

1 JEFFREY D. STERNKLAR (*pro hac vice pending*)
DUANE MORRIS LLP
2 SUITE 2400
100 HIGH STREET
3 BOSTON, MA 02110
TELEPHONE: (857) 488-4200
4 FACSIMILE: (857) 401-3034

5 BRUCE K. MEDEIROS
DAVIDSON BACKMAN MEDEIROS PLLC
6 1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
7 SPOKANE, WASHINGTON 99201
(509) 624-4600
8

9 Counsel for
Holdco Advisors L.P., Plan Proponent

10 Holdco Advisors L.P.'s Mailing Address:
11 32 Broadway, Suite 1112
New York, NY 10004

12 UNITED STATES BANKRUPTCY COURT
13 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

14 In re)
15)
16 AMERICANWEST) Case No. 10-06097-PCW-11
BANCORPORATION,)
17) Chapter 11
Debtor.) **DISCLOSURE STATEMENT**
18) **REGARDING CHAPTER 11 PLAN OF**
19) **REORGANIZATION PROPOSED BY**
20) **HOLDCO ADVISORS L.P. DATED**
21) **DECEMBER 19, 2011**
22) **Disclosure Statement Hearing**
23)
Date: January 12, 2012
Time: 10:00 a.m.
24)
25)
26)
27)
28)

1 THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO
2 SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND
3 IS NOT NECESSARILY IN ACCORDANCE WITH THE FEDERAL OR STATE
4 SECURITIES LAWS OR SIMILAR LAWS. THIS DISCLOSURE STATEMENT CONTAINS
5 SUMMARIES OF CERTAIN PROVISIONS OF THE CHAPTER 11 PLAN OF
6 REORGANIZATION PROPOSED BY HOLDCO ADVISORS L.P. (INCLUDING ALL
7 EXHIBITS THERETO), AS MODIFIED OR AMENDED FROM TIME TO TIME (THE
8 “PLAN”) AND CERTAIN OTHER DOCUMENTS. THE INFORMATION CONTAINED IN
9 THIS DISCLOSURE STATEMENT IS PROVIDED FOR THE PURPOSE OF SOLICITING
10 ACCEPTANCES OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY
11 PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE
12 PLAN. HOLDCO ADVISORS L.P. (“HOLDCO” OR THE “PLAN PROPONENT”)
13 BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE.

14 THE STATEMENTS AND INFORMATION CONTAINED IN THIS DISCLOSURE
15 STATEMENT HAVE BEEN MADE AS OF THE DATE OF THIS DISCLOSURE
16 STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND EQUITY
17 INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT
18 THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE
19 FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS
20 DISCLOSURE STATEMENT. EACH HOLDER OF A CLAIM ENTITLED TO VOTE ON
21 THE PLAN SHOULD CAREFULLY REVIEW THE PLAN, THIS DISCLOSURE
22 STATEMENT, AND THE PLAN SUPPLEMENT IN THEIR ENTIRETY BEFORE CASTING
23 A BALLOT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL,
24 BUSINESS, FINANCIAL, OR TAX ADVICE. ANY ENTITIES DESIRING ANY SUCH
25 ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

26 NO ONE IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO
27 THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE
28

1 STATEMENT. NO REPRESENTATIONS CONCERNING AMERICANWEST
2 BANCORPORATION (THE “DEBTOR”) OR THE VALUE OF ITS PROPERTY HAVE
3 BEEN AUTHORIZED BY THE PLAN PROPONENT OTHER THAN AS SET FORTH IN
4 THIS DISCLOSURE STATEMENT AND THE DOCUMENTS ATTACHED TO THIS
5 DISCLOSURE STATEMENT. ANY INFORMATION, REPRESENTATIONS, OR
6 INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE PLAN THAT ARE
7 OTHER THAN AS SET FORTH, OR INCONSISTENT WITH, THE INFORMATION
8 CONTAINED IN THIS DISCLOSURE STATEMENT, THE DOCUMENTS ATTACHED TO
9 THIS DISCLOSURE STATEMENT OR THE PLAN SHOULD NOT BE RELIED UPON BY
10 ANY HOLDER OF A CLAIM OR EQUITY INTEREST.

11 WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS,
12 AND OTHER PENDING, THREATENED, OR POTENTIAL LITIGATION OR OTHER
13 ACTIONS, THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT
14 BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR
15 WAIVER, BUT RATHER AS A STATEMENT MADE IN THE CONTEXT OF
16 SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES
17 OF EVIDENCE.

18 THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR
19 DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE
20 COMMISSION, NOR HAS THE UNITED STATES SECURITIES AND EXCHANGE
21 COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE
22 STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT OR UPON THE
23 MERITS OF THE PLAN.

24 ALTHOUGH THE PLAN PROPONENT BELIEVES THAT THE PLAN COMPLIES
25 WITH ALL APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, THE PLAN
26 PROPONENT CANNOT ASSURE SUCH COMPLIANCE OR THAT THE BANKRUPTCY
27 COURT WILL CONFIRM THE PLAN.

1 PLEASE REFER TO ARTICLE IX OF THIS DISCLOSURE STATEMENT,
2 ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING," FOR
3 A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION
4 BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE PLAN.

5 THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION
6 HEARING TO COMMENCE ON JANUARY 12, 2012, AT 10:00 A.M. PREVAILING
7 PACIFIC TIME BEFORE THE HONORABLE PATRICIA C. WILLIAMS, UNITED
8 STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON, LOCATED AT 904 W.
10 RIVERSIDE AVENUE, STE. 304, SPOKANE, WASHINGTON. THE CONFIRMATION
11 HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY
12 COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT OF
13 THE ADJOURNED DATE MADE AT THE CONFIRMATION HEARING OR BY
14 NOTICE OF ANY ADJOURNMENT OF THE CONFIRMATION HEARING FILED BY
15 THE PLAN PROPONENT.

16 TO BE COUNTED, THE BALLOTS UPON WHICH HOLDERS OF IMPAIRED
17 CLAIMS ENTITLED TO VOTE SHALL CAST THEIR VOTE TO ACCEPT OR
18 REJECT THE PLAN INDICATING ACCEPTANCE OR REJECTION OF THE PLAN
19 MUST BE RECEIVED IN ACCORDANCE WITH THE INSTRUCTIONS ON SUCH
20 BALLOT. SUCH BALLOTS SHOULD BE CAST IN ACCORDANCE WITH THE
21 SOLICITATION PROCEDURES DESCRIBED IN FURTHER DETAIL IN ARTICLE XI
22 OF THIS DISCLOSURE STATEMENT AND DISCLOSURE STATEMENT ORDER
23 AND NOTICE. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE SHALL
24 BE COUNTED IN THE SOLE DISCRETION OF THE PLAN PROPONENT.

25 OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED AND
26 SERVED ON OR BEFORE , 2012 AT 11:59 P.M. PREVAILING PACIFIC
27 STANDARD TIME, IN ACCORDANCE WITH THE SOLICITATION PROCEDURES
28

1 **AND DISCLOSURE STATEMENT ORDER, WHICH ARE DESCRIBED IN FURTHER**
2 **DETAIL IN ARTICLE XI OF THIS DISCLOSURE STATEMENT. UNLESS**
3 **OBJECTIONS TO CONFIRMATION ARE TIMELY SERVED AND FILED IN**
4 **COMPLIANCE WITH THE SOLICITATION PROCEDURES AND DISCLOSURE**
5 **STATEMENT ORDER, THEY MAY NOT BE CONSIDERED BY THE BANKRUPTCY**
6 **COURT.**

7 THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING
8 STATEMENTS WITHIN THE MEANING OF SECTION 27A AND SECTION 21E OF THE
9 SECURITIES ACT, AS AMENDED. SUCH STATEMENTS MAY CONTAIN WORDS
10 SUCH AS "MAY," "WILL," "MIGHT," "EXPECT," "BELIEVE," "ANTICIPATE,"
11 "COULD," "WOULD," "ESTIMATE," "CONTINUE," "PURSUE," OR THE NEGATIVE
12 THEREOF OR COMPARABLE TERMINOLOGY, AND MAY INCLUDE, WITHOUT
13 LIMITATION, INFORMATION REGARDING THE PLAN PROPONENT'S
14 EXPECTATIONS REGARDING FUTURE EVENTS. FORWARD-LOOKING
15 STATEMENTS ARE INHERENTLY UNCERTAIN, AND ACTUAL RESULTS MAY
16 DIFFER FROM THOSE EXPRESSED OR IMPLIED IN THIS DISCLOSURE STATEMENT
17 AND THE FORWARD-LOOKING STATEMENTS CONTAINED HEREIN. IN PREPARING
18 THIS DISCLOSURE STATEMENT, THE PLAN PROPONENT RELIED ON FINANCIAL
19 DATA DERIVED FROM THE DEBTOR'S DISCLOSURE STATEMENT AND OTHER
20 PRIOR FILINGS WITH THE BANKRUPTCY COURT OR OTHERWISE MADE
21 AVAILABLE TO IT AT THE TIME OF SUCH PREPARATION AND ON VARIOUS
22 ASSUMPTIONS. THE PLAN PROPONENT RELIES UPON THE FINANCIAL
23 INFORMATION PROVIDED BY THE DEBTOR IN ITS DISCLOSURE STATEMENT, AS
24 WELL AS THE DEBTOR'S REPRESENTATION(S) THAT SUCH FINANCIAL
25 INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTOR
26 AS OF THE DATE OF THE FILING OF THE DEBTOR'S DISCLOSURE STATEMENT,
27 AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT
28

1 REASONABLE BUSINESS JUDGMENTS. IT SHOULD BE NOTED, HOWEVER, THAT
2 NO REPRESENTATIONS OR WARRANTIES ARE MADE BY THE PLAN PROPONENT
3 AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN
4 OR THE PLAN PROPONENT'S ASSUMPTIONS REGARDING DISTRIBUTIONS UNDER
5 THE PLAN. THE PLAN PROPONENT EXPRESSLY CAUTIONS READERS NOT TO
6 PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS
7 CONTAINED HEREIN.

8 AMONG THE FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER
9 MATERIALLY FROM CURRENT ESTIMATES OF FUTURE PERFORMANCE IS THE
10 PLAN PROPONENT'S ABILITY TO PROSECUTE, CONFIRM, AND CONSUMMATE A
11 PLAN WITH RESPECT TO THIS CASE.

12 THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS AS OF
13 THE FILING DATE OF THIS DISCLOSURE STATEMENT AND THE PLAN PROPONENT
14 IS UNDER NO OBLIGATION, AND EXPRESSLY DISCLAIM ANY OBLIGATION, TO
15 PUBLICLY UPDATE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A
16 RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:¹

1. **“Section 382”** means the section of the Internal Revenue Code that imposes an annual limitation on a company’s use of its taxable losses in the year following a change in ownership of the company.
2. **“382(1)(5) Exception”** means an exception to the Section 182 Limitation that generally applies when so-called “qualified creditors” of a debtor in chapter 11 receive, in respect of their Claims, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan.
3. **“382(1)(6) Exception”** means an exception to the Section 182 Limitation where the 382(1)(5) Exception is not applicable, either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(1)(5) Exception.
4. **“Section 383”** means the section of the Internal Revenue Code that imposes an annual limitation on the use of a corporation’s excess tax credits following an ownership change. Section 383 provides that the use of excess tax credits in post-change years is limited to the “portion of the tax liability which is attributable to so much of the taxable income as does not exceed the Section 382 limitation for such post-change year to the extent available after the application of Section 382 and subsections (b) and (c) [of Section 383].”
5. **“Accrued Professional Compensation”** means, at any given moment, all accrued and/or unpaid fees and expenses including, without limitation, fees or expenses Allowed or awarded by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code or otherwise rendered prior to the Effective Date, or thereafter in connection with, and only with (x) applications Filed pursuant to section 330 and 331 of the Bankruptcy Code and (y) motions seeking the enforcement of the provisions of the Plan or Confirmation Order, by all Professionals in the Case that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not previously been paid regardless of whether a fee application has been filed for any such amount. To the extent that the Bankruptcy Court or any higher court denies by a Final Order any amount of a Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.

26
27
28

¹ All capitalized terms not defined herein have the meaning ascribed to them in the Plan. All terms used and not otherwise defined herein that are defined in the Bankruptcy Code shall have the meanings ascribed to them in the Bankruptcy Code.

- 1 6. **“AMT”** means alternative minimum tax.
- 2 7. **“AMTI”** means a corporation’s alternative minimum taxable income.
- 3 8. **“Ballot”** means a ballot sent to Holders of Claims to be counted as a vote to accept or
4 reject the Plan.
- 5 9. **“Bank”** means AmericanWest Bank, a Washington state-chartered bank insured by the
6 FDIC.
- 7 10. **“Capital Loss Carryforwards”** means the application of the prior net operating losses to
8 future years’ profits in order to reduce overall tax liability of a company. In general, net
9 operating losses may be carried forward for the five taxable years following the loss year.
10 The amount of net capital loss carryforwards from any taxable year prior to the first year
11 after a company ownership change is limited under the principles of Section 382 of the
12 Internal Revenue Code.
- 13 11. **“Common Stock”** means common stock of the Debtor.
- 14 12. **“Company”** means the Debtor and the Bank collectively.
- 15 13. **“Disclosure Statement Order”** means an order Entered by the Bankruptcy Court
16 approving this Disclosure Statement.
- 17 14. **“FDIC”** means the Federal Deposit Insurance Corporation.
- 18 15. **“IRS”** means the Internal Revenue Service.
- 19 16. **“Loss Corporation”** means any corporation with a net operating loss carryover or a net
20 operating loss for the taxable year in which an ownership change occurs.
- 21 17. **“NOLs”** means net operating losses.
- 22 18. **“NYSE”** means the New York Stock Exchange.
- 23 19. **“Pre-Change Losses”** means the amount of NOLs and built-in losses of a corporation
24 prior to an “ownership change” within the meaning of Section 382 of the Internal
25 Revenue Code.
- 26 20. **“Professionals”** means those Persons (a) employed in the Case under sections 327 or
27 1103 of the Code, and (b) entitled, under sections 330, 503(b), 506(b), or 507(a)(1) of the
28 Code, to seek compensation for legal, accounting or other professional services and the
costs and expenses related to such services from the Debtor or the Estate.

- 1 21. **“Regulators”** means collectively the FDIC, the Washington Department of Financial
2 Institutions the Board of Governors of the Federal Reserve System, and the Federal
3 Reserve Bank of San Francisco.
- 4 22. **“Representatives”** means, with regard to an entity or the Committee, officers, directors,
5 members, employees, advisors, attorneys, professionals, accountants, investment bankers,
6 financial advisors, consultants, agents and other representatives (including their
7 respective officers, directors, employees, members and professionals).
- 8 23. **“Resolution Event”** means, with respect to a Disputed Claim, any one of the following
9 events: (a) an order by the Bankruptcy Court is entered allowing such Disputed Claim
10 pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing; (b) an
11 order by the Bankruptcy Court is entered temporarily allowing such Disputed Claim for
12 voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
13 (c) a stipulation or other agreement is executed between the Holder of the Disputed Claim
14 and Holdco resolving the objection to the Disputed Claim and allowing the Disputed
15 Claim in an agreed upon amount; or (d) the pending objection to the Disputed Claim
16 voluntarily is withdrawn by Holdco.
- 17 24. **“Sale”** means the sale of the Debtor’s assets to SKBHC Holdings LLC and its wholly-
18 owned subsidiary SKBHC Hawks Nest Acquisition Corp., approved by the Bankruptcy
19 Court, which closed on December 20, 2010.
- 20 25. **“Section 382 Limitation”** means the limitation of Pre-Change Losses determined under
21 Section 382 of the Internal Revenue Code in the case of an “ownership change.”
- 22 26. **“Solicitation Package”** means those certain documents, as described in Article X.C
23 herein, to be sent to Holders of Claims in Voting Classes.
- 24 27. **“Solicitation Procedures”** means the solicitation and voting procedures, attached as
25 Exhibit 1 to and/or included in the Disclosure Statement Order.
- 26 28. **“Tax Code”** means the Internal Revenue Code.
- 27 29. **“Treasury Regulations”** means the United States Department of Treasury regulations
28 promulgated under the Internal Revenue Code.
30. **“Voting Classes”** means Classes of Claims, the Holders of which are entitled to vote to
accept or reject the Plan.
31. **“Voting Deadline”** means that date and time set forth in the Disclosure Statement Order
by which the Plan Proponent must receive Ballots from Holders of Allowed Claims in
Voting Classes.
32. **“Voting Record Date”** means that date set forth in the Disclosure Statement Order for
determining which Holders of Claims and Equity Interests are entitled to vote to accept or
reject the Plan.

1 **II. Summary**

2 The following is qualified in its entirety by the more detailed information contained in the
3 Plan and elsewhere in this Disclosure Statement. This summary does not purport to be complete,
4 and Creditors are urged to read and review the Plan in full.

5 The Plan Proponent now submits this Disclosure Statement, pursuant to section 1125 of
6 the Bankruptcy Code, to holders of Claims against and Equity Interests in the Debtor in
7 connection with the solicitation of votes to accept or reject the Plan and the Confirmation
8 Hearing, which is scheduled for January 12, 2012 at 10:00 a.m., prevailing Pacific Standard time.
9 A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference.

10 **1. Rules of Interpretation, Computation of Time, and References to Monetary**
11 **Figures**

12 **a. Rules of Interpretation**

13 For purposes of this Disclosure Statement: (a) whenever from the context it is
14 appropriate, each term, whether stated in the singular or the plural, shall include both the singular
15 and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the
16 masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference in this
17 Disclosure Statement to a contract, instrument, release, indenture, or other agreement or
18 document being in a particular form or on particular terms and conditions means that such
19 document shall be substantially in such form or substantially on such terms and conditions;
20 (c) unless otherwise specified, any reference in this Disclosure Statement to an existing
21 document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or
22 exhibit, as it may have been or may be amended, modified, or supplemented; (d) any reference to
23 an entity as a holder of a Claim or Equity Interest includes that entity's successors and assigns;
24 (e) unless otherwise specified, all references in this Disclosure Statement to Articles are
25 references to Articles of this Disclosure Statement; (f) unless otherwise specified, all references
26 in this Disclosure Statement to exhibits are references to exhibits in the Plan Supplement; (g) the
27 words "herein," "hereof," and "hereto" refer to this Disclosure Statement in its entirety rather
28 than to a particular portion of this Disclosure Statement; (h) subject to the provisions of any
contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document
entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan
shall be governed by, and construed and enforced in accordance with applicable federal law,
including the Bankruptcy Code and Bankruptcy Rules; (i) captions and headings to Articles are
inserted for convenience of reference only and are not intended to be a part of or to affect the
interpretation of this Disclosure Statement; (j) unless otherwise set forth in this Disclosure
Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply;
(k) any term used in capitalized form in this Disclosure Statement that is not otherwise defined
herein in the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the
meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;
(l) all references to docket numbers of documents Filed in the Case are references to the docket
numbers under the Bankruptcy Court's CM/ECF system; and (m) all references to statutes,
regulations, orders, rules of courts, and the like shall mean as amended from time to time, as
applicable to the Case, unless otherwise stated.

1 In computing any period of time prescribed or allowed, the provisions of Bankruptcy
2 Rule 9006(a) shall apply. If the date on which a transaction may occur pursuant to this
3 Disclosure Statement shall occur on a day that is not a Business Day, then such transaction shall
4 instead occur on the next succeeding Business Day.

4 **b. Reference to Monetary Figures**

5 All references in this Disclosure Statement to monetary figures shall refer to currency of
6 the United States of America, unless otherwise expressly provided.

7 **2. Overview of Chapter 11**

8 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In
9 addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for
10 similarly situated holders of claims and equity interests, subject to the priority of distributions
11 prescribed by the Bankruptcy Code.

12 The commencement of a Case creates an estate that comprises all of the legal and
13 equitable interests of the debtor as of the commencement of the chapter 11 case. The
14 Bankruptcy Code provides that a debtor may continue to operate its business and remain in
15 possession of its property as a debtor in possession.

16 As a result of various factors described more fully herein, the Plan Proponent has
17 determined that the Plan is in the best interests of the Debtor's creditors.

18 Prior to soliciting acceptances of a proposed chapter 11 plan, section 1125 of the
19 Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a
20 kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed
21 judgment regarding acceptance of the chapter 11 plan. This Disclosure Statement is being
22 submitted in accordance with the requirements of section 1125 of the Bankruptcy Code.

23 **III. Background To The Case**

24 The following is a general summary of the Debtor's business and history prior to filing
25 this Case. The background information regarding the Debtor's business and history was
26 obtained by the Plan Proponent, in large part, from the Debtor's Disclosure Statement, filed on
27 May 13, 2011 [Docket No. 215]. The Plan Proponent relies on the accuracy and veracity of the
28 statements contained in the Debtor's Disclosure Statement and other pleadings filed by the
29 Debtor with this Court, and makes no independent representations or warranties regarding the
30 accuracy and/or veracity of the information provided by the Debtor.

31 **A. The Debtor's Business**

32 **1. Summary of the Debtor's Business**

33 The Debtor was founded in 1983, and is a Washington corporation registered as a bank
34 holding company under the Bank Holding Company Act of 1956, with headquarters located in
35 Spokane, Washington. The Debtor asserts that it is the direct or indirect corporate parent of the

1 following two non-debtor subsidiaries: the Bank, which is wholly-owned by the Debtor, and
2 AmericanWest Holdings, Inc., a Washington corporation that is wholly-owned by the Bank.
3 According to the Debtor, the Bank operates in Eastern and Central Washington, Northern Idaho,
and in Utah where it conducts business under the trade name of “Far West Bank.”

4 Prior to the Sale described below, the Debtor asserts that it functioned as a holding company
5 for the Bank, which was its primary asset. The Debtor advises that the Bank gathers deposits and
6 provides loans to approximately 77,000 customers across the Inland Northwest through branches
7 located primarily in Spokane, Yakima, Walla Walla, and the Tri-Cities area. According to the
8 Debtor, the Bank serves customers in a total of 58 branches, including a branch in Salt Lake
City, Utah, and branches in suburban and rural communities in Eastern and Central Washington,
Northern Idaho, and Utah. As of the Petition Date, pursuant to the Debtor, the Company
collectively had approximately 540 employees across its 58 branches and two support facilities.

9 **a. Capital Structure and the TOPrS**

10 As detailed in the Debtor’s Disclosure Statement, the Debtor claims it held 100% of the
11 equity ownership in the Bank totaling 429,000 issued and outstanding shares of common stock of
12 the Bank, no par value. According to the Debtor, no other shares of capital stock of the Bank are
issued or outstanding, and all of the shares of the Bank were owned by the Debtor.

13 According to the Debtor, as of September 30, 2010, the Debtor had outstanding
14 unsecured indebtedness totaling approximately \$47.2 million,² consisting of: (a) four outstanding
15 issuances of junior subordinated debentures issued to the four TOPrS Trusts, that in turn issued
16 their trust originated preferred securities preferred securities to investors; and (b) approximately
17 \$50,000 in trade debt. The Debtor asserts that the principal amount of the its junior subordinated
18 debt was approximately \$41.2 million, which backs exactly \$40 million of TruPS issued to
19 investors.³ The Debtor notes that the accrued interest on the junior subordinated debentures
totaled \$6.0 million. Wilmington Trust Company acts as trustee of two of the Trusts and U.S.
Bank acts as trustee of the other two Trusts (the “Indenture Trustees”). Each of the four Trust
agreements provide that the junior subordinated debentures shall be junior to certain obligations
of the Debtor, such as indebtedness for all borrowed money (“Senior Indebtedness”).⁴ The

20 ² The Debtor represents that his total includes the \$6.0 million of accrued deferred interest relating to
21 the issuance of TOPrS. According to the Debtor, however, such interest has not been capitalized and
is not included in the principal balance of \$41.2 million described herein.

22 ³ The excess amount of the debentures over the amount of the TOPrS represents the common equity of
23 the Trusts, which is held by the Debtor. The common equity interest has no economic value.

24 ⁴ Each Trust agreement defines “Senior Indebtedness” to mean, with respect to the Debtor, (i) the
25 principal, premium, if any, and interest in respect of (A) indebtedness of the Debtor for money
26 borrowed and (B) indebtedness evidenced by securities, debentures, notes, bonds or other similar
27 instruments issued by the Debtor; securities, debentures, notes, bonds or other similar instruments
28 issued by the Debtor; (ii) all capital lease obligations of the Debtor; (iii) all obligations of the Debtor
issued or assumed as the deferred purchase price of property, all conditional sale obligations assumed
as the deferred purchase price of property, all conditional sale obligations of the Debtor and all
obligations of the Debtor under any title retention agreement; (iv) all obligations of the Debtor for the

1 junior subordinated debentures are not subordinated to the Debtor's trade debt. The Debtor
2 asserts that it has no obligations that could be characterized as Senior Indebtedness. The Debtor
3 claims that each of the four TruPS issuances corresponding to the Debtor's four issuances of
debentures was sold as a block into a separate limited liability company (each a "PreTSL").⁵

4 According to the Debtor, Each PreTSL issued several tranches, or priorities, of notes
5 (e.g., Class A 1 Senior Notes, Class A 2 Senior Notes, Mezzanine Notes, and Subordinated
6 Notes) to numerous institutional and accredited and individual investors through offerings
7 exempt from securities registration. According to the Debtor, PreTSL's notes are collateralized
8 with the TruPS held by that PreTSL, along with TruPS and debt obligations of other entities. The
Debtor represents that the PreTSLs are unmanaged, pooled collateralized debt obligations (or
"CDOs"), with Bank of New York Mellon ("BNYM") acting as CDO trustee under the indenture
applicable to each PreTSL.

9 IV. The Case

10 The following is a general summary of the Case, including the events leading up to the
11 chapter 11 filing, certain administrative matters addressed during the Case, and the Debtor's
12 post-petition restructuring attempts. Some of the information regarding the Debtor's bankruptcy
13 case was obtained by the Plan Proponent from the Debtor's Disclosure Statement. The Plan
14 Proponent relies on the accuracy and veracity of the statements contained in the Debtor's
Disclosure Statement and other pleadings filed by the Debtor with this Court, and makes no
independent representations or warranties regarding the accuracy and/or veracity of the
information provided by the Debtor.

15 A. The Debtor's Bankruptcy Case and Related Postpetition Events

16 1. Initiation of the Case

17 On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of
18 the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession
19 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been
appointed in the Case.

20
21
22 reimbursement of any letter of credit, any banker's acceptance, any security purchase facility, any
23 repurchase agreement or similar arrangement, any interest rate swap, any other hedging arrangement,
24 any obligation under options or any similar credit or other transaction; (v) all obligations of the type
25 referred to in clauses (i) through (iv) above of other Persons for the payment of which the Debtor is
responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the type referred to
in clauses (i) through (v) above of other Persons secured by any lien on any property or asset of the
Debtor (whether or not such obligation is assumed by the Debtor), whether incurred on or prior to the
date of this Indenture or thereafter incurred.

26 ⁵ "PreTSLSM is a registered service mark, derived from "Preferred Term Securities," another term for
27 trust preferred securities.

1 **2. Factors Leading to the Sale**

2 According to the Debtor, the current financial and credit crisis — resulting in
3 approximately 325 nationwide bank failures since 2008 — significantly hampered the Bank’s
4 business and ability to meet certain state and federal regulatory requirements for capital,
5 profitability, and credit quality. The Debtor asserts that, beginning approximately three years
6 ago, effects from the housing crisis, including tumbling home prices, soaring loan defaults, and
7 high unemployment rates, began to take their toll on the Bank’s, and ultimately the Company’s,
8 financial condition.

9 **3. The Company’s Efforts to Recapitalize**

10 The Debtor asserts that, beginning in 2007, the Company’s management initiated efforts
11 to deal with asset quality problems in its loan portfolio, reduce expenses, build capital reserves,
12 and take other actions to return the Bank to profitability and reduce its risk profile. In early
13 2008, however, the Debtor asserts that the Company’s management and Board of Directors
14 determined that additional capital would be required to address the Bank’s financial problems.

15 From 2008 through the Petition Date, the Debtor asserts that the Company undertook
16 significant efforts to raise additional capital, including efforts to sell Bank assets, or to sell the
17 Debtor or the Bank to another financial institution.

18 **4. State and Federal Regulatory Actions**

19 According to the Debtor, as a result of the Bank’s announcement that it had ceased to be
20 “well capitalized” as of June 30, 2008, the Washington State Department of Financial
21 Institutions (“DFI”) conducted an off-site interim examination of the Bank’s financial health.
22 The Debtor asserts that this investigation led to the first of a series of increasingly serious
23 enforcement actions against the Bank or the Debtor by the FDIC, DFI, and the Federal Reserve
24 Bank of San Francisco (“FRB”), which regulated the Debtor as a bank holding company. The
25 Debtor notes that first, the DFI issued a Supervisory Directive against the Bank effective August
26 8, 2008 (the “DFI Directive”). According to the Debtor, the DFI Directive required the Bank to
27 provide periodic liquidity and credit quality reports, update the DFI regarding the status of
28 liquidity planning and previously announced capital raising initiatives, notify the DFI about
29 significant changes in management and financial condition, retain a permanent Chief Executive
30 Officer, and seek prior written consent of the DFI before paying dividends.⁶

31 Subsequently, according to the Debtor, on February 2, 2009, the FDIC issued a Prompt
32 Corrective Action Notification (the “PCA Notification”) to the Bank. As noted by the Debtor,
33 the PCA Notification was issued under the Prompt Correction Action provisions of the FDIA and
34 FDIC regulations. The Debtor states that the FDIA and FDIC regulations identify five capital
35 categories for banking institutions — well-capitalized, adequately capitalized, undercapitalized,
36 significantly undercapitalized, and critically undercapitalized. The Debtor asserts that the PCA

37 ⁶ On September 17, 2009, the DFI notified the Bank that the DFI Directive was being rescinded, as it
38 had been effectively superseded by the PCA Directive discussed below.

1 Notification formally advised the Bank that it was significantly undercapitalized, which is the
2 next-to-lowest capital category. As such, according to the Debtor, the Bank was required to
3 submit a capital restoration plan (the “Capital Restoration Plan”), and it became subject to a wide
4 range of restrictions relating to its senior management team, management compensation,
5 dividends, loan loss reserves, reductions in troubled assets, liquidity, asset growth, and other
6 aspects of its business. The Debtor states that in response to the PCA Notification, the Bank
7 submitted its Capital Restoration Plan to the FDIC on March 20, 2009, which the Bank
8 subsequently amended on July 2, 2009 – and which Capital Restoration Plan was rejected.

9 Further, as stated by the Debtor, on May 8, 2009, the Bank entered into a Stipulation and
10 Consent to the Issuance of an Order to Cease and Desist (the “Stipulation”) with the FDIC and
11 the DFI. Pursuant to the Stipulation, the FDIC and the DFI issued an Order to Cease and Desist
12 (the “Cease and Desist Order”) against the Bank on May 11, 2009. The Debtor asserts that the
13 Cease and Desist Order required, among other things, that the Bank take actions necessary to
14 return to the “well-capitalized” category by September 9, 2009.

15 Subsequently, the Debtor asserts that, on September 15, 2009, it entered into a Written
16 Agreement (the “Written Agreement”) with the FRB, imposing on the Debtor restrictions and
17 requirements substantially similar to those contained in the PCA Notification and the Cease and
18 Desist Order, including the obligation to submit a capital restoration plan. The Debtor further
19 asserts that on February 26, 2010, the Bank received a Prompt Corrective Action Directive (the
20 “PCA Directive”) from the FDIC. According to the Debtor, the PCA Directive directed the
21 Bank to recapitalize within 30 days of receipt, and reiterated various requirements previously
22 imposed on the Bank by the Cease and Desist Order.

23 According to the Debtor, the Cease and Desist Order and the PCA Directive required the
24 Bank, among other things, to recapitalize or accept an offer to be acquired by or combine with
25 another financial institution by March 28, 2010.

26 The Debtor asserts that, although the Company’s management had undertaken all actions
27 within its power to comply with all aspects of the PCA Notification, the Cease and Desist Order,
28 the Written Agreement, and the PCA Directive (collectively, the “Regulatory Orders”), the
29 Company was unable to comply with their most important terms — the recapitalization or sale of
30 the Bank. Full satisfaction of the Regulatory Orders depended on raising a significant amount of
31 additional capital.

32 According to the Debtor, the Bank continued to remain in the significantly
33 undercapitalized capital category. As noted by the Debtor, a critically undercapitalized
34 institution may be seized at any time by the DFI and placed in an FDIC receivership.

35 **5. Work With Interested Parties**

36 According to the Debtor, prior to the Petition Date, the Company considered a number of
37 investment strategies to achieve a successful capital raise. The Company and its investment
38 banking firm, Sandler O’Neill & Partners, L.P. (“Sandler”) contacted approximately 100 parties,
39 executing confidentiality agreements with 67 of such parties..

1 Further, in February 2010, in addition to the Company's engagement of Sandler, the
2 Company retained Cappello Capital Corp. ("Cappello"), as a second financial advisor.

3 **6. The Purchaser**

4 According to the Debtor, the Company, in consultation with Sandler, negotiated with
5 SKBHC Holdings LLC and its wholly-owned subsidiary SKBHC Hawks Nest Acquisition Corp.
6 (collectively, the "Purchaser") regarding the terms and conditions of a potential sale of the
7 Debtor's assets. According to the Debtor, the Debtor and the Purchaser agreed, in principle, to
8 the key terms of the sale of the Shares to the Purchaser (the "Sale"), and executed an asset
9 purchase agreement with the Purchaser (the "APA").

8 **7. The DIP Facility**

9 Prior to the Petition Date, according to the Debtor, the Debtor negotiated a debtor-in-
10 possession loan agreement (the "DIP Facility") with the Purchaser to obtain the working capital
11 necessary to fund the Case.

12 According to the Debtor, it had an immediate need to access additional operating capital
13 in order to fund the day-to-day operating expenses of its business, including payments to
14 remaining employees and professionals sought to be retained in this Case. As set forth in the
15 DIP Credit Agreement, and subject to the terms and conditions thereof, Purchaser agreed to
16 provide the DIP Facility with a total commitment of up to \$2 million. The Debtor asserts that,
17 among other features, the DIP Facility included certain safeguards for Purchaser's protection as a
18 debtor-in-possession lender, since as a lender it bore the full risk of any decline in the value of
19 the Shares and the Other Purchased Assets that would serve as its collateral. The DIP Facility
20 was secured by a senior secured, superpriority lien on the Debtor's assets and the proceeds
21 thereof.

17 **8. Post-Bankruptcy Developments**

18 **a) The Debtor Continued as Debtor-In-Possession**

19 Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor has continued
20 in the management and possession of its property as a debtor-in-possession since the Petition
21 Date. No trustee or examiner has been appointed in this case.

