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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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**In re:**

**SPRING POINTE DEVELOPMENT,  
L.L.C.,**

**Debtor-in-Possession**

**Bankruptcy Case No. 11-32972  
Chapter 11**

**Honorable Joel T. Marker**

**[Filed Electronically]**

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***DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION,  
DATED FEBRUARY 15, 2012***

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This disclosure statement (the “Disclosure Statement”) is being distributed for purposes of soliciting acceptances of the Debtor’s Chapter 11 Plan of Reorganization, dated February 15, 2012 (the “Plan”). The information in this Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan. No solicitation of votes to accept the Plan may be made except pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

All creditors are advised and encouraged to read this entire Disclosure Statement and the Plan before voting to accept or reject the Plan. A copy of the Plan is attached as Exhibit “A.” Plan summaries and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan and this Disclosure Statement. The statements contained in this Disclosure Statement are made only as of the date hereof. There is no assurance that the statements contained in this Disclosure Statement will be correct at any later date. In the event of any conflict between this Disclosure Statement and the terms of the Plan, the terms of the Plan will govern.

This Disclosure Statement has been prepared in accordance with Section 1125 of the Bankruptcy Code and Rule 3016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and not necessarily in accordance with Federal or State securities laws or other non-bankruptcy law.

As to contested matters, adversary proceedings and other actions, threatened actions or disputes, this Disclosure Statement will not constitute or be construed as an admission of any fact or liability, or as a stipulation or waiver, but rather as a statement made in settlement negotiations. This Disclosure Statement will not be admissible in any bankruptcy or non-bankruptcy proceeding involving Spring Pointe Development, L.L.C., as debtor and debtor in possession (“Debtor”), or any other party (other than in connection with approval of this

Disclosure Statement or confirmation of the Plan), nor will it be construed to be conclusive advice on the tax or other legal effects of the Plan as to holders of Claims against, or Interests in, the Debtor.

## **I. INTRODUCTION.**

### **A. Summary of the Debtor's Plan of Reorganization.**

The Debtor submits this Disclosure Statement for use in the solicitation of votes to accept or reject the Debtor's Plan. Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

Generally, the Plan provides for the payment of Allowed Claims from the sale of the assets of the Debtor after the Confirmation of the Plan. Further, the Plan provides that the Debtor may obtain capital contributions or loans to make the payments required by the terms of the Plan. Finally, as it relates to the secured claim of Springville City, the Plan provides that, if the Debtor defaults on its payment obligations and does not cure its defaults, the Debtor will transfer certain of its real property to Springville City in full satisfaction of Springville City's claim.

### **B. Purpose, Limitations and Structure of this Disclosure Statement.**

This Disclosure Statement is intended to provide such information as may be material, important and necessary for a reasonable investor typical of the holders of Impaired Claims to make an informed decision whether to vote in favor of or against the Plan. Only the holders of Allowed Claims or Interests of a Class that is Impaired under the Plan are entitled to vote on the Plan.

This Disclosure Statement sets forth certain information concerning the Debtor's prepetition operations and financial history, the reasons for the Debtor's filing of its Chapter 11

petition, significant events that occurred during the Chapter 11 Case, and the Debtor's assets and liabilities.

This Disclosure Statement also summarizes the terms and provisions of the Plan, including certain alternatives to the Plan, certain effects of Confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and procedures that holders of Claims who are entitled to vote on the Plan must follow for their votes to be counted. This Disclosure Statement contains a summary of certain provisions of the Plan and certain other documents and financial information. While it is believed that the summaries are fair and accurate and provide adequate information with respect to the documents summarized, each such summary is qualified to the extent that it does not set forth the entire text of such documents, which are controlling, in the event of any inconsistency. While reasonable efforts have been made to be accurate, there can be no representation or assurance that the information contained herein is complete and without error. The Disclosure Statement, however, is not the Plan. In the event of any inconsistency between the Disclosure Statement and the Plan, the Plan will control. Each holder of a Claim is urged to review the Plan and any Exhibits to this Disclosure Statement in their entirety before casting a ballot.

For a description of the Plan and certain risks and other factors pertaining to the Plan as it relates to holders of Claims and Interests, see "The Plan" and "Risk Factors" below.

The Bankruptcy Court has not passed on the merits of the Plan and has not conducted a detailed investigation into the contents of this Disclosure Statement. The Bankruptcy Court's approval of this Disclosure Statement does not constitute either a guarantee of the accuracy or completeness of the information contained herein or an endorsement of the Plan by the Bankruptcy Court.



Neither the Plan nor the Disclosure Statement have been approved or disapproved by the Securities and Exchange Commission or the Utah Department of Securities, nor has the Securities and Exchange Commission or the Utah Department of Securities passed upon the fairness or merits of the information contained herein. Any representation to the contrary is unlawful.

No representations concerning the Plan, the effects of the Plan on the creditors of the Debtor (the "Creditors"), the Debtor's business operations, the value of the Debtor's assets, the Debtor, or the value of benefits offered to Creditors or other parties in interest in connection with the Plan are authorized, other than as set forth in this Disclosure Statement. You should not rely on any representations or inducements made to secure your acceptance or rejection of the Plan which are contrary to the information contained in this Disclosure Statement.

You are not to construe the contents of this Disclosure Statement as legal, tax or accounting advice, but you should consult your separate counsel, accountant and business advisors as to legal, tax and accounting matters concerning the Plan.

The Debtor has prepared the information contained in this Disclosure Statement in good faith, based upon the information available to it. No audit of the financial information contained in this Disclosure Statement has been conducted. Moreover, certain of the statements contained in this Disclosure Statement, by their nature, are forward-looking and contain estimates, assumptions and projections, and there can be no assurance that these forward-looking statements will turn out to be true.

On March \_\_, 2012, after notice and a hearing, the Bankruptcy Court issued an order (the "Disclosure Statement Order") approving this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical, reasonable investor typical of the Debtor's Creditors to make an informed judgment whether to accept or reject the Plan.

Approval of this Disclosure Statement does not constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

**C. Voting on the Plan.**

Pursuant to the Bankruptcy Code, only Classes of Allowed Claims or Interests that are Impaired under the Plan are entitled to vote to accept or reject the Plan. Classes of Claims that are not Impaired are not entitled to vote and are deemed to have accepted the Plan. Similarly, Classes of Claims that are not Allowed are not entitled to vote to accept or reject the Plan.

Voting on the Plan shall be pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules, and a Class shall have accepted the Plan if the Plan is accepted by at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class actually voting.

Only holders of Allowed Claims and Allowed Interests shall be entitled to vote on the Plan. A Claim to which an objection has been filed is a Disputed Claim, not an Allowed Claim, unless and until the Bankruptcy Court rules on the objection and has Allowed the Claim. Therefore, although holders of Claims and Interests subject to a pending objection will receive ballots, their votes will not be counted unless the Bankruptcy Court, prior to the hearing on Confirmation (the "Confirmation Hearing"), rules on the objection and allows the Claim or, on proper request under Bankruptcy Rule 3018(a), temporarily allows the Claim in an amount which the Bankruptcy Court deems proper for the purpose of voting on the Plan prior to the time for ballots to be returned. A Creditor's vote may be disregarded if the Bankruptcy Court determines that the Creditor's acceptance or rejection was not solicited or procured in good faith and in accordance with the provisions of the Bankruptcy Code and Bankruptcy Rules.

**1. Voting Classes and Presumed Acceptance.** Holders of Allowed Claims in Class 1 are not Impaired and not entitled to vote on the Plan. Holders of Claims in this Class,

therefore, are conclusively presumed to accept the Plan pursuant to § 1126(f) of the Bankruptcy Code. All other Classes of Claims are entitled to vote.

**2. One Vote Per Holder.** If a holder of a Claim holds more than one Claim in any one Class, all Claims of such holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number of Claims voting for or against the Plan.

**3. Procedures and Deadlines for Completing Ballots and Voting.** A ballot for accepting or rejecting the Plan is enclosed for use by those holders of Claims or Interests entitled to vote on the Plan. Holders of Claims or Interests entitled to vote should carefully read this Disclosure Statement, the Plan and the instructions contained on the ballot and complete, date, sign and mail the ballot to the address indicated on the ballot so that it is received no later than \_\_\_\_\_, \_\_\_, 2012. Your acceptance or rejection of the Plan must be indicated by voting in favor of or against the Plan on the enclosed ballot. You must complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided. In order for your vote to be counted, your properly completed ballot must be actually received at the address indicated on the ballot no later than \_\_\_\_\_, \_\_\_, 2012 at 4:30 p.m., prevailing Mountain Time.

If you have questions about (i) the procedure for voting, (ii) the packet of materials you received, or (iii) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy or copies of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact Nissen Curran at Ray Quinney & Nebeker P.C., at (801) 532-1500, or by mail or facsimile at the address listed on the cover sheet of this Disclosure Statement, or by email to [ncurran@rqn.com](mailto:ncurran@rqn.com).

**4. Procedures for Vote Tabulation.** In determining whether the Plan has been accepted or rejected, any ballot from the holder of an Allowed Claim that is timely received

and that contains sufficient information to permit the identification of the holder of such Allowed Claim, is signed by the holder of such Allowed Claim or an authorized agent, and is cast as an acceptance or rejection of the Plan, will be counted.

The following ballots will not be counted in determining whether the Plan has been accepted or rejected: (a) any ballot received after the voting deadline as set by the Bankruptcy Court; (b) any ballot that is not signed or that contains insufficient information for the identification of the claimant; (c) any ballot timely received that indicates neither an acceptance nor a rejection of the Plan; (d) any ballot timely received that both indicates an acceptance and a rejection of the Plan; (e) any ballot cast by (i) a Creditor or Interest holder who is not listed as a Creditor or Interest holder on Debtor's Schedules, or whose Claim or Interest is listed as disputed, contingent or unliquidated, and who has not timely filed a proof of claim or interest with respect to the Claim or Interest being voted; or (ii) a Creditor or Interest holder who has timely filed a proof of claim or interest that is the subject of an objection or a pending adversary proceeding disputing such Claim and who has not obtained the temporary allowance of its Claim for voting purposes; and (f) any ballot cast by an Entity who does not hold a Claim or Interest in the Class in which it voted.

Whenever two or more ballots are cast by the holder of the same Claim prior to the voting deadline, the last ballot received prior to the voting deadline will be deemed to reflect the voter's intent and thus supersede prior ballots.

**5. Record Date.** The entry date of the Order approving this Disclosure Statement shall be the record date for all Claims for voting purposes (the "Record Date"). Persons that did not hold an Allowed Claim as of the Record Date will not be permitted to vote to accept or reject the Plan.

**6. Confirmation Hearing - Rules Governing Objections to Confirmation.**

Pursuant to Section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Confirmation Hearing is scheduled to commence on [*May 10, 2012 at 9:00 a.m. MDT (Tentative)*], before the Honorable Joel T. Marker, in Courtroom 341 of the United States Bankruptcy Court for the District of Utah, on the Third Floor of the United States Courthouse, 350 South Main Street, Salt Lake City, Utah 84101. The Confirmation Hearing may be continued from time to time by the Debtor or the Bankruptcy Court without further notice other than by announcement of the continued date at the Confirmation Hearing or at any subsequent continued Confirmation Hearing.

Objections to Confirmation of the Plan are governed by Rule 9014 of the Bankruptcy Rules. Such objections, if any, must be in writing, must provide the name, current address and telephone number of the objecting party and counsel, must set forth with specificity all factual and legal bases for the objection, must specify the amount of such party's Claims or Interests, and must be filed and served so as to be actually received by the Bankruptcy Court and each of the following not later than \_\_\_\_\_, 2012:

To Counsel for the Debtor:

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Douglas M. Monson  
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Pursuant to Bankruptcy Rule 3020(b)(2), the Bankruptcy Court may confirm the Plan without receiving evidence if no objection to confirmation is timely filed.

