

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11  
East West Resort Development V, L.P., L.L.L.P. : Case No. 10-10452 (BLS)  
Debtor. : (Jointly Administered)  
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**DISCLOSURE STATEMENT FOR THE PLAN OF LIQUIDATION OF  
EAST WEST RESORT DEVELOPMENT V, L.P., L.L.L.P.  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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**THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THE FILING AND DISSEMINATION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS A SOLICITATION OF ACCEPTANCES OF THE PLAN, NOR SHOULD THE INFORMATION CONTAINED HEREIN BE RELIED UPON FOR ANY PURPOSE UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE.**

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## SUMMARY

East West Resort Development V, L.P., L.L.L.P. (“EWRD V”), as a debtor and debtor in possession in the above-captioned jointly administered chapter 11 cases submits the following *Disclosure Statement for the Plan of Liquidation of East West Resort Development V, L.P., L.L.L.P. Under Chapter 11 of the Bankruptcy Code* (as may be amended from time to time, the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code to Holders of Interests in and Claims against EWRD V in connection with (i) the solicitation of votes on the Plan and (ii) the Confirmation Hearing.

The Plan provides for the conversion of all of EWRD V’s Assets to cash, and the transfer of all such Assets into the newly formed Liquidating Trust created for the purposes, *inter alia*, of making distributions to the Creditors of the Estate, pursuing Causes of Action, and otherwise completing the liquidation of the Estate, all as more fully set forth in this Plan.

The Joint Plan of Reorganization (the “Reorganization Plan”) of NMP Holdings, LLC, Northstar Mountain Properties, LLC, Northstar Iron Horse, LLC, Northstar Big Horn, LLC, Northstar Village Townhomes, LLC, Northstar Trailside Townhomes, LLC, Old Greenwood, LLC, Old Greenwood Realty Inc., Tahoe Mountain Resorts, LLC, and Tahoe Club Company, LLC was confirmed by that certain order of the Bankruptcy Court dated June 2, 2010. The Reorganization Plan became effective on July 1, 2010 (the “Reorganization Plan Effective Date”). Immediately prior to the Reorganization Plan Effective Date, EWRD V held, directly or indirectly, a majority of the equity interests in the Confirmed Debtors. The Reorganization Plan, however, extinguished all of the equity interests in the Confirmed Debtors and a new entity which is now known as Crew Tahoe, LLC (“Crew”) was established to hold a majority of the equity interests in the Confirmed Debtors.

As described in the Reorganization Plan, the Reorganization Plan constituted a separate chapter 11 plan for each of the Debtors except for EWRD V and Gray’s Station, LLC. On July 12, 2010, the Bankruptcy Court entered an order dismissing the chapter 11 case of Gray’s Station, LLC, leaving EWRD V the only Debtor in these cases whose case has yet to be resolved through a chapter 11 plan or alternative process.

EWRD V believes that confirmation of the Plan is preferable to any other alternative and that the Plan is designed to provide greater recoveries to creditors of EWRD V than those available in any other form of liquidation. EWRD V further believes that the Plan is the most efficient way to monetize and distribute EWRD V’s remaining assets.

## INTRODUCTION

This Disclosure Statement is intended to be used in connection with the solicitation of acceptances or rejections of the Plan filed with the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit A**. Unless otherwise noted, all capitalized terms used herein shall have the meaning ascribed to them in the Plan (*see* Article I of the Plan entitled “Definitions”). Except as expressly provided for herein, all of the provisions of this Plan, including without limitation, the definitions, distributions to creditors, and establishment of reserves, shall only apply to the assets and claims of the Estate.

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (PREVAILING EASTERN TIME), NOVEMBER 10, 2010, UNLESS EXTENDED BY (I) CONSENT OF THE DEBTORS WITHOUT AN ORDER OF THE BANKRUPTCY COURT OR (II) ORDER OF THE BANKRUPTCY COURT.**

**AFTER NOTICE AND HEARING, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION TO PERMIT THE HOLDERS OF CLAIMS AGAINST AND INTERESTS IN EWRD V BEING SOLICITED HEREIN TO MAKE REASONABLY INFORMED DECISIONS IN EXERCISING THEIR RIGHT TO VOTE ON THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT, HOWEVER, DOES NOT MEAN THAT THE BANKRUPTCY COURT RECOMMENDS ACCEPTANCE OR REJECTION OF THE PLAN.**

**WHILE THIS DISCLOSURE STATEMENT DESCRIBES FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS CERTAIN BACKGROUND MATTERS AND THE MATERIAL TERMS OF THE PLAN, IT IS INTENDED AS A SUMMARY DOCUMENT ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ATTACHED TO THE PLAN AND THIS DISCLOSURE STATEMENT. YOU SHOULD CAREFULLY READ THE PLAN AND THE EXHIBITS TO OBTAIN A FULL UNDERSTANDING OF THEIR PROVISIONS.**

**THE STATEMENTS AND INFORMATION CONCERNING EWRD V AND THE LIQUIDATING TRUST SET FORTH IN THIS DISCLOSURE STATEMENT CONSTITUTE THE ONLY STATEMENTS OR INFORMATION CONCERNING SUCH MATTERS THAT HAVE BEEN APPROVED BY THE BANKRUPTCY COURT FOR THE PURPOSE OF SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN WILL UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE THIS DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED. EWRD V ASSUMES NO DUTY TO UPDATE OR SUPPLEMENT THE DISCLOSURES CONTAINED HEREIN AND DOES NOT INTEND TO UPDATE OR SUPPLEMENT THE DISCLOSURES, EXCEPT TO THE EXTENT, IF ANY, NECESSARY AT THE HEARING ON CONFIRMATION OF THE PLAN.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN. CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY PROVE**

**TO BE WRONG OR MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THERE CAN BE NO ASSURANCE THAT ANY FORECASTED OR PROJECTED RESULTS CONTAINED HEREIN WILL BE REALIZED, AND ACTUAL RESULTS MAY VARY FROM THOSE SHOWN, POSSIBLY BY MATERIAL AMOUNTS.**

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THIS DISCLOSURE STATEMENT. PURSUANT TO THE PLAN, ANY SECURITIES OF EWRD V ISSUED TO ANY PARTY UNDER, PURSUANT TO OR IN EFFECTUATING THE PLAN, AND THE OFFERING AND ISSUANCE THEREOF BY ANY PARTY, INCLUDING, WITHOUT LIMITATION, EWRD V, ARE EXEMPT FROM SECTION 5 OF THE SECURITIES ACT OF 1933, IF APPLICABLE, AND FROM ANY STATE OR FEDERAL SECURITIES LAWS REQUIRING REGISTRATION FOR THE OFFER OR SALE OF A SECURITY OR REGISTRATION OR LICENSING OF AN ISSUER OF, UNDERWRITER OF, OR BROKER OR DEALER IN, A SECURITY, AND OTHERWISE ENJOY ALL EXEMPTIONS AVAILABLE FOR DISTRIBUTIONS OF SECURITIES UNDER A PLAN IN ACCORDANCE WITH ALL APPLICABLE LAW, INCLUDING WITHOUT LIMITATION SECTION 1145 OF THE BANKRUPTCY CODE.**

**EWRD V RESERVES THE RIGHT TO FILE AN AMENDED DISCLOSURE STATEMENT AND PLAN. ALL CREDITORS ARE HEREBY ADVISED AND ENCOURAGED TO READ THE PLAN AND DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

**A. SUMMARY OF THE PLAN**

***1. General Information***

This Section provides a general summary of the structure of the Plan and of the classification and treatment of Claims and Interests under the Plan. The following summary of the Plan is qualified in its entirety by reference to the Plan, which is attached as **Exhibit A** to this Disclosure Statement, as may be amended or modified. Holders of Claims and Interests are, once again, urged to review the Plan in detail as it is the operative legal document with respect to the treatment of Claims and Interests and the rights of holders of Claims and Interests. The primary objectives of the Plan are (i) to wind down and complete the liquidation of all of the Assets of EWRD V in an efficient and effective manner, (ii) to investigate and pursue, if applicable, or continue to pursue, all causes of action available to EWRD V, (iii) to recover any and all amounts owed to EWRD V, (iv) to review, analyze and, if applicable, object to any Claims and/or Interests filed against EWRD V, (v) to make Distributions to holders of Allowed Claims pursuant to the terms of the Plan, (vi) to otherwise maximize the value of recoveries to all creditors of EWRD V on a fair and equitable basis, and (vii) to close this Chapter 11 Case.

***2. Creation of Liquidation Trust***

The Plan provides for the transfer of all of EWRD V's Assets and liabilities, including Claims, into the Liquidating Trust which will be formed pursuant to the Plan for the benefit of the Estate. The Liquidating Trust will, among other things, have the responsibility for liquidating certain assets, pursuing causes of action, recovering amounts owed to EWRD V, reconciling Claims and distributing the Assets of the Estate to the Holders of Allowed Claims in accordance with the Plan. The Liquidating Trust will be under the full control of the Liquidating Trustee as provided in the Plan, subject to the limitations set forth in the Plan and the Liquidating Trust Agreement (including, without limitation, with respect to the rights of the Trust Oversight Committee). Pursuant to the terms of the Plan and the Liquidating Trust, EWRD V shall appoint and designate the initial Liquidating Trustee, which is anticipated to be William Hoffman, President and Chief Executive Officer of Trigild Inc. It is anticipated that the Trust Oversight Committee will be composed of three (3) members selected by the creditors of EWRD V. The Bankruptcy Court will retain and have exclusive jurisdiction over any and all matters involving the Liquidating Trustee and/or the Liquidating Trust and the Trust Oversight Committee.

### 3. Summary of Plan Treatment

While a number of claimants asserted security, priority and administrative claims against EWRD V, EWRD V has determined after review of its books and records and of all such claims, that such claimants are not entitled to secured, administrative or priority status in whole or in part. EWRD V believes that all such claims are misclassified and intends to file an objection to reclassify all such claims to unsecured claims. Nevertheless, out of an abundance of caution, the Plan includes a separate classification for Priority Claims and Secured Claims in the event and to the extent that the Bankruptcy Court deems that any of these claims are properly classified.

The following table briefly summarizes the classification of claims and interests under the Plan:<sup>1</sup>

- Administrative Expense Claims. Allowed Administrative Claims, including Professional Fee Claims, will be paid in full.

EWRD V estimates that no Administrative Expense Claims, to the extent that any have been asserted, will be Allowed.

- Priority Tax Claims. Allowed Priority Tax Claims, if any, will be paid in full.

EWRD V estimates that no Priority Tax Claims, to the extent that any have been asserted, will be Allowed.

- Priority Claims. Allowed Priority Claims in Class 1, if any, will be paid in full.

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<sup>1</sup> EWRD V explicitly reserves its right to file an amended Plan and Disclosure Statement and any Supplements thereto.

EWRD V estimates that no Priority Claims, to the extent that any have been asserted, will be Allowed.

- Secured Claims. Each Holder of an Allowed Class 2 Claim, if any, shall, at the option of the Liquidating Trustee, subject to the consent of the Trust Oversight Committee, (i) receive Cash in an amount equal to such Claim, in full and complete satisfaction of such Claim, on the later of the initial distribution date under the Plan and the date such Claim becomes an Allowed Claim, or as soon thereafter as is practicable; or (ii) receive the collateral securing its Claim in full and complete satisfaction of such Claim on the later of the initial distribution date under the Plan and the date such Claim becomes an Allowed Claim, or as soon thereafter as is practicable. Each Holder of an Allowed Class 2 Claim shall also have a General Unsecured Claim to the extent its Allowed Class 2 Claim is not fully and completely satisfied through the receipt of cash or collateral as described in the preceding sentence.

EWRD V estimates that no Secured Claims, to the extent that any have been asserted, will be Allowed.

- General Unsecured Claims. The Liquidating Trustee shall distribute to each Holder of an Allowed Class 3 Claim a Pro Rata share of Distributable Cash.
- Interests and Interest Related Claims. Holders of Interests and Interest Related Claims in Class 4 shall receive no distribution or dividend on account of such Interests. On the Effective Date, all Interests and Interest Related Claims in Class 4 shall be deemed canceled, null and void, and of no force and effect.

*For detailed information, please refer to Article II of the Plan (“Classification and Treatment of Claims”).*

## **B. RECOMMENDATION**

**EWRD V BELIEVES THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY OTHER ALTERNATIVE AND THAT THE PLAN IS DESIGNED TO PROVIDE GREATER RECOVERIES THAN THOSE AVAILABLE IN ANY OTHER FORM OF LIQUIDATION. ANY OTHER ALTERNATIVE WOULD CAUSE SIGNIFICANT DELAY AND UNCERTAINTY, AS WELL AS ADDITIONAL ADMINISTRATIVE COSTS. THEREFORE, EWRD V RECOMMENDS THAT YOU VOTE TO “ACCEPT” THE PLAN BY NO LATER THAN 5:00 P.M., PREVAILING EASTERN TIME, ON NOVEMBER 10, 2010, WHICH IS THE VOTING DEADLINE SET BY THE BANKRUPTCY COURT.**

## ARTICLE I.

### VOTING

#### A. ELIGIBILITY TO VOTE

The Plan divides creditors' Claims against and shareholders' Interests in EWRD V into various Classes and provides separate treatment for each Class. Except as provided below, any holder of a Claim whose claim is impaired under the Plan is entitled to vote if either (i) its Claim has been scheduled by EWRD V and such Claim is not scheduled as disputed, contingent or unliquidated, or (ii) such holder of a Claim has filed a proof of claim or interest on or before the bar date established by the Bankruptcy Court for filing such proofs of claim or interest. A holder of a disputed, contingent or unliquidated Claim, or the holder of a Claim that has been objected to, is not entitled to vote on the Plan unless such Claim has been allowed prior to the balloting deadline by the Bankruptcy Court after notice and hearing, or the Bankruptcy Court estimates such Claim for voting purposes prior to the balloting deadline. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by a creditor was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

As provided in Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims will not be classified for the purposes of voting or receiving distributions under the Plan. Rather, all such Claims will be treated separately as unclassified Claims and will be paid in full. Priority Claims will also be paid in full to the extent such Claims become Allowed Claims. Creditors in these Classes are unimpaired, are conclusively presumed to have accepted the Plan, and are not entitled to vote on the Plan. If and to the extent that any Class identified as being unimpaired is determined to be impaired, such Class shall be entitled to vote to accept or reject the Plan.

The following Classes of Claims and Interests under the Plan are Impaired: Class 3 (General Unsecured Claims) and Class 4 (Interests and Interest Related Claims). Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan. Holders of Interests and Interest Related Claims in Class 4 are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

The record date for determining any Creditor's eligibility to vote on the Plan is October 4, 2010. Only those Creditors entitled to vote on the Plan will receive a ballot with this Disclosure Statement.