22 **b) Hiring of Professionals**

23 Shortly after the filing of the petition, Debtor sought and obtained Bankruptcy Court
24 approval of Foster Pepper PLLC ("Foster Pepper") as its counsel. The Bankruptcy Court also
25 authorized the Debtor to employ the following professionals:

- 26 a) Morrison & Foerster LLP as Special Counsel; and
- 27 b) Sandler O'Neill & Partners LP as Financial Advisors
- 28 c) BDO Seidman LLP as Accountants

1 hearing, along with all related deadlines, based upon the Debtor's concern that certain trustees
2 for the Debtor's TruPS had not received ballots and/or proper notice of the confirmation hearing
during the solicitation process. [Docket No. 227].

3 On November 3, 2011, the Court conducted a conference regarding the status of the
4 Debtor's solicitation and progress towards confirmation of the Debtor's Liquidating Plan.
5 Holdco participated in the November 3 conference, and advised the Court of its intent to submit
6 a competing plan. During the November 3 conference, the Court authorized Holdco to submit a
competing plan which would be considered for confirmation alongside the Debtor's Liquidating
Plan.

7 The Court scheduled a final hearing on the Debtor's Disclosure Statement for January 12,
8 2012 at 10:00 a.m. [Docket No. 256] (the "Confirmation Hearing").

9 **V. The Purpose and Effect of Holdco's Plan**

10 Holdco's Plan provides for the reorganization of the Debtor and for Holders of certain
11 Allowed Claims to receive equity in the Reorganized Debtor, with the option for each Holder of
12 TOPrS Unsecured Claims and General Unsecured Claims to receive instead a "cash out" right of
13 payment and/or a security that results in cash from certain of the Debtor's assets, including Cash
14 held by the Reorganized Debtor as of the Effective Date. The Plan Proponent believes the Plan
15 will maximize the value of the Estate. In order to effectuate the Distributions, the Plan provides
16 that all of the assets of the Debtor's Estate (including Causes of Action not expressly released
17 under the Plan) shall vest in the Reorganized Debtor,⁷ and that the Former Officer and Director
18 Causes of Action shall vest in the Plan Trust. The Reorganized Debtor shall continue to operate
the Debtor's business as a going concern in the real estate and financial services sectors, and will
pursue litigation (with the exception of Former Officer and Director Causes of Action, which
will be pursued by the Plan Trustee) and make Distributions under the Plan. The New Board
shall be appointed as of the Effective Date and shall be responsible for implementing the Plan
and operating the business of the Reorganized Debtor.

19 The Plan Proponent believes that the Plan maximizes recoveries for Holders of Allowed
20 Claims and strongly recommends that you vote to accept the Plan (if you are entitled to vote).
21 The Plan Proponent believes that any alternative to confirmation of the Plan, such as a
22 conversion of the Case to a case under chapter 7 of the Bankruptcy Code would result in
23 significant delay, litigation, and additional costs, and, ultimately, would lower the recoveries for
24 all Holders of Allowed Claims.

25
26
27 ⁷ As described further in the Plan, this Disclosure Statement shall refer to the Debtor as the
Reorganized Debtor for any time period on or after the Effective Date.

1 **1. Treatment of Claims and Equity Interests**

2 **a. Classification**

3 The Plan divides all Claims (other than Administrative Claims and Priority Tax Claims)
4 and all Equity Interests into various Classes. Listed below is a summary of the Classes of Claims
5 and Equity Interests under the Plan.

CLASS	CLAIMS	IMPAIRMENT/VOTING
1	Secured	Unimpaired – Not Entitled to Vote
2	TOPrS Unsecured Claims	Impaired – Entitled to Vote
2	General Unsecured Claims	Impaired – Entitled to Vote
3	Convenience	Unimpaired – Not Entitled to Vote
4	Equity Interests	Impaired – Not Entitled to Vote

6
7
8
9
10 The following tables summarize the Classes of Claims and Equity Interests under the
11 Plan, as well as the treatment of such Classes. To the extent that any inconsistency exists
12 between the summaries contained in this Disclosure Statement and the information set forth in
13 the Plan, the Plan shall govern. The ranges of recoveries listed below are based on various
14 assumptions, including assumptions regarding asset realization, the total amount of the Allowed
15 TOPrS Unsecured Claims, General Unsecured Claims, Administrative Claims, Priority Tax
16 Claims and assumptions concerning the costs to operate the Reorganized Debtor’s business and
17 pursue certain litigation.

18 **b. Unclassified Claims**

<u>Claim</u>	<u>Plan Treatment</u>	<u>Projected Recovery Under the Plan</u>
Administrative Claims	Paid in full in Cash	100.0%
Priority Tax Claims	Paid in full in Cash	100.0%

19
20 **c. Summary of Classification, Treatment, and Projected Recoveries of**
21 **Classified Claims and Equity Interests**

22 The classification, treatment, and the projected recoveries of classified Claims and Equity
23 Interests under the Plan are described in summary form below for illustrative purposes only and
24 are subject to the more detailed and complete descriptions contained in Article III of the Plan.
25
26
27
28

Class	Claim/ Equity Interest	Plan Treatment of Class	Projected Recovery Under the Plan⁸
1	Secured Claims	At the sole option of the Plan Proponent, (i) paid in full in Cash, (ii) receive the collateral securing its Allowed Secured Claim, or (iii) receive other treatment rendering such Secured Claim Unimpaired.	100%
2	TOPrS Unsecured Claims	Each Holder of an Allowed Unsecured Claim shall receive its Pro Rata Distribution of the New Common Stock or, if it so elects, such Holder shall receive the Proceeds Distribution Election.	Unknown
3	General Unsecured Claims	Each Holder of an Allowed Unsecured Claim shall receive its Pro Rata Distribution of the New Common Stock or, if it so elects, such Holder shall receive the Proceeds Distribution Election.	Unknown
4	Convenience Claims	Each Holder of an Allowed Convenience Claim shall receive cash equal to the full amount of its Convenience Claim, unless the Holder otherwise agrees to less favorable treatment.	100%
5	Equity Interests	Deemed canceled	N/A

2. Claims Estimates

As of May 13, 2011, the date the Debtor filed its Disclosure Statement, the following, according to the Debtor's representations contained therein, is the Debtor's best estimation of the amounts claimed by the Debtor's various creditors [see the Debtor's Disclosure Statement, filed on May 31, 2011 at Docket No. 215]. According to the Debtor's representations, these amounts represent mere estimates, as Claims participating in the Plan already may have been, or may continue to be augmented or reduced through litigation, compromise or other development subsequent to the date of this Disclosure Statement.

⁸ As of the Petition Date, the Debtor, via its filings with this Court, asserted total assets of approximately \$8,306,646, and liabilities of approximately \$47,399,789. According to the Debtor's representations, the Debtor holds approximately \$5,896,209 in its accounts. The Debtor asserts that the sources of these funds include \$97,345 held in its accounts as of the Petition Date plus proceeds from the Sale. A final analysis of the scheduled claims versus claims filed will be conducted with respect to the Debtor's secured, priority, and unsecured obligations. The Reorganized Debtor may file objections to claims scheduled or filed based upon that review.

CLAIM		ESTIMATED AMOUNT OF CLAIMS
Administrative Expenses (excluding professionals)		\$168,849
Priority Tax Claims		\$0
Class 1	Secured Claims	\$0
Classes 2 and 3	TOPrS Unsecured Claims and General Unsecured Claims	\$47,918,039
Class 4	Convenience Claims	\$50,000 ⁹
Class 5	Equity Interests	Common Stock

These estimations are based upon the Debtor's claims/assertions that it has no exposure to the IRS for tax obligations. See below for a discussion of the potential obligations to IRS. In the event the Debtor is found to have significant tax obligations to the IRS, the estimated total amount to be distributed to Allowed Claims herein will be altered, and it is possible that holders of Allowed Claims may not be paid as anticipated. Based on all the available information provided by the Debtor and its financial advisors, the Plan Proponent believes the risk of these factors having a material impact is small.

3. Consummation

Following Confirmation, the Plan will be consummated on the Effective Date, which is the date that is the first Business Day after the Confirmation Date on which no stay of the Confirmation Order is in effect and all conditions to the occurrence of the Effective Date have been satisfied or waived. Distributions to be made under the Plan will be made on or as soon as reasonably practicable after the Effective Date in accordance with the Plan.

4. Certain Factors to Be Considered Prior to Voting

Prior to voting to accept or reject the Plan, each Holder in a voting Class should carefully consider all of the information in this Disclosure Statement, especially the risk factors described in Article IX herein.

5. Voting and Confirmation

Holders of Claims in Classes 1 and 4 are Unimpaired and are conclusively presumed to accept the Plan. Holders of Equity Interests in Class 5 are wholly impaired and are conclusively presumed to reject the Plan. Accordingly, Holders of Claims or Equity Interests in Classes 1, 4, and 5 are not entitled to vote on the Plan, and the vote of such Holders of Claims and Equity

⁹ This estimate is based upon a cursory review of the Debtor's Schedules and Claims Register.

1 Interests shall not be solicited. Only Holders of Claims in Classes 2 and 3 are entitled to vote to
2 either accept or reject the Plan.

3 Pursuant to sections 1126(c) and 1126(d) of the Bankruptcy Code and except as
4 otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has
5 accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in
6 number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

7 Assuming the requisite acceptances are obtained, the Plan Proponent intends to seek
8 confirmation at the Confirmation Hearing scheduled to commence on January 12, 2012, at 10:00
9 a.m., prevailing Pacific Standard time, before the Bankruptcy Court. Section 1129(a)(10) of the
10 Bankruptcy Code shall be satisfied for purposes of confirmation by acceptance of the Plan by an
11 Impaired Class of Claims. The Plan Proponent shall seek confirmation of the Plan pursuant to
12 section 1129(b) of the Bankruptcy Code because Class 5, Equity Interests of the Debtor, is
13 deemed to reject the Plan. The Plan Proponent also reserves the right to modify the Plan and
14 seek confirmation consistent with the Bankruptcy Code.

15 The Bankruptcy Court has established January 9, 2011 as the Voting Record Date for
16 determining which Holders of Claims are eligible to vote to accept or reject the Plan. Ballots,
17 along with this Disclosure Statement, the Plan, and the Disclosure Statement Order, will be
18 mailed to all registered Holders of Claims as of the Voting Record Date that are entitled to vote
19 to accept or reject the Plan. An appropriate return envelope, postage prepaid, will be included
20 with each Ballot, if appropriate.

21 **BALLOTS CAST BY HOLDERS OF CLAIMS IN CLASSES ENTITLED TO
22 VOTE MUST BE RECEIVED BY THE PLAN PROPONENT BY THE VOTING
23 DEADLINE, WHETHER BY FIRST CLASS MAIL, OVERNIGHT COURIER, OR
24 PERSONAL DELIVERY. THE BALLOTS AND THE PRE-ADDRESSED, POSTAGE
25 PRE-PAID ENVELOPES ACCOMPANYING THE BALLOTS WILL INDICATE
26 WHETHER THE BALLOT MUST BE RETURNED TO THE PLAN PROPONENT.
27 THE ADDRESS FOR BALLOTS RETURNABLE TO THE PLAN PROPONENT,
28 OTHER THAN BALLOTS SENT VIA OVERNIGHT MAIL OR BY HAND DELIVERY,
AND THE GENERAL CONTACT INFORMATION FOR HOLDCO, IS:**

29 **Holdco Advisors, L.P.
30 c/o Duane Morris LLP
31 Attn: Jeffrey D. Sternklar
32 100 High Street, Suite 2400
33 Boston, MA 02110**

34 **FOR ANSWERS TO ANY QUESTIONS REGARDING SOLICITATION
35 PROCEDURES, PARTIES MAY CALL JEFFREY D. STERNKLAR, COUNSEL TO
36 THE PLAN PROPONENT AT (857) 488-4200.**

37 **TO BE COUNTED, THE BALLOTS CAST BY HOLDERS INDICATING
38 ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY THE PLAN
39 PROPONENT NO LATER THAN THE VOTING DEADLINE. SUCH BALLOTS**

1 **SHOULD BE CAST IN ACCORDANCE WITH THE SOLICITATION PROCEDURES**
2 **DESCRIBED IN FURTHER DETAIL IN ARTICLE XI OF THIS DISCLOSURE**
3 **STATEMENT AND THE DISCLOSURE STATEMENT ORDER. ANY BALLOT**
4 **RECEIVED AFTER THE VOTING DEADLINE SHALL BE COUNTED IN THE SOLE**
5 **DISCRETION OF THE PLAN PROPONENT.**

6 To obtain an additional copy of the Plan, this Disclosure Statement, the Plan Supplement,
7 or other Solicitation Package materials (except Ballots), please refer to the docket for this case,
8 available at the Court's website, <http://www.waeb.uscourts.gov/> or request a copy from the Plan
9 Proponent (including Ballots), using the contact information for Holdco provided above.

10 THE PLAN PROPONENT BELIEVES THAT THE PLAN IS IN THE BEST
11 INTEREST OF ALL HOLDERS OF CLAIMS AND RECOMMENDS THAT ALL SUCH
12 HOLDERS WHOSE VOTES ARE BEING SOLICITED VOTE TO ACCEPT THE PLAN.

13 **VI. The Reorganized Debtor's Business Plan and Valuation**

14 **A. The Reorganized Debtor's Business Plan**

15 Following the Debtor's bankruptcy, the Reorganized Debtor intends to continue in its
16 previous financial services business. The Reorganized Debtor will utilize cash on hand. Prior to
17 the Voting Deadline, Holdco plans to identify the New Board, some or all of whom will have
18 experience in the financial services industry. The New Board will have the broad mandate of
19 deciding how to implement the go-forward business of the Reorganized Debtor and may decide,
20 at their discretion, to execute the business plan by hiring internal management, external
21 management, or pursuing the business plan via any other method they deem appropriate. From
22 time to time, the New Board will evaluate its business plan, which is subject to change at any
23 time, and may decide to continue in its current direction, change directions, or give money back
24 to shareholders.

25 It is difficult, if not impossible, to project with any meaningful certainty what the results
26 of the Reorganized Debtor's business operations will be. The New Board will determine with
27 greater precision what types of assets the Reorganized Debtor will invest in, and that will be
28 necessary for the Reorganized Debtor to invest in to retain the Debtor's NOLs and Capital
Losses pursuant to the applicable provisions of the Internal Revenue Code. Indeed, it is possible
the Reorganized Debtor will invest in or acquire highly speculative, illiquid, contingent,
unliquidated assets or causes of action that may require substantial litigation, and can only be
monetized if the Reorganized Debtor succeeds in such litigation. Accordingly, no such
projections are provided here. Creditors who believe the absence of projections makes the
business plan too speculative are encouraged to elect the Proceeds Distribution Election.

29 **B. Management of the Reorganized Debtor**

30 Senior management of the Reorganized Debtor shall be disclosed in the Plan Supplement
31 prior to the Confirmation Date in accordance with section 1129(a)(5) of the Bankruptcy Code.
32 The Reorganized Debtor may, but shall not be required, to enter into one or more contracts with
33 one or more Entities to outsource or subcontract certain management functions, and to the extent

1 that any such arrangement is entered into on or immediately after the Effective Date, the identity
2 or identities of such Entities shall be disclosed in the Plan Supplement. After the Effective Date,
3 the New Board will have full discretion to outsource or subcontract certain management
4 functions, including agreements with any employees, officers, directors, shareholders of New
5 Common Stock or any other interested parties, insiders, or their affiliates.

6 **C. Feasibility of the Plan**

7 The Plan Proponent believes the Plan meets the feasibility requirement set forth in
8 section 1129(a)(11) of the Bankruptcy Code, as confirmation is not likely to be followed by
9 liquidation or the need for further financial reorganization of the Reorganized Debtor. The Plan
10 Proponent believes that it will have sufficient funds on hand as of the Effective Date to fund all
11 Plan Distributions required to be paid in Cash on the Effective Date. Further, upon emergence
12 from bankruptcy on the Effective Date, the Reorganized Debtor will be debt-free and does not
13 require any exit financing. Therefore the Reorganized Debtor will have no debt service
14 requirements, removing that potential burden on the Reorganized Debtor's cash flow. The
15 management and New Board of the Reorganized Debtor, who will be disclosed in accordance
16 with section 1129(a)(5) of the Bankruptcy Code, will be comprised of individuals with
17 experience in the financial services industry. Accordingly, the Plan Proponent believes the Plan
18 satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

19 **VII. Summary Of The Plan**

20 **A. Administrative and Priority Tax Claims**

21 **1. Administrative Claims**

22 Subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, the
23 Reorganized Debtor shall pay each Holder of an Allowed Administrative Claim the full unpaid
24 amount of such Allowed Administrative Claim in Cash: (a) on the Effective Date or as soon as
25 practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as
26 soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date
27 such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such
28 Allowed Administrative Claim is due); (c) at such later time as may be agreed upon by such
29 Holder and the Reorganized Debtor, as applicable; or (d) at such time and upon such terms as set
30 forth in an order of the Bankruptcy Court.

31 **2. Priority Tax Claims**

32 The Reorganized Debtor shall pay each Holder of an Allowed Priority Tax Claim the full
33 unpaid amount of such Allowed Priority Tax Claim in Cash, on or as soon as practicable after the
34 latest of: (a) the Effective Date; (b) the date such Allowed Priority Tax Claim becomes Allowed;
35 and (c) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy
36 law.

1 **B. Classification and Treatment of Claims and Equity Interests**

2 The Plan constitutes a chapter 11 plan of reorganization for the Debtor. Except for
3 Administrative Claims and Priority Tax Claims, all Claims against and Equity Interests in the
4 Debtor are placed in Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, the
5 Debtor has not classified Administrative Claims and Priority Tax Claims, as described in
6 Article III of the Plan.

7 The table in Article III of the Plan classifies Claims against and Equity Interests in the
8 Debtor for all purposes, including voting, confirmation and Distribution pursuant hereto and
9 pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or
10 Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity
11 Interest qualifies within the description of that Class and shall be deemed classified in a different
12 Class to the extent that any remainder of such Claim or Equity Interest qualifies within the
13 description of such different Class. A Claim or Equity Interest is in a particular Class, other than
14 for voting purposes, only to the extent that any such Claim or Equity Interest is Allowed in that
15 Class and has not been paid or otherwise settled prior to the Effective Date.

16 Summary of Classification and Treatment of Classified Claims and Equity Interests

CLASS	CLAIMS	IMPAIRMENT/VOTING
1	Secured Claims	Unimpaired – Not Entitled to Vote
2	TOPrS Unsecured Claims	Impaired – Entitled to Vote
3	General Unsecured Claims	Impaired – Entitled to Vote
4	Convenience Claims	Unimpaired – Not Entitled to Vote
5	Equity Interests	Impaired – Not Entitled to Vote

17 **1. Class 1 (Secured Claims).**

18 a. *Classification.* Class 1 consists of all Secured Claims.

19 b. *Impairment and Voting.* Class 1 is Unimpaired under the Plan and
20 the Holders of Class 1 Allowed Secured Claims, if any, are deemed to accept the Plan.

21 c. *Treatment.* The legal, equitable and contractual rights of the
22 Holders of Allowed Secured Claims are unaltered by the Plan. Unless otherwise agreed to by the
23 Holder of an Allowed Secured Claim and the Plan Proponent, each Holder of an Allowed
24 Secured Claim shall receive on the later of (x) the Effective Date, and (y) the date an order of the
25 Bankruptcy Court allowing the Secured Claim becomes a Final Order, on account of and in full
26 satisfaction of its Allowed Secured Claim, either of the following treatments at the election of
27 Plan Proponent: (i) Cash equal to the amount of the Allowed Secured Claim or (ii) possession of
28 the property in which the Holder of the Allowed Secured Claim has a perfected, unavoidable and
enforceable lien, security interest or other charge and relief from the automatic stay provided by
section 362 of the Code to foreclose, collect upon or set-off the property in accordance with
applicable non-bankruptcy law; *provided, however*, that any time after the Confirmation Date but
before the Effective Date, the Plan Proponent can elect to give to the Holder of an Allowed
Secured Claim the treatment provided in subparagraph (ii) above.

1 **2. Class 2— TOPrS Unsecured Claims**

2 a. *Classification:* Class 2 consists of all TOPrS Unsecured Claims.

3 b. *Impairment and Voting:* Class 2 is Impaired by the Plan. Each
4 holder of an Allowed TOPrS Unsecured Claim is entitled to vote to accept or reject the Plan.

5 c. *Treatment:* In full satisfaction, settlement, release and compromise
6 of and in exchange for each TOPrS Unsecured Claim, each Holder of a TOPrS Unsecured Claim
7 shall receive on or as soon as reasonably practicable after the Effective Date, (i) such Holder’s
8 Pro Rata Share of the Plan Trust Interests, which *inter alia* shall entitle such Holder to receive its
9 Pro Rata Share of distributions of Plan Trust Assets from the Plan Trust in accordance with this
10 Plan and the Plan Trust Agreement, and (ii) its Pro Rata Distribution of New Common Stock or,
11 if it so elects, such Holder shall receive the Proceeds Distribution Election.

12 **3. Class 3— General Unsecured Claims**

13 a. *Classification:* Class 3 consists of all General Unsecured Claims
14 that are not TOPrS Claims and exceed the \$7,500 threshold for inclusion in Class 4
15 (Convenience Claims).

16 b. *Impairment and Voting:* Class 3 is Impaired by the Plan. Each
17 holder of an Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.

18 c. *Treatment:* In full satisfaction, settlement, release and compromise
19 of and in exchange for each General Unsecured Claim, each Holder of an Allowed General
20 Unsecured Claim shall receive on or as soon as reasonably practicable after the Effective Date,
21 (i) such Holder’s Pro Rata share of the Plan Trust Interests, which *inter alia*, shall entitle such
22 Holder to receive its Pro Rata Share of distributions of Plan Trust Assets from the Plan Trust in
23 accordance with this Plan and the Plan Trust Agreement, and (ii) its Pro Rata Distribution of the
24 New Common Stock or, if it so elects, such Holder shall receive the Proceeds Distribution
25 Election.

26 **4. Class 4 (Convenience Claims).**

27 a. *Classification:* Class 4 consists of Convenience Claims.

28 b. *Impairment and Voting:* Class 4 is unimpaired by the Plan. The
holders of Class 4 Convenience Claims are deemed to accept the Plan pursuant to section 1126(f)
of the Code.

 c. *Treatment:* In full satisfaction, settlement, release, and
compromise of and in exchange for each Convenience Claim, each Holder of an Allowed
Convenience Claim shall receive, on account of and in full satisfaction of its Allowed
Convenience Claim, Cash equal to 100% of the amount of the Allowed Convenience Claim on
the later of (x) the Effective Date, and (y) the date an order of the Bankruptcy Court allowing the
Convenience Claim becomes a Final Order.

1 **5. Class 5 (Holders Of Interests).**

2 Class 5 is comprised of holders of Interests. Holders of Class 5 Interests shall neither
3 receive nor retain any property under the Plan and all Interests of the Debtor shall be cancelled as
4 of the Effective Date. Class 5 is impaired under the Plan and the holders of Class 5 Interests are
5 deemed to reject the Plan.

6 **C. Means for Implementation of the Plan**

7 **1. Corporate Existence.** Except as otherwise provided in the Plan or Plan
8 Supplement, the Reorganized Debtor shall continue to exist after the Effective Date as a separate
9 corporate entity with all the powers of a corporation pursuant to the applicable law in the
10 jurisdiction in which the Debtor is incorporated or formed and pursuant to the certificate of
11 incorporation, charter and bylaws in effect prior to the Effective Date, except to the extent the
12 Plan Proponent elects to reincorporate the Debtor in another jurisdiction or make any other
13 amendments to such certificate of incorporation, charter or bylaws, pursuant to documents
14 contained in the Plan Supplement, in which case such documents in effect prior to the Effective
15 Date are deemed to be amended pursuant to the Plan and require no further action or approval.
16 For the avoidance of doubt, the Reorganized Debtor may reincorporate from and after the
17 Effective Date in a jurisdiction other than Washington as the Plan Proponent may in its sole
18 discretion select.

19 **2. Directors and Officers of the Debtor on the Effective Date.**On the
20 Effective Date, the persons then acting as directors and officers of the Debtor shall be released
21 and discharged from all further authority, duties, responsibilities and obligations relating to and
22 arising from the Debtor or the Case. Nothing contained in Article VIII of the Plan shall release
23 the Debtor's officers and directors from claims for actions taken before the Effective Date.

24 The Reorganized Debtor shall seek approval of any settlement of a material Cause of
25 Action from the Bankruptcy Court by the filing of an appropriate motion, and such approval
26 shall only come after a hearing, upon notice to all parties requesting service pursuant to
27 Bankruptcy Rule 2002 or to such Entities as the Court may order.

28 **3. The Plan Trust**

**(a) Creation of the Plan Trust and Appointment of the Plan
Trustee**

 On the Effective Date, the Plan Trust shall be created pursuant to the Plan Trust
Agreement, and into which trust all Former Officers and Directors Causes of Action shall be
transferred and become vested pursuant to and in accordance with the terms of this Plan. The
Plan Trust shall operate under the provisions of the Plan Trust Agreement. The Plan Trust shall
be administered by the Plan Trustee. Holdco shall be and is appointed as the Plan Trustee on the
Effective Date and shall be bound by the terms of the Plan Trust Agreement without further
order of the Bankruptcy Court. The Plan will be administered and actions will be taken in the
name of the Debtors or Plan Trust, as appropriate, through the Plan Trustee. The Plan Trust
Agreement shall be deemed approved and effective on the Effective Date.

1 For all federal income tax purposes, all parties (including, without limitation, the Debtor,
2 Reorganized Debtor, the Plan Trustee, and the holders of Allowed General Unsecured Claims)
3 will treat the transfer of the Plan Trust Assets to the Plan Trust, including any amounts or other
4 assets subsequently transferred to the Plan Trust (but only at such time as actually transferred)
5 for the benefit of the holders of General Unsecured Claims, whether Allowed on or after the
6 Effective Date, as (A) a transfer of the Plan Trust Assets directly to such holders of Allowed
7 General Unsecured Claims, followed by (B) the transfer by such Persons to the Plan Trust of
8 such Plan Trust Assets in exchange for beneficial interests in the Plan Trust. Accordingly, the
9 holders of Allowed General Unsecured Claims will be treated for federal income tax purposes as
10 the grantors and owners of their respective shares of the applicable Plan Trust Assets.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

i. Tax Reporting

1. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Plan Trustee of a private letter ruling if the Plan Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Plan Trustee), all parties will treat the Plan Trust as a “liquidating trust” in accordance with Treasury Regulation section 301.7701-4(d), of which the holders of Allowed General Unsecured Claims, whether Allowed on or after the Effective Date, are the grantors and beneficiaries. In the event an alternative treatment of the Plan Trust is required for federal income tax purposes, the Plan Trustee will promptly notify in writing (or by comparable means) all holders of beneficial interests in the Plan Trust, and anyone who subsequently becomes a holder, of such alternative treatment. The Plan Trustee will file returns for the Plan Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Plan Trustee also may send annually to each record holder of a beneficial interest in the Plan Trust a separate statement setting forth such holder’s share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Plan Trustee will also file (or cause to be filed) any other statements, returns, or disclosures relating to the Plan Trust that are required by any governmental unit. Except as may otherwise be provided, the Plan Trust’s taxable income, gain, loss, deduction or credit will be allocated by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distribution described in the Plan) if, immediately prior to the deemed distribution, the Plan Trust had distributed all of its other assets (valued at their tax book value) in accordance with the provisions

1 of the Plan and the Plan Trust Agreement, up to the tax book value
2 of the Plan Trust Assets treated as contributed by the holders of
3 Allowed General Unsecured Claims, whether Allowed on or after
4 the Effective Date, adjusted for prior taxable income and loss, and
5 taking into account all prior and concurrent distributions from the
6 Plan Trust. Similarly, taxable loss of the Plan Trust will be
7 allocated by reference to the manner in which an economic loss
8 would be borne immediately after a liquidating distribution of the
9 remaining assets.

- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
2. As soon as practicable after the Effective Date, the Plan Trustee will make a good faith valuation of the value of the Plan Trust Assets. Such valuation will be made available from time to time, to the extent relevant, and used consistently by all parties for all federal income tax purposes.
 3. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Plan Trustee of a private letter ruling if the Plan Trustee requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Plan Trustee), the Plan Trustee will (1) make an election pursuant to Treasury Regulation section 1.468B-9 to treat the Disputed Claims Reserve as a “disputed ownership fund” within the meaning of that section; (2) treat as taxable income or loss of the Disputed Claims Reserve, with respect to any given taxable year, the portion of the taxable income or loss of the Plan Trust that would have been allocated to the holders of Disputed General Unsecured Claims had such Claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Claims are unresolved), (3) treat as a distribution from the Disputed Claims Reserve any assets previously allocated to or retained on account of Disputed General Unsecured Claims as and when, and to the extent, such claims are subsequently resolved (following which time such assets will no longer be held in the Disputed Claims Reserve) and (4) to the extent permitted by applicable law, report consistent with the foregoing for state and local income tax purposes (including making any appropriate elections). The holders of Allowed General Unsecured Claims, whether Allowed on or after the Effective Date, will report, for tax purposes, consistent with the foregoing.
 4. The Plan Trustee will be responsible for payments, out of and to the extent of available Plan Trust Assets, of any taxes imposed on the Plan Trust or the Plan Trust Assets, including the Disputed Claims Reserve.

1 **c) Payment of Holdco Fees.** On or as soon as practicable after the
2 Effective Date, the Reorganized Debtor shall pay the Holdco Fees..

3 **7. Reorganized Debtor Securities**

4 **a) New Common Stock**

5 The Reorganized Debtor's equity interests shall consist of New Common Stock, and, if
6 the Debtor elects (only if necessary to cause Section 382(l)(5) of the Internal Revenue Code to
7 apply to the Plan), a separate series or class of New Common Stock on account of part of the
8 Proceeds Distribution Election. On the Effective Date, or as soon as reasonably practicable
9 thereafter, the Reorganized Debtor shall issue or reserve for issuance all securities to be issued
10 pursuant to the terms of the Plan, without need for any further corporate or shareholder action.
11 Shares of New Common Stock and any separate series or class of New Common Stock on
12 account of the Proceeds Distribution Election, depending on the election of the applicable Holder
13 of a particular General Unsecured Claim, shall be issued Pro Rata to (a) Holders of Allowed
14 TOPrS Unsecured Claims and (b) Holders of Allowed General Unsecured Claims.

11 **b) Other Attributes**

12 Other attributes of the New Common Stock including, without limitation,
13 transfer restrictions, redemption rights, rights to receive dividends, and preemptive rights, shall
14 be as set forth in the Plan Supplement.

15 **c) Redemption of Common Stock**

16 The New Board may elect to redeem all shares of New Common Stock held by a
17 particular stockholder at any time, so long as the New Common Stock is redeemed for Fair
18 Market Value Price. For purposes of the redemption of the New Common Stock, to determine
19 whether the New Common Stock is redeemed for Fair Market Value, the New Board shall
20 consult with its professional advisors in determining the Fair Market Value for the New
21 Common Stock, and may rely on its professional advisors to determine such Fair Market Value.
22 Prior to making a final determination to exercise the Reorganized Debtor's redemption right
23 under this paragraph, the Reorganized Debtor shall send a written notice to such stockholder (at
24 the notice address appearing in the Reorganized Debtor's records) advising the stockholder of
25 the Reorganized Debtor's intention to exercise its redemption right. In the event that the
26 stockholder notifies the Reorganized Debtor in writing (within sixty (60) days after the date of
27 the Reorganized Debtor's notice) that such stockholder objects to the redemption of its shares,
28 then the Reorganized Debtor shall not exercise the redemption right. In the event that the
stockholder does not respond to the Reorganized Debtor's notice within sixty (60) days, the
stockholder is deemed to have consented to the proposed redemption. In the event that the
stockholder does not respond to the Reorganized Debtor's notice within sixty (60) days after the
date of the Reorganized Debtor's notice (or the stockholder notifies the Reorganized Debtor that
it approves or does not object to such redemption), then the New Board shall be entitled to
make a final determination to exercise the redemption right. In the event that the New Board
makes such a final determination, then the redemption shall take place on a date determined by
the New Board (but such redemption date shall be no later than 30 days after the New Board's

1 final determination) and shall be at a price equal to the Fair Market Value Price. The purchase
2 price payable in any such redemption shall be paid in cash or by check on the closing date. Such
3 redemption shall be effective on the closing date of the redemption regardless of whether or not
4 the stockholder participates in the closing or delivers his or its stock certificate to the
5 Reorganized Debtor for cancellation.

6 **8. Restructuring Transactions**

7 On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized
8 Debtor may take all actions as may be necessary or appropriate to effect any transaction
9 described in, approved by, contemplated by or necessary to effectuate the Plan, including: (1)
10 the execution and delivery of appropriate agreements or other documents of merger,
11 consolidation or reorganization containing terms that are consistent with the terms of the Plan
12 and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate
13 instruments of transfer, assignment, assumption or delegation of any property, right, liability,
14 duty or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate
15 certificates of incorporation, charter, merger or consolidation with the appropriate governmental
16 authorities pursuant to applicable law; and (4) all other actions that the Reorganized Debtor
17 determines are necessary or appropriate.

18 **a) Corporate Action**

19 Each of the matters provided for by the Plan involving the corporate structure of the
20 Debtor or corporate, financing or related actions to be taken by or required of the Reorganized
21 Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided
22 in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to
23 the extent taken prior to the Effective Date, ratified in all respects without any requirement of
24 further action by Holders of Claims or Equity Interests, the directors of the Debtor or any other
25 entity. Without limiting the foregoing, such actions will include: the adoption and (as
26 applicable) filing of amended and restated certificate of incorporation, charter, bylaws and other
27 governance documents; the appointment of officers and (as applicable) directors for the
28 Reorganized Debtor; the issuance of the New Common Stock and any security or instrument
issued by the Reorganized Debtor on account of part of the Proceeds Distribution Election, and
all related documents and instruments (as applicable). The Reorganized Debtor shall enter into
such agreements and amend their corporate governance documents to the extent necessary to
implement the terms and conditions of the Plan.

29 **b) Effectuating Documents; Further Transactions**

30 On and after the Effective Date, the Reorganized Debtor, and the officers and members of
31 the New Board thereof, are authorized to and may issue, execute, deliver, file or record such
32 contracts, securities, instruments, releases, and other agreements or documents and take such
33 actions as may be necessary or appropriate to effectuate, implement, and further evidence the
34 terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and
35 on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or
36 consents except for those expressly required pursuant to the Plan.

1 **c) Exemption from Certain Transfer Taxes and Recording Fees**

2 Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from the Debtor to the
3 Reorganized Debtor or to any entity pursuant to, in contemplation of, or in connection with the
4 Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, securities,
5 or other interest in the Debtor or the Reorganized Debtor; (2) the creation, modification,
6 consolidation, or recording of any mortgage, deed of trust or other security interest, or the
7 securing of additional indebtedness by such or other means; (3) the making, assignment, or
8 recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other
9 instrument of transfer under, in furtherance of, or in connection with, the Plan, including any
10 deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any
11 transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject
12 to any document recording tax, sales tax, stamp tax, conveyance fee, intangibles or similar tax,
13 mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing
14 or recording fee, regulatory filing or recording fee, or other similar tax or governmental
15 assessment, and the appropriate state or local governmental officials or agents shall forego the
16 collection of any such tax or governmental assessment and to accept for filing and recordation
17 any of the foregoing instruments or other documents without the payment of any such tax or
18 governmental assessment.

