

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**IN RE:**

**SAPPHIRE VP, L.P**

**DEBTOR**

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**CASE NO. 12-10173-B-11**

**(Chapter 11)**

**PROPOSED DISCLOSURE STATEMENT UNDER  
11 U.S.C. § 1125 AND BANKRUPTCY RULE 3016 IN SUPPORT  
OF PLAN OF LIQUIDATION OF DEBTOR**

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**THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS OF THE DEBTOR ENTITLED TO VOTE ON THE PLAN OF LIQUIDATION HEREIN DESCRIBED AND CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO ACCEPT OR REJECT THE DEBTOR'S PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE AS TO THE DEBTOR'S PLAN OF LIQUIDATION. ALL CREDITORS ARE URGED TO READ THE DISCLOSURE STATEMENT AND ATTACHMENTS WITH CARE AND IN THEIR ENTIRETY.**

**ON \_\_\_\_\_, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE. SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN OF LIQUIDATION HEREIN DESCRIBED AND ATTACHED AS EXHIBIT A, IS BEING SOUGHT FROM CREDITORS WHOSE CLAIMS AGAINST THE DEBTORS ARE IMPAIRED UNDER THE PLAN OF LIQUIDATION. CREDITORS ENTITLED TO VOTE ON THE PLAN OF LIQUIDATION ARE URGED TO VOTE IN FAVOR OF THE PLAN AND TO RETURN THE BALLOT INCLUDED WITH THIS DISCLOSURE STATEMENT UPON COMPLETION IN THE ENVELOPE ADDRESSED TO HOOVER SLOVACEK LLP., ATTENTION: EDWARD L. ROTHBERG, 5847 SAN FELIPE, SUITE 2200, HOUSTON, TEXAS 77057, NOT LATER THAN \_\_\_\_\_, AT \_:\_.\_.M. HOUSTON TIME.**

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## **DEBTOR'S DISCLOSURE STATEMENT**

The Debtor, Sapphire VP, LP ("Sapphire" or "Debtor"), and Randall J. Davis ("Davis") pursuant to Section 1125 of the Bankruptcy Code, hereby submits the following Disclosure Statement in connection with the Chapter 11 Plan of Liquidation (the "Plan"). Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Plan.

### **I.**

#### **SUMMARY AND INTRODUCTORY STATEMENT**

##### **1.1 Summary**

The Debtor is a residential real estate development company responsible for developing a luxury condominium project located in South Padre Island, Texas ("Sapphire Property"). The Sapphire Property is encumbered by liens in favor of International Bank of Commerce ("IBC") and Premier Tierra Holdings, Inc. ("Premier Tierra"). IBC alleges that, as of the Petition Date, the outstanding principal and interest owed to IBC and Premier Tierra is approximately \$36.9 million, plus attorneys' fees, costs and expenses.

In 2008, Hurricane Dolly inflicted significant damage to the Sapphire Property, negatively impacting sales. Moreover, due to egregious drafting errors in the form earnest money contracts prepared by the Winstead Law Firm for the Sapphire Property, 84 individuals who executed earnest money contracts to purchase condominiums, cancelled them. Additionally, the general national economic decline and tightened credit markets of the last three years have wreaked havoc on the home construction industry as a whole, including the Debtor. In addition to the damage that was sustained, the hurricane also caused homebuyers to rethink purchasing properties near the beach. Then, to make matter worse, the collapse of the mortgage market made it extremely difficult for individuals to obtain mortgages to purchase condominiums.

These factors caused the Debtor to default on its obligations to IBC and Premier Tierra. The Debtor's loans with IBC and Premier Tierra have matured and a forbearance or extension could not be negotiated. With no economic improvement for these markets foreseen in the near term, the Debtor agreed to lift the automatic stay and allow IBC and/or Premier Tierra to foreclose their liens on the Sapphire Property for a credit against the debt equal to \$28 million which has been stipulated as the current value of the property. Allowed General Unsecured Claims shall be paid a pro rata share of up to \$70,000 from the ZCA Settlement Proceeds, which the Debtor estimates will be 100% of the Allowed Claims.

The Plan provides for the payment to Creditors as follows in the order of priority required by the Bankruptcy Code: (1) Allowed Administrative Claims will be paid in cash in full from the Cash Infusion unless otherwise agreed; (2) Ad valorem property taxes will be by IBC when due; (3) the Sapphire Property will be foreclosed on by IBC or Premier Tierra for a credit against the debt equal to \$28 million, plus payment of a portion of the proceeds from the Reserved Litigation Claims; (4) Allowed Noninsider General Unsecured Claims, including any claims related to condominium association dues, shall be paid a pro rata share \$70,000 from the ZCA Settlement Proceeds; (5) Allowed Insider Claims shall receive specified percentages of the proceeds from Reserved Litigation Claims up to the full amount of the allowed claim; (6) Equity Interest Holders will receive any funds remaining

after full payment to IBC, Premier Tierra, and holders of Allowed General Unsecured Claims and Allowed Insider Claims.

## **1.2 Introductory Statement**

On April 2, 2012, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Brownsville Division. The Debtor prepared this Disclosure Statement under 11 U.S.C. §1125 to disclose that information which, in its opinion, is material, important, and necessary to an evaluation of the Plan.

This Disclosure Statement is being provided in order to disclose important and necessary information to allow a reasonably informed decision by Creditors receiving distributions under the Plan to exercise their rights to vote on the Plan. The purpose of this summary is to answer questions which are most often asked by a party receiving a Disclosure Statement. Unless otherwise stated, the information contained herein is current as of December 31, 2012, which is at the end of the Debtor's most recently reported accounting year.

On \_\_\_\_\_, the Bankruptcy Court entered an order approving the Disclosure Statement as containing information of a kind and in sufficient detail, adequate to enable Creditors whose votes on the Plan are being solicited to make an informed judgment whether to accept or reject the Plan. Pursuant to the provisions of the United States Bankruptcy Code, this Disclosure Statement has been presented to and approved by the Bankruptcy Court. However, such approval is that required by statute and does not constitute a judgment by the Court as to the desirability of the Plan or as to the value or suitability of any consideration offered thereby.

**In addition to reviewing this Disclosure Statement, all persons receiving the Disclosure Statement are urged to review fully the provisions of the Plan and all attachments to the Disclosure Statement. This Disclosure Statement is not intended to replace careful review and analysis of the Plan. Rather, it is submitted as an aid and supplement in your review of the Plan and in an effort to explain the terms and implications of the Plan on file with the Bankruptcy Court. Every effort has been made to explain fully the various aspects of the Plan as it may affect all Creditors and Holders of Equity Interests. If you have any questions, the Debtor urges you to contact Debtor's legal counsel and every effort will be made to assist you.**

**Creditors should read this Disclosure Statement in its entirety prior to voting on the Plan. No solicitation of votes on the Plan may be made, except pursuant to this Disclosure Statement and Section 1125 of the Bankruptcy Code. No other party has been authorized to utilize any information concerning the Debtor or its affairs, other than the information contained in this Disclosure Statement, to solicit votes on the Plan. Creditors and Holders of Equity Interests should not rely on any information relating to the Debtor other than that contained in this Disclosure Statement and the exhibits attached hereto.**

A copy of the notice of the dates set for objections to and the hearing on confirmation of the Plan and the order of the Bankruptcy Court, dated \_\_\_\_\_, 2012, approving the Disclosure Statement, are also being transmitted with this Disclosure Statement. The order and the notice of the Confirmation Hearing set forth in detail the deadlines, procedures and instructions for filing objections to confirmation

of the Plan. Each Holder of a Claim or Equity Interest should read the Disclosure Statement, the Plan, the order and the notice of Confirmation Hearing.

If you have questions about the packet of materials that you received, please contact Edward L. Rothberg of Hoover Slovacek LLP, counsel to the Debtor, at (713) 977-8686.

The material herein contained is intended solely for the use of known Creditors and Equity Interest Holders of the Debtor, and may not be relied upon for any purpose other than a determination by them of how to vote on the Plan.

Certain of the materials contained in this Disclosure Statement are taken directly from other, readily accessible documents or are digests of other information. While the Debtor has made every effort to retain the meaning of such other information or portions thereof, it urges that any reliance on the contents of such other instruments should depend on a thorough review of the underlying information.

