

1 equal to the sum of (a) its Allowed Property Tax Claim and (b) all accrued postpetition interest
2 calculated at the rate required by applicable nonbankruptcy law.

3 2. Class 2--Note Claims

4 Class 2 consists of the Note Claims. Note Claims are impaired by the Plan; consequently,
5 the holders of Note Claims are entitled to vote on the Plan. On the Effective Date, each holder of a
6 Note Claim shall receive, in complete satisfaction of such Claim, its Pro Rata Share of 100% of the
7 Class A Membership Interests. Such membership interests shall have all of the rights and
8 obligations set forth in the New Operating Agreement.

9 3. Class 3 – Old Membership Units

10 Class 3 consists of the Old Membership Units. Old Membership Units are impaired by the
11 Plan; consequently, the holders of Old Membership Units are entitled to vote on the Plan. On the
12 Effective Date, the Old Membership Units shall be exchanged for the Class B Membership Interests.
13 Such membership interests shall have all of the rights and obligations set forth in the New Operating
14 Agreement.

15 C. Implementation of the Plan

16 The following section describes the means for implementing the Plan.

17 1. Issuance of Class A Membership Interests. On the Effective Date, the Old
18 Membership Units shall be cancelled and the Debtor shall issue, without further order of the
19 Bankruptcy Court or need for corporate approval, the Class A Membership Interests and the Class B
20 Membership Interests as provided for in the Plan.

21 2. Adoption of Operating Agreement. On and after the Effective Date and
22 without further order of the Bankruptcy Court or need for corporate approval, the Debtor shall adopt
23 the New Operating Agreement and such agreement shall supercede all other operating agreements in
24 respect of the Debtor. A copy of the New Operating Agreement is attached as Exhibit A to the Plan.
25 The New Operating Agreement shall provide that upon the sale of Property, the proceeds shall be
26 paid first to reimburse the makers of the Supplemental Capital Contributions for any such amounts
27 contributed plus an 8% annual return, second, to the makers of Additional Capital Contributions for
28 any such amounts contributed plus an 8% annual return, third, until the holders of Class A

1 Membership Interests have received the Initial Class A Amount, (a) 90% to the holders of Class A
2 Membership Interests on a pro rata basis; provided that the pro rata distributions of the Class A
3 members shall be adjusted so that the makers of Supplemental Capital Contributions receive an
4 additional 12% annual return at the expense of the Class A members that did not make an Additional
5 Capital Contribution, and (b) 10% to the Parent, and, fourth, 70% to the holders of Class A
6 Membership Interests on a pro rata basis and 30% to the Parent.

7 **3. Management.** Without limiting the generality of paragraph 2 above, on and
8 after the Effective Date, the Debtor shall be managed by the Manager and the Steering Committee
9 and such New Operating Agreement may be amended as permitted by Nevada state law without
10 further order of the Bankruptcy Court. The entry of the Confirmation Order shall ratify and approve
11 all actions taken by the Debtor prior to the date thereof.

12 The Manager is an affiliate of the Parent, an insider of the Debtor. The Manager will also be
13 an affiliate of the Developer. Nevertheless, the Debtor believes that appointing an affiliate of the
14 Parent and the Developer to manage the day-to-day operations of the Debtor is consistent with
15 public policy and is in the best interests of the Lenders because the Manager, in collaboration with
16 the Developer, has the experience and expertise to complete pre-development work in respect of the
17 Property and to market the Property in a manner that maximizes value for the Lenders. Moreover,
18 the Manager, through the Developer, is familiar with the Property and will be able to perform its
19 function as manager without a substantial learning curve. Finally, the Steering Committee (which
20 will be controlled by individuals appointed by the Lenders) will provide an important check upon the
21 activities of the Manager and the holders of Class A Membership Interests will have final authority
22 to approve "Major Decisions," including any sale of the Property.

23 The Steering Committee shall consist of four individuals appointed by the Lenders holding
24 interests in the reorganized Debtor and one individual appointed by the Parent. The Debtor believes
25 that such an arrangement is consistent with public policy and is in the best interests of the Lenders
26 because it will allow the Lenders to effectively oversee management of the Debtor without the
27 constant need to consult the entire Lender constituency. Indeed, the formation of the Steering
28 Committee is one of the primary advantages of the Plan. Absent the Steering Committee, any action

1 taken by the Lenders would require the vote of literally hundreds of Lenders. The identity and
 2 affiliations of each member of the Steering Committee will be disclosed prior to the Confirmation
 3 Hearing.

