

Richard W. Ward  
6860 N. Dallas Pkwy., Suite 200  
Plano, TX 75024  
Attorney for Eastern Hills Country Club

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: Eastern Hills Country Club,                   §       Case No. 13-33123-sgj-11  
Debtor   §       Small Business Case under Chapter 11

**FIRST AMENDED EASTERN HILL COUNTRY CLUB'S DISCLOSURE STATEMENT,  
DATED APRIL 17, 2014**

**I. INTRODUCTION**

This is the disclosure statement (the "Disclosure Statement") in the small business chapter 11 case of Eastern Hills Country Club (The "Debtor"). This Disclosure Statement contains information about the Debtor and describes the First Amended Plan of Reorganization (the "Plan") filed by the Debtor and Robert Yaquinto, Jr., the Chapter 11 trustee of the Debtor, on May 21, 2014. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 5 through 7 of this Disclosure Statement. General unsecured creditors are classified in Class 9, and will receive a distribution of one hundred percent (100%) of their allowed claims, to be paid in Cash, in full on the Effective Date, as that term is defined in the Plan.

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_m., in Courtroom of the Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, 1100 Commerce Street, 14<sup>th</sup> Floor, Dallas, TX 75242.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Richard W. Ward, 6860 N. Dallas Parkway, Suite 200, Plano, TX 75024. See section IV.A., below, for a discussion of voting eligibility requirements.

Your ballot must be received by \_\_\_\_\_, 2014, or it will not be counted.

3. *Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Richard W. Ward, 6860 N. Dallas Parkway, Suite 200, Plano, TX 75024 and Robert Yaquinto, Jr., 509 N. Montclair, Dallas, TX 75208 by \_\_\_\_\_, 2014.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact counsel for the Debtor, Richard W. Ward, 6860 N. Dallas Parkway, Suite 200, Plano, TX 75024; email: [rwward@airmail.net](mailto:rwward@airmail.net).

**C. Disclaimer**

***The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_, 2014.***

## **II-BACKGROUND**

### **A. Description and History of the Debtor's Business**

The Debtor is a not for profit corporation that was the survivor by merger with a for profit corporation Eastern Hills Tennis, Yacht and Golf Club, Inc. The merger occurred in 2006. A copy of the Agreement and Plan of Merger is attached hereto and incorporated herein as Exhibit A. Prior to the Plan of Merger, Eastern Hills Country Club had operated a golf and tennis facility at 3000 S. Country Club, Garland, TX. . Prior to the Plan of Merger, the club was operated as social club under IRC section 501(c)(7) with different levels of membership including what were described as "equity members" who had voting rights and other privileges regarding operation and use of the Debtor's facilities. Subsequent to the effective date of the Plan of Merger on October 27, 2007, the existing equity members gave up their voting rights in exchange for certain deed restrictions on the use of the club and its facilities. The members of the merged entity are J.D. Harvey and related entities described below. The Debtor operates as a golf and tennis club for use by members. The revenues of the Debtor were derived from dues

and fees paid by the members. Financial difficulties incurred by the operations of the facility led to the members transferring their ownership interests to EHCC under the terms of the merger.

The remaining information in this section was provided by David Harvey and is consistent with his sworn testimony before this court and After the Plan of Merger was consummated J.D. Harvey became the principal of the Debtor. J.D. Harvey was principally engaged in another business that he owned and operated on a full time basis and enlisted the assistance of his daughter, Lindsey, in the management of the Debtor's operations.

Kent Milberger was hired to serve as comptroller of the Debtor. Based on information discovered in the first quarter of 2013, Milberger engaged in a systematic misappropriation of funds of the Debtor in amounts that have not been determined. In the first quarter of 2013, Milberger disappeared, but before disappearing destroyed all of the Debtor's business records. Milberger concealed liens filed by the IRS for unpaid withholding taxes and failure to pay taxes, including sales taxes, to the State of Texas. Both the IRS and the State of Texas placed liens on the assets of the Debtor. When J.D. Harvey discovered Milberger's absence, the destruction of the books and records, and the claims of the State of Texas and the IRS, he began efforts to operate the Country Club and pay bills. At this time David Harvey, on behalf of EHCC, filed a report and complaint with the Garland, Texas police department. The efforts of Mr. Harvey to operate the Debtor were hindered by the loss of EHCC's liquor license as a result of the failure to pay Texas sales tax. At the time that Milberger disappeared and tried to access the computers of the Debtor, Harvey learned that all information on the computers had been deleted. Harvey contacted several services regarding data recovery, but none could assure him that any data would be recovered and all want to be paid between \$7,000 and \$10,000 for recovery services, whether any data could be recovered. At the time these estimates were provided to Harvey, EHCC did not have sufficient funds to pay for the services, because EHCC did not have sufficient revenues to pay bills, EHCC had no record of what bills needed to be paid, and revenues were used to pay creditors as the creditors asserted or demanded payment. Additionally, the State of Texas was engaged in collection efforts that included seizure of bank accounts and cash on the premises of EHCC.

Continued collection efforts by the State of Texas caused the filing of this bankruptcy case. After disclosing to all parties that the value of the real property owned by the Debtor exceeded the claims against the Debtor, David Harvey tried to unsuccessfully operate the Debtor as a golf club. When the Debtor was not able to pay post-petition bills, Yaquinto was appointed as the chapter 11 trustee. After an initial period, Yaquinto determined that the club could not operate at a break even or better level and proceeded with efforts to sell the club. The sale was approved by the Bankruptcy Court.

**B. Insiders of the Debtor.**

The insiders of the Debtor, as listed in the Statement of Financial Affairs, are: David Harvey, Lindsey West, Chelsey Harvey Trust, Helen Harvey, and James Harvey, each of whom are members of the Debtor holding twenty percent membership interests.

**C. Management of the Debtor Before and During the Bankruptcy**

The information contained in this section is provided by David Harvey and is consistent with his sworn testimony in this Court and at the section 341 meeting conducted in this Base. During the two years prior to the date on which the bankruptcy petition was filed, Debtor's operations were run by Kent Milberger, with limited oversight from David Harvey. As stated above, Milberger, without Harvey's knowledge, misappropriated revenues of the

Debtor in an undetermined amount and caused delinquencies of approximately \$500,000 in payment of taxes to the IRS; \$50,000 in payment of taxes to the State of Texas; and other losses, including proceeds from the sale of assets of the Debtor, that the Debtor has not been able to calculate. Milberger also caused the destruction of the Debtor's books and records in both paper and electronic form.

The manager of the Debtor during the Debtor's chapter 11 was initially David Harvey with assistance from his daughter Lindsey. As a result of unsuccessful post petition operations that generated expenses in excess of revenue, the United States Trustee filed a motion for the conversion of the case or the appointment of a chapter 11 trustee. The Debtor agreed to the appointment of a chapter 11 trustee. Robert Yaquinto, Jr. was appointed chapter 11 trustee in November of 2013. Yaquinto determined that Debtor could not continue operations unless members agreed to pay dues, including a month's advance of dues. When the members declined, Yaquinto terminated operations of the Debtor.

After the effective date of the order confirming the Plan, members of EHCC shall remain in control of the Debtor, but the Debtor will have no operations and all assets of the Debtor, including principally the proceeds from the sale of the Property, will be controlled and disbursed by Yaquinto in accordance with the Plan. Yaquinto will not transfer any property of funds to the Debtor unless and until claims of all creditors in classes 1-10 are paid and all priority claims, including administrative expense claims and claims of professionals are paid.

**D. Significant Events During the Bankruptcy Case**

The significant event during the Debtor's bankruptcy case were as follows:

- The Debtor's inability to reverse financial declines and operate its business at a profit.
- The appointment of Yaquinto as the chapter 11 trustee.
- Yaquinto's decision to cease operations of the Debtor and sell the Property.
- The approval of the sale of the Property for a gross price of \$4,050,000.
- The closing of the sale of the Property

**E. Projected Recovery of Avoidable Transfers.** The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**F. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

**G. Current and Historical Financial Conditions**

The sale of the Debtor's principal asset, the Property, for a gross price of \$4,050,000 has been approved by the Bankruptcy Court. When the sale of the Property is consummated, virtually all of the assets of the Debtor will have been reduced to cash. The analysis of the current financial condition of the debtor is contained in section J. Distribution Analysis. Since all claims against the Debtor will be paid in full in cash, from funds in the possession of the Chapter 11 Trustee, the historic financial condition of the Debtor is irrelevant to the Plan and the treatment of claims under the Plan.

The Debtor will retain all causes of action held by the Debtor and such causes of action will be preserved and may be pursued by the Debtor in any appropriate forum.

**H. Adversary Proceeding involving Payment of Existing EHCC Equity**

**Members.** Treatment of the claims of the Class 10 Claimants (the Existing EHCC Equity Members) shall be made pursuant to order of this Court or court of competent jurisdiction in adversary proceeding no. 14-03040 (the “Adversary Proceeding”). Certain persons claiming status as Existing EHCC Equity Members commenced the Adversary Proceeding, claiming rights to \$500,000, plus attorneys’ fees under certain deed restrictions and that Plan of Merger dated August 18, 2006, between Eastern Hills Tennis, Yacht and Golf Club, Inc. and EHCC (the “Plan of Merger”). Under the Plan of Merger, EHCC is to pay Existing EHCC Equity Holders that sum of \$500,000 to be divided among those persons who qualify as Existing EHCC Equity Holders under the Plan of Merger. EHCC will interplead the \$500,000 because EHCC asserts no claim to the \$500,000, but EHCC will not make the determination of the identity of all persons who may assert claims as Existing EHCC Equity Members. Existing EHCC Equity Members have no rights or claims against EHCC under the Plan of Merger except the right to participate in the \$500,000. EHCC disputes the attorneys’ fees claimed by the Existing EHCC Equity Members in the Adversary Proceeding, but the amount of attorneys’ fees will be determined by the Bankruptcy Court and any amount Allowed shall be paid by the Plan Agent. Upon deposit of the \$500,000 EHCC shall have no liability to Existing EHCC Equity Members under the Plan of Merger. If a dispute arises regarding whether any person is entitled to be an Existing EHCC Equity Member, EHCC has no interest in such action, but the determination whether the person is an Existing EHCC Equity Member will be made under sections 5.2 and 5.3 of the Plan of Merger.