**No representations concerning the Debtor or the Plan are authorized other than those that are set forth in this Disclosure Statement. Any representations or inducements made by any person to secure your vote which are other than those contained herein should not be relied upon, and such representations or inducements should be reported to Edward L. Rothberg, counsel for the Debtor (at the address shown herein) who shall deliver such information to the Bankruptcy Court. Improper representations or inducements to secure votes are a serious matter.**

## II. VOTING PROCEDURES

The Debtor prepared this Disclosure Statement as required by Bankruptcy Code Section 1125 and Federal Rule of Bankruptcy Procedure 3016(c). It is being distributed to Holders of Claims and Equity Interests against the Debtor to assist such Holders in evaluating the feasibility of the Plan, the manner in which their Claims are treated and in determining that the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code. The purpose of this Disclosure Statement is to assist those entitled to vote on the Plan to make an informed judgment in voting to accept or reject the Plan.

The Bankruptcy Court approved this Disclosure Statement on \_\_\_\_\_, 2012 as containing information of a kind, and in sufficient detail, adequate to enable a hypothetical, reasonable investor typical of each of the Classes whose votes are being solicited to make an informed judgment with respect to the Plan.

This Disclosure Statement describes the background of the Debtor and the significant events leading up to and following filing of its Chapter 11 petition. It summarizes the major events that have taken place during the Debtor's Chapter 11 case and describes the terms of the Plan which divides creditor Claims and Equity Interests for the Debtor into Classes and provides for the treatment of Allowed Claims and Equity Interests as set forth in the Plan.

This Disclosure Statement contains a summary of certain provisions of the Plan. While the Debtor has made every effort to ensure that this summary provides adequate information with respect to the Plan, it does not purport to be complete and is qualified to the extent it does not set forth the entire

text of the Plan. If there is any inconsistency between the Plan and the summary of the Plan contained in this Disclosure Statement, the Plan shall control. Accordingly, each Holder of a claim should review the entire Plan.

As to contested matters, adversary proceedings and other actions or threatened actions, this Disclosure Statement shall not constitute or be construed as an admission of any fact or liability, stipulation or waiver but rather as a statement made in settlement negotiations.

A Creditor or Equity Interest Holder, in order to vote on the Plan, must have filed a proof of Claim or Equity Interest on or prior to the Bar Date, unless such Claim or Equity Interest has been scheduled by the Debtor as not disputed, liquidated, and not contingent. Creditors whose claims are scheduled as not disputed, liquidated and not contingent are, to the extent scheduled, deemed to have filed claims, and absent timely objection, such claims are deemed allowed. A Creditor or Interest Holder may vote to accept or reject the Plan by filling out the enclosed ballot and mailing it to the Debtor's counsel in the enclosed self-addressed stamped envelope.

The Court has fixed \_\_\_\_\_, 2012 at \_\_\_\_: \_\_0 \_\_.M. Houston time as the last day by which ballots must be received by the Debtor. No vote received after such time will be counted. Whether a Creditor or Interest Holder votes on the Plan or not, such person will be bound by the terms and treatments set forth in the Plan if the Plan is accepted by the requisite majorities of classes of Creditors and Interest Holders and/or is confirmed by the Court. Absent the filing of a ballot, such creditor or Interest Holder will not be included in the tally. Allowance of a Claim or Interest for voting purposes, and disallowance of any Claim or Interest for voting purposes does not necessarily mean that all or a portion of the Claim or Interest will be allowed or disallowed for distribution purposes.

In order for the Plan to be accepted by Creditors, a majority in number and a two-thirds majority in the amount of Allowed Claims in each impaired class of Creditors must vote to accept the Plan. In order for the Plan to be accepted by Interest Holders, a two-thirds majority in the amount of Allowed Interests in each impaired class of interests must vote to accept the Plan. You are, therefore, urged to fill in, date, sign and promptly mail the enclosed ballot, if you are entitled to vote. Please be sure to properly complete the form and legibly identify the name of the claimant or Interest Holder.

The Debtor recommends that Creditors support and vote to accept the Plan. It is the opinion of the Debtor that the treatment of Creditors under the Plan contemplates a greater recovery than that which is likely to be achieved under other alternatives for the reorganization or liquidation of the Debtor. Accordingly, the Debtor believes that confirmation of the Plan is in the best interests of Creditors.

### **III.**

#### **NATURE AND HISTORY OF BUSINESS**

##### **3.1 Source of Information and Accounting Method**

The Debtor's books are maintained under the supervision of Randall J. Davis, the manager of the Debtor's general partner. The Debtor's tax returns historically have been prepared by the accounting firm of LaPorte, Sehr, Romig & Hand CPA's. THE DEBTOR'S BOOKS HAVE NOT BEEN AUDITED BY AN INDEPENDENT PUBLIC ACCOUNTANT AND OTHER FACTS IN THIS DISCLOSURE STATEMENT MAY NOT BE BASED ON INFORMATION CONSIDERED BY OUTSIDE ACCOUNTANTS. NO ABSOLUTE REPRESENTATION IS MADE BY THE DEBTOR

AS TO THE ACCURACY OF ITS RECORDS; HOWEVER, IT HAS ATTEMPTED TO ACCURATELY REFLECT ITS BUSINESS OPERATIONS.

## **3.2 General Information**

### **3.2.1 History of The Debtor**

The Sapphire Property is located on a powder sand beach with crystal-clear blue water on the exclusive South Padre Island. Its 31 stories tower above the Gulf Coast beach and bay and consist of 230 luxurious high end condominium units. Each condominium unit has unparalleled views of the ocean or bay and contains unrivaled amenities. Amenities include a world class spa and fitness center, a 300' two-tiered pool with adjoining private cabanas, hot tubs, pool bar, poolside food service, concierge, business center, 24 seat private theater, teens' lounge area with complimentary computers, optional daily maid service (fees apply), and free garage parking. The property offers several floor plans ranging from approximately 1400 sq. ft. to over 2300 sq feet, plus larger penthouses. Each unit contains a private terrace and is outfitted with stainless steel appliances, contemporary lighting and tile flooring. The property offers the privacy of a home while having all the amenities of a hotel/spa getaway.

As stated above, in 2008, Hurricane Dolly inflicted significant damage to the Sapphire Property, in part stemming from a construction and design defect on the property and which resulted in litigation by the Debtor against the various responsible parties ("Sapphire Construction Litigation"). Because of these problems, sales of condominiums plummeted. Moreover, due to egregious drafting errors in the form earnest money contracts prepared by the Winstead Law Firm for the Sapphire Property, 84 individuals who executed earnest money contracts to purchase condominiums, cancelled them.<sup>1</sup> Additionally, the general national economic decline and tightened credit markets of the last three years have wreaked havoc on the home construction industry as a whole, including the Debtor. In addition to the damage that was sustained, the hurricane also caused homebuyers to rethink purchasing properties near the beach. Then, to make matter worse, the collapse of the mortgage market made it extremely difficult for individuals to obtain mortgages to purchase condominiums and for Sapphire to resell the condominiums it was forced to take back to inventory as a result of contract cancellations. As of the Petition Date, the Sapphire Property had sixty-one (61) unsold units.

These factors caused the Debtor to default in its obligations to IBC. The Debtor's loans with IBC have matured and a forbearance or extension could not be negotiated. IBC posted the Sapphire Property for foreclosure in April 2012, thereby prompting this bankruptcy filing

With no economic improvement for these markets foreseen in the near term, the Debtor is proposing to provide IBC will an Allowed Claim of \$36.9 million and allow IBC to foreclose on the Sapphire Property in exchange for a credit against the debt and claim equal to \$28 million. As part of the settlement, IBC shall also receive specified percentages of the proceeds from the Reserved Litigation Claims as provided in Article 3 of the Plan. Allowed General Unsecured claims, including any claims related to Condominium Association dues, shall be paid a pro rata share \$70,000 from the ZCA Settlement Proceeds. Debtor estimates a return to Allowed General Claims of 100%, without interest.

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<sup>1</sup> As indicated on the bankruptcy schedules and statement of affairs, Sapphire has filed a professional negligence suit against Winstead seeking recover for these damages which is included in the Plan as part of the Other Sapphire Litigation Claims.



