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City Crossing 1, LLC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re
CITY CROSSING 1, LLC, a Nevada limited
liability company,

Debtor.

BK-S-08-15780 BAM

Chapter 11

**DEBTOR'S FIRST AMENDED
DISCLOSURE STATEMENT FOR
DEBTOR'S FIRST AMENDED PLAN OF
REORGANIZATION DATED SEPTEMBER
26, 2008**

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1 **I. INTRODUCTION**

2 This First Amended Disclosure Statement (the “Disclosure Statement”) has been prepared by
3 City Crossing 1, LLC, a Nevada limited liability company (the “Debtor”), in connection with the
4 solicitation of acceptances of the Debtor’s First Amended Plan of Reorganization Dated September
5 25, 2008 (the “Plan”).

6 The purpose of this Disclosure Statement is to provide adequate information of a kind, and in
7 sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor
8 and the condition of the Debtor’s books and records, that would enable a hypothetical reasonable
9 investor, typical of holders of Claims against and Equity Interests in the Debtor, to make an
10 informed judgment about the Plan. An acceptance or rejection of the Plan must be in writing and
11 may only be made by completing the ballot that accompanies the Plan. In order for your vote to be
12 counted, it must be *received* no later than 5:00 p.m. (prevailing Pacific Time) on [_____] 2008
13 at the following address:

14 Schwartzer & McPherson Law Firm
15 Attn: Jeanette E. McPherson, Esq.
16 2850 S. Jones Boulevard, Suite 1
Las Vegas, NV 89146-5308
Facsimile (702) 892-0122

17 This Disclosure Statement includes (among other things) a brief history of the Debtor, a
18 summary of its Chapter 11 Case, a description of the Claims against and Equity Interests in the
19 Debtor, a summary of the Plan, a discussion of the Plan’s feasibility, and a liquidation analysis
20 setting forth what holders of a Claim against or Equity Interest in the Debtor would recover if the
21 Debtor was liquidated immediately under Chapter 7 of the Bankruptcy Code.

22 **UPON BANKRUPTCY COURT APPROVAL OF THE PLAN, THE PLAN WILL BE**
23 **BINDING UPON ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS PLAN.**

24 **THE PLAN IS THE GOVERNING DOCUMENT. IF ANY INCONSISTENCY**
25 **EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF**
26 **THE PLAN CONTROL.**

1 THE FINANCIAL PROJECTIONS CONTAINED IN THIS DISCLOSURE
2 STATEMENT REPRESENT THE DEBTOR'S ESTIMATES OF FUTURE EVENTS BASED
3 ON CERTAIN ASSUMPTIONS MORE FULLY DESCRIBED BELOW, SOME OR ALL OF
4 WHICH MAY NOT BE REALIZED. THE FINANCIAL INFORMATION IS UNAUDITED.
5 NONE OF THE FINANCIAL ANALYSIS CONTAINED IN THIS DISCLOSURE
6 STATEMENT IS CONSIDERED TO BE A "FORECAST" OR "PROJECTION" AS
7 TECHNICALLY DEFINED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC
8 ACCOUNTANTS. THE USE OF THE WORDS "FORECAST," "PROJECT," OR
9 "PROJECTION" WITHIN THE DISCLOSURE STATEMENT RELATES TO THE BROAD
10 EXPECTATIONS OF FUTURE EVENTS OR MARKET CONDITIONS AND
11 QUANTIFICATIONS OF THE POTENTIAL RESULTS UNDER THOSE CONDITIONS.

12 THE PROFESSIONALS REPRESENTING THE DEBTOR HAVE RELIED UPON
13 INFORMATION PROVIDED BY THE DEBTOR IN CONNECTION WITH THE
14 PREPARATION OF THIS DISCLOSURE STATEMENT AND HAVE NOT
15 INDEPENDENTLY VERIFIED ALL OF THE INFORMATION CONTAINED HEREIN.
16 THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED
17 AS LEGAL, BUSINESS, OR TAX ADVICE. YOU SHOULD CONSULT WITH YOUR OWN
18 LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX, AND RELATED
19 MATTERS CONCERNING YOUR CLAIM OR INTEREST.

20 EACH CREDITOR AND EQUITY INTEREST HOLDER IS URGED TO REVIEW
21 THE PLAN IN FULL BEFORE VOTING ON THE PLAN TO ENSURE A COMPLETE
22 UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

23 THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF
24 CREDITORS AND OTHER PARTIES IN INTEREST AND FOR THE SOLE PURPOSE OF
25 ASSISTING THEM IN MAKING AN INFORMED DECISION ABOUT THE PLAN. NO
26 PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY
27 REPRESENTATIONS IN CONJUNCTION WITH THE SOLICITATION OF VOTES TO
28

1 ACCEPT OR REJECT THE PLAN OTHER THAN THE INFORMATION AND
2 REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR IN THE
3 BALLOTS. IF GIVEN OR MADE, ANY SUCH INFORMATION OR REPRESENTATIONS
4 MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY DEBTOR.

5 [THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE
6 BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION TO PERMIT A
7 CREDITOR TO VOTE ON THE PLAN. THE COURT'S APPROVAL OF THE
8 DISCLOSURE STATEMENT, HOWEVER, DOES NOT CONSTITUTE AN
9 ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.]

10 **II. EXPLANATION OF CHAPTER 11**

11 **A. Overview of Chapter 11.** Chapter 11 is the principal reorganization chapter of the
12 Bankruptcy Code. Pursuant to Chapter 11, a debtor in possession attempts to reorganize its business
13 for the benefit of the debtor, its creditors, and other parties in interest. The Debtor commenced the
14 Chapter 11 case (the "Chapter 11 Case") with the Bankruptcy Court by filing a voluntary petition for
15 relief under Chapter 11 of the Bankruptcy Code on June 2, 2008 with the United States Bankruptcy
16 Court for the District of Nevada. The Chapter 11 Case is Case No. 08-15780 (BAM).

17 The commencement of a Chapter 11 case creates an estate comprising of all of the legal and
18 equitable interests of the debtor as of the date the petition is filed. Sections 1101, 1107, and 1108 of
19 the Bankruptcy Code provide that a debtor may continue to operate its business and remain in
20 possession of its property as a "debtor in possession" unless the bankruptcy court orders the
21 appointment of a trustee. In the present Chapter 11 Case, the Debtor has remained in possession of
22 its property and continues to operate its business as debtor-in-possession.

23 The filing of a chapter 11 petition triggers the automatic stay provisions of the Bankruptcy
24 Code. Section 362 of the Bankruptcy Code provides, among other things, for an automatic stay of
25 all attempts to collect or recover prepetition claims from the debtor or to otherwise interfere with, or
26 exercise control over, the debtor's property or business. Except as otherwise ordered by the
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1 Bankruptcy Court, the automatic stay remains in full force and effect until the effective date of a
2 confirmed plan of reorganization.

3 **B. Plan of Reorganization**

4 The formulation of a plan of reorganization is the principal purpose of a Chapter 11 case.
5 The plan sets forth the means for satisfying claims against and interests in the debtor. Although
6 referred to as a plan of reorganization, a plan may provide for anything from a complex restructuring
7 of a debtor's business and its related obligations to a simple liquidation of the debtor's assets. In
8 either event, upon confirmation of the plan, it becomes binding on the debtor and all of its creditors
9 and equity holders, and the obligations owed by the debtor to such parties are compromised and
10 exchanged for the obligations specified in the plan.

11 After a plan of reorganization has been filed, the holders of impaired claims against and
12 interests in a debtor are permitted to vote to accept or reject the plan, provided such holders are to
13 receive distributions under the plan. Before soliciting acceptances to the proposed plan, section
14 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate
15 information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make
16 an informed judgment about the plan. **This Disclosure Statement is presented to holders of**
17 **Claims against and Equity Interests in the Debtor to satisfy the requirements of Section 1125**
18 **of the Bankruptcy Code in connection with the Debtor's solicitation of votes on the Plan.**

19 **C. Confirmation of a Plan of Reorganization**

20 If all classes of claims and interests accept a plan of reorganization, the bankruptcy court may
21 confirm the plan if the bankruptcy court independently determines that the requirements of section
22 1129 of the Bankruptcy Code have been satisfied. Section 1129 of the Bankruptcy Code sets forth
23 the requirements for confirmation of a plan and, among other things, requires that a plan meet the
24 "best interests" of creditors test and be "feasible." The "best interests" test generally requires that
25 the value of the consideration to be distributed under a plan to the holders of claims or interests in
26 the debtor is not less than those parties would receive if the debtor was liquidated pursuant to a
27 hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. Under the "feasibility"
28

1 requirement, the court generally must find that there is a reasonable probability that the debtor will
2 be able to meet its obligations under its plan without the need for further financial reorganization.
3 **With the exception of approval of the Plan by all impaired classes, the Debtor believes that the**
4 **Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code,**
5 **including, in particular, the best interests of creditors test and the feasibility requirement. As**
6 **described in greater detail in Section XVIII herein, holders of Claims and Equity Interests in**
7 **the Debtor will receive more under the Plan than they would under a hypothetical Chapter 7**
8 **liquidation. In addition, the Plan is feasible because the Debtor and the Guarantors are each**
9 **capable of performing all of their obligations thereunder.**

10 Chapter 11 does not require that each holder of a claim or interest in a particular class vote in
11 favor of a plan of reorganization in order for the bankruptcy court to determine that the class has
12 accepted the plan. Rather, a particular class will be determined to have accepted the plan if the court
13 determines that the plan has been accepted by a majority in number and two-thirds in amount of
14 those claims actually voting in such class. **In the present case, only the holders of Claims who**
15 **actually vote will be counted as either accepting or rejecting the Plan.**

16 In addition, classes of claims or interests in the debtor that are not “impaired” under a plan of
17 reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote.
18 Conversely, classes that are to receive no distribution under the plan are conclusively deemed to
19 have rejected the plan. Accordingly, acceptances of a plan will generally be solicited only from
20 those persons who hold claims or equity interests in an impaired class. A class is “impaired” if the
21 legal, equitable, or contractual rights associated with the claims or equity interests of that class are
22 modified in any way under the plan. Modification for purposes of determining impairment,
23 however, does not include curing defaults and reinstating maturity or payment in full in cash on the
24 effective date of the plan. **All classes of Claims are impaired under the Plan and the holders of**
25 **Claims in such classes are entitled to vote on the Plan.**

26 The bankruptcy court may also confirm a plan of reorganization even though fewer than all
27 classes of impaired claims and equity interests accept it. For a plan of reorganization to be
28

1 confirmed despite its rejection by a class of impaired claims or equity interests, the proponent of the
2 plan must show, among other things, that the plan does not “discriminate unfairly” and that the plan
3 is “fair and equitable” with respect to each impaired class of claims or equity interests that has not
4 accepted the plan.

5 Under section 1129(b) of the Bankruptcy Code, a plan is “fair and equitable” as to a rejecting
6 class of claims or equity interests if, among other things, the plan provides: (a) with respect to
7 secured claims, that the holders in a rejecting class of secured claims will realize the indubitable
8 equivalent of such claims, and (b) with respect to unsecured claims and equity interests, that the
9 holder of any claim or equity interest that is junior to the claims or equity interests of such class will
10 not receive or retain on account of such junior claim or equity interest any property at all unless the
11 senior class is paid in full.

12 A plan does not “discriminate unfairly” against a rejecting class of claims or equity interests
13 if the relative value of the recovery of such class under the plan does not differ materially from that
14 of any class (or classes) of similarly situated claims or equity interests. **The Debtor believes that**
15 **the Plan has been structured so that it will satisfy the foregoing requirements as to any**
16 **rejecting class of Claims, and can therefore be confirmed, if necessary, over the objection of**
17 **any (but not all) classes of Claims.**

18 **III. DEFINITIONS**

19 All capitalized terms used herein, but not defined herein shall have the meaning given to such
20 terms in the Plan. If a term is not defined herein or in the Plan, but is defined in the Bankruptcy
21 Code, such term has the meaning given to that term in the Bankruptcy Code unless the context of the
22 Disclosure Statement requires otherwise. References to a code section are references to the
23 Bankruptcy Code, except as otherwise stated.

24 **IV. SUMMARY OF THE PLAN AND DISTRIBUTIONS UNDER THE PLAN**

25 This Section provides a summary of the Plan and of how Claims against and Equity Interests
26 in the Debtor are classified and treated under the Plan. The descriptions set forth below are merely
27
28

1 summaries and, in the event of an inconsistency with the Plan, the terms of the Plan will govern.
2 Please refer to Section VIII hereof for a more detailed discussion of the Plan.

3 **A. Summary of Plan**

4 The Plan is not complicated. The Debtor's principle asset consists of fifteen parcels of real
5 estate located in Henderson, Nevada, the sum of which totals approximately 126 acres. Prior to the
6 Petition Date, the Debtor planned to build a mixed use development with one million square feet of
7 true Class A office space, eight hundred fifty thousand square feet of lifestyle boutique retail, one
8 hundred fifty thousand square feet of neighborhood commercial retail and two thousand five
9 hundred luxury residential units known as "City Crossing." Due to economic conditions described
10 in greater detail below, the Debtor is unable to complete the City Crossing Project at this time. In
11 addition, the Lenders have indicated that they will not support a plan that provides for the sale of the
12 City Crossing Project unless their credit bid rights are preserved, a condition that is unacceptable to
13 the Guarantors, the only entities capable of funding a commercially reasonable sales process.
14 Accordingly, the Debtor has determined that it can best be restructured by transferring its real
15 property to the Lenders holding liens in such real property in satisfaction of the Lenders' secured
16 claims against the Debtor.

17 Community Bank has agreed to accept title to its real property collateral and a payment of
18 \$190,000 to cover reasonable fees and costs in complete satisfaction of all of its claims against the
19 Debtor and the Guarantors and supports the Plan. The FDIC, as receiver for First National Bank¹
20 and Silver State Bank, has agreed to similar treatment subject to the completion of certain diligence,
21 and the Debtor anticipates that the FDIC will support the Plan. With respect to the remaining
22 Lenders (the "Non-Releasing Lenders"), the Plan requires that the Bankruptcy Court value their
23 respective collateral at the Confirmation Hearing. The Debtor will then transfer title of each Parcel
24 to the Non-Releasing Lender holding a lien on such Parcel in exchange for a reduction in debt
25 commensurate with the value of such Parcel. All of the Lenders, including the Non-Releasing

26 _____
27 ¹ First National Bank is the successor in interest to all of the loans made by First National Corporation to the
28 Debtor and all references to First National Bank are also references to First National Bank as successor in
interest to First National Capital.

