

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

SWB WACO SH, L.P.

Debtor.

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§

CASE NO. 10-38001-H1-11

**FIRST AMENDED DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN  
SUPPORT OF FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

**THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS AND INTEREST HOLDERS OF THE DEBTOR ENTITLED TO VOTE ON THE CHAPTER 11 PLAN OF REORGANIZATION SUBMITTED BY SWB WACO SH, L.P. HEREIN DESCRIBED AND CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE CONCERNING THE PLAN. ALL CREDITORS AND INTEREST HOLDERS ARE URGED TO READ THE ENTIRE DISCLOSURE STATEMENT AND PLAN WITH CARE.**

**ON \_\_\_\_\_, 2010, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE. SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN HEREIN DESCRIBED IS BEING SOUGHT FROM CREDITORS AND INTEREST HOLDERS WHOSE CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR IS IMPAIRED UNDER THE PLAN. CREDITORS AND INTEREST HOLDERS ENTITLED TO VOTE ON THE PLAN ARE URGED TO VOTE IN FAVOR OF THE PLAN AND TO RETURN THE COMPLETED BALLOT INCLUDED WITH THIS DISCLOSURE STATEMENT IN THE ACCOMPANYING ENVELOPE ADDRESSED TO PORTER & HEDGES, L.L.P., ATTENTION: DAVID R. JONES, 1000 MAIN STREET, 36<sup>TH</sup> FLOOR, HOUSTON, TEXAS 77002, NOT LATER THAN \_\_\_\_\_, 2010.**

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**ARTICLE 1**  
**INTRODUCTION**

**1.1 General Information Concerning Disclosure Statement and Plan.**

SWB Waco SH, L.P. the (“Debtor”) submits this First Amended Disclosure Statement, as may be amended from time to time, (the “Disclosure Statement”) under § 1125 of the Bankruptcy Code and Rule 3016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to all of the Debtor’s known Creditors and Interest Holders entitled to vote on the Plan. The purpose of this Disclosure Statement is to provide adequate information to enable Creditors and Interest Holders who are entitled to vote on the First Amended Chapter 11 Plan of Reorganization submitted by the Debtor (the “Plan”) to arrive at a reasonably informed decision in exercising their respective right to vote on the Plan. A copy of the Plan is included with this Disclosure Statement. Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to them in the Plan or in the Bankruptcy Code and Bankruptcy Rules. All section references in this Disclosure Statement are to the Bankruptcy Code unless otherwise indicated.

The Debtor has proposed the Plan consistent with the provisions of the Bankruptcy Code. The purpose of the Plan is (i) to allow the Debtor to restructure its debts; and (ii) to maximize recovery to each Class of Claims and Equity Interests. The Debtor believes that the Plan provides for the maximum recovery available for all Classes of Claims and Equity Interests.

This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment of Claims and Equity Interests under the Plan. It is submitted as an aid and supplement to your review of the Plan and to explain the terms of the Plan. Every effort has been made to fairly summarize the Plan and to inform Creditors and Interest Holders how various aspects of the Plan affect their respective positions. If any questions arise, the Debtor urges you to contact the Debtor’s counsel. These attorneys will attempt to resolve your questions. You are also encouraged to consult with your own counsel. The counsel for the Debtor is likewise available to answer any questions that your counsel may have regarding the Plan and this Disclosure Statement.

**1.2 Disclaimers.**

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND § 1125 OF THE BANKRUPTCY CODE. NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTOR TO SOLICIT ACCEPTANCES OR REJECTIONS OF THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CREDITORS AND INTEREST HOLDERS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTOR OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT, ANY ATTACHMENTS THERETO AND THE PLAN.**

**EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT, NO REPRESENTATION CONCERNING THE DEBTOR, ITS ASSETS, LIABILITIES, PAST OR FUTURE OPERATIONS, OR CONCERNING THE PLAN ARE AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON**

**IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE IMMEDIATELY REPORTED TO COUNSEL FOR THE DEBTOR.**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE CONCERNING THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**THE INFORMATION PROVIDED HEREIN WAS OBTAINED FROM A VARIETY OF SOURCES AND IS BELIEVED TO BE RELIABLE. HOWEVER, THE DEBTOR HAS NOT BEEN ABLE TO INDEPENDENTLY VERIFY EACH AND EVERY STATEMENT CONTAINED HEREIN. ACCORDINGLY, THE DEBTOR AND ITS PROFESSIONALS CANNOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THE DEBTOR'S BUSINESS AFFAIRS ARE COMPLEX. IT IS POSSIBLE THAT THE TRANSACTIONS CONTEMPLATED UNDER THE PLAN COULD HAVE NEGATIVE TAX AND OTHER ECONOMIC CONSEQUENCES. THE DEBTOR MAKE NO REPRESENTATIONS REGARDING THE TAX IMPLICATIONS OF ANY TRANSACTION CONTEMPLATED UNDER THE PLAN. IT IS NOT UNCOMMON FOR PARTIES TO RETAIN THEIR OWN TAX ADVISORS TO ANALYZE THE PLAN. THE DEBTOR ENCOURAGES ALL PERSONS THAT MIGHT BE AFFECTED TO SEEK INDEPENDENT ADVICE REGARDING THE TAX EFFECTS OF THE PLAN.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY THE DEBTOR OR THEIR PROFESSIONALS THAT THE PLAN IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE REORGANIZATION AND/OR LIQUIDATION OF THE DEBTOR'S ASSETS OR THAT ALL POTENTIAL ADVERSE EVENTS HAVE BEEN ANTICIPATED.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTY OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN SHOULD BE READ IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES**

**ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

**1.3 Answers to Commonly Asked Questions.**

As part of the Debtor's efforts to inform Creditors and Interest Holders regarding the Plan and the Plan confirmation process, the following summary provides answers to questions which parties who receive a disclosure statement often ask.

**THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

**1.3.1 Who is the Debtor?**

The Debtor is SWB Waco SH, LP. The Debtor owns and operates a recently constructed 374-bed student housing apartment complex in Waco, Texas known as Heritage Quarters (the "Property"). The Property is part of a re-development project of the downtown Waco area and serves primarily as an off-campus student housing facility for Baylor University.

