company, or require an affiliate of the Trustee to forward to the Company, the recordkeeping reports and related financial information provided by an affiliate of the Trustee, but the Trustee shall not otherwise be required to provide Trust accounts.

Section 8. Responsibility of Trustee.

- (a) Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that Trustee shall incur no

liability to any person for any action taken pursuant to a direction, request or approval given by Company or any delegate appointed by the Company which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by Company or its delegate. In the event of a dispute between Company and a party, Trustee may apply to a court of competent jurisdiction to resolve the dispute.

- (b) If Trustee undertakes or defends any litigation arising in connection with this Trust, Company agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If Company does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.
- (c) Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder, including recordkeeping, reporting, custody of assets or proxy voting. Such agents may include affiliates of the Trustee.
- (d) Trustee shall have, without exclusion, all powers conferred in Trustees in accordance with applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, Trustee shall have no power to name a beneficiary other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.
- (e) The Company shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done, except where the same is finally adjudicated to be due to the negligence or willful misconduct of the Trustee.
- (f) In addition to and in no way in limitation of the indemnification of paragraph (e) of this section, the Company hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.
- (g) The Trustee shall be responsible only for such assets as are actually received by it as Trustee hereunder. The Trustee shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any such contribution, nor shall it

have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula. The Trustee shall have no responsibility for any assets not held under this Trust, even if those assets are held as assets of the Plan under a separate trust agreement. Responsibility for any such assets shall be solely that of the trustees named in such separate trust agreement, or, in the event no such separate trust exists, the Company.

Section 9. Compensation and Expenses of Trustee.

Company shall pay all administrative and Trustees' fees and expenses in accordance with a fee schedule provided to the Company. In addition, Trustee shall be paid its reasonable expenses, including reasonable expenses of counsel and other agents employed by the Trustee, incurred in connection with administration of the Trust Fund. If the Trustee proposes an amended fee schedule and the Company fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by the Company. If not paid, the fees and expenses shall be paid from the Trust.

Section 10. Resignation and Removal of Trustee.

- (a) Trustee may resign at any time by written notice to Company, which shall be effective 30 (thirty) days after receipt of such notice unless Company and Trustee agree otherwise.
- (b) Trustee may be removed by Company on 30 (thirty) days notice or upon shorter notice accepted by Trustee.
- (c) The Trustee's service pursuant to this Agreement is conditioned upon the existence of one or more contracts between the Company and an affiliate of the Trustee providing for full Plan recordkeeping services. In the event the contract providing for such recordkeeping services is discontinued or terminated, this Trust Agreement shall be terminated as well with no further notice from either party to the other as of the date of discontinuance or termination of the contract providing for Plan recordkeeping services.
- (d) Upon resignation or removal of Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 30 days after receipt of notice of resignation, removal or transfer, unless Company extends the time limit.
- (e) If Trustee resigns or is removed, a successor shall be appointed, in accordance with Section 11 hereof, by the effective date of resignation or removal under paragraph(s) (a), (b) or (c) of this section. If no such appointment has been made, Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

Section 11. Appointment of Successor.

If Trustee resigns or is removed in accordance with Section 10(a), (b) or (c) hereof, Company may appoint any third party, such as a bank trust department or other party that may be granted corporate trustee powers under state law, as a successor to replace Trustee upon resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by Company or the successor Trustee to evidence the transfer.

Section 12. Amendment or Termination.

- (a) This Trust Agreement may be amended by a written instrument executed by Trustee and Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 1(b) hereof.
- (b) The Trust shall not terminate until the date on which Plan participants and their beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan. Upon termination of the Trust any assets remaining in the Trust shall be returned to Company.

Section 13. Miscellaneous.

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Plan participants and their beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all respects in accordance with the laws of Connecticut.
- (d) This Trust Agreement shall be binding upon the respective successors and assigns of the Employer and the Trustee.
- (e) In the event of any conflict between provisions of the Plan and those of this Trust Agreement, this Trust Agreement shall prevail.

Section 14. Effective Date.

The effective date of this Trust Agreement shall be January 1, 2007.