4 **4. Release of Liens.** Pursuant to section 1142(b) of the Bankruptcy Code, the
 5 entry of the Confirmation Order shall constitute a direction by the Bankruptcy Court to the
 6 Administrative Agent and the Lenders to execute the documents necessary to release the Deed of
 7 Trust and any Liens granted thereby shall be deemed satisfied as of the Effective Date without
 8 further order of the Bankruptcy Court.

9 **5. Certain Provisions Affecting Lenders.** *Under Nevada state law, "[e]xcept*
 10 *as otherwise provided by law or by agreement of the parties, and regardless of the date the*
 11 *interests were created, if a beneficial interest in a loan belongs to more than one natural person,*
 12 *the holders of 51% or more of the outstanding principal balance may act on behalf of all the*
 13 *holders of the beneficial interests of record on matters which require the action of the holders of*
 14 *the beneficial interests in the loan."* Accordingly, approval of the Plan by the Majority Lenders
 15 shall be deemed to constitute an action by such Lenders to release the Guarantor Claims and such
 16 release shall be binding upon all Lenders pursuant to the terms of Chapter 645B of the NRS as
 17 amended by Section 8 of AB 513.

18 If the Plan is accepted by a sufficient number of Lenders to comply with the requirements of
 19 the Bankruptcy Code (*i.e.*, one-half in number and two-thirds in amount of holders of Allowed Note
 20 Claims actually voting to accept the Plan), but not by enough Lenders to comply with Nevada state
 21 law, then only Lenders voting to accept the Plan shall be deemed to have released the Guarantor
 22 Claims and the Lenders who vote against the Plan shall be deemed to have retained their rights
 23 against the Guarantors under Nevada law.

24 **6. Certain Tax Provisions.** Pursuant to section 1146(a) of the Bankruptcy
 25 Code, the making or delivery of an instrument of transfer as part of a transaction authorized by the
 26 Plan, including, without limitation, any transfers of Property shall not be taxed under any law
 27 imposing a stamp tax or similar tax.
 28

1 **7. Issuance of New Membership Units.** Pursuant to section 1145(a) of the
2 Bankruptcy Code, section 5 of the Securities Act of 1933 and any state or local law requiring
3 registration for the offer or sale of a security or registration or licensing of an issuer of, underwriter
4 of, or broker or dealer in, a security shall not apply to the issuance of the Class A Membership
5 Interests and the Class B Membership Interests. In addition, pursuant to section 1125(e) of the
6 Bankruptcy Code, any Persons that solicit the acceptance or rejection of the Plan, in good faith and
7 in compliance with the Bankruptcy Code, or that participate, in good faith and in compliance with
8 the applicable provisions of this title, in the offer, issuance, sale or purchase of a security, offered or
9 sold under the Plan, shall not be liable, on account of such solicitation or participation, for violation
10 of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan
11 or the offer, issuance, sale or purchase of securities.

12 **8. Post-confirmation matters.** Except as otherwise set forth in the Plan, on and
13 after the Effective Date, without need for further action by the members or managers of the Debtor,
14 and without further order of the Bankruptcy Court, the Debtor shall be appointed estate
15 representative under section 1123 of the Bankruptcy Code and shall be solely responsible for and
16 shall have authority to: (a) make all Distributions required to be made on or after the Effective Date
17 to the holders of Allowed Claims; (b) settle, resolve and object to Claims; (c) pay all fees payable
18 under 28 U.S.C. § 1930; (d) file any post Confirmation reports required by the Bankruptcy Code or
19 the Bankruptcy Court; (e) retain, employ and utilize such Professionals as may be necessary without
20 further approval of the Bankruptcy Court; (f) do all things necessary and appropriate to fulfill the
21 duties and obligations of the Debtor under the Plan, the Confirmation Order, the Bankruptcy Code
22 and the Bankruptcy Rules; (g) move for the entry of a Final Decree and prepare and file any
23 pleadings as may be required by the Bankruptcy Court in connection with the Final Decree and the
24 closing of the Chapter 11 Case and (h) dissolve the Debtor upon the entry of a Final Decree. The
25 Debtor, in its capacity as estate representative, shall comply with all withholding and reporting
26 requirements imposed upon it by any Governmental Unit under applicable law and all Distributions
27 shall be subject to such withholding and reporting requirements, if any.