**1.3.2 What is a Chapter 11 bankruptcy?**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code that allows financially distressed businesses to reorganize their debts or to liquidate their assets in a controlled fashion. The commencement of a chapter 11 case creates an "estate" containing all of the legal and equitable interests of the debtor in property as of the date the bankruptcy case is filed. During a chapter 11 bankruptcy case, the debtor remains in possession of its assets unless the Court orders the appointment of a trustee. No trustee has been appointed in the Debtor's case. The Plan is being proposed by the Debtor. The Debtor has worked to propose a plan of reorganization in an effort to minimize the overall administrative costs associated with this bankruptcy case and maximize value to Creditors and Interest Holders.

**1.3.3 If the Plan governs how my Claim or Interest is treated, what is the purpose of this Disclosure Statement?**

The Bankruptcy Code requires that in order to solicit votes on a bankruptcy plan, the proponent of the plan must first prepare a disclosure statement that provides sufficient information to allow creditors and interest holders to make an informed decision about the plan. The disclosure statement and plan are distributed to creditors and interest holders only after the Bankruptcy Court has approved the disclosure statement and determined that the disclosure statement contains information adequate to allow creditors and interest holders to make an informed judgment about the plan. At that time, creditors and interest holders whose claims and interests are impaired under the Plan also receive a voting ballot.

**1.3.4 Has this Disclosure Statement been approved by the Bankruptcy Court?**

Yes. On \_\_\_\_\_, 2010, the Bankruptcy Court approved this Disclosure Statement as containing adequate information. "Adequate information" means information of a kind, and in sufficient detail, as far as is practicable considering the nature and history of the Debtor and the condition of the Debtor's books and records, to enable a hypothetical investor typical of holders

of claims or interests of the relevant classes to make an informed judgment whether to vote to accept or reject the Plan. The Bankruptcy Court's approval of this Disclosure Statement does not constitute an endorsement of any of the representations contained in either the Disclosure Statement or the Plan.

### **1.3.5 How do I determine how my Claim or Interest is classified?**

To determine the classification of your Claim or Interest, you must determine the nature of your Claim or Interest. Under the Plan, Claims and Interests are classified into a series of classes. The pertinent articles and sections of the Disclosure Statement and Plan disclose, among other things, the treatment that each class of Claims or Interests will receive if the Plan is confirmed.

### **1.3.6 Why is confirmation of the Plan important?**

The Bankruptcy Court's confirmation of the Plan is a condition to the Debtor carrying out the treatment of Creditors and Interest Holders under the Plan. Unless the Plan is confirmed, and any other conditions to confirmation or to the effectiveness of the Plan are satisfied, all parties are legally prohibited from satisfying Claims or Interests as provided in the Plan. Put more simply, confirmation of a plan in chapter 11 is required before the Debtor can begin making payments to pre-petition Creditors.

### **1.3.7 What is necessary to confirm the Plan?**

Under applicable provisions of the Bankruptcy Code, confirmation of the Plan requires that, among other things, at least one class of impaired Claims or Interests vote to accept the Plan. Acceptance by a class of claims or interests means that at least two-thirds in the total dollar amount and more than one-half in number of the allowed Claims or Interests actually voting in the class vote in favor of the Plan. Because only those claims or interests who vote on a plan will be counted for purposes of determining acceptance or rejection of a plan by an impaired class, a plan can be approved with the affirmative vote of members of an impaired class who own less than two-thirds in amount and one-half in number of the claims/interests. Besides acceptance of the Plan by each class of impaired creditors or interests, a bankruptcy court also must find that the Plan meets a number of statutory tests before it may confirm the Plan. These requirements and statutory tests generally are designed to protect the interests of holders of impaired claims or interests who do not vote to accept the Plan but who will nonetheless be bound by the Plan's provisions if the bankruptcy court confirms the Plan.

If one or more classes vote to reject the Plan, the Debtor may still request that the bankruptcy court confirm the Plan under § 1129(b) of the Bankruptcy Code. To confirm a plan not accepted by all classes, the plan proponent must demonstrate that the plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and that has not accepted, the plan. This method of confirming a plan is commonly called a "cramdown." In addition to the statutory requirements imposed by the Bankruptcy Code, the plan itself also provides for certain conditions that must be satisfied as conditions to confirmation.

**1.3.8 Is there a Committee in this case?**

No. The Office of the United States Trustee was unable to form an official committee of unsecured creditors in this case.

**1.3.9 When is the deadline for returning my ballot?**

The Bankruptcy Court has directed that, to be counted for voting purposes, your ballot must be received by the Debtor's counsel not later than \_\_\_\_\_, 2010.

**IT IS IMPORTANT THAT ALL IMPAIRED CREDITORS AND INTEREST HOLDERS VOTE ON THE PLAN. THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST POSSIBLE RECOVERY TO CREDITORS AND INTEREST HOLDERS. THE DEBTOR THEREFORE BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF CREDITORS AND INTEREST HOLDERS AND RECOMMENDS THAT ALL IMPAIRED CREDITORS AND INTEREST HOLDERS VOTE TO ACCEPT THE PLAN.**

**ARTICLE 2  
OVERVIEW OF PLAN**

An overview of the Plan is set forth below. This overview is qualified in its entirety by reference to the Plan. If the Court confirms the Plan and, in the absence of any applicable stay, all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date.

The Debtor's plan to reorganize involves an infusion of equity into the Debtor, the Debtor reaching agreements with Sterling Bank and E.E. Reed, whose claims are secured by liens on Heritage Quarters, to provide for retention of those liens and repayment from operation of the Property and ultimately a sale or refinancing of the debt secured by the Property. Unsecured creditors will receive pro rata distributions from four annual payments of \$25,000 each.

