

GORDON SILVER  
GERALD M. GORDON, ESQ.  
Nevada Bar No. 229  
E-mail: ggordon@gordonsilver.com  
TALITHA GRAY KOZLOWSKI, ESQ.  
Nevada Bar No. 9040  
E-mail: tkozlowski@gordonsilver.com  
CANDACE C. CLARK, ESQ.  
Nevada Bar No. 11539  
E-mail: cclark@gordonsilver.com  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
Telephone (702) 796-5555  
Facsimile (702) 369-2666  
*Attorneys for Debtor*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:

HORIZON VILLAGE SQUARE LLC,

Debtor.

Case No.: BK-11-21034-MKN  
Chapter 11

Confirmation Hearing :  
Date: [April 28, 2015](#)  
Time: [9:30 a.m.](#)

**DEBTOR'S AMENDED PLAN OF REORGANIZATION**

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Horizon Village Square LLC, a Nevada limited liability company (“Debtor”), debtor and debtor-in-possession proposes this plan of reorganization (the “Plan”) for the resolution of Debtor’s outstanding Claims and Equity Securities (as these terms are defined herein). All Creditors, Equity Security Holders (as both terms are defined herein), and other parties-in-interest should refer to the Disclosure Statement (as this term is defined herein) for a discussion of Debtor’s history, assets, historical financial data, and for a summary and analysis of this Plan and certain related matters. All Holders of Claims against and Equity Securities in Debtor are encouraged to read this Plan, the Disclosure Statement, and the related solicitation materials in their entirety before voting to accept or reject this Plan.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article 11 to this Plan, Debtor expressly reserves the right to alter, amend, strike, withdraw, or modify this Plan one or more times before its substantial consummation.

## **1. DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

**1.1. Definitions.** For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in this Article 1. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, in that order of priority. Whenever the context requires, such terms shall include the plural as well as the singular, the masculine gender shall include the feminine, and the feminine gender shall include the masculine. As used in this Plan, the following terms shall have the meanings specified below:

**1.1.1. Adequate Protection Payment.** Each payment tendered by Debtor to Secured Lender prior to the Effective Date pursuant to the *Stipulation Authorizing Use of Cash Collateral and Granting Adequate Protection* filed in the Chapter 11 Case on September 13, 2011, which payments shall be applied by Secured Lender in accordance with applicable law and as ordered by the Bankruptcy Court.

**1.1.2. Administrative Claim.** A Claim for any cost or expense of administration of the Chapter 11 Case allowed under Sections 503(b) or 507(b) of the Bankruptcy Code and entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, but not limited to: (i) fees payable pursuant to 28 U.S.C. § 1930; (ii) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate, including wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Case; and (iii) all Professional Fees approved by the Bankruptcy Court pursuant to interim and final allowances. To the extent that a Claim is allowed pursuant to Sections 365(d)(3) and (d)(5) of the Bankruptcy Code, such Claim shall also be deemed an “Administrative Claim” under this paragraph.

**1.1.3. Administrative Claim Bar Date.** The end of the first Business Day occurring on or after the sixtieth (60th) calendar day after the Effective Date.

...

**1.1.4. Allowed Administrative Claim.** An Administrative Claim:

(a) As to which no objection has been filed or, if an objection has been filed, has been resolved by the allowance of such Administrative Claim by a Final Order of the Bankruptcy Court; or

(b) Which requires payment in the ordinary course and as to which there is no Final Order of the Bankruptcy Court in effect which prohibits any such payment.

**1.1.5. Allowed Claim.** A Claim or any portion thereof that is not a Disputed Claim: (i) that is allowed pursuant: (w) to this Plan or Final Order of the Bankruptcy Court, (x) to any stipulation executed prior to the Confirmation Date and approved by the Bankruptcy Court, (y) to any stipulation with Debtor or Reorganized Debtor, as applicable, executed on or after the Confirmation Date and approved by the Bankruptcy Court, or (z) to any contract, instrument, or other agreement entered into or assumed in connection herewith; (ii) proof of which, requests for payment of which, or application for allowance of which, was filed or deemed to be filed on or before the Bar Date for filing proofs of Claim or requests for payment of Claims of such type against Debtor; or (iii) if no proof of Claim is filed, which has been or hereafter is listed by Debtor in the Schedules as liquidated in amount and not disputed or contingent; and in the case of (ii) or (iii), no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or the Bankruptcy Court has entered a Final Order Allowing all or a portion of such Claim.

**1.1.6. Allowed Equity Security.** An Equity Security as of the Record Date that: (i) is allowed pursuant to the Plan; (ii) is not disputed by Debtor or Reorganized Debtor, as the case may be; or (iii) if a Disputed Equity Security, which Equity Security has been allowed in whole or in part by Final Order of the Bankruptcy Court.

**1.1.7. Amended and Restated Note.** The Amended and Restated Note Secured by Deed of Trust made by Reorganized Debtor, as maker, and in favor of Secured Lender, as payee, effective as of the Effective Date, which amends and modifies the Secured Note consistent with the provisions and intent of this Plan, expressly including Section 4.1 of the Plan.

**1.1.8. Assets.** All of the assets, property, interests, and effects, real and personal, tangible and intangible, wherever situated, of Debtor, as they exist on the Effective Date.

**1.1.9. Avoidance Actions.** All avoidance, recovery, subordination, and other similar actions preserved for the Estate under the Bankruptcy Code, including but not limited to those set forth in Sections 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code, regardless of whether or not such action has been commenced prior to the Effective Date.

**1.1.10. Ballot.** The form of ballot or ballots that will be distributed with the Disclosure Statement to Holders of Claims entitled to vote under this Plan in connection with the solicitation of acceptances of this Plan.

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1 **1.1.11. Bankruptcy Code.** The Bankruptcy Reform Act of 1978, Title 11, United  
 2 States Code, as applicable to the Chapter 11 Case, as now in effect or hereafter amended, 11  
 U.S.C. §§ 101, *et seq.*

3 **1.1.12. Bankruptcy Court.** The United States Bankruptcy Court for the District  
 4 of Nevada having jurisdiction over the Chapter 11 Case and, to the extent of the withdrawal of  
 any reference under Section 157 of Title 28 of the United States Code and/or the General Order  
 5 of the United States District Court for the District of Nevada pursuant to Section 151 of Title 28  
 of the United States Code, the United States District Court for the District of Nevada.

6 **1.1.13. Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy  
 7 Procedure, as applicable to the Chapter 11 Case, promulgated under 28 U.S.C. § 2075 and the  
 8 general, local, and chamber rules of the Bankruptcy Court as applicable to the Chapter 11 Case,  
 as now in effect or hereinafter amended.

9 **1.1.14. Bar Date.** The date or dates established by the Bankruptcy Court, the  
 10 Bankruptcy Code, and/or the Bankruptcy Rules for the filing of proofs of Claim for all Creditors,  
 excepting therefrom, Administrative Claims.

11 **1.1.15. Business Day.** Any day, other than a Saturday, Sunday, or “legal holiday”  
 12 (as defined in Bankruptcy Rule 9006(a)).

13 **1.1.16. Cash.** The legal tender of the United States of America or the equivalent  
 14 thereof, including bank deposits, checks, negotiable instruments, wire transfers of immediately  
 available funds, or other cash equivalents.

15 **1.1.17. Chapter 11 Case.** The case under Chapter 11 of the Bankruptcy Code  
 16 involving Debtor, having case number BK-11-21034-MKN, including all adversary proceedings  
 pending in connection therewith.

17 **1.1.18. Claim.** Any right to payment from Debtor, whether or not such right is  
 18 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
 19 undisputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date  
 or relating to any event that occurred before the Effective Date, or any right to an equitable  
 20 remedy for breach of performance if such breach gives rise to a right of payment from Debtor,  
 whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent,  
 21 matured, unmatured, disputed, undisputed, secured, or unsecured.

22 **1.1.19. Class.** A category of Holders of Claims or Equity Securities as classified  
 23 in this Plan.

24 **1.1.20. Collateral.** All the collateral as described in the Loan Documents.

25 **1.1.21. Confirmation.** The entry by the Bankruptcy Court of the Confirmation  
 26 Order on the docket of the Chapter 11 Case.