### **3.2.2 The Debtor's Debt Structure**

The Sapphire Property is encumbered by liens in favor of IBC and Premier Tierra. The Sapphire First Lien Notes and associated loan documents, deeds of trust and security agreements are dated August 28, 2006 and executed by Sapphire in favor of Amegy Bank, IBC, Capital One and Regions Bank in the total original principal amount of \$106,875,000 and secured by a first lien on the assets of Sapphire including the Sapphire Property. The Sapphire Second Lien Notes and associated loan documents, deeds of trust and security agreements are dated March 30, 2009 and February 1, 2010 in favor of Amegy Bank and IBC in the total original principal amounts of \$3,500,000 and secured by a second lien on the assets of Sapphire including the Sapphire Property. Prior to bankruptcy, IBC purchased the First Lien Notes and Second Lien Notes held by Amegy and Regions. The Sapphire Third Lien Note and associated loan documents, deed of trust and security agreement are dated August 29, 2006 in favor of IBC in the total original principal amount of \$5,900,000 and secured by a third lien on the assets of Sapphire including the Sapphire Property. This note is currently held by Premier Tierra. IBC alleges that, as of the Petition Date, the approximate outstanding principal and interest owed with respect to the Sapphire First, Second and Third Lien Notes is \$36.9 million, plus attorney's fees, cost and expenses.

### **3.2.3 Significant Events During Bankruptcy**

#### **3.2.3.1 Relevant Pleadings**

On April 5, 2012, Debtor filed a Motion for Valuation of Collateral, Request for Scheduling Conference and Hearing seeking court valuation of Debtor's property. On April 16, 2012, IBC filed an objection to this motion. The Debtor and IBC agreed to abate this matter and on May 18, 2012, the Court entered an order authorizing the abatement of this motion.

On April 5, 2012, Debtor an filed Emergency Motion for Joint Administration of Cases seeking to jointly administer the Sapphire and Diamond Beach Chapter 11 cases. On April 12, 2012, IBC filed an objection to this motion. The Debtor and IBC agreed to abate this matter and on May 18, 2012, the Court entered an order authorizing the abatement of this motion.

On April 5, 2012, Debtor filed an Expedited Motion to (I) Establish Procedures to Sell Real Estate Property in the Ordinary Course of Business Free and Clear of All Liens, (II) Authorize Payment of Commissions related to Sales and (III) Authorize Debtors Use of a Portion of the Net Proceeds seeking to sell condominium units in the ordinary course of business. On April 16, 2012, IBC filed an objection to this motion. An agreed order approving this motion was entered on April 24, 2012.

On April 9, 2012, Debtor filed a Motion to Set Last Date for Non-Governmental Parties to File Claims. An order approving this motion and establishing June 1, 2012 as the bar date for filing claims in both the Sapphire and Diamond Beach cases was entered on April 24, 2012.

On April 9, 2012, Sapphire filed a Motion for Authority to Use Cash Collateral. On April 16, 2012, IBC filed an objection to this motion. An agreed interim order authorizing use of cash collateral was entered on April 24, 2012 and a second agreed interim order was entered on May 18, 2012. A final hearing is scheduled on this motion for July 2, 2012.

On April 16, 2012, Debtor filed an Application to Employ Edward L. Rothberg and Hoover Slovacek, LLP, as Debtor's counsel. On April 23, 2012, IBC filed an objection to this application. An order authorizing this employment, subject to IBC's limited ability to seek reconsideration of the same, was entered on May 18, 2012.

On May 16, 2012, IBC filed a Motion for Relief from Stay in order to foreclose on the Diamond Beach Property. A hearing on this motion is scheduled for May 31, 2012. As contemplated in the Plan and in connection with the Settlement Agreement, the Debtor will not oppose the relief requested in this motion.

A Meeting of Creditors was held and concluded on May 30, 2012 in this case along with the Diamond Beach case.

On May 16, 2012, IBC filed a Motion for Relief from Stay in order to foreclose on the Diamond Beach Property. A hearing on this motion is scheduled for May 31, 2012. As contemplated in the Plan and in connection with the Settlement Agreement, the Debtor will not oppose the relief requested in this motion.

### **3.2.3.2 Creditors Committee**

No Official Committee of Unsecured Creditors has been appointed.

### **3.2.3.4 Plan Proposal**

The Debtor and its counsel ultimately determined that the best avenue to realize value for Creditors and Equity Interest Holders is to allow IBC and/or Premier Tierra to foreclose their liens on the Sapphire Property for a credit against the debt equal to \$28 million. IBC will also share in the proceeds from the Reserved Litigation Claims. All general unsecured claims, shall be paid a pro rata share of up to \$70,000 from the ZCA Litigation Proceeds.

## **3.3 The Debtor's Assets and its Value**

### **3.3.1 Filing Date**

#### Sapphire VP, LP

Sapphire's principal assets on the Filing Date consisted of cash, the Property, and various litigation claims initiated by the Debtor. Total assets were listed at approximately \$57,041,223.15. Following is a table summarizing the value of these assets as of the Filing Date:

ASSET TYPE	VALUE
Cash	\$ 235,123.15



Real Estate	\$28,000,000 <sup>2</sup>
Debtor Lawsuits against Real Estate Brokers (Estimated Value)	\$96,100.00
Winstead Litigation (Estimated Value)	\$8,710,000.00
ZCA Litigation (Estimated Value)	\$20,000,000.00
<b>TOTAL</b>	<b>\$57,041,223.15</b>

### 3.4 Liabilities

#### Sapphire VP, LP

Debtor Sapphire VP, LP had liabilities of approximately \$47,698,150.05 on the Filing Date, primarily owed to IBC. Following is a table summarizing these liabilities as of the Filing Date:

Secured Liens	\$37,672,864.56
Unsecured Debts	\$10,018,190.49
Unsecured Priority Tax Claims	\$7,095.00
Total Liabilities	\$47,698,150.05
<b>Equity (Assets&gt;Liabilities)</b>	<b>\$9,343,073.10</b>

An analysis of the anticipated claims in this case is attached hereto as Exhibit B.

### 3.5 Operations

The Debtor continue to operate during the pendency of this case and will, with in accordance with the sales procedures established by the Court, continue to market and sell condominium units on the Debtor's property until the earlier of the Plan being confirmed or the date that IBC forecloses on the Sapphire Property.

<sup>2</sup> As part of a global settlement and as part of the proposed Plan, IBC, Premier Tierra, and the Debtor have agreed that the value of the Sapphire Property is \$28 million.

### 3.6 **Ownership and Management**

Debtor Sapphire VP, LP is operated through its general partner, Sapphire South Padre GP, LLC. Randall J. Davis is the President of Debtor's general partner and manages the Debtor. The limited partnership interests of the Debtor are owned as follows: Randall J. Davis, 43%, SSPIBR, 50%, Gary T. Leach, 5%, Portland Corporation, 1% and Sapphire South Padre GP, LLC, 1% general partnership interest.

## IV. DESCRIPTION OF PLAN

A copy of the Plan is attached as **Exhibit A**. The Plan should be read carefully and independently of this Disclosure Statement. The following is a brief overview of the Plan is intended to provide a context for understanding the remainder of this Disclosure Statement. It is qualified by reference to the Plan itself.

The Plan is the result of a determination that the most effective method to maximize the recovery of all creditors was to allow IBC and/or Premier Tierra to foreclose their liens on the Sapphire Property for a credit against the debt equal to \$28 million. IBC will also share in the proceeds from the Reserved Litigation Claims. Allowed General Unsecured Claims, shall be paid a pro rata share of up to \$70,000 from the ZCA Litigation Proceeds as set forth in the Plan. Other Creditors will also be paid as set forth in the Plan. The Debtor submits that the Plan will afford Creditors a superior return on account of their Claims than would a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code, discussed more fully below. Under the Plan, Holders of all Allowed Claims will receive the distributions or other treatment provided under the Plan on the Effective Date or as soon as practicable thereafter.

### 4.1 **Class 1. Allowed Secured Claim of Taxing Authorities.**

1. **Classification.** Class 1 consists of the Allowed Secured Claims of Ad Valorem taxing authorities for the year 2012 accrued through the Effective Date and secured by a lien on all of the Debtors' assets. Class 1 Claims are not impaired.
2. **Treatment.** Allowed Secured Class 1 Claims shall be paid in full by IBC when due. The Allowed Secured Class 1 Claims Holders shall retain their liens until such time as they are paid in full.