**I. Tax Exempt Status of the Debtor**

EHCC is classified as a social club and as a tax exempt entity under section 501(c)(7) of the Internal Revenue Code and has filed tax returns as a tax exempt entity using form 990 with the Internal Revenue Service. The Internal Revenue Service has never challenged the status of EHCC as an entity under section 501(c)(7). Under the Internal Revenue Code, Internal Revenue Service regulations, and Internal Revenue Service private letter rulings, Section 501(c)(7) entities may be owned by members and members may receive distributions if the entity is liquidated.

The amendment to the articles of incorporation filed by the Debtor on September 6, 2006, provided for distributions to Members on dissolution. Article 5.6 of the Plan of Merger that was referenced in that Certificate of Merger filed by the Debtor with the Texas Secretary of State on October 26, 2007 provides that after payment of \$500,000 to Existing EHCC Equity Members “... any remaining amounts to be distributed to the Surviving Club Equity Members...” Surviving Club Equity Members is defined in section 2.1(a) of the Plan of Merger to be the Mergco Equity Members. Under the Plan of Merger, MergCo is the Eastern Hills Tennis, Yacht and Golf Club, Inc., which was the for profit entity owned by David Harvey and his relatives or trusts that merged with the Debtor. In the merger, the surviving entity was the Debtor, EHCC. Under applicable Texas law, these provisions of EHCC’s corporate documents allow a distribution on liquidation as provided in the Plan of Merger, which is a distribution to the existing persons who are members of EHCC and are David Harvey and certain family members or legal entities owned by his family members.

**J. Distribution Analysis**

The sale of the property has closed. The analysis contained in this section is the opinion of the Plan Proponents based on the sale of the property; the closing statement from such sale; the proof of claims filed in this case; the claims that were scheduled by the Debtor; and pleadings filed in this case and the Adversary Proceeding. A copy of the closing statement from the sale of the property is attached hereto and incorporated herein as Exhibit “C”. The result of the sale of

the property and the distributions of the funds under the order approving the sale and those proposed under the Plan are as follows:

The Trustee sold the real property and improvements and received Seller's Final Settlement Statement from Republic Title of Texas. The amount delivered to the estate was \$3,241,045.54. The following claims were paid from the gross purchase price and are no longer payable by the estate:

|                               |                  |
|-------------------------------|------------------|
| Internal Revenue Service      | 201,925.88       |
| Tax Ease Funding, LLC         | 209,872.17       |
| Pro rated 2014 ad valorem tax | 36,472.87        |
| 2013 Tax Dallas County        | 17,311.63        |
| 2013 Tax City of Garland      | 18,656.75        |
| 2013 Tax Garland ISD          | <u>33,185.50</u> |

Total Claims paid at closing 517,424.80.

The total amount of claims filed, including secured<sup>1</sup> and priority claims is 2,126,411.52<sup>2</sup>

The Claims listed on Schedule F that were not listed as contingent, disputed or unliquidated and for which no proof of claim was filed total \$150,178.59.

The total Claims filed or scheduled<sup>3</sup> are \$2,276,590.11.

After subtracting the amounts paid at Closing of \$517,424.80, the claims remaining to be paid (excluding class 11 claims of David Harvey which the Plan treats as contributions to the Debtor) total \$1,759,165.31.

The amount remaining in estate after payment of all Claims will be \$1,481,880.23; this amount will be delivered to the Debtor by the Plan Agent.

#### **K. Claims of J. D. Harvey**

Under the section 1.2 Plan of Merger, J. D. Harvey was required to make a number of payments to the EHCC or certain creditors of EHCC that existed in 2006. Section 1.2 also required that Harvey forgive a \$213,462 balance on a line of credit he extended to EHCC. Harvey complied with all provisions of section 1.2 of the Plan of Merger.

In addition to the advances required by the Plan of Merger, J.D. Harvey purchased items for EHCC, paid EHCC bills or advanced amounts owed to other persons by EHCC. All of these amounts will be treated under the Plan as capital contributions to EHCC and will be treated by EHCC after closing of this Case.

#### **L. The Members of EHCC**

The statements in this section are based on the Plan of Merger. Under the plan of merger, the members of EHCC changed upon the merger. The merger has been consummated. Person who were members of EHCC before the merger surrendered all membership interests in EHCC in exchange for the benefits under the Plan of Merger. All of these pre-merger members were defined in the Plan of Merger as the "Existing EHCC Equity Members". Under the Plan of Merger, the persons defined as Existing EHCC Equity Members retained no membership rights except the right to receive a proportionate share of \$500,000 if EHCC ceased to function as a club in 2014 and the person satisfied the requirements for "good standing" contained in Section 5.3 of the Plan of Merger. Upon the consummation of the merger, the only members of EHCC

<sup>1</sup> All claims listed Schedule D were superseded by filed claims.

<sup>2</sup> These claims include

<sup>3</sup> This amount includes approximately \$160,000 in attorneys' fees claimed by the Existing EHCC Equity Members; the Debtor disputes the amount of these fees.

were the persons or entities who were formerly the shareholders of Eastern Hills Tennis, Yacht & Golf Club, Inc.; those persons are David Harvey and his family members as stated in section 2.1(a) of the Plan of Merger and are defined as Surviving Club Equity Members by the Plan of Merger. As discussed in section I. above upon liquidation of EHCC, the Surviving Club Equity Members of EHCC receive the residual monies after payment of all claims, including the \$500,000 for Existing EHCC Equity Members. (Under Internal Revenue Code and Internal Revenue Service Rulings, the Surviving Club Equity Members have the option to (1) distribute the monies remaining after paying all creditor claims or (2) use the same monies to purchase an interest in or create another 501(c)(7) entity.

## **II. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

### **A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan; however the Plan proposes to pay all Allowed Claims in full. If no dispute exists regarding a claim, the claim will be paid within 15 days of the Effective Date of the Plan.

### **B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

#### *1. Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

| <b>Type</b>  | <b>Estimated Amount</b> | <b>Proposed Treatment</b>  |
|--|-------------------------|--|
| Expenses of Post-petition operations                                   | \$75,000                | Payment in cash in full on Effective date  |
| Professional Fees Approved by Court, including 3% trustee's commission | \$200,000               | Payment in cash, in full after notice and hearing on application and order allowing fees |
| US Trustee Fees  | \$20,000                | Payment in cash in full on Effective Date  |

#### *2. Priority Tax Claims*

Since the Debtor is a nonprofit entity, the Debtor does not owe any priority tax claims. The claims of the IRS for unpaid withholding taxes are secured based on lien filings by the IRS. Classes of Claims and Equity Interests

3. *Classes of Secured and Unsecured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under §506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured and unsecured prepetition claims and their proposed treatment under the Plan:

| <b>Class</b>  | <b>Impairment</b> | <b>Treatment</b>  |
|---|-------------------|---|
| Class 1 – Secured Claim of Internal Revenue Service                 | Impaired.         | Claim will be paid in cash, in full on the earlier of (a) closing of the sale of the Property or (b) the Effective Date. Upon payment any and all liens shall be released and, if necessary the Class 1 Claimant shall execute documents releasing any and all lien claims.   |
| Class 2- Secured Claim of the State of Texas                        | Impaired.         | Claim will be paid in cash, in full on the Effective Date. Upon payment any and all liens shall be released and, if necessary the Class 2 Claimant shall execute documents releasing any and all lien claims.   |
| Class 3- Secured Claim of Tax Ease Funding, LLC                     | Impaired.         | The Allowed Claim will be paid in cash, in full on the earlier of (a) closing of the sale of the Property but the Debtor, the Plan Agent or any party in interest shall retain rights to object to the interest, costs and attorneys' fees asserted by the Class 3 Claimant. Any objection shall be subject to the provisions of this Plan. or (b) the Effective Date. Upon payment any and all liens shall be released and, if necessary the Class 3 Claimant shall execute documents releasing any and all lien claims. |
| Class 4 – Secured Claims of Claimants holding ad valorem tax claims | Impaired.         | Claims will be paid in cash, in full on the closing of the sale of the Property. Upon payment any and all liens shall be released and, if necessary each of the Class 4 Claimants shall execute documents releasing any and all lien claims.  |