28

1 **9. Certain Distribution Provisions Concerning the Lenders.** Distributions to
 2 the Lenders on account of the Class A Membership Interests shall be made by the Administrative
 3 Agent. The Administrative Agent shall make such distributions in accordance with any prepetition
 4 agency or other agreements between the Administrative Agent and the Lenders and the
 5 Administrative Agent shall receive the Service Fee provided for in the New Operating Agreement in
 6 connection with such Distributions. In connection with such Distributions, the entry of the
 7 Confirmation Order shall constitute a direction for the Administrative Agent to deliver the Deed of
 8 Trust to the Debtor on the Effective Date for cancellation.

9 **10. Release of Claims by Releasing Lenders.** On the Effective Date, each of the
 10 Lenders voting in favor of the Plan (each a "Releasing Lender") and the Administrative Agent, on
 11 behalf of itself and each of its agents, successors, assigns and representatives of any kind
 12 (collectively, the "Releasing Lender Parties"), shall and hereby does voluntarily forever release and
 13 discharge the Debtor, any other obligors under the Note and any applicable guarantees, and each of
 14 such Person's respective agents, successors, assigns and representatives of any kind (collectively, the
 15 "Debtor Parties") from any and all claims, demands, causes of action and rights of every kind, nature
 16 or character arising or existing on or before the Effective Date arising out of or in any way related to
 17 the Note, the Guarantee or the Property; whether absolute, inchoate or contingent; whether
 18 determined or undetermined, known or unknown, proven or unproven; whether held individually,
 19 jointly, or jointly and severally; whether arising directly, indirectly, derivatively, or by way of any
 20 legal or equitable right of subrogation, contribution, indemnity, estoppel, marshalling of assets or
 21 otherwise; whether for compensation, relief, protection, punishment or any other remedy or result of
 22 any kind, character or nature; whether based upon any intentional or negligent conduct, strict
 23 liability, any tort of any kind, upon any breach of any contract or upon any other grounds or upon
 24 any other theory whatsoever; whether asserted or subject to assertion by complaint, cross-complaint,
 25 counterclaim, affirmative defense, or other pleading, by motion, by notice or otherwise; whether
 26 asserted or subject to assertion in any jurisdiction, in any court or other forum or with any federal,
 27 state, county, municipal or other governmental authority, agency or official; and whether arising at
 28 law, in equity or otherwise.

1 Lenders that do not vote, or vote against the Plan shall not be considered Releasing Lenders
2 under the Plan, however such Lenders shall be deemed to have released the Guarantor Claims if the
3 Plan is accepted by the Majority Lenders.

4 **11. Release of Claims by Debtor Parties.** On the Effective Date, each Debtor
5 Party hereby forever releases and discharges each Releasing Lender Party from any and all claims,
6 demands, causes of action and rights of every kind, nature or character arising or existing on or
7 before the Effective Date arising out of or in any way related to the Note, the Guarantee or the
8 Property; whether absolute, inchoate or contingent; whether determined or undetermined, known or
9 unknown, proven or unproven; whether held individually, jointly, or jointly and severally; whether
10 arising directly, indirectly, derivatively, or by way of any legal or equitable right of subrogation,
11 contribution, indemnity, estoppel, marshalling of assets or otherwise; whether for compensation,
12 relief, protection, punishment or any other remedy or result of any kind, character or nature; whether
13 based upon any intentional or negligent conduct, strict liability, any tort of any kind, upon any
14 breach of any contract or upon any other grounds or upon any other theory whatsoever; whether
15 asserted or subject to assertion by complaint, cross-complaint, counterclaim, affirmative defense, or
16 other pleading, by motion, by notice or otherwise; whether asserted or subject to assertion in any
17 jurisdiction, in any court or other forum or with any federal, state, county, municipal or other
18 governmental authority, agency or official; and whether arising at law, in equity or otherwise.

