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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:
REXFORD PROPERTIES LLC, a
California limited liability company,
Debtor.

Case No 1:15-bk-12116-MB
Chapter 11

**DISCLOSURE STATEMENT FOR
PLAN OF REORGANIZATION OF
REXFORD PROPERTIES LLC
DATED FEBRUARY 29, 2016**

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ARTICLE I

INTRODUCTION AND EXECUTIVE SUMMARY OF THE PLAN

Rexford Properties LLC, a California limited liability company (“Rexford” or “Debtor”), the debtor and debtor-in-possession in the above-captioned case, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on June 16, 2015 (the “Petition Date”), commencing this chapter 11 case (this “Bankruptcy Case”). This Bankruptcy Case is pending in the United States Bankruptcy Court for the Central District of California, San Fernando Valley Division, the Honorable Martin Barash presiding. Since the Petition Date, the Debtor has managed its affairs as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

The Debtor is the proponent of the concurrently filed Plan of Reorganization (the “Plan”)¹ for the purpose of reorganizing its financial affairs under the provisions of the Bankruptcy Code.

THE DOCUMENT THAT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE PLAN. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS TO THESE DOCUMENTS IN THEIR ENTIRETY.

Following is an executive summary of the Plan, which is not intended to replace a careful review of the terms of the Plan, this Disclosure Statement, or any documents filed in support of or in connection with the Plan and Disclosure Statement.

The Plan is a reorganizing plan. The Plan provides for the Debtor to continue operating its business post-petition under a new equity structure, with existing equity in the Debtor cancelled and replaced by new equity. The new equity will be given 55% to a party or parties, referred to as the New Value Funder, who provide the New Value Contribution. The remaining 45% of new equity will be issued pro rata to the holders of Large Unsecured Claims, which means essentially

¹ Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan. The Plan is the legally operative document regarding the treatment of Claims and Interests and the terms and conditions of Debtor’s reorganization. Accordingly, to the extent that there is any inconsistency between the terms contained in this Disclosure Statement and those contained in the Plan, the terms of the Plan shall govern.

1 general unsecured claims over \$100,000. However, the New Value Funder retains the ability not
2 to make the New Value Contribution by so electing in writing 14 days prior to the initial hearing
3 on Plan confirmation, in which case 100% of the new equity in the Reorganized Debtor will be
4 distributed to holders of Allowed Large Unsecured Claims. Large Unsecured Claims also have
5 the option to take 10% of their Allowed Claim in Cash instead of the new interests. Note that for
6 any Large Unsecured Claims that are Disputed on the Effective Date, which will likely include the
7 claim of United States Fidelity & Guaranty Company (“USF&G”), the claimant’s equity interests
8 will be held in escrow until the Claim in question is no longer Disputed.

9 The Plan provides for payment in full of unclassified claims – Administrative Claims and
10 Priority Tax Claims – on the Effective Date of the Plan.

11 The Plan provides that the DIP Facility Claim held by the DIP Lender will ride through the
12 bankruptcy case and be governed post-confirmation by the terms of the DIP Loan Documents,
13 with the Reorganized Debtor liable thereunder to the same extent that the Debtor is on the
14 Effective Date. In other words, the DIP Lender retains all of its liens, claims, and rights under the
15 DIP Loan Documents, and the Debtor does not need to repay the DIP Facility Claim on the
16 Effective Date of the Plan.

17 Secured Claims are classified in Class 1 and provides that the Reorganized Debtor shall
18 choose from one of five alternate methods of treatment including abandonment of the collateral,
19 immediate cash payments, reinstatement, deferred cash payments, or provision of the indubitable
20 equivalent of the creditor’s Secured Claim. The Debtor does not believe that there are any
21 Allowed Secured Claims.

22 The Plan classifies Priority Non-Tax Claims in Class 2 and generally provides that they are
23 to be paid in full on the Effective Date.

24 The Plan includes three classes of unsecured, non-priority claims which are divided by
25 their amount. First among these is Class 3, which consists of Convenience Claims. Convenience
26 Claims are unsecured claims \$2,500 and under, which are paid in full on the Effective Date of the
27 Plan.

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1 Next are General Unsecured Claims in Class 4, which consists of unsecured, non-priority
2 claims over \$2,500 in amount but less than \$100,000. These claimants will be paid in full over
3 time as follows: 50% will be paid on the first Plan Distribution Date following the Effective Date,
4 then 25% each will be paid on the succeeding two Plan Distribution Dates, which occur on a
5 quarterly basis. Note that Class 4 General Unsecured Claims may also elect to be treated as Class
6 Convenience Claims and receive a Cash payment of up to \$2,500.00 on the Effective Date, but
7 must waive any amount of their Claim in excess of \$2,500.00 as part of that election.

8 Class 5 consists of Large Unsecured Claims, which consists of unsecured, non-priority
9 Claims in the amount of \$100,000 or more. As described above, Allowed Large Unsecured
10 Claims, which includes the Claim of USF&G, will receive their pro rata share of 45% of the new
11 interests in the Reorganized Debtor if the New Value Contribution is made, or their pro rata share
12 of 100% of the new interests in the Reorganized Debtor if the New Value Contribution is not
13 made. Holders of Allowed Large Unsecured Claims may also opt to receive Cash equal to 10% of
14 their Allowed Claim instead of receiving new interests in the Reorganized Debtor.

15 Class 6 consists of Interests in the Debtor, which are cancelled.

16 Classes 1, 3, 4, and 5 are impaired and are entitled to vote on the Plan. Class 2 is
17 unimpaired and not entitled to vote because it is conclusively deemed to accept the Plan. Class 6
18 is impaired, but since it receives nothing under the Plan, it is conclusively deemed to reject the
19 Plan and is therefore not entitled to vote.

20 This Disclosure Statement sets forth the assumptions underlying the Plan, describes the
21 process that the Court will follow when determining whether to confirm the Plan, and describes
22 how the Plan will be implemented if it is confirmed by the Bankruptcy Court. Bankruptcy Code
23 section 1125 requires that a disclosure statement contain “adequate information” concerning a plan
24 of reorganization. *See* 11 U.S.C. § 1125(b).

25 **THE COURT HAS NOT YET APPROVED THIS DISCLOSURE STATEMENT AS**
26 **CONTAINING “ADEQUATE INFORMATION” OR CONFIRMED THE PLAN**
27 **DESCRIBED IN THIS DISCLOSURE STATEMENT. THEREFORE, THE TERMS OF**
28 **THE PLAN ARE NOT YET BINDING ON ANYONE. IF THE COURT APPROVES THIS**

1 **DISCLOSURE STATEMENT AND CONFIRMS THE PLAN, AND THE EFFECTIVE**
2 **DATE OCCURS, THEN THE PLAN WILL BE BINDING ON DEBTOR AND ON ALL**
3 **CREDITORS AND INTEREST HOLDERS IN THIS BANKRUPTCY CASE.**

4 The Debtor believes that the Plan is appropriate and in the best interests of Creditors and
5 the Estate. In view of the foregoing, the Debtor strongly recommends that all eligible Creditors
6 entitled to vote on the Plan cast their ballots to accept the Plan.

7 **ARTICLE II**

8 **GENERAL DISCLAIMERS AND INFORMATION**

9 Please carefully read this document and the Exhibits to this document. These documents
10 explain who may object to confirmation of the Plan, who is entitled to vote to accept or reject the
11 Plan, and the treatment that Creditors of Debtor and holders of Interests can expect to receive if
12 the Court confirms the Plan. This Disclosure Statement also describes Debtor's history, the events
13 precipitating the Case, the effect of Plan confirmation, and some of the issues the Court may
14 consider in deciding whether to confirm the Plan. The statements and information contained in
15 the Plan and Disclosure Statement, however, do not constitute financial or legal advice. You
16 therefore should consult your own advisors if you have questions about the impact of the Plan on
17 your Claims or Interests.

18 The financial information used to prepare the Plan and Disclosure Statement was prepared
19 by the Debtor (and its professionals) from information in the Debtor's books and records and is
20 the sole responsibility of the Debtor. The Debtor's professionals prepared the Plan and Disclosure
21 Statement at the direction of, and with the review, input and assistance of, the Debtor's
22 management.

23 Upon approval of this Disclosure Statement as containing "adequate information," the
24 statements and information concerning the Debtor that are set forth herein will constitute the only
25 statements and information that the Bankruptcy Court will have approved for the purpose of
26 soliciting votes to accept or reject the Plan. Therefore, statements and/or information that are
27 inconsistent with anything contained in this Disclosure Statement are not authorized unless
28 otherwise ordered by the Bankruptcy Court.

1 **3.1 Allowed Claims and Interests**

2 Subject to the exceptions explained below, under the Bankruptcy Code, a claim or interest
3 is generally allowed only if a proof of the claim or interest is properly filed before the Bar Date for
4 doing so, and either no party in interest has objected to or the court has entered an order allowing
5 the claim or interest. Under certain circumstances provided in the Bankruptcy Code, a creditor
6 may have an allowed claim even if a proof of claim was not filed and the bar date for filing a proof
7 of claim has passed. For example, a claim may be deemed allowed if the claim is listed on
8 Debtor's schedules of assets and liabilities filed with the court, is not scheduled as disputed,
9 contingent, or unliquidated, and no party in interest has objected, or the court has entered an order
10 allowing the claim or interest after such an objection was filed.

11 A Creditor's Claim must be an Allowed Claim, or must be Allowed for purposes of voting,
12 for the Creditor holding such Claim to have the right to vote on the Plan. Generally, for voting
13 purposes only, a Claim is deemed Allowed to the extent that: (1) either (a) a proof of Claim was
14 timely Filed, or (b) a proof of Claim was deemed timely Filed either under Bankruptcy Rule
15 3003(b)(1)-(2) or by a Final Order; and (2) (a) the Claim is not a Disputed Claim, or (b) the Claim
16 is Allowed either by a Final Order or under the Plan.

17 Under the Plan, a Creditor whose Claim is not an Allowed Claim nevertheless may be
18 entitled to vote to accept or reject the Plan if the Creditor has timely filed a proof of Claim that is
19 not the subject of an objection filed before the Confirmation Hearing or a Court order disallowing
20 the Claim entered before the Confirmation Hearing. An entity whose Claim is subject to an
21 objection is not eligible to vote on the Plan unless and until (1) that objection is resolved in such
22 entity's favor, provided, however, in the case of an objection which only seeks to reduce the
23 amount of such entity's Claim, the entity shall nonetheless still be eligible to vote the reduced
24 amount of its Claim or (2) after notice and a hearing under Bankruptcy Rule 3018(a), the
25 Bankruptcy Court temporarily allows the entity's Claim or portion thereof for the purpose of
26 voting to accept or reject the Plan. Any entity that seeks temporary allowance of its Claim for
27 voting purposes must promptly take steps necessary to arrange for an appropriate and timely
28 hearing with the Court.

1 **3.2 Impaired Claims and Interests**

2 Generally speaking, under the Bankruptcy Code, a class of claims or interests is impaired
3 if the plan alters the legal, equitable, or contractual rights of the members of the class, even if the
4 alteration is beneficial to the creditors or interest holders. Section 3.1 of the Plan and Article VI of
5 this Disclosure Statement, among other things, describe the Classes of Claims and Interests that
6 the Debtor believes to be impaired (or unimpaired) under the Plan.

7 **ARTICLE IV**

8 **VOTES NECESSARY TO CONFIRM THE PLAN**

9 Impaired Claims or Interests are placed in classes under the Plan, and it is the class that
10 must accept the Plan by the requisite majorities. Section 4.1 of the Plan and Article VI of this
11 Disclosure Statement summarize the classification of all Claims and Interests under the Plan.
12 There also are some types of Claims that are unclassified because the Bankruptcy Code requires
13 that they be treated in a certain way. These Claims are considered unimpaired, and their holders
14 cannot vote.