### 4.2 **Class 2. Allowed Secured Claim of IBC and Premier Tierra.**

1. **Classification.** Class 2 consists of the Allowed Secured Claims of IBC and Premier Tierra in the allowed amount of \$36,900,000.00 secured by the Sapphire Property. The Class 2 Claims are impaired.
2. **Treatment.** The Allowed Class 2 Claims shall be treated in accordance with the Settlement Agreement between IBC, Premier Tierra, the Debtor and Randall J. Davis. The Settlement Agreement is attached as Exhibit A and the terms are incorporated herein as part of this Plan. A summary of the treatment of the Allowed Secured Claims of IBC and Premier Tierra are as follows:

- (a) IBC and Premier Tierra shall receive the following in partial satisfaction of the Allowed IBC/Premier Tierra Claim:
  - (i) The Sapphire Property and a credit of \$28,000,000.00 shall be applied against the Allowed IBC/Premier Tierra Claim.
  - (ii) IBC's and Premier Tierra's cash collateral (as defined in 11 U.S.C. § 363(a)) remaining in Debtor's DIP account on the Effective Date, but not including commissions held by the Debtor in the account and which will continue to be held by the Debtor pending agreement with IBC or approval of the Bankruptcy Court. IBC and Premier Tierra's liens on remaining cash collateral shall remain in effect until final approval by the Court
  - (iii) 100% of the settlement proceeds (net of attorney's fees and costs) from the pending partial settlement of Sapphire Construction Litigation Claims against ZCA Residential, LLC (the "*ZCA Settlement Proceeds*"). The ZCA Settlement Proceeds paid to IBC/Premier Tierra shall not be less than \$1.5 million. Up to \$70,000 of the ZCA Settlement Proceeds may be paid to the Debtor's allowed unsecured creditors and to satisfy pre-petition condominium association fees or dues;
- (b) From the Sapphire Construction Litigation Claims
  - (i) After payment of the ZCA Settlement Proceeds, the next \$3,000,000 of net recoveries from the Sapphire Construction Litigation Claims shall be paid to IBC/Premier Tierra;
  - (ii) After payment of the ZCA Settlement Proceeds and \$3,000,000 to IBC/Premier Tierra, 40% of the remaining recoveries from the Sapphire Construction Litigation Claims (until Allowed IBC/Premier Tierra Claim is paid in full).
- (c) 20% of the Other Sapphire Litigation Claims (until the Allowed IBC/Premier Tierra Claim is paid in full).

#### **4.3 Class 3. Allowed Non-Insider General Unsecured Claims.**

1. **Classification.** Class 3 consists of the Allowed General Unsecured Claims against the Debtor, including any claims related to Condominium Association dues . The Class 3 claims are impaired.

2. **Treatment.** Holders of Allowed Non-Insider General Unsecured Claims shall be paid a pro rata share of \$70,000 from the ZCA Settlement Proceeds in full satisfaction of the Allowed Claim..

#### **4.4 Class 4. Allowed Claims of Insiders.**

1. **Classification.** Class 5 consists of the Allowed Claims of Insiders of Sapphire. The claims of Randall J. Davis and SSPIBR, Ltd. are the only Class 4 Claims. The Class 4 claims are impaired.
2. **Treatment.** Class 4 shall be paid as follows:
  - (a) 60% of the Sapphire Construction Litigation Claims to Randall Davis and SSPIBR, Ltd. as agreed between them or approved by the Bankruptcy Court; and
  - (b) 80% of the Other Sapphire Litigation Claims to Randall Davis.

#### **4.5 Class 5. Allowed Interests of Equity Holders.**

1. **Classification.** Class 5 consists of the Allowed Equity Interests in Sapphire. The Class 5 Equity Interest Holders are impaired.
2. **Treatment.** Class 5 shall receive their pro rata share of the Litigation Trust Proceeds and other Cash remaining, if any, after payment in full of Claims in Classes 2 through 4 as provided herein. The Equity Interests shall be cancelled upon the Effective Date of the Plan and the Sapphire Debtor shall be wound down in accordance with the procedures provided under Texas State law.

#### **4.6 Administrative Claims Bar Date.**

Any Holder of an Administrative Claim against the Debtor, except for administrative expenses incurred in the ordinary course of operating the Debtor's business, shall file an application for payment of such Administrative Claim on or within thirty (30) days after entry of the Confirmation Order with actual service upon counsel for the Debtors, otherwise such Holder's Administrative Claim will be forever barred and extinguished and such Holder shall, with respect to any such Administrative Claim, be entitled to no distribution and no further notices. The Debtor shall pay pre-confirmation quarterly U.S. Trustee fees in full in cash from the Cash Infusion within thirty (30) days after the Effective Date and shall file all monthly financial reports for each quarter (or portion thereof) which accrue prior to confirmation. It is not necessary for the U.S. Trustee to file a proof of claim.

#### **4.7 Payment of Administrative Claims.**

Each Holder of an unpaid Administrative Claim shall be paid in Cash in full from the Cash Infusion on the later of thirty (30) days after the Effective Date or the date such Claim becomes an Allowed Administrative Claim, unless the Holder of such a Claim agrees to a different treatment.

**V.**  
**IMPLEMENTATION OF THE PLAN**

The Plan shall be implemented and executed in accordance with the procedures set forth in the Plan.

**5.1 Means for Execution of Plan**

The Plan shall be implemented and executed in accordance with the procedures set forth in the Plan.

1. **Funding of Plan.** The source of funds to achieve consummation of and carry out the Plan shall be (i) the Sapphire Property; (ii) the Cash Infusion; and (iii) the Sapphire Litigation Proceeds, which are to be utilized to satisfy Claims in the manner and order of priority in Articles 2 and 3 in the Plan.

2. **Creation of Litigation Trust.** Allowed Class 2 Claims (deficiency balance), Class 3, and 4 Claims and Class 5 Equity Interests shall be paid as provided in Article 3 of the Plan through the Litigation Trust which shall be created and administered as provided in Article 6 of the Plan.

3. **Payment of Sales Commissions to RandallDavis.com.** All sales commissions claimed by RandallDavis.com, in the Order Approving Motion to (I) Establish Procedures to Sell Real Estate Property in the Ordinary Course of Business Free and Clear of All Liens, (II) Authorize Payment of Commissions related to Sales and (III) Authorize Debtors Use of a Portion of the Net Proceeds (Docket #40) shall be retained by the Debtor pending agreement with IBC or resolution by the Bankruptcy Court. If agreement is not reached, the Debtor and IBC agree to request that the Bankruptcy Court make a final determination as to the payment of these commissions to RandallDavis.com or IBC/Premier Tierra.

4. **Disbursing Agent.** Except as provided for herein with respect to the Litigation Trust and disbursements to Class 1, 2, 3, and 4, the Debtor, shall act as the Disbursing Agent. If the Debtor chooses not to act as the Disbursing Agent, then, with the consent of IBC, it may designate a substitute.

5. **Exclusive Rights and Duties of the Disbursing Agent.** The duties of the Disbursing Agent shall be as follows:

- (a) **Distribution to Creditors with Administrative Claims.** In accordance with Sections 3.2 of the Plan, the Disbursing Agent shall pay the Administrative Claims out of the Cash Infusion; provided however, that all funds on deposit with professionals for the Debtor shall be used towards the payment of the Allowed Administrative Claims of those professionals.

6. **Powers of the Disbursing Agent.** The Disbursing Agent shall have full power and authority to do the following.

- (a) The Disbursing Agent shall be authorized to make disbursements to Administrative and Priority Creditors in accordance with Article 3. The payment shall be made within 15 days of becoming an Allowed Expense or Claim.
- (b) The Disbursing Agent shall be authorized to file all reports required under law, including state and federal tax returns, and to pay all taxes incurred by the Bankruptcy Estate.
- (c) The Disbursing Agent shall be authorized to take any and all actions, including the filing or defense of any Claim objections necessary to accomplish the above, except as such claims and duties are assigned to the Litigation Trustee.
- (d) The Disbursing Agent shall be authorized to employ and pay from the Cash Infusion reasonable fees and expenses of such attorneys, accountants, and other professionals, as may be deemed necessary to accomplish the above and shall be entitled to reserve sufficient Cash from the Cash Infusion to pay the projected fees and costs to such Professionals on a post-confirmation basis, and shall be authorized to purchase insurance with such coverage and limits as are reasonably necessary, including covering liabilities incurred in connection with its service as Disbursing Agent.
- (e) The Disbursing Agent may suspend distribution to any Creditor that has not provided the Disbursing Agent with its Federal Tax Identification number or social security number, as the case may be.