27 **1.1.22. Confirmation Date.** The date upon which the Bankruptcy Court enters  
 the Confirmation Order on the docket of the Chapter 11 Case.



**1.1.23. Confirmation Hearing.** The duly-noticed initial hearing held by the Bankruptcy Court to confirm this Plan pursuant to Section 1128 of the Bankruptcy Code, and any subsequent hearing held by the Bankruptcy Court from time to time to which the initial hearing is adjourned without further notice other than the announcement of the adjourned dates at the Confirmation Hearing or by a subsequent order of the Bankruptcy Court.

**1.1.24. Confirmation Order.** The order entered by the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

**1.1.25. Contingent Claim.** A Claim which is contingent, unmatured, or unliquidated on or immediately before the Confirmation Date.

**1.1.26. Creditor.** Any Holder of a Claim, whether or not such Claim is an Allowed Claim.

**1.1.27. Cure.** The distribution on the Effective Date or as soon thereafter as practicable of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption of an Executory Contract or Unexpired Lease pursuant to Section 365(b) of the Bankruptcy Code, or with respect to any other debt instrument, in an amount equal to: (i) all unpaid monetary obligations due under such executory contract or unexpired lease or required to pay to bring current the debt instrument and thereby reinstate the debt and return to the pre-default conditions to the extent such obligations are enforceable under the Bankruptcy Code or applicable non-bankruptcy law; and (ii) with respect to any debt instrument, if a claim arises from a debtor's failure to perform any non-monetary obligation as set forth in Sections 1124(2)(C) and 1124(2)(D) of the Bankruptcy Code, payment of the dollar amount which compensates the Holder of such a claim for any actual pecuniary loss incurred by such Holder as a result of any such failure and the dollar amount of the Claim that is established by the Holder's sworn declaration and accompanying admissible evidence filed with the Bankruptcy Court and served upon Debtor's counsel on or before such date ordered by the Court for the filing of objections to the disclosure statement.

**1.1.28. Debtor.** Horizon Village Square LLC, the debtor and debtor-in-possession in the Chapter 11 Case pursuant to Section 1108 of the Bankruptcy Code.

**1.1.29. Deed of Trust.** The Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing made by Debtor, as borrower, in favor of Secured Lender, as lender, recorded with the Clark County Recorder on February 13, 2008, as Book-Instrument 20080213-0003061.

~~**1.1.30. Deficiency Claim.** Solely to the extent that Secured Lender does not make the Section 1111(b) Election: (i) the sum of \$380,639.40, plus reasonable attorney's fees and costs incurred by Secured Lender post petition and prior to the Effective Date to the extent such fees and costs are approved by entry of a Final Order of the Bankruptcy Court; or (ii) such other unsecured amount determined by entry of a Final Order of the Bankruptcy Court to be due and owing to Secured Lender under the Secured Note.~~

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1.1.30. ~~1.1.31.~~ **Disclosure Statement.** The disclosure statement that relates to this Plan, as amended, supplemented, or modified from time to time, describing this Plan that is prepared and distributed in accordance with, among others, Sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law.

1.1.31. ~~1.1.32.~~ **Disputed Claim or Disputed Equity Security.** A Claim or Equity Security which is: (i) subject to timely objection interposed by Debtor, Reorganized Debtor, or any party-in-interest entitled to file and prosecute such objection in the Chapter 11 Case, if at such time such objection remains unresolved; or (ii) a Claim that is listed by Debtor as disputed, unliquidated, or contingent in the Schedules; provided, however, that the Bankruptcy Court may estimate a Disputed Claim for purposes of allowance pursuant to Section 502(c) of the Bankruptcy Code. The term “Disputed,” when used to modify a reference in this Plan to any Claim or Class of Claims or Equity Security, shall mean a Claim or Equity Security (or any Claim or Equity Security in such Class) that is a Disputed Claim or Disputed Equity Security as defined herein. In the event there is a dispute as to classification or priority of a Claim or Equity Security, it shall be considered a Disputed Claim or Disputed Equity Security in its entirety. Until such time as a Contingent Claim becomes fixed and absolute, such Claim shall be treated as a Disputed Claim and not an Allowed Claim for purposes related to allocations and distributions under this Plan.

1.1.32. ~~1.1.33.~~ **Disputed Claim Reserve.** A reserve established to hold in one or more accounts Cash or other Assets equal to the aggregate amount thereof that would have been distributed in accordance with the terms of this Plan on account of a Disputed Claim.

1.1.33. ~~1.1.34.~~ **Distributable Assets.** Shall mean the Assets distributable to Allowed Claims and unclassified Claims in accordance with the Plan by Reorganized Debtor.

1.1.34. ~~1.1.35.~~ **Distribution.** Any distribution by Debtor or Reorganized Debtor of Distributable Assets to the Holders of Allowed Claims or Equity Securities as of the Record Date.

1.1.35. ~~1.1.36.~~ **Effective Date.** The latest to occur of: (i) the first Business Day that is at least fourteen (14) days after the Confirmation Date and on which no stay of the Confirmation Order is in effect; and (ii) the first (1st) Business Day on which all of the conditions set forth in Article 8 to this Plan have been satisfied or waived.

1.1.36. ~~1.1.37.~~ **Equity Security.** An equity security as the term is defined in Section 101(16) of the Bankruptcy Code and includes the membership interests in Debtor and any warrants, options, redemption rights, dividend rights, liquidation preferences, rights to purchase any such Equity Security, or any other rights related thereto.

1.1.37. ~~1.1.38.~~ **Estate.** The estate created for Debtor in the Chapter 11 Case pursuant to Section 541 of the Bankruptcy Code.

1.1.38. ~~1.1.39.~~ **Executory Contract.** A contract to which Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

...

1.1.39, ~~1.1.40~~. **Final Order.** An order, judgment, or other decree of the Bankruptcy Court, or other court of competent jurisdiction, entered on the docket of such court, that has not been reversed, reconsidered, stayed, modified, or amended, that is in full force and effect, and as to which order or judgment: (i) the time to appeal, seek review or rehearing, or petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand, or certiorari is pending; (ii) any appeal taken or petition for certiorari or request for reconsideration or further review or rehearing filed: (a) has been resolved by the highest court to which the order or judgment was appealed or from which review, rehearing, or certiorari was sought; or (b) has not yet been resolved by such highest court, but such order has not been stayed pending appeal. Notwithstanding the foregoing, the Confirmation Order shall specifically become a Final Order on the first Business Day that is fourteen (14) days after the entry of such Confirmation Order unless any appeal of such Confirmation Order was accompanied by a stay pending appeal.

1.1.40, ~~1.1.41~~. **General Unsecured Claim.** A Claim that is not secured by a charge against or interest in property in which the Estate has an interest and is not an unclassified Claim, Administrative Claim, ~~Deficiency Claim~~, or Priority Unsecured Claims. General Unsecured Claims shall also include all Claims arising under Section 502(g) of the Bankruptcy Code.

1.1.41, ~~1.1.42~~. **Guarantors.** The Persons having entered into Guaranty agreements with Secured Lender in conjunction with the Secured Loan.

1.1.42, ~~1.1.43~~. **Holder.** An entity holding an Equity Interest or Claim.

1.1.43, ~~1.1.44~~. **Impaired.** Impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.1.44, ~~1.1.45~~. **Lien.** This term shall have the meaning set forth in Section 101(37) of the Bankruptcy Code.

1.1.45, ~~1.1.46~~. **Litigation Claims.** All rights, claims, torts, liens, liabilities, obligations, actions, causes of action, Avoidance Actions, derivative actions, proceedings, debts, contracts, judgments, damages and demands whatsoever in law or in equity, whether known or unknown, contingent or otherwise, that Debtor or the Estate may have against any Person, including but not limited to, those listed on Schedule ~~1.1.46~~1.1.45 hereto. Failure to list a Litigation Claim on Schedule ~~1.1.46~~1.1.45 shall not constitute a waiver or release by Debtor or Reorganized Debtor of such Litigation Claim.