## **II. GENERAL INFORMATION ABOUT THE DEBTOR.**

### **A. The Development of the Real Property.**

The Debtor is the owner and developer of approximately 84.971 acres commercial property (the “Real Property”) located on the west side of I-15 in Springville, Utah County, Utah, consisting of 9 improved commercial lots (the “Lots”). The descriptions of the Lots by Plat Number, Parcel Number, Tax Serial Number and acreage and their recent appraised values are as follows:

<b>Parcel No.</b>	<b>Serial No.</b>	<b>Acreage Per Assessor</b>	<b>Appraised Value</b>
Plat A, Lot 1	52:973:001	7.330 acres	\$1,120,000
Plat A, Lot 2	52:973:0002	13.835 acres	\$1,220,000
Plat A, Lot 3	52:973:003	21.837 acres	\$1,600,000
Plat B, Lot 1	66:272:0001	1.210 acres	\$160,000
Plat B, Lot 2	66:272:0002	1.058 acres	\$145,000
Plat B, Lot 3	66:272:0003	1.340 acres	\$175,000
Plat C, Lot 1	66:321:0001	1.652 acres	\$360,000
Plat C, Lot 2	66:321:0002	1.700 acres	\$340,000
Plat C, Lot 3	66:321:0003	35.011 acres	\$4,880,000

<b>TOTAL ACREAGE OWNED BY DEBTOR</b>	84.971 acres	\$10,000,000
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In November of 2005, after the Debtor had acquired title to all of the Real Property, Springville City formed the Springville City, Utah Special Improvement District No. 29 (the “SID”) for the purpose of constructing various improvements for the Real Property (as well as other land covered by the SID) through the issuance of certain bonds (the “Springville City Bonds”). The SID was created by an Assessment Ordinance of the City Council of Springville City, Utah, acting as the governing authority of the SID, dated November 1, 2005, Ordinance No. 21-05 (the “Assessment Ordinance”). Record notice of the Assessment Ordinance and the corresponding assessments against the Real Property (the “SID Assessments”) was recorded against the Real Property on December 2, 2005, in a document entitled “Notice of Assessment Interest,” recorded as Entry No. 139383:2005, of the Official Records of Utah County, Utah.

Following the creation of the SID, various improvements were made by the SID to the Real Property. However, a sewer pump station that the Debtor anticipated would be constructed (and which the Debtor claims was included in the SID and charged to the Debtor) as part of the SID was not built by the SID. The sewer pump station still needs to be built as part of the completion of the improvements for the Real Property. The estimated cost to complete the sewer pump station is between \$400,000 and \$500,000.

All of the pre-petition prospective sales that the Debtor located for the Real Property have fallen through. At the time that the Real Property was last appraised, the Debtor’s asking prices for the Real Property were approximately \$250,000 per acre (\$5.74 per square foot) for the front Lots and \$125,000 per acre (\$2.87 per square acre) for the back Lots.

**B. Background of the Debtor.** The Debtor’s Manager and sole owner is Milton Christensen (“Christensen”). Christensen began acquiring the Real Property in the 1990’s.

**C. Ownership and Management.** The Debtor is a Utah limited liability company. Christensen owns 100% of the membership interests in the Debtor. Following its bankruptcy filing, the Debtor has been operated as a debtor-in-possession by Christensen as the Debtor's manager and sole owner.

**D. Pre-Petition Secured Debt.** In addition to the claim of Springville City under the SID, which claim is secured by a priming lien on the Real Property, the following information relates to the various secured claims (the "Secured Claims" or a "Secured Claim") asserted against the Debtor. The Debtor incurred the Class 2 PRM Secured Claim in the Allowed amount of \$242,485.04 (as of the Petition Date) as a pre-petition secured loan from PRM Investment Company ("PRM") secured by PRM's Lien against a portion of the Real Property. The Debtor also incurred the Class 5 Christensen Secured Claim of \$1,500,000 as a loan to the Debtor from Christensen. Pursuant to the Plan, the Class 5 Christensen Secured Claim will be cancelled and Allowed at zero. Norman Van Wagenen ("Van Wagenen") also asserts the Class 3 Van Wagenen Secured Claim in the amount of \$5,000,000 against the Real Property. However, the Debtor asserts that there was nothing owed by the Debtor to Van Wagenen as of the Petition Date, and the Debtor will object to the Class 3 Van Wagenen Secured Claim. D&M Excavating & Grading, Inc. ("D&M") (Class 6) has also asserted a mechanic's lien of \$90,696.50 against the Real Property. However, the Debtor asserts that D&M has been paid everything to which D&M was entitled from the Debtor, and therefore D&M is owed nothing by the Debtor, and the Debtor will object to the Class 6 D&M Secured Claim.

**E. Pre-Petition Unsecured Debt.** Shake & Shingle Sales, Inc. ("S & S Sales") filed a late proof of claim on February 6, 2012, asserting an unsecured claim (the "Unsecured Claim") in the amount of \$182,548.00 for an alleged breach of contract by the Debtor. The



Debtor asserts that there was no breach of contract by the Debtor, and the Debtor will object to the Class 7 S & S Sales Unsecured Claim.

**F. Events Leading to Commencement of the Debtor's Chapter 11 Case.**

The severe downturn in the real estate market greatly affected the Debtor's financial position as a real estate developer, and the Debtor did not have the funds to continue to pay the SID Assessments. In March of 2011, Springville City caused the trustee for the SID's assessment lien under the Assessment Ordinance, Provo Land Title Company, to record a Notice of Default against all of the Real Property. The Debtor filed its voluntary petition for relief under Chapter 11 in the United States District Court for the District of Utah on September 2, 2011, as a means to preserve the value of the Real Property for all Allowed Creditors and avoid the foreclosure of the Real Property. Had the Debtor not filed its voluntary petition for relief, Springville City would have foreclosed its assessment lien and acquired the entirety of the Debtor's Real Property, leaving nothing for other Allowed Creditors or Christensen, as the holder of the Debtor's equity interests.

**III. THE DEBTOR'S CHAPTER 11 CASE.**

**A. Significant Events During the Case.**

**1. Development of the Real Property.** Since the Petition Date, the Debtor has continued with its efforts as a debtor in possession to develop the Real Property. Among other things, the Debtor had continued to receive fill from the I-15 reconstruction project (at no cost to the Debtor or its estate), which fill has allowed the Debtor to increase the elevation of the Real Property and make the Real Property more attractive to potential purchasers and more feasible for development.

**2. Retention of Debtor's Professionals.** On September 12, 2011, shortly after the Petition Date, the Debtors sought authority to retain Ray Quinney & Nebeker P.C. as

Debtor's general bankruptcy counsel. On October 11, 2011, the Court entered an order approving the retention of Ray Quinney & Nebeker P.C.

**3. Stipulation with Springville City.** On December 1, 2011, the Debtor and Springville City filed a Stipulation with the Bankruptcy Court concerning Section 363(d) of the Bankruptcy Code and authorizing Springville City's use of certain reserve funds that Springville City was holding to service and bring current the payments due to the holders of the Springville City Bonds. The Stipulation required the Debtor to file the Plan by February 15, 2012, which in fact occurred.

**B. Schedules, Bar Date and Summary of Claims.**

**1. Schedules and Statements.** On September 16, 2011, the Debtor filed its Statements of Financial Affairs and Schedules of Assets and Liabilities (collectively, the "Schedules").

**2. Bar Date.** Pursuant to Local Bankruptcy Rule 3003-1(a), "[i]n a chapter-11 case, a proof of claim or interest is timely filed if it is filed not later than 90 days after the first date set for the meeting for creditors under § 341 of the Code, or, if filed by a governmental unit, not later than 180 days after the date of the order for relief." LBR 3003-1(a). Accordingly, January 4, 2012 (the "Bar Date") was the date and time by which proofs of claim by all claimants (other than governmental units) were required to be filed. The deadline for a governmental unit to file a proof of claim is February 29, 2012.

**3. Summary of Claims.** As of February 14, 2012, 6 proofs of claim have been filed in this case. The Debtor has been reviewing the proofs of claim and intends to object to certain proofs of claim, as outlined above and below. As of February 14, 2012, \$182,548 in General Unsecured Claims, \$9,804,369.59 in Secured Claims and \$0 in Priority Claims have been filed and not yet disallowed or expunged pursuant to Court orders.

#### **IV. THE PLAN.**

##### **A. Purpose of Plan.**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of Chapter 11 is to promote equality of treatment for similarly situated creditors with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the Petition Date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession." The Bankruptcy Code also provides that any party in interest may propose a plan of reorganization for the Chapter 11 case after the debtor's exclusive period for proposing a plan has expired.

The consummation of a plan of reorganization is the principal objective of a Chapter 11 reorganization case. A Chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a Chapter 11 plan by the Bankruptcy Court binds the debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor or equity interest holder of a debtor, whether or not such creditor or equity interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under

the plan. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

The Debtor believes that implementation of the Plan will provide holders of Allowed Claims and Interests a greater distribution than they would receive if this case was converted to a Chapter 7 case. The summary of the Plan set forth below is qualified in its entirety by reference to the provisions of the Plan.

**B. General Structure of the Debtor's Plan.**

The Debtor's Plan proposes a time period not to exceed five (5) years for the Debtor to sell all of the Real Property and pay the Allowed Claims against the Debtor. The Debtor's Plan also authorizes the Debtor to obtain capital contributions or loans in order to fund distributions under the Plan, to the extent required. Finally, as it relates to Springville City, the Plan provides that, in the event the Debtor defaults in its payment obligations under the Plan and fails to cure its defaults, the Debtor may transfer certain portions of its Real Property to Springville City in full satisfaction of Springville City's claims.

**C. Classification and Treatment of Claims and Interests**

Section 1123 of the Bankruptcy Code provides that a plan of reorganization must provide certain treatment for Allowed Administrative Expenses and priority tax Claims and otherwise classify claims and interests and provide for their treatment. As a result, the Plan (a) describes the treatment to be afforded to Allowed Administrative Expenses Claims (which includes claims of compensation by professionals) and United States Trustee quarterly fees and other statutory Fees and (b) classifies Claims and Interests in separate Classes and provides different treatment for different Classes of Claims and Interests. As described more fully below, the Plan provides, separately for each Class, that holders of certain Claims will receive various amounts and types

of consideration, thereby giving effect to the different rights of holders of Claims and Interests in each Class.

**D. Plan Overview.**

The following is only a general overview of the Plan, and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information and financial statements appearing elsewhere in this Disclosure Statement and the Plan. Certain provisions of the Plan, and thus the descriptions and summaries in this Disclosure Statement, may be the subject of further negotiations that are subject to change. The Debtor reserves its right to amend or modify the Plan consistent with § 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

**E. Summary of Treatment of Claims and Interests.**

The following is a brief summary of the treatment of Claims and Interests under the Plan. A Claim or Interest is placed in a particular Class for purposes of voting on the Plan. A Claim or Interest receives distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled. In accordance with the Bankruptcy Code, Allowed Administrative Claims and Allowed priority tax Claims have not been classified.

**1. Unclassified Claims.** In accordance with § 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Expenses Claims have not been classified, and the treatment of such unclassified Claims is set forth in Article 2 of the Plan. Unclassified Claims are to be treated as follows:

(a) **Allowed Administrative Expense Claims.** Except to the extent that the holder of an Allowed Administrative Expenses Claim agrees to a less favorable treatment, each Allowed Administrative Expenses Claim shall be paid in full on or as soon as reasonably practicable following the later to occur of (a) the Effective Date, or (b) the date on

which such Administrative Expenses Claim becomes an Allowed Claim. Allowed Administrative Expenses Claims representing liabilities incurred in the ordinary course of business by the Debtor post-petition are to be paid by the Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to conditions of any agreements governing the same.

(b) **United States Trustee Quarterly Fees and Other Statutory**

**Fees.** All fees due and payable under § 1930 of Title 28 shall be paid within ten business days after the Effective Date. In addition, the Reorganized Debtor shall pay the United States Trustee quarterly fees due and payable on all disbursements until entry of a final decree, dismissal of the case or conversion of the case to a case under Chapter 7.

2. **Classified Claims Against and Interests in the Debtor.**

(a) (i) **Class Description: Class 1 – Allowed Priority Claims – Unimpaired – Not Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 1**  
**Allowed Priority Claims.** The Debtor believes that there are no unpaid priority Claims in this Case. To the extent it is determined that there are Allowed priority Claims, each holder of an Allowed priority Claim shall receive, on account of its Claim against the Debtor, cash in an amount equal to the Allowed Claim amount on the later of the Effective Date or the date such priority Claim becomes an Allowed Claim, or as soon after as is practicable.

(b) (i) **Class Description: Class 2 – Springville City Claim – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 2**  
**Springville City Claim.** Unless otherwise agreed by the Debtor and Springville City, the Springville City Claim will be Allowed in the amount of \$2,806,997.90, the amount of

\$2,971,188.05 asserted in the Springville City proof of claim less total late fees of \$164,190.15 asserted in the Springville City proof of claim. The Allowed Springville City Claim will be payable as follows:

A. Annual payments of principal and interest in the amount of \$384,183.11 each year shall be paid to Springville City on the Allowed Springville City Claim for seven (7) years, with a final payment of \$117,716.13 (or such other amount as may then be owed) on the Allowed Springville City Claim in the eighth (8<sup>th</sup>) year, pursuant to the following schedule:

1. November 6, 2012 (Payment of \$384,183.11).
2. November 6, 2013 (Payment of \$384,183.11).
3. November 6, 2014 (Payment of \$384,183.11).
4. November 6, 2015 (Payment of \$384,183.11).
5. November 6, 2016 (Payment of \$384,183.11).
6. November 6, 2017 (Payment of \$384,183.11).
7. November 6, 2018 (Payment of \$384,183.11).
8. November 6, 2019 (Payment of the remaining balance, estimated to be \$117,716.13).

