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**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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**In re:**

**COTTONWOOD ESTATES  
DEVELOPMENT, LLC**

**Debtor.**

**Bankruptcy Case No. 13-34298  
Chapter 11**

**Judge R. Kimball Mosier**

**(Filed Electronically)**

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**DISCLOSURE STATEMENT FOR DEBTOR'S MODIFIED PLAN OF  
REORGANIZATION**

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Dated: May 13, 2014.

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This disclosure statement (the “Disclosure Statement”) is being distributed for purposes of soliciting acceptances of the Debtor’s Modified Plan of Reorganization, dated May 13, 2014 (the “Plan”). The information in this Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan. No solicitation of votes to accept the Plan may be made except pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

All creditors are advised and encouraged to read this entire Disclosure Statement and the Plan before voting to accept or reject the Plan. A copy of the Plan is attached as Exhibit “A.” Plan summaries and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan and this Disclosure Statement. The statements contained in this Disclosure Statement are made only as of the date hereof. There is no assurance that the statements contained in this Disclosure Statement will be correct at any later date. In the event of any conflict between this Disclosure Statement and the terms of the Plan, the terms of the Plan will govern.

This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and rule 3016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and not necessarily in accordance with Federal or State securities laws or other non-bankruptcy law.

As to contested matters, adversary proceedings and other actions, threatened actions or disputes, this Disclosure Statement will not constitute or be construed as an admission of any fact or liability, or as a stipulation or waiver, but rather as a statement made in settlement negotiations. This Disclosure Statement will not be admissible in any bankruptcy or non-bankruptcy proceeding involving the Debtor or any other party (other than in connection with

approval of this Disclosure Statement or confirmation of the Plan), nor will it be construed to be conclusive advice on the tax or other legal effects of the Plan as to holders of Claims against, or Interests in, the Debtor.

## **I. INTRODUCTION**

### **A. Summary of the Debtor's Plan of Reorganization**

Cottonwood Estates Development, LLC, as debtor and debtor in possession, ("Debtor"), submits this Disclosure Statement for use in the solicitation of votes to accept or reject the Plan. Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

Generally, the Plan provides for the continued marketing and sale of the Debtor's real estate project located in Big Cottonwood Canyon, Salt Lake County, Utah, referred to in the Plan as the Tavaci Project. The Tavaci Projects consists of 39 single family residence lots which are finished and ready for construction of homes thereon. Creditors will be paid through sales proceeds as set forth in the Plan.

The Debtor will seek judicial determination of the claim of America First Federal Credit Union, and pay the Allowed Amount of the claim according to the lot release schedule attached to the Plan. Additional sales proceeds will be deposited into the Plan Fund as set forth in the Plan, and distributions to unsecured creditors will be made from the Plan Fund on a quarterly basis. The Debtor has a real estate broker in place to market and sell lots in the Tavaci Project, and has already filed a motion to sell Lot 3 to MW Resources, L.L.C. The Debtor anticipates that motion will be heard and decided upon by the Bankruptcy Court before the Plan is Confirmed.

### **B. Purpose, Limitations and Structure of this Disclosure Statement**

This Disclosure Statement is intended to provide such information as may be material,

important and necessary for a reasonable investor typical of the holders of Impaired Claims to make an informed decision whether to vote in favor of or against the Plan. Only the holders of Allowed Claims or Interests of a Class that is Impaired under the Plan are entitled to vote on the Plan.

This Disclosure Statement sets forth certain information concerning the Debtor's prepetition operations and financial history, the reason for filing the Chapter 11 petition, significant events that occurred during the Chapter 11 Cases, and the Debtor's Assets and Liabilities.

This Disclosure Statement also summarizes the terms and provisions of the Plan, including certain alternatives to the Plan, certain effects of confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and procedures that holders of Claims who were entitled to vote on the Plan must follow for their votes to be counted.

This Disclosure Statement contains a summary of certain provisions of the Plan and certain other documents and financial information. While it is believed that the summaries are fair and accurate and provide adequate information with respect to the documents summarized, each such summary is qualified to the extent that it does not set forth the entire text of such documents, which are controlling, in the event of any inconsistency. While reasonable efforts have been made to be accurate, there can be no representation or assurance that the information contained herein is complete and without error. The Disclosure Statement, however, is not the Plan. In the event of any inconsistency between the Disclosure Statement and the Plan, the Plan will control. Each holder of a Claim is urged to review the Plan and the exhibits to this Disclosure Statement in their entirety before casting a ballot.

For a description of the Plan and certain risks and other factors pertaining to the Plan as it relates to holders of Claims and Interests, see “Summary of the Plan” and “Risk Factors” below.

The Bankruptcy Court has not passed on the merits of the Plan and has not conducted a detailed investigation into the contents of this Disclosure Statement. The Bankruptcy Court’s approval of this Disclosure Statement does not constitute either a guarantee of the accuracy or completeness of the information contained herein or an endorsement of the Plan by the Bankruptcy Court.

Neither the Plan nor the Disclosure Statement have been approved or disapproved by the Securities and Exchange Commission, nor has the Securities and Exchange Commission passed upon the fairness or merits of the information contained herein. Any representation to the contrary is unlawful.

No representations concerning the Debtor, its business operations, the value of its property, or the value of benefits offered to creditors or other parties in interest in connection with the Plan are authorized other than as set forth in this Disclosure Statement. You should not rely on any representations or inducements made to secure your acceptance or rejection of the Plan which are contrary to the information contained in this Disclosure Statement.

You are not to construe the contents of this Disclosure Statement as legal, tax or accounting advice but should consult your counsel, accountant and business advisors as to legal, tax and accounting matters concerning the Plan.

The Debtor has prepared the information contained in this Disclosure Statement in good faith, based upon the information available to it. No audit of the financial information contained in this Disclosure Statement has been conducted. Moreover, certain of the statements contained in this Disclosure Statement, by their nature, are forward-looking and contain estimates,



assumptions and projections, and there can be no assurance that these forward- looking statements will turn out to be true.

On \_\_\_\_\_, 2014, after notice and a hearing, the Bankruptcy Court issued an order (the “Disclosure Statement Order”) approving this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical, reasonable investor typical of the Debtor’s Creditors to make an informed judgment whether to accept or reject the Plan. Approval of this disclosure statement does not constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

**C. Voting on the Plan**

Pursuant to the Bankruptcy Code, only Classes of Allowed Claims or Interests that are Impaired under the Plan are entitled to vote to accept or reject the Plan. Classes of Claims that are not Impaired are not entitled to vote and are deemed to have accepted the Plan. Similarly, Classes of Claims that are not Allowed are not entitled to vote to accept or reject the Plan. Voting on the Plan shall be pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules, and a Class shall have accepted the Plan if the Plan is accepted by at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class actually voting.

Only holders of Allowed Claims and Allowed Interests shall be entitled to vote on the Plan. A Claim to which an objection has been filed is a Disputed Claim, not an Allowed Claim, unless and until the Bankruptcy Court rules on the objection and has Allowed the Claim. Therefore, although holders of Claims and Interests subject to a pending objection will receive ballots, their votes will not be counted unless the Bankruptcy Court, prior to the Confirmation Hearing, rules on the objection and allows the Claim or, on proper request under Bankruptcy

Rule 3018(a), temporarily allows the Claim in an amount which the Bankruptcy Court deems proper for the purpose of voting on the Plan prior to the time for ballots to be returned. A Creditor's vote may be disregarded if the Bankruptcy Court determines that the Creditor's acceptance or rejection was not solicited or procured in good faith and in accordance with the provisions of the Bankruptcy Code and Bankruptcy Rules.

**1. Voting Classes and Presumed Acceptance.**

All Claims in all Classes are impaired, and therefore are entitled to vote.

**2. One Vote Per Holder.**

If a holder of a Claim holds more than one Claim in any one Class, all Claims of such holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number of Claims voting for or against the Plan.