1.1.46, ~~1.1.47~~. **Loan Documents.** Collectively, the Secured Loan Agreement, the Secured Note, the Deed of Trust, and any and all amendments, supplements, or modifications to the foregoing, as well as any and all other documents pertaining thereto.

1.1.47, ~~1.1.48~~. **Maturity Date.** The first (1<sup>st</sup>) day of the sixty-first (61<sup>st</sup>) month after the Effective Date.

1.1.48, ~~1.1.49~~. **Memorandum Decision.** The *Memorandum Decision on Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan* [ECF No. 303].

1.1.49. ~~1.1.50.~~ **Nevada Secretary.** The Secretary of State of the State of Nevada.

1.1.50. ~~1.1.51.~~ **NRS.** The Nevada Revised Statutes, as amended from time to time.

1.1.51. ~~1.1.52.~~ **Other Secured Claims.** Any Secured Claim, other than the Secured Lender Claim.

1.1.52. ~~1.1.53.~~ **Person.** An individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization or government, governmental unit, or any subdivision thereof or any other entity.

1.1.53. ~~1.1.54.~~ **Petition Date.** July 13, 2011, the date on which a voluntary Chapter 11 petition was filed by Debtor, thereby commencing the Chapter 11 Case.

1.1.54.

1.1.54. ~~1.1.55.~~ **Plan.** This plan of reorganization, either in its present form or as it may be amended, supplemented, or modified from time to time, including all exhibits and schedules annexed hereto or referenced herein.

1.1.55. ~~1.1.56.~~ **Priority Unsecured Claims.** Any and all Claims accorded priority in right of payment under Section 507(a) of the Bankruptcy Code.

1.1.56. ~~1.1.57.~~ **Professional Fees.** The Administrative Claims for compensation and reimbursement submitted pursuant to Sections 328, 330, 331, or 503(b) of the Bankruptcy Code of Persons: (i) employed pursuant to an order of the Bankruptcy Court under Section 327 or 328 of the Bankruptcy Code; or (ii) for whom compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b) of the Bankruptcy Code or by other Final Order.

1.1.57. ~~1.1.58.~~ **Pro Rata.** The ratio of an Allowed Claim or Equity Security in a particular class to the aggregate amount of all such Allowed Claims or Allowed Equity Securities in any such Class.

1.1.58. ~~1.1.59.~~ **Real Property.** That certain real property located in Las Vegas, Clark County, Nevada, having APNs 179-30-114-008 and 179-30-214-002, and all improvements thereto.

1.1.59. ~~1.1.60.~~ **Record Date.** The Confirmation Date for the purpose of determining the Holders of Equity Securities.

1.1.60. ~~1.1.61.~~ **Reinstated or Reinstatement.** These terms shall mean: (i) leaving unaltered the legal, equitable, and contractual rights of the Holder of a Claim so as to leave such Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code; or (ii) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default: (a) Curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in Section 365(b)(2) of the Bankruptcy Code; (b) reinstating the maturity of such Claim as such maturity existed before such default; (c) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such

contractual provision or such applicable law; and (d) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants, or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required in order to accomplish Reinstatement.

**1.1.61. ~~1.1.62.~~ Reorganized Debtor.** Debtor as reorganized pursuant to this Plan after the Effective Date by merger, consolidation, or otherwise.

**1.1.62. ~~1.1.63.~~ Schedules.** The schedules of assets and liabilities and any amendments thereto filed by Debtor with the Bankruptcy Court in accordance with Section 521(1) of the Bankruptcy Code.

**~~1.1.64. Section 1111(b) Election.~~** ~~The election provided to undersecured creditors pursuant to Section 1111(b) of the Bankruptcy Code and Bankruptcy Rule 3014, which election shall be made on or before the final hearing on the motion seeking approval of the Disclosure Statement.~~

**1.1.63. ~~1.1.65.~~ Secured Claim.** A Claim that is secured by a Lien against property of the Estate to the extent of the value of any interest in such property of the Estate securing such Claim, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or to the extent of the amount of such Claim subject to setoff in accordance with Section 553 of the Bankruptcy Code, in either case as determined pursuant to Section 506(a) of the Bankruptcy Code.

**1.1.64. ~~1.1.66.~~ Secured Interest Rate.** The rate of 4.25% per annum as determined by the Bankruptcy Court in its Memorandum Decision.

**1.1.65. ~~1.1.67.~~ Secured Lender.** Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, N.A., and any other Person having a right of participation in, under, or to the Secured Loan or any rights, title, or interest to or under the Loan Documents.

**1.1.66. ~~1.1.68.~~ Secured Lender Claim.** ~~If the Section 1111(b) Election is not made, the sum of \$10,845,000.00, as determined by the Bankruptcy Court in the Memorandum Decision. If the Section 1111(b) Election is made: (i) \$11,225,639.40, plus~~ The sum of \$11,225,639.40, minus the Adequate Protection Payments tendered on account of the Secured Loan, plus: (i) any accrued and unpaid interest from the Petition Date up to the Effective Date at the rate of 1-month LIBOR plus 1.50%, as more fully set forth in Section 4 of the Secured Note; and (ii) reasonable attorney's fees ~~and costs, and expenses~~ incurred by Secured Lender post-petition and prior to the Effective Date, solely to the extent that such fees ~~and costs, and expenses~~ are approved by entry of a Final Order of the Bankruptcy Court; or (ii) such other amount that is consistent with the Memorandum Decision and determined by entry of a Final Order of the Bankruptcy Court to be due and owing to Secured Lender under the Secured Note.

1.1.67. ~~1.1.69.~~ **Secured Loan.** The loan in the principal sum of \$11,350,000 tendered by Secured Lender, as lender, to Debtor, as borrower, and evidenced by the Loan Documents.

1.1.68. ~~1.1.70.~~ **Secured Loan Agreement.** The Term Loan Agreement dated February 13, 2008, between Secured Lender, as lender, and Debtor, as borrower, for the Secured Loan.

1.1.69. ~~1.1.71.~~ **Secured Note.** The Promissory Note (Term Loan) dated February 13, 2008, between Secured Lender, as lender, and Debtor, as borrower, in the original principal sum of \$11,350,000.

1.1.70. ~~1.1.72.~~ **Taxes.** All income, gaming, franchise, excise, sales, use, employment, withholding, property, payroll, or other taxes, assessments of governmental charges, together with any interest penalties, additions to tax, fines, and similar amounts relating thereto, whether or not yet assessed or imposed, collected by, or due to any federal, state, local or foreign governmental authority.

1.1.71. ~~1.1.73.~~ **Unexpired Lease.** A lease of non-residential real property to which Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

1.1.72. ~~1.1.74.~~ **Unimpaired.** Unimpaired shall have the meaning set forth in Section 1124 of the Bankruptcy Code.

1.1.73. ~~1.1.75.~~ **Unsecured Interest Rate.** The rate of 5.5% per annum.

**1.2. Computation of Time.** In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**1.3. Rules of Interpretation.** For purposes of this Plan only; (i) any reference in this Plan to a contract, instrument, release, or other agreement or documents being in particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (ii) any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented; (iii) unless otherwise specified, all references in this Plan to Sections, Articles, Schedules and Exhibits are references to Sections, Articles, Schedules and Exhibits of or to this Plan; (iv) the words "herein," "hereof," "hereto," and "hereunder" refer to this Plan in its entirety rather than to a particular portion of this Plan; (v) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; and (vi) the rules of construction and definitions set forth in Sections 101 and 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply unless otherwise expressly provided.



1.4. **Exhibits and Plan Schedules.** All exhibits and schedules attached to the Plan are incorporated into and are a part of this Plan as if set forth in full herein.

## 2. TREATMENT OF UNCLASSIFIED CLAIMS

2.1. **General.** Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Claims against Debtor set forth in this Article 2 are not classified within any Classes. The Holders of such Claims are not entitled to vote on this Plan. The treatment of the Claims set forth below is consistent with the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

2.2. **Treatment of Administrative Claims.** Each Allowed Administrative Claim shall be paid by Reorganized Debtor (or otherwise satisfied in accordance with its terms) upon the latest of: (i) the Effective Date or as soon thereafter as is practicable; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable, (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed, or as soon thereafter as practicable; and (iv) such date as the Holder of such Claim and Reorganized Debtor shall agree upon.