As of the Effective Date of the Plan, the Reorganized Debtor will be responsible for all payments and distributions to be made under the Plan to the holders of Allowed Claims, together with any payments that become due under any executory contract or unexpired lease assumed by the Debtor. Each executory contract and unexpired lease to which the Debtor is a party shall be deemed rejected unless the Debtor expressly assumes a particular executory contract or lease before the Effective Date.

**ARTICLE 3  
THE DEBTOR**

**3.1 The Debtor's Business and Capital Structure.**

**3.1.1 The Debtor's Pre-petition Business.**

SWB was formed in 2007 to construct and operate a student housing facility in Waco, Texas.



### **3.1.2 The Debtor's Capital Structure.**

On April 22, 2008, the Debtor executed a Construction Real Estate Lien Note dated April 22, 2008 by and between the Debtor and Sterling Bank in the maximum principal amount of \$18,000,000. The Sterling Bank Secured Note is secured by a first priority security interest in Heritage Quarters and bears interest at the greater of prime or 5.75% per annum. As of the Petition Date, the principal amount of the Sterling debt was approximately \$15,849,734.36 plus accrued and unpaid pre-petition interest and other costs of \$352,676.83. The Sterling Bank Secured Note matured on April 22, 2010.

### **3.1.3 The Debtor's Assets.**

On the Petition Date, the Debtor's assets consisted of a 374-bed student housing facility in downtown Waco, Texas known as Heritage Quarters and the associated leases and furniture and fixtures.

On September 9, 2010, the Debtor filed with the Bankruptcy Court its Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, as amended, the "Schedules") save its Schedule B which was filed on September 22, 2010. The Schedules contain a detailed listing of the Debtor's assets and the amounts owed to its Creditors based on the Debtor's books and records. In connection with this Disclosure Statement, Creditors and Interest Holders are referred to the Schedules. A copy of the Schedules are available from the Clerk's office or from the Debtor upon request.

### **3.1.4 Debtor's Financial Information.**

The Debtor is required to file monthly operating reports with the Bankruptcy Court which reflect current financial information and are publicly available for inspection at the office of the Clerk of the Court. Attached hereto as **Schedule 1** is a copy of the latest monthly operating report filed by the Debtor.

### **3.1.5 Events Leading to Bankruptcy.**

The Debtor obtained a construction loan funded by Sterling Bank for the development and construction of Heritage Quarters. Sterling refused to honor the final draw request of the Debtor to pay the final development and construction related expenses. Sterling asserts that the Debtor breached the loan agreement by allowing involuntary liens to be placed upon the Heritage Quarters and that it was justified in refusing the Debtor's draw request. Shortly thereafter, the Sterling Bank Secured Note matured on April 22, 2010. Sterling and the Debtor were not able to negotiate a conversion of the Note to a term loan or reach an agreement regarding an extension. On August 17, 2010, Sterling Bank posted Heritage Quarters for a foreclosure sale to occur in September 2010. This bankruptcy case was filed to prevent that foreclosure from occurring and to afford an opportunity for the Debtor to reorganize its debts. Under the Plan, all disputes between Sterling and the Debtor are resolved.

### **3.1.6 Debtor's Tenant Leases and Executory Contracts.**

On the Petition Date, the Debtor was a party to a number of Tenant Leases, all of which will be assumed. All security deposits have been maintained in a segregated account and will be handled in accordance with the tenant leases.

The Debtor is also a party to certain equipment leases and executory contracts. The Debtor's executory contracts will either be assumed or rejected on the Effective Date of the Plan.

### **3.1.7 Liabilities and Claims against the Debtor.**

The Schedules contain a detailed listing of Creditors, together with the estimated amount of Claims. Creditors and Interest Holders are referred to the Debtor's Schedules. The Debtor's respective Schedules generally organize Creditors into three general groupings: (i) Schedule D-Secured Claims, (ii) Schedule E-Unsecured Priority Claims, and (iii) Schedule F-Unsecured Nonpriority Claims. Additional proofs of claims may be filed in the Bankruptcy Case. The last day to file a proof of claim is November 30, 2010.

### **3.1.8 Secured Claims.**

Pursuant to the Bankruptcy Code, Claims which are secured by a lien or other security interest may be categorized into a secured and an unsecured component. In general, Claims are Secured Claims to the extent of the value of the collateral that secures the Claims and they are Unsecured Claims to the extent of any deficiency in the value of the collateral.

The Debtor is party to the Construction Real Estate Lien Note dated April 22, 2008 by and between the Debtor and Sterling Bank in the maximum principal amount of \$18,000,000 (the "Note"). Concurrent with the execution of the Note, the Debtor executed a Construction Deed of Trust, Security Agreement, and Financing Statement ("Deed of Trust") which provides Sterling with a security interest in Heritage Quarters and substantially all assets of the Debtor. The Note matured in April 2010. As of the petition date, Sterling Bank was owed \$15,849,734.36 plus accrued and unpaid pre-petition interest and other costs of \$352,676.83.

E.E. Reed Construction, L.P. is owed \$1,892,984 arising out of E.E. Reed's construction of the Heritage Quarters in Waco, Texas and the April 22, 2008 AIA A101 Form Agreement between the Debtor and E.E. Reed. The E.E. Reed Secured Claim is secured by a mechanic's and materialman's lien against Heritage Quarters filed in McLennan County, Texas. The Debtor believes that E.E. Reed's lien is subordinate to the lien in favor of Sterling Bank. Additionally, E.E. Reed has an unsecured claim in the amount of \$51,013. The Debtor's failure to pay the E.E. Reed Secured Claim prior to the Petition Date was not due to the failure of E.E. Reed to meet its obligations to the Debtor in connection with the construction of the Heritage Quarters. The Debtor has agreed to execute an Affidavit attesting to this fact.

Certain subcontractors hired by E.E. Reed or its subcontractors that performed work on or supplied materials to the Heritage Quarters have filed mechanic's and materialman's liens in the real property records of McLennan County, Texas. These subcontractors do not have claims directly against the Debtor. As discussed in Article 6.2.1, the mechanic's and materialman's

liens filed by them will be voided and those subcontractors will look to E.E. Reed and the Payment and Performance Bonds for payment of their claims.