**3. Procedures and Deadlines for Completing Ballots and Voting.**

A ballot for accepting or rejecting the Plan is enclosed for use by those holders of Claims or Interests entitled to vote on the Plan. Holders of Claims or Interests entitled to vote should carefully read this Disclosure Statement, the Plan and the instructions contained on the ballot and complete, date, sign and mail the ballot to the address indicated on the ballot so that it is received no later than \_\_\_\_\_, 2014. Your acceptance or rejection of the Plan must be indicated by voting in favor of or against the Plan on the enclosed ballot. You must complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided. In order for your vote to be counted, your properly completed ballot must be actually received at the address indicated on the ballot no later than \_\_\_\_\_, 2014.

If you have questions about (i) the procedure for voting, (ii) the packet of materials you received, or (iii) the amount of your Claim, or if you wish to obtain, at your own expense (unless

otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy or copies of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact James W. Anderson, at Miller Guymon & Toone, P.C., at (801) 363-5600 or by mail, email or facsimile at the address listed on the cover sheet of this Disclosure Statement.

#### **4. Procedures for Vote Tabulation.**

In determining whether the Plan has been accepted or rejected, any ballot timely received that contains sufficient information to permit the identification of the claimant, is signed by the claimant or an authorized agent, and is cast as an acceptance or rejection of the Plan will be counted.

The following ballots will not be counted in determining whether the Plan has been accepted or rejected: (a) any ballot received after the voting deadline as set by the Bankruptcy Court; (b) any ballot that is not signed or that contains insufficient information for the identification of the claimant; (c) any ballot timely received that indicates neither an acceptance nor a rejection of the Plan; (d) any ballot timely received that both indicates an acceptance and a rejection of the Plan; (e) any ballot cast by (i) a Creditor or Interest holder who is not listed as a Creditor or Interest holder on Debtors' Schedules or whose Claim or Interest is listed as disputed, contingent or unliquidated, and who has not timely filed a proof of claim or interest with respect to the Claim or Interest being voted; or (ii) a Creditor or Interest holder who has timely filed a proof of claim or interest that is the subject of an objection or a pending adversary proceeding disputing such Claim and who has not obtained the temporary allowance of its Claim for voting purposes; and (f) any ballot cast by an Entity who does not hold a Claim or Interest in the Class in which it voted.

Whenever two or more ballots are cast by the holder of the same Claim prior to the

voting deadline, the last ballot received prior to the voting deadline will be deemed to reflect the voter's intent and thus supersede prior ballots.

**5. Record Date**

The entry date of the order approving this Disclosure Statement shall be the record date for all Claims for voting purposes (the "Record Date"). Persons that did not hold an Allowed Claim as of the Record Date will not be permitted to vote to accept or reject the Plan.

**6. Confirmation Hearing - Rules Governing Objections to Confirmation**

Pursuant to Section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Confirmation Hearing is scheduled to commence on \_\_\_\_\_, 2014 at \_\_\_\_\_ (prevailing Mountain Time), before the Honorable R. Kimball Mosier, in Courtroom 369 of the United States Bankruptcy Court for the District of Utah, on the Third Floor of the United States Courthouse, 350 South Main Street, Salt Lake City, Utah 84101. The Confirmation Hearing may be continued from time to time by the Debtor or the Bankruptcy Court without further notice other than by announcement of the continued date at the Confirmation Hearing or at any subsequent continued Confirmation Hearing.

Objections to confirmation of the Plan are governed by Rule 9014 of the Bankruptcy Rules. Such objections, if any, must be in writing, must provide the name, current address and telephone number of the objecting party and counsel, must set forth with specificity all factual and legal bases for the objection, must specify the amount of such party's Claims or Interests, and must be filed and served so as to be actually received by the Bankruptcy Court and each of the following not later than \_\_\_\_\_, 2014:

To Counsel for the Debtor:

James W. Anderson, Esq.  
Miller Guymon & Toone, P.C.  
165 Regent Street

Salt Lake City, Utah 84111

To the Office of the United States Trustee:

John T. Morgan, Esq.  
405 South Main Street, Suite 300  
Salt Lake City, Utah 84111  
Telephone: 801-524-3031  
Facsimile: 801-524-5628

Pursuant to Bankruptcy Rule 3020(b)(2), the Bankruptcy Court may confirm the Plan without receiving evidence if no objection to confirmation is timely filed.

**II. GENERAL INFORMATION ABOUT THE DEBTOR**

**A. Tavaci Project**

The Debtor's primary and significant asset is the Tavaci Project. The Tavaci Project consists of 39 residential lots in Big Cottonwood Canyon, Salt Lake County, Utah. The lots are finished and ready for home construction. The Debtor has owned the Tavaci Project for many years, and has developed it from raw ground into finished lots. The Tavaci Project is a gated community with a private road leading into the lots.

Prior to filing the Case, the Debtor sold 4 lots. The Debtor has entered into a purchase agreement with MW Resources, L.L.C. to purchase Lot 3, which has a partially completed spec home. MW Resources, L.L.C. will obtain financing to complete the spec home and sell Lot 3, which will greatly benefit the Tavaci Project to have 2 homes constructed.

The Debtor and its real estate broker, Summit Sotheby's International Real Estate, have been aggressively marketing the Tavaci Project including print media, websites, and open houses. Significant buyer interest is being generated in the Tavaci Project as a result of these efforts. The Debtor expects to pay all Allowed Claims in full through the sale of lots in the Tavaci Project, according to the provisions of the Plan. The Debtor has determined lot release

prices which are attached to the Plan to pay the Allowed Amount of America First Federal Credit Union's claim, and has hired an appraiser to appraise the fair market value of the Tavaci Project. These lot release prices are determined by the Debtor based on the amount of the debt and the value of the Tavaci Project, to pay a significant percentage of the expected sales proceeds from the sale of each lot, commensurate with the Debtor's estimate of the fair market value of each lot. The Debtor estimates the value of the Tavaci Project to be at least \$29,000,000 of gross sale proceeds through the sale of lots therein. This estimate is based on the Debtor's opinion of value, based in part, on discussions with sales professionals. The Debtor has used a liquidation value of \$14,500,000 to reflect the fact that in the event of an immediate foreclosure, there would not be sufficient proceeds to pay unsecured claims. This is based on what the Debtor believes a forced, bulk sale liquidation could have resulted in.

Pre-petition the Debtor was not actively marketing the Tavaci Project for sale as individual lots. The Debtor was attempting to change the zoning. Since that time, the market for individual lots has returned and the Debtor believes selling lots now is the highest and best use. The Debtor has attached, as Exhibit "B", the Debtor's analysis of sales in the Tavaci Project based on information obtained from professionals for the marketing, price and absorption rates.

#### **B. Background of the Debtor**

The Debtor is a Utah limited liability company which was formed on January 2, 2003. The Debtor's membership has changed both pre-petition and post-petition. Originally, the Debtor was owned jointly by Bodell Properties, I, LLC and Western Land & Development II, LLC, and the managers were Michael Bodell and Terry Diehl. Effective December 31, 2012, Bodell Properties I, LLC assigned its interest to TCD Holding Company, LLC. TCD Holding Company, LLC and Western Land & Development II, LLC thereafter assigned their membership

interests to DG Tavaci, LLC, and the manager became Brent Daines, who was an owner in DG Tavaci.

DG Tavaci, LLC attempted to resolve claims and disputes with creditors, significantly America First Federal Credit Union, and to develop the Tavaci Project. After extensive negotiations, on the morning of December 30, 2013, America First Federal Credit Union, ceased negotiations and instructed the Debtor it was completing its foreclosure sale scheduled for that afternoon. DG Tavaci, LLC then caused the Debtor to file the voluntary petition and commence the Case. After preparation and filing of the schedules and statements, DG Tavaci, LLC exercised its put option to transfer ownership of the Debtor back to the former owners.

Subsequently, TCD Holding Company, LLC transferred its ownership of the Debtor to an unrelated entity, Tavaci Partners, LLC. As a result of this change, the Debtors managers are now Terry Diehl and Michael Christensen.