2.2.1. **Requests for Payment.** All requests for payment of Administrative Claims against Debtor and all final applications for allowance and disbursement of Professional Fees must be filed by the Administrative Claims Bar Date or the Holders thereof shall be forever barred from asserting such Administrative Claims against Debtor and the Reorganized Debtor. All Professional Fees applications must be in compliance with all of the terms and provisions of any applicable order of the Bankruptcy Court, including the Confirmation Order, and all other orders governing payment of Professional Fees. Unless otherwise ordered by the Bankruptcy Court, from and after the Effective Date, no professional shall be required to file fee applications with the Bankruptcy Court and Reorganized Debtor may pay all professionals in the ordinary course for fees and expenses incurred after the Effective Date.

## 3. DESIGNATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS

Pursuant to this Plan and in accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors and the Holders of Equity Securities (except unclassified Claims) are placed in the Classes described below. A Claim or Equity Security is classified in a particular Class only to the extent that the Claim or Equity Security qualifies within the description of that Class and is classified in other Classes only to the extent that any remainder of the Claim or Equity Security qualifies within the description of such other Classes. A Claim or Equity Security is also classified in a particular Class only to the extent that such Claim or Equity Security is an Allowed Claim or Allowed Equity Security in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. With respect to Classes of Claims described as Unimpaired under the Plan, except as otherwise provided under this Plan, nothing shall affect the rights and legal and equitable defenses of Debtor and Reorganized Debtor regarding such Claims classified as Unimpaired under this Plan, including but not limited to, all rights in respect of legal and equitable defenses to setoff or recoupment against such Claims.

### 3.1. Summary of Classification.



<u>Class</u>	<u>Description</u>	<u>Treatment</u>
Class 1	Secured Lender Claim	Impaired. Solicitation required.
<del>Class 2</del>	<del>Deficiency Claim</del>	<del>Impaired. Solicitation required.</del>
Class <del>3</del> <u>2</u>	Other Secured Claims	Unimpaired. No solicitation required.
Class <del>4</del> <u>3</u>	Priority Unsecured Claims	Unimpaired. No solicitation required.
Class <del>5</del> <u>4</u>	General Unsecured Claims	Impaired. No further solicitation required.
Class <del>6</del> <u>5</u>	Equity Securities	Unimpaired. No solicitation required.

### 3.2. Specific Classification.

**3.2.1. Class 1: Secured Lender Claim.** Class 1 consists of the Secured Lender Claim.

~~**3.2.2. Class 2: Deficiency Claim.** Class 2 consists of the Deficiency Claim.~~

~~**3.2.2.**~~ **3.2.3. Class ~~2~~2: Other Secured Claims.** Class 2 consists of the Other Secured Claims. Each Holder of an Other Secured Claim shall be considered to be its own separate subclass within Class 2, and each subclass shall be deemed to be a separate class for purposes of this Plan. Debtor may add additional other Secured Creditors as an additional separate subclass.

~~**3.2.3.**~~ **3.2.4. Class ~~4~~3: Priority Unsecured Claims.** Class ~~4~~3 consists of the Priority Unsecured Claims.

~~**3.2.4.**~~ **3.2.5. Class ~~5~~4: General Unsecured Claims.** Class ~~5~~4 consists of the General Unsecured Claims.

~~**3.2.5.**~~ **3.2.6. Class ~~6~~5: Equity Securities.** Class ~~6~~5 consists of the Equity Securities.

## 4. DESIGNATION OF AND PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS UNDER THIS PLAN

**4.1. Class 1 – Secured Lender Claim.** Class 1 is comprised of the Secured Lender Claim.

1 **4.1.1.** On the Effective Date, the Loan Documents shall remain in full force and  
 2 effect, save and except that: (i) without any further action by Debtor, Reorganized Debtor, or  
 3 Secured Lender all of the Loan Documents shall be deemed to have been amended as follows;  
 4 and (ii) the Class 1 Allowed Secured Lender Claim will be evidenced by the Amended and  
 Restated Note, which will be effective on the Effective Date and will generally incorporate the  
 terms of the Secured Note as modified as follows:

5 (a) Principal Balance. The principal balance of the Amended and  
 6 Restated Note shall be the Secured Lender Claim.

7 (b) Lien. From and after the Confirmation Date, the Holder of the  
 8 Class 1 Secured Lender Claim shall retain its Lien in the Collateral consistent  
 with the applicable Loan Documents and the Amended and Restated Note until  
 the Amended and Restated Note is repaid in full.

9 (c) Post-Effective Date Interest. Interest shall accrue on the Amended  
 10 and Restated Note at the Secured Interest Rate.

11 (d) Payments.

12 (i) On the first (1<sup>st</sup>) Business Day of the first (1<sup>st</sup>) full calendar  
 13 month following the Effective Date, Reorganized Debtor shall distribute  
 14 the sum of \$585,000.00 to Secured Lender, which shall be applied by  
 15 Secured Lender as a principal reduction of the principal balance of the  
 16 Amended and Restated Note.

17 (ii) ~~(d) Monthly Payments.~~ Beginning on the ~~fourteenth~~  
 18 ~~(14<sup>th</sup> first (1<sup>st</sup>))~~ Business Day of the second (2<sup>nd</sup>) full calendar month  
 19 following the Effective Date, and on the ~~fourteenth (14<sup>th</sup> first (1<sup>st</sup>))~~ Business  
 Day of each subsequent month up to and through the Maturity Date,  
 Reorganized Debtor shall distribute to Secured Lender monthly principal  
 and interest payments on the outstanding balance of the Amended and  
 Restated Note amortized over a period of thirty (30) years at the Secured  
 Interest Rate.

20 (e) Maturity Date. The unpaid balance of the Amended and Restated  
 21 Note shall be due and payable on the Maturity Date.

22 (f) Prepayment. There shall be no penalty for prepayment for all or  
 23 part of the Amended and Restated Note prior to the Maturity Date.

24 (g) Refinancing and Sale Options. Prior to the Maturity Date, Debtor  
 shall have the absolute right to act as follows:

25 (i) Refinance the Amended and Restated Note; provided,  
 26 however, that the proceeds of such refinancing loan are sufficient to and  
 27 are utilized to pay all sums due and owing under the Amended and  
 28 Restated Note at the time of closing of such refinancing, unless Secured  
 Lender otherwise agrees; or

(ii) Sell the Real Property free and clear of Secured Lender's Liens; provided, however, that the proceeds of such sale are sufficient at the time of closing of such sale to, and are utilized to, pay all sums due and owing under the Amended and Restated Note, unless Secured Lender otherwise agrees.

(h) Financial Covenants. On and after the Effective Date, all financial covenants, expressly including debt coverage ratio requirements, set forth in the Loan Documents shall be of no force and effect, including but not limited to the financial covenants set forth in Section 7.13 of the Secured Loan Agreement.

(i) Insolvency and Bankruptcy Relief. Debtor's pre-Effective Date insolvency, inability to pay its debts as they mature, the making of an assignment for the benefit of creditors by Debtor or the Guarantors, the appointment of a receiver of the property of Debtor or the Guarantors, or the filing of a voluntary or involuntary petition under Title 11 or similar proceeding under law against Debtor or the Guarantors shall not constitute an event of default under the Loan Documents.

**4.1.2.** The Holder of the Class 1 Secured Lender Claim shall not be entitled to any default interest, late fees, or other charges resulting from a default occurring prior to the Effective Date under the Loan Documents. The effectiveness of this Section 4.1.2 is subject to the entry of a Final Order determining the amount of the Secured Lender Claim.

**4.1.3.** On the Effective Date, all pre-Effective Date defaults under the Loan Documents shall be deemed to have been cured and on the Effective Date, Debtor and/or Reorganized Debtor shall be current and in good standing under the Loan Documents.

Class 1 is Impaired under the Plan. The Holder of the Class 1 Secured Lender Claim is entitled to vote on this Plan.

