

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

.....X	
In re:	: Chapter 11
	:
MA LERIN HILLS HOLDER, LP, <i>et al.</i>	: Case No. 15-51424
	:
Debtors.	: Jointly Administered
.....X	

**DISCLOSURE STATEMENT IN SUPPORT OF  
FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION**

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Dated: July 30, 2015

- Voting Record Date: July 30, 2015.
- Voting Deadline: September 3, 2015.
- Deadline to file motions pursuant to Rules 3013 or 3018, Federal Rules of Bankruptcy Procedure: August 24, 2015
- Deadline to file and serve objections to plan confirmation (other than objections to classification): September 3, 2015.
- Hearing on confirmation of Plan: September 10, 2015 at 10:00 a.m. prevailing Central time.

MA Lerin Hills Holder, LP (“**Landco**”), L H Devco, Inc. (“**Devco**”) and Lerin Hills Utility Easement Holder, LLC (“**Pipeco**” and, together with Landco and Devco, the “**Debtors**”) as debtors in possession under chapter 11 of the Bankruptcy Code, and Putnam Bridge Funding III, LLC (“**Putnam**”) hereby propose and file this disclosure statement (the “**Disclosure Statement**”) in support of the *First Amended Joint Chapter 11 Plan of Liquidation* (the “**Plan**”),<sup>1</sup> filed on June 9, 2015. The Plan provides for the liquidation of the Debtors and the treatment of all Claims against and Interests in the Debtors. The Plan and Disclosure Statement have been filed in the Debtors’ jointly-administered Chapter 11 Cases, which are currently pending in the United States Bankruptcy Court for the Western District of Texas. Pursuant to § 1121(a),<sup>2</sup> each Debtor is deemed to have filed the Plan as its individual, separate plan of liquidation.

If you have a Claim against or Interest in any Debtor, you should read the Disclosure Statement and Plan carefully. The Debtors urge all holders of Claims in Impaired Classes receiving Ballots to accept the Plan.

This Disclosure Statement (and the other appendices hereto), the Plan, the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtors to their respective holders of Impaired Claims and Impaired Interests pursuant to § 1125 in connection with the solicitation by the Debtors of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

This Disclosure Statement is designed to provide adequate information to enable holders of Claims against and Interests in the Debtors to make an informed judgment on the Plan. All holders of Claims are hereby advised and encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. Be advised that under the Plan all holders of Interests are deemed to reject the Plan. The Plan summary and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan of even date herewith, other Appendices annexed hereto and other documents referenced as filed with the Bankruptcy Court before or concurrently with the filing of this Disclosure Statement. Furthermore, the projected financial information contained herein has not been the subject of an audit. Subsequent to the date hereof, there can be no assurance that: (a) the information and representations contained herein will continue to be materially accurate; or (b) this Disclosure Statement contains all material information.

All holders of Impaired Claims who are entitled to vote on the Plan should read and consider carefully the matters described in this Disclosure Statement as a whole, including the Section entitled “Risk Factors,” prior to voting on the Plan. In making a decision to accept or reject the Plan, each holder of a Claim must rely on its own examination of the Debtors as described in this Disclosure Statement and the terms of the Plan, including the merits and risks involved. In addition, confirmation and consummation of the Plan are subject to conditions precedent that could lead to delays in consummation of the Plan. There can be no assurance that each of these conditions will be satisfied or waived (as provided in the Plan) or that the Plan will

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning given to them in the Plan.

<sup>2</sup> Unless otherwise specified, all section (§) references are to title 11 of the United States Code (the “**Bankruptcy Code**”).

be consummated. Even after the Effective Date, distributions under the Plan may be subject to substantial delays for holders of Claims that are Disputed.

This Disclosure Statement has been approved by order of the Bankruptcy Court as containing adequate information of a kind and in sufficient detail to enable holders of Claims to make an informed judgment with respect to voting to accept or reject the Plan. However, the Bankruptcy Court's approval of this Disclosure Statement does not constitute a recommendation or determination by the Bankruptcy Court with respect to the merits of the Plan.

With the exception of historical information, some matters discussed herein, including the projections and valuation analysis described herein are "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are subject to risks, uncertainties and other factors which could cause actual results to differ materially from future results expressed or implied by such forward looking statements.

No party is authorized by the Debtors to give any information or make any representations with respect to the Plan other than that which is contained in this Disclosure Statement. No representations or information concerning the Debtors, their future business operations or the value of their properties have been authorized by the Debtors, other than as set forth herein. Any information or representations given to obtain your acceptance or rejection of the Plan which are different from or inconsistent with the information or representations contained herein and in the Plan should not be relied upon by any holders of Claims and Interests in voting on the Plan.

This Disclosure Statement has been prepared in accordance with § 1125 and not in accordance with federal or state securities laws or other applicable nonbankruptcy law. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtors should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission or by any state securities commission or similar public, governmental or regulatory authority, and neither such commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

With respect to contested matters, adversary proceedings and other pending or threatened actions (whether or not pending), this Disclosure Statement and the information contained herein shall not be construed as an admission or stipulation by any entity, but rather as statements made in settlement negotiations governed by Rule 408 of the Federal Rules of Evidence and any other rule or statute of similar import.

This Disclosure Statement shall neither be admissible in any other proceeding involving the Debtors or any other party nor be construed to be providing any legal, business, financial or tax advice. Each holder of a Claim should, therefore, consult with its own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the summaries thereof contained in this Disclosure Statement.

This Disclosure Statement, the Plan (and the other appendices hereto), the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtors to their respective holders of Impaired Claims and Impaired Interests pursuant to § 1125, in connection with the solicitation by the Debtors of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

**The Bankruptcy Court has scheduled the Confirmation Hearing to commence on September 10, 2015, at 10:00 a.m. (prevailing Central time) before the Honorable Craig A. Gargotta in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, located at 615 East Houston Street, Courtroom #3, San Antonio, Texas. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment of such hearing.**

**Objections to Confirmation of the Plan must be filed and served on or before September 3, 2015. Objections that are not timely filed and served may not be considered by the Bankruptcy Court.**

**To be counted, Ballots must be received by the Debtors on September 3, 2015.**

#### **INCORPORATION OF DOCUMENTS BY REFERENCE**

This Disclosure Statement incorporates by reference certain documents relating to the Debtors that are not presented herein or delivered herewith. The following documents are incorporated by reference herein in their entirety:

Each Debtor's *Schedules of Assets and Liabilities* filed in the Chapter 11 Cases, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Each Debtor's *Statement of Financial Affairs* filed in the Chapter 11 Cases, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

The Debtors' Monthly Operating Reports, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Disclosure Statement, shall be deemed to be modified or superseded for purposes of this Disclosure Statement to the extent that a statement contained herein modifies or supersedes such statement.

#### **AVAILABLE INFORMATION**

Certain documents filed in the Chapter 11 Cases are available through the Bankruptcy Court at the following website: <http://www.txwb.uscourts.gov/>.

## TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY .....	1
A. Overview of Chapter 11 .....	1
B. The Solicitation .....	1
C. Recommendation .....	2
D. Summary of the Plan .....	2
E. Voting Eligibility and Procedures .....	4
F. Votes Required for Acceptance; Confirmation .....	5
G. Effective Date of the Plan .....	6
H. Sources of Information .....	7
II. BACKGROUND .....	7
A. General Information Regarding the Debtors .....	7
1. Ownership Structure .....	7
2. Prepetition Financing .....	8
3. Other Alleged Lienholders .....	9
B. Events Leading to Chapter 11 Filing .....	10
1. Events of Default .....	10
2. The Receivership .....	11
3. The Municipal Utility District .....	11
4. Abel Godines .....	13
C. Pre-Petition Negotiations .....	13
III. THE CHAPTER 11 CASES .....	14
A. Continuation of Business; Stay of Actions Against the Debtors .....	14
B. Significant Events During the Chapter 11 Cases .....	14
1. First Day Motions .....	14
2. 341 Meeting .....	17
3. Claims Process and Bar Date .....	17
4. Operation of the Debtors .....	17
5. Construction Contract .....	18
IV. THE PLAN .....	18
A. Overall Structure of the Plan .....	18

B.	Administrative and Priority Tax Claims Against All of the Debtors.....	18
1.	Administrative Expenses .....	18
2.	Priority Tax Claims.....	19
C.	Classification and Treatment of Claims and Interests Against Debtors .....	20
D.	Treatment Of Claims And Interests .....	20
1.	Treatment of Allowed Class 1 Claims (DIP Claims).....	20
2.	Treatment of Allowed Class 2 Claims (Prepetition Lender Claims) .....	21
3.	Treatment of Allowed Class 3 Claims (Other Secured Claims) .....	21
4.	Treatment of Allowed Class 4 Claims (Priority Non-Tax Claims) .....	22
5.	Treatment of Allowed Class 5 Claims (General Unsecured Claims) .....	22
6.	Treatment of Allowed Class 6 Claims (Subordinated Claims).....	23
7.	Treatment of Allowed Class 7 Interests (Old Interests).....	23
V.	ACCEPTANCE OR REJECTION OF THE PLAN .....	24
A.	Impaired Classes of Claims Entitled to Vote.....	24
B.	Classes Deemed to Accept the Plan.....	24
C.	Classes Deemed to Reject the Plan.....	24
D.	Nonconsensual Confirmation.....	24
VI.	MEANS FOR IMPLEMENTATION .....	24
A.	Implementation of Plan.....	24
B.	The Sale .....	24
C.	Funding of the Plan.....	25
D.	Other Issues.....	25
E.	Causes of Action .....	25
F.	Appointment and Term of the Responsible Person .....	26
G.	Duties of the Responsible Person .....	27
H.	Discharge of Debtors' Professionals.....	28
I.	Employee Matters .....	28
J.	Corporate and Limited Liability Company Action.....	29
K.	Dissolution of the Debtors .....	29
L.	Saturday, Sunday or Legal Holiday .....	29
VII.	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	29
A.	Rejection of Remaining Executory Contracts.....	29
B.	Assumption and Cure of Executory Contracts.....	29

C.	Cure of Defaults of Assumed Executory Contracts .....	30
D.	Effect of Assumption and Assignment .....	30
E.	Rejection Damages Bar Date .....	31
VIII.	DISPUTED CLAIMS; DISTRIBUTIONS .....	31
A.	General Provisions Concerning Distributions .....	31
B.	Distributions on Account of Disputed Claims .....	32
C.	Time and Manner of Distributions.....	32
D.	Delivery of Distributions .....	32
E.	Undeliverable Distributions .....	32
F.	Objections .....	33
G.	Amendments to Claims; Claims Filed After the Confirmation Date.....	33
H.	Procedures for Treating and Resolving Disputed and Contingent Claims .....	33
1.	No Distributions Pending Allowance .....	33
2.	Claim Estimation .....	33
I.	Setoffs and Recoupment .....	34
J.	Allowance and Disallowance of Claims Subject to § 502.....	34
K.	Cancellation of Instruments and Agreements .....	34
L.	No Interest on Claims .....	34
M.	Withholding Taxes.....	34
N.	Reports .....	35
IX.	EFFECT OF CONFIRMATION .....	35
A.	Vesting of Assets .....	35
B.	Binding Effect.....	35
C.	No Assumption of Liabilities; Transfer Free and Clear.....	35
D.	Discharge .....	36
E.	Injunction .....	37
F.	Term of Injunctions or Stays.....	37
G.	Exculpation and Releases .....	37
H.	Releases by Holders of Claims and Interests .....	38
I.	Reservation of Causes of Action/Reservation of Rights.....	39
J.	Release of Liens.....	39
X.	CONDITIONS PRECEDENT .....	39
A.	Conditions Precedent to Effective Date .....	39

B.	Revocation, Withdrawal or Non-Consummation of Plan .....	40
XI.	ADMINISTRATIVE PROVISIONS .....	40
A.	Retention of Jurisdiction by the Bankruptcy Court .....	40
B.	Payment of Statutory Fees .....	41
C.	Headings .....	42
D.	Binding Effect of Plan .....	42
E.	Final Order .....	42
F.	Withholding and Reporting Requirements .....	42
G.	Tax Exemption and Expedited Tax Determination .....	42
H.	Governing Law .....	43
I.	Plan Supplement .....	43
J.	Severability .....	43
K.	Revocation .....	43
L.	Substantial Consummation .....	44
M.	Conflict .....	44
N.	Amendments and Modifications .....	44
O.	Notices .....	44
P.	Filing of Additional Documents .....	45
Q.	Direction to a Party .....	45
R.	Successors and Assigns.....	46
S.	Waiver of Subrogation.....	46
XII.	CONFIRMATION OF THE PLAN.....	46
A.	Voting Procedures and Requirements.....	46
B.	Acceptance.....	49
C.	Confirmation of the Plan.....	49
1.	The Best Interests Test.....	49
2.	Feasibility.....	50
D.	Non-Acceptance and Cramdown .....	50
1.	The Plan Is Fair and Equitable.....	51
2.	No Unfair Discrimination .....	51
E.	Confirmation Hearing .....	52
XIII.	ALTERNATIVES TO CONFIRMATION OF THE PLAN .....	52
A.	Liquidation Under Chapter 7 .....	52



B.	Alternative Plan or Reorganization/Liquidation .....	53
XIV.	CERTAIN FACTORS TO BE CONSIDERED PRIOR TO VOTING .....	53
A.	Certain Bankruptcy Considerations .....	53
B.	Business Risks .....	55
XV.	CERTAIN FEDERAL INCOME TAX CONSEQUENCES.....	56
A.	Federal Income Tax Consequences to Creditors .....	57
B.	Federal Income Tax Consequences to Interest Holders.....	57
C.	Federal Income Tax Consequences to Debtors.....	57
D.	Withholding and Reporting.....	57
E.	Importance of Obtaining Professional Tax Assistance .....	58
XVI.	MISCELLANEOUS PROVISIONS.....	58
A.	Additional Documents .....	58
B.	Payment of Statutory Fees .....	58
C.	Reservation of Rights.....	59
D.	Successors and Assigns.....	59
XVII.	RECOMMENDATION AND CONCLUSION.....	59

## **I. INTRODUCTION AND SUMMARY**

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement. References herein to a “fiscal” year refer to the fiscal year of the Debtors ending the last day of December in the calendar year indicated. Capitalized terms used but not defined in the Disclosure Statement have the meanings assigned to them in the Plan.

### **A. Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, a debtor in possession attempts to reorganize its business and financial affairs for the benefit of the debtor, its creditors, and other parties in interest. Formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The chapter 11 plan sets forth the means for satisfying the Claims of creditors against and interests of equity security holders in the debtor.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee, a chapter 11 debtor may continue to operate its business and control the assets of its estate as a debtor in possession. The Debtors have so operated since the Petition Date.

The filing of a chapter 11 petition also triggers the automatic stay, which is set forth in § 362. The automatic stay essentially halts all attempts to collect pre-petition Claims from the debtor or to otherwise interfere with the debtor’s business or its estate.

### **B. The Solicitation**

On June 9, 2015, the Debtors and Putnam filed the Plan with the United States Bankruptcy Court for the Western District of Texas. The Debtors file this Disclosure Statement with the Bankruptcy Court pursuant to § 1125 and in connection with the solicitation with respect to the Plan.

On July 30, 2015, the Bankruptcy Court determined that this Disclosure Statement contains “adequate information” in accordance with § 1125. Pursuant to § 1125(a)(1), “adequate information” is defined as information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors’ books and records, that would enable a hypothetical reasonable investor typical of holders of Claims or interests of the relevant class to make an informed judgment about the Plan.

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan before the Honorable Craig A. Gargotta, United States Bankruptcy Judge on September 10, 2015 at 10:00 a.m. prevailing Central time. The hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled date of such hearing. Any objections to Confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on the counsel listed below to ensure receipt

by them on or before September 3, 2015 at 5:00 p.m.. Bankruptcy Rule 3007 governs the form of any such objection. Any such objection must be served on:

Counsel for the Debtors:

Dykema Cox Smith  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Attn: Deborah D. Williamson, Esq.

Counsel for the Putnam:

Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Attn: Michael P. Cooley, Esq.

Office of the United States Trustee:

Office of the U.S. Trustee  
615 E. Houston Street, Suite 533  
San Antonio, Texas 78205  
Attn: Nancy Ratchford, Esq.

**C. Recommendation**

THE DEBTORS AND PUTNAM RECOMMEND THAT EACH ENTITY ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

With respect to the Plan, the Debtors and Putnam believe that: (i) the Plan provides the best possible result for the holders of Impaired Claims; (ii) with respect to each Impaired Class of Claims, the distributions under the Plan are greater than the amounts that would be received if the Debtors were to liquidate under Chapter 7 of the Bankruptcy Code; and (iii) acceptance of the Plan is in the best interest of holders of Impaired Claims.

In arriving at their conclusions, the Debtors considered (i) the limited alternatives available to the Debtors to restructure their respective debts, (ii) their estimated liquidation value, and (iii) the rights, in both payment and security position, of the Debtors' Creditors.