The annual \$384,183.11 payment is calculated as follows: Lot 1: Principal of \$18,691.99, Accrued Interest of \$12,605.87; Lot 2: Principal of \$35,283.07, Accrued Interest of \$23,794.90; Lot 3: Principal of \$55,692.32, Accrued Interest of \$37,558.90; Lot 4: Principal of \$97,770.56, Accrued Interest of \$65,936.45; and Lot 6: Principal of \$9,327.99, Accrued Interest of \$9,327.99, for a total of \$384,183.11. Completion of all eight of the payments set forth in this Section A shall result in the Allowed Springville City Claim being satisfied in full.

B. Springville City shall retain its Lien on the Real Property until such time as the Allowed Springville City Claim is paid in full pursuant to the payment schedule outlined in Section A above, at which time Springville City's Lien shall be released and discharged. The Reorganized Debtor shall not be obligated to make any payments

to Springville City on the late fees asserted in the Springville City proof of claim unless the Reorganized Debtor defaults on any payment and fails to cure the default as set forth in Section D below.

C. As the Reorganized Debtor sells portions of the Real Property after the Effective Date, the Reorganized Debtor will be entitled to a partial release from Springville City of Springville City's Lien on the applicable portion of the Real Property by payment to Springville City of the remaining principal payments for the applicable portion of the Real Property outlined in Section A above along with any accrued and unpaid interest on the applicable portion of the Real Property, based upon the annual interest accrual amount for the applicable portion of the Real Property outlined in Section A above.

D. In the event any payment to Springville City is not made in full by the Reorganized Debtor when such payment comes due as outlined in Section A above, Springville City shall provide the Debtor and its counsel with a written notice of default. If the default is not cured by the Reorganized Debtor within twenty (20) business days of the Reorganized Debtor's receipt of the written notice of default, then the Reorganized Debtor shall immediately thereafter quit claim Plat A, Lot 1 and Plat A, Lot 2 to Springville City in full satisfaction of the Allowed Springville City Claim, including full satisfaction of all late fees asserted by Springville City in connection with the Springville City proof of claim. Plat A, Lot 1 and Plat A, Lot 2 have a combined appraised value of at least \$3,040,000, and therefore these two Lots are the indubitable equivalent of the Lien securing the Allowed Springville City Claim. If Springville City objects to the valuation of Plat A, Lot 1 and Plat A, Lot 2, or any other portion of the Real Property as set forth herein, then, by no later than the Effective Date, Springville City shall file a written objection to the valuation, and accompany its written objection with an appraisal, with an effective date of no earlier than six months prior to the Effective Date, issued by a certified MAI appraiser. Springville City also shall schedule an evidentiary hearing on its written objection for a date that is no earlier than forty-five (45) days and no later than seventy (70) days after the Effective Date. The Debtor shall be entitled to file a written response to



Springville City's written objection, along with such supporting documents as it deems appropriate, within thirty (30) days of the date of filing of the written objection by Springville City. In the event such a written objection is filed, the Bankruptcy Court shall determine (a) the fair market value of all or any portions of the Real Property, by Parcel Number, and (b) the amount of the Real Property, by acreage or whatever other method the Bankruptcy Court deems appropriate, that the Debtor would be required to deed to Springville City in order to fully satisfy the Allowed Springville City Claim. In making such determination, the Bankruptcy Court shall be entitled to determine both that the Debtor is required to transfer more than Plat A, Lot 1 and Plat A, Lot 2, and less than Plat A, Lot 1 and Plat A, Lot 2, in order to fully satisfy the Allowed Springville City Claim.

(c) (i) **Class Description: Class 3 - Secured Claim of Norman Van Wagenen – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 3 Secured Claim of Norman Van Wagenen.** Class 3 shall consist of the Van Wagenen Secured Claim. The Van Wagenen Secured Claim is disputed, and the Debtor will file an objection to the Van Wagenen Secured Claim on the basis that, although a trust deed was previously recorded against the Real Property listing Van Wagenen as the beneficiary of the trust deed, as of the Petition Date there was nothing owed by the Debtor to Van Wagenen, either under the obligation secured by the Van Wagenen trust deed or otherwise. Therefore, the Van Wagenen Secured Claim shall be Allowed at zero under this Plan, Van Wagenen will not be paid anything under this Plan (either as a secured Claim or an unsecured Claim), and the Van Wagenen Lien will be extinguished by the Confirmation of this Plan. However, in the event the Bankruptcy Court does not sustain the Debtor's objection, then the Van Wagenen Secured Claim shall be paid under this Plan, in whatever amount the Court deems to be Allowed, by no later than five (5) years from the Effective Date of this Plan, or at the time of the sale of the Real Property, whichever occurs first,

with the claim to be paid pro rata with all Allowed Claims in Classes 6 and 7 from the proceeds of the sale of the Real Property after the payment in full of the Allowed Claims in Classes 1, 2, and 4.

(d) (i) **Class Description:** **Class 4 – Allowed Secured Claim of PRM Investment Company – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 4 Allowed Secured Claim of PRM Investment Company.** Class 4 shall consist of the PRM Secured Claim. The PRM Secured Claim, which is secured by a portion of the Real Property, is believed to have been oversecured as of the Petition Date. Therefore, the PRM Secured Claim shall be Allowed in the amount of \$242,485.04 as of the Petition Date. In addition, consistent with Section 506(b) of the Bankruptcy Code, if the PRM Secured Claim is determined to have been oversecured as of the Effective Date, there shall be allowed to PRM after the Petition Date, additional interest on the PRM Allowed Secured Claim at the rate of 5% per annum from the Petition Date to the date of payment and any reasonable post-Petition Date fees, costs, or charges provided for under the PRM loan documents until the PRM Allowed Secured Claim is paid in full. The PRM Allowed Secured Claim shall be paid under this Plan at the earlier of the time of the sale of that portion of the Real Property securing the PRM Allowed Secured Claim, or five (5) years from the Effective Date of this Plan. The Debtor also shall have the option, but not the obligation, to pay the PRM Allowed Secured Claim at an earlier date from other assets of the Debtor, including from capital contributions from Christensen.

(e) (i) **Class Description:** **Class 5 – Secured Claim of Milton Christensen – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 5 Secured Claim of Milton Christensen.** Class 5 shall consist of the Christensen Secured Claim.

The Christensen Secured Claim shall be Allowed at zero, and Christensen's Lien shall be extinguished by the Confirmation of the Plan.

(f) (i) **Class Description:** **Class 6 – Secured Claim of D&M Excavation & Grading, Inc. – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 6 Secured Claim of D&M Excavation & Grading, Inc.** Class 6 shall consist of the D&M Secured Claim of D&M Excavation & Grading, Inc. ("D&M"). The D&M Secured Claim is disputed, and the Debtor will file an objection to the D&M Secured Claim on the basis that D&M was paid everything that it was owed in connection with its work on the Real Property, and as of the Petition Date there was nothing owed by the Debtor to D&M, either under the mechanic's lien filed by D&M or otherwise. Therefore, the D&M Secured Claim shall be Allowed at zero under this Plan, D&M will not be paid anything under this Plan (either as a secured Claim or an unsecured Claim), and the D&M mechanic's Lien will be extinguished by the Confirmation of this Plan. However, in the event the Bankruptcy Court does not sustain the Debtor's objection, then the D&M Secured Claim shall be paid under this Plan, in whatever amount the Court deems to be Allowed, by no later than five (5) years from the Effective Date of this Plan, or at the time of the sale of the Real Property, whichever occurs first, with the claim to be paid pro rata with all claims in Classes 3 and 7 from the proceeds of the sale of the Real Property after the payment in full of Classes 1, 2, and 4.

(g) (i) **Class Description:** **Class 7 – Unsecured Claim of Shake & Shingles Sales, Inc. – Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 7 Unsecured Claim of Shake & Shingles Sales, Inc.** Class 7 shall consist of the S & S Sales Unsecured Claim of Shake & Shingle Sales, Inc. ("S & S Sales"). The S & S Sales Unsecured

Claim is disputed, and the Debtor will object to the S & S Sales Unsecured Claim. To the extent that the S & S Sales Claim is Allowed as an Unsecured Claim by the Bankruptcy Court, the amount that is Allowed will be paid in full upon the earlier of five (5) years from the Effective Date of this Plan or at the time of the sale of the Real Property, with the S & S Sales Unsecured Claim to be paid pro rata with all claims in Classes 3 and 6 from the proceeds of the sale of the Real Property after the payment in full of Classes 1, 2, and 4.

(h) (i) **Class Description: Class 8: Equity Interests –**

**Impaired – Voting.**

(ii) **Proposed Treatment Under the Plan For the Class 8**

**Equity Interests.** Class 8 shall consist of all Allowed Equity Interests of the Debtor. Equity Interest holders shall retain their interests in the Debtor in the same percentages and amounts, and with the same rights, as existed prior to the Petition Date, without modification of any kind.

**F. Plan Implementation.**

**1. General.** The Plan shall be implemented through the means contemplated by Sections 1123(a)(5), (b)(3) and (b)(4) of the Bankruptcy Code on and after the Effective Date by the Reorganized Debtor. Pursuant to the Confirmation Order, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan. Without limiting the foregoing, such transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (iii) the filing of appropriate certificates of

incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (iv) all other actions the Reorganized Debtor determines are necessary or appropriate.

**2. Vesting of Assets; Release of Liens.** Except as otherwise provided in the Plan or any agreement, instrument, or other document relating thereto, on or after the Effective Date, all property in the Estate, including all of the Debtor's assets as of the Petition Date, and any property acquired by the Debtor thereafter, shall vest in the Reorganized Debtor on the Effective Date. Thereafter, the Reorganized Debtor may manage its assets and may use, acquire, dispose of property, and settle or compromise Claims or Interests, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules. Except as provided in this Plan or any contract, instrument, release or other agreement created in connection with this Plan, on the Effective Date, all Liens, claims and encumbrances against the property of the Reorganized Debtor shall be fully and completely released and discharged and all such assets or property shall be free and clear of any such Liens, claims and encumbrances.

**3. Preservation of Causes of Action, Claims and Retained Claims and Defenses.** In accordance with section 1123(b)(3) of the Bankruptcy Code, and except as otherwise provided in the Plan, all Causes of Action, Claims, and Retained Claims and Defenses transferred to the Reorganized Debtor shall be retained by the Reorganized Debtor, and the Reorganized Debtor shall have the power and authority to prosecute and defend all such Causes of Action, Claims, and Retained Claims and Defenses.

**4. Hiring of Employees; Retention of Professionals.** The Reorganized Debtor shall be authorized, without further order of the Bankruptcy Court, to hire such employees and retain such professionals as it may deem necessary to discharge its obligations,

and the costs of such employment and other expenditures shall be paid by the Reorganized Debtor without further approval of the Bankruptcy Court.

**5. Compromise and Settlement.** Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the Reorganized Debtor may, subject to approval of the Bankruptcy Court, compromise and settle Claims against the Reorganized Debtor or any Claims the Reorganized Debtor or the Estate may have against other Persons. The Debtor hereby reserves the right, with approval of the Bankruptcy Court, to compromise and settle Claims against the Debtor or Claims the Debtor or the Estate may have against other Persons up to and including the Effective Date. On the Effective Date, such rights shall pass to the Reorganized Debtor, and thereafter, Claims against the Reorganized Debtor or Claims the Reorganized Debtor or the Estate may have against other Persons may be compromised and settled exclusively by the Reorganized Debtor, without approval of the Bankruptcy Court.

**6. Terms of Injunctions or Stays.** All injunctions or stays provided for in the Chapter 11 Case pursuant to §§ 105 or 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date shall remain in full force and effect until the Effective Date. If the Plan is not confirmed, all such injunctions or stays shall remain in full force and effect until ordered otherwise by the Bankruptcy Court or until an alternative plan of reorganization is confirmed in the Reorganized Debtor's Chapter 11 Case or the Reorganized Debtor's Chapter 11 Case is dismissed. Except as may be determined otherwise by Final Order of the Bankruptcy Court, all distributions and transfers of property pursuant to the Plan shall be made free and clear of all liens, claims and encumbrances and, on the Confirmation Date, all holders of Claims or Interests shall be permanently enjoined from and restrained against commencing or continuing any suit, action or proceeding against the Reorganized Debtor, or asserting against the Reorganized

Debtor or the assets or property thereof, any claim, interest or cause of action based upon any act or omission, transaction or other activity of any kind that occurred prior to Confirmation.

**7. Continuation of Development and Sales Efforts for the Debtor's Real Property.** Post Confirmation, the Reorganized Debtor will continue its development and sales efforts for the Debtor's Real Property.

**G. Distributions.**

The Reorganized Debtor shall make or cause to be made all distributions required under the Plan. All distributions made under the Plan shall be made to holders of Allowed Claims (a) if any such holder has filed a proof of claim, at the address of such holder as set forth in the proof of claim, or (b) if any such holder has not filed a proof of claim, at the last known address of such holder according to the Debtor's books and records.