12 **d) Board Representation**

13 The New Board shall be disclosed in the Plan Supplement prior to the Confirmation Date
14 in accordance with section 1129(a)(5) of the Bankruptcy Code. The initial members of the New
15 Board shall serve staggered terms of one, two and three years, as designated, and thereafter, the
16 members of the New Board shall be elected on a staggered three-year basis by the holders of
17 New Common Stock.

17 **e) Senior Management**

18 Senior management of the Reorganized Debtors shall be disclosed in the Plan
19 Supplement prior to the Confirmation Date in accordance with section 1129(a)(5) of the
20 Bankruptcy Code. The Reorganized Debtor may, but shall not be required, to enter into one or
21 more contracts with one or more Entities to outsource or subcontract certain management
22 functions, and the identity or identities of such Entities with whom the Reorganized Debtor may
23 contract as of the Effective Date shall be disclosed in the Plan Supplement.

22 **f) Committee**

23 As of the Effective Date, the Committee shall dissolve, and its members shall be released
24 and discharged from all further authority, duties, responsibilities and obligations relating to and
25 arising from the Case. The retention and employment of any Professionals retained by the
26 Committee shall terminate as of the Effective Date. Any and all orders providing the Committee
27 with standing and authority to bring any Causes of Action, including, without limitation, the
28 Former Officers and Directors Causes of Action, shall be vacated, null, void and of no effect
from and after the Effective Date, and from and after the Effective Date the Committee shall

1 have no standing or authority whatsoever to bring or prosecute any Causes of Action, including,
2 without limitation, the Former Officers Causes of Action.

3 **g) Vesting of Assets in the Reorganized Debtor**

4 Except as otherwise provided in this Plan or in any agreement, instrument or other
5 document relating thereto, on or after the Effective Date pursuant to section 1141 of the
6 Bankruptcy Code, all property of the Estate and any property acquired by the Debtor pursuant
7 hereto shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other
8 encumbrances. The sole exception shall be the Former Officer and Director Causes of Action,
9 which shall be transferred to and vest in the Plan Trust as described herein. Except as may be
10 provided in this Plan or the Confirmation Order, including without limitation with respect to the
11 Proceeds Distribution Election Segregated Account, on and after the Effective Date, the
12 Reorganized Debtor may use, acquire or dispose of property and compromise or settle any
13 Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of
14 the Bankruptcy Code or Bankruptcy Rules.

15 **h) Prohibition Against Pledging Assets**

16 Notwithstanding anything to the contrary contained herein, the Reorganized Debtor shall
17 be precluded from, and the Confirmation Order shall expressly prohibit the Reorganized Debtor
18 from, pledging any interest in (a) the Disputed Reserve or the assets therein; (b) the Proceeds
19 Distribution Election Segregated Account or the assets therein; or (c) any assets, or the proceeds
20 thereof, that are or could become part of the Proceeds Distribution Election, including, without
21 limitation, any Causes of Action or the proceeds thereof. The Confirmation Order shall also
22 provide that any such pledge in violation of this section of the Plan is null and void.

23 **i) Deregistration**

24 As soon after the Effective Date as is practicable, the Reorganized Debtor shall file a
25 Form 15 Certification and Notice of Termination of Registration Under Section 12(g) of the
26 Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 12 and
27 15(d) of the Securities and Exchange Act of 1934 with the United States Securities and
28 Exchange Commission or to otherwise comply with the statutory or regulatory requirements of a
publicly traded company, including, but not limited to, seeking to deregister the Equity Interests.

1 **j) Allowance of TOPrS Unsecured Claims.**

2 The TOPrS Unsecured Claims are deemed to be Allowed Claims in the amounts as set
3 forth in Exhibit "C" to the Plan Supplement. Holders of TOPrS Unsecured Claims shall receive
4 a Distribution of New Common Stock on the Initial Distribution Date or the Cash Based
5 Alternative Treatment at the appropriate time, as determined by such Holder's election, based on
6 the Allowed amount of such TOPrS Unsecured Claim in accordance with Article 3 of the Plan.

7 **k) Plan Advisor**

8 As of the Effective Date, the Plan Advisor (the identity of whom shall be disclosed in the
9 Plan Supplement) shall be appointed and shall perform the duties set forth in this paragraph. The
10 compensation of the Plan Advisor shall be set by the New Board. The Plan Advisor shall
11 oversee and have decision-making authority regarding any litigation and/or settlement of Causes
12 of Action and the administration and payment of Distributions. The fiduciary duties of the Plan
13 Advisor shall run to all parties entitled to Distributions under the Plan, whether or not such
14 beneficiaries have elected the Proceeds Distribution Election. The Plan Advisor shall consult
15 with the Reorganized Debtor and the Plan Trustee regarding any material decision in connection
16 with a Material Cause of Action, including without limitation any decision to make, reject or
17 accept any offer of settlement with respect thereto. The Reorganized Debtor shall seek approval
18 of any settlement of a Material Cause of Action from the Bankruptcy Court by the filing of an
19 appropriate motion, and such approval shall only come after a hearing, upon notice to the Plan
20 Advisor and to all parties requesting service pursuant to Bankruptcy Rule 2002. The Plan
21 Advisor shall, at least quarterly, consider the calculation of Net Free Cash, including the
22 following factors, among other things: (a) the amount of Cash; (b) the pending Claims against
23 the Estate; (c) the status of litigation of any Causes of Action; (d) the appropriate reserves for
24 such Causes of Action; (e) any administrative and related costs of administering the Plan; and (f)
25 the length of time since the Effective Date and the previous distribution of Net Free Cash. The
26 position of Plan Advisor shall cease and terminate upon the conclusion of all litigation of all
27 Causes of Action, at which time the duties and powers of the Plan Advisor shall be vested in the
28 New Board. Notwithstanding anything to the contrary in this Plan, if no Creditor entitled to elect
the Proceeds Distribution Election in point of fact timely and properly elect such Proceeds
Distribution Election, then, at the sole election of Holdco in its sole and absolute discretion made
on or before the Effective Date, the position of Plan Advisor shall not be created, in which case
all duties and powers conferred upon the Plan Advisor by this Plan shall instead vest in the New
Board.

23 **D. Provisions Governing Distributions**

24 **1. Initial Distribution Date**

25 On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the
26 Reorganized Debtor shall make the Distributions required to be made under the Plan.
27

1 **2. Disputed Reserve**

2 **a) Establishment of Disputed Reserve**

3 On the Initial Distribution Date, and after making all Distributions required to be made
4 on such date under the Plan, the Reorganized Debtor shall establish a separate Disputed Reserve
5 for Disputed Claims, which Disputed Reserve shall be administered by the Reorganized Debtor.
6 The Reorganized Debtor shall reserve a number of shares of New Common Stock, an amount of
7 Cash, or any other security or equity interest issued under the Plan, depending on the election of
8 the Holder of such Disputed Claims, and whether the Debtor elects to issue a security on account
9 of the part of the Proceeds Distribution Election, sufficient to provide Holders of Disputed
10 Claims the treatment such Holders would be entitled to receive under the Plan if all such
11 Disputed Claims were to become Allowed Claims (or such lesser amount as may be estimated by
12 the Bankruptcy Court).

13 **b) Maintenance of Disputed Reserve**

14 The Reorganized Debtor shall hold unissued New Common Stock and Cash in the
15 Disputed Reserve in trust, segregated from and not to be commingled with any other assets of the
16 Reorganized Debtor, for the benefit of the Holders of Claims ultimately determined to be
17 Allowed. The Reorganized Debtor shall, in its sole discretion, distribute such amounts (net of
18 any expenses, including taxes, relating thereto), as provided herein, as such Disputed Claims are
19 resolved by a Final Order, and such New Common Stock and Cash will be distributable in
20 respect of such Disputed Claims as such amounts would have been distributable had the
21 Disputed Claims been Allowed Claims as of the Effective Date.

22 **c) Establishment and Maintenance of Proceeds Distribution
23 Election Segregated Account**

24 On the Effective Date, and after making all Distributions required to be made on such
25 date under the Plan, the Reorganized Debtor shall establish the Proceeds Distribution Election
26 Segregated Account, into which shall on that date and from time to time thereafter as it becomes
27 available be deposited all Net Free Cash necessary and sufficient to make Distributions to
28 Holders of Claims that elect to receive the Proceeds Distribution Election. All Cash in the
Proceeds Distribution Election Segregated Account shall be held pursuant to the investment
guidelines contained in the exhibits to the Plan Supplement. The Confirmation Order shall
provide that such account, and all funds required by this section to be deposited into such
account, shall be segregated from, and shall not be commingled with, any other assets of the
Reorganized Debtor, and as against creditors of the Reorganized Debtor, shall not be considered
or deemed to be, property of the Reorganized Debtor or subject to claims by creditors of the
Reorganized Debtor, and shall be held in trust for the sole benefit of Holders of Claims that elect
to receive the Proceeds Distribution Election.

3. Quarterly Distributions. On each Quarterly Distribution Date or as soon
thereafter as is reasonably practicable, the Reorganized Debtor shall make the Distributions
required to be made under the Plan on such date. Any Distribution that is not made on the Initial

1 Distribution Date or on any other date specified herein because the Claim that would have been
2 entitled to receive that Distribution is not an Allowed Claim on such date, shall be held by the
3 Reorganized Debtor as applicable, in the Disputed Reserve and distributed on the first Quarterly
4 Distribution Date after such Claim is Allowed. No interest shall accrue or be paid on the unpaid
5 amount of any Distribution paid on a Quarterly Distribution Date.

6 **4. Record Date for Distributions.** Except as otherwise provided in a Final
7 Order of the Bankruptcy Court or as otherwise stipulated by the Debtor or Reorganized Debtor,
8 as applicable, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on
9 or prior to the Distribution Record Date will be treated as the Holders of those Claims for all
10 purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the
11 transfer may not have expired by the Distribution Record Date. The Reorganized Debtor shall
12 have no obligation to recognize any transfer of any Claim occurring after the Distribution Record
13 Date. In making any Distribution with respect to any Claim, the Reorganized Debtor shall be
14 entitled instead to recognize and deal with, for all purposes hereunder, only the entity that is
15 listed on the proof of Claim Filed with respect thereto or on the Schedules as the Holder thereof
16 as of the close of business on the Distribution Record Date and upon such other evidence or
17 record of transfer or assignment that are known to the Reorganized Debtor as applicable, as of
18 the Distribution Record Date.

19 Subject to Bankruptcy Rule 9010, and except as otherwise provided herein, Distributions
20 to the Holders of Allowed Claims shall be made by the Reorganized Debtor at (i) the address of
21 each Holder as set forth in the Schedules, unless superseded by the address set forth on proofs of
22 Claim Filed by such Holder or (ii) the last known address of such Holder if no proof of Claim is
23 Filed or if the Debtor or Reorganized Debtor, as applicable, has been notified in writing of a
24 change of address; *provided, however*, that Distributions paid by the Reorganized Debtor for the
25 benefit of Holders of TOPrS Debentures and the TOPrS shall be made to the appropriate TOPrS
26 Indenture Trustee under the respective TOPrS Indenture for such obligations. Each such TOPrS
27 Indenture Trustee shall, in turn, administer the distributions to the respective holders of TOPrS
28 Unsecured Claims in accordance with the Plan and the applicable TOPrS Indentures.
Distribution to a TOPrS Indenture Trustee shall be promptly remitted by such TOPrS Indenture
Trustee to the Holders of the TOPrS Unsecured Claims entitled thereto (i.e., the Holder of the
relevant TOPrS on the applicable Distribution Record Date) in accordance with this Plan and the
TOPrS Indentures, and each such Distribution by the Reorganized Debtor to a TOPrS Indenture
Trustee shall be deemed to have discharged the obligation of the Debtor to make such
Distribution to the Holders of TOPrS Unsecured Claims represented by such TOPrS Indenture
Trustee. The TOPrS Indenture Trustees shall not be required to give any bond or surety or other
security for the performance of their duties unless otherwise ordered by the Bankruptcy Court.
The TOPrS Indenture Trustees shall only be required to make distributions in accordance with
the terms of the Plan and the respective TOPrS Indenture and shall have no liability for actions
taken in accordance with the Plan or in reliance upon information provided to the TOPrS
Indenture Trustees in accordance with the Plan, except for liabilities resulting from their own
gross negligence or willful misconduct. If any Distribution is returned as undeliverable, the
Reorganized Debtor may, in its discretion, make such efforts to determine the current address of
the Holder of the Claim with respect to which the Distribution was made as the Reorganized
Debtor deems appropriate, but no Distribution to any Holder shall be made unless and until the

1 Reorganized Debtor has determined the then-current address of the Holder, at which time the
2 Distribution to such Holder shall be made to the Holder without interest. Amounts in respect of
3 any undeliverable Distributions made by the Reorganized Debtor shall be returned to, and held in
4 trust by, the Reorganized Debtor, until the Distributions are claimed or are deemed to be
5 unclaimed property under section 347(b) of the Bankruptcy Code. The Reorganized Debtor shall
6 have the discretion to determine how to make Distributions in the most efficient and cost-
7 effective manner possible; *provided, however*, that its discretion may not be exercised in a
8 manner inconsistent with any express requirements of the Plan. The rights of the TOPrS
9 Indenture Trustee to assert (a) its charging Lien to the extent the TOPrS Indenture Trustee Fees
10 or any other fees owed to such TOPrS Indenture Trustee under the TOPrS Indenture, including
11 without limitation, fees and expenses (including fees and expenses of its professionals), accrued
12 prior to the Petition Date, are not paid pursuant to the Plan; or (b) any other rights or arguments
13 to payment other than asserting its charging Lien, are preserved.

9 **6. Unclaimed Property.** Except with respect to property not distributed
10 because it is being held in the Disputed Reserve, Distributions that are not claimed by the
11 expiration of one year from the Initial Distribution Date or Quarterly Distribution Date
12 applicable to such Distribution, shall be deemed to be unclaimed property under section 347(b)
13 of the Bankruptcy Code and shall vest or revest in the Reorganized Debtor, and the Claims with
14 respect to which those Distributions are made shall be automatically canceled. After the
15 expiration of such one-year period, the Claim of any entity to those Distributions shall be
16 discharged and forever barred. Nothing contained in the Plan shall require the Reorganized
17 Debtor to attempt to locate any Holder of an Allowed Claim. Except as otherwise provided in
18 the Plan, all funds or other property that vests or revests in the Reorganized Debtor pursuant to
19 this Article shall be distributed by the Reorganized Debtor in accordance with the provisions of
20 the Plan.

16 **7. Other Ministerial and Mechanical Details.** Please see Plan and Plan
17 Supplement for further mechanical details regarding the Plan.

18 **8. No Distribution in Excess of Allowed Amount of Claim.**

19 No Holder of an Allowed Claim shall receive in respect of that Claim any Distribution in
20 excess of the Allowed amount of that Claim.

21 **9. Setoff and Recoupment.**

22 The Reorganized Debtor may, but shall not be required to, set off against, or recoup from,
23 any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims or
24 defenses of any nature whatsoever that the Debtor, the Estate or the Reorganized Debtor may
25 have against the Holder of such Claim, but neither the failure to do so nor the allowance of any
26 Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate, or the
27 Reorganized Debtor of any right of setoff or recoupment that any of them may have against the
28 Holder of any Claim.

1 **5. Cure of Defaults for Assumed Executory Contracts and Unexpired**
2 **Leases.**

3 a. Cure of Defaults. Any provisions or terms of the Debtor’s executory
4 contracts or unexpired leases to be assumed pursuant to the Plan that are, or may be, alleged to
5 be in default, shall be satisfied solely by Cure or by a waiver of Cure agreed upon between the
6 Debtor and applicable counterparty. Except with respect to executory contracts or unexpired
7 leases in which the Debtor and the applicable counterparties have stipulated in writing to
8 payment of Cure, all requests for payment of Cure must be Filed on or before the Cure Bar Date.
9 Any request for payment of Cure that is not timely Filed shall be disallowed automatically and
10 forever barred from assertion and shall not be enforceable against the Reorganized Debtor,
11 without the need for any objection by the Reorganized Debtor or further notice to or action,
order, or approval of the Bankruptcy Court, and any such Claim for Cure shall be deemed fully
satisfied, released, and discharged, notwithstanding anything included in the Schedules or in any
proof of Claim to the contrary; provided, however, that nothing shall prevent the Reorganized
Debtor from paying any Cure despite the failure of the relevant counterparty to File such request
for payment of such Cure. The Reorganized Debtor also may settle any Cure without further
notice to or action, order, or approval of the Bankruptcy Court.

12 b. Objections to Cure. If the Plan Proponent or Reorganized Debtor, as
13 applicable, object to any request for Cure or any other matter related to assumption, the
14 Bankruptcy Court shall determine the Allowed amount of such Cure and any related issues. If
15 there is a dispute regarding such Cure, the ability of the Reorganized Debtor or any assignee to
16 provide “adequate assurance of future performance” within the meaning of section 365 of the
17 Bankruptcy Code, or any other matter pertaining to assumption, then such Cure shall occur as
18 soon as reasonably practicable after entry of a Final Order resolving such dispute, approving
19 such assumption (and, if applicable, assignment), or as may be agreed upon by the Plan
20 Proponent or Reorganized Debtor and the counterparty to the executory contract or unexpired
21 lease. Any counterparty to an executory contract or unexpired lease that fails to object timely to
22 the proposed assumption of any executory contract or unexpired lease will be deemed to have
23 consented to such assumption. The Plan Proponent or Reorganized Debtor, as applicable,
24 reserve the right, either to reject or nullify the assumption of any executory contract or unexpired
25 lease no later than thirty (30) days after a Final Order determining the Cure or any request for
26 adequate assurance of future performance required to assume such executory contract or
27 unexpired lease.

28 (c) Release and Satisfaction of Debtor upon Assumption. Assumption of any
executory contract or unexpired lease pursuant to the Plan or otherwise and after satisfaction of
any Cure, shall result in the full release and satisfaction of any Claims or defaults, whether
monetary or nonmonetary, including defaults of provisions restricting the change in control or
ownership interest composition or other bankruptcy-related defaults, arising under any assumed
executory contract or unexpired lease at any time prior to the effective date of assumption.

The Plan contains detailed provisions regarding the treatment of executory contracts the
Plan Proponent intends the Debtor to assume and those the Plan Proponent intends the Debtor to
reject. Parties in interest are respectfully invited to review the Plan for further details.

1 **F. Pending And Contemplated Litigation**

2 **1. Cappello Litigation**

3 On February 2, 2011, Cappello Capital Corp. filed suit in Los Angeles, California against
4 the Bank, Sandler O’Neill and 10 unnamed John Doe defendants. The suit demands payment
5 from the defendants of over \$11 million, seeks to impose a constructive trust on the sale
6 proceeds and the recapitalization funds, and seeks a fee of \$292,500 on the purchase price of
7 \$6.5 million. Sandler has indicated that its agreement with the Bank and AWBC may implicate a
8 claim for indemnity against both of them. Cappello’s claims against AWBC and perhaps the
9 other defendants are barred because they were not an approved professional entitled to
10 compensation in the Bankruptcy case, did not file a claim prior to the claims bar date and for
11 other reasons.

12 The suit has been removed to the United States District Court for the Central District of
13 California and there is a Motion before that Court to move the case to the Eastern District of
14 Washington. The suit will very likely delay distributions under the Plan until the claims arising
15 under the suit against AWBC and the proceeds of the Sale are clearly defined. Thus prompt
16 resolution of the litigation will be sought.

17 **2. Avoidance Actions**

18 The Plan Proponent will retain all rights and causes of action authorized by Chapter V of
19 the Bankruptcy Code, which causes of action will be prosecuted by the Reorganized Debtor.
20 This Bankruptcy Code chapter authorizes a Debtor (or, in this instance, the Reorganized Debtor)
21 to, under limited circumstances, seek the return of certain transfers made by the Debtor for the
22 benefit of the estate (“Avoidance Actions”). The Reorganized Debtor will analyze the Debtor’s
23 books and records to determine if there are potential Avoidance Actions.

24 **3. Objections to Claims**

25 Holdco reserves the right to object to any claims scheduled or filed.

26 According to the Debtor, the IRS has filed a precautionary claim in the case, but the
27 Debtor asserts that all indications are that this claim will be withdrawn once their audit and
28 determination of no liability has been cleared by the Joint Committee on Taxation.

 Holdco will conduct a review of the Debtor’s schedule and claims register, and will make
the requisite determinations regarding whether to prosecute objections to existing claims.

G. Conditions Precedent to Confirmation and the Effective Date.

4. Conditions to Confirmation.

 The only condition precedent to confirmation of the Plan is that the Bankruptcy Court
shall have Entered the Confirmation Order in form and substance acceptable to the Plan
Proponent and the Committee.

1 **5. Conditions to the Effective Date.**

2 The following are conditions precedent to the occurrence of the Effective Date, each of which
3 must be satisfied or waived in accordance with the Plan:

- 4 (i) the Confirmation Order shall be a Final Order;
- 5 (ii) all other actions and all agreements, instruments or other documents necessary to
6 implement the terms and provisions of the Plan shall have been effected, and in each case, shall
7 have been duly and validly executed and delivered by the parties thereto and all conditions to
8 their effectiveness shall have been satisfied or waived in accordance therewith; and
- 9 (iii) the Debtor shall have received all authorizations, consents, rulings, opinions, or other
10 documents that are determined by Holdco, to be necessary to implement the Plan and that are
11 required by law, regulation, or order.

10 **6. Waiver of Conditions Precedent**

11 The Debtor, with the Committee’s and Tricadia’s consent (such consent not to be
12 unreasonably withheld), may waive the occurrence of or modify any condition precedent in
13 Article IX of the Plan. Any such written waiver of a condition precedent set forth in this Article
14 may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and
15 without any formal action other than proceeding to consummate the Plan. The failure of the
16 Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights,
17 and each such right shall be deemed an ongoing right, which may be asserted at any time. Any
18 actions required to be taken on the Effective Date shall take place and shall be deemed to have
19 occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking
20 of any other such action.

17 **H. Effect of Plan Confirmation**

18 **1. Satisfaction of Claims.**

19 Except to the extent otherwise provided in the Plan, the treatment of all Claims or
20 Interests in the Debtor under the Plan shall be in exchange for and in complete satisfaction and
21 release of, all Claims or Interests in the Debtor of any nature whatsoever, known or unknown,
22 including any interest accrued or expenses incurred thereon from and after the Petition Date, or
23 against the Estate. Except as otherwise provided in the Plan, upon the Effective Date, all Claims
24 and Interests in the Debtor and the Estate shall be satisfied and released in full in exchange for
25 the consideration provided under the Plan. Except as otherwise provided in the Plan, all Persons
26 shall be precluded and enjoined from asserting against the Debtor, the Estate or the Reorganized
27 Debtor any Claims or Interests or other Claims based upon any act or omission, transaction or
28 other activity of any kind or nature that occurred prior to the Effective Date.

26 **2. Discharge.**

27 Except as otherwise specifically provided in this Plan or in the Confirmation Order,
28 pursuant to section 1141(d) of the Code, the Distributions and rights that are provided in this

1 Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of
2 all Claims, including any interest or penalties accrued on such Claims from and after the Petition
3 Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against
4 and Interests in the Debtor, or any of its assets or properties, regardless of whether any property
5 shall have been distributed or retained pursuant to this Plan on account of such Claims, rights
6 and Interests, including but not limited to, Claims and Interests that arose before the
7 Confirmation Date, including all debts of the kind specified in sections 502(g), 502(h) and 502(i)
8 of the Bankruptcy Code, in each case whether or not (a) a proof of Claim or interest based upon
9 such Claim, debt, right or Interest is Filed or deemed Filed under section 501 of the Code; (b) a
10 Claim or Interest based upon such Claim, debt, right or Interest is allowed under section 502 of
11 the Code, or (c) the Holder of such a Claim, debt, right, or Interest accepted this Plan. The
12 Confirmation Order shall constitute a determination of the discharge of all of the Claims against
13 and Interests in the Debtor, subject to the occurrence of the Effective Date.

9 3. Compromise and Settlement.

10 Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in
11 consideration for the Distributions and other benefits provided pursuant to the Plan, the
12 provisions of the Plan shall constitute a good faith compromise of all Claims and Equity Interests
13 on the terms set forth in the Plan. The entry of the Confirmation Order shall constitute the
14 Bankruptcy Court's approval of the compromise or settlement of all Claims and Equity Interests,
15 as well as a finding by the Bankruptcy Court that such compromise or settlement is fair,
16 equitable, reasonable and in the best interests of the Debtor, the Estate and Holders of Claims
17 and Equity Interests. Entry of the Confirmation Order also shall constitute the Bankruptcy
18 Court's approval of the releases set forth in the Plan pursuant to Bankruptcy Rule 9019 and its
19 finding that the releases are: (i) in exchange for the good and valuable consideration provided by
20 the Releasees, a good faith settlement and compromise of the Claims released by releases set
21 forth in the Plan; (ii) in the best interests of the Debtor and all Holders of Claims; (iii) fair,
22 equitable and reasonable; (iv) given and made after due notice and opportunity for hearing; and
23 (v) a bar to any of the Debtor or the Reorganized Debtor, the Committee, or the Holders of
24 Claims against the Debtor asserting any Claim released by the Releasing Parties set forth in the
25 Plan against any of the Releasees.

21 4. Releases.

- 22 a) **Releases of Third Parties by the Debtor. Notwithstanding anything contained in the Plan to the contrary, on the Effective Date and effective as of the Effective Date, the Debtor on behalf of itself and the Estate, for the good and valuable consideration provided by each of the Releasees, hereby provides a full release to the Releasees (and each such Releasee so released shall be deemed released by the Debtor) and their respective properties from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative claims, remedies and liabilities whatsoever, whether**

1 known or unknown, foreseen or unforeseen, existing as of the
2 Effective Date, in law, at equity, whether for tort, contract,
3 violations of federal or state securities laws, or otherwise,
4 based in whole or in part upon any act or omission,
5 transaction, or other occurrence or circumstances existing or
6 taking place prior to or on the Effective Date arising from or
7 related in any way to the Debtor, including, without limitation,
8 those that the Debtor or the Reorganized Debtor would have
9 been legally entitled to assert or that any Holder of a Claim
10 against or Equity Interest in the Debtor or other entity would
11 have been legally entitled to assert for or on behalf of the
12 Debtor, the Reorganized Debtor or the Estate and further
13 including those in any way related to the Case or the Plan;
14 provided, however, that the foregoing provisions shall have no
15 effect on the liability of any Releasee that results from any act
16 or omission that is determined in a Final Order to be solely due
17 to such Releasee's own gross negligence or intentional or
18 willful misconduct or fraud.

12 b) Releases of Third Parties by Others. Notwithstanding anything
13 contained in the Plan to the contrary, on the Effective Date and
14 effective as of the Effective Date, the Releasing Parties shall be
15 deemed to provide a full release to the Releasees and their
16 respective property from any and all Causes of Action,
17 whether known or unknown, whether for tort, contract,
18 violations of federal or state securities laws or otherwise, and
19 all direct claims, based in whole or in part upon any act or
20 omission, transaction, or other occurrence or circumstances
21 existing or taking place prior to or on the Effective Date
22 arising from or related in any way to the Debtor, including
23 those in any way related to the Case or the Plan; provided,
24 however, that the foregoing provisions shall have no effect on
25 the liability of any Releasee that results from any act or
26 omission that is determined in a Final Order to be solely due to
27 such Releasee's own gross negligence or intentional or willful
28 misconduct or fraud.

5. Exculpation of Releasees.

The Releasees shall neither have nor incur any liability to any Person for any act
taken or omission made in good faith in connection with or related to the administration of
the Case, including, but not limited to, the formulation, implementation, confirmation, or
consummation of the Plan, the Disclosure Statement, or any other contract, instrument,
release, or other agreement or document created in connection with the Plan or regarding
any Distribution made under the Plan, except to the extent that the action taken or omitted

1 **to be taken by each of the same is determined by a Final Order to be due to such Person's**
2 **own respective gross negligence, intentional or willful misconduct or fraud.**

3 **6. Good Faith Solicitation**

4 Upon entry of the Confirmation Order, pursuant to section 1125(e) of the Code, Holdco
5 and its respective present and former members, officers, directors, employees, agents, advisors,
6 representatives, successors and assigns, and any Professionals (acting in such capacity)
7 employed by any of the foregoing Persons will be deemed to have solicited votes on the Plan in
8 good faith and in compliance with the Code and any applicable non-bankruptcy law, and,
9 therefore, shall have no liability for the violation of any applicable law, rule or regulation
10 governing the solicitation of votes on the Plan.

11 **7. Cramdown**

12 Notwithstanding anything to the contrary contained herein or in the Plan, Holdco reserves
13 the right to seek confirmation of the Plan pursuant to section 1129(b) of the Code in the event
14 any impaired Class of Claims or Interests does not vote to accept the Plan.

15 **8. Preservation of Rights of Action.**

16 **a) Vesting of Causes of Action.**

17 Except as expressly released or otherwise expressly provided in the Plan, pursuant to
18 section 1123(b) of the Code, the Debtor and the Reorganized Debtor, as applicable, exclusively
19 shall be vested with and shall retain and may enforce any and all Causes of Action that the
20 Debtor or the Estate may hold or have against any Person or entity, all of which are hereby
21 preserved, including all Causes of Action, and all rights of disallowance, offset,
22 recharacterization and/or equitable subordination with respect to claims, and causes of action that
23 have been or may be brought by or on behalf of the Debtor, the Estate, the Committee or the
24 Reorganized Debtor. Such claims, rights and causes of action shall remain assets of and vest in
25 the Reorganized Debtor, whether or not litigation relating thereto is pending on the Effective
26 Date, and whether or not any such claims, rights and causes of action have been listed or referred
27 to in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court.
28 Neither the Debtor, the Estate, the Committee, nor the Reorganized Debtor waives, releases,
relinquishes, forfeits, or abandons (nor shall they be estopped or otherwise precluded or impaired
from asserting) any claims, rights and causes of action or defenses that constitute property of the
Debtor or its Estate: (a) whether or not such claims, rights, causes of action, or defenses have
been listed or referred to this Plan, the Disclosure Statement, or any other document filed with
the Bankruptcy Court, (b) whether or not such claims, rights and causes of action, or defenses are
currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to
such claims, rights or causes of action filed a proof of Claim in the Case, filed a notice of
appearance or any other pleading or notice in the Case, voted for or against this Plan, or received
or retained any consideration under this Plan. Without in any manner limiting the scope of the
foregoing, notwithstanding any otherwise applicable principle of law or equity, including any
principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar
doctrine, (x) the failure to list, disclose, describe, identify, analyze or refer to any claims, rights

1 and causes of action, or defenses in the Plan, the Disclosure Statement, or any other document
2 filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the
3 right of the Debtor or the Reorganized Debtor, to commence, prosecute, defend against, settle,
4 recover on account of, and realize upon any such claims, rights and causes of action, that the
5 Debtor, its Estate, or the Committee may have as of the Effective Date, and (y) from and after
6 the Effective Date, the Reorganized Debtor shall have exclusive standing and authority to
7 prosecute any Causes of Action.

8 The sole claims and/or Causes of Action that shall not vest upon the Effective Date in the
9 Reorganized Debtor are the Former Officer and Director Causes of Action. On the Effective
10 Date, the Former Officer and Director Causes of Action shall vest in the Plan Trust (as described
11 herein). The Plan Trust shall have the exclusive right to institute, prosecute, abandon, settle or
12 compromise the Former Officer and Director Causes of Action, in accordance with the terms of
13 the Plan, in any court or other tribunal of competent jurisdiction, including, without limitation, in
14 an adversary proceeding filed in connection with the Debtor's bankruptcy case.

15 The Former Officer and Director Causes of Action and any recoveries therefrom shall
16 remain the sole property of the Plan Trust for the sole benefit of entities entitled to Distributions
17 under the Plan.

18 **b) Reservation of Causes of Action.**

19 The Debtor and the Reorganized Debtor expressly reserve all its Causes of Action,
20 including, without limitation, all claims, rights, Causes of Action (related to the Sale or
21 otherwise), and defenses for later adjudication by the Debtor or Reorganized Debtor, as
22 applicable, and, therefore, no preclusion doctrine, including the doctrines of res judicata,
23 collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or
24 otherwise) or laches will apply to such claims, rights and causes of action, and defenses upon or
25 after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan
26 or the Confirmation Order. In addition, the Debtor and the Reorganized Debtor expressly
27 reserve the right to pursue or adopt claims, rights and causes of action that are alleged in any
28 lawsuits in which the Debtor is a defendant or an interested party, against any entity, including
the plaintiffs or co-defendants in such lawsuits. Any entity to whom the Debtor has incurred an
obligation (whether on account of services, purchase, sale of goods or otherwise), or who has
received services from the Debtor, or who has received money or property from the Debtor, or
who has transacted business with the Debtor, or who has leased equipment or property from or to
the Debtor should assume that such obligation, receipt, transfer or transaction may be reviewed
by the Reorganized Debtor subsequent to the Effective Date and may be the subject of an action
after the Effective Date, whether or not: (a) such entity has filed a proof of Claim against the
Debtor in this Case; (b) such entity's proof of Claim has been objected to by the Debtor; (c) such
entity's Claim was included in the Debtor's Schedules; or (d) such entity's scheduled Claim has
been objected to by the Debtor or has been identified by the Debtor as contingent, unliquidated
or disputed.

1 subrogation, or recoupment of any kind against any obligation due the Debtors, the
2 Reorganized Debtors, their successors, or their property; and (5) commencing or
3 continuing any action, in any manner, in any place that does not comply with or is
4 inconsistent with the provisions of the Plan; and (b) taking any of the foregoing actions on
5 account of any Claims or Causes of Action that are revested in, or transferred to, the
6 Reorganized Debtor as of the Effective Date or under the Plan commencing or continuing
7 in any manner any action or other proceeding of any kind to recover on or otherwise with
8 respect to such Claims or rights of action. Any person or entity injured by any willful
9 violation of such injunction shall recover actual damages, including costs and attorneys'
10 fees, and, in appropriate circumstances, may recover punitive damages from the willful
11 violateor.