**D. Summary of the Plan**

The Plan contemplates the transfer of substantially all the Debtors' assets to the Prepetition Lender in full and final satisfaction of the Debtors' obligations under the Prepetition Loans, and the assignment and transfer of the Debtors' Causes of Action to Putnam in full and final satisfaction of the Debtors' obligations under the DIP Agreement. The proceeds of the DIP Agreement will be used to, among other things, make Distributions under the Plan as set forth in greater detail herein.

**The Debtors believe the Plan treats all Classes of Creditors and Interest holders fairly and equitably, in observance of the absolute priority rule of § 1129(b)(2). The Debtors believe the Plan provides all Creditors and Interest holders with at least as much as they would receive in a Chapter 7 liquidation of the Debtors and provides all General Unsecured Creditors substantially more than they would receive in a Chapter 7 liquidation. Because, among other things, certain contemplated settlements and objections to Claims**

**have not been resolved, the Debtors are not certain what the total amount of Allowed Claims will be.**

Set forth in detail elsewhere in this Disclosure Statement is a description of the technical aspects of the classification of Claims and Interests, the relative allocations of property to holders of such Claims and Interests, the methodology as to how such property is to be distributed, the risks inherent in the proposed Plan, and the applicable bankruptcy and tax consequences of the reorganization of the Debtors. The Plan is complex and is the product of lengthy discussions between the Debtors, Putnam, the Prepetition Lender, the Receiver and other parties in interest and is based upon the Debtors' analysis of all Claims asserted or known as of the date hereof, an evaluation of the relative merits of potential conflicting Claims and a compromise between such Claims consistent with the goals of the Bankruptcy Code. The Debtors and Putnam believe that the following broad overview of what Creditors and Interest holders will receive under the Plan will be helpful in your consideration of whether you wish to accept or reject the Plan. This summary does not purport to be complete and should only be relied upon for voting purposes when read in conjunction with the Plan and the Disclosure Statement in their entirety. In the event of any inconsistency between the Plan and the Plan Documents, on the one hand, and this Disclosure Statement, on the other hand, the Plan and the Plan Documents shall control and take precedence with respect to such inconsistency.

The following Table 1 sets forth a quick reference guide to the classification and treatment of Allowed Claims against and Allowed Interests in the Debtors. Table 1 is a summary only and is subject in all respects to the specific provisions of the Plan.

<b>Table 1</b> <b>Summary of Claims Against and Interests in the Debtor</b>			
<b>Class</b>	<b>Claim or Interest</b>	<b>Amount</b>	<b>General Description</b>
1	DIP Claims		Claims for principal and interest owing to the DIP Lender under the DIP Agreement.
2	Prepetition Lender Claims		Claims of the Prepetition Lender arising under the Prepetition Loans.
3	Other Secured Claims		Secured Claims other than a Priority Tax Claim, a DIP Claim or a Prepetition Lender Claim, but specifically including Removables Claims and Real Property Tax Claims.
4	Priority Non-Tax Claims		Claims entitled to priority under § 507(a) that are not Administrative Expenses or Priority Tax Claims.
5	General Unsecured Claims		Any Claim that is not a Secured Claim, Administrative Expense, Priority Non-Tax Claim or Priority Tax Claim.
6	Subordinated Claims		Any Unsecured Claim which by its terms or by Final Order of the Bankruptcy Court is subordinated to the payment of any other Unsecured Claim..
7	Interests		All issued and outstanding Interests in the Debtors as of the Petition Date.

Table 2 is a summary of estimated recoveries for the different Classes under the Plan and is subject in all respects to the Plan.

<b>Table 2</b> <b>Projected Treatment of Claims Against and Interests in the Debtor</b>	
<b>If you have an Allowed Claim in this Class:</b>	<b>You are expected to receive this treatment:</b>
Class 1 (DIP Claims)	An assignment of 100% of the proceeds of the Causes of Action.
Class 2 (Prepetition Lender Claim)	On the Effective Date, all of the Assets shall be transferred to the Prepetition Lender.
Class 3 (Other Secured Claims)	At the election of the DIP Lender, and as soon as practicable after the Effective Date, (i) payment in full, without interest, of the Allowed Other Secured Claim or (ii) return of the property securing such Allowed Other Secured Claim.  Real Property Tax Claims will be paid when due in the ordinary course; Allowed Removables Claims will be paid in full on the Effective Date, except that any portion of such Claims constituting retainage will be paid when due at completion.
Class 4 (Priority Non-Tax Claims)	Payment in full, without interest, not later than thirty (30) days after the Effective Date.
Class 5 (General Unsecured Claims)	Payment in Cash, without interest, of the lesser of (i) the Allowed amount of your Claim, and (ii) your <i>pro rata</i> share of the Vendor Claim Fund, within ten (10) days after the later to occur of (i) the Effective Date, (ii) the date your Claim becomes an Allowed Claim or (iii) the date of entry of a Final Order allowing all Claims disallowing or otherwise resolving all objections to Claims.
Class 6 (Subordinated Claims)	No distribution.
Class 7 (Interests)	No Distribution. Interests shall be canceled on the Effective Date.

**The Debtors and Putnam believe that the Plan treats the respective Classes of Creditors and Interest holders of each Debtor fairly and equitably in observance of the absolute priority rule of § 1129(b)(2). The Debtors believe that the Plan provides each Creditor and Interest holder of each Debtor with at least as much as it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code, and provides each General Unsecured Creditor substantially more than it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code.**

#### **E. Voting Eligibility and Procedures**

Table 3 provides a summary of the voting eligibility of Creditors and Interest holders in each Class under the Plan, based on whether or not those Claims and Interests are Impaired or not Impaired.

<b>Table 3</b> <b>Voting Eligibility Under the Plan</b>			
<b>Class</b>	<b>Description</b>	<b>Impairment</b>	<b>Entitled to vote?</b>
Class 1	DIP Claims	Impaired	YES
Class 2	Prepetition Lender Claim	Impaired	YES
Class 3	Other Secured Claims	Impaired	YES
Class 4	Priority Non-Tax Claims	Unimpaired	NO (deemed to accept)
Class 5	General Unsecured Claims	Impaired	YES
Class 6	Subordinated Claims	Impaired	NO (deemed to reject)
Class 7	Interests	Impaired	NO (deemed to reject)

Some Creditors might hold Impaired Claims in more than one Class. If you hold Claims in more than one Class, or Claims against more than one Debtor, you must cast a separate vote based on each individual Claim against each individual Debtor.

**Please do not return any other documentation with your Ballot.** For further information on casting a Ballot to vote on the Plan, please see Section XII.A of this Disclosure Statement.

#### **F. Votes Required for Acceptance; Confirmation**

The Bankruptcy Code defines acceptance of a plan by an Impaired Class of Claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the Claims of that Class which actually cast ballots. The vote of a holder of a Claim may be disregarded if the Bankruptcy Court determines, after notice and hearing, that the acceptance or rejection was not solicited or procured in good faith.

In addition to this voting requirement, § 1129 requires that the Plan be accepted by each holder of a Claim in an Impaired class or that the Plan be found by the Bankruptcy Court to provide the holder with at least as much value on account of its Claim as it would receive on a liquidation of the Debtors under Chapter 7 of the Bankruptcy Code. If the Plan is not accepted by one or more Classes of Impaired Claims, the Debtors may nevertheless ask the Court to confirm the Plan despite such lack of acceptance if the Court finds that the Plan does not discriminate unfairly and is “fair and equitable” with respect to any such non-accepting Impaired Class. Refer to Section V.D of this Disclosure Statement for a detailed discussion of the procedures by which the Plan may be confirmed based upon the votes of Impaired Creditors.

Section 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is “fair and equitable” with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders) and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance

by an Impaired Class if that Class and all more junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under a Plan.

Confirmation of the Plan will make the Plan binding upon the Debtors and all holders of Claims against and Interests in the Debtors and other parties in interest regardless of whether they have accepted the Plan, and such holders of Claims and Interests will be prohibited from receiving payment from, or seeking recourse against, any assets that are distributed to other holders of Claims or Interests under the confirmed Plan. In addition, Confirmation of the Plan will enjoin Creditors and Interest holders from taking a wide variety of actions on account of a debt, Claim, liability, interest or right that arose prior to the Confirmation Date. As of the Effective Date of the Plan, Confirmation will also operate as a discharge of all Claims against and Interests in the Debtors to the full extent authorized by § 1141(d). Section 1141(d) provides generally that, except as otherwise provided in the Plan or order confirming the Plan, Confirmation of the Plan (i) discharges the Debtors from any debt that arose before the date of such confirmation, including a debt of a kind specified under specified sections of the Bankruptcy Code (such as rejection damages Claims), whether or not a proof of Claim based on such debt is filed or deemed filed, whether or not such Claim is Allowed, and whether or not the holder of such Claim has accepted the Plan, and (ii) terminates all rights and interests of Interest holders as provided for in the Plan.

#### **G. Effective Date of the Plan**

The Plan may not be consummated immediately upon Confirmation, but only upon the Effective Date. The Effective Date will not occur unless various conditions to the occurrence of the Effective Date are satisfied (or waived to the extent permitted by, and in accordance with the terms of, the Plan). Certain of the conditions to the occurrence of the Effective Date may be waived by the Debtors or Putnam. There is no assurance, however, that the Debtors or Putnam would waive any such conditions. The Confirmation Order may be vacated if the conditions to the Effective Date are not timely met or waived.

Because of the conditions to the occurrence of the Effective Date provided in the Plan, a delay may occur between Confirmation of the Plan and the Effective Date. There is no assurance that the conditions to the Effective Date will be fulfilled, or that any waivable condition, which is not fulfilled will in fact be waived. The Plan provides that it is a condition to the occurrence of the Effective Date of the Plan that each of the conditions set forth in Section 10.1 of the Plan has been satisfied or waived. **In the event any conditions to the Effective Date cannot be fulfilled or waived, the Effective Date will not occur.**

The implementation of the Plan involves certain risks. For a discussion of these risks, see Article XIV of this Disclosure Statement.

The Debtors currently believe that all conditions to the occurrence of the Effective Date of the Plan will be satisfied, and that the Effective Date of the Plan is likely to occur shortly after entry of the Confirmation Order. To permit the Plan to become effective promptly following entry of the Confirmation Order, the Debtors are requesting a waiver of the 14-day stay under Bankruptcy Rules 3020(e) and 6004(h), to the extent applicable.

## **H. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtors, their business, properties and management, and the Plan have been prepared from information furnished by the Debtors.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtors, the value of their property, or the value of any benefit offered to the holder of a Claim or Interest in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement. Any such additional representations or inducements should be reported immediately to counsel for the Debtors, Deborah D. Williamson, Esq., Dykema Cox Smith, 112 E. Pecan Street, Suite 1800, San Antonio, Texas 78205, Telephone: (210) 554-5500, Facsimile: (210) 241-0591.

## **II. BACKGROUND**

### **A. General Information Regarding the Debtors**

#### **1. Ownership Structure**

The Debtors own and/or otherwise control approximately 867 acres of real property and related improvements, generally known as the Lerin Hills residential real estate development located in Boerne, Texas (the “**Property**”).

Prior to April 4, 2015, MALH-GP, LLC (“**MALH**”) was the sole general partner of Debtor Landco, a limited partnership, and held a 1% ownership interest in it. Limited partnership interests in Debtor Landco were owned by Sequel Holdings, LLC (“**Sequel**”) (1%), Makamah Associates, LLC (“**Makamah**”) (4%), Joe F. Godines Investments, LLC (“**Godines**”) (23.79%), Petuck Capital Corp. (“**Petuck**”) (34.79%) and Putnam (32.5%). The equity in Debtor Devco was owned 100% by Petuck. Putnam has a contractual right to 32.5% of any distribution made by Devco. Debtor Pipeco was owned by Petuck (67.5%) and Putnam (32.5%).

On or about April 4, 2015, after the appointment of the Receiver (as discussed below), Sequel, Makamah, MALH, Godines and Petuck tendered to PBF Lerin Hills LLC (“**PBF**”) their respective equity interests in each of the Debtors.

As of the Petition Date, equity in each Debtor was held as follows:

(a) The general partner in Landco was MALH-GP, LLC, which has a .01% general partnership interest. PBF owns a 67.49% limited partnership interest in Landco. Putnam retains its 32.5% limited partnership interest.



(b) Devco is owned 100% by PBF and Putnam retains its right to 32.5% of any distributions by Devco.

(c) PBF has a 67.5% membership interest in Pipeco and Putnam retains a 32.5% membership interest in Pipeco following such tenders.

## 2. Prepetition Financing

On or as of June 28, 2012, Landco and Prepetition Lender entered into that certain *Landco Loan Agreement*, dated June 28, 2012 (as amended thereafter, including as amended and restated pursuant to the *Amended and Restated Landco Loan Agreement*, dated February 7, 2014, the “**Landco Loan Agreement**”), pursuant to which Prepetition Lender agreed to make certain loans to Landco (the “**Landco Loan**”). To further evidence the Landco Loan, Landco executed and delivered to Prepetition Lender a *Secured Promissory Note*, dated June 28, 2012, payable to the order of Prepetition Lender in the original principal amount of \$6,819,000.00, bearing interest and being payable as therein provided.

On or as of June 28, 2012, Devco and Prepetition Lender entered into that certain *Devco Loan Agreement*, dated June 28, 2012 (as amended thereafter, including as amended and restated pursuant to the *Amended and Restated Devco Loan Agreement*, dated February 7, 2014, the “**Devco Loan Agreement**”), pursuant to which Prepetition Lender agreed to make certain loans to Devco (the “**Devco Loan**”). To further evidence the Devco Loan, Devco executed and delivered to Prepetition Lender a *Secured Promissory Note*, dated June 28, 2012, payable to the order of Prepetition Lender in the original principal amount of \$5,419,963.00, bearing interest and being payable as therein provided. On or about February 7, 2014, Devco executed and delivered to Prepetition Lender an *Amended and Restated Secured Grid Promissory Note* (the “**Grid Note**”) payable to the order of Prepetition Lender in the original principal amount of \$23,078,143.08, bearing interest and being payable as therein provided.

On or as of June 28, 2012, Pipeco and Prepetition Lender entered into that certain *Pipeco Loan Agreement*, dated June 28, 2012 (as amended thereafter, including as amended and restated pursuant to the *Amended and Restated Pipeco Loan Agreement*, dated February 7, 2014, the “**Pipeco Loan Agreement**” and, together with the Devco Loan Agreement and the Pipeco Loan Agreement, the “**Loan Agreements**”), pursuant to which Prepetition Lender agreed to make certain loans to Pipeco (the “**Pipeco Loan**” and, together with the Devco Loan and the Landco Loan, the “**Loans**”). To further evidence the Pipeco Loan, Pipeco executed and delivered to Prepetition Lender a *Secured Promissory Note*, dated June 28, 2012, payable to the order of Prepetition Lender in the original principal amount of \$1,962,125.33, bearing interest and being payable as therein provided.

Repayment of the Debtors’ obligations under the Loan Agreements is secured by, among other instruments, the Deed of Trust, encumbering, among other things, the Property (the “**Prepetition Liens**”).

To guarantee the Debtors’ obligations under the Loan Agreements, each of the Debtors entered into that certain *Guaranty, Pledge, and Security Agreement* (the “**Cross-Guaranty Agreement**”), dated June 28, 2012. Pursuant to the Cross-Guaranty Agreement, each Debtor

guaranteed the full, prompt, and unconditional repayment of all of the Debtors' Obligations (as defined in the Cross-Guaranty Agreement).

Repayment of the Debtors' obligations under the Loan Agreements is further supported by *Limited Recourse Guaranty, Pledge, and Security Agreements* (the "**Limited Guaranties**"), dated June 28, 2012 by each of (i) Sequel, (ii) Makamah, (iii) Godines and (iv) Petuck (collectively, the "**Limited Guarantors**") in favor of Prepetition Lender, pursuant to which each Limited Guarantor pledged its respective equity interests in one or more of the Debtors to secure the repayment of all obligations under the Prepetition Loan Documents.<sup>3</sup>

The Debtors have acknowledged that, pursuant to the Prepetition Loan Documents, they are indebted to Prepetition Lender in an amount not less than \$41,288,034.99 as of the Petition Date, including principal, accrued interest thereon, and other unpaid fees and expenses, which amount is presently due and owing. Based on their existing financial records, among other financial information, the amount of the Debtors' current total debts and liabilities significantly exceeds the current market value of their assets and, accordingly, the Debtors are insolvent.

### 3. Other Alleged Lienholders

Prior to the Petition Date, affidavits of lien were recorded by certain vendors asserting M&M Lien Claims secured by mechanic's and materialman's liens arising under chapter 53 of the Texas Property Code, including Central Texas Water Maintenance, LLC ("**CTWM**"); Bulldog Steel Products, Inc. ("**Bulldog**"); Apolinar Zepeda dba Zepeda Masonry ("**Zepeda**"); DC Civil Construction, LLC ("**DC Civil**"); Rafael Rios dba Rafael Contracting ("**Rios**"); CMC Rebar; and Holt Texas, Ltd. dba Holt CAT and Holt Rental Store ("**Holt**").

Under Texas real property law, a mechanic's lien is subordinate to any lien, encumbrance, or mortgage in place at the time of the inception of the mechanic's lien, subject only to a limited exception for improvements that can be removed without material injury to the land, existing improvements, or to the improvements themselves (so-called "removables"). Tex. Prop. Code. § 53.123(b).

