



**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
CONFIRMING THE FIRST LIEN STEERING COMMITTEE’S SECOND  
AMENDED MODIFIED PLAN OF REORGANIZATION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE FOR THE RHODES COMPANIES,  
LLC, ET AL.**

**RECITALS**<sup>2</sup>

A. On either March 31, 2009 or April 1, 2009 (collectively, the “Petition Date”), each of the Debtors commenced with the Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

B. Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors are currently authorized to operate their businesses and manage their properties as debtors in possession. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in these Chapter 11 Cases.

C. On May 26, 2009, pursuant to Bankruptcy Code section 1102, the United States Trustee for the District of Nevada appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”). The Creditors’ Committee currently consists of four members: G.C. Wallace, Inc.; Interstate Plumbing & Air Conditioning; M & M Electric, Inc.; and Southwest Iron Works, LLC.

D. On November 23, 2009, the First Lien Steering Committee filed (i) the Second Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies, LLC, *et al.* (the “Plan”) and (ii) the accompanying Second Amended Modified Disclosure Statement for the Plan of

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<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan (as defined herein) or the Disclosure Statement (as defined herein), as applicable.

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1 Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies,  
2 LLC, *et al.* (the “Disclosure Statement”).

3 E. On December 1, 2009, the Court entered the Order (A) Approving the  
4 Adequacy of the First Lien Steering Committee’s Disclosure Statement; (B) Approving  
5 Solicitation and Notice Procedures with Respect to Confirmation of the First Lien Steering  
6 Committee’s Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots  
7 and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect  
8 Thereto (Docket No. 809) (the “Solicitation Procedures Order”). The Solicitation  
9 Procedures Order (i) approved the Disclosure Statement as containing adequate information  
10 within the meaning of Bankruptcy Code section 1125(a), (ii) fixed December 1, 2009, as the  
11 record date for purposes of determining eligibility to vote to accept or reject the Plan,  
12 (iii) fixed January 4, 2010, at 4:00 p.m. (Pacific Time) as the deadline for submitting ballots  
13 accepting or reject the Plan, (iv) fixed January 4, 2010 at 4:00 p.m. (Pacific Time) as the  
14 deadline for filing objections to the Plan, (v) fixed January 11, 2010, as the deadline for  
15 filing the Memorandum (as defined below), (vi) fixed January 11, 2010 as the deadline by  
16 which Omni Management Group, LLC (the “Claims and Solicitation Agent”) must file its  
17 report summarizing the results of voting on the Plan (the “Voting Report”), and (vii) fixed  
18 January 14, 2010, at 9:00 a.m. as the date and time for the commencement of the hearing of  
19 the confirmation hearing (the “Confirmation Hearing”) on the Plan. The Solicitation  
20 Procedures Order also approved certain procedures for soliciting votes to accept or reject the  
21 Plan (the “Solicitation Procedures”).

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25 F. In accordance with the Solicitation Procedures Order, the solicitation  
26 materials described in the Solicitation Procedures were transmitted and served on all  
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1 Holders of Claims that were entitled to vote to accept or reject the Plan, as well as certain  
2 other parties in interest in the Debtors' Chapter 11 Cases.

3 G. Adequate and sufficient notice of the Confirmation Hearing and other  
4 requirements and deadlines, hearings and matters described in the Solicitation Procedures  
5 Order was provided in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the  
6 Solicitation Procedures Order. As evidenced by the Osborne Declaration (as defined  
7 below), the Amended Osborne Declaration (as defined below) and various certificates of  
8 service filed by Nova George (*see* Docket Nos. 819, 822, 823, 824, 825 and 826), the  
9 Confirmation Hearing Notice was mailed on or about December 4, 2009 to Holders of  
10 Claims against and Interests in the Debtors and other parties in interest.

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12 H. On January 11, 2010, the First Lien Steering Committee filed the Declaration  
13 of Brian Osborne Certifying the Tabulation of Ballots Regarding Vote on Second Amended  
14 Modified Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The  
15 Rhodes Companies, LLC, *et al.*, dated and sworn to on January 11, 2010, attesting to and  
16 certifying the methods and results of the ballot tabulation for the Classes of Claims entitled  
17 to vote to accept or reject the Plan (the "Osborne Declaration").

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19 I. On January 15, 2010, the First Lien Steering Committee filed the Amended  
20 Declaration of Brian Osborne Certifying the Tabulation of Ballots Regarding Vote on  
21 Second Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the  
22 Bankruptcy Code for The Rhodes Companies, LLC, *et al.*, dated and sworn to on January  
23 15, 2010, attesting to and certifying the methods and results of the ballot tabulation for the  
24 Classes of Claims entitled to vote to accept or reject the Plan (the "Amended Osborne  
25 Declaration"). As evidenced by the Osborne Declaration and the Amended Osborne  
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1 Declaration, the ballots were tabulated in compliance with the Bankruptcy Code, the  
2 Bankruptcy Rules and the Solicitation Procedures Order.

3 J. The following pleadings were filed prior to the deadline for filing objections  
4 to the Plan: (i) the Conditional Objection to Chapter 11 Plan filed by Caterpillar Financial  
5 Services Corporation on January 4, 2010 (Docket No. 895); and (ii) the Limited Response to  
6 Second Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the  
7 Bankruptcy Code for The Rhodes Companies, LLC, *et al.* filed by Credit Suisse AG,  
8 Cayman Islands Branch on January 5, 2010 (Docket No. 899). No other objections to  
9 confirmation of the Plan were filed. The filed conditional objection and limited response to  
10 confirmation of the Plan are collectively referred to herein as the “Objections.”

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12 K. On January 11, 2010, the First Lien Steering Committee filed (a) the First  
13 Lien Steering Committee’s Memorandum of Law (I) in Support of Confirmation of the  
14 Second Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the  
15 Bankruptcy Code for The Rhodes Companies, LLC, *et al.* and (II) in Response to Objections  
16 Thereto (the “Memorandum”), (b) the Declaration of Richard Dix in Support of  
17 Confirmation of the Second Amended Modified Plan of Reorganization Pursuant to Chapter  
18 11 of the Bankruptcy Code for The Rhodes Companies, LLC, *et al.* dated January 11, 2010  
19 (the “Dix Declaration”), (c) the Osborne Declaration, and (d) the Amended Osborne  
20 Declaration (collectively, the “Confirmation Papers”).  
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23 L. The Confirmation Hearing was held before the Court on January 14, 2010.

24 NOW, THEREFORE, the Court having reviewed and considered the Disclosure  
25 Statement, the Plan and all documents contained therein, the Voting Report, the Objections,  
26 and the Confirmation Papers; the Court having heard statements of counsel in support of and  
27 in opposition to confirmation of the Plan at the Confirmation Hearing; the Court having  
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1 considered all testimony presented and evidence admitted at the Confirmation Hearing; the  
2 Court having taken judicial notice of the papers and pleadings on file in the Chapter 11  
3 Cases; it appearing to the Court that (i) notice of the Confirmation Hearing was adequate  
4 and appropriate as to all parties to be affected by the Plan and the transactions contemplated  
5 thereby and (ii) the legal and factual bases set forth in the Confirmation Papers and  
6 presented at the Confirmation Hearing establish just cause for the relief granted herein; and  
7 after due deliberation thereon, good cause appearing therefor, and for the reasons stated  
8 herein, it is hereby DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED  
9 THAT:  
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11 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12 1. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157, 1334(a),  
13 1408, and 1409). The Court has jurisdiction over the Chapter 11 Cases pursuant to 28  
14 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding under 28 U.S.C. §  
15 157(b)(2), and the Court has exclusive jurisdiction to determine whether the Plan complies  
16 with the applicable provisions of the Bankruptcy Code and should be confirmed. Venue is  
17 proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Venue in the District of  
18 Nevada was proper as of the Petition Date and continues to be proper.  
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20 2. Commencement and Joint Administration of the Chapter 11 Cases.  
21 Beginning on the Petition Date, each of the above-captioned Debtors commenced a case  
22 under chapter 11 of the Bankruptcy Code. By prior order of the Court, the Chapter 11 Cases  
23 have been consolidated for procedural purposes only and are being jointly administered  
24 pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and  
25 managed their properties as debtors in possession pursuant to Bankruptcy Code sections  
26 1107(a) and 1108. No trustee or examiner has been appointed in the Chapter 11 Cases.  
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1           3.       Judicial Notice. The Court takes judicial notice of the docket of the Chapter  
2 11 Cases maintained by the Clerk of the Court or its duly appointed agent, including,  
3 without limitation, all pleadings and other documents filed, all orders entered, and all  
4 evidence and arguments made, proffered, or adduced at, the hearings held before the Court  
5 during the pendency of the Chapter 11 Cases.  
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7           4.       Transmittal and Mailing of Materials; Notice; Solicitation. The Solicitation  
8 Packages were transmitted and served in compliance with the Bankruptcy Code, the  
9 Bankruptcy Rules, applicable nonbankruptcy law, and the Solicitation Procedures Order.  
10 Such transmittal and service of the Solicitation Packages were adequate and sufficient.  
11 Adequate and sufficient notice of the Confirmation Hearing was given in compliance with  
12 the Bankruptcy Code, the Bankruptcy Rules and the Solicitation Procedures Order, and no  
13 further notice is or shall be required. Votes for acceptance and rejection of the Plan were  
14 solicited in good faith and such solicitation complied with Bankruptcy Code sections 1125  
15 and 1126, Bankruptcy Rules 3017 and 3018, all other applicable provisions of the  
16 Bankruptcy Code, the Solicitation Procedures Order, and all other applicable rules, laws and  
17 regulations.  
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19           5.       Burden of Proof. The First Lien Steering Committee, as the proponent of the  
20 Plan, has met its burden of proving the elements of Bankruptcy Code sections 1129(a) and  
21 (b) by a preponderance of evidence.  
22

23           6.       Voting. Votes on the Plan were solicited after the disclosure of “adequate  
24 information” as defined in Bankruptcy Code section 1125. As evidenced by the Amended  
25 Osborne Declaration, votes to accept the Plan have been solicited and tabulated fairly, in  
26 good faith and in a manner consistent with the Solicitation Procedures Order, the  
27 Bankruptcy Code and the Bankruptcy Rules.  
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1           7.       Plan Compliance with the Applicable Provisions of the Bankruptcy Code (11  
2 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with the applicable provisions  
3 of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(1).