**CREDITORS WHOSE CLAIMS ARE BEING OBJECTED TO ARE NOT ELIGIBLE TO VOTE UNLESS SUCH OBJECTIONS ARE RESOLVED IN THEIR FAVOR OR, AFTER NOTICE AND A HEARING PURSUANT TO BANKRUPTCY RULE 3018(a), THE BANKRUPTCY COURT ALLOWS THE CLAIM TEMPORARILY FOR THE PURPOSE OF VOTING TO ACCEPT OR REJECT THE PLAN. ANY CREDITOR THAT WANTS ITS CLAIM TO BE ALLOWED TEMPORARILY FOR THE PURPOSE OF VOTING MUST TAKE THE STEPS NECESSARY TO ARRANGE**

**AN APPROPRIATE HEARING WITH THE BANKRUPTCY COURT UNDER BANKRUPTCY RULE 3018(a).**

**B. BALLOTS**

In voting for or against the Plan, please use only the ballot or ballots sent to you with this Disclosure Statement. Votes cast to accept or reject the Plan will be counted by Class. Please read the voting instructions on the reverse side of the ballot for a thorough explanation of voting procedures.

**IF YOU BELIEVE THAT YOU ARE A HOLDER OF A CLAIM IN A VOTING CLASS FOR WHICH YOU DID NOT RECEIVE A BALLOT, IF YOUR BALLOT IS DAMAGED OR LOST, OR IF YOU HAVE QUESTIONS CONCERNING VOTING PROCEDURES, PLEASE CONTACT HILLA URIBE JIMENEZ, ESQ. AT 312-499-6091. MRS. URIBE CANNOT PROVIDE YOU WITH LEGAL ADVICE.**

EWRD V's acceptance and counting of any vote or any ballot is not and shall not be an admission or acknowledgement of the Claim asserted therein or the appropriate treatment thereof under the Plan, and all rights in this regard are reserved for the benefit of the Liquidating Trust and the Liquidating Trustee.

**C. VOTING PROCEDURE**

Unless otherwise directed in your solicitation package, mail your completed ballots to:

East West Resort Development V, L.P., L.L.L.P. Claims Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, 3rd Floor  
New York, NY 10017  
Tel. [Toll-free] (866) 212-0222  
Fax. (646) 282-2501

**DO NOT RETURN BALLOTS TO THE BANKRUPTCY COURT.** A ballot that does not indicate an acceptance or rejection of the Plan will not be counted either as a vote to accept or a vote to reject the Plan. If you cast more than one ballot voting the same Claim before 5 p.m. Prevailing Eastern Time on the Voting Deadline (as defined below), the last ballot received before the Voting Deadline will be deemed to reflect your intent and thus will supersede any prior ballots. Additionally, you may not split your Claims within a particular Class under the Plan either to accept or reject the Plan. Therefore, a ballot or a group of ballots within a Plan Class received from a single creditor that partially rejects and partially accepts the Plan will not be counted.

Unless the Bankruptcy Court permits you to do so after notice and a hearing to determine whether sufficient cause exists to permit the change, you may not change your vote after it is cast. **DO NOT RETURN ANY STOCK CERTIFICATES, DEBT INSTRUMENTS OR OTHER SECURITIES WITH YOUR BALLOT. FACSIMILE, EMAIL OR ELECTRONICALLY TRANSMITTED BALLOTS WILL NOT BE ACCEPTED.**

**PLEASE INCLUDE YOUR TAXPAYER IDENTIFICATION NUMBER ON YOUR BALLOT; THE DISBURSING AGENT MAY NOT BE ABLE TO MAKE DISTRIBUTIONS TO YOU WITHOUT IT.**

**D. VOTING DEADLINE**

**IN ORDER TO BE COUNTED, BALLOTS MUST BE RECEIVED BY 5:00 P.M., PREVAILING EASTERN TIME ON NOVEMBER 10, 2010 (the “Voting Deadline”).**

**E. IMPORTANCE OF YOUR VOTE**

Your vote is important. The Bankruptcy Code defines acceptance by a Class of Claims as acceptance by Holders of at least two-thirds in amount and a majority in number of Allowed Claims in that Class that have voted. **ONLY THOSE CREDITORS WHO ACTUALLY VOTE ARE COUNTED FOR PURPOSES OF DETERMINING WHETHER A CLASS HAS VOTED TO ACCEPT THE PLAN. FAILURE TO VOTE WILL LEAVE TO OTHERS THE DECISION TO ACCEPT OR REJECT THE PLAN.**

**ARTICLE II.**

**BACKGROUND**

**A. OVERVIEW OF EWRD V’S BUSINESS AND THE CIRCUMSTANCES LEADING TO THESE CASES**

**1. EWRD V**

EWRD V is a limited partnership formed to develop residential and commercial real estate projects on and around Northstar at Tahoe Resort located in Lake Tahoe, California.

EWRD V has co-developed and, prior to the Reorganization Plan Effective Date, co-owned and co-developed the following four unique residential communities: Northstar Village, Northstar Highlands, Old Greenwood and Gray’s Crossing.

**2. EWRD V’s Business and Principal Assets**

**a. Business**

Prior to the Reorganization Plan Effective Date, EWRD V served as the holding company for the remaining Debtors and, in that capacity, held, directly or indirectly, a majority of the membership interests of or stock in each of the Confirmed Debtors. Pursuant to the Reorganization Plan, however, all equity interests in the Confirmed Debtors were extinguished on the Reorganization Plan Effective Date and consequently, EWRD V no longer holds any interest in the Confirmed Debtors. EWRD V remains the majority holder of membership interests in Gray’s Station, LLC whose chapter 11 case was dismissed on July 12, 2010 by Bankruptcy Court order. EWRD V neither independently conducts business nor has any employees.

**b. EWRD V's Principal Assets**

EWRD V's assets comprise the following:

- (i) EWRD V has Cash in the amount of \$60,432, of which \$47,725 was obtained from distributions that EWRD V received on account of its general unsecured claims against Old Greenwood, LLC, Tahoe Mountain Resorts, LLC and NMP Holdings, LLC in the amounts of \$7,927.11, \$19,066 and \$26,423.68, respectively.
- (ii) EWRD V has two claims (the "Ace Claims") pending against ACE American Insurance Company ("ACE").

ACE has provided the Debtors with general commercial liability insurance (the "Policy") coverage since July 1, 2004. On September 11, 2009, EWRD V, Big Horn and Iron Horse (collectively, the "ACE Plaintiffs") filed suit (the "ACE Action") against ACE and ten doe defendants (collectively, the "ACE Defendants") in the Superior Court of the State of California, County of Placer. The ACE Plaintiffs assert that while the Policy was in effect and during the coverage period of the Policy, the ACE Plaintiffs suffered damage from third party claims for covered property caused by and/or resulting from a covered cause of loss. Thereafter, the ACE Plaintiffs filed two claims against ACE in the amounts of \$6,434,485 and \$1,000,000. The ACE Plaintiffs further assert that the ACE Defendants have breached their obligations under the Policy by refusing and failing to pay and otherwise reimburse the ACE Plaintiffs for any and all covered losses under the Policy. Additionally, the ACE Plaintiffs allege that such breaches by the ACE Defendants were made in bad faith in violation of the implied covenant of good faith and fair dealing present in all contracts. Finally, the ACE Plaintiffs seek declaratory relief against the ACE Defendants such that the parties may determine their rights and duties under the Policy.

The relief sought by the ACE Plaintiffs includes: (i) a declaration that the ACE Plaintiffs' loss is covered under the Policy, (ii) damages according to proof at trial, (iii) exemplary and punitive damages, (iv) interest at the legal rate, (v) costs of suit, including attorney's fees, and (vi) such further relief as the court deems proper. The ACE Plaintiffs have asserted monetary damages in excess of \$6 million.

- (iii) EWRD V has an account receivable due and owing from Sawmill Heights in the amount of \$661,200 (the "Sawmill Heights Receivable"). Prior to the Petition Date, EWRD V deposited \$661,200 into an escrow account with US Bank per a demand by US Bank under the Sawmill Heights Limited Guaranty (the "Escrow Account"). US Bank subsequently drew down on the Escrow Account to make monthly interest and Letter of Credit payments on the Series A Bonds (defined below) until it had a zero balance.

**B. CAPITAL STRUCTURE OF EWRD V AND SIGNIFICANT PREPETITION INDEBTEDNESS**

### ***Guaranty Debt Obligations***

EWRD V served as guarantor or co-guarantor for a number of loan facilities between various lenders and certain Debtors and non-debtor entities, all as more fully described below:<sup>2</sup>

- EWRD V is a guarantor under that certain loan facility dated July 16, 2007, between Gray's Station, LLC and Citizens Bank of Northern California ("Citizens") in the amount of \$2,880,000, with a maturity date of July 15, 2010 and an interest rate of 795 bps (the "Citizens Facility"). HF Holding is co-guarantor of the Citizens Facility. As of the Petition Date, the outstanding principal balance on the Citizens Facility was approximately \$2,881,000.
- EWRD V is a guarantor under that certain loan facility dated July 29, 2005, between Gray's Station, LLC and Societe Generale in the amount of \$6,000,000, with a maturity date of July 31, 2009 (the "SocGen Facility"). As of the Petition Date, the SocGen Facility was in default with an outstanding principal balance of \$6,000,000 and a default interest rate of 10.5%.
- EWRD V is a guarantor under that certain loan facility dated December 26, 2006, between Old Greenwood, LLC and Citizens Bank of Northern California in the amount of \$2,350,000, with a maturity date of December 26, 2016 and an interest rate of 795 bps (the "Citizens Model Facility"). HF Holding is co-guarantor of the Citizens Model Facility. As of the Petition Date, the outstanding principal balance on the Citizens Model Facility was approximately \$2,350,000.
- EWRD V is a guarantor under that certain loan facility dated December 19, 2005, between Old Greenwood, LLC and Plumas Bank in the approximate amount of \$3,940,000, with a maturity date of December 20, 2010 and an interest rate of 745 bps (the "Plumas Facility"). As of the Petition Date, the outstanding principal balance on the Plumas Facility was approximately \$3,000,000.
- EWRD V is a guarantor under that certain loan facility dated March 31, 2004, between Old Greenwood, LLC and JPMorgan Chase Bank, N.A, in the amount of \$15,940,000 (the "JPMorgan Facility"). As of the Petition Date, the principal balance on the JPMorgan Facility was approximately \$1,513,000.
- EWRD V is a guarantor under that certain loan facility dated October 26, 2007, between non-debtor Highlands Hotel Company, LLC and Bank of America, National Association ("BofA"), in the maximum amount of

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<sup>2</sup> For a complete description of the liabilities of the Confirmed Debtors, please consult the Disclosure Statement for the Reorganization Plan [Dkt. No. 292].

\$147,000,000 with an original maturity date of October 26, 2010 (the “BofA Construction Loan”). Non-debtor East West Resort Development IX, L.P., L.L.L.P. (“EWRD IX”) is a co-guarantor of the BofA Construction Loan. As of the Petition Date, the BofA Construction Loan was in default with an outstanding principal balance of approximately \$123,200,000.

- EWRD V is a guarantor under that certain loan facility dated October 27, 2008, between non-debtor Highlands Hotel Residences, LLC and BofA in the amount of \$10,000,000 with an original maturity date of October 27, 2009 (the “BofA Land Loan”). Non-debtors EWRD IX and Highlands Hotel Holding Company, LLC are co-guarantors of the BofA Land Loan. As of the Petition Date, the BofA Land Loan was in default with an outstanding principal balance of \$10,000,000.
- EWRD V is a guarantor under that certain construction loan dated August 28, 2007, between MV Penthouses, LLC and BofA, as agent, in the amount of \$76,500,000 (the “Manor Vail Construction Loan”). Non-debtor East West Resort Development VIII, L.P., L.L.L.P. is co-guarantor of the Manor Vail Construction Loan. As of the Petition Date, the outstanding principal balance on the Manor Vail Construction Loan was \$17,700,000.

#### ***Sawmill Heights Limited Guaranty***

On June 1, 2006, Northstar Community Housing Corporation (“NCHC”) and U.S. Bank, N.A., as trustee, entered into that certain Indenture of Trust establishing NCHC’s right to issue bonds on behalf of the Town of Truckee to finance the acquisition and construction of real and personal property, buildings and improvements for approximately 96 housing units known as “*Sawmill Heights*.” In connection therewith, NCHC issued \$20,393,000 in aggregate principal amount of its Series A Bonds (the “Series A Bonds”). EWRD V guaranteed 100% of the bonds (the “Sawmill Heights Limited Guaranty”), with this guaranty reduced to 25% of the outstanding bonds once certain events occurred. EWRD V believes these events have occurred, resulting in a guaranty amount of \$5,098,250.

#### ***EWRD V Guarantees to Affiliated Non-Debtor Entities***

EWRD V has also entered into various general indemnity agreements with surety companies to guarantee certain obligations of affiliated non-debtor entities. EWRD V estimates that these guarantees total approximately \$4,900,000 for performance bonds, \$600,000 for homeowner association bonds and approximately \$8,000,000 for escrow bonds.

### **C. RECENT FINANCIAL INFORMATION**

For the twelve months ending December 31, 2009, EWRD V had no income and/or losses on an unaudited basis, exclusive of its subsidiary business units.

### ARTICLE III.

#### **KEY EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASES**

Given that the Debtors focused their business on the construction, development, management and sale of resort real property and the management of high-end resort amenities, the unprecedented collapse of the real estate finance market and drop in real property values dramatically affected the Debtors. At the same time, the collapse of the financial markets made it impossible for the Debtors to continue with their normal operations, despite extensive out-of-court restructuring efforts.

EWRD V was unable to secure additional capital or financing, other than with the protection provided under the Bankruptcy Code, from its current lenders or investors to fund, among other things, (i) land holding costs, (ii) further development, and (iii) operating costs at the recreational club (the "Tahoe Club") operated by Tahoe Club Company, LLC.

Making matters worse, the general decline in the economy took its toll on demand for luxury real estate causing property values to fall markedly, particularly in Lake Tahoe, where all of the Debtors' properties are located. Over the course of the past year, the Debtors' properties lost significant value, in some cases resulting in assets being valued below their loan balances.