|  |             |   |
|--|-------------|---|
| Class 5-Secured Claim of PNC Mortgage                  | Unimpaired. | On the Effective Date the Plan Agent shall pay the Class 5 claimant an amount equal to all payments that are due, but have not been paid, on each debt instrument executed by the Debtor. Such payments will include late, charges and interest. PNC shall be entitled to seek attorneys' fees by filing an application with this court and all attorneys' fees that the Debtor does not dispute are reasonable or that the Court determines are reasonable, after notice and hearing, shall be deemed Allowed and shall be paid by the Plan Agent. The Class 5 Claimant shall retain any and all liens securing the claims of class 5 Claimant. The Plan Agent shall make any and all future payments on the debt instruments in accordance with the terms of the debt instrument. The payments provided in this treatment shall constitute cure of any and all defaults under any debt instrument and the maturity date of any debt instrument shall be reinstated as provided in section 1124(2). Except for the cure of defaults and reinstatement of maturity dates no terms of any agreement between the Debtor and the Class 5 claimant shall be modified or altered by this Plan. |
| Class 6- Secured Claim of Agricredit Acceptance, Corp. | Unimpaired. | The secured claim of the Class 6 Claimant has been paid, in part, by the Class 6 Claimant's sale of all collateral securing the Class 6 Claim. The deficiency remaining on the Class 6 Claim after such sale, shall be treated as a claim under Class 9 of the Plan.  |
| Class 7- Secured Claim of VGM Financial Services       | Impaired.   | On the Effective Date, the Plan Agent shall pay the Class 7 Claim in full, unless the collateral securing the claims of the Class 7 Claimant has previously been sold. If the collateral has not been sold on or before the Effective Date, the Plan Agent shall pay the Class 7 Claim in Cash, in full and the Class 7 Claimant shall release any and all liens or claims against any collateral securing the Class 7 Claim and shall have no further claims against the Debtor or the bankruptcy estate of the Debtor. If prior to the Effective Date the collateral securing the Claim of the Class 7 Claimant has been sold by the class 7 claimant any Deficiency Claim shall be treated as a Claim under Class 9 of this Plan.  |
| Class 8- Claim of King Ranch Turfgrass, L.P.           | Impaired.   | On the Effective Date the Plan Agent shall pay the Class 8 Claim in Cash, in full. On receipt of such payment, the Class 8 Claimant shall release any lien claims filed against the Debtor or the Property.   |

|  |             |   |
|--|-------------|---|
| Class 9 - General Unsecured Creditors            | Impaired.   | On the 15 <sup>th</sup> day following the Effective Date, the Plan Agent shall pay all Allowed claims of Class 9 Claimants, unless an objection has been filed to a claim. If an objection to Class 9 Claim is timely filed the procedures stated in Article V of this Plan shall govern the time of payment of the Claim. Pending resolution of any such objection, the Plan Agent shall retain 125% of the amount of the Filed Claim.                                       |
| Class 10-Claims of Existing EHCC Equity Members  | Unimpaired. | The Debtor shall segregate with the Plan Agent the amount of \$500,000. The Debtor shall file an interpleader under Fed. R. Civ.P. 22 with the United States District Court for the Northern District of Texas, listing all parties who may qualify or meet the definition in the plan of merger for an Existing EHCC Equity Member. Upon filing of the interpleader, the Debtor shall have no liability to any person asserting any claim as an Existing EHCC Equity Member. |
| Class 11-Claims of J.D. Harvey                   | Impaired.   | Claims of the class 11 claimant shall be treated as equity contributions to the Debtor and shall not be paid by the Plan Agent. Any and all claims of the Class 11 Claimant shall be subordinated to the full payment of Classes 1 through 10 of this Plan and all priority claims.   |
| Class 12 - Equity Security Holders of the Debtor | Unimpaired. | Equity Security Holders of the Debtor shall retain their interests in the Debtor.   |

4. *Class of Equity Interest Holders.*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a 501(c)(7) entity such as the Debtor, the members are the equity interest holders.

**C. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded from the proceeds of the sale of the Debtor's Property.

2. *Post-confirmation Management*

The Post-Confirmation distribution of funds will be effected by the Plan Agent. The Plan Agent will be Yaquinto. Any assets that remain after the distribution of funds will be delivered to the Debtor. Yaquinto will be paid at his hourly legal rate for services he renders. No officer, director or manager of the Debtor shall be paid for services rendered until Yaquinto has made payments of all priority claims and payments to all claimants in classes 1 through 12 of the Plan.

3. *Payment to Existing EHCC Equity Members*

Treatment of the claims of the Class 10 Claimants (the Existing EHCC Equity Members)

shall be made pursuant to order of this Court or court of competent jurisdiction in adversary proceeding no. 14-03040 (the “Adversary Proceeding”). Certain persons claiming status as Existing EHCC Equity Members commenced the Adversary Proceeding, claiming rights to \$500,000, plus attorneys’ fees under certain deed restrictions and that Plan of Merger dated August 18, 2006, between Eastern Hills Tennis, Yacht and Golf Club, Inc. and EHCC (the “Plan of Merger”). Under the Plan of Merger, EHCC is to pay Existing EHCC Equity Holders the sum of \$500,000 to be divided among those persons who qualify as Existing EHCC Equity Holders under the Plan of Merger. EHCC will interplead the \$500,000 because EHCC asserts no claim to the \$500,000, but EHCC will not make the determination of the identity of all persons who may assert claims as Existing EHCC Equity Members. Existing EHCC Equity Members have no rights or claims against EHCC under the Plan of Merger except the right to participate in the \$500,000. EHCC disputes the attorneys’ fees claimed by the Existing EHCC Equity Members in the Adversary Proceeding, but the amount of attorneys’ fees will be determined by the Bankruptcy Court and any amount Allowed shall be paid by the Plan Agent. Upon deposit of the \$500,000 EHCC shall have no liability to Existing EHCC Equity Members under the Plan of Merger.

**D. Risk Factors**

The only risk factor under the proposed Plan is the failure of the sale of the Property to close. If the approved sale does not close, the Trustee has approval for two back-up contracts. If any of these contracts close, the holders of Allowed Claims will all be paid in full. The closing should occur before the confirmation hearing, which will remove all risk at the time of the confirmation hearing.

**E. Executory Contracts and Unexpired Leases**

The Plan rejects all executory contracts and unexpired leases to which the Debtor is a party. The Debtor does not believe that the Debtor is a party to any executory contract or unexpired leases. If you believe that you are a party to an unexpired lease or an executory contract with the Debtor you must file a claim for any damages you assert on or before the Effective Date.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

**F. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

**IV- CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in §1129, and they are not the only requirements for confirmation.

***1. Who May Vote or Object***

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes 1, 2, 3, 4, 5, 8, 9, and 11 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 6, 7, and 10 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan. The Debtor believes that the equity interests in class 12 are unimpaired and are not entitled to vote.

2. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

3. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

4. *Who is **Not** Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court, but no such claims exist at this time;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims or equity interests in unimpaired classes, which includes classes 6, 7, 10 and 12 under the Plan;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.***

a. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

### **G. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section B.2.

#### *1. Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

#### *2. Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***  
***Liquidation Analysis***

### **H. Feasibility and Liquidation Analysis**

Since the Plan pays all Allowed Claims in cash and in full a liquidation analysis is irrelevant to the Plan. However, the distribution of funds under the Plan will occur faster than a distribution under chapter 7 because the Allowed Claims will be paid within 15 days of the Effective Date. Conversion to chapter 7 would require notice of a section 341 meeting and establishment of new bar dates would be at least 90 days after the anticipated Effective Date of the Plan.

## **III. EFFECT OF CONFIRMATION OF PLAN**

### **A. Discharge of the Debtor.**

On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the Effective Date, to the extent specified in §1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in §1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

### **B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

### **C. Final Decree.**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall

designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

May 21, 2014

Respectfully submitted,

Eastern Hills Country Club

By: /s/ J.D. Harvey  
J.D. Harvey, Member

/s/ Richard W. Ward  
Attorney for the Plan Proponent, Eastern Hills  
Country Club

/s/ Robert Yaquinto, Jr.  
Chapter 11 Trustee

Exhibit A  
(Plan of Merger)

### AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger dated as of August 18, 2006 (this "Agreement"), is entered into by and among Eastern Hills Country Club, a Texas non-profit corporation ("EHCC"), Eastern Hills Tennis, Yacht and Golf Club, Inc., a Texas corporation ("MergerCo"), and James David Harvey, individually ("Harvey").

### RECITALS

WHEREAS, Harvey has caused the formation of MergerCo for the purpose of acquiring control of EHCC through the merger of MergerCo with and into EHCC and, in connection therewith, Harvey has or will designate the owners of MergerCo immediately prior to such merger (the "MergerCo Equity Members");

WHEREAS, the board of directors of EHCC and MergerCo have each approved the business transaction whereby, on or about October 1, 2007 and subject to the approval of the equity members of EHCC, MergerCo will merge with and into EHCC, and EHCC will continue as the surviving entity (the "Merger"), upon the terms and subject to the conditions set forth herein;

WHEREAS, following the execution hereof, the Merger and this Agreement will be submitted to the equity members of EHCC for their approval;

WHEREAS, EHCC was organized under and is currently subject to the provisions of the Texas Non-Profit Corporation Act (the "Act");

WHEREAS, MergerCo was organized under and is currently subject to the provisions of the Texas Business Organizations Code (the "Code");

WHEREAS, the Board of Directors of EHCC (the "Board") has concluded that it is in the best interest of EHCC and its members to voluntarily elect to adopt and become subject to the Code to be effective immediately prior to the Effective Time (the "Code Adoption") and, through the Merger, to amend the Articles of Incorporation and Bylaws of EHCC as necessary in connection with the Code Adoption;

WHEREAS, EHCC, MergerCo and Harvey desire to make certain covenants, representations and warranties in connection with the Merger and the transactions contemplated herein; and

WHEREAS, certain capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in Section 8.1;

NOW, THEREFORE, in consideration of the foregoing and of the respective representations, warranties, covenants and agreements set forth in this Agreement, the parties hereto hereby agree as follows:



## ARTICLE I

### THE MERGER

#### 1.1 Member Meeting; Election of Director; Dues Increase.

(a) On or about August 29, 2006, EHCC shall call a special meeting of the equity members of EHCC for the purpose of approving this Agreement and the other matters contemplated herein in accordance with the bylaws of EHCC and applicable law including the approval of the Merger, the Code Adoption and the Fee Increase (as defined below). The date on which the equity members of EHCC approve such matters is hereinafter referred to as the "Member Approval Date" and such approval of the equity members of EHCC is referred to as the "Member Approval." In connection therewith, EHCC shall circulate to the equity members of EHCC an information statement which shall include (i) notice of such special meeting in accordance the Act and the bylaws of EHCC, (ii) a copy of this Agreement, (iii) a biography of Harvey, and (iv) such other information as the Board shall reasonably believe is advisable for inclusion in such information statement. Harvey shall provide such other information concerning his business and personal affairs as EHCC may reasonably request for inclusion in such information statement. If the equity members of EHCC fail to approve this Agreement, the Merger and the other matters contemplated herein on or prior to October 1, 2006, either EHCC or Harvey may terminate this Agreement and neither party shall have any further obligations or liabilities hereunder.