### **3.1.9 Priority Claims.**

The Debtor's schedules reflect no known priority claims. No proofs of claim have yet been filed asserting a priority claim.

### **3.1.10 General Unsecured Claims.**

The Debtor's schedule F which is based on the Debtor's books and records reflects undisputed unsecured claims of \$79,740 excluding the claims for security deposits associated with the Tenant Leases. This figure does not include claims asserted by subcontractors of any tier hired by E.E. Reed or claims for rejection damages. Additional claims may be filed. As discussed below, the Debtor will be assuming the Tenant Leases and the security deposits have been maintained in a segregated account and therefore there should not be any claims assertable by the Tenants. The Debtor expects to file at least some objections to proofs of claims. Should additional or amended proofs of claim be filed, the Debtor will review such claims and may file additional objections. The Debtor is unable to predict the outcome of any anticipated claim objections that may be filed.

### **3.1.11 Deadline to File Proofs of Claim.**

Tuesday, November 30, 2010 has been established as the deadline for proofs of claim and claims under 11 U.S.C. § 503(b)(9).

**THE RIGHT OF ALL PARTIES, INCLUDING THE DEBTOR AND/OR THE REORGANIZED DEBTOR (WHETHER EXISTING OR FORMED UNDER THE PLAN) TO OBJECT TO ANY CLAIM FILED IN THIS CASE IS EXPRESSLY RESERVED. THE INCLUSION OF A CLAIM OR CLAIMS WITHIN THIS DISCLOSURE STATEMENT IS NOT AN ADMISSION REGARDING THE VALIDITY OR ALLOWANCE OF ANY CLAIM. YOU SHOULD NOT ASSUME THAT A VOTE FOR OR AGAINST THE PLAN WILL HAVE ANY AFFECT OF THE STATUS OF YOUR CLAIM. IF ANYONE SUGGESTS THAT THE STATUS OF YOUR CLAIM MAY BE AFFECTED BY YOUR VOTE, YOU SHOULD REPORT SUCH INCIDENT TO COUNSEL FOR THE DEBTOR IMMEDIATELY AS ANY SUCH SUGGESTION MAY VIOLATE TITLE 18.**

## **3.2 Significant Events during the Chapter 11 Case.**

### **3.2.1 First-Day Pleadings.**

Shortly after the Petition Date, the Debtor obtained authority to take certain actions to promote the ongoing operation of Heritage Quarters, including authorization to use cash collateral and to establish procedures for determining adequate assurance requests from utility companies.

### **3.2.2 Use of Cash Collateral.**

On September 27, 2010, the Court entered its Final Order (I) Authorizing The Debtor to Use Cash Collateral, and (II) Providing Adequate Protection and Granting Liens, Security Interests and Other Relief to Sterling Bank (the “Cash Collateral Order”), authorizing the Debtor to execute the Ratification and Amendment Agreement with Wachovia, the predecessor-in-interest to utilize the cash collateral of Sterling Bank to fund operations of Heritage Quarters pending a hearing on continued use of cash collateral on December 21, 2010.

### **3.2.3 Retention of Professionals.**

On October 18, 2010, the Court entered an order granting the Debtor’s Application for Authority to Employ Porter & Hedges, L.L.P. as bankruptcy counsel.

### **3.2.4 Replacement of the Property Manager.**

On October 18, 2010, the Court approved the employment of Asset Campus Housing, Inc. as the new property manager, replacing Campus Advantage effective September 16, 2010.

### **3.2.5 The Bar Date.**

On October 18, 2010, the Court entered an order granting the Debtor’s request for the establishment of a bar date for filing proofs of claim. Tuesday, November 30, 2010 has been established as the deadline for proofs of claim and claims under 11 U.S.C. § 503(b)9.

## **ARTICLE 4**

### **CLASSIFICATION OF CLAIMS AND INTERESTS UNDER THE PLAN**

**4.1** The Claims against and Interests in the Debtor is classified as follows:

**4.1.1 Class 1 – Secured Claim of Sterling Bank.** Class 1 is comprised of the Allowed Secured Claim of Sterling Bank arising out of the Sterling Bank Secured Note.

**4.1.2 Class 2 – Secured Claim of E.E. Reed.** Class 2 is comprised of the Allowed Secured Claim of E.E. Reed.

**4.1.3 Class 3a – Heritage M&M Lien Claims.** Class 3a is comprised of all Claims of subcontractors of any tier hired by E.E. Reed or its subcontractors that performed work on or supplied materials to the Heritage Quarters and that filed a mechanic’s and materialman’s lien in the real property records of McLennan County, Texas.

**4.1.4 Class 3b – Miscellaneous Secured Claims.** Class 3b is comprised of all Allowed Miscellaneous Secured Claims against the Debtor other than the secured claims otherwise set forth in the Plan.

**4.1.5 Class 4 – Priority Non-Tax Claims.** Class 4 is comprised of all Allowed Priority Non-Tax Claims against the Debtor.

**4.1.6 Class 5 – General Unsecured Claims.** Class 5 is comprised of all Allowed General Unsecured Claims against the Debtor.

**4.1.7 Class 6 – Subordinated Claims.** Class 6 is comprised of all Allowed Subordinated Claims against the Debtor.

**4.1.8 Class 7 – Equity Interests.** Class 7 is comprised of all Allowed Equity Interests in the Debtor.

## **ARTICLE 5**

### **IMPAIRMENT OF CLASSES AND RESOLUTION OF CLAIM CONTROVERSIES**

#### **5.1 Impaired Classes.**

Only holders of Claims that are in impaired Classes may vote on the Plan. The following Classes of Claims and Interests are impaired under the Plan:

**5.1.1** Class 1 – Secured Claim of Sterling Bank.

**5.1.2** Class 2 – Secured Claim of E.E. Reed.

**5.1.3** Class 5 – General Unsecured Claims.

**5.1.4** Class 6 – Subordinated Claims.

**5.1.5** Class 7 – Equity Interests

#### **5.2 Unimpaired Classes.**

Holders of Claims that are in unimpaired Classes are deemed to have accepted the proposed Plan and are not entitled to vote on the Plan. The following Classes of Claims are not impaired under the Plan:

**5.2.1** Class 3a – Heritage M&M Lien Claims.

**5.2.2** Class 3b – Miscellaneous Secured Claims.

**5.2.3** Class 4 – Priority Non-Tax Claims.

#### **5.3 Controversy Concerning Classification, Impairment or Voting Rights.**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, prior to the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes the amount of any contingent or unliquidated Claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the Chapter 11 Case. In addition, the Bankruptcy Court may in accordance with § 506(b) of the Bankruptcy Code conduct valuation hearings to determine the Allowed Amount of any Secured Claim.