7. **Presumption of Disbursing Agent's Authority.** The Disbursing agent has the necessary authority to act under the terms of this Plan and no party shall have the ability to challenge this authority except as provided in the Plan.

8. **Limitation on Disbursing Agent's Liability.**

- (a) Except to the extent provided for in Section 5.8.2 of the Plan, no recourse shall ever be had directly or indirectly against the Disbursing Agent personally or against any employee of the Disbursing Agent by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Disbursing Agent pursuant to this Plan, or by reason of the creation of any indebtedness by the



Disbursing Agent for any purpose authorized by the Plan, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Disbursing Agent or any such employee, whether in writing or otherwise shall be enforceable only against and be satisfied only out of the assets of the Bankruptcy Estate and every undertaking, contract, covenant or agreement entered into in writing by the Disbursing Agent shall provide expressly against the personal liability of the Disbursing Agent.

- (b) The Disbursing Agent shall not be liable for any act the Disbursing Agent may do or omit to do as Disbursing Agent hereunder while acting in good faith and in the exercise of the best judgment of the Disbursing Agent and the fact that such act or omission was advised, directed or approved by an attorney acting as attorney for the Disbursing Agent, shall be evidence of such good faith and best judgment; nor shall the Disbursing Agent be liable in any event except for gross negligence or willful default or misconduct of the Disbursing Agent.

9. **Establishment and Maintenance of Disputed Claims Reserve:**

- (a) Distributions made in respect of any Disputed Claims shall not be distributed, but shall instead be deposited by the Disbursing Agent or Litigation Trustee into an interest-bearing account styled "Disputed Claims Reserve". The funds in this account shall be held in trust for the benefit of the Holders of all Disputed Claims.
- (b) Unless and until the Bankruptcy Court shall determine that a good and sufficient reserve for any Disputed Claim is less than the full amount thereof, the calculations required by the Plan to determine the amount of the distributions due to the Holders of Allowed Claims and to be reserved for Disputed Claims shall be made as if all Disputed Claims were Allowed Claims in the full amount claimed by the Holders thereof. No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.
- (c) At such time as a Disputed Claim becomes an Allowed Claim the distributions due on account of such Allowed Claim and accumulated by the Debtor (including the Pro Rata share of any dividends or interest earned in respect of such distributions) shall be released from the account and paid by the Debtor to the Holder of such Allowed Claim.

- (d) At such time as any Disputed Claim is finally determined not to be an Allowed Claim, the amount on reserve in respect thereof shall be released from the account and returned to holding Allowed Claims.
- (e) The Disbursing Agent and Litigation Trustee shall not be required to withhold funds or consideration, designate reserves, or make other provisions for the payment of any Claims that have been Disallowed by a Final Order of the Bankruptcy Court as of any applicable time for distribution under the Plan, unless the Bankruptcy Court orders otherwise or unless the Court's order of disallowance has been stayed.

## VI. CREDITORS LITIGATION TRUST

**6.1 Creation of the Litigation Trust and Appointment of the Litigation Trustee.** On the Effective Date, the Debtor shall establish a Litigation Trust to prosecute Reserved Litigation Claims, for the benefit of Allowed Class 2 (deficiency balance), 3, and 4 Claims and Class 5 Interests, as provided in Article 3 of the Plan. The Litigation Trust shall be administered by the Litigation Trustee. Randall J. Davis shall be appointed as Litigation Trustee. A list of Reserved Litigation Claims is attached hereto as Exhibit C.

**6.2 Property of the Litigation Trust.** On the Effective Date, the Debtor shall transfer and assign all rights to prosecute the Reserved Litigation Claims to the Litigation Trust.

**6.3 Distributions to Allowed Class 2, 3 and 4 Claims and Class 5 Interests.** Holders of Allowed Class 2 (deficiency balance), 3 and Class 4 Claims and Class 5 Interests shall receive a pro rata share of any available Litigation Trust Proceeds in accordance with the priority and provisions provided in this Plan on account of said claims and interests. The Litigation Trustee shall make periodic distributions to Creditors of Allowed Claims at any time in which the Litigation Trust Proceeds are in excess of \$10,000.

**6.4 Purpose of the Litigation Trust.** The Litigation Trust shall be established for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reason ably necessary to, and consistent with, the liquidating purpose of the Litigation Trust.

**6.5 Powers of the Litigation Trustee.** The Litigation Trustee shall have full power and authority to do the following:

1. The Litigation Trustee shall have the sole right and duty to make the distributions to Class, 3 Claims and Class 4 Interests as provided for in Article 3 of the Plan.
2. The Litigation Trustee shall be authorized to file all reports required under law, including state and federal tax returns, and to pay all taxes incurred by the Litigation Trust.

3. The Litigation Trustee shall prosecute the Reserved Litigation Claims.
4. The Litigation Trustee shall take any and all actions, including the filing or defense of any civil actions or Claim objections necessary to accomplish the above.
5. The Litigation Trustee shall be authorized to employ and pay reasonable fees and expenses of such attorneys, accountants, and other professionals, as may be deemed necessary to accomplish the above.
6. The Litigation Trustee shall be authorized to suspend distribution to any Allowed Class 3 Creditor or Class 4 Equity Interest Holder that has not provided the Litigation Trustee with its Federal Tax Identification number or social security number, as the case may be.
7. The Litigation Trustee shall keep or cause to be kept books containing an accounting of all receipts and disbursements, which records shall be open to inspection by any Creditor or Equity Holder at all reasonable times.

**6.6 Termination of the Litigation Trust.** The Litigation Trust shall exist until all disbursements to holders of Class 2, 3, and 4 Allowed Claims and Class 5 Interests have been made pursuant to this Plan. Upon termination of the Litigation Trust, the claims of IBC and Premier Tierra shall be deemed satisfied in full

**6.7 Investment of Litigation Trust Monies.** The Litigation Trustee shall invest any monies held at any time as a part of the Litigation Trust only in interest-bearing deposits, certificates of deposit, or repurchase obligations of any federally insured banking institution with a combined capital and surplus of at least \$25,000,000, or short term investments and obligations of, and unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need to make disbursements thereof in payment of costs, expenses, and liabilities of the liquidation or to make a distribution to the creditors hereunder.

**6.8 Presumption of Litigation Trustee's Authority.** The Litigation Trustee has the necessary authority to act under the terms of this Plan and no party shall have the ability to challenge this authority except as provided in the Plan.

**6.9 Limitation on Litigation Trustee Liability.**

1. Except to the extent provided in Article 6.9.2 of the Plan, no recourse shall ever be had directly or indirectly against the Litigation Trustee personally or against any employee of the Litigation Trustee by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Litigation Trustee pursuant to this Plan, or by reason of the creation of any indebtedness by the Litigation Trustee for any purpose authorized by the Plan, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Litigation Trustee or any such employee, whether in writing or otherwise shall be enforceable only against and be satisfied only out of the assets of the Creditors Litigation Trust and every

undertaking, contract, covenant or agreement entered into in writing by the Litigation Trustee shall provide expressly against the personal liability of the Litigation Trustee.

2. The Litigation Trustee shall not be liable for any act the Litigation Trustee may do or omit to do as Litigation Trustee hereunder while acting in good faith and in the exercise of the best judgment of the Litigation Trustee and the fact that such act or omission was advised, directed or approved by an attorney acting as attorney for the Litigation Trustee, shall be evidence of such good faith and best judgment; nor shall the Litigation Trustee be liable in any event except for gross negligence or willful default or misconduct of the Litigation Trustee.

## VII.

### OTHER PLAN PROVISIONS

**7.1 Continued Operations.** The Debtor will continue to operate post-confirmation, solely in order to distribute the funds necessary to make payments to Creditors holding administrative Claims and to engage in the Claims resolution process pursuant to Article 7 of the Plan.

**7.2 Avoidance Actions.** The Debtor does not retain any Avoidance Actions after the Effective Date and all such actions and claims are hereby waived.

**7.3 Reserved Litigation Claims.** On the Effective Date, all Reserved Litigation Claims shall be, and are hereby, transferred and assigned to the Litigation Trust described in Article 6 of the Plan for the benefit of Allowed Class 2 (deficiency balance), 3 and 4 claims and Class 5 Interest Holders. In accordance with Section 6.5.3 of the Plan, the Litigation Trustee shall prosecute the Reserved Litigation Claims.