(b) During the period from the Member Approval Date until the Effective Time, EHCC shall continue to be governed by the Articles of Incorporation and bylaws of EHCC in effect as of the date hereof, subject to any amendments or modifications approved in accordance with the terms thereof.

(c) Subject to the Member Approval and confirmation by the Board that such appointment will not adversely affect the Club's license with the Texas Alcohol and Beverage Commission, Harvey shall be appointed by the Board as a member of the Board to fill a current vacancy and shall serve on such Board until his successor is duly elected or appointed and qualified or until his earlier death, resignation or removal in accordance with the Bylaws of EHCC.

(d) Subject to the Member Approval, effective on October 1, 2006, the dues, service charges and range fees for a full golfing membership shall be increased to \$300, and the dues and service charges for the other category of memberships shall be raised proportionately (the "Fee Increase").

1.2 First Year Covenants. Subject to the Member Approval, Harvey covenants and agrees as follows (the "First Year Covenants"):

(a) Harvey shall establish a bank account in the name of EHCC, which shall be separate from the EHCC bank account (the "Disbursement Account"), and shall timely deposit funds in the Disbursement Account sufficient to satisfy, and which shall be used to timely satisfy, the following obligations of EHCC:

(i) Commencing on October 31, 2006, Harvey shall begin to provide funds to EHCC (through the Disbursement Account) for the capital improvements set forth in the 5 year plan presented to the Board, with a minimum contribution by Harvey of \$300,000 for the period commencing on the Member Approval Date and ending on September 30, 2007;

(ii) On or before December 31, 2006, Harvey shall provide funds to EHCC (through the Disbursement Account) as necessary to satisfy all of EHCC's expenses incurred in connection with this Agreement and all vendor-related accounts;

(iii) On or before June 30, 2007, Harvey shall provide funds to EHCC (through the Disbursement Account) as necessary to satisfy all of EHCC's indebtedness (principal and interest) under the loan from CitiBank Texas, N.A., which had an outstanding principal balance of approximately \$458,812 as of July 31, 2006; and

(iv) To the extent the revenues of EHCC are not sufficient to satisfy the operating expenses of EHCC consistent with the past operations of EHCC, on and after October 1, 2006, Harvey shall provide any additional funds to EHCC (through the Disbursement Account) reasonably necessary to continue the operations of EHCC.

(b) Effective on the Member Approval Date, all amounts owing under the \$250,000 line of credit of EHCC loaned by Harvey (which was approximately \$213,462 as of July 31, 2006) is forgiven and EHCC shall have no further obligation or liability with respect thereto.

(c) The funds provided under this Section 1.2 shall be deemed a non-refundable contribution by Harvey to EHCC and not a loan, and EHCC shall not have any obligation or liability with respect thereto, unless the Merger is not consummated due to the breach of this Agreement by EHCC.

#### 1.3 The Merger, Designation of MergerCo Equity Members.

(a) Prior to the Closing Date (as hereinafter defined), Harvey shall designate the MergerCo Equity Members. The MergerCo Equity Members may be Harvey, members of Harvey's immediate family, and/or trusts established for the benefit of any of the foregoing. As a condition of the Merger, the MergerCo Equity Members shall execute an Adoption Agreement (the "Adoption Agreement"), in a form acceptable to the Board, agreeing to be bound by and to abide by the terms and conditions of this Agreement. Further, any persons that are subsequently admitted as Surviving Club Equity Members shall execute an Adoption Agreement agreeing to be bound by and to abide by the terms and conditions of this Agreement (as if such persons were MergerCo Equity Members).

(b) Upon the terms and subject to the conditions of this Agreement (including the satisfaction of the First Year Covenants and the Member Approval) and in accordance with applicable provisions of the Code, at the Effective Time (as hereinafter defined), MergerCo shall be merged with and into EHCC. As a result of the Merger, the separate corporate existence of the MergerCo shall cease and EHCC shall continue as the surviving corporation of the Merger (the "Surviving Club"). The Merger shall be subject to, among other things, the satisfaction and performance of Harvey of all of the covenants and agreements set forth herein, to the extent such covenants or agreements are to be performed on or before the Effective Time.

1.4 Closing. Unless this Agreement shall have been terminated pursuant to Article VII and subject to the satisfaction or, if permissible, waiver of the conditions set forth in Article VI, the consummation of the Merger and the other transactions contemplated hereby (the "Closing") shall take place at the offices of Eastern Hills Country Club, 3000 S. Country Club, Garland, Texas 75043, on the later of (i) September 30, 2007 and (ii) as promptly as practicable following the satisfaction or, if permissible, waiver of the conditions set forth in Article VI, unless another place, date or time is agreed to by EHCC and Harvey. The date of the Closing is referred to herein as the "Closing Date."

1.5 Effective Time. Subject to the terms and conditions of this Agreement and in accordance with applicable provisions of the Code, on the later of (i) October 1, 2007 and (ii) and as promptly as practicable after the satisfaction or, if permissible, waiver of the conditions set forth in Article VI, the

parties hereto will cause the Certificate of Merger, in substantially the form attached hereto as **Exhibit A** (the "Certificate of Merger"), to be executed and filed with the Secretary of State of Texas in accordance with the Code. The Merger shall become effective at such time as the Certificate of Merger is filed with the Secretary of State of Texas, or at such later time as may be agreed to by EHCC and Harvey and specified in the Certificate of Merger in accordance with applicable law. The date and time when the Merger shall become effective is referred to herein as the "Effective Time."

1.6 Effect of the Merger. At the Effective Time, the Merger shall have the effect set forth in the applicable provisions of the Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all properties, rights, privileges and powers of EHCC and MergerCo shall vest in the Surviving Club, and all debts, liabilities and duties of EHCC and MergerCo shall become the debts, liabilities and duties of the Surviving Club. Additionally, at the Effective Time, all indebtedness or amounts owed by EHCC or MergerCo to Harvey, the MergerCo Equity Members or their respective Affiliates shall be converted, without any further actions, into a contribution by Harvey, the MergerCo Equity Members and their respective Affiliates, as applicable, to the Surviving Club and the Surviving Club shall have no further obligations or liabilities to Harvey, the MergerCo Equity Members or their respective Affiliates (or their respective successors and assigns) with respect to any indebtedness or other amounts.

#### 1.7 Certificate of Formation and Bylaws.

(a) At the Effective Time, Articles of Incorporation of EHCC, with such amendments and modifications as are deemed necessary, appropriate or advisable by the Board to be consistent with the terms of this Agreement (the "New Certificate of Formation"), shall be the Certificate of Formation of the Surviving Club, until thereafter amended as provided by law and in accordance with the terms thereof. It is understood and agreed that (i) prior to the Effective Time, the Board shall adopt amendments and modifications to be reflected in the New Certificate of Formation setting forth the dissolution and distributions rights of the Existing EHCC Equity Members set forth in Sections 5.5 and 5.6 hereof and such provisions of the New Certificate of Formation shall not be amended without the Requisite Approval and (ii) except with respect to any amendments that would conflict or be inconsistent with the terms of this Agreement (which shall require the Requisite Approval), after the Effective Time the Surviving Club Equity Members shall be entitled to amend the New Certificate of Formation. Concurrent with the filing of the Certificate of Merger, the Board may, in its discretion, either file the amendments with the Secretary of State of Texas or file an Amended and Restated Certificate of Formation reflecting such amendments and modifications. Upon adoption by the Board, the amendments to the New Certificate of Formation, or the Amended and Restated Certificate of Formation, as the case may be, shall be attached hereto as **Exhibit B** and incorporated herein for all purposes.

(b) At the Effective Time, the Bylaws of EHCC, with such amendments and modifications as are deemed necessary, appropriate or advisable by the Board (the "New Bylaws") shall be the Bylaws of the Surviving Club, until thereafter amended as provided by law and in accordance with the terms thereof; provided, however, that the New Bylaws shall not conflict or be inconsistent with any of the terms of this Agreement. The Board shall adopt the amendments to the Bylaws to reflect the terms and conditions of this Agreement, such amendments to be effective at the Effective Time. The Board is authorized to amend and restate the New Bylaws to reflect such amendments. Upon adoption by the Board, the amendment to be reflected in the New Bylaws, or the amended and restated New Bylaws, as the case may be, shall be attached hereto as **Exhibit C** and incorporated herein for all purposes.

(c) The parties acknowledge and agree that, upon approval of this Agreement by the equity members of EHCC, the Board shall have the power and authority to amend the Articles of Incorporation and Bylaws of EHCC to be effective as of the Effective Time without any further approval of

the equity members of EHCC and such equity members of EHCC shall be deemed to have approved such amendments; provided that such amendments do not conflict with the terms and conditions of this Agreement.

1.8 Directors and Officers: At the Effective Time, the directors and officers of the Surviving Club shall be the directors and officers of EHCC immediately prior to the Effective Time until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal, in accordance with the New Certificate of Formation and New Bylaws and applicable law. The parties acknowledge that after the Effective Time, the Surviving Club Equity Members shall have the right to remove and replace any members of the Board of Directors of the Surviving Club and the Board of Directors of the Surviving Club shall have the right to remove and replace any of the officers of the Surviving Club.