**ARTICLE 6**  
**TREATMENT OF CLAIMS AND EXECUTORY CONTRACTS**

**6.1 Treatment of Impaired Classes.**

**6.1.1 Class 1 – Secured Claim of Sterling Bank.** Pursuant to a compromise reached between Sterling Bank and the Debtor, the Secured Claim of Sterling Bank shall be paid as follows:

(a) The Secured Claim of Sterling Bank shall be allowed in the principal amount of \$15,849,734.36 plus accrued and unpaid pre-petition interest and other costs of \$352,676.83. All other claims are disallowed. Sterling Bank's liens against the Heritage Quarters, the Waco Ground Lease and all rents and leases therefrom shall remain in full force and effect. The Secured Claim of Sterling Bank and its liens shall be additionally evidenced by a promissory note, deed of trust and security agreement substantially in the form of the original Sterling Bank Secured Note and associated security documents.

(b) Beginning 30 days after the Effective Date, the Reorganized Debtor shall make monthly interest payments of \$66,040.56 (5% simple interest) on the outstanding principal amount. Except as set forth below, the entire unpaid principal balance and all accrued and unpaid pre-petition interest and other costs shall be due and payable on the third anniversary of the Effective Date. If full payment in accordance with this Article has not occurred by the third anniversary of the Effective Date, or upon any default of the Reorganized Debtor that is not cured as provided hereinafter, Sterling Bank may elect to exercise any of its rights or remedies arising under the promissory note, deed of trust and security agreement provided for in Article 5.1.1 or under applicable nonbankruptcy law, including the right to foreclose its liens in the Heritage Quarters, the Waco Ground Lease and the Tenant Leases in accordance with such documents or applicable state law. Sterling Bank may also elect to accept a deed in lieu of foreclosure, provided however that such deed shall expressly state that it is given and accepted without merger of title and indebtedness. The Reorganized Debtor shall reasonably cooperate with Sterling Bank. If Sterling Bank elects to foreclose its liens, it will give written notice of intent to foreclose to E.E. Reed at least ten (10) days prior to the date of the foreclosure sale by certified mail, return receipt requested, to: Mr. Mark Reed, E.E. Reed Construction Company 333 Commerce Green Boulevard, P.O. Box 108, Sugar Land, TX 77487-0108. Nothing herein shall operate as a divesture of any right of the Reorganized Debtor to seek or obtain financing to pay the Secured Claim of Sterling Bank as contemplated in this Plan.

(c) At any time prior to the third anniversary of the Effective Date, the Reorganized Debtor may satisfy the Secured Claim of Sterling Bank in full by making a payment in accordance with the following table (plus any accrued but unpaid monthly interest payments due under Article 5.1.2 of the Plan):

Time of Payment (Anniversary of Effective Date)	Percentage of Unpaid Principal	Amount of Unpaid Pre- Petition Interest and Costs
Prior to 1 <sup>st</sup> Anniversary	85%	\$0.00
On or after 1 <sup>st</sup> Anniversary but prior to 2 <sup>nd</sup> Anniversary	90%	\$150,000
On or after 2 <sup>nd</sup> Anniversary but prior to 3 <sup>rd</sup> Anniversary	100%	\$250,000

By way of example, if the Effective Date were January 11, 2011 and the Reorganized Debtor elected to pay Sterling Bank in full on March 4, 2012 (and assuming all monthly interest payments were current and no interim principal payments), the Reorganized Debtor could satisfy Sterling Bank in full by making a payment of \$14,414,760.92 (( $\$15,849,734.36 \times 90\%$ ) plus \$150,000).

(d) On the 30<sup>th</sup> day of each calendar month beginning in the month following the Effective Date and continuing thereafter until the satisfaction of the Secured Claim of Sterling Bank, the Reorganized Debtor shall deliver to Sterling Bank monthly operating reports of the operation and management of Heritage Quarters, including an income statement of revenues, expenses and accruals, a current rent roll and the written property management report prepared by the property manager for distribution to the general partner of the Reorganized Debtor or any Interest Holder.

(e) The Equity Interests in the Reorganized Debtor are pledged as additional collateral to Sterling Bank.

(f) The existing guarantees issued by Kevin J. Matocha, Costandl R. Bajjali a/k/a Costa Bajjali, David G. Wallace, the Whitney L. Wallace 1996 Sub-S Trust, the Jaquelyn M. Wallace 1996 Sub-S Trust, Stonehenge Companies, LLC, Wallace Bajjali Development Partners, LLP shall remain in force as written. Any and all litigation against the foregoing guarantors by Sterling Bank or its assigns shall be dismissed without prejudice within 10 days after the Effective Date. All guarantees shall be released upon (i) payment of the allowed Secured Claim of Sterling Bank; (ii) the exercise by Sterling Bank of its rights or remedies as provided in Article 5.1.2 or otherwise provided herein or by applicable law and no subsequent bankruptcy proceeding is initiated by the Reorganized Debtor or the guarantors in any court or administrative agency pertaining to the Plan or the transfer to Sterling Bank contemplated in Article 5.1.2 of the Plan; or (iii) as provided in the guarantees. In the event that the Reorganized Debtor or any guarantor initiates a proceeding in any court or administrative agency pertaining to the Plan, the transfer to Sterling Bank contemplated in Article 5.1.2 of the Plan, the Heritage Quarters, or to otherwise prevent Sterling Bank from exercising its rights and remedies related thereto or arising under statute or common law, the obligations of the guarantors shall remain in full force and effect according to their terms notwithstanding any other provision of the Plan.