**7.4 Assumption and Rejection of Executory Contracts.** Unless otherwise specifically assumed and assigned, the Debtor will reject all Executory Contracts. Any Claims arising from rejection of an executory contract or lease must be filed on or before 20 days from the Effective Date. Otherwise, such Claims are forever barred and will not be entitled to share in any distribution under the Plan. Any Claims arising from rejection of Executory Contracts, if timely filed and allowed, will be paid as Class 3 General Unsecured Claims.

**7.5 Delivery of Distributions.** Subject to Bankruptcy Rule 9010 and the provisions of the Plan, distributions to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the proofs of Claim filed by such Holders (or at the last known addresses of such a Holder if no proof of Claim or proof of Equity Interest is filed or if the Disbursing Agent or Litigation Trustee has been notified in writing of a change of address), except as provided below. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Disbursing Agent or Litigation Trustee is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Disbursing Agent or Litigation Trustee until such distributions are claimed.

**7.6 Time Bar for Cash Payments.** Checks issued by the Disbursing Agent or Litigation Trustee in respect of Allowed Claims shall be null and void if not negotiated within six months after the date of

issuance thereof. Requests for reissuance of any check shall be made directly to the Disbursing Agent or Litigation Trustee by the Holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a voided check shall be made on or before the later of (a) the first anniversary of the Effective Date or (b) ninety (90) days after the date of reissuance of such check. After such date, all Claims in respect of void checks shall be discharged and forever barred.

**7.7 Unclaimed Property.** If any Person entitled to receive distributions under the Plan cannot be located within a reasonable period of time after the Effective Date, the distributions such Person would be entitled to receive shall be held by the Disbursing Agent or Litigation Trustee in a segregated interest-bearing account styled Sapphire Unclaimed Distribution. If the Person entitled to any such distributions is located within six months after the Effective Date, such distributions, together with any dividends and interest earned thereon, shall be paid and distributed to such Person. If such Person cannot be located within such period, such distributions and any dividends and interest thereof shall be returned to the Disbursing Agent or Litigation Trustee for distribution to Creditors holding Allowed Claims and such person shall have waived and forfeited his right to such distributions. Nothing contained in this Plan shall require the Debtor or the Disbursing Agent or the Litigation Trustee to attempt to locate such Person. It is the obligation of each Person claiming rights under the Plan to keep the Debtor and/or the Disbursing Agent and/or the Litigation Trustee advised of current address by sending written notice of any changes to the Debtor and/or the Disbursing Agent and/or the Litigation Trustee.

**7.8 Fractional Dollars.** Any other provision of the Plan notwithstanding, no payments of fractional dollars will be made to any Holder of an Allowed Claim. Whenever any payment of a fraction of a dollar to any holder of an Allowed Claim would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest whole dollar (up or down).

**7.9 Minimum Payment.** The minimum amount of any distribution shall be \$25. If a payment is due in an amount less than \$25, then such payments is hereby waived and the funds shall be retained by the Disbursing Agent or Litigation Trustee.

**7.10 Distribution Dates.** Whenever any distribution to be made under the Plan is due on a day other than a Business Day, such distribution will instead be made, without penalty or interest, on the next Business Day. The Bankruptcy Court shall retain power, after the Confirmation Date, to extend distribution dates for cause, upon motion and after notice and a hearing (as defined in Bankruptcy Code Section 102) to affected parties.

**7.11 Orders Respecting Claims Distribution.** After confirmation of the Plan, the Bankruptcy Court shall retain jurisdiction to enter orders in aid of consummation of the Plan respecting distributions under the Plan and to resolve any disputes concerning distributions under the Plan.

**7.12 Conditions to Confirmation.** Confirmation of the Plan shall not occur and the Bankruptcy Court shall not enter the Confirmation Order unless all of the requirements of the Bankruptcy Code for confirmation of the Plan with respect to the Debtor shall have been satisfied. In addition, confirmation shall not occur, the Plan shall be null and void and of no force and effect, and the Plan shall be deemed withdrawn unless the Court shall have entered all orders (which may be orders included within the Confirmation Order) required to implement the Plan.

**7.13 Waiver and Nonfulfillment of Conditions to Confirmation.** Nonfulfillment of any condition to confirmation of the Plan may be waived only by the Debtor with the consent of IBC and Premier Tierra. In the event that the Debtor determines that the conditions to the Plan's confirmation which it may waive cannot be satisfied and should not, in its discretion, be waived, the Debtor, with the consent of IBC and Premier Tierra, may propose a new plan, may modify this Plan as permitted by law, or may request other appropriate relief.

**7.14 Conditions to the Effective Date.** The following are conditions precedent to the effectiveness of the Plan: (i) the Plan is confirmed and the Bankruptcy Court shall have entered the Confirmation Order, which shall have become a Final Order; (ii) Debtor does not withdraw the Plan at any time prior to the Effective Date; (iii) the Debtor shall have sufficient Cash on hand from the Cash Infusion, to make the initial payments and distributions required under the Plan; (iv) IBC and/or Premier Tierra has foreclosed its liens on the Sapphire Property.

**7.15 Binding Effect.** As provided for in Section 1141(d) of the Bankruptcy Code, the provisions of the Plan shall bind the Debtor, any entity acquiring property under the Plan and any Creditor, Equity Holder, or shareholder of the Debtor, whether or not the Claim or Interest of such Creditor or Equity Holder is impaired under the Plan and whether or not such Creditor or Equity Holder has accepted the Plan. After confirmation, the property dealt with by the Plan shall be free and clear of all Claims and Interests of Creditors and Equity Holders, except to the extent as provided for in the Plan as the case may be. The Confirmation Order shall contain an appropriate provision to effectuate the terms of this paragraph 13.1.

**7.16 Satisfaction of Claims and Interests.** Holders of Claims and Interests shall receive the distributions provided for in this Plan, if any, in full settlement and satisfaction of all such Claims, and any interest accrued thereon, and all such Interests.

**7.17 Injunction.** The Confirmation Order shall include a permanent injunction prohibiting the collection of Claims in any manner other than as provided for in the Plan. All Holders of Claims shall be prohibited from asserting against the Debtor or any of its assets or properties, any other or further Claim based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date, whether or not such Holder filed a proof of Claim. Such prohibition shall apply whether or not (a) a proof of Claim based upon such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) a Claim based upon such debt is allowed under Section 502 of the Bankruptcy Code; or (c) the Holder of a Claim based upon such debt has accepted the Plan.

**7.18 Preservation of Setoff Rights.** In the event that the Debtor has a Claim of any nature whatsoever against the Holders of Claims, the Debtor may, but is not required to setoff against the Claim (and any payments or other distributions to be made in respect of such Claim hereunder), subject to the provisions of Section 553 of the Bankruptcy Code. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any Claim that the Debtor has against the Holder of Claims. Neither this provision nor the injunctive provision of the Confirmation Order shall impair the existence of any right of setoff or recoupment that may be held by a Creditor herein; provided that the exercise of such right shall not be permitted unless the Creditor provides the Debtor with written notice of the intent to effect such setoff or recoupment. If the Debtor or the Disbursing Agent, as applicable, object in writing within twenty (20) business days following the receipt of such notice, such exercise shall only be allowed upon order of the Bankruptcy Court. In the



absence of timely objection, the Creditor may implement the proposed setoff or recoupment against the Claim held by the Bankruptcy Estates.

**7.19 Releases.** On the Effective Date and pursuant to Section 1123(b)(3)(A) of the Bankruptcy Code, the Debtor, and to the maximum extent provided by law, its agents, release and forever discharge all claims, including acts taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into or any other act taken or entitled to be taken in connection with the Plan or this case against the following, whether known or unknown:

Sapphire South Padre GP, LLC and its current members, managers and officers, and Randall J. Davis (“Insider Released Parties”), in connection with any and all claims and causes of action arising on or before the Confirmation Date that may be asserted by or on behalf of the Debtor or the Bankruptcy Estate.

The release of these Insider Released Parties shall be conditioned upon the occurrence of the Effective Date.

The Debtor’s Professionals will be released from any and all claims and liabilities from the Debtor other than gross negligence and willful misconduct or except as otherwise provided under the Professional Code of Responsibility.