15 A bankruptcy court may confirm a plan if at least one class of impaired claims has voted to
16 accept that plan (without counting the votes of any insiders whose claims are classified within that
17 class) and if certain statutory requirements are met both as to non-consenting members within a
18 consenting class and as to rejecting classes. A class of claims has accepted the plan when at least a
19 majority in number and at least two-thirds in amount of the allowed claims actually voting in that
20 class vote to accept the plan. A class of interests has accepted the plan when at least two-thirds in
21 amount of the allowed interests actually voting in that class vote to accept the plan.

22 Even if a plan receives the requisite number of votes to confirm it, the plan will not
23 become binding unless and until, among other things, the Bankruptcy Court makes an independent
24 determination that confirmation is appropriate. This determination will be the subject of the
25 Confirmation Hearing. Also, as described in Article V below, even if all Classes do not vote in
26 favor of the Plan, the Plan may nonetheless be confirmed if the dissenting Classes are treated in a
27 manner prescribed by the Bankruptcy Code.

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ARTICLE V

CRAMDOWN TREATMENT OF NON-CONSENTING CLASSES

The Plan may be confirmed, even if all Classes do not consent to the proposed treatment of their claims under the Plan, if the dissenting Classes are treated in the manner prescribed by the Bankruptcy Code. The process by which a plan is confirmed, notwithstanding the existence of a dissenting class, is commonly referred to as “cramdown.” The Bankruptcy Code allows dissenting classes to be crammed down if the plan does not “discriminate unfairly” and is “fair and equitable.” The Bankruptcy Code does not define unfair discrimination, but it does set forth certain minimum requirements for “fair and equitable” treatment. A plan is fair and equitable to holders of secured claims if the holders are to receive property equal in value to the allowed amount of the secured claims. For a class of unsecured claims, a plan is fair and equitable if the claims in that class receive value equal to the allowed amount of the claims or, if the unsecured claims are not fully paid, no claim or interest that is junior to such class receives or retains anything under the plan. Accordingly, if a class of unsecured claims rejects a plan under which a junior class (*e.g.*, a class of interest holders) will receive or retain any property under the plan, the plan cannot be confirmed (with certain possible exceptions not relevant to the Plan) unless the plan provides that the class of unsecured creditors receives value equal to the allowed amount of the claims in that class.

ARTICLE VI

VOTING INSTRUCTIONS

Classes 1, 3, 4, and 5 are impaired and the holders of Claims in those Classes are entitled to vote on the Plan. Class 2 is not impaired and the holders of Claims in Class 2 are not entitled to vote on the Plan and Class 2 is deemed to accept the Plan. Class 6 Interests receive nothing under the Plan and are therefore deemed to reject the Plan. Administrative Expenses, Priority Tax Claims, and the DIP Facility Claims are not classified under the Plan and the holders thereof are not entitled to vote.

Any party that disputes the Debtor’s characterization of its Claim as unimpaired may request a finding of impairment from the Bankruptcy Court to obtain the right to vote, but should

1 file and serve a motion requesting such a determination and arrange for such a motion to be heard
2 by the Court *prior* to the hearing on confirmation of the Plan.

3 In voting to accept or reject the Plan, please use only the Ballot (if any) sent to you with
4 this Disclosure Statement, and please carefully read the voting instructions on the Ballot for an
5 explanation of the applicable voting procedures and deadlines. If you have received this
6 Disclosure Statement without a Ballot, the Debtor believes that you are: (i) a holder of a Claim or
7 Interest that is unimpaired by the Plan and that you, therefore, are not entitled to vote on the Plan;
8 or (ii) otherwise not the holder of a Claim or Interest that is entitled to vote to accept or reject the
9 Plan.

10 If you nevertheless believe that you are entitled to vote on the Plan, you must file and serve
11 a motion requesting a determination that you are entitled to vote on the Plan and arrange for such
12 motion to be heard by the Court prior to the Confirmation Hearing. Before doing so, however,
13 you should first confirm that the absence of a Ballot was not inadvertent by contacting Debtor's
14 counsel at the following address:

15 Sheppard, Mullin, Richter & Hampton LLP
16 333 South Hope Street, 43rd Floor
17 Los Angeles, CA 90071
18 Attn: Shadi Mahmoudi, Esq.
19 Facsimile: (213) 620-1398
20 email: smahmoudi@sheppardmullin.com

21 If you wish to vote to accept or reject the Plan, your Ballot must be received by Debtor's
22 counsel, at the address, email address or facsimile number listed in the paragraph immediately
23 above **no later than 5:00 p.m. (California time), on _____, 2016**. If your Ballot is
24 not timely received by Debtor's counsel, it will not be counted. Ballots must be provided to
25 Debtor's counsel by mail, email, overnight delivery, messenger, or facsimile.

26 Any interested party desiring further information with respect to the Plan, or seeking
27 additional copies of this document, should contact Debtor's counsel. All pleadings and other
28 papers filed in this Case may be inspected during regular court hours at the United States
Bankruptcy Court, 21041 Burbank Boulevard, Woodland Hills, CA 91367.

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ARTICLE VII

OBJECTING TO PLAN CONFIRMATION

A Confirmation Hearing has been scheduled for _____, 2016, at _____ p.m., at the United States Bankruptcy Court, 21041 Burbank Boulevard, Woodland Hills, CA 91367, Courtroom 303, the Hon. Martin Barash presiding, to determine whether the Bankruptcy Court will confirm the Plan. Any party that objects to the confirmation of the Plan must file and serve its objection and evidence in support of its objection, if appropriate, by _____, 2016. Any objection to confirmation of the Plan must be in writing, specify the name and address of the party objecting, set forth the specific grounds for the objection, and be accompanied by the evidence the objecting party intends to present in support of its objection. Such objection and evidence in support thereof must be served on Debtor’s counsel, the U.S. Trustee and parties that have requested special notice in the Bankruptcy Case. Any affiant or declarant with respect to an affidavit or declaration filed in support of an objection to Plan confirmation must be present at the Confirmation Hearing for cross-examination without the necessity of a subpoena. Failure to properly and timely file an opposition to Plan confirmation or appear at the Confirmation Hearing may be deemed consent to the Plan’s confirmation.

ARTICLE VIII

DESCRIPTION OF DEBTOR, ITS BUSINESS, THE EVENTS PRECIPITATING THE FILING, AND SIGNIFICANT EVENTS IN THE BANKRUPTCY CASE

8.1 Description of the Debtor and its Business.

The Debtor is a California limited liability company that owns the Island Waterpark (the “Waterpark”) in Fresno, California. The Waterpark is a family friendly water-themed amusement park featuring a variety of rides and attractions including a wave park, a lazy river, a three story water slide, and other attractions for both children and adults. The Waterpark is located on a plot of land off Highway 99 and Shaw Avenue in Fresno. The Debtor owns the underlying land and the improvements and other assets of the Waterpark, and utilizes the assistance of third party manager / independent contractor to operate the Waterpark. Under the agreement with the independent contractor, the operational debts are directly owed by the Debtor, and the Waterpark’s

1 employees are all employees of the Debtor directly. The Waterpark is seasonal, opening each year
2 from late May to early September. The Debtor employs five full-time, year-round employees, as
3 well as approximately 300 seasonal, part-time employees that actually operate the Waterpark
4 during the months that it is open. The Debtor's gross revenues for 2014 (the last year for which a
5 tax return was filed) were approximately \$3,693,033. The Debtor currently operates on a cash
6 flow positive basis, without any secured debt related to its operations, though as described below it
7 has obtained financing in the bankruptcy case to pay for certain extraordinary expenses, most
8 notable of which is the replacement of a major attraction that was shut down by state regulators at
9 the end of the 2015 operating season.

10 The Debtor was formed in 1995 by Richard Ehrlich. In the years following, the Debtor
11 acquired land in Fresno, California and developed the Waterpark on the Fresno property at a cost
12 of about \$11.3 million. Based on a feasibility study commissioned in 1997, the Debtor's business
13 plan was to lease the park once constructed under a long term lease and recoup its investment
14 through the rent received. Pursuant to that plan, on June 1, 1998, the Debtor entered into a 20 year
15 lease with Lee Investment LLC ("Lee"), a company also formed by Richard Ehrlich but with
16 different ownership. Under the lease, Lee operated the Waterpark with a rental amount owed to
17 the Debtor of \$1.2 million per year. The Waterpark, with Lee as its operator, opened its doors for
18 the first time in August 1998.

19 Lee was the initial operator of the Waterpark on its opening in 1998. During the period
20 from its opening in 1998 through 2007, the Waterpark struggled. It did not achieve the amount of
21 revenues that had been forecast at the outset of the project due to lower than expected sales, and as
22 a result Lee was unable to satisfy its rent obligations to the Debtor. The unpaid rent was shown on
23 the books and records of both the Debtor and Lee, and amounted to over \$10 million.

24 In 2007, the Debtor terminated the lease with Lee for non-payment of rent and contracted
25 with a new third party operator / independent contractor to operate the Waterpark. Under that
26 contract, the employees of the Waterpark are the employees of the Debtor, and the debts of the
27 Waterpark are debts owed by the Debtor. With the exception of 2008, when the Waterpark
28 suffered an operating loss of approximately \$179,125, the Waterpark made modest profits from

1 2007 through 2014, due in no small part to the fact that it did not have a \$1.2 million rent
2 obligation.

3 **8.2 Management and Ownership of the Debtor.**

4 Lisa Ehrlich, daughter of founder Richard Ehrlich, is the managing member of the Debtor,
5 and has served in that role since Richard's death in 2009. Lisa Ehrlich owns 38% of the
6 membership interests in the Debtor. The remaining membership interests are owned by The
7 Marcia Ehrlich Survivor's Trust (30.5%), the Richard Ehrlich Q-Tip Trust (30.5%), and The 1979
8 Ehrlich Investment Trust (1.0%). The Richard Ehrlich Q-Tip Trust is an irrevocable trust with
9 Marcia Ehrlich as the life beneficiary and Lisa Ehrlich and brother, Stephen as remainder
10 beneficiaries. The Marcia Ehrlich Survivor's Trust is a revocable trust with Marcia Ehrlich as the
11 life beneficiary and Lisa and Stephen Ehrlich as remainder beneficiaries. The 1979 Ehrlich
12 Investment Trust is an irrevocable trust managed by a third party trustee, Donald Crasnick.
13 Neither Lisa Ehrlich nor anyone in her family has a role in the management of The 1979 Ehrlich
14 Investment Trust. Lisa and Stephen Ehrlich are income beneficiaries of The 1979 Ehrlich
15 Investment Trust.

16 **8.3 Debt Structure.**

17 The Debtor obtained a series of loans from companies related to the Ehrlich family to
18 construct the Waterpark, but all were unsecured. The only secured loan that the Debtor has is the
19 post-petition debtor-in-possession loan (the "DIP Loan") approved by the Court in an Order
20 entered December 31, 2015. The lender under the DIP Loan is The 1979 Ehrlich Investment
21 Trust, and the total maximum principal balance of the DIP Loan is \$2 million. The DIP Loan is
22 structured as a revolving line of credit that may be drawn upon with the submission of satisfactory
23 draw requests evidencing expenses related to construction and repairs as set forth on a budget, or
24 evidencing administrative expenses in the Bankruptcy Case.