4                   (a)       Proper Classification of Claims and Interests (11 U.S.C. §§ 1122 and  
5 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims, which need not  
6 be classified, Article III.A of the Plan designates nine Classes of Claims and one Class of  
7 Interests. The Claims or Interests placed in each Class are substantially similar to other  
8 Claims or Interests, as the case may be, in such Class. Valid business, factual, and legal  
9 reasons exist for separately classifying the various Classes of Claims and Interests created  
10 under the Plan, and such Classes do not unfairly discriminate among Holders of Claims or  
11 Interests. The Plan satisfies Bankruptcy Code sections 1122 and 1123(a)(1).

12                   (b)       Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).  
13 Article III.B of the Plan specifies that each of Classes A-3 and B are Unimpaired under the  
14 Plan, thereby satisfying Bankruptcy Code section 1123(a)(2).

15                   (c)       Specification of Treatment of Impaired Classes (11 U.S.C.  
16 § 1123(a)(3)). Article III.B of the Plan designates each of Classes A-1, A-2, C-1, C-2, C-3,  
17 C-4, D and E as Impaired and specifies the treatment of Claims and Interests in those  
18 Classes, thereby satisfying Bankruptcy Code section 1123(a)(3).

19                   (d)       Equal Treatment Within Classes (11 U.S.C. § 1123(a)(4)). Article  
20 III.B of the Plan provides for the same treatment for each Claim or Interest in a particular  
21 Class, thereby satisfying Bankruptcy Code section 1123(a)(4).

22                   (e)       Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides  
23 adequate and proper means for implementation of the Plan, including, but not limited to,  
24 among other things: (i) the substantive consolidation of the Estates into a single Estate for all  
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1 purposes associated with Confirmation and distributions to be made under the Plan (*See* Plan  
2 Art. IV.A); (ii) the issuance of Newco Equity Interests (based upon the Newco Total  
3 Enterprise Value) to the Holders of First Lien Lender Secured Claims (*See* Plan Art.  
4 IV.B.1); (iii) the issuance of \$50 million in New First Lien Notes to the Holders of First  
5 Lien Lender Secured Claims (*See* Plan Art. IV.B.2); (iv) the cancellation of Old Equity  
6 Interests and certain other existing securities (*See* Plan Art. IV.E); (v) any restructuring  
7 transaction deemed necessary or appropriate to effectuate the Plan (*See* Plan Art. IV.G); (vi)  
8 the selection of the initial board of directors and officers of the Reorganized Debtors (*See*  
9 Plan Art. IV.M); (vii) the establishment of a Litigation Trust for the benefit of Holders of  
10 Allowed Claims in Classes C-1, C-2 and C-3 (*See* Plan Art. IV.O); (viii) the transfer of the  
11 Rhodes Ranch Golf Course to the Reorganized Debtors pursuant to the terms of a stock and  
12 asset transfer agreement (*See* Plan Art. IV.S); (ix) the payment of \$3.5 million in Cash to the  
13 Reorganized Debtors by the Rhodes Entities on the Effective Date (*See* Plan Art. IV.T); and  
14 (x) the transfer of the Arizona Assets set forth on Attachment D to the Mediation Term  
15 Sheet to the Rhodes Entities (*See* Plan Art. IV.U). In addition, the Plan provides that the  
16 Holders of First Lien Lender Secured Claims will receive \$1.5 million in Cash from the  
17 proceeds of the First Lien Lenders' Collateral for the purpose of purchasing the General  
18 Unsecured Claims set forth on Exhibit H to the Disclosure Statement. *See* Plan Art. VII.F-  
19 G. Therefore, the Plan satisfies Bankruptcy Code section 1123(a)(5).  
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23 (f) Charter Provisions (11 U.S.C. § 1123(a)(6)). Article IV.J of the Plan  
24 provides that the organizational documents for Newco, among other things, shall (i)  
25 authorize the issuance of the Newco Equity Interests, and (ii) pursuant to and only to the  
26 extent required by Bankruptcy Code section 1123(a)(6), include a provision prohibiting the  
27 issuance of non-voting Equity Securities, thereby satisfying Bankruptcy Code section  
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1 1123(a)(6).

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(g) Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Article

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IV.M of the Plan provides that (i) the board of directors of the Reorganized Debtors or

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similar governing entities will be composed of one or more members appointed by the First

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Lien Steering Committee, (ii) on or after the Effective Date, a chief executive officer or

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similar person in control shall be appointed, and (iii) the identity of such officers and

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directors shall be disclosed at or prior to the Confirmation Hearing. The provisions of the

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Plan for the selection of directors and officers are consistent with the interests of creditors

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and with public policy as to the manner and selection of any officer or director and any

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successor thereto, thereby satisfying Bankruptcy Code section 1123(a)(7). Pursuant to

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Bankruptcy Code section 1129(a)(5), the First Lien Steering Committee has disclosed, on or

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prior to the Confirmation Date, the identity and affiliations of any Person proposed to serve

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on the initial boards of directors of the Reorganized Debtors and, to the extent such Person is

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an insider, the nature of any compensation to be paid to such Person.

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(h) Future Income (11 U.S.C. § 1123(a)(8)). Each of the Debtors is a

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business entity, and not an individual. Accordingly, Bankruptcy Code section 1123(a)(8) is

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not implicated by the Plan.

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8. Plan Compliance with Bankruptcy Code Section 1123(b). The Plan contains

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other permissive provisions that are consistent with the applicable provisions of the

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Bankruptcy Code and, thus, the Plan satisfies the requirements of Bankruptcy Code section

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1123(b).

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9. Bankruptcy Rule 3016. The Plan is dated and identifies the entities

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submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure

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1 Statement with the Clerk of the Court satisfies Bankruptcy Rule 3016(b).

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3 10. Bankruptcy Rule 3017. The First Lien Steering Committee has given notice  
4 of the Confirmation Hearing as required by Bankruptcy Rule 3017(d), the Solicitation  
5 Procedures Order or as otherwise required. The transmittal and service of the Solicitation  
6 Packages were (i) in compliance with the Solicitation Procedures Order, the Bankruptcy  
7 Code and the Bankruptcy Rules and (ii) adequate and sufficient under the Bankruptcy Rules  
8 and the circumstances surrounding the Chapter 11 Cases.

9  
10 11. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan  
11 solely from Holders of Allowed Claims in Classes entitled to vote to accept or reject the  
12 Plan, as of the Record Date, satisfies Bankruptcy Rule 3018. Votes to accept or reject the  
13 Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with  
14 the Bankruptcy Code, the Bankruptcy Rules and the Solicitation Procedures Order.

15  
16 12. First Lien Steering Committee's Compliance with the Applicable Provisions  
17 of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The First Lien Steering Committee has  
18 complied with the applicable provisions of the Bankruptcy Code, thereby satisfying  
19 Bankruptcy Code section 1129(a)(2). Specifically:

20 (a) the Debtors are proper debtors under Bankruptcy Code section 109  
21 and the First Lien Steering Committee is a proper proponent of the Plan  
22 under Bankruptcy Code section 1121(a);

23 (b) the First Lien Steering Committee has complied with applicable  
24 provisions of the Bankruptcy Code, except as otherwise provided or  
permitted by orders of the Court; and

25 (c) the First Lien Steering Committee has complied with the applicable  
26 provisions of the Bankruptcy Code, including sections 1125 and 1126(b), the  
27 Bankruptcy Rules, and the Solicitation Procedures Order in transmitting the  
Solicitation Package and in soliciting and tabulating votes on the Plan.