The Claims of Holt were paid in full prior to the Petition Date, and Holt filed releases of its mechanic's liens. The M&M Lien Claims of Zepeda, Rios, and DC Civil are "labor only" contracts, and neither contemplated nor included the provision of anything that could constitute a "removable." The M&M Lien Claim of CMC Rebar was for the provision of rebar, which was to be installed in concrete on the Property, and is therefore not a "removable." As set forth in detail in the Plan, including Section 4.3 thereof, the Claims of CTWM and Bulldog are secured by Liens on certain equipment, including hydropneumatic tanks, and are therefore Allowed Removables Claims for purposes of the Plan.

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<sup>3</sup> The Loan Agreements (as amended and restated), the secured promissory notes, the Deed of Trust, the Cross Guaranty Agreement, the Limited Guaranties, and all other documents executed in connection with the Loans (as more fully defined in the Loan Agreements as the "Devco Transaction Documents," the "Landco Transaction Documents," and the "Pipeco Transaction Documents," are collectively referred to herein as the "**Prepetition Loan Documents**."

## **B. Events Leading to Chapter 11 Filing**

### **1. Events of Default**

Of the initial approximately \$17.5 million in financing provided by Prepetition Lender to the Debtors in 2012, approximately \$6.76 million was to be used by Landco to refinance existing debt of the Debtors, approximately \$2.5 million was to be used by Pipeco to finance on behalf of the Lerin Hills Municipal Utility District (the “**MUD**”) the cost to build a water transmission pipe to convey water from the Guadalupe-Blanco River Authority (“**GBRA**”) to the Property, and the approximate \$8.3 million remainder was to be used by Devco to construct road, utilities and other infrastructure on the Property.

In 2013, Prepetition Lender learned that the Debtors had experienced a material shortage of capital requiring additional advances of approximately \$13 million. Consequently, the Debtors were left with no capital from any source, and required significant additional funding to get the Property to a “first closing” on building lots with home builders, triggering material breaches of various provisions of the Devco Loan Agreement. Prepetition Lender agreed to provide another approximately \$13 million (the “**Additional Financing**”) to enable Devco to get the development to a first closing, which was memorialized in the February 2014 amendments and restatements to each of the Loan Agreements. In addition, Devco executed and delivered to Prepetition Lender the Grid Note. However, despite the additional funding, by the end of 2014, the Debtors still were still not in a position to get to a first closing.

As a result, on or about December 26, 2014, Prepetition Lender sent to the Debtors a Notice of Default letter (the “**Default Notice**”), which letter constituted notice of the occurrence of certain defaults that, if not timely cured pursuant to the Loan Agreements, would constitute Events of Default thereunder. On or about March 13, 2015, the Prepetition Lender sent a letter to the Debtors accelerating all indebtedness and obligations owing under the Loan Documents.

One month after delivery of the Default Notice, the Debtors provided Prepetition Lender with a list of accounts payable showing approximately \$1.89 million in outstanding payables as of January 28, 2015. Subsequently, Lender received an updated accounts payable listing showing that total payables had increased to \$2.45 million as of March 6, 2015.

On or about February 4, 2015, Central Texas Water Maintenance, LLC (“**CTWM**”), the outside manufacturer and installer of the booster tank, water distribution tank, and re-use tanks and systems integral to the installation of a permanent water supply to the Property, issued a “Stop Work Notice” to the Debtors. CTWM claims it is owed in excess of \$545,000. On or about February 13, 2015, one of CTWM's subcontractors, Crawford Electric Supply Company, took the first step toward perfecting a subcontractor's lien by serving a written demand for payment on Devco, Prepetition Lender and the MUD.

In addition, various mechanic's or materialman's liens (each, an “**M&M Lien**”) have been asserted against the Property. The existence of M&M Liens constitutes a further breach of certain representations and warranties made by the Debtors in the Loan Agreements.

On March 9, 2015, the Kendall County Commissioners' Court (the “**Commissioners' Court**”) held a hearing to consider, among other agenda items, “a Preliminary Plat for Lerin Hills

Garden Home Subdivision, Unit 1A, Phase 1.” Although the Commissioners’ Court approved the plat, it cautioned the Debtors that they could neither sell any buildings nor allow anybody to occupy the buildings until both water and wastewater services were in place, and that such restriction would be included in the plat. Thus, the Debtors were effectively precluded from completing arrangements with any home builder until the water supply issue is resolved. In other words, the Debtors were still months and millions away from a first closing.

## 2. The Receivership

On March 16, 2015, Prepetition Lender filed its *Verified Original Petition for Temporary Restraining Order and for the Immediate Appointment of a Temporary Receiver* (the “**Original Petition**”), pursuant to which the Prepetition Lender sought the appointment of a receiver for the Debtors and their assets, including the Property, as well as other enumerated relief. On April 7, 2015 the state court appointed Andrew Cohen as receiver (the “Receiver”) pursuant to its *Order Immediately Appointing Temporary Receiver and Granting Temporary Injunction* was entered in the 216<sup>th</sup> Judicial District Court in Kendall County, Texas (as amended by the *Agreed Amended Order Immediately Appointing Temporary Receiver and Granting Temporary Injunction*, dated June 8, 2015, the “**Receivership Order**”).

Mr. Cohen was appointed as Receiver for the Property and all other collateral currently held by, or in control of, the Debtors (the “**Receivership Assets**”) and was given the authority under § 64.031 of the Texas Civil Practice and Remedies Code and §§ 11.404 and 11.405 of the Texas Business Organizations Code to do any and all acts necessary to the proper and lawful conduct of the Debtors and the Property. In particular, the Receiver was exclusively vested with all the powers of an officer, director, shareholder, general partner, manager, managing member or other person in control, as applicable, of each of the Debtors, and authorized and empowered, to the extent deemed necessary by the Receiver, to exercise all such powers of an officer, director, shareholder, general partner, manager, managing member, or other person in control of each Debtor, including the power to make all management and operational decisions for and on behalf of the Debtors, to defend, compromise and adjust causes of actions or proceedings in state or federal courts and to file a voluntary petition, or consent to an involuntary petition, for relief for any Debtor under the Bankruptcy Code.

Simultaneously, all other officers, directors, managers, managing members, and general partners of the Debtors at that time were deemed to have resigned such positions effective as of the entry of Receiver Order.

## 3. The Municipal Utility District

Municipal Utility Districts (“**Utility Districts**”) are one of several types of “Special Purpose Districts” authorized for creation under Texas law pursuant to Article XVI, Section 59, of the Texas Constitution, commonly referred to as the “**Conservation Amendment**.” Pursuant to the Conservation Amendment, over the years, the Texas Legislature has enacted a number of statutes authorizing the creation of different types of “Special Purpose Districts” to address the intent of the Conservation Amendment. Among those special purpose district statutes is one specific to Municipal Utility Districts – Chapter 54, Texas Water Code. *See* Texas Water Code Ch. 54.

Utility Districts are typically created for purposes of (i) facilitating the development and operation of water and wastewater utility systems of real property owned by a developer located outside of the service areas of municipal corporations, both to provide those essential services to members of the public located and living within the boundaries of the Utility District, *e.g.*, water, wastewater, drainage, and (ii) to facilitate a means by which the developer of such Utility District who initially undertakes the cost, obligation and risk of constructing and operating the utility systems for the property to recover the investment made into such infrastructure. Construction of this infrastructure is considered to be essential to protect both the water quantity and quality of the state, particularly within the area located within the boundaries of the Utility District.

Providing these essential utility services on a centralized basis is intended (i) to minimize the proliferation of groundwater wells that could deplete groundwater resources, as well as (ii) to facilitate uniform and reliable collection and treatment of wastewater streams to ensure that discharges of untreated wastewater do not make their way into the waters of the state (either surface or groundwater resources) and to minimize the proliferation of individual onsite wastewater systems.

It is against this backdrop that the Lerin Hills Municipal Utility District (the “**MUD**”) was formed in 2006. The District is described as containing approximately 866.53 acres of land, located approximately four miles west/southwest of downtown Boerne, Texas, and approximately 31 miles northwest of the San Antonio central business district, in Kendall County. The MUD currently is managed by five directors: Albert D. Belton, Anastacio M. Nieto, Edward Suarez, Gary P. Ard, and Johnna Maxwell (collectively, the “**MUD Directors**”). Four of the five MUD Directors were hand selected by Abel Godines and, upon information and belief, share personal relationships with him.<sup>4</sup>

On May 21, 2007, Lerin Hills, Ltd., the predecessor in interest to the Debtors (the “**Original Developer**”) entered into a *Development Financing Agreement* (the “**MUD Development Agreement**”) with the MUD.<sup>5</sup> Pursuant to the terms of the MUD Development Agreement, the MUD is obligated to obtain and construct public rights-of-way, easements, drainage and facility water supply, water transmission facilities and a wastewater treatment plant. At the outset, the Development Agreement requires the Debtors to advance funds to the MUD for the cost of such construction. Upon completion of construction and acceptance by the MUD, substantially all costs and operating advances will be reimbursed to Debtors from the proceeds of the issuance and sale by the MUD of municipal bonds.

The MUD is also a party to that certain Agreement between Lerin Hills Municipal Utility District of Kendall County and the Guadalupe-Blanco River Authority, dated September 18, 2009 (the “**GBRA Agreement**”), which provides for the wholesale supply by the Guadalupe-Blanco-River Authority (the “**GBRA**”) to the MUD of up to 750 acre-feet of water for the Property.

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<sup>4</sup> The fifth, Ms. Johnna Maxwell, was recently appointed to the MUD to replace a former MUD Director.

<sup>5</sup> The Original Developer assigned its rights to the MUD Development Agreement to its then current lender pursuant to the terms of that certain Assignment of MUD Rights recorded at Volume 966, Page 152 of the Official Public Records of Kendall County, Texas (the “**MUD Assignment**”). The Original Developer conveyed to Landco all of the rights under the MUD Assignment, including its rights under the MUD Development Agreement.

These two agreements—the GBRA Agreement, which supplies water to the Property, and the Development Agreement, by which the water transmission system will be constructed—are fundamental to the success of the Property, which does not otherwise have access to water for residential use. The Debtors’ ability to maximize the value of the Property and develop it to its full potential is therefore extremely dependent upon the MUD; accordingly any action taken by the MUD or the MUD Directors with respect to the Property has the potential to impact—potentially significantly—the Debtors, their estates, and creditors.

4. Abel Godines

Mr. Godines was the principal owner of the predecessor entity to the Debtors, which entity’s interest in the Property was foreclosed by its own senior lender. Thereafter, family members of Mr. Godines owned an equity interest in one of the Debtors, and Mr. Godines served in a controlling operational and management capacity for the Debtors.<sup>6</sup> In recent months, the Receiver discovered evidence of potentially significant issues relating to the payment of substantial funds to Mr. Godines or for other unauthorized purposes, potentially improper relationships between Mr. Godines and other parties who conducted business with the Debtors, material deficiencies in the work performed on the Property, and improprieties concerning the management of the Debtors. Further, the Receiver has discovered various improper activities of Mr. Petuck in connection with the work performed or in connection with the work at the Property as well as various improper activities in the management of the Debtors by Mr. Petuck. As a result, the Debtors believe that they have substantial claims against Mr. Godines and Mr. Petuck (and their indirect or direct affiliates).

Among other things, Mr. Godines signed construction contracts with various contractors—some of whom were close friends or former employees of Mr. Godines. These contracts, worth millions of dollars, were never submitted to Putnam for approval despite loan covenants specifically requiring Putnam’s consent to any major contracts. In one known instance, Mr. Godines signed a contract worth over \$600,000 in favor of DC Civil Construction, LLC for the construction of acceleration and deceleration lanes, despite having already signed a contract with Rafael Rios dba Rafael Contracting *for exactly the same work*. Mr. Godines also authorized multiple disbursements to vendors under these and other contracts—again, without obtaining the requisite approval of Putnam—and signed literally dozens of change orders that appear to have been back-dated to validate unauthorized overages. As a result, Mr. Godines allowed the Debtors to incur millions of dollars in cost overruns in favor of friends and former employees without any meaningful independent oversight.

**C. Pre-Petition Negotiations**

Shortly prior to the Petition Date, the Receiver obtained an appraisal of the Property that places the as-is value of the Property at approximately \$21.3 million—significantly less than the approximately \$41.3 million presently owed to the Prepetition Lender. On information and belief, a significant portion of such infrastructure will have to be repaired, retrofitted, or reconstructed. Moreover, as the Debtors are presently unable to generate revenue from the sale of

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<sup>6</sup> In various contracts and other documents signed by Mr. Godines on behalf of one or another of the Debtors, Mr. Godines described himself as “Project Manager.”

individual lots (which revenue would, in any event, remain subject to the Prepetition Liens), there is no source of funds to correctly complete the initial phase of the Property or to repay creditors aside from Putnam.

In the weeks immediately preceding the Petition Date, Putnam made protective overadvances to the Receiver to allow him to pay certain ordinary operating and other expenses of the Debtors and to prepare for these Chapter 11 Cases. Without these additional advances, the Debtors would have run out of cash and been forced to shut down completely, making any transaction less attractive and valuable for the Debtors' creditors.

Additional background information on the Debtors, their businesses and the relief requested in this pleading can be found in the First Day Declaration.

### **III. THE CHAPTER 11 CASES**

#### **A. Continuation of Business; Stay of Actions Against the Debtors**

On June 9, 2015, the Debtors commenced their Chapter 11 Cases. Since the Petition Date, the Debtors—through the Receiver, as their sole officer and responsible party—have continued to operate as debtors in possession subject to the supervision of the Bankruptcy Court in accordance with the Bankruptcy Code. The Debtors are authorized to operate in the ordinary course of business. Transactions out of the ordinary course of business must receive prior Bankruptcy Court approval. In addition, the Bankruptcy Court has supervised the Debtors' employment of attorneys, accountants and other professionals.

An immediate effect of the commencement of the Chapter 11 Cases was the imposition of the automatic stay under § 362. With limited exceptions, the automatic stay enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against the Debtors and litigation against the Debtors. This injunction remains in effect unless modified or lifted by order of the Bankruptcy Court.

#### **B. Significant Events During the Chapter 11 Cases**

##### **1. First Day Motions**

On the Petition Date, the Debtors submitted numerous so-called "*First Day Motions*" seeking various relief in the first few weeks of the Chapter 11 Cases. Among the more notable First Day Motions, the Debtors filed motions seeking authority: (i) to maintain the Debtors' existing bank account, checks and business forms; (ii) to pay certain outstanding claims to utility providers and provide adequate protection to such providers; (iii) to designate the Receiver as the person in control of the Debtors and excuse the Receiver from the turnover requirements of §543(d); (iv) to establish procedures for the interim compensation and reimbursement of expenses for Professionals; (v) to reject certain executory contracts and unexpired leases, (vi) to establish expedited deadlines for the filing of proofs of Claims and Interests; (vii) to use Cash Collateral, incur certain postpetition indebtedness and grant adequate protection to the DIP Lender and (viii) to require the MUD to provide notice to the Debtors of any material action taken by the MUD.

Certain of the First Day Motions are briefly summarized below:

(a) *Retention of Professionals*

The Debtors sought to retain Dykema Cox Smith (the “**Dykema Retention**”) as lead bankruptcy counsel and Golden Steves Cohen & Gordon LLP (the “**Golden Steves Retention**”) as special counsel to the Debtors. On June 11, 2015, the Bankruptcy Court entered an order approving the Dykema Retention and the Golden Steves Retention on an interim basis. No objections were received to the Dykema Retention or the Golden Steves Retention, and the orders approving the retention of those professionals became final on July 2, 2015.

(b) *DIP Financing and Use of Cash Collateral*

The Debtors sought to use cash collateral pursuant to § 363 and to obtain post-petition financing from Putnam (in such capacity, the “**DIP Lender**”) in the form of an up to \$4,000,000 DIP financing pursuant to §364(c) and (d) on an interim and final basis, and an order approving that financing on a final basis was approved on July 10, 2015. Putnam is also the Debtors’ Prepetition Lender and co-sponsor of the Plan. The DIP Loans will mature on the earlier of (i) October 31, 2015, (ii) the expiration of ninety (90) days following the Petition Date, (iii) the Effective Date of the Plan and (iv) the acceleration of the loans made under the DIP Agreement pursuant to the DIP Lender’s acceleration and termination of the commitment under the DIP Agreement.

The DIP Lender has been granted, as adequate protection for the DIP Loans, (i) an Allowed Administrative Expense with priority over virtually all other Claims and Administrative Expenses in the Chapter 11 Cases, including Administrative Expenses (subject to certain carve-outs) and (ii) first priority Liens on substantially all the Debtors’ assets *pari passu* with the liens securing the Prepetition Lender’s Claims under the Prepetition Loans (subject to certain carve-outs and exclusions).

Approval of the DIP financing will enable the Debtors to, among other things, ensure the continued ability to fund the costs of administration in the Chapter 11 Cases, including payments to vendors for goods and services provided to the Debtors during the course of the Chapter 11 Cases, and to fund the Plan.