The Reorganized Debtor shall have no obligation to recognize any purported transfer of a Claim after the Distribution Record Date, and will be entitled for all purposes relating to the Plan to recognize and deal only with those holders of Claims shown on the Schedules or filed proofs of claim as of the Effective Date.

**1. Means of Cash Distributions.** Payments made pursuant to the Plan shall be in lawful U.S. currency and by the means agreed to by the payor and the payee, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Reorganized Debtor shall determine.

**2. No Distributions Pending Allowance.** No payments or distributions shall be made with respect to any Claim to the extent such Claim is a Disputed Claim unless and until all objections to such Disputed Claim are withdrawn or overruled by the Bankruptcy Court and such Claim becomes an Allowed Claim.

3. **Distributions after Allowance.** Distributions shall be made at the times set forth in the Plan to the holder of any Disputed Claim that has become an Allowed Claim on the later of the time set forth in the Plan or the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim as of the Effective Date. No interest shall be payable to holders of Disputed Claims.

4. **Setoff Rights.** The Reorganized Debtor may, but shall not be required to, set off against or recoup from any Claim and the distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the holder of such Claim; provided that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such Claim against such holder.

5. **Unclaimed Distributions.** If a distribution made by the Reorganized Debtor pursuant to the Plan is returned as undeliverable, or the holder has failed to deposit or negotiate the applicable check within 180 days of issuance (collectively, “Unclaimed Distributions”), the distribution shall be held by the Reorganized Debtor. The Reorganized Debtor shall make reasonable efforts to determine the then-current address of such holder, and no further distributions shall be made to such holder unless and until the Reorganized Debtor determines or is notified of such holder’s current address, at which time all missed distributions shall be made, without interest; provided, however, that such distributions shall be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code if not claimed by 180 days after the distribution was initially attempted, notwithstanding any federal or state escheat laws to the contrary. After such date, (a) all rights to Cash, or other distributions shall be forfeited and such Cash or other property shall be revested in the Reorganized Debtor and the claim of such



holder to such Cash or other distribution pursuant to the Plan shall be discharged and forever barred, and (b) all rights to such distributions shall be forfeited.

**6. Minimum Cash Distributions.** No payment of less than One Dollar (\$1) shall be made to any holder of an Allowed Claim unless requested in writing to the Reorganized Debtor. If no such request is timely received, all Cash attributable to such holders shall be treated under the Plan as Unclaimed Distributions.

#### **H. Claims.**

**1. Claims Administration.** Unless otherwise ordered by the Bankruptcy Court, from and after the Effective Date, the sole and exclusive authority to administer, dispute, object to, compromise or otherwise resolve Claims shall belong to the Reorganized Debtor. Subject to the foregoing, the Reorganized Debtor may dispute any Claim evidenced by a proof of claim or request for payment filed with the Bankruptcy Court by filing and serving on the holder thereof an objection (“Objection”) in accordance with the Bankruptcy Code, the Bankruptcy Rules or a Final Order of the Bankruptcy Court. Except as otherwise provided herein, if the Reorganized Debtor disputes any Claim for which a proof of claim has been filed, the Reorganized Debtor must file and serve on the holder of the Disputed Claim an Objection on or before 90 days following the entry of the Confirmation Order (the “Claims Objection Deadline.”)

**2. Estimation of Disputed Claims.** The Debtor or Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate any Disputed Claim subject to estimation under section 502(c) of the Bankruptcy Code, including any Disputed Claim for taxes to the extent permitted by section 502(c) of the Bankruptcy Code, regardless of whether any party in interest previously objected to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code at any time during litigation concerning any objection to the Claim. Disputed Claims may be

estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism set forth in the Plan or approved by the Bankruptcy Court.

**3. Interest on Claims.** Unless specifically provided in the Plan or the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the respective Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim with respect to the period from the Petition Date to the date a final distribution is made thereon.

**4. Voting and Objections.** Failure by the Debtor or the Reorganized Debtor to object to or examine any Claim or Interest for purposes of voting in favor of or against the Plan shall not be deemed a waiver of the Debtor's, the Reorganized Debtor or any other Creditor's rights to object to, or re-examine, such Claim or Interest, in whole or in part, for purposes of allowance or distribution.

**I. Executory Contracts.**

**1. Rejection of Contracts and Leases.** All executory contracts and unexpired leases that exist between or among the Debtor and any other Person shall be deemed rejected by operation of this Plan pursuant to section 365(a) of the Bankruptcy Code on the Effective Date, except for any such contract or lease (a) that has been assumed or rejected, or renegotiated and assumed on modified terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (b) that has been entered into by the Debtor during the pendency of the Chapter 11 Case in the ordinary course of business or pursuant to an order of the Bankruptcy Court, (c) that is the subject of a motion to assume or reject, or a motion to approve renegotiated terms and to assume or reject on such terms, filed prior to the Effective Date, or (d) that is specifically treated otherwise in the Plan or in the Confirmation Order. Entry of the

Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of executory contracts and unexpired leases as provided for herein.

**2. Bar to Rejection Damages.** Claims arising from the rejection of the Debtor's executory contracts or unexpired leases shall be treated as general unsecured claims. The holder thereof shall file a proof of claim by the date fixed in such rejection order or, if no deadline is specified in such order, within thirty (30) days of the effective date of the rejection of such contract or lease or shall be forever barred. Objections to such Claims shall be filed and served by the later of sixty (60) days after the effective date of the rejection or the Claims Objection Deadline.

**3. Assumption of Specific Contracts and Leases.** The Debtor is a party to an executory contract with Provo River Constructors/Ames Construction (the "Fill Material Contract"). Pursuant to Section 9.1 of the Plan, the Debtor shall assume the Fill Material Contract on the Effective Date. As there are no defaults under the Fill Material Contract on the part of the Debtor, the Debtor shall not make any cure payments as part of the assumption. The Fill Material Contract is important to the Debtor because it is the source of the materials needed to raise the elevation of the Real Property so that the Real Property can continue to be developed. Notwithstanding anything to the contrary in the Plan, not less than ten (10) days prior to the Confirmation Hearing, the Debtor shall provide a list of additional executory contracts and unexpired leases (if any) that are to be assumed by operation of the Plan pursuant to section 365(a) of the Bankruptcy Code.

**4. Insurance Policies.** Notwithstanding anything to the contrary contained in the Plan, the Debtor's insurance policies and any agreements, documents or instruments relating thereto shall be deemed to be and treated as though they are executory contracts, and

shall be assumed as of the Effective Date by operation of the Plan pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code. Nothing contained herein shall constitute or be deemed a waiver of any Cause of Action against any insurer or any other Person (except as otherwise provided herein) under any of the Debtor's policies of insurance or otherwise, or in any way to limit the obligation of such insurers to defend, indemnify, and/or hold harmless the Debtor under the terms of any insurance policy issued to the Debtor.

**5. Cure of Defaults.** On the Effective Date, the Debtor and the Reorganized Debtor shall (a) cure or provide adequate assurance that they will cure any and all undisputed defaults under any executory contract or unexpired lease assumed pursuant to the Plan and (b) compensate or provide adequate assurance that they will promptly compensate the other parties to such executory contract or unexpired lease for the agreed amount of any actual pecuniary loss to such party resulting from such undisputed default in accordance with section 365(b)(1) of the Bankruptcy Code. In the event that the Debtor disputes the existence of a default, or the nature, extent or amount of any required cure, adequate assurance or compensation, the Debtor's and the Reorganized Debtor's obligations under section 365(b) of the Bankruptcy Code shall be determined by a Final Order, and any such obligations shall be performed by the Reorganized Debtor unless otherwise provided in such Final Order.

**6. Modification and Amendments.** The Debtor may alter, amend or modify the Plan in accordance with section 1127(a) of the Bankruptcy Code at any time prior to Confirmation. On and after the Confirmation Date but prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects

of the Plan, so long as such proceedings do not materially adversely affect the treatment of holders of Claims or Interests under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or any orders of court.

**7. Revocation, Withdrawal or Non-Consummation.** The Debtor shall have the right to revoke or withdraw the Plan at any time prior to the Effective Date. If revoked or withdrawn prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Class), the assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed or to be executed pursuant to the Plan shall be null and void and of no effect. In such event, nothing contained herein, and no acts taken to implement the Plan, shall be deemed to constitute a waiver or release of any Claims against the Debtor or any other person or any claims by the Debtor or the Debtor against any person, to prejudice in any manner the rights of the Debtor, the Debtor or any person in any further proceedings involving the Debtor or to constitute an admission of any sort by the Debtor or any other person.

**J. Confirmation.**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

**1. Voting Procedures and Solicitation of Votes.** The voting procedures and the procedures governing the solicitation of votes are described above.

**2. Confirmation.** At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor has complied with the applicable provisions of the Bankruptcy Code.

- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised by the Debtor or by a person acquiring property under the plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
- The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as member, director or officer of the Reorganized Debtor, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such insider.
- With respect to each Class of Claims or Interests, each holder of an impaired Claim or Interest has either accepted the Plan or will receive or retain under the Plan on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the debtors were liquidated on the effective date under Chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.
- Each Class of Claims or Interest has either accepted the Plan or is not impaired under the Plan.
- Except to the extent that the holder of a particular Claim has agreed to different favorable treatment of such Claim, the Plan provides that Allowed Administrative Expenses Claims and priority tax Claims will be paid in full as required by the Bankruptcy Code.
- At least one Class of impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the plan. See discussion of "Feasibility," below.

(a) **Acceptance.** Class 1 is unimpaired under the Plan and is not entitled to vote to accept or reject the Plan. Classes 2 through 8 are Impaired and will be entitled to vote to accept or reject the Plan.

(b) **Feasibility.** Section 1129(a)(11) of the Bankruptcy Code provides that a Chapter 11 plan may be confirmed only if the Bankruptcy Court finds that the Plan is feasible. A feasible plan is one that will not lead to a need for further reorganization or liquidation of the Debtor, unless such reorganization or liquidation is proposed in the Plan. The Debtor believes that the Plan satisfies the feasibility requirement imposed by the Bankruptcy Code.

(c) **Best Interests Test.** With respect to each impaired Class of Claims and Interests, confirmation of the Plan requires that each holder of a Claim or Interest either (i) accepts the Plan or (ii) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. This requirement often is referred to as the “best interests test.”

The starting point in determining whether the Plan meets the best interests test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor’s assets in a Chapter 7 liquidation case. These proceeds must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 cases and allowed under Chapter 7 of the Bankruptcy Code (such as professionals’ fees and expenses), a trustee’s fees and expenses, and the fees and expenses of professionals retained by a trustee. The potential Chapter 7 liquidation distribution in respect of each Class must be reduced further by costs imposed by the delay caused by conversion to Chapter 7. In addition, inefficiencies in the claims resolution process in a Chapter 7 would negatively impact the recoveries of Creditors.

The net present value of a hypothetical Chapter 7 liquidation distribution in respect of an impaired Class is then compared to the recovery provided for in the Plan for that Class.

Because the additional expenses and delays associated with a Chapter 7 liquidation case would reduce the distributions that would be made to the Creditors under this Plan that is proposed for the payment of the Creditors, and because it is likely that a Chapter 7 trustee who would be obligated to sell the Real Property on an expedited basis in the currently depressed real estate market, the Debtor believes that Creditors would receive less in a Chapter 7 liquidation case than they would receive in Chapter 11 under the treatments proposed for the Creditors in this Plan.

In any event, the question under the best interests test is whether creditors will receive at least as much under Chapter 11 as they would under Chapter 7. The Debtor firmly believes that creditors will receive at least as much under the Plan as they would under Chapter 7, and therefore that the best interests test is easily satisfied.

**(d) Cramdown.** The Debtor will seek to confirm the Plan notwithstanding the rejection by any of the Impaired Classes. To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each Impaired, nonaccepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” The Bankruptcy Code establishes “cram down” tests for secured creditors, unsecured creditors and equity holders, as follows:

(i) Secured Creditors. Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured



claim, or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds is to be as provided in subclause (i) or (ii) above.

(ii) Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting Class will not receive any property under the plan. (This provision is often referred to as the “absolute priority rule.”)

(iii) Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest, or (ii) the holder of an interest that is junior to the nonaccepting Class will not receive or retain any property under the plan.

A plan does not “discriminate unfairly” with respect to a nonaccepting Class if the value of the cash and/or securities to be distributed to the nonaccepting Class is equal to, or otherwise fair when compared to, the value of the distributions to other Classes whose legal rights are the same as those of the nonaccepting Class.