19 **12. Corporate Authority.** The entry of the Confirmation Order shall constitute
20 authorization for the Debtor to take or cause to be taken all corporate actions necessary or
21 appropriate to implement all provisions of, and consummate, the Plan, and the Plan Documents prior
22 to, on and after the Effective Date and all such actions taken or caused to be taken shall be deemed
23 to have been authorized and approved by the Bankruptcy Court without further approval, act or
24 action under any applicable law, order, rule, or regulation, including, without limitation, any action
25 required by holders of Old Membership Units, including, among other things, the issuance of Class
26 A Membership Interests and Class B Membership Interests, and the adoption of the New Operating
27 Agreement under the Plan.
28

1 **13. Avoidance Actions.** The Debtor does not believe that the estate has any
2 viable avoidance actions and, therefore, does not intend to pursue any such actions after the
3 Effective Date.

4 **VIII. CONDITIONS PRECEDENT**

5 **A. Condition to Confirmation**

6 It is a condition precedent to Confirmation that the Bankruptcy Court enter a Confirmation
7 Order in form and substance reasonably acceptable to the Debtor.

8 **B. Conditions to Effectiveness**

9 The following are conditions precedent to the occurrence of the Effective Date:

10 (a) the Confirmation Date shall have occurred;

11 (b) the Confirmation Order shall be a Final Order, except that the Debtor reserves
12 the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the
13 Confirmation Order under circumstances that such parties believe would moot such appeal;

14 (c) no request for revocation of the Confirmation Order under section 1144 of the
15 Bankruptcy Code shall have been made, or, if made, remain pending;

16 (d) the Debtor shall have received all approvals necessary or appropriate to
17 substantially consummate the Plan and enter into the related Plan Documents; and

18 (e) each and every Plan Document shall be fully executed and in form and
19 substance satisfactory to the Debtor.

20 **C. Waiver of Conditions**

21 Conditions to Confirmation and the occurrence of the Effective Date may be waived in
22 whole or in part by the Debtor at any time without notice, an order of the Bankruptcy Court, or any
23 further action other than proceeding to Confirmation and consummation of the Plan.

24 **D. Failure of Conditions**

25 If the Effective Date shall not occur, the Debtor and all other parties in interest shall retain
26 all their rights and remedies as if the Plan had not been proposed. Among other things, the Plan
27 shall be null and void and nothing contained in the Plan shall: (a) constitute a waiver of any Claims
28

1 against or equity interests in the Debtor or (b) prejudice in any manner the rights of the Debtor or the
2 Lenders.

3 **IX. DISPUTED CLAIMS**

4 **A. Objection Deadline**

5 Any objections to Administrative Claims and all other Claims made after the Effective Date shall be
6 filed and served on the holders of such Administrative Claims and Claims not later than thirty (30) days after
7 the Effective Date or such later date as may be approved by the Bankruptcy Court via ex parte request.

8 **B. Prosecution of Disputed Claims**

9 The Debtor, as estate representative, may object to the allowance of Claims and
10 Administrative Claims filed with the Bankruptcy Court with respect to which liability is disputed in
11 whole or in part. All objections that are filed and prosecuted as provided herein shall be litigated to
12 Final Order or compromised and settled in accordance with the Plan.

13 **C. Entitlement to Plan Distributions upon Allowance**

14 Notwithstanding any other provision of the Plan, no Distribution shall be made with respect
15 to any Claim to the extent it is a Disputed Claim, unless and until such Disputed Claim becomes an
16 Allowed Claim. When a Claim that is not an Allowed Claim as of the Effective Date becomes an
17 Allowed Claim (regardless of when), the holder of such Allowed Claim shall thereupon become
18 entitled to receive Distributions in respect of such Claim the same as though such Claim had been an
19 Allowed Claim on the Effective Date.