In addition, costs stemming from the Tahoe Club, which loses money on an operating basis, and continued contractual infrastructure obligations and tax obligations, put a severe drain on the Debtors' cash resources. For the twelve months ending December 31, 2009, the Debtors had total net losses on an unaudited consolidated basis of approximately \$31.8 million. Such losses were due to, among other things, the following:

- Declining real estate sales during the last six months of 2009 (\$20.5 million vs. \$48.7 million during the last six months of 2008).
- Ongoing operating losses at the Tahoe Club.
- Significant ongoing land holding costs, which include approximately \$3.1 million of annual property taxes and significant annual special taxes incurred by the Debtors.

Moreover, the Debtors had limited internal options to fund ongoing cash burn at the Debtors, including, but not limited to: (i) significant land holding costs, (ii) operating losses at the Tahoe Club, (iii) ongoing development, marketing and administrative expenditures and (iv) constructions loans which swept 100% of asset sale proceeds.

This lack of liquidity made it impossible for the Debtors to continue their development efforts, operate the Tahoe Club, fulfill contractual infrastructure obligations or continue to pay their debt service. Indeed, due to inadequate liquidity, immediately prior to commencing the Chapter 11 Cases, the Debtors faced an imminent shut down of their operations and liquidation of all their assets.

## ARTICLE IV.

### **SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES**

This section of the Disclosure Statement describes important developments that occurred in the Chapter 11 Cases.

#### **A. RETENTION OF PROFESSIONALS BY THE DEBTORS**

On March 11, 2010, the Bankruptcy Court entered orders authorizing the retention of Paul, Hastings, Janofsky & Walker LLP as the Debtors' lead counsel and Richards Layton & Finger, P.A., as their co-counsel pursuant to section 327(a) of the Bankruptcy Code in connection with these Chapter 11 Cases. On that same date, the Bankruptcy Court entered an order authorizing the retention of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey") as the Debtors' financial advisors and investment bankers pursuant to sections 327(a) and 328(a) of the Bankruptcy Code.

#### **B. FORMATION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

The U.S. Trustee held a meeting to form an official committee of unsecured creditors on March 1, 2010. Due to insufficient response by the Debtors' creditors, however, a committee was not appointed by the U.S. Trustee.

#### **C. "FIRST DAY" RELIEF**

As in many large chapter 11 cases, the Debtors filed a variety of customary motions on the Petition Date which were designed to facilitate their smooth transition into bankruptcy.

##### **1. Joint Administration**

On February 18, 2010, the Bankruptcy Court entered a final order allowing the joint administration of these Chapter 11 Cases solely for procedural purposes to reduce the financial and other resources spent on administering the Chapter 11 Cases.

##### **2. Cash Management**

On February 18, 2010, the Bankruptcy Court entered an interim order granting the Debtors' motion to continue using their established cash management system, bank accounts, and documents related to the bank accounts, in lieu of closing existing accounts and establishing an entirely new post-petition cash management system, to avoid disruption. The Bankruptcy Court order granted the Debtors an additional 45 days to invest and deposit funds in accordance with the requirements of section 345 of the Bankruptcy Code. A final order approving such motion was entered on March 11, 2010.

##### **3. Utilities**

On February 18, 2010, the Bankruptcy Court entered an interim order prohibiting the Debtors' utility providers from discontinuing, altering or refusing service and authorizing the

Debtors to provide each utility provider with adequate assurance of future performance in the form of a cash deposit. A final order approving such motion was entered on March 11, 2010.

**4. Retention of Epiq as Claims and Noticing Agent**

On February 18, 2010, the Bankruptcy Court entered an order authorizing the Debtors to retain Epiq to perform certain claims, noticing and balloting functions in the Chapter 11 Cases. The order retaining Epiq further provided that the fees and expenses incurred pursuant to Epiq's provision of services would be treated as administrative expenses of the Debtors' Estates.

**5. Prepetition Trust Fund Taxes**

On February 18, 2010, the Bankruptcy Court entered a final order authorizing the Debtors to pay prepetition trust fund taxes in the ordinary course of business. The authorization permits, but does not require, the Debtors to pay all such taxes, including prepetition sales, use and other trust fund type taxes due and owing to all federal, state and local taxing authorities. Such payments are authorized only to the extent that adequate funds are available and, in any event, the Debtors are only permitted to pay up to \$15,000 in prepetition trust fund taxes.

**6. Insurance**

On February 18, 2010, the Bankruptcy Court entered a final order: (i) authorizing the Debtors to (a) maintain insurance and surety bond programs, (b) pay insurance and surety bond premiums in the ordinary course, and (c) pay all obligations associated therewith; and (ii) preventing insurance and surety companies from giving notice of termination or otherwise modifying any insurance policy or surety bonds.

**7. DIP Financing**

On March 11, 2010, the Bankruptcy Court entered an order authorizing that certain debtor-in-possession financing and security agreement dated as of February 18, 2010, with Barclays Bank PLC (the "DIP Facility") on a final basis. The DIP Facility was fully paid down as of the Reorganization Plan Effective Date.

**D. THE DEBTORS' SCHEDULES AND THE BAR DATE**

On March 8, 2010, the Debtors filed their Schedules with the Bankruptcy Court. On April 5, 2010 and July 29, 2010, the Debtors filed an amendment to certain of their Schedules. As set forth on the global notes to the Schedules, the assets listed on the Schedules are listed at book value rather than market value.

On March 11, 2010, the Debtors entered an order establishing April 14, 2010 as the Bar Date and September 11, 2010 as the Governmental Bar Date.

As of the date of the filing of the Plan, claims have been filed against EWRD V in the aggregate amount of \$211,258,294.88, excluding claims that appear to be duplicative of other claims filed in the Chapter 11 Cases or claims listed on the Schedules. Objections to Claims may be filed both before and after the Confirmation Date. On and after the Effective Date, only the

Liquidating Trust and the Liquidating Trustee shall have legal standing and the sole right to commence and pursue objections to Claims on behalf of the Estate.

#### **E. THE PLAN OF REORGANIZATION OF THE CONFIRMED DEBTORS**

On May 28, 2010, the Confirmed Debtors filed their Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, As Modified. The Reorganization Plan was subsequently confirmed by the Bankruptcy Court on June 2, 2010. The Reorganization Plan became effective on July 1, 2010.

#### **F. DISMISSAL OF CHAPTER 11 CASE OF GRAY'S STATION, LLC**

On June 17, 2010, the Town of Truckee and Truckee Donner Public Utility District Community Facilities District No. 04-1 filed their Motion to Dismiss Chapter 11 Case of Gray's Station, LLC asserting, among other things, that: (i) substantially all of Gray's material assets were fully encumbered, (ii) Gray's attempt to sell certain of its assets pursuant to section 363 of the Bankruptcy Code was unsuccessful, and (iii) Gray's was not included in the Reorganization Plan of the Confirmed Debtors, confirmed by the Bankruptcy Court on June 2, 2010. No objections were filed to the Motion to Dismiss and, accordingly, on July 12, 2010, the Bankruptcy Court entered its Order Dismissing the Chapter 11 Case of Gray's Station, LLC.

#### **G. MANAGEMENT OF EWRD V AND THE SALE MOTION**

Prior to the Petition Date, East West Partners Inc. ("EWP"), an affiliate of HF Holding Corp. ("HF Holding") which is the general partner of EWRD V, was paid a fee for managing the Debtors' operations and providing the Debtors personnel support pursuant to the Amended and Restated Limited Partnership Agreement of EWRD V dated July 1, 2004 (as amended and supplemented, the "Partnership Agreement").

The Partnership Agreement was rejected by the Debtors effective as of the Reorganization Plan Effective Date and pursuant to the Plan, Crew entered into a new management agreement (the "Crew Management Agreement") with East West Partners – Tahoe, Inc. ("EWP-Tahoe"), pursuant to which EWP-Tahoe agreed to, among other things, manage the Confirmed Debtors' affairs for a management fee based upon the requirements imposed by each entity.

Since the Debtors' rejection of the Partnership Agreement, Crew has been managing the affairs of EWRD V. Crew has an administrative expense claim for the management services that it has provided since the Effective Date and for the management services that it will continue to provide until EWRD V emerges from chapter 11.

Crew, however, has agreed to provide EWRD V management services at no charge until EWRD V emerges from chapter 11 and forever waive and withdraw with prejudice any and all claims, proofs of claim, scheduled claims, administrative claims, motions or requests for payment filed and/or asserted, or which could be filed and/or asserted, by Crew against the EWRD V's estate if EWRD V transfers certain of its trademarks (the "Trademarks") to Crew free and clear of any liens, claims, encumbrances and other interests.

Accordingly, on August 17, 2010, EWRD V filed its *Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9007 for an Order Authorizing (I) the Sale or Transfer of Certain Assets of East West Resort Development V, L.P., L.L.P., Free and Clear of Liens, Claims and Encumbrances and (II) Granting Related Relief* (the “Sale Motion”), pursuant to which EWRD V is seeking Bankruptcy Court approval to sale and transfer the Trademarks to Crew free and clear of any claims, encumbrances and other interests, without a public auction, in exchange for Crew’s agreement to provide EWRD V management services at no charge until EWRD V emerges from chapter 11 and forever waive and withdraw with prejudice any and all claims, proofs of claim, scheduled claims, administrative claims, motions or requests for payment filed and/or asserted, or which could be filed and/or asserted, by Crew against the Estate.

In EWRD V’s business judgment, the Trademarks have no value to EWRD V, and thus the consideration offered by Crew is the highest and best offer for the Trademarks, and recognizing the limited resources available to EWRD V, marketing the Trademarks or conducting an auction will not result in higher consideration. Objections to the Sale Motion are due by September 7, 2010 and the hearing to consider approval of the Sale Motion is on September 14, 2010.

**ARTICLE V.**

**CLASSIFICATION AND TREATMENT OF CLAIMS**

**A. CLASSIFICATION**

The classification of Claims (except for Administrative Claims and Priority Tax Claims) and Interests listed below is for all purposes, including, without limitation, voting, confirmation and distributions under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. Consistent with section 1122 of the Bankruptcy Code, a Claim or Interest shall be deemed classified by the Plan in a particular Class only to the extent such Claim or Interest satisfies the definition of such Class and shall be deemed classified in a different Class to the extent any remainder or other portion of such Claim or Interest satisfies the definition of such different Class. A Claim is in a particular Class only to the extent such Claim is an Allowed Claim in such Class and has not been paid or otherwise settled before the Effective Date. The classification of Claims and Interests pursuant to the Plan is as follows:

<b><u>CLASS</u></b>	<b><u>STATUS</u></b>	<b><u>VOTING RIGHTS</u></b>
Class 1: Priority Claims	Not Impaired	Not Entitled to Vote
Class 2: Secured Claims	Not Impaired	Not Entitled to Vote
Class 3: General Unsecured Claims	Impaired	Entitled to Vote
Class 4: Interests and Interest Related Claims	Impaired	Not Entitled to Vote

**B. UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims shall not be classified for the purposes of voting or receiving distributions under the Plan. Rather, all such Claims shall be treated separately as unclassified Claims on the terms set forth in this Article II.B of the Plan.

**1. Administrative Claims**

**a. Professional Fee Claims**

The Liquidating Trustee shall pay Professionals who are entitled to reimbursement or allowance of fees and expenses from the Estate pursuant to sections 503(b)(2) - (b)(6) of the Bankruptcy Code, in Cash, in the amount awarded to such Professionals by Final Order of the Bankruptcy Court, as soon as practicable after the later of the Effective Date and the date upon which any order awarding fees and expenses becomes a Final Order, in accordance with the terms of any order entered by the Bankruptcy Court governing the payment of fees and expenses during the course of the Chapter 11 Case of EWRD V, and after application of any retainer received by the Professionals. Notwithstanding anything herein to the contrary, a Holder of a Professional Fee Claim may be paid on such other date or dates and upon such other terms as may be agreed upon by such Holder and the Liquidating Trustee.

Any final application for allowance of a Professional Fee Claim for services rendered and costs incurred through the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Liquidating Trust and the Liquidating Trustee at the addresses listed in Article IX.N of the Plan and on the Office of the United States Trustee so that it is received no later than forty-five (45) days after the Effective Date, or such Professional Fee Claim shall be forever barred and shall not be enforceable against EWRD V, its Estate, the Liquidating Trust, the Liquidating Trustee and their successors, their assigns or its Assets. Allowed Professional Fee Claims must be paid in full or reserved for in Cash to pay Professional Fee Claims pending allowance by the Bankruptcy Court prior to any payment to Holders of Allowed Claims in Class 3 (General Unsecured Claims).

**b. Administrative Claims and Administrative Expense Request Deadline**

The Liquidating Trustee shall pay each Holder of an Allowed Administrative Claim (excluding Professional Fee Claims) the full amount of such Allowed Administrative Claim, without interest, in Cash, as soon as practicable after the Effective Date or within thirty (30) days after such Administrative Claim becomes an Allowed Claim. Notwithstanding anything herein to the contrary, a Holder of an Allowed Administrative Claim may be paid on such other date or dates and upon such other terms as may be agreed upon by such Holder and the Liquidating Trustee. Without limiting the foregoing, all outstanding fees payable to the Office of the United States Trustee under 28 U.S.C. § 1930 that have not been paid as of the Effective Date shall be paid by the Liquidating Trustee no later than thirty (30) days after the Effective Date or when due in the ordinary course.

Each Holder of an Administrative Claim must file an Administrative Expense Request requesting payment of such Administrative Claim with the Bankruptcy Court by no later than the Administrative Expense Request Deadline for all other Administrative Claims that are not

subject to the Bar Date Order; provided, however, that any such Administrative Expense Request need not be filed with a hearing date. Nothing herein extends a Bar Date established in the Bar Date Order.

## **2. Priority Tax Claims**

The Liquidating Trustee shall pay, at the Liquidating Trustee's discretion, each Holder of an Allowed Priority Tax Claims either (i) in full in Cash at the later of (a) as soon as practicable after the Effective Date or (b) within thirty (30) days after such Priority Tax Claim becomes an Allowed Claim. Notwithstanding the immediately preceding sentence, the Disbursing Agent, may at the direction of the Liquidating Trustee, make payment on such Claims over a term of 5 years from the Petition Date, provided, however, that if the Liquidating Trustee elects to make payments in this manner, such claimants shall receive interest from the Effective Date through and including the date of the last payment at the interest rate required by section 511 of the Bankruptcy Code. All Allowed Priority Tax Claims against EWRD V which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof. The Liquidating Trustee can prepay any Allowed Priority Tax Claim at any time after the Effective Date without any penalty or charge.

Holders of Allowed Priority Tax Claims will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with such Claims. Any Claim for any such penalty, or demand for any such penalty, will be deemed disallowed by confirmation of the Plan.