28 13. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The First Lien

1 Steering Committee has proposed the Plan in good faith and not by any means forbidden by  
2 law, thereby satisfying the requirements of Bankruptcy Code section 1129(a)(3). The First  
3 Lien Steering Committee's good faith is evident from the facts and record of the Chapter 11  
4 Cases, the Disclosure Statement and the hearing thereon, and the record of the Confirmation  
5 Hearing and other proceedings held in the Chapter 11 Cases. The Plan is the product of  
6 extensive negotiations and embodies the terms of the Mediation Settlement. The Plan itself  
7 and the process leading to its formulation provide independent evidence of the First Lien  
8 Steering Committee's good faith, and that the Plan serves the public interest and assures fair  
9 treatment of Holders of Claims and Interests. The Plan was proposed with the legitimate  
10 and honest purpose of maximizing the value of the Debtors' estates and to effectuate a  
11 successful reorganization of the Debtors.

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14 14. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any  
15 payment made or to be made by the Debtors for services or for costs and expenses in  
16 connection with the Chapter 11 Cases, or in connection with the Plan and incident to the  
17 Chapter 11 Cases, has been approved by, or is subject to approval of, the Court as  
18 reasonable, thereby satisfying Bankruptcy Code section 1129(a)(4).

19  
20 15. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The First Lien  
21 Steering Committee has complied with Bankruptcy Code section 1129(a)(5). On January  
22 11, 2010, the First Lien Steering Committee filed the Notice of Disclosure of Directors and  
23 Officers Pursuant to 11 U.S.C. § 1129(a)(5) for Second Amended Modified Plan of  
24 Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies,  
25 LLC, *et al.* (the "Notice of Disclosure") (Docket No. 911) disclosing that as of the Effective  
26 Date, Dunhill Homes will provide management services to the Reorganized Debtors and  
27 disclosing the terms of compensation to be paid for such management services. The Notice  
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1 of Disclosure also discloses (i) the identity of the members of the initial board of directors of  
2 the Reorganized Debtors, (ii) the identity of the Litigation Trustee, and (iii) the  
3 compensation to be provided to each of the foregoing.

4 16. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for a  
5 change in any rates subject to regulatory approval. Thus, Bankruptcy Code section  
6 1129(a)(6) is not applicable in the Chapter 11 Cases.

7 17. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies  
8 Bankruptcy Code section 1129(a)(7). The Liquidation Analysis attached to the Disclosure  
9 Statement as Exhibit E and other evidence proffered or adduced at the Confirmation Hearing  
10 (i) are persuasive and credible, (ii) have not been successfully challenged or controverted by  
11 other evidence, (iii) establish that each Holder of a Claim or Interest in an Impaired Class  
12 either (x) has accepted the Plan or (y) will receive or retain under the Plan, on account of  
13 such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not  
14 less than the amount that it would have received if the Debtors were liquidated under chapter  
15 7 of the Bankruptcy Code.

16 18. Acceptance or Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)).  
17 Classes A-3 and B are each Classes of Unimpaired Claims that are conclusively presumed to  
18 have accepted the Plan under Bankruptcy Code section 1126(f). Classes A-1, A-2, C-1, C-2  
19 and C-3 have each voted to accept the Plan in accordance with Bankruptcy Code section  
20 1126(c). Classes C-4, D and E are not entitled to receive or retain any property under the  
21 Plan and, therefore, are deemed to have rejected the Plan pursuant to Bankruptcy Code  
22 section 1126(g). Although Bankruptcy Code section 1129(a)(8) has not been satisfied with  
23 respect to Classes C-4, D and E (collectively, the "Rejecting Classes"), the Plan is  
24 confirmable because the Plan does not discriminate unfairly and is fair and equitable with  
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1 respect to the Rejecting Classes and therefore satisfies Bankruptcy Code section 1129(b)  
2 with respect to the Rejecting Classes.

3 19. Treatment of Administrative Claims and Priority Tax Claims (11 U.S.C.  
4 1129(a)(9)). The treatment of Administrative Claims pursuant to Article II.A of the Plan  
5 satisfies the requirements of Bankruptcy Code sections 1129(a)(9)(A) and (B). The  
6 treatment of Priority Tax Claims pursuant to Article II.B of the Plan satisfies the  
7 requirements of Bankruptcy Code section 1129(a)(9)(C).

9 20. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). As set forth in  
10 the Amended Osborne Declaration, each of Classes A-1, A-2, C-1, C-2 and C-3 are  
11 Impaired Classes that have voted to accept the Plan, without including any acceptance of the  
12 Plan by any insider. As such, there is at least one Class of Claims against the Debtors that is  
13 Impaired under the Plan and has accepted the Plan, determined without including any  
14 acceptance by any insider, thus satisfying the requirements of Bankruptcy Code section  
15 1129(a)(10).

17 21. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted regarding  
18 feasibility, including the Going Concern Analysis attached to the Disclosure Statement as  
19 Exhibit D, (i) is persuasive and credible, (ii) has not been controverted by other evidence  
20 and (iii) establishes that confirmation of the Plan is not likely to be followed by the  
21 liquidation, or the need for further financial reorganization, of the Reorganized Debtors, thus  
22 satisfying the requirements of Bankruptcy Code section 1129(a)(11).

24 22. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28  
25 U.S.C. § 1930 either have been paid or will be paid pursuant to Article II.A of the Plan.  
26 Accordingly, the Plan satisfies Bankruptcy Code section 1129(a)(12).

27 23. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors  
28

1 have no retiree benefit obligations and, thus, Bankruptcy Code section 1129(a)(13) is  
2 inapplicable.

3 24. Postpetition Domestic Support Obligations and Disposable Income (11  
4 U.S.C. § 1129(a)(14) and (15)). Bankruptcy Code sections 1129(a)(14) and (15) impose  
5 certain requirements on individual chapter 11 debtors. Each of the Debtors is a business  
6 entity, and not an individual. Accordingly, Bankruptcy Code sections 1129(a)(14) and (15)  
7 are not implicated by the Plan.  
8

9 25. Transfers of Property by Nonprofit Entities (11 U.S.C. § 1129(a)(16)).  
10 Bankruptcy Code section 1129(a)(16) imposes certain requirements on corporations or trusts  
11 that are not a moneyed, business or commercial corporation or trust. Each of the Debtors is  
12 a moneyed, business or commercial corporation, partnership or limited liability company.  
13 Accordingly, Bankruptcy Code section 1129(a)(16) is not implicated by the Plan.  
14

15 26. Confirmation of Plan Over Nonacceptance of Impaired Classes (11 U.S.C. §  
16 1129(b)). Notwithstanding the fact that the Rejecting Classes have not accepted the Plan,  
17 the Plan may be confirmed pursuant to Bankruptcy Code section 1129(b)(1) because (i) at  
18 least one Impaired Class has voted to accept the Plan, and (ii) the Plan does not discriminate  
19 unfairly and is fair and equitable with respect to the Rejecting Classes. Thus, the Plan may  
20 be confirmed notwithstanding the First Lien Steering Committee's failure to satisfy  
21 Bankruptcy Code section 1129(a)(8). After entry of the Confirmation Order and upon the  
22 occurrence of the Effective Date, the Plan shall be binding upon the members of the  
23 Rejecting Classes.  
24

25 27. The Plan does not unfairly discriminate because (i) Classes C-4 and D are  
26 comprised of Claims and Interests that are dissimilar in their legal nature from, and  
27 subordinate to, the Secured and Unsecured Claims receiving distributions under the Plan,  
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1 and (ii) there is a reasonable basis for the disparate treatment of the Claims in Class E.

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3 28. In addition, the Plan is “fair and equitable” under Bankruptcy Code section  
4 1129(b)(2) because the Holders of (i) Interests in Class D and (ii) Claims in Classes C-4 and  
5 E are not entitled to any recovery under the Plan and no Classes junior to Classes C-4, D and  
6 E will receive any distributions or retain any property under the Plan. Thus, the Plan is fair  
7 and equitable and satisfies the requirements of Bankruptcy Code section 1129.

9 29. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of  
10 reorganization filed in the Chapter 11 Cases. Accordingly, Bankruptcy Code section  
11 1129(c) is inapplicable.

12 30. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of  
13 the Plan is neither the avoidance of taxes nor the avoidance of section 5 of the Securities  
14 Act, and no governmental unit has objected to the confirmation of the Plan on such grounds.  
15 The Plan, therefore, satisfies the requirements of Bankruptcy Code section 1129(d).

17 31. Good Faith Solicitation (11 U.S.C. § 1129(e)). Based on the record before  
18 the Court in the Chapter 11 Cases, the First Lien Steering Committee is deemed to have  
19 solicited acceptances of the Plan in good faith and in compliance with the applicable  
20 provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections  
21 1125(a) and (e), and any applicable nonbankruptcy law, rule or regulation governing the  
22 adequacy of disclosure in connection with such solicitation.

24 32. Satisfaction of Confirmation Requirements. For all of the foregoing reasons,  
25 the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section  
26 1129.