**C. Pre-Petition Debt.**

**1. America First Federal Credit Union.**

The Debtor entered into Loan 724932-9.1 with America First Federal Credit Union (“AFCU”), wherein the Debtor is the obligor under that certain Development Loan Agreement, dated October 31, 2006, and under that certain Development Loan Promissory Note, dated the same date, with a maximum loan commitment of \$13,000,000 (the “Cottonwood Loan”). The Cottonwood Loan is secured by that certain Development Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing in favor of America First Federal Credit Union, dated October 31, 2006 and recorded on October 31, 2006 as Entry No. 9893712, in Book 9373, at Page 9785, with the Salt Lake County Recorder’s office, along with its Modification recorded on January 24, 2008 at Entry No. 10330384, in Book 9562, at Page 964,

and its Cross-Collateralization and Cross-Default Agreement recorded December 31, 2009, in Book 9793, at Page 5821.

The Tavaci Project was cross-collateralized with loans owed to AFCU by two other entities, Jordan Hills Villages, LLC, and Kaysville 1, LLC. On December 30, 2013, AFCU foreclosed on the property owned by Jordan Hills Villages, LLC and Kaysville 1, LLC.

**2. Salt Lake County Treasurer.**

Salt Lake County holds a lien against the Tavaci Project for unpaid property taxes for the year 2013, in the approximate amount of \$250,000.00.

**3. Bodell Construction Company.**

Bodell Construction Company held two promissory notes, each secured by a deed of trust against the Tavaci Project or portions of the Tavaci Project. The deeds of trust are as follows: (i) Deed of Trust (with Assignment of Rents) in favor of Bodell Construction Company, effective as of January 31, 2003, and recorded on May 25, 2006 as Entry No. 9734466, in Book 9299, at Page 1771, in the Salt Lake County Recorder's office; and (ii) Deed of Trust (with Assignment of Rents) in favor of Bodell Construction Company, effective as of January 31, 2003, and recorded on May 25, 2006 as Entry No. 9734465, In Book 9299, at Page 1765, in the Salt Lake County Recorder's Office. Both of these loans and deeds of trust have been assigned to TCD Holding Company, LLC, who is in the process of releasing them.

**D. Events Leading to Commencement of Chapter 11 Case**

As set forth above, the Debtor was in active negotiations with AFCU to restructure the debt and the parties came very close to settlement. However, on the morning of December 30, 2013, when the Debtor and AFCU were supposed to sign the negotiated term sheet, AFCU informed the Debtor that it would not sign, and was going to proceed with its foreclosure



schedule for that afternoon. As a result, the Debtor was forced to file the Case to preserve the value of the Tavaci Project for all creditors.

### **III. THE DEBTORS' CHAPTER 11 CASE**

#### **A. Filing**

On the Petition Date (December 30, 2013), the Debtor filed its bankruptcy petition under chapter 11 of the Bankruptcy Code. The Debtor has continued to operate its business and manage its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

#### **B. Events During the Case.**

The Debtor has received an offer to purchase Lot 3, and has filed a motion to approve the same. That motion will likely be decided upon prior to confirmation of the Plan, as the hearing is set for April 15, 2014. The Debtor is actively marketing the Tavaci Project and anticipates receiving several more offers prior to plan confirmation.

##### **1. Retention of Debtors' Professionals**

The Debtor has been represented by Miller Guymon, P.C. since the Petition Date. The Debtor has filed for approval to retain Summit Sotheby's International Real Estate as its real estate broker. The Debtor has filed for approval to retain Parr Brown Gee & Loveless as special counsel for real estate transaction matters. The Debtor has or will soon file applications to employ J. Philip Cook as the Debtor's appraiser, and Daines Goodwin as the Debtor's accountant.

##### **2. Unsecured Creditors Committee**

No unsecured creditors committee has been appointed in this case.

#### **C. Schedules, Bar Date and Summary of Claims**

### **1. Schedules and Statements**

On January 21, 2014, the Debtor filed its Statements of Financial Affairs and Schedules of Assets and Liabilities (collectively, the “Schedules”). On February 6, 2014, the Debtor participated in the 341 meeting of creditors.

### **2. Bar Date**

Pursuant to Local Bankruptcy Rule 3003-1(a), “[i]n a chapter 11 case, a proof of claim or interest is timely filed if it is filed not later than 90 days after the first date set for the meeting for creditors under § 341 of the Code, or, if filed by a governmental unit, not later than 180 days after the date of the order for relief.” LBR 3003-1(a). Thus, May 7, 2104 (the “Bar Date”) is the date and time by which proofs of claim by all claimants (other than governmental units) are required to be filed. The deadline for a governmental unit to file a proof of claim is June 30, 2014.

### **3. Summary of Claims**

As of May 13, 2014, six proofs of claim have been filed in this case: (1) Salt Lake County Treasurer in the amount of \$252,979.82; (2) Rocky Mountain Power in the amount of \$417.69; (3) Parr Brown Gee & Loveless in the amount of \$12,228.25; (4) AFCU in the amount of \$20,806,164.28; (5) Burbidge & Mitchell in the amount of \$92,061.04; and (6) Michael J. Bodell in the amount of \$20,806,264.28. The Debtor has received a payoff statement from AFCU, effective as of March 25, 2014, wherein AFCU asserts it is owed \$18,647,459.16, with interest accruing at \$6,142.34 per day. AFCU has subsequently filed a proof of claim indicating a claim in the amount of \$20,806,164.28, which includes an alleged deficiency owed from the foreclosure of the cross-collateralized loans. The Debtor strongly disputes the amount owed to AFCU, and the Plan provides for the determination of the Allowed Amount of AFCU’s claim

through a court of competent jurisdiction. In addition to other grounds of dispute, the Debtor does not believe any deficiency exists on the cross-collateralized loans, disputes the accumulation of default interest where no notice of default was sent, and the parties were in constant negotiations to pay the loan through a sale of the Tavaci Project, and the Debtor can offset the claim for AFCU's lender liability. The Debtor has commenced discovery on all of these issues through its Rule 2004 Subpoena Duces Tecum. AFCU's document production was required on May 9, 2014. However, as an accommodation to AFCU's request for additional time, the Debtor consented to a two week extension. As a related claim, Michael J. Bodell has filed a proof of claim in the amount of \$20,806,264.28, as a contribution claim in the event that the Debtor does not pay AFCU in full, and Bodell is required to pay AFCU. Thus, if the Debtor pays AFCU in full, Bodell has no claim. The two claims do not exist independent of one another. The Debtor has also identified \$272,341.46 of undisputed general unsecured claims on its schedules, which includes substantially all of the proofs of claim filed by Parr Brown and Burbidge & Mitchell.

**D. Administrative Claims Incurred During Case.**

The Debtor has incurred professional fees for its bankruptcy counsel. However, no fee application has been filed at this time due to the requirements of the Bankruptcy Code. Bankruptcy counsel is holding a retainer for such services in the amount of \$65,419.48, from which it will seek payment. The Debtor has also make application to pay its real estate broker a commission in the amount of \$66,000 related to the sale of Lot 3 in the Tavaci Project. The motion to approve the sale of Lot 3 was denied by the Court, and thus this commission is not owed.

#### **IV. THE PLAN**

##### **A. Purpose of Plan.**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the Petition Date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a chapter 11 plan by the Bankruptcy Court binds the debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor whether or not such creditor or equity interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

The Debtor believes that implementation of the Plan will provide holders of Allowed Claims and Interests a greater distribution than they would receive if this case was converted

to a Chapter 7 case. Attached hereto as Exhibit “B” is a liquidation analysis alternative acceptance of the Plan. The summary of the Plan set forth below is qualified in its entirety by reference to the provisions of the Plan.

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

Section 1123 of the Bankruptcy Code provides that a plan of reorganization must provide certain treatment for Administrative Expense and Priority Tax Claims and otherwise classify claims and interests and provide for their treatment. As a result, the Plan (a) describes the treatment to be afforded to Administrative Expense Claims (which includes claims of compensation by professionals) and Priority Tax Claims and United States Trustee Quarterly Fees and Other Statutory Fees and (b) classifies Claims and Interests in separate Classes and provides different treatment for different Classes of Claims and Interests. As described more fully below, the Plan provides, separately for each Class, that holders of certain Claims will receive various amounts and types of consideration, thereby giving effect to the different rights of holders of Claims and Interests in each Class.