## **C. CLASSES OF CLAIMS AND INTERESTS: CLASSIFICATION, TREATMENT AND VOTING RIGHTS**

Holders of Claims and Interests are divided into Classes and treated as follows:

### **1. "Class 1" – Priority Claims – Not Impaired**

#### **a. Classification**

Class 1 consists of all Allowed Priority Claims.

#### **b. Treatment**

The Liquidating Trustee shall pay each Holder of an Allowed Class 1 Claim, in relative order of priority pursuant to section 507 of the Bankruptcy Code, in full, in Cash, without interest, on the later of thirty (30) days after (i) the Effective Date or (ii) the date on which such Claim becomes an Allowed Claim.

#### **c. Voting**

Class 1 is not Impaired. Holders of Claims in Class 1 are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

**2. “Class 2” – Secured Claims – Not Impaired**

**a. Classification**

Class 2 consists of all Secured Claims.

**b. Treatment**

Each Holder of an Allowed Class 2 Claim shall, at the option of the Liquidating Trustee, subject to the consent of the Trust Oversight Committee, (i) receive Cash in an amount equal to such Claim, in full and complete satisfaction of such Claim, on the later of the initial distribution date under the Plan and the date such Claim becomes an Allowed Claim, or as soon thereafter as is practicable; or (ii) receive the collateral securing its Claim in full and complete satisfaction of such Claim on the later of the initial distribution date under the Plan and the date such Claim becomes an Allowed Claim, or as soon thereafter as is practicable. Each Holder of an Allowed Class 2 Claim shall also have a General Unsecured Claim to the extent its Allowed Class 2 Claim is not fully and completely satisfied through the receipt of cash or collateral as described in the preceding sentence.

**c. Voting**

Class 2 is not Impaired. Holders of Allowed Class 2 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

**3. “Class 3” – General Unsecured Claims – Impaired**

**a. Classification**

Class 3 consists of all General Unsecured Claims.

**b. Treatment**

The Liquidating Trustee shall distribute to each Holder of an Allowed Class 3 Claim a Pro Rata share of Distributable Cash, in accordance with Article VI of the Plan.

**c. Voting**

Class 3 is Impaired. Therefore, Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

**4. “Class 4” – Interests and Interest Related Claims – Impaired**

**a. Classification**

Class 4 consists of all Interests and Interest Related Claims.

**b. Treatment**

Holders of Interests and Interest Related Claims in Class 4 shall receive no distribution or dividend on account of such Interests. On the Effective Date, all Interests and Interest Related Claims in Class 4 shall be deemed canceled, null and void, and of no force and effect.

**c. Voting**

Class 4 is Impaired and will receive no distribution under the Plan. Holders of Interests and Interest Related Claims in Class 4 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Interests and Interest Related Claims in Class 4 are not entitled to vote to accept or reject the Plan.

**ARTICLE VI.**

**IMPLEMENTATION OF THE PLAN**

**A. IMPLEMENTATION OF PLAN**

EWRD V proposes to implement and consummate the Plan on and after the Effective Date.

**B. DISSOLUTION OF CORPORATE ENTITY AND FORMATION OF THE LIQUIDATING TRUST**

Prior to the Effective Date, EWRD V shall continue to wind down its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules. The Plan contemplates and is predicated upon the transfer of EWRD V's Assets and liabilities into the Liquidating Trust.

On the Effective Date, the Liquidating Trustee shall, in accordance with all applicable law, be issued one partnership interest in EWRD V and thereafter shall be the sole partner, officer and director of EWRD V, replacing the existing partners, officers and directors of EWRD V, and all other partnership interests in EWRD V shall be deemed canceled as of the Effective Date. Within the respective times determined by the Liquidating Trustee as necessary or appropriate under the circumstances (including with respect to the pursuit of Causes of Action in the name of the Estate), EWRD V shall be dissolved without any further action by the former partners, officers, or directors of EWRD V. The Liquidating Trustee may, in his or her discretion, file all necessary certificates of dissolution and take any other actions necessary or appropriate to reflect the dissolutions of EWRD V under the state law where EWRD V is incorporated. All applicable regulatory or governmental agencies shall accept any certificates of dissolution or other papers filed by the Liquidating Trustee on behalf of EWRD V and shall take all steps necessary to allow and reflect the prompt dissolution of EWRD V as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates, except as the Liquidating Trustee may determine in his or her sole discretion.

**C. CAUSES OF ACTION**

All Causes of Action shall be transferred into the Liquidating Trust. Causes of Action may be prosecuted, settled in accordance with Article IV.F of the Plan or abandoned by the

Liquidating Trustee. Notwithstanding anything to the contrary herein, no Distribution shall be made to the Holder of any Claim, including by way of setoff or recoupment by such claimant, if EWRD V or the Liquidating Trustee has taken action to recover, or given notice to the applicable party of intent to take such action, on a Cause of Action against the holder of such Claim (or the direct or indirect transferor to, or transferee of, such holder), until such Cause of Action is resolved by Final Order or otherwise in accordance with this section. The Liquidating Trustee will be substituted as the party in interest instead of EWRD V for all Causes of Action pending on the Effective Date.

#### **D. FORMATION OF THE LIQUIDATING TRUST**

The Liquidating Trust shall be established as a Delaware common law trust for the sole purpose of liquidating the Estate and making distributions to Holders of Allowed Claims, in accordance with the Plan and Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Subject to definitive guidance from the IRS, all parties shall treat the Liquidating Trust as a liquidating trust for all federal income tax purposes.

The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, but not limited to, any and all provisions necessary to govern the rights, powers, obligations and appointment and removal of the Liquidating Trustee and to ensure the treatment of the Liquidating Trust as a liquidating trust for federal income tax purposes, all consistent with the Plan.

As set forth herein, the liquidation and winding up of the Liquidating Trust and EWRD V shall become the responsibility of the Liquidating Trustee who shall thereafter have responsibility for the management, control and operation thereof, and who may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, subject to any necessary oversight or approvals of the Trust Oversight Committee as may be required pursuant to the Plan. Subject to further order of the Bankruptcy Court, the Liquidating Trustee shall act as liquidating agent of and for the Liquidating Trust and the Estate from and after the Effective Date, subject to any necessary oversight or approvals of the Trust Oversight Committee as may be required pursuant to the Plan.

The Liquidating Trustee, at the direction of the Trust Oversight Committee, shall be permitted to make any investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. The Liquidating Trustee, at the direction of the Trust Oversight Committee, may expend the Cash of the Liquidating Trust (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the respective assets of the Liquidating Trust during liquidation, (b) to pay Post-Confirmation Expenses according to the Administrative Budget (including, but not limited to, any United States Trustee fees, Liquidating Trustee fees, professional fees and taxes imposed on the Liquidating Trust), and (c) to satisfy other respective liabilities incurred by the Liquidating Trust in accordance with the Plan or the Liquidating Trust Agreement.

For all federal income tax purposes, all parties (including, without limitation, EWRD V, the Liquidating Trustee and Holders of Allowed Claims) shall treat the transfer of Assets and liabilities to the Liquidating Trust, in accordance with the terms of the Plan, as a transfer to Holders of Allowed Claims followed by a transfer by such Holders to the Liquidating Trust, and the beneficiaries of the Liquidating Trust shall be treated as the grantors and owners thereof. The beneficiaries of the Liquidating Trust shall be the Creditors of the Estate.

The Liquidating Trust shall terminate no later than the fifth (5th) anniversary of the Effective Date; provided, however, that within a period of three (3) months prior to such termination date, the Bankruptcy Court, upon motion by a party in interest in consultation with the Trust Oversight Committee, may extend the term of the Liquidating Trust if it is necessary to facilitate or complete the liquidation of the trust's assets. Notwithstanding the foregoing, multiple extensions can be obtained so long as Bankruptcy Court approval is obtained within three (3) months prior to the expiration of each extended term; provided, however, that the aggregate of all such extensions shall not exceed three (3) years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes.

#### **E. APPOINTMENT AND TERM OF THE LIQUIDATING TRUSTEE**

EWRD V shall appoint and designate the initial Liquidating Trustee, which is anticipated to be William Hoffman, President and Chief Executive Officer of Trigild Inc. EWRD V and the initial Liquidating Trustee shall have entered into a Liquidating Trustee employment agreement to be filed with the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing. The initial Liquidating Trustee, and each successor Liquidating Trustee, shall serve until the earlier of (i) the later to occur of (a) the entry of the Final Decree, (b) the dissolution of the Liquidating Trust, and (c) the payment of the final distributions to Holders of Allowed General Unsecured Claims pursuant to the Plan; or (ii) the expiration of the term of such Liquidating Trustee's employment agreement or such Liquidating Trustee's resignation, death, incapacity, removal or termination by the Trust Oversight Committee pursuant to the Liquidating Trust Agreement or order of the Bankruptcy Court. The Liquidating Trustee may also be removed by the Bankruptcy Court upon motion for good cause shown by any Creditor.

Upon creation of the Liquidating Trust, the Liquidating Trustee shall be the trustee of the Liquidating Trust for all purposes and in all respects, with all necessary and appropriate power to act for, on behalf of and in the name of the Liquidating Trust.

#### **F. DUTIES OF THE LIQUIDATING TRUSTEE**

In addition to the duties as set forth elsewhere in the Plan and his or her duties as the trustee of the Liquidating Trust, the Liquidating Trustee, in consultation with and at the direction of the Trust Oversight Committee, shall have the following duties:

- (i) to sell, liquidate and/or recover any and all Assets of the Estate and of the Liquidating Trust;
- (ii) to manage, control and operate the Liquidating Trust;

- (iii) to investigate and, if necessary and appropriate, to prosecute, enforce (or not prosecute or enforce), or to compromise, release or settle any Causes of Action on behalf of the Estate and the Liquidating Trust;
- (iv) to invest the Cash and other Assets of the Liquidating Trust and the Estate;
- (v) to create the Wind-down Reserve and allocate funds to such reserve;
- (vi) to file any and all reports, pleadings and other documents;
- (vii) to make any and all distributions required or permitted to be made under the Plan;
- (viii) to procure a necessary errors and omissions policy pursuant to which the Liquidating Trust will be insured for any errors and omissions of the Liquidating Trustee and/or the Trust Oversight Committee;
- (ix) to pay out of the Liquidating Trust any and all Claims, liabilities, losses, damages, costs and expenses incurred in connection therewith or as a result thereof, including all Post-Confirmation Expenses accruing from and after the Effective Date, in accordance with the Administrative Budget;
- (x) to employ, supervise and compensate any employees of the Liquidating Trust;
- (xi) to make and file tax returns for EWRD V and the Liquidating Trust;
- (xii) to commence and pursue dissolution or winding up proceedings for the Liquidating Trust;
- (xiii) to request the entry of a Final Decree;
- (xiv) to take any and all actions, including any action set forth in Article IV.Q of the Plan, necessary to dissolve and cancel the existence of EWRD V in the State of Delaware and in any other jurisdiction in which EWRD V is qualified to do business; and
- (xv) to take any and all other actions necessary or appropriate to implement the Plan and the liquidation and winding up of EWRD V, the Estate and the Liquidating Trust in accordance with applicable law.

In connection with the execution of his or her duties under the Plan, the Liquidating Trustee, in consultation with and at the direction of the Trust Oversight Committee, shall be authorized:

- (i) to execute such documents and to take such other actions as are necessary to effectuate the Plan and perform his or her duties as liquidating agent of

and for the Estate and the Liquidating Trust, including to execute such documents and take such other action on behalf of the Liquidating Trust or EWRD V;

- (ii) to open, close and manage bank accounts, and to enter into business transactions within or without the ordinary course of business;
- (iii) to authorize and benefit from any insurance policies and rights of indemnification;
- (iv) to retain and pay professionals (including any of EWRD V's Professionals), subject to prior Bankruptcy Court approval, and to designate another Person to be the Disbursing Agent;
- (v) to incur any reasonable and necessary expenses (up to the amounts set forth in the Administrative Budget) in the performance of his or her duties as liquidating agent of and for the Estate and the Liquidating Trust;
- (vi) to prepare and deliver to the Trust Oversight Committee the Administrative Budget of the Liquidating Trust with respect to each six-month period following the Effective Date and any amendments or modifications thereto;
- (vii) to settle, without approval of the Trust Oversight Committee or the Bankruptcy Court, any Claim or Cause of Action where the Claim or Cause of Action has an asserted value of less than \$50,000 or for which the difference between the asserted value and the actual value of the Claim or Cause of Action is less than \$10,000;
- (viii) to approve, without approval of the Trust Oversight Committee or the Bankruptcy Court, the compromise, release or settlement of any Cause of Action that has an asserted value of \$50,000 or more or for which the difference between the asserted value and the actual value of the Claim or Cause of Action is \$10,000 or more; and
- (ix) to employ such other procedures, not inconsistent with the Plan, necessary for the Liquidating Trustee to perform his or her duties hereunder.

In the event that the Trust Oversight Committee withholds its approval on a matter for which its authorization or approval is required, the Liquidating Trustee may request an order from the Bankruptcy Court allowing it to proceed with the disputed action. The Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code (including, without limitation, commencing, prosecuting or settling Causes of Action and asserting claims, defenses, offsets and privileges), to the extent not inconsistent with the Plan or the status of the Liquidating Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes. In

discharging the foregoing responsibilities, the Liquidating Trustee shall be entitled to exercise and rely upon his or her business judgment. The Liquidating Trustee shall not be obligated to take any action or to pursue any Causes of Action unless justified in his or her reasonable determination by fact and law, nor shall the Liquidating Trustee be obligated to take any action that could reasonably cause him or her personal liability. Without limiting the generality of the foregoing, the Liquidating Trustee may consider the interests of Holders of Allowed Claims in receiving prompt distributions and such other factors as may be reasonable in the exercise of his or her business judgment and after consultation with the Trust Oversight Committee. Such authorization and benefits shall also extend to any, each and every successor Liquidating Trustee, without reservation or limitation.

The reasonable and necessary fees and actual and necessary expenses, including those related to the errors and omissions policy, of the Liquidating Trust, the Liquidating Trustee, the Trust Oversight Committee and the professionals or other Persons retained by the Liquidating Trustee and the Trust Oversight Committee on behalf of the Liquidating Trust shall be paid by the Liquidating Trustee from the Wind-down Reserve, provided that the Liquidating Trustee and all professionals or other Persons retained by the Liquidating Trustee or Trust Oversight Committee each shall be required to file a fee application with the Bankruptcy Court on a monthly basis and shall not receive payment until the Bankruptcy Court has entered an order authorizing payment of such Person's requested compensation and expense reimbursement.