1 Lenders, will receive their collateral free and clear of all claims and interests pursuant to section
2 1141(c) and 363(f) of the Bankruptcy Code.

3 If a Parcel is subject to more than one deed of trust in favor of more than one Non-Releasing
4 Lender, the Debtor will effectuate the transfer of title to such Non-Releasing Lenders by transferring
5 such Parcel to a newly formed limited liability company to be owned by all of the Non-Releasing
6 Lenders that held a lien in such Parcel. The senior Lenders will receive preferred units in such
7 limited liability company on a pro rata basis. The junior lenders will receive common units in such
8 limited liability company, also on a pro rata basis. And, the Non-Releasing Lenders holding junior
9 liens on such Parcel will not be able to receive distributions on account of their membership interests
10 in such limited liability company until the Non-Releasing Lenders holding senior liens have received
11 distributions from such limited liability company with a value at least equal to their secured claims
12 against the Debtor.

13 The Debtor believes that the transfer of a Parcel to a new limited liability company is a
14 significant benefit for the Non-Releasing Lenders. Many of the Non-Releasing Lenders are
15 participants in loans arranged by Aspen Financial and Clayton Mortgage. Absent the Plan, such
16 Non-Releasing Lenders would be required to foreclose upon their real property collateral, which
17 would be difficult to do in light of the fact that participants in the Aspen Financial and Clayton
18 Mortgage loans hold fractional interests in a deed of trust along with many other lenders. The Plan
19 allows participants in the loans arranged by Aspen Financial and Clayton Mortgage to hold title to
20 their collateral through a single company, thereby resolving the question of how title should be held
21 after foreclosure and making future dispositions of the property more easy to consummate.

22 Further, absent the Plan, foreclosure by senior Non-Releasing Lenders will eliminate the
23 interests of the junior Non-Releasing Lenders unless the junior Non-Releasing Lenders payoff the
24 senior debt. Under the Plan, the junior Non-Releasing Lenders will be entitled to recoveries from
25 their collateral; provided, that the Bankruptcy Court finds that the value of the collateral is greater
26 than the amount of the Claims of the senior Non-Releasing Lenders and the property is subsequently
27 sold for at least that amount.

1 The Debtor believes that there is sufficient value in the Parcels to satisfy all of the Claims of
2 the Non-Releasing Lenders through the return of such Parcels, however, any claims of the Non-
3 Releasing Lenders (other than Community Bank, First National Bank and Silver State, which have
4 agreed to accept their collateral in full satisfaction of their respective Claims) not satisfied by the
5 return of the Parcels will be classified as general unsecured claims under the Plan.

6 As an added inducement to the Non-Releasing Lenders under the Plan, the Guarantors will
7 pay in cash the reasonable attorneys fees and costs owed by the Debtor pursuant to a Non-Releasing
8 Lender's loan documents if such Non-Releasing Lender agrees to release the Guarantors from their
9 respective Guarantees.

10 Finally, the Plan calls for the preservation of all Avoidance Actions against the Yamagata
11 Group. The Yamagata Group received approximately \$50 million from the Debtor and its
12 predecessors in interest as part of a leveraged buyout of the Yamagata Group's interests in such
13 parties. Such transfers may have been constructively fraudulent and the Plan provides for the
14 creation of a Litigation Trust to prosecute any Avoidance Actions that may exist as a result of such
15 transfers. The Litigation Trust will be funded by a \$100,000 contribution from the Guarantors. The
16 proceeds received from any recoveries against the Yamagata Group will be used, first, to pay the
17 claims of any non-insider unsecured creditors, including any deficiency claims of the Non-Releasing
18 Lenders and, second, as a return to equity.

19 *The Debtor believes that the Plan will maximize the value of its assets because it will*
20 *transfer the Lenders' collateral to the Lenders free and clear of all claims and interests without*
21 *the need for costly foreclosure, thereby allowing the Lenders, especially junior lenders to market*
22 *their collateral on a non-fire sale basis. Further, the Plan allows for the prosecution of*
23 *Avoidance Actions against the Yamagata Group, which may provide some recoveries for general*
24 *unsecured creditors. Accordingly, the Debtor urges all creditors to vote in favor of the Plan.*

25 **B. Distributions under the Plan**

26 The following is a summary of the Distributions under the Plan. Claims (except those
27 Claims receiving treatment as set forth in Section VIII(A) hereof) against and Equity Interests in the
28

1 Debtor will receive Distributions under the Plan as set forth below:

<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 1	Parcel 1 Claims Estimated amount of Parcel 1 Claims: \$ 14,000,000	On the Effective Date, the Alper Trust shall receive, in complete satisfaction of its Parcel 1 Claims, (a) all of the Debtor's right, title and interest in and to Parcel 1 and (b) the Alper Road Property, in each case on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code. In addition, if the Alper Trust is a Releasing Lender, on the Effective Date, the Guarantor shall make a cash payment to the Alper Trust in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 1 Claims under the Parcel 1 Loan Documents.
Class 2	Parcel 2 Senior Claims Estimated amount of Parcel 2 Senior Claims: \$ 23,340,591	On the Effective Date, First National Bank shall receive, in complete satisfaction of its Parcel 2 Senior Claims, (a) from the Debtor, all of the Debtor's right, title and interest in and to Parcel 2 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs incurred by First National Bank in connection with the Parcel 2 Senior Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of such agreement, as ordered by the Bankruptcy Court.
Class 3	Parcel 2 Junior Claims Estimated amount of Parcel 2 Junior Claims: \$ 4,433,235	On the Effective Date, First National Bank, as successor in interest to First National Capital, shall receive, in complete satisfaction of all of its Parcel 2 Junior Claims, (a) from the Debtor, all of the Debtor's right, title and interest in and to Parcel 2 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs incurred by First National Bank in connection with the Parcel 2 Junior Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of such agreement, as ordered by the Bankruptcy Court.
Class 4	Parcel 3 Claims Estimated amount of Parcel 3 Claims: \$ 15,861,565	On the Effective Date, Silver State Bank shall receive, in complete satisfaction of all of its Parcel 3 Claims, (a) from the Debtor, all of the Debtor's right, title and interest in and to Parcel 3 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs incurred by Silver State Bank in connection with the Parcel 3 Loan Documents as agreed to by the Debtor and Silver State or, in the absence of such agreement, as ordered by the Bankruptcy Court.

<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 5	Parcels 4 & 5 Claims Estimated amount of Parcels 4 & 5 Claims: \$ 29,893,788	On the Effective Date, Community Bank shall receive, in complete satisfaction of the Parcels 4 & 5 Claims, (a) from the Debtor all of the Debtor's right, title and interest in and to Parcels 4 & 5 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, \$190,000 in cash to reimburse Community Bank for its reasonable fees and costs.
Class 6	Parcels 6-8 Senior Claims Estimated amount of Parcels 6-8 Senior Claims: \$ 31,568,692	On the Effective Date, First National Bank shall receive, in complete satisfaction of the Parcels 6-8 Senior Claims, (a) from the Debtor, all of the Debtor's right, title and interest in and to Parcel 6, Parcel 7 and Parcel 8 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs incurred by First National Bank in connection with the Parcels 6-8 Senior Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of such agreement, as ordered by the Bankruptcy Court.
Class 7	Parcels 6-8 Junior Claims Estimated amount of Parcels 6-8 Junior Claims: \$ 7,381,000	On the Effective Date, First National Bank, as successor in interest to First National Capital, shall receive, in complete satisfaction of the Parcels 6-8 Junior Claims, (a) from the Debtor, all of the Debtor's right, title and interest in and to Parcel 6, Parcel 7 and Parcel 8 on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs incurred by First National Bank in connection with the Parcels 6-8 Junior Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of such agreement, as ordered by the Bankruptcy Court.

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<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 8	Parcel 9 Senior Claims Estimated amount of Parcel 9 Senior Claims: \$ 6,986,479	On the Effective Date, each holder of a Parcel 9 Senior Claim shall receive, in complete satisfaction of its Parcel 9 Senior Claim, preferred membership units in Parcel 9 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 9 Senior Claims. The operating agreement for Parcel 9 Resolution Company shall provide that any common membership units of Parcel 9 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 9 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 9 Senior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 9 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 9 Senior Claims under the Parcel 9 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 9 to Parcel 9 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.
Class 9	Parcel 9 Junior Claims Estimated amount of Parcel 9 Junior Claims: \$ 2,600,000	On the Effective Date, each holder of a Parcel 9 Junior Claim shall receive, in complete satisfaction of its Parcel 9 Junior Claim, common membership units in Parcel 9 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 9 Junior Claims. The operating agreement for Parcel 9 Resolution Company shall provide that any common membership units of the Parcel 9 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 9 Resolution Company have received cash dividends in an amount equal to the aggregate amount of the Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 9 Junior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 9 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 9 Junior Claims under the Parcel 9 Junior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 9 to Parcel 9 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.

<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 10	Parcel 10 Senior Claims Estimated amount of Parcel 10 Senior Claims: \$ 4,832,000	On the Effective Date, each holder of a Parcel 10 Senior Claim shall receive, in complete satisfaction of its Parcel 10 Senior Claim, preferred membership units in Parcel 10 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 10 Senior Claims. The operating agreement for Parcel 10 Resolution Company shall provide that any common membership units of Parcel 10 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 10 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 10 Senior Claims. In addition, if all of the holders of Parcel 10 Senior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 10 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 10 Senior Claims under the Parcel 10 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 10 to Parcel 10 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.
Class 11	Parcel 10 Junior Claims Estimated amount of Parcel 10 Junior Claims: \$ 1,850,000	On the Effective Date, each holder of a Parcel 10 Junior Claim shall receive, in complete satisfaction of its Parcel 10 Junior Claim, common membership units in Parcel 10 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 10 Junior Claims. The operating agreement for Parcel 10 Resolution Company shall provide that any common membership units of Parcel 10 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 10 Resolution Company have received cash dividends in an amount equal to the aggregate amount of the Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 10 Junior Claims are Releasing Lenders, on the Effective Date, the Guarantor shall make a cash payment to the holders of Parcel 10 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 10 Junior Claims under the Parcel 10 Junior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 10 to Parcel 10 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.

<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 12	Parcel 11 Senior Claims Estimated amount of Parcel 11 Senior Claims: \$ 7,270,000	On the Effective Date, each holder of a Parcel 11 Senior Claim shall receive, in complete satisfaction of its Parcel 11 Senior Claims, preferred membership units in Parcel 11 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 11 Senior Claims. The operating agreement for Parcel 11 Resolution Company shall provide that any common membership units of Parcel 11 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 11 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 11 Senior Claims. In addition, if all of the holders of Parcel 11 Senior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 11 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 11 Senior Claims under the Parcel 9 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 11 to Parcel 11 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.
Class 13	Parcel 11 Junior Claims Estimated amount of Parcel 11 Junior Claims: \$ 2,800,000	On the Effective Date, each holder of a Parcel 11 Junior Claim shall receive, in complete satisfaction of its Parcel 11 Junior Claims, common membership units in Parcel 11 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 11 Junior Claims. The operating agreement for Parcel 11 Resolution Company shall provide that any common membership units of Parcel 11 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 11 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 11 Senior Claims. In addition, if all of the holders of Parcel 11 Junior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 11 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 11 Junior Claims under the Parcel 9 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 11 to Parcel 11 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.

<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 14	Parcel 12 Senior Claims Estimated amount of Parcel 12 Senior Claims: \$ 3,225,000	On the Effective Date, each holder of a Parcel 12 Senior Claim shall receive, in complete satisfaction of its Parcel 12 Senior Claim, preferred membership units in Parcel 12 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 12 Senior Claims. The operating agreement for Parcel 12 Resolution Company shall provide that any common membership units of Parcel 12 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 12 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 12 Senior Claims. In addition, if all of the holders of Parcel 12 Senior Claims are Releasing Lenders, on the Effective Date, the Guarantor shall make a cash payment to the holders of Parcel 12 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 12 Senior Claims under the Parcel 12 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 12 to Parcel 12 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.
Class 15	Parcel 12 Junior Claims Estimated amount of Parcel 12 Senior Claims: \$ 1,244,574	On the Effective Date, each holder of a Parcel 12 Junior Claim shall receive, in complete satisfaction of its Parcel 12 Junior Claim, common membership units in Parcel 12 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 12 Junior Claims. The operating agreement for Parcel 12 Resolution Company shall provide that any common membership units of Parcel 12 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 12 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 12 Senior Claims. In addition, if all of the holders of Parcel 12 Junior Claims are Releasing Lenders, on the Effective Date, the Guarantor shall make a cash payment to the holders of Parcel 12 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 12 Junior Claims under the Parcel 12 Junior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 12 to Parcel 12 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.