**C. Plan Overview and Summary of Treatment of Claims and Interests.**

The following is only a general overview of the Plan, and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information and financial statements appearing elsewhere in this Disclosure Statement and the Plan. Certain provisions of the Plan, and thus the descriptions and summaries in this Disclosure Statement, may be the subject of further negotiations that are subject to change. The Debtor is reserving the right to amend or modify the Plan consistent with § 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. The following is a brief summary of the treatment of Claims and Interests under the Plan. A Claim or Interest is placed in a particular Class for purposes of voting on the Plan and

receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled. In accordance with the Bankruptcy Code, Allowed Administrative Claims and Allowed Priority Tax Claims have not been classified.

**1. Unclassified Claims.**

In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, have not been classified, and the respective treatment of such unclassified Claims is set forth in Article II of the Plan. Unclassified Claims are to be treated as follows:

a. Administrative Expense Claims. Except to the extent that the holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment, each Allowed Administrative Expense Claim shall be paid in full on or as soon as reasonably practicable following the later to occur of (a) the Effective Date, or (b) the date on which such administrative expense Claim becomes an Allowed Claim. Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor post-petition are to be paid by the Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to conditions of any agreements governing such transactions. The Debtor projects that there will be sufficient funds to pay Allowed Administrative Expense Claims on the Effective Date.

b. United States Trustee Quarterly Fees and Other Statutory Fees. All fees due and payable under §1930 of Title 28 shall be paid as required by statute. In addition, the Reorganized Debtor shall pay the United States Trustee quarterly fees due and payable on all disbursements until entry of a Final Decree, dismissal of the case or conversion of the case to a

case under Chapter 7. The Debtor may seek entry of a Final Decree at any time allowed pursuant to 11 U.S.C. § 350(a).

c. Allowed Priority Tax Claims. Except to the extent that a holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Reorganized Debtor, (a) cash in an amount equal to such Allowed Priority Tax Claim on the Effective date, (b) in accordance with § 1129(a)(9)(C) of the Bankruptcy Code, equal semi-annual cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest at the applicable non-bankruptcy rate, commencing upon the Effective Date and continuing over a period ending not later than five years after the Effective Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim.

d. Allowed Other Priority Claims. Unless other mutually agreed upon by the holder of an Allowed Other Priority Claim and the Reorganized Debtor, each holder of an Allowed Other Priority Claim shall receive, an account of their claims against the Debtor, cash in an amount equal to such Allowed Other Priority Claim on the later of the Effective Date or the date such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon thereafter as is practicable.

## 2. Classified Claims Against and Interests in the Debtor.

Class Description	Proposed Treatment Under the Plan For Holders Of Allowed Claims Or Interests In Each Class
Class 1 – Priority Tax Claims – Unimpaired – Non-Voting	Except to the extent that a holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the

	Reorganized Debtor, (a) cash in an amount equal to such Allowed Priority Tax Claim on the Effective date, (b) in accordance with § 1129(a)(9)(C) of the Bankruptcy Code, equal semi-annual cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest at the applicable non-bankruptcy rate, commencing upon the Effective Date and continuing over a period ending not later than five years after the Effective Date, or (c) such other treatment as shall be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim
Class 2 – Other Priority Claims – Unimpaired – Non-Voting	Unless otherwise mutually agreed upon by the holder of an Allowed Other Priority Claim and the Reorganized Debtor, each holder of an Allowed Other Priority Claim shall receive, an account of their claims against the Debtor, cash in an amount equal to such Allowed Other Priority Claim on the later of the Effective Date or the date such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon thereafter as is practicable.
Class 3 – Secured Claim of Salt Lake County Treasurer – Impaired – Voting	Unless otherwise agreed by the Debtor and the holder of the Claim of this Class, this Claim shall be paid in full through the earlier to occur of the following: (1) payment of equal quarterly installments over a term of not more than five years, with interest accruing thereon at the rate allowed pursuant to Utah law, and the first payment shall be made on the Effective Date; or (2) the sale of the Tavaci Project (or sale of each lot in the Tavaci Project, in which case the amount then due and owing for such lot shall be paid at the closing of such sale). The Claim holder shall retain all prepetition Liens securing the Claim of this Class having the same rights and priorities accorded to such Liens as of the Petition Date. The failure of Debtor to comply with the provisions of the Plan concerning the liability owed to the Salt Lake County Treasurer, which includes, but is not limited to, the failure to make full and timely payment, shall constitute a default of the Plan. In the event of default, the Salt Lake County Treasurer may enforce the entire amount of its claim, exercise any and all rights and remedies under applicable non-bankruptcy law, which includes, but is not limited to, state tax collection procedures, and any other such relief as may be deemed appropriate by the Bankruptcy Court.
Class 4 – Secured Claim of America First Federal Credit Union – Impaired - Voting	Unless the Debtor and America First Federal Credit Union otherwise agree to the Allowed Amount of the Class 4 Claim, which agreement shall be subject to approval by the Bankruptcy Court through a Rule 9019 motion, the Allowed Amount of the Class 4 Claim shall be determined by the Bankruptcy Court or other court of competent jurisdiction as agreed upon by the Debtor, through the claims objection process (or other process as



required by the applicable court or applicable provisions of the Bankruptcy Code). The Class 4 Claim shall retain all prepetition Liens securing this Claim, having the same rights and priorities accorded such Liens as of the Petition Date. The Class 4 Claim shall accrue simple interest from the Petition Date until paid in full at the annual rate computed by taking the 1 Year LIBOR Rate as published by bankrate.com, and adding thereto 300 basis points. The Allowed Amount of the Class 4 Claim shall be paid through the following two options: (I) as the Debtor receives an offer to purchase all or any portion of the Tavaci Project that the Debtor intends to accept, the Debtor shall provide that offer to the holder of the Class 4 Claim, who shall have through 2:00 p.m. on the next business day to assert its rights under 11 U.S.C. § 363(k) to credit bid the amount of the offer, less all costs of sale, and take the portion of the Tavaci Project which is the subject of such offer, with a reduction in the amount of the Class 4 Claim by the amount of the credit bid (the "Credit Bid Option"). In exercising the Credit Bid Option, the holder of the Class 4 Claim shall pay the commission due to any sales agent of the seller and buyer for procuring such offer, and shall either pay or take subject to all existing liens which are senior to the lien securing the Class 4 Claim on the portion of the Tavaci Project which is the subject of such offer. If the holder of the Class 4 Claim does not timely give notice to the Debtor that it desires the exercise the Credit Bid Option, the holder of the Class 4 Claim shall irrevocably be deemed to have waived its Credit Bid Option as to that offer, and consented to the sale for the corresponding lot release price set forth in Exhibit "A" hereto. The lot release prices set forth in Exhibit "A" hereto shall be effective until the Allowed Amount of the Class 4 Claim is determined as set forth above, after which time the the remaining lot release prices will be adjusted up or down pro rata depending on whether the Allowed Amount is determined to be higher or lower than the total of lot release prices set forth in Exhibit "A". In the event the holder of the Class 4 Claim does timely exercise the Credit Bid Option, the Debtor shall transfer such property to the holder within five (5) business days by a quit claim deed under this Plan, which shall be free and clear of all liens junior to that of the lien securing the Class 4 Claim. The second option to pay the Allowed Amount of the Class 4 Claim in all instances where the holder of the Class 4 Claim does not timely exercise the Credit Bid Option, is through annual installments over a four (4) year period. Each installment shall be calculated as 1/4 of the Allowed Amount of the Class 4 Claim, plus interest that has accrued on the unpaid portion of the Allowed Amount until paid. Payments of these installments shall be made on the following dates: (1) the first of such payments shall not be