## ARTICLE II

### CONVERSION OF MEMBERSHIP INTERESTS: MERGER CONSIDERATION

2.1 Conversion of Membership Interests. At the Effective Time, by virtue of the Merger and without any action on the part of any of the parties hereto or the holders of any membership or ownership interest in EHCC or MergerCo:

(a) The ownership interest in MergerCo of the MergerCo Equity Members shall be converted to the special equity and voting membership interest in the Surviving Club, so that the MergerCo Equity Members shall hold the equity and voting interest in the Surviving Club (collectively with any other equity members that may subsequently be admitted to the Surviving Club, the "Surviving Club Equity Members"), subject only to the rights and obligations of the Existing EHCC Equity Members set forth in this Agreement, the New Certificate of Formation and the New Bylaws.

(b) The Existing EHCC Equity Members' membership interest and voting rights shall be limited to those rights expressly provided in Section 2.2 and Articles I and V of this Agreement, as reflected in the New Certificate of Formation and the New Bylaws. Each Existing EHCC Equity Member's membership interest in EHCC that is held immediately prior to the Effective Time shall be converted into (i) the right to receive the Merger Consideration (as defined below) and (ii) a limited membership interest in the Surviving Club consistent with the terms of this Agreement, which shall be governed by and subject to the provisions of this Agreement and, to the extent consistent with this Agreement, the New Certificate of Formation, the New Bylaws and the Rules and Regulations, as may be amended from time to time.

(c) The Excluded EHCC Equity Members and the Existing EHCC Non-Equity Members shall not hold any equity interest or have voting rights in the Surviving Club. Each Excluded EHCC Equity Member's and Existing EHCC Non-Equity Member's membership in EHCC that is held immediately prior to the Effective Time shall be converted to a non-voting and non-equity membership interest in the Surviving Club, which shall be governed by and subject to the provisions of the New Bylaws and the Rules and Regulations, as may be amended from time to time. The Excluded EHCC Equity Members and the Existing EHCC Non-Equity Member shall not be entitled to any Merger Consideration.

(d) No Existing EHCC Equity Member, Excluded EHCC Equity Members or Existing EHCC Non-Equity Member shall be required to pay any initiation or transfer fees in connection with the

conversion of its membership interest as described in this Section 2.1 or its participation in the Surviving Club following the Effective Time.

2.2 Exchange of Certificates; Payments to Certificate Holders. As a condition to the payment of the Merger Consideration, each Existing EHCC Equity Member shall surrender its certificate representing its EHCC membership interest (each, a "Certificate" and collectively, "Certificates") for cancellation to the Surviving Club. In the event an Existing EHCC Equity Member cannot locate its certificate, such Existing EHCC Equity Member may instead deliver an affidavit of lost certificate, in a form reasonably acceptable to the Board. Upon surrender of a Certificate for cancellation to the Surviving Club (or an acceptable affidavit of lost certificate), in addition to the other rights and privileges set forth in this Agreement, the Existing EHCC Equity Member who is the registered holder of such Certificate shall be entitled to elect in exchange therefor one of the following consideration options (the "Merger Consideration"), to be payable by Harvey, the MergerCo Equity Members or the Surviving Club, as the case may be:

(i) a cash payment of \$3,000.00 from Harvey and the MergerCo Equity Members, to be paid on October 1, 2007;

(ii) a cash payment of \$3,300.00 from Harvey and the MergerCo Equity Members, with \$1,650.00 to be paid on October 1, 2007 and \$1,650.00 to be paid on or before the one-year anniversary of the Effective Time;

(iii) a discount of \$85.00 per month on monthly dues of the Surviving Club, for a period ending on the earlier of 61 months following the Effective Time or upon the dissolution of the Surviving Club in accordance with Section 5.5; or

(iv) solely with respect to each Existing EHCC Equity Member who is a life member of EHCC at the Effective Time, a waiver of any future dues or assessments of the Surviving Club after the Effective Time (the life members that elect this option are referred to herein as "Continuing Life Members").

Prior to the Effective Time, EHCC shall cause to be delivered to each Existing EHCC Equity Member a letter of transmittal describing the options for Merger Consolidation set forth in this Section 2.2 (the "Letter of Transmittal"), such Letter of Transmittal to be in a form approved by the Board. Each Existing EHCC Equity Member shall be entitled to designate in the Letter of Transmittal the type of Merger Consideration such Existing EHCC Equity Member elects to receive, and shall return to EHCC or the Surviving Club, as applicable, the completed Letter of Transmittal and Certificate (or an acceptable affidavit of lost certificate). Notwithstanding anything herein to the contrary, no Existing EHCC Equity Member shall be entitled to receive any of the Merger Consideration unless and until such EHCC Equity Member has delivered its Certificate or an acceptable affidavit of lost certificate to EHCC or the Surviving Club, as applicable. Payment of the Merger Consideration shall be made by Harvey or the MergerCo Equity Members by check made payable to such Certificate holder. If any Existing EHCC Equity Member fails to return the Letter of Transmittal electing one of the above options within a reasonable period of time set by the Board (or the Board of the Surviving Club, if applicable), then such Existing EHCC Equity Member shall be deemed to have elected option 2.2(iii) above.

### 2.3 Taxes.

(a) Harvey, the MergerCo Equity Members and the Surviving Club, as the case may be, shall be entitled to deduct and withhold, or cause to be deducted or withheld from the consideration



otherwise payable to an Existing EHCC Equity Member pursuant to the Merger, any transfer taxes and such amounts as are required under the Internal Revenue Code of 1986, as amended, or any applicable provision of state, local or foreign tax law. To the extent that amounts are so withheld by Harvey, the MergerCo Equity Members or the Surviving Club, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Existing EHCC Equity Member in respect of which such deduction and withholding was made, and Harvey, the MergerCo Equity Members or the Surviving Club, as the case may be, shall provide to such Existing EHCC Equity Member written notice of the amounts so deducted or withheld. Notwithstanding the foregoing, no amount shall be withheld or caused to be withheld from any payment made hereunder to an Existing EHCC Equity Member who provides Harvey, the MergerCo Equity Members and the Surviving Club with a properly completed Internal Revenue Service Form W-9 or Substitute Form W-9, or who otherwise provides Harvey, the MergerCo Equity Members and the Surviving Club with appropriate evidence that such Existing EHCC Equity Member is exempt from federal income tax back-up withholding.

(b) Except with respect to any Taxes owed by the Existing EHCC Equity Members arising out of their respective receipt of the Merger Consideration, the Surviving Club shall be solely responsible for the payment of any Taxes arising out of the Merger and Harvey and the MergerCo Equity Members agree to provide the funds to the Surviving Club as may be necessary to satisfy any such Tax obligations and liabilities.

2.4 Cooperation. Subject to the terms and conditions herein provided, each party hereto will use such party's best efforts to take, or cause to be taken, such actions, to execute and deliver, or cause to be executed and delivered, such additional documents and instruments and to do, or cause to be done, all things necessary, proper or advisable under the provisions of this Agreement and applicable law to consummate and make effective all of the transactions contemplated herein.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF EHCC

EHCC hereby represents and warrants to Harvey and MergerCo as follows:

3.1 Organization and Qualification. EHCC is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

3.2 Authorization and Validity of Agreement. EHCC has the requisite corporate power and authority to execute and deliver this Agreement and each other document or instrument contemplated to be executed and delivered by EHCC pursuant hereto, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby in accordance with the terms hereof and thereof, subject to the requisite approval and adoption of this Agreement and the Merger by the Existing EHCC Equity Members, as required by applicable law, and the filing and recordation of appropriate merger documents as required by the Code. This Agreement has been duly executed and delivered by EHCC and constitutes the legal, valid and binding obligation of EHCC, enforceable against EHCC in accordance with its terms.

3.3 Members. As of the date hereof, there are one hundred ninety seven (197) equity members of EHCC, including eleven (11) life equity members. EHCC has made available to Harvey with a current list of the equity and non-equity members of EHCC.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF MERGERCO, THE MERGERCO EQUITY MEMBERS AND HARVEY

Harvey and MergerCo, and upon the adoption of this Agreement the MergerCo Equity Members, jointly and severally, hereby represent and warrant to EHCC and the Existing EHCC Equity Members as follows:

###### 4.1 Organization and Qualification.

(a) MergerCo is a duly organized corporation, validly existing and in good standing under the laws of the State of Texas and will have the requisite corporate power and authority to carry on its business as it is then being conducted. MergerCo is formed for the purpose of consummating the Merger and as of the Closing will not have conducted any business, or incurred any obligations or liabilities other than as expressly contemplated in this Agreement.

(b) The MergerCo Equity Members who are not individuals, have been duly formed under the laws of the State of Texas, and such MergerCo Equity Members are either immediate family members of Harvey or are trusts for benefit thereof, of which Harvey is the sole trustee. The MergerCo Equity Members who sign the Adoption Agreement will be the only owners of MergerCo, free and clear of any Encumbrances or restrictions of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

4.2 Authorization and Validity of Agreement. Harvey has, and each of MergerCo and MergerCo Equity Members will have at the Effective Time, the requisite corporate power and authority to execute and deliver this Agreement (and any Adoption Agreement agreeing to be bound by the terms hereof) and each other document or instrument contemplated to be executed and delivered by such party pursuant hereto; to perform its respective obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby in accordance with the terms hereof and thereof, subject to the filing and recordation of appropriate merger documents as required by the Code. This Agreement and the other documents and instruments contemplated herein have been, or will be at the Closing, duly executed and delivered by MergerCo, the MergerCo Equity Members and Harvey and constitutes or will constitute upon execution and delivery, the legal, valid and binding obligation of MergerCo, the MergerCo Equity Members and Harvey, enforceable against each of them in accordance with their respective terms.