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<u>Classification</u>	<u>Type of Claim</u>	<u>Treatment</u>
Class 16	Parcels 13-15 Claims Estimated amount of Parcels 13-15 Claims: \$ 25,000,000	On the Effective Date, each holder of a Parcels 13-15 Claim shall receive, in complete satisfaction of its Parcels 13-15 Claim, common membership units in Parcels 13-15 Resolution Company equal to such holder's percentage of the aggregate amount of Parcels 13-15 Senior Claims. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 13, Parcel 14 and Parcel 15 to Parcels 13-15 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code. In addition, if all of the holders of Parcels 13-15 Claims are Releasing Lenders, on the Effective Date, the Guarantor shall make a cash payment to the holders of Parcels 13-15 Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcels 13-15 Claims under the Parcels 13-15 Loan Documents.
Class 17	Insider Unsecured Claims Estimated amount of Insider Unsecured Claims: \$ 1,244,610.61	On the Effective Date, the holders of Allowed Insider Unsecured Claims shall release all of their Allowed Insider Unsecured Claims. In exchange, the Debtor shall release any and all claims that it may hold against such holders and, if applicable, against each of such holders officers, directors shareholders and Affiliates, including, without limitation, any Avoidance Actions.
Class 18	Other Unsecured Claims Estimated amount of Other Unsecured Claims: \$ 9,769,831	On the Distribution Date, each holder of an Allowed Other Unsecured Claim shall receive, in complete satisfaction of its Allowed Other Unsecured Claim, a beneficial interest in the Litigation Trust entitling such holder to receive its Pro Rata Share of any proceeds from the Litigation Trust Assets; provided that such holder shall not be entitled to receive an amount in excess of such holder's Allowed Other Unsecured Claim.
Class 19	Equity Interests	On the Effective Date, all of the Equity Interests in the Debtor shall be cancelled and the holder of such Equity Interests shall receive a beneficial interest in the Litigation Trust which shall entitle such holder to receive any and all proceeds from the Litigation Trust Assets remaining after the holders of Claims in Class 18 shall have been paid in full.

V. VOTING INSTRUCTIONS

IT IS IMPORTANT THAT YOU EXERCISE YOUR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN. If you are or may be entitled to vote on the Plan, you have been sent a

1 ballot (the "Ballot") and instructions for voting with this Disclosure Statement. You should read the
2 Ballot carefully and follow the instructions contained therein. Please use only the Ballot sent to you
3 with this Disclosure Statement.

4 To simplify the voting procedure, Ballots have been sent only to all known holders of Claims
5 and equity interests, including Disputed Claims to which objections may be filed. The Bankruptcy
6 Code and the Bankruptcy Rules provide that only the holders of Allowed Claims (or Claims which
7 are deemed Allowed) and holders of Allowed Equity Interests are entitled to vote on the Plan. A
8 Claim to which an objection has been filed is not an Allowed Claim unless and until the Bankruptcy
9 Court rules on the objection. The Bankruptcy Court may temporarily allow a Disputed Claim to
10 which an objection has been filed for purposes of voting on the Plan. Therefore, although the
11 holders of Disputed Claims to which an objection has been filed will receive Ballots, these votes will
12 not be counted unless the Bankruptcy Court temporarily allows such Claims for purposes of voting
13 on the Plan.

14 If a party in interest is a member of more than one Class, it will receive a Ballot for each
15 Class. **IF YOU ARE A MEMBER OF MORE THAN ONE CLASS, YOU MUST FILL OUT**
16 **AND RETURN ALL BALLOTS SENT TO YOU FOR YOUR VOTE TO COUNT IN EACH**
17 **CLASS.**

18 **YOU MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING THE**
19 **BALLOT THAT ACCOMPANIES THE PLAN AND THE DISCLOSURE STATEMENT,**
20 **AND RETURNING IT NO LATER THAN 5:00 P.M. (PREVAILING PACIFIC TIME) ON**

21 **[_____], 2008 TO:**

22 Schwartz & McPherson Law Firm
23 Attn: Jeanette McPherson, Esq.
24 2850 S. Jones Boulevard, Suite 1
25 Las Vegas, NV 89146-5308
26 Facsimile (702) 892-08122

27 **IF YOUR BALLOT IS NOT RETURNED BY SUCH TIME, IT MAY NOT BE**
28 **CONSIDERED. BALLOTS WHICH ARE RETURNED BUT NOT PROPERLY**

1 EXECUTED OR WHICH FAIL TO INDICATE EITHER ACCEPTANCE OR REJECTION
2 OF THE PLAN WILL NOT BE COUNTED.

3 **VI. BACKGROUND AND EVENTS PRECIPITATING THE CHAPTER 11 FILING**

4 **A. The Debtor's ownership**

5 The Debtor is owned by an entity known as Aquila Investments, LLC ("Aquila Investments")
6 and is managed by Aquila Management, LLC ("Aquila Management"). Aquila Investments and
7 Aquila Management are both controlled by William Plise. Mr. Plise is a respected developer in the
8 Las Vegas area. In addition to the City Crossing Project, Mr. Plise is responsible for developing
9 various other office buildings through the Las Vegas area, including the Rainbow Sunset Pavilion
10 and Centennial Corporate Center in southern Las Vegas. Both the Rainbow Sunset Pavilion and
11 Centennial Corporate Center projects are unrelated to the Debtor.

12 **B. The History of the Property**

13 The property that now constitutes the City Crossing Project was purchased by Aquila
14 Investments in early 2002. Shortly thereafter, Aquila Investments formed Sage Mountain I, LLC
15 ("SM1") and transferred the real property thereto. In 2002 and 2003, Gene Yamagata through one or
16 more entities (including GY Property Holdings, LLC) and certain of his key employees (collectively,
17 the "Yamagata Group") became 80% partners in SM1. Aquila Investments and the Yamagata Group
18 originally intended to develop the property as an industrial site that would be known as the Sage
19 Mountain Commerce Center.

20 Due to land use changes in the West Henderson area and the development of the master
21 planned community of Inspirada to the South, Mr. Plise and the Yamagata Group agreed that the
22 highest and best use of the property was to develop it as a mixed use center. As a result, SM1
23 applied, and Mr. Plise worked with, the City of Henderson over a three year period to master plan
24 the project and change the zoning classification from industrial to commercial mixed-use. During
25 this process, the Yamagata Group decided that it did not want take on the risk of developing the
26 entire 126 acres and asked Mr. Plise to sell the project or buy out its interests either in whole or in
27 part. The Yamagata Group and Mr. Plise agreed to subdivide the project into eight parcels to
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1 facilitate refinancing the debt with multiple lenders and to start the process of buying out the
2 Yamagata Group's interests. Aquila Investments formed Playa del Sol, LLC ("Playa"), and through
3 Playa acquired 20 acres in the project on December 13, 2004. Yamagata retained a 15% interest in
4 Playa. The acquisition was funded by Eliot Alper and his family and later refinanced by Community
5 Bank of Nevada.

6 On November 15, 2005, SM1, Aquila Investments, the Yamagata Group and certain other
7 entities entered into a Memorandum of Understanding (the "MOU") pursuant to which SM1's
8 property was subdivided into seven separate parcels to be owned by limited liability companies
9 named "Sage Mountain Parcel" followed by the number of the parcel transferred to such entity (*e.g.*,
10 parcels 2-8; parcel 1 was owned by Playa). Pursuant to the MOU, from November 15, 2005 through
11 the end of 2006, the parties refinanced some of the parcels and Aquila Investments acquired 100% of
12 the membership interests in the Sage Mountain entities that owned parcels 2, 3 and 8. Loans were
13 made from several lending institutions, including Community Bank of Nevada, Town & Country
14 Bank and First National Bank of Nevada. By late 2006, Aquila Investments and the Yamagata
15 Group agreed that Aquila Investments would buy out the remainder of Yamagata's interests in Playa
16 and the Sage Mountain entities. A Redemption Agreement (the "Redemption Agreement") in
17 connection with such buyout was executed on December 31, 2006.

18 The mixed-use project that replaced the Sage Mountain Commerce Center became known as
19 "City Crossing." In order to commence developing the City Crossing Project, the real property
20 owned by Playa and the Sage Mountain entities was divided from eight parcels into fifteen parcels.
21 The parcels are substantially different from the eight parcels owned by Playa and the Sage Mountain
22 entities and do not have common meets and bounds. As a result, Aquila Investments created new
23 limited liability companies named "City Crossing" followed by a number corresponding to the
24 parcel owned by such entity.

25 From April 13, 2007 through August of 2007, the City Crossing entities obtained loans to (a)
26 refinance the obligations of the Sage Mountain entities in respect of the parcels being formed for the
27 City Crossing Project, (b) fund the redemption payments to the Yamagata Group, (c) make equity
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distributions to Aquila Investments and the Debtor’s other indirect equity owners, and (d) in some cases, for the development of the City Crossing project. The loans were secured by the parcel or parcels held by the applicable City Crossing entity borrower. In addition to the real property collateral, each of the loans are all personally guaranteed by Mr. Plise and, in some instances, also by Aquila Management, Aquila Investments and Plise Companies, LLC, all of which are affiliates of the Debtor. The foregoing guarantors are referred to herein as the “Guarantors.”

The balances in respect of such loans were as follows as of March 31, 2008:

Parcel	Lender	Loan Amount
Parcel 1	Eliot A. Alper Revocable Trust, Dated March 22, 1999, Eliot Alper, Trustee	\$13,940,164.38
Parcel 2	First National Bank	\$22,388,130.00
Parcel 2 - Mezz	First National Capital	\$4,433,236.00
Parcel 3	Silver State Bank	\$13,632,804.00
Parcel 4 & 5	Community Bank	\$25,978,000.00
Parcel 6, 7, & 8	First National Bank	\$26,117,194.00
Parcel 6, 7, & 8	First National Capital	\$7,381,000.00
Parcel 9 - 1st	Aspen Financial ²	\$6,970,705.48
Parcel 9 - 2nd	Aspen Financial	\$2,585,415.07
Parcel 10 - 1st	Aspen Financial	\$4,811,778.41
Parcel 10 - 2nd	Aspen Financial	\$1,839,622.26
Parcel 11 - 1st	Clayton Mortgage	\$7,072,365.55
Parcel 11 - 2nd	Aspen Financial	\$2,784,293.15
Parcel 12 - 1st	Clayton Mortgage	\$3,140,907.02
Parcel 12 - 2nd	Aspen Financial	\$1,242,988.01
Parcel 13 - 15	Alper Limited Partnership, a Nevada limited partnership, <i>et. al.</i>	\$25,000,000.00
Total:		\$ 169,318,603.00

In March of 2008, Playa, SM1 and all of the Sage Mountain entities were merged into the Debtor. The purpose of this merger was to preserve any fraudulent transfer claims that these entities may have against the Guarantors, the Yamagata Group and the Lenders. On May 23, 2008, all of the City Crossing entities other than the Debtor were also merged into the Debtor. The purpose of this merger was to create a single company that could attract financing from a single joint venture partner or financing source, an event which did not materialize.

² Aspen Financial and Clayton Mortgage are not lenders. They merely service loans made by hundreds of individual investors.

1 **C. Transfers to the Yamagata Group and Certain Plise Entities**

2 As noted above, some of the proceeds of the various loans obtained by the Sage Mountain
3 entities and, later, the City Crossing entities, were used to fund redemption payments to the
4 Yamagata Group and to make distributions to equity. Through out the life of the Sage Mountain
5 project and City Crossing Project, approximately \$50 million was distributed to the Yamagata Group
6 from the proceeds of the Sage Mountain and City Crossing loans described above under the MOU,
7 the Redemption Agreement and for other reasons. A schedule of such payments is attached hereto
8 as Exhibit C. The distributions were mostly made by the Sage Mountain entities during 2006.
9 Approximately \$33.6 million was paid to the Guarantors from the proceeds of the loans.

10 As discussed in greater detail below, the Debtor proposes to transfer any Avoidance Actions
11 arising from the Yamagata Group's receipt of funds from the Debtor and its predecessors in interest
12 to the Litigation Trust for the benefit of unsecured creditors, including Lenders holding deficiency
13 claims (if any), and equity.

14 **D. Events Precipitating the Chapter 11 Case**

15 In the fall of 2007, significant volatility existed in the mortgage and home-building industry,
16 which seriously affected the Las Vegas area. The dramatic tightening of the credit markets severely
17 impacted the ability of the City Crossing Entities to obtain credit. This had a devastating effect on
18 the Debtor. In short, the Debtor was financing the City Crossing Project through short term loans.
19 When the credit markets tightened, the Debtor was no longer able to refinance its loans resulting in
20 defaults and severe cash constraints. Notwithstanding its lack of cash or inability to obtain further
21 financing, the Debtor believes that there is sufficient value in its property to repay the Lenders in full
22 if the collateral is returned to the Lenders as provided for in the Plan.

23 In May of 2008, shortly after many of the Debtor's loans became due, the ability of the
24 Debtor to keep the City Crossing Project together became precarious. At least one Lender sent the
25 Debtor and the Guarantors a demand letter indicating that it would commence exercising remedies if
26 a forbearance agreement was not executed on or before May 30, 2008. Despite good faith
27 negotiations, the parties were unable to reach agreement. The Debtor filed for relief under Chapter
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1 11 of the Bankruptcy Code on June 2, 2008 to maintain its assets while the Debtor attempted to
2 reach a consensual restructuring of its obligations.

3 **VII. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

4 **A. Commencement of the Chapter 11 Case**

5 On June 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under
6 Chapter 11 of the Bankruptcy Code. The Chapter 11 Case was assigned to the Honorable Bruce A.
7 Markell, United States Bankruptcy Judge for the District of Nevada. The Debtor remains in
8 possession of its properties as a debtor-in-possession under Sections 1107(a) and 1108 of the
9 Bankruptcy Code.

10 **B. The Injunction Adversary**

11 On June 2, 2008, the Debtor commenced an adversary proceeding against its Lenders seeking
12 temporarily to prevent such Lenders from enforcing their rights against the Guarantors. The Debtor
13 argued that the Guarantors should not be distracted by collection actions from the primary task at
14 hand—reorganizing the Debtor. On June 4, 2008, the Bankruptcy Court entered a temporary
15 restraining order, but indicated that any injunction obtained by the Debtor would only prevent the
16 Lenders from exercising remedies in respect of the Debtor related loans held by the Lenders. The
17 Bankruptcy Court further indicated that any such injunction would dissolve if any creditors not
18 subject to the injunction sought to assert remedies against the Guarantors. Certain of the Lenders
19 hold Debtor loans guaranteed by the Guarantors and non-Debtor loans guaranteed by the Guarantors.
20 As a result, any such Lender could effectively dissolve any injunction issued by the Bankruptcy
21 Court by exercising remedies against the Guarantors in respect of non-Debtor loans, some of which
22 arguably have cross defaults. Faced with the foregoing facts, the Debtor voluntarily dismissed the
23 adversary proceeding on June 9, 2008.