27 33. Good Faith. The First Lien Steering Committee, the Debtors, the Creditors’  
28



1 Committee, the Rhodes Entities, the Second Lien Agent and all other parties (and all of their  
2 respective members, officers, directors, agents, financial advisers, attorneys, employees,  
3 equity holders, partners, affiliates and representatives) will be acting in good faith if they  
4 proceed to (i) consummate the Plan and the agreements, settlements, transactions and  
5 transfers contemplated thereby and (ii) take the actions authorized and directed by this  
6 Confirmation Order.  
7

8 34. Substantive Consolidation. A preponderance of the evidence presented to the  
9 Court demonstrates that (i) no Creditor will be harmed by the proposed substantive  
10 consolidation of the Debtors' Estates into a single consolidated Estate for purposes of  
11 confirmation and distributions to be made under the Plan and (ii) the proposed substantive  
12 consolidation of the Debtors' Estates is appropriate in light of the fact that the Debtors: (a)  
13 operate as a single business enterprise under a single name; (b) operate on a centralized basis  
14 with a centralized cash management system; (c) share common parent companies; (d) rely  
15 on a single corporate office for operational and other support services; (e) regularly conduct  
16 business with each other such that the flow of funds and transactions would be difficult to  
17 entangle; and (f) are all obligated on the First Lien Lender Claims and the Second Lien  
18 Lender Claims. In addition, substantial Intercompany Claims existed between the various  
19 Debtors as of the Petition Date, and numerous Proofs of Claim were filed against the  
20 incorrect Debtor entity. The substantive consolidation of the Debtors' Estates into a single  
21 Estate for purposes of confirmation and distributions under the Plan will also provide  
22 significant advantages that benefit all of the Debtors' creditors.  
23

24 35. Mediation Settlement. As described in Article I.A of the Disclosure  
25 Statement, the Plan embodies the terms of the Mediation Settlement. In order to determine  
26 whether a compromise may be approved under Bankruptcy Rule 9019, the Bankruptcy  
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1 Court must consider four factors: (i) the probability of success of the litigation; (ii) the  
2 difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the  
3 litigation involved, and the expense, inconvenience and delay necessarily attending it; and  
4 (iv) the paramount interest of the creditors and a proper deference to their reasonable views.  
5 *See, e.g., Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986). A  
6 compromise may be approved even if all four of the factors do not favor the compromise so  
7 long as the factors weigh in favor of the compromise when taken as a whole. *See In re Pac.*  
8 *Gas and Elec. Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In addition, a compromise  
9 does not have to be the best compromise that could have possibly been obtained but, instead,  
10 must only fall within a reasonable range of possible outcomes. *In re WCI Cable, Inc.*, 282  
11 B.R. 457, 473-74 (Bankr. D. Or. 2002).

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14 36. Based on the foregoing standard, the Court hereby finds that the Mediation  
15 Settlement is fair, equitable and reasonable because, among other things, the Mediation  
16 Settlement allows for the resolution of (i) potential preference actions relating to transfers in  
17 excess of \$9 million to certain of the Rhodes Entities within the one year period prior to the  
18 Petition Date that would have been heavily contested by the Rhodes Entities and (ii)  
19 potential fraudulent conveyance actions held by the Debtors' Estates against the Rhodes  
20 Entities that likewise would have been heavily contested by the Rhodes Entities. In  
21 addition, the creditors of the Estates will derive a material benefit from the approval of the  
22 Mediation Settlement because, among other things, the Mediation Settlement (i)  
23 contemplates a \$3.5 million cash payment from the Rhodes Entities to the Reorganized  
24 Debtors, which payment will be used to fund working capital needs and distributions  
25 contemplated by the Plan, (ii) provides for the transfer of the Arizona Assets, which were  
26 non-core assets to the Reorganized Debtors that likely would have required significant  
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1 additional funding for development, to the Rhodes Entities, (iii) provides for the transfer of  
2 the Rhodes Ranch Golf Course, the maintenance and continued operation of which is  
3 paramount to maximizing the value of the Reorganized Debtors' assets, to the Reorganized  
4 Debtors, (iv) avoids the significant expense and time delay associated with litigating the  
5 Claims released under the Plan, which would have yielded uncertain results, and (v) enables  
6 the Debtors to emerge from bankruptcy expeditiously and consensually, without any  
7 unnecessary eradication of value through a prolonged stay in chapter 11. In addition, all  
8 Claims and Causes of Action against the Rhodes Entities that are not covered by the limited  
9 release provided for in the Mediation Settlement will be transferred to the Litigation Trust  
10 for the benefit of all creditors, to be prosecuted and/or settled post-emergence, as deemed  
11 appropriate by the Litigation Trust, and the Mediation Settlement will ensure a smooth  
12 transition to new ownership under the Plan.

13  
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15 37. Assumption of Executory Contracts and Unexpired Leases. The Plan  
16 satisfies all requirements for the assumption of executory contracts and unexpired leases  
17 contained in the Bankruptcy Code, including, without limitation, the requirement to cure all  
18 outstanding defaults, if any, and to provide adequate assurance of performance under such  
19 contracts and leases.

20  
21 38. Releases, Exculpations and Injunctions. Pursuant to Bankruptcy Code  
22 section 1123(b) and Bankruptcy Rule 9019, the settlements, compromises, releases,  
23 discharges, exculpations and injunctions set forth in Article VIII of the Plan are fair,  
24 equitable, reasonable, in good faith, and are in the best interests of the Debtors, the  
25 Reorganized Debtors, the Estates and the Holders of Claims and Interests. In addition, the  
26 releases, injunctions and exculpations set forth in Article VIII of the Plan are integral  
27 components of the Mediation Settlement that is embodied in the Plan. The record of the  
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1 Confirmation Hearing and the Chapter 11 Cases is sufficient to support the releases,  
2 exculpations and injunctions provided for in Article VIII of the Plan.

3 39. Conditions to Confirmation. Entry of this Confirmation Order shall satisfy  
4 the conditions to Confirmation set forth in Article X.A of the Plan.

5 **DECREES**

6 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
7 THAT:

8 40. Confirmation. For the reasons set forth herein, all requirements for  
9 confirmation of the Plan have been satisfied. Accordingly, the Plan is confirmed under  
10 Bankruptcy Code section 1129.

11 41. Objections. All Objections that have not been withdrawn, waived or settled,  
12 and all reservations of rights pertaining to the confirmation of the Plan, are overruled on the  
13 merits.

14 42. Plan Documents. The documents attached as exhibits to the Disclosure  
15 Statement (collectively, the "Plan Documents"), and any amendments, modifications, and  
16 supplements thereto, and all documents and agreements introduced into evidence by the  
17 First Lien Steering Committee at the Confirmation Hearing (including all exhibits and  
18 attachments thereto and documents referred to therein), and the execution, delivery and  
19 performance thereof by the Reorganized Debtors, are authorized and approved. Without  
20 further order or authorization of the Court, the First Lien Steering Committee or the  
21 Reorganized Debtors, as applicable, and their respective successors are authorized and  
22 empowered to make all modifications to all documents included as part of the Plan  
23 Documents that are consistent with the Plan. Execution versions of the documents  
24 comprising the Plan Documents shall constitute legal, valid, binding, and authorized  
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1 obligations of the respective parties thereto, enforceable in accordance with their terms and,  
2 to the extent applicable, shall create, as of the Effective Date, all liens and other security  
3 interests purported to be created thereby.

4 43. Plan Classification Controlling. The classification of Claims and Interests for  
5 purposes of the distributions to be made under the Plan shall be governed solely by the terms  
6 of the Plan. The classification and amounts of Claims, if any, set forth on the ballots  
7 returned by the Debtors' creditors in connection with voting on the Plan (i) were set forth on  
8 the ballots solely for purposes of voting to accept or reject the Plan, (ii) do not necessarily  
9 represent, and in no event shall be deemed to modify or otherwise affect, the actual amount  
10 or classification of such Claims under the Plan for distribution purposes and (iii) shall not be  
11 binding on the First Lien Steering Committee, the Debtors or the Reorganized Debtors  
12 except with respect to voting on the Plan.

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15 44. Mediation Settlement. As described in Article I.A of the Disclosure  
16 Statement, the Plan embodies the terms of the Mediation Settlement. The entry of the  
17 Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule  
18 9019, of the compromise and settlement of the matters subject to the Mediation Settlement.

19 45. The Court's approval of the Mediation Settlement is appropriate in light of  
20 the fact that the Court has found that the Mediation Settlement is fair, equitable and  
21 reasonable because, among other things, the Mediation Settlement allows for the resolution  
22 of (i) potential preference actions relating to transfers in excess of \$9 million to certain of  
23 the Rhodes Entities within the one year period prior to the Petition Date that would have  
24 been heavily contested by the Rhodes Entities and (ii) potential fraudulent conveyance  
25 actions held by the Debtors' Estates against the Rhodes Entities that likewise would have  
26 been heavily contested by the Rhodes Entities.  
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1           46.     In addition, the Court has found that creditors of the Estates will derive a  
2 material benefit from the approval of the Mediation Settlement because, among other things,  
3 the Mediation Settlement (i) contemplates a \$3.5 million cash payment from the Rhodes  
4 Entities to the Reorganized Debtors, which payment will be used to fund working capital  
5 needs and distributions contemplated by the Plan, (ii) provides for the transfer of the  
6 Arizona Assets, which were non-core assets to the Reorganized Debtors that likely would  
7 have required significant additional funding for development, to the Rhodes Entities, (iii)  
8 provides for the transfer of the Rhodes Ranch Golf Course, the maintenance and continued  
9 operation of which is paramount to maximizing the value of the Reorganized Debtors'  
10 assets, to the Reorganized Debtors, (iv) avoids the significant expense and time delay  
11 associated with litigating the Claims released under the Plan, which would have yielded  
12 uncertain results, and (v) enables the Debtors to emerge from bankruptcy expeditiously and  
13 consensually, without any unnecessary eradication of value through a prolonged stay in  
14 chapter 11. Moreover, the Court has found that all Claims and Causes of Action against the  
15 Rhodes Entities that are not covered by the limited release provided for in the Mediation  
16 Settlement will be transferred to the Litigation Trust for the benefit of all creditors, to be  
17 prosecuted and/or settled post-emergence (as deemed appropriate by the Litigation Trust),  
18 and that the Mediation Settlement will ensure a smooth transition to new ownership under  
19 the Plan.  
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23           47.     Substantive Consolidation. The substantive consolidation of the Debtors'  
24 Estates into a single consolidated Estate for purposes of confirmation and distributions under  
25 the Plan is approved.