20 **X. EFFECT OF CONFIRMATION**

21 **A. Revesting of Assets**

22 Subject to the provisions of the Plan and the Confirmation Order, the property of the Estate,
23 including, without limitation, the Property, shall vest in the Debtor on the Effective Date. As of the
24 Effective Date, all such property, including, without limitation, the Property, shall be free and clear
25 of all Claims, Liens and equity interests, including, without limitation, any claims arising from the
26 Note, any Liens arising from the Deed of Trust and the Old Membership Units to the fullest extent
27 permitted by section 1141(c) of the Bankruptcy Code, except as otherwise provided in the Plan or
28 the Confirmation Order. From and after the Effective Date, the Debtor shall be free of any

1 restriction imposed by the Bankruptcy Court, the Bankruptcy Code and the Bankruptcy Rules, other
2 than the obligations set forth in the Plan, or the Confirmation Order.

3 **B. Discharge**

4 Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan
5 and the treatment of Claims and equity interests under the Plan are in exchange for and in complete
6 satisfaction, discharge, and release of, all Claims. Except as provided in the Plan or the
7 Confirmation Order, Confirmation discharges the Debtor and the reorganized Debtor from all
8 Claims or other debts that arose before the Effective Date, and all debts of the kind specified in
9 Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (a) a proof of claim based
10 on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) a Claim based
11 on such debt is Allowed under Section 502 of the Bankruptcy Code; or (c) the holder of a Claim
12 based on such debt has accepted the Plan.

13 **C. Judgments Void**

14 Any judgment obtained before or after the Confirmation Date in any court other than the
15 Bankruptcy Court shall be null and void as a determination of the liability of the Debtor with respect
16 to any debt treated by the Plan.

17 **XI. JURISDICTION**

18 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective
19 Date, and as more particularly set forth in the Plan, the Bankruptcy Court shall retain and have all
20 authority and jurisdiction as is allowed under the Bankruptcy Code and other applicable law to
21 enforce the provisions, purposes, and intent of the Plan.

22 **XII. AMENDMENT AND WITHDRAWAL OF PLAN**

23 **A. Amendment of the Plan**

24 At any time before the Confirmation Date, the Debtor may alter, amend, or modify the Plan
25 under section 1127(a) of the Bankruptcy Code; provided that the Debtor may not materially modify
26 the treatment of any Class that has accepted the Plan without the consent of such Class. After the
27 Confirmation Date and before substantial consummation of the Plan as defined in section 1101(2) of
28 the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute

proceedings in the Bankruptcy Court to remedy any defect or omission in, or reconcile any inconsistencies in the Plan or the Confirmation Order, and to implement such action as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially and adversely affect the treatment of holders of Claims under the Plan; provided, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

B. Revocation or Withdrawal of the Plan

The Debtor reserves the right to revoke or withdraw the Plan at any time and for any reason before the Confirmation Date. Without limiting the generality of the foregoing, the Debtor may withdraw the Plan in the event that any Class does not accept the Plan or if there is substantial opposition to the Plan from any Lender notwithstanding such acceptance. If the Plan is withdrawn or revoked, then the Plan shall be deemed null and void, and nothing contained in the Plan or any Plan Documents shall be deemed a waiver of any Claims by or against the Debtor or any other Person in any further proceedings involving the Debtor.

XIII. TAX CONSEQUENCES OF THE PLAN

THE PLAN MAY HAVE SIGNIFICANT TAX CONSEQUENCES FOR ALL CREDITORS AND EQUITY HOLDERS OF THE DEBTOR. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OR HER TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

THE DEBTOR AND THE REORGANIZED DEBTOR MAY WITHHOLD ALL AMOUNTS REQUIRED BY LAW TO BE WITHHELD FROM PAYMENTS TO HOLDERS OF ALLOWED CLAIMS.

XIV. RISK FACTORS

The restructuring of the Debtor contemplated by the Plan involves a degree of risk, and this Disclosure Statement contains forward-looking statements that involve risks and uncertainty. The Debtor's actual results could differ materially from those anticipated in such forward-looking statements as a result of a variety of factors, including those set forth in the following risk factors

1 and elsewhere in this Disclosure Statement. **Holders of Claims and equity interests should**
2 **consider carefully the following factors, in addition to the other information contained in this**
3 **Disclosure Statement, before submitting a vote to accept or reject the Plan. The below risk**
4 **factors should not be regarded as constituting the only risks involved in connection with the**
5 **Plan and its implementation.**