(g) Any and all claims held against Sterling Bank arising under or related to the Sterling Bank Secured Note and any guaranty thereof from the beginning of time through the Effective Date will be released and forever discharged on the Effective Date.

(h) Should the Reorganized Debtor default in any provision of this Plan, the Reorganized Debtor shall have ten (10) days to cure such default after written notification by Sterling Bank. If the default is not cured, Sterling Bank may exercise any or all of its contractual or state law rights and remedies without an election of remedies, including without limitation its right of foreclosure.

**6.1.2 Class 2 – Secured Claim of E.E. Reed.** The E.E. Reed Secured Claim shall be paid as follows:

(a) The E.E. Reed Secured Claim is allowed in the amount of \$1,892,984. All other secured claims are disallowed. E.E. Reed shall retain its lien on the Heritage Quarters to secure the Reorganized Debtor's obligations to E.E. Reed under the Plan, any amendments or supplement thereto and any obligations of the Reorganized Debtor in an order confirming the Plan.

(b) Any and all claims held by the Debtor and Reorganized Debtor against E.E. Reed arising from the beginning of time related to or arising out of the construction of the Heritage Quarters or the construction contract related thereto are released and forever discharged on the Effective Date.

(c) Unless the E.E. Reed Secured Claim has been previously paid or satisfied, on the first and second anniversaries of the Effective Date, the Reorganized Debtor shall pay to E.E. Reed the sum of \$100,000. On the third anniversary of the Effective Date, the Reorganized Debtor shall pay to E.E. Reed the unpaid balance of the E.E. Reed Secured Claim. To the extent required by Texas law or the applicable contract(s), these payments shall be held in trust by E.E. Reed for the benefit of unpaid third-party subcontractors having contracts with E.E. Reed that provided goods and services to Heritage Quarters (the "third-party subcontractors") until the claims of such third-party subcontractors have been satisfied or released. Notwithstanding the foregoing, should the Secured Claim of Sterling Bank be satisfied prior to the third anniversary of the Effective Date in accordance with Article 5.1.3 or through a post-Effective Date compromise, the then remaining unpaid balance of the E.E. Reed Secured Claim shall be paid in full at such time. In the event that Sterling Bank forecloses its liens or takes possession of the Heritage Quarters in accordance with Article 5.1.2, E.E. Reed shall look solely to its right of foreclosure, if any, of its lien against the Heritage Quarters to satisfy its claim. Should the Reorganized Debtor default in any provision hereunder, the Reorganized Debtor shall have ten (10) days to cure such default after written notification by E.E. Reed and Sterling Bank. If the default is not cured, E.E. Reed may exercise any or all of its contractual or state law rights and remedies without an election of remedies, including without limitation its right of foreclosure. The period for E.E. Reed to bring suit to foreclose the mechanic's and materialman's lien, as provided in Texas Property Code § 53.158, is extended until the E.E. Reed's Secured Claim is paid in full. If E.E. Reed elects to foreclose its liens, it will give written notice of intent to foreclose to the Reorganized Debtor and Sterling Bank at least ten (10) days prior to the date of the



foreclosure sale by certified mail, return receipt requested, to: Mr. Gerald Mangum, Sterling Bank, P.O. Box 40333, Houston, Texas 77240-0333.

(d) At any time prior to the third anniversary of the Effective Date, the Reorganized Debtor may satisfy the Secured Claim of E.E. Reed in full by making a payment in accordance with the following table:

Time of Payment (Anniversary of Effective Date)	Percentage of Unpaid Claim
Prior to 1 <sup>st</sup> Anniversary	85%
On or after 1 <sup>st</sup> Anniversary but prior to 2 <sup>nd</sup> Anniversary	90%
On or after 2 <sup>nd</sup> Anniversary but prior to 3 <sup>rd</sup> Anniversary	100%

By way of example, if the Effective Date were January 11, 2011 and the Reorganized Debtor elected to pay E.E. Reed in full on March 4, 2012 (and assuming all interim annual payments required in the foregoing section were current), the Reorganized Debtor could satisfy E.E. Reed in full by making a payment of \$1,613,685.60 ((\$1,892,984 - \$100,000) X 90%).

(e) At the option of E.E. Reed, upon satisfaction or release of all of the claims of the third party subcontractors, the Reorganized Debtor will execute a non-recourse promissory note and deed of trust for the then unpaid portion of the E.E. Reed Secured Claim. The terms of the note shall be consistent with the treatment of the E.E. Reed Secured Claim under this Plan and shall be in the general form as provided in the State Bar of Texas form. Upon execution of such promissory note and deed of trust, the E.E. Reed Secured Claim may be enforced as provided in the promissory note and deed of trust and applicable law. The deed of trust lien will have the same lien priority as the existing mechanic's and materialman's lien securing the E.E. Reed Secured Claim.

**6.1.3 Class 5 – General Unsecured Claims.** On the first, second, third and fourth anniversaries of the Effective Date, the Reorganized Debtor shall deposit into the U/S Creditor Cash Account the lesser of (i) \$25,000; or (ii) the amount necessary to pay all Allowed General Unsecured Claims and Allowed Subordinated Claims in full. Ten days after the first, second, third and fourth anniversaries of the Effective Date, each holder of an Allowed General Unsecured Claim shall receive a Pro Rata share of the available balance in the U/S Creditor Cash Account less \$100 up to the Allowed Amount of such Claim. Notwithstanding the foregoing, should Heritage Quarters be transferred to Sterling Bank whether by foreclosure, pursuant to Article 5.1 of the Plan or otherwise, the obligation of the Reorganized Debtor to make any future payments hereunder shall cease.

**6.1.4 Class 6 – Subordinated Claims.** At such time as all Class 5 Claims have been paid in full and there remain amounts in the U/S Creditor Cash Account, each holder of an Allowed Subordinated Claim shall receive a Pro Rata share of the available balance in the U/S Creditor Cash Account less \$100 up to the Allowed Amount of such Claim. Notwithstanding the

foregoing, should Heritage Quarters be transferred to Sterling Bank in accordance with Article 5.1 of the Plan, the obligation of the Reorganized Debtor to make any future payments hereunder shall cease.