#### **G. NO RECOURSE TO LIQUIDATING TRUSTEE**

Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is allowed in an amount for which there is insufficient Cash in the relevant fund or reserve to provide a recovery equal to that received by other holders of Allowed Claims in the relevant Class, no Claim holder shall have recourse to the Protected Parties, or their successors or assigns, or the holder of any other Claim, or any of their respective property. However, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code. **THUS, THE BANKRUPTCY COURT'S ENTRY OF AN ESTIMATION ORDER MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

#### **H. LIABILITY, INDEMNIFICATION**

No Protected Party shall be liable for the act or omission of any other Protected Party. The Liquidating Trustee or any member of the Trust Oversight Committee shall not be liable for any act or omission taken or omitted to be taken in his or her capacity as Liquidating Trustee or as a member of the Trust Oversight Committee, as the case may be, other than acts or omissions resulting from the Liquidating Trustee's or Trust Oversight Committee member's willful misconduct, gross negligence or fraud. The Liquidating Trustee and the Trust Oversight Committee may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with their respective attorneys, accountants, financial advisors and agents, and the Liquidating Trustee and the Trust Oversight Committee shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions

rendered by such Persons other than acts or omissions resulting from the willful misconduct, gross negligence or fraud of the Liquidating Trustee or the Trust Oversight Committee, as the case may be. Notwithstanding such authority, the Liquidating Trustee and the Trust Oversight Committee shall not be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and any determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or the Trust Oversight Committee, as the case may be, and their respective designees, unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust and the Estate shall indemnify and hold harmless the Liquidating Trustee, the Trust Oversight Committee and their respective designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, but not limited to, attorneys' fees and costs) arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of the duties of the Liquidating Trustee or the Trust Oversight Committee, as the case may be, or the implementation or administration of the Plan; provided, however, that no such indemnification will be available to such Persons for such actions or omissions if a court of competent jurisdiction has determined by final order that the challenged conduct occurred as a result of willful misconduct, gross negligence or fraud.

## **I. TRUST OVERSIGHT COMMITTEE**

On the Effective Date, the Trust Oversight Committee will be established and will be composed of three (3) members selected by the creditors of EWRD V. The Trust Oversight Committee shall have the duties set forth herein to maximize distributions to Holders of Allowed Claims.

The Trust Oversight Committee shall have the duty to take actions in accordance with the provisions of the Plan and in furtherance of the execution of the Plan. Additionally, the Trust Oversight Committee shall have the following rights and duties:

- (i) to approve any release or indemnity in favor of any third party granted or agreed to by the Liquidating Trustee;
- (ii) to authorize the Liquidating Trustee to commence any Cause of Action or Avoidance Action;
- (iii) to approve the settlement of any Cause of Action or Avoidance Action and to approve any application by the Liquidating Trustee for an order in connection with any such settlement;
- (iv) to approve the allowance of any Disputed Claim;
- (v) to approve the sale of any Assets by the Liquidating Trustee and to approve any application by the Liquidating Trustee for an order in connection with any such sale of Assets;

- (vi) to review all financial information relating to the Liquidating Trust and the Estate, which shall be promptly provided by the Liquidating Trustee upon request by the Trust Oversight Committee;
- (vii) to review and assert objections to motions filed or claims asserted;
- (viii) to monitor distributions to creditors; and
- (ix) to take such other actions as it deems necessary and appropriate with respect to the implementation of the Plan.

The duties and powers of the Trust Oversight Committee shall terminate upon the later to occur of (i) the entry of the Final Decree, (ii) the dissolution of the Liquidating Trust, and (iii) the payment of the final distributions to Holders of Allowed General Unsecured Claims pursuant to the Plan.

The Trust Oversight Committee shall have the right to retain counsel of its choice, and the reasonable and necessary fees and expenses of such counsel as well as the reasonable and necessary expenses of the members of the Trust Oversight Committee shall be paid by the Liquidating Trustee from the Wind-down Reserve, provided that counsel to the Trust Oversight Committee shall be required to file a fee application with the Bankruptcy Court on a monthly basis and shall not receive payment until the Bankruptcy Court has entered an order authorizing payment of such counsel's requested compensation and expense reimbursement.

## **J. FUNDING OF THE PLAN**

The Cash Distributions to be made pursuant to the Plan will be made and the Cash necessary to fund the Liquidating Trust and the Wind-down Reserve will be derived from (i) Cash proceeds received by EWRD V from the liquidation of their Assets as of the Effective Date and other funds then available, and (ii) any payments to be received by EWRD V from the further liquidation of Assets and the prosecution and enforcement of Causes of Action of EWRD V, and other funds available after the Effective Date. In addition, the Liquidating Trustee, with Bankruptcy Court approval, shall have the right to make non-Cash distributions to Holders of Claims.

To the extent not otherwise provided for herein or ordered by the Court, the Liquidating Trustee, with the consent of the Trust Oversight Committee, shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for accrued expenses and for the payment of prospective expenses and liabilities of the Estate and the Liquidating Trust after the Effective Date. Without limitation, these reserves shall include funds for the Wind-down Reserve, Administrative Claims, Priority Tax Claims, Priority Claims, Secured Claims and Disputed Claims.

Notwithstanding any contrary provision contained herein, the Liquidating Trustee shall not be obligated to physically segregate and maintain separate accounts for reserves or for the Distribution Fund. Separate reserves and funds may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating Trustee to determine Distributable Cash, reserves and amounts to be paid to parties in interest.

## **K. WIND-DOWN RESERVE**

On the Effective Date, or as soon thereafter as reasonably practicable, the Liquidating Trustee shall create the Wind-down Reserve and shall transfer an appropriate amount into such reserve from the assets transferred by EWRD V to the Liquidating Trust. EWRD V anticipates that the Wind-down Reserve will be approximately \$25,000, covering expenses accruing from the Effective Date forward. The Liquidating Trustee shall pay Plan administration costs and costs of holding and liquidating any non-Cash property, including but not limited to taxes, professional fees and the errors and omissions policy, from the Wind-down Reserve. To the extent that the Liquidating Trustee, in consultation with the Trust Oversight Committee, determines that funds allocated to the Wind-down Reserve are insufficient for such purposes, the net proceeds of the continuing liquidation of EWRD V's assets and any other Distributable Cash shall, to the extent necessary for such purposes, be allocated to the Wind-down Reserve. After all costs associated with the Wind-down Reserve have been paid, and/or upon the reasonable determination of the Liquidating Trustee, in consultation with the Trust Oversight Committee, that the funds in the Wind-down Reserve exceed the amounts necessary to pay the expenses for which such fund is established, the remaining or excess funds, as applicable, in the Wind-down Reserve shall be designated Distributable Cash.

## **L. DISTRIBUTION FUND**

After all payments have been made or properly reserved for holders of Administrative Expense Claims, Priority Tax Claims, Priority Claims and Secured Claims, and all costs associated with the Wind-down Reserve have been paid, and/or upon the reasonable determination of the Liquidating Trustee that the funds in the Wind-down Reserve and any other reserves established by the Liquidating Trustee exceed the amounts necessary for such reserves, the remaining Distributable Cash shall be allocated to the Distribution Fund. Distribution of Cash, if any, to holders of Class 3 General Unsecured Claims, shall be made solely from the Distribution Fund.

## **M. CORPORATE AND LIMITED LIABILITY COMPANY ACTION**

On the Effective Date, the matters under the Plan involving or requiring corporate or limited liability company action of EWRD V, including, but not limited to, actions requiring a vote or other approval of the board of directors, members or shareholders, as applicable, and execution of all documentation incident to the Plan, notwithstanding any otherwise applicable non-bankruptcy law or the Organization Documents of EWRD V, shall be deemed to have been authorized by the Confirmation Order and to have occurred and be in effect from and after the Effective Date without any further action by the Bankruptcy Court or the officers, directors, members or shareholders, as applicable, of EWRD V.

## **N. RETENTION OF ACTIONS AND DEFENSES**

All claims, rights, defenses, offsets, recoupments, causes of action, actions in equity or otherwise, whether arising under the Bankruptcy Code or federal, state or common law, which constitute property of the Estate within the meaning of section 541 of the Bankruptcy Code, as well as all claims, rights, defenses, offsets, recoupments and causes of action arising under

chapter 5 of the Bankruptcy Code (including, without limitation, the Causes of Action) with respect to EWRD V or their Estate, shall be and hereby are preserved for the benefit of the beneficiaries of the Liquidating Trust, and shall be and hereby are deemed to be part of the assets transferred and assigned to the Liquidating Trust as of the Effective Date. Prosecution and settlement of such claims, rights, defenses, and causes of action shall be the responsibility of the Liquidating Trustee, with the consent of the Trust Oversight Committee, pursuant to the provisions of the Liquidating Trust Agreement, and the Liquidating Trustee shall pursue those claims, rights, defenses and causes of action, as appropriate, in accordance with the Trust Oversight Committee's sole judgment of what is in the best interests, and for the benefit of, the beneficiaries of the Liquidating Trust; provided, however, that nothing in the Plan is intended to or does confer upon the Liquidating Trustee standing to pursue claims or causes of action that do not constitute property of the Estate.

Nothing in the Plan or the Confirmation Order shall limit, impair or otherwise restrict the rights of the Liquidating Trustee, with the consent of the Trust Oversight Committee, to bring any claim or cause of action against any Person (not otherwise released pursuant to the Plan) for any reason whatsoever, including, without limitation, the failure of the Plan to identify and/or describe such potential claim(s) or causes of action(s) with specificity. In addition to the general reservation of rights, the Liquidating Trustee or the Trust Oversight Committee reserve the right to modify the Plan at any time prior to or after substantial consummation of the Plan to include such specificity, if necessary, or otherwise desirable, and shall be deemed to have complied with section 1127(b) of the Bankruptcy Code.

#### **O. DISSOLUTION OF EWRD V**

As soon as is reasonably practicable after the tenth day following the Effective Date and upon the filing by or on behalf of EWRD V of a certification to that effect with the Bankruptcy Court, notwithstanding any otherwise applicable non-bankruptcy law or the Organization Documents of EWRD V, EWRD V shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of EWRD V or payments to be made in connection therewith. After the liquidation and the winding up of the various Estate, the completion of distributions under the Plan and the entry of the Final Decree, the Liquidating Trustee shall file any documents necessary and proper pursuant to applicable state law to dissolve the Liquidating Trust, and the Liquidating Trust shall dissolve and cease to exist.

#### **P. SATURDAY, SUNDAY OR LEGAL HOLIDAY**

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

#### **Q. PRESERVATION OF ALL AVOIDANCE ACTIONS AND CAUSES OF ACTION**

From and after the Effective Date, the Liquidating Trust and the Liquidating Trustee, subject to any approval of the Trust Oversight Committee as set forth in Article IV.J of the Plan, may litigate or settle any avoidance, recovery or subordination actions under sections 502, 510,

522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 or 724 of the Bankruptcy Code or any other Causes of Action or rights to payments or claims that belong to EWRD V that may be pending on the Effective Date or instituted by the Liquidating Trustee after the Effective Date, expressly including the Causes of Action, except as otherwise expressly released or provided in the Plan. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, no other Person may pursue any such Causes of Action.

## **ARTICLE VII.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. REJECTION OF REMAINING EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

On the Confirmation Date, except for (i) any Executory Contract that was previously assumed or rejected by an order of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code and (ii) the ACE Contracts, any Executory Contract that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, effective as of the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejection pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Confirmation Date.

#### **B. REJECTION DAMAGES BAR DATE**

Except to the extent another Bar Date applies pursuant to an order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts under the Plan must be filed with the Bankruptcy Court and a copy served on counsel for EWRD V, the Trust Oversight Committee and the Liquidating Trustee, within thirty (30) days from the entry of the Confirmation Order, or such Claim shall be forever barred and shall not be entitled to a Distribution or be enforceable against EWRD V, their Estate, the Liquidating Trust, the Liquidating Trustee, their successors, their assigns or their Assets. Any Claim arising from the rejection of an Executory Contract shall be treated as a Claim in Class 3 (General Unsecured Claims). Nothing in the Plan extends or modifies any previously applicable Bar Date.

## **ARTICLE VIII.**

### **DISTRIBUTIONS**

#### **A. DISBURSING AGENT**

##### **1. Liquidating Trustee as Disbursing Agent**

The Liquidating Trustee shall be the Disbursing Agent, and the Disbursing Agent shall make all distributions under the Plan.

##### **2. Alternative Disbursing Agent Qualification**

No Person other than the Liquidating Trustee shall be authorized by the Bankruptcy Court to serve as Disbursing Agent unless and until the Liquidating Trustee and the Trust Oversight Committee consent in writing to that Person serving as Disbursing Agent and that Person (i) executes and files a statement with the Bankruptcy Court agreeing to perform all of the duties of the Disbursing Agent under the Plan and (ii) consents to the jurisdiction of the Bankruptcy Court in respect to all matters relating to the performance of his or her duties as the Disbursing Agent under the Plan or order of the Bankruptcy Court.

## **B. TIME AND MANNER OF DISTRIBUTIONS**

The Liquidating Trustee shall have the power, subject to Trust Oversight Committee consent, to make interim distributions to Holders of Allowed General Unsecured Claims if the Liquidating Trustee determines that such interim distributions are warranted and economical; provided, however, that the Liquidating Trustee shall make interim distributions commencing at least one year following the Confirmation Date and at least annually thereafter to the extent the Liquidating Trustee determines there are sufficient available excess funds in the Distribution Fund. If the Liquidating Trustee determines to make interim distributions to Holders of Allowed General Unsecured Claims, the Liquidating Trustee will determine the amount to be distributed by taking into account such factors as ongoing expenses and costs, taxes and reserves necessary to provide for the resolution of Disputed Claims. Amounts withheld will be placed in an interest-bearing account which shall fund ongoing expenses and costs relating to such reserves, including, without limitation, taxes in respect of Disputed Claims, if any.

At the option of the Liquidating Trustee, any distributions under the Plan may be made either in Cash, by check drawn on a domestic bank, by wire transfer or by ACH or, in the case of non-cash distributions, in such manner approved by the Bankruptcy Court. Notwithstanding any other provisions of the Plan to the contrary, no payment of fractional cents will be made under the Plan. Cash will be issued to Holders entitled to receive a Distribution of Cash in whole cents (rounded to the nearest whole cent when and as necessary). Any distribution of less than \$10.00 will be considered de minimis, and Holders of Allowed Claims that are entitled to any distribution of less than \$10.00 will not receive any distribution unless and until the aggregate of such distributions exceeds \$10.00. Such funds shall remain with and vest in the Liquidating Trust to be utilized for the Wind Down Reserve, or in the discretion of the Liquidating Trustee, for distribution to other Holders of Allowed Claims.