12 **I. Retention of Jurisdiction.**

13 Following the Effective Date, the Bankruptcy Court shall retain such jurisdiction to the
14 maximum extent as is legally permissible, including, without limitation, for the following
15 purposes:

- 16 1. To determine the allowability, amount, classification, or priority of
17 Claims upon objection by the Reorganized Debtor;
- 18 2. To construe and to take any action to execute and enforce the Plan,
19 the Confirmation Order, or any other order of the Bankruptcy
20 Court, to issue such orders as may be necessary for the
21 implementation, execution, performance, and consummation of the
22 Plan, and all matters referred to herein, and to determine all
23 matters that may be pending before the Bankruptcy Court in the
24 Case on or before the Effective Date;
- 25 3. To rule on any and all applications for allowance of compensation
26 and expense reimbursement of Professionals for periods on or
27 before the Effective Date;
- 28 4. To rule on any request for payment of any Administrative Claim or
administrative expense;
5. To resolve any dispute regarding the implementation, execution,
performance, consummation, or interpretation of the Plan;
6. To resolve all applications, adversary proceedings, contested
matters, and other litigated matters instituted on or before the
Effective Date;
7. To hear and determine any actions related to the Recovery Rights,
whether or not such actions are pending on or commenced after the
Effective Date and to recover any assets of the Debtor's Estate;

- 1 8. To determine such other matters and to perform other functions as
2 may be provided in the Confirmation Order;
- 3 9. To modify the Plan under section 1127 of the Code, to remedy any
4 apparent nonmaterial defect or omission in the Plan, or to reconcile
5 any nonmaterial inconsistency in the Plan so as to carry out its
6 intent and purposes;
- 7 10. To issue injunctions or take such other actions or make such other
8 orders as may be necessary or appropriate to restrain interference
9 with the Plan or its execution or implementation by any entity;
- 10 11. To issue such orders in aid of execution of the Plan and the
11 Confirmation Order, notwithstanding any otherwise applicable
12 non-bankruptcy law, with respect to any entity, to the full extent
13 authorized by the Code;
- 14 12. To hear and determine any tax disputes concerning, and to
15 determine and declare any tax effects under the Plan; and
- 16 13. To enter a final decree closing the Case.

17 **J. Miscellaneous Provisions.**

18 The Plan also contains numerous miscellaneous provisions. Parties in interest are
19 respectfully invited to review the Plan for further details.

20 **VIII. Statutory Requirements For Confirmation Of The Plan.**

21 The following is a brief summary of the confirmation process. Holders of Claims and
22 Equity Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to
23 consult their own advisors.

24 **A. The Confirmation Hearing.**

25 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to
26 conduct a hearing to consider confirmation of a plan. Section 1128(b) of the Bankruptcy Code
27 provides that any party in interest may object to confirmation.

28 **B. Confirmation Standards.**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan
satisfies the requirements of section 1129 of the Bankruptcy Code. The Plan Proponent believes
that: (1) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the
Bankruptcy Code; (2) it has complied or will have complied with all of the requirements of
chapter 11 of the Bankruptcy Code; and (3) the Plan has been proposed in good faith.
Specifically, the Plan Proponent believes that the Plan satisfies or will satisfy the applicable

1 Confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth
2 below.

- 3 a) The Plan complies with all applicable provisions of the Bankruptcy
4 Code.
- 5 b) The Plan Proponent will have complied with the applicable
6 provisions of the Bankruptcy Code.
- 7 c) The Plan has been proposed in good faith and not by any means
8 forbidden by law.
- 9 d) Any payment made or to be made under the Plan for services or for
10 costs and expenses in, or in connection with, the Case, or in
11 connection with the Plan and incident to the Case, has been or will
12 be disclosed to the Bankruptcy Court, and any such payment: (a)
13 made before the Confirmation of the Plan will be reasonable; or (b)
14 will be subject to the approval of the Bankruptcy Court as
15 reasonable, if it is to be fixed after Confirmation of the Plan.
- 16 e) Each Holder of an Impaired Claim has accepted the Plan or will
17 receive or retain under the Plan on account of such Claim property
18 of a value as of the Effective Date of the Plan that is not less than
19 the amount that such Holder would receive or retain if the Debtor
20 were liquidated on that date under chapter 7 of the Bankruptcy
21 Code.
- 22 f) Each Class of Claims that is entitled to vote on the Plan has either
23 accepted the Plan or is not Impaired under the Plan, or the Plan can
24 be confirmed without the approval of such voting Class of Claims
25 or Equity Interests pursuant to section 1129(b) of the Bankruptcy
26 Code.
- 27 g) Except to the extent that the Holder of a particular Claim will agree
28 to a different treatment of its Claim, the Plan provides that Holders
of Administrative Claims and Holders of Priority Tax Claims shall
receive payment in Cash, in full on the Effective Date, unless
otherwise agreed to by the Creditor and the Plan Proponent or the
Reorganized Debtor.
- h) At least one Class of Impaired Claims has accepted the Plan,
determined without including any acceptance of the Plan by any
Insider holding a Claim in that Class.
- i) Confirmation of the Plan is not likely to be followed by the
liquidation or the need for further financial reorganization of the

1 Debtor or any successors thereto under the Plan, unless the Plan
2 contemplates such liquidation or reorganization.

3 j) The Debtor has paid the required filing fees pursuant to 28 U.S.C.
4 § 1930 to the clerk of the Bankruptcy Court.

5 k) In addition to the filing fees paid to the clerk of the Bankruptcy
6 Court, the Debtor will pay quarterly fees no later than the last day
7 of the calendar month following the calendar quarter for which the
8 fee is owed in the Debtor's Case for each quarter (including any
fraction thereof), to the United States Trustee, until the case is
closed.

9 **C. Financial Feasibility.**

10 The Bankruptcy Code permits a chapter 11 plan to be confirmed if it is not likely to be
11 followed by liquidation or the need for further financial reorganization, other than as provided in
12 such plan. Holdco believes the Plan meets the feasibility requirement set forth in section
13 1129(a)(11) of the Bankruptcy Code, as Confirmation is not likely to be followed by liquidation
14 or the need for further financial reorganization of the Reorganized Debtor. The discussion
15 regarding feasibility is set forth above and is incorporated here by reference.

16 **D. Best Interests of Creditors Test.**

17 Under the Bankruptcy Code, confirmation of a plan also requires a finding that the plan is
18 in the "best interests" of creditors. Under the "best interests" test, the Bankruptcy Court must
19 find (subject to certain exceptions) that the Plan provides, with respect to each Impaired Class,
20 that each Holder of an Allowed Claim or Equity Interest in such Impaired Class has accepted the
21 Plan, or will receive or retain under the Plan property of a value, as of the Effective Date, that is
22 not less than the amount that such Holder would receive or retain if the Debtor were liquidated
23 under chapter 7 of the Bankruptcy Code.

24 The reason for this largely is a function of the Plan structure and the protections built in
25 to the Plan structure that shield Creditors electing the Cash Based Alternative Treatment from the
26 risks of the Reorganized Debtor's post-confirmation business activities. Essentially, the Plan
27 provides Holders of TOPrS Unsecured Claims and General Unsecured Claims with an option –
28 they can either elect to "cash out" and thereby receive a Distribution based upon Cash on hand
and the proceeds, if any, recovered by the Reorganized Debtor in any potential causes of action
or assets, or they can do nothing, and if confirmed, then the Plan by default converts their
Allowed Claims into New Common Stock. The Cash that will be available for Distribution to
those who elect the Cash Based Alternative Treatment – the Cash on hand on the Effective Date
and other assets – will be segregated (to the extent and in the amount necessary to make
Distributions to those Creditors who properly elect the Cash Based Alternative Treatment) and
not consumed by the Reorganized Debtor in its operations post-confirmation. Thus, there are no
circumstances under which Creditors who are Holders of Allowed Claims will recover less than
would be available in a chapter 7 liquidation, unless they specifically assume that risk by

1 refraining from electing the Cash Based Alternative Treatment and instead receive New
2 Common Stock on account of their Allowed Claims.

3 Furthermore, the holders of Allowed General Unsecured Claims that elect the
4 Cash Based Alternative Treatment will receive their recoveries with no dilution for chapter 7
5 trustee fees and costs, including the costs of administering the chapter 7 case. If this Case were
6 converted to a chapter 7 liquidation, a trustee would be appointed by the Bankruptcy Court. That
7 trustee would liquidate the remaining assets of the Debtor's Estate and distribute the proceeds in
8 accordance with the priorities established under the Code.

9 All administrative expenses of the chapter 7 case, including the chapter 7 trustee's
10 fees (which can be as high as 3% of the total amount collected and disbursed) would have to be
11 paid in full before payment of the unpaid administrative expenses from the Case. Unpaid chapter
12 11 Administrative Claims would, in turn, be paid in full before any Distribution could be made to
13 unsecured Creditors. It is unusual for Distributions to be made within one year of the
14 appointment of a chapter 7 trustee in a case involving substantial assets or Claims.

15 Thus, in a chapter 7 liquidation, it is likely the total proceeds would be approximately the
16 same, or possibly less for those creditors that elect the Cash Based Alternative Treatment.
17 However, the administrative expenses associated with the chapter 7 case would very likely
18 exceed the expenses that the Reorganized Debtor will incur in the implementation of the Plan,
19 and the Distributions likely would be delayed longer than the Distributions that will be made
20 under the Plan. Therefore, the Plan Proponent believes that the Plan satisfies the requirements of
21 the "best interests" test and provides Creditors at least as much present value as they would
22 receive in a chapter 7 liquidation.

23 The Liquidation Analysis does not compare the ultimate recoveries to Creditors who
24 become shareholders of the Reorganized Debtor with the recoveries to Creditors who elect the
25 Cash Based Alternative Treatment. Such a comparison is difficult to illustrate, in light of
26 uncertainties about the Reorganized Debtor's prospects. The Reorganized Debtor's future
27 business plan is discussed below.

28 Based upon the conclusions set forth herein the Plan Proponent believes that the value of
Distributions, if any, in a hypothetical chapter 7 liquidation to Holders of Allowed General
Unsecured Claims would be less than or equal to the value of distributions to such Holders under
the Plan and the Plan Proponent believes that the Plan satisfies the "best interests" test of section
1129(a)(7) of the Bankruptcy Code.

E. Acceptance by Impaired Classes.

The Bankruptcy Code requires, as a condition to confirmation, that, except as described
in the following section, each class of claims or equity interests that is impaired under a plan,
accept the plan. A class that is not "impaired" under a plan is conclusively presumed to have
accepted the plan and, therefore, solicitation of acceptances with respect to such class is not
required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and
contractual rights to which the claim or the equity interest entitles the holder of such claim or
equity interest; (ii) cures any default and reinstates the original terms of such obligation; or (iii)

1 provides that, on the Effective Date, the holder of such claim or equity interest receives Cash
2 equal to the allowed amount of that claim or, with respect to any equity interest, any fixed
3 liquidation preference to which the holder of such equity interest is entitled to any fixed price at
4 which the debtor may redeem the security.

5 Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of
6 impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than
7 one-half in number of claims in that class, but for that purpose counts only those who actually
8 vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan
9 only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor
10 of acceptance.

11 The Claims in Classes 1 and 4 are not Impaired under the Plan, and, as a result, the
12 Holders of such Claims are conclusively presumed to have accepted the Plan.

13 The Voting Classes – Classes 2 and 3 are Impaired under the Plan, and the Holders of
14 Claims in such Classes are entitled to vote on the Plan. Pursuant to section 1129 of the
15 Bankruptcy Code, the Holders of Claims in the Voting Classes must accept the Plan for the Plan
16 to be confirmed without application of the “fair and equitable test” to such Classes and without
17 considering whether the Plan “discriminates unfairly” with respect to such Classes, as both
18 standards are described herein.

19 **F. Confirmation Without Acceptance by All Impaired Classes.**

20 Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a Plan
21 even if all other impaired classes entitled to vote on the plan have not accepted it, *provided* that
22 the plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the
23 Bankruptcy Code, notwithstanding an impaired class’s rejection or conclusively presumed
24 rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure
25 commonly known as “cram down,” so long as the plan does not “discriminate unfairly” and is
26 “fair and equitable” with respect to each class of claims or equity interests that is impaired under,
27 and has not accepted, the plan.

28 **1. No Unfair Discrimination.**

This test applies to classes of claims or equity interests that are of equal priority and are
receiving different treatment under the Plan. The test does not require that the treatment be the
same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider
whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*,
classes of the same legal character). Bankruptcy courts will take into account a number of
factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat
two classes of unsecured creditors differently without unfairly discriminating against either class.

2. Fair and Equitable Test.

This test applies to classes of different priority and status (*e.g.*, secured versus unsecured)
and includes the general requirement that no class of claims receive more than 100% of the

1 amount of the allowed claims in such class. As to the non-accepting class, the test sets different
2 standards depending on the type of claims or equity interests in such class.

3 Secured Claims: The condition that a plan be “fair and equitable” to a non-accepting
4 class of secured claims includes the requirements that: (a) the holders of such secured claims
5 retain the liens securing such claims to the extent of the allowed amount of the claims, whether
6 the property subject to the liens is retained by the debtor or transferred to another entity under the
7 plan; and (b) each holder of a secured claim in the class receives deferred cash payments totaling
at least the allowed amount of such claim with a present value, as of the effective date of the
plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property
subject to the liens.

8 Unsecured Claims: The condition that a plan be “fair and equitable” to a non-accepting
9 class of unsecured claims includes the following requirement that either: (a) the plan provides
10 that each holder of a claim of such class receive or retain on account of such claim property of a
11 value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the
holder of any claim or any equity interest that is junior to the claims of such class will not
receive or retain under the plan on account of such junior claim or junior equity interest any
property.

12 Equity Interests: The condition that a plan be “fair and equitable” to a non-accepting
13 class of equity interests includes the requirements that either: (a) the plan provides that each
14 holder of an equity interest in that class receives or retains under the plan on account of that
15 equity interest property of a value, as of the effective date of the plan, equal to the greater of:
16 (i) the allowed amount of any fixed liquidation preference to which such holder is entitled;
17 (ii) any fixed redemption price to which such holder is entitled; or (iii) the value of such interest;
or (b) if the class does not receive the amount as required under (a) hereof, no class of equity
interests junior to the non-accepting class may receive a distribution under the plan.

18 The Plan Proponent will seek confirmation of the Plan under section 1129(b) of the
19 Bankruptcy Code in view of the conclusively presumed rejection by Class 5 To the extent that
20 any of the Voting Classes vote to reject the Plan, the Plan Proponent further reserves the right to
(a) seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or
(b) modify the Plan in accordance with Article XI of the Plan.

21 The votes of Holders of Equity Interests in Class 5 are not being solicited because, as set
22 forth in Article III of the Plan, there will be no distribution to this Class.

23 Notwithstanding the conclusively presumed rejection by Class 5 or any Class that votes
24 to reject the Plan, the Plan Proponent does not believe that the Plan discriminates unfairly against
25 any Impaired Class of Claims or Equity Interests. The Plan Proponent believes that the Plan and
26 the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing
27 requirements for nonconsensual confirmation of the Plan.

1 **IX. Certain Risk Factors To Be Considered Prior To Voting**

2 **A. Certain Bankruptcy Law Considerations.**

3 The occurrence or non-occurrence of any or all of the following contingencies, and any
4 others, including those additional risk factors described herein could affect distributions available
5 to Holders of Allowed Claims under the Plan but will not necessarily affect the validity of the
6 vote of the Impaired Classes to accept or reject the Plan or necessarily require a re-solicitation of
7 the votes of Holders of Claims in such Impaired Classes.

8 **1. Parties in Interest May Object to the Plan’s Classification of Claims
9 and Equity Interests.**

10 Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity
11 interest in a particular class only if such claim or equity interest is substantially similar to the
12 other claims or equity interests in such class. The Plan Proponent believes that the classification
13 of Claims and Equity Interests under the Plan complies with the requirements set forth in the
14 Bankruptcy Code because the Plan Proponent created Classes of Claims and Equity Interests,
15 each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the
16 other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance
17 that the Bankruptcy Court will reach the same conclusion.

18 **2. Failure to Satisfy Vote Requirements.**

19 If votes are received in number and amount sufficient to enable the Bankruptcy Court to
20 confirm the Plan, the Plan Proponent intends to seek, as promptly as practicable thereafter,
21 confirmation of the Plan. In the event that sufficient votes are not received, the Plan Proponent
22 may seek to confirm an alternative chapter 11 plan. There can be no assurance that the terms of
23 any such alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed
24 Claims as those proposed in the Plan.

25 **3. The Plan Proponent May Not Be Able to Secure Confirmation of the
26 Plan.**

27 Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a
28 chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that:
29 (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-
30 accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a
31 need for further financial restructuring unless such liquidation or reorganization is contemplated
32 by the plan; and (c) the value of distributions to non-accepting holders of claims and equity
33 interests within a particular class under such plan will not be less than the value of distributions
34 such holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy
35 Code.

36 There can be no assurance that the requisite acceptances to confirm the Plan will be
37 received. Even if the requisite acceptances are received, there can be no assurance that the
38 Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might

1 challenge either the adequacy of this Disclosure Statement or whether the balloting procedures
2 and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if
3 the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures, and
4 the voting results are appropriate, the Bankruptcy Court can still decline to confirm the Plan if it
5 finds that any of the statutory requirements for Confirmation have not been met, including the
6 requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable”
7 to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any,
8 Holders of Allowed Claims will receive with respect to their Allowed Claims.

9 The Plan Proponent, subject to the terms and conditions of the Plan, reserves the right to
10 modify the terms and conditions of the Plan as necessary for confirmation. Any such
11 modifications could result in a less favorable treatment of any non-accepting Class, as well as of
12 any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan.
13 Such a less favorable treatment could include a Distribution of property to the Class affected by
14 the modification of a lesser value than currently provided in the Plan, or no Distribution of
15 property whatsoever under the Plan.

16 More specifically, in the event this Plan cannot be confirmed, the Plan Proponent
17 explicitly reserves its right to amend this Plan to a liquidating plan under Chapter 11 of the
18 Bankruptcy Code, which liquidating plan would also preserve the Causes of Action (including
19 the Former Director and Officer Causes of Action) the Debtor purports to release in its plan, and
20 which are specifically preserved pursuant to the within Plan.

21 **4. Nonconsensual Confirmation.**

22 In the event that any impaired class of claims or equity interests does not accept a chapter
23 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponent’s request if at
24 least one impaired class has accepted the plan (with such acceptance being determined without
25 including the vote of any “insider” in such class), and, as to each impaired class that has not
26 accepted the plan, the bankruptcy court determines that the plan “does not discriminate unfairly”
27 and is “fair and equitable” with respect to the dissenting impaired classes. The Plan Proponent
28 believes that the Plan satisfies these requirements and the Plan Proponent may request such
nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code.
Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In
addition, the pursuit of nonconsensual confirmation of the Plan may result in, among other
things, increased expenses relating to Professionals.

29 **5. The Plan Proponent May Object to the Amount or Classification of a Claim.**

30 Except as otherwise provided in the Plan, the Plan Proponent and the Reorganized Debtor
31 reserve the right to object to the amount or classification of any Claim under the Plan. The
32 estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim
33 where such Claim is subject to an objection. Any Holder of a Claim that is subject to an
34 objection may not receive its expected share of the estimated Distributions described in this
35 Disclosure Statement and may not be entitled to vote on the Plan.

1 **6. Risk of Non-Occurrence of the Effective Date.**

2 Although the Plan Proponent believes that the Effective Date may occur quickly after the
3 Confirmation Date, there can be no assurance as to such timing or as to whether the Effective
4 Date will, in fact, occur. As noted above, the occurrence of the Effective Date could be delayed
for months or years after the Confirmation Date.

5 **7. Contingencies Could Affect Votes of Impaired Classes to Accept or**
6 **Reject the Plan.**

7 The distributions available to Holders of Allowed Claims under the Plan can be affected
8 by a variety of contingencies. The occurrence of any and all such contingencies, which could
9 affect distributions available to Holders of Allowed Claims under the Plan, will not affect the
validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort
of revote by the Impaired Classes.

10 **B. Risk Factors that May Affect the Recovery Available to Holders of Allowed**
11 **Claims.**

12 HOLDERS OF CLAIMS SHOULD READ AND CONSIDER CAREFULLY THE
13 FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH
14 IN THIS DISCLOSURE STATEMENT AND RELATED DOCUMENTS, REFERRED TO OR
15 INCORPORATED BY REFERENCE IN THIS DISCLOSURE STATEMENT, PRIOR TO
16 VOTING TO ACCEPT OR REJECT THE PLAN. THIS ARTICLE PROVIDES
17 INFORMATION REGARDING POTENTIAL RISKS IN CONNECTION WITH THE PLAN.
18 THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE
19 ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS
IMPLEMENTATION.

20 **1. The Plan Proponent Cannot State with any Degree of Certainty What**
21 **Recovery Will Be Available to Holders of Allowed Claims in Voting**
22 **Classes.**

23 Many unknown factors make certainty of creditor recoveries under the Plan
24 unachievable. Among them are the following: First, the Plan Proponent cannot know with any
25 certainty, at this time, the exact value of the New Common Stock in the Reorganized Debtor, or
26 other common stock issued in connection with the Cash Based Alternative Treatment, or what
27 the results will be of the Reorganized Debtor's post-confirmation business activities. Second,
28 the Plan Proponent cannot know with any certainty, at this time, the number or amount of Claims
that will ultimately be Allowed. Third, the Plan Proponent cannot know with any certainty, at
this time, the number or size of Claims senior to the Voting Classes or unclassified Claims that
will ultimately be Allowed.

29 **C. Risk Factors Could Negatively Impact the Reorganized Debtor's Business.**

30 The risks enumerated above could have a materially adverse effect on the business,
31 financial condition, or results of operations of the Reorganized Debtor. Moreover, the

1 Reorganized Debtor's business plan will only be developed fully after confirmation of the Plan
2 and based upon the decisions of the New Board, made consistently with the fiduciary duties the
3 members of the New Board will owe. Thus, there are many unknowns about the prospects of
4 creditor recoveries on account of the New Common Stock unknown, uncertain and highly
5 speculative. The Reorganized Debtor's business may be adversely affected by the major
6 recession currently being experienced in the United States. Investment returns could be less than
7 projected and the Reorganized Debtor might be forced to liquidate investments to raise Cash.
8 The Reorganized Debtor may invest in or acquire highly illiquid assets, including, without
9 limitation, disputed, contingent and unliquidated causes of action against third parties. The
10 Reorganized Debtor may be required to engage in prolonged, expensive and speculative litigation,
11 and may be required to succeed in such litigation in order to monetize such causes of action.
12 Additional risks and uncertainties not currently known to the Plan Proponent or that the Plan
13 Proponent currently deems immaterial may also materially adversely affect the Reorganized
14 Debtor's business, financial condition, or results of operations. Moreover, the Reorganized
15 Debtor will be engaged in inherently risky business, and there is substantial risk that the
16 Reorganized Debtor's business plan will not perform as well as intended. There is no assurance
17 that management will select investments that produce results that meet expectations. There is no
18 assurance that New Common Stock will avoid becoming worthless and losing all of its value.

12 In addition to the possibility of a loss in the value of the New Common Stock due to risks
13 associated with the Reorganized Debtor's business, a liquid trading market for the New Common
14 Stock may never develop. As of the Effective Date, the New Common Stock will not be listed
15 for trading on any stock exchange or trading system, and no such listing is anticipated in the
16 future. Consequently, the trading liquidity of the New Common Stock is expected to be very
17 limited. In addition, it is expected that from and after the Effective Date, the certificate of
18 incorporation of the Reorganized Debtor will contain certain restrictions in relation to the
19 transfer of New Common Stock. In particular, without the prior approval of the New Board, no
20 person will be permitted to acquire, whether directly or indirectly, and whether in one transaction
21 or a series of related transactions, shares of the Reorganized Debtor to the extent that, after
22 giving effect to the proposed acquisition, (i) the purported transferee or, as a result of the
23 proposed acquisition, any other person, would hold more than 4.9% of the total equity value of
24 the Reorganized Debtor, or (ii) a person who already holds at least 4.9% of the total equity value
25 of the Reorganized Debtor shares would hold shares representing a higher percentage of that
26 value.

21 **As a result of the above risk factors, the ultimate value of each share of the**
22 **Reorganized Debtor's New Common Stock is uncertain and holders thereof may incur a**
23 **complete loss.**

23 **D. Disclosure Statement Disclaimer.**

24 **1. Information Contained Herein Is for Soliciting Votes.**

25 The information contained in this Disclosure Statement is for the purposes of soliciting
26 acceptances of the Plan and may not be relied upon for any other purposes.

1 **2. This Disclosure Statement Was Not Approved by the United States**
2 **Securities and Exchange Commission.**

3 Although this Disclosure Statement will be filed with the Securities Exchange
4 Commission on a Form 8-K, neither the Securities Exchange Commission nor any state
5 regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or
6 the exhibits or the statements contained herein, and any representation to the contrary is
7 unlawful.

8 **3. This Disclosure Statement May Contain Forward Looking**
9 **Statements.**

10 This Disclosure Statement may contain “forward looking statements” within the meaning
11 of the Private Securities Litigation Reform Act of 1995. Such statements consist of any
12 statement other than a recitation of historical fact and can be identified by the use of forward
13 looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the
14 negative thereof or other variations thereon or comparable terminology. The reader is cautioned
15 that all forward looking statements are necessarily speculative and there are certain risks and
16 uncertainties that could cause actual events or results to differ materially from those referred to
17 in such forward looking statements. The information contained herein and attached hereto are
18 estimates only, and the timing and amount of actual distributions to Holders of Allowed Claims
19 may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates or
20 recovery projections may or may not turn out to be accurate.

21 **4. Reliance on Exemptions from Registration Under the Securities Act**
22 **and Investment Company Act.**

23 The Plan provides that the Debtor and the Reorganized Debtor may rely on section 1145
24 of the Bankruptcy Code as well as exemptions from registration under the Securities Act and the
25 Investment Company Act. Parties in interest are invited to review the Plan for further details.

26 **5. No Legal or Tax Advice Is Provided to You by this Disclosure**
27 **Statement.**

28 **This Disclosure Statement is not legal advice to you.** The contents of this Disclosure
Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or
an Equity Interest should consult his or her own legal counsel and accountant with regard to any
legal, tax, and other matters concerning his or her Claim or Equity Interest. This Disclosure
Statement may not be relied upon for any purpose other than to determine how to vote on the
Plan, or object to confirmation of the Plan.

6. No Admissions Made.

 The information and statements contained in this Disclosure Statement will neither
(a) constitute an admission of any fact or liability by any entity (including, without limitation, the
Plan Proponent) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the
Debtor, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

1 **7. Failure to Identify Litigation Claims or Projected Objections.**

2 No reliance should be placed on the fact that a particular litigation claim or projected
3 objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Plan
4 Proponent or the Reorganized Debtor, may seek to investigate, file, and prosecute objections to
5 Claims and may object to Claims after the Confirmation or Effective Date of the Plan
6 irrespective of whether this Disclosure Statement identifies such Claims or objections to such
7 Claims.

8 **8. No Waiver of Right to Object or Right to Recover Transfers and
9 Assets.**

10 The vote by a Holder of an Allowed Claim for or against the Plan does not constitute a
11 waiver or release of any Claims, Causes of Action, or rights of the Debtor or the Reorganized
12 Debtor (or any party in interest, as the case may be) to object to that Holder's Allowed Claim, or
13 recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether
14 any Claims, Causes of Action of the Debtor, its Estate or the Reorganized Debtor are specifically
15 or generally identified herein.

16 **9. Information Was Provided by the Debtor and Was Relied Upon by
17 the Debtor's Professionals.**

18 As repeatedly noted herein, the Plan Proponent has relied upon information provided by
19 the Debtor in connection with the preparation of this Disclosure Statement. The Plan Proponent
20 has not verified independently the accuracy or completeness of the information upon which it has
21 relied.

22 **10. Potential Exists for Inaccuracies, and the Plan Proponent Has No
23 Duty to Update.**

24 The statements contained in this Disclosure Statement are made by the Plan Proponent as
25 of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure
26 Statement after that date does not imply that there has not been a change in the information set
27 forth herein since that date. While the Plan Proponent has used its reasonable business judgment
28 to ensure the accuracy of all of the information provided in this Disclosure Statement and in the
29 Plan, the Plan Proponent nonetheless cannot, and does not, confirm the current accuracy of all
30 statements appearing in this Disclosure Statement. Further, although the Plan Proponent may
31 subsequently update the information in this Disclosure Statement, it has no affirmative duty to do
32 so unless ordered to do so by the Bankruptcy Court.

33 **11. No Representations Outside this Disclosure Statement Are
34 Authorized.**

35 No representations concerning or relating to the Debtor, this Case, or the Plan are
36 authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this
37 Disclosure Statement. Any representations or inducements made to secure your acceptance or
38 rejection of the Plan that are other than as contained in, or included with, this Disclosure

1 Statement, should not be relied upon by you in arriving at your decision. You should promptly
2 report unauthorized representations or inducements to the counsel to the Debtor and the United
3 States Trustee.

4 **12. Liquidation Under Chapter 7.**

5 The Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant
6 to which a trustee would be elected or appointed to liquidate the assets of the Debtor for
7 distribution in accordance with the priorities established by the Bankruptcy Code. A discussion
8 of the effects that a chapter 7 liquidation would have on the recoveries of Holders of Claims and
9 the Holdco Liquidation Analysis is set forth in Article VII herein, "Statutory Requirements for
10 Confirmation of the Plan."

11 **X. Certain United States Federal Income Tax Consequences.**

12 The following is a summary of certain United States federal income tax consequences of
13 the Plan to the Debtor and certain Holders of Claims and Equity Interests and is based upon
14 information provided by the Debtor. This summary does not address the United States federal
15 income tax consequences to Holders (i) whose Claims or Equity Interests are Unimpaired or
16 otherwise entitled to payment in full in Cash under the Plan or (ii) that are deemed to reject the
17 Plan. This summary is based on the Internal Revenue Code, Treasury Regulations thereunder,
18 and administrative and judicial interpretations and practice, all as in effect on the date of this
19 Disclosure Statement and all of which are subject to change or differing interpretations, possibly
20 with retroactive effect. Due to the lack of definitive judicial and administrative authority in a
21 number of areas, substantial uncertainty may exist with respect to some of the tax consequences
22 described below. No opinion of counsel has been obtained and the Plan Proponent does not
23 intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed
24 below. This summary is not binding on the IRS or the courts. There can be no assurance that the
25 IRS will not assert, or that a court will not sustain, a different position than any position
26 discussed below.

27 This summary does not address all aspects of United States federal income taxation that
28 may be relevant to the Debtor or to certain Holders in light of their individual circumstances, nor
does it discuss tax issues applicable to Holders of Claims or Equity Interests that are not "United
States persons" (as such term is defined in the Internal Revenue Code) or that are otherwise
subject to special treatment under United States federal income tax law (including, without
limitation, banks, brokers, dealers and traders in securities, financial institutions, governmental
authorities or agencies, insurance companies, mutual funds, pass-through entities, regulated
investment companies, small business investment companies, tax-exempt organizations, and
trusts and those holding, or who will hold, Claims, Equity Interests, New Series A Common
Stock or New Series B Common Stock as part of a hedge, straddle, conversion or constructive
sale transaction). This summary assumes (i) each Holder of a Claim or Equity Interest holds its
Claim, Equity Interests, New Series A Common Stock or other Common Stock in the
Reorganized Debtor issued in connection with the Cash Based Alternative Treatment as "capital
assets" (generally, property held for investment) within the meaning of Section 1221 of the
Internal Revenue Code and (ii) the debt obligations(s) underlying each Allowed Claim is
properly treated as debt (rather than equity) of the Debtor. Moreover, this summary does not

1 purport to cover all aspects of United States federal income taxation that may apply to the Debtor
2 and Holders of Claims and Equity Interests based upon their particular circumstances.
3 Additionally, this summary does not discuss any tax consequences that may arise under any laws
4 other than United States federal income tax law, including under state, local, estate, gift, foreign
5 or other tax law.

6 ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES
7 FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES
8 ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE
9 BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A
10 CLAIM OR EQUITY INTEREST. ALL HOLDERS OF CLAIMS OR EQUITY INTERESTS
11 ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE,
12 LOCAL, ESTATE, GIFT, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE
13 UNDER THE PLAN.

14 **IRS CIRCULAR 230 DISCLOSURE:** TO ENSURE COMPLIANCE WITH
15 REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN THIS
16 DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED
17 OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE
18 PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL
19 REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT
20 (INCLUDING ANY ATTACHMENTS) IS WRITTEN TO SUPPORT THE MARKETING OR
21 PROMOTION OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THIS
22 DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON
23 THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX
24 ADVISOR.

25 **A. Certain United States Federal Income Tax Consequences to the Debtor.**

26 **1. Cancellation of Debt and Reduction of Tax Attribute**

27 In general, absent an exception, a debtor will realize and recognize cancellation of debt
28 income ("CODI") upon satisfaction of its outstanding indebtedness for total consideration less
than the amount of such indebtedness. The amount of CODI, in general, is the excess of (a) the
adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash
paid, (y) the issue price of any new indebtedness of the taxpayer issued and (z) the fair market
value of any new consideration (including New Common Stock or Cash) given in satisfaction of
such indebtedness at the time of the exchange.

Pursuant to Section 108 of the Internal Revenue Code, a debtor is not required to include
CODI in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11
of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as
a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of CODI
that it excluded from gross income. In general, tax attributes are reduced in the following order:
(a) NOLs; (b) general business credit carryovers; (c) minimum tax credit carryovers; (d) capital
loss carryovers; (e) tax basis in assets (but not below the amount of liabilities to which the debtor
remains subject); (f) passive activity loss and credit carryovers; and (g) foreign tax credits.

1 Because the Plan provides that Holders of certain Claims will receive New Common
2 Stock in the Reorganized Debtor, the amount of CODI, and accordingly the amount of tax
3 attributes of the Debtor required to be reduced, will depend on the fair market value of the New
4 Common Stock. The amount of such CODI is therefore uncertain. It is expected, however, that
5 the Debtor will recognize a substantial amount of CODI as a result of consummation of the Plan,
6 and that this CODI will result in a reduction in the NOL carryforwards of the Reorganized
7 Debtor.

8 **2. Limitation of NOL Carryforwards and Other Tax Attributes.**

9 Even after taking into account a reduction in its NOLs as a result of CODI, Holdco
10 anticipates the Reorganized Debtor will have tax attributes (in particular, significant capital
11 losses) at emergence. The amount of such tax attributes that will be available to the Reorganized
12 Debtor at emergence is based on a number of factors and is impossible to calculate at this time.
13 Some of the factors that will impact the amount of available tax attributes include: (a) the
14 amount of tax losses incurred by the Debtor in 2011; (b) the fair market value of the New
15 Common Stock; and (c) the amount of CODI that has not been included in gross income by the
16 Debtor as a result of the above-described rules in connection with consummation of the Plan.
17 Any capital loss carryovers that are available will be subject to the limitations on the use of
18 capital losses, generally, only against future capital gains rather than ordinary income.

19 Under Section 382 of the Internal Revenue Code, if a corporation undergoes an
20 “ownership change,” the amount of its Pre-Change Losses, which include capital losses, that may
21 be utilized to offset future taxable income generally is subject to an annual limitation. As
22 discussed in greater detail herein, the Debtor anticipates that the issuance of the New Common
23 Stock pursuant to the Plan will result in an “ownership change” of the Reorganized Debtor for
24 these purposes, and that the Debtor’s use of its Pre-Change Losses (which are anticipated to
25 include substantial built-in losses) will be subject to limitation unless an exception to the general
26 rules of Sections 382 and 383 of the Internal Revenue Code applies.

27 a) General Section 382 Annual Limitation.