4.3 No Violations. The execution and delivery of this Agreement (or the Adoption Agreement agreeing to be bound by the terms hereof) by MergerCo, the MergerCo Equity Members and Harvey, the Merger and the performance of their respective obligations hereunder, will not:

(i) contravene, conflict with or result in a violation of any provision of the Organizational Documents of MergerCo or the MergerCo Equity Members or any resolution adopted by the board of directors, the members or the trustees, as the case may be, of MergerCo or the MergerCo Equity Members;

(ii) conflict with, violate, result in a material breach of, or constitute a default (or would result in, or constitute such a material breach or default with notice, or lapse of time, or both) under any provision of any arrangement, indenture, lien, pledge, claim, right, mortgage, security interest,

lease, encumbrance or other adverse interest of any kind or nature (collectively, "Encumbrances"), agreement, instrument, license, order, judgment, arbitration award, decree, law, ordinance, regulation, or any other restriction of any kind or character to which MergerCo, the MergerCo Equity Members or Harvey is a party or by which it is bound;

(iii) contravene, conflict with or result in a violation of, or give any governmental body or other person the right to challenge the Merger or to exercise any remedy or obtain any relief under any legal requirement or order to which MergerCo, the MergerCo Equity Members or Harvey may be subject; or

(iv) result in any Encumbrance upon any membership interest in MergerCo or the Surviving Club.

4.4 Financial Representation. Harvey has, and each of the MergerCo Equity Members will have as of the Closing, each provided EHCC with a recent balance sheet and a list of contingent liabilities as of the date hereof. Such balance sheets and list of contingent liabilities fairly present in all material respects Harvey and the MergerCo Equity Members respective financial position as of its date. Harvey has, and the MergerCo Equity Members will have as of the Closing, sufficient liquid assets to satisfy their respective obligations under this Agreement.

4.5 Disclosure. None of this Agreement or any Schedule, Exhibit or certificate delivered in accordance with the terms hereof or any document or statement in writing which has been supplied by or on behalf of MergerCo, Harvey or the MergerCo Equity Members, or by any of their respective officers or representatives, in connection with the Merger, contains any untrue statement of a material fact or omits any statement of a material fact necessary in order to make the statements contained herein or therein or otherwise made by Harvey not misleading for the purposes it was intended. There is no fact known to Harvey which could materially and adversely affect the Surviving Club or the ability of Harvey, the Surviving Club or the MergerCo Equity Members to satisfy their respective obligations and liabilities, which has not been set forth in this Agreement or in the schedules, exhibits or certificates or statements in writing furnished in connection with the Merger.

## ARTICLE V

### POST-CLOSING COVENANTS

Subject to the consummation of the Merger, the Surviving Club covenants and agrees to the following provisions, and Harvey and the MergerCo Equity Members covenant and agree to cause the Surviving Club to abide by the following covenants and agreements. Further, Harvey, the MergerCo Equity Members and the Surviving Club agree that the New Bylaws and the New Certificate of Formation shall include provisions consistent with the following covenants and agreements.

5.1 Continued Operation of Surviving Club. For a period of nine (9) years immediately following the Effective Time, the Surviving Club and the real property on which the Surviving Club is currently located as more specifically described on Exhibit D attached hereto (the "Real Property") shall continue to be operated as a private country club and golf course, featuring the existing golf course facilities, tennis facilities, swimming facilities, dining facilities, clubhouse facilities and a pro-shop facility (collectively the "Facilities"), such Facilities to be maintained in good order and repair. During such nine-year period, there shall be no daily fee usage at the Facilities, and membership in the Facilities shall be limited to 550 golf memberships and 300 social memberships. Additionally, during such nine-year period, each Existing EHCC Equity Member in Good Standing (as hereinafter defined) shall have access to



and use of all of the Facilities in accordance with the New Bylaws and the Rules and Regulations, subject to the rights of the Existing EHCC Equity Members as set forth in this Agreement. At the Effective Time, the covenants and restrictions on the Real Property set forth on Exhibit E attached hereto (the "Declaration") will be filed in the real property records of the county clerk's office for the County of Dallas, Texas. As a condition to the filing of the Declaration, and as more specifically set forth in the Declaration, the Surviving Club has been given the unilateral authority to file an instrument (the "Unilateral Instrument") with the Real Property Records of Dallas County, Texas certifying the expiration of the term of the covenants set forth in the Declaration in accordance with this Agreement and the amendment or modification of the Declaration in accordance with the terms of this Agreement, without the necessity of the joinder of any Existing EHCC Equity Member or of any other third party. Upon filing of a Unilateral Instrument in the Real Property Records of Dallas County, Texas, (i) such Unilateral Instrument shall be effective to amend or modify the Declaration or terminate the covenants set forth in the Declaration, as the case may be, and (ii) third parties and title companies are entitled to rely on such Unilateral Instrument with respect to such amendment or modification of the Declaration and/or termination of the covenants in the Declaration, as the case may be. Notwithstanding the foregoing but without limiting the right of title companies and third parties to rely upon such Unilateral Instrument, the Surviving Club shall not file any Unilateral Instrument without the Requisite Approval or which violates or is inconsistent with this Agreement, the New Certificate of Formation or the New Bylaws, and the Surviving Club, Harvey and the MergerCo Equity Members shall be jointly and severally liable to the Existing EHCC Equity Members for any breach of this Agreement resulting from the improper filing of any Unilateral Instrument.

## 5.2 Terms of Ongoing Membership.

(a) For a period of twenty-four (24) months following the Effective Time, the dues, service charges and range fees of the Existing EHCC Equity Members (other than the Continuing Life Members) for use of the Facilities shall be no more than \$300 per month, and the Existing EHCC Equity Members shall not be subject to any assessments or other fees. After such 24-month period, the terms of participation of the Existing EHCC Equity Members (other than the Continuing Life Members) in the Surviving Club (including dues, fees and assessments) shall be governed by the New Bylaws and the Rules and Regulations and shall be at least as favorable as the most favorable terms offered to the New Members.

(b) Except as otherwise provided in this Article V, the Continuing Life Members shall not be required to pay any future dues or assessments to the Surviving Club unless and until the occurrence of a Terminating Event. A "Terminating Event" shall mean (i) such member is no longer in Good Standing, (ii) prior to the nine (9) year anniversary of the Effective Time, the Surviving Club is dissolved or the Real Property is sold and the Requisite Approval consents to such transferor not assuming the obligations hereunder as contemplated in Section 5.5 or (iii) after the nine (9) year anniversary of the Effective Time, the Surviving Club is dissolved or the Real Property is sold. Notwithstanding any provision in this Agreement to the contrary, this provision shall not be amended without the consent of all of the Continuing Life Members then in Good Standing. Except with respect to the waiver of dues and assessments, the Continuing Life Members shall be subject to the New Bylaws and all of the Rules and Regulations. The rights of the Continuing Life Members shall not be assignable by the Continuing Life Members except to his/her spouse upon death pursuant to a will or the laws of descent and distribution. The Continuing Life Members shall not have any rights to vote on the matters requiring the approval of the Existing EHCC Equity Members and shall not have any distribution or any other rights upon the dissolution or merger of the Surviving Club.

### 5.3 Failure to Maintain Good Standing: Assignability of Membership.

(a) Good Standing. An Existing EHCC Equity Member shall be deemed in "Good Standing" unless such member (i) voluntarily resigns as a member of the Surviving Club (other than due to a material breach of this Agreement, the New Bylaws or the New Certificate of Formation by the Surviving Club, the MergerCo Equity Members or Harvey), (ii) assigns its membership interest in the Surviving Club in accordance with the Rules and Regulations (other than to a spouse upon death of such member), (iii) is expelled from the Surviving Club or his/her membership is terminated by the Surviving Club due to the failure of such member to materially comply with the applicable Rules and Regulations (to the extent such rules and regulations are consistent with and do not violate this Agreement, the New Bylaws or the New Certificate of Formation) or (iv) is expelled from the Surviving Club or his/her membership is terminated by the Surviving Club due to the failure of such member to remain current (after a reasonable grace period) on all dues or other amounts owed to the Surviving Club (to the extent such dues or other amounts owed to the Surviving Club are consistent with this Agreement, the New Bylaws or the New Certificate of Formation); provided, however, with respect to clause (iii) and (iv), such Existing EHCC Equity Member shall receive written notice of such deficiency and such Existing EHCC Equity Member shall have thirty (30) days after notice has been provided to cure the deficiency before such member will be expelled or its membership terminated. The Surviving Club shall in good faith maintain records of the Existing EHCC Equity Members that it believes are in Good Standing.

(b) Assignability. In the event that an Existing EHCC Equity Member assigns its right to participate in the Surviving Club to another person in accordance with and if permitted under the New Bylaws and the Rules and Regulations, for purposes of Section 5.3(a), such Existing EHCC Equity Member shall be deemed to have voluntarily withdrawn from the Surviving Club and therefore not in Good Standing, and its assignee shall not be deemed an Existing EHCC Equity Member for purposes of this Agreement but shall have the rights and privileges of a New Member. Notwithstanding the foregoing, the parties acknowledge that an Existing EHCC Equity Member may transfer such interest to his/her spouse upon death pursuant to a will or the laws of descent and distribution, and such transferee shall retain the rights of and be deemed an Existing EHCC Equity Member.

(c) Applicability of New Bylaws and the Rules and Regulations. Notwithstanding any provision in this Agreement to the contrary, the New Bylaws and the Rules and Regulations shall apply to the Existing EHCC Equity Members only to the extent such New Bylaws and the Rules and Regulations are consistent with and do not violate the terms of this Agreement.