Witness:

Latanice McKinney

RATNER COMPANIES, LC

By *[Signature]*

Title CFO

Date 12/6/06

Witness:

PRUDENTIAL BANK & TRUST, FSB

By *[Signature]*

Title **Michael G. Williamson
Vice President and
Chief Trust Officer**

Date **Prudential Bank & Trust, F.S.B.**

12 8 - 2006

EXHIBIT C

PARTICIPANT LAST NAME	PARTICIPANT FIRST NAME	ADDRESS	CITY	STATE	ZIP	SCHEDULED BASIS FOR CLAIM	SCHEDULED AMOUNT	PROOF OF CLAIM AMOUNT*
Brown	Jennifer	5224 JULIET ST	SPRINGFIELD	VA	22151-2947	DEFERRED COMP PLAN	\$181,392.74	
Cheadle	Cheryll	16708 STRASBOURG LN	DELRAY BEACH	FL	33446-3698	DEFERRED COMP PLAN	\$37,660.82	
Gerling	Donnelle	214 HEATH CT	WINCHESTER	VA	22602-7044	DEFERRED COMP PLAN	\$236,904.89	\$258,504.00
Hansen	Bradley	3820 LAWRENCE AVE	KENSINGTON	MD	20895-1533	DEFERRED COMP PLAN	\$14,178.39	
Lemieux	Timothy	42555 UNBRIDLED SONG PL	CHANTILLY	VA	20152-6324	DEFERRED COMP PLAN	\$388,328.81	
Logue	Lisa	2474 WICKES DR	FINKSBURG	MD	21048-1947	DEFERRED COMP PLAN	\$19,242.52	
Mc Kinney	Latarice	14220 MADRIGAL DR	WOODBIDGE	VA	22193-5954	DEFERRED COMP PLAN	\$97,986.65	
Mistretta	Kelly	4813 BENDING LN NW	WASHINGTON	DC	20007-1527	DEFERRED COMP PLAN	\$20,907.14	
Osburn	Christi	11204 ALGONQUIN RD	HUNTLEY	IL	60142-7171	DEFERRED COMP PLAN	\$20,816.52	
Simon	James	18676 QUEEN ELIZABETH DRIVE	BROOKEVILLE	MD	20833	DEFERRED COMP PLAN	\$147,547.85	
Van Vlaandere	Deborah	1344 SHALLOW FORD RD	HERNDON	VA	20170-2041	DEFERRED COMP PLAN	\$266,836.25	
							\$1,431,802.58	
* Debtors reserve right to object to amount of claim and priority status								

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re:	*	Chapter 11
CREATIVE HAIRDRESSERS INC.,	*	Case Nos. 20-14583, 20-14584-TJC
<i>et al.,</i>	*	(Jointly Administered)
Debtors. ¹	*	

* * * * *

NOTICE TO PARTICIPANTS OF DEBTORS’ MOTION (A) FOR AUTHORIZATION TO TERMINATE THE EXECUTIVE NONQUALIFIED EXCESS PLAN OF RATNER COMPANIES, (B) DIRECTING RETURN OF TRUST ASSETS TO THE ESTATES, (C) REJECTING TRUST AGREEMENT AND (D) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on August 28, 2020, the Debtors filed their Motion (A) For Authorization to Terminate the Executive Nonqualified Excess Plan of Ratner Companies, (B) Directing Return of Trust Assets to the Estates, (C) Rejecting Trust Agreement and (D) Granting Related Relief First (the “Motion”). Prior to the Petition Date, RC established The Executive Nonqualified Excess Plan of Ratner Companies (the “Deferred Compensation Plan”), which is an unfunded, nonqualified plan, for certain officers and management to elect to defer a certain percentage of their compensation. The Deferred Compensation Plan has eleven (11) participants (the “Participants”). In conjunction, RC established the Ratner Companies Executive Nonqualified Excess Plan Trust (the “Trust”), a grantor trust, to serve as a vehicle into which RC contributed assets for investment to meet obligations under the Deferred Compensation Plan, but always subject to the claims of creditors. Administration of the Trust is governed by the terms of a Trust Agreement, by and between RC and Prudential Bank & Trust, FSB (the “Trustee”). As of July 31, 2020, the market value of the assets held in the Trust was \$1,541,640.21.

As more fully set forth in the Motion, the Debtors have determined that it is necessary and in the best interests of the Debtors’ bankruptcy estates to terminate the Deferred Compensation Plan, reject the Trust Agreement, and require the Trustee to return to the Debtors the proceeds from the sale of the assets held in the Trust, free and clear of any claims of the Participants. The Trust assets will not make payments to the Participants pursuant to the Deferred Compensation Plan.

If you object to the Motion or dispute the relief requested therein, within 21 days after the date of this Notice, you must file a written objection thereto with the Clerk, United States Bankruptcy Court for the District of Maryland, 6500 Cherrywood Lane, Greenbelt, MD 20770, with copies served upon: (i) undersigned counsel for the Debtors, Shapiro Sher Guinot & Sandler,

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. (“CHI”) and (ii) Ratner Companies, L.C (“RC”).