28 In general, the annual Section 382 Limitation on the use of Pre-Change Losses in any
“post-change year” is equal to the product of (a) the fair market value of the stock of the
corporation immediately before the “ownership change” (with certain adjustments) multiplied by
(b) the “long-term tax-exempt rate” in effect for the month in which the “ownership change”
occurs (approximately 4.3% for the month of July 2011). The Section 382 Limitation may be
increased to the extent that the Debtor recognizes certain built-in gains in its assets during the
five-year period following the ownership change, or is treated as recognizing built-in gains
pursuant to the safe harbors provided in IRS Notice 2003-65. Any unused limitation may be
carried forward, thereby increasing the annual limitation in the subsequent taxable year. As
discussed below, however, special rules may apply in the case of a corporation which
experiences an ownership change as the result of a bankruptcy proceeding.

The issuance under the Plan of the New Common Stock, along with the cancellation of
existing Debtor Equity Interests through the Plan, is expected to cause an ownership change with
respect to the Debtor on the Effective Date. As a result, unless an exception applies, Sections

1 382 and 383 of the Internal Revenue Code will apply to limit the Debtor's use of any remaining
2 Pre-Change Losses after the Effective Date. This limitation is independent of, and in addition to,
3 the reduction of tax attributes described in the preceding section resulting from the exclusion of
4 CODI.

5 b) Special Bankruptcy Exceptions.

6 The 382(1)(5) Exception to the foregoing annual limitation rules generally applies when
7 so-called "qualified creditors" of a debtor company in chapter 11 receive, in respect of their
8 Claims, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling
9 corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan. Under the 382(1)(5)
10 Exception, a debtor's Pre-Change Losses are not limited on an annual basis but, instead, the
11 debtor's NOLs are required to be reduced by the amount of any interest deductions claimed
12 during any taxable year ending during the three-year period preceding the taxable year that
13 includes the effective date of the plan of reorganization, and during the part of the taxable year
14 prior to and including the effective date of the plan of reorganization, in respect of all debt
15 converted into stock in the reorganization. If the 382(1)(5) Exception applies but the debtor
16 undergoes another ownership change within two years after consummation, then the debtor's
17 Pre-Change Losses effectively would be eliminated in their entirety.

18 Where the 382(1)(5) Exception is not applicable (either because the debtor does not
19 qualify for it or the debtor otherwise elects not to utilize the 382(1)(5) Exception), a second
20 special rule, the 382(1)(6) Exception, will generally apply. When the 382(1)(6) Exception
21 applies, a debtor corporation that undergoes an ownership change generally is permitted to
22 determine the fair market value of its stock after taking into account the increase in value
23 resulting from any surrender or cancellation of creditors' Claims in the bankruptcy. This differs
24 from the ordinary rule that requires the fair market value of a debtor corporation that undergoes
25 an ownership change to be determined before the events giving rise to the change. The 382(1)(6)
26 Exception also differs from the 382(1)(5) Exception in that the debtor corporation is not required
27 to reduce its NOLs by interest deductions in the manner described above, and the debtor may
28 undergo a change of ownership within two years without triggering the elimination of its Pre-
Change Losses. Similar rules may apply to capital loss carryovers pursuant to Section 383 and
the Treasury Regulations thereunder.

Holdco believes it will be beneficial for it to qualify for, and utilize, the 382(1)(5)
Exception. However, as mentioned above, if the Debtor does utilize the 382(1)(5) Exception and
another ownership change were to occur within the two-year period after consummation, then the
Debtor's Pre-Change Losses would effectively be eliminated. In order to prevent such a
subsequent ownership change, it is expected that the Reorganized Debtor's certificate of
incorporation will contain restrictions on transfers of the Reorganized Debtor's stock that are
intended to prevent such a change.

Whether the Reorganized Debtor will qualify for the 382(1)(5) Exception is uncertain.
Qualification under Section 382(1)(5) is a complex determination that depends on a number of
different facts and legal conclusions, many of which cannot be known at this time, including the
identity of those persons who will own claims against the Debtor that will be exchanged for
stock on the Effective Date. If the Reorganized Debtor does not qualify for the 382(1)(5)

1 Exception, the Debtor expects that its use of its NOLs after the Effective Date will be subject to
2 limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception.
3 Regardless of whether the Reorganized Debtor takes advantage of the 382(l)(5) Exception or the
4 382(l)(6) Exception, the Reorganized Debtor's use of its Pre-Change Losses after the Effective
Date may be adversely affected if an "ownership change" within the meaning of Section 382 of
the Internal Revenue Code were to occur after the Effective Date.

5 c) Alternative Minimum Tax.

6 In general, an AMT is imposed on a corporation's AMTI at a 20% rate to the extent such
7 tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to
8 regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax
9 deductions and other beneficial allowances are modified or eliminated. For example, generally
10 only 90% of a corporation's AMTI may be offset by available alternative tax NOL
carryforwards. The effect of these rules could cause the Reorganized Debtor to owe a modest
amount of federal income tax on taxable income in future years even though NOL carryforwards
and capital loss carryforwards may be available to offset that taxable income.

11 **B. Certain United States Federal Income Tax Consequences to the Holders of**
12 **Allowed Claims.**

13 1. **Consequences to Holders of TOPrS Unsecured Claims**

14 Pursuant to the Plan, and in full satisfaction of its Claim, a Holder of a TOPrS Unsecured
15 Claim, which will be treated as an Allowed Class 2 General Unsecured Claim, will receive New
16 Common Stock or, where the Holder elects the Cash Based Alternative Treatment, a Pro Rata
Distribution of Net Free Cash, which may be evidenced in part (at the Debtor's option) by other
series or class of common stock in the Reorganized Debtor.

17 While not free from doubt, where a Holder elects the Cash Based Alternative Treatment,
18 and the Debtor does not issue other Common Stock in the Reorganized Debtor to evidence such
19 right, the Holder should recognize capital gain or loss on the exchange, except to the extent that a
20 portion of the Cash received is treated as interest that accrued between the Effective Date and the
21 distribution dates (see "Accrued Interest" below). Any such capital gain or loss would equal the
22 difference between (a) the amount of Cash received (other than Cash treated as interest) and (b)
the Holder's tax basis in the surrendered Allowed Class 4 Claim. Such gain or loss should be
long-term capital gain (subject to the "market discount" rules described below) or loss if the
Holder had a holding period in the Class 4 Claim of more than one year.

23 Additionally, certain Holders so electing may be eligible to use the installment method to
24 defer recognition of any gain until the distribution dates. It is also plausible that a Holder not
25 eligible for the installment method could defer recognition of any gain or loss by treating the
26 transaction as an "open" transaction for United States federal income tax purposes. The United
27 States federal income tax consequences of an open transaction are uncertain and highly complex.
A Holder electing the Cash Based Alternative Treatment should consult with its tax advisor to
determine if it is eligible to use the installment method and/or whether open transaction treatment
might be appropriate.

1 The discussion that follows describes the tax treatment that applies where a Holder either
2 (a) receives New Series A Common Stock or (b) elects the Cash Based Alternative Treatment
3 and the Debtor issues other Common Stock in the Reorganized Debtor to evidence such right.

4 Whether a Holder of a TOPrS Unsecured Claim recognizes gain or loss as a result of the
5 exchange of its Claim for New Common Stock or other series or other series or class of Common
6 Stock in the Reorganized Debtor issued in connection with the Cash Based Alternative
7 Treatment depends on whether (a) the exchange qualifies as a tax-free recapitalization, which in
8 turn depends on whether the TOPrS Debentures constituting the Allowed Class 2 TOPrS
9 Unsecured Claim surrendered are treated as a “security” for the reorganization provisions of the
10 Internal Revenue Code; (b) such Holder previously included in income any accrued but unpaid
11 interest with respect to the Allowed Class 2 TOPrS Unsecured Claim; (c) such Holder has
12 claimed a bad debt deduction with respect to such Allowed Class 2 TOPrS Unsecured Claim;
13 and (d) such Holder uses the accrual or cash method of accounting for tax purposes.

14 Whether a debt instrument constitutes a “security” for United States federal income tax
15 purposes is determined based on all the relevant facts and circumstances, but most authorities
16 have held that the length of the term of a debt instrument is an important factor in determining
17 whether such instrument is a security for United States federal income tax purposes. These
18 authorities have indicated that a term of less than five years is evidence that the instrument is not
19 a security, whereas a term of ten years or more is evidence that it is a security. There are
20 numerous other factors that could be taken into account in determining whether a debt instrument
21 is a security, including the security for payment, the creditworthiness of the obligor, the
22 subordination or lack thereof to other creditors, the right to vote or otherwise participate in the
23 management of the obligor, convertibility of the instrument into an equity interest of the obligor,
24 whether payments of interest are fixed, variable or contingent and whether such payments are
25 made on a current basis or accrued. The Plan Proponent anticipates taking the position that the
26 TOPrS Debentures will be treated as “securities” for United States federal income tax purposes.

27 If the TOPrS Debentures constituting a Holder of a TOPrS Unsecured Claim’s
28 surrendered Allowed Class 2 TOPrS Unsecured Claim are treated as “securities” for United
States federal income tax purposes, the exchange of such Holder’s Allowed Class 2 TOPrS
Unsecured Claim for New Common Stock other series or class of Common Stock in the
Reorganized Debtor issued in connection with the Cash Based Alternative Treatment should be
treated as a recapitalization, and therefore a reorganization, under the Internal Revenue Code. In
general, this means such a Holder will recognize gain, but not loss, on the exchange.
Specifically, such a Holder will recognize (a) capital gain, subject to the “market discount” rules
discussed below, to the extent of the lesser of (i) the amount of gain realized from the exchange
or (ii) the fair market value of the New Common Stock or other series or class of Common Stock
in the Reorganized Debtor issued in connection with the Cash Based Alternative Treatment
received, and (b) ordinary interest income to the extent that the New Common Stock or other
series or class of Common Stock in the Reorganized Debtor issued in connection with the Cash
Based Alternative Treatment is treated as received in satisfaction of accrued but untaxed interest
on the TOPrS Debentures underlying the TOPrS Unsecured Claim (see discussion of “Accrued
Interest” below). In such case, such a Holder’s tax basis in the New Common Stock or other
series or class of Common Stock in the Reorganized Debtor issued in connection with the Cash
Based Alternative Treatment received should be equal to the tax basis of the TOPrS Debentures

1 constituting the Allowed Class 2 TOPrS Unsecured Claim surrendered therefor (increased by the
2 amount of any gain recognized and decreased by the fair market value of the New Common
3 Stock or other series or class of Common Stock in the Reorganized Debtor issued in connection
4 with the Cash Based Alternative Treatment), and such a Holder's holding period for its New
5 Common Stock or other series or class of Common Stock in the Reorganized Debtor issued in
6 connection with the Cash Based Alternative Treatment received should include the holding
7 period for the TOPrS Debentures constituting the surrendered Allowed Class 2 TOPrS
8 Unsecured Claim; *provided* that the tax basis of any portion of New Common Stock or other
9 series or class of Common Stock in the Reorganized Debtor issued in connection with the Cash
10 Based Alternative Treatment that is treated as received in satisfaction of accrued but untaxed
11 interest should equal the amount of such accrued but untaxed interest, and the holding period for
12 any such portion of the New Common Stock or other series or class of Common Stock in the
13 Reorganized Debtor issued in connection with the Cash Based Alternative Treatment should not
14 include the holding period of the TOPrS Debentures constituting the surrendered Allowed Class
15 2 TOPrS Unsecured Claim.

16 If the TOPrS Debentures constituting a Holder of a TOPrS Unsecured Claim's
17 surrendered Allowed Class 2 TOPrS Unsecured Claim is not treated as "securities" for U.S.
18 federal income tax purposes, such a Holder should be treated as exchanging its Allowed Class 2
19 TOPrS Unsecured Claim for New Common Stock or other series or class of Common Stock in
20 the Reorganized Debtor issued in connection with the Cash Based Alternative Treatment in a
21 fully taxable exchange. A Holder of a TOPrS Unsecured Claim who is subject to this treatment
22 should recognize gain or loss equal to the difference between (i) the Holder's tax basis in the
23 Allowed Class 2 TOPrS Unsecured Claim surrendered by the Holder in such exchange, and (ii)
24 the fair market value of the New Common Stock or other series or class of Common Stock in the
25 Reorganized Debtor issued in connection with the Cash Based Alternative Treatment received.
26 Such gain or loss should be capital gain, subject to the "market discount" rules discussed below,
27 and should be long term capital gain or loss if the TOPrS Debentures constituting the
28 surrendered Allowed Class 2 TOPrS Unsecured Claim were held for more than one year by the
Holder. To the extent that a portion of the New Common Stock or other series or class of
Common Stock in the Reorganized Debtor issued in connection with the Cash Based Alternative
Treatment received is allocable to accrued but untaxed interest, such a Holder may recognize
ordinary interest income (see discussion of "Accrued Interest" below). Such a Holder's tax basis
in the New Common Stock or other series or class of Common Stock in the Reorganized Debtor
issued in connection with the Cash Based Alternative Treatment received should equal its fair
market value. Such a Holder's holding period for the New Common Stock or other series or
class of Common Stock in the Reorganized Debtor issued in connection with the Cash Based
Alternative Treatment received on the Effective Date should begin on the day following the
Effective Date.

2. Consequences to Holders of Class 3 Allowed General Unsecured Claims

Pursuant to the Plan, and in full satisfaction of its Claim, a Holder of an Allowed Class 3
General Unsecured Claim will receive New Common Stock or, where the Holder elects the Cash
Based Alternative Treatment, a Pro Rata Distribution of Residual Net Free Cash, which may be
evidenced in part (at the Debtor's option) by other common stock in the Reorganized Debtor.

1 While not free from doubt, where a Holder elects the Cash Based Alternative Treatment,
2 and the Debtor does not issue other Common Stock in the Reorganized Debtor to evidence such
3 right, the Holder should recognize capital gain or loss on the exchange, except to the extent that a
4 portion of the Cash received is treated as interest that accrued between the Effective Date and the
5 distribution dates (see “Accrued Interest” below). Any such capital gain or loss would equal the
6 difference between (a) the amount of Cash received (other than Cash treated as interest) and (b)
7 the Holder’s tax basis in the surrendered Allowed Class 3 Claim. Such gain or loss should be
8 long-term capital gain (subject to the “market discount” rules described below) or loss if the
9 Holder had a holding period in the Class 3 Claim of more than one year.

7 Additionally, certain Holders so electing may be eligible to use the installment method to
8 defer recognition of any gain until the distribution dates. It is also plausible that a Holder not
9 eligible for the installment method could defer recognition of any gain or loss by treating the
10 transaction as an “open” transaction for United States federal income tax purposes. The United
11 States federal income tax consequences of an open transaction are uncertain and highly complex.
12 A Holder electing the Cash Based Alternative Treatment should consult with its tax advisor to
13 determine if it is eligible to use the installment method and/or whether open transaction treatment
14 might be appropriate.

12 The discussion that follows describes the tax treatment that applies where a Holder of an
13 allowed Class 3 General Unsecured Claim either receives New Common Stock or elects the Cash
14 Based Alternative Treatment and the Debtor issues other common stock in the Reorganized
15 Debtor to evidence such right.

15 Whether a Holder of an Allowed Class 3 Claim recognizes gain or loss as a result of the
16 exchange of its Claim for New Common Stock or other series or class of common stock in the
17 Reorganized Debtor issued in connection with the Cash Based Alternative Treatment depends on
18 whether (a) the exchange qualifies as a tax-free recapitalization, which in turn depends on
19 whether the debt instrument(s) constituting the Allowed Class 3 Claim surrendered is treated as a
20 “security” for the reorganization provisions of the Internal Revenue Code; (b) such Holder
21 previously included in income any accrued but unpaid interest with respect to the Allowed Class
22 3 Claim; (c) such Holder has claimed a bad debt deduction with respect to such Allowed Class 3
23 Claim; and (d) such Holder uses the accrual or cash method of accounting for tax purposes.

20 Whether a debt instrument constitutes a “security” for United States federal income tax
21 purposes is determined based on all the relevant facts and circumstances, but most authorities
22 have held that the length of the term of a debt instrument is an important factor in determining
23 whether such instrument is a security for United States federal income tax purposes. These
24 authorities have indicated that a term of less than five years is evidence that the instrument is not
25 a security, whereas a term of ten years or more is evidence that it is a security. There are
26 numerous other factors that could be taken into account in determining whether a debt instrument
27 is a security, including the security for payment, the creditworthiness of the obligor, the
28 subordination or lack thereof to other creditors, the right to vote or otherwise participate in the
management of the obligor, convertibility of the instrument into an equity interest of the obligor,
whether payments of interest are fixed, variable or contingent and whether such payments are
made on a current basis or accrued. Holdco anticipates the Debtors taking the position that the
debt instruments underlying the Allowed Class 3 claims will not be treated as “securities.”

1 If the debt instrument(s) constituting a Holder's surrendered Allowed Class 3 Claim is
2 not treated as a "security" for U. S. federal income tax purposes, such a Holder should be treated
3 as exchanging its Allowed Class 3 Claim for New Common Stock or other series or class of
4 common stock in the Reorganized Debtor issued in connection with the Cash Based Alternative
5 Treatment in a fully taxable exchange. A Holder of an Allowed Class 3 Claim who is subject to
6 this treatment should recognize gain or loss equal to the difference between (i) the Holder's tax
7 basis in the Allowed Class 3 Claim surrendered by the Holder in such exchange, and (ii) the fair
8 market value of the New Common Stock or other series or class of common stock in the
9 Reorganized Debtor issued in connection with the Cash Based Alternative Treatment received.
10 Such gain or loss should be capital gain, subject to the "market discount" rules discussed below,
11 and should be long term capital gain or loss if the debt instrument(s) constituting the surrendered
12 Allowed Class 3 Claim was held for more than one year by the Holder. To the extent that a
13 portion of the New Common Stock or other series or class of common stock in the Reorganized
14 Debtor issued in connection with the Cash Based Alternative Treatment received is allocable to
15 accrued but untaxed interest, such a Holder may recognize ordinary interest income (see
16 discussion of "Accrued Interest" below). Such a Holder's tax basis in the New Common Stock
17 or other series or class of common stock in the Reorganized Debtor issued in connection with the
18 Cash Based Alternative Treatment received should equal its fair market value. Such a Holder's
19 holding period for the New Common Stock or other series or class of common stock in the
20 Reorganized Debtor issued in connection with the Cash Based Alternative Treatment received on
21 the Effective Date should begin on the day following the Effective Date.

14 3. Accrued Interest.

15 To the extent that any amount received by a Holder of a surrendered Allowed Claim
16 under the Plan is attributable to accrued but unpaid interest and such amount has not previously
17 been included in the Holder's gross income, such amount should be taxable to the Holder as
18 ordinary interest income. Conversely, a Holder of a surrendered Allowed Claim may be able to
19 recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the
20 extent that any accrued interest on the debt instrument(s) constituting such Claim was previously
21 included in the Holder's gross income but was not paid in full by the Debtor. Such loss may be
22 ordinary, but the tax law is unclear on this point.

23 The extent to which the consideration received by a Holder of a surrendered Allowed
24 Claim will be attributable to accrued interest on the debt instrument(s) constituting the
25 surrendered Allowed Claim is unclear. Certain Treasury Regulations generally treat a payment
26 under a debt instrument first as a payment of accrued and untaxed interest and then as a payment
27 of principal. Application of this rule to a final payment on a debt instrument being discharged at
28 a discount in bankruptcy is unclear. Pursuant to the Plan, distributions in respect of Allowed
Claims will be allocated first to the principal amount of such claims (as determined for United
States federal income tax purposes) and then, to the extent the consideration exceeds the
principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.
However, the provisions of the Plan are not binding on the IRS nor a court with respect to the
appropriate tax treatment for creditors.

**HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING
THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF**

1 **THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED**
2 **BUT UNPAID INTEREST.**

3 **4. Market Discount.**

4 Under the “market discount” provisions of sections 1276 through 1278 of the Internal
5 Revenue Code, some or all of the gain realized by a Holder who exchanges the debt
6 instrument(s) constituting its Allowed Claim for other property on the Effective Date may be
7 treated as ordinary income (instead of capital gain), to the extent of the amount of “market
8 discount” on the debt instrument(s) constituting the surrendered Allowed Claim.

9 In general, a debt instrument is considered to have been acquired with “market discount”
10 if its Holder’s adjusted tax basis in the debt instrument is less than (a) the sum of all remaining
11 payments to be made on the debt instrument, excluding “qualified stated interest” or (b) in the
12 case of a debt instrument issued with “original issue discount,” its adjusted issue price, by at least
13 a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the
14 debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole
15 years to maturity).

16 Any gain recognized by a Holder on the exchange of the debt instrument(s) constituting
17 its Allowed Claim that had been acquired with “market discount” should be treated as ordinary
18 income to the extent of the “market discount” that accrued thereon while such debts were
19 considered to be held by the Holder (unless the Holder elected to include “market discount” in
20 income as it accrued).

21 **5. Consequences to Holders of New Common Stock or Other Series of**
22 **Common Stock in the Reorganized Debtor.**

23 a) Dividends on New Common Stock.

24 Any distributions made on account of the New Common Stock will constitute dividends for
25 United States federal income tax purposes to the extent of the current or accumulated earnings
26 and profits of Reorganized Debtor as determined under United States federal income tax
27 principles. To the extent that a Holder receives distributions that would otherwise constitute
28 dividends for United States federal income tax purposes but that exceed such current and
accumulated earnings and profits, such distributions will be treated first as a non-taxable return
of capital reducing the Holder’s basis in its shares. Any such distributions in excess of the
Holder’s basis in its shares (determined on a share-by-share basis) generally will be treated as
capital gain. Subject to certain exceptions, dividends received by noncorporate Holders prior to
2013 will be taxed under current law at a maximum rate of 15%, provided that certain holding
period requirements and other requirements are met.

Dividends paid to Holders that are corporations generally will be eligible for the
dividends-received deduction so long as there are sufficient earnings and profits. However, the
dividends-received deduction is only available if certain holding period requirements are
satisfied. The length of time that a shareholder has held its stock is reduced for any period
during which the shareholder’s risk of loss with respect to the stock is diminished by reason of

1 the existence of certain options, contracts to sell, short sales or similar transactions. In addition,
2 to the extent that a corporation incurs indebtedness that is directly attributable to an investment
3 in the stock on which the dividend is paid, all or a portion of the dividends received deduction
4 may be disallowed.

4 b) Sale, Redemption or Repurchase of New Common Stock.

5 Unless a non-recognition provision applies, subject to the “market discount” rules
6 discussed above, Holders generally will recognize capital gain or loss upon the sale, redemption
7 or other taxable disposition of New Common Stock.

7 c) Medicare Tax Certain Holders that are individuals, estates or trusts
8 are required to pay an additional 3.8% tax on, among other things,
9 gains from the sale or other disposition of capital assets for taxable
10 years beginning after December 31, 2012. Holders that are
11 individuals, estates or trusts should consult their tax advisors
12 regarding the effect, if any, of this tax provision on their ownership
13 and disposition of New Common Stock.

12 **6. Information Reporting and Backup Withholding.**

13 The Reorganized Debtor will withhold all amounts required by law to be withheld from
14 payments of interest and dividends. The Reorganized Debtor will comply with all applicable
15 reporting requirements of the Internal Revenue Code. In general, information reporting
16 requirements may apply to distributions or payments under the Plan. Additionally, under the
17 backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently
18 at a rate of 28%) with respect to distributions or payments made pursuant to the Plan unless that
19 Holder complies with the applicable requirements of the backup withholding rules and: (a)
20 comes within certain exempt categories (which generally include corporations) and, when
21 required, demonstrates that fact; or (b) provides a correct taxpayer identification number and
22 certifies under penalty of perjury that the taxpayer identification number is correct and that the
23 Holder is not subject to backup withholding because of a failure to report all dividend and
24 interest income. Backup withholding is not an additional tax but is, instead, an advance payment
25 that may be refunded to the extent it results in an overpayment of tax; *provided, however*, that
26 the required information is provided to the IRS.

21 In addition, from an information reporting perspective, the Treasury Regulations
22 generally require disclosure by a taxpayer on its United States federal income tax return of
23 certain types of transactions in which the taxpayer participated, including, among other types of
24 transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of
25 specified thresholds. Holders are urged to consult their tax advisors regarding these regulations
26 and whether the transactions contemplated by the Plan would be subject to these regulations and
27 require disclosure on the Holders’ tax returns.

26 **THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE
27 PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL
28 ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE**

1 **RELEVANT TO A PARTICULAR HOLDER OF A CLAIM OR EQUITY INTEREST IN**
2 **LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION.**
3 **ALL HOLDERS OF EQUITY INTERESTS IN OR CLAIMS AGAINST THE DEBTOR**
4 **SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX**
5 **CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE**
6 **RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY**
7 **STATE, LOCAL, ESTATE, GIFT, FOREIGN OR OTHER TAX LAWS, AND OF ANY**
8 **CHANGE IN APPLICABLE TAX LAWS.**

9 **XI. Voting Procedures**

10 On December 15, 2011, the Bankruptcy Court entered an Order conditionally approving
11 the adequacy of this Disclosure Statement and approving procedures for the solicitation of votes
12 to accept or reject the Plan. In addition to approving the Solicitation Procedures, the Disclosure
13 Statement Order established certain dates and deadlines, including the date for the Confirmation
14 Hearing, the deadline for parties to object to confirmation, the Voting Record Date, and the
15 Voting Deadline. The Disclosure Statement Order also approved the forms of Ballots, the letter
16 from the Plan Proponent to the Holders of Claims in Voting Classes and certain confirmation-
17 related notices. The Disclosure Statement Order and the Solicitation Procedures should be read
18 in conjunction with this Article X.

19 **A. Confirmation Generally**

20 The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies
21 with the requirements of chapter 11 of the Bankruptcy Code. One of these requirements is that
22 the Bankruptcy Court find, among other things, that the Plan has been accepted by the requisite
23 votes of all Classes of Impaired Claims unless approval will be sought under section 1129(b) of
24 the Bankruptcy Code despite the non-acceptance by one or more such Classes. The process by
25 which the Plan Proponent solicits votes to accept or reject the Plan will be governed by the
26 Disclosure Statement Order and the Solicitation Procedures.

27 The following is a brief and general summary of the Solicitation Procedures. Holders of
28 Claims and Equity Interests are encouraged to review the Disclosure Statement Order, the
Solicitation Procedures, the relevant provisions of the Bankruptcy Code, and to consult their own
advisors. To the extent of any inconsistency between the summary below and (i) the Disclosure
Statement Order or (ii) the Solicitation Procedures, the Disclosure Statement Order and the
Solicitation Procedures shall govern.

29 **B. Who Can Vote**

30 In general, a holder of a claim or equity interest may vote to accept or to reject a plan if
31 (i) no party in interest has objected to such claim or interest and (ii) the claim or equity interest is
32 impaired by the plan but the plan does not make distributions on account of such claim or
33 interest. If the holder of an impaired claim or interest will not receive any distribution under the
34 plan in respect of such claim or interest, the Bankruptcy Code deems such holder to have
35 rejected the plan in respect of such claim or interest. If a claim or an interest is not impaired, the

1 Bankruptcy Code deems that the holder of such claim or interest has accepted the plan and the
2 plan proponent need not solicit such holder's vote.

3 Pursuant to section 1124 of the Bankruptcy Code, a class of claims or interests is deemed
4 to be "impaired" under a plan unless the plan leaves unaltered the legal, equitable, and
5 contractual rights to which such claim or interest entitles the holder thereof or, notwithstanding
6 any legal right to an accelerated payment of such claim or interest, the plan cures all existing
7 defaults (other than defaults resulting from the occurrence of events of bankruptcy), reinstates
8 the maturity of such claim or interest as it existed before the default, compensates the holder of
9 such claim or interest for any damages incurred as a result of reasonable reliance on the holder's
10 legal right to an accelerated payment, and does not otherwise alter the legal, equitable, or
11 contractual rights to which such claim or interest entitles the holder thereof.

12 A vote may be disregarded if the Bankruptcy Court determines, pursuant to section
13 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in
14 accordance with the provisions of the Bankruptcy Code. The Solicitation Procedures also set
15 forth assumptions and procedures for tabulating Ballots.

16 C. Classes Impaired Under the Plan

- 17 (i) Unimpaired Classes of Claims. Classes 1 and 4 are Unimpaired under the
18 Plan and are conclusively presumed to have accepted the Plan under
19 section 1126(f) of the Bankruptcy Code. Thus, Holders in such Classes
20 will not be solicited to vote to accept or to reject the Plan. Rather,
21 acceptances or rejections of the Plan are being solicited only from those
22 who hold Claims in an Impaired Class whose members will receive a
23 distribution under the Plan. Pursuant to the Solicitation Procedures, these
24 parties will receive a notice, substantially in the form attached as an
25 exhibit to the Disclosure Statement Order, notifying them of their non-
26 voting status.
- 27 (ii) Voting Impaired Classes of Claims. Classes 2 and 3 are Impaired under
28 the Plan and are entitled to vote to accept or reject the Plan.
- (iii) Non-Voting Impaired Classes of Claims and Equity Interests. Class 5 is
wholly Impaired under the Plan and is conclusively presumed to have
rejected the Plan under section 1126(g) of the Bankruptcy Code. Thus,
Holders in such Class will not be solicited to vote to accept or to reject the
Plan. Rather, acceptances or rejections of the Plan are being solicited only
from those who hold Claims in an Impaired Class whose members will
receive a distribution under the Plan. Pursuant to the Solicitation
Procedures, these parties will receive a notice, substantially in the form
attached as an exhibit to the Disclosure Statement Order, notifying them of
their non-voting status.

1 **D. Temporary Allowance of Disputed Claims for Voting Purposes**

2 The Solicitation Procedures generally provide that Holders of Disputed Claims will not
3 be entitled to vote unless a Resolution Event occurs; *provided, however*, that if the Claim is
4 objected to on a reduce-and-allow basis, such Holder shall receive a Ballot and be entitled to
5 vote such Claim in the reduced amount contained in such objection. No later than two (2)
6 Business Days after a Resolution Event, the Plan Proponent shall distribute a Ballot and a pre-
7 addressed, postage pre-paid envelope to the relevant Holder of such a Disputed Claim, which
8 must be returned to the Plan Proponent by no later than the Voting Deadline.

9 If the Holder of a Claim receives a Solicitation Package, but the Plan Proponent objects
10 to such Claim after the Voting Record Date, the Plan Proponent’s notice of objection will inform
11 such Holder of the rules applicable to Disputed Claims, and the procedures for temporary
12 allowance for voting purposes.

13 Each Holder of a Disputed Claim will receive a notice notifying such Holder of the
14 Solicitation Procedures applicable to Disputed Claims.

15 **E. Voting**

16 The Plan Proponent will facilitate the solicitation process. The Plan Proponent will
17 answer questions regarding the procedures and requirements for voting to accept or reject the
18 Plan and for objecting to the Plan, provide additional copies of all materials, and oversee the
19 voting tabulation. The Plan Proponent will also process and tabulate Ballots for each Class
20 entitled to vote to accept or reject the Plan.

21 BALLOTS CAST BY HOLDERS OF CLAIMS IN CLASSES ENTITLED TO VOTE
22 MUST BE RECEIVED BY THE PLAN PROPONENT BY THE VOTING DEADLINE,
23 WHETHER BY FIRST CLASS MAIL, OVERNIGHT COURIER, OR PERSONAL
24 DELIVERY. THE ADDRESS FOR BALLOTS RETURNABLE TO THE PLAN
25 PROPONENT, OTHER THAN BALLOTS SENT VIA OVERNIGHT MAIL OR BY HAND
26 DELIVERY, IS: Holdco Advisors, L.P., c/o Duane Morris LLP, Attn: Jeffrey D. Sternklar, 100
27 High Street, Suite 2400, Boston, MA 02110.

28 FOR ANSWERS TO ANY QUESTIONS REGARDING SOLICITATION
PROCEDURES, PARTIES MAY CALL JEFFREY D. STERNKLAR, COUNSEL TO THE
PLAN PROPONENT AT (857) 488-4200.

To obtain an additional copy of the Plan, this Disclosure Statement, the Plan Supplement,
or other Solicitation Package materials (except Ballots), please refer to the docket for this case,
available at the Court’s website, <http://www.waeb.uscourts.gov/> or request a copy from the Plan
Proponent (including Ballots), either by calling Jeffrey D. Sternklar at (857) 488-4200 or by
writing to Holdco Advisors, L.P., c/o Duane Morris LLP, Attn: Jeffrey D. Sternklar, 100 High
Street, Suite 2400, Boston, MA 02110.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XII. Plan Supplement

The Plan Supplement will be filed with the Bankruptcy Court prior to the transmission of the Plan to Holders of Allowed Claims in connection with the solicitation of votes to accept this Plan. The Plan Proponent reserves the right to modify and supplement the Plan Supplement through and including the Effective Date.

XIII. Conclusion And Recommendation

The Plan Proponent believes that the Plan is in the best interests of all Holders of Claims. The Plan Proponent urges all Holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots, as applicable, so they will be received by the Plan Proponent by the Voting Deadline.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 19, 2011

Respectfully submitted,

HOLDCO ADVISORS, L.P. as manager
for Financials Restructuring Partners II,
Ltd.

BY: VM MANAGEMENT COMPANY,
LLC, as its general partner

By: /s/ Michael Zaitzeff
Michael Zaitzeff
Member

DATED this 19th day of December 2011
DAVIDSON BACKMAN MEDEIROS PLLC

/s/ Bruce K. Medeiros
Bruce K. Medeiros, WSBA No. 16380
Davidson Backman Medeiros PLLC
1550 Bank of America Financial Center
601 West Riverside Avenue
Spokane, Washington 99201
(509) 624-4600

/s/ Jeffrey D. Sternklar
Jeffrey D. Sternklar (BBO#549561)
100 High Street
Suite 2400
Boston, MA 02110-1724
Phone: (857) 488-4200
Email: JDSternklar@duanemorris.com

EXHIBIT A

The Plan

1 JEFFREY D. STERNKLAR (Admitted *pro hac vice*)
DUANE MORRIS LLP
2 SUITE 2400
100 HIGH STREET
3 BOSTON, MA 02110
TELEPHONE: (857) 488-4200
4 FACSIMILE: (857) 401-3034

5 BRUCE K. MEDEIROS
DAVIDSON BACKMAN MEDEIROS PLLC
6 1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
7 SPOKANE, WASHINGTON 99201
(509) 624-4600

8
9 Counsel for
Holdco Advisors L.P., Plan Proponent

10 Holdco Advisors L.P.'s Mailing Address:
11 32 Broadway
New York, NY 10004

12 UNITED STATES BANKRUPTCY COURT
13 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

14 In re

15 AMERICANWEST
16 BANCORPORATION,

17 Debtor.

)
)
) Case No. 10-06097-PCW-11
)
) Chapter 11
)
) **CHAPTER 11 PLAN OF**
) **REORGANIZATION PROPOSED BY**
) **HOLDCO ADVISORS L.P. DATED**
) **DECEMBER 19, 2011**

20)
21) **Plan Confirmation Hearing**
22)

23) Date: January 12, 2012
24) Time: 10:00 a.m.