**7.20 Lawsuits.** On the Effective Date, all lawsuits, litigations, administrative actions or other proceedings, judicial or administrative, in connection with the assertion of Claims against the Debtor, except proof of Claim and/or objections thereto pending in the Bankruptcy Court, shall be dismissed as to the Debtor. Such dismissal shall be with prejudice to the assertion of such Claim in any manner other than as prescribed by the Plan. All parties to any such action shall be enjoined by the Bankruptcy Court by the Confirmation Order from taking any action to impede the immediate and unconditional dismissal of such actions. All lawsuits, litigations, administrative actions or other proceedings, judicial or administrative, in connection with the assertion of a claim(s) by the Debtor, including Reserved Litigation Claims, or any entity proceeding in the name of or for the benefit of the Debtor against a person shall remain in place only with respect to the claim(s) asserted by the Debtor or such other entity, and shall become property of the Post-Confirmation Debtors to prosecute, settle or dismiss as it sees fit.

**7.21 Insurance.** Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtor in which the Debtor or any of the Debtor’s representatives or agents is or was the insured party; the Debtor shall become the insured party under any such policies without the need of further documentation other than the Plan and entry of the Confirmation Order. Each insurance company is prohibited from denying, refusing, altering or delaying coverage on any basis regarding or related to the Debtor’s bankruptcy, the Plan or any provision within the Plan.

**7.22 Objections to Administrative Expense Claims.** The Debtor or the Disbursing Agent shall, on and after the Effective Date, have the right to make and file objections to Administrative Expense Claims. Unless otherwise ordered by the Bankruptcy Court, all objections to Administrative Expenses Claims that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court

shall be filed and served upon the holder of the Administrative Expense Claim as to which the objection is made no event later than ninety (90) days after the Effective Date.

**7.23 Objections to Claims.** The Debtor or the Disbursing Agent shall have the right and standing to make and file objections to Claims upon and after the Effective Date. Except as set forth herein, nothing in the Plan, the Confirmation Order or any order in aid of Confirmation, shall constitute, or be deemed to constitute, a waiver or release of any claim, Causes of Action, right of setoff, or other legal or equitable defense which the Debtor and its Estate had immediately prior to the commencement of the Bankruptcy Case, against or with respect to any Claim. Except as set forth herein, upon Confirmation, the Debtor or Disbursing Agent shall have, retain, reserve and be entitled to assert all such claims, Causes of Action, rights of setoff and other legal or equitable defenses which the Debtor and its Estate had immediately prior to the commencement of the Bankruptcy Case as if the Bankruptcy Case had not been commenced and avoidance power actions under the Bankruptcy Code.

**7.24 Disallowance of Claims.** All Claims held by Persons against whom the Debtor, its Estate, or the Disbursing Agent have asserted a Claim or Cause of Action under Sections 522(f), 522(h), 542, 543, 544, 547, 548, 549, 550, 551, 553, or 724(a) of the Bankruptcy Code, including, without limitation, the Chapter 5 Actions and the Derivative Claims, shall be deemed disallowed pursuant to Section 502(d) of the Bankruptcy Code, and holders of such Claims may not vote to accept or reject the Plan until such time as such Claims or Causes of Action against the Person have been settled or a Final Order entered and all sums due the Debtor by that Person are turned over to the Litigation Trust.

**7.25 Disputed Claims.** Except as otherwise provided in the Plan, no payments shall be made with respect to all or any portion of a Disputed claim unless and until any and all objections to such Disputed Claim have been determined by a Final Order. Payments and distributions to each holder of a Disputed Claim, to the extent that the Disputed Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan. Any payments that would have been made prior to the date on which a Disputed Claim becomes an Allowed Claim shall be made as soon as practicable after the date that the order or judgment of the Court determining such Claim to be an Allowed Claim becomes a Final Order.

For purposes of the Plan, any and all Claims that are subject to disallowance pursuant to Code §§ 502(e) and 509 shall be deemed to be disallowed as of the Confirmation Date, notwithstanding the absence of any objection thereto.

## VIII. LIQUIDATION ANALYSIS

Attached as **Exhibit D** is a liquidation analysis (the “Liquidation Analysis”). This Liquidation Analysis indicates that Holders of Allowed General Unsecured Claims, would receive a much lower distribution in a Chapter 7 liquidation than under the Plan. Under the Plan, unsecured creditors are estimated to receive 100% of their Allowed Claim. The Debtor submits that the Holders of Allowed General Unsecured claims will receive at least as much consideration under the Plan as they would receive in Chapter 7 liquidation scenario. In a liquidation, Debtor estimates that at best, unsecured creditors would receive a return of approximately 60% of the Allowed Claims. As set forth in Exhibit D, absent confirmation of the Plan, the Chapter 11 Case would be converted to a case under Chapter 7 of the Bankruptcy Code. In that circumstance, IBC would still obtain relief from the automatic stay and

would complete its foreclosure sale on the Sapphire Property under state law and likely credit bid a value that it determines is reasonable market value, which would almost certainly result in a much greater deficiency claim that what will result under the terms of the Plan. IBC contends that the balance owed with respect to its claim is in excess of \$36.9 million and continues to increase daily and would likely assert that the value of the property is significantly less than the outstanding indebtedness, which could result in deficiency claim in excess of \$9 million. IBC also asserts a lien on the Reserved Litigation Claims, meaning that a Chapter 7 trustee would likely not administer the assets or make any distributions to creditors. Further, even if a Chapter 7 trustee were able to pursue the Reserved Litigation Claims, IBC's deficiency claim, along with other secured claims, would be paid as Class 3 unsecured claims and increase the amount of unsecured claim by approximately \$10.6 million, bringing total unsecured claims to \$20.6 million. This would significantly dilute any potential recovery to Allowed General Unsecured claimants. Additionally, as reflected in the Liquidation Analysis, the costs attendant Chapter 11 and Chapter 7 administrative expenses, including professional fees and trustee commissions, would be paid ahead of Allowed General Unsecured Creditors.

## **IX.**

### **RISKS POSED TO UNSECURED CREDITORS**

The Debtor believes that the primary risk to creditors is that the Plan is not confirmed. In that event, IBC will likely obtain stay relief and unsecured creditors would not have the opportunity to secure any distribution on account of their Claims.

## **X.**

### **ALTERNATIVES**

Although the Disclosure Statement is intended to provide information to assist Creditors in making a judgment on whether to vote for or against the Plan, and although Creditors are not being offered through that vote an opportunity to express an opinion concerning alternatives to the Plan, a brief discussion of alternatives to the Plan may be useful. These alternatives include conversion to a Chapter 7 case or dismissal of the bankruptcy proceeding. The Debtor, of course, believes the proposed Plan to be in the best interests of Creditors. Thus, the Debtor does not favor any alternative to the proposed Plan in arriving at the conclusion. The Debtor assesses the alternatives as follows:

#### **10.1 Conversion to Chapter 7**

The first alternative would be to convert the Chapter 11 case to a Chapter 7 liquidating bankruptcy. If this occurred, the Bankruptcy Court would appoint a trustee to liquidate the Debtor's assets for the benefit of their Creditors. A sale by a Chapter 7 Trustee is typically less advantageous than a sale by Chapter 11 debtor, who may sell property as a "going concern" basis for a better return.

Moreover, the appointment of a trustee would create an additional tier of administrative expenses having priority over all other Creditors. Such administrative expenses would include the Chapter 7 trustee's commissions and fees for professionals retained by the Chapter 7 trustee to assist in the liquidation. In addition, these services would likely duplicate services performed by other professionals during the Chapter 11 case for which the estate would essentially have to pay twice.

Finally, it will take a Chapter 7 trustee much longer to make a distribution to Creditors since the process for obtaining approval of a final report can take six to twelve months after all assets are collected.

## **10.2 Dismissal**

Dismissal of the proceeding would result in numerous lawsuits to collect debts, none of which would be collectible, as IBC is fully secured by the Debtor's only significant assets and would foreclose upon the Debtor's Property.

The Debtor has attempted to set forth alternatives to the proposed Plan. However, the Debtor must caution Creditors that a vote must be for or against the Plan. The vote on the Plan does not include a vote on alternatives to the Plan. There is no assurance what course the proceedings will take if the Plan is rejected. If you believe one of the alternatives referred to is preferable to the Plan and you wish to urge it upon the Court, you should consult counsel.