## **C. DELIVERY OF DISTRIBUTIONS**

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made by the Disbursing Agent (i) at the addresses set forth on the Proofs of Claim filed by such Holder (or at the last known addresses of such Holder if no motion requesting payment or Proof of Claim is filed or EWRD V, the Liquidating Trust or the Voting and Claims Agent have been notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim, or (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Liquidating Trustee has not received a written notice of a change of address.

## **D. UNDELIVERABLE DISTRIBUTIONS**

If a distribution to a Holder of a Claim is returned as undeliverable, no further distributions to such Holder of a Claim shall be made unless and until the Liquidating Trustee and the Disbursing Agent is notified of the then-current address of such Holder, at which time (subject to the terms of the last sentence of Article VI.D of the Plan) all missed distributions shall be made to such Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trustee until such distributions are claimed. All Distributions under the Plan that are unclaimed for a period of (4) months after Distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and reverted in the Liquidating Trustee notwithstanding state escheat or other similar laws to the contrary and any entitlement of any holder of any Claims to such Distributions shall be extinguished and forever barred. Any unclaimed funds held by the Liquidating Trust at the time the Final Decree is entered may be donated to a charity selected by the Liquidating Trustee and the Trust Oversight Committee provided that such funds do not exceed \$10,000 without further order of the Court.

## **E. CLAIMS ADMINISTRATION RESPONSIBILITY**

### **1. Reservation of Rights to Object to Claims**

Unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim prior to or after the Effective Date, the Liquidating Trust and the Liquidating Trustee (on behalf of the Estate) reserve any and all objections to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, priority, secured or unsecured, including, without limitation, any and all objections to the validity or amount of any and all alleged Administrative Claims, Priority Tax Claims, Priority Claims, Secured Claims, General Unsecured Claims, Interest Related Claims, Interests, Liens and security interests, whether under the Bankruptcy Code, other applicable law or contract. The Liquidating Trust's and/or the Liquidating Trustee's failure to object to any Claim or Interest in the Chapter 11 Case of EWRD V shall be without prejudice to the Liquidating Trust's and the Liquidating Trustee's rights to contest or otherwise defend against such Claim or Interest in the Bankruptcy Court when and if such Claim or Interest is sought to be enforced by the Holder of such Claim or Interest.

### **2. Objections to Claims**

Prior to the Effective Date, EWRD V shall be responsible for pursuing any objection to the allowance of any Claim. From and after the Effective Date, the Liquidating Trustee will retain responsibility for administering, disputing, objecting to, compromising or otherwise resolving and making distributions, if any, with respect to all Claims. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections to Claims by the Liquidating Trustee will be filed and served not later than 180 days after the Effective Date, provided that the Liquidating Trust or the Liquidating Trustee may request (and the Bankruptcy Court may grant) an extension of such deadline by filing a motion with the Bankruptcy Court, based upon a reasonable exercise of his or her business judgment. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan.

### **3. Filing of Objections**

An objection to a Claim or Interest shall be deemed properly served on the Holder of such Claim or Interest if the Liquidating Trust or the Liquidating Trustee affects service in accordance with Bankruptcy Rule 3007.

#### **4. Determination of Claims**

Except as otherwise agreed by the Liquidating Trust or the Liquidating Trustee, any Claim as to which a Proof of Claim or motion or request for payment was timely filed in the Chapter 11 Case of EWRD V may be determined and (so long as such determination has not been stayed, reversed or amended and as to which determination (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending) liquidated pursuant to (i) an order of the Bankruptcy Court, (ii) applicable bankruptcy law, (iii) agreement of the parties, (iv) applicable non-bankruptcy law, or (v) the lack of (a) an objection to such Claim, (b) an application to equitably subordinate such Claim, and (c) an application to otherwise limit recovery with respect to such Claim, filed by EWRD V, the Liquidating Trust or the Liquidating Trustee on or prior to any applicable deadline for filing such objection or application with respect to such Claim. Any such Claim so determined and liquidated shall be deemed to be an Allowed Claim for such liquidated amount and shall be satisfied in accordance with the Plan. Nothing contained in Article VI.E of the Plan shall constitute or be deemed a waiver of any claim, right or Cause of Action that EWRD V or the Liquidating Trustee may have against any Person in connection with or arising out of any Claim or Claims, including, without limitation, any rights under 28 U.S.C. § 157.

### **F. PROCEDURES FOR TREATING AND RESOLVING DISPUTED AND CONTINGENT CLAIMS**

#### **1. No Distributions Pending Allowance**

No payments or distributions will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and the Disputed Claim has become an Allowed Claim; provided, however, that in the event that only a portion of such Claim is an Allowed Claim, the Liquidating Trustee may make, in his or her discretion, a distribution pursuant to the Plan on account of the portion of such Claim that becomes an Allowed Claim.

#### **2. Claim Estimation**

The Liquidating Trustee may request estimation or liquidation of any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code; provided, however, that the Bankruptcy Court shall determine (i) whether such Disputed Claim is subject to estimation pursuant to section 502(c) of the Bankruptcy Code and (ii) the timing and procedures for such estimation proceedings, if any.

### **G. SETOFFS AND RECOUPMENT**

The Liquidating Trustee may, pursuant to sections 553 and 558 of the Bankruptcy Code or applicable non-bankruptcy law, but shall not be required to, setoff against or recoup from any

Claim on which payments are to be made pursuant to the Plan, any claims or Causes of Action of any nature whatsoever EWRD V may have against the Holder of such Claim; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim shall constitute a waiver or release by EWRD V of any setoff or recoupment EWRD V may have against the Holder of such Claim, nor of any other claim or Cause of Action.

#### **H. ALLOWANCE AND DISALLOWANCE OF CLAIMS SUBJECT TO BANKRUPTCY CODE § 502**

Allowance and disallowance of Claims shall be in all respects subject to the provisions of section 502 of the Bankruptcy Code, including, without limitation, subsections (b), (d), (e), (g), (h) and (i) thereof.

#### **I. CANCELLATION OF INSTRUMENTS AND AGREEMENTS**

Upon the occurrence of the Effective Date, except as otherwise provided herein, all promissory notes, shares, certificates, instruments, indentures, stock or agreements evidencing, giving rise to or governing any Claim or Interest shall be deemed canceled and annulled without further act or action under any applicable agreement, law, regulation, order or rule; the obligations of EWRD V under such promissory notes, share certificates, instruments, indentures or agreements shall be discharged and the Holders thereof shall have no rights against EWRD V, the Liquidating Trustee, the Estate or the Liquidating Trust; and such promissory notes, share certificates, instruments, indentures or agreements shall evidence no such rights, except the right to receive the distributions provided for in the Plan.

#### **J. NO INTEREST ON CLAIMS**

Unless otherwise specifically provided for in the Plan, the Confirmation Order or a post-petition agreement in writing between EWRD V and a Holder of a Claim and approved by an order of the Bankruptcy Court, post-petition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In addition, and without limiting the foregoing, interest shall not accrue on or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made when and if such Disputed Claim becomes an Allowed Claim.

#### **K. WITHHOLDING TAXES**

The Liquidating Trustee shall be entitled to deduct any federal, state or local withholding taxes from any payments under the Plan. As a condition to making any distribution under the Plan, the Liquidating Trustee may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws.

#### **L. REPORTS**

From the Effective Date, until a Final Decree is entered, the Liquidating Trustee shall submit quarterly reports to the United States Trustee setting forth all receipts and disbursements of the Liquidating Trust as required by the United States Trustee guidelines.

## **ARTICLE IX.**

### **EFFECT OF CONFIRMATION**

#### **A. INJUNCTION**

Except as otherwise expressly provided in the Plan or in the Confirmation Order, and except in connection with the enforcement of the terms of the Plan or any documents provided for or contemplated in the Plan, all entities who have held, hold or may hold Claims against or Interests in EWRD V or the Estate that arose prior to the Effective Date are permanently enjoined from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against any Protected Party (other than the Liquidating Trust) or any property of any Protected Party (other than the Liquidating Trust) with respect to any such Claim or Interest; (b) the enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree or order against any Protected Party (other than the Liquidating Trust) or any property of any Protected Party (other than the Liquidating Trust) with respect to any such Claim or Interest; (c) creating, perfecting or enforcing, directly or indirectly, any lien or encumbrance of any kind against any Protected Party (other than the Liquidating Trust) or any property of any Protected Party (other than the Liquidating Trust) with respect to any such Claim or Interest; (d) effecting, directly or indirectly, any setoff or recoupment of any kind against any obligation due to any Protected Party (other than the Liquidating Trust) or any property of any Protected Party (other than the Liquidating Trust) with respect to any such Claim or Interest, unless approved by the Bankruptcy Court; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Interest. Nothing contained in Article VII.A of the Plan shall prohibit the Holder of a Claim or Interest with respect to which a Proof of Claim was timely filed from litigating its right to seek to have such Claim or Interest declared an Allowed Claim or Interest and paid in accordance with the distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Holder of such Claim or Interest of any of the obligations of EWRD V, the Liquidating Trustee or the Liquidating Trust under the Plan. The Confirmation Order shall also constitute an injunction enjoining any Person from enforcing or attempting to enforce any Causes of Action against any Protected Party or any property of any Protected Party based on, arising from or related to any failure to pay, or make provision for payment of, any amount payable with respect to any Priority Tax Claim on which the payments due under Article VI.K of the Plan have been made or are not yet due under Article VI.K of the Plan.

#### **B. TERM OF INJUNCTIONS OR STAYS**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case of EWRD V under sections 105 or 362 of the

Bankruptcy Code, the Plan or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the later of (i) entry of the Final Decree or (ii) the dissolution of the Liquidating Trust.

### **C. EXCULPATION AND RELEASES**

Excepting EWRD V, none of the Protected Parties shall have or incur any liability for, and each Protected Party is hereby released from, any claim, cause of action or liability to any other Protected Party, to any Holder of a Claim or an Interest in their capacity as such, for any act or omission taken in connection with, arising from or relating to the Chapter 11 Case of EWRD V, the formulation, negotiation and/or pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan and/or the property to be distributed under the Plan, except for claims, causes of action or liabilities arising from the gross negligence, willful misconduct or fraud of any Protected Party, in each case subject to determination of such by final order of a court of competent jurisdiction and provided that any Protected Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan and such reasonable reliance shall form an absolute defense to any such claim, cause of action or liability. Without limiting the generality of the foregoing, each Protected Party shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code.

## **ARTICLE X.**

### **CONDITIONS PRECEDENT**

#### **A. CONDITIONS PRECEDENT TO EFFECTIVE DATE**

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

- (i) The Confirmation Order, in form and substance acceptable to EWRD V, shall have been entered by the Bankruptcy Court and shall not be subject to any stay of effectiveness; the Confirmation Date shall have occurred and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending; and
- (ii) The appointment of the Liquidating Trustee shall have been confirmed by order of the Bankruptcy Court.

#### **B. REVOCATION OR WITHDRAWAL OF PLAN**

EWRD V reserves the right to revoke and withdraw the Plan prior to the Confirmation Date. If EWRD V revokes or withdraws the Plan, then the Plan shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against EWRD V or any other Person or to prejudice in any manner the rights of

EWRD V or any Person in any further proceedings involving EWRD V, or be deemed an admission by EWRD V.

## ARTICLE XI.

### ADMINISTRATIVE PROVISIONS

#### A. RETENTION OF JURISDICTION BY THE BANKRUPTCY COURT

The Plan shall not in any way limit the Bankruptcy Court's post-confirmation jurisdiction as provided under the Bankruptcy Code. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and have exclusive jurisdiction (to the extent granted by applicable law, including any provisions permitting mandatory or discretionary withdrawal of such jurisdiction) over any matter arising out of or related to the Chapter 11 Case of EWRD V and the Plan, including, without limitation, the following:

- (i) all matters relating to the assumption or rejection or the assumption and assignment of executory contracts or unexpired leases, or Claims or disputes relating thereto;
- (ii) all matters relating to the ownership of a Claim or Interest;
- (iii) all matters relating to the distribution to holders of Allowed Claims and to the determination of Claims;
- (iv) any and all matters involving the Liquidating Trustee and/or the Liquidating Trust and the Trust Oversight Committee;
- (v) all matters relating to or arising in connection with the allowance or estimation of Claims filed, both before and after the Confirmation Date, including any objections to the classification of any Claim;
- (vi) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified and/or vacated;
- (vii) all matters relating to the construction and implementation of the Plan and the provisions thereof, and to hear and determine all requests for orders in aid of execution, implementation or consummation of the Plan;
- (viii) all matters relating to disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- (ix) to consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

- (x) all applications for allowance of compensation and reimbursement of Professional Fee Claims under the Plan or under sections 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;
- (xi) to hear and determine all motions requesting allowance of an Administrative Claim;
- (xii) to determine requests for the payment of Claims entitled to priority under section 507(a)(2) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto;
- (xiii) all Causes of Action, Avoidance Actions and other suits and adversary proceedings to recover assets of the Liquidating Trust (including, but not limited to, the Lender Litigation), as successor-in-interest to EWRD V and property of the Estate, wherever located, and to adjudicate any and all other Causes of Action, Avoidance Actions, suits, adversary proceedings, motions, applications and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case of EWRD V or the Plan, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
- (xiv) all matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (xv) any other matter not inconsistent with the Bankruptcy Code;
- (xvi) all applications for allowance of compensation and reimbursement of expenses from professionals or Persons retained post-confirmation by the Liquidating Trustee or the Trust Oversight Committee on behalf of the Liquidating Trust;
- (xvii) all disputes involving the existence, nature or scope of EWRD V' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
- (xviii) to enter the Final Decree closing the Chapter 11 Case of EWRD V; and
- (xix) to enforce all orders previously entered by the Bankruptcy Court.

## **B. PAYMENT OF STATUTORY FEES**

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. All fees payable after the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid by EWRD V or the Liquidating Trustee out of the Assets of the Estate.

## **C. HEADINGS**

The headings of the articles, paragraphs and sections of the Plan and the Disclosure Statement are inserted for convenience only and shall not affect the interpretation thereof.

#### **D. BINDING EFFECT OF PLAN**

On and after the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, EWRD V, the Estate, the Liquidating Trust and their respective successors or assigns, whether or not the Claim or Interest of such Holders is impaired under the Plan and whether or not such Holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity (including, without limitation, the Liquidating Trustee and any trustee appointed for EWRD V under chapters 7 or 11 of the Bankruptcy Code).

#### **E. FINAL ORDER**

Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by EWRD V upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

#### **F. WITHHOLDING AND REPORTING REQUIREMENTS**

In connection with the Plan and all instruments issued in connection therewith and distributions thereunder, the Liquidating Trust and the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements.