	<p>made until thirty (30) days after a Final Order is entered determining the Allowed Amount of the Class 4 Claim, and the amount of the first payment shall be the cumulative amount of all annual installments which would have been due as of such date; (2) the second payment shall be paid on the immediately following anniversary of the Effective Date, even though less than one year might have passed since the first payment; and (3) all following payments, if any, shall be due on each anniversary of the Effective Date thereafter. If the Debtor fails to pay an installment on or before thirty (30) days after its due date, the holder of this Claim may enforce its rights to foreclose its Liens under applicable Utah law, which shall include, but is not limited to, the deficiency restrictions set forth in Utah Code Ann. § 57-1-32. The Debtor shall escrow the lot release amount from the sales proceeds of each Tavaci Project lot sale as stated on the lot release price schedule attached to this Plan as Exhibit “A”, in order to make the aforementioned payments. The cumulative lot release amounts is not an admission by the Debtor of the Allowed Amount of the Class 4 Claim. The Debtor expects the Allowed Amount of the Class 4 Claim to be significantly lower. Any and all Liens securing the Class 4 Claim shall be immediately released, reconveyed and extinguished on each lot or portion of the Tavaci Project for which the corresponding lot release price is placed in escrow by the Debtor.</p>
Class 5 – Secured Claim of TCD Holding Company, LLC – Impaired - Voting	<p>Unless already released prior to the Effective Date, the Class 5 Claim shall be extinguished, waived and released on the Effective Date, and the Bodell 1 DOT and the Bodell 2 DOT shall be reconveyed. In the event the holder of the Class 5 Claim does not cause deeds of reconveyance to be recorded, the Debtor may do so as the attorney-in-fact for the holder of the Class 5 Claim.</p>
Class 6 – General Unsecured Claims – Impaired - Voting	<p>Unless otherwise agreed by the Debtor and the holder of a specific Claim in this Class to a less favorable treatment, each holder of a Class 6 Claim shall be paid, Pro Rata, and to the extent possible, from the proceeds of the Plan Fund. Plan Interest shall accrue on the Class 6 Claims from the Effective Date until paid in full or extinguished. Distributions from the Plan Fund shall be made on the fifteenth day of each calendar quarter to holders of Claims in this Class, from the deposits made into the Plan Fund from the previous calendar quarter, subject to the provisions of Article VIII of the Plan. No distributions shall be made to Class 6 Claims until a Final Order has been entered determining the Allowed Amount of the Class 4 Claim</p>
Class 7 – Interests – Impaired - Voting	<p>Interest holders shall retain their interests in the Debtor. Interest holders, however, will not be entitled to receive distributions pending payment of all Class 1, 2 and 6 Claims as provided in the</p>

	Plan
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**D. Plan Implementation**

**1. General**

The Plan shall be implemented through the means contemplated by sections 1123(a)(5), (b)(3) and (b)(4) of the Bankruptcy Code (a) prior to the Effective Date, by the Debtor and (b) on and after the Effective Date, by the Reorganized Debtor. Pursuant to the Confirmation Order, the Debtor or the Reorganized Debtor, as applicable, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan. Without limiting the foregoing, such transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (iii) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (iv) all other actions the Debtor and the Reorganized Debtor determine are necessary or appropriate. The manager in existence as of the Effective Date shall remain managers after the Effective Date, unless changed pursuant to the applicable governing documents of the Debtor

In particular, the Debtor may continue to retain any and all real estate brokers, retain new real estate brokers, and retain multiple real estate brokers to assist in the sale of the Tavaci Project, including lots therein, without further Bankruptcy Court approval. The Debtor may pay any and all real estate brokers without further Bankruptcy Court approval, except for any sales

made prior to the Effective Date. The Debtor may continue to sell the Tavaci Project, including lots therein, free and clear of any and all liens, claims and interests, with all such liens, claims and interests to be paid pursuant to the Plan, or attach to the sales proceeds as allowed by the Plan. To the extent the Plan does not specify paying a lien, claim or interest, or having such lien, claim or interest attach to sales proceeds, then such lien, claim or interest shall be extinguished. The to extent a lien, claim or interest holder is unwilling or unable to execute a document releasing such lien, claim or interest in a timely manner, and the Debtor, buyer, or a title company requires such a document to complete a sale, the Debtor is authorized to execute such a release and have the same recorded as the attorney-in-fact for such lien, claim or interest holder.

The Debtor may sell the Tavaci Project, or lots therein, pursuant to any commercially reasonable terms, in the Debtor's business judgment, including seller financing, so long as there are sufficient cash proceeds to pay Allowed Claims which are required by the Plan to be paid at the closing of a sale. The Debtor may pay any and all costs at the closing of a sale with are customary and reasonable in the Debtor's business judgment, from the proceeds of such sale, or from the Debtor's other funds. The Debtor may employ contractors and repairmen for ordinary and necessary maintenance and repair of the Tavaci Project, and may participate and operate any owners association(s) related to the Tavaci Project.

Plan Fund. On the Effective Date the Debtor shall establish a new federally-insured demand deposit account for the deposit of monies to pay the Class 1, 2, and 6 Claims (the "Plan Fund"). From the Effective Date until all Class 1, 2, and 6 Claims are paid in full, the Debtor shall deposit 90% of its calendar quarter net income from all operations, which shall be calculated after deducting actual payments of Class 3 and 4 Claims. The Debtor shall make this deposit no less frequently than one time per calendar quarter, on the last business day of such

calendar quarter.

## **2. Vesting of Assets; Release of Liens**

Except as otherwise provided in the Plan or any agreement, instrument, or other document relating thereto, on or after the Effective Date, all property in the Estate, including all Assets, and any property acquired by the Debtor shall vest in the Reorganized Debtor on the Effective Date. Thereafter, the Reorganized Debtor may manage its assets and may use, acquire, dispose of property, and settle or compromise Claims or Interests, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules. Except as provided in this Plan or any contract, instrument, release or other agreement created in connection with this Plan, on the Effective Date, all liens, claims and encumbrances against the property of the Reorganized Debtor shall be fully and completely released and discharged and all such assets or property shall be free and clear of any such liens, claims and encumbrances.

## **3. Preservation of Causes of Action**

In accordance with section 1123(b)(3) of the Bankruptcy Code, and except as otherwise provided in the Plan, all Causes of Action transferred to the Reorganized Debtor shall be retained by the Reorganized Debtor, and shall have the power and authority to prosecute and defend all such Causes of Action.

## **4. Hiring of Employees; Retention of Professionals**

The Reorganized Debtor shall be authorized, without further order of the Bankruptcy Court, to hire such employees and retain such professionals as it may deem necessary to discharge its obligations, and the costs of such employment and other expenditures shall be paid by the Reorganized Debtor without further approval of the Bankruptcy Court.

## **5. Compromise and Settlement**

Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the Reorganized Debtor may, subject to approval of the Bankruptcy Court, compromise and settle Claims against the Reorganized Debtor or any claims the Reorganized Debtor or the Estate may have against other Persons. The Debtor hereby reserves the right, with approval of the Bankruptcy Court, to compromise and settle Claims against the Debtor or claims the Debtor or the Estate may have against other Persons up to and including the Effective Date. On the Effective Date, such rights shall pass to the Reorganized Debtor, and thereafter, Claims against the Reorganized Debtor or claims the Reorganized Debtor or the Estate may have against other Persons may be compromised and settled exclusively by the Reorganized Debtor, without approval of the Bankruptcy Court; provided, however, that approval of the Bankruptcy Court, on appropriate application, shall be required for any such compromise or settlement (a) with any “insider” of the Reorganized Debtor, as such term is defined in section 101(31) of the Bankruptcy Code, or (b) where the asserted claim compromised is in excess of \$100,000.

#### **6. Terms of Injunctions or Stays**

All injunctions or stays provided for in the Chapter 11 Case pursuant to §§ 105 or 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date shall remain in full force and effect until the Effective Date. If the Plan is not confirmed, all such injunctions or stays shall remain in full force and effect until ordered otherwise by the Bankruptcy Court or until an alternative plan of reorganization is confirmed in the Reorganized Debtor’s Chapter 11 Case or the Reorganized Debtor’s Chapter 11 Case is dismissed. Except as may be determined otherwise by Final Order of the Bankruptcy Court, all distributions and transfers of property pursuant to the Plan shall be made free and clear of all liens, claims and encumbrances and, on the Confirmation Date, all holders of Claims or Interests shall be permanently enjoined from and restrained against

commencing or continuing any suit, action or proceeding against the Reorganized Debtor, or asserting against the Reorganized Debtor or the assets or property thereof, any claim, interest or cause of action based upon any act or omission, transaction or other activity of any kind that occurred prior to Confirmation.