(c) *Motion to Designate Receiver as Control Person*

As discussed above, the Receiver has been vested with all the powers of an officer, director, shareholder, general partner, manager, managing member, or other person in control, as applicable, of each of the Debtors, and authorized and empowered, to the extent deemed necessary by the Receiver, to exercise all such powers as the sole officer, director, shareholder, general partner, manager, managing member or other person in control of each Debtor. To reaffirm the Receiver’s role as the sole “person in control” of the Debtors for purposes of these Chapter 11 Cases, the Debtors sought entry of an order of the Bankruptcy Court designating the Receiver as the person in control of the Debtors pursuant to Bankruptcy Rule 9001(5), excusing the Receiver from compliance with the turnover provisions of § 543(d)(2) with respect to certain Causes of Action, and excusing the Receiver from certain reporting requirements under § 543 that would otherwise be duplicative of the Debtors’ inherent reporting requirements under the



Bankruptcy Code generally. The Bankruptcy Court entered an order approving the Receiver Motion on June 10, 2015.

(d) *Cash Management Motion*

The Debtors sought authority (the “**Cash Management Motion**”) to continue using their existing bank account, including checks, invoices, business forms and the like. The ability to maintain the Debtors’ current bank account and business stock will enable the Debtors to operate more seamlessly following the Petition Date and will minimize expenses related to these Chapter 11 Cases. The Bankruptcy Court entered an order approving the Cash Management Motion on June 11, 2015.

(e) *Utilities Motion*

In connection with the operation of their businesses, the Debtors currently utilize water service from Kendall West Utilities and electric service from Bandera Electric Cooperative (collectively, the “**Utility Providers**”). Uninterrupted utility service is essential to the Debtors’ ability to operate and maintain their operations. The Debtors therefore sought an order (the “**Utilities Motion**”) of the Bankruptcy Court (i) prohibiting the Utility Providers from altering, refusing or discontinuing services to the Debtors following the Petition Date and (ii) authorizing and approving procedures for providing adequate assurance to such Utility Providers of post-petition payments. The Bankruptcy Court entered an order approving the Utilities Motion on June 10, 2015

(f) *Motion to Reject Certain Executory Contracts and Unexpired Leases*

Prior to the Petition Date, the Debtors entered into agreements relating to the potential purchase of lots. Given the uncertainty regarding the completion of the Property and the proposed sale of the Property, the Debtors propose (the “**Contract Rejection Motion**”) to reject certain agreements related to the potential purchase of lots to avoid any issues related to whether the Debtors have an obligation to continue to attempt to satisfy or perform under these agreements, whether there could be an administrative claim in connection with these agreements or whether these parties have any standing to object to or otherwise interfere with the potential sale of the Property. In addition, the Debtors seek to immediately reject contracts that were entered into with parties that were insiders or affiliates of insiders or which were entered into by insiders or affiliated insiders. The Bankruptcy Court entered an order approving the Contract Rejection Motion and authorizing the Debtors to reject the contracts and leases enumerated therein on June 19, 2015.

(g) *Bar Date Motion*

As more fully discussed below, the Claims resolution process is vital to the quick and efficient execution of the transaction and payments contemplated under the Plan. Accordingly, the Debtors sought authority (the “**Bar Date Motion**”) of the Bankruptcy Court to establish a deadline by which Holders of Claims and Interests must file proof of such Claims or Interests. In general, the Debtors are seeking a deadline for proofs of Claim and Interests of approximately thirty (30) days following the Petition Date. The Bankruptcy Court approved the Bar Date

Motion on June 11, 2015 and set such deadline for Holders of Claims and Interests to timely file proof of such Claims as July 24, 2015.

(h) *MUD Notification Motion*

As discussed above, the MUD is instrumental to the development of the Property and, concomitantly, to the Debtors success, and it is vital for the Debtors to have advance notice of any material action taken by the MUD which may directly or indirectly affect the Property. Consequently, the Debtors sought authority (the “*MUD Motion*”) to require the MUD to provide at least fourteen (14) days’ notice to the Debtors of any such action. On June 11, 2015, the Bankruptcy Court entered an order (the “*MUD Notice Order*”) approving the MUD Motion on an interim basis. The MUD Notice Order became a final order on July 2, 2015.

2. 341 Meeting

A formal meeting of creditors pursuant to § 341 took place July 13, 2015 in San Antonio, Texas. Creditors and parties in interest received separate notice of the time and place for this meeting should they wish to attend.

3. Claims Process and Bar Date

The Debtors timely filed their *Schedules of Assets and Liabilities and Statements of Financial Affairs* on June 23, 2015. To enable the Debtors to quantify the total Claims asserted against their estates promptly in connection with the plan process, the Debtors filed a motion on the Petition Date seeking to establish expedited deadlines for the filing of proofs of Claim, including requests for payment of Administrative Expenses arising under § 503(b)(9). The Court granted the motion, establishing July 24, 2015 as the deadline for the filing of all proofs of Claim.

The Debtors will review all Claims filed and develop and analyze a database of all Claims asserted against them. Each proof of Claim and proof of Interest will be analyzed to determine whether to object to the allowance of such Claims or Interests.

The Claims asserted against the Debtors may be materially in excess of the total amount of Allowed Claims estimated by the Debtors in connection with the development of the Plan because, among other things, certain Claims: (i) are filed in duplicate; (ii) consist of amendments to previously filed Claims; (iii) assert Claims in excess of the amount actually owed; (iv) do not allege an obligation of the Debtors or have been erroneously asserted against the Debtors; (v) assert contingent Claims against the Debtors; (vi) were filed after the Bar Date and/or (vii) include postpetition interest and other disallowable charges. The Debtors intend to file objections to, among others, those Claims falling into the foregoing categories.

There is inherent uncertainty as to the amount of Claims in certain Classes that may ultimately become Allowed Claims. For example, Creditors may assert Claims not presently reflected on the Debtors books and records, and the outcome of certain pending litigation could also impact the magnitude of total Claims asserted against the Debtors’ Estates.

4. Operation of the Debtors

The Debtors are operating substantially in accordance with their budget, which was approved by the DIP Lender, and anticipate that they will continue to meet all of their obligations incurred during the course of the Chapter 11 Cases.

5. Construction Contract

The Debtors have obtained court approval to assume their Construction Contract with V.K. Knowlton, pursuant to which V.K. Knowlton will complete construction of TxDOT approved ingress and egress to the Property.

**IV. THE PLAN**

**A. Overall Structure of the Plan**

A summary description of the principal provisions of the Plan and the treatment of Classes of Allowed Claims and Interests is set out below. This summary is qualified in its entirety by the Plan, and in the event of any discrepancy between this summary and the terms of the Plan, the Plan will control.

The Plan constitutes a chapter 11 plan of liquidation for each of the Debtors. Except for Administrative Claims and Priority Tax Claims, all Claims against and Interests in a particular category of Debtors are placed in Classes for each category of the Debtors described below. In accordance with § 1123(a)(1), the Debtors have not classified Administrative Claims or Priority Tax Claims, as described below. Further, for purposes of voting and making distributions only, creditors of all Debtors will be combined in classes as described below.

**B. Administrative and Priority Tax Claims Against All of the Debtors**

As provided in § 1123(a)(1), 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 in accordance with the terms set forth in Article III of the Plan.

1. Administrative Expenses

*(a) General*

The Responsible Person shall pay each Holder of an Allowed Administrative Expense (excluding Professional Fee Claims) the full amount of such Allowed Administrative Expense, without interest, in Cash, within ten (10) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim. All Administrative Expenses against the Debtors which are not due and payable on or before the Effective Date and which are not Assumed Liabilities shall be paid when due in the ordinary course of business and shall be provided for in the Administrative Budget. Notwithstanding anything herein to the contrary, a Holder of an Allowed Administrative Expense may be paid on such other date and upon such other terms as may be agreed upon by such Holder and the Responsible Person. Allowed Administrative Expenses must be paid in full or fully reserved for in the Distribution Fund

pending allowance by the Bankruptcy Court before any Distribution may be made to any other Holder of an Allowed Claim.

(b) *Statutory Fees*

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 Responsible Person no later than thirty (30) days after the Effective Date or when due in the ordinary course.

(c) *Bar Date for Administrative Expenses*

Each Holder of an Administrative Expense other than the DIP Lender must file an Administrative Expense Request requesting payment of such Administrative Expense with the Bankruptcy Court by no later than the Administrative Expense Request Deadline for all Administrative Expenses 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; and provided, further, that the foregoing requirement to file an Administrative Expense Request shall not apply to Holders of Administrative Expenses arising under §§ 503(b)(1)(B) or (C). Nothing herein shall extend any Bar Date established in the Bar Date Order.

(d) *Professional Fee Claims*

The Responsible Person shall pay Professional Fee Claims, in Cash, in the amount awarded to such Professionals by interim fee application order or Final Order of the Bankruptcy Court, as soon as practicable after the Effective Date 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 Cases or in accordance with any trial Order issued by the Bankruptcy Court, but in any event within ten (10) Days of the Bankruptcy Court's approval of such fees and expenses following the Effective Date.

The Plan Supplement shall include an estimate of fees and expenses for Professionals, including all retainers, holdbacks, fees and expenses accrued through the Effective Date and any reductions in fees and expenses agreed upon by the respective Professionals. The Administrative Budget shall set forth the estimated fees and expenses to be incurred by Professionals from the Effective Date through the close of the Chapter 11 Cases, which post-Effective Date fees and expenses shall be paid without further order of the Court.

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 Debtors, Putnam, and Responsible Person at the addresses listed in Section 11.15 of the Plan and on the Office of the United States Trustee so that it is received no later than thirty (30) days after the Effective Date, unless otherwise extended by agreement of the Claimant and the Responsible Person, or such Professional Fee Claim shall be forever barred and shall not be enforceable against the Debtors and their Estates, and their successors and assigns. Allowed Professional Fee Claims must be paid in full or reserved in full in Cash pending allowance by the Bankruptcy Court prior to any payment to Holders of Allowed Claims.

2. *Priority Tax Claims*

The Responsible Person shall pay, at the Responsible Person's discretion, each Holder of an Allowed Priority Tax Claim against any Debtor in full in Cash within ten (10) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim. All Allowed Priority Tax Claims against the Debtors 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 Responsible Person or Putnam (in the case of Assumed Liabilities) 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 this Plan.

### **C. Classification and Treatment of Claims and Interests Against Debtors**

The following tables (i) designate the classes of Claims against, and Interests in, the Debtors, and (ii) specify which of those classes are (a) Impaired or not Impaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with § 1126, or (c) deemed to reject the Plan.

<b><u>CLASS</u></b>	<b><u>STATUS</u></b>	<b><u>ENTITLED TO VOTE</u></b>
Class 1: DIP Claims	Impaired	Yes
Class 2: Prepetition Lender Claims	Impaired	Yes
Class 3: Other Secured Claims	Impaired	Yes
Class 4: Priority Non-Tax Claims	Not Impaired	No
Class 5: Non-Insider Unsecured Claims	Impaired	Yes
Class 6: Subordinated Claims	Impaired	No
Class 7: Interests	Impaired	No

### **D. Treatment Of Claims And Interests**

The categories of Claims and Interests listed below classify Claims and Interests in or against the Debtors for all purposes, including voting, Confirmation, and Distribution, pursuant to the Plan and pursuant to §§ 1122 and 1123(a)(1). A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed and has not been paid or otherwise satisfied prior to the Effective Date.

As more specifically set forth in, and without any way limiting, the Plan, the Distribution to a Holder provided in the Plan is in full settlement, release and discharge of each such Holder's Claim or Interest.

#### **1. Treatment of Allowed Class 1 Claims (DIP Claims)**

(a) Class 1 consists of all DIP Claims, which Claims are Allowed in full for all purposes of the Chapter 11 Cases and this Plan.

(b) In full and final satisfaction of the DIP Claims, on the Effective Date, Putnam shall receive an assignment of 100% of the proceeds of the Causes of Action. The transfer and assignment to the DIP Lender of the proceeds of the Causes of Action shall be deemed to constitute full and final satisfaction of the DIP Claims, regardless of whether the ultimate total amount of such net proceeds is greater or less than the Allowed amount of the DIP Claims. The transfer and assignment to the DIP Lender of the proceeds of the Causes of Action shall be free and clear of all Claims, Liens, and Interests. The DIP Lender shall be solely responsible for payment of any and all fees and expenses incurred in pursuing any Cause of Action.

(c) Class 1 is Impaired. Holders of Allowed DIP Claims shall be entitled to vote to accept or reject the Plan.

2. Treatment of Allowed Class 2 Claims (Prepetition Lender Claims)

(a) Class 2 consists of all Prepetition Lender Claims, which Claims are Allowed in full for all purposes of the Chapter 11 Cases and this Plan. A listing of all known Creditors in Class 2 are set forth on Appendix B to the Disclosure Statement.

(b) In full and final satisfaction of the Prepetition Lender Claims, on the Effective Date, all of the Assets shall be transferred to the Prepetition Lender (or its designee). From and after the conveyance of the Assets on the Effective Date, the Debtors and their Affiliates shall have no legal, equitable, or other interest, right, claim, or participation in such Assets. The transfer of the Assets to the Prepetition Lender (or its designee) pursuant to the terms described herein shall be deemed to constitute full and final satisfaction of the Prepetition Lender Claims. As described in detail in the Plan, the transfer of the Assets to the Prepetition Lender shall be free and clear of all Claims, Liens, and Interests.

(c) Class 2 is Impaired. Holders of Allowed Prepetition Lender Claims shall be entitled to vote to accept or reject the Plan.

3. Treatment of Allowed Class 3 Claims (Other Secured Claims)

(a) Class 3 consists of all Other Secured Claims, including Removables Claims and Real Property Tax Claims, and the Debtors believe there are no Class 3 Claims other than 2015 Real Property Tax Claims and the Removables Claim of Central Texas Water Maintenance. A listing of all known Creditors in Class 3 is set forth on Appendix B to the Disclosure Statement. To the extent there are Holders of more than one Class 3 Claim, each such Claim shall be deemed to be classified in a separate sub-class of Class 3, and each such sub-class shall be deemed to be a separate Class under the Plan. Allowed Other Secured Claims, including Allowed Removables Claims, will be paid from the proceeds of the Vendor Claim Fund.

(b) On or as soon as practicable after the Effective Date, in full satisfaction, discharge, exchange, and release of its Allowed Class 3 Claim, each Holder of an Allowed Other Secured Claim that is not a Removables Claim or a Real Property Tax Claim will receive, at the election of Putnam, either (i) payment in full in cash, without interest, of its Allowed Other Secured Claim on the later of the Effective Date or the date such Claim becomes due, or (ii) the

Distribution to such Holder of the property securing such Allowed Other Secured Claim as the indubitable equivalent of such Holder's interest in such property, in which event such Holder shall be entitled to file a proof of claim for any deficiency entitled to treatment under this Plan or be forever barred from asserting such deficiency against the Debtors.

(c) The 2015 Real Property Tax Claims are an Assumed Liability, and shall be paid in the ordinary course of business as and when they become due.

(d) Except as otherwise agreed by the Debtors and the applicable Creditor (with the consent of Putnam), the Allowed Removables Claims of Central Texas Water Maintenance, LLC and Bulldog Steel Products, Inc. shall receive payment in Cash, without interest, of the Allowed amount of such Claim within ten (10) days after the later to occur of (i) the Effective Date, and (ii) the date such Claim becomes an Allowed Claim; provided, however, that any portion of such Allowed Removables Claims for retainage shall be paid pursuant to existing contract terms at project completion. There are no other Removables Claims.

(e) If the holder of an Other Secured Claim does not obtain a Final Order of the Bankruptcy Court determining that it holds a Lien that is superior to the Liens securing the Prepetition Lender Claims, on or before the Effective Date, then such Other Secured Claim shall be deemed an Unsecured Claim, and to the extent Allowed, shall receive the same treatment afforded to other Allowed General Unsecured Claims or Allowed Subordinated Claims, as applicable.

(f) Class 3 is Impaired. Holders of Allowed Other Secured Claims, if any, shall be entitled to vote to accept or reject the Plan.

#### 4. Treatment of Allowed Class 4 Claims (Priority Non-Tax Claims)

(a) Class 4 consists of all Priority Non-Tax Claims. The Debtors believe there are no Claims in Class 4.

(b) The Responsible Person shall pay each Holder of an Allowed Priority Non-Tax Claim, Allowed in relative order of priority pursuant to § 507, in full, in Cash, without interest, as soon as practicable but not later than thirty (30) days after the Effective Date.

(c) Class 4 is not Impaired. Holders of Allowed Priority Non-Tax Claims, if any, shall be deemed to have accepted the Plan.

#### 5. Treatment of Allowed Class 5 Claims (General Unsecured Claims)

(a) Class 5 consists of all General Unsecured Claims, including all M&M Lien Claims that are neither Removables Claims nor Subordinated Claims. A listing of all known Creditors in Class 5 is set forth on Appendix B to the Disclosure Statement.