25 **8.4 Events Leading to Chapter 11 Filing.**

26 The bankruptcy filing was necessitated by a recent alter ego judgment issued in Los
27 Angeles Superior Court against the Debtor, finding the Debtor to be the alter ego of Lee, and
28

1 therefore liable for an approximately \$1.5 million judgment issued against Lee on August 5, 2009
2 in federal court in Los Angeles (the “USF&G Judgment”).

3 The original judgment arose from an accident that occurred at the Waterpark in 1999 in
4 which an employee was injured while installing fiberglass panels into a nearly-completed water
5 slide. United States Fidelity & Guaranty Company (“USF&G”) paid the employee’s worker’s
6 compensation claim, and then sued Lee in federal court in Fresno to rescind the worker’s
7 compensation policy. USF&G also asserted alter ego claims against the Debtor and the Estate of
8 Richard Ehrlich. The alter ego claims were, however, reserved and never litigated in the federal
9 case. USF&G ultimately prevailed in the federal case against Lee, obtaining a judgment against
10 Lee on August 5, 2009 in the amount of \$1,425,693. Two awards of cost in 2009 and 2010
11 increased the principal amount of the USF&G Judgment to \$1,517,201. USF&G also asserts
12 entitlement to interest which raises the amount of the USF&G Judgment to nearly \$2 million.

13 USF&G has pursued a scorched earth litigation policy, vigorously pursuing the Debtor,
14 Lisa Ehrlich, Lee, and the Estate of Richard Ehrlich (collectively, the “State Court Defendants”)
15 for various claims and theories. USF&G filed a complaint in Los Angeles Superior Court in
16 January 2013 seeking to find the Debtor, Lisa Ehrlich, and the other State Court Defendants to be
17 the alter ego of Lee, and alleging claims of conspiracy and fraudulent conveyance. Following a
18 trial held in March 2015, and proceedings on March 19, 2015, USF&G lost on all of its claims
19 except that the Court orally stated that it tentatively found the Debtor to be the alter ego of Lee,
20 and therefore liable for the USF&G Judgment.

21 Following subsequent proceedings in Superior Court, the Superior Court on June 16, 2015
22 stated that it would issue an opinion and judgment in approximately 35 days confirming its
23 tentative ruling. The Superior Court also issued a temporary protective order the same day which
24 prevented the Debtor from transferring the land underlying the Waterpark pending judgment.

25 The Debtor then commenced this bankruptcy filing in order to prevent the irreparable harm
26 that would occur to the business of the Waterpark if USF&G began to execute and levy upon
27 either the temporary protective order or an eventual judgment.

28

1 **8.5 Significant Events in the Bankruptcy Case.**

2 8.5.1 First Day Motions

3 The Debtor filed certain motions in the first days of the Bankruptcy Case, known as “first
4 day motions,” which ensured the smooth transition of the Debtor into bankruptcy. First and
5 foremost, the Debtor filed a motion seeking permission to pay its employees in the ordinary
6 course, to the extent that they possessed claims that were at or under the \$12,475 statutory cap for
7 priority employee claims under Section 507(a)(4) of the Bankruptcy Code. This first day motion
8 was granted and the Debtor was able to pay employees in the normal course, preserving morale
9 and retaining the roughly 300 person workforce necessary to operate the Waterpark. This was
10 crucial as the Bankruptcy Case was filed near the beginning of the operating season.

11 The Debtor also filed a first day motion seeking Bankruptcy Court approval to continue
12 honoring prepaid tickets and season passes, which could technically be construed to represent
13 prepetition claims. The ability to honor these passes was critical to the Debtor’s ability to
14 maintain goodwill with its customers and ensure that its business did not suffer a significant
15 disruption as a result of the bankruptcy filing. The motion was granted.

16 In the same motion, the Debtor also sought Court approval to continue its credit card
17 processing arrangements in the ordinary course of business, both as to the system that accepts
18 credit cards at the Waterpark, and the system that processes online credit card sales. With credit
19 cards being the lifeblood of the Debtor’s business, this was absolutely critical. Again, the Court
20 approved the motion and the Debtor’s ability to accept credit cards continued undisturbed by the
21 bankruptcy.

22 In addition, in the first weeks of the case the Debtor filed a motion under Section 366 of
23 the Bankruptcy Code to maintain its critical utility service during the Bankruptcy Case, including
24 the utilities providing water and power to the Waterpark. To do this, the Debtor proposed a
25 system where utilities were paid one month in advance based on usage totals from the same month
26 the year prior. The Bankruptcy Court approved this mechanism and the Debtor was able to ensure
27 that it received uninterrupted utility service during the Bankruptcy Case.

28

1 8.5.2 Motion to Assume Third Party Management Agreement

2 Approximately one month after the petition date, the Debtor filed a motion to assume the
3 existing management agreement with the third party manager of the Waterpark, Amber Watson.
4 Ms. Watson has significant experience in the industry, and has served as the Waterpark's day
5 day manager for roughly the past four years. Her continued involvement with the Waterpark was
6 crucial to the success of the Waterpark going forward. The motion was approved and Ms. Watson
7 has continued to serve to this day as the Waterpark's general manager.

8 8.5.3 USF&G Stay Relief Motion

9 Approximately one week after the bankruptcy case was filed, USF&G filed a motion for
10 relief from stay to permit the proceedings in state court to continue. The Debtor was not opposed
11 to this so long as the Debtor also received relief from stay to appeal the alter ego judgment once
12 entered. The Court entered a consensual order granting relief from stay to both USF&G and the
13 Debtor with respect to the state court litigation. The alter ego judgment was then entered against
14 the Debtor, and the Debtor has timely appealed it.

15 8.5.4 Key Largo Lagoon Shutdown

16 Shortly prior to the end of the operating season in 2015, inspectors from Cal/OSHA
17 inspected the attractions at the Waterpark and shut down one of the key attractions: the Kids' Key
18 Largo Lagoon. The Debtor then began the process of searching for a contractor to construct a
19 replacement for the ride, which is the main attraction for the Waterpark's key demographic of
20 families with children ten years old and younger. After interviewing multiple options, the Debtor
21 finally selected WhiteWater West Industries Ltd., an unrelated company from Canada well known
22 in the industry, to construct a replacement structure. The Debtor typically operates off of its own
23 cash flow, and does not have any pre-petition secured debt facility. Thus the Debtor needed to
24 obtain financing in order to fund the construction of the replacement structure, associated site
25 improvements, and other repair and maintenance tasks, all of which amounted to approximately
26 \$1.6 million. The Debtor secured financing from The 1979 Ehrlich Investment Trust, a pre-
27 petition lender and 1% equity holder of the Debtor. The Debtor sought Court approval for the
28

1 proposed financing, which consisted of a \$2 million revolving credit facility with interest only
2 payments until maturity, which is approximately three years after the Effective Date of the Plan.

3 An initial hearing was held on the motion on shortened time, since the Debtor needed
4 approval immediately to enter into the contract with WhiteWater and pay the associated deposit if
5 it wanted the structure to be completed by the time the Waterpark's operating season began in late
6 May. At the initial hearing, the contract with WhiteWater was approved. At a further hearing on
7 December 18, 2015, the Court approved the proposed financing from The 1979 Ehrlich
8 Investment Trust over the objection of USF&G. The order approving the debtor-in-possession
9 financing was approved on December 31, 2015.

10 **ARTICLE IX**

11 **DESCRIPTION OF LIABILITIES (INCLUDING CLAIMS AND PROCEDURES FOR** 12 **OBJECTING TO CLAIMS), EQUITY INTERESTS IN DEBTOR, AND ASSETS OF** 13 **DEBTOR (INCLUDING AVOIDANCE AND OTHER ACTIONS)**

14 **9.1 Description of Liabilities**

15 9.1.1 Schedules

16 The Debtor's Schedules of Assets and Liabilities filed on July 21, 2015 (Dkt. No. 72)
17 listed Priority Tax and Non-Tax Claims in the aggregate amount of \$317,539, and unsecured non-
18 priority claims in the amount of \$12,565,901.

19 9.1.2 Filed Claims

20 The claims bar date passed on September 9, 2015. Taking into account the claims filed
21 and scheduled, and taking into account the fact that a filed claim supersedes a scheduled claim
22 pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(4), the total asserted Priority Tax and
23 Priority Non-Tax Claims are approximately \$108,308 in the aggregate, and the total asserted
24 unsecured non-priority tax claims are approximately \$19,180,834.91. These figures do not
25 account for the effect of any claim objections, which have yet to be filed.

26 9.1.3 Claims Objections

27 The Debtor and any party in interest may file objections to Claims in this case up until the
28 Effective Date, pursuant to Section 502(a) of the Bankruptcy Code. After the Effective Date, the

1 Plan provides that only the Debtor may object to Claims, and it may only do so up until the Claim
2 Objection Deadline.

3 **9.2 Description of Equity Interests in Debtor**

4 As described in the filings attached to the petition, the four individuals and entities own the
5 equity interests in the Debtor, which are classified in the Plan as Class 6 Interests: Lisa Ehrlich
6 (38.0%), The Marcia Ehrlich Survivor's Trust (30.5%), The Richard Ehrlich Q-Tip Trust (30.5%),
7 and The 1979 Ehrlich Investment Trust (1.0%). The equity comes in the form of membership
8 interests in the Debtor, which is a California limited liability company. As described in greater
9 detail below, all of the Class 6 Interests in the Debtor will be cancelled on the Effective Date.

10 **9.3 Description of the Debtor's Assets**

11 On the Schedules, Debtor listed personal property assets in the amount of \$1,107,620, and
12 an unknown amount for real property assets. The real property assets – the Waterpark and the
13 underlying real property in Fresno, CA – are the core assets of the Debtor's estate. However, the
14 value of the Waterpark was unknown at the time this Bankruptcy Case was filed. The Debtor
15 received an appraisal for the land underlying the Waterpark in 2009, reflecting a land-only value
16 of \$4 million. However, on the Petition Date, the Debtor had no current appraisal or other
17 valuation of either the land underlying the Waterpark or the business operations of the Waterpark.

18 The Debtor is in the process of obtaining an updated appraisal of its real property assets
19 and will file the appraisal with the Court as part of a supplemental disclosure prior to the hearing
20 on this Disclosure Statement.

21 **9.4 Retained Causes of Action and/or Defenses**

22 Under Section 6.2.3 of the Plan, all Causes of Action and/or Defenses not expressly
23 waived, relinquished, released, compromised, or settled in the Plan or any Final Order will be
24 retained by the Debtor and will vest in the Reorganized Debtor on the Effective Date. The
25 reservation set forth in this section shall include, without limitation, a reservation by the Debtor
26 and the Reorganized Debtor of any Causes of Action and/or Defenses not specifically identified in
27 the Plan or Disclosure Statement, or of which the Debtor may presently be unaware, or which may
28 arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or

1 facts or circumstances that may change or be different from those the Debtor now believe to exist
2 and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata,
3 collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or
4 otherwise), or laches will apply to such Causes of Action and/or Defenses upon or after the
5 Confirmation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order,
6 except where such claims and/or defenses have been expressly waived, relinquished, released,
7 compromised, or settled in the Plan or a Final Order. Following the Effective Date, the
8 Reorganized Debtor may assert, compromise or dispose of the Causes of Action and/or Defenses
9 without further notice to Creditors or authorization of the Bankruptcy Court.

10 For the avoidance of doubt, the Causes of Action and/or Defenses retained by the Debtor
11 pursuant to Section 6.2.3 of the Plan include, without limitation, all rights, arguments, and
12 defenses of the Debtor to the USF&G Litigation Claim, including any that have been or could be
13 raised in this Bankruptcy Case or in the appeal of the USF&G Judgment.