**3. Conditions to Confirmation.** Except as expressly waived pursuant to the Plan, the Plan shall be null and void and have no force or effect unless the Court shall have entered the Confirmation Order, which shall be a Final Order and which order shall:

- (a) confirm the Plan without modification except as modified by the Debtor in accordance herewith;
- (b) be in form and substance acceptable to the Debtor;

(c) declare that the provisions of the Confirmation Order shall not be severable and are mutually dependent;

(d) declare that the transfer of the Debtor's assets, including the transfer of ownership the Real Property, to the Reorganized Debtor shall be free from any and all recordation and transfer taxes; and

(e) declare that the Debtor has solicited acceptances of the Plan in good faith and in compliance with the Bankruptcy Code and that the Debtor and each of its affiliates, agents, directors, officers, employees, advisors, members, managers and attorneys have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and therefore are not liable for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

**4. Conditions to Effective Date.** Except as expressly waived pursuant to the Debtor, a condition precedent to the Effective Date is the entry of the Confirmation Order, in form and substance acceptable to the Debtor, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall be pending, provided that, if an appeal of the Confirmation Order or any other such order is filed but no stay is granted in connection therewith, the Debtor may elect to permit the Effective Date to occur notwithstanding the pendency of an appeal.

**5. Waiver of Conditions.** All of the conditions for Confirmation may be waived by the Debtor without any notice to parties in interest or the Bankruptcy Court and without a hearing, unless waiver is prohibited by law.

**6. Effect of Failure of Conditions.** In the event that the conditions for Confirmation have not been satisfied or waived on or before sixty (60) days after the Confirmation Date, then upon written notification filed by the Debtor with the Bankruptcy Court,

(a) the Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) the Debtor and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) all obligations of the Debtor with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any Claims against the Debtor or any claims of the Debtor against any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

**K. Federal Income Tax Consequences.**

The following discussion summarizes certain federal income tax consequences of the implementation of the Plan to the Debtor and certain holders of Claims and Interests.

The following summary is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”) and Treasury regulations promulgated and proposed thereunder (the “Treasury Regulations”), judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”). Changes or new interpretations of these rules may have retroactive effect and could significantly affect the federal income tax consequences described below.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested an opinion of counsel with respect to any of the tax aspects of the Plan. In addition, the Debtor has not requested a ruling from the IRS concerning the federal income tax consequences of the Plan, and the consummation of the Plan is not conditioned upon the issuance of any such ruling. Thus, no assurance can be given as to the interpretation that the IRS or a court of law will adopt.

This summary does not address state, local or foreign income or other tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign persons, broker-dealers, banks, mutual funds, insurance companies, financial institutions, thrifts, small business investment companies, regulated investment companies, real estate investment trusts and tax-exempt entities).

This summary also assumes that the various third-party debt and other arrangements to which the Debtor is a party will be respected for federal income tax purposes in accordance with their form, and that Claims and Interests are held as capital assets.

Accordingly, the following summary is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to a holder of a Claim or Interest.

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (1) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER FEDERAL, STATE OR LOCAL TAX LAWS, (II) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS DISCUSSED HEREIN, AND (III) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**3. Consequences to Interest Holders.**

**(a) Limited Liability Companies.** The Debtor is a limited liability company that is taxed as a partnership for U.S. federal income tax purposes. A partnership is not itself a taxpaying entity for U.S. federal income tax purposes. A partnership's income or loss is allocated among its partners, who are required to report the income or loss allocated to them on their own tax returns. A partner's tax basis of the interest in the partnership is initially equal to the amount of cash and the adjusted tax basis of property contributed to the partnership.

A partner's tax basis increases for additional contributions and the partner's share of taxable and tax-exempt income and gain, and decreases for distributions and the partner's share of losses. An increase in a partner's share of partnership liabilities or a partner's assumption of partnership liabilities is treated as a cash contribution to the partnership that increases tax basis, and a decrease in a partner's share of partnership liabilities or the assumption by the partnership of a partner's liabilities decreases tax basis, but not below zero. Cash distributions, including a decrease in a partner's share of partnership liabilities, in excess of tax basis is taxable and generally treated as gain from the sale of a partnership interest.

Generally, a partner is not allowed to deduct his or her share of partnership losses for the year in excess of the adjusted tax basis of his or her interest in the partnership. Any excess is allowed in any subsequent year in which a partner's adjusted tax basis increases. A partner shares partnership recourse liability to the extent the partner bears the economic risk of loss with respect to the liabilities; i.e., based on a hypothetical partnership liquidation at a time when the partnership has no assets, after taking into account any rights of contribution or reimbursement from other partners or third parties that are related to other partners.

**(b) Cancellation of Indebtedness Income.** If a debt is forgiven or reduced, cancellation of indebtedness income ("COD Income") may result. Whether COD

Income is realized is made at the partnership level. If realized, such COD Income is then allocated among the partners. The tax treatment of that income will be determined with respect to each partner at the partner level. Generally, the amount of COD Income is the difference between (i) adjusted issue price of the old indebtedness less (ii) the sum of the amount of cash paid and the issue price of the new debt and (iii) the fair market value of any new consideration given in satisfaction of the old indebtedness. The adjusted issue price of old debt is typically the outstanding principal balance plus any previously accrued interest that has been deducted for federal income tax purposes.

(a) **Holders of Interests.** In general, holders of Allowed Interests in the Debtor should recognize gain or loss in an amount equal to the difference between (x) the sum of the amount of cash and the fair market value of other property, if any, received in respect of their Interest pursuant to the Plan (whether on or after the Effective Date), and (y) their adjusted tax basis in their Interest. Such gain or loss generally will be capital gain or loss, and will be long-term if their Interest shall have been held for at least one year at the Effective Date.

4. **Accrued but Unpaid Interest.** A portion of the consideration received by holders of Claims may be attributable to accrued but unpaid interest on such Claims. Such amount should be taxable to that holder as interest income if such accrued interest has not been previously included in the holder's gross income for U.S. federal income tax purposes. Conversely, it is possible that a holder of a Claim may be able to recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any accrued interest on the Claim was previously included in the U.S. holder's gross income but was not paid in full by the Debtor. The character of such loss may be ordinary rather than capital, but the tax law is unclear on this issue.

**5. Information Reporting and Withholding.** All distributions to holders of Allowed Claims or Interests under the Plan are subject to any applicable withholding obligations (including employment tax withholding). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then-applicable rate. Backup withholding generally applies if the holder: (i) fails to furnish its social security number or other taxpayer identification number (“TIN”); (ii) furnishes an incorrect TIN; (iii) fails properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is such holder’s correct number and that such holder is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, applicable Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among others, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holders’ federal income tax returns. The foregoing summary has been provided for informational purposes only. All holders of Claims and Interests are urged to consult their tax advisors concerning the federal, state, local, and foreign tax consequences applicable under the Plan.

**L. Risk Factors.**

**HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION OR INVESTING IN ASSETS OF THE DEBTOR.**

**1. Certain Bankruptcy Considerations.** Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate a re-solicitation of votes. Finally, there can be no assurance that any or all of the conditions to the Effective Date of the Plan will be met (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated.

**2. Inability to Consummate Sales or Obtain Funds.** As set forth above, the Plan generally provides for the sale of the Real Property to satisfy claims. There is a risk that the Debtor may be unable to sell its Real Property at a price sufficient to make the payments required for by the Plan. This is particularly true if the Debtor is unable to obtain the fill materials that will be necessary to make the Real Property marketable, or if the Debtor is unable to address the need for a sewer lift station for the Real Property. Further, while the Plan also contemplates that the Debtor may obtain capital contributions or loans if necessary to make payments required by the Plan, there is no guarantee that the Debtor will successfully obtain such



capital contributions or loans. Finally, there is a risk that the Debtor will be unable to satisfy its payment obligations to Springville City, and that the Debtor may need to transfer certain portions of its Real Property to Springville City as a result. The transfer of certain portions of the Real Property to Springville City may negatively impact the Debtor's ability to sell its other portions of the Real Property.

**3. Material United States Federal Income Tax Considerations.** THERE ARE A NUMBER OF MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS, RISKS AND UNCERTAINTIES ASSOCIATED WITH CONSUMMATION OF THE PLAN. INTERESTED PARTIES SHOULD READ CAREFULLY THE DISCUSSION SET FORTH ABOVE, ENTITLED "FEDERAL INCOME TAX CONSEQUENCES" FOR A DISCUSSION OF THE MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES AND RISKS FOR THE DEBTOR AND FOR HOLDERS OF CLAIMS AND INTERESTS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN RESULTING FROM THE TRANSACTIONS OCCURRING IN CONNECTION WITH THE PLAN.

**M. Alternatives to Plan.**

If the Plan is not confirmed and consummated, the Debtor's alternatives include (i) liquidation under Chapter 7 of the Bankruptcy Code, or (ii) confirmation of an alternative plan or plans of reorganization or liquidation.

**1. Liquidation Under Chapter 7.** If the Plan or any other Chapter 11 plan for the Debtor cannot be confirmed under section 1129(a) and (b) of the Bankruptcy Code, this Chapter 11 case may be converted to a case under Chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to Chapter 7 of the Bankruptcy Code.

**2. Alternative Chapter 11 Plan.** If the Plan is not confirmed, the Debtor, or any other party in interest, may attempt to formulate an alternative Chapter 11 plan, which might provide for the liquidation of the Debtor's assets other than as provided by the Plan. Any attempt to formulate an alternative Chapter 11 plan would unnecessarily delay Creditors' receipt of distributions yet to be made and, due to the incurrence of additional administrative expenses during such period of delay, may provide for smaller distributions to holders of Allowed Unsecured Claims and Interests than are currently provided for under the Plan. Accordingly, the Debtor believes that this Plan will enable all Creditors to realize the greatest possible recovery on their respective Claims or Interests with the least delay.

**V. CONCLUSIONS AND RECOMMENDATION.**

The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims and Interests. Other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Debtor urges holders of impaired Claims and Interests entitled to vote on the Plan to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than 4:30 p.m., Mountain Time, on \_\_\_\_\_, 2012.

*[Remainder of Page Intentionally Left Blank]*

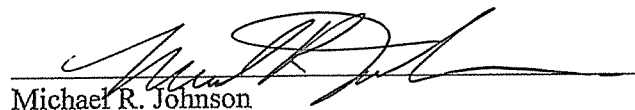
DATED this 17<sup>th</sup> day of February, 2012.

**SPRING POINTE DEVELOPMENT, L.L.C.**

A handwritten signature in cursive script, appearing to read "Milton Christensen", written over a horizontal line.

By: Milton Christensen  
Manager of Spring Pointe Development, L.L.C.

**RAY QUINNEY & NEBEKER P.C.**

A handwritten signature in cursive script, appearing to read "Michael R. Johnson", written over a horizontal line.

Michael R. Johnson  
Douglas M. Monson  
*Attorneys for the Debtor*

**Exhibit “A”**

Michael R. Johnson, Esq. (A7070)  
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*Attorneys for Spring Pointe Development, L.L.C., Debtor-in-Possession*

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:  SPRING POINTE DEVELOPMENT, L.L.C.,  Debtor-in-Possession.	<b>Bankruptcy Case No 11-32972</b> Chapter 11  Honorable Joel T. Marker  [Filed Electronically]
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**DEBTOR'S CHAPTER 11 PLAN, DATED FEBRUARY 15, 2012**

Spring Pointe Development, L.L.C., the debtor and debtor-in-possession in the above-entitled Chapter 11 case (the “**Debtor**”), through counsel, hereby proposes the following *Chapter 11 Plan, dated February 15, 2012*, pursuant to 11 U.S.C. §§ 1121 and 1123.

**ARTICLE 1**

**DEFINITIONS**

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and the plural):

“Affiliate” shall have the same meaning as provided in § 101(2) of the Code.

“Allowed Administrative Expense” shall mean any cost or expense of the Estate that is allowed under § 503(b) of the Code by a final and nonappealable order of the Court after notice and a hearing, and shall also include any fees and charges assessed against the Estate under 28 U.S.C. § 1930.

“Allowed” shall mean the amount of a Claim against the Debtor that is allowed under this Plan and § 502(a) of the Code. This Plan may provide that a Disputed Claim shall be Allowed in an amount less than the amount asserted by the holder of the Disputed Claim in its proof of claim filed in this Bankruptcy Case.

“Allowed Claim” shall mean any debt, liability or other obligation represented by a proof of claim that is filed (including a claim that is deemed filed under § 1111(a) of the Code), that is allowed under § 502(a) of the Code, and is not a Disputed Claim.

“Assessment Ordinance” shall mean that certain Assessment Ordinance of the City Council of Springville City, Utah, acting as the governing authority of the SID, dated November 1, 2005, Ordinance No. 21-05, record notice of which was recorded against the Real Property on December 2, 2005, in a document entitled “Notice of Assessment Interest,” Entry No. 139383:2005, of the Official Records of Utah County, Utah.

“Avoidance Actions” means any actions commenced, or that may be commenced before or after the Effective Date, pursuant to Sections 544, 547, 548, 549, or 550 of the Bankruptcy Code.

“Bankruptcy Case” shall mean the bankruptcy case of In re Spring Pointe Development, L.L.C., Case No. 11-32972, which Bankruptcy Case is now pending in the United States Bankruptcy Court for the District of Utah.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Utah.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United States Code, as amended from time to time, and any Local Rules of the Bankruptcy Court, as applicable to Chapter 11 cases.