~~4.2. 4.1. Class 2—Deficiency Claim. Subject to Secured Lender's Section 1111(b) Election, Class 2 is comprised of the Deficiency Claim. For the avoidance of doubt, if Secured Lender makes the Section 1111(b) Election, there shall be no Class 2 Deficiency Claim. Except to the extent that the Holder of the Deficiency Claim agrees to less favorable treatment, the Holder of the Deficiency Claim shall, in full and final satisfaction of such Claim, be paid in full in Cash, plus post Effective Date interest at the Unsecured Interest Rate, on the latest of: (i) the sixtieth (60<sup>th</sup>) Business Day after the Effective Date, as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtor have agreed or shall agree.~~

~~Class 2 is Impaired under the Plan. The Holders of Class 2 Claims are entitled to vote on this Plan.~~

~~4.2. Class 3 – Other Secured Claims.~~ Each Allowed Other Secured Claim, if any, shall, in full and final satisfaction of such Claim, be paid in full in Cash or otherwise left Unimpaired by Debtor or Reorganized Debtor, as the case may be, upon the latest of: (i) the

Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed; and (iv) such date as agreed upon by the Holder of such Claim and Debtor, and after the Effective Date, Reorganized Debtor.

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Class 32 is Unimpaired under the Plan, and therefore the Holders of Class 32 Claims, if any, are deemed to have accepted this Plan and are not entitled to vote on this Plan.

**4.3. Class 43 – Priority Unsecured Claims.** Each Allowed Priority Unsecured Claim, if any, shall, in full and final satisfaction of such Claims, be paid in full in Cash on the latest of: (i) the Effective Date, or as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtor have agreed or shall agree.

Class 43 is Unimpaired under the Plan, and therefore, the Holders of Class 43 Claims, if any, are deemed to have accepted this Plan and are not entitled to vote on this Plan.

**4.4. Class 54 – General Unsecured Claims.** Except to the extent that a Creditor with an Allowed General Unsecured Claim agrees to less favorable treatment, each Creditor with an Allowed General Unsecured Claim, shall, in full and final satisfaction of such Claim, be paid in full in Cash, plus post-Effective Date interest at the Unsecured Interest Rate, on the latest of: (i) the sixtieth (60<sup>th</sup>) Business Day after the Effective Date, as soon thereafter as is practical; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder of such Claim and Reorganized Debtor have agreed or shall agree.

Although Class 54 is Impaired under the Plan, as the Holders of Class 54 Claims previously voted to accept less favorable treatment under a prior plan, they are not being resolicited.

**4.5. Class 65 – Equity Securities.** On the Effective Date, the Holders of Equity Securities of Debtor shall retain all of their legal interests. The Holders of the Class 65 Equity Securities are Unimpaired, and are therefore deemed to have accepted this Plan and are not entitled to vote on this Plan.

## **5. MEANS FOR IMPLEMENTATION OF PLAN**

**5.1. Plan Implementation Occurring on the Effective Date.** On the Effective Date, without any further action by Debtor or Reorganized Debtor, all of Debtor's assets shall vest in Reorganized Debtor and the following events shall occur in the following sequence:

**5.1.1. Reorganized Debtor.** On and after the Effective Date, Reorganized Debtor shall continue to exist as a separate entity in accordance with applicable law. Debtor's existing articles of organization, by-laws, and operating agreements (as amended, supplemented, or modified) will continue in effect for Reorganized Debtor following the Effective Date, except

1 to the extent that such documents are amended in conformance with this Plan or by proper  
2 corporate action after the Effective Date.

3 **5.2. Effectiveness of the Amended and Restated Note.** On the Effective Date, the  
4 Amended and Restated Note shall be executed by Reorganized Debtor and delivered to Secured  
5 Lender.

6 ...

7 **5.3. Effectiveness of the Loan Documents.** On the Effective Date, the Loan  
8 Documents shall remain in full force and effect, save and except that without any further action  
9 by Reorganized Debtor or Secured Lender, all of the Loan Documents shall be deemed to have  
10 been amended as set forth in Section 4.1 of this Plan. All amendments necessary to implement  
11 and effectuate the provisions of this Plan shall be deemed to have been made. All potential  
12 discrepancies or inconsistencies between the Loan Documents and the Plan shall be construed  
13 and resolved in favor of the effectuation and implementation of the provisions and intentions of  
14 the Plan.

15 **5.4. Articles of Organization, By-laws, Operating Agreement.** The articles of  
16 organization, by-laws, and/or operating agreement, as applicable, of Debtor shall be amended as  
17 necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among  
18 other things, pursuant to Section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the  
19 issuance of non-voting equity securities, but only to the extent required by Section 1123(a)(6) of  
20 the Bankruptcy Code.

21 **5.5. Post-Effective Date Management of Reorganized Debtor.** From and after the  
22 Effective Date, Reorganized Debtor will continue to be managed by Debtor's pre-petition  
23 managers, which management may subsequently be modified to the extent provided by  
24 Reorganized Debtor's articles of organization, by-laws, and operating agreement (as amended,  
25 supplemented, or modified).

26 **5.6. Effectuation of Transactions.** On and after the Effective Date, the appropriate  
27 managers or members of Debtor are authorized to issue, execute, deliver, and consummate the  
28 transactions contemplated by or described in the Plan in the name of and on behalf of  
Reorganized Debtor without further notice to or order of the Bankruptcy Court, act or action  
under applicable law, regulation, order, rule, or any requirements of further action, vote, or other  
approval or authorization by any Person.

**5.7. Notice of Effectiveness.** When all of the steps contemplated by Section 8.2 have  
been completed or waived, Reorganized Debtor shall file with the Bankruptcy Court and serve  
upon all Creditors and all potential Holders of Administrative Claims known to Reorganized  
Debtor (whether or not disputed), a notice of Effective Date of Plan. The notice of Effective  
Date of Plan shall include notice of the Administrative Claim Bar Date.

**5.8. No Governance Action Required.** As of the Effective Date: (i) the adoption,  
execution, delivery, and implementation or assignment of all contracts, leases, instruments,  
releases, and other agreements related to or contemplated by this Plan; and (ii) the other matters  
provided for under or in furtherance of this Plan involving corporate action to be taken by or  
required of Debtor shall be deemed to have occurred and be effective as provided herein, and

shall be authorized and approved in all respects without further order of the Bankruptcy Court or any requirement of further action by the members or managers of Debtor

**5.9. Filing with Nevada Secretary.** To the extent applicable, in accordance with NRS 78.622, on or as soon as reasonably practical after the Effective Date, a certified copy of this Plan and the Confirmation Order shall be filed with the Nevada Secretary. Again, to the extent applicable, Debtor, from the Confirmation Date until the Effective Date, is authorized and directed to take any action or carry out any proceeding necessary to effectuate this Plan pursuant to NRS 78.622.

## **6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1. Executory Contracts.** Except for Executory Contracts and Unexpired Leases specifically addressed in this Plan or set forth on the schedule of Rejected Executed Contracts and Unexpired Leases attached as Schedule 6.1 hereto (which may be supplemented and amended up to the date the Bankruptcy Court enters the Confirmation Order), all Executory Contracts and Unexpired Leases that exist on the Confirmation Date shall be deemed assumed by Debtor on the Effective Date.

**6.2. Approval of Assumption or Rejection.** Entry of the Confirmation Order shall constitute as of the Effective Date: (i) approval, pursuant to Bankruptcy Code Section 365(a), of the assumption by Reorganized Debtor of each Executory Contract and Unexpired Lease to which Debtor is a party that is not listed on Schedule 6.1, not otherwise provided for in this Plan, and neither assigned, assumed and assigned, nor rejected by separate order of the Bankruptcy Court prior to the Effective Date; and (ii) rejection by Debtor of each Executory Contract and Unexpired Lease to which Debtor is a party that is listed on Schedule 6.1. Upon the Effective Date, each counter party to an assumed Executory Contract or Unexpired Lease listed shall be deemed to have consented to an assumption contemplated by Section 365(c)(1)(B) of the Bankruptcy Code, to the extent such consent is necessary for such assumption. To the extent applicable, all Executory Contracts or Unexpired Leases of Reorganized Debtor assumed pursuant to Article 6 shall be deemed modified such that the transactions contemplated by this Plan shall not be a “change of control,” regardless of how such term may be defined in the relevant Executory Contract or Unexpired Lease and any required consent under any such Executory Contract or Unexpired Lease shall be deemed satisfied by confirmation of this Plan.