26           48.     Continued Corporate Existence. Except as otherwise provided in the Plan,  
27 each Debtor shall continue to exist after the Effective Date as a separate corporate entity,  
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1 limited liability company, partnership, or other form, as the case may be, with all the powers  
2 of a corporation, limited liability company, partnership, or other form, as the case may be,  
3 pursuant to the applicable law in the jurisdiction in which each applicable Debtor is  
4 incorporated or formed and pursuant to the respective certificate of incorporation and  
5 bylaws (or other formation documents) in effect prior to the Effective Date, except to the  
6 extent such certificate of incorporation and bylaws (or other formation documents) are  
7 amended by the Plan or otherwise, and to the extent such documents are amended, such  
8 documents are deemed to be pursuant to the Plan and require no further action or approval.

9  
10 49. Vesting of Assets in the Reorganized Debtors. Except for any Claims or  
11 Causes of Action transferred to the Litigation Trust and unless otherwise provided in the  
12 Plan or any agreement, instrument, or other document incorporated therein, on the Effective  
13 Date, all property in each Estate, all Causes of Action, and any property acquired by any of  
14 the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and  
15 clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date,  
16 except as otherwise provided in the Plan, each Reorganized Debtor may operate its business  
17 and may use, acquire, or dispose of property and compromise or settle any Claims, Interests,  
18 or Causes of Action without supervision or approval by the Court and free of any restrictions  
19 of the Bankruptcy Code or Bankruptcy Rules.  
20

21  
22 50. Cancellation of Equity Securities and Related Obligations. On the Effective  
23 Date, except as otherwise specifically provided for in the Plan: (1) the Old Equity Interests  
24 and any other Certificate, note, bond, indenture, purchase right, option, warrant, or other  
25 instrument or document directly or indirectly evidencing or creating any indebtedness or  
26 obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except  
27 such Certificates, notes, other instruments or documents evidencing indebtedness or  
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1 obligations of the Debtors that are reinstated pursuant to the Plan), shall be cancelled solely  
2 as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations  
3 thereunder and (2) the obligations of the Debtors pursuant, relating, or pertaining to any  
4 agreements, indentures, certificates of designation, bylaws, or certificate or articles of  
5 incorporation or similar documents governing the Old Equity Interests and any other  
6 Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other  
7 instruments or documents evidencing or creating any indebtedness or obligation of the  
8 Debtors (except such agreements or certificates, notes or other instruments evidencing  
9 indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the  
10 Plan) shall be released and discharged; provided, however, that notwithstanding  
11 Confirmation, any such indenture or agreement that governs the rights of the Holder of a  
12 Claim shall continue in effect solely for purposes of: (w) allowing Holders to receive  
13 distributions under the Plan; (x) allowing a Servicer to make distributions on account of  
14 such Claims as provided in the applicable governing agreement; (y) permitting such Servicer  
15 to maintain any rights and Liens it may have against property other than the Reorganized  
16 Debtors' property for fees, costs, and expenses pursuant to such indenture or other  
17 agreement; and (z) governing the rights and obligations of non-Debtor parties to such  
18 agreements vis-à-vis each other (including, without limitation, the rights and obligations of  
19 non-Debtor parties under the First Lien Credit Agreement and the Second Lien Credit  
20 Agreement, which, for the avoidance of doubt, shall not be affected by the Plan except as  
21 otherwise expressly provided in the Plan); provided, further, however, that the preceding  
22 proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy  
23 Code, the Confirmation Order, or the Plan, or result in any expense or liability to the  
24 Reorganized Debtors. The Reorganized Debtors shall not have any obligations to any  
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1 Servicer for any fees, costs, or expenses, except as expressly otherwise provided in the Plan.

2

3           51.     Section 1145 Exemption. Pursuant to Bankruptcy Code section 1145, the  
4 offering, issuance, and distribution of any Securities contemplated by the Plan and any and  
5 all settlement agreements incorporated therein, including the Newco Equity Interests, shall,  
6 to the fullest extent permitted by applicable law, be exempt from, among other things, the  
7 registration requirements of section 5 of the Securities Act and any other applicable law  
8 requiring registration prior to the offering, issuance, distribution, or sale of Securities. In  
9 addition, under Bankruptcy Code section 1145 any Securities contemplated by the Plan,  
10 including the Newco Equity Interests and New First Lien Notes, will be freely tradable and  
11 transferable by the recipients thereof, subject to (i) the provisions of Bankruptcy Code  
12 section 1145(b)(1) relating to the definition of an underwriter in section 2(a)(11) of the  
13 Securities Act, and compliance with any rules and regulations of the Securities and  
14 Exchange Commission, if any, applicable at the time of any future transfer of such  
15 Securities or instruments; (ii) the restrictions, if any, on the transferability of such Securities  
16 and instruments set forth in the Newco LLC Operating Agreement, a draft of which is  
17 attached to the Disclosure Statement as Exhibit J; and (iii) applicable regulatory approval.

20

21           52.     Exemption from Certain Transfer Taxes and Recording Fees. Pursuant to  
22 Bankruptcy Code section 1146(a), any transfer from a Debtor to a Reorganized Debtor or to  
23 any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to:  
24 (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other  
25 interest in the Debtors or the Reorganized Debtors; (2) the creation, modification,  
26 consolidation, or recording of any mortgage, deed of trust, or other security interest, or the  
27 securing of additional indebtedness by such or other means; (3) the making, assignment, or  
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1 recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or  
2 other instrument of transfer under, in furtherance of, or in connection with, the Plan,  
3 including any deeds, bills of sale, assignments, or other instrument of transfer executed in  
4 connection with any transaction arising out of, contemplated by, or in any way related to the  
5 Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee,  
6 intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax,  
7 Uniform Commercial Code filing or recording fee or other similar tax or governmental  
8 assessment, and the appropriate state or local governmental officials or agents shall forego  
9 the collection of any such tax or governmental assessment and to accept for filing and  
10 recordation any of the foregoing instruments or other documents without the payment of any  
11 such tax or governmental assessment.  
12

13           53.     Restructuring Transactions. On the Effective Date or as soon as reasonably  
14 practicable thereafter, the Reorganized Debtors may take all actions as may be necessary or  
15 appropriate to effect any transaction described in, approved by, contemplated by, or  
16 necessary to effectuate the Plan, including: (1) the execution and delivery of appropriate  
17 agreements or other documents of merger, consolidation, or reorganization containing terms  
18 that are consistent with the terms of the Plan and that satisfy the requirements of applicable  
19 law; (2) the execution and delivery of appropriate instruments of transfer, assignment,  
20 assumption, or delegation of any property, right, liability, duty, or obligation on terms  
21 consistent with the terms of the Plan; (3) the filing of appropriate certificates of  
22 incorporation, merger, or consolidation with the appropriate governmental authorities  
23 pursuant to applicable law; (4) the Roll-Up Transactions; (5) the establishment of a  
24 liquidation trust or other appropriate vehicle to hold assets for sale that will not be utilized in  
25 the business of the Reorganized Debtors; and (6) all other actions that the Reorganized  
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1 Debtors determine are necessary or appropriate, including the making of filings or  
2 recordings in connection with the relevant Roll-Up Transactions. The form of each Roll-Up  
3 Transaction shall be determined by the Reorganized Debtor that is party to such Roll-Up  
4 Transaction. Implementation of the Roll-Up Transactions shall not affect any distributions,  
5 discharges, exculpations, releases, or injunctions set forth in the Plan.  
6

7 54. Effectuating Documents, Further Transactions. On and after the Effective  
8 Date, the Reorganized Debtors, and the officers and members of the boards of directors (or  
9 other governing bodies) thereof, are authorized to and may issue, execute, deliver, file, or  
10 record such contracts, Securities, instruments, releases, and other agreements or documents  
11 and take such actions as may be necessary or appropriate to effectuate, implement, and  
12 further evidence the terms and conditions of the Plan and the Securities issued pursuant to  
13 the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any  
14 approvals, authorizations, or consents except for those expressly required pursuant to the  
15 Plan.  
16