14 **ARTICLE X**

15 **SUMMARY OF MATERIAL PLAN PROVISIONS**

16 The following is a narrative description of certain provisions of the Plan. The following
17 summary of the Plan is qualified in its entirety by the actual terms of the plan. In the event of any
18 conflict, the terms of the Plan will control over any summary set forth in this Disclosure
19 Statement.

20 **10.1 Designation of Classes and Treatment of Claims and Interests Generally**

21 The Bankruptcy Code requires that a chapter 11 plan divide the different claims against,
22 and equity interests in, a debtor into separate classes based upon their legal nature. Claims of a
23 substantially similar legal nature are usually classified together, as are equity interests of a
24 substantially similar legal nature. The Bankruptcy Code does not require the classification of
25 administrative claims and certain priority claims, and they are typically denominated “unclassified
26 claims.”

27 Under Bankruptcy Code section 1124, a class of claims is “impaired” unless the plan
28 (i) leaves unaltered the legal, equitable, and contractual rights of the holders of claims in the class;

1 or (ii) cures all defaults (other than those arising from Debtor’s insolvency, the commencement of
2 the case, or nonperformance of a nonmonetary obligation) that occurred before or after the
3 commencement of the case, reinstates the maturity of the claims in the class, compensates the
4 holders for their actual damages incurred as a result of their reasonable reliance on any
5 acceleration rights, and does not otherwise alter their legal, equitable, and contractual rights.
6 Except for any right to accelerate Debtor’s obligations, the holder of an unimpaired claim will be
7 placed in the position it would have been if the case had not been commenced.

8 A chapter 11 plan must designate each separate class of claims and equity interests either
9 as “impaired” (affected by the plan) or “unimpaired” (unaffected by the plan). If a class of claims
10 is “impaired” under the Bankruptcy Code, the holders of claims in that class are entitled to vote on
11 the plan (unless the plan provides for no distribution to the class, in which case the class is deemed
12 to reject the plan), and to receive, under the plan, property with a value at least equal to the value
13 that the holder would receive if Debtor were liquidated under chapter 7 of the Bankruptcy Code.
14 If a class of claims is unimpaired, the holders of claims in that class are deemed to accept the plan.

15 **10.2 Summary of Classification and Treatment of Claims and Interests Under the Plan**

16 This Section describes the classification of Claims and Interests under the Plan – except for
17 Administrative Expenses and Priority Tax Claims, which are not classified – for all purposes,
18 including voting, confirmation and distributions under the Plan. A Claim or Interest is classified
19 in a particular Class only to the extent that the Claim or Interest falls within the Class description.
20 In addition, this Section describes the treatment of Claims and Interests under the Plan. The
21 following table (a) estimates Claim amounts, based on Debtor’s Schedules and proofs of Claim
22 filed in Debtor’s Case, and (b) summarizes the classification and treatment of Claims and Interests
23 under the Plan, to the extent Allowed, subject to the more specific provisions of the Plan and the
24 following more detailed sections of this Disclosure Statement.

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26
27
28

1	CLASS	DESCRIPTION ²	TREATMENT	ESTIMATED DISTRIBUTION PERCENTAGE	IMPAIRED/ UNIMPAIRED	VOTING STATUS
2	Unclassified Claims	U.S. Trustee Fees – Estimated Amount: \$0.00	Paid in full in Cash on the Effective Date	100%	Unimpaired	Not Entitled to Vote
3		Administrative Claims (Other than Professional Fees) – Estimated Amount: \$53,521.68	Paid in full in Cash on the later of the Effective Date, a date fixed by the Bankruptcy Court, the 15 th business day after the Claim is allowed, or the date the Claim is otherwise due according to its terms	100%	Unimpaired	Not Entitled to Vote
4		Professional Fees – Estimated Amount: \$750,000	Paid in full in Cash upon Court approval	100%	Unimpaired	Not Entitled to Vote
5		Priority Tax Claims - Estimated Amount: \$22,788.32	Either paid in Cash installments equal to the Allowed amount of the claim, or otherwise treated per agreement with Claimant	100%	Unimpaired	Not Entitled to Vote
6		DIP Facility Claim: up to \$2,000,000	Rides through bankruptcy, not paid on Effective Date, becomes obligation of Reorganized Debtor	N/A	Unimpaired	Not Entitled to Vote
7	Class 1	Other Secured Claims – Estimated Amount: \$0.00	Alternative forms of treatment as specified in Section 4.1 of the Plan	100%	Impaired	Entitled to Vote
8	Class 2	Priority Non-Tax Claims – Estimated Amount: \$10,621.00	Paid in Cash on the Effective Date or the date the Claim becomes Allowed, or other treatment per agreement with Claimant	100%	Unimpaired	Not Entitled to Vote
9	Class 3	Convenience Claims – Estimated Amount: \$26,601.15	Paid in full in Cash on the Effective Date, but only up to \$2,500	100%	Impaired ³	Entitled to Vote
10	Class 4	General Unsecured Claims – Estimated	Paid in full in three installments: 50% on the first Plan Distribution Date	100%	Impaired	Entitled to Vote

24 _____
 25 ² The estimated amounts included in this chart are estimates based on Debtor’s Schedules and the
 26 proofs of Claims filed in Debtor’s Case. All Claims, unless previously Allowed, remain subject to
 27 dispute and disallowance. The inclusion of the estimated amounts herein does not constitute an
 28 admission as to the validity of the Claims or the amounts thereof.

27 ³ Class 3 is impaired under the Plan because Claimants in Class 4 can elect into Class 3 under the
 28 Plan and be paid in full on the Effective Date, but only up to \$2,500 (i.e., Class 4 claimants
 electing into Class 3 would waive their Claims to the extent they exceed \$2,500).

CLASS	DESCRIPTION ²	TREATMENT	ESTIMATED DISTRIBUTION PERCENTAGE	IMPAIRED/ UNIMPAIRED	VOTING STATUS
	Amount: \$342,959.92	following the Effective Date, and 25% each on the two succeeding Plan Distribution Dates, which occur quarterly. Can also elect into Class 3 treatment, but have to waive claim in excess of \$2,500 if election is made.			
Class 5	Large Unsecured Claims – Estimated Amount: \$18,811,273.84	Claimants receive either their pro rata share of 45% of the New Interests in the Reorganized Debtor, or they may elect to receive 10% of their Allowed Claim in Cash on the Effective Date.	10%, if election to receive Cash is made. Otherwise, N/A	Impaired	Entitled to Vote
Class 6	Interests	Cancelled, receive nothing under the Plan	0%	Impaired	Not Entitled to Vote; Deemed to Reject

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR DISCLOSURE STATEMENT, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM OR INTEREST THAT IS NOT ALLOWED.

The treatment in the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any Liens) that each Holder of an Allowed Claim or an Allowed Interest may have in or against the Debtor, the Estate, or their respective properties. This treatment supersedes and replaces any agreements or rights those entities may have in or against Debtor, the Estate, or their respective properties.

10.3 Allowance and Treatment of Unclassified Claims.

As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims against the Debtor are not classified for purposes of voting on, or receiving Distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead treated separately in accordance with Article 2 of the Plan and in accordance with the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

1 10.3.1 Administrative Claims.

2 (a) Administrative Claim Bar Date.

3 All requests for payment of Administrative Claims against the Debtor (except with respect
4 to (i) Professional Fees, which shall instead be subject to the Professional Fees Bar Date, and
5 (ii) DIP Facility Claim) must be filed by the Administrative Claim Bar Date or the holders thereof
6 shall be forever barred from asserting such Administrative Claims against the Debtor or from
7 sharing in any Distribution under the Plan.

8 (b) Payment of Allowed Administrative Claims.

9 (i) *Generally.*

10 Each Allowed Administrative Claim against the Debtor (except for (i) Professional Fees,
11 which shall be treated as set forth in section 2.4 of the Plan, and (ii) the DIP Facility Claim, which
12 shall receive the treatment provided for in section 2.5 of the Plan) shall, unless the holder of such
13 Claim shall have agreed to different treatment of such Claim, be paid in full in Cash on the latest
14 of: (i) the Effective Date, or as soon thereafter as practicable; (ii) such date as may be fixed by the
15 Bankruptcy Court; (iii) the fifteen (15th) Business Day after such Claim is Allowed; and (iv) the
16 date such Claim is otherwise due according to its terms.

17 (ii) *Ordinary Course.*

18 Notwithstanding anything in section 2.2.1 of the Plan to the contrary, holders of
19 Administrative Claims against the Debtor based on liabilities incurred in the ordinary course of the
20 Debtor's business following the Petition Date shall not be required to comply with the
21 Administrative Claims Bar Date, *provided, however*, that such holders have otherwise submitted
22 an invoice, billing statement or other evidence of indebtedness to the Debtor in the ordinary course
23 of business, and *provided, further*, that the Debtor and/or Reorganized Debtor, to the extent of any
24 disagreement with any such invoice, billing statement or other evidence of indebtedness, may file
25 with the Bankruptcy Court an objection to such invoice, billing statement or other evidence of
26 indebtedness as though the claimant thereunder had filed an Administrative Claim with the
27 Bankruptcy Court.

28

1 The Debtor currently estimates that there are roughly \$53,521.68 in Administrative Claims
2 that will be paid on the Effective Date of the Plan per the above, all of which are Claims having
3 administrative priority under Section 503(b)(9) of the Bankruptcy Code.

4 10.3.2 Allowed Priority Tax Claims.

5 Provided that a Priority Tax Claim has not been paid prior to the Effective Date, on, or as
6 soon as reasonably practicable after, each Plan Distribution Date immediately following the date a
7 Priority Tax Claim becomes an Allowed Priority Tax Claim, a holder of an Allowed Priority Tax
8 Claim shall receive, in full and final satisfaction, settlement and release of and in exchange for
9 such Allowed Priority Tax Claim, (a) regular installment payments, in Cash, on each Plan
10 Distribution Date, of a total value, as of the Effective Date, equal to the Allowed amount of such
11 Priority Tax Claim, plus interest on the unpaid portion of such Allowed Priority Tax Claim from
12 the assessment date through the date of repayment, at the rate of interest determined under
13 applicable nonbankruptcy law as of the calendar month in which Confirmation occurs, provided
14 that full repayment of such Allowed Priority Tax Claim shall in no event be later than the date that
15 is five (5) years after the Petition Date, or (b) such other treatment as to which such holder and the
16 Debtor shall have agreed upon in writing; provided, however, that the Reorganized Debtor shall
17 have the right to pay any Allowed Priority Tax Claim, or any remaining balance of any Allowed
18 Priority Tax Claim, in full at any time on or after the Effective Date without premium or penalty.
19 The Debtor currently estimates that there are \$22,788.32 in Priority Tax Claims, though the
20 amount may change depending on the timing of Plan confirmation.

21 10.3.3 Claims for Professional Fees.

22 Each Professional seeking an award by the Bankruptcy Court of Professional
23 Fees: (a) must file its final application for allowance of compensation for services rendered and
24 reimbursement of expenses incurred through the Effective Date on or before the Professional Fees
25 Bar Date; and (b) if the Bankruptcy Court grants such an award, the Reorganized Debtor shall pay
26 each such Professional such amounts as are Allowed by the Bankruptcy Court as soon as
27 practicable following the first day after such order has been entered by the Bankruptcy Court and
28 is not stayed. All final applications for allowance and disbursement of Professional Fees must be

1 in compliance with all of the terms and provisions of any applicable order of the Bankruptcy
2 Court, including the Confirmation Order.

3 The Debtor currently estimates that Professional Fees through the Effective Date will be
4 roughly \$750,000 in total for all Professionals. However, this estimate is highly dependent on
5 relatively little litigation over Plan confirmation. Depending on how much litigation over the Plan
6 occurs, the actual number may be significantly lower or significantly higher.