1 **TABLE OF CONTENTS**

2 **Page**

3 ARTICLE I. INTRODUCTION 5

4 ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION 5

5 A. Specific Definitions. 5

6 B. Interpretation, Rules of Construction and Computation of Time 16

7 ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS 18

8 A. Unclassified Claims. 18

9 1. Administrative Claims. 18

10 a. Treatment. 18

11 b. Bar Date For Administrative Claims. 19

12 2. Priority Tax Claims. 19

13 B. Classified Claims And Interests. 20

14 1. Class 1 (Secured Claims). 20

15 a. *Classification*. 20

16 b. *Impairment and Voting*. 20

17 c. *Treatment*. 20

18 2. Class 2— TOPrS Unsecured Claims 21

19 a. *Classification* 21

20 b. *Impairment and Voting* 21

21 c. *Treatment* 21

22 3. Class 3— General Unsecured Claims 22

23 a. *Classification* 22

24 b. *Impairment and Voting* 22

25 c. *Treatment* 22

26 4. Class 4 (Convenience Claims). 22

27 a. *Classification* 22

28 b. *Impairment and Voting* 22

 c. *Treatment* 22

 5. Class 5 (Holders Of Interests). 23

ARTICLE IV. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES 23

 A. Default Rejection of Executory Contracts and Unexpired Leases. 23

 B. Procedural Issues. 23

1	C.	Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	23
2	D.	Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.....	24
3		1. Cure of Defaults.....	24
4		2. Objections to Cure.....	24
5		3. Release and Satisfaction of Debtor upon Assumption.....	25
6	E.	Reservation of Rights.....	25
7	ARTICLE V. MEANS OF IMPLEMENTATION OF THE PLAN.....		26
8	A.	Corporate Existence.....	26
9	B.	Directors/Officers of the Debtor on the Effective Date.....	26
10		1. Release and Discharge of Duties and Obligations of Current Directors and Officers.....	26
11	C.	The Plan Trust.....	26
12		1. Creation of the Plan Trust and Appointment of the Plan Trustee.....	26
13		2. Property of the Plan Trust.....	27
14		3. Plan Trustee.....	27
15		4. Resignation or Removal of the Plan Trustee:.....	27
16		5. Exculpation of the Plan Trustee:.....	28
17		6. Federal Income Tax Treatment of Plan Trust.....	28
18	D.	Cancellation of TOPrS Debentures, TOPrS, and Equity Interests.....	30
19		1. Cancellation of TOPrS Debentures.....	30
20		2. Limited Survival of TOPrS Documents.....	31
21		3. Payment of TOPrS Indenture Trustee Fees.....	31
22		4. Payment of Holdco Fees.....	32
23	E.	Reorganized Debtor Securities.....	32
24		1. New Common Stock.....	32
25		2. Other Attributes.....	32
26		a. Other Attributes of New Common Stock.....	32
27		b. Redemption of Common Stock.....	32
28	F.	Exemption from the Registration Requirements of the Securities Act; Investment Company Act.....	33
		1. Exemption from Securities Act.....	33
		2. Investment Company Act.....	34
	G.	Restructuring Transactions.....	34
	H.	Corporate Action.....	35
	I.	Effectuating Documents; Further Transactions.....	35
	J.	Exemption from Certain Transfer Taxes and Recording Fees.....	36
	K.	Board Representation.....	36
	L.	Senior Management.....	37
	M.	Committee.....	37
	N.	Vesting of Assets in the Reorganized Debtor.....	37

1	O.	Prohibition Against Pledging Assets.....	38
	P.	Deregistration.....	38
2	Q.	Allowance of TOPrS Unsecured Claims.....	38
	R.	Plan Advisor.....	39
3			
4		ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	40
5	A.	Initial Distribution Date.....	40
	B.	Disputed Reserve.....	40
6		1. Establishment of Disputed Reserve.....	40
		2. Maintenance of Disputed Reserve.....	40
7		3. Establishment and Maintenance of Proceeds Distribution Election Segregated Account.....	41
8			
9	C.	Quarterly Distributions.....	41
	D.	Record Date for Distributions.....	42
	E.	Delivery of Distributions.....	42
10			
11		1. General Provisions; Undeliverable Distributions.....	42
		2. Unclaimed Property.....	44
12	F.	Surrender of Canceled Instruments and Securities.....	45
13		1. Generally.....	45
		2. Failure to Surrender Canceled Instruments.....	46
14			
15	G.	Lost, Stolen, Mutilated or Destroyed Instrument or Security.....	46
	H.	Manner of Cash Payments Under the Plan.....	47
	I.	Time Bar to Cash Payments by Check.....	47
16	J.	Limitations on Funding of Disputed Reserve.....	47
	K.	Compliance with Tax Requirements.....	48
17	L.	No Payments of Fractional Dollars.....	48
	M.	Interest on Claims.....	48
18	N.	No Distribution in Excess of Allowed Amount of Claim.....	49
	O.	Setoff and Recoupment.....	49
19			
20		ARTICLE VII. DISPUTED CLAIMS.....	49
21	A.	No Distribution Pending Allowance.....	49
22		1. Distributions on Disputed Claims.....	49
		2. No Partial Payments.....	50
23	B.	Resolution of Disputed Claims.....	50
	C.	Objection Deadline.....	50
24	D.	Estimation of Claims.....	51
25		ARTICLE VIII. EFFECT OF PLAN CONFIRMATION.....	51
26	A.	Satisfaction of Claims.....	51
	B.	Discharge.....	52
27	C.	Compromise and Settlement.....	53
	D.	Releases.....	53
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. *Releases of Third Parties by the Debtor* 53
2. *Releases of Third Parties by Others* 54
3. *Injunction* 55

E. Preservation of Causes of Action..... 56

1. Vesting of Causes of Action 56
2. Reservation of Causes of Action..... 57
3. Former Officer and Director Causes of Action..... 58
4. Reservation of Rights Regarding Claims..... 58
5. Reservation of Claims and Causes of Action Subject To Investigation. .. 59

F. Exculpation and Limitation of Liability. 60

1. Exculpation of Releasees..... 60
2. Good faith Solicitation..... 60

G. Cramdown..... 60

ARTICLE IX. CONDITIONS PRECEDENT61

A. Conditions to Confirmation..... 61
B. Conditions to the Effective Date..... 61
C. Waiver of Conditions to Confirmation..... 61
D. Effect of Failure of Conditions..... 61

ARTICLE X. RETENTION AND SCOPE OF JURISDICTION OF THE BANKRUPTCY COURT62

A. Retention and Scope of Jurisdiction of the Bankruptcy Court. 62

ARTICLE XI. MISCELLANEOUS63

A. Governing Law..... 63
B. Successors And Assigns..... 64
C. Modification of the Plan..... 64
D. Provisions Severable..... 64
E. Headings Do Not Control..... 64
F. Post-Confirmation Notices or Requests..... 64
G. Successors/Representatives of the Debtor..... 65

ARTICLE XII. CONFIRMATION REQUEST65

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE I.
INTRODUCTION

This Plan of Reorganization is the Plan that Holdco Advisors L.P. seeks to confirm pursuant to 11 U.S.C. § 1129 with respect to the Debtor, AmericanWest Bancorporation.

ARTICLE II.
DEFINITIONS AND RULES OF CONSTRUCTION

A. Specific Definitions.

In addition to such other terms as are defined in other Sections hereof, the following terms shall have the following meanings:

1. **“Administrative Claim”** means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Code and entitled to priority pursuant to sections 507(a)(1) or 507(b) of the Code, including compensation of and reimbursement of costs to Professionals, and all fees and charges assessed against the Debtor and the Estate under 28 U.S.C. section 1930.

2. **“Administrative Claim Objection Bar Date”** means the deadline for the Reorganized Debtor to object to Administrative Claims Filed in the Case which deadline shall be the later of: (a) 120 days after the Effective Date, or (b) 120 days after the particular request for an administrative expense payment has been filed, except as extended by an agreement between the Creditor and the Reorganized Debtor, or by order of the Bankruptcy Court.

3. **“Affiliate”** means the term “affiliate” as defined in section 101(2) of the Bankruptcy Code. **“Allowed Administrative Claim”** means all or that portion of an Administrative Claim which is an Allowed Claim.

5. **“Allowed Claim”** means that portion of a Claim which: (a) was scheduled by the Debtor pursuant to section 521 of the Code, other than a Claim scheduled as disputed, contingent or unliquidated; (b) is set forth in a proof of Claim which was timely filed with the Bankruptcy Court, and as to which no objection has been filed within the time provided by the Plan; or (c) if a proof of Claim was timely filed and an objection to the proof of Claim was filed, has been allowed by a Final Order.

1 6. “**Allowed Convenience Claim**” means all or that portion of a Convenience Claim
2 which is an Allowed Claim.

3 7. “**Allowed Priority Tax Claim**” means all or that portion of a Priority Tax Claim which
4 is an Allowed Claim.

5 8. “**Allowed Secured Claim**” means an Allowed Claim secured by a lien on any property
6 of the Estate, but only to the extent of the value of the interest of the holder of such Allowed Claim
7 in such property, the calculation of which shall not include any demand for default interest, penalty
8 interest or other similar demands.

9 9. “**Allowed General Unsecured Claim**” means all or that portion of a General
10 Unsecured Claim that is an Allowed Claim.

11 10. “**Avoidance Actions**” means any and all avoidance, recovery, subordination or other
12 actions or remedies that may be brought on behalf of the Debtor, the Reorganized Debtor or its
13 Estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation,
14 actions or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of
15 the Bankruptcy Code.

16 11. “**Ballot**” means a ballot sent to Holders of Claims to be counted as a vote to accept or
17 reject the Plan.

18 12. “**Bankruptcy Code**” means title I of the Bankruptcy Reform Act of 1978, as amended
19 from time to time, as set forth in sections 101 *et seq.* of title 11 of the United States Code, and
20 applicable portions of titles 18 and 28 of the United States Code.

21 13. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Eastern
22 District of Washington, having jurisdiction over the Case and, to the extent of any reference made
23 pursuant to section 157 of title 28 of the United States Code, the unit of such District Court pursuant
24 to section 151 of title 28 of the United States Code; or, in the event such court ceases to exercise
25 jurisdiction over the Case, such court or unit thereof that exercises jurisdiction over the Case in lieu
26 thereof.

1 14. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure and the Local
2 Bankruptcy Rules for the Bankruptcy Court, to the extent applicable to the Case, including all
3 amendments thereto to the extent such amendments are applicable to the Case.

4 15. “**Bar Date Order**” means the Order Establishing Claims Bar Date, dated December 30,
5 2010 [Docket No. 168].

6 16. “**Business Day**” means any day except Saturday, Sunday, “legal holiday” (as that term
7 is defined in Bankruptcy Rule 9006(a)) or any day on which commercial banks in Spokane,
8 Washington are authorized by law to close.

9 17. “**Case**” means the chapter 11 case number 10-06097-PCW-11 under the Code,
10 commenced by the Debtor on the Petition Date.

11 18. “**Cash**” means legal tender of the United States of America or the equivalent thereof,
12 and with respect to the Disputed Reserve, including bank deposits, checks and readily marketable
13 securities or instruments issued by an entity, including, without limitation, readily marketable direct
14 obligations of, or obligations guaranteed by, the United States of America, commercial paper of
15 domestic corporations carrying a Moody’s rating of “A” or better, or equivalent rating of any other
16 nationally-recognized rating service, or interest-bearing certificates of deposit or other similar
17 obligations of domestic banks or other financial institutions having a shareholders’ equity or capital
18 of not less than one hundred million dollars (\$100,000,000) having maturities of not more than one
19 (1) year, at the then best generally available rates of interest for like amounts and like periods.

20 19. “**Causes of Action**” means all claims, actions, causes of action, including choses in
21 action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants,
22 contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies,
23 rights of set off, third-party claims, subrogation claims, contribution claims, reimbursement claims,
24 indemnity claims, counterclaims and cross claims (including, without limitation, all claims and any
25 avoidance, recovery, subordination or other actions against insiders and/or any other Entities under
26 the Bankruptcy Code, including Avoidance Actions) of the Debtor, the Debtor in Possession, the
27 Reorganized Debtor and/or the Estate (including, without limitation, those actions set forth on
28

1 Exhibit "A" to the Plan Supplement) that are or may be pending on, or may be instituted by the
2 Reorganized Debtor after, the Effective Date against any entity, based in law or equity, including,
3 without limitation, under the Bankruptcy Code, whether direct, indirect, derivative or otherwise and
4 whether asserted or unasserted as of the Effective Date.

5 20. "**Certificate**" means any instrument, including, without limitation, any note, bond,
6 indenture or other document evidencing or creating any indebtedness or obligation of the Debtor,
7 evidencing a Claim against the Debtor.

8 21. "**Claim**" means the term as defined in section 101(5) of the Code.

9 22. "**Claims Objection Bar Date**" means the deadline for the Reorganized Debtor to object
10 to Claims Filed in the Case (except for Administrative Claims), which deadline shall be the later of
11 (a) 90 days after the Effective Date; or (b) 90 days after the relevant proof of Claim has been filed,
12 except as extended by an agreement between the Creditor and the Reorganized Debtor or by order of
13 the Bankruptcy Court.

14 23. "**Claims Register**" means the official register of proofs of Claim filed in the Case and
15 maintained by the clerk of the Court.

16 24. "**Class**" means a group of Claims or Interests classified together in a class designated
17 in Article III.

18 25. "**Code**" means the Bankruptcy Code.

19 26. "**Committee**" means the Official Committee of Unsecured Creditors appointed by the
20 Office of the United States Trustee in the Case pursuant to section 1102(a), as it may be constituted
21 from time to time, and its current and former members.

22 27. "**Confirmation Date**" means the date of Entry of the Confirmation Order.

23 28. "**Confirmation Hearing**" means the hearing before the Bankruptcy Court to be held in
24 accordance with section 1128(a) of the Code.

25 29. "**Confirmation Order**" means the order of the Bankruptcy Court confirming the Plan
26 pursuant to section 1129 of the Code.
27
28

1 30. **“Convenience Claim”** means (i) any Allowed General Unsecured Claim for an amount
2 of \$7,500 or less or (ii) any Allowed General Unsecured Claim in an amount greater than \$7,500, but
3 which is reduced to \$7,500 by election of the Holder thereof pursuant to such Holder’s Ballot. In no
4 event shall any Convenience Claim exceed \$7,500 for the purposes of allowance, treatment or
5 Distribution under this Plan.

6 31. **“Creditor”** means any Person that is the holder of a Claim.

7 32. **“Cure”** means the payment of Cash by the Debtor or Reorganized Debtor, as
8 applicable, or the distribution of other property (as the Debtor or the Reorganized Debtor, as
9 applicable, and the counterparty to the executory contract or unexpired lease may agree or the
10 Bankruptcy Court may order), as necessary to (a) cure a monetary default by the Debtor in
11 accordance with the terms of an executory contract or unexpired lease of the Debtor and (b) permit
12 the Debtor to assume such executory contract or unexpired lease under sections 365 and 1123 of the
13 Bankruptcy Code.

14 33. **“Cure Bar Date”** means the date that is thirty days after the Effective Date.

15 34. **“Debtor”** means AmericanWest Bancorporation, a Washington corporation.

16 35. **“Disclosure Statement”** means the **DISCLOSURE STATEMENT RE CHAPTER**
17 **11 PLAN OF REORGANIZATION PROPOSED BY HOLDCO ADVISORS L.P. FOR**
18 **DEBTOR AMERICANWEST BANCORPORATION DATED DECEMBER 19, 2011** (and all
19 annexes attached thereto or referenced therein) that relates to this Plan and is approved pursuant to
20 section 1125 of the Code in an order Entered by the Bankruptcy Court, as such Disclosure Statement
21 may be amended, modified or supplemented.

22 36. **“Disputed Claim”** means any Claim which is not an Allowed Claim.

23 37. **“Disputed Reserve”** means the reserve for Disputed Claims as forth in Article VI.B. of
24 the Plan.

25 38. **“Distribution”** means any distribution of New Common Stock or any distributions of
26 Net Free Cash that may be issued on account of the Proceeds Distribution Election to be made in
27 accordance with the Plan, as applicable.
28

1 39. **“Distribution Date”** means (i) the Initial Distribution Date, and (ii) any subsequent
2 date on which a Distribution is made by the Reorganized Debtor.

3 40. **“Distribution Record Date”** means the record date for determining the entitlement of
4 Holders of Claims to receive Distributions under the Plan on account of Allowed Claims. The
5 Distribution Record Date shall be two business days after the Confirmation Date.

6 41. **“Effective Date”** means the first Business Day on which all the conditions precedent to
7 the effectiveness of the Plan are satisfied or waived as provided in this Plan, provided, however, that
8 if a stay, injunction or similar provision of the Confirmation Order is in effect, the Effective Date
9 shall be the first Business Day after such stay, injunction or similar proceeding is no longer in effect.

10 42. **“Entered” or “Entry”** means the recording on the Bankruptcy Court docket for the
11 Case by the clerk of the Bankruptcy Court.

12 43. **“Estate”** means the estate of the Debtor created on the Petition Date by section 541 of
13 the Bankruptcy Code.

14 44. **“Fair Market Value Price”** means a price equal to fair market value as determined by
15 the Board of Directors in good faith as of a date not more than 30 days prior to the closing date of
16 the applicable transaction.

17 45. **“File” or “Filed”** means, with respect to any pleading, entered on the docket of the
18 Case and properly served in accordance with the Bankruptcy Rules or with respect to a Claim, a
19 Claim for which a proof of Claim has been properly and timely filed in accordance with the Bar Date
20 Order.

21 46. **“Final Order”** means an order or judgment Entered by the Bankruptcy Court or any
22 other court exercising jurisdiction over the subject matter of the Case and the parties: (i) that has not
23 been reversed, stayed, modified or amended; (ii) as to which no appeal, certiorari proceeding,
24 reargument, or other review or rehearing has been requested or is still pending; and (iii) as to which
25 the time for filing a notice of appeal or petition for certiorari shall have expired. Notwithstanding,
26 and in lieu of the foregoing, with respect to the Confirmation Order, Final Order means an order or
27
28

1 judgment of the Bankruptcy Court confirming the Plan and with respect to which no stay pending
2 appeal is in effect.

3 47. **“Former Officer and Director Causes of Action”** means any Causes of Action
4 existing as of the Effective Date against any officers and directors of the Debtor employed prior to
5 the Petition Date and directors of the Debtor.

6 48. **“Free Cash”** means (a) Cash owned by the Debtor as of the Effective Date plus (b)
7 Cash proceeds from (i) any loan participation, loan, investment financial instrument, or anything
8 similar to any of the foregoing, that is owned by the Debtor as of the Effective Date; (ii) any Causes
9 of Action (including the Former Officer and Director Causes of Action); (iii) any proceeds of the
10 Plan Trust, and (iv) any other tangible or intellectual property assets that are owned by the Debtor as
11 of the Effective Date plus (c) amounts, if any, refunded under the Debtor’s insurance policies.

12 49. **“General Unsecured Claim”** means a Claim against the Debtor that is not a Secured
13 Claim, Administrative Claim, Priority Tax Claim, Convenience Class Claims or Equity Interest. For
14 the avoidance of doubt, TOPrS Unsecured Claims and all Class 3 Claims are General Unsecured
15 Claims under the Plan.

16 50. **“Governmental Entity”** means any legislature, agency, bureau, department,
17 commission, court, political subdivision, tribunal or other instrumentality of government whether
18 local, state, federal or foreign, and such other entities as defined and described in section 101(27) of
19 the Code.

20 51. **“Holdco”** means Holdco Advisors L.P.

21 52. **“Holdco Fees”** means the reasonable, documented third party fees and expenses
22 (including, without limitation, professional fees and expenses) of Holdco incurred through the
23 Effective Date related to the Plan (including with respect to potential modifications thereof), the
24 Disclosure Statement, and all other Plan documents and matters related thereto.

25 53. **“Holder or Holders”** mean any entity or entities holding a Claim against or an Interest
26 in the Debtor.
27
28

1 54. **“Impaired”** means, with respect to a Claim, Equity Interest, or Class of Claims or
2 Equity Interests, “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy
3 Code.

4 55. **“Initial Distribution Date”** means the Effective Date, or as soon as reasonably
5 practicable after the Effective Date.

6 56. **“Insider”** means the term as defined in section 101(31) of the Code.

7 57. **“Interests”** means any equity interests, ownership rights, or shares in the Debtor
8 (including, without limitation, all capital stock, stock certificates, common stock, preferred stock,
9 partnership interests, membership and other interests in a limited liability company, rights, options,
10 warrants, contingent warrants, convertible or exchangeable securities, investment securities,
11 subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share
12 in the Debtor, partnership interests in the Debtor’s stock appreciation rights, conversion rights,
13 repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences,
14 puts, calls or commitments of any character whatsoever relating to any such equity, ownership
15 interests or shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any
16 shares of capital stock) whether or not certificated, transferable, voting or denominated “stock” or a
17 similar security, and any Claim relating to or arising from any of the foregoing.

18 58. **“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.

19 59. **“Investment Company Act”** means the Investment Company Act of 1940, 15 U.S.C. §
20 80a–1 et seq., as now in effect or hereafter amended.

21 60. **“Lien”** shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

22 61. **“Material Causes of Action”** means any Causes of Action (i) seeking a recovery of
23 more than \$20,000, and (ii) any Former Officer and Director Causes of Action.

24 62. **“Net Free Cash”** means Free Cash after full payment or satisfaction of, or reasonable
25 reserve for, all: Allowed Secured, Administrative, Priority Tax Claims; Convenience Class Claims,
26 costs of administering and implementing the Plan; and the ordinary course business expenses related
27 to the assets identified in the definition of Free Cash. For the avoidance of doubt, costs of
28

1 administering and implementing the Plan, the ordinary course business expenses related to the assets
2 identified in the definition of Free Cash, Administrative Claims, not otherwise related to the assets
3 identified in the definition of Free Cash that would not otherwise be incurred in a chapter 11
4 liquidation, including without limitation the incremental cost of any insurance purchased after (or in
5 contemplation of) the Effective Date above what would be required in a chapter 11 liquidation plan
6 and the costs of any employee benefits resolutions above what would be required in a chapter 11
7 liquidation plan, shall not operate to reduce Free Cash.

8 63. **“New Board”** means the board of directors of the Reorganized Debtor.

9 64. **“New Common Stock”** means newly-issued shares of common stock of the
10 Reorganized Debtor, which shall be entitled to ten votes per share and have a par value of \$0.01 per
11 share.

12 65. **“Person”** means an individual, partnership, limited liability company, corporation,
13 association, joint stock company, trust, entity, joint venture, labor organization, unincorporated
14 organization, Governmental Entity, and such other entities as defined and described in section
15 101(41) of the Code.

16 66. **“Petition Date”** means October 28, 2010.

17 67. **“Plan”** means this **CHAPTER 11 PLAN OF REORGANIZATION PROPOSED**
18 **BY HOLDCO ADVISORS L.P.** (including all exhibits hereto), as modified or amended from time
19 to time.

20 68. **“Plan Advisor”** means the Person appointed and serving in such capacity pursuant to
21 Article V.R of this Plan.

22 69. **“Plan Supplement”** means the compilation of documents and exhibits relevant to the
23 implementation of the Plan that will be filed prior to the transmission of this Plan to Holders of
24 Allowed Claims in connection with the solicitation of votes to accept this Plan, and which may be
25 amended, supplemented or modified through and including the date of the Confirmation Hearing.

26 70. **“Plan Trust”** means the Trust created pursuant to Article V.C of the Plan and the Plan
27 Trust Agreement.
28

1 71. “**Plan Trust Agreement**” means the Agreement for the establishment and operation of
2 the Plan Trust substantially in the form attached as Exhibit A to the Plan.

3 72. “**Plan Trust Assets**” means the Former Officer and Director Causes of Action, which
4 will be transferred to the Plan Trust upon the Effective Date.

5 73. “**Plan Trustee**” means Holdco or its designee appointed pursuant to the Plan for the
6 purpose of acting as Trustee of the Plan Trust.

7 74. “**Priority Tax Claim**” means a Claim entitled to priority under sections 502(i) and
8 507(a)(8) of the Code.

9 75. “**Pro Rata**” means the ratio of the amount of an Allowed General Unsecured Claim in
10 a particular Class to the aggregate amount of all General Unsecured Claims that have not yet been
11 disallowed.

12 76. “**Proceeds Distribution Election**” means the right of each Holder who so elects to
13 receive a Pro Rata Distribution of Net Free Cash, which may be evidenced in part, at the
14 Reorganized Debtor’s option (only if necessary to cause Section 382(l)(5) of the Internal Revenue
15 Code to apply to the Plan) by a separate series or class of New Common Stock on the terms set forth
16 in Article V.E.

17 77. “**Proceeds Distribution Election Segregated Account**” means an account in a bank or
18 other financial institution selected by the Debtor or Reorganized Debtor pursuant to Article VI.

19 78. “**Professionals**” means those Persons (a) employed in the Case under sections 327 or
20 1103 of the Code, and (b) entitled, under sections 330, 503(b), or 507(a)(2) of the Code, to seek
21 compensation for legal, accounting or other professional services and the costs and expenses related
22 to such services from the Debtor or the Estate.

23 79. “**Quarterly Distribution Date**” means the first Business Day after the end of each
24 quarterly calendar period (i.e., March 31, June 30, September 30 and December 31 of each calendar
25 year).

26 80. “**Releasees**” means, in their individual and representative capacities as such, the
27 TOPrS Indenture Trustees, the Committee and its individual members, Holdco, all Entities
28

1 controlled by or under common control of the foregoing, all Affiliates of Holdco, all affiliates of all
2 of the foregoing, and all of their respective current and former directors, officers, members, partners,
3 employees, attorneys, accountants, investment bankers, financial advisors and consultants (including
4 their respective officers, directors, employees, members, attorneys, and professional advisors).

5 81. **“Releasing Parties”** means, collectively: (a) Holders of Claims in Classes entitled to
6 vote on the Plan who: (i) vote to accept the Plan; (ii) vote to reject the Plan and do not opt-out of the
7 Third Party Releases; or (iii) abstain from voting on the Plan and, accordingly, do not opt-out of the
8 Third Party Releases; and (b) the Committee.

9 82. **“Reorganized Debtor”** means the Debtor or any successor thereto, by merger,
10 consolidation or otherwise, on or after the Effective Date.

11 83. **“Schedules”** means the Schedule of Assets and Liabilities and Statement of Financial
12 Affairs, as may have been amended, and as Filed by the Debtor in the Case.

13 84. **“Secured Claim”** means a Claim against the Debtor secured by a lien on any property
14 of the Estate.

15 85. **“Third Party Release”** means the release granted by the Releasing Parties to the
16 Releasees pursuant to Article VIII.D.

17 86. **“TOPrS”** means the trust originated preferred securities issued by the TOPrS Trusts.

18 87. **“TOPrS Debentures”** means the debentures issued by the Debtor pursuant to the
19 TOPrS Debenture Indentures.

20 88. **“TOPrS Debenture Indenture”** means the indenture agreements between the Debtor
21 and each TOPrS Debenture Indenture Trustee.

22 89. **“TOPrS Debenture Indenture Trustee”** means the indenture trustees of each of the
23 TOPrS Debentures.

24 90. **“TOPrS Documents”** means, with respect to each TOPrS Trust, the TOPrS Indenture,
25 the TOPrS Trust Guarantee and all instruments and agreements executed in connection therewith.

26 91. **“TOPrS Indenture”** means the TOPrS Debenture Indenture and the TOPrS Trust
27 Indenture.
28

1 92. “*TOPrS Indenture Trustees*” means the TOPrS Debenture Indenture Trustee and the
2 TOPrS Trust Indenture Trustee.

3 93. “*TOPrS Indenture Trustee Fees*” means reasonable, documented fees, disbursements,
4 advances and expenses (including, without limitation, professional fees and expenses, and payments
5 made or to be made in connection with indemnity claims) of each TOPrS Indenture Trustee
6 (including, without limitation, in connection with service on the Committee, and in connection with
7 Distributions under the Plan).

8 94. “*TOPrS Trusts*” means, collectively, AmericanWest Capital Statutory Trust I,
9 AmericanWest Capital Statutory Trust II, AmericanWest Capital Statutory Trust III and Columbia
10 Trust Statutory Trust I.

11 95. “*TOPrS Trust Guarantee*” means the guarantee agreement of the Debtor with respect
12 to each of the TOPrS.

13 96. “*TOPrS Trust Guarantee Trustee*” means the guarantee trustees of each of the TOPrS
14 Trust Guarantees.

15 97. “*TOPrS Trust Indenture*” means the amended and restated declarations of trust or
16 amended and restated trust agreements governing each of the TOPrS Trusts.

17 98. “*TOPrS Trust Indenture Trustee*” means the trustees of each of the TOPrS Trusts
18 under the TOPrS Trust Indentures.

19 99. “*TOPrS Unsecured Claims*” means Claims on account of the \$47,391,827.43 in
20 TOPrS Debentures issued to the TOPrS Trusts and any guarantees related thereto. For the avoidance
21 of doubt, TOPrS Unsecured Claims are Class 2 Claims under the Plan.

22 100. “*Treasury Regulations*” means the United States Department of Treasury regulations
23 promulgated under the Internal Revenue Code.

24 101. “*Unimpaired*” means not Impaired.

25 **B. Interpretation, Rules of Construction and Computation of Time**

26 1. Any term used in this Plan that is not defined herein or in the Disclosure
27 Statement, whether in this Article II or elsewhere, or other exhibits hereto, but that is used in the
28

1 Code or the Bankruptcy Rules has the meaning ascribed to that term in (and shall be construed in
2 accordance with the rules of construction under) the Code or the Bankruptcy Rules.

3 2. The words “herein,” “hereof,” “hereto,” “hereunder” and others of similar
4 import refer to this Plan as a whole and not to any particular Article, Section, subsection or clause
5 contained in this Plan.

6 3. Unless specified otherwise in a particular reference, a reference in this Plan to
7 an “Article” or a “Section” is a reference to that Article or Section of this Plan.

8 4. Any reference in this Plan to a document being in a particular form or on
9 particular terms and conditions means that the document shall be substantially in such form or
10 substantially on such terms and conditions.

11 5. Any reference in this Plan to an existing document means such document, as it
12 may have been amended, modified or supplemented from time to time as of the Effective Date.

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

15 7. Except as otherwise provided herein, the rules of construction set forth in
16 section 102 of the Code shall apply to this Plan.

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

19 9. All exhibits to this Plan are incorporated into this Plan, and shall be deemed to
20 be included in this Plan, regardless of when filed with the Bankruptcy Court.

21 10. The provisions of the Plan shall control over the contents of the Disclosure
22 Statement. The provisions of the Confirmation Order shall control over the contents of the Plan.

23 11. Whenever the time for occurrence or happening of an event as set forth in the
24 Plan falls on a day that is not a Business Day, then the time for the occurrence or happening of said
25 event shall be extended to the next Business Day.

26 12. Subject to the provisions of any contract, certificate of incorporation, bylaw,
27 instrument, release or other agreement or document entered into in connection with the Plan, the
28

1 rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced
2 in accordance with applicable federal law, including the Code and Bankruptcy Rules.

3 13. All references to statutes, regulations, orders, rules of court, and the like shall
4 mean as amended from time to time, as applicable to the Case, unless otherwise stated.

5 14. Except as otherwise specifically provided in the Plan to the contrary,
6 references in the Plan to the Debtor shall mean the Debtor and the Reorganized Debtor, as
7 applicable, to the extent the context requires.

8 **ARTICLE III.**

9 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

10 As required by the Code, the Plan classifies Claims and Interests in various Classes
11 according to their right to priority of payments as provided in the Code. The Plan states whether
12 each Class of Claims or Interests is impaired or unimpaired. The Plan provides the treatment each
13 Class will receive under the Plan. The following are the Classes in this Plan:

14 **A. Unclassified Claims.**

15 Certain types of Claims are not placed into voting Classes; instead they are unclassified.
16 They are not considered impaired and they do not vote on the Plan because they are automatically
17 entitled to specific treatment provided for them in the Code. As such, Holdco has not placed the
18 following Claims in a Class. The treatment of these Claims is provided below.

19 **1. Administrative Claims.**

20 **a. Treatment.**

21 Unless otherwise agreed to by the holder of an Allowed Administrative Claim and Holdco or
22 the Reorganized Debtor, as applicable, each holder of an Allowed Administrative Claim shall
23 receive Cash equal to the unpaid portion of such Allowed Administrative Claim: (I) on the later of
24 (x) the Effective Date, and (y) the date an order of the Bankruptcy Court allowing the Administrative
25 Claim becomes a Final Order, or (II) as otherwise ordered by the Bankruptcy Court.
26
27
28

Petition Date on, or penalties with respect to or arising in connection with, such Allowed Priority Tax Claims, except as specifically allowed by Final Order of the Bankruptcy Court.

B. Classified Claims And Interests.

A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of the Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is classified in a particular Class regardless of whether the Claim or Interest is an Allowed Claim or Interest in that Class, or only asserted as such, but only to the extent that it has not been paid, released, disallowed or otherwise satisfied. The treatment with respect to each Class of Claims and Interests provided for in this Article III shall be in full and complete satisfaction and release of such Claims and Interests. The following Classes appear in this Plan:

CLASS	CLAIMS	IMPAIRMENT/VOTING
1	Secured	Unimpaired – Not Entitled to Vote
2	TOPrS Unsecured Claims	Impaired – Entitled to Vote
3	General Unsecured Claims	Impaired – Entitled to Vote
4	Convenience	Unimpaired – Not Entitled to Vote
5	Equity Interests	Impaired – Not Entitled to Vote

1. Class 1 (Secured Claims).

a. **Classification.** Class 1 consists of all Secured Claims.

b. **Impairment and Voting.** Class 1 is unimpaired under the Plan and the holders of Class 1 Allowed Secured Claims, if any, are deemed to accept the Plan.

c. **Treatment.** The legal, equitable and contractual rights of the holders of Allowed Secured Claims are unaltered by the Plan. Unless otherwise agreed to by the holder of an Allowed Secured Claim and Holdco, each holder of an Allowed Secured Claim shall receive on

1 the later of (x) the Effective Date, and (y) the date an order of the Bankruptcy Court allowing the
2 Secured Claim becomes a Final Order, on account of and in full satisfaction of its Allowed Secured
3 Claim, either of the following treatments at the election of (A) the Debtor or (B) if after the
4 Effective Date, the Reorganized Debtor: (i) Cash equal to the amount of the Allowed Secured Claim
5 or (ii) possession of the property in which the holder of the Allowed Secured Claim has a perfected,
6 unavoidable and enforceable lien, security interest or other charge and relief from the automatic stay
7 provided by section 362 of the Code to foreclose, collect upon or set-off the property in accordance
8 with applicable non-bankruptcy law; *provided, however*, that any time after the Confirmation Date
9 but before the Effective Date, Holdco may elect to give to the holder of an Allowed Secured Claim
10 the treatment provided in subparagraph (ii) above.
11

12 **2. Class 2— TOPrS Unsecured Claims**

- 13 a. **Classification:** Class 2 consists of all TOPrS Unsecured Claims.
14
15 b. **Impairment and Voting:** Class 2 is Impaired by the Plan. Each
16 holder of an Allowed TOPrS Unsecured Claim is entitled to vote to accept or reject the Plan.
17
18 c. **Treatment:** In full satisfaction, settlement, release and compromise of
19 and in exchange for each TOPrS Unsecured Claim, each Holder of a TOPrS Unsecured Claim shall
20 receive on or as soon as reasonably practicable after the Effective Date, (i) such Holder's Pro Rata
21 share of the Plan Trust Interests, which *inter alia*, shall entitle such Holder to receive its Pro Rata
22 Share of distributions of Plan Trust Assets from the Plan Trust in accordance with this Plan and the
23 Plan Trust Agreement, and (ii) its Pro Rata Distribution of New Common Stock or, if it so elects,
24 such Holder shall receive the Proceeds Distribution Election.
25
26
27
28

1 3. **Class 3— General Unsecured Claims**

2 a. **Classification:** Class 3 consists of all General Unsecured Claims that
3 are not TOPrS Claims and exceed the \$7,500 threshold for inclusion in Class 4 (Convenience
4 Claims).