5.4 Capital Improvements. The Surviving Club shall spend, and the MergerCo Equity Members and Harvey shall cause the Surviving Club to spend, at least an aggregate of \$1,500,000.00 (less any funds spent on capital improvements pursuant to the First Year Covenants) over the four (4) year period following the Effective Time, with a minimum of \$300,000.00 per year to be spent during such period, for capital improvements at the Surviving Club that will benefit the members of the Surviving Club, including the Existing EHCC Equity Members. Such capital improvements shall be funded by contributions made, directly or indirectly, by Harvey to the Surviving Club. In no event shall such capital improvements be funded, directly or indirectly, through assessments of the Existing EHCC Equity Members. Further, no assessments shall be made of any New Members of the Surviving Club unless and until the Surviving Club has spent \$1,500,000.00 on capital improvements as described in this Section 5.4.

5.5 Dissolution or Merger: Sale of the Real Property. During the nine (9) year period following the Effective Time, the merger of the Surviving Club with or into another entity, the sale of the Real Property or the dissolution of the Surviving Club shall require the approval of the Surviving Club Equity Members and the Requisite Approval of the Existing EHCC Equity Members (other than the Continuing Life Members); provided, however, in the event the Surviving Club, the MergerCo Equity Members or Harvey breaches or fails to comply with any provision of this Agreement, the New Certificate of Formation or the New Bylaws, then the dissolution of the Surviving Club shall only require the Requisite Approval in accordance with Section 5.8(d). In the event of the merger of the Surviving Club with or into another entity or the sale of the Real Property on or before the nine (9) year anniversary of the Effective Time, the surviving entity or the acquirer of the Real Property shall agree to be bound by the terms of this Agreement unless otherwise consented to by the Requisite Approval.

5.6 Distribution Rights. In the event that the Surviving Club is dissolved during the nine (9) year period following the Effective Time, the Existing EHCC Equity Members (other than the Continuing Life Members) then in Good Standing shall have the priority distribution rights with respect to the following amounts, with any remaining amounts to be distributed to the Surviving Club Equity Members:

(a) Upon the satisfaction of all liabilities and obligations of the Surviving Club and before any distributions may be made to any other members of the Surviving Club, and before any indebtedness is paid to Harvey, the Surviving Club Equity Members or any Affiliate thereof, each Existing EHCC Equity Member (other than the Continuing Life Members) who is then in Good Standing shall be entitled to a distribution of an amount equal to (x) the Dissolution Amount (as hereinafter defined) plus the amount, if any, of any capital improvements required pursuant to Section 5.4 above that have not then been made divided by (y) the number of Existing EHCC Equity Members (other than the Continuing Life Members) who are then in Good Standing.

(b) The "Dissolution Amount" shall be equal to (x) \$1,500,000.00 if such dissolution occurs on or before the two (2) year anniversary of the Effective Time, (y) \$1,000,000.00 if such dissolution occurs after the two (2) year anniversary of the Effective Time and on or prior to the five (5) year anniversary of the Effective Time, and (z) \$500,000.00 if such dissolution occurs after the five (5) year anniversary of the Effective Time and prior to the nine (9) year anniversary of the Effective Time; provided, however in no event shall such distribution amount exceed the amount of the total distributions available to be made to all of the members of the Surviving Club plus the aggregate of all indebtedness owed to Harvey, the Surviving Club Equity Members and any Affiliate thereof. If the amount that will be available for distribution to all of the members (after satisfaction of all debts and liabilities of the Surviving Club) is less than the foregoing amounts, then Harvey, the Surviving Club Equity Members and any Affiliate thereof shall forgive (or convert to a contribution) an amount of its indebtedness owed by the Surviving Club sufficient for the Surviving Club to make the distributions contemplated herein.

(c) In no event shall the Continuing Life Members be entitled to any distributions or consideration upon dissolution or merger of the Surviving Club.

#### 5.7 Termination or Amendments of Covenants.

(a) Except for the obligations under Section 5.2(b) above which may only be terminated as set forth therein, the covenants set forth in this Article V shall automatically terminate upon the earlier of (i) the nine (9) year anniversary of the Effective Time or (ii) the Requisite Approval consenting to or approving the termination or waiver of the covenants set forth herein. Further, all of the covenants set forth in this.

Article V shall automatically terminate upon (i) the dissolution of the Surviving Club which has been duly authorized by the Requisite Approval and (ii) the receipt by the Existing EHCC Equity Members (other than the Continuing Life Members) then in Good Standing of the distributions described in Section 5.6 of this Agreement.

(b) Except for the provisions of Section 5.2(b), any of the provisions of this Article V may be waived or amended by the Requisite Approval.

5.8 Failure to Comply with Covenants. If after the Effective Time, the Surviving Club, the Surviving Club Equity Members or Harvey breaches or fails to comply with any provision of this Agreement, the New Certificate of Formation or the New Bylaws, the Existing EHCC Equity Members then in Good Standing shall have the following remedies, in addition to any other remedies available under applicable law. The rights and remedies of the parties to this Agreement are cumulative and not alternative.

- (a) Any Existing EHCC Equity Member then in Good Standing shall have the right to have such provisions specifically enforced by any court having equity jurisdiction;
- (b) Any Existing EHCC Equity Member then in Good Standing shall have the right to Damages from the Surviving Club, the MergerCo Equity Members or Harvey.
- (c) The Existing EHCC Equity Members, upon the receipt of the Requisite Approval and without any approval of the Surviving Club Equity Members, may dissolve the Surviving Club and receive the distributions in accordance with Section 5.6.

5.9 Inspection. At any time after the Effective Time and during the term of the covenants of this Article V, any existing EHCC Equity Member receiving the written authorization of twenty-five or more Existing EHCC Equity Members shall have the right to inspect, and the Surviving Club shall provide reasonable access to, the books, records and premises of the Surviving Club and Facilities to confirm compliance with the covenants of this Article V.

## ARTICLE VI

### CLOSING CONDITIONS

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party hereto to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law.

(a) Approval of Existing EHCC Equity Members. This Agreement and the matters set forth herein including the Merger, the Code Adoption and the Fee Increase, shall have been adopted and approved by the vote of at least two-thirds of the Existing EHCC Equity Members present at a meeting of the Existing EHCC Equity Members in person or by proxy, as required by the Act and any other applicable Organizational Documents of EHCC.

(b) No Injunction. No federal or state governmental or regulatory body or court of competent jurisdiction shall have enacted, issued, promulgated or enforced any statute, rule, regulation, executive order, decree, judgment, preliminary or permanent injunction or other order which is in effect and which prohibits, enjoins or otherwise restrains the consummation of the Merger; provided, that the parties

shall use commercially reasonable efforts to cause any such decree, judgment, injunction or order to be vacated or lifted.

(c) Adoption of the Code. Prior to Closing, EHCC shall have caused a Statement of Early Adoption of the Code to have been executed and filed with the Secretary of State of Texas, pursuant to which EHCC will adopt and become subject to the Code.

6.2 Conditions to Obligations of EHCC to Effect the Merger. The obligations of EHCC to effect the Merger shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law:

(a) Representations and Warranties. The representations and warranties of MergerCo, Harvey and the MergerCo Equity Members contained in this Agreement shall be true and correct when made and as of the Closing Date and MergerCo, Harvey and the MergerCo Equity Members shall have delivered to the EHCC a certificate, dated the Closing Date, to such effect.

(b) Covenants. MergerCo, Harvey and the MergerCo Equity Members shall have caused all covenants, agreements, and conditions required by this Agreement to be performed or complied with or by them prior to or at the Closing to be so performed or complied with. MergerCo, Harvey and the MergerCo Equity Members shall have executed and delivered to EHCC a certificate, dated the Closing Date, to such effect.

(c) Payments by Harvey. Harvey shall have provided reasonably satisfactory evidence that he and the MergerCo Equity Members have the liquid assets necessary to fund the Merger Consideration under Section 2.2(i) assuming that all of the Existing EHCC Equity Members elect such option other than those electing another option prior to the Closing. Harvey shall have prepared checks payable to all of the Existing EHCC Equity Members that prior to the Closing submit the Letter of Transmittal and their Certificate and elect the option to receive cash under Section 2.2(i).

(d) Adoption Agreement. The MergerCo Equity Members shall have executed an Adoption Agreement, in a form acceptable to the Board, agreeing to be bound by all of the terms and conditions of this Agreement.

(e) Approval of MergerCo Equity Members. This Agreement, the Merger and the other matters set forth herein shall have been adopted and approved by the Board of Directors and shareholders of MergerCo as required by the Code and any other applicable Organizational Documents of MergerCo.

6.3 Conditions to Obligations of MergerCo to Effect the Merger. The obligations of MergerCo to effect the Merger shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law:

(a) Representations and Warranties. The representations and warranties of EHCC contained in this Agreement shall be true and correct in all material respects when made and as of the Effective Time and EHCC shall have delivered to MergerCo a certificate, dated the Closing Date, to such effect.



(b) Covenants. EHCC shall have caused all covenants, agreements, and conditions required by this Agreement to be performed or complied with or by it prior to or at the Closing to be so performed or complied with in all material respects. EHCC shall have executed and delivered to MergerCo a certificate, dated the Closing Date, to such effect.