**6.1.5 Class 7 – Equity Interests.** In exchange for the New Equity Contribution, all limited partners in the Debtor shall retain Equity Interests in the following percentages:

Waco Student Housing Equity, LP	96.1400000%
WB Real Estate Holdings, LLC	3.8577552%

The general partner interest in the Debtor held by SWB Waco SH GP, LLC shall be cancelled on the Effective Date. On the Effective Date, a new general partner for the Reorganized Debtor shall be formed. The ownership of the new general partner shall be the same as the existing ownership of SWB Waco SH GP, LLC. During the pendency of the Plan, (i) all Equity Interests of the Reorganized Debtor shall be pledged as collateral to Sterling Bank in accordance with Article 5.1 of the Plan; (ii) the Equity Interests shall not be assigned nor pledged to any party (except for the pledge to Sterling Bank). During the pending of the Plan, no distributions shall be made to holders of Equity Interests.

## **6.2 Treatment of Unimpaired Classes.**

The Unimpaired Classes will be treated as follows:

**6.2.1 Class 3a – Heritage M&M Lien Claims.** Pursuant to Chapter 53.201 et seq. of the Texas Property Code, holders of Allowed Class 3a Claims shall look solely to (i) E.E. Reed; (ii) the payments made to E.E. Reed by the Reorganized Debtor; and (iii) the Payment and Performance Bonds provided by E.E. Reed in connection with the construction of Heritage Quarters for satisfaction of their claims. All liens/lien notices securing such claims against the Heritage Quarters are voided.

**6.2.2 Class 3b – Miscellaneous Secured Claims.** In the sole discretion of the Reorganized Debtor, the holder of an Allowed Miscellaneous Secured Claim shall receive either (i) the proceeds of the Collateral securing such Claimant's Allowed Claim after satisfaction in full of all superior liens up to the Allowed Amount of the Claimant's Allowed Secured Claim; (ii) the Collateral securing such Claimant's Allowed Secured Claim in full and final satisfaction of such Claim; (iii) payment of the Claim in accordance with the terms of the underlying agreement; or (iv) . The Claimant and the Reorganized Debtor may also agree to other terms.

**6.2.3 Class 4 – Priority Non-Tax Claims.** Each Holder of a Priority Non-Tax Claim will be paid in Cash and in full on the later of (i) the Distribution Date, (ii) the date on which such Claim becomes an Allowed Claim; or (iii) such other date as the Reorganized Debtor and the holder of the Allowed Priority Non-Tax Claim shall agree. Notwithstanding the foregoing, Allowed Claims under 11 U.S.C. § 507(a)(7) shall be paid in cash in accordance with the terms of the Tenant Leases between the Claimants and applicable Texas law.

**ARTICLE 7**  
**MEANS OF IMPLEMENTATION**

**7.1 Closing.**

On the Effective Date, the New Equity Contribution shall be deposited in cash with the Reorganized Debtor. A new general partner shall be formed and appointed for the Reorganized Debtor as set forth in the Plan. All property of the estate shall be revested in the Reorganized Debtor free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. § 363(f) and 11 U.S.C. § 1123(a)(5) to the maximum extent allowed by law; save and except the Liens securing (i) the Sterling Bank Secured Note; and (ii) 2010 *ad valorem* taxes.

**7.2 Real Property.**

The Real Property and all associated escrows shall be revested in the Reorganized Debtor free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. § 363(f) and 11 U.S.C. § 1123(a)(5) to the maximum extent allowed by law; save and except the Liens securing (i) the Sterling Bank; (ii) the E.E. Reed Secured Claim; and (iii) 2010 *ad valorem* taxes on the Real Property.

**7.3 Continuation of Operations.** From and after the Effective Date of the Plan, the Reorganized Debtor is authorized to take such actions as are necessary to continue all operations.

**7.4 2010 Ad Valorem Taxes.** The 2010 *ad valorem* taxes will be paid by the Reorganized Debtor as the taxes become due.

**7.5 Continued Corporate Existence.** From and after the Effective Date, the Reorganized Debtor shall continue to exist in accordance with the applicable laws of the state of Texas.

**7.6 General Powers of the Reorganized Debtor.** Subject to any express limitations, the Reorganized Debtor, have all of the rights, powers and privileges set forth in the Plan and the Confirmation Order. The Reorganized Debtor is authorized and shall have the obligation to take all such actions as in his/her judgment are necessary and appropriate to effectuate the purposes of the Plan, including but not limited to the following:

**7.6.1** Make all Distributions contemplated under the Plan;

**7.6.2** Consistent with maintaining the value of the Reorganized Debtor's assets and operate its business in a lawful manner as it deems appropriate;

**7.6.3** Administer the resolution, settlement and payment of Claims and Equity Interests and the distributions to the holders of Allowed Claims and Allowed Equity Interests in accordance with the Plan;

**7.6.4** Enter into any agreement required by or consistent with the Plan and perform all of the obligations required of the Reorganized Debtor under the Plan;

**7.6.5** Abandon any of the assets of the Reorganized Debtor if the Reorganized Debtor concludes that such assets are of no benefit to the Creditors or Interest Holders;

**7.6.6** Participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitrate or other non-judicial proceeding and litigate claims, including without limitation all state and federal causes of action or any other litigation which constitutes an asset of the Estate/Reorganized Debtor and pursue to settlement or judgment such actions;

**7.6.7** Participate as a party-in-interest in any proceeding before the United States Bankruptcy Court involving this Chapter 11 Case;

**7.6.8** Take actions and exercise remedies against any entity that owes money to the Debtor/Estate/Reorganized Debtor, including without limitation, the remedies available under any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document; make compromises regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document; and, declare or waive defaults regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document;

**7.6.9** Select and employ such professionals, agents or employees as the Reorganized Debtor deems necessary to assist in the administration of the affairs of the Reorganized Debtor and compensate such persons;