(b) Each Holder of an Allowed General Unsecured Claim shall receive payment in Cash, without interest, of the lesser of (i) the Allowed amount of such Claim, and (ii) such Holder's pro rata share of the Vendor Claim Fund remaining after payment of Allowed

Class 3 Claims, within ten (10) days after the later to occur of (i) the Effective Date, (ii) the date such Claim becomes an Allowed Claim or (iii) entry of a final order allowing, disallowing or otherwise resolving all Objections to Claims. The Debtors anticipate that the Vendor Claim Fund will be sufficient to pay all anticipated Allowed General Unsecured Claims in full after payment of Allowed Class 3 Claims; however, to the extent any Claims designated under the Plan as Class 6 Subordinated Claims are ultimately Allowed as Class 5 General Unsecured Claims, the payment of such Claims may dilute the potential recovery to other Holders of Allowed General Unsecured Claims.

(c) Class 5 is Impaired. Holders of Allowed General Unsecured Claims, if any, shall be entitled to vote to accept or reject the Plan.

6. Treatment of Allowed Class 6 Claims (Subordinated Claims)

(a) Class 6 consists of all Interest Related Claims and all Subordinated Claims, including the Claims, if any, of Abel Godines, Stephen Petuck, Phil Milton, Peter Tzelios, Petuck Capital Corp., Sequel Holdings, LLC, Makamah Associates, LLC, Joe J. Godines Investments, LLC, Rafael Rios, Martin Rios, Apolinar Zepeda, DC Civil Construction LLC, KGME, Inc., and any of their respective direct or indirect Affiliates, officers, directors, agents, or representatives.

(b) The holders of Subordinated Claims shall receive no Distribution of any kind under the Plan, nor or retain any Property in respect of such Subordinated Claim.

(c) To the extent any Interest Related Claim or Subordinated Claim is determined by Final Order of the Bankruptcy Court to be a General Unsecured Claim, the Debtors reserve the right to nevertheless classify and treat such Claim as a Subordinated Claim for distribution purposes under the Plan.

(d) Class 6 is Impaired under the Plan. Holders of Allowed Subordinated Claims are deemed to reject the Plan, and are therefore not entitled to vote to accept or reject the Plan.

7. Treatment of Allowed Class 7 Interests (Old Interests)

(a) The Holders of Old Interests shall receive no Distribution of any kind under the Plan, nor or retain any Property in respect of such Old Interests. On the Effective Date, all Interests in any of the Debtors shall be deemed canceled, null and void, and of no force and effect.

(b) Class 7 is Impaired under the Plan. Holders of Allowed Subordinated Claims are deemed to reject the Plan, and are therefore not entitled to vote to accept or reject the Plan.



## **V. ACCEPTANCE OR REJECTION OF THE PLAN**

### **A. Impaired Classes of Claims Entitled to Vote**

Except as otherwise provided in an order of the Bankruptcy Court pertaining to solicitation of votes on the Plan, Classes 1, 2, 3 and 5 are Impaired under the Plan and, pursuant to § 1126(c), Holders of Claims in Classes 1, 2, 3 and 5 are entitled to vote to accept or reject the Plan. If and to the extent any other Class identified as “not Impaired” is determined to be Impaired (whether as a result of the terms of the Plan or any modification or amendment thereto), upon such determination, such Class shall then be entitled to vote to accept or reject the Plan.

### **B. Classes Deemed to Accept the Plan**

Under the Plan, Class 4 is Not Impaired under the Plan and, pursuant to § 1126(f), is conclusively presumed to have accepted the Plan.

### **C. Classes Deemed to Reject the Plan**

Classes 6 and 7 are Impaired and not entitled to receive any Distribution under the Plan. Pursuant to § 1126(g), therefore, Holders of Claims and Interests in Classes 6 and 7 are conclusively presumed to have rejected the Plan, and the votes of Holders of Claims and Interests in Classes 6 and 7 therefore will not be solicited.

### **D. Nonconsensual Confirmation**

To the extent necessary, the Debtors intend to request that the Bankruptcy Court confirm the Plan pursuant to § 1129(b).

## **VI. MEANS FOR IMPLEMENTATION**

### **A. Implementation of Plan**

Prior to the Effective Date, the Debtors shall continue to operate their businesses subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules. The Plan contemplates and is predicated upon the transfer of the Assets to the Prepetition Lender, the assignment of all proceeds from the Causes of Action to the DIP Lender, the dissolution of the Debtors and the liquidation of the Estates.

### **B. The Sale**

The transfer of the Assets to the Prepetition Lender (or its designee) pursuant to Section 4.2 of the Plan shall be treated as a private sale to the Prepetition Lender pursuant to § 363(b) in consideration of a credit bid pursuant to § 363(k) of the full amount of the Prepetition Lender Claims. All other Liens, if any, on the Assets, including all liens alleged to secure M&M Lien Claims, shall attach to the proceeds of such sale. The Sale shall be consummated on the Effective Date pursuant to the Plan as contemplated by §§ 363 and 1123(a)(5)(D), and the Confirmation shall expressly provide that the Prepetition Lender (or its designee) is a good faith purchaser of the Assets entitled to the protections of § 363(m).

### **C. Funding of the Plan**

All consideration necessary for the payment or tender of Distributions under the Plan and the funding of the Administrative Budget will be derived from (i) Cash on hand on the Effective Date and (ii) amounts funded by the DIP Lender under and subject to the DIP Agreement, including the Vendor Claim Fund, the Distribution Fund, and amounts necessary to pay Allowed Administrative Expenses and Allowed Priority and Priority Tax Claims. All such amounts contributed by the DIP Lender pursuant to the DIP Agreement to fund Distributions under the Plan shall be deemed to have been contributed by Putnam directly to the recipients of such Distributions in exchange for the injunctions and releases provided in Sections 9.5 and 9.6 of the Plan.

To the extent not otherwise provided for herein or ordered by the Court, the Responsible Person shall estimate appropriate reserves of Cash to be set aside in the Distribution Fund in order to pay or reserve for Disputed Claims (other than Class 5 Claims), accrued expenses and for the payment of prospective expenses and liabilities of the Estates after the Effective Date. Without limitation, these reserves shall include funds for any Claim not paid immediately on or after the Effective Date, including Professional Fee Claims, Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims, Disputed Claims and all amounts due pursuant to 28 U.S.C. §1930. Any funds left remaining after the payment in full of all Allowed Claims subject to the DIP Agreement by the Responsible Person shall be refunded to Putman, as the DIP Lender.

Notwithstanding any contrary provision contained herein, the Responsible Person 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 Responsible Person to determine reserves and amounts to be paid to parties in interest.

### **D. Other Issues**

Entry of the Confirmation Order shall constitute the approval, pursuant to §§ 105(a), 1123(a)(5)(B), and 1123(a)(5)(D), effective as of the Effective Date, of the transfer of the Assets to the Prepetition Lender and of the Causes of Action to the DIP Lender. Each of the DIP Lender and the Prepetition Lender shall be entitled to the protections afforded pursuant to § 363(m), which protections shall be expressly set forth in the Confirmation Order.

Notwithstanding the reorganization provided for herein, the Debtors shall remain severally responsible for the payment of quarterly fees pursuant to 28 U.S.C. §1930 to the Office of the United States Trustee until such time as a particular case is closed pursuant to a Final Decree or other order of the Bankruptcy Court, dismissed or converted to Cash under another chapter of the Bankruptcy Code.

### **E. Causes of Action**

All Causes of Action, including all Avoidance Actions, shall be vest fully in the Receiver, as the Responsible Person and representative of the estate appointed for the purpose of retaining, enforcing, and settling Causes of Action pursuant to § 1123(b)(3). Pursuant to § 1123, the Responsible Person shall be substituted for the Debtors or the Receiver, as applicable, as the

estate representative, in each such Cause of Action, and shall be authorized to commence or continue all Causes of Action on behalf of all of the Debtors or their Estates (except for any Cause of Action that may be released pursuant to this Plan) and the Receiver may prosecute any Causes of Action not transferred to the Debtors; *provided, however*, that any proceeds from such Causes of Action, whether by final judgment, settlement, or otherwise, shall be payable solely to Putnam pursuant to Section 4.1 of the Plan. The authorization shall be approved without limitation, notwithstanding any other applicable law that could restrict any such transfer or authorization, all of which shall be determined by the Bankruptcy Court in the Confirmation Order to be void as against public policy. The Causes of Action retained by the Debtor and vested in the Responsible Person as of the Effective Date or retained in the Receivership include all Claims and Causes of Action listed on Appendix A to this Disclosure Statement.

The Responsible Person shall succeed, on the Effective Date, in all respects to all of the rights, privileges and immunities of the Debtors, including without limitation, the attorney-client privileges and any other evidentiary privileges of the Debtors.

Nothing in the Plan or the Confirmation Order shall limit, impair or otherwise restrict the rights of the Responsible Person to bring any Claim or Cause of Action, except for those actions otherwise released pursuant to the Plan, against any Person for any reason whatsoever, including the failure of the Plan to identify or describe any such potential Claim or Cause of Action with specificity. No Person may rely on the absence of a specific reference in the Plan or Disclosure Statement to any Cause of Action against them as an indication that the Responsible Person will not pursue any and all available Causes of Action against them. Except as otherwise specifically released pursuant to the Confirmation Order, it is the Responsible Person's intent not to waive any Cause of Action.

Except to the extent a Cause of Action or Avoidance Action against a Person is expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or pursuant to a Bankruptcy Court order, all Causes of Action are expressly reserved for later adjudication. Therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, Claim preclusion, estoppel (judicial, equitable or otherwise), or laches shall apply to such Causes of Action or Avoidance Actions upon, after, or as a consequence of the Confirmation Order. In accordance with § 1123(b)(3), all Causes of Action and Avoidance Actions that a Debtor may hold against a Person shall vest in the Responsible Person or Receiver pursuant to the terms of the Plan.

#### **F. Appointment and Term of the Responsible Person**

On the Effective Date, the Receiver shall become the Responsible Person for all purposes under the Plan. To the extent that the Responsible Person becomes incapacitated or is otherwise unable or unwilling to assume and carry out his duties under the Plan, a Responsible Person shall be selected by mutual agreement of the Debtors, the Prepetition Lender and the DIP Lender or, if after the Effective Date, by Putnam; *provided, however*, that the appointment of any successor Receiver who may become the Responsible Person will also be subject to approval in the Receiver Action. The terms of the Responsible Person's employment, including the compensation of the Responsible Person and the appointment of any successor to the

Responsible Person, will be set forth in a separate agreement to be filed as part of the Plan Supplement.

**G. Duties of the Responsible Person**

In addition to the duties as set forth elsewhere in the Plan, the Responsible Person shall have the following duties:

(a) to implement the Administrative Budget and establish such accounts as may be necessary or appropriate for the maintenance of the Administrative Budget and the Distribution Fund.

(b) to file any and all reports, pleadings and other documents necessary to carry out the provisions of the Plan;

(c) to make any and all Distributions required or permitted to be made under the Plan;

(d) to make and file tax returns and final tax returns for any of the Debtors;

(e) to request the entry of a Final Decree;

(f) to take any and all actions, including any action set forth herein necessary to dissolve and cancel the existence of each of the Debtors in the State of Delaware or the State of Texas, as applicable, and in any other jurisdiction in which any Debtor is organized or qualified to do business;

(g) to determine reserve amounts for Post-Confirmation Expenses and Disputed Claims; and

(h) to take any and all other actions necessary or appropriate to implement the Plan and the liquidation of the Debtors in accordance with applicable law.

In connection with the execution of his duties under the Plan, the Responsible Person shall be authorized:

(i) to execute such documents and to take such other actions as are necessary to effectuate the Plan and perform his duties as responsible person of and for the Estates;

(j) to open, close and manage bank accounts, and to enter into business transactions within or without the ordinary course of business;

(k) to authorize, renew, extend and benefit from any of the Debtors' insurance policies and rights of indemnification;

(l) to retain and pay professionals or other Persons to assist the Responsible Person in the liquidation of the Estates, without prior Bankruptcy Court approval, and to designate, with Putnam's consent, another Person to be the Responsible Person;

(m) to incur any reasonable and necessary expenses (up to the amounts set forth in the Administrative Budget) in the performance of his duties as Responsible Person of and for the Debtors;

(n) to object to the allowance of, and settle, any Disputed Claim;

(o) to employ such other procedures, not inconsistent with the Plan, necessary for the Responsible Person to perform his duties hereunder.

The Responsible Person shall be deemed the Estates' representative in accordance with the provisions of the Bankruptcy Code, including § 1123, and shall have all powers, authority and responsibilities specified in the Plan, including the powers of a trustee under §§ 108 and 704 and Bankruptcy Rules 1106 and 2004, to the extent not inconsistent with the Plan.

## **H. Discharge of Debtors' Professionals**

On the Effective Date, the Debtors' Professionals and agents shall be released and discharged from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to: (i) obligations arising under confidentiality agreements, joint interest agreements and protective orders entered during the Chapter 11 Cases which shall remain in full force and effect according to their terms; (ii) applications for Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to § 503(b) for making a substantial contribution in any of the Chapter 11 Cases; and (iv) any pending motions, or any motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Debtors shall not be entitled to compensation and reimbursement of expenses for services rendered to or on behalf of the Debtors after the Effective Date, except for services rendered in connection with applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed after the Effective Date. Notwithstanding the foregoing, nothing contained herein shall prohibit the Debtors or the Responsible Person from engaging any of the Debtors' Professionals for the purpose of rendering services to the Debtors or the Responsible Person, as applicable, on and after the Effective Date, and any such fees and expenses incurred in connection with such post-Effective Date services may be paid by the Debtors or Responsible Person, as applicable, without further order of the Bankruptcy Court.

## **I. Employee Matters**

Consistent with the Receivership Order and other actions taken before the filing of the Chapter 11 Cases, there are no officers, directors, managers, employees, or agents of any Debtor other than the Receiver, who was the sole remaining officer and person in control of each of the Debtors as of the Petition Date in accordance with the terms of the Receivership Order. To the extent not earlier terminated in accordance with their terms or otherwise (including by operation of the Receivership Order) or assumed by the Debtors pursuant to Section 7.2 of the Plan, all employee arrangements or programs, including but not limited to any contractual or other arrangements, retirement plans or agreements and health benefits and disability plans (other than in connection with the Receiver) are deemed terminated as of the Petition Date with no further action required by the Debtors, the Receiver or the Responsible Person. To the extent any such employee arrangement or program constitutes an Executory Contract (other than in connection

with the Receiver), such contract is deemed rejected on the Petition Date unless otherwise listed on the Assumed Contracts Schedule. The Responsible Person is authorized to take any actions to permit the termination of such arrangements or programs and discharge all benefit liabilities to participants and beneficiaries of such arrangements or programs. The transactions contemplated by the Plan shall not require notice or give rise to any Claim under the Worker Adjustment and Retraining Notification Act or other comparable applicable law.

**J. 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 the Debtors, including, but not limited to, actions requiring a vote or other approval of the board of directors, partners, members or shareholders, as applicable, and execution of all documentation incident to the Plan, notwithstanding any otherwise applicable non-bankruptcy law or the Organizational Documents of the Debtors, 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 the Debtors. To the extent necessary, the Responsible Person shall be vested with authority to execute any document necessary to effectuate such action.

**K. Dissolution of the Debtors**

As soon as practical after the Effective Date, the Responsible Person shall file any documents necessary and proper pursuant to applicable law to dissolve each of the Debtors, and the Debtors shall dissolve and cease to exist.

**L. 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.

**VII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Remaining Executory Contracts**

On the Effective Date, all Executory Contracts shall be deemed rejected pursuant to §§ 365 and 1123, effective as of the Effective date, except for any Executory Contract that (i) previously expired or terminated by its own terms, (ii) was previously assumed or rejected by an order of the Bankruptcy Court pursuant to § 365, (iii) is identified on the Assumed Contracts Schedule as an Executory Contract to be assumed and assigned to Putnam pursuant to the Plan or (iv) is the subject of a pending motion to assume or assume and assign as of the Confirmation Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejection pursuant to §§ 365 and 1123 as of the Effective Date.

**B. Assumption and Cure of Executory Contracts**

The Assumed Contracts Schedule, which will be filed as part of the Plan Supplement, shall identify Executory Contracts to be assumed and assigned to Putnam in connection with the

transfer of Assets to the Prepetition Lender pursuant to the Plan. Putnam reserves the right to amend the Assumed Contracts Schedule at any time up to three (3) Business Days before the Confirmation Hearing to delete any Executory Contract listed therein or, with the consent of the affected counterparty, to add any Executory Contract to the Assumed Contracts Schedule. The Debtors will provide notice of any amendment to the Assumed Contracts Schedule to the parties to the Executory Contracts added or removed. The Assumed Contracts Schedule shall include a designation of the Cure Amount, if any, proposed by the Debtors to be paid in connection with the assumption and assignment of each Executory Contract listed therein.

On the Effective Date, each Executory Contract that is identified in the Assumed Contracts Schedule shall be deemed assumed in accordance with the provisions and requirements of §§ 365 and 1123, and all defaults, if any, shall be deemed cured by the payment of the Cure Amount, if any, corresponding to such Executory Contract.