**E. Distributions**

The Reorganized Debtor or its designee shall make or cause to be made all distributions required under the Plan. All distributions made under the Plan shall be made to holders of Allowed Claims as of the Effective Date (a) if any such holder has filed a proof of claim, at the address of such holder as set forth in the proof of claim, or (b) if any such holder has not filed a proof of claim, at the last known address of such holder according to the Debtor's books and records.

In an effort to maintain efficiency in distributions, and to avoid the Debtor being forced to choose sides in any dispute between Creditors and their assignees, neither the Debtor nor the Reorganized Debtor shall have any obligation to recognize any purported transfer of a Claim after the Effective Date, and will be entitled for all purposes relating to the Plan to recognize and deal only with those holders of Claims shown on the books of the Debtor as of the close of business on the Effective Date.

**1. Means of Cash Distributions.**

Payments made pursuant to the Plan shall be in lawful U.S. currency and by the means agreed to by the payor and the payee, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Reorganized Debtor shall determine.

**2. No Distributions Pending Allowance.**

No payments or distributions shall be made with respect to any Claim to the extent such

Claim is a Disputed Claim unless and until all objections to such Disputed Claim are withdrawn or overruled by the Bankruptcy Court and such Claim becomes an Allowed Claim.

**3. Distributions after Allowance.**

Distributions shall be made as appropriate to the holder of any Disputed Claim that has become an Allowed Claim on the date such Disputed Claim becomes an Allowed Claim or as soon thereafter as practicable. Such distributions shall be based upon the cumulative distributions that would have been made to the holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim as of the Effective Date and shall not be limited by the amounts reserved with respect to such Disputed Claim to the extent that additional amounts are available therefore, but only to the extent that such additional amounts have not yet been distributed to holders of Allowed Claims. No interest shall be payable to holders of Disputed Claims.

**4. Setoff Rights.**

The Reorganized Debtor may, but shall not be required to, set off against or recoup from any Claim and the distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the holder of such Claim; provided that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claim against such holder.

**5. Unclaimed Distributions.**

If a distribution made by the Reorganized Debtor pursuant to the Plan is returned as undeliverable, or the holder has failed to deposit or negotiate the applicable check within 180 days of issuance (collectively, "Unclaimed Distributions"), the distribution shall be held by the Reorganized Debtor. The Reorganized Debtor shall make reasonable efforts to determine the



then-current address of such holder, and no further distributions shall be made to such holder unless and until the Reorganized Debtor determines or is notified of such holder's current address, at which time all missed distributions shall be made, without interest; provided, however, that such distributions shall be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code if not claimed by 180 days after the distribution was initially attempted, notwithstanding any federal or state escheat laws to the contrary. After such date, (a) all rights to Cash, or other distributions shall be forfeited and such Cash or other property shall be revested in the Reorganized Debtor and the claim of such holder to such Cash or other distribution pursuant to the Plan shall be discharged and forever barred, and (b) all rights to such distributions shall be forfeited.

**6. Minimum Cash Distributions.**

No payment of less than fifty dollars (\$50) shall be made to any holder of an Allowed Claim unless requested in writing to the Reorganized Debtor prior to 30 days prior to the Liquidation Fund Distribution Date. If no such request is timely received, all Cash attributable to such holders shall be treated under the Plan as Unclaimed Distributions.

**F. Claims**

**1. Claims Administration**

Unless otherwise ordered by the Bankruptcy Court, from and after the Effective Date, the sole and exclusive authority to administer, dispute, object to, compromise or otherwise resolve Claims shall belong to the Reorganized Debtor. Subject to the foregoing, the Reorganized Debtor may dispute any Claim evidenced by a proof of claim or request for payment Filed with the Bankruptcy Court by Filing and serving on the holder thereof an objection in accordance with the Bankruptcy Code, the Bankruptcy Rules or a Final Order of the

Bankruptcy Court. Except as otherwise provided herein, if the Reorganized Debtor disputes any Claim for which a proof of claim has been filed, the Reorganized Debtor must File and serve on the holder of the Disputed Claim an objection on or before 120 days following the Effective Date (the “Claims Objection Deadline.”)

## **2. Estimation of Disputed Claims**

The Debtor or Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate any Disputed Claim subject to estimation under section 502(c) of the Bankruptcy Code, including any Disputed Claim for taxes to the extent permitted by section 502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code at any time during litigation concerning any objection to the Claim. Disputed Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism set forth in the Plan or approved by the Bankruptcy Court.

## **3. Interest on Claims.**

Unless specifically provided in the Plan or the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the respective Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon.

## **4. Voting and Objections.**

Failure by the Debtor or the Reorganized Debtor to object to or examine any Claim or Interest for purposes of voting in favor of or against the Plan shall not be deemed a waiver of the

Debtor's, the Reorganized Debtor or any other Person's rights to object to, or re-examine, such Claim or Interest, in whole or in part, for purposes of allowance or distribution.

**G. Executory Contracts**

**1. Rejection of Contracts and Leases**

All executory contracts and unexpired leases that exist between or among the Debtor and any other Person shall be deemed rejected by operation of this Plan pursuant to section 365(a) of the Bankruptcy Code on the Effective Date, except for any such contract or lease (a) that has been assumed or rejected, or renegotiated and assumed on modified terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (b) that has been entered into by the Debtor during the pendency of the Chapter 11 Case in the ordinary course of business or pursuant to an order of the Bankruptcy Court, (c) that is the subject of a motion to assume or reject, or a motion to approve renegotiated terms and to assume or reject on such terms, filed prior to the Effective Date, or (d) that is specifically treated otherwise in the Plan or in the Confirmation Order. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of executory contracts and unexpired leases as provided for herein.

**2. Bar to Rejection Damages**

Claims arising from the rejection of the Debtor's executory contracts or unexpired leases shall be treated as General Unsecured Claims. The holder thereof shall file a proof of claim by the date fixed in such rejection order or, if no deadline is specified in such order, within thirty (30) days of the effective date of the rejection of such contract or lease or shall be forever barred. Objections to such Claims shall be filed and served by later of sixty days of the effective date of the rejection or the Claims Objection Deadline.

**3. Assumption of Specific Contracts and Leases**

Notwithstanding anything to the contrary in the Plan, not less than ten (10) days prior to the Confirmation Hearing, the Debtor shall provide a list of executory contracts and unexpired leases being assumed by operation of the Plan pursuant to section 365(a) of the Bankruptcy Code. Furthermore, the stipulations and leases entered into during the Case are assumed.

**4. Insurance Policies**

Notwithstanding anything to the contrary contained in the Plan, the Debtor's insurance policies and any agreements, documents or instruments relating thereto shall be deemed to be and treated as though they are executory contracts, and shall be assumed as of the Effective Date by operation of the Plan pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code. Nothing contained herein shall constitute or be deemed a waiver of any Cause of Action against any insurer or any other Person (except as otherwise provided herein) under any of the Debtor's policies of insurance or otherwise, or in any way to limit the obligation of such insurers to defend, indemnify, and/or hold harmless the Debtor under the terms of any insurance policy issued to the Debtor.

**5. Cure of Defaults**

On the Effective Date, the Debtor and the Reorganized Debtor shall (a) cure or provide adequate assurance that they will cure any and all undisputed defaults under any executory contract or unexpired lease assumed pursuant to the Plan and (b) compensate or provide adequate assurance that they will promptly compensate the other parties to such executory contract or unexpired lease for the agreed amount of any actual pecuniary loss to such party resulting from such undisputed default in accordance with section 365(b)(1) of the Bankruptcy Code. In the event that the Debtor disputes the existence of a default, or the nature, extent or

amount of any required cure, adequate assurance or compensation, the Debtor's and the Reorganized Debtor's obligations under section 365(b) of the Bankruptcy Code shall be determined by a Final Order, and any such obligations shall be performed by the Reorganized Debtor unless otherwise provided in such Final Order.