**6.3. Cure of Defaults.** Reorganized Debtor shall Cure any defaults respecting each Executory Contract or Unexpired Lease assumed pursuant to Section 6.1 of this Plan upon the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such dates as may be fixed by the Bankruptcy Court or agreed upon by Debtor, and after the Effective Date, Reorganized Debtor; or (iii) the fourteenth (14<sup>th</sup>) Business Day after the entry of a Final Order resolving any dispute regarding: (a) a Cure amount; (b) the ability of Debtor or Reorganized Debtor to provide “adequate assurance of future performance” under the Executory Contract or Unexpired Lease assumed pursuant to this Plan in accordance with Section 365(b)(1) of the Bankruptcy Code; or (c) any matter pertaining to assumption, assignment, or the Cure of a particular Executory Contract or an Unexpired Lease.

**6.4. Objection to Cure Amounts.** Any party to an Executory Contract or Unexpired Lease who objects to the Cure amount determined by Debtor to be due and owing must file and serve an objection on Debtor’s counsel no later than thirty (30) days after the Effective Date.



Failure to file and serve a timely objection shall be deemed consent to the Cure amounts paid by Debtor in accordance with Section 6.3 of this Plan. If there is a dispute regarding: (i) the amount of any Cure payment; (ii) the ability of Reorganized Debtor to provide “adequate assurance of future performance” under the Executory Contract or Unexpired Lease to be assumed or assigned; or (iii) any other matter pertaining to assumption, the Cure payments required by ...

Section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order resolving the dispute and approving the assumption.

**6.5. Confirmation Order.** The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions described in this Article 6 pursuant to Section 365 of the Bankruptcy Code as of the Effective Date. Notwithstanding the forgoing, if, as of the date the Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy Court a dispute concerning the Cure amount or adequate assurance for any particular Executory Contract or Unexpired Lease, the assumption of such Executory Contract or Unexpired Lease shall be effective as of the date the Bankruptcy Court enters an order resolving any such dispute and authorizing assumption by Debtor.

**6.6. Post-Petition Date Contracts and Leases.** Executory Contracts and Unexpired Leases entered into and other obligations incurred after the Petition Date by Debtor shall be assumed by Debtor on the Effective Date. Each such Executory Contract and Unexpired Lease shall be performed by Debtor or Reorganized Debtor, as applicable, in the ordinary course of its business.

**6.7. Bar Date.** All proofs of Claims with respect to Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be filed no later than thirty (30) calendar days after the Effective Date. Any Claim not filed within such time shall be forever barred.

## **7. MANNER OF DISTRIBUTION OF PROPERTY UNDER THIS PLAN**

**7.1. Distributions.** Reorganized Debtor shall be responsible for making the Distributions described in this Plan. Reorganized Debtor may make such Distributions before the allowance of each Claim and Equity Securities has been resolved if Reorganized Debtor has a good faith belief that the Disputed Claims Reserve or Disputed Equity Security Reserve is sufficient for all Disputed Claims and Disputed Equity Securities. Except as otherwise provided in this Plan or the Confirmation Order, the Cash necessary for Reorganized Debtor to make payments pursuant to this Plan may be obtained from existing Cash balances and Debtor’s operations.

**7.2. Reserves.** Reorganized Debtor shall establish and maintain the Disputed Claim Reserve.

**7.3. Statements.** Reorganized Debtor shall maintain a record of the names and addresses of all Holders of Allowed General Unsecured Claims as of the Effective Date and all Holders as of the Record Date of Equity Securities of Debtor for purposes of mailing Distributions to them. Reorganized Debtor may rely on the name and address set forth in Debtor’s Schedules and/or proofs of Claim and the ledger and records regarding Holders of Equity Securities as of the Record Date as being true and correct unless and until notified in



1 writing. Reorganized Debtor shall file all tax returns and other filings with governmental  
2 authorities on behalf of Reorganized Debtor and the Assets it holds.

3 **7.4. Further Authorization.** Debtor and Reorganized Debtor shall be entitled to seek  
4 such orders, judgments, injunctions, and rulings as it deems necessary to carry out the intentions  
and purposes, and to give full effect to the provisions of this Plan.

## 5 **8. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE 6 DATE**

7 **8.1. Conditions to Confirmation.** The Confirmation Order shall have been entered  
and be in form and substance reasonable acceptable to Debtor.

8 **8.2. Conditions to Effectiveness.** The following are conditions precedent to the  
9 occurrence of the Effective Date:

10 **8.2.1.** The Confirmation Order shall be a Final Order, except that Debtor  
11 reserves the right to cause the Effective Date to occur notwithstanding the pendency of an appeal  
of the Confirmation Order, under circumstances that would moot such appeal;

12 **8.2.2.** No request for revocation of the Confirmation Order under Section 1144  
13 of the Bankruptcy Code shall have been made, or, if made, shall remain pending, including any  
appeal; and

14 **8.2.3** All documents necessary to implement the transactions contemplated by  
15 this Plan shall be in form and substance reasonable acceptable to Debtor.

16 **8.3. Waiver of Conditions.** Debtor, in its sole discretion, may waive any and all of  
17 the other conditions set forth in this Plan and specifically Sections 8.1 and 8.2 above without  
leave of or order of the Bankruptcy Court and without any formal action.

## 18 **9. TITLE TO PROPERTY; DISCHARGE; INJUNCTION**

19 **9.1. Vesting of Assets.** Subject to the provisions of this Plan and as permitted by  
20 Section 1123(a)(5)(B) of the Bankruptcy Code, the Assets, including the Litigation Claims and  
21 right, title, and interest being assumed by Reorganized Debtor in the assumed Executory  
Contracts, shall be transferred to Reorganized Debtor on the Effective Date. As of the Effective  
22 Date, all such property shall be free and clear of all Liens, Claims, and Equity Securities except  
as otherwise provided herein. On and after the Effective Date, Reorganized Debtor may operate  
23 its business and may use, acquire, and dispose of property and compromise or settle any Claim  
without the supervision of or approval of the Bankruptcy Court and free and clear of any  
24 restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly  
imposed by this Plan or the Confirmation Order.

25 **9.2. Preservation of Litigation Claims.** In accordance with Section 1123(b)(3) of the  
26 Bankruptcy Code, and except as otherwise expressly provided herein, all Litigation Claims shall  
be assigned and transferred to Reorganized Debtor pursuant to Section 5.1. Reorganized Debtor,  
27 as the successor in interest to Debtor and the Estate, may and shall have the exclusive right to sue  
28

on, settle, or compromise any and all Litigation Claims, including derivative actions existing against Debtor on the Effective Date.

**9.3. Discharge.** On the Effective Date, unless otherwise expressly provided in this Plan or the Confirmation Order, Debtor shall be discharged from any and all Claims to the fullest extent provided in the Bankruptcy Code, including Sections 524 and 1141. All consideration distributed under this Plan or the Confirmation Order shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of all Claims of any kind or nature whatsoever against Debtor or any of its Assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, Debtor shall be deemed discharged and released under and to the fullest extent provided under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**9.4. Injunction.** From and after the Effective Date, and except as provided in this Plan and the Confirmation Order, all entities that have held, currently hold, or may hold a Claim or an Equity Security or other right of an Equity Security Holder that is terminated pursuant to the terms of this Plan are permanently enjoined from taking any of the following actions on account of any such Claims or terminated Equity Securities or rights: (i) commencing or continuing in any manner any action or other proceeding against Reorganized Debtor or its property; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Reorganized Debtor or its property; (iii) creating, perfecting, or enforcing any Lien or encumbrance against Reorganized Debtor or its property; (iv) asserting a right of subrogation of any kind against any debt, liability, or obligation due to Reorganized Debtor or its property; and (v) commencing or continuing any action, in any manner or any place, that does not comply with or is inconsistent with the provisions of this Plan or the Bankruptcy Code.