6 The Plan contains several material risks, including, without limitation:

- 7 • Under the Plan, the carry costs of the Property must be voluntarily borne by the
8 Lenders receiving Class A Membership Interests in the Debtor. If the Lenders are
9 unwilling to contribute sufficient capital to pay such costs, the Debtor, the Manager
10 and the Developer may not be able to effectively market and sell the Property.
- 11 • Major Decisions of the Debtor, including, without limitation, the sale of assets for
12 less than the original principal amount of the Note and incurrence of debt in an
13 amount in excess of 10% of the original principal amount of the Note can be
14 authorized by a vote of 51% of the Class A Membership Interests actually
15 participating in such vote. As a result, the Debtor may sell the Property and incur
16 debt under the circumstances set forth in this paragraph over the objection of an
17 individual Lender and there is no guarantee that an individual Lender will be able to
18 block any particular sale.
- 19 • If the Lenders holding Class A Membership Interests are unwilling to fund the carry
20 costs of the Property, the Debtor may, subject to the terms of the New Operating
21 Agreement, seek financing to pay such costs and may secure such financing with the
22 Property. Thereafter, the lender providing such financing may foreclose upon the
23 Property if the Debtor is unable to meet its debt obligations to such lender.
- 24 • There is no guarantee that liquidity in the real estate market in southern Nevada will
25 improve in the future. As a result, the Property may lose value after the Effective
26 Date, impairing the value of the Class A Membership Interests issued to the Lenders
27 under the Plan.

28

- Although the Developer believes that it can weather the downturn in the real estate market, such an outcome is not guaranteed. If the Developer fails, it will not be able to effectively market the Property and the Property could lose value.
- Under the Plan, the Parent and the Developer are prepared to pay the cost of the plan process only so long as such cost is reasonable. If there are lengthy objections to the Plan, such parties may refuse to continue to fund the Debtor. In such a case, the Plan will likely be withdrawn and the Debtor's bankruptcy case may be converted to chapter 7. In such event, the Plan will not be confirmed and the Lenders will lose the benefit of the Plan.

XV. LIQUIDATION ANALYSIS

Section 1129(a)(7) of the Bankruptcy Code requires that a holder of a Claim in an impaired Class receive or retain under the Plan not less than the holder would receive or retain on account of the Claim if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. This test is often referred to as the "best interest of creditors" test.

To apply the "best interests" test, the Bankruptcy Court must first calculate the aggregate dollar amount that would be generated from a liquidation of the Debtor's assets in a hypothetical liquidation on the Effective Date under Chapter 7, including the amount of cash and other tangible assets held by such Debtor and the value of any projected recoveries on actions against third parties and other intangible assets held by such Debtor (the "Liquidation Value"). The Liquidation Value must then be reduced by the costs of liquidation, including administrative costs of the Chapter 7 estates and compensation to the Chapter 7 trustees and other professionals retained by the trustees (the "Liquidation Costs"). After estimating the Liquidation Value and the Liquidation Costs, the Bankruptcy Court must ascertain the potential Chapter 7 recoveries by Creditors and then compare those recoveries with the distributions offered under the Plan to determine if the Plan is in the "best interests" of Creditors in each Class. Attached hereto as Exhibit B is a spreadsheet (the "Spreadsheet") setting forth the Liquidation Value, the Liquidation Costs and the expected return to unsecured creditors in a Chapter 7 case.

1 The Debtor retained Valemount Capital ("Valemount") to provide a valuation of the
2 Property. Valemount and its employees have extensive experience in the Las Vegas real estate
3 market and have estimated that the rapid liquidation of the Property in a chapter 7 would generate
4 values equal to between \$1,054,800 and \$1,758,000. Valemount has also estimated that the price of
5 the Property, if properly marketed and held over the next five to seven years, would be between
6 \$12,306,000 and \$15,822,000, a considerable increase in value. The Spreadsheet attached hereto
7 adopts these values to produce the liquidation analysis set forth therein.

8 As described with more particularity on Exhibit B, the Debtor believes that the Plan provides
9 a distribution far in excess of what would be achieved in a hypothetical Chapter 7 liquidation.