#### **G. TAX EXEMPTION**

Pursuant to section 1146 of the Bankruptcy Code, any transfers from a Debtor, the Liquidating Trust or the Liquidating Trustee to any other Person or entity pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of EWRD V' or the Liquidating Trust's real or personal property, or the issuance, transfer or exchange of any security under the Plan, or the execution, delivery or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, including, without limitation, any transfers to or by the Liquidating Trustee of EWRD V's or the Liquidating Trust's property in implementation of or as contemplated by the Plan (including, without limitation, any subsequent transfers of property by the Liquidating Trustee) shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

## **H. GOVERNING LAW**

Except to the extent a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless specifically stated, the rights, duties and obligations arising under the Plan, any agreements, documents and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreements shall control), and, with respect to EWRD V incorporated or organized in Delaware and the Liquidating Trust, corporate and limited liability company governance matters shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles.

## **I. SEVERABILITY**

After the Effective Date, should the Bankruptcy Court or any other court of competent jurisdiction determine that any provision in the Plan is either illegal on its face or illegal as applied to any Claim, such provisions shall be unenforceable either as to all Holders of Claims or as to the Holder of such Claim as to which the provision is illegal, respectively. Such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

## **J. REVOCATION**

EWRD V reserves the right to revoke and withdraw the Plan prior to the Confirmation Date. If EWRD V revokes or withdraws the Plan, then the Plan shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against EWRD V or any other Person or to prejudice in any manner the rights of EWRD V or any Person in any further proceedings involving EWRD V, or be deemed an admission by EWRD V.

## **K. CONSTRUCTION**

The rules of construction as set forth in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

## **L. PLAN CONTROLS DISCLOSURE STATEMENT**

In the event and to the extent any provision of the Plan is inconsistent with any provision of the Disclosure Statement, the provisions of the Plan shall control and take precedence.

## **M. AMENDMENTS AND MODIFICATIONS**

EWRD V may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Hearing. After the Confirmation Date and prior to “substantial consummation” (as such term is defined in section 1101(2) of the Bankruptcy Code) of the Plan, any Debtor, the Liquidating Trust or the Liquidating Trustee may institute proceedings in the Bankruptcy Court pursuant to section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the

purposes and effects of the Plan, by the filing of a motion on notice to the Bankruptcy Rule 2002 service list only, and the solicitation of all Creditors and other parties-in-interest shall not be required.

## **N. NOTICES**

Any notices required under the Plan or any notices or requests of the Liquidating Trustee by parties in interest under or in connection with the Plan shall be in writing and served either by (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, all charges prepaid, and shall be deemed to have been given when received by the following parties:

To the Liquidating Trust and the Liquidating Trustee:  
Trigild Inc.  
Attn: William Hoffman  
12707 High Bluff Drive, Suite 300  
San Diego, CA 92130

With a copy to:  
Paul, Hastings, Janofsky & Walker, LLP  
Attn: Hilla Uribe Jimenez, Esq.  
191 N. Wacker Dr., Suite 3000  
Chicago, IL 60606

## **O. FILING OF ADDITIONAL DOCUMENTS**

On or before substantial consummation of the Plan, EWRD V may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

## **P. DIRECTION TO A PARTY**

From and after the Effective Date, the Liquidating Trust or the Liquidating Trustee may apply to the Bankruptcy Court for the entry of an order directing any Person to execute or deliver or to join in the execution or delivery of any instrument or document reasonably necessary or reasonably appropriate to effect a transfer of properties dealt with by the Plan, and to perform any other act (including the satisfaction of any lien or security interest) that is reasonably necessary or reasonably appropriate for the consummation of the Plan.

## **Q. SUCCESSORS AND ASSIGNS**

The rights, duties and obligations of any Person named or referred to in the Plan, including all Creditors, shall be binding on, and shall inure to the benefit of, the successors and assigns of such Person.

## **ARTICLE XII.**

### **FINANCIAL INFORMATION**

## **A. STATUS OF CURRENT CASH POSITION AS OF AUGUST 23, 2010**

EWRD V's cash position as of August 23, 2010 is approximately \$60,432. As of the Petition Date, EWRD V had cash on hand of \$12,225. Since August 23, 2010, the EWRD V's cash position will be adjusted for proceeds from the sale of assets, payment of professional fees, and other expenses in the ordinary course.

## **B. PROJECTED DISTRIBUTABLE CASH**

According to an analysis prepared by the management of Crew, the Estate's total Cash is projected to be approximately \$10,000 (prior to payment of Priority and Administrative Claims in the estimated amount of \$0; but net of professional fees, costs and expenses associated with winding down the Estate after the Effective Date of the Plan in the aggregate approximate amount of \$50,432). Thus, the projections prepared by the management of Crew estimate that the Distributable Cash in respect of Allowed Claims in Class 3 (General Unsecured Claims) is estimated to be approximately \$10,000 after the payment of Priority and Administrative Claims.

## **C. DESCRIPTIONS OF ASSETS AND LITIGATION**

### **1. Remaining Assets**

The Ace Claims are EWRD V's principal assets. In order to pursue the Ace Claims, however, the Liquidating Trustee will be required to fund the legal expenses in connection therewith. The value of the Sawmill Heights Receivable is uncertain.

### **2. Estate Litigation**

Except as otherwise provided in the Plan, any and all rights or Causes of Action and Avoidance Actions under any theory of law or fact, including, without limitation, under the Bankruptcy Code, accruing to or assertable by EWRD V shall remain Assets of the Estate and on the Effective Date shall be transferred to and vested in the Liquidating Trust with the Liquidating Trustee as the duly appointed representative of the Estate. Pursuant to Bankruptcy Code § 1123(b)(3)(B), only the Liquidating Trust and the Liquidating Trustee, subject to any necessary oversight and approval of the Trust Oversight Committee as may be required under the Plan, shall have the right to pursue or not to pursue, or, subject to the terms of the Plan, compromise or settle any Causes of Action and Avoidance Actions owned or held by EWRD V or its Estate as of the Effective Date.

From and after the Effective Date, the Liquidating Trust and the Liquidating Trustee, subject to necessary oversight and approval by the Trust Oversight Committee as may be required under the Plan, may litigate or settle any avoidance, recovery or subordination actions under Bankruptcy Code §§ 510, 543, 544, 545, 547, 548, 549, 550, 551, 553 or 724(a) or any other Causes of Action or rights to payments or claims that belong to EWRD V that may be pending on the Effective Date or instituted by the Liquidating Trust and the Liquidating Trustee after the Effective Date, except as otherwise expressly provided in the Plan. The Liquidating Trustee may settle without need of Bankruptcy Court approval any Avoidance Actions and may seek an order of the Bankruptcy Court approving the compromise, release or settlement of any such Avoidance Action, subject to any necessary oversight and approval of the Trust Oversight

Committee as may be required under the Plan. Subject to the Confirmation Order, the Bankruptcy Court shall retain jurisdiction to adjudicate any and all Causes of Action, Claims and Avoidance Actions and approve of any such settlement, whether commenced prior to or after confirmation of the Plan. Except as otherwise provided in the Plan, the Liquidating Trustee shall have no obligation to obtain the approval or authorization of the Bankruptcy Court or file a report to the Bankruptcy Court concerning the sale, transfer, assignment or disposition of Assets; provided that the Liquidating Trustee, subject to any necessary oversight and approval of the Trust Oversight Committee as may be required under the Plan, may seek an order of the Bankruptcy Court approving any sale or disposition of Assets by the Liquidating Trustee to facilitate such transactions.

Except as otherwise provided in the Plan, from and after the Effective Date, the Liquidating Trust and the Liquidating Trustee shall, subject to any necessary oversight and approval of the Trust Oversight Committee as may be required under the Plan, have sole authority to commence, litigate or settle any Avoidance Actions and/or Causes of Action and shall have standing for all purposes. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Avoidance Actions and Causes of Action and approve of any such settlement (if required), whether commenced prior to or after confirmation of the Plan.

#### **D. RISKS ASSOCIATED WITH REALIZING ON LITIGATION**

A portion of the property to be distributed to the creditors pursuant to the Plan includes litigation claims. In addition to the risks described above, in general, the outcome of such litigation is impossible to predict. It is possible that the Estate may recover nothing at all on account of such litigation. The risks in such litigation include, but are not limited to, those associated with defenses and counter-claims of opposing parties to the litigation; the delay and expense associated with discovery and trial of factually intensive and complex disputes; the additional delay and expense inherent in appellate review; difficulties in pursuing claims pertaining to EWRD V because it is no longer an operating entity; the diminishing availability of former employees to serve as witnesses because they have moved from the geographic area or have otherwise become unavailable; the impossibility of predicting judicial outcomes; and the difficulty collecting favorable judgments.

**EWRD V MAKES NO REPRESENTATION CONCERNING THE ACCURACY OF THE PROJECTED FINANCIAL INFORMATION OR THE ABILITY TO ACHIEVE THE PROJECTED RESULTS. MANY OF THE ASSUMPTIONS ON WHICH THESE PROJECTIONS ARE BASED ARE SUBJECT TO SIGNIFICANT ECONOMIC UNCERTAINTIES. IT IS LIKELY THAT SOME ASSUMPTIONS WILL NOT MATERIALIZE BECAUSE OF UNANTICIPATED EVENTS AND CIRCUMSTANCES. ACCORDINGLY, THE ACTUAL RESULTS ACHIEVED THROUGHOUT THE PROJECTION PERIOD ARE LIKELY TO VARY FROM THE PROJECTED RESULTS. THE VARIATIONS MAY BE MATERIAL AND ADVERSE OR POSITIVE.**

**EWRD V DOES NOT ANTICIPATE AT THIS TIME THAT IT WILL UPDATE THESE PROJECTIONS AT THE HEARING ON CONFIRMATION OF THE PLAN OR OTHERWISE MAKE SUCH PROJECTIONS PUBLIC.**

## **ARTICLE XIII.**

### **CERTAIN FACTORS TO BE CONSIDERED REGARDING THE PLAN**

Holders of Claims against EWRD V should read and consider carefully the factors set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

#### **A. ASSUMPTIONS REGARDING CLAIMS AND RECOVERY ESTIMATES**

The following are the assumptions made by EWRD V in estimating recoveries under the Plan:

1. Assets other than cash have a value estimated by the EWRD V, which value may be more or less than estimated.
2. Allowed General Unsecured Claims are not greater than \$200,000,000; however, this is only an estimate and any variance will impact recoveries.
3. Allowed General Unsecured Claims for rejection of executory contracts and leases have an estimated value; however the bar date for rejection damages will not occur until after the Effective Date, and any variance will impact recoveries.

#### **B. BANKRUPTCY CONSIDERATIONS**

An objection to confirmation of the Plan could prevent confirmation or delay confirmation for a significant period of time. In such case, the Effective Date may not occur and payments to creditors may not commence for several months. In addition, if the Plan is not confirmed, the Chapter 11 Cases may be converted to cases under chapter 7, in which event EWRD V believes that Creditor recoveries will be substantially diminished.

EWRD V BELIEVES THAT THE EFFECTIVE DATE WILL OCCUR THE FIRST BUSINESS DAY AFTER THE CONFIRMATION ORDER BECOMES FINAL, ALTHOUGH THERE CAN BE NO ASSURANCE THAT EACH OF THE CONDITIONS TO THE EFFECTIVE DATE WILL BE SATISFIED BY SUCH DATE.

#### **C. OVERALL RISKS TO RECOVERY BY HOLDERS OF CLAIMS**

In addition to the risks described in Article IX.D hereof, the ultimate recovery under the Plan to Holders of Allowed General Unsecured Claims depends upon the ability of the Liquidating Trustee to realize the maximum value of the Assets of EWRD V and to realize a favorable litigation outcome or settlement of the Causes of Action. It is extremely difficult to value litigation and, as discussed above, litigation outcomes cannot be predicted.

#### **D. RISKS REGARDING THE AMOUNT OF PRIORITY CLAIMS; ADMINISTRATIVE EXPENSES**

EWRD V's projections assume that unpaid Administrative Claims and Priority Claims against EWRD V will be \$0, excluding Professional Fee Claims and administrative expenses incurred in the ordinary course. This amount is only an estimate. The Bar Date for filing Administrative Claims will not occur until 30 days after entry of the Confirmation Order. It is anticipated that additional Administrative Claims will be filed against EWRD V.

**E. RISKS REGARDING AMOUNT OF GENERAL UNSECURED CLAIMS**

As of August 23, 2010, there are approximately \$211,258,294.88, of General Unsecured Claims scheduled and filed against EWRD V excluding multiple and duplicate Claims. The Claims administration process is in its initial stages, and EWRD V anticipates many of these Claims will be disallowed or reduced. The Claim estimates do not include contract rejection claims for which the time to file a Claim has not expired or Claims listed without dollar amounts. It is also possible that the dollar amount of General Unsecured Claims could increase if the Bankruptcy Court determines that any claimant did not receive adequate notice of the Bar Date and therefore allows such claimant's late-filed Claim.

Many of these Claims are subject to objection, defenses or counterclaims, and the Estate intends to vigorously contest such Claims as appropriate. Accordingly, the Pro Rata recoveries for the Holders of General Unsecured Claims against EWRD V are uncertain.

**ARTICLE XIV.**

**POST-CONFIRMATION ISSUES**

**A. CONVERSION OR DISMISSAL**

The Plan provides that if the Confirmation Order is vacated, the Plan will be null and void in all respects and nothing contained therein will (i) constitute a waiver of any Claims against or Interests in any of EWRD V, (ii) prejudice in any manner the rights of the Holder of any Claim against or Interests in EWRD V, or (iii) prejudice in any manner the rights of EWRD V in the Chapter 11 Case.

**B. AUTHORITY TO EFFECTUATE PLAN**

Upon the Confirmation Order becoming a Final Order, all matters provided under the Plan shall be deemed to be authorized and approved without the requirement of further approval from the Bankruptcy Court or any of the EWRD V's board of directors, members, partners or shareholders, as applicable.

**C. CANCELLATION OF INSTRUMENTS AND AGREEMENTS**

Upon the occurrence of the Effective Date, except as otherwise provided in the Plan, all promissory notes, shares, certificates, instruments, indentures or stock, or agreements evidencing, giving rise to or governing any Claim or Interest, shall be deemed canceled and annulled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of EWRD V under such promissory notes, share certificates,

instruments, indentures or agreements (including any applicable Organization Documents) shall be discharged.

#### **D. SECURITIES LAW**

Under Bankruptcy Code § 1145, the issuance of the equity interest in the Liquidating Trust to the Liquidating Trustee under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities.