7 10.3.4 DIP Facility Claim.

8 The DIP Facility Claim shall be Allowed in the amount to which the DIP Lender is entitled
9 under the DIP Loan Documents. On the Effective Date, except to the extent that the holder of the
10 DIP Facility Claim and the Debtor agree to a different treatment, the DIP Facility Claim shall be
11 satisfied as follows: (i) the DIP Facility shall ride through the Chapter 11 Case and continue
12 following the Effective Date and shall be governed pursuant to the terms of the DIP Order and the
13 DIP Loan Documents, (ii) the Debtor's obligations under the DIP Facility shall become those of
14 the Reorganized Debtor, (iii) the DIP Lender shall retain all its Liens and rights as provided under
15 the DIP Order and DIP Loan Documents, and (iv) the DIP Loan Documents shall be deemed
16 amended to the extent necessary to affect the treatment provided for herein.

17 **10.4 Allowance and Treatment of Classified Claims.**

18 10.4.1 Class 1 – Other Secured Claims.

19 (a) Impairment and Voting.

20 Each Allowed Class 1 Other Secured Claim shall be treated as a separate sub-Class for
21 purposes of the Plan. Holders of Allowed Class 1 Other Secured Claims are impaired and entitled
22 to vote on the Plan.

23 (b) Estimate of Claims in Class 1.

24 The Debtor does not believe that there are any Other Unsecured Claims, and so estimates
25 the total Claims in this Class to be \$0.

26 (c) Treatment.

27 On, or as soon as reasonably practicable after, the later of (x) the Effective Date and (y) the
28 date the Other Secured Claim becomes Allowed, except to the extent that the holder of an Allowed

1 Other Secured Claim and the Reorganized Debtor agree to a different treatment, the holder of an
2 Allowed Other Secured Claim shall receive, at the election of the Reorganized Debtor in its sole
3 and absolute discretion, one of the following treatments in full satisfaction, discharge, exchange
4 and release of its Allowed Other Secured Claim: (a) the Reorganized Debtor shall abandon the
5 collateral securing such Allowed Other Secured Claim to the holder in full satisfaction and release
6 of such Claim; (b) the Distribution Agent shall pay the holder of the Allowed Other Secured
7 Claim Cash equal to the amount of its Allowed Other Secured Claim, or such lesser amount to
8 which the holder of such Claim shall agree, in full satisfaction and release of such Claim; (c) the
9 Reorganized Debtor shall reinstate the Allowed Other Secured Claim in compliance with section
10 1124(2) of the Bankruptcy Code and shall not otherwise alter the legal, equitable or contractual
11 rights to which such Claim entitles the holder; (d) the Distribution Agent shall pay to the holder of
12 the Allowed Other Secured Claim, on account of such Claim, deferred Cash payments pursuant to
13 section 1129(b)(2)(A)(i)(II) of the Bankruptcy Code, totaling at least the Allowed amount of such
14 Claim, of a present value, as of the Effective Date, of at least the value of such holder's interest in
15 the Debtor's interest in property that serves as collateral for such Claim or (e) the Reorganized
16 Debtor shall deliver to the holder of the Allowed Other Secured Claim the indubitable equivalent
17 of such Claim. Each holder of an Allowed Other Secured Claim shall retain its Lien until it has
18 received treatment as provided hereinabove, unless such Lien is otherwise invalidated by the
19 Bankruptcy Court.

20 10.4.2 Class 2 – Priority Non-Tax Claims.

21 (a) Impairment and Voting.

22 Class 2 is unimpaired under the Plan. Holders of Allowed Priority Non-Tax Claims are
23 deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and holders of Class 2
24 Claims are not entitled to vote on the Plan.

25 (b) Estimate of Claims in Class 2.

26 The Debtor currently estimates the Claims in this Class to be \$10,621.00.
27
28

1 (c) Treatment.

2 Provided that an Allowed Priority Non-Tax Claim has not been paid prior to the Effective
3 Date, on, or as soon as reasonably practicable after, the later of (x) the Effective Date and (y) the
4 date a Priority Non-Tax Claim becomes Allowed, each holder of such Allowed Priority Non-Tax
5 Claim shall receive, in full and final satisfaction, settlement and release of and in exchange for
6 such Allowed Non-Tax Priority Claim, (a) Cash equal to the unpaid portion of such Allowed Non-
7 Tax Priority Claim, or (b) such other treatment as to which such holder and the Debtor shall have
8 agreed upon in writing.

9 10.4.3 Class 3 – Convenience Claims.

10 (a) Impairment and Voting.

11 Class 3 is impaired under the Plan and holders of Class 3 Claims are entitled to vote on the
12 Plan. The reason that Class 3 Claims are classified as impaired is that holders of Claims in 4 may
13 elect into Class 3 and receive a maximum payment of \$2,500 on the Effective Date. Those Class 4
14 Claims electing into Class 3 would be impaired because they would be receiving less than the full
15 amount of their Claim.

16 (b) Estimate of Claims in Class 3.

17 The Debtor currently estimates the Claims in this Class to be \$26,601.15, though the
18 number may increase if Claimants in Class 4 elect into Class 3, as described in the following
19 section.

20 (c) Treatment.

21 Each holder of an Allowed Convenience Claim shall be paid 100% of its Allowed Class 3
22 Claim on or promptly after the Effective Date or the date such Convenience Claim is Allowed.

23 10.4.4 Class 4 –General Unsecured Claims.

24 (a) Impairment and Voting.

25 Class 4 is impaired under the Plan. Holders of General Unsecured Claims are entitled to
26 vote on the Plan.

27 (b) Estimate of Claims in Class 4.

28 The Debtor currently estimates there to be \$342,959.92 in Class 4 Claims.

1 (c) Treatment.

2 (i) *Payment in Installments.*

3 On, or as soon as reasonably practicable after, the later of (x) the Effective Date and (y) the
4 date a General Unsecured Claim becomes Allowed, the holder of an Allowed General Unsecured
5 Claim shall receive (unless such holder selects the treatment for Class 3 Convenience Claims), in
6 full and final satisfaction, settlement and release of and in exchange for such Allowed General
7 Unsecured Claim: (a) an amount in Cash equal to such holder's Allowed General Unsecured
8 Claim to be paid as follows: (i) 50% of such holder's Allowed General Unsecured Claim on the
9 first Plan Distribution Date following the Effective Date, or as soon as practicable thereafter;
10 (ii) 25% of such holder's Allowed General Unsecured Claim on the second Plan Distribution Date
11 following the Effective Date, or as soon as practicable thereafter; and (iii) 25% of such holder's
12 Allowed General Unsecured Claim on the third Plan Distribution Date, or a soon as practicable
13 thereafter, or (b) such other treatment as to which such holder and the Reorganized Debtor shall
14 have agreed upon in writing.

15 (ii) *Alternative Treatment.*

16 Rather than receiving the foregoing treatment under Class 4, each holder of an Allowed
17 General Unsecured Claim may elect to receive instead the treatment of Class 3 Convenience
18 Claims by irrevocably selecting the treatment of Class 3 on such holder's Ballot and delivering the
19 Ballot by the Voting Deadline pursuant to the instructions applicable to voting on the Plan. If a
20 holder of an Allowed General Unsecured Claim in Class 4 elects to be treated as a Class 3
21 Convenience Claim, then the Claim in question will be converted to a Class 3 Claim, and the
22 amount of the Claim in excess of \$2,500 will be waived and disallowed.

23 10.4.5 Class 5 – Large Unsecured Claims.

24 (a) Impairment and Voting.

25 Class 5 is impaired under the Plan. Holders of Large Unsecured Claims are entitled to vote
26 on the Plan.

27 (b) Estimate of Claims in Class 5.

28 The Debtor currently estimates there to be \$18,811,273.84 in Class 5 Claims, as follows:

Claimant	Amount
The 1979 Ehrlich Investment Trust	\$9,738,190.02
Rexford Development Corporation	\$6,141,103.91
Lurline Gardens, LP	\$651,141.39
The Lee Investment Company	\$2,280,838.52
United States Fidelity & Guaranty Company	\$1,940,656.12
Total:	\$18,811,273.84

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As with all estimates of Claims in this Disclosure Statement, this is an estimate only. It does not prevent the Debtor from objecting to any Claim on any basis, or constitute an admission as to the allowability of any particular Claim.

(c) Treatment.

(i) *Receipt of New Interests.*

On, or as soon as reasonably practicable after, the later of (x) the Effective Date and (y) the date a Class 5 Claim becomes Allowed, and unless such holder and the Reorganized Debtor agree otherwise in writing, the holder of such Allowed Class 5 Claim shall receive, in full and final satisfaction, settlement, release and discharge of and in exchange for such Class 5 Claim, a pro rata share (calculated by dividing the amount of such holder's Allowed Class 5 Claim by the sum of the amount of the Allowed Class 5 Claims) of 45% of the New Interests in the Reorganized Debtor. However, if as described in Section 6.1 below, the New Value Funder elects not to make the New Value Contribution, then the holders of Allowed Class 5 Claims shall receive pro rata shares of 100% of the New Interests in the Reorganized Debtor.

To the extent a Class 5 Claim is a Disputed Claim and the holder of such Claim has elected to receive New Interests, the New Interests allocated to the holder of such Claim on account thereof shall be held by the Distribution Agent pending the resolution of such Disputed Claim. The New Interests allocated to the holder of such Disputed Claim shall be distributed to the holder of such Claim upon such time when such Disputed Claim becomes an Allowed Claim.

To the extent a Class 5 Claim is disallowed by a Final Order and the holder of such Claim has elected to receive New Interests, the New Interests allocated to such holder on account of such

1 Claim shall be distributed as follows. If the New Value Contribution has been made, the new
2 Interests that were held by the Distribution Agent on account of such Class 5 Claim shall be
3 distributed to the New Value Funder. If the New Value Contribution has not been made, then the
4 New Interests that were held by the Distribution Agent on account of such Class 5 Claim shall be
5 cancelled and the pro rata share of the New Interests of each holder of an Allowed Class 5 Claim
6 shall be adjusted accordingly to take into account the reduction in the total number of New
7 Interests resulting from the cancellation of the New Interests set aside on account of the
8 disallowed Claim.

9 If all of the Class 5 Claims are Disputed Claims on the Effective Date, and neither the New
10 Value Funder nor any overbidder makes the New Value Contribution pursuant to Section 6.1 of
11 the Plan, then the current managing member of the Debtor shall continue to manage the Debtor
12 post-Effective Date until such time as a sufficient number of Class 5 Claims become Allowed such
13 that more than 50% of New Interests contemplated to be issued are issued to the holders of
14 Allowed Class 5 Claims. During the interim post-Effective Date period during which the current
15 managing member remains in place: (i) the Reorganized Debtor will purchase director's and
16 officer's liability insurance covering the current managing member's activities in form and
17 substance similar to that maintained currently; (ii) the Reorganized Debtor shall pay the current
18 managing member a fee for her services at a market rate; (iii) the Reorganized Debtor shall
19 indemnify and defend the current managing member for any losses, claims, or demands made
20 against or suffered by the current managing member arising out of her management of the
21 Reorganized Debtor; and (iv) the managing member will receive the benefit of the exculpation
22 provisions in Section 9.6 of the Plan.

23 Further, during the time when a Class 5 Claim is Disputed and its New Interests are held
24 by the Distribution Agent, the New Value Funder shall be deemed to be the owner of said New
25 Interests for tax purposes.