24 **C. Retention of Professionals**

25 On June 10, 2008, White & Case LLP filed an application to be retained as the Debtor’s
26 primary bankruptcy and reorganization counsel. On July 22, 2008, an order was entered approving
27 the application of White & Case LLP. On June 9, 2008, Schwartzer & McPherson Law Firm filed
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1 an application to be employed by the Debtor as co-counsel. On July 29, 2008, an order was entered
2 approving the application of Schwartzer & McPherson Law Firm. The Debtor has not retained any
3 other professionals in its Chapter 11 Case.

4 **D. Official Unsecured Creditors' Committee**

5 As of the date hereof, no Official Committee of Unsecured Creditors has been appointed in
6 this Chapter 11 Case. The Debtor believes that no such committee is necessary in its Chapter 11
7 Case because most of the Claims against the Debtor are secured Claims, and each of the secured
8 creditors have retained independent, sophisticated counsel. Moreover, the unsecured claims against
9 the Debtor are not substantial.

10 **E. Plan and Disclosure Statement**

11 The Debtor filed an initial plan with an initial disclosure statement on July 2, 2008 that
12 provided for the retention of a broker to professionally market and sell the City Crossing Project as
13 an integrated whole over the eighteen months following the effective date of the Plan. Under the
14 initial plan, the proceeds of the sale would be distributed to creditors in order of priority.

15 The initial plan also contained a provision that eliminated the Lenders' credit bid rights. This
16 provision was essential to the plan, but was strenuously opposed by the Lenders. In order for the
17 initial plan to be feasible, the Guarantors were required to contribute approximately \$6.5 million—a
18 considerable sum of money—to make adequate protection payments and fund the sales process. The
19 Guarantors were only willing to contribute such sums if the Lenders waived their credit bid rights.
20 The Guarantors were concerned that if the Lenders did not waive their credit bid rights, the Lenders
21 could thwart a commercially reasonable sale put together at great expense by the Debtor and the
22 Guarantors simply by exercising their credit bid rights. The Guarantors were unwilling to take this
23 risk.

24 In order to attempt to resolve this and other disputes, the Debtor filed a motion on July 8,
25 2008, seeking a Court-ordered settlement conference. The motion was granted by the Court on July
26 15, 2008, and a settlement conference was scheduled for July 21, 2008 before the Honorable Gregg
27 W. Zive in Reno, Nevada. After a full day of negotiations at the settlement conference, the Debtor
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1 agreed to make certain modifications to the initial plan and to arrange a meeting among the Lenders,
2 the Debtor's proposed broker and the Debtor. The parties also agreed to continue their negotiations
3 in respect of the initial plan, to stay most matters in this case during the negotiation process and to
4 reconvene in Reno on September 18, 2008 for a continued settlement conference. The foregoing is
5 memorialized in an order entered in this case on July 24, 2008 (the "Settlement Conference Order").

6 In compliance with the Settlement Conference Order, during August and the early part of
7 September, the Debtor arranged a meeting among the Lenders, the broker and the Debtor, circulated
8 a new plan and disclosure statement to the Lenders and continued to engage the Lenders in
9 negotiations. Ultimately, the Debtor determined that the Lenders would not support a plan providing
10 for a sale of the Property and began negotiating the present Plan pursuant to which the Debtor
11 transfers title to the Lenders in satisfaction of the Lenders' secured claims.

12 The parties reconvened the settlement conference on September 18, 2008 to discuss the new
13 plan and disclosure statement. At the conclusion of the settlement conference, the Debtors and the
14 Lenders had made substantial progress in respect of a consensual plan and the Plan reflects the
15 compromises made at the settlement conference. Community Bank agreed to accept title to its
16 collateral in full satisfaction of its Claims against the Debtor and intends to vote for the Plan. The
17 FDIC has tentatively agreed to accept title to its collateral in full satisfaction of its Claims against the
18 Debtor and, the Debtor believes, will vote for the Plan after completing certain due diligence.
19 Further, the Debtor believes that the members of the Alper Group have agreed to vote in favor of the
20 Plan, while preserving their deficiency claims against the Debtor and the Guarantors. Only Clayton
21 Mortgage and Aspen Financial have not agreed to support the Plan. In short, the settlement
22 conference was successful in forging a plan acceptable to the bulk of the Lenders and the Debtor.
23 That plan of reorganization is the Plan you are being asked to consider and the Debtor believes that
24 such Plan should be confirmed.

25 The Debtor strongly urges the Lenders that are participants in the loans arranged by Aspen
26 Financial and Clayton Mortgage (the "Participants") to vote for the Plan notwithstanding the fact
27 that the Plan is not supported by Clayton Mortgage or Aspen Financial. As noted above, the Plan
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1 provides a fair mechanism for transferring title to the Participants' collateral to the Participants that
2 is superior to foreclosure and may preserve the ability of junior participants to receive recoveries
3 from their collateral, all at no cost to the participants and without any requirement that the
4 Participants release any Guarantees. The alternative, foreclosure, will be complicated and expensive
5 and does not protect the rights of Participants holding junior loans.

6 **VIII. THE PLAN**

7 A copy of the Plan accompanies this Disclosure Statement as Exhibit A. The following
8 summary of the material provisions of the Plan is qualified in its entirety by the specific provisions
9 of the Plan, including the Plan's definitions of certain terms used below. The following is intended
10 only to provide a general description of the Plan. For more specific information concerning the Plan,
11 the Plan should be referenced. For an overview of the Plan, please refer to Section IV above.

12 **A. Treatment of Unclassified Claims Under the Plan**

13 As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Claims,
14 including, without limitation, Professional Fees and Priority Tax Claims are not classified for
15 purposes of voting on, or receiving distributions under, the Plan. Holders of such Claims are not
16 entitled to vote on the Plan. All such Claims are instead treated separately in accordance with
17 Article 2 of the Plan and in accordance with the requirements set forth in section 1129(a)(9)(A) of
18 the Bankruptcy Code.

19 **1. Administrative Claims**

20 Each Administrative Claim other than a Claim for Professional Fees shall be paid in full in
21 Cash by the Reorganized Debtor on the later to occur of: (a) the Effective Date; (b) the tenth (10th)
22 day after such Administrative Claim is Allowed; and (c) such date as the holder of any such
23 Administrative Claim and the Reorganized Debtor may agree.

24 **2. Allowed Priority Tax Claims**

25 Each Allowed Priority Tax Claim (if any) shall be paid in full in Cash on the latest of: (a) the
26 Effective Date; (b) the tenth (10th) Day after such Claim is Allowed; and (c) such date as the holder
27 of any such Claim and the Reorganized Debtor may agree.

3. Professional Fees

Each Person seeking an award by the Bankruptcy Court of Professional Fees: (a) must file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date within thirty (30) days of the Effective Date; and (b) if the Bankruptcy Court grants such an award, must be paid in full in Cash in such amounts as are allowed by the Bankruptcy Court as soon thereafter as practicable. All final applications for allowance and disbursement of Professional Fees must be in compliance with all of the requirements of the Bankruptcy Code, the Bankruptcy Rules, and any applicable guidelines and with all of the terms and conditions set forth in any applicable order of the Bankruptcy Court, including, without limitation, the Confirmation Order, and all other orders governing payment of Professional Fees.

4. Post-Effective Date Professional Fees

All Professional Fees for services rendered in connection with the Chapter 11 Case and the Plan after the Effective Date may be paid by the Reorganized Debtor upon receipt of an invoice for such services, or on such other terms to which the Reorganized Debtor and the relevant Professional may agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

B. Summary of Classification and Treatment of Claims Under the Plan

In accordance with section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors (except those Claims receiving treatment as set forth in Section VIII(A) above) and holders of Equity Interests are placed in the Classes described below for all purposes, including, without limitation, voting on, Confirmation of, and Distribution under, the Plan:

<u>Class</u>	<u>Type of Claim</u>	<u>Impaired/Unimpaired</u>
Class 1	Parcel 1 Claims	Impaired, entitled to vote
Class 2	Parcel 2 Senior Claims	Impaired, entitled to vote
Class 3	Parcel 2 Junior Claims	Impaired, entitled to vote
Class 4	Parcel 3 Claims	Impaired, entitled to vote
Class 5	Parcels 4 & 5 Claims	Impaired, entitled to vote

1	Class 6	Parcels 6-8 Senior Claims	Impaired, entitled to vote
2	Class 7	Parcels 6-8 Junior Claims	Impaired, entitled to vote
3	Class 8	Parcel 9 Senior Claims	Impaired, entitled to vote
4	Class 9	Parcel 9 Junior Claims	Impaired, entitled to vote
5	Class 10	Parcel 10 Senior Claims	Impaired, entitled to vote
6	Class 11	Parcel 10 Junior Claims	Impaired, entitled to vote
7	Class 12	Parcel 11 Senior Claims	Impaired, entitled to vote
8	Class 13	Parcel 11 Junior Claims	Impaired, entitled to vote
9	Class 14	Parcel 12 Senior Claims	Impaired, entitled to vote
10	Class 15	Parcel 12 Junior Claims	Impaired, entitled to vote
11	Class 16	Parcels 13-15 Claims	Impaired, entitled to vote
12	Class 17	Insider Unsecured Claims	Impaired, entitled to vote
13	Class 18	Other Unsecured Claims	Impaired, entitled to vote
14	Class 19	Equity Interests	Impaired, entitled to vote

15 The Debtor believes that recoveries under the Plan will exceed recoveries in a Chapter 7 case
16 and urges all Creditors to vote for the Plan. The treatment of Claims against and Equity Interests in
17 the Debtor under the Plan is set forth below and is consistent with the requirements of section
18 1129(a) of the Bankruptcy Code.

19 **1. Class 1 – Parcel 1 Claims**

20 Class 1 consists of Allowed Parcel 1 Claims. On the Effective Date, the Alper Trust shall
21 receive, in complete satisfaction of its Parcel 1 Claims, (a) all of the Debtor's right, title and interest
22 in and to Parcel 1 and (b) the Alper Road Property, in each case on an "as is, where is" basis free and
23 clear of all Claims and interests, including, without limitation, Liens of creditors and equity security
24 holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code. In addition, if the
25 Alper Trust is a Releasing Lender, on the Effective Date, the Guarantor shall make a cash payment
26 to the Alper Trust in an amount equal to the reasonable attorneys fees and costs payable in respect of
27 the Parcel 1 Claims under the Parcel 1 Loan Documents.
28

1 **2. Class 2 – Parcel 2 Senior Claims**

2 Class 2 consists of Allowed Parcel 2 Senior Claims. On the Effective Date, First National
3 Bank shall receive, in complete satisfaction of its Parcel 2 Senior Claims, (a) from the Debtor, all of
4 the Debtor’s right, title and interest in and to Parcel 2 on an “as is, where is” basis free and clear of
5 all Claims and interests, including, without limitation, Liens of creditors and equity security holders
6 pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors,
7 the reasonable attorneys fees and costs incurred by First National Bank in connection with the Parcel
8 2 Senior Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of
9 such agreement, as ordered by the Bankruptcy Court.

10 **3. Class 3 – Parcel 2 Junior Claims**

11 Class 3 consists of Allowed Parcel 2 Junior Claims. On the Effective Date, First National
12 Bank, as successor in interest to First National Capital, shall receive, in complete satisfaction of all
13 of its Parcel 2 Junior Claims, (a) from the Debtor, all of the Debtor’s right, title and interest in and to
14 Parcel 2 on an “as is, where is” basis free and clear of all Claims and interests, including, without
15 limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section
16 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable attorneys fees and costs
17 incurred by First National Bank in connection with the Parcel 2 Junior Loan Documents as agreed to
18 by the Debtor and First National Bank or, in the absence of such agreement, as ordered by the
19 Bankruptcy Court.

20 **4. Class 4 – Parcel 3 Claims**

21 Class 4 consists of Allowed Parcel 3 Claims. On the Effective Date, Silver State Bank shall
22 receive, in complete satisfaction of all of its Parcel 3 Claims, (a) from the Debtor, all of the Debtor’s
23 right, title and interest in and to Parcel 3 on an “as is, where is” basis free and clear of all Claims and
24 interests, including, without limitation, Liens of creditors and equity security holders pursuant to
25 section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the
26 reasonable attorneys fees and costs incurred by Silver State Bank in connection with the Parcel 3
27 Loan Documents as agreed to by the Debtor and Silver State or, in the absence of such agreement, as
28

1 ordered by the Bankruptcy Court.

2 **5. Class 5 – Parcels 4 & 5 Claims**

3 Class 5 consists of the Allowed Parcels 4 & 5 Claim. On the Effective Date, Community
4 Bank shall receive, in complete satisfaction of the Parcels 4 & 5 Claim, (a) from the Debtor all of the
5 Debtor’s right, title and interest in and to Parcels 4 & 5 on an “as is, where is” basis free and clear of
6 all Claims and interests, including, without limitation, Liens of creditors and equity security holders
7 pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors,
8 \$190,000 in cash to reimburse Community Bank for its reasonable fees and costs.

9 **6. Class 6 – Parcels 6-8 Senior Claims**

10 Class 6 consists of the Parcels 6-8 Senior Claims. On the Effective Date, First National Bank
11 shall receive, in complete satisfaction of the Parcels 6-8 Senior Claims, (a) from the Debtor, all of
12 the Debtor’s right, title and interest in and to Parcel 6, Parcel 7 and Parcel 8 on an “as is, where is”
13 basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and
14 equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code and
15 (b) from the Guarantors, the reasonable attorneys fees and costs incurred by First National Bank in
16 connection with the Parcels 6-8 Senior Loan Documents as agreed to by the Debtor and First
17 National Bank or, in the absence of such agreement, as ordered by the Bankruptcy Court.

18 **7. Class 7 – Parcels 6-8 Junior Claims**

19 Class 7 consists of Allowed Parcels 6-8 Junior Claims. On the Effective Date, First National
20 Bank, as successor in interest to First National Capital, shall receive, in complete satisfaction of the
21 Parcels 6-8 Junior Claims, (a) from the Debtor, all of the Debtor’s right, title and interest in and to
22 Parcel 6, Parcel 7 and Parcel 8 on an “as is, where is” basis free and clear of all Claims and interests,
23 including, without limitation, Liens of creditors and equity security holders pursuant to section
24 1141(c) and section 363(f) of the Bankruptcy Code and (b) from the Guarantors, the reasonable
25 attorneys fees and costs incurred by First National Bank in connection with the Parcels 6-8 Junior
26 Loan Documents as agreed to by the Debtor and First National Bank or, in the absence of such
27 agreement, as ordered by the Bankruptcy Court.