Except as provided elsewhere in the Plan, any Person objecting to the proposed assumption or assignment of an Executory Contract, including on the basis of any objection to (i) the amount of the proposed Cure Amount, if any, to be paid in connection with such assumption and assignment, (ii) the ability of Putnam to provide “adequate assurance of future performance” of such Executory Contract (within the meaning of § 365), or (iii) any other matter pertaining to the assumption or assignment of such Executory Contract, shall file an serve such objection on or before the deadline for the filing of objections to Confirmation of the Plan. To the extent any such objections are filed, the hearing on such objections shall be scheduled for the same date as the Confirmation Hearing. Failure to timely file an objection to the proposed assumption and assignment of an Executory Contract, including any proposed Cure Amount associated therewith, shall constitute consent to the assumption and assignment of such Executory Contract, including the Cure Amount, if any, payable in connection therewith, and an acknowledgment that such assumption and assignment satisfies all requirements of §§ 365(b), (c) and (f).

If any Person files an objection to the proposed assumption or assignment of an Executory Contract, the Debtors reserve the right to delete such contract or lease from the Assumed Contracts Schedule and declare such contract or lease to be rejected pursuant to Section 7.1 of the Plan.

### **C. Cure of Defaults of Assumed Executory Contracts**

Cure Amounts, if any, to be paid in connection with the assumption and assignment of Executory Contracts to Putnam pursuant to the Plan shall be paid by Putnam not more than ten (10) days after the occurrence of the Effective Date.

### **D. Effect of Assumption and Assignment**

Each Executory Contract assumed or assumed and assigned pursuant to Article VII of the Plan (or pursuant to Bankruptcy Court order) shall remain in full force and effect and be fully enforceable by Putnam in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or assignment. To the extent applicable, all Executory Contracts assumed during the Chapter 11 Cases (a) shall be deemed modified as needed such that the transactions

contemplated by the Plan shall not be a “change of control,” however such term may be defined in the relevant Executory Contract; and (b) shall not constitute a breach of any anti-alienation provision thereof. Any consents required in connection with the assignment to Putnam of any Executory Contract on the Assumed Contracts Schedule shall be deemed satisfied upon entry of the Confirmation Order.

The Plan shall not affect any Executory Contract that was assumed, rejected or assumed and assigned pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date.

#### **E. Rejection Damages Bar Date**

Except to the extent another bar date applies pursuant to an order of the Bankruptcy Court, any Proof of Claim with respect to a Claim arising from the rejection of an Executory Contract under the Plan must be filed with Court, with a copy served on counsel for Putnam and counsel for the Debtors or the Responsible Person, as applicable, within thirty (30) days after 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 the Debtors, their Estates, Putnam or any of their successors and their assigns. Any Claim arising from the rejection of an Executory Contract shall be treated as a Class 5 General Unsecured Claim. Nothing in the Plan extends or modifies the Bar Date, except as specifically provided herein.

### **VIII. DISPUTED CLAIMS; DISTRIBUTIONS**

#### **A. General Provisions Concerning Distributions**

Unless otherwise designated by the Responsible Person, the Responsible Person shall make all Distributions required to be made to Holders of Allowed Claims under the Plan.

At the written request of the Responsible Person, any creditor holding multiple Allowed Claims shall provide the Responsible Person a single address to which any Distributions shall be sent.

In the event that 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.

The Debtors and the Responsible Person may, but shall not be required to, setoff against or recoup from any Claim and the payments to be made pursuant to the Plan in respect of such Allowed Claim, any Claims or Causes of Action of any nature whatsoever that the Debtors or the Responsible Person may have asserted against the Claimant, but neither the failure to do so nor the allowance of any Disputed Claim hereunder shall constitute a waiver or release by the Debtors or the Responsible Person of any such Claim or Cause of Action against such Claimant.

To the extent applicable, Distributions shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to interest and such other amounts comprising a part of the Claim.



**B. Distributions on Account of Disputed Claims**

No Distribution will be made on account of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. In determining the amount of Distributions to be made under the Plan to the Holders of Allowed Claims, the appropriate Distributions shall be made as if all the Disputed Claims as of such Distribution Date were Allowed Claims in the full amount claimed by the holders thereof, unless otherwise ordered or estimated by the Bankruptcy Court.

**C. Time and Manner of Distributions**

Distributions of Cash to Holders of Allowed Class 5 Claims shall be made solely from the Vendor Claim Fund. Distributions to holders of Allowed Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims shall be made from the Distribution Fund.

The Responsible Person shall make all Distributions under the Plan on account of Allowed Claims in Class 5 within ten (10) days after the later to occur of (i) the Effective Date(ii) the date such Claim becomes an Allowed Claim or (iii) entry of a Final Order allowing, disallowing or otherwise resolving all objections to Class 5 Claims, except as otherwise ordered by the Bankruptcy Court or as otherwise set forth herein. The Responsible Person shall make all Distributions under the Plan on account of Allowed Professional Fee Claims within ten (10) days after entry of a Final Order approving such Professional Fee Claim. The Responsible Person shall make all Distributions under the Plan to holders of Allowed Administrative Expense Claims and Allowed Class 4 Claims within ten (10) days after the later to occur of (i) the Effective Date or (ii) the date such claim becomes Allowed. Amounts withheld may be placed in an interest-bearing account, which interest shall be used by the Responsible Person to fund ongoing expenses and costs relating to such reserves, including taxes in respect of Disputed Claims, if any.

At the option of the Responsible Person, any Cash Distribution under the Plan may be made either in Cash, by check drawn on a domestic bank, by wire transfer or by ACH. 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).

**D. Delivery of Distributions**

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made by the Responsible Person (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 the Debtors or the Responsible Person 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 Responsible Person 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 Responsible Person has not received a written notice of a change of address.

**E. 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 Responsible Person is notified of the then-current address of such Holder, at which time (subject to the terms of the penultimate sentence of Section 8.4 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 Responsible Person until such Distributions are Claimed. All funds or other undeliverable Distributions returned to the Responsible Person in respect of any Claim and not Claimed within four (4) months of return shall be forfeited and remain with and vest in the Distribution Fund for Distribution to other Holders of Allowed Claims, until such Claims are paid in full, at which point any unused funds remaining in the Distribution Fund shall be remitted to Putnam.

#### **F. Objections**

From and after the Effective Date, an objection to the allowance of a Claim (other than an Administrative Expense) or Interest shall be in writing and may be filed only by Putnam, the Responsible Person or the Receiver, on behalf of the Debtors, at any time on or before the Claims Objection Deadline. Any compromise or settlement of any objection to a Claim or Interest is subject to the approval of Putnam and must be evidenced by written stipulation subject to Bankruptcy Court approval, if necessary, or withdrawal of such objection.

Unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim prior to the Effective Date, all objections to the allowance and payment of any Claim or Interest are expressly reserved, including any objection to the validity or amount of any such Claim, Interest, Lien or security interest, whether under the Bankruptcy Code, other applicable law or contract.

#### **G. Amendments to Claims; Claims Filed After the Confirmation Date**

Except as otherwise provided in the Plan, after the Confirmation Date, a Claim may not be filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the Holder of such Claim solely to decrease, but not to increase, the face amount of such Claim. Except as otherwise provided in the Plan, any new or amended Claim Filed after the Confirmation Date shall be deemed Disallowed in full and expunged without any further action by the Court or any other party.

#### **H. Procedures for Treating and Resolving Disputed and Contingent Claims**

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

No payment or Distribution will be made with respect to any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, determined by a Final Order, and the Disputed Claim has become an Allowed Claim. Any Proof of Claim filed with all of the dollar amounts listed as contingent, unknown or otherwise containing unliquidated amounts shall be deemed to be a Disputed Claim and shall be treated as such for Distribution purposes in accordance with the terms of this paragraph.

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

The Debtors and the Responsible Person, as applicable, may request estimation or liquidation of any Disputed Claim that is contingent or unliquidated pursuant to § 502(c).

**I. Setoffs and Recoupment**

Pursuant to §§ 502(d), 553 and 558 or applicable non-bankruptcy law, the Responsible Person may, but shall not be required to, setoff against or recoup from any Claim on which a Distribution is to be made by the Responsible Person pursuant to the Plan, any Claims or Causes of Action of any nature whatsoever that any Debtor or its Estate may have or have had 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 Putnam, the Responsible Person, the Receiver or the Debtors of any setoff or recoupment the Debtors may have against the Holder of such Claim, nor of any other Claim or Cause of Action.

**J. Allowance and Disallowance of Claims Subject to § 502**

Allowance and disallowance of Claims shall be in all respects subject to the provisions of § 502, including subsections (b), (d), (e), (g), (h) and (i) thereof.

**K. 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 the Debtors under such promissory notes, share certificates, instruments, indentures or agreements shall be discharged and the Holders thereof shall have no rights against the Debtors, Putnam, the Responsible Person or the Estates; 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.

**L. No Interest on Claims**

Unless otherwise specifically provided for in the Plan, the Confirmation Order or a post-petition agreement in writing between the Debtors and a Holder of a Claim that has been 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 receive any Distribution on account of interest accruing on or after the Petition Date, nor shall any interest accrue on and after the Effective Date on account of any Disputed Claim that subsequently becomes Allowed and paid under the terms of the Plan after the Effective Date.

**M. Withholding Taxes**

The Responsible Person 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 Responsible Person may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as the

Responsible Person may deem necessary to comply with applicable tax reporting and withholding laws.

#### **N. Reports**

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

### **IX. EFFECT OF CONFIRMATION**

#### **A. Vesting of Assets**

On the Effective Date, pursuant to §§ 1141(b) and (c), the Assets and the proceeds from Causes of Action shall be released from the custody and jurisdiction of the Bankruptcy Court and vest in the Prepetition Lender and the DIP Lender, respectively, free and clear of all Claims, Liens (except that Liens securing Real Property Tax Claims and any other Liens that run with the land shall continue to encumber and benefit the Property), encumbrances, charges and other interests, including any tax Liens or Claims, except as provided in the Plan. For the avoidance of doubt, all Liens, if any, securing any M&M Lien Claim shall be deemed to have been dealt with pursuant to the terms of the Plan and extinguished on the Effective Date, subject only to the right to payment of any Allowed Removables Claim pursuant to Section 4.3 hereof. On the Effective Date, all other property of the Estates not vesting in Prepetition Lender or the DIP Lender shall vest in the Responsible Person, free and clear of all Claims, Liens, encumbrances, charges and other interests, including any tax Liens or Claims, except as provided in the Plan.

#### **B. Binding Effect**

On and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against or Interest in any Debtor, including such Holder's respective successors and assigns, regardless of whether the Claim or Interest is Impaired under the Plan, whether such Holder has accepted the Plan, and whether such Holder is entitled to a Distribution under the Plan.

#### **C. No Assumption of Liabilities; Transfer Free and Clear**

Other than Assumed Liabilities, neither Putnam nor any of its designees, assignees, or transferees (as a successor entity, successor employer or otherwise) has acquired or assumed, will acquire or assume, nor will be deemed to have acquired or assumed, any obligation or liability of any Debtor, asserted or unasserted, known or unknown, including employee related claims, payroll taxes, employee contracts, and successor liability, and all Persons and Entities are hereby permanently enjoined and restrained from asserting or prosecuting any claim against Putnam or its affiliates or designees or agents, to recover on any such Claim such Person or Entity has or may have against any Debtor, Estate, or asset of any Debtor or Estate, relating to the ownership, use or operation of the Property or any other Asset, including, any present or future right of first refusal or right of set-off or recoupment or under or on account of any theory of successor liability.

Neither Putnam nor any of its designees, assignees, or transferees shall be obligated or liable, either directly or indirectly, as successor, transferee or otherwise, for any liability or interest of any Debtor, or any Debtor's Affiliate, as a result of the transfer of the Assets and the Causes of Action. Neither Putnam nor any of its designees, assignees, or transferees shall be or be deemed to be a successor or successor in interest or responsible person or potentially responsible person to any Debtor or any current or former creditor, employee, equity holder or other party in interest with respect to any liability or interest, nor shall have any liability for successor liability, including with respect to any liability or interest arising from or under product liability, tax, environmental, employment or other state or federal law.

Under no circumstances shall Putnam or its designee be deemed a successor of or to any Debtor for any interest against or in any Debtor, the Assets, or the Property of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets to Putnam shall not be subject to any Interests, and all Interests of any kind or nature. All persons holding Interests against or in the Debtor or the Assets or Properties of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against Putnam and its designee(s), their respective property, their respective successors, assigns and transferees, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, their estates, officers, directors, shareholders, or the Assets. Following the transfer of the Assets to Putnam or its designee(s), no holder of an Interest in the Debtor shall interfere with Putnam's or its designee(s) title to or use and enjoyment of the Assets and Properties based on or related to such Interest, or any actions that the Debtor may take in the Bankruptcy Case.

The transfer of the Properties and Assets to Putnam or its designee(s) will not subject Putnam or its designee(s) to any liability whatsoever with respect to the operation of the Properties and Assets or employment of the Debtor's current or former employees prior to the transfer to Putnam or its designee(s) by reason of such transfer under applicable state or federal law, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equity or law, including, without limitation, any theory of antitrust or successor or transferee liability with regard to severance obligations that may be due and owing by the Debtor.

The transfer of the Properties and Assets to Putnam or its designee(s) will be a legal and effective conveyance of the Assets. Any and all parties are enjoined and restrained from taking any action, including without limitation, the assertion or exercise of any alleged rights, including any right of first refusal, offset, recoupment, or the assertion of any Claim, Interest, and/or Lien against any of the Assets transferred to the Putnam, its affiliates, agents, successors, designees or assigns, or against any of the property of the foregoing, including, without limitation, against any real or personal property transferred to Putnam or its designee(s) through the Plan.

#### **D. Discharge**

The Plan is a plan of liquidation. Accordingly, Confirmation of the Plan shall not operate as a discharge, pursuant to § 1141(d), of any and all debts of or Claims against the Debtor that arose at any time prior to Confirmation.

**E. 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 (including the payment of Distributions hereunder and Putnam's obligation to fund such Distributions) or any documents provided for or contemplated in the Plan, all Entities who have held, hold or may hold Claims against or Interests in the Debtors or the Estates 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 or any property of any Protected Party 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 or any property of any Protected Party 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 or any property of any Protected Party 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 or any property of any Protected Party 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 Section 9.4 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 the Debtors or the Responsible Person under the Plan.

**F. Term of Injunctions or Stays**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under §§ 105 or 362, the Plan or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the entry of the Final Decree.

**G. Exculpation and Releases**

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, liability to any other Protected Party, to any Holder of a Claim or an Interest only in their capacity as such, for any act or omission taken in connection with, arising from or relating to the Chapter 11 Cases, 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 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 § 1125(e).

Each party to which Section 9.6 of the Plan applies shall be deemed to have granted the releases set forth in Section 9.6 of the Plan notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any statute or common law principle, which would limit the effect of such releases to those Claims or Causes of Action actually known or suspected to exist at the time of execution of the release.

Notwithstanding anything set forth above or elsewhere in the Plan, nothing in the Plan discharges, releases, precludes, or enjoins: (i) any environmental liability to any governmental unit that is not a Claim; (ii) any environmental Claim of any governmental unit arising on or after the Confirmation Date; (iii) any environmental liability to any governmental unit that any Entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any environmental liability to the United States on the part of any Person other than the Debtor or Reorganized Debtor.

Notwithstanding anything set forth in Section 9.6 or elsewhere in the Plan, nothing contained in Section 9.6 or elsewhere in the Plan shall operate to release or exculpate any Entity from or against its obligations under the Plan, including Putnam's obligation to fund Distributions to be made under the Plan.

#### **H. Releases by Holders of Claims and Interests**

As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, each Holder of a Claim or an Interest shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Debtors and the Released Parties from any and all Claims, Interests, Claims obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims or Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Released Parties, the Chapter 11 Cases, the Plan, the Disclosure Statement, the DIP Agreement and related documentation, and other related agreements, other than Claims, Claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud or willful misconduct as determined by a Final Order; *provided, however*, that nothing herein shall be deemed a waiver or release of a Releasing Party's right to receive a Distribution pursuant to the terms of the

**Plan. For the avoidance of doubt, this Release by Holders of Claims and Interests is not and shall not be deemed a waiver of the Debtors' rights or Claims against the holders of General Unsecured Claims, including to the Debtors' rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any General Unsecured Claim, and all such rights and Claims are expressly reserved.**

**I. Reservation of Causes of Action/Reservation of Rights**

Unless otherwise set forth herein, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action or Avoidance Actions that the Debtors, the Responsible Person or the Estates may have or may choose to assert against any Person.

**J. Release of Liens.**

Except as otherwise specifically provided in the Plan or the Confirmation Order, all Liens, security interests, deeds of trust, or mortgages against any Debtor or property of the Estates shall and shall be deemed to be released, terminated, extinguished and nullified as of the Confirmation Date pursuant to §§ 363 and 1141(c). For the avoidance of doubt, confirmation of the Plan shall serve to extinguish all mechanic's and materialman's Liens arising under chapter 53 of the Texas Property Code and purporting to secure M&M Lien Claims. Pursuant to § 1142(b), from and after the Confirmation Date, the Debtors and Putnam are authorized to execute and file any release of Lien, in their sole business judgment, to assist in consummation of the Plan if the Holder of such Lien, including any Holder of an M&M Lien Claim, fails to execute such a release of Lien.