26 The holder of the Class 5 Claim, to the extent such holder elects to receive New Interests,
27 shall not be deemed a member of the Reorganized Debtor, and shall not have any membership rights
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1 with respect thereto, until and unless such time as the Class 5 Claim becomes an Allowed Claim
2 and such New Interests are released in accordance with the Plan.

3 For the avoidance of doubt, the USF&G Litigation Claim is a Disputed Claim, which is
4 subject to a pending appeal of the USF&G Judgment. The USF&G Litigation Claim shall become
5 Allowed if at the conclusion of all appeals of the USF&G Judgment, the USF&G Judgment is
6 affirmed pursuant to a Final Order. To the extent the USF&G Litigation Claim becomes an
7 Allowed Claim, the USF&G Litigation Claim shall be Allowed in the amount of the USF&G
8 Judgment as of the Petition Date of \$1,940,656.12.

9 (ii) *Alternative Treatment*

10 Rather than receiving the foregoing treatment under Class 5, each holder of an Allowed
11 Large Unsecured Claim may elect to receive instead Cash in the amount of 10% of its Allowed
12 Class 5 Large Unsecured Claim on the Effective Date of the Plan in full and final satisfaction of
13 such Claim. In order to be effective, such election must be reflected in writing on the ballot cast
14 on account of each Allowed Large Unsecured Claim that seeks to make such election.

15 10.4.6 Class 6 – Interests.

16 (a) Impairment and Voting.

17 Class 6 is impaired under the Plan. Holders of Interests in the Debtor shall not receive any
18 Distributions on account of such Interests and are deemed to reject the Plan under section 1126(g)
19 of the Bankruptcy Code and holders of Interests are not entitled to vote on the Plan.

20 (b) Treatment.

21 All Interests in the Debtor shall be cancelled, annulled and extinguished as of the Effective
22 Date. The holders of Interests in the Debtor shall not receive or retain anything under the Plan on
23 account of such Interests. However, if one or more holders of Interests in the Debtor make the
24 New Value Contribution, then such holders may receive all or a pro rata share of 55% of the New
25 Interests in the Debtor as provided in Section 6.1 of the Plan on account of the New Value
26 Contribution.

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1 **ARTICLE XI**

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

3 **11.1 Assumption.**

4 On the Effective Date, pursuant to section 1123(b)(2) of the Bankruptcy Code, the
5 Reorganized Debtor will assume the executory contracts and unexpired leases of the Debtor
6 that: have been expressly identified in the Plan Supplement for assumption (together with any
7 additions, deletions, modifications or other revisions to such exhibit as may be made by the Debtor
8 prior to the Effective Date), and those that are specified in the Plan. Each executory contract and
9 unexpired lease listed in the Plan Supplement shall include any modifications, amendments and
10 supplements to such agreement, whether or not listed in the Plan Supplement. The Plan
11 Supplement shall identify the amount, if any, the Debtor proposes to pay to satisfy the Assumption
12 Obligations for each executory contract and unexpired lease to be assumed.

13 **11.2 Rejection.**

14 Except as set forth in the Plan, on the Effective Date, pursuant to section 1123(b)(2) of the
15 Bankruptcy Code, the Debtor will reject any and all executory contracts and unexpired leases
16 identified in the Plan Supplement or in the Plan, including, without limitation, any executory
17 contracts and unexpired leases expressly identified for rejection in the Plan Supplement (together
18 with any additions, deletions, modifications or other revisions to such exhibit as may be made
19 prior to the Effective Date). Any Person asserting any Claim for damages arising from the
20 rejection of an executory contract or unexpired lease of the Debtor under the Plan shall file such
21 Claim on or before the Rejection Claim Bar Date, or be forever barred from: (a) asserting such
22 Claim against the Reorganized Debtor, the Debtor or the Estate Assets, and (b) sharing in any
23 Distribution under the Plan.

24 **11.3 Assumption Obligations.**

25 The Reorganized Debtor shall satisfy all Assumption Obligations, if any, by making a
26 Cash payment or as otherwise permitted by section 365(b)(1)(B) of the Bankruptcy Code, equal to
27 the amount specified in the Plan Supplement, unless an objection to the amount identified in the
28 Plan Supplement is filed with the Bankruptcy Court and served on counsel to the Debtor on or

1 prior to the date set by the Bankruptcy Court for filing objections to Confirmation of the Plan and
2 the Bankruptcy Court, after notice and hearing, determines that the Reorganized Debtor is
3 obligated to pay a different amount under section 365 of the Bankruptcy Code, in which case, the
4 Reorganized Debtor shall have the right within ten (10) days after such determination to seek an
5 order of the Bankruptcy Court rejecting such executory contract or unexpired lease. Any Person
6 that fails to object to the Assumption Obligation amount specified in the Plan Supplement on or
7 prior to the date set by the Bankruptcy Court for filing objections to Confirmation of the Plan
8 and/or other subsequent date(s) set by the Bankruptcy Court, as applicable, shall be forever barred
9 from: (a) asserting any other, additional or different amount on account of such obligation against
10 the Reorganized Debtor, the Debtor or the Estate Assets, and (b) sharing in any other, additional or
11 different Distribution under the Plan on account of such obligation.

12 **11.4 Effect of Confirmation Order.**

13 The Confirmation Order shall constitute an order of the Bankruptcy Court approving, as of
14 the Effective Date, the assumption or rejection by the Debtor pursuant to sections 365(a) and
15 1123(b)(2) of the Bankruptcy Code, of all executory contracts and unexpired leases identified
16 under the Plan or Plan Supplement. The contracts and leases identified in the Plan or Plan
17 Supplement will be assumed or rejected, respectively, only to the extent that such contracts or
18 leases constitute pre-petition executory contracts or unexpired leases of the Debtor, and the
19 identification of such agreements does not constitute an admission with respect to the
20 characterization of such agreements or the existence of any unperformed obligations, defaults, or
21 damages thereunder.

22 The Plan does not affect any executory contracts or unexpired leases that: (a) have been
23 assumed, rejected or terminated prior to the Confirmation Date, or (b) are the subject of a pending
24 motion to assume, reject or terminate as of the Confirmation Date.

25 **11.5 Modifications to Plan Supplement.**

26 The Debtor shall have the right, any time prior to the Effective Date, to make additions,
27 deletions, modifications and/or other revisions to the identification of executory contracts and
28 leases to be assumed or rejected by the Debtor; provided, however, that any party to such contract

1 or lease or affected by such action shall be provided notice of such action and an opportunity to
2 object, and if any objection is filed, such action will not be effective until such objection is
3 resolved by Final Order of the Bankruptcy Court.

4 **ARTICLE XII**

5 **MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

6 **12.1 The New Value Contribution.**

7 On the Effective Date, the New Value Funder shall provide the Debtor with the New Value
8 Contribution, which reflects the amount that the Debtor forecasts may be necessary in order to
9 make all payments due on the Effective Date under the Plan and all payments due to Allowed
10 Claims in Classes 3 and 4 under the Plan in a conservative scenario. In exchange for the New
11 Value Contribution, the New Value Funder shall (i) receive 55% of the New Interests in the
12 Reorganized Debtor and (ii) be the managing member of the Reorganized Debtor, provided
13 however, that the New Value Funder may retain a non-member manager to oversee day to day
14 management. The remaining 45% of the New Interests shall issue to be distributed pro rata to the
15 holders of Allowed Class 5 Claims who elected to receive New Interests. As reflected in the
16 definition of New Value Contribution above, the amount of the New Value Contribution is subject
17 to Cash overbid. Any party may, at least seven (7) calendar days prior to the hearing on
18 confirmation of the Plan, submit to counsel for the Debtor a Qualifying Overbid (defined below)
19 for the New Value Contribution. If a Qualifying Overbid for the New Value Contribution is
20 received, then the proposed New Value Funder submitting the baseline bid and the party that
21 submitted the Qualifying Overbidder will participate in an auction at the Plan confirmation
22 hearing as to the amount of the New Value Contribution, which auction shall be presided over by
23 the bankruptcy judge in the Debtor's Bankruptcy Case. In order for an overbid to be deemed to be
24 a "Qualifying Overbid," it must meet all of the following requirements, the satisfaction of which
25 are to be determined by the Debtor, in its discretion:

26 (a) The bid must be submitted via email to Debtor's counsel, Michael Lauter of
27 Sheppard Mullin Richter & Hampton LLP, at mlauter@sheppardmullin.com, by no later than
28 5:00 p.m. Pacific Time on the date that is seven (7) calendar days before the initial hearing on

1 confirmation of the Plan. In the event that the Plan confirmation hearing is continued, the deadline
2 to make an overbid will NOT be continued along with it.

3 (b) The bid must be in writing, signed by an authorized signatory of the overbidder,
4 and must clearly indicate that it is irrevocable.

5 (c) The bid must be an all Cash bid, and must be accompanied by a good faith deposit
6 in the amount of 10% of the overbid price. Such deposit is to be made to the Sheppard Mullin
7 client trust account per wire instructions provided by Debtor's counsel upon request. In the event
8 that the overbidder is the winning bidder at the subsequent auction, the deposit will be applied to
9 the New Value Contribution made by the overbidder. In the event that the overbidder is not the
10 winning bidder at the subsequent auction, the deposit will be promptly returned to the overbidder.
11 If the overbidder is the successful bidder at the subsequent auction held at the hearing on Plan
12 confirmation, but fails to provide the balance of the overbid price within two (2) business days of
13 the auction, the Debtor shall retain the deposit in compensation for damages suffered by the delay
14 caused by the overbidder's failure to close.

15 (d) The bid must be accompanied by documentation of the overbidder's ability to fund
16 a purchase price equal to 125% of the overbid amount, in form and content reasonably satisfactory
17 to the Debtor, such as a bank account statement reflecting a cash balance in excess of 125% of the
18 overbid price.

19 Notwithstanding the foregoing, if no funding is needed to make payments due on the
20 Effective Date and payments due to Allowed Claims in Classes 3 and 4, then the New Value
21 Funder retains the right to elect not to make the New Value Contribution. If such an election is
22 made, the 55% of the New Interests in the Reorganized Debtor that would have been distributed to
23 the New Value Funder shall instead be distributed pro rata to holders of Allowed Class 5 Claims
24 in the manner described in Section 4.5 of the Plan. The election not to make the New Value
25 Contribution must be made by the New Value Funder not later than fourteen (14) calendar days
26 prior to the initial hearing on confirmation of the Plan, and must be made in a writing filed with
27 the Bankruptcy Court. Absent any such election, the New Value Funder shall be conclusively
28 deemed to have elected to make the New Value Contribution pursuant to the terms set forth above.

1 In addition, in the absence of an election not to make the New Value Contribution, the Debtor
2 shall disclose in a writing filed with the Bankruptcy Court the identity of the part(y)(ies) making
3 the New Value Contribution no later than fourteen (14) calendar days prior to the initial hearing on
4 confirmation of the Plan.

5 **12.2 The Debtor After the Effective Date.**

6 12.2.1 Continued Existence of the Reorganized Debtor.

7 As of the Effective Date, the Reorganized Debtor shall continue to maintain its legal
8 existence for all purposes under the Plan, retaining all the powers of a legal entity under applicable
9 law. If the New Value Contribution is made, then the New Value Funder shall become the
10 managing member of the Reorganized Debtor. If the New Value Contribution is not made by any
11 party, and if enough of the Class 5 Claims are Disputed Claims such that 50% or more of the New
12 Interests are being held by the Distribution Agent on the Effective Date, then as provided in
13 Section 4.5.2(a) of the Plan, the current managing member of the Debtor shall continue to manage
14 the Reorganized Debtor post-Effective Date until such time as a sufficient number of Class 5
15 Claims become Allowed such that more than 50% of New Interests contemplated to be issued are
16 issued to the holders of Allowed Class 5 Claims.