250 West Pratt Street, Suite 2000, Baltimore, Maryland 21201; (ii) Prudential Bank & Trust, FSB, as the Trustee for the Ratner Companies Executive Nonqualified Excess Plan Trust, Attention: Bradford Melius, 5001 Spring Valley Road, Suite 650-E | Dallas, TX 75244; and (iii) the Office of the United States Trustee, 6305 Ivy Lane, Suite 600, Greenbelt, MD 20770 (Attn: Jeanette Rice, Assistant U.S.). All objections must: (a) be in writing; (b) conform to the applicable provisions of the Local Bankruptcy Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Bankruptcy Court no later than the applicable objection deadline. If no timely objection is filed, the Motion may be granted by the Bankruptcy Court without hearing or further notice. The Bankruptcy Court, in its discretion, may conduct a hearing or determine the matter without a hearing regardless of whether an objection is filed.

Dated: August 28, 2020

/s/ Joel I. Sher

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re: * Chapter 11
CREATIVE HAIRDRESSERS, INC., et al.¹, * Case Nos. 20-14583, 20-14584-TJC
* (Jointly Administered)
Debtors. *

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**ORDER GRANTING DEBTORS’ MOTION (A) FOR AUTHORIZATION TO
TERMINATE THE EXECUTIVE NONQUALIFIED EXCESS PLAN OF RATNER
COMPANIES, (B) DIRECTING RETURN OF TRUST ASSETS TO THE ESTATES,
(C) REJECTING TRUST AGREEMENT AND (D) GRANTING RELATED RELIEF**

Upon consideration of Debtors’ Motion (A) For Authorization to Terminate The Executive Nonqualified Excess Plan Of Ratner Companies, (B) Directing Return of Trust Assets to the Estates, (C) Rejecting Trust Agreement and (D) Granting Related Relief (the “Motion”) filed by the above-captioned debtors and debtors in possession; no objections to the Motion to having been filed or any objections thereto having been overruled; the Court having reviewed the Motion, the Deferred Compensation Plan², and the Trust Agreement, and any exhibits

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

² Capitalized terms not defined herein shall have the meaning ascribed in the Motion.

attached to the Motion or otherwise submitted; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and any hearing thereon was sufficient under the circumstances, (d) the Deferred Compensation Plan is unfunded and maintained for the purpose of providing deferred compensation for a select group of management or highly compensated employees, (e) termination of the Deferred Compensation Plan, effective immediately, represents a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors' Chapter 11 estates, (f) the Trust assets constitute property of the Debtors' estates and (g) a sound business purpose exists for rejecting the Trust Agreement; and the Court having determined that the legal and factual bases set forth in the Motion and at any hearing thereon establish just cause for the relief granted herein; it is by the United States Bankruptcy Court for the District of Maryland ORDERED;

1. The Motion is granted.
2. The Debtors are authorized to terminate the Deferred Compensation Plan, effective immediately.
3. Upon the Debtors' instruction, Prudential Bank & Trust, FSB (the "Trustee") is directed and authorized to promptly to sell any assets held by the Trust and to transfer the resulting cash and consideration (the "Trust Proceeds") to the Debtors. From the Trust Proceeds, the Trustee may deduct any reasonable fees and expenses incurred in connection with administering the Trust and the Trust assets as provided for by the Trust Agreement.
4. Upon delivery of the Trust Proceeds to the Debtors, the Trustee and each of its parents, subsidiaries, affiliates, predecessors, successors, insurers and assigns, are forever discharged and released from all manner of actions, suits, proceedings, and causes of action, in

law or in equity, whether foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, and demands of any kind, including but not limited to, claims made by the Participants (and their beneficiaries and assignees), the Debtors, and the creditors of the Debtors, related to the Trust, Trust Agreement, Trust Funds and the transfer of the Trust Funds to the Debtors.

5. Upon receipt of the Trust Funds by the Debtors, the Trust Agreement shall be deemed rejected and all duties and obligations of the Debtors and the Trustee thereunder shall be terminated without further order of the Court. In addition, the Trustee shall be released from any and all future obligations under the Trust Agreement, including without limitation, any role or responsibility in connection with claims of the Participants.

6. The Trust Funds shall be received and retained by the Debtors free and clear of any direct liens, claims or encumbrances of the Participants.

7. Pursuant to Rules 6004(h), this order shall be immediately effective and enforceable upon entry.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.

cc:

Prudential Bank & Trust, FSB, as the Trustee for the
Ratner Companies Executive Nonqualified Excess Plan Trust
Attention: Bradford Melius
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- END OF ORDER -