17 55. Preservation of Causes of Action. In accordance with Bankruptcy Code  
18 section 1123(b), except as otherwise provided in the Plan, the Reorganized Debtors and the  
19 Litigation Trust shall retain and may enforce all rights to commence and pursue, as  
20 appropriate, any and all Causes of Action, whether arising before or after the Petition Date,  
21 including any actions specifically enumerated on Exhibit L to the Disclosure Statement, and  
22 the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action  
23 shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized  
24 Debtors and the Litigation Trust, as applicable, may pursue such Causes of Action, as  
25 appropriate, in accordance with the best interests of the Reorganized Debtors and the  
26 Litigation Trust, as applicable. No Entity may rely on the absence of a specific reference in  
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1 the Plan or the Disclosure Statement to any Cause of Action against them as any indication  
2 that the Debtors, Reorganized Debtors or the Litigation Trust, as applicable, will not pursue  
3 any and all available Causes of Action against them. The Reorganized Debtors and the  
4 Litigation Trust, as applicable, shall be deemed to have expressly reserved all rights to  
5 prosecute any and all Causes of Action against any Entity, except as otherwise expressly  
6 provided in the Plan. Unless any Causes of Action against an Entity are expressly waived,  
7 relinquished, exculpated, released, compromised, or settled in the Plan or an order of the  
8 Court, the Reorganized Debtors and the Litigation Trust, as applicable, shall be deemed to  
9 expressly reserve all Causes of Action for later adjudication and, therefore, no preclusion  
10 doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim  
11 preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes  
12 of Action upon, after, or as a consequence of Confirmation or the occurrence of the  
13 Effective Date.

14  
15  
16 56. The Reorganized Debtors and the Litigation Trust, as applicable, shall be  
17 deemed to reserve and shall retain the foregoing Causes of Action notwithstanding the  
18 rejection or repudiation of any executory contract or unexpired lease during the Chapter 11  
19 Cases or pursuant to the Plan. In accordance with Bankruptcy Code section 1123(b)(3), any  
20 Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized  
21 Debtors and the Litigation Trust, as the case may be, on the Effective Date. The applicable  
22 Reorganized Debtor and the Litigation Trust, as applicable, through its authorized agents or  
23 representatives, shall retain and may exclusively enforce any and all such Causes of Action  
24 belonging to it. The Reorganized Debtors and the Litigation Trust, as applicable, shall have  
25 the exclusive right, authority, and discretion to determine and to initiate, file, prosecute,  
26 enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such  
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1 Causes of Action and to decline to do any of the foregoing without the consent or approval  
2 of any third party or further notice to or action, order, or approval of the Court. Neither the  
3 Litigation Trust nor the Reorganized Debtors shall commence any litigation against the  
4 Rhodes Entities until the Court rules on the allowance of the Rhodes Entities Claims set  
5 forth in Proofs of Claim, included in the Debtors' Schedules or otherwise set forth in the  
6 Mediation Term Sheet. To the extent any statute of limitations to pursue any claims  
7 belonging to the Debtors against the Rhodes Entities would lapse from the execution date of  
8 the Mediation Term Sheet through the Court's resolution of the allowance of the Rhodes  
9 Entities Claims, the Rhodes Entities shall be deemed to have consented to an extension of  
10 the applicable statute of limitations until sixty days following the Court's ruling on the  
11 allowance of the Rhodes Entities Claims. The Litigation Trust shall have no liability to any  
12 entity for any Claims or Causes of Action it determines not to pursue.

15 57. Assumption and Rejection of Executory Contracts and Unexpired Leases.

16 Except as otherwise provided in the Plan, the Debtors' executory contracts or unexpired  
17 leases not assumed or rejected pursuant to an order of the Court prior to the Effective Date  
18 shall be deemed rejected pursuant to Bankruptcy Code sections 365 and 1123, except for  
19 those executory contracts or unexpired leases: (1) listed on the schedule of Assumed  
20 Executory Contracts and Unexpired Leases attached to the Disclosure Statement as Exhibit  
21 N; (2) that are Intercompany Contracts, in which case such Intercompany Contracts are  
22 deemed automatically assumed by the applicable Debtor as of the Effective Date, unless  
23 such Intercompany Contract previously was rejected by the Debtors pursuant to an order of  
24 the Court or is the subject of a motion to reject pending on the Effective Date; (3) that are  
25 the subject of a motion to assume or reject pending on the Effective Date (in which case  
26 such assumption or rejection and the effective date thereof shall remain subject to an order  
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1 of the Court); (4) that are subject to a motion to reject with a requested effective date of  
2 rejection after the Effective Date; or (5) that are otherwise expressly assumed or rejected  
3 pursuant to the Plan. Entry of the Confirmation Order shall constitute an order of the Court  
4 approving the assumptions or rejections of such executory contracts or unexpired leases as  
5 set forth in the Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless  
6 otherwise indicated, all assumptions or rejections of such executory contracts and unexpired  
7 leases in the Plan are effective as of the Effective Date. Each such executory contract and  
8 unexpired lease assumed pursuant to the Plan or by Court order but not assigned to a third  
9 party prior to the Effective Date shall revert in and be fully enforceable by the applicable  
10 contracting Reorganized Debtor in accordance with its terms, except as such terms may have  
11 been modified by such order. Notwithstanding anything to the contrary in the Plan, the First  
12 Lien Steering Committee and the Reorganized Debtors, as applicable, reserve the right to  
13 alter, amend, modify, or supplement the schedules of executory contracts or unexpired  
14 leases identified in Exhibit N to the Disclosure Statement at any time through and including  
15 fifteen days after the Effective Date. All executory contracts and unexpired leases  
16 associated solely with the Arizona Assets shall be assumed and assigned to the Rhodes  
17 Entities (or their designee) to the extent set forth on the schedule of Assumed Executory  
18 Contracts and Unexpired Leases attached to the Disclosure Statement as Exhibit N, at no  
19 cost to the Debtors or the Reorganized Debtors and all Cure costs associated with such  
20 scheduled Arizona contracts or leases shall be borne by the Rhodes Entities.

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24 58. Claims Based on Rejection or Repudiation of Executory Contracts and  
25 Unexpired Leases. Unless otherwise provided by an order of the Court, any Proofs of Claim  
26 asserting Claims arising from the rejection or repudiation of the Debtors' executory  
27 contracts and unexpired leases pursuant to the Plan or otherwise must be filed with the  
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1 Claims and Solicitation Agent no later than the Rejection Damages Claim Deadline. Any  
2 Proofs of Claim arising from the rejection or repudiation of the Debtors' executory contracts  
3 or unexpired leases that are not timely filed by the Rejection Damages Claim Deadline shall  
4 be disallowed automatically, forever barred from assertion, and shall not be enforceable  
5 against any Reorganized Debtor without the need for any objection by the Reorganized  
6 Debtors or further notice to or action, order, or approval of the Court, and any Claim arising  
7 out of the rejection or repudiation of the executory contract or unexpired lease shall be  
8 deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules  
9 or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection or  
10 repudiation of the Debtors' executory contracts and unexpired leases shall be classified as  
11 General Unsecured Claims.  
12

13           59.    Home Sales. All pending home sale contracts shall be assumed by the  
14 applicable Reorganized Debtor.  
15

16           60.    Warranties. All eligible prepetition home sale contracts with one-year  
17 warranty obligations shall be performed in the ordinary course of business of the  
18 Reorganized Debtors. Upon the Effective Date, any remaining warranty obligations that are  
19 to be assumed by the Reorganized Debtors, which shall only be assumed with the consent of  
20 the First Lien Steering Committee, shall be transferred to the Reorganized Debtors.  
21

22 Warranty obligations that are not expressly assumed shall be rejected and treated as General  
23 Unsecured Claims.

24           61.    Procedures for Resolving Disputed Claims. The provisions contained in  
25 Article VI of the Plan are found to be reasonable and are hereby approved.

26           62.    Provisions Governing Distributions. The provisions contained in Article VII  
27 of the Plan, including, without limitation, (i) the provisions governing the payment of \$1.5  
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1 million to the First Lien Lenders and (ii) the provisions regarding the purchase of certain  
2 General Unsecured Claims, are found to be reasonable and are hereby approved.

3           63.     Discharge of Claims and Termination of Interests. Pursuant to Bankruptcy  
4 Code section 1141(d), and except as otherwise specifically provided in the Plan, the  
5 distributions, rights, and treatment that are provided in the Plan shall be in complete  
6 satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests,  
7 and Causes of Action of any nature whatsoever, including any interest accrued on Claims or  
8 Interests from and after the Petition Date, whether known or unknown, against, liabilities of,  
9 Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or  
10 properties, regardless of whether any property shall have been distributed or retained  
11 pursuant to the Plan on account of such Claims and Interests, including demands, liabilities,  
12 and Causes of Action that arose before the Effective Date, any liability (including  
13 withdrawal liability) to the extent such Claims or Interests relate to services performed by  
14 employees of the Debtors prior to the Effective Date and that arise from a termination of any  
15 employee, regardless of whether such termination occurred prior to or after the Effective  
16 Date, any contingent or non-contingent liability on account of representations or warranties  
17 issued on or before the Effective Date, and all debts of the kind specified in Bankruptcy  
18 Code sections 502(g), 502(h), or 502(i), in each case whether or not: (1) a Proof of Claim  
19 based upon such debt or right is filed or deemed filed pursuant to Bankruptcy Code section  
20 501; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to  
21 Bankruptcy Code section 502; or (3) the Holder of such a Claim has accepted the Plan. Any  
22 default by the Debtors with respect to any Claim or Interest that existed immediately prior to  
23 or on account of the filing of the Chapter 11 Cases shall be deemed Cured on the Effective  
24 Date. The Confirmation Order shall be a judicial determination of the discharge of all  
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1 Claims and Interests subject to the Effective Date occurring.