17 12.2.2 Revesting of Estate Assets.

18 Upon the Effective Date, the Reorganized Debtor shall be vested with all right, title and
19 interest in the Estate Assets and such property shall become the property of the Reorganized
20 Debtor free and clear of all Claims, Liens, charges, other encumbrances and Interests, except as set
21 forth in the Plan (including the Liens securing the DIP Facility Claim).

22 12.2.3 Retained Causes of Action and/or Defenses.

23 Unless any Cause of Action and/or Defense is expressly waived, relinquished, released,
24 compromised, or settled in the Plan or any Final Order (including, without limitation, the
25 Confirmation Order), the Debtor and the Reorganized Debtor expressly reserve such Causes of
26 Action and/or Defenses for later adjudication or other use by the Reorganized Debtor. The
27 reservation set forth in this section shall include, without limitation, a reservation by the Debtor
28 and the Reorganized Debtor of any Causes of Action and/or Defenses not specifically identified in

1 the Plan or Disclosure Statement, or of which the Debtor may presently be unaware, or which may
2 arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or
3 facts or circumstances that may change or be different from those the Debtor now believe to exist
4 and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata,
5 collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or
6 otherwise), or laches will apply to such Causes of Action and/or Defenses upon or after the
7 Confirmation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order,
8 except where such claims and/or defenses have been expressly waived, relinquished, released,
9 compromised, or settled in the Plan or a Final Order. Following the Effective Date, the
10 Reorganized Debtor may assert, compromise or dispose of the Causes of Action and/or Defenses
11 without further notice to Creditors or authorization of the Bankruptcy Court.

12 12.2.4 Post-Effective Date Matters.

13 (a) Continued Business of the Reorganized Debtor.

14 From and after the Effective Date, the Reorganized Debtor shall continue to engage in
15 business with the goal of maximizing the value of the Estate Assets and, subject to the Provisions
16 Governing Distributions and Retention of Jurisdiction provisions hereof, the Reorganized Debtor
17 shall continue such business without supervision by the Bankruptcy Court and free of any
18 restrictions under the Bankruptcy Code or the Bankruptcy Rules. The Reorganized Debtor shall
19 be authorized, without limitation, to use and dispose of the Estate Assets, to insure the Estate
20 Assets, to borrow money, to employ and compensate Agents, to reconcile and object to Claims,
21 and, in its capacity as Distribution Agent, to make Distributions to Creditors in accordance with
22 the Plan.

23 (b) Funding of the Reorganized Debtor.

24 Funding for the Reorganized Debtor from and after the Effective Date shall be provided
25 from a combination of Cash on hand, New Value Contribution, proceeds of ongoing operations
26 and, if necessary, post-Effective Date financing.

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1 (c) Management of the Reorganized Debtor.

2 It is anticipated that the Reorganized Debtor's management will be substantially the same
3 as its current management. A list of the Reorganized Debtor's officers, their proposed
4 compensation and other benefits as of the Effective Date will be attached to the Plan Supplement.
5 Each of the manager(s) and officers of the Reorganized Debtor shall serve in accordance with
6 applicable nonbankruptcy law and the Reorganized Debtor's Charter, as the same may be
7 amended from time to time. From and after the Effective Date, the manager(s), directors and
8 officers of the Reorganized Debtor shall be selected and determined in accordance with the
9 provisions of applicable law and the Reorganized Debtor's Charter.

10 (d) Reorganized Debtor's Charter.

11 Upon the Effective Date, and without any further action by the shareholders, directors,
12 officers or manager(s) of the Reorganized Debtor, the Reorganized Debtor's Charter shall be
13 (i) deemed amended (x) to the extent necessary, to incorporate the provisions of the Plan and (y) to
14 prohibit the issuance by the Reorganized Debtor of nonvoting securities to the extent required
15 under section 1123(a)(6) of the Bankruptcy Code; and (ii) subject to further amendment of such
16 Charter as permitted by applicable law.

17 (e) Section 1145 Exemption.

18 Pursuant to section 1145 of the Bankruptcy Code, the issuance and allocation of shares of
19 the New Interests pursuant to the Plan shall be exempt from registration under the Securities Act
20 of 1933 and any state or local law requiring registration for offer or sale of a security.

21 12.2.5 Final Decree.

22 At any time following the Effective Date, the Reorganized Debtor shall be authorized to
23 file a motion for the entry of a final decree closing the Chapter 11 Case pursuant to section 350 of
24 the Bankruptcy Code.

25 **12.3 Distributions.**

26 The Distribution Agent shall administer Claims and make all of the Distributions in respect
27 of Allowed Claims that are contemplated in the Plan. The rules and provisions regarding
28 Distributions are set forth in Article VII of the Plan.

1 **ARTICLE XIII**

2 **EFFECT OF CONFIRMATION OF THE PLAN**

3 **13.1 Binding Effect.**

4 The rights afforded under the Plan and the treatment of all Claims and Interests under the
5 Plan shall be the sole and exclusive remedy on account of such Claims against, and Interests in the
6 Debtor, the Reorganized Debtor and the Estate Assets, including any interest accrued on such
7 Claims from and after the Petition Date or interest which would have accrued but for the
8 commencement of the Chapter 11 Case. The Distributions made pursuant to this Plan shall be in
9 full and final satisfaction, settlement, release and discharge of the Allowed Claims on account of
10 which such Distributions are made. Confirmation of the Plan shall bind and govern the acts of the
11 Reorganized Debtor, and all holders of all Claims against, and Interests in the Debtor, whether or
12 not: (a) a proof of Claim or proof of Interest is filed or deemed filed pursuant to section 501 of the
13 Bankruptcy Code; (b) a Claim or Interest is allowed pursuant to section 502 of the Bankruptcy
14 Code, or (c) the holder of a Claim or Interest has accepted the Plan.

15 **13.2 Property Reverts Free and Clear.**

16 Upon the Effective Date, title to all remaining Estate Assets of the Debtor shall vest in the
17 Reorganized Debtor for the purposes contemplated under the Plan and shall no longer constitute
18 property of the Estate. Except as otherwise provided in the Plan, upon the Effective Date, all
19 Estate Assets shall be free and clear of all Claims and Interests, including Liens, charges or other
20 encumbrances of Creditors of the Debtor (except for the Liens securing the DIP Facility Claim).

21 **13.3 Discharge and Permanent Injunction.**

22 Except as otherwise set forth in the Plan, Confirmation of the Plan shall discharge the
23 Debtor, Estate, Estate Assets and the Reorganized Debtor from all Claims or other debts that arose
24 at any time before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h)
25 or 502(i) of the Bankruptcy Code, whether or not: (a) a proof of claim based on such debt is filed
26 or deemed filed under section 501 of the Bankruptcy Code; (b) a Claim based on such debt is
27 Allowed under section 502 of the Bankruptcy Code; or (c) the holder of a Claim has accepted the
28 Plan. As of the Effective Date, all entities that have held, currently hold or may hold a Claim or

1 other debt or liability that is discharged or any other right that is terminated under the Bankruptcy
2 Code or the Plan are permanently enjoined, to the full extent provided under section 524(a) of the
3 Bankruptcy Code, from “the commencement or continuation of an action, the employment of
4 process, or an act, to collect, recover or offset any such debt as a personal liability” of the Debtor,
5 Estate, Estate Assets or the Reorganized Debtor, except as otherwise set forth in this Plan.
6 Nothing contained in the foregoing discharge shall, to the full extent provided under section
7 524(e) of the Bankruptcy Code, affect the liability of any other entity on, or the property of any
8 other entity for, any debt of the Debtor that is discharged under the Plan.

9 **13.4 Limitation of Liability.**

10 The Debtor, the Reorganized Debtor, and each of their respective Agents shall have all of
11 the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable
12 law.

13 **13.5 Release of the Debtor Released Parties by the Debtor.**

14 As of the Effective Date, for good and valuable consideration, the adequacy of which is
15 hereby confirmed, the Debtor, in its individual capacity and as debtor in possession, and the
16 Reorganized Debtor, will be deemed to have (a) forever released, waived, and discharged all
17 claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and
18 liabilities (other than the rights of the Debtor or the Reorganized Debtor to enforce this Plan and
19 the contracts, instruments, releases, and other agreements or documents delivered hereunder, and
20 liabilities arising after the Effective Date in the ordinary course of business), whether liquidated or
21 unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or
22 unforeseen, existing or hereafter arising, in law, equity, or otherwise that are based in whole or
23 part on any act, omission, condition, transaction, event, or other occurrences (*except* for willful
24 misconduct or gross negligence), taking place or existing on or prior to the Effective Date, in any
25 way directly, indirectly or derivatively arising from or related to the Debtor, the Reorganized
26 Debtor, their respective operations or their securities, any act or omission related to service with or
27 for or on behalf of Debtor, the Chapter 11 Case, the Plan or any act taken pursuant thereto, or the
28 Disclosure Statement (collectively, the “*Released Liabilities*”), and that could have been asserted

1 by or on behalf of the Debtor or its Estate or the Reorganized Debtor, against any of the Debtor
2 Released Parties, and (b) forever covenanted with each of the Debtor Released Parties not to sue,
3 assert any claim or claims against or otherwise seek recovery from any Debtor Released Party,
4 whether based on tort, contract or otherwise in connection with any of the foregoing Released
5 Liabilities.

6 **13.6 Exculpation.**

7 Except as otherwise provided in this Plan, the Debtor, Estate, the Reorganized Debtor, the
8 Debtor Released Parties, and any of the foregoing parties' respective present or former members,
9 officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment
10 bankers, Agents or other Professionals and any of such parties' successors and assigns, solely in
11 their capacities as such, shall not have or incur any liability for any claim, action, proceeding,
12 cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to
13 equitable remedies, right to payment, or Claim, whether known, unknown, reduced to judgment,
14 not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
15 disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or
16 derivatively, in law, equity, or otherwise to one another or to any Claim holder or Interest holder,
17 or any other party in interest, or any of their respective Agents, employees, representatives,
18 advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission
19 originating or occurring on or after the Petition Date through and including the Effective Date in
20 connection with, relating to, or arising out of the Debtor, the Chapter 11 Case, the negotiation and
21 filing of the Plan, the Disclosure Statement or any prior plans of reorganization, the filing of the
22 Chapter 11 Case, the pursuit of Confirmation of the Plan or any prior plans of reorganization, the
23 consummation of the Plan, the administration of the Plan, the issuance of the New Interests, or the
24 property to be liquidated and/or distributed under this Plan, and in all respects shall be entitled to
25 rely reasonably upon the advice of counsel with respect to their duties and responsibilities under
26 the Plan, provided, however, that the foregoing provisions shall have no effect on the liabilities of
27 any Person that resulted from any such act or omission that is determined in a Final Order of the
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1 Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or
2 willful misconduct.

3 **ARTICLE XIV**

4 **BEST INTERESTS OF CREDITORS AND FEASIBILITY**

5 **14.1 The “Best Interests” Test**

6 In addition to the other requirements described in this Disclosure Statement, the
7 Bankruptcy Code requires that a chapter 11 plan satisfy the “best interests of creditors” test (the
8 “Best Interests Test”). Under this test, if the holder of an allowed claim or allowed interest is in an
9 impaired class and does not vote to accept the plan, that holder must receive or retain property of a
10 value not less than the amount that such entity would receive or retain if Debtor was liquidated
11 under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a debtor’s assets are typically sold
12 by a chapter 7 trustee. Secured creditors are paid first from the sales proceeds of property on
13 which the secured creditors have liens. Any remaining proceeds from the sale of estate property
14 are next distributed to satisfy administrative claims, including a fee to the trustee. Unsecured
15 creditors are then paid from any remaining sales proceeds according to the priorities set forth in
16 the Bankruptcy Code. Unsecured creditors with the same priority share on a pro rata basis with
17 other unsecured creditors of the same priority. Finally, interest holders receive any remaining
18 proceeds on a pro rata basis with other interest holders.