8. Class 8 – Parcel 9 Senior Claims

Class 8 consists of Allowed Parcel 9 Senior Claims. On the Effective Date, each holder of a Parcel 9 Senior Claim shall receive, in complete satisfaction of its Parcel 9 Senior Claim, preferred membership units in Parcel 9 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 9 Senior Claims. The operating agreement for Parcel 9 Resolution Company shall provide that any common membership units of Parcel 9 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 9 Resolution Company have received cash dividends in an amount equal to the aggregate amount of Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 9 Senior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 9 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in respect of the Parcel 9 Senior Claims under the Parcel 9 Senior Loan Documents. On the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 9 to Parcel 9 Resolution Company on an "as is, where is" basis free and clear of all Claims and interests, including, without limitation, Liens of creditors and equity security holders pursuant to section 1141(c) and section 363(f) of the Bankruptcy Code.

9. Class 9 – Parcel 9 Junior Claims

Class 9 consists of Allowed Parcel 9 Junior Claims. On the Effective Date, each holder of a Parcel 9 Junior Claim shall receive, in complete satisfaction of its Parcel 9 Junior Claim, common membership units in Parcel 9 Resolution Company equal to such holder's percentage of the aggregate amount of Parcel 9 Junior Claims. The operating agreement for Parcel 9 Resolution Company shall provide that any common membership units of the Parcel 9 Resolution Company shall not be entitled to receive any distributions until the holders of the preferred membership units in Parcel 9 Resolution Company have received cash dividends in an amount equal to the aggregate amount of the Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 9 Junior Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders of Parcel 9 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in

1 respect of the Parcel 9 Junior Claims under the Parcel 9 Junior Loan Documents. On the Effective
2 Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 9 to Parcel 9
3 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
4 including, without limitation, Liens of creditors and equity security holders pursuant to section
5 1141(c) and section 363(f) of the Bankruptcy Code.

6 **10. Class 10 – Parcel 10 Senior Claims**

7 Class 10 consists of Allowed Parcel 10 Senior Claims. On the Effective Date, each holder of
8 a Parcel 10 Senior Claim shall receive, in complete satisfaction of its Parcel 10 Senior Claim,
9 preferred membership units in Parcel 10 Resolution Company equal to such holder’s percentage of
10 the aggregate amount of Parcel 10 Senior Claims. The operating agreement for Parcel 10 Resolution
11 Company shall provide that any common membership units of Parcel 10 Resolution Company shall
12 not be entitled to receive any distributions until the holders of the preferred membership units in
13 Parcel 10 Resolution Company have received cash dividends in an amount equal to the aggregate
14 amount of Parcel 10 Senior Claims. In addition, if all of the holders of Parcel 10 Senior Claims are
15 Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders
16 of Parcel 10 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in
17 respect of the Parcel 10 Senior Claims under the Parcel 10 Senior Loan Documents. On the
18 Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 10 to Parcel
19 10 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
20 including, without limitation, Liens of creditors and equity security holders pursuant to section
21 1141(c) and section 363(f) of the Bankruptcy Code.

22 **11. Class 11 –Parcel 10 Junior Claims**

23 Class 11 consists of Allowed Parcel 10 Junior Claims. On the Effective Date, each holder of
24 a Parcel 10 Junior Claim shall receive, in complete satisfaction of its Parcel 10 Junior Claim,
25 common membership units in Parcel 10 Resolution Company equal to such holder’s percentage of
26 the aggregate amount of Parcel 10 Junior Claims. The operating agreement for Parcel 10 Resolution
27 Company shall provide that any common membership units of Parcel 10 Resolution Company shall
28

1 not be entitled to receive any distributions until the holders of the preferred membership units in
2 Parcel 10 Resolution Company have received cash dividends in an amount equal to the aggregate
3 amount of the Parcel 9 Senior Claims. In addition, if all of the holders of Parcel 10 Junior Claims
4 are Releasing Lenders, on the Effective Date, the Guarantor shall make a cash payment to the
5 holders of Parcel 10 Junior Claims in an amount equal to the reasonable attorneys fees and costs
6 payable in respect of the Parcel 10 Junior Claims under the Parcel 10 Junior Loan Documents. On
7 the Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 10 to
8 Parcel 10 Resolution Company on an “as is, where is” basis free and clear of all Claims and
9 interests, including, without limitation, Liens of creditors and equity security holders pursuant to
10 section 1141(c) and section 363(f) of the Bankruptcy Code.

11 **12. Class 12 – Parcel 11 Senior Claims**

12 Class 12 consists of Allowed Parcel 11 Senior Claims. On the Effective Date, each holder of
13 a Parcel 11 Senior Claim shall receive, in complete satisfaction of its Parcel 11 Senior Claims,
14 preferred membership units in Parcel 11 Resolution Company equal to such holder’s percentage of
15 the aggregate amount of Parcel 11 Senior Claims. The operating agreement for Parcel 11 Resolution
16 Company shall provide that any common membership units of Parcel 11 Resolution Company shall
17 not be entitled to receive any distributions until the holders of the preferred membership units in
18 Parcel 11 Resolution Company have received cash dividends in an amount equal to the aggregate
19 amount of Parcel 11 Senior Claims. In addition, if all of the holders of Parcel 11 Senior Claims are
20 Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders
21 of Parcel 11 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in
22 respect of the Parcel 11 Senior Claims under the Parcel 9 Senior Loan Documents. On the Effective
23 Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 11 to Parcel 11
24 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
25 including, without limitation, Liens of creditors and equity security holders pursuant to section
26 1141(c) and section 363(f) of the Bankruptcy Code.

1 **13. Class 13 – Parcel 11 Junior Claims**

2 Class 13 consists of Allowed Parcel 11 Junior Claims. On the Effective Date, each holder of
3 a Parcel 11 Junior Claim shall receive, in complete satisfaction of its Parcel 11 Junior Claims,
4 common membership units in Parcel 11 Resolution Company equal to such holder’s percentage of
5 the aggregate amount of Parcel 11 Junior Claims. The operating agreement for Parcel 11 Resolution
6 Company shall provide that any common membership units of Parcel 11 Resolution Company shall
7 not be entitled to receive any distributions until the holders of the preferred membership units in
8 Parcel 11 Resolution Company have received cash dividends in an amount equal to the aggregate
9 amount of Parcel 11 Senior Claims. In addition, if all of the holders of Parcel 11 Junior Claims are
10 Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders
11 of Parcel 11 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in
12 respect of the Parcel 11 Junior Claims under the Parcel 9 Senior Loan Documents. On the Effective
13 Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 11 to Parcel 11
14 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
15 including, without limitation, Liens of creditors and equity security holders pursuant to section
16 1141(c) and section 363(f) of the Bankruptcy Code.

17 **14. Class 14 – Parcel 12 Senior Claims**

18 Class 14 consists of Allowed Parcel 12 Senior Claims. On the Effective Date, each holder of
19 a Parcel 12 Senior Claim shall receive, in complete satisfaction of its Parcel 12 Senior Claim,
20 preferred membership units in Parcel 12 Resolution Company equal to such holder’s percentage of
21 the aggregate amount of Parcel 12 Senior Claims. The operating agreement for Parcel 12 Resolution
22 Company shall provide that any common membership units of Parcel 12 Resolution Company shall
23 not be entitled to receive any distributions until the holders of the preferred membership units in
24 Parcel 12 Resolution Company have received cash dividends in an amount equal to the aggregate
25 amount of Parcel 12 Senior Claims. In addition, if all of the holders of Parcel 12 Senior Claims are
26 Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders
27 of Parcel 12 Senior Claims in an amount equal to the reasonable attorneys fees and costs payable in
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1 respect of the Parcel 12 Senior Claims under the Parcel 12 Senior Loan Documents. On the
2 Effective Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 12 to Parcel
3 12 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
4 including, without limitation, Liens of creditors and equity security holders pursuant to section
5 1141(c) and section 363(f) of the Bankruptcy Code.

6 **15. Class 15 –Parcel 12 Junior Claims**

7 Class 15 consists of Allowed Parcel 12 Junior Claims. On the Effective Date, each holder of
8 a Parcel 12 Junior Claim shall receive, in complete satisfaction of its Parcel 12 Junior Claim,
9 common membership units in Parcel 12 Resolution Company equal to such holder’s percentage of
10 the aggregate amount of Parcel 12 Junior Claims. The operating agreement for Parcel 12 Resolution
11 Company shall provide that any common membership units of Parcel 12 Resolution Company shall
12 not be entitled to receive any distributions until the holders of the preferred membership units in
13 Parcel 12 Resolution Company have received cash dividends in an amount equal to the aggregate
14 amount of Parcel 12 Senior Claims. In addition, if all of the holders of Parcel 12 Junior Claims are
15 Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to the holders
16 of Parcel 12 Junior Claims in an amount equal to the reasonable attorneys fees and costs payable in
17 respect of the Parcel 12 Junior Claims under the Parcel 12 Junior Loan Documents. On the Effective
18 Date, the Debtor shall transfer all of its right, title and interest in and to Parcel 12 to Parcel 12
19 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
20 including, without limitation, Liens of creditors and equity security holders pursuant to section
21 1141(c) and section 363(f) of the Bankruptcy Code.

22 **16. Class 16 –Parcels 13-15 Claims**

23 Class 16 consists of Allowed Parcels 13-15 Claims. On the Effective Date, each holder of a
24 Parcels 13-15 Claim shall receive, in complete satisfaction of its Parcels 13-15 Claim, common
25 membership units in Parcels 13-15 Resolution Company equal to such holder’s percentage of the
26 aggregate amount of Parcels 13-15 Senior Claims. On the Effective Date, the Debtor shall transfer
27 all of its right, title and interest in and to Parcel 13, Parcel 14 and Parcel 15 to Parcels 13-15
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1 Resolution Company on an “as is, where is” basis free and clear of all Claims and interests,
2 including, without limitation, Liens of creditors and equity security holders pursuant to section
3 1141(c) and section 363(f) of the Bankruptcy Code. In addition, if all of the holders of Parcels 13-15
4 Claims are Releasing Lenders, on the Effective Date, the Guarantors shall make a cash payment to
5 the holders of Parcels 13-15 Claims in an amount equal to the reasonable attorneys fees and costs
6 payable in respect of the Parcels 13-15 Claims under the Parcels 13-15 Loan Documents.

7 **17. Class 17 – Insider Unsecured Claims**

8 Class 17 consists of the Allowed Insider Unsecured Claims. On the Effective Date, the
9 holders of Allowed Insider Unsecured Claims shall release all of their Allowed Insider Unsecured
10 Claims. In exchange, the Debtor shall release any and all claims that it may hold against such
11 holders and, if applicable, against each of such holders officers, directors, shareholders and
12 Affiliates, including, without limitation, any Avoidance Actions.

13 As noted above, the Guarantors received substantial amounts from the Debtor and its
14 predecessors in the form of equity distributions. Fraudulent transfer claims could be asserted against
15 the Guarantors on the grounds that such transfers were (a) for less than reasonably equivalent value,
16 (b) left the Debtor with unreasonably small capital in relation to its business at the time, and (c) were
17 made at a time when the Debtor intended to incur, or believed or reasonably should have believed
18 that it would incur debts beyond its ability to pay as such debts matured, in that when the Property
19 did not generate any income to pay debt service or amortize any of the indebtedness to satisfy the
20 debts as they came due. ***The Plan releases these claims against the Guarantors and the other***
21 ***holders of Insider Unsecured Claims.*** The Debtor believes that such releases are warranted under
22 the standards identified in *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986).

23 To approve a release, the Court must find that the compromise is fair and equitable. In
24 determining the fairness, reasonableness and adequacy of a compromise, the court must consider: (a)
25 the probability of success in litigation; (b) any potential difficulties with respect to collection; (c) the
26 complexity, expense, inconvenience and delay attendant to the litigation; and (d) the paramount
27 interest of the creditors and proper deference to their reasonable views.

1 Here, the Debtor believes that the release of the Guarantors and the holders of Insider
2 Unsecured Claims in exchange for such entities' release of their \$1.2 million in claims against the
3 Debtor is reasonable. First, the claims against the Guarantors and the holders of Insider Unsecured
4 Claims are complex, and litigating them will be expensive, as they involve transfers over a four year
5 period and will require expert analysis regarding the Debtor's capital requirements at multiple points
6 in time. Second, the merits of the claims against the Guarantors and the holders of Insider
7 Unsecured Claims are unclear. The loans received by the Debtor were made pursuant to an appraisal
8 procured by the Lenders in respect of City Crossing Project that shows substantial equity in the
9 property, placing into question of whether the Debtor was insolvent at the time of the transfers.
10 Third, even if a judgment against the Guarantors and holders of Insider Unsecured Claims were
11 achieved, the ability to collect on the judgment is questionable. The Guarantors financial condition
12 has been significantly harmed by the current crisis in the real estate market, and a large judgment
13 against may not be collectable. Fourth, the Debtor's believe that the value of the Property should be
14 sufficient to satisfy all of the Claims of the Lenders, leaving only a small amount of unsecured
15 claims to receive distributions from any potential avoidance recoveries. Under the circumstances,
16 the \$1.2 million from PD&C in the form of debt relief is a reasonable amount of consideration that
17 justifies a release of claims.

18 **18. Class 18 – Other Unsecured Claims**

19 Class 18 consists of Allowed Other Unsecured Claims. On the Distribution Date, each
20 holder of an Allowed Other Unsecured Claim shall receive, in complete satisfaction of its Allowed
21 Other Unsecured Claim, a beneficial interest in the Litigation Trust entitling such holder to receive
22 its Pro Rata Share of any proceeds from the Litigation Trust Assets; provided that such holder shall
23 not be entitled to receive in an amount in excess of such holder's Allowed Other Unsecured Claim.