10 **XVI. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

11 The following is a brief summary of the provisions of the Bankruptcy Code relevant to
12 acceptance and confirmation of a plan of reorganization. Holders of Claims and equity interests are
13 encouraged to review the relevant provisions of the Bankruptcy Code with their own attorneys.

14 **A. Acceptance of the Plan**

15 This Disclosure Statement is provided in connection with the solicitation of acceptances of
16 the Plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of Claims
17 as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number,
18 of the Allowed Claims of that Class that have actually voted or are deemed to have voted to accept
19 or reject a plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of
20 interests as acceptance by at least two-thirds in amount of the allowed interests of that Class that
21 have actually voted or are deemed to have voted to accept or reject a plan.

22 The Debtor will not go forward with the Plan unless each Class of creditors accepts the Plan.

23 **B. Confirmation**

24 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold
25 a hearing on confirmation of a plan. Notice of the Confirmation Hearing regarding the Plan has been
26 provided to all known holders of Claims and equity interests or their respective representatives along
27 with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by
28

1 the Bankruptcy Court without further notice except for an announcement of the adjourned date made
2 at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

3 Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to
4 confirmation of a plan. Any objection to confirmation of the Plan must be in writing, must conform
5 with the Bankruptcy Rules, must set forth the name of the objecting party, the nature and amount of
6 Claims or equity interests held or asserted by that party against the Debtor's Estate or property, and
7 the specific basis for the objection. Such objection must be filed with the Bankruptcy Court,
8 together with a proof of service, and served on all parties and by the date set forth on the notice of
9 the Confirmation Hearing.

10 At the Confirmation Hearing, the Debtor will request that the Bankruptcy Court determine
11 that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If the Bankruptcy
12 Court so determines, the Bankruptcy Court will enter an order confirming the Plan. The applicable
13 requirements of Section 1129 of the Bankruptcy Code are as follows:

- 14 • The Plan must comply with the applicable provisions of the Bankruptcy Code;
- 15 • The Debtor must have complied with the applicable provisions of the Bankruptcy
16 Code;
- 17 • The Plan must have been proposed in good faith and not by any means forbidden
18 by law;
- 19 • Any payment made or promised to be made by the Debtor under the Plan for
20 professional services or for costs and expenses in, or in connection with, the
21 Chapter 11 Case, or in connection with the Plan, must have been disclosed to the
22 Bankruptcy Court, and any such payment made before Confirmation of the Plan
23 must be reasonable, or if such payment is to be fixed after Confirmation of the
24 Plan, such payment must be subject to the approval of the Bankruptcy Court as
25 reasonable;
- 26 • The Debtor must have disclosed the identity and affiliates of any individual
27 proposed to serve, after Confirmation of the Plan, as a director, officer, or voting
28 trustee of the Debtor under the Plan. Moreover, the appointment to, or
continuance in, such office of such individual, must be consistent with the
interests of holders of Claims and equity interests and with public policy, and the
Debtor must have disclosed the identity of any insider that the reorganized Debtor
will employ or retain, and the nature of any compensation for such insider;
- With respect to each Class of impaired Claims or equity interests, either each
holder of a Claim or equity interest of such Class must have accepted the Plan, or
must receive or retain under the Plan on account of such Claim or equity interest,
property of a value, as of the Effective Date of the Plan, that is not less than the

amount that such holder would receive or retain if the Debtor were liquidated on such date under Chapter 7 of the Bankruptcy Code;

- Each Class of Claims or equity interests must have either accepted the Plan or not be impaired under the Plan;
- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Allowed Administrative Claims will be paid in full on the Effective Date;
- If a Class of Creditors is impaired under the Plan, at least one impaired Class of Claim must have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class; and
- Confirmation of the Plan must not be followed by the liquidation, or the need for further financial reorganization of the Debtor or any other successor.

XVII. MISCELLANEOUS PROVISIONS

A. Filing Objections to Claims

From and after the Effective Date, the Debtor, in its capacity as estate representative, may litigate to Final Order, propose settlements of, or withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court.