#### **6. Modification and Amendments**

The Debtor may alter, amend or modify the Plan in accordance with section 1127(a) of the Bankruptcy Code at any time prior to Confirmation. On and after the Confirmation Date but prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings do not materially adversely affect the treatment of holders of Claims or Interests under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or any orders of court.

#### **7. Revocation, Withdrawal or Non-Consummation, and Default**

The Debtor shall have the right to revoke or withdraw the Plan at any time prior to the Effective Date. If revoked or withdrawn prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Class), the assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed or to be executed pursuant to the Plan shall be null and void and of no effect. In such event, nothing contained herein, and no acts taken to implement the Plan, shall be deemed to

constitute a waiver or release of any Claims against the Debtor or any other Person or any claims by the Debtor or the Debtor against any Person, to prejudice in any manner the rights of the Debtor, the Debtor or any Person in any further proceedings involving the Debtor or to constitute an admission of any sort by the Debtor or any other Person.

A Creditor may assert its state and federal law rights against the Debtor in the event of a default in the Plan in any court of competent jurisdiction. A default in the Plan for a class includes if the Debtor fails to satisfy any requirement of the Debtor set forth in the Plan for treatment of that particular class. Furthermore, those classes having pre-petition liens recognized in the Plan shall be able to assert their pre-petition lien rights in the event of a default.

#### **H. Confirmation**

The Debtor asserts the Plan is confirmable. Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

##### **1. Voting Procedures and Solicitation of Votes**

The voting procedures and the procedures governing the solicitation of votes are described above.

##### **2. Confirmation**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor has complied with the applicable provisions of the Bankruptcy Code.

- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised by the Debtor or by a person acquiring property under the plan for services or for costs and expenses in, or in connection with, the chapter 11 case, or in connection with the plan and incident to the chapter 11 case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the plan is reasonable or if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
- The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as member, director or officer of the Reorganized Debtor, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such insider.
- With respect to each Class of Claims or Interests, each holder of an impaired Claim or Interest has either accepted the plan or will receive or retain under the Plan on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the debtors were liquidated on the effective date under Chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.
- Each Class of Claims or Interest has either accepted the Plan or is not impaired

under the Plan.

- Except to the extent that the holder of a particular Claim has agreed to different favorable treatment of such Claim, the Plan provides that administrative expense claims and priority tax Claims will be paid in full as required by the Bankruptcy Code.
- 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 such Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtor or any successor to the debtors under the plan, unless such liquidation or reorganization is proposed in the plan. See discussion of “feasibility,” below.
- The Plan satisfies the absolute priority rule, meaning that, absent consent of the unsecured creditors, equity interest holders may not retain their ownership unless the unsecured creditors are paid in full.

**(a) Acceptance**

All Classes which are Impaired are entitled to vote to accept or reject the Plan.

**(b) Feasibility**

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that the Plan is feasible. A feasible plan is one that will not lead to a need for further reorganization or liquidation of the Debtor, unless such reorganization or liquidation is proposed in the Plan. The Debtor believes that the Plan satisfies the feasibility requirement imposed by the Bankruptcy Code, as described in more detail in the



Debtors' projected financial information contained in Exhibit "B". The Debtor expects the fair market value of its real property to be at least \$20,000,000. With this value, even assuming the AFCU Claim was determined to be the amount asserted by AFCU, then the Debtor will still have sufficient proceeds to pay the Allowed Amount of all Claims in full.

**(c) Best Interests Test**

With respect to each impaired Class of Claims and Interests, confirmation of the Plan requires that each holder of a Claim or Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. This requirement often is referred to as the "best interests test."

The starting point in determining whether the Plan meets the best interests test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor's assets in a Chapter 7 liquidation case. These proceeds must then be reduced by the costs of such liquidation, including costs incurred during the chapter 11 cases and allowed under chapter 7 of the Bankruptcy Code (such as professionals' fees and expenses), a trustee's fees, and the fees and expenses of professionals retained by a trustee. The potential chapter 7 liquidation distribution in respect of each Class must be reduced further by costs imposed by the delay caused by conversion to chapter 7. In addition, inefficiencies in the claims resolution process in a chapter 7 would negatively impact the recoveries of creditors. The net present value of a hypothetical chapter 7 liquidation distribution in respect of an impaired Class is then compared to the recovery provided for in the Plan for that Class. The liquidation analysis is set forth on Exhibit "C".

**(d) Cramdown**

The Debtor will seek to confirm the Plan notwithstanding the rejection by any of the impaired Classes. To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each impaired, nonaccepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” The Bankruptcy Code establishes “cram down” tests for secured creditors, unsecured creditors and equity holders, as follows:

(i) Secured Creditors. Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.

(ii) Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting Class will not receive any property under the plan. (This provision is often referred to as the “absolute priority rule.”)

(iii) Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior

to the nonaccepting Class will not receive or retain any property under the plan.

A plan does not “discriminate unfairly” with respect to a nonaccepting Class if the value of the cash and/or securities to be distributed to the nonaccepting Class is equal to, or otherwise fair when compared to, the value of the distributions to other Classes whose legal rights are the same as those of the nonaccepting Class.

### **3. Conditions to Confirmation**

Except as expressly waived pursuant to the Plan, the Plan shall be null and void and have no force or effect unless the Court shall have entered the Confirmation Order, which shall be a Final Order and which order shall:

- (a) confirm the Plan without modification except as modified by the Debtor in accordance herewith;
- (b) be in form and substance acceptable to the Debtor;
- (c) declare that the provisions of the Confirmation Order shall not be severable and are mutually dependent;
- (d) declare that the transfer of the Debtor’s assets, including the transfer of ownership of all remaining real property to the Reorganized Debtor shall be free from any and all recordation and transfer taxes; and
- (e) declare that the Debtor has solicited acceptances of the Plan in good faith and in compliance with the Bankruptcy Code and that the Debtor and each of its affiliates, agents, directors, officers, employees, advisors and attorneys have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and therefore are not liable for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

**4. Conditions to Effective Date**

Except as expressly waived pursuant to the Debtor, a condition precedent to the Effective Date is the entry of the Confirmation Order, in form and substance acceptable to the Debtor, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall be pending, provided that, if an appeal of the Confirmation Order or any other such order is Filed but no stay is granted in connection therewith, the Debtor may elect to permit the Effective Date to occur notwithstanding the pendency of an appeal.

**5. Waiver of Conditions**

All of the conditions for confirmation may be waived by the Debtor without any notice to parties in interest or the Bankruptcy Court and without a hearing, unless waiver is prohibited by law.

**6. Effect of Failure of Conditions**

In the event that the conditions for confirmation have not been satisfied or waived on or before sixty (60) days after the Confirmation Date, then upon written notification filed by the Debtor with the Bankruptcy Court, (a) the Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) the Debtor and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) all obligations of the Debtor with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any Claims against the Debtor or any claims of the Debtor against any other Person or to prejudice in any manner the rights of the Debtor or any other Person in any further proceedings involving the Debtor.

## **I. Federal Income Tax Consequences**

The following discussion summarizes certain federal income tax consequences of the implementation of the Plan to the Debtor and certain holders of Claims and Interests.

The following summary is based on the Internal Revenue Code of 1986, as amended, (the “Tax Code”) and Treasury regulations promulgated and proposed thereunder (the “Treasury Regulations”), judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”). Changes or new interpretations of these rules may have retroactive effect and could significantly affect the federal income tax consequences described below.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested an opinion of counsel with respect to any of the tax aspects of the Plan. In addition, the Debtor has not requested a ruling from the IRS concerning the federal income tax consequences of the Plan, and the consummation of the Plan is not conditioned upon the issuance of any such ruling. Thus, no assurance can be given as to the interpretation that the IRS or a court of law will adopt.

This summary does not address state, local or foreign income or other tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign persons, broker-dealers, banks, mutual funds, insurance companies, financial institutions, thrifts, small business investment companies, regulated investment companies, real estate investment trusts and tax-exempt entities).

This summary also assumes that the various third-party debt and other arrangements to which the Debtors are a party will be respected for federal income tax purposes in accordance

with their form, and that Claims and Interests are held as capital assets.

Accordingly, the following summary is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to a holder of a Claim or Interest.