## **XI.**

### **FEDERAL INCOME TAX CONSEQUENCES**

#### **11.1 Tax consequences to the Debtor**

As the Debtor is a limited partnership, any tax consequences would flow through to the Equity Interest Holders of the Debtor-- the partners. Thus, any income in excess of that necessary to satisfy all Claims derived as a result of the sale of the Property would be part of the tax consequences to the Interest Holders. The Debtor itself will have no tax consequences as a result of the provisions of the Plan.

#### **11.2 Tax Consequences to Creditors**

##### **11.2.1 Generally**

The tax consequence to any particular Creditor may vary depending on their own circumstances and they should consult with their own tax professional for advice regarding the impact on them of their acceptance or rejection of the plan.

##### **11.2.2 Unsecured Claims**

Holders of Class Allowed General Unsecured Claims will receive distributions from the Cash Infusion. A Class 4 Claimholder should either be treated as (i) recognizing ordinary income in an amount equal to cash received and recognizing a loss in an amount equal to the tax basis in the Claim or (ii) recognizing a loss equal to the difference between the amount of cash received and their tax basis in their Claim.

A Claimholder's tax basis in a Claim should generally equal the amount included in income as a result of the provision of goods or services to the Debtor, except to the extent that a bad debt loss had previously been claimed. The gain or loss with respect to the Claim should be ordinary to the extent that it arose in the ordinary course of trade or business for services rendered or from the sale of inventory to the Debtor.

**DUE TO THE COMPLEX NATURE OF APPLICABLE TAX LAWS, CLAIMANTS SHOULD CONSULT WITH THEIR TAX PROFESSIONALS AND ADVISORS CONCERNING COMPLIANCE WITH AND THE AFFECT OF BOTH STATE AND FEDERAL TAX LAWS ON THEIR INTEREST BEFORE THEY CAST A BALLOT TO ACCEPT OR REJECT THE PLAN.**

**THE ACCOUNTANTS, ATTORNEYS, AND THE MANAGEMENT OF THE DEBTOR MAKE NO REPRESENTATIONS HEREIN CONCERNING THE IMPACT OF THE TAX LAW ON ANY INDIVIDUAL TREATED UNDER THE PLAN.**

## **XII.**

### **VOIDABLE TRANSFERS**

Under the Bankruptcy Code and Texas State Law, the bankruptcy estate may sue to recover assets (or their value) that were transferred by "voidable transfers", which includes assets transferred:

- 1) in fraud of Creditors,
- 2) in constructive fraud of Creditors – because the asset was transferred without sufficient consideration while the debtor was insolvent,
- 3) as a preferential transfer - a payment before bankruptcy outside the ordinary course that allows a creditor to receive more than it would receive in liquidation, or
- 4) as an unauthorized post-bankruptcy transfer by the debtor outside of the ordinary course.

The Debtor does not believe there are any transfers voidable under Section 550, 547, 548, 544, or similar provision of the Bankruptcy Code. Prior to bankruptcy, all payments were made in the ordinary course of business and reasonably equivalent value was obtained for all assets transferred. All post-bankruptcy payments were likewise in the ordinary course, or otherwise authorized by the Court. Accordingly, the Debtor does not believe that any transfers are avoidable under Section 549 of the Bankruptcy Code.

If the Plan is not confirmed and a liquidating trustee or Chapter 7 trustee is appointed, it is possible that the trustee's analysis will differ from that of the Debtor and that avoidance actions will be commenced against Creditors of the estate, insiders, or others.

## **XIII.**

### **LITIGATION AGAINST THE DEBTOR**

A list of litigation against the Debtor pending as of the Petition Date is attached to the Debtor's Statement of Financial Affairs filed with the Court. The Debtor is not aware of any further litigation

that is pending or threatened against the Debtor. No claim of environmental liability has been made, and no such claims are known or expected.

#### **XIV.**

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

##### **14.1 Requirements for Confirmation**

In order to obtain confirmation of the Plan, the requirements of Section 1129 of the Code all must be satisfied. These requirements include, but are not limited to, findings that the Plan complies with the applicable provisions of Chapter 11 of the Code, that the Debtor has complied with the applicable provisions of Chapter 11 of the Code, that the Plan has been proposed in good faith and not by any means forbidden by law, and at least one class of impaired claims has voted to accept the Plan. The Debtor believes that the Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code.

##### **14.2 Best Interest of Creditors**

Before the Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Plan provides, with respect to each class, that each Holder of a Claim or Interest of such class either (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such person would receive or retain if the Debtor was, on the Effective Date, liquidated under Chapter 7 of the Bankruptcy Code. The Debtor believes that this test will be satisfied, as Allowed Class 3 claims shall be paid pro rata from the ZCA Litigation Proceeds and are expected to receive 100% of the Allowed Claim. This recovery is much greater than would be received in a Chapter 7 liquidation and will be much more quickly than the long delay in distributions attendant in a Chapter 7. Further, as agreed between the Debtor and IBC, Class 2 claims shall receive the Property, plus a portion of the proceeds from the Reserved Litigation Claims. Class 4 Claims and Class 5 interests shall receive more under the Plan as these classes would likely not receive anything in the event of a liquidation.

##### **14.3 Financial Feasibility**

The Bankruptcy Code requires the Debtor to establish that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Since the Plan provides for liquidation of Debtor's assets, Litigation Trust Proceeds and the Cash Infusion to provide payment, this requirement is met.

##### **14.4 Cram-Down - Confirmation Without Acceptance by All Impaired Classes**

The Bankruptcy Code contains provisions for confirmation of a Plan even if the Plan is not accepted by all impaired classes, provided that at least one impaired class of claims has accepted it (determined without including any acceptance by any insider holding a claim of such class). These "cram-down" provisions are set forth in Section 1129(b) of the Bankruptcy Code.

In the event that any impaired class of claims does not accept the Plan by the requisite majority set out in the introduction and as required under the Bankruptcy Code the Debtor must demonstrate to the Bankruptcy Court, with respect to each impaired class which does not accept the Plan that the Plan



does not discriminate unfairly, and is “fair and equitable” with respect to that class. Under the Bankruptcy Code, a Plan is considered “fair and equitable” with respect to secured claims, unsecured claims or interest, as the case may be, if the following conditions are met:

14.4.1.1 Secured Claims.

The Holders of such Claims retain their liens, to the extent of the allowed amount of their Claims, and that each Holder of such a Claim receive on account of such Claim deferred cash payments totaling at least the allowed amount of such Claim, of a value, as of the Effective Date of the Plan, of at least the value of such Holder’s Interest in the estate’s interest in the collateral.

14.4.1.2 Unsecured Claims.

Either (i) each impaired unsecured creditor receives or retains under the Plan property of a value as of the Effective Date of the Plan equal to the amount of its Allowed Claim, or (ii) the Holder of any Claim or Interest that is junior to the Claims of the dissenting class will not receive or retain any property under the Plan.

14.4.1.3 Interests.

Either (i) each Holder of an Interest will receive or retain under the Plan property of a value as of the Effective Date of the Plan equal to the greater of any fixed liquidation preference or redemption price to which such Holder is entitled or the value of such Interest, or (ii) the Holder of any Interest that is junior to such Interest will not receive or retain any property under the Plan.

The Debtor believes that the Plan meets the “fair and equitable” test and does not discriminate unfairly with respect to any class of Creditors or Interest Holders. Therefore, the Plan may be confirmed, even if it is rejected by the Holders of Allowed Claims and Interests.

**XIV.**  
**CONCLUSION AND RECOMMENDATION**

The information provided in this Disclosure Statement is intended to assist you in voting on the Plan in an informed fashion. If the Plan is confirmed, you will be bound by its terms. Accordingly, you are urged to make such further inquiries as you may deem appropriate and then cast an informed vote on the Plan.

The Debtor urges all Creditors entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by immediately returning their properly completed ballots to the appropriate voting agent as set forth on the ballots within the time stated in the notice served with this Disclosure Statement.

Respectfully submitted this 31st day of May, 2012.

SAPPHIRE VP, LP

By: Sapphire South Padre GP, LLC,

*Randall J. Davis with permission by /s/ Melissa A.  
Haselden*

By: \_\_\_\_\_  
Randall J. Davis, Manager of Sapphire South Padre  
GP, LLC, General Partner of Sapphire VP, LP

*Randall J. Davis with permission by /s/ Melissa A.  
Haselden*

By: \_\_\_\_\_  
Randall J. Davis, Individually

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**ATTORNEYS FOR DEBTOR**