“Business Day” shall mean any day other than a Saturday, a Sunday, or any holiday recognized by the Bankruptcy Court.

“Causes of Action” means any and all Claims, Avoidance Actions, and rights of the Debtor or the Estate.

“Christensen” shall mean Milton Christensen, who holds the entire membership interest of the Debtor.

“Christensen Secured Claim” shall mean the Claim of Christensen in the amount of \$1,500,000.00 as of the Petition Date, which Claim is secured by a lien on and security interest in the Real Property.

“Claim” shall have the meaning given in Section 101(5) of the Code.

“Class” shall mean any group of Claims or Equity Interests classified by the Plan.

“Code” shall mean Title 11 of the United States Code, as the same shall be amended from time to time.

“Confirmation” shall mean the entry of an order of the Court confirming this Plan.

“Confirmation Date” shall mean the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Bankruptcy Case.

“Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Code.

“Debtor” shall mean Spring Pointe Development, L.L.C., a Utah limited liability company.

“Disputed Claim” shall mean a claim (whether filed or deemed filed) for which an objection has been filed by the Debtor or any other party with standing to file such an objection before the Effective Date.

“D&M” shall mean D&M Excavation & Grading, Inc.

“D&M Claim” shall mean the mechanic’s lien claim of D&M in the amount of \$90,696.50 as of the Petition Date, as evidenced by Proof of Claim No. 3 filed on January 4, 2012, which Claim is purportedly secured by an asserted mechanic’s lien on the Real Property.

“Effective Date” shall mean the date on which the order approving Confirmation becomes a Final Order or such earlier date as the Debtor elects in writing.

“Estate” shall mean the estate created and described under Section 541 of the Code.

“Equity Interest” shall mean the membership interest in the Debtor held by Christensen.

“Fill Material Contract” shall have the meaning outlined in Section 9.1 of this Plan.

“Final Order” means an order or judgment, the operation or effect of which has not been reversed or stayed, is no longer subject to appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing, and as to which no appeal, *certiorari* proceeding, or other proceeding for review, reargument, or rehearing has been requested or is then pending and the time to file any such appeal, *certiorari* proceeding or other proceeding for review, reargument, or rehearing has expired or as to which any right to appeal, petition for *certiorari*, reargue, or seek rehearing shall have been waived in writing by the Debtor.



“Impaired” when used with respect to any Claims, Interest or Class, shall have the meaning set forth in section 1124 of the Code. For purposes of determining impairment of a claim of a governmental unit, the word Impaired also shall have the meaning defined in such cases as *In re Bryson Properties, XVIII (Traveler’s Insurance Co. v. Bryson Properties, XVIII)*, 961 F.2d 496, 501 n.8 (4<sup>th</sup> Cir. 1992), and *In re Friese*, 103 B.R. 90 (Bankr. S.D.N.Y. 1989).

“Interest” shall mean (1) with respect to a claim for taxes, interest accruing from the Petition Date to the date of payment on principal amounts owed thereunder at the rates prescribed by 26 U.S.C. §§ 6621(a)(2) and 6622(a) (for federal taxes) and Utah Code Ann. § 59-1-402(2) (for state taxes) and Utah Code Ann. § 59-2-1302(4) (for unpaid real property taxes and assessments) and (2) with respect to any other claims, interest on the principal amount of the date accruing at the rate of 5% per annum from the Petition Date to the date of payment. Notwithstanding the foregoing, if the Court determines another rate of interest is needed for a claim to be unimpaired, then such rate of interest shall be used in this Plan.

“Lien” shall mean any charge against or interest in property to secure payment of a debt or performance of an obligation.

“Pending Administrative Expense” shall mean any cost or expense of the Estate that may be allowable under § 503(b) of the Code and is not barred or disallowed but has not been allowed by Final Order of the Court.

“Petition Date” shall mean September 2, 2011.

“Plan” shall mean this Chapter 11 Plan of the Debtor, as the same may be amended or modified from time to time in accordance with the provisions of the Code and the terms of the Plan.

“PRM” shall mean PRM Investment Company.

“PRM Secured Claim” shall mean the Claim of PRM in the Allowed amount of \$242,485.04 as of the Petition Date, evidenced by PRM’s Proof of Claim No. 2 filed on December 27, 2011, which Claim is purportedly secured by a lien on and security interest in a portion of the Real Property.

“Real Property” shall mean that certain undeveloped real property owned by the Debtor located in Utah County, Utah consisting of approximately 84.971 acres, more particularly described by Plat Number, Parcel Number, Tax Serial Number and acreage as follows:

<b>Parcel No.</b>	<b>Serial No.</b>	<b>Acreage Per Assessor</b>	<b>Appraised Value</b>
Plat A, Lot 1	52:973:001	7.330 acres	\$1,120,000
Plat A, Lot 2	52:973:0002	13.835 acres	\$1,220,000
Plat A, Lot 3	52:973:003	21.837 acres	\$1,600,000
Plat B, Lot 1	66:272:0001	1.210 acres	\$160,000
Plat B, Lot 2	66:272:0002	1.058 acres	\$145,000
Plat B, Lot 3	66:272:0003	1.340 acres	\$175,000
Plat C, Lot 1	66:321:0001	1.652 acres	\$360,000
Plat C, Lot 2	66:321:0002	1.700 acres	\$340,000
Plat C, Lot 3	66:321:0003	35.011 acres	\$4,880,000
<b>TOTAL ACREAGE OWNED BY DEBTOR</b>		84.971 acres	\$10,000,000

“Reorganized Debtor” means the Debtor, as reorganized as of the Effective Date in accordance with the Plan, and its successors and assigns.

“Retained Claims and Defenses” means any and all Claims, Causes of Action, and defenses, including: counterclaims, rights of offset or recoupment; objections to Claims; objections to the validity, priority, amount, allowance, or classification of any Claim; rights to seek equitable or contractual subordination of Claims; rights relating to the determination of the Allowed amounts for secured Claims and recovery rights with respect to the preservation and disposition of Estate assets that are collateral for secured creditors (including but not limited to all Section 506(c) Claims and all other rights arising under Bankruptcy Code Section 506); and avoidance and recovery of prepetition or postpetition transfers (including but not limited to those arising under Bankruptcy Code Sections 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and 553), which claims, causes of action, and defenses are against, arise out of, or are related to any of the following:

(a) All claims, causes of action and defenses against former advisors, including, without limitation, objections to or actions to avoid or subordinate any Claims arising from notes, debentures, fee deferral agreements, or other contracts or relationships with respect to such Persons, arising out of or related to services rendered by such investment advisors, or any of them;

(b) All defenses, counterclaims, third party claims, offset claims, rights of recoupment, causes of action for equitable or contractual subordination, indemnity claims and coverage claims arising out of or related to any Claim against the Debtor, whether based on the Bankruptcy Code or any applicable law;

(c) All claims, causes of action and defenses against or with respect to financial institutions and any other Person for the turnover of funds of, or due to, the Estate;

(d) All rights, causes of action, defenses, claims, powers, privileges and licenses of the Estate and the Debtor;

(e) All causes of action, claims and defenses arising under the Plan and the Bankruptcy Code;

(f) All rights, claims, causes of action and defenses for coverage in or under any and all insurance policies of the Debtor; and

(g) All claims, causes of action, and defenses arising under or related to any product warranty, service warranty, or representation of merchantability issued by or in favor of Debtor.

“S & S Sales” shall mean Shake & Shingle Sales, Inc.

“S & S Sales Unsecured Claim” shall mean the unsecured Claim of S & S Sales in the amount of \$182,548.00 as of the Petition Date, evidenced by S & S Sales’ Proof of Claim No. 6 filed on February 6, 2012, which Claim is unsecured.

“Schedules” shall mean the Statement of Financial Affairs and Schedules of Assets and Liabilities that the Debtor has filed in the Bankruptcy Case, including any amendments thereto.

“Springville City” shall mean and include Springville City, Utah, the Springville City, Utah Special Improvement District No. 29, and/or the trustee for Springville City’s assessment lien, Provo Land Title Company, or any or all of them as the context may require.

“Springville City Claim” shall mean the Claim of Springville City in the amount of, as of the Petition Date, \$2,971,188.05, as set forth in the Proof of Claim filed by Springville City in the Bankruptcy Case as Proof of Claim No. 5 on January 11, 2012, which Claim is secured by a first priority lien on and security interest in the Real Property.

“Van Wagenen” shall mean Norman Van Wagenen.

“Van Wagenen Secured Claim” shall mean the Claim of Van Wagenen in the asserted amount of \$5,000,000.00 as of the Petition Date, evidenced by Van Wagenen’s Proof of Claim No. 4 filed on January 11, 2012, which Claim is purportedly secured by an asserted lien on and security interest in the Real Property.

## **ARTICLE 2**

### **TREATMENT OF ADMINISTRATIVE EXPENSES**

*Allowed Administrative Expenses.* Unless otherwise agreed, on the Effective Date, the Debtor or the Reorganized Debtor, as the case may be, shall pay all Allowed Administrative Expenses in full, unless some other treatment is expressly agreed to by the Debtor or the Reorganized Debtor, on the one hand, and the particular administrative creditor, on the other hand.

*Pending Administrative Expenses.* Unless otherwise agreed, on the day that a Pending Administrative Expense becomes an Allowed Administrative Expense, the Debtor or the Reorganized Debtor, as the case may be, shall pay such Allowed Administrative Expense in full.

*U.S. Trustee Fees.* Unless otherwise agreed, on the Effective Date, the Debtor or the Reorganized Debtor, as the case may be, shall pay all fees owing to the Office of the United States Trustee in full. Any U.S. Trustee Fees that become due between the Effective Date and the entry of the Final Decree shall be paid by the Reorganized Debtor as they become due.

### ARTICLE 3

#### CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

(Class 1) *Allowed Priority Claims.* Class 1 shall consist of all Allowed Claims entitled to priority under § 507 of the Code. Unless otherwise agreed, on the Effective Date, the Debtor shall pay the holders of Class 1 claims the full amount of their pre-petition Allowed Claims plus Interest. Any Disputed Claims entitled to priority under § 507 of the Code shall be paid in full plus Interest on the date the order allowing such claims becomes a Final Order. The Debtor does not believe that any Claims will be classified under Class 1.

(Class 2) *Springville City Claim.* Class 2 shall consist of the Springville City Claim. Unless otherwise agreed by the Debtor and Springville City, the Springville City Claim will be Allowed in the amount of \$2,806,997.90, the amount of \$2,971,188.05 asserted in the Springville City proof of claim less total late fees of \$164,190.15 asserted in the Springville City proof of claim. The Allowed Springville City Claim will be payable as follows:

A. Annual payments of principal and interest in the amount of \$384,183.11 each year shall be paid to Springville City on the Allowed Springville City Claim for seven (7) years, with a final payment of \$117,716.13 (or such other amount as may then be owed) on the Allowed Springville City Claim in the eighth (8<sup>th</sup>) year, pursuant to the following schedule:

1. November 6, 2012 (Payment of \$384,183.11).
2. November 6, 2013 (Payment of \$384,183.11).
3. November 6, 2014 (Payment of \$384,183.11).
4. November 6, 2015 (Payment of \$384,183.11).
5. November 6, 2016 (Payment of \$384,183.11).
6. November 6, 2017 (Payment of \$384,183.11).
7. November 6, 2018 (Payment of \$384,183.11).

8. November 6, 2019 (Payment of the remaining balance, estimated to be \$117,716.13).

The annual \$384,183.11 payment is calculated as follows: Lot 1: Principal of \$18,691.99, Accrued Interest of \$12,605.87; Lot 2: Principal of \$35,283.07, Accrued Interest of \$23,794.90; Lot 3: Principal of \$55,692.32, Accrued Interest of \$37,558.90; Lot 4: Principal of \$97,770.56, Accrued Interest of \$65,936.45; and Lot 6: Principal of \$9,327.99, Accrued Interest of \$9,327.99, for a total of \$384,183.11. Completion of all eight of the payments set forth in this Section A shall result in the Allowed Springville City Claim being satisfied in full.

B. Springville City shall retain its Lien on the Real Property until such time as the Allowed Springville City Claim is paid in full pursuant to the payment schedule outlined in Section A above, at which time Springville City's Lien shall be released and discharged. The Reorganized Debtor shall not be obligated to make any payments to Springville City on the late fees asserted in the Springville City proof of claim unless the Reorganized Debtor defaults on any payment and fails to cure the default as set forth in Section D below.

C. As the Reorganized Debtor sells portions of the Real Property after the Effective Date, the Reorganized Debtor will be entitled to a partial release from Springville City of Springville City's Lien on the applicable portion of the Real Property by payment to Springville City of the remaining principal payments for the applicable portion of the Real Property outlined in Section A above along with any accrued and unpaid interest on the applicable portion of the Real Property, based upon the annual interest accrual amount for the applicable portion of the Real Property outlined in Section A above.