5 b. **Impairment and Voting:** Class 3 is Impaired by the Plan. Each
6 holder of an Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.
7

8 c. **Treatment:** In full satisfaction, settlement, release and compromise of
9 and in exchange for each General Unsecured Claim, each Holder of an Allowed General Unsecured
10 Claim shall receive on or as soon as reasonably practicable after the Effective Date, (i) such Holder's
11 Pro Rata share of the Plan Trust Interests, which *inter alia*, shall entitle such Holder to receive its
12 Pro Rata Share of distributions of Plan Trust Assets from the Plan Trust in accordance with this Plan
13 and the Plan Trust Agreement, and (ii) its Pro Rata Distribution of the New Common Stock or, if it
14 so elects, such Holder shall receive the Proceeds Distribution Election.
15

16 4. **Class 4 (Convenience Claims).**

17 a. **Classification:** Class 4 consists of Convenience Claims.

18 b. **Impairment and Voting:** Class 4 is unimpaired by the Plan. The
19 holders of Class 4 Convenience Claims are deemed to accept the Plan pursuant to section 1126(f) of
20 the Code.
21

22 c. **Treatment:** In full satisfaction, settlement, release, and compromise of
23 and in exchange for each Convenience Claim, each Holder of an Allowed Convenience Claim shall
24 receive, on account of and in full satisfaction of its Allowed Convenience Claim, Cash equal to
25 100% of the amount of the Allowed Convenience Claim on the later of (x) the Effective Date, and
26 (y) the date an order of the Bankruptcy Court allowing the Convenience Claim becomes a Final
27 Order.
28

1 timely filed within that time period will be forever barred from assertion against the Debtor, the
2 Reorganized Debtor, the Estate, its successors and assigns, and its assets and properties, unless
3 otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall,
4 as of the Effective Date, be subject to the permanent injunction set forth in this Plan. Unless
5 otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein
6 shall be treated as General Unsecured Claims under the Plan.
7

8 **D. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

9
10 1. **Cure of Defaults.** Any provisions or terms of the Debtor's executory contracts or
11 unexpired leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default,
12 shall be satisfied solely by Cure or by a waiver of Cure agreed upon between the Debtor and
13 applicable counterparty. Except with respect to executory contracts or unexpired leases in which the
14 Debtor and the applicable counterparties have stipulated in writing to payment of Cure, all requests
15 for payment of Cure must be Filed on or before the Cure Bar Date. Any request for payment of Cure
16 that is not timely Filed shall be disallowed automatically and forever barred from assertion and shall
17 not be enforceable against the Reorganized Debtor, without the need for any objection by the
18 Reorganized Debtor or further notice to or action, order, or approval of the Bankruptcy Court, and
19 any such Claim for Cure shall be deemed fully satisfied, released, and discharged, notwithstanding
20 anything included in the Schedules or in any proof of Claim to the contrary; provided, however, that
21 nothing shall prevent the Reorganized Debtor from paying any Cure despite the failure of the
22 relevant counterparty to File such request for payment of such Cure. The Reorganized Debtor also
23 may settle any Cure without further notice to or action, order, or approval of the Bankruptcy Court.

24 2. **Objections to Cure.** If Holdco or Reorganized Debtor, as applicable, object to any
25 request for Cure or any other matter related to assumption, the Bankruptcy Court shall determine the
26 Allowed amount of such Cure and any related issues. If there is a dispute regarding such Cure, the
27 ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future
28 performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter

1 pertaining to assumption, then such Cure shall occur as soon as reasonably practicable after entry of
2 a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or
3 as may be agreed upon by Holdco or Reorganized Debtor and the counterparty to the executory
4 contract or unexpired lease. Any counterparty to an executory contract or unexpired lease that fails
5 to object timely to the proposed assumption of any executory contract or unexpired lease will be
6 deemed to have consented to such assumption. Holdco or Reorganized Debtor, as applicable,
7 reserve the right, either to reject or nullify the assumption of any executory contract or unexpired
8 lease no later than thirty (30) days after a Final Order determining the Cure or any request for
9 adequate assurance of future performance required to assume such executory contract or unexpired
10 lease.

11 **3. Release and Satisfaction of Debtor upon Assumption.** Assumption of any executory
12 contract or unexpired lease pursuant to the Plan or otherwise and after satisfaction of any Cure, shall
13 result in the full release and satisfaction of any Claims or defaults, whether monetary or
14 nonmonetary, including defaults of provisions restricting the change in control or ownership interest
15 composition or other bankruptcy-related defaults, arising under any assumed executory contract or
16 unexpired lease at any time prior to the effective date of assumption.

17 **E. Reservation of Rights.** Neither the exclusion nor inclusion of any contract or lease
18 in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the
19 Debtor or Holdco that any such contract or lease is in fact an executory contract or unexpired lease
20 or that the Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a
21 contract or lease is or was executory or unexpired at the time of assumption or rejection, Holdco or
22 Reorganized Debtor, as applicable, shall have thirty (30) days following entry of a Final Order
23 resolving such dispute to alter their treatment of such contract or lease.
24
25
26
27
28

1 the provisions of the Plan Trust Agreement. The Plan Trust shall be administered by the Plan
2 Trustee. Holdco shall be and is appointed as the Plan Trustee on the Effective Date and shall be
3 bound by the terms of the Plan Trust Agreement without further order of the Bankruptcy Court. The
4 Plan will be administered and actions will be taken in the name of the Debtors or Plan Trust, as
5 appropriate, through the Plan Trustee. The Plan Trust Agreement shall be deemed approved and
6 effective on the Effective Date.
7

8 **2. Property of the Plan Trust**

9 On the Effective Date, the Debtor shall be deemed to have transferred and/or assigned any and all
10 Former Officers and Directors Causes of Action to the beneficiaries of the Plan Trust, followed by a deemed
11 transfer by such beneficiaries to the Plan Trust, and such transferred assets shall be held by the Plan Trust free
12 and clear of all Claims, Liens and contractually imposed restrictions, except for the rights to distribution and
13 the retention of Liens afforded to certain Holders of Allowed Secured Claims, solely to the extent and priority
14 of any such Allowed Secured Claim under the Plan.
15

16 **3. Plan Trustee**

17 The salient terms of the Plan Trustee's employment, including the Plan Trustee's duties and
18 compensation, to the extent not set forth in the Plan, shall be set forth in the Plan Trust Agreement. In
19 general, the Plan Trustee shall be the exclusive trustee of the Plan Trust for the purposes of 31 U.S.C.
20 § 3713(b) and 26 U.S.C. § 6012(b)(3). The Plan Trustee shall have fiduciary duties to beneficiaries of the
21 Plan Trust in the same manner that members of an official committee of creditors appointed pursuant to
22 § 1102 of the Bankruptcy Code have fiduciary duties to the creditor constituents represented by such a
23 committee. The Plan Trust Agreement shall specify the terms of the Plan Trustee's compensation,
24 responsibilities and powers.
25

26 **4. Resignation or Removal of the Plan Trustee:**

27 The Plan Trustee may resign at any time upon 30 days' written notice, provided that a
28 successor Plan Trustee is appointed pursuant to the Plan Trust Agreement. No successor Plan

1 Trustee shall in any event have any liability or responsibility for the acts or omissions of any of his
2 or her predecessors. Every successor Plan Trustee shall execute, acknowledge and file with the
3 Bankruptcy Court an instrument in writing accepting such appointment hereunder, and thereupon
4 such successor Plan Trustee, without any further act, shall become fully vested with all of the rights,
5 powers, duties and obligations of his or her predecessor.
6

7 **5. Exculpation of the Plan Trustee:**

8 From and after the Effective Date, the Plan Trustee and its professionals shall be exculpated
9 by the Debtor, its estate, the Reorganized Debtor and all Holders of Claims or Interests from any
10 and all claims or causes of action and assertions of liability arising out of the performance of the
11 duties conferred upon the Plan Trustee by the Plan, the Plan Trust Agreement, or any orders of the
12 Bankruptcy Court, except to the extent an act constitutes bad faith, gross negligence, willful
13 misconduct, or actual fraud. No holder of a Claim or Interest or representative thereof shall have or
14 pursue any claim or cause of action against the Plan Trustee or its professionals for taking any action
15 in accordance with the Plan, the Plan Trust Agreement, or to implement the provisions of the Plan or
16 any order of the Bankruptcy Court. Nothing in this provision shall be deemed to alter the provisions
17 of the Plan Trust Agreement.
18

19 **6. Federal Income Tax Treatment of Plan Trust**

20 **i. Plan Trust Assets Treated as Owned by Creditors.**

21 For all federal income tax purposes, all parties (including, without limitation, the Debtor, Reorganized
22 Debtor, the Plan Trustee, and the holders of Allowed General Unsecured Claims) will treat the transfer of the
23 Plan Trust Assets to the Plan Trust, including any amounts or other assets subsequently transferred to the Plan
24 Trust (but only at such time as actually transferred) for the benefit of the holders of General Unsecured
25 Claims, whether Allowed on or after the Effective Date, as (A) a transfer of the Plan Trust Assets directly to
26 the holders of Allowed General Unsecured Claims, followed by (B) the transfer by such Persons to the Plan
27 Trust of such Plan Trust Assets in exchange for beneficial interests in the Plan Trust. Accordingly, the
28

1 holders of Allowed General Unsecured Claims will be treated for federal income tax purposes as the grantors
2 and owners of their respective shares of the applicable Plan Trust Assets.

3 **ii. Tax Reporting**

4 1. Subject to definitive guidance from the IRS or a court of competent
5 jurisdiction to the contrary (including the issuance of applicable
6 Treasury Regulations, the receipt by the Plan Trustee of a private letter
7 ruling if the Plan Trustee so requests one, or the receipt of an adverse
8 determination by the IRS upon audit if not contested by the Plan
9 Trustee), all parties will treat the Plan Trust as a “liquidating trust” in
10 accordance with Treasury Regulation section 301.7701-4(d), of which
11 the holders of Allowed General Unsecured Claims, whether Allowed
12 on or after the Effective Date, are the grantors and beneficiaries. In the
13 event an alternative treatment of the Plan Trust is required for federal
14 income tax purposes, the Plan Trustee will promptly notify in writing
15 (or by comparable means) all holders of beneficial interests in the Plan
16 Trust, and anyone who subsequently becomes a holder, of such
17 alternative treatment. The Plan Trustee will file returns for the Plan
18 Trust as a grantor trust pursuant to Treasury Regulation section 1.671-
19 4(a). The Plan Trustee also may send annually to each record holder of
20 a beneficial interest in the Plan Trust a separate statement setting forth
21 such holder’s share of items of income, gain, loss, deduction, or credit
22 and will instruct all such holders to report such items on their federal
23 income tax returns or to forward the appropriate information to the
24 beneficial holders with instructions to report such items on their
25 federal income tax returns. The Plan Trustee will also file (or cause to
26 be filed) any other statements, returns, or disclosures relating to the
27 Plan Trust that are required by any governmental unit. Except as may
28 otherwise be provided, the Plan Trust’s taxable income, gain, loss,
deduction or credit will be allocated by reference to the manner in
which an amount of Cash equal to such taxable income would be
distributed (without regard to any restrictions on distribution described
in the Plan) if, immediately prior to the deemed distribution, the Plan
Trust had distributed all of its other assets (valued at their tax book
value) in accordance with the provisions of the Plan and the Plan Trust
Agreement, up to the tax book value of the Plan Trust Assets treated as
contributed by the holders of Allowed General Unsecured Claims,
whether Allowed on or after the Effective Date, adjusted for prior
taxable income and loss, and taking into account all prior and
concurrent distributions from the Plan Trust. Similarly, taxable loss of
the Plan Trust will be allocated by reference to the manner in which an
economic loss would be borne immediately after a liquidating
distribution of the remaining assets.

2. As soon as practicable after the Effective Date, the Plan Trustee will
make a good faith valuation of the value of the Plan Trust Assets. Such

1 valuation will be made available from time to time, to the extent
2 relevant, and used consistently by all parties for all federal income tax
3 purposes.

- 4 3. Subject to definitive guidance from the Internal Revenue Service or a
5 court of competent jurisdiction to the contrary (including the receipt by
6 the Plan Trustee of a private letter ruling if the Plan Trustee requests
7 one, or the receipt of an adverse determination by the Internal Revenue
8 Service upon audit if not contested by the Plan Trustee), the Plan
9 Trustee will (1) make an election pursuant to Treasury Regulation
10 section 1.468B-9 to treat the Disputed Claims Reserve as a “disputed
11 ownership fund” within the meaning of that section; (2) treat as
12 taxable income or loss of the Disputed Claims Reserve, with respect to
13 any given taxable year, the portion of the taxable income or loss of the
14 Plan Trust that would have been allocated to the holders of Disputed
15 General Unsecured Claims had such Claims been Allowed on the
16 Effective Date (but only for the portion of the taxable year with respect
17 to which such Claims are unresolved), (3) treat as a distribution from
18 the Disputed Claims Reserve any assets previously allocated to or
19 retained on account of Disputed General Unsecured Claims as and
20 when, and to the extent, such claims are subsequently resolved
21 (following which time such assets will no longer be held in the
22 Disputed Claims Reserve) and (4) to the extent permitted by applicable
23 law, report consistent with the foregoing for state and local income tax
24 purposes (including making any appropriate elections). The holders of
25 Allowed General Unsecured Claims, whether Allowed on or after the
26 Effective Date, will report, for tax purposes, consistent with the
27 foregoing.
- 28 4. The Plan Trustee will be responsible for payments, out of and to the
extent of available Plan Trust Assets, of any taxes imposed on the Plan
Trust or the Plan Trust Assets, including the Disputed Claims Reserve.
5. The Plan Trustee may request an expedited determination of taxes of
the Plan Trust, including the Disputed Claims Reserve, under section
505(b) of the Bankruptcy Code, for all returns filed for, or on behalf
of, the Plan Trust for all taxable periods through the dissolution of the
Plan Trust (including the Disputed Claims Reserve).

iii. **Dissolution of Plan Trust.** The Plan Trustee and the Plan Trust will be
discharged or dissolved, as the case may be, as set forth in the Plan Trust
Agreement.

D. Cancellation of TOPrS Debentures, TOPrS, and Equity Interests

1. **Cancellation of TOPrS Debentures.** On the Effective Date, except to the extent
otherwise provided herein, all notes, stock, instruments, certificates and other documents evidencing

1 the TOPrS Unsecured Claims and Equity Interests, including the TOPrS Documents, the TOPrS
2 Trusts and the TOPrS shall be deemed automatically canceled, shall be of no further force, whether
3 surrendered for cancellation or otherwise, and the obligations of the Debtor thereunder or in any way
4 related thereto shall be discharged.

5
6 **2. Limited Survival of TOPrS Documents.** Notwithstanding anything to the contrary
7 contained in this Plan, (a) the TOPrS Documents will continue in effect solely for purposes of (i)
8 allowing the applicable TOPrS Indenture Trustee to receive and make the Distributions to be made
9 pursuant to this Plan on account of TOPrS Unsecured Claims, from Distributions received from the
10 Reorganized Debtor in accordance with this Plan, and (ii) permitting such TOPrS Indenture Trustee
11 to maintain any rights or Liens it may have under the applicable TOPrS Documents against property
12 held or collected by the TOPrS Indenture Trustees and to receive TOPrS Indenture Trustee Fees and
13 indemnification, provided that the Debtor or Reorganized Debtor, as applicable, will not have any
14 obligation to any TOPrS Indenture Trustee for payment of any such TOPrS Indenture Trustee Fees
15 or indemnifications except as otherwise provided in this Plan, and (b) the TOPrS Debentures issued
16 under such agreements will continue in effect solely for the purposes of permitting Holders thereof
17 to receive Distributions from the applicable TOPrS Indenture Trustee in accordance with the Plan.
18
19

20 **3. Payment of TOPrS Indenture Trustee Fees**

21 On or as soon as practicable after the Effective Date, the Reorganized Debtor shall
22 pay the TOPrS Indenture Trustee Fees, after submission of invoices therefor. Subsequent
23 submissions by a TOPrS Indenture Trustee of TOPrS Indenture Trustee Fees incurred after the
24 Effective Date may be made from time to time, but no more frequently than monthly, by delivery of
25 invoices to the Reorganized Debtor for payment, but only for fees incurred by the TOPrS Indenture
26 Trustee that are reasonably necessary for the implementation of this Plan.
27
28

1 4. **Payment of Holdco Fees.** On or as soon as practicable after the Effective Date, the
2 Reorganized Debtor shall pay the Holdco Fees.

3 **E. Reorganized Debtor Securities.**

4 1. **New Common Stock.** The Reorganized Debtor's equity interests shall consist of New
5 Common Stock, and, if the Debtor elects (only if necessary to cause Section 382(l)(5) of the Internal
6 Revenue Code to apply to the Plan), a separate series or class of New Common Stock on account of
7 part of the Proceeds Distribution Election. On the Effective Date, or as soon as reasonably
8 practicable thereafter, the Reorganized Debtor shall issue or reserve for issuance all securities to be
9 issued pursuant to the terms of the Plan, without need for any further corporate or shareholder action.
10 Shares of New Common Stock and any separate series or class of New Common Stock on account
11 of the Proceeds Distribution Election, depending on the election of the applicable Holder of a
12 particular General Unsecured Claim, shall be issued Pro Rata to (a) Holders of Allowed TOPRS
13 Unsecured Claims and (b) Holders of Allowed General Unsecured Claims.
14
15

16 2. **Other Attributes.**

17 a. **Other Attributes of New Common Stock.** Shares of New Common
18 Stock shall have conversion rights, redemption rights, rights to receive dividends, preemptive rights,
19 transfer restrictions and other rights, responsibilities and restrictions typically associated with
20 common stock, all as set forth in the Plan Supplement, in order to preserve and maximize the value
21 of all tax attributes that are or will be held by the Reorganized Debtor from and after the Effective
22 Date.
23

24 b. **Redemption of Common Stock.** The New Board may elect to
25 redeem all shares of New Common Stock held by a particular stockholder at any time, so long as the
26 New Common Stock is redeemed for Fair Market Value Price. For purposes of the redemption of
27 the New Common Stock, to determine whether the New Common Stock is redeemed for Fair Market
28

1 Value, the New Board shall consult with its professional advisors in determining the Fair Market
2 Value for the New Common Stock. Prior to making a final determination to exercise the
3 Reorganized Debtor's redemption right under this paragraph, the Reorganized Debtor shall send a
4 written notice to such stockholder (at the notice address appearing in the Reorganized Debtor's
5 records) advising the stockholder of the Reorganized Debtor's intention to exercise its redemption
6 right. In the event that the stockholder notifies the Reorganized Debtor in writing (within sixty (60)
7 days after the date of the Reorganized Debtor's notice) that such stockholder objects to the
8 redemption of its shares, then the Reorganized Debtor shall not exercise the redemption right. In the
9 event that the stockholder does not respond to the Reorganized Debtor's notice within sixty (60)
10 days, the stockholder is deemed to have consented to the proposed redemption. In the event that the
11 stockholder does not respond to the Reorganized Debtor's notice within sixty (60) days after the date
12 of the Reorganized Debtor's notice (or the stockholder notifies the Reorganized Debtor that it
13 approves or does not object to such redemption), then the New Board shall be entitled to make a
14 final determination to exercise the redemption right. In the event that the New Board makes such a
15 final determination, then the redemption shall take place on a date determined by the New Board
16 (but such redemption date shall be no later than 30 days after the New Board's final determination)
17 and shall be at a price equal to the Fair Market Value Price. The purchase price payable in any such
18 redemption shall be paid in cash or by check on the closing date. Such redemption shall be effective
19 on the closing date of the redemption regardless of whether or not the stockholder participates in the
20 closing or delivers his or its stock certificate to the Reorganized Debtor for cancellation.

24 **F. Exemption from the Registration Requirements of the Securities Act; Investment**
25 **Company Act.**

26 1. **Exemption from Securities Act.** The offering, issuance, and distribution of securities
27 pursuant to the Plan shall be exempt from the registration requirements of section 5 of the Securities
28 Act as one or more private placements pursuant to any and all applicable exemptions, including, as

1 applicable, exemptions provided by Section 1145 of the Bankruptcy Code, Section 4(2) of the
2 Securities Act and/or Rule 506 of Regulation D under the Securities Act, based on the number of
3 creditors receiving securities under the Plan, the Reorganized Debtor's belief as to their status as
4 accredited investors, and other factors. As a result, the securities issued under the Plan likely will be
5 "restricted securities" for purposes of the federal securities laws. The Reorganized Debtor also
6 reserves all rights to rely, if necessary in its sole discretion, on other exemptions to the registration
7 requirements of section 5 of the Securities Act.
8

9 **2. Investment Company Act.** In addition, the Reorganized Debtor expects to rely on
10 one or more of the exemptions contained in the Investment Company Act, which exemptions may
11 include, without limitation, exemptions under Sections 3(c)1 and 3(c)7. In order to ensure that the
12 Reorganized Debtor qualifies for all applicable exemptions under the Investment Company Act
13 (including, without limitation, Section 3(c)(7) if the Reorganized Debtor relies on such exemption),
14 then all holders of the Reorganized Debtor's equity interests will be required to be "Qualified
15 Purchasers" and/or "Accredited Investors" as defined under the applicable federal laws unless and
16 until the Board of Directors determines otherwise.
17

18 **G. Restructuring Transactions.**

19 On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor
20 may take all actions as may be necessary or appropriate to effect any transaction described in,
21 approved by, contemplated by or necessary to effectuate the Plan, including: (1) the execution and
22 delivery of appropriate agreements or other documents of merger, consolidation or reorganization
23 containing terms that are consistent with the terms of the Plan and that satisfy the requirements of
24 applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment,
25 assumption or delegation of any property, right, liability, duty or obligation on terms consistent with
26 the terms of the Plan; (3) the filing of appropriate certificates of incorporation, charter, merger or
27
28

1 consolidation with the appropriate governmental authorities pursuant to applicable law; and (4) all
2 other actions that the Reorganized Debtor determines are necessary or appropriate.

3 **H. Corporate Action.**

4 Each of the matters provided for by the Plan involving the corporate structure of the Debtor
5 or corporate, financing or related actions to be taken by or required of the Reorganized Debtor shall,
6 as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except
7 to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to
8 the Effective Date, ratified in all respects without any requirement of further action by Holders of
9 Claims or Equity Interests, the directors of the Debtor or any other entity. Without limiting the
10 foregoing, such actions will include: the adoption and (as applicable) filing of amended and restated
11 certificate of incorporation, charter, bylaws and other governance documents; the appointment of
12 officers and (as applicable) directors for the Reorganized Debtor; the issuance of the New Common
13 Stock and any security or instrument issued by the Reorganized Debtor on account of part of the
14 Proceeds Distribution Election, and all related documents and instruments (as applicable). The
15 Reorganized Debtor shall enter into such agreements and amend their corporate governance
16 documents to the extent necessary to implement the terms and conditions of the Plan.
17

18
19 **I. Effectuating Documents; Further Transactions.**

20 On and after the Effective Date, the Reorganized Debtor, and the officers and members of the
21 New Board thereof, are authorized to and may issue, execute, deliver, file or record such contracts,
22 securities, instruments, releases, and other agreements or documents and take such actions as may be
23 necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of
24 the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the
25 Reorganized Debtor, and the Debtor may make non-material modifications to the documents set
26
27
28

1 forth in the Plan Supplement, without the need for any approvals, authorizations, or consents except
2 for those expressly required pursuant to the Plan.

3 **J. Exemption from Certain Transfer Taxes and Recording Fees.**

4 Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from the Debtor to the
5 Reorganized Debtor or to any entity pursuant to, in contemplation of, or in connection with the Plan
6 or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, securities, or other
7 interest in the Debtor or the Reorganized Debtor; (2) the creation, modification, consolidation, or
8 recording of any mortgage, deed of trust or other security interest, or the securing of additional
9 indebtedness by such or other means; (3) the making, assignment, or recording of any lease or
10 sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under,
11 in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or
12 other instrument of transfer executed in connection with any transaction arising out of, contemplated
13 by, or in any way related to the Plan, shall not be subject to any document recording tax, sales tax,
14 stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage
15 recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee,
16 or other similar tax or governmental assessment, and the appropriate state or local governmental
17 officials or agents shall forego the collection of any such tax or governmental assessment and to
18 accept for filing and recordation any of the foregoing instruments or other documents without the
19 payment of any such tax or governmental assessment.
20
21
22

23 **K. Board Representation.**

24 The New Board shall be disclosed in the Plan Supplement prior to the Confirmation Date in
25 accordance with section 1129(a)(5) of the Bankruptcy Code. The initial members of the New Board
26 shall serve staggered terms of one, two and three years, as designated. The members of the New
27 Board shall be elected on a staggered three-year basis by the holders of New Common Stock.
28

1 **L. Senior Management.**

2 Senior management of the Reorganized Debtors shall be disclosed in the Plan Supplement
3 prior to the Confirmation Date in accordance with section 1129(a)(5) of the Bankruptcy Code. The
4 Reorganized Debtor may, but shall not be required, to enter into one or more contracts with one or
5 more Entities to outsource or subcontract certain management functions, and the identity or identities
6 of such Entities with whom the Reorganized Debtor may contract as of the Effective Date shall be
7 disclosed in the Plan Supplement.
8

9 **M. Committee.**

10 As of the Effective Date, the Committee shall dissolve, and its members shall be released and
11 discharged from all further authority, duties, responsibilities and obligations relating to and arising
12 from the Case. The retention and employment of any Professionals retained by the Committee shall
13 terminate as of the Effective Date. Any and all orders providing the Committee with standing and
14 authority to bring any Causes of Action, including, without limitation, the Former Officers and
15 Directors Causes of Action, shall be vacated, null, void and of no effect from and after the Effective
16 Date, and from and after the Effective Date the Committee shall have no standing or authority
17 whatsoever to bring or prosecute any Causes of Action.
18

19 **N. Vesting of Assets in the Reorganized Debtor.**

20 Except as otherwise provided in this Plan or in any agreement, instrument or other document
21 relating thereto, on or after the Effective Date pursuant to section 1141 of the Bankruptcy Code, all
22 property of the Estate and any property acquired by the Debtor pursuant hereto shall vest in the
23 Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. The sole
24 exception shall be the Former Officer and Director Causes of Action, which shall be transferred to and vest
25 in the Plan Trust as described herein. Except as may be provided in this Plan or the Confirmation
26 Order, including without limitation with respect to the Proceeds Distribution Election Segregated
27
28

1 Account, on and after the Effective Date, the Reorganized Debtor may use, acquire or dispose of
2 property and compromise or settle any Claims without supervision or approval by the Bankruptcy
3 Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

4 **O. Prohibition Against Pledging Assets.**

5 Notwithstanding anything to the contrary contained herein, the Reorganized Debtor shall be
6 precluded from, and the Confirmation Order shall expressly prohibit the Reorganized Debtor from,
7 pledging any interest in (a) the Disputed Reserve or the assets therein; (b) the Proceeds Distribution
8 Election Segregated Account or the assets therein; or (c) any assets, or the proceeds thereof, that are
9 or could become part of the Proceeds Distribution Election, including, without limitation, any
10 Causes of Action or the proceeds thereof. The Confirmation Order shall also provide that any such
11 pledge in violation of this section of the Plan is null and void.

12 **P. Deregistration.**

13 As soon after the Effective Date as is practicable, the Reorganized Debtor shall terminate its
14 registration under the Securities and Exchange Act of 1934 by filing a Form 15 “Certification and
15 Notice of Termination of Registration Under Section 12(g) of the Securities Exchange Act of 1934
16 or Suspension of Duty to File Reports Under Sections 12 and 15(d) of the Securities and Exchange
17 Act of 1934” with the United States Securities and Exchange Commission and shall otherwise
18 comply with the statutory or regulatory requirements of a publicly traded company, including, but
19 not limited to, seeking to deregister the Equity Interests.

20 **Q. Allowance of TOPrS Unsecured Claims.** The TOPrS Unsecured Claims will be
21 deemed to be Allowed General Unsecured Claims in the amounts set forth in Exhibit “C” to the Plan
22 Supplement.

1 **R. Plan Advisor.** As of the Effective Date, the Plan Advisor (the identity of whom
2 shall be disclosed in the Plan Supplement) shall be appointed and shall perform the duties set forth in
3 this paragraph. The compensation of the Plan Advisor shall be set by the New Board. The Plan
4 Advisor shall oversee and have decision-making authority regarding any litigation and/or
5 settlement of Causes of Action and the administration and payment of Distributions. The fiduciary
6 duties of the Plan Advisor shall run to all parties entitled to Distributions under the Plan, whether or
7 not such beneficiaries have elected the Proceeds Distribution Election. The Plan Advisor shall
8 consult with the Reorganized Debtor and the Plan Trustee regarding any material decision in
9 connection with a Material Cause of Action, including without limitation any decision to make,
10 reject or accept any offer of settlement with respect thereto. The Reorganized Debtor shall seek
11 approval of any settlement of a Material Cause of Action from the Bankruptcy Court by the filing of
12 an appropriate motion, and such approval shall only come after a hearing, upon notice to the Plan
13 Advisor and to all parties requesting service pursuant to Bankruptcy Rule 2002. The Plan Advisor
14 shall, at least quarterly, consider the calculation of Net Free Cash, including the following factors,
15 among other things: (a) the amount of Cash; (b) the pending Claims against the Estate; (c) the status
16 of litigation of any Causes of Action; (d) the appropriate reserves for such Causes of Action;
17 (e) any administrative and related costs of administering the Plan; and (f) the length of time since
18 the Effective Date and the previous distribution of Net Free Cash. The position of Plan Advisor shall
19 cease and terminate upon the conclusion of all litigation of all Causes of Action, at which time the
20 duties and powers of the Plan Advisor shall be vested in the New Board. Notwithstanding anything
21 to the contrary in this Plan, if no Creditor entitled to elect the Proceeds Distribution Election in point
22 of fact timely and properly elect such Proceeds Distribution Election, then, at the sole election of
23 Holdco in its sole and absolute discretion made on or before the Effective Date, the position of Plan
24
25
26
27
28

1 Advisor shall not be created, in which case all duties and powers conferred upon the Plan Advisor by
2 this Plan shall instead vest in the New Board.

3 **ARTICLE VI.**

4 **PROVISIONS GOVERNING DISTRIBUTIONS**

5 **A. Initial Distribution Date.**

6 On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the
7 Reorganized Debtor shall make the Distributions required to be made under the Plan.
8

9 **B. Disputed Reserve.**

10 **1. Establishment of Disputed Reserve.**

11 On the Initial Distribution Date, and after making all Distributions required to be
12 made on such date under the Plan, the Reorganized Debtor shall establish a separate Disputed
13 Reserve for Disputed Claims, which Disputed Reserve shall be administered by the Reorganized
14 Debtor. The Reorganized Debtor shall reserve a number of shares of New Common Stock, an
15 amount of Cash, or any other security or equity interest issued under the Plan, depending on the
16 election of the Holder of such Disputed Claims, and whether the Debtor elects to issue a security on
17 account of the part of the Proceeds Distribution Election, sufficient to provide Holders of Disputed
18 Claims the treatment such Holders would be entitled to receive under the Plan if all such Disputed
19 Claims were to become Allowed Claims (or such lesser amount as may be estimated by the
20 Bankruptcy Court).
21

22 **2. Maintenance of Disputed Reserve.**

23 The Reorganized Debtor shall hold unissued New Common Stock and Cash in the
24 Disputed Reserve in trust, segregated from and not to be commingled with any other assets of the
25 Reorganized Debtor, for the benefit of the Holders of Claims ultimately determined to be Allowed.
26 The Reorganized Debtor shall, in its sole discretion, distribute such amounts (net of any expenses,
27
28

1 including taxes, relating thereto), as provided herein, as such Disputed Claims are resolved by a
2 Final Order, and such New Common Stock and Cash will be distributable in respect of such
3 Disputed Claims as such amounts would have been distributable had the Disputed Claims been
4 Allowed Claims as of the Effective Date.

5
6 **3. Establishment and Maintenance of Proceeds Distribution Election Segregated**
7 **Account.**

8 On the Effective Date, and after making all Distributions required to be made on such
9 date under the Plan, the Reorganized Debtor shall establish the Proceeds Distribution Election
10 Segregated Account, into which shall on that date and from time to time thereafter as it becomes
11 available be deposited all Net Free Cash necessary and sufficient to make Distributions to Holders of
12 Claims that elect to receive the Proceeds Distribution Election. All Cash in the Proceeds
13 Distribution Election Segregated Account shall be held pursuant to the investment guidelines
14 contained in Exhibit D to the Plan Supplement. The Confirmation Order shall provide that such
15 account, and all funds required by this section to be deposited into such account, shall be segregated
16 from, and shall not be commingled with, any other assets of the Reorganized Debtor, and as against
17 creditors of the Reorganized Debtor, shall not be considered or deemed to be, property of the
18 Reorganized Debtor or subject to claims by creditors of the Reorganized Debtor, and shall be held in
19 trust for the sole benefit of Holders of Claims that elect to receive the Proceeds Distribution
20 Election.
21
22

23 **C. Quarterly Distributions.**

24 On each Quarterly Distribution Date or as soon thereafter as is reasonably practicable, the
25 Reorganized Debtor shall make the Distributions required to be made under the Plan on such date.
26 Any Distribution that is not made on the Initial Distribution Date or on any other date specified
27 herein because the Claim that would have been entitled to receive that Distribution is not an Allowed
28

1 Claim on such date, shall be held by the Reorganized Debtor as applicable, in the Disputed Reserve
2 and distributed on the first Quarterly Distribution Date after such Claim is Allowed. No interest
3 shall accrue or be paid on the unpaid amount of any Distribution paid on a Quarterly Distribution
4 Date.

5 **D. Record Date for Distributions.**

6 Except as otherwise provided in a Final Order of the Bankruptcy Court or as otherwise
7 stipulated by the Debtor or Reorganized Debtor, as applicable, the transferees of Claims that are
8 transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be
9 treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by
10 Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Distribution Record
11 Date. The Reorganized Debtor shall have no obligation to recognize any transfer of any Claim
12 occurring after the Distribution Record Date. In making any Distribution with respect to any Claim,
13 the Reorganized Debtor shall be entitled instead to recognize and deal with, for all purposes
14 hereunder, only the entity that is listed on the proof of Claim Filed with respect thereto or on the
15 Schedules as the Holder thereof as of the close of business on the Distribution Record Date and upon
16 such other evidence or record of transfer or assignment that are known to the Reorganized Debtor as
17 applicable, as of the Distribution Record Date.