### **ARTICLE XV.**

#### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Circular 230 Disclaimer: To ensure compliance with requirements imposed by the Internal Revenue Service (the “IRS”), we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code of 1986, as amended (the “IRC”), or (ii) promoting, marketing or recommending to another party any transaction or tax matter(s) addressed herein.

The following discussion summarizes certain federal income tax consequences of the Plan to EWRD V and to Holders of General Unsecured Claims and Interests. This summary does not address the federal income tax consequences to Holders whose Claims are paid in full, in Cash, or which are otherwise not Impaired under the Plan (i.e., Allowed Administrative Claims, Priority Claims, Priority Tax Claims and Secured Claims).

This summary is based on the IRC, the Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rulings and pronouncements of the IRS currently in effect. These authorities are all subject to change, possibly with retroactive effect, and any such change could alter or modify the federal income tax consequences described below.

This summary does not address foreign, state or local income tax consequences, or any estate or gift tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign companies, nonresident alien individuals, S corporations, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, investors in pass-through entities, broker-dealers and tax-exempt organizations). Accordingly, this summary should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular Holder of a Claim or Interest.

Due to the possibility of changes in law, differences in the nature of various Claims, differences in individual Claim or Interest Holders’ methods of accounting, and the potential for disputes as to legal and factual matters, the federal income tax consequences described herein are subject to significant uncertainties. No ruling has been applied for or obtained from the IRS, and no opinion of counsel has been requested or obtained by EWRD V with respect to any of the tax aspects of the Plan.

**THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS OR INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH SUCH HOLDER. THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OR ALL OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX CONSEQUENCES OF THE PLAN.**

**A. FEDERAL INCOME TAX CONSEQUENCES**

**1. Federal Income Tax Consequences to Holders of Unsecured Claims**

In accordance with the Plan, each Holder of a General Unsecured Claim against EWRD V shall be entitled to receive his, her or its Pro Rata share of the proceeds of the EWRD V's Assets. Each Holder of an Allowed Unsecured Claim will recognize gain or loss upon receipt of such Pro Rata share equal to the difference between the "amount realized" by such Creditor and such Creditor's adjusted tax basis in his, her or its Claim. The amount realized is equal to the value of such Creditor's Pro Rata share of the proceeds of the EWRD V's Assets. Any gain or loss realized by an Unsecured Creditor should constitute ordinary income or loss to such creditor unless such Claim is a capital asset in the hands of such Unsecured Creditor. If a Claim is a capital asset and it has been held for more than one year, such creditor will realize long-term capital gain or loss.

The federal income tax consequences to Unsecured Creditors will differ and will depend on factors specific to each such Creditor, including, but not limited to: (i) whether the Unsecured Creditor's Claim (or a portion thereof) constitutes a Claim for principal or interest, (ii) the origin of the Unsecured Creditor's Claim, (iii) the type of consideration received by the Unsecured Creditor in exchange for the Claim, (iv) whether the Unsecured Creditor is a United States person or a foreign person for United States federal income tax purposes, (v) whether the Unsecured Creditor reports income on the accrual or cash basis method, and (vi) whether the Unsecured Creditor has taken a bad debt deduction or otherwise recognized a loss with respect to the Claim.

**THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCES TO EACH UNSECURED CREDITOR. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN SOME CASES UNCERTAIN. THEREFORE, IT IS IMPORTANT THAT EACH CREDITOR OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR AS A RESULT OF THE PLAN.**

**2. Federal Income Tax Treatment of Interests**

In accordance with the Plan, Holders of Interests will not receive anything on account of such Interest and will recognize loss in an amount equal to such Holder's adjusted tax basis in

the Interest. The character of any recognized loss will depend upon several factors, including, but not limited to, the status of the Holder, the nature of the Interest of Holdings in the Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period, and the extent to which the Holder had previously claimed a deduction for the worthlessness of all or a portion of the Interest.

**THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCES TO EACH HOLDER OF AN INTEREST OF EWRD V. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN SOME CASES UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH HOLDER OF AN INTEREST OF EWRD V OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH HOLDER OF AN INTEREST OF EWRD V AS A RESULT OF THE PLAN.**

### **3. Withholding and Reporting**

Payments of interest, dividends and certain other payments are generally subject to backup withholding at the rate of 28% unless the payee of such payment furnishes such payee's correct taxpayer identification number (social security number or employer identification number) to the payor. The Liquidating Trustee may be required to withhold the applicable percentage of any payments made to a Holder who does not provide his, her or its taxpayer identification number. Backup withholding is not an additional tax, but an advance payment that may be refunded to the taxpayer by the IRS to the extent that the backup withholding results in an overpayment of tax by such taxpayer in such taxable year.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE AND LOCAL INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN SOME CASES UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL INCOME AND OTHER TAX CONSEQUENCES UNDER THE PLAN.

## **ARTICLE XVI.**

### **ALTERNATIVES TO CONFIRMATION OF THE PLAN**

EWRD V believes that the Plan provides a recovery to creditors that is greater than or equal to the probable recoveries by creditors if EWRD V was liquidated under chapter 7 of the Bankruptcy Code.

#### **A. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

EWRD V believes that the Plan satisfies all the requirements for confirmation.

## **B. GENERAL CONFIRMATION REQUIREMENTS**

Bankruptcy Code § 1129(a) contains several requirements for confirmation of a plan. Among those requirements are that a plan be proposed in good faith, that certain information be disclosed regarding payments made or promised to be made to insiders, and that the plan comply with the applicable provisions of chapter 11. EWRD V believes that the Plan complies with these requirements, including those requirements discussed below.

## **C. BEST INTEREST TEST**

Each Holder of a Claim or Interest in an Impaired Class must either (i) accept the Plan or (ii) receive or retain under the Plan Cash or property of a value, as of the Effective Date of the Plan, that is not less than the value such Holder would receive or retain if EWRD V was liquidated under chapter 7 of the Bankruptcy Code. The Bankruptcy Court will determine whether the Cash and property issued under the Plan to each class equals or exceeds the value that would be allocated to the Holders in a liquidation under chapter 7 of the Bankruptcy Code (the “Best Interest Test”). EWRD V believes that the Holders of Claims against and Interests in EWRD V will have an equal or greater recovery under the Plan than could be realized in a chapter 7 liquidation for the following reasons.

The Liquidating Trust is liquidating and therefore is not seeking to require Creditors to accept non-cash consideration so that the Estate could pursue going-concern value. Accordingly, the only question is whether the creditors will have recovered more (or at least as much) under the Plan than they would recover through an asset liquidation by a chapter 7 trustee.

To determine the value that a Holder of a Claim or Interest in an Impaired Class would receive if EWRD V was liquidated under chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated from the liquidation of EWRD V’s Assets if the EWRD V’s Chapter 11 Case had been converted to a chapter 7 liquidation case and EWRD V’s Assets were liquidated by a chapter 7 trustee (the “Liquidation Value”). The Liquidation Value would consist of the net proceeds from the disposition of EWRD V’s Assets, augmented by Cash held by EWRD V and reduced by certain increased costs and Claims that arise in a chapter 7 liquidation case that do not arise in a chapter 11 reorganization case.

As explained below, the Liquidation Value available for satisfaction of Claims and Interests in EWRD V would be reduced by: (a) the costs, fees and expenses of the liquidation under chapter 7, which would include disposition expenses and the compensation of a trustee and his or her counsel and other professionals retained, (b) the fees of the chapter 7 trustee, and (c) certain other costs arising from conversion of the Chapter 11 Cases to chapter 7.

EWRD V believes that Creditors have benefited and will continue to clearly benefit from the liquidation by EWRD V. If the Assets are liquidated by a chapter 7 trustee, EWRD V projects that the maximum recovery would be substantially less.

Moreover, under the Plan, EWRD V believes that the increased costs and expenses of a chapter 7 liquidation, including the fees payable to a chapter 7 trustee and his or her professionals, can be avoided. Although EWRD V has already incurred many of the expenses associated with generating the proceeds, the Cash to be distributed to Creditors would be reduced

by the chapter 7 trustee's statutory fee, which is calculated on a sliding scale from which the maximum compensation is determined based on the total amount of moneys disbursed or turned over by the chapter 7 trustee. Bankruptcy Code § 326(a) permits reasonable compensation not to exceed 3% of the proceeds in excess of \$1 million distributable to creditors.<sup>3</sup> The chapter 7 trustee's professionals, including legal counsel and accountants, would add substantial administrative expenses that would be entitled to be paid ahead of Allowed Claims against EWRD V. Moreover, these chapter 7 trustee fees would reduce the Assets available for distribution to the Estate's Creditors from additional recoveries such as preferential payments, expunged administrative claims and the proceeds of successful Estate litigation or settlement.

In contrast, the Liquidating Trustee will be highly familiar with EWRD V's operations and the issues pertaining thereto; therefore, the Estate will avoid the significant administrative burden associated with the familiarization process of a chapter 7 trustee and his or her legal and accounting professionals. Further, under the Plan, all Causes of Action will be pursued by the Liquidating Trustee, subject to any necessary oversight and approval of the Trust Oversight Committee as may be required under the Plan. The Liquidating Trustee is extensively familiar with the facts and legal theories pertaining to EWRD V's Causes of Action. Conversely, a chapter 7 trustee would have no initial familiarity with the Estate's litigation or claims and have less capability to maximize the value of such Causes of Action.

It is also anticipated that a chapter 7 liquidation would result in a significant delay in payments being made to creditors. Bankruptcy Rule 3002(c) provides that conversion of chapter 11 cases to chapter 7 will trigger a new bar date for filing claims against the Estate, and that the new bar date will be 90 days after the first date set for the meeting of creditors called under section 341 of the Bankruptcy Code. Not only would a chapter 7 liquidation delay distribution to creditors, but it is possible that additional claims that were not asserted in the Chapter 11 Cases, or were late-filed, could be filed against the Estate. EWRD V has received and is analyzing late-filed claims and may file claims objections in the near future. Reopening the bar date in connection with conversion to chapter 7 would provide these and other claimants an additional opportunity to timely file claims against the Estate.

For the reasons set forth above, EWRD V believes that the Plan provides a superior recovery for Holders of Claims, and the Plan meets the requirements of the Best Interest Test.

#### **D. FINANCIAL FEASIBILITY TEST**

Even if the Plan is accepted by each Class of Claims voting on the Plan, and even if the Bankruptcy Court determines that the Plan satisfies the Best Interest Test, the Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy Court, it must be

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<sup>3</sup> Bankruptcy Code § 326(a) permits a chapter 7 trustee to receive 25% of the first \$5,000 distributed to creditors, 10% of additional amounts up to \$50,000, 5% of additional distributions up to \$1 million and reasonable compensation up to 3% of distributions in excess of \$1 million. For example, the tiered fee structure could result in fees (excluding the expenses of the chapter 7 trustee and his or her professionals) of \$1,013,250, or 3.166%, on a hypothetical distribution of \$33 million.

demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of EWRD V.

EWRD V forecasts that the Cash payments to be made pursuant to the Plan will be funded through the amounts obtained from the sale of substantially all EWRD V's Assets. Since a form of liquidation is proposed in the Plan and no further financial reorganization of EWRD V is contemplated, EWRD V believes that the Plan meets the feasibility requirement.

## **E. ACCEPTANCE BY IMPAIRED CLASSES**

Bankruptcy Code § 1129(b) provides that a plan can be confirmed even if it has not been accepted by all impaired classes as long as at least one impaired class of claims has accepted it. The process by which nonaccepting classes are forced to be bound by the terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Court may confirm the Plan at the request of EWRD V notwithstanding the Plan's rejection (or deemed rejection) by impaired classes as long as the Plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired Class that has not accepted it. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank.

A class of claims under a plan accepts the plan if the plan is accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed claims in the class that actually vote on the plan. A class of interests accepts the plan if the plan is accepted by holders of interests that hold at least two-thirds in amount of the allowed interests in the class that actually vote on a plan.

A class that is not “impaired” under a plan is conclusively presumed to have accepted the plan. Solicitation of acceptances from such a class is not required. A class is “impaired” unless (i) the legal, equitable and contractual rights to which a claim or interest in the class entitles the holder are not modified, or (ii) the effect of any default is cured and the original terms of the obligation are reinstated.

A plan is fair and equitable as to a class of secured claims that rejects the plan if the plan provides (i)(a) that the holders of claims included in the rejecting class retain the liens securing those claims, whether the property subject to those liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and (b) that each holder of a claim of such class receives on account of that claim deferred cash payments totaling at least the allowed amount of that claim, of a value, as of the effective date of the plan, at least equal to the value of the holder's interest in the estate's interest in such property; (ii) for the sale, subject to Bankruptcy Code § 363(k), of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of the liens, with the liens to attach to the proceeds of the sale, and the treatment of the liens on proceeds under clause (i) or (ii) of this paragraph; or (iii) for the realization of the indubitable equivalent of such claims.

A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the plan provides (i) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the

allowed amount of such claim, or (ii) that the holder of any claim or interest that is junior to the claims of such rejecting class will not receive or retain on account of such junior claim or interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (i) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greater of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest, or (ii) that the holder of any interest that is junior to the interest of such rejecting class will not receive or retain under the plan on account of such junior interest any property at all.

Class 3 (General Unsecured Claims) is impaired and shall be entitled to vote to accept or reject the Plan. If and to the extent that any Class identified as being not Impaired is Impaired (whether as a result of the terms of the Plan or any modification or amendment thereto), such Class shall be entitled to vote to accept or reject the Plan.

Class 1 (Priority Claims) and Class 2 (Secured Claims) are not Impaired by the Plan. Pursuant to Bankruptcy Code § 1126(f), Classes 1 and 2 are conclusively presumed to have accepted the Plan, and the votes of Holders of Claims in Classes 1 and 2 will therefore not be solicited.

The votes of Class 4 (Interests and Interest Related Claims) are not being solicited because such Holders are not entitled to receive or retain under the Plan any interest in property on account of such Claims and Interests. Class 4 is therefore deemed to have rejected the Plan pursuant to Bankruptcy Code § 1126(g). The Plan provides fair and equitable treatment to these Holders because there are no Classes junior to this class and no Class senior to this Class is being paid more than in full on its Allowed Claims.

If any impaired Class fails to accept the Plan, EWRD V intends to request that the Bankruptcy Court confirm the Plan pursuant to Bankruptcy Code § 1129(b) with respect to those Classes.

Dated: October 1, 2010

Respectfully submitted,

**EAST WEST RESORT DEVELOPMENT V, L.P., L.L.L.P.,**  
a Delaware limited liability limited partnership

By: HF HOLDING CORP.,  
a Colorado corporation, its sole General Partner

By: /s/ Craig Ferraro  
Its: Vice President, Treasurer and Secretary

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