D. In the event any payment to Springville City is not made in full by the Reorganized Debtor when such payment comes due as outlined in Section A above, Springville City shall provide the Debtor and its counsel with a written notice of default. If the default is not

cured by the Reorganized Debtor within twenty (20) business days of the Reorganized Debtor's receipt of the written notice of default, then the Reorganized Debtor shall immediately thereafter quit claim Plat A, Lot 1 and Plat A, Lot 2 to Springville City in full satisfaction of the Allowed Springville City Claim, including full satisfaction of all late fees asserted by Springville City in connection with the Springville City proof of claim. Plat A, Lot 1 and Plat A, Lot 2 have a combined appraised value of at least \$3,040,000, and therefore these two Lots are the indubitable equivalent of the Lien securing the Allowed Springville City Claim. If Springville City objects to the valuation of Plat A, Lot 1 and Plat A, Lot 2 or any other portion of the Real Property as set forth herein, then, by no later than the Effective Date, Springville City shall file a written objection to the valuation, and accompany its written objection with an appraisal, with an effective date of no earlier than six months prior to the Effective Date, issued by a certified MAI appraiser. Springville City also shall schedule an evidentiary hearing on its written objection for a date that is no earlier than forty-five (45) days and no later than seventy (70) days after the Effective Date. The Debtor shall be entitled to file a written response to Springville City's written objection, along with such supporting documents as it deems appropriate, within thirty (30) days of the date of filing of the written objection by Springville City. In the event such a written objection is filed, the Bankruptcy Court shall determine (a) the fair market value of all or any portions of the Real Property, by Parcel Number, and (b) the amount of the Real Property, by acreage or whatever other method the Bankruptcy Court deems appropriate, that the Debtor would be required to deed to Springville City in order to fully satisfy the Allowed Springville City Claim. In making such determination, the Bankruptcy Court shall be entitled to determine both that the Debtor is required to transfer more than Plat A, Lot 1 and Plat A, Lot 2, and less than Plat A, Lot 1 and Plat A, Lot 2, in order to fully satisfy the Allowed Springville City Claim.



(Class 3) *Van Wagenen Secured Claim*. Class 3 shall consist of the Van Wagenen Secured Claim. The Van Wagenen Secured Claim is disputed, and the Debtor will file an objection to the Van Wagenen Secured Claim on the basis that, although a trust deed was previously recorded against the Real Property listing Van Wagenen as the beneficiary of the trust deed, as of the Petition Date there was nothing owed by the Debtor to Van Wagenen, either under the obligation secured by the trust deed or otherwise. Therefore, the Van Wagenen Secured Claim shall be Allowed at zero under this Plan, Van Wagenen will not be paid anything under this Plan (either as a Secured Claim or an Unsecured Claim), and the Van Wagenen Lien will be extinguished by the Confirmation of this Plan. However, in the event the Bankruptcy Court does not sustain the Debtor's objection, then the Van Wagensen Secured Claim shall be paid under this Plan, in whatever amount the Court deems to be Allowed, by no later than five (5) years from the Effective Date of this Plan, or at the time of the sale of the Real Property, whichever occurs first, with the claim to be paid pro rata with all claims in Classes 6 and 7 from the proceeds of the sale of the Real Property after the payment in full of Classes 1, 2, and 4.

(Class 4) *PRM Claim*. Class 4 shall consist of the PRM Secured Claim. The PRM Secured Claim, which is secured by a portion of the Real Property, is believed to have been oversecured as of the Petition Date. Therefore, the PRM Secured Claim shall be Allowed in the amount of \$242,485.04 as of the Petition Date. In addition, consistent with Section 506(b) of the Bankruptcy Code, if the PRM Secured Claim is determined to have been oversecured as of the Effective Date, there shall be allowed to PRM after the Petition Date, additional interest on the PRM Allowed Secured Claim at the rate of 5% per annum from the Petition Date to the date of payment and any reasonable post-Petition Date fees, costs, or charges provided for under the PRM loan documents until the PRM Allowed Secured Claim is paid in full. The PRM Secured Claim shall be paid under this Plan at the earlier of the time of the sale of that portion of the Real

Property securing the PRM Secured Claim, or five (5) years from the Effective Date of this Plan. The Debtor also shall have the option, but not the obligation, to pay the PRM Secured Claim at an earlier date from other assets of the Debtor, including from capital contributions from Christensen.

(Class 5) *Christensen Claim*. Class 5 shall consist of the Christensen Secured Claim. The Christensen Secured Claim shall be Allowed at Zero, and Christensen's Lien shall be extinguished by the Confirmation of this Plan.

(Class 6) *D&M Claim*. Class 6 shall consist of the D&M Secured Claim. The D&M Secured Claim is disputed, and the Debtor will file an objection to the D&M Secured Claim on the basis that D&M was paid everything that it was owed in connection with its work on the Real Property, and as of the Petition Date there was nothing owed by the Debtor to D&M, either under the mechanic's lien filed by D&M or otherwise. Therefore, the D&M Secured Claim shall be Allowed at Zero under this Plan, D&M will not be paid anything under this Plan (either as a Secured Claim or an Unsecured Claim), and the D&M mechanic's Lien will be extinguished by the Confirmation of this Plan. However, in the event the Bankruptcy Court does not sustain the Debtor's objection, then the D&M Secured Claim shall be paid under this Plan, in whatever amount the Court deems to be Allowed, by no later than five (5) years from the Effective Date of this Plan, or at the time of the sale of the Real Property, whichever occurs first, with the claim to be paid pro rata with all claims in Classes 3 and 7 from the proceeds of the sale of the Real Property after the payment in full of Classes 1, 2, and 4.

(Class 7) *S & S Sales Claim*. Class 7 shall consist of the S & S Sales Unsecured Claim. The S & S Sales Unsecured Claim is disputed, and the Debtor will object to the S & S Sales Unsecured Claim. To the extent that the S & S Sales Claim is Allowed as an Unsecured Claim by the Bankruptcy Court, the amount that is Allowed will be paid in full upon the earlier of five

(5) years from the Effective Date of this Plan or at the time of the sale of the Real Property, with the S & S Sales Unsecured Claim to be paid pro rata with all claims in Classes 3 and 6 from the proceeds of the sale of the Real Property after the payment in full of Classes 1, 2, and 4.

(Class 8) *Equity Interests*. Class 8 shall consist of all Allowed Equity Interests of the Debtor. Equity Interest holders shall retain their interests in the Debtor in the same percentages and amounts, and with the same rights, as existed prior to the Petition Date, without modification of any kind.

#### **ARTICLE 4**

##### **TREATMENT OF CLASSES**

4.1 *All Claims are Impaired; Bankruptcy Court to Determine Controversies Regarding Impairment*. Claims in Classes 2 through 7 (i.e., all Classes of Claims under the Plan) are Impaired and shall be entitled to vote for or against the Plan. Class 8 (Equity Interests) is not impaired, is deemed to accept the Plan, and shall not be entitled to vote for or against the Plan. In the event of a dispute or controversy as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy at or prior to Confirmation. Finally, all Claims and Classes are entitled to object to confirmation of the Plan on any relevant ground.

#### **ARTICLE 5**

##### **MEANS FOR EXECUTION OF THE PLAN**

5.1 *Disbursement on the Effective Date*. Allowed Administrative Claims shall be paid on the Effective Date from retainers held by professionals holding Allowed Administrative Claims or from loans or capital contributions by Christensen or another Affiliate to the Debtor. Consistent with applicable law, the Debtor shall not be required to obtain Bankruptcy Court approval prior to obtaining any capital contributions, either prior to or after the Effective Date of

the Plan, to fund disbursements under the Plan. Any loans to the Debtor either prior to or after the Effective Date of the Plan, including loans from an Affiliate, shall be subject to prior approval by the Bankruptcy Court, pursuant to Section 364 of the Bankruptcy Code, unless such loans are obtained on an unsecured basis. In the event the Debtor is able to obtain loans on an unsecured basis, the Debtor may enter into such unsecured lending transactions without prior approval of the Bankruptcy Court, pursuant to Section 364(a) of the Bankruptcy Code.

5.2 *Post Effective Date Disbursements.* All disbursements made under this Plan after the Effective Date, including any and all disbursements made to Springville City and any and all disbursements made on Allowed Claims or Allowed Administrative Expenses which are first Allowed after the Effective Date of the Plan, shall be paid from the proceeds from the sale of the Real Property and, to the extent such proceeds are not available or are not sufficient to make all payments, from either loans or capital contributions by Christensen or another Affiliate to the Debtor. Consistent with applicable law, the Debtor shall not be required to obtain Bankruptcy Court approval prior to obtaining any capital contributions, either prior to or after the Effective Date of the Plan, to fund disbursements under the Plan. Any loans to the Debtor either prior to or after the Effective Date of the Plan, including loans from an Affiliate, shall be subject to prior approval by the Bankruptcy Court, pursuant to Section 364 of the Bankruptcy Code, unless such loans are obtained on an unsecured basis. In the event the Debtor is able to obtain loans on an unsecured basis, the Debtor may enter into such unsecured lending transactions without prior approval of the Bankruptcy Court, pursuant to Section 364(a) of the Bankruptcy Code.

5.3 *Distributions After Allowance.* Distributions shall be made as appropriate to the holder of any Disputed Claim that has become an Allowed Claim on the date such Disputed Claim becomes an Allowed Claim or as soon thereafter as is practicable.

## ARTICLE 6

### MEANS FOR IMPLEMENTATION OF PLAN

6.1 *Implementation of the Plan.* Prior to the Effective Date, the Plan shall be implemented through the means contemplated by Sections 1123(a) and 1123(b) of the Code. On and after the Effective Date, the Plan shall be implemented by the Reorganized Debtor. Pursuant to the Confirmation Order, the Debtor or the Reorganized Debtor, as applicable, may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved or authorized by, contemplated by, or necessary to, the Plan. Without limiting the foregoing, such transactions may include: (a) the execution and delivery of appropriate agreements or documents of merger, consolidation, or reorganization containing terms that are consistent with the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (d) all other actions the Debtor and/or the Reorganized Debtor determine are necessary or appropriate.

6.2 *Vesting of Assets.* Except as otherwise provided in the Plan or any agreement, instrument, or other document relating thereto, on or after the Effective Date, all property of the Estate, including the Real Property, and all property acquired by the Debtor after the Petition Date shall vest in the Reorganized Debtor on the Effective Date, subject to any valid Liens recognized by the Plan. Thereafter, the Reorganized Debtor may manage its assets and may use, acquire, dispose of property or assets, and settle or compromise Claims or Interests, free of any restrictions of the Code or the Bankruptcy Rules.

6.3 *Preservation of Causes of Action, Claims, and Retained Claims and Defenses.* In accordance with Section 1123(b)(3) of the Code, all Claims and Causes of Action and Retained Claims and Defenses of the Debtor shall be retained and transferred to the Reorganized Debtor on the Effective Date. The Reorganized Debtor shall thereafter have the full power and authority to prosecute and defend all such Claims and Causes of Action and Retained Claims and Defenses and the Reorganized Debtor shall pursue any such Causes of Action and Retained Claims and Defenses as the representative of the Estate.

6.4 *Hiring of Employees; Retention of Professionals.* On and after the Effective Date, the Reorganized Debtor is authorized, without further order of the Bankruptcy Court, to hire and retain such employees and professionals as it may deem necessary or expedient to discharge its obligations under the Plan, and the costs of such employment and other expenditures shall be paid by the Reorganized Debtor, without further approval of the Bankruptcy Court.

6.5 *Compromise and Settlement of Claims.* Pursuant to Section 1123(b)(3) of the Code and Bankruptcy Rule 9019, the Reorganized Debtor may, subject to approval of the Bankruptcy Court, compromise and settle all Claims against the Reorganized Debtor and all Claims the Reorganized Debtor or the Estate may have against any person.

6.6 *Terms of Injunctions or Stays.* Unless otherwise provided in the Plan, all injunctions or stays pursuant to sections 105 or 362 of the Code or otherwise in effect on the Effective Date shall remain in full force and effect until entry of a Final Decree. In the event the Plan is not confirmed, all such injunctions or stays shall remain in full force and effect until ordered otherwise by the Bankruptcy Court or until an alternative plan of reorganization is confirmed in the Bankruptcy Case. Except as set forth in the Plan or as may be determined otherwise by a Final Order of the Bankruptcy Court, all distributions and transfers of property pursuant to the Plan shall be made free and clear of all Liens, claims and encumbrances and, on

the Confirmation Date, all holders of Claims or Interests shall be permanently enjoined from and restrained against commencing or continuing any suit, action or proceeding against the Reorganized Debtor, or asserting against the Reorganized Debtor or the assets or property thereof, any claim, interest or cause of action based upon any act or omission, transaction or other activity of any kind that occurred prior to the Confirmation Date.