24 **19. Class 19 – Equity Interests**

25 Class 19 consists of Equity Interests in the Debtor. On the Effective Date, all of the Equity
26 Interests in the Debtor shall be cancelled and the holder of such Equity Interests shall receive a
27 beneficial interest in the Litigation Trust which shall entitle such holder to receive any and all
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1 proceeds from the Litigation Trust Assets remaining after the holders of Claims in Class 18 shall
2 have been paid in full.

3 **C. Implementation of the Plan**

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

5 **1. Creation of Limited Liability Companies.** On or before the Effective Date,
6 the Debtor shall create Parcel 9 Resolution Company, Parcel 10 Resolution Company, Parcel 11
7 Resolution Company, Parcel 12 Resolution Company and Parcels 13-15 Resolution Company as
8 Nevada limited liability companies; provided, that the Debtor shall not own any interests in such
9 limited liability companies, which, instead, shall be owned by the applicable Lenders as provided for
10 in the Plan. The operating agreements of such limited liability companies shall be consistent with
11 the Plan in all respects and shall be filed with the Bankruptcy Court prior to the Confirmation Date.
12 Without limiting the generality of the foregoing, the operating agreements of Parcel 9 Resolution
13 Company and Parcel 10 Resolution Company shall name Aspen Financial as the managing member
14 and shall provide Aspen Financial with full authority to sell the assets transferred to such companies
15 under the Plan on a commercially reasonable basis. The operating agreements of Parcel 11
16 Resolution Company and Parcel 12 Resolution Company shall name Clayton Mortgage as the
17 managing member and shall provide Clayton Mortgage with full authority to sell the assets
18 transferred to such companies under the Plan on a commercially reasonable basis.

19 **2. Transfer of Parcels.** On the Effective Date of the Plan, the Debtor shall
20 execute such documents as are reasonable and necessary to transfer all of the Debtor's right, title and
21 interest in and to the Property as required by the Plan on as "as is, where is" basis free and clear of
22 all Claims and interests, including, without limitation, Liens pursuant to section 1141(c) of section
23 363(f) of the Bankruptcy Code, including, without limitation, any Claims and interests relating to the
24 Development Agreement. Without limiting the generality of the foregoing, the Debtor shall execute
25 any and all Grant Bargain and Sale Deeds (the "Deeds") as may be required or reasonably requested
26 by the Lenders to transfer the Property as required by the Plan.

1 **3. Valuation Motion.** The Plan shall constitute a motion requesting that the
2 Bankruptcy Court determine the fair market value of Parcel 1, Parcel 9, Parcel 10, Parcel 11, Parcel
3 12, Parcel 13, Parcel 14 and Parcel 15. Absent agreement of the parties with an interest in any such
4 Parcel, the Bankruptcy Court shall determine the Fair Market Value of such Parcel at the
5 Confirmation Hearing. The value of any such Parcel, whether determined by agreement or by the
6 Bankruptcy Court, shall be the “Fair Market Value” of such Parcel. The order approving the
7 Disclosure Statement shall contain a scheduling order in respect of the valuation proceeds described
8 in Section 5.3 of the Plan, including a schedule for filing briefs and presenting evidence to the
9 Bankruptcy Court.

10 **4. Guarantor Payments.** On or before the Effective Date, the Guarantors shall
11 make all payments required to be made by the Guarantors hereunder in cash.

12 **5. Creation of the Litigation Trust.** On the Effective Date, the Debtor and the
13 Litigation Trustee shall execute the Litigation Trust Agreement and shall take all other steps
14 necessary to establish the Litigation Trust in accordance with the Plan. Notwithstanding any
15 prohibition of assignability under applicable non-bankruptcy law, on the Effective Date, the Debtor
16 shall be deemed to have automatically transferred to the Litigation Trust all of its right, title, and
17 interest in and to all of the Litigation Trust Assets, and in accordance with section 1141 of the
18 Bankruptcy Code, the Litigation Trust Assets shall automatically vest in the Litigation Trust free and
19 clear of all Claims and interests, subject only to the Allowed Claims of the Beneficiaries as set forth
20 in the Plan and the expenses of the Litigation Trust as provided in the Litigation Trust Agreement.
21 On the Effective Date, the Debtor shall have no interest in or with respect to the Litigation Trust
22 Assets or the Litigation Trust.

23 **6. Nature of the Litigation Trust.** The Litigation Trust shall be established for
24 the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no
25 objective to continue or engage in the conduct of a trade or business, except to the extent reasonably
26 necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the
27 Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the
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1 Yamagata Avoidance Actions, make timely distributions to the Beneficiaries and not unduly prolong
2 its duration. The Litigation Trust shall not be deemed a successor-in-interest of the Debtor for any
3 purpose other than as specifically set forth herein or in the Litigation Trust Agreement. The
4 Litigation Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the
5 Beneficiaries treated as grantors and owners of the Litigation Trust. As soon as practicable after the
6 Effective Date, the Litigation Trustee (to the extent that the Litigation Trustee deems it necessary or
7 appropriate in his or her sole discretion) shall value the Litigation Trust Assets based on the good
8 faith determination of the Litigation Trustee. The valuation shall be used consistently by all parties
9 for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the
10 valuation of the Litigation Trust Assets.

11 **7. Nature of the Litigation Trust.** Subject to the provisions of Article V of the
12 Plan, the Litigation Trustee shall distribute to the Beneficiaries all net Cash income plus all net Cash
13 proceeds from the liquidation of the Litigation Trust Assets (including as Cash for this purpose, all
14 Cash equivalents) at such time intervals as decided by the Litigation Trustee in its discretion,
15 pursuant to the terms of the Plan.

16 **8. The Litigation Trustee.** On the Effective Date, the Lenders holding Other
17 Unsecured Claims and the Guarantors shall designate an individual to serve as the Litigation
18 Trustee. The Litigation Trustee shall have all powers, rights and duties of a trustee and shall be the
19 estate representative designated to prosecute the Yamagata Avoidance Actions. Without limiting the
20 generality of the foregoing, the Litigation Trustee shall (i) hold, administer and prosecute the
21 Litigation Trust Assets and any proceeds thereof, (ii) have the power and authority to retain, as an
22 expense of the Litigation Trust, attorneys, advisors, other professionals and employees as may be
23 appropriate to perform the duties required of the Litigation Trustee hereunder or in the Litigation
24 Trust Agreement, (iii) make distributions to the Beneficiaries as provided in the Litigation Trust
25 Agreement and the Plan, (iv) have the right to receive reasonable compensation for performing
26 services as Litigation Trustee and to pay the reasonable fees, costs and expenses of any counsel,
27 professionals, advisors or employees as may be necessary to assist the Litigation Trustee in
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1 performing the duties and responsibilities required under the Plan and the Litigation Trust
2 Agreement, and (v) provide periodic reports and updates regarding the status of the administration of
3 the Litigation Trust Assets and the assets, liabilities and transfers of the Litigation Trust. In the
4 event the Litigation Trustee is no longer willing or able to serve as trustee, then the successor shall
5 be appointed by the mutual agreement of the Trust Board or as otherwise determined by the
6 Bankruptcy Court, and notice of the appointment of such Litigation Trustee shall be filed with the
7 Bankruptcy Court.

8 **9. Access to Information.** Until the Litigation Trust is terminated, the Lenders
9 holding Other Unsecured Claims and the Guarantors shall (i) have access to all reports, documents,
10 memoranda and other work product of the Litigation Trustee and (ii) have the right to monitor the
11 actions of the Litigation Trustee and to receive monthly status reports from the Litigation Trustee as
12 to the status of the litigation, settlement, administration and pursuit of the Yamagata Avoidance
13 Actions, and (iii) have the right to monitor and receive periodic reports and updates from the
14 Litigation Trustee regarding the status of the administration of the Litigation Trust Assets.

15 **10. Funding of the Litigation Trust.** On the Effective Date, the Guarantors shall
16 contribute \$100,000 to the Litigation Trust (the “Guarantor Funding Contribution”) to be used solely
17 for the fees, costs and expenses of the Litigation Trustee and the Litigation Trust for administering
18 the Litigation Trust and the Litigation Trust Assets, including the payment of trust expenses and
19 professionals, advisors and employees retained by the Litigation Trustee. Neither the Debtor nor the
20 Guarantors shall be liable for any expenses of the Litigation Trustee or the Litigation Trust except to
21 the extent of the Guarantor Funding Contribution. *The Avoidance Actions to be asserted against*
22 *the Yamagata Group are complex and will costs significantly more than \$100,000 to prosecute.*
23 *As a result, the Litigation Trustee will likely hire an attorney to prosecute such Avoidance Actions*
24 *on a contingency fee basis.*

25 **11. Termination of Litigation Trust.** The Litigation Trust will terminate as soon
26 as practicable, but in no event later than the seventh (7th) anniversary of the Effective Date;
27 provided that, on or prior to the date of such termination, the Bankruptcy Court, upon motion by a
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1 party in interest, may extend the term of the Litigation Trust for a finite period, if such an extension
2 is necessary to liquidate the Litigation Trust Assets or for other good cause. Notwithstanding the
3 foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained
4 prior to the expiration of each extended term; provided that the Litigation Trustee receives an
5 opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension
6 would not adversely affect the status of the Litigation Trust as a grantor trust for federal income tax
7 purposes.

8 **12. Exculpation; Indemnification.** The Litigation Trustee and the individuals
9 comprising the Trust Board, and their respective professionals, shall be exculpated and indemnified
10 pursuant to the terms of the Litigation Trust Agreement.

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

15 **14. Post-Confirmation Matters.** Except as otherwise set forth in the Plan, on
16 and after the Effective Date, without need for further action by the members or managers of the
17 Debtor, and without further order of the Bankruptcy Court, Aquila Management, LLC shall be
18 appointed estate representative under section 1123 of the Bankruptcy Code and shall be solely
19 responsible for and shall have authority to: (a) make all Distributions required to be made on or after
20 the Effective Date to the holders of Allowed Claims; (b) settle, resolve and object to Claims; (c) pay
21 all fees payable under 28 U.S.C. § 1930; (d) file any post Confirmation reports required by the
22 Bankruptcy Code or the Bankruptcy Court; (e) retain, employ and utilize such Professionals as may
23 be necessary without further approval of the Bankruptcy Court; (f) do all things necessary and
24 appropriate to fulfill the duties and obligations of the Debtor and the Reorganized Debtor under the
25 Plan, the Confirmation Order, the Bankruptcy Code and the Bankruptcy Rules; (g) dissolve the
26 Debtor as permitted by applicable law and (h) move for the entry of a Final Decree and prepare and
27 file any pleadings as may be required by the Bankruptcy Court in connection with the Final Decree
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1 and the closing of the Chapter 11 Case. Notwithstanding the foregoing, it is expressly understood
2 that the Reorganized Debtor shall have no authority over the Litigation Trustee or the Litigation
3 Trust Assets, all of which shall be administered as provided in 5.8 of the Plan.

4 **15. Release of Avoidance Actions Against Lenders.** As part of the
5 consideration to be provided to the Lenders under the Plan, on the Effective Date, the Debtor shall
6 and hereby does release all Avoidance Actions against the Lenders and all such Avoidance Actions
7 shall be extinguished as of the Effective Date. Subject to Section 5.17, the release set forth in this
8 Section 5.15 shall not affect any claims or defenses that the Guarantors may have against the
9 Lenders, all of which are expressly preserved.

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

3 **17. Release of Claims by Debtor Parties.** Without limiting and in addition to
4 the releases set forth in Section 5.15, on the Effective Date, each Debtor Party hereby forever
5 releases and discharges each Releasing Lender Party from any and all claims, demands, causes of
6 action and rights of every kind, nature or character arising or existing on or before the Effective Date
7 arising out of or in any way related to the Loan Documents, or the loans made pursuant thereto or
8 administered thereby, including, without limitation, any claims arising from such Releasing Lender
9 Party's exercise of remedies against such Debtor Party, including, without limitation, the taking of
10 any setoffs; whether absolute, inchoate or contingent; whether determined or undetermined, known
11 or unknown, proven or unproven; whether held individually, jointly, or jointly and severally;
12 whether arising directly, indirectly, derivatively, or by way of any legal or equitable right of
13 subrogation, contribution, indemnity, estoppel, marshalling of assets or otherwise; whether for
14 compensation, relief, protection, punishment or any other remedy or result of any kind, character or
15 nature; whether based upon any intentional or negligent conduct, strict liability, any tort of any kind,
16 upon any breach of any contract or upon any other grounds or upon any other theory whatsoever;
17 whether asserted or subject to assertion by complaint, cross-complaint, counterclaim, affirmative
18 defense, or other pleading, by motion, by notice or otherwise; whether asserted or subject to
19 assertion in any jurisdiction, in any court or other forum or with any federal, state, county, municipal
20 or other governmental authority, agency or official; and whether arising at law, in equity or
21 otherwise.