**9.5. Exculpation.** From and after the Effective Date, neither Debtor, Reorganized Debtor, the professionals employed on behalf of the Estate, nor any of their respective present or former members, directors, officers, managers, employees, advisors, attorneys, or agents, shall have or incur any liability, including derivative claims, but excluding direct claims, to any Holder of a Claim or Equity Security or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of (from the Petition Date forward), the Chapter 11 Case, Reorganized Debtor, the pursuit of confirmation of this Plan, or the consummation of this Plan, except for gross negligence and willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan or in the context of the Chapter 11 Case.

## **10. RETENTION OF JURISDICTION**

**10.1. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the

Chapter 11 Case and Reorganized Debtor after the Effective Date as is legally permissible, including jurisdiction to:

**10.1.1.** Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Disputed Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Disputed Claims;

**10.1.2.** Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective Date;

**10.1.3.** Resolve any matters related to the assumption, assignment, or rejection of any Executory Contract or Unexpired Lease to which Debtor or Reorganized Debtor are party and to hear, determine, and, if necessary, liquidate any Claims arising there from or Cure amounts related thereto;

**10.1.4.** Insure that distributions to Holders of Allowed Claims and Equities Securities are accomplished pursuant to the provisions of this Plan;

**10.1.5.** Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications or motions involving Debtor or Reorganized Debtor that may be pending on the Effective Date or commenced thereafter as provided for by this Plan;

**10.1.6.** Enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan or the Disclosure Statement or the Confirmation Order, except as otherwise provided herein;

**10.1.7.** Decide or resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of any Final Order, this Plan, the Confirmation Order, or any Person's obligations incurred in connection with this Plan or the Confirmation Order;

**10.1.8.** Modify this Plan before or after the Effective Date pursuant to Section 1127 of the Bankruptcy Code and Section 11.1 of this Plan or modify any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order or the Reorganized Debtor; or remedy any defect or omission or reconcile any inconsistency in any Final Order, this Plan, the Confirmation Order, or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code;

**10.1.9.** Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any person with

consummation, implementation, or enforcement of any Final Order, this Plan, or the Confirmation Order, except as otherwise provided herein;

**10.1.10.** Enter and implement such orders as are necessary or appropriate if a Final Order or the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

**10.1.11.** Determine any other matters that may arise in connection with or relate to this Plan, any Final Order, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, any Final Order, or Confirmation Order, except as otherwise provided herein;

**10.1.12.** Enter an order closing the Chapter 11 Case;

**10.1.13.** Hear and decide Litigation Claims and continue to hear and decide pending Litigation Claims and any other claim or cause of action of Debtor and Reorganized Debtor; and

**10.1.14.** Decide or resolve any matter over which the Bankruptcy Court has jurisdiction pursuant to Section 505 of the Bankruptcy Code.

## **11. MODIFICATION AND AMENDMENT OF PLAN**

**11.1. Modification and Amendment.** Prior to Confirmation, Debtor may alter, amend, or modify this Plan under Section 1127(a) of the Bankruptcy Code at any time. After the Confirmation Date and prior to substantial consummation of this Plan as defined in Section 1101(2) of the Bankruptcy Code, Debtor may, under Section 1127(b), (c), and (d) of the Bankruptcy Code, alter, amend, or modify this Plan or institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, to make appropriate adjustments and modifications to this Plan or the Confirmation Order as may be necessary to carry out the purposes and effects of this Plan so long as such proceedings do not materially adversely affect the treatment of Holders of Claims under this Plan.

...

...

## 12. MISCELLANEOUS

**12.1. Filing of Objections to Claims.** After the Effective Date, objections to Claims shall be made and objections to Claims made previous thereto shall be pursued by Reorganized Debtor or any other party properly entitled to do so after notice to Reorganized Debtor and approval by the Bankruptcy Court. Any objections to Claims made after the Effective Date shall be filed and served not later than the first Business Day that is ninety (90) calendar days after the Effective Date; provided, however, that such period may be extended by order of the Bankruptcy Court.

**12.1.1. Resolution of Objections After Effective Date.** From and after the Effective Date, Reorganized Debtor may litigate to judgment, propose settlements of, or withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court.

**12.1.2. Distributions and Disputed Claims Reserve.** In order to facilitate Distributions to Holders of Allowed Claims and Allowed Equity Securities, and if and to the extent there are Disputed Claims or Disputed Equity Securities in any Class, Reorganized Debtor shall set aside in a designated reserve account the payments or Distributions applicable to such Disputed Claims or Disputed Equity Securities as if such Disputed Claims or Disputed Equity Securities were Allowed Claims or Allowed Equity Securities, pending the allowance or disallowance of such Disputed Claims or Disputed Equity Securities. In the event that Reorganized Debtor wishes to deposit or hold a lesser amount than required herein and is unable to reach an agreement with the Holder of the Disputed Claim or Disputed Equity Security on the amount to be deposited or held, the Bankruptcy Court shall fix the amount after notice and hearing. Upon Final Order with respect to a Disputed Claim or Disputed Equity Security, the Holder of such Disputed Claim or Disputed Equity Security, to the extent it has been determined to be an Allowed Claim or Allowed Equity Security, shall receive on the next Quarterly Distribution Date from the Reorganized Debtor that payment or Distribution to which it would have been entitled if the portion of the Claim or Equity Security so allowed had been allowed as of the Effective Date.

**12.1.3. Late-Filed Claims.** No Claim filed after the Bar Date or, as applicable, the Administrative Claim Bar Date, shall be allowed, and all such Claims are hereby disallowed in full. After the Bar Date or the Administrative Bar Date, as applicable, no Creditor shall be permitted to amend any claim to increase the claimed amount and any such amendment shall be disallowed to the extent of the late-filed increase in the claimed amount.

**12.2. Effectuating Documents; Further Transactions; Timing.** Debtor and Reorganized Debtor are each authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan and any securities issued, transferred, or canceled pursuant to this Plan. All transactions that are required to occur on the Effective Date under the terms of this Plan shall be deemed to have occurred simultaneously. Debtor and Reorganized Debtor are authorized and directed to do such acts and execute such documents as are necessary to implement this Plan.

**12.3. Exemption from Transfer Taxes.** Pursuant to Section 1146 of the Bankruptcy Code: (i) the issuance, distribution, transfer, or exchange of Estate property; (ii) the creation,



modification, consolidation, or recording of any deed of trust or other security interest, the securing of additional indebtedness by such means or by other means in furtherance of, or connection with this Plan or the Confirmation Order; (iii) the making, assignment, modification, or recording of any lease or sublease; or (iv) the making, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to the foregoing shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents shall be, and hereby are, directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

**12.4. Revocation or Withdrawal of this Plan.** Debtor reserves the right to revoke or withdraw this Plan at any time prior to its substantial consummation. If this Plan is withdrawn or revoked, then this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against Debtor or any other Person nor shall the withdrawal or revocation of this Plan prejudice in any manner the rights of Debtor or any Person in any further proceedings involving Debtor. In the event this Plan is withdrawn or revoked, nothing set forth herein shall be deemed an admission of any sort and this Plan and any transaction contemplated thereby shall be inadmissible into evidence in any proceeding.

**12.5. Binding Effect.** This Plan shall be binding upon, and shall inure to the benefit of Debtor, Reorganized Debtor, and the Holders of all Claims and Equity Securities and their respective successors and assigns.

**12.6. Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any contract, instrument, release, or other agreement entered into in connection with this Plan or in any document which remains unaltered by this Plan, the rights, duties, and obligations of Debtor, Reorganized Debtor, and any other Person arising under this Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Nevada without giving effect to Nevada's choice of law provisions.

**12.7. Modification of Payment Terms.** Reorganized Debtor reserves the right to modify the treatment of any Allowed Claim or Allowed Equity Security in any manner adverse only to the Holder of such Allowed Claim or Allowed Equity Security at any time after the Effective Date upon the prior written consent of the Holder whose Allowed Claim or Allowed Equity Security treatment is being adversely affected.