18 **E. Delivery of Distributions.**

19 **1. General Provisions; Undeliverable Distributions.**

20 Subject to Bankruptcy Rule 9010, and except as otherwise provided herein,
21 Distributions to the Holders of Allowed Claims shall be made by the Reorganized Debtor at (i) the
22 address of each Holder as set forth in the Schedules, unless superseded by the address set forth on
23 proofs of Claim Filed by such Holder or (ii) the last known address of such Holder if no proof of
24 Claim is Filed or if the Debtor or Reorganized Debtor, as applicable, has been notified in writing of a
25
26
27
28

1 change of address; *provided, however*, that Distributions paid by the Reorganized Debtor for the
2 benefit of Holders of TOPrS Debentures and the TOPrS shall be made to the appropriate TOPrS
3 Indenture Trustee under the respective TOPrS Indenture for such obligations. Each such TOPrS
4 Indenture Trustee shall, in turn, administer the distributions to the respective holders of TOPrS
5 Unsecured Claims in accordance with the Plan and the applicable TOPrS Indentures. Distribution to
6 a TOPrS Indenture Trustee shall be promptly remitted by such TOPrS Indenture Trustee to the
7 Holders of the TOPrS Unsecured Claims entitled thereto (i.e., the Holder of the relevant TOPrS on
8 the applicable Distribution Record Date) in accordance with this Plan and the TOPrS Indentures, and
9 each such Distribution by the Reorganized Debtor to a TOPrS Indenture Trustee shall be deemed to
10 have discharged the obligation of the Debtor to make such Distribution to the Holders of TOPrS
11 Unsecured Claims represented by such TOPrS Indenture Trustee. The TOPrS Indenture Trustees
12 shall not be required to give any bond or surety or other security for the performance of their duties
13 unless otherwise ordered by the Bankruptcy Court. The TOPrS Indenture Trustees shall only be
14 required to make distributions in accordance with the terms of the Plan and the respective TOPrS
15 Indenture and shall have no liability for actions taken in accordance with the Plan or in reliance upon
16 information provided to the TOPrS Indenture Trustees in accordance with the Plan, except for
17 liabilities resulting from their own gross negligence or willful misconduct. If any Distribution is
18 returned as undeliverable, the Reorganized Debtor may, in its discretion, make such efforts to
19 determine the current address of the Holder of the Claim with respect to which the Distribution was
20 made as the Reorganized Debtor deems appropriate, but no Distribution to any Holder shall be made
21 unless and until the Reorganized Debtor has determined the then-current address of the Holder, at
22 which time the Distribution to such Holder shall be made to the Holder without interest. Amounts in
23 respect of any undeliverable Distributions made by the Reorganized Debtor shall be returned to, and
24 held in trust by, the Reorganized Debtor, until the Distributions are claimed or are deemed to be
25
26
27
28

1 unclaimed property under section 347(b) of the Bankruptcy Code. The Reorganized Debtor shall
2 have the discretion to determine how to make Distributions in the most efficient and cost-effective
3 manner possible; *provided, however*, that its discretion may not be exercised in a manner
4 inconsistent with any express requirements of the Plan. The rights of the TOPrS Indenture Trustee
5 to assert (a) its charging Lien to the extent the TOPrS Indenture Trustee Fees or any other fees owed
6 to such TOPrS Indenture Trustee under the TOPrS Indenture, including without limitation, fees and
7 expenses (including fees and expenses of its professionals), accrued prior to the Petition Date, are
8 not paid pursuant to the Plan; or (b) any other rights or arguments to payment other than asserting its
9 charging Lien, are preserved.

11 **2. Unclaimed Property.**

12 Except with respect to property not distributed because it is being held in the
13 Disputed Reserve, Distributions that are not claimed by the expiration of one year from the Initial
14 Distribution Date or Quarterly Distribution Date applicable to such Distribution, shall be deemed to
15 be unclaimed property under section 347(b) of the Bankruptcy Code and shall vest or re-vest in the
16 Reorganized Debtor, and the Claims with respect to which those Distributions are made shall be
17 automatically canceled. After the expiration of such one-year period, the Claim of any entity to
18 those Distributions shall be discharged and forever barred. Nothing contained in the Plan shall
19 require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim. Except as
20 otherwise provided herein, all funds or other property that vests or re-vests in the Reorganized Debtor
21 pursuant to this Article shall be distributed by the Reorganized Debtor in accordance with the
22 provisions of the Plan.
23
24
25
26
27
28

1
2 **F. Surrender of Canceled Instruments and Securities.**

3 1. **Generally.**

4 Except as set forth in this Plan, as a condition precedent to receiving any Distribution
5 hereunder on account of an Allowed Claim evidenced by instruments, securities or other
6 documentation canceled pursuant to this Plan, other than securities held in book entry form through
7 the Depository Trust Company, the Holder of such Claim shall tender such instrument, security or
8 other documentation evidencing such Claim to the Reorganized Debtor. In the event an Allowed
9 Claim is evidenced by securities held in book entry form through the Depository Trust Company,
10 such securities shall be cancelled in accordance with usual Depository Trust Company practices.
11 Any Distributions pursuant to the Plan on account of any Claim evidenced by such instruments,
12 securities or other documentation, other than securities held in book entry form through the
13 Depository Trust Company, shall, pending such surrender, be treated as an undeliverable
14 Distribution; *provided, however*, that Holders of the TOPrS shall tender the TOPrS to the TOPrS
15 Trust Indenture Trustee and Holders of the TOPrS Debentures shall tender the TOPrS Debentures to
16 the TOPrS Debenture Indenture Trustee. All payments to Holders of TOPrS Unsecured Claims,
17 other than TOPrS Unsecured Claims evidenced by securities held by the Depository Trust Company,
18 shall only be made after such surrender, or in the event such certificate is lost, stolen, mutilated or
19 destroyed, upon the Holder's compliance with the requirements set forth in this Plan. Upon
20 surrender of such TOPrS, the TOPrS Trust Indenture Trustee shall cancel and destroy such TOPrS
21 and upon surrender of such TOPrS Debentures, the TOPrS Debenture Indenture Trustee shall cancel
22 and destroy such TOPrS Debentures. As soon as practicable after surrender of the TOPrS and the
23 TOPrS Debentures, the TOPrS Indenture Trustee shall distribute to the Holder thereof, as the case
24 may be, such Holder's Pro Rata share of the Distribution pursuant to the terms of the TOPrS
25
26
27
28

1 Indenture, but subject to the rights of the TOPrS Indenture Trustee to assert (a) its charging Lien to
2 the extent the TOPrS Indenture Trustee Fees or any other fees owed to such TOPrS Indenture
3 Trustee under the TOPrS Indenture, including without limitation, fees and expenses (including fees
4 and expenses of its professionals), accrued prior to the Petition Date, are not paid pursuant to the
5 Plan; or (b) any other rights or arguments to payment other than asserting its charging Lien.
6

7 **2. Failure to Surrender Canceled Instruments.**

8 If any Holder of an Allowed Claim evidenced by instruments, securities or other
9 documentation canceled as set forth in this Plan, fails to surrender such instrument, security or other
10 documentation or comply with the provisions of this Plan within one year after the Effective Date,
11 its Claim for a Distribution under the Plan on account of such instrument, security, or other
12 documentation shall be discharged, and such Holder shall be forever barred from asserting such
13 Claim against the Reorganized Debtor or its property. In such case, any property held on account of
14 such Claim shall be disposed of pursuant to the provisions set forth in this Plan.
15

16 **G. Lost, Stolen, Mutilated or Destroyed Instrument or Security.**

17 Any Holder of an Allowed Claim evidenced by instruments, securities or other
18 documentation canceled pursuant to this Plan that has been lost, stolen, mutilated or destroyed, shall,
19 in lieu of surrendering such instrument, security or documentation: (i) deliver to the Reorganized
20 Debtor (or in the case of the TOPrS Debentures or TOPrS, the applicable TOPrS Indenture Trustee)
21 (a) an affidavit of loss reasonably satisfactory to the Reorganized Debtor (or in the case of the
22 TOPrS Debentures or TOPrS, the applicable TOPrS Indenture Trustee) setting forth the
23 unavailability of such instrument, security, or other documentation and (b) such additional security
24 or indemnity as may reasonably be requested by the Reorganized Debtor to hold the Reorganized
25 Debtor (or, in the case of the TOPrS Debentures or TOPrS, required by the applicable TOPrS
26 Indenture Trustee to hold the applicable TOPrS Indenture Trustee) harmless from any damages,
27
28

1 liabilities, or costs incurred in treating such entity as a Holder of an Allowed Claim; and (ii) satisfy
2 any other requirement under the TOPrS Indenture or any other relevant document. Upon
3 compliance with this paragraph by a Holder of an Allowed Claim evidenced by such instrument,
4 security or other documentation, such Holder shall, for all purposes under the Plan, be deemed to
5 have surrendered such instrument, security or other documentation.
6

7 **H. Manner of Cash Payments Under the Plan.**

8 Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn
9 on a domestic bank selected by the Reorganized Debtor, or by wire transfer from a domestic bank, at
10 the option of the Reorganized Debtor.

11 **I. Time Bar to Cash Payments by Check.**

12 Checks issued by the Reorganized Debtor on account of Allowed Claims shall be null and
13 void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance
14 of any check that becomes null and void pursuant to this paragraph shall be made directly to the
15 Reorganized Debtor by the Holder of the Allowed Claim to whom the check was originally issued.
16 Any claim in respect of such voided check shall be made in writing on or before the later of the first
17 anniversary of the Initial Distribution Date or Quarterly Distribution Date on which such check was
18 issued. After that date, all Claims in respect of void checks shall be discharged and forever barred
19 and the proceeds of those checks shall revert in and become the property of the Reorganized Debtor
20 as unclaimed property in accordance with section 347(b) of the Bankruptcy Code and be distributed
21 as provided in this Plan.
22
23

24 **J. Limitations on Funding of Disputed Reserve.**

25 Except as expressly set forth in the Plan, neither the Debtor nor the Reorganized Debtor shall
26 have any duty to fund the Disputed Reserve.
27
28

1 **K. Compliance with Tax Requirements.**

2 In connection with making Distributions under the Plan, to the extent applicable, the
3 Reorganized Debtor shall comply with all tax withholding and reporting requirements imposed on it
4 by any governmental unit, and all Distributions pursuant to the Plan shall be subject to such
5 withholding and reporting requirements. *The Reorganized Debtor may withhold the entire*
6 *Distribution due to any Holder of an Allowed Claim until such time as such Holder provides the*
7 *necessary information to comply with any withholding requirements of any governmental unit.*
8 *Any property so withheld will then be paid by the Reorganized Debtor to the appropriate authority,*
9 *including, without limitation, a signed and completed Internal Revenue Service Form W-9.* If the
10 Holder of an Allowed Claim fails to provide the information necessary to comply with any
11 withholding requirements of any governmental unit within 90 days from the Effective Date, then
12 such Holder's Distribution shall be treated as an undeliverable Distribution and such Holder's
13 Claims shall not be Allowed.

14 **L. No Payments of Fractional Dollars.**

15 Notwithstanding any other provision of the Plan to the contrary, no payment of fractional
16 dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the
17 Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such
18 fraction to the nearest whole dollar.

19 **M. Interest on Claims.**

20 Except as specifically provided for in the Plan or the Confirmation Order, interest shall not
21 accrue on Claims and no Holder of a Claim shall be entitled to interest accruing on or after the
22 Petition Date on any Claim. Interest shall not accrue or be paid on any Disputed Claim in respect of
23 the period from the Petition Date to the date a final Distribution is made thereon if and after that
24 Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final
25
26
27
28

1 Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for
2 postpetition interest or other similar charges.

3 **N. No Distribution in Excess of Allowed Amount of Claim.**

4 Notwithstanding anything to the contrary contained in the Plan, no Holder of an Allowed
5 Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of that
6 Claim.
7

8 **O. Setoff and Recoupment.**

9 The Debtor and the Reorganized Debtor may, but shall not be required to, set off against, or
10 recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any
11 Claims or defenses of any nature whatsoever that the Debtor, the Estate or the Reorganized Debtor
12 may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any
13 Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate, or the
14 Reorganized Debtor of any right of setoff or recoupment that any of them may have against the
15 Holder of any Claim.
16

17 **ARTICLE VII.**

18 **DISPUTED CLAIMS**

19 **A. No Distribution Pending Allowance.**

20 **1. Distributions on Disputed Claims.**

21 Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant parties
22 and subject to the establishment of the Disputed Reserve, Distributions under the Plan on account of
23 Disputed Claims that become Allowed after the Effective Date shall be made as soon as reasonably
24 practicable after such Disputed Claims become Allowed Claims; *provided, however*, that (a)
25 Disputed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary
26 course of business during the Case or assumed by the Debtor on or before the Effective Date that
27
28

1 become Allowed after the Effective Date shall be paid or performed in the ordinary course of
2 business in accordance with the terms and conditions of any controlling agreements, course of
3 dealing, course of business, or industry practice and (b) Disputed Priority Tax Claims that become
4 Allowed Priority Tax Claims after the Effective Date, unless otherwise agreed, shall be paid in
5 accordance with the Plan.
6

7 **2. No Partial Payments.**

8 Notwithstanding any provision otherwise in the Plan, and except as otherwise agreed by the
9 Reorganized Debtor, no partial payments and no partial Distributions shall be made with respect to a
10 Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved
11 by settlement or Final Order. Any entity that holds both an Allowed Claim and a Disputed Claim
12 shall only receive a Distribution on the Allowed Claim unless and until all objections to the Disputed
13 Claim have been resolved by settlement or Final Order.
14

15 **B. Resolution of Disputed Claims.**

16 Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the
17 Reorganized Debtor shall have the right to the exclusion of all others (except as to the Professionals'
18 applications for allowances of compensation and reimbursement of expenses under sections 330 and
19 503 of the Bankruptcy Code), to make, File, prosecute, settle, compromise, withdraw or resolve in
20 any manner approved by the Bankruptcy Court, objections to Claims, and to administer and adjust
21 the Claims Register to, among other things, reflect any such settlements, compromises and
22 withdrawals.
23

24 **C. Objection Deadline.**

25 All objections to Disputed Claims shall be Filed and served upon the Holders of each such
26 Claim on or before the Claims Objection Bar Date or the Administrative Claim Objection Bar Date.
27 If an objection has not been Filed to a proof of Claim or request for payment of an Administrative
28

1 Claim by the respective bar dates, then such Claim or Administrative Claim shall be treated as an
2 Allowed Claim for all purposes under the Plan unless otherwise ordered by the Bankruptcy Court
3 after notice and a hearing.

4 **D. Estimation of Claims.**

5 At any time, subsequent to the Effective Date, the Reorganized Debtor may request that the
6 Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section
7 502(c) of the Bankruptcy Code regardless of whether the Debtor or Reorganized Debtor has
8 previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection,
9 and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation
10 concerning any objection to such Claim, including during the pendency of any appeal relating to any
11 such objection.
12

13 **E. Disallowance of Claims.**

14 Except as otherwise agreed, any and all proofs of Claim Filed after the applicable bar date
15 shall be deemed disallowed and expunged as of the Effective Date without any further notice or
16 action, order or approval of the Bankruptcy Court, and Holders of such Claims may not receive any
17 Distributions on account of such Claims, unless on or before the Confirmation Date the Bankruptcy
18 Court has entered an order deeming such Claim to be timely filed.
19

20 **ARTICLE VIII.**

21 **EFFECT OF PLAN CONFIRMATION**

22 **A. Satisfaction of Claims.**

23 Except to the extent otherwise provided in the Plan, the treatment of all Claims or Interests in
24 the Debtor under the Plan shall be in exchange for and in complete satisfaction and release of, all
25 Claims or Interests in the Debtor of any nature whatsoever, known or unknown, including any
26 interest accrued or expenses incurred thereon from and after the Petition Date, or against the Estate.
27
28

1 Except as otherwise provided in the Plan, upon the Effective Date, all Claims and Interests in the
2 Debtor and the Estate shall be satisfied and released in full in exchange for the consideration
3 provided under the Plan. Except as otherwise provided in the Plan, all Persons shall be precluded
4 and enjoined from asserting against the Debtor, the Estate or the Reorganized Debtor any Claims or
5 Interests or other Claims based upon any act or omission, transaction or other activity of any kind or
6 nature that occurred prior to the Effective Date.
7

8 **B. Discharge.**

9 Except as otherwise specifically provided in this Plan or in the Confirmation Order, pursuant
10 to section 1141(d) of the Code, the Distributions and rights that are provided in this Plan shall be in
11 complete satisfaction, discharge and release, effective as of the Effective Date, of all Claims,
12 including any interest or penalties accrued on such Claims from and after the Petition Date, whether
13 known or unknown, against liabilities of, liens on, obligations of, rights against and Interests in the
14 Debtor, or any of its assets or properties, regardless of whether any property shall have been
15 distributed or retained pursuant to this Plan on account of such Claims, rights and Interests,
16 including but not limited to, Claims and Interests that arose before the Confirmation Date, including
17 all debts of the kind specified in sections 502(g), 502(h) and 502(i) of the Bankruptcy Code, in each
18 case whether or not (a) a proof of Claim or interest based upon such Claim, debt, right or Interest is
19 Filed or deemed Filed under section 501 of the Code; (b) a Claim or Interest based upon such Claim,
20 debt, right or Interest is allowed under section 502 of the Code; or (c) the Holder of such a Claim,
21 debt, right, or Interest accepted this Plan. The Confirmation Order shall constitute a determination
22 of the discharge of all of the Claims against and Interests in the Debtor, subject to the occurrence of
23 the Effective Date.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Compromise and Settlement.

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and Equity Interests on the terms set forth in the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all Claims and Equity Interests, as well as a finding by the Bankruptcy Court that such compromise or settlement is fair, equitable, reasonable and in the best interests of the Debtor, the Estate and Holders of Claims and Equity Interests. Entry of the Confirmation Order also shall constitute the Bankruptcy Court's approval of the releases set forth in the Plan pursuant to Bankruptcy Rule 9019 and its finding that the releases are: (i) in exchange for the good and valuable consideration provided by the Releasees, a good faith settlement and compromise of the Claims released by releases set forth in the Plan; (ii) in the best interests of the Debtor and all Holders of Claims; (iii) fair, equitable and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to any of the Debtor or the Reorganized Debtor, the Committee, or the Holders of Claims against the Debtor asserting any Claim released by the Releasing Parties set forth in the Plan against any of the Releasees.

D. Releases.

1. *Releases of Third Parties by the Debtor.*

Notwithstanding anything contained in the Plan to the contrary, on the Effective Date and effective as of the Effective Date, the Debtor on behalf of itself and the Estate, for the good and valuable consideration provided by each of the Releasees, hereby provides a full release to the Releasees (and each such Releasee so released shall be deemed released by the Debtor) and their respective properties from any and all Causes of Action and any other debts, obligations,

1 rights, suits, damages, actions, derivative claims, remedies and liabilities whatsoever, whether
2 known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity,
3 whether for tort, contract, violations of federal or state securities laws, or otherwise, based in
4 whole or in part upon any act or omission, transaction, or other occurrence or circumstances
5 existing or taking place prior to or on the Effective Date arising from or related in any way to
6 the Debtor, including, without limitation, those that the Debtor or the Reorganized Debtor
7 would have been legally entitled to assert or that any Holder of a Claim against or Equity
8 Interest in the Debtor or other entity would have been legally entitled to assert for or on behalf
9 of the Debtor, the Reorganized Debtor or the Estate and further including those in any way
10 related to the Case or the Plan; provided, however, that the foregoing provisions shall have no
11 effect on the liability of any Releasee that results from any act or omission that is determined
12 in a Final Order to be solely due to such Releasee's own gross negligence or intentional or
13 willful misconduct or fraud.

14
15
16 2. *Releases of Third Parties by Others.*

17 Notwithstanding anything contained in the Plan to the contrary, on the Effective Date
18 and effective as of the Effective Date, the Releasing Parties shall be deemed to provide a full
19 release to the Releasees and their respective property from any and all Causes of Action,
20 whether known or unknown, whether for tort, contract, violations of federal or state securities
21 laws or otherwise, and all direct claims, based in whole or in part upon any act or omission,
22 transaction, or other occurrence or circumstances existing or taking place prior to or on the
23 Effective Date arising from or related in any way to the Debtor, including those in any way
24 related to the Case or the Plan; provided, however, that the foregoing provisions shall have no
25 effect on the liability of any Releasee that results from any act or omission that is determined
26
27
28

1 in a Final Order to be solely due to such Releasee's own gross negligence or intentional or
2 willful misconduct or fraud.

3 3. *Injunction.*

4 Except as otherwise expressly provided in this Plan, the documents executed
5 pursuant to this Plan, or the Confirmation Order, on and after the Effective Date, all Persons
6 and Entities who have held, currently hold, or may hold a debt, Claim, or Interest discharged
7 pursuant to the terms of this Plan (including but not limited to Governmental Entities, which
8 includes but is not limited to States and other governmental units, and any State official,
9 employee, or other entity acting in an individual or official capacity on behalf of any State or
10 other governmental units) shall be permanently enjoined from: (a) taking any of the following
11 actions on account of any such discharged debt, Claim, or Interest: (1) commencing or
12 continuing in any manner any action or other proceeding against the Debtor, the Reorganized
13 Debtor, their successors, or their property; (2) enforcing, attaching, executing, collecting, or
14 recovering in any manner any judgment, award, decree, or order against the Debtor, the
15 Reorganized Debtor, their successors, or their property; (3) creating, perfecting, or enforcing
16 any lien or encumbrance against the Debtor, the Reorganized Debtor, their successors, or their
17 property; (4) asserting any set off, right of subrogation, or recoupment of any kind against any
18 obligation due the Debtors, the Reorganized Debtors, their successors, or their property; and
19 (5) commencing or continuing any action, in any manner, in any place that does not comply
20 with or is inconsistent with the provisions of this Plan; and (b) taking any of the foregoing
21 actions on account of any Claims or Causes of Action that are revested in, or transferred to,
22 the Reorganized Debtor as of the Effective Date or under this Plan commencing or continuing
23 in any manner any action or other proceeding of any kind to recover on or otherwise with
24 respect to such Claims or rights of action. Any person or entity injured by any willful violation
25
26
27
28

1 **of such injunction shall recover actual damages, including costs and attorneys' fees, and, in**
2 **appropriate circumstances, may recover punitive damages from the willful violator.**

3 **E. Preservation of Causes of Action.**

4 **1. Vesting of Causes of Action.**

5 Except as expressly released or otherwise expressly provided in the Plan, pursuant to section
6 1123(b) of the Code, the Debtor and the Reorganized Debtor, as applicable, exclusively shall be
7 vested with and shall retain and may enforce any and all Causes of Action that the Debtor or the
8 Estate may hold or have against any Person or entity (including, without limitation, the Former
9 Officer and Director Causes of Action), all of which are hereby preserved, including all Causes of
10 Action, and all rights of disallowance, offset, recharacterization and/or equitable subordination with
11 respect to claims, and causes of action that have been or may be brought by or on behalf of the
12 Debtor, the Estate, the Committee or the Reorganized Debtor. Such claims, rights and causes of
13 action shall remain assets of and vest in the Reorganized Debtor, whether or not litigation relating
14 thereto is pending on the Effective Date, and whether or not any such claims, rights and causes of
15 action have been listed or referred to in the Plan, the Disclosure Statement, or any other document
16 filed with the Bankruptcy Court. Neither the Debtor, the Estate, the Committee, nor the Reorganized
17 Debtor waives, releases, relinquishes, forfeits, or abandons (nor shall they be estopped or otherwise
18 precluded or impaired from asserting) any claims, rights and causes of action or defenses that
19 constitute property of the Debtor or its Estate: (a) whether or not such claims, rights, causes of
20 action, or defenses have been listed or referred to this Plan, the Disclosure Statement, or any other
21 document filed with the Bankruptcy Court, (b) whether or not such claims, rights and causes of
22 action, or defenses are currently known to the Debtor, and (c) whether or not a defendant in any
23 litigation relating to such claims, rights or causes of action filed a proof of Claim in the Case, filed a
24 notice of appearance or any other pleading or notice in the Case, voted for or against this Plan, or
25
26
27
28

1 received or retained any consideration under this Plan. Without in any manner limiting the scope of
2 the foregoing, notwithstanding any otherwise applicable principle of law or equity, including any
3 principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar
4 doctrine, (x) the failure to list, disclose, describe, identify, analyze or refer to any claims, rights and
5 causes of action, or defenses in the Plan, the Disclosure Statement, or any other document filed with
6 the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the right of the
7 Debtor or the Reorganized Debtor, to commence, prosecute, defend against, settle, recover on
8 account of, and realize upon any such claims, rights and causes of action, that the Debtor, its Estate,
9 or the Committee may have as of the Effective Date, and (y) from and after the Effective Date, the
10 Reorganized Debtor shall have exclusive standing and authority to prosecute any Causes of Action,
11 with the exception of the Former Officer and Director Causes of Action.
12

13
14 The sole claims and/or Causes of Action that shall not vest upon the Effective Date in the
15 Reorganized Debtor are the Former Officer and Director Causes of Action. On the Effective Date, the Former
16 Officer and Director Causes of Action shall vest in the Plan Trust (as described herein). The Plan Trust shall
17 have the exclusive right to institute, prosecute, abandon, settle or compromise the Former Officer and
18 Director Causes of Action, in accordance with the terms of the Plan, in any court or other tribunal of
19 competent jurisdiction, including, without limitation, in an adversary proceeding filed in connection with the
20 Debtor's bankruptcy case.

21 The Former Officer and Director Causes of Action and any recoveries therefrom shall remain the sole
22 property of the Plan Trust for the sole benefit of entities entitled to Distributions under the Plan.

23 **2. Reservation of Causes of Action.**

24 The Debtor expressly reserves all its Causes of Action, including, without limitation, all
25 claims, rights, Causes of Action, and defenses for later adjudication by the Debtor, Holdco or
26 Reorganized Debtor, as applicable, and, therefore, no preclusion doctrine, including the doctrines of
27 res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial,
28

1 equitable or otherwise) or laches will apply to such claims, rights and causes of action, and defenses
2 upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the
3 Plan or the Confirmation Order. In addition, the Debtor, Holdco and the Reorganized Debtor
4 expressly reserve the right to pursue or adopt claims, rights and causes of action that are alleged in
5 any lawsuits in which the Debtor is a defendant or an interested party, against any entity, including
6 the plaintiffs or co-defendants in such lawsuits. Any entity to whom the Debtor has incurred an
7 obligation (whether on account of services, purchase, sale of goods or otherwise), or who has
8 received services from the Debtor, or who has received money or property from the Debtor, or who
9 has transacted business with the Debtor, or who has leased equipment or property from or to the
10 Debtor should assume that such obligation, receipt, transfer or transaction may be reviewed by the
11 Reorganized Debtor subsequent to the Effective Date and may be the subject of an action after the
12 Effective Date, whether or not: (a) such entity has filed a proof of Claim against the Debtor in this
13 Case; (b) such entity's proof of Claim has been objected to by the Debtor; (c) such entity's Claim
14 was included in the Debtor's Schedules; or (d) such entity's scheduled Claim has been objected to by
15 the Debtor or has been identified by the Debtor as contingent, unliquidated or disputed.
16
17

18 **3. Former Officer and Director Causes of Action**

19
20 The precise basis and potential targets for claims relating to the Debtor's prepetition officers
21 and directors are not fully developed at this time; however, such claims may be based on acts, errors,
22 omissions, misstatements, misleading statements, neglect and/or breaches of duty. As described
23 herein, the Former Officer and Director Causes of Action shall vest in the Plan Trust, and the Plan
24 Trustee may pursue any and all Former Officer and Director Causes of Action.
25

26 **4. Reservation of Rights Regarding Claims.**

27 Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of the
28 Debtor or any other Person to object to any Claim for purpose of voting, the failure of the Debtor or

1 any other Person to object to a Claim or Administrative Claim before confirmation or consummation
2 of the Plan or the Effective Date, the failure of any Person to assert a Claim or cause of action before
3 confirmation or consummation of the Plan or the Effective Date, the absence of a proof of Claim
4 having been filed with respect to a Claim nor any action or inaction of the Debtor or any other
5 Person with respect to a Claim or Administrative Claim, other than a legally effective express waiver
6 or release, shall be deemed a waiver or release of the right of the Debtor or the Reorganized Debtor
7 before or after solicitation of votes on the Plan or before or after the Confirmation Date or the
8 Effective Date to (a) object to or examine such Claim or Administrative Claim in whole or in part or
9 (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or
10 otherwise enforce any claim or cause of action against the holder of any such Claim.
11

12
13 **5. Reservation of Claims and Causes of Action Subject To Investigation.**

14 The Plan Proponent hereby explicitly reserves all rights, potential claims and potential
15 Causes of Action with respect to any and all third parties not specifically released from liability in
16 conjunction with the provisions of the Plan including, but not limited to: Sandler O'Neill & Partners,
17 L.P., SKBHC Holdings LLC, SKBHC Hawks Nest Acquisition Corp. and the Debtor's
18 Professionals. The Plan Proponent is conducting an investigation into the existence of potential
19 rights, claims, and/or Causes of Action which may exist with respect to such third parties and, to the
20 extent any such claims or Causes of Action exist, the Plan Proponent will pursue same. It should be
21 noted that the identification of any specific party in the foregoing paragraph does not indicate the
22 existence of any claim or Cause of Action with respect to such party, nor does the absence of the
23 specific identification of a third party in the foregoing paragraph indicate that no claim or Cause of
24 Action exists with respect to such third party.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. Exculpation and Limitation of Liability.

1. Exculpation of Releasees.

The Releasees shall neither have nor incur any liability to any Person for any act taken or omission made in good faith in connection with or related to the administration of the Case, including, but not limited to, the formulation, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release, or other agreement or document created in connection with the Plan or regarding any Distribution made under the Plan, except to the extent that the action taken or omitted to be taken by each of the same is determined by a Final Order to be due to such Person's own respective gross negligence, intentional or willful misconduct or fraud.

2. Good faith Solicitation.

Upon entry of the Confirmation Order, pursuant to section 1125(e) of the Code, Holdco and its respective present and former members, officers, directors, employees, agents, advisors, representatives, successors and assigns, and any Professionals (acting in such capacity) employed by any of the foregoing Persons will be deemed to have solicited votes on the Plan in good faith and in compliance with the Code and any applicable non-bankruptcy law, and, therefore, shall have no liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

G. Cramdown.

Notwithstanding anything to the contrary contained herein, Holdco reserves the right to seek confirmation of the Plan pursuant to section 1129(b) of the Code in the event any impaired Class of Claims or Interests does not vote to accept the Plan.

1
2 **ARTICLE IX.**

3 **CONDITIONS PRECEDENT**

4 **A. Conditions to Confirmation.**

5 The only condition precedent to confirmation of the Plan is that the Bankruptcy Court shall
6 have Entered the Confirmation Order in form and substance acceptable to Holdco.
7

8 **B. Conditions to the Effective Date.**

9 The following are conditions precedent to the occurrence of the Effective Date, each of
10 which must be satisfied or waived in accordance with Section D of this Article IX:

11 (i) the Confirmation Order shall be a Final Order;

12 (ii) all other actions and all agreements, instruments or other documents necessary
13 to implement the terms and provisions of the Plan shall have been effected, and in each case, shall
14 have been duly and validly executed and delivered by the parties thereto and all conditions to their
15 effectiveness shall have been satisfied or waived in accordance therewith; and
16

17 (iii) the Debtor shall have received all authorizations, consents, rulings, opinions,
18 or other documents that are determined by Holdco to be necessary to implement the Plan and that
19 are required by law, regulation, or order.
20

21 **C. Waiver of Conditions to Confirmation.**

22 The conditions set forth in Article IX, Sections A and B, supra (except for the condition
23 appearing in Article IX.B. (iii)), may be waived, in whole or in part by Holdco, in its sole and
24 absolute discretion.

25 **D. Effect of Failure of Conditions.**

26 If the Effective Date does not occur, the Plan shall be null and void in all respects and
27 nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of
28

1 any claims by or Claims against the Debtor; (ii) prejudice in any manner the rights of the Debtor,
2 any holder of a Claim or Interest, or any other Person; or (iii) constitute an admission,
3 acknowledgement, offer, or undertaking by the Debtor, any Creditors, or holders of Interests, or any
4 other Person in any respect.

5 **ARTICLE X.**

6 **RETENTION AND SCOPE OF JURISDICTION OF THE BANKRUPTCY COURT**

7 **A. Retention and Scope of Jurisdiction of the Bankruptcy Court.**

8 Following the Effective Date, the Bankruptcy Court shall retain such jurisdiction to the
9 maximum extent as is legally permissible, including, without limitation, for the following purposes:
10

- 11 1. To determine the allowability, amount, classification, or priority of Claims upon
12 objection by the Reorganized Debtor;
- 13 2. To construe and to take any action to execute and enforce this Plan, the Confirmation
14 Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the
15 implementation, execution, performance, and consummation of this Plan, and all matters referred to
16 herein, and to determine all matters that may be pending before the Bankruptcy Court in the Case on
17 or before the Effective Date;
- 18 3. To rule on any and all applications for allowance of compensation and expense
19 reimbursement of Professionals for periods on or before the Effective Date;
- 20 4. To rule on any request for payment of any Administrative Claim or administrative
21 expense;
- 22 5. To resolve any dispute regarding the implementation, execution, performance,
23 consummation, or interpretation of this Plan;
- 24 6. To resolve all applications, adversary proceedings, contested matters, and other
25 litigated matters instituted on or before the Effective Date;
- 26
27
28

1 **B. Successors And Assigns.**

2 The rights, benefits and obligations of any Person named or referred to in this Plan are
3 binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors
4 or assigns of such Person.

5 **C. Modification of the Plan.**

6 Holdco shall have the exclusive right to amend or modify the Plan, including, without
7 limitation, (i) to remedy any defect or omission or reconcile any inconsistency in the Plan in such
8 manner as may be necessary to carry out the purpose and intent of the Plan, (ii) pursuant to section
9 1127 of the Code, and (iii) to the extent applicable law otherwise permits.

10 **D. Provisions Severable.**

11 Should any provision in this Plan be determined to be unenforceable, such determination
12 shall in no way limit or affect the enforceability and operative effect of any or all other provisions of
13 the Plan.

14 **E. Headings Do Not Control.**

15 In interpreting this Plan, the headings of individual Sections are provided for convenience
16 only, and are not intended to control over the text of any Section. The headings used in the Plan are
17 inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect
18 the provisions of the Plan.

19 **F. Post-Confirmation Notices or Requests.**

20 From and after the Effective Date, any Person who desires notice of any pleading or
21 document filed in the Bankruptcy Court, or any hearing in the Bankruptcy Court, or other matter as
22 to which the Code requires notice to be provided, shall file a request for post-confirmation notice
23 and shall serve the request on the Reorganized Debtor.

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A
PLAN TRUST AGREEMENT

TO BE PROVIDED