22 **18. Non-Debtor Guarantees Not Affected.** The parties hereto acknowledge that
23 the Guarantors, certain other affiliates of the Debtor and/or the Guarantors and the Releasing
24 Lenders are parties to loan documents evidencing loans to affiliates of the Debtor (the "Other
25 Loans") and that nothing herein, including in Section 5.16 of the Plan shall affect, waive or release
26 the obligations or liabilities of the Guarantors to the Releasing Lenders in respect of the Other
27 Loans.
28

1 **19. Preservation of Claims and Rights.** Except as expressly set forth in the
2 Plan, nothing in the Plan shall be deemed to constitute a waiver of the powers of the Debtor as a
3 debtor-in-possession under the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, and the
4 Debtor and the Reorganized Debtor as applicable shall retain after the Confirmation Date and after
5 the Effective Date all powers granted by the Bankruptcy Code, the Bankruptcy Rules and the Local
6 Rules, including, without limitation, the power to avoid transfers and obligations, to recover property
7 and to object to, and/or seek subordination of, Claims. Confirmation of the Plan effects no
8 settlement, compromise, waiver or release of any Claim, cause of action or claim for relief held by
9 the Debtor or Reorganized Debtor unless the Plan or Confirmation Order specifically and
10 unambiguously so provides. The Debtor intends that the nondisclosure or non-discussion of any
11 particular Claim, cause of action or claim for relief held by the Debtor shall not be construed as a
12 settlement, compromise, waiver or release of any such Claim, cause of action or claim for relief held
13 by the Debtor. Except as otherwise provided in the Plan or the Confirmation Order, the Debtor and
14 the Reorganized Debtor reserve any and all of their Claims and rights against any and all third
15 parties, whether such Claims and rights arose before, on or after the Petition Date, the Confirmation
16 Date, the Effective Date and/or the Distribution Date. The entry of the Confirmation Order shall not
17 constitute *res judicata* or otherwise bar, estop or inhibit any actions by the Debtor or the
18 Reorganized Debtor upon any Claims it holds as identified herein or otherwise. **Without limiting**
19 **the generality of the foregoing, the Debtor expressly intends to preserve the Yamagata**
20 **Avoidance Actions and to transfer such causes of action of the Litigation Trust to be**
21 **prosecuted by the Litigation Trustee for the benefit of the Beneficiaries to the fullest extent**
22 **permitted by applicable law. Nothing in the Plan is intended to release, modify, adjudicate or**
23 **affect any such Avoidance Actions in any manner whatsoever. THE YAMAGATA GROUP IS**
24 **HEREBY ADVISED THAT IF AND WHEN THE YAMAGATA AVOIDANCE ACTIONS**
25 **ARE BROUGHT, THE LIQUIDATING TRUST MAY AND WILL LIKELY SEEK TO**
26 **DISALLOW ANY CLAIMS OF THE YAMAGATA GROUP AGAINST THE DEBTOR**
27 **UNDER SECTION 502(d) OF THE BANKRUPTCY CODE.**
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1 **20. Operation Pending Effective Date.** Until the Effective Date, the Debtor will
2 continue to operate its business, subject to all applicable requirements of the Bankruptcy Code and
3 the Bankruptcy Rules.

4 **IX. CONDITIONS PRECEDENT**

5 **A. Condition to Confirmation**

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

8 **B. Conditions to Effectiveness**

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

- 10 (a) the Confirmation Date shall have occurred;
- 11 (b) the Confirmation Order shall have been entered, shall be a Final Order and
12 shall include, without limitation, the following provisions: (i) a finding that the Lenders are not
13 successors of the Debtor and shall not incur any liabilities of the Debtor unless any such liability is
14 expressly assumed, (ii) to the extent permitted by applicable law, a permanent injunction enjoining
15 each and every holder of a Claim or interest from commencing, continuing or otherwise pursuing or
16 enforcing any remedy, claim, cause of action or encumbrance relating to the Debtor against the
17 Lenders or the Parcels, (iii) a finding that the Debtor has good and marketable title to the Parcels and
18 that the transfer of such Parcels shall be free and clear of all Claims and interests, including, without
19 limitation, the Development Agreement pursuant to section 1141(c) and section 363(f) of the
20 Bankruptcy Code, (iv) a paragraph authorizing the Debtor to transfer the Parcels on the terms and
21 conditions set forth in the Plan, (v) a paragraph providing that the Bankruptcy Court shall retain
22 jurisdiction for the purpose of enforcing the provisions of the Confirmation Order including, without
23 limitation, compelling delivery of the Parcels to the Lenders and protecting the Lenders against any
24 Claims and interests against the Debtor or any of the Parcels, (vi) a finding that there are no brokers
25 involved in consummating the transfers set forth herein and that no brokers' commissions are due,
26 (viii) a finding that the releases set forth in the Plan and fully effective and enforceable under
27 applicable law; and (vii) a finding that, pursuant to Section 1146(a) of the Bankruptcy Code, the
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1 transfer of the Parcels shall be free and clear of any and all transfer tax, stamp tax, or similar taxes;
2 provided, that the Debtor reserves the right to cause the Effective Date to occur notwithstanding the
3 pendency of an appeal of the Confirmation Order under circumstances that such parties believe
4 would moot such appeal;

5 (c) The Lenders entitled to payments from the Guarantors under the Plan shall
6 have received certified funds from the Guarantors in the amounts set forth in the Plan;

7 (d) With respect to each Parcel being transferred under the Plan, the Debtor
8 and/or the Guarantors shall have paid all outstanding property taxes, assessments or other items
9 which would, (i) pursuant to statute, law or regulation constitute liens upon such Parcel and (ii)
10 constitute administrative claims pursuant to section 503(b)(1)(B)(i) of the Bankruptcy Code;

11 (e) Community Bank shall have received reasonable written assurances from a
12 title insurer reasonably acceptable to Community Bank and the Debtor that, at Community Bank's
13 expense, upon the transfer to Community Bank of Parcel 4 and Parcel 5 pursuant to the Plan, an
14 owner's policy of title insurance will be issued in favor of Community Bank with respect to such
15 Parcels, containing reasonable and customary endorsements and exceptions and insuring that
16 Community Bank's title to Parcel 4 and Parcel 5 is marketable, good of record and free and clear of
17 any and all Claims and interests, including Liens as provided for in this Plan; provided, that the
18 condition precedent set forth in Section 6.2(e) of the Plan shall not apply if Community Bank does
19 not act in a commercially reasonable manner to obtain such title insurance;

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

22 (g) the Debtor shall have delivered all of the Deeds to the Lenders in recordable
23 form and in substance satisfactory to the Lenders;

24 (h) November 18, 2008 shall not have occurred; and

25 (i) the Reorganized Debtor shall have received all approvals necessary or
26 appropriate to substantially consummate the Plan and enter into the related Plan Documents.

27 **C. Waiver of Conditions**
28

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

5 **D. Failure of Conditions**

6 If the Effective Date shall not occur, the Debtor and all other parties in interest shall retain all
7 their rights and remedies as if the Plan had not been proposed. Among other things, the Plan shall be
8 null and void and nothing contained in the Plan shall: (a) constitute a waiver of any Claims against
9 or Equity Interests in the Debtor, or (b) prejudice in any manner the rights of the Debtor or the
10 Lenders.

11 **X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

12 **A. Rejection of Executory Contracts and Unexpired Leases**

13 All unexpired leases and executory contracts of the Debtor, including, without limitation, the
14 Development Agreement shall be rejected by the Debtor as of the Effective Date pursuant to
15 Section 365(a) of the Bankruptcy Code.

16 **B. Bar Date**

17 All proofs of claim with respect to Claims arising from the rejection of any unexpired lease
18 or executory contracts pursuant to Section 7.1 of the Plan shall be filed with the Bankruptcy Court
19 and served on Debtor's counsel no later than thirty (30) days after the Effective Date. The holder of
20 any Claim not filed within such time shall be forever barred from asserting any such Claim or
21 receiving any Distribution on account of such Claim. Any Claims resulting from the rejection of
22 executory contracts shall be classified as Other Unsecured Claims for purposes of the Plan.

23 **XI. DISPUTED CLAIMS**

24 **A. Objection Deadlines.** Any objections to Administrative Claims and all other Claims
25 made after the Effective Date shall be filed and served on the holders of such Administrative Claims
26 and Claims not later than one hundred and twenty (120) days after the Effective Date, or such later
27 date as may be approved by the Bankruptcy Court via *ex parte* request.

1 deadline to be established by the Bankruptcy Court in respect of the Plan without the consent of such
2 Class. After the Confirmation Date and before substantial consummation of the Plan as defined in
3 section 1101(2) of the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy
4 Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission in, or
5 reconcile any inconsistencies in the Plan or the Confirmation Order, and to implement such action as
6 may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do
7 not materially and adversely affect the treatment of holders of Claims under the Plan; provided, that
8 prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or
9 applicable order of the Bankruptcy Court.

10 **B. Revocation or Withdrawal of the Plan.** The Debtor reserves the right to revoke or
11 withdraw the Plan at any time before the Confirmation Date. If the Plan is withdrawn or revoked,
12 then the Plan shall be deemed null and void, and nothing contained in the Plan or any Plan
13 Documents shall be deemed a waiver of any Claims by or against the Debtor or any other Person in
14 any further proceedings involving the Debtor.

15 **XIV. RETENTION OF JURISDICTION**

16 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective
17 Date, the Bankruptcy Court shall retain and have all authority and jurisdiction as is allowed under
18 the Bankruptcy Code and other applicable law to enforce the provisions, purposes, and intent of the
19 Plan including, without limitation, matters or proceedings that relate to:

20 (a) allowance, disallowance, determination, liquidation, classification, estimation,
21 or establishment of the priority or secured or unsecured status of any Claim, including, without
22 limitation, the resolution of any request for payment of any Administrative Claim and the resolution
23 of any and all objections to the allowance or priority of Claims;

24 (b) requests for payment of Claims entitled to priority under section 507(a) of the
25 Bankruptcy Code, including, without limitation, compensation and reimbursement of expenses for
26 Professionals to the extent Bankruptcy Court approval therefore is required under the Plan or the
27 Confirmation Order;

1 (c) the title, rights, or interests of the Debtor or Reorganized Debtor in any
2 property, including, without limitation, the Property and the recovery of all assets and property of the
3 Estate wherever located;

4 (d) any right, power, action, or duty of the Debtor or the Reorganized Debtor
5 under the Plan;

6 (e) any determination or estimation necessary or appropriate under section 505 of
7 the Bankruptcy Code or other determination or estimation relating to tax returns filed or to be filed
8 by the Debtor or the Reorganized Debtor for periods through the end of the fiscal year in which the
9 Effective Date occurs, including, without limitation, the determination of the amount of taxes, net
10 operating losses, tax attributes, tax benefits, tax refunds, and related matters of the Debtor or the
11 Reorganized Debtor;

12 (f) any matters related to the assumption, assumption and assignment, or rejection
13 of any executory contract or unexpired lease to which the Debtor or the Reorganized Debtor is a
14 party;

15 (g) ensuring that Distributions to holders of Allowed Claims are accomplished in
16 accordance with the Plan;

17 (h) resolution of controversies and disputes, including, without limitation, the
18 correction of any mistake, defect, or omission regarding consummation, interpretation or
19 enforcement of the Plan, the Confirmation Order, and any agreements referred to in the Plan or
20 executed in contemplation of or to implement the Plan;

21 (i) resolution of any motions, adversary proceedings, contested or litigated
22 matters, and any other matters involving the Debtor or the Reorganized Debtor that may be pending
23 on the Effective Date;

24 (j) entry of such orders as may be necessary or appropriate to implement or
25 consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements
26 or documents created in connection with the Plan;

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1 (k) modification of the Plan before or after the Effective Date under section 1127
2 of the Bankruptcy Code or any contract, instrument, release, or other agreement or document created
3 in connection with the Plan; or remedy any defect or omission or reconcile any inconsistency in any
4 Bankruptcy Court order, the Plan, or any contract, instrument, release, or other agreement or
5 document created in connection with the Plan in such manner as may be necessary or appropriate to
6 consummate the Plan, to the extent authorized by the Bankruptcy Code;

7 (l) the entry of an order including injunctions necessary to enforce the title,
8 rights, and powers of the Debtor or the Reorganized Debtor and the purposes and intent of the Plan,
9 and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as
10 the Bankruptcy Court may deem necessary;

11 (m) implementation of the provisions of the Plan and entry of such orders (i) in aid
12 of Confirmation of the Plan, including, without limitation, appropriate orders to protect the Debtor,
13 Reorganized Debtor, and Guarantors from actions by holders of Claims, or (ii) as are necessary or
14 appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or
15 vacated;

16 (n) determination of any other matters that (i) may arise in connection with or
17 relate to the Plan, the Confirmation Order or any contract, instrument, release, or other agreement or
18 document created in connection with the Plan or the Confirmation Order except as otherwise
19 provided in the Plan, or (ii) are otherwise provided under the Bankruptcy Code or other applicable
20 law; and

21 (o) entry of a Final Decree closing the Chapter 11 Case, including, without
22 limitation, provisions for injunctive relief as may be equitable, consistent with Bankruptcy
23 Rule 3022 and for retention of jurisdiction for the Bankruptcy Court for purposes of this Article 10.

24 **XV. FEASIBILITY**

25 In order for the Plan to be confirmed, the Bankruptcy Court must determine that the Plan is
26 feasible and is not likely to be followed by the need for further reorganization. The Debtor believes
27 that the Plan meets this test. In short, the Plan provides for the liquidation of its assets through the
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1 return of collateral to the Lenders, the payment of attorneys fees by the Guarantors to the Releasing
2 Lenders and the prosecution of Avoidance Actions against the Yamagata Group.

3 The provisions of the Plan calling for the return of collateral are feasible because the Debtor
4 is prepared to execute the deeds required to transfer the Parcels to the Lenders and will have the
5 legal authority to do so once the Plan is confirmed. The provisions regarding the payment of fees by
6 the Guarantors to the Lenders are feasible because the Guarantors do not expect such fees to exceed
7 \$500,000 and the Guarantors have sufficient liquidity to make such payments on the Effective Date.
8 Finally, the prosecution of the Avoidance Actions against the Yamagata Group is feasible because
9 the Debtor will transfer all of its Avoidance Actions against the Yamagata Group to the Liquidating
10 Trust on the Effective Date and the Guarantors will and have the means to fund \$100,000 into the
11 Litigation Trust so that the Litigation Trustee can determine if such claims have merit and hire
12 counsel to prosecute such claims if appropriate. *It is important to note that there is no guarantee*
13 *that the prosecution of the Avoidance Actions against the Yamagata Group will be successful,*
14 *only that such actions will be transferred to the Liquidation Trust and that there merits will be*
15 *explored by the Litigation Trustee.*

16 **XVI. TAX CONSEQUENCES OF THE PLAN**

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

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

25 **XVII. RISK FACTORS**

26 The restructuring of the Debtor contemplated by the Plan involves a degree of risk, and this
27 Disclosure Statement contains forward-looking statements that involve risks and uncertainty.
28

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

5 The largest risk facing holders of Claim is that the Plan will not be confirmed. Although the
6 Debtor believes that the Plan will satisfy all requirements necessary for Confirmation by the
7 Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same
8 conclusion. There can also be no assurance that modifications of the Plan will not be required for
9 Confirmation, that such modifications will not adversely affect the holders of Allowed Claims and
10 Equity Interests, or that such modifications will not necessitate the re-solicitation of votes.