**12.8. Providing for Claims Payments.** Distributions to Holders of Allowed Claims shall be made by Reorganized Debtor: (i) at the addresses set forth on the proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no proof of Claim is filed or if Debtor has been notified of a change of address); (ii) at the addresses set forth in any written notices of address changes delivered to Reorganized Debtor 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 Reorganized Debtor has not received a written notice of a change of address. Distributions to Holders of Allowed Equity Securities shall be made to the Holder of such Allowed Equity Security as of the Record Date. If any Holder's distribution is returned as undeliverable, no

1 further distributions to such Holder shall be made unless and until Reorganized Debtor is notified  
 2 of such Holder's then-current address, at which time all missed Distributions shall be made to  
 3 such Holder without interest. Amounts in respect of undeliverable Distributions made through  
 4 Reorganized Debtor shall be returned to Reorganized Debtor until such Distributions are  
 5 claimed. All claims for undeliverable Distributions shall be made on or before the first  
 6 anniversary of the Effective Date. After such date, all unclaimed property shall revert to  
 7 Reorganized Debtor and the Claim of any Holder or successor to such Holder with respect to  
 8 such property shall be discharged and forever barred notwithstanding any federal or state escheat  
 9 laws to the contrary. Nothing contained in this Plan shall require Debtor or Reorganized Debtor  
 10 to attempt to locate any Holder of an Allowed Claim or Allowed Equity Security.

11 **12.9. Set Offs.** Debtor and Reorganized Debtor may, but shall not be required to, set  
 12 off or recoup against any Claim or Equity Security and the payments or other distributions to be  
 13 made pursuant to this Plan in respect of such Claim or Equity Security (before any distribution is  
 14 made on account of such Claim or Equity Security), claims of any nature whatsoever that the  
 15 applicable Debtor or Reorganized Debtor may have against the Holder of such Claim or Equity  
 16 Security to the extent such Claims or Equity Security may be set off or recouped under  
 17 applicable law, but neither the failure to do so nor the allowance of any Claim or Equity Security  
 18 hereunder shall constitute a waiver or release by Debtor or Reorganized Debtor of any such  
 19 Claim that it may have against such Holder.

20 ...

21 **12.10. Notices.** Any notice required or permitted to be provided under this Plan shall be  
 22 in writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii)  
 23 hand delivery; or (iii) reputable overnight courier service, freight prepaid, to be addressed as

24 If to Debtor: Horizon Village Square LLC  
 25 Attn: Todd Nigro  
 26 9115 W. Russell Road, Suite 210  
 27 Las Vegas, NV 89148  
 28 Fax: (702) 247-1917

With a copy to: Gordon Silver  
 Attn: Talitha Gray Kozlowski, Esq.  
 3960 Howard Hughes Pkwy, 9<sup>th</sup> Floor  
 Las Vegas, NV 89169  
 Fax: (702) 369-2666

23 **12.11. Severability.** If any provision of this Plan is determined by the Bankruptcy Court  
 24 to be invalid, illegal, or unenforceable or this Plan is determined to be not confirmable pursuant  
 25 to Section 1129 of the Bankruptcy Code, the Bankruptcy Court, at the request of Debtor shall  
 26 have the power to alter and interpret such term to make it valid or enforceable to the maximum  
 27 extent practicable, consistent with the original purpose of the term or provision held to be  
 28 invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or  
 interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the  
 terms and provisions of this Plan shall remain in full force and effect and will in no way be  
 affected, impaired, or invalidated by such holding, alteration, or interpretation. The



Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**12.12. Withholding and Reporting Requirements.** In connection with this Plan and all instruments and securities issued in connection therewith and Distributions thereon, Reorganized Debtor 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. Reorganized Debtor shall be authorized to take any and all action that may be necessary to comply with such withholding and recording requirements. Notwithstanding any other provision of this Plan, each Holder of an Allowed Claim or Allowed Equity Security that has received a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, and other tax obligation on account of such distribution.

**12.13. Post-Confirmation Reporting.** Until the entry of the final decree closing the Chapter 11 Case, Reorganized Debtor shall comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rule's post-confirmation reporting requirements. Additionally, to the extent required, Reorganized Debtor shall file post-confirmation quarterly operating reports in accordance with the United States Trustee Guidelines.

**12.14. Cramdown.** In the event that any Impaired Class is determined to have rejected this Plan in accordance with Section 1126 of the Bankruptcy Code, Debtor may invoke the provisions of Section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of this Plan. Debtor reserves the right to modify this Plan to the extent, if any, that Confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

**12.15. Quarterly Fees to the United States Trustee.** Prior to the Effective Date, Debtor, and after the Effective Date, Reorganized Debtor, shall pay all quarterly fees payable to the Office of the United States Trustee consistent with the sliding scale set forth in 28 U.S.C. § 1930(a)(6), and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

DATED this ~~24~~<sup>15</sup><sup>th</sup> day of ~~December, 2014~~April, 2015.

HORIZON VILLAGE SQUARE LLC  
A Nevada limited liability company,

/s/ Todd Nigro

By: Nigro Development LLC  
Its: Manager

By: Todd Nigro  
Its: Manager

**Prepared and Submitted:**

GORDON SILVER

By: /s/ Talitha Gray Kozlowski

GERALD M. GORDON, ESQ.

TALITHA GRAY KOZLOWSKI, ESQ.

CANDACE C. CLARK, ESQ.

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

*Attorneys for Debtor*

**SCHEDULE ~~1.1.46~~1.1.45**  
**TO PLAN OF REORGANIZATION**  
**CERTAIN PRESERVED POTENTIAL CAUSES OF ACTION**

All defined terms used herein shall have the meanings set forth in the Plan. The following is a non-exhaustive list of potential parties against whom Debtor and/or Reorganized Debtor may hold a claim or cause of action. Debtor and Reorganized Debtor reserve their right to modify this list to amend or add parties or causes of action, but disclaim any obligation to do so. In addition to the possible causes of action and claims listed below, Debtor and Reorganized Debtor have or may have, in the ordinary course of their business, numerous causes of action and Claims or rights against contractors, subcontractors, vendors, suppliers, and others with whom they deal in the ordinary course of their business (the “Ordinary Course Claims”). Debtor and Reorganized Debtor reserve their right to enforce, sue on, settle, or compromise (or decline to do any of the foregoing) the Ordinary Course Claims, as well as the claims and causes of action listed below and all other claims and causes of action. Debtor and Reorganized Debtor also have, or may have, and are retaining, various claims or causes of action arising under or pursuant to its insurance policies, and all rights arising under, relating to, or in connection with such policies are expressly reserved and retained.

1. Avoidance Actions and Litigation Claims arising out of or in connection with Debtor's business, property, or operations;
2. Avoidance Actions and Litigation Claims arising out of transactions involving, concerning, or related to Debtor; and
3. All other rights, privileges, claims, actions, or remedies of Debtor and/or Reorganized Debtor existing on the Effective Date, whether arising at law or in equity.

There may also be other Avoidance Actions and Litigation Claims which currently exist or may subsequently arise that are not set forth herein because the facts underlying such Avoidance Actions or Litigation Claims are not currently known or sufficiently known by Debtor. The failure to list any such unknown Avoidance Action or Litigation Claim herein is not intended to limit the rights of Reorganized Debtor to pursue any unknown Avoidance Action or Litigation Claim to the extent the facts underlying such unknown Avoidance Action or Litigation Claim become more fully known in the future.

Unless Avoidance Actions or Litigation Claims against any individual or entity are expressly waived, relinquished, released, compromised, or settled by the Plan or any Final Order, Debtor expressly reserves for its benefit, and the benefit of Reorganized Debtor, all Avoidance Actions and Litigation Claims, including, without limitation, all unknown Avoidance Actions and Litigation Claims for later adjudication and therefore no preclusion doctrine (including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches) shall apply to such Avoidance Actions or Litigation Claims after the confirmation or consummation of the Plan. In addition, Debtor expressly reserves for its benefit and the benefit of Reorganized Debtor, the right to pursue or adopt any claims alleged in any lawsuit in which Debtor is a defendant or an interested party, against any individual or entity, including plaintiffs and co-defendants in such lawsuits.

**SCHEDULE 6.1  
TO  
PLAN OF REORGANIZATION  
REJECTED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

None.

Document comparison by Workshare Professional on Wednesday, April 15, 2015  
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Padding cell	

Statistics:	
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Deletions	202
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Moved to	1
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Format changed	0
Total changes	343