**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:

(a) The Confirmation Order shall be in form and substance acceptable to the Debtors and Putnam in their absolute discretion;

(b) The Confirmation Order shall have been entered by the Bankruptcy Court and shall not be subject to any stay of effectiveness, including any such stay pursuant to Bankruptcy Rules 3020(e) or 6004(h);

(c) the Confirmation Date shall have occurred and no request for revocation of the Confirmation Order under § 1144 shall have been made, or, if made, remain pending;

(d) Putnam shall have consented in all respects to, and agreed to be bound by, the terms of the Plan.

(e) The appointment of the Responsible Person shall have been approved by order of the Bankruptcy Court; and



(f) All necessary documents relating to the sale of the Assets shall be in form and substance acceptable to the Debtors and Putnam and shall be executed.

**B. Revocation, Withdrawal or Non-Consummation of Plan**

If, after the Confirmation Order is entered, each of the conditions precedent to the Effective Date have not been satisfied or duly waived on or by ninety (90) days after the Confirmation Date, then upon motion by the Debtors or Putnam, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions precedent to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. A condition precedent to the Effective Date may only be waived by a writing executed by both the Debtors and Putnam. If the Confirmation Order is vacated pursuant to Section 10.2, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims against or Interests in the Debtors, (ii) prejudice in any manner the rights of the Holder of any Claim against or Interest in the Debtors, (iii) prejudice in any manner the rights of the Debtors in the Chapter 11 Cases, or (iv) constitute a release, indemnification or exculpation by the Debtors, the Estates or any other party pursuant to the Plan.

**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 §§ 105(a) and 1142, the Bankruptcy Court shall retain and have 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 Cases and the Plan, including the following:

- (a) all matters relating to the assumption or rejection or the assumption and assignment of Executory Contracts, or Claims or disputes relating thereto;
- (b) all matters relating to the ownership of a Claim or Interest;
- (c) all matters relating to the Distribution to holders of Allowed Claims and to the determination of Claims;
- (d) any and all matters involving the Responsible Person;
- (e) 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;
- (f) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified and/or vacated;

(g) 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;

(h) 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;

(i) 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 the Confirmation Order;

(j) all applications for allowance of compensation and reimbursement of Professional Fee Claims;

(k) to hear and determine all motions or requests for the payment of Claims entitled to priority under § 507(a)(2), including compensation and reimbursement of expenses of parties entitled thereto;

(l) all Causes of Action, Avoidance Actions and other suits and adversary proceedings to recover assets for Putnam, as successor-in-interest to any of the Debtors and property of the Estates, 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 Cases 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;

(m) all matters concerning state, local and federal taxes in accordance with §§ 346, 505 and 1146;

(n) any other matter not inconsistent with the Bankruptcy Code;

(o) all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(p) to enter the Final Decree closing the Chapter 11 Cases; and

(q) to enforce all orders previously entered by the Bankruptcy Court.

## **B. Payment of Statutory Fees**

All fees incurred pursuant to 28 U.S.C. §1930 on or prior to the Effective Date shall be paid on or before the Effective Date consistent with the requirements of 28 U.S.C. § 1930 and Section 3.1(b) of the Plan. All fees incurred pursuant to 28 U.S.C. §1930 after the Effective Date

shall be paid by the Responsible Person from the Distribution Fund consistent with the requirements of 28 U.S.C. § 1930.

**C. Headings**

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

**D. Binding Effect of Plan**

Except as otherwise provided in § 1141(d)(3) on and after the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtors, the Estates, the Responsible Person 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 the Responsible Person and any trustee appointed for the Debtors 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 the Debtors, with the prior written consent of Putnam, and upon written notice to the Bankruptcy Court, provided that the Effective Date shall occur within 48 hours of the effectiveness of such waiver. 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 herewith and Distributions hereunder, the Responsible Person 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.

Notwithstanding the above, each holder of an Allowed Claim or Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution. Any party issuing any instrument or making any Distribution under the Plan has the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**G. Tax Exemption and Expedited Tax Determination**

Pursuant to § 1146, any and all transfers of real or personal property owned by the Debtors shall be free of any and all federal, state and local stamp taxes and similar taxes pursuant to § 1146(a).

The Debtors and Responsible Person are authorized to request an expedited determination of taxes under § 505(b) for any or all returns filed for, on or behalf of, the Debtors for any or all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

#### **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 corporate and limited liability company governance matters shall be governed by, and construed and enforced in accordance with the laws of the applicable State of formation, without giving effect to conflicts of law principles.

#### **I. Plan Supplement**

The Plan Supplement and the documents contained therein shall be in form, scope and substance satisfactory to the Debtors and Putnam and shall be filed with the Bankruptcy Court no later than ten (10) days before the deadline for voting to accept or reject the Plan, provided that the documents included therein may thereafter be amended and supplemented prior to execution, so long as no such amendment or supplement materially affects the rights of holders of Claims or Interests, and provided further that amendment of the Assumed Contracts Schedule shall be governed by Section 7.2 of the Plan. The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full herein.

#### **J. 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.

#### **K. Revocation**

The Debtors and Putnam reserve the right to revoke and withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw 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 the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or be deemed an admission by the Debtors.

**L. Substantial Consummation**

On the Effective Date, for purposes of § 1127(b) and other applicable sections of the Bankruptcy Code, the Plan shall be deemed to be substantially consummated as such term is defined in § 1101.

**M. Conflict**

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. The terms of the Confirmation Order shall govern in the event of any inconsistency with the Plan or the summary of the Plan set forth in the Disclosure Statement.

**N. Amendments and Modifications**

The Debtors and Putnam jointly may agree to alter, amend or modify the Plan under § 1127(a) at any time prior to the Confirmation Hearing. After the Confirmation Date and prior to “substantial consummation” (as such term is defined in § 1101(2) and Section 11.12 of the Plan), any Debtor or the Responsible Person may institute proceedings in the Bankruptcy Court pursuant to § 1127(b) 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 those parties set forth in Bankruptcy Rule 2002, and the solicitation of all Creditors and other parties-in-interest shall not be required. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Claims or Interests.

**O. Notices**

Any notices required under the Plan or any notices or requests 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:

(a) To the Debtors:

Dykema Cox Smith  
112 E. Pecan Street, Suite 1800  
San Antonio, TX 78205  
Attn: Deborah Williamson, Esq.  
Telephone: (210) 554-500  
Facsimile: (210) 226-8395

(b) To Putnam:

Akin Gump Strauss Hauer & Feld, LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, TX 75201  
Attn: Michael P. Cooley, Esq.  
Telephone: (214) 969-2800  
Facsimile: (214) 969-4343

-and-

Triton Equity Partners, LLC  
81 Newtown Lane #351  
East Hampton, New York 11937  
Attn: Robert L. Pressman  
Telephone: (631) 613-6657  
Facsimile: (631) 613-6659

(c) To the Responsible Person:

Golden Steves Cohen & Gordon LLP  
300 Convent Street  
San Antonio, TX 78205  
Attn: Andrew Cohen, Esq.

**P. Filing of Additional Documents**

On or before substantial consummation of the Plan, and without the need for any further order or authority, the Debtors 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.

**Q. Direction to a Party**

From and after the Effective Date, the Debtors or the Responsible Person 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.

**R. 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.

**S. Waiver of Subrogation**

Notwithstanding any provision of the Plan to the contrary, all Holders of Claims shall be deemed to have waived any and all subrogation rights which they may have with respect to the Distributions made pursuant to the Plan, and the Confirmation Order shall permanently enjoin, effective as of the Effective Date, all Holders of Claims from enforcing or attempting to enforce any such rights against any Person receiving Distributions under the Plan.

**XII. CONFIRMATION OF THE PLAN**

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors.

**A. Voting Procedures and Requirements**

The Debtors are providing copies of this Disclosure Statement, Ballots and, where appropriate, summary Ballots, to all known holders of Impaired Claims who are entitled to vote on the Plan.

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims and Interests in the Debtors that are “Impaired” under the terms and provisions of the Plan and entitled to receive a Distribution thereunder are entitled to vote to accept or reject the Plan. Accordingly, Classes of Claims or Interests that are not Impaired are *not* entitled to vote on the Plan. In addition, Classes of Claims or Interests that are not entitled to a Distribution are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**If you hold an Impaired Claim against any Debtor, you are entitled to vote on the Plan. If you hold multiple Impaired Claims against one or more Debtors, you are entitled to cast a vote on account of each such Claim. Some Creditors may therefore be entitled to cast more than one Ballot.**

Under the Plan, Classes 1-3 and 5 are entitled to vote on the Plan. Class 4 is unimpaired and is deemed to have accepted the Plan and does not vote. Classes 6 and 7 are deemed to have rejected the Plan because holders of Claims and Interests in Classes 6 and 7 will not receive any Distributions on account of their Claims under the Plan do not vote.

Any holders of Claims that hold Claims in more than one Impaired Class must vote separately for each Class. Such holders will receive a separate Ballot for all their Claims in each

Class and should complete and sign each Ballot separately. The following voting procedures (the “**Voting Procedures**”) have been established with respect to the amount and classification of Claims and Interests, and the determination of the validity of Ballots submitted, for voting purposes:

1. With respect to a Claim as to which a proof of Claim has not been timely filed (*i.e.*, was not filed or was filed after the Bar Date set by the Bankruptcy Court for the filing of a Claim of that type), the voting amount of such Claim (subject to any applicable limitations set forth below) shall be equal to the amount listed, if any, in respect of such Claim in the applicable Debtor’s Schedules to the extent such Claim is not listed as contingent, unliquidated, undetermined or disputed. Such Claim shall be placed in the appropriate Class based upon the applicable Debtor’s records and the classification scheme set forth in the Plan.

2. With respect to a proof of Claim which, according to the Clerk of the Bankruptcy Court’s records, was not timely filed (*i.e.*, was filed after the applicable Bar Date) and is not subject to the provisions of the immediately preceding paragraph, such Claim shall be provisionally disallowed for voting purposes.

3. With respect to a liquidated, non-contingent, undisputed Claim as to which a proof of Claim has been timely filed and as to which an objection has not been filed, the amount and classification of such Claim shall be that specified in such proof of Claim, subject to any applicable limitations set forth below.

4. With respect to a proof of Claim which is the subject of an objection filed by a Debtor, the Claim represented by such proof of Claim shall be provisionally disallowed for voting purposes, except to the extent and in the manner that (i) that Debtor indicates in its objection the extent to which such Claim should be allowed; or (ii) the Bankruptcy Court otherwise orders.

5. A timely filed proof of Claim that is designated as wholly unliquidated or contingent shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c), unless the Claim is disputed as set forth in the immediately preceding paragraph.

6. With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim shall be that set by the Bankruptcy Court.

7. With respect to a Claim any portion of which is unliquidated, contingent or disputed, the holder of the Claim shall be entitled to vote that portion of the Claim that is liquidated, non-contingent and undisputed, subject to any limitations set forth herein and unless otherwise ordered by the Bankruptcy Court.

8. Holders of Claims shall not be entitled to vote Claims to the extent such Claims duplicate or have been superseded by other Claims of such holders of Claims.

9. Each Claim shall be entitled to vote only once.



10. Whenever a holder of a Claim submits more than one Ballot voting the same Claim or Interest prior to the deadline for submission of Ballots, the first of such Ballots filed (and only such Ballot) shall be counted in accordance with the Voting Procedures unless either (i) the applicable Debtor consents to the filing and counting of a superseding Ballot, or (ii) the Bankruptcy Court, after notice and a hearing, orders otherwise.

11. The authority of the signatory of each Ballot to complete and execute such Ballot shall be presumed.

12. A holder of a Claim must vote all of its Claim within a particular Class under the Plan either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot (or multiple Ballots with respect to separate Claims within a single Class) that partially rejects and partially accepts the Plan or that indicates both a vote for and against the Plan will not be counted.

13. Any Ballot which is executed and returned, but does not indicate an acceptance or rejection of the applicable Plan, shall be deemed to be an acceptance of the Plan.

14. Any Ballot that is not signed will not be counted.

15. For the purpose of voting on the Plan, the Debtors will be deemed to be in constructive receipt of any Ballot timely delivered to any address designated for the receipt of Ballots cast in connection with the Plan.

16. Any Ballot received by the Debtors after the end of the voting period shall not be accepted or used by the Debtors in connection with the Debtors' request for Confirmation of the Plan unless the Debtors, in their sole discretion, consent to the counting of such Ballot or the Bankruptcy Court orders such Ballot to be counted.

17. All Ballots must be cast using the Ballots distributed to the holders of Claims. Votes cast in any manner other than by using such Ballots will not be counted.

**IN ORDER TO BE COUNTED, EXCEPT TO THE EXTENT THE DEBTORS SO DETERMINE OR AS PERMITTED BY THE BANKRUPTCY COURT PURSUANT TO BANKRUPTCY RULE 3018, BALLOTS MUST BE SIGNED AND RETURNED SO THAT THEY ARE RECEIVED NO LATER THAN September 3, 2015 AT THE FOLLOWING ADDRESS:**

Dykema Cox Smith  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Attn: Allison Seifert, Esq.

As mentioned above, if your Ballot is not signed and returned as described, it will not be counted. If your Ballot is damaged or lost, or if you do not receive a Ballot, you may request a replacement by addressing a written request to counsel for the Debtors at the foregoing address. Please follow the directions contained on the Ballot carefully.

The process of soliciting acceptance of the Plan must be fair and open without outside influence in the form of representations, inducements or duress of any kind. To the extent that you believe solicitation of your vote from any party is being sought outside of the judicially-approved and statutorily-defined disclosure requirements and Voting Procedures, please contact counsel for the Debtors.

## **B. Acceptance**

Acceptance of the Plan requires that each Impaired Class of Claims or Interests (as classified therein) accepts the Plan, with certain exceptions hereinafter discussed below. Thus, acceptance of the Plan requires acceptance by each of the Impaired Classes.

Classes of Claims and Interests that are not Impaired under the Plan are deemed to have accepted the Plan. Acceptances of the Plan are being solicited only from those persons who hold Claims or Interests of Impaired Classes.

The Bankruptcy Code defines acceptance of a Plan by a Class of Claims as acceptance by the holders of at least two-thirds (2/3) in dollar amount and a majority in number of Claims of that class, but for that purpose, only those Claims, the holders of which actually vote to accept or reject a Plan, are counted.

## **C. Confirmation of the Plan**

In order to confirm the Plan, § 1129 requires the Bankruptcy Court to make a series of determinations concerning the Plan, including, without limitation: (a) that the Plan has classified Claims and Interests in a permissible manner; (b) that the contents of the Plan comply with the technical requirements of the Bankruptcy Code; (c) that the Debtors have proposed the Plan in good faith; and (d) that the Debtors have made disclosures concerning the Plan which are adequate and include information concerning all payments made or promised in connection with the Plan and the Chapter 11 Cases. The Debtors believe that all of these conditions have been or will be met.

The Bankruptcy Code requires that, unless the “cramdown” provisions of the Bankruptcy Code (as discussed below) are utilized, as a condition precedent to confirmation, the Plan be accepted by the requisite votes of each Class of Claims and Interests voting as separate Classes. Therefore, the Bankruptcy Court must find, in order to confirm the Plan, that the Plan has been duly accepted. In addition, the Bankruptcy Court must find that the Plan is feasible and that the Plan is in the “best interests” of all holders of Claims and Interests. Thus, even if holders of Claims of the Debtors were to accept the Plan by the requisite number of votes, the Bankruptcy Court would be required to make independent findings respecting the Plan’s feasibility and whether the Plan is in the best interests of holders of Claims and Interests before it can confirm the Plan.

### **1. The Best Interests Test**

Whether or not the Plan is accepted by each Impaired Class of Claims entitled to vote on the Plan, in order to confirm the Plan the Bankruptcy Court must, pursuant to § 1129(a)(7), independently determine that the Plan is in the best interests of each holder of an Impaired Claim

or Interest that has not voted to accept the Plan. This requirement is satisfied if the Plan provides each non-accepting holder of a Claim or Interest in such Impaired Class a recovery on account of such holder's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the Distribution each such holder would receive in a liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

To determine the value that holders of Impaired Claims and Interests would receive if the Debtors were liquidated under Chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated from the liquidation of the Debtors' assets if the Debtors' Chapter 11 Cases was converted to a Chapter 7 liquidation case and the Debtors' assets were liquidated by a Chapter 7 trustee (the "**Liquidation Value**"). The Liquidation Value would consist of the net proceeds from the disposition of the Debtors' assets, augmented by Cash held by the Debtors 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. In addition, the dividend to holders of General Unsecured Claims in a Chapter 7 proceeding would be materially affected by the outcome of any litigation instituted by a Chapter 7 trustee. Based on the Liquidation Values discussed more fully in Section XIII below, the Debtors believe that the Plan provides substantially greater recoveries to Creditors than they would receive in a Chapter 7 liquidation and, therefore, satisfies § 1129(a)(7).