6.7 *Effects of Appeal on Confirmation Order.* Unless the Confirmation Order is stayed pending a timely appeal, at the option of the Debtor, the Plan may be consummated notwithstanding the pendency of any appeal from the Confirmation Order or the timely filing or service of a motion under Bankruptcy Rules 7052, 8002, 8003, 8015, 9023 and/or 9024.

## **ARTICLE 7**

### **PAYMENTS**

7.1 *Manner of Payment.* Unless other mutually acceptable arrangements are made between the Debtor or the Reorganized Debtor and the holder of an Allowed Administrative Expense or Allowed Claim, the payments required hereunder may be paid by check drawn on the Debtor's or the Reorganized Debtor's account and mailed (first-class, postage prepaid) and/or hand-delivered to the holder of the Allowed Claim or Allowed Administrative Expense. A payment shall be deemed made when mailed. Payments shall be in lawful currency of the United States.

7.2 *Right to Rely on Information.* The Debtor shall be entitled to rely on the addresses contained in the proofs of claim (or evidence of transfer pursuant to Bankruptcy Rule 3001 where applicable) or the Debtor's schedules if no proof of claim is filed (for holders of Claims) and applications for allowance (for holders of Administrative Expenses) in making payments required hereunder. The Debtor shall have no duty to search for, obtain, or make corrections to contact and mailing information.

7.3 *Forfeiture of Payments.* Holders of Allowed Claims or Allowed Administrative Expenses shall be deemed to have forfeited their right to a payment hereunder if (a) a payment check is returned to the Debtor as undeliverable, as having an incorrect address, or the like, and such party does not contact the Debtor within 60 days of the check being originally mailed, or (b) a payment check is not paid by the payor bank within 60 days after it is mailed. The Debtor shall issue a stop payment on any payment that is forfeited under this provision.

## **ARTICLE 8**

### **TAXES**

8.1 *Duty to File Tax Returns and Pay Taxes.* From and after the Effective Date, the Reorganized Debtor shall file all required tax returns and shall pay all taxes owed by the Debtor, the Reorganized Debtor, or the Estate, if any. The Reorganized Debtor shall have all rights relating to determination of the tax liabilities of the Estate as if set forth in § 505 of the Code.

## **ARTICLE 9**

### **EXECUTORY CONTRACTS, UNEXPIRED LEASES AND INSURANCE POLICIES**

9.1 *Assumption of Executory Contracts and Unexpired Leases.* The Debtor is a party to an executory contract with Provo River Constructors/Ames Construction (the “Fill Material Contract”), which is identified in Debtor’s Schedule G. The Debtor shall assume the Fill Material Contract on the Effective Date. As there are no defaults under the Fill Material Contract on the part of the Debtor, the Debtor shall not make any cure payments as part of the assumption. To the extent the Debtor is a party to any other executory contracts and unexpired leases, the Debtor shall assume such executory contracts and/or unexpired leases by operation of law pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. To the extent there are any monetary defaults under any executory contracts or unexpired leases, the same



shall be cured by the Debtor or the Reorganized Debtor, as the case may be, on the Effective Date.

9.2 *Insurance Policies.* Notwithstanding anything to the contrary contained in the Plan, the Debtor's insurance policies and any agreements, documents or instruments relating thereto shall be deemed to be and treated as though they are executory contracts and shall be assumed as of the Effective Date by operation of the Plan pursuant to sections 365(a) and 1123(b) of the Code.

## **ARTICLE 10**

### **BAR DATES, DEADLINES, OBJECTION TO CLAIMS**

10.1 *Administrative Expense Claims.* Unless an earlier date is ordered by the Court, the bar date for the filing of applications for allowance of any pre-Confirmation administrative expense under 11 U.S.C. § 503(b) shall be the date that is sixty (60) days from the date of entry of the Confirmation Order.

10.2 *Claims Bar Date.* The bar date for filing proofs of claim for all creditors that are not non-governmental units was January 4, 2012. The bar date for filing proofs of claim by governmental units was February 29, 2012. Proofs of claim were filed in the Bankruptcy Case by the IRS (Claim No. 1), PRM (Claim No. 2), D&M (Claim No. 3), Van Wagenen (Claim No. 4), Springville City (Claim No. 5), and S & S Sales (Claim No. 6). The S & S Sale proof of claim was filed after the January 4, 2012 bar date. In the event the holder of the S & S claim votes in favor of this Plan, the Debtor shall not object to the S & S claim on the grounds of untimeliness (but shall reserve its right to object to the claim on substantive grounds). In the event the holder of the S & S claim votes against this Plan, however, then the Debtor will object to the claim on the grounds of untimeliness (as well as any other applicable grounds). Any new (as opposed to amended) proof of claim filed after these dates shall be deemed disallowed unless

the holder of such claim has obtained a Final Order of the Bankruptcy Court allowing the late-filing of the claim.

10.3 *Objections to Claims.* After Confirmation, the Reorganized Debtor shall be the sole entity with standing to object to Claims (whether or not a proof of claim is filed), and the Reorganized Debtor shall have the exclusive right to prosecute or settle any objection to a Claim that is pending on confirmation and shall have the right to be substituted as the real party in interest therein to the extent another party has been permitted by the Court to file a claims objection. The bar date for the Debtor to file objections to claims under this Plan shall be the date that is ninety (90) days from the date of entry of the Confirmation Order.

## **ARTICLE 11**

### **EXEMPTION FROM CERTAIN TRANSFER TAXES AND RECORDING FEES**

11.1 *No Transfer Taxes or Recording Fees.* Pursuant to Section 1146(c) of the Code, any transfer from the Debtor to the Reorganized Debtor pursuant to, in contemplation of, or in connection with the Plan or pursuant to any documents, agreements, deeds, security interests, mortgages, assignments, bills of sale or other instruments or documents executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

## **ARTICLE 12**

### **EFFECT OF EFFECTIVE DATE**

12.1 *Binding Effect of Plan; Vesting of Property in Reorganized Debtor.* Upon the Effective Date, the provisions of the Plan shall bind the Debtor, creditors, interest holders and all parties in interest regardless of whether or not such persons or entities have impaired claims or interests under the Plan or whether or not such persons or entities have accepted the Plan. All property of the Estate shall vest with the Reorganized Debtor upon the Effective Date.

12.2 *Plan Injunction.* Upon the Effective Date, and except as otherwise set forth herein, the Debtor, creditors, interest holders and all parties in interest shall be permanently enjoined from commencing or pursuing any action against the Estate other than to enforce the provisions of this Plan, except as set forth in the Plan.

## **ARTICLE 13**

### **MODIFICATION OF PLAN**

13.1 *Modification of Plan Prior to Confirmation.* The Debtor may modify the Plan at any time before Confirmation provided that the Plan, as modified, meets the requirements of the Code. If the Debtor files a modification of the Plan with the Court, the Plan as modified will become the Plan.

13.2 *Modification of Plan After Confirmation.* The Debtor or Reorganized Debtor, as the case may be, may modify the Plan at any time after Confirmation and before substantial consummation provided that the Plan, as modified, meets the requirements of the Code. The Plan, as modified, after confirmation will become the Plan only if circumstances warrant such modification and the Court, after notice and a hearing, confirms the Plan as modified. If the Court makes such a determination and approves such modification, it shall be deemed accepted by all holders of Claims that have previously accepted or been deemed to accept the Plan.

## **ARTICLE 14**

### **RETENTION OF JURISDICTION AND PRESERVATION OF CAUSES OF ACTION**

14.1 *Retention of Jurisdiction.* The Court shall retain jurisdiction after the Effective Date for the purposes of: (a) fixing an allowance of any Administrative Expenses; (b) hearing and determining any objections to Claims; (c) hearing and determining all causes of action, controversies, disputes, or conflicts that were pending before the Effective Date; (d) correcting any defect, curing any omission, or reconciling any inconsistency in the Plan or related documents (including the Confirmation Order), including, without limitation, such declaratory and injunctive orders as are appropriate to protect the Estate from actions of creditors, or other parties in interest; (f) hearing and determining any dispute relating to the terms or implementation of the Plan or to the rights or obligations of any party in interest with respect thereto; (g) confirming a Plan after modification pursuant to § 1127(b) of the Code; (h) determining the fair market value of all or any portion of the Debtor's Real Property, in the event Springville City files a timely objection to the Debtor's proposed valuation by the deadlines set forth herein; and (i) entering orders concluding and closing this Bankruptcy Case.

14.2 *Preservation of Causes of Action.* The Debtor and, after the Effective Date the Reorganized Debtor, shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) any litigation claims that the Estate may hold against any person or entity.

## **ARTICLE 15**

### **FINAL DECREE**

15.1 *Entry of Final Decree.* The Reorganized Debtor may seek a Final Decree after any actions filed by the Debtor are fully concluded (including any appeals thereof) and the Plan is otherwise fully administered. The Reorganized Debtor shall not be required to wait until the Springville City Claim is paid in full to seek entry of a Final Decree.

## ARTICLE 16

### MISCELLANEOUS

16.1 *Calculation of Time.* The calculation of time periods herein shall be governed by Rule 9006 of the Bankruptcy Rules.

16.2 *Deemed Consent.* By accepting distributions under or pursuant to the Plan, each holder of an Allowed Claim receiving such distributions shall be deemed to have specifically consented to the terms of the Plan.

16.3 *Conditions to Confirmation.* Except as expressly waived by the Debtor and/or the Reorganized Debtor, the Plan shall be null and void and have no force or effect unless the Court shall have entered the Confirmation Order, which Confirmation Order shall be a Final Order and which shall:

- A. Confirm the Plan without modification except as modified by the Debtor in accordance herewith;
- B. Be in form and substance acceptable to the Debtor;
- C. Declare that the provisions of the Confirmation Order shall not be severable and are mutually dependant;
- D. Declare that the transfer of the Debtor's assets to the Reorganized Debtor shall be free of any and all recordation and transfer taxes; and
- E. Declare that the Debtor and the Plan have met all of the requirements for confirmation under the applicable provisions of the Code.

16.4 *Conditions to the Effective Date.* Except as expressly waived by the Debtor and/or the Reorganized Debtor, a condition precedent to the Effective Date is the entry of the Confirmation Order, as set forth in Paragraph 16.3 above, and no request for revocation of the Confirmation Order under Section 1144 of the Code shall have been made or, if made, shall be

pending, provided, however, that if an appeal of the Confirmation Order or any other such order is filed but no stay is granted in connection therewith, the Debtor may elect to permit the Effective Date to occur notwithstanding the pendency of an appeal.

16.5 *Waiver of Conditions.* The Debtor may waive any and all conditions precedent in this Plan without notice to parties in interest or the Bankruptcy Court and without a hearing, unless waiver is expressly prohibited by applicable law.

16.6 *Exclusivity.* The Debtor shall have the exclusive right to amend or modify the Plan through the Effective Date.

16.7 *Notices.* Any notice required or permitted under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand-delivery, or (iii) overnight delivery service, and (c) deemed to have been given or made when actually delivered, to the following addresses:

If to the Debtor:

Spring Pointe Development, L.L.C.  
P.O. Box 548  
Provo, UT 84603  
Attn: Milton Christensen

With a copy to:

Michael R. Johnson  
**RAY QUINNEY & NEBEKER**  
36 South State Street, Suite 1400  
Salt Lake City, UT 84101

16.8 *Governing Law; Construction.* Unless a rule of law or procedure is supplied by federal law (including the Code and the Bankruptcy Rules), and unless otherwise specifically stated in any agreement, document or instrument executed in connection with the Plan, the substantive and procedural laws of the State of Utah shall govern the construction and

implementation of the Plan, and any agreements, documents or instruments executed in conjunction with the Plan, without reference to conflict or choice of law principles. To the extent the provisions of the Plan conflict with the terms and conditions of any other agreement, document or instrument executed in connection with the Plan, the provisions of the Plan shall govern.

16.9 *Notice of Effective Date.* The Reorganized Debtor shall give notice of the occurrence of the Effective Date to all creditors and parties in interest.

16.10 *Post-Confirmation Management.* The Debtor is currently managed by Milton Christensen, who is the Manager of the Debtor. Milton Christensen will continue to manage the Debtor post-confirmation. Unless and until all Allowed Claims are paid in full, Milton Christensen shall receive no compensation for his services to the Debtor.

16.11 *No Governmental Regulation of Rates.* There is no governmental regulatory commission with jurisdiction over rates charged by the Debtor, as the Debtor is not a regulated entity and does not charge rates.

DATED this 15th day of February, 2012.

**SPRING POINTE DEVELOPMENT, L.L.C.**

/s/ Milton Christensen

By: Milton Christensen

Manager of Spring Pointe Development, L.L.C.

**RAY QUINNEY & NEBEKER P.C.**

/s/ Michael R. Johnson

Michael R. Johnson

Douglas M. Monson

*Attorneys for the Debtor*