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (I) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER FEDERAL, STATE OR LOCAL TAX LAWS, (II) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS DISCUSSED HEREIN, AND (III) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**1. Consequences to Interest Holders**

**a. Limited Liability Company**

The Debtor is a limited liability company that is taxed as a partnership for U.S. federal income tax purposes. A partnership is not itself a taxpaying entity for U.S. federal income tax purposes. A partnership's income or loss is allocated among its partners, who are required to report the income or loss allocated to them on their own tax returns. A partner's tax basis of the interest in the partnership is initially equal to the amount of cash and the adjusted tax basis of property contributed to the partnership.

A partner's tax basis increases for additional contributions and the partner's share of taxable and tax-exempt income and gain, and decreases for distributions and the partner's share of losses. An increase in a partner's share of partnership liabilities or a partner's assumption of partnership liabilities is treated as a cash contribution to the partnership that increases tax basis, and a decrease in a partner's share of partnership liabilities or the assumption by the partnership of a partner's liabilities decreases tax basis, but not below zero. Cash distributions, including a decrease in a partner's share of partnership liabilities, in excess of tax basis is taxable and generally treated as gain from the sale of a partnership interest. Generally, a partner is not allowed to deduct his or her share of partnership losses for the year in excess of the adjusted tax basis of his or her interest in the partnership. Any excess is allowed in any subsequent year in which a partner's adjusted tax basis increases. A partner shares partnership recourse liabilities to the extent the partner bears the economic risk of loss with respect to the liabilities, i.e., based on a hypothetical partnership liquidation at a time when the partnership has no assets, after taking into account any rights of contribution or reimbursement from other partners or third parties that are related to other partners.

**b. Cancellation of Indebtedness Income**

If a debt is forgiven or reduced, cancellation of indebtedness income ("COD Income") may result. Whether COD Income is realized is made at the partnership level. If realized, such COD Income is then allocated among the partners. The tax treatment of that income will be determined with respect to each partner at the partner level.

Generally, the amount of COD Income is the difference between (i) adjusted issue price of the old indebtedness less (ii) the sum of the amount of cash paid and the issue price of the new debt and (iii) the fair market value of any new consideration given in satisfaction of the old

indebtedness. The adjusted issue price of old debt is typically the outstanding principal balance plus any previously accrued interest that has been deducted for Federal Income tax purposes. It should be noted that when income is realized from the discharge of indebtedness to the extent the payment of the debt by the tax payer would have given rise to a deduction.

## **2. Consequences to Holders of Allowed Claims**

### **a. Holders of Secured Claims**

The Debtor does not believe the Plan poses any significant changes in tax treatment to Holders of Secured Claims.

### **b. Holders of Allowed Class 6 General Unsecured Claims**

Each holder of an Allowed Class 6 General Unsecured Claim will recognize gain or loss in an amount equal to the difference between (a) the “amount realized” by the holder in satisfaction of the Claim (other than any Claim for accrued but unpaid interest) and (b) the holder’s adjusted tax basis in the Claim (other than any Claim for accrued by unpaid interest). The “amount realized” by a holder will equal the sum of any Cash received by the holder upon the Effective Date and/or the fair market value of the holder’s right to receive subsequent distributions pursuant to the Plan. The character of any gain or loss recognized as long-term or short-term capital gain or loss or as ordinary income or loss recognized by a holder of an Allowed Class 6 General Unsecured Claim will be determined by a number of factors, including, among others the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was purchased at a discount, and whether and to what extent the holder had previously claimed a bad debt deduction in respect of such Claim.

### **c. Holders of Interests**



In general, holders of Allowed Interests in the Debtor should recognize gain or loss in an amount equal to the difference between (x) the sum of the amount of Cash and the fair market value of other property, if any, received in respect of their Interest pursuant to the Plan (whether on or after the Effective Date), and (y) their adjusted tax basis in their Interest. Such gain or loss generally will be capital gain or loss, and will be long-term if their Interest shall have been held for at least one year at the Effective Date.

### **3. Accrued but Unpaid Interest**

A portion of the consideration received by holders of Claims may be attributable to accrued but unpaid interest on such Claims. Such amount should be taxable to that holder as interest income if such accrued interest has not been previously included in the holder's gross income for U.S. federal income tax purposes. Conversely, it is possible that a holder of Claims may be able to recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any accrued interest on the Claims was previously included in the U.S. holder's gross income but was not paid in full by the Debtor. The character of such loss may be ordinary rather than capital, but the tax law is unclear on this issue.

### **4. Information Reporting and Withholding**

All distributions to holders of Allowed Claims or Interests under the Plan are subject to any applicable withholding obligations (including employment tax withholding). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then-applicable rate. Backup withholding generally applies if the holder: (i) fails to furnish its social security number or other taxpayer identification number ("TIN"); (ii) furnishes an incorrect TIN; (iii) fails

properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is such holder's correct number and that such holder is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, applicable Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among others, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holders' federal income tax returns.

The foregoing summary has been provided for informational purposes only. All holders of Claims and Interests are urged to consult their tax advisors concerning the federal, state, local, and foreign tax consequences applicable under the Plan.

#### **J. Risk Factors**

**HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS**

**CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION OR INVESTING IN ASSETS OF THE DEBTOR.**

**1. Certain Bankruptcy Considerations**

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate a resolicitation of votes. Finally, there can be no assurance that any or all of the conditions to the Effective Date of the Plan will be met (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated.

**2. Material United States Federal Income Tax Considerations**

THERE ARE A NUMBER OF MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS, RISKS AND UNCERTAINTIES ASSOCIATED WITH CONSUMMATION OF THE PLAN. INTERESTED PARTIES SHOULD READ CAREFULLY THE DISCUSSION SET FORTH ABOVE, ENTITLED "CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN" FOR A DISCUSSION OF THE MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES AND RISKS FOR THE DEBTOR AND FOR HOLDERS OF CLAIMS AND INTERESTS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN RESULTING FROM THE TRANSACTIONS OCCURRING IN CONNECTION WITH THE PLAN.

**K. Alternatives to Plan**

If the Plan is not confirmed and consummated, the Debtor's alternatives include: (i) liquidation under chapter 7 of the Bankruptcy Code, and (ii) confirmation of an alternative plan or plans of reorganization or liquidation.

**1. Liquidation under Chapter 7**

If the Plan or any other chapter 11 plan for the Debtor cannot be confirmed under section 1129(a) and (b) of the Bankruptcy Code, this chapter 11 case may be converted to a case under chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. Attached as Exhibit "C" is a liquidation analysis demonstrating this option.

**2. Alternative Chapter 11 Plan**

If the Plan is not confirmed, the Debtor, or any other party in interest, may attempt to formulate an alternative chapter 11 plan, which might provide for the liquidation of the Debtor's assets other than as provided by the Plan. Any attempt to formulate an alternative chapter 11 plan would unnecessarily delay creditors' receipt of distributions yet to be made and, due to the incurrence of additional administrative expenses during such period of delay, may provide for smaller distributions to holders of Allowed Unsecured Claims and Interests than are currently provided for under the Plan. Accordingly, the Debtor believes that the Plan will enable all creditors to realize the greatest possible recovery on their respective Claims or Interests with the least delay.

**L. Post-Confirmation Quarterly Reports.**

The Debtor, after confirmation, will file quarterly reports that include: the total disbursements for the quarter, a comparison between the Plan payments made in each period

and the payments projected under the Plan.

## **V. CONCLUSIONS AND RECOMMENDATION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims and Interests. Other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Debtor urges holders of impaired Claims and Interests entitled to vote on the Plan to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received on \_\_\_\_\_, 2014.

DATED this 28<sup>th</sup> day of March, 2014.

Cottonwood Estates Development, LLC

Debtor and Debtor in Possession

By: /s/ Terry C. Diehl

Terry C. Diehl, Manager

By: /s/ Michael Christensen

Michael Christensen, Manager

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**EXHIBIT “A”—PLAN OF REORGANIZATION**

**EXHIBIT “B”—FEASABILITY ANALYSIS**



**EXHIBIT “C”—LIQUIDATION ANALYSIS**