## 2. Feasibility

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 interests" test, the Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed its ability to meet its obligations under the Plan. Based on the funds proposed to be available for distribution under the Plan, the Debtors believe that the Debtors will be able to make all payments required to be made pursuant to the Plan.

## D. Non-Acceptance and Cramdown

Pursuant to § 1129(b), the Bankruptcy Court may confirm a Plan despite the non-acceptance of the Plan by an Impaired Class. This procedure is commonly referred to as a "cramdown". Section 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is "fair and equitable" with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders) and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the "absolute priority" rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under a Plan.

1. The Plan Is Fair and Equitable

The Bankruptcy Code establishes different “fair and equitable” tests for holders of Secured Claims, Unsecured Claims and Interests. As to the dissenting Class, the test sets different standards, depending on the type of Claims or Interests in such Class.

(a) *Secured Claims*

With respect to a Class of Secured Claims that does not accept a Plan, the Debtors must demonstrate to the Bankruptcy Court that either (i) the holders of such Secured Claims will retain the liens securing such Claims and will receive on account of such Claim deferred Cash payments totaling at least the Allowed amount of such Claim, of a value, as of the Effective Date, of at least the value of such holder’s interest in such property, or (ii) the holders of such Claims will realize the indubitable equivalent of such Claims under the Plan.

(b) *Unsecured Claims*

With respect to a Class of Unsecured Claims that does not accept the Plan, the Debtors must demonstrate to the Bankruptcy Court that either (i) each holder of an Unsecured Claim of the dissenting Class receives or retains under the Plan property of a value equal to the Allowed amount of its Unsecured Claim or (ii) the holders of Claims or Interests that are junior to the Claims of the holders of such Unsecured Claims will not receive or retain any property under the Plan.

(c) *Interests*

With respect to a Class of Interests that does not accept the Plan, the Debtors must demonstrate to the Bankruptcy Court that (i) each holder of an Interest of the dissenting Class receives or retains on account of such Interest property of a value equal to the greatest 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) the holders of any Interest that is junior to the Interests of such Class will not receive or retain any property under the Plan. The Debtors believe the Plan is fair and equitable with respect to each Class.

2. No Unfair Discrimination

A Chapter 11 Plan “does not discriminate unfairly” with respect to a nonaccepting Class if the value of the Cash and/or securities to be distributed to the nonaccepting Class is equal or otherwise fair when compared to the value of Distributions to other Classes whose legal rights are the same as those of the nonaccepting Class. Since all similarly situated holders of Claims or Interests are classified together and all Claims or Interests in a given Class are treated identically, the Debtors believe the Plan does not unfairly discriminate against any Class.

In particular, the Plan does not discriminate unfairly against the Holders, if any, of Allowed Class 6 Claims.

Pursuant to the terms of the Plan, including Section 4.6 thereof, the Claims of Insiders and their respective Affiliates, officers, directors, agents, or representatives, are separately classified from other General Unsecured Claims.

#### **E. Confirmation Hearing**

Section 1128(a) requires the Bankruptcy Court, after notice, to hold a confirmation hearing (the “**Confirmation Hearing**”). Section 1128(b) provides that any party in interest may object to Confirmation of the Plan. Notice of the Confirmation Hearing will be provided to all holders of Claims and Interests and other parties in interest (the “**Confirmation Notice**”). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof. Objections to Confirmation of a Plan must be made in writing, specifying in detail the name and address of the person or Entity objecting, the grounds for the objection, and the nature and amount of the Claim or Interest held by the objector. Objections must be filed with the Bankruptcy Court, together with proof of service, and served upon the parties so designated in the Confirmation Notice, on or before the time and date designated in the Confirmation Notice as being the last date for serving and filing objections to Confirmation of a Plan. Objections to Confirmation of a Plan are governed by Bankruptcy Rule 9014 and the local rules of the Bankruptcy Court.

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

#### **A. Liquidation Under Chapter 7**

The Debtors believe that the Plan affords Holders of Claims the potential for the greatest realization from the Debtors’ Estates and, therefore, is in the best interests of such Holders. If the Plan is not confirmed, however, one possible alternative is a liquidation of the Debtors under chapter 7. As discussed in Section XIII of this Disclosure Statement, the Debtors have analyzed whether a liquidation of its Assets by a chapter 7 trustee, who is unfamiliar with the Debtors, their business and the industry, would result in a higher return to the creditors of the Estates than an orderly liquidation by the Debtors. The Debtors believe that liquidation of their Estates in chapter 7 would result in substantial diminution in the value to be realized by holders of Claims because:

- any successor chapter 7 trustee will not have relevant knowledge of the Debtors necessary to maximize the proceeds of the Debtors’ Assets, including certain Causes of Action;
- substantial additional administrative expenses will be incurred by a chapter 7 trustee that retains new attorneys, accountants, appraisers and other professionals who are unfamiliar with the Chapter 11 Cases and who will also have to learn about the Debtors and their business;
- the satisfaction of the Secured Claims of the Prepetition Lender and the DIP Lender, which are secured by Liens on substantially all the Debtors’ assets and believed to greatly exceed the value of those assets, would leave nothing for

distribution to Holders of Unsecured Claims and other remaining Claims against the Debtors; and

- it would result in a substantial delay in distributions.

In contrast, the Plan is based on negotiated treatments for the Secured Claims of the Prepetition Lender and the DIP Lender, and up to \$1 million for distribution to the Holders of Allowed Class 5 Unsecured Claims. Based on the Proofs of Claim filed by the Bar Date, the Debtors estimate that holders of Allowed Claims in Class 5 may receive payment in full of their Allowed General Unsecured Claims. In a Chapter 7, the Debtors estimated that there would be no payment on account of any Allowed General Unsecured Claims. Accordingly, the Debtors believe that the Plan provides a substantially greater return to Holders of Claims than would a liquidation by a chapter 7 trustee who is unfamiliar with these Chapter 11 Cases, the Debtors and the relevant industry.

#### **B. Alternative Plan or Reorganization/Liquidation**

If the Plan is not confirmed, the Debtors (or, if the Debtors' exclusive period to file a plan of reorganization were to expire or be otherwise terminated, any other party in interest) could attempt to file a different plan. Such a plan could involve a reorganization or orderly liquidation of the Debtors' assets, but would need to provide for the satisfaction of the Secured Claims of both the Prepetition Lender and the DIP Lender, which are substantial, and may not provide for any distribution to the Holders of Unsecured Creditors. Moreover, the filing of a competing plan would constitute a default under the DIP Facility that could lead to the termination of the Debtors' access to necessary funding to complete these cases. With respect to an alternative plan, the Debtors have explored numerous alternatives in connection with the formulation and development of the Plan. The Debtors believe that the Plan, as described herein, enables their respective holders of Claims and Interests to realize the most value under the circumstances.

### **XIV. CERTAIN FACTORS TO BE CONSIDERED PRIOR TO VOTING**

#### **A. Certain Bankruptcy Considerations**

1. Undue Delay in Confirmation May Significantly Disrupt the Operations of the Debtors.

The impact that a continued prolonging of the Chapter 11 Cases may have on operations of the Debtors cannot be accurately predicted or quantified. Since the filing of the Chapter 11 Cases, the Debtors have suffered certain disruptions in operations.

2. The Continuation of the Chapter 11 Cases, Particularly if the Plan is Not Approved or Confirmed in the Time Frame Currently Contemplated, Could Further Adversely Affect the Debtors' Operations and Relationships With the Debtors' Customers, Vendors, and Employees.

If confirmation and consummation do not occur expeditiously, the Chapter 11 Cases could result in, among other things, increased costs, professional fees, and similar expenses. Prolonged Chapter 11 Cases may also make it more difficult to retain and attract management

and other key personnel, and would require senior management to spend a significant amount of time and effort dealing with the Debtors' financial reorganization instead of focusing on the operation of the Debtors' businesses. In addition, the Chapter 11 Cases may impede development of the Property, including, among other things, the access to water, the sale of lots to homebuilders, completion of a sanitary sewage and re-use system, completion of a gas line, final platting and completion of the streets and entrance to the Property.

3. The Debtors May Not be Able to Obtain Confirmation or Consummation

The Debtors cannot ensure that they will receive the requisite acceptances to confirm the Plan. Even if the Debtors receive the requisite acceptances, the Debtors cannot ensure that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or Interest holder might challenge the adequacy of the Disclosure Statement or the solicitation procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. As previously discussed, § 1129 sets forth the requirements for confirmation of a plan of reorganization and requires, among other things: a finding by a bankruptcy court that the plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; confirmation is not likely to be followed by a liquidation or a need for further financial reorganization; and the value of distributions to non-accepting holders of Claims and interests within a particular class under the plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Debtors believe that the Plan complies with § 1129.

4. Confirmation and Consummation are also Subject to Certain Conditions Described in Article X of this Disclosure Statement.

If the Plan is not confirmed, it is unclear what distributions holders of Allowed Claims or Interests ultimately would receive. If a feasible plan is not confirmed, it is possible that the Debtors would have to liquidate their assets, in which case, as set forth in the liquidation analysis, it is likely that holders of Claims and Interests would receive substantially less favorable treatment than they would receive under the Plan.

5. Parties in Interest May Object to the Debtors' Classification of Claims.

Section 1122 provides that a plan of reorganization may place a class or an interest in a particular class only if such Claim or interest is substantially similar to the other Claims or interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there is no assurance that the Bankruptcy Court will necessarily hold that the Claims classification scheme complies with the Bankruptcy Code.

6. The Debtors May Object to the Amount, or the Secured or Priority Status, of a Claim and Procedures for Contingent and Unliquidated Claims.

The Debtors reserve the right to object to the amount, or the secured<sup>7</sup> or priority status, of any Claim or Interest. The estimates set forth in the Disclosure Statement cannot be relied on by any creditor or equity holder whose Claim or Interest is subject to an objection. Any such holder of a Claim or Interest may not receive its specified share of the estimated distributions described in the Disclosure Statement. Moreover, notwithstanding any language in any holder's proof of Claim or otherwise, the holder of a contingent or unliquidated Claim shall not be entitled to receive or recover any amount in excess of the amount stated in the holder's proof of Claim, if any, as of the Distribution Record Date, or if the proof of Claim provides no monetary value of such holders' Claim on the Distribution Record Date, then the amount the Debtors elect to withhold on account of such Claim.

## **B. Business Risks**

### **1. Risks and Uncertainties Associated with the Chapter 11 Cases**

Although the Debtors believe that the Chapter 11 Cases, commenced in order to implement the orderly liquidation of the Debtors through a sale of the Property in accordance with § 363 and applicable state law, will not be materially disruptive to their business operations, the Debtors cannot be certain that this will be the case. The Plan is designed to minimize the length of the bankruptcy proceeding; however, it is impossible to predict with certainty the amount of time that the Debtors may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed.

Even if the Plan is confirmed on a timely basis, for the duration of the Chapter 11 Cases, the Debtors' ability to execute their business strategy will be subject to the risks and uncertainties associated with bankruptcy. These risks include:

- the Debtors' ability to obtain approval of the Bankruptcy Court with respect to motions filed in the Chapter 11 Cases from time to time;
- the Debtors' ability to maintain contracts that are critical to their operations; and
- the Debtors' ability to obtain Creditor, Interest Holder and Bankruptcy Court approval for, and then to consummate, the Plan and emerge from bankruptcy.

The Debtors will also be subject to risks and uncertainties with respect to the actions and decisions of the Creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Debtors' restructuring.

These risks and uncertainties could affect the Debtors' business in various ways. For example, negative events or publicity associated with the Chapter 11 Cases could adversely affect the Debtors' operations and financial condition. In addition, pursuant to the Bankruptcy Code, the Debtors need approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit their ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the

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<sup>7</sup> The Plan only preserves the Liens of Putnam, CTWM, Bulldog, and the Liens securing any Real Property Tax Claims. No other alleged Lien is preserved under the Plan.



Chapter 11 Cases, the Debtors cannot predict or quantify the ultimate impact that events occurring during the reorganization process will have on their business, financial condition and results of operations.

## 2. Risks and Uncertainties Associated with Economic Conditions

The residential housing market in Texas, particularly in suburban areas, has been robust and demand has been high. A material change in interest rates for residential mortgage loans, the residential lending market, or the economy in general could affect the Debtors' businesses.

## **XV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain federal income tax consequences of the Plan to the Debtors and holders of Claims and Interests that are individual citizens or residents of the United States or corporations that are created or organized in or under the laws of the United States or any political subdivision thereof. The analysis contained herein is based upon the Internal Revenue Code of 1986, as amended (the "*Tax Code*"), the Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rulings and pronouncements of the Internal Revenue Service ("*IRS*") as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated hereafter could alter or modify the analysis and conclusions set forth below. Any such changes or interpretations may be retroactive and could affect significantly the federal income tax consequences discussed below. This summary does not address the federal income tax consequences to any holders of Claims or Interests that will either be satisfied in full under the Plan or will receive no recovery under the Plan. Finally, this summary does not address foreign, state or local tax law, 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 taxpayers who are not United States domestic corporations or citizens or residents of the United States, S corporations, banks, mutual funds, insurance companies, financial institutions, regulated investment companies, broker-dealers, small business investment companies, persons that hold Claims or Interests as part of a straddle or conversion transaction and tax-exempt organizations).

Due to the complexity of the transactions described herein and in the Plan, the lack of applicable legal precedent and the possibility of changes in law, differences in the nature of the Claims, differences in the Claimants' methods of accounting (including Claimants within the same class) and the potential for disputes as to legal and factual matters, the tax consequences described herein are subject to significant uncertainties. No rulings or determinations by the IRS have been obtained or sought by the Debtors with respect to the Plan and no opinion of counsel has been obtained with respect to the tax aspects of the Plan.

**THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE**

**ANY 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 ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE OR LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Federal Income Tax Consequences to Creditors**

The federal income tax consequences of the Plan to a Creditor will depend upon several factors, including but not limited to: (i) whether the Creditor's Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Creditor in exchange for the Claim; (iii) whether the Creditor is a resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above); (iv) whether the Creditor has taken a bad debt deduction or worthless security deduction with respect to his Claim; and (v) whether the Creditor receives Distributions under the Plan in more than one taxable year. **CREDITORS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT OF THEIR RESPECTIVE CLAIMS UNDER THE PLAN.**

**B. Federal Income Tax Consequences to Interest Holders**

Holders of Class 9 Interests will receive no distribution under the Plan and each such holder should recognize a capital loss to the extent of such holder's tax basis in the Interests held. Such capital loss should be long-term capital loss if the Interest was held by the holder for more than one year. **INTEREST HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT OF THEIR INTERESTS UNDER THE PLAN.**

**C. Federal Income Tax Consequences to Debtors**

Generally, a taxpayer recognizes cancellation of indebtedness ("**COD**") income upon satisfaction of its outstanding indebtedness for less than its adjusted issue price. The amount of COD income is, in general, the excess of (i) the adjusted issue price of the indebtedness satisfied, over (ii) the issue price of any new indebtedness issued by the taxpayer, the amount of Cash and the fair market value of any other consideration (including stock of the taxpayer) given in exchange for the indebtedness satisfied.

However, COD income is not included in gross income to a Debtor if the discharge occurs in a Title 11 case or the discharge occurs when the Debtor is insolvent (except with respect to certain discharged intercompany debt that is treated as both income and an offsetting loss to the group). Rather the Debtor generally must, after determining its tax for the taxable year of discharge, reduce its net operating losses ("**NOL(s)**") and any capital loss carryovers first and then, as of the first day of the next taxable year, reduce the tax basis of its assets by the amount of COD income excluded from gross income by this exception.

**D. Withholding and Reporting**

The Debtors will withhold all amounts required by law to be withheld from payments to Claimants and holders of Interests. In addition, such holders may be required to provide certain tax information to the Debtors as a condition of receiving Distributions under the Plan.

**E. Importance of Obtaining Professional Tax Assistance**

The foregoing is intended to be a summary only and not a substitute for consultation with a tax professional. The federal, state, local and foreign tax consequences of the Plan are complex and, in some respects, uncertain. Such consequences may also vary based upon 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 its own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan.

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN OF THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY RESPECTS, UNCERTAIN. THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND, AS SUCH, DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR CREDITOR OR HOLDER OF INTERESTS IN THE DEBTORS. ALL CREDITORS AND HOLDERS OF INTERESTS IN THE DEBTORS ARE STRONGLY URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE PLAN THAT ARE RELEVANT TO THEIR PARTICULAR CIRCUMSTANCES.**

**XVI. MISCELLANEOUS PROVISIONS**

**A. Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**B. Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. § 1930(a), as determined by the Bankruptcy Court at a hearing pursuant to § 1128, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

**C. Reservation of Rights**

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

**D. Successors and Assigns**

The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each entity.


**XVII. RECOMMENDATION AND CONCLUSION**

The Debtors and Putnam recommend the Plan because it provides for greater distributions to the holders of Claims and Interests than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation could result in extensive delays and increased administrative expenses resulting in smaller distributions to the holders of Claims and Interests. **Accordingly, the Debtors and Putnam recommend that Holders of Claims and Interests entitled to vote on the Plan support confirmation and vote to accept the Plan.**

Dated: July 30, 2015  
San Antonio, Texas

Respectfully submitted,

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