19 In order to confirm the Plan, the Bankruptcy Court must find that Creditors and Interest
20 Holders in an impaired Class who do not accept the Plan will receive at least as much under the
21 Plan as they would receive under a chapter 7 liquidation. Here, Classes 1, 3, 4, 5, and 6 are
22 impaired.

23 In a liquidation scenario, the Debtor believes that the recovery available to Creditors in
24 Classes 1, 3, 4, 5 and 6 would be significantly less than the Claims asserted against the Estate. A
25 liquidation analysis will be provided as part of a supplemental disclosure filed before the hearing
26 on the Disclosure Statement, which will support such conclusion. However, pursuant to the Plan,
27 the Creditors will receive more than they would in chapter 7. The Debtor does not believe there
28 are any Claims in Class 1, but if there are, the Plan provides for certain alternative treatment that

1 ensure members of that Class receive the treatment afforded to them under the Code. Class 1
2 Creditors would at best receive the same treatment in a chapter 7 case. Holders of Claims in
3 Classes 3, 4 and 5 may realize a greater recovery greater under the terms of the Plan than in a
4 chapter 7 liquidation because these creditors likely would suffer a deficiency in a chapter 7
5 liquidation, leading to no distribution for the Holders of these Claims. Under the Plan, Classes 3
6 and 4 will receive distributions equal to 100% of the Allowed amount of their Claims either
7 immediately (in the case of Class 3 Claims) or over a period of time (in the case of Class 4
8 Claims). Claim 5 Claims will either receive a portion of the equity in the Reorganized Debtor, or,
9 if they choose, an immediate cash payment equal to 10% of their allowed Claim. Given that there
10 are nearly \$19 million in Class 5 Claims, significantly larger than the estimated liquidation value
11 as will be shown in the liquidation analysis to be filed as part of the supplemental disclosure
12 described above, it is extremely unlikely that they would fare better under a chapter 7 fire-sale,
13 given the uncertainty regarding the value of the Debtor's assets, and the inherent difficulty in
14 marketing and selling assets of this nature. Indeed, one would either need to locate a buyer able to
15 continue the current business, or someone interested in replacing it with something else at great
16 cost. As such, there is no reason to believe that Creditors of Debtor in Classes 3, 4 or 5 would
17 receive more in a chapter 7 liquidation than they would receive under the Plan. Further, the
18 Class 6 equity holders likely will receive nothing under a chapter 7 liquidation or under the terms
19 of the Plan.

20 In a chapter 7 liquidation, a trustee would seek to liquidate the property quickly to avoid
21 the risk of operating something the chapter 7 trustee would likely know nothing about – a
22 waterpark. In that liquidation effort, the trustee would either be faced with an extremely limited
23 pool of buyers (i.e., parties willing to purchase and operate a Waterpark), or broadening the pool
24 of buyers by marketing this as a real estate opportunity where the buyer would have to expend
25 significant costs, time, and effort in order to remove the improvements currently located on the
26 property, obtain all necessary governmental approvals for whatever the buyer deems to be the
27 highest and best use, and then finance and develop that use, likely after years of effort. The
28 chapter 7 trustee would not have any other significant source of funds. The Debtor does not

1 expect much if any to be recovered expect from avoidance actions because pre-petition payments
2 were generally made to trade vendors in the ordinary course of business, or to legal counsel for
3 ongoing fees associated with the pre-petition litigation.

4 A chapter 7 liquidation will also increase Administrative Claims against the estate. In
5 addition to having to pay the fees of a chapter 7 trustee, the chapter 7 trustee is likely to hire
6 separate counsel, an accountant, auctioneers, brokers, sales agents and/or other professionals to
7 assist in his or her duties. This will undoubtedly result in significant additional Professional Fees
8 which would likely offset any positive net value obtained from Debtor's remaining assets. The
9 Administrative Claims of the chapter 7 trustee and the trustee's professionals would be paid prior
10 to any distribution to General Unsecured Creditors. A liquidation may also give rise to Claims
11 against Debtor for debts incurred during the ordinary course of Debtor's operations during the
12 Case and any Claims arising under 11 U.S.C. § 502 from recoveries made in Avoidance Actions.

13 In light of the foregoing, the Debtor believes that the Plan is in the best interests of
14 Creditors and should be confirmed. The Debtor will also submit an appraisal report of the
15 Debtor's real property as part of a supplemental disclosure prior to the hearing on the Disclosure
16 Statement, which supplemental disclosure will further support the best interests of creditors
17 analysis above.

18 **14.2 Feasibility**

19 The Bankruptcy Code requires that, in order for the Plan to be confirmed by the
20 Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be
21 followed by the liquidation or the need for further financial reorganization of Debtor, unless such
22 liquidation or reorganization is proposed in the Plan. This is sometimes referred to as the
23 "feasibility test," and requires the Court to determine whether the Plan is workable and has a
24 reasonable likelihood (*i.e.*, more likely than not) of success. *In re Acequia, Inc.*, 787 F.2d 1352,
25 1364 (9th Cir. 1986). Feasibility does not, nor can it, require the certainty that a reorganized
26 company will succeed. *See, e.g., United States v. Energy Resources Co.*, 495 U.S. 545, 549
27 (1990); *In re WCI Cable, Inc.*, 282 B.R. 457, 486 (Bankr. D. Or. 2002) ("Guaranteed success in
28

1 the stiff winds of commerce without the protection of the Code is not the standard under
2 § 1129(a)(11).”).

3 Here, the Plan is clearly feasible. The Debtor has retained a financial advisory firm,
4 Sherwood Partners, Inc., to work with it to prepare detailed projections, which are attached hereto
5 as Exhibit A (the “Plan Projections”). The Plan Projections demonstrate once the New Value
6 Contribution is taken into account, the Debtor easily possesses sufficient resources to ensure all
7 payments required on the Effective Date, all payments of Administrative and Fee Claims due
8 thereafter, and all payments due after the Effective Date to Class 4 Claims. The Plan Projections
9 also show that the Debtor will emerge from the bankruptcy healthier than ever, due in no small
10 part to the replacement attraction and related construction financed by the DIP Loan. The Plan
11 Projections reflect that in 2016, even when saddled with considerable restructuring expenses
12 associated with this bankruptcy case, the Debtor will have modest positive net income of
13 approximately \$62,000. Those figures improve in the following years, as the Plan Projections
14 show that the Debtor will have a net income of approximately \$760,300 in 2017, \$765,500 in
15 2018, and \$781,300 in 2019. The Plan Projections extend through 2019 because it is in
16 approximately June 2019 that the DIP Loan becomes due. The Plan Projections, and the net
17 income figures described above, take into account the repayment of the DIP Loan, and
18 demonstrate that the Reorganized Debtor will be able to generate sufficient revenue with which to
19 repay the DIP Loan.

20 The figures in the Plan Projections come despite very conservative estimates of future
21 revenues and costs. The Plan projections reflect conservative revenue growth consistent with prior
22 years. Note that revenue growth from 2014 to 2015 was 3%. The company’s projections for 2016
23 assume revenue growth of 6.5% over 2015, taking into account increased attendance and a small
24 increase in pricing based on the new attraction(s) and the planned capital improvements. Future
25 revenue growth assumptions are: 4% growth in 2017, 3.5% growth in 2018, and 3.5% growth in
26 2019. As explained in footnote (d) to the Plan Projections, expenses are generally forecast to
27 increase 5% per year, with the exception of higher increases for labor costs (15%) and utilities
28 (25%) in the year 2016 due to increases in the minimum wage and increases in water rates,

1 respectively. Thus, the Plan Projections are conservative estimates of the Debtor's performance
2 post-confirmation, and do not represent an overly optimistic business plan going forward. Instead,
3 the Debtor will run exactly the same business it has always run, just with an improved balance
4 sheet as a result of the restructuring. It is no surprise that the Reorganized Debtor will be
5 profitable, given that, as described in Section 8.1 above, the Debtor has turned a net profit every
6 year except for one since 2007.

7 In light of the above, there can be no doubt that the Plan meets the "feasibility"
8 requirement of Section 1129(a)(11) of the Bankruptcy Code.

9 **ARTICLE XV**

10 **RISK FACTORS**

11 As with any plan, there exist certain risk factors which may affect consummation of the
12 Plan and the payment of amounts necessary to satisfy Allowed Claims, though in this case they are
13 unlikely. These include the possibility of a material adverse event at the Waterpark during the
14 time between the filing of the Plan and the Effective Date, such as a significant accident or other
15 event that could materially impact the Debtor's finances and/render all or a part of the Waterpark
16 unfit for its current use.

17 **ARTICLE XVI**

18 **CERTAIN FEDERAL INCOME TAX AND OTHER TAX CONSEQUENCES OF PLAN**

19 The following discussion is a summary of certain U.S. federal income tax consequences of
20 the Plan to Debtor. This discussion is based on the Internal Revenue Code, Treasury Regulations,
21 judicial decisions and published administrative rules and pronouncements of the IRS as in effect
22 on the date hereof. Due to the possibility of changes in the law and the potential for disputes as to
23 legal and factual matters with the IRS, the tax consequences described in the Plan are subject to
24 significant uncertainties. No legal opinions have been requested from counsel with respect to any
25 tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to
26 any of the issues discussed below. Furthermore, legislative, judicial or administrative changes
27 may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and
28 conclusions set forth below as well as the tax consequences to Debtor.

1 Subject the foregoing, the Debtor is a limited liability company. The Plan provides for the
2 continued existence of the Debtor, by cancelling existing Interests and replacing them with New
3 Interests in the Reorganized Debtor. Since the Debtor is a limited liability company, holders of
4 claims should consult with their tax professionals regarding potential tax consequences as a result
5 of transactions contemplated by the Plan. Holders of cancelled Interests and recipients of New
6 Interests may face certain tax consequences for which they should consult their tax advisors
7 regarding the potential tax consequences of the Plan to each of them.

8 **THE FOREGOING IS INTENDED ONLY TO BE A SUMMARY OF TAX**
9 **CONSEQUENCES TO DEBTOR AND IS NOT INTENDED TO CONSTITUTE A**
10 **DISCUSSION OF TAX CONSEQUENCES APPLICABLE TO HOLDERS OF CLAIMS**
11 **AND INTERESTS. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE**
12 **PLAN ON HOLDERS OF CLAIMS AND INTERESTS MAY BE COMPLEX. EACH**
13 **HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT SUCH HOLDER'S**
14 **TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, AND OTHER**
15 **TAX CONSEQUENCES APPLICABLE TO SUCH HOLDERS UNDER THE PLAN.**

16 **ARTICLE XVII**

17 **RECOMMENDATION AND CONCLUSION**

18 The Debtor believes that acceptance of the Plan is in the best interests of the parties, and
19 that any alternative would likely result in a reduced or delayed recovery to holders of Allowed
20 Claims, as well as additional expense. Accordingly, the Debtor urges holders of impaired Claims
21 (and which are entitled to vote), to vote to accept the Plan, by so indicating on their Ballots, and
22 returning them as specified in this Disclosure Statement and on their Ballots.

23 Dated: February 26, 2016

24 REXFORD PROPERTIES LLC,
25 a California limited liability company

26 By: 

27 LISA EHRlich
28 Managing Member

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Respectfully submitted by,

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