B. Holding of, and Failure to Claim, Undeliverable Distributions

All Distributions other than Distributions to the Lenders are to be made to the holder of each Allowed Claim by the Debtor as estate representative at the address of such holder listed on the Schedules or proof of claim filed by such holder at the time of such Distribution. Distributions to the Lenders are to be made by tendering such Distributions to the Administrative Agent for the benefit of the Lenders at the last written address provided by the Administrative Agent to the Debtor for such purpose. If any holder's Distribution is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Debtor is notified of such holder's then current address, at which time all required Distributions shall be made to such holder. Undeliverable Distributions shall be held by the Debtor until such Distributions are claimed. All Claims for undeliverable Distributions must be made within ninety (90) days following a Distribution. After such date, all unclaimed Distributions shall be allocated pro rata to the members of the Class related to such Distribution notwithstanding any federal or state escheat laws to the contrary.

1 **C. Fractional Amounts**

2 Notwithstanding anything contained herein to the contrary, payments of fractions of dollars
3 will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise
4 be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar
5 (up or down), with half dollars being rounded down.

6 **D. Ex Parte Relief**

7 Upon *ex parte* motion by the Debtor after the Confirmation Date, the Bankruptcy Court may
8 enter such order and further orders as may be necessary or appropriate to instruct and direct the
9 Debtor and others, and to facilitate the Distributions contemplated in the Plan.

10 **E. Binding Effect**

11 The Plan shall be binding on, and shall inure to the benefit of, the Debtor and the holders of
12 all Claims and equity interests and their respective successors and assigns.

13 **F. Exculpation**

14 The Debtor, the Administrative Agent, the Parent, the Manager and the Developer and their
15 respective officers, directors, agents, managers, shareholders or attorneys shall not be liable for any
16 actions or omissions taken or not taken in connection with or arising out of the administration of the
17 Chapter 11 Case, pursuit of confirmation of the Plan, the consummation of the Plan, or the
18 administration of the Plan or the property to be distributed under the Plan, except for gross
19 negligence or willful misconduct as determined by Final Order of the Bankruptcy Court.

20 **G. Governing Law**

21 Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights,
22 duties and obligations of the Debtor, all Creditors and any other Person arising under the Plan shall
23 be governed by, and construed and enforced in accordance with, the internal laws of the State of
24 Nevada, without giving effect to Nevada's choice of law provisions.

25 **H. Modification of Payment Terms**

26 At any time after the Effective Date, the Debtor may modify the treatment of any Allowed
27 Claim or equity interest in any manner adverse to the holder of such Claim or equity interest only
28

1 with the prior written consent of the holder whose Allowed Claim or equity interest treatment is
2 being adversely affected.

3 **I. United States Trustee Fees**

4 The reorganized Debtor shall pay all quarterly fees payable to the Office of the United States
5 Trustee after Confirmation in connection with the Chapter 11 Case, consistent with applicable
6 provisions of the Bankruptcy Code, Bankruptcy Rules, and 28 U.S.C. § 1930(a)(6).

7 **J. Computation of Time**

8 In computing any period of time prescribed or allowed by the Plan, the day of the act, event,
9 or default from which the designated period of time begins to run shall not be included. The last day
10 of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, or,
11 when the act to be done is the filing of a paper in the Bankruptcy Court, a day on which weather or
12 other conditions have made the clerk's office inaccessible, in which event the period runs until the
13 end of the next day which is not one of the aforementioned days.

14 **K. Final Decree**

15 After the Estate is fully administered, the Debtor shall file an application for a Final Decree,
16 and shall serve the application on the U.S. Trustee, together with a proposed Final Decree.

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XVIII. RECOMMENDATION AND CONCLUSION

The Debtor has analyzed different scenarios and believes that the Plan will provide for a larger distribution to holders of Claims than would otherwise result if an alternative restructuring plan were proposed or if the Debtor was liquidated under Chapter 7. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially smaller distributions to the holders of Claims and equity interests. Accordingly, the Debtor recommends confirmation of the Plan and urges all holders of Allowed Claims to vote to accept the Plan and to indicate acceptance by returning their Ballots so as to be received by no later than the voting deadline.

Dated: July 27, 2009

Respectfully submitted,

A-JVP1, LLC, a Nevada limited liability company
By: LEHM, LLC, its Manager

By /s/ John A. Ritter
John A. Ritter, its Manager