2

3 64. Releases by the Debtors of the Released Parties. Pursuant to Bankruptcy

4 Code section 1123(b) and except as otherwise specifically provided in the Plan, for good and

5

6 valuable consideration, including the service of the Released Parties to facilitate the

7

8 expeditious reorganization of the Debtors and the implementation of the restructuring

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10 contemplated by the Plan, and as part of the global settlement described in Article I.B of the

11 Disclosure Statement, on and after the Effective Date, the Released Parties are deemed

12

13 released by the Debtors, the Reorganized Debtors, and the Estates from any and all Claims,

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15 obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever,

16

17 including any derivative Claims asserted on behalf of the Debtors, taking place on or before

18

19 the Effective Date, whether known or unknown, foreseen or unforeseen, existing or

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21 hereinafter arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors or

22

23 the Estates would have been legally entitled to assert in their own right (whether

24

25 individually or collectively) or on behalf of the Holder of any Claim or Interest or other

26

27 Entity, based on or relating to, or in any manner arising from, in whole or in part, the

28

29 Debtors, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of

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31 any Security of the Debtors, the subject matter of, or the transactions or events giving rise to,

32

33 any Claim or Interest that is treated in the Plan, the business or contractual arrangements

34

35 between any Debtor and any of the Released Parties, the restructuring of Claims and

36

37 Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of

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39 the Plan and Disclosure Statement, or related agreements, instruments, or other documents,

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41 upon any other act or omission, transaction, agreement, event, or other occurrence taking

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43 place on or before the Effective Date.

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65. Releases by the Debtors of the Rhodes Entities. The Rhodes Entities shall be deemed released from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever arising under chapter 5 of the Bankruptcy Code with respect to transfers made by the Debtors to the Rhodes Entities during the 2 years prior to the Petition Date; provided, however, that such release shall only apply to transfers expressly set forth in the Schedules as filed with the Court as of August 1, 2009 or as disclosed in Attachment B to the Mediation Term Sheet.

66. Releases by First Lien Lenders of First Lien Lenders. Pursuant to Bankruptcy Rule 9019, and except as otherwise specifically provided in the Plan, to the extent a First Lien Lender elected on its ballot to release the First Lien Lenders in accordance with Article VIII.F of the Plan, for good and valuable consideration, on and after the Effective Date, each of the First Lien Lenders that elected to grant a release, shall be deemed to release each of the other First Lien Lenders that elected to grant a release and each of their affiliates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such First Lien Lender would have been legally entitled to assert against any other First Lien Lender that elected to grant a release, based on or relating to, or in any manner arising from, in whole or in part, the First Lien Credit Agreement, the First Lien Lender Claims, any other claims arising under or related to the First Lien Credit Agreement, the Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to any First Lien Lender Claim, the restructuring of the First Lien Lender Claims prior to or during the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or

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1 omission, transaction, agreement, event, or other occurrence taking place on or before the  
2 Effective Date; with such releases constituting an express waiver and relinquishment by  
3 each First Lien Lender electing to grant a release of any claims, whether known or unknown  
4 that such First Lien Lender may have under Section 1542 of the California Civil Code or  
5 other analogous state or federal law related to the matters being released; provided, however,  
6 that Claims or liabilities arising out of or relating to any act or omission of any First Lien  
7 Lender or any of its affiliates that constitutes gross negligence or willful misconduct shall  
8 not be released.

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10 67. Exculpation. Except as otherwise specifically provided in the Plan, no  
11 Exculpated Party shall have or incur, and each Exculpated Party is hereby released and  
12 exculpated from, any Claim, obligation, Cause of Action, or liability to one another or to any  
13 Exculpating Party for any Exculpated Claim, except for gross negligence, willful  
14 misconduct or fraud, but in all respects such Entities shall be entitled to reasonably rely  
15 upon the advice of counsel with respect to their duties and responsibilities pursuant to the  
16 Plan. The Debtors, the First Lien Steering Committee and the Reorganized Debtors (and  
17 each of their respective agents, members, directors, officers, employees, advisors, and  
18 attorneys) have, and upon confirmation of the Plan shall be deemed to have, participated in  
19 good faith and in compliance with the applicable provisions of the Bankruptcy Code with  
20 regard to the distributions of the Securities pursuant to the Plan, and therefore are not, and  
21 on account of such distributions shall not be, liable at any time for the violation of any  
22 applicable law, rule, or regulation governing the solicitation of acceptances or rejections of  
23 the Plan or such distributions made pursuant to the Plan.

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26 68. Injunction. Except as otherwise expressly provided in the Plan or for  
27 obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims  
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1 against the Debtors, and all Entities holding Interests, are permanently enjoined, from and  
2 after the Effective Date, from: (1) commencing or continuing in any manner any action or  
3 other proceeding of any kind against the Debtors or Reorganized Debtors on account of or in  
4 connection with or with respect to any such Claims or Interests; (2) enforcing, attaching,  
5 collecting, or recovering by any manner or means any judgment, award, decree or order  
6 against the Debtors or Reorganized Debtors on account of or in connection with or with  
7 respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any  
8 encumbrance of any kind against the Debtors or Reorganized Debtors or the property or  
9 Estates of the Debtors or Reorganized Debtors on account of or in connection with or with  
10 respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or  
11 recoupment of any kind against any obligation due from the Debtors or Reorganized Debtors  
12 or against the property or Estates of the Debtors or Reorganized Debtors on account of or in  
13 connection with or with respect to any such Claims or Interests unless such Holder has filed  
14 a motion requesting the right to perform such setoff on or before the Confirmation Date, and  
15 notwithstanding an indication in a Proof of Claim or Interest or otherwise that such Holder  
16 asserts, has, or intends to preserve any right of setoff pursuant to Bankruptcy Code section  
17 553 or otherwise (provided, that, to the extent the Rhodes Entities Claims are Allowed, the  
18 Rhodes Entities, without the need to file any such motion, shall retain the right to assert a  
19 setoff against any Claims or Causes of Action that the Reorganized Debtors or Litigation  
20 Trust may assert against the Rhodes Entities, with the Reorganized Debtors and Litigation  
21 Trust, as applicable, reserving the right to challenge the propriety of any such attempted  
22 setoff, with any such challenge to be resolved by the Court); and (5) commencing or  
23 continuing in any manner any action or other proceeding of any kind on account of or in  
24 connection with or with respect to any such Claims or Interests released or settled pursuant  
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69. Setoffs. Except as otherwise expressly provided for in the Plan, each Reorganized Debtor, pursuant to the Bankruptcy Code (including Bankruptcy Code section 553), applicable non bankruptcy law, or as may be agreed to by the Holder of a Claim, may setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor, Reorganized Debtor or the Litigation Trust, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor or the Litigation Trust of any such Claims, rights, and Causes of Action that such Reorganized Debtor or the Litigation Trust may possess against such Holder. In no event shall any Holder of Claims be entitled to setoff any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such Holder had filed a motion with the Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 or otherwise; provided, however, that, to the extent the Rhodes Entities Claims are Allowed, the Rhodes Entities, without the need to file any such motion, shall retain the right to assert a setoff against any Claims or Causes of Action that the Reorganized Debtors or Litigation Trust may assert against the Rhodes Entities,

1 with the Reorganized Debtors and Litigation Trust, as applicable, reserving the right to  
2 challenge the propriety of any such attempted setoff, with any such challenge to be resolved  
3 by the Court.

4 70. Professional Claims. The provisions contained in Article IX.A of the Plan  
5 relating to Claims for fees and expenses incurred in connection with the Chapter 11 Cases  
6 are found to be reasonable and are hereby approved.

7  
8 71. Other Administrative Claims. All requests for payment of an Administrative  
9 Claim must be filed with the Claims and Solicitation Agent and served upon counsel to the  
10 Debtors or Reorganized Debtors, as applicable, and the First Lien Steering Committee on or  
11 before the Administrative Claim Bar Date. Any request for payment of an Administrative  
12 Claim that is not timely filed and served shall be disallowed automatically without the need  
13 for any objection by the Debtors, Reorganized Debtors, or the First Lien Steering  
14 Committee. The Reorganized Debtors may settle and pay any Administrative Claim in the  
15 ordinary course of business without any further notice to or action, order, or approval of the  
16 Court. In the event that any party with standing objects to an Administrative Claim, the  
17 Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding  
18 the foregoing, no request for payment of an Administrative Claim need be filed with respect  
19 to an Administrative Claim previously Allowed by Final Order.