## ARTICLE VII

### TERMINATION

7.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time:

(a) at any time prior to the Effective Time upon the mutual agreement of EHCC and Harvey;

(b) by EHCC or Harvey if the equity members of EHCC fail to approve the Merger on or prior to October 1, 2006;

(c) by EHCC at any time (notwithstanding approval of the Merger by the equity members of EHCC) prior to the Effective Time if Harvey, MergerCo or any MergerCo Equity Member breaches or fails to satisfy or perform any representation, covenant or warranty set forth in this Agreement (including the First Year Covenants); or

(d) by EHCC if any of the conditions to Closing contained in Sections 6.1 and 6.2 shall not have been satisfied or waived in writing on or before October 1, 2007, or (ii) Harvey, if the conditions to Closing contained in Sections 6.1 and 6.3 shall not have been satisfied or waived in writing on or before on or before October 1, 2007. Notwithstanding the foregoing, in order to terminate this Agreement pursuant to the above, the terminating party or parties shall not be the party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date;

7.2 Effect of Termination. If this Agreement is terminated pursuant to Section 7.1, all further obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the others; provided, however, nothing in this Article VII shall relieve any party of any liability for a breach of this Agreement prior to the termination hereof. If any of the conditions set forth in Sections 6.1 and 6.2 of this Agreement have not been satisfied, EHCC may nevertheless elect to proceed with the consummation of the transactions contemplated hereby. If any of the conditions set forth in Section 6.1 and 6.3 have not been satisfied, Harvey may nevertheless elect to proceed with the consummation of the transactions contemplated hereby and waive the condition to Closing. The waiver of a condition to Closing shall not affect the rights of a party with respect to any breach of this Agreement prior to or at the Closing. Further, notwithstanding any provision herein to the contrary, if this Agreement is terminated (other than as a result of the breach by EHCC of any of its covenants or obligations set forth herein or the failure to obtain the Member Approval), all funds contributed, loaned or otherwise provided to EHCC by Harvey, MergerCo, the MergerCo Equity Members or any of their Affiliates shall be deemed contributed to EHCC without any rights of such person to recover or receive repayment of such amounts, any loans shall be deemed forgiven, and EHCC shall not have any further obligations or liabilities with respect thereto.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Definitions. For purposes hereof, the following definitions shall apply:

(a) "Affiliate" is used in this Agreement to indicate a relationship with one or more persons and when used shall mean any corporation, limited liability company or other organization of which such person is an executive officer, manager, director, member or partner or is directly or indirectly the beneficial owner of more than fifty percent (50%) or more of any class of equity securities or financial interest therein; any trust or other estate in which such person has a beneficial interest or as to which such person serves as trustee or in any similar fiduciary capacity; any relative or spouse of such person, or any relative of such spouse (such relative being related to the person in question within the second degree); any director, manager or executive officer of such person; or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(b) "Damages" means the amount of any loss, liability, claim or damage or expense (including reasonable costs of investigation and defense and reasonable attorneys' fees), whether or not involving a third-party claim.

(c) "Excluded EHCC Equity Members" shall mean any equity members of the Club at the time of the Merger whose membership is terminated prior to or after the Member Approval Date that elects to rejoin the Club in accordance with the Bylaws during the period from the Member Approval Date to the Effective Time.

(d) "Existing EHCC Equity Members" means the Equity Members of EHCC (as such term is defined in the Bylaws of EHCC) immediately prior to the Effective Time; provided, however, that the Excluded EHCC Equity Members shall not be included as Existing EHCC Equity Members.

(e) "Existing EHCC Non-Equity Members" means the Associate Members of EHCC (as such term is defined in the Bylaws of EHCC) immediately prior to the Effective Time.

(f) "New Members" means the participants in the Facilities joining on or after the Effective Time.

(g) "Organizational Documents" means (i) the articles or certificate of incorporation and the bylaws of a corporation; (ii) the partnership agreement and any statement of partnership of a general partnership; (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (iv) the articles of organization and regulations of a limited liability company; (v) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; (vi) the trust agreement or other similar document forming a trust; and (vii) any amendment to any of the foregoing.

(h) "Person" or "person" means any individual, corporation (including any non-profit or profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental authority.

representations and warranties made by EHCC in Article III, EHCC make no representation or warranty, (a) with respect to any projections, estimates or budgets heretofore delivered to or made available to MergerCo, Harvey or the MergerCo Equity Members of future revenues, expenses or expenditures or future results of operations; (b) with respect to any information or documents (financial or otherwise) made available to MergerCo, Harvey or the MergerCo Equity Members or its counsel, accountants, advisers or representatives other than information or documents specifically referenced in Article III hereof; (c) as to the amount of or type of consideration, profit or loss that could be realized by the MergerCo Equity Members as the equity members of the Surviving Club; or (d) the qualification of the Surviving Club as an organization described in the Internal Revenue Code of 1986, as amended, Section 501(c)(7) ("Section 501(c)(7)") after the Merger.

### 8.3 Legal Representation.

(a) The law firm of Cox Smith Matthews Incorporated ("CSM") has represented only the corporate interest of EHCC with respect to the transactions contemplated by this Agreement and has not been engaged to provide, and has not provided, any legal services to the Existing EHCC Equity Members, MergerCo, Harvey or the MergerCo Equity Members. Further, the representation of EHCC by CSM has been limited to the corporate matters related to the Merger and CSM has not opined on or provided advice to EHCC, and EHCC has not relied on any advice from CSM, with respect to (i) the Tax effect of the Merger on EHCC or the Existing EHCC Equity Members or the tax treatment of the Merger Consideration, (ii) the qualification of EHCC (prior to the Merger) under Section 501(c)(7) or (iii) the effect of the Merger on the exemption of EHCC under Section 501(c)(7) and whether the Surviving Club will qualify as an organization described in Section 501(c)(7) after the Merger.

(b) Harvey, MergerCo and the MergerCo Equity Members acknowledge that each of them has consulted with, or had the opportunity to consult with, legal counsel of their own selection about this Agreement, the Merger and the exhibits hereto. Harvey and MergerCo each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

8.4 Entire Agreement. This Agreement (including the other documents referred to herein) constitutes the entire agreement between and among the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such subject matter. All Exhibits and Schedules referred to herein and attached hereto are incorporated herein by reference.

8.5 Assignment; Binding Effect; Third Party Beneficiary. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. None of MergerCo, the MergerCo Equity Members or Harvey may assign its rights under this Agreement. The parties acknowledge that the Existing EHCC Equity Members are intended third party beneficiaries of this Agreement and are entitled to the benefit of and the right to enforce the rights, duties and obligations of MergerCo, the Surviving Club, Harvey and the MergerCo Equity Members.



8.6 Amendments. Prior to the Effective Time, this Agreement may be amended only by the written agreement of the parties hereto. After the Effective Time, unless as expressly set forth herein, any amendment of this Agreement shall be in writing and shall require the approval of the Surviving Club and the Requisite Approval.

8.7 Indemnification. The Surviving Club, Harvey and the MergerCo Equity Members (collectively, the "Harvey Parties"), jointly and severally, will indemnify and hold harmless each Existing EHCC Equity Member for, and will pay to such Existing EHCC Equity Member the amount of any Damages, whether or not involving a third-party claim, caused by, arising from or in connection with (directly or indirectly) any breach or failure to perform of any representation, warranty, covenant or obligation made by any Harvey Party in this Agreement, the New Certificate of Formation or the New Bylaws or any other certificate or document executed and delivered by a Harvey Party pursuant to this Agreement. In the event of litigation relating to this Agreement, the non-prevailing party shall be liable and pay to the prevailing party the reasonable legal fees incurred by the prevailing party in connection with such litigation, including any appeal therefrom.

8.8 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party at the earlier of (i) when actually delivered to such party, (ii) when facsimile transmitted to such party to the facsimile number indicated for such party below (or to such other facsimile number for a party as such party may have substituted by notice pursuant to this section), or (iii) when mailed to such party by registered or certified U.S. Mail (return receipt requested) or sent by overnight courier, confirmed by receipt, and addressed to such party at the address designated below for such party (or to such other address for such party as such Party may have substituted by notice pursuant to this section):

(a) If to EHCC or the Surviving Club

Eastern Hill Country Club  
3000 S. Country Club  
Garland, Texas 75043  
Attn: President

With a copy to:

Cox Smith Matthews Incorporated  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Attn: Steven A. Elder

(b) If to any members of the Club, to the address set forth on the books and records of the Club.

(c) If to Harvey or MergerCo:

James David Harvey  
11410 Pagemill Drive  
Dallas, Texas 75243

With a copy to:

Patrick F. Lacy  
5001 Spring Valley, Suite 1000 E  
Dallas, Texas 75244

8.9 Waiver. No waiver of any provision of this Agreement shall arise from any action or inaction of any party, except an instrument in writing expressly waiving the provision executed by the party entitled to the benefit of the provision.

8.10 Severability. If any part or provision of this Agreement is or shall be deemed violative of any applicable laws, rules or regulations, such legal invalidity shall not void the Agreement or affect the remaining terms and provisions of this Agreement, and the Agreement shall be construed and interpreted to comport with all such laws, rules or regulations to the maximum extent possible.

8.11 Section Headings; Construction; References. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

8.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

8.13 Further Assurances. Each party, at any time after the Effective Time, shall promptly execute, acknowledge and deliver any further assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by another party and necessary for the party to comply with the representations, warranties and covenants contained herein and will take any action consistent with the terms of this Agreement that may reasonably be requested by another party.

8.14 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to any applicable principles of conflicts of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement and Plan of Merger as of the date first above written.

EASTERN HILLS COUNTRY CLUB

By: Jeannette Tiffany, Pres.  
Jeannette Tiffany, President

EASTERN HILLS TENNIS, YACHT AND GOLF  
CLUB, INC

By: [Signature]  
James David Harvey, President

[Signature]  
James David Harvey, individually

Exhibit B  
(Plan of Reorganization)

Exhibit C  
(Closing Statement from sale of Property)