11 Further, if any impaired class of Claims does not accept a plan of reorganization, a
12 bankruptcy court may nevertheless confirm such a plan of reorganization at the proponent's request
13 if at least one impaired class has accepted the plan of reorganization (without including the
14 acceptance of any "insider" in such class) and, as to each impaired class that has not accepted the
15 plan of reorganization, the bankruptcy court determines that the plan of reorganization "does not
16 discriminate unfairly" and is "fair and equitable" with respect to rejecting impaired classes.

17 The Debtor believes that it could satisfy the legal requirements for the "cramdown" of
18 Classes 1-19 (assuming one such Class accepts the Plan) on the Effective Date. Nevertheless, there
19 is no assurance that the Bankruptcy Court will confirm the Plan on a non-consensual basis, and the
20 possibility of non-confirmation is a risk factor of the Plan.

21 **IF ANY IMPAIRED CLASS FAILS TO ACCEPT THE PLAN IN ACCORDANCE WITH**
22 **SECTION 1129(a)(8) OF THE BANKRUPTCY CODE, THE DEBTOR RESERVES THE RIGHT**
23 **AND CURRENTLY INTENDS TO REQUEST NONCONSENSUAL CONFIRMATION OF THE**
24 **PLAN IN ACCORDANCE WITH SECTION 1129(b) OF THE BANKRUPTCY CODE.**

25 Even if the Plan is confirmed by the Bankruptcy Court, it may still not become "effective."
26 The Debtor notes that there are numerous conditions precedent to the effectiveness of the Plan and
27 there is no guarantee that all of these conditions precedent will be satisfied as required by the Plan.
28

1 Among other things, the effectiveness of the Plan is conditioned upon the Bankruptcy Court entering
2 an order confirming the Plan with certain legal finds. In addition, the Plan must become effective by
3 November 18, 2008 and Community Bank must be able to obtain title insurance in respect of Parcel
4 4 and Parcel 5. If any of the conditions precedent set forth in the Plan do not occur, the Plan will not
5 become effective and could be null and void. In such case, all parties will be in the same position
6 that they would have been in had the Plan not been Confirmed.

7 *We note that recoveries to non-insider unsecured creditors, including the Non-Releasing*
8 *Lenders holding deficiency claims, are entirely dependent on the successful prosecution of the*
9 *Avoidance Actions of the Debtor against the Yamagata Group and that there is no guarantee that*
10 *such a prosecution will be successful. Accordingly, there is a substantial risk under the Plan that*
11 *holders of non-insider unsecured claims will receive no distributions under the Plan, even if the*
12 *Plan is confirmed.*

13 **XVIII. LIQUIDATION ANALYSIS**

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

18 To apply the “best interests” test, the Bankruptcy Court must first calculate the aggregate
19 dollar amount that would be generated from a liquidation of the Debtor’s assets in a hypothetical
20 liquidation on the Effective Date under Chapter 7, including the amount of cash and other tangible
21 assets held by such Debtor and the value of any projected recoveries on actions against third parties
22 and other intangible assets held by such Debtor (the “Liquidation Value”). The Liquidation Value
23 must then be reduced by the costs of liquidation, including administrative costs of the Chapter 7
24 estates and compensation to the Chapter 7 trustee and other professionals retained by the trustee (the
25 “Liquidation Costs”). After estimating the Liquidation Value and the Liquidation Costs, the
26 Bankruptcy Court must ascertain the potential Chapter 7 recoveries by Creditors and then compare
27 those recoveries with the distributions offered under the Plan to determine if the Plan is in the “best
28

1 interests” of Creditors in each Class. Attached hereto as Exhibit B is a spreadsheet setting forth the
2 Liquidation Value, the Liquidation Costs, and the expected return to unsecured creditors in a
3 Chapter 7 case. As described with more particularity on Exhibit B, the Debtor believes that the Plan
4 provides a distribution in excess of what would be achieved in a hypothetical Chapter 7 liquidation.

5 **XIX. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

6 The following is a brief summary of the provisions of the Bankruptcy Code relevant to
7 acceptance and confirmation of a plan of reorganization. Holders of Claims and Equity Interests are
8 encouraged to review the relevant provisions of the Bankruptcy Code with their own attorneys.

9 **A. Acceptance of the Plan**

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

18 If one or more impaired Classes rejects the Plan, the Debtor may, in its discretion,
19 nevertheless seek confirmation of the Plan if the Debtor believes that the requirements of Section
20 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are summarized below) will be
21 met, despite the lack of acceptance by all Impaired Classes.

22 **B. Confirmation**

23 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold
24 a hearing on confirmation of a plan. Notice of the Confirmation Hearing regarding the Plan has been
25 provided to all known holders of Claims and Equity Interests or their respective representatives
26 along with a copy of this Disclosure Statement. The Confirmation Hearing may be adjourned from
27 time to time by the Bankruptcy Court without further notice except for an announcement of the
28

1 adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation
2 Hearing.

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

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

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

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

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

C. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan, even if such plan has not been accepted by all impaired Classes entitled to vote on such plan, provided that such plan has been accepted by at least one impaired Class. If any impaired Classes reject or are deemed to have rejected the Plan, the Debtor reserves the right to seek the application of the requirements set forth in Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all impaired Classes.

Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of an impaired Class to accept a plan or reorganization, the plan may be confirmed, on request of the plan proponent, in a procedure commonly known as “cramdown,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each Class of impaired Claims or Interests that has not accepted the plan.

The condition that a plan be “fair and equitable” with respect to a rejecting Class of Secured Claims can be satisfied if, among other things, the Secured Claim of a Creditor is paid in full on the Effective Date. Section 506(a) of the Bankruptcy Code provides that a Claim is a Secured Claim only to the extent of the value of the collateral securing such Claim. The Debtor believes that the treatment of the Secured Claims of the Lenders provided in the Plan satisfies the requirement that a plan be “fair and equitable” with respect to a rejecting Class of Secured Claims and is sufficient to cramdown Classes 1 – 16 because the Plan provides for the return of each Lender’s collateral to such

1 Lender, which, in effect, provides each Lender with property equal to the value of its secured claim.

2 The condition that a plan be “fair and equitable” with respect to a Class of unsecured
3 creditors requires unsecured creditors to be paid in full prior to any distributions to equity under the
4 plan. The Plan also satisfies this condition by requiring that unsecured creditors be paid in full prior
5 to equity receiving any property under the Plan. Indeed, the Plan expressly provides that equity
6 cannot receive distributions from the Litigation Trust after holders of unsecured claims have been
7 paid in full.

8 **XX. MISCELLANEOUS PROVISIONS**

9 **A. Settlement of Objections After the Effective Date**

10 From and after the Effective Date, the Estate Representative may litigate to Final Order,
11 propose settlements of, or withdraw objections to all pending or filed Disputed Claims and may
12 settle or compromise any Disputed Claim without notice and a hearing and without approval of the
13 Bankruptcy Court.

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

15 All Distributions are to be made to the holder of each Allowed Claim at the address of such
16 holder listed on the Schedules or proof of claim filed by such holder at the time of such Distribution.
17 If any holder’s Distribution is returned as undeliverable, no further Distributions to such holder shall
18 be made unless and until the Reorganized Debtor or the Litigation Trustee (as applicable) is notified
19 of such holder’s then current address, at which time all required Distributions shall be made to such
20 holder. Undeliverable Distributions shall be held by the Reorganized Debtor or the Litigation
21 Trustee (as applicable) until such Distributions are claimed. All claims for undeliverable
22 Distributions must be made within ninety (90) days following a Distribution. After such date, all
23 unclaimed Distributions will revert to the Reorganized Debtor and the Reorganized Debtor shall
24 donate such unclaimed Distribution to a charity of its choice notwithstanding any federal or state
25 escheat laws to the contrary.

1 **C. Time Bar to Cash Distributions**

2 Checks issued on account of Allowed Claims shall be null and void if not negotiated within
3 ninety (90) days from and after the date of issuance thereof. Requests for re-issuance of any check
4 shall be made directly to the Reorganized Debtor or the Litigation Trustee (as applicable) by the
5 holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in
6 respect of such avoided check shall be made on or before the later of (a) the first anniversary of the
7 Effective Date, or (b) ninety (90) days after the date of issuance of such check, if such check
8 represents a Distribution under the Plan on account of such Claim. After such date, all Claims in
9 respect of voided checks shall be discharged and forever barred and shall revert to the Reorganized
10 Debtor and the Reorganized Debtor shall donate such unclaimed Distribution to a charity of its
11 choice.

12 **D. Post-Effective Date Distributions**

13 Distributions made after the Effective Date to holders of Claims that are not Allowed Claims
14 as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been
15 made on the Effective Date.

16 **E. Fractional Amounts**

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

21 **F. Ex Parte Relief**

22 Upon *ex parte* motion by the Debtor after the Confirmation Date, or the Reorganized Debtor
23 after the Effective Date, the Bankruptcy Court may enter such other and further orders as may be
24 necessary or appropriate to instruct and direct the Debtor, the Reorganized Debtor, and others, and to
25 facilitate the Distributions contemplated in the Plan.

1 **G. Injunction Against Holders of Claims and Equity Interests**

2 On the Effective Date and except as otherwise provided in the Plan, all Persons who have
3 been, are, or may be holders of Claims against or Equity Interests in the Debtor shall be permanently
4 enjoined from taking any of the following actions against or affecting the Reorganized Debtor or its
5 assets or property with respect to such Claims or Equity Interests (other than actions brought to
6 enforce any rights or obligations under the Plan):

7 **a.** commencing, conducting or continuing in any manner, directly or
8 indirectly, any suit, action or other proceeding of any kind (including, without limitation, all suits,
9 actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or
10 dismissed with prejudice);

11 **b.** enforcing, levying, attaching, collecting or otherwise recovering by
12 any manner or means, whether directly or indirectly, any judgment, award, decree or order;

13 **c.** creating, perfecting or otherwise enforcing in any manner, directly or
14 indirectly, any encumbrance; and

15 **d.** asserting any setoff, right of subrogation or recoupment of any kind;
16 provided, that any defenses, offsets or counterclaims which the Debtor may have or assert in respect
17 of the above referenced Claims are fully preserved in accordance with Section 13.10 of the Plan.

18 **H. Binding Effect**

19 The Plan shall be binding on, and shall inure to the benefit of, the Debtor, the Reorganized
20 Debtor, and the holders of all Claims and Equity Interests and their respective successors and
21 assigns.

22 **I. Governing Law**

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

1 **J. Modification of Payment Terms**

2 At any time after the Effective Date, the Reorganized Debtor may modify the treatment of
3 any Allowed Claim or Equity Interest in any manner adverse to the holder of such Claim or Equity
4 Interest only with the prior written consent of the holder whose Allowed Claim or Equity Interest
5 treatment is being adversely affected.

6 **K. Setoffs**

7 The Debtor and the Reorganized Debtor may, but are not required to, set-off or recoup
8 against any Claim or Equity Interest and the payments or other Distributions to be made under the
9 Plan in respect of such Claim, Claims of any nature whatsoever that arose before the Petition Date
10 that the Debtor may have against the holder of such Claim or Equity Interest to the extent such
11 Claims may be set-off or recouped under applicable law, but neither the failure to do so nor the
12 Allowance of any Claim or Equity Interest under the Plan shall constitute a waiver or release by the
13 Debtor or the Reorganized Debtor (in its own capacity and as Estate Representative pursuant to
14 section 1123 of the Bankruptcy Code) of any such Claim that it may have against such holder.

15 **L. United States Trustee Fees**

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

19 **M. Computation of Time**

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

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N. Final Decree

After the Estate is fully administered, the Reorganized Debtor shall file an application for a final decree, and shall serve the application on the U.S. Trustee, together with a proposed final decree.

XXI. RECOMMENDATION AND CONCLUSION

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

Dated: September 26, 2008

Respectfully submitted,

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and

/s/ Roberto J. Kampfner _____

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**Exhibit A
To Disclosure Statement**

**DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION
DATED SEPTEMBER 26, 2008**

**Exhibit B
To Disclosure Statement**

Liquidation Analysis in Chapter 7

[to come]

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Exhibit C

YAMAGATA ENTITY PAYMENTS**PROJECT LIFE**

Entity	Date	75.38%	2.88%	1.75%	Total
		GYI Yamagata	Dave Senior	Steve Nielsen	
Playa Del Sol Purchase	12/13/2004	1,677,000.70	130,901.75	79,679.33	1,887,581.78
Sage Mountain Parcel 3, LLC Purchase	11/30/2005	6,575,986.97	250,825.37	152,676.31	6,979,488.65
Sage Mountain Parcel 2, LLC Purchase	1/6/2006	6,894,970.35	262,992.24	160,082.23	7,318,044.82
Sage Mountain Parcel 4, LLC Refinance	1/19/2006	4,546,049.23	171,109.67	104,153.71	4,821,312.61
Sage Mountain Parcel 7, LLC Sage Mountain Parcel 8, LLC Refinance	2/28/2006	9,032,300.41	344,515.60	209,705.15	9,586,521.16
Sage Mountain Parcel 5, LLC Sage Mountain Parcel 6, LLC Refinance	3/27/2006	8,041,962.01	306,741.50	186,712.22	8,535,415.73
Sage Mountain Parcel 8 Purchase	8/9/2006	2,595,186.08	118,058.51	71,861.70	2,785,106.29
SubTotal 12-31-06		<u>39,363,455.75</u>	<u>1,585,144.64</u>	<u>964,870.65</u>	<u>41,913,471.04</u>
Sage Mountain Parcel 4 Purchase	3/1/2007	3,138,587.00	119,714.00	72,869.00	3,331,170.00
Sage Mountain Parcel 5 Purchase	4/13/2007	3,658,969.00	139,563.00	84,951.00	3,883,483.00
Subtotal 2007		<u>6,797,556.00</u>	<u>259,277.00</u>	<u>157,820.00</u>	<u>7,214,653.00</u>
Total Payments		46,161,011.75	1,844,421.64	1,122,690.65	49,128,124.04