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22 72. Immediate Binding Effect. Subject to Article X.B of the Plan and  
23 notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the  
24 occurrence of the Effective Date, the terms of the Plan shall be immediately effective and  
25 enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all  
26 Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed  
27 to have accepted the Plan), all Entities that are parties to or are subject to the settlements,  
28

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1 compromises, releases, discharges, and injunctions described in the Plan or herein, each  
2 Entity acquiring property under the Plan, and any and all non-Debtor parties to executory  
3 contracts and unexpired leases with the Debtors.

4           73.     Notice of Entry of Confirmation Order. In accordance with Bankruptcy  
5 Rules 2002 and 3020(c), within ten business days of the date of entry of the Confirmation  
6 Order, the First Lien Steering Committee shall serve the Notice of Confirmation by United  
7 States mail, first class postage prepaid, by hand, or by overnight courier service to all parties  
8 having been served with the Confirmation Hearing Notice; provided, however, that no  
9 notice or service of any kind shall be required to be mailed or made upon any Entity to  
10 whom the First Lien Steering Committee mailed a Confirmation Hearing Notice, but  
11 received such notice returned marked “undeliverable as addressed,” “moved, left no  
12 forwarding address” or “forwarding order expired,” or similar reason, unless the First Lien  
13 Steering Committee has been informed in writing by such Entity, or is otherwise aware, of  
14 that Entity’s new address. To supplement the notice described in the preceding sentence,  
15 within twenty days of the date of the Confirmation Order, the First Lien Steering Committee  
16 shall publish the Notice of Confirmation once in the Vegas Sun. Mailing and publication of  
17 the Notice of Confirmation in the time and manner set forth in the this paragraph shall be  
18 good and sufficient notice under the particular circumstances and in accordance with the  
19 requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

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22           74.     Additional Documents. On or before the Effective Date, the First Lien  
23 Steering Committee may file with the Court such agreements and other documents as may  
24 be necessary or appropriate to effectuate and further evidence the terms and conditions of  
25 the Plan. The Debtors or the Reorganized Debtors, as applicable, the First Lien Steering  
26 Committee and all Holders of Claims receiving distributions pursuant to the Plan and all  
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1 other parties in interest shall, from time to time, prepare, execute, and deliver any  
2 agreements or documents and take any other actions as may be necessary or advisable to  
3 effectuate the provisions and intent of the Plan, in each case as may be determined by the  
4 First Lien Steering Committee.

5           75.     Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of  
6 the Judicial Code, as determined by the Court at a hearing pursuant to Bankruptcy Code  
7 section 1128, shall be paid for each quarter (including any fraction thereof) until the Chapter  
8 11 Cases are converted, dismissed, or closed, whichever occurs first.

9           76.     Dissolution of Creditors' Committee. Upon the Effective Date, the  
10 Creditors' Committee shall dissolve automatically (except with respect to the resolution of  
11 applications for Professional Claims), and members thereof shall be released and discharged  
12 from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter  
13 11 Cases and under the Bankruptcy Code.

14           77.     Reservation of Rights. Except as expressly provided by the Plan, none of the  
15 filing of the Plan, any statement or provision contained in the Plan, or the taking of any  
16 action by any Debtor or the First Lien Steering Committee with respect to the Plan, the  
17 Disclosure Statement, or any documents ancillary to either the Plan or the Disclosure  
18 Statement, shall be deemed to be an admission or waiver of any rights of any Debtor or the  
19 First Lien Steering Committee with respect to the Holders of Claims or Interests prior to the  
20 Effective Date.

21           78.     Successors and Assigns. The rights, benefits, and obligations of any Entity  
22 named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any  
23 heir, executor, administrator, successor or assign, affiliate, officer, director, agent,  
24 representative, attorney, beneficiaries, or guardian, if any, of each Entity.  
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1           79.     Term of Injunctions or Stays. Unless otherwise provided in the Plan or in the  
2 Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to  
3 Bankruptcy Code sections 105, 362, or 525 or otherwise, or any order of the Court, and  
4 extant on the date of the Confirmation Order (excluding any injunctions or stays contained  
5 in the Plan or this Confirmation Order) shall remain in full force and effect until the  
6 Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order  
7 shall remain in full force and effect in accordance with their terms. The Confirmation Order  
8 will permanently enjoin the commencement or prosecution by any Person, whether directly,  
9 derivatively or otherwise, of any Claims, Causes of Action, obligations, suits, judgments,  
10 damages, demands, debts, rights or liabilities released pursuant to the Plan.

11           80.     Governing Law. Unless a rule of law or procedure is supplied by federal law  
12 (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically  
13 stated, the laws of the State of Nevada, without giving effect to the principles of conflict of  
14 laws, shall govern the rights, obligations, construction, and implementation of the Plan, any  
15 agreements, documents, instruments, or contracts executed or entered into in connection  
16 with the Plan (except as otherwise set forth in those agreements, in which case the governing  
17 law of such agreement shall control), and corporate governance matters; provided, however,  
18 that corporate governance matters relating to the Debtors or Reorganized Debtors, as  
19 applicable, not incorporated or organized in Nevada shall be governed by the laws of the  
20 state of incorporation or organization of the applicable Debtor or Reorganized Debtor, as  
21 applicable.

22           81.     Modifications and Amendments to Plan. The First Lien Steering Committee  
23 shall not modify materially the terms of the Plan without the prior consent of the parties to  
24 the Mediation Term Sheet; provided, that in the event the Rhodes Entities fail to comply  
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1 with any of their obligations under the Mediation Term Sheet or the Plan by the Effective  
2 Date (or such other date set forth in the Plan) and fail to cure such alleged breach within ten  
3 (10) days' written notice to the Rhodes Entities, then the First Lien Steering Committee shall  
4 be entitled to file a motion on at least seven (7) days notice to (i) determine that a breach has  
5 occurred (except that the failure of the parties to agree on the refinancing of the Rhodes  
6 Ranch Golf Course solely as a result of the First Lien Steering Committee acting  
7 unreasonably or in bad faith shall not be deemed a failure of the Rhodes Entities to comply  
8 with their obligations under the Plan), and the Rhodes Entities reserve their right to object to  
9 such motion; (ii) modify the Plan to remove any provisions of the Plan that were included  
10 for the benefit of the Rhodes Entities; and (iii) consummate the Plan, as modified. Upon  
11 entry of an order of the Court finding a breach by the Rhodes Entities and authorizing the  
12 modifications to the Plan to remove any provisions that were included for the benefit of the  
13 Rhodes Entities, the First Lien Steering shall be authorized to make such modifications and  
14 consummate the Plan. Subject to certain restrictions and requirements set forth in  
15 Bankruptcy Code section 1127 and Bankruptcy Rule 3019 and those restrictions on  
16 modifications set forth in the Plan, the First Lien Steering Committee expressly reserves its  
17 rights to revoke, withdraw, alter, amend, or modify materially the Plan with respect to any  
18 Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate  
19 proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or  
20 omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the  
21 Confirmation Order, in such matters as may be necessary to carry out the purposes and  
22 intent of the Plan. Any such modification or supplement shall be considered a modification  
23 of the Plan and shall be made in accordance with Article XI.A of the Plan.

27 82. Nonseverability of Plan Provisions. The provisions of the Confirmation  
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1 Order shall constitute a judicial determination and shall provide that each term and provision  
2 of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is:  
3 (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be  
4 deleted or modified without the First Lien Steering Committee's consent; and (3)  
5 nonseverable and mutually dependent.  
6

7 83. References to Plan Provisions. Captions and headings to Articles of the Plan  
8 are inserted for convenience of reference only and are not intended to be part of or to affect  
9 the interpretation of the Plan. The failure specifically to include or to refer to any particular  
10 provision of the Plan in the Confirmation Order shall not diminish or impair the  
11 effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in  
12 its entirety.  
13

14 84. Conflicts Between Confirmation Order and Plan. The provisions of the Plan  
15 and of this Confirmation Order shall be construed in a manner consistent with each other so  
16 as to effect the purposes of each; provided, however, that if there is determined to be any  
17 inconsistency between any Plan provision and any provisions of this Confirmation Order  
18 that cannot so be reconciled, then, solely to the extent of such inconsistency, the provisions  
19 of the Confirmation Order shall control.  
20

21 85. Findings of Fact. The determinations, findings, judgments, decrees and  
22 orders set forth and incorporated herein constitute the Court's findings of fact and  
23 conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding  
24 pursuant to Bankruptcy Rule 9014. Each finding of fact set forth or incorporated herein, to  
25 the extent that it is or may be deemed a conclusion of law, shall also constitute a conclusion  
26 of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be  
27 deemed a finding of fact, shall also constitute a finding of fact.  
28

1 86. Substantial Consummation. Substantial consummation of the Plan shall be  
2 deemed to occur on the Effective Date.

3 87. Final Order. The Confirmation Order is a final order and the period in which  
4 an appeal must be filed shall commence upon entry hereof.

5 88. Retention of Jurisdiction. Notwithstanding the entry of this Confirmation  
6 Order and the occurrence of the Effective Date, the Court shall retain exclusive jurisdiction  
7 over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to  
8 Bankruptcy Code sections 105(a) and 1142 and Article XII of the Plan.  
9

10 Submitted by:

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12  
13 /s/ Nile Leatham, Esq.  
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21 Nleatham@klnevada.com

22 Dated: January 15, 2010

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