**7.6.10** Hold any unclaimed distribution or payment to the holder of an Allowed Claim in accordance with the Plan;

**7.6.11** Propose any amendment, modification or supplement to the Plan or the Reorganized Debtor's governance documents;

**7.6.12** Receive, conserve and manage the assets of the Reorganized Debtor and sell, pursuant to 11 U.S.C. § 363(f), 11 U.S.C. § 1123(a)(5) and the Plan, or otherwise dispose of such assets for a price and upon such terms and conditions as the Reorganized Debtor deems most beneficial to the Creditors and Interest Holders and execute such deeds, bills of sale, assignments and other instruments in connection therewith;

**7.6.13** Open and maintain bank accounts;

**7.6.14** Pay all taxes, make all tax withholdings and file tax returns and tax information returns and make tax elections;

**7.6.15** Pay all lawful expenses, debts, charges and liabilities of the Reorganized Debtor;

**7.6.16** Enforce all provisions of the Plan;

**7.6.17** Protect, perfect and defend the title to any of the assets of the Reorganized Debtor and enforce any bonds, mortgages or other obligations or liens owned by the Reorganized Debtor;

**7.6.18** Carry insurance coverage in such types and amounts as the Reorganized Debtor deems advisable or otherwise required to be carried under the Sterling Bank Secured Note;

**7.6.19** Establish such reserves for taxes, assessments and other expenses of the Reorganized Debtor (including without limitation the Disputed Claims Reserve) as may be necessary and appropriate for the proper operation of matters incident to the affairs of the reorganized Debtor and its obligations under the Plan; and

**7.6.20** Exercise such other powers and duties as are necessary or appropriate in the Reorganized Debtor's discretion to accomplish the purposes of the Plan;

## **ARTICLE 8**

### **CLAIM/INTEREST OBJECTION PROCEDURES, TREATMENT OF DISPUTED CLAIMS/INTERESTS AND PROCEDURES FOR ASSERTING CLAIMS**

#### **8.1 Objection Process.**

The Reorganized Debtor shall have the sole right to object to the allowance of any Claims or Equity Interests provided for under the Plan. The Reorganized Debtor shall have the authority to compromise, settle or otherwise resolve all objections without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Reorganized Debtor shall file and serve all objections to Claims and Equity Interests no later than (i) 90 days after the later of (a) the Effective Date; or (b) the date on which a proof of claim, proof of interest or request for payment is filed with the Bankruptcy Court or (ii) such other date as may be approved by the Bankruptcy Court after notice and hearing.

#### **8.2 Filing of Claims and Causes of Action.**

The Reorganized Debtor shall have the exclusive right to file and prosecute any Claims and Causes of Action, including all derivative Causes of Action. The Reorganized Debtor shall have the authority to compromise, settle or otherwise resolve all Claims and Causes of Action without approval of the Bankruptcy Court.

#### **8.3 Disputed Claims Reserve.**

A Disputed Claims Reserve shall be established by the Reorganized Debtor for the treatment of Disputed Claims. The Disputed Claims Reserve shall be held in a separate bank account from all other funds held by the Reorganized Debtor. The Reorganized Debtor shall deposit into a Disputed Claims Reserve an amount equal to the Pro Rata share of the Distribution allocable to such Disputed Claims, in accordance with the distribution scheme contemplated in the Plan, as if such Claims and/or Equity Interests were Allowed Claims or Equity Interests. Amounts deposited into the Disputed Claims Reserve shall be held in trust for the benefit of the holders of Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan. Once such Disputed Claim is determined by Final Order or settlement to be an Allowed Claim, the Reorganized Debtor is authorized to pay the Allowed Amount of such Claim without further approval from or notice to any person or entity.

#### **8.4 Distributions to Holders of Disputed Claims.**

Within 10 Business Days after such time as a Disputed Claim becomes an Allowed Claim or Equity Interest, but in no event earlier than the initial payment dates established under the Plan, any Distributions reserved for such Allowed Claim or Equity Interest shall be released from the Disputed Claims Reserve and delivered to the holder of such Allowed Claim or Equity Interest in an amount proportionate to the Allowed Amount of any such Claim or Equity Interest. In the event that the Disputed Claim is disallowed in whole or in part, or otherwise settled in amount less than the Disputed Claim amount, the disallowed or reduced portion of such Claim or Equity Interest shall be distributed from the Disputed Claim Reserve to holders of Allowed Claims or Equity Interests on the next scheduled payment date established under the Plan without further approval from or notice to any person or entity.

#### **8.5 Disallowance of Late Filed Proofs of Claim.**

Except as otherwise provided in the Plan, any proof of claim filed by the holder of such Claim after the Bar Date is hereby disallowed and forever barred.

#### **8.6 Provisions Governing Distributions.**

8.1.1 Record Date for Claims and Equity Interests. The record date for Distributions to Allowed Claims and Allowed Equity Interests under the Plan shall be the date the Bankruptcy Court enters its order approving the Disclosure Statement. For purposes of Distributions to holders of Allowed Claims, the Reorganized Debtor shall rely on the claims docket maintained by the Clerk for proofs of claim filed in this Chapter 11 Case except to the extent a notice of transfer of Claim or Interest has been filed with the Court prior to the record date pursuant to Bankruptcy Rule 3001.

8.1.2 Delivery of Distributions to Holders of Allowed Claims. Subject to Bankruptcy Rule 9010, Distributions to holders of Allowed Claims will be made at the address of each such holder as set forth on the proofs of claim filed by such holders, or at the last known address of such holder if no proof of claim is filed, unless the holder of the Allowed Claim has otherwise notified the Reorganized Debtor in writing of a change of address. If any holder's Distribution is returned as undeliverable, it will be treated in accordance with Article 8.6.4 herein. The Reorganized Debtor may, but shall not be required to make any Distribution of less than \$25.00.

8.1.3 Delivery of Distributions to Holders of Allowed Equity Interests. Distributions to holders of Allowed Equity Interests, to the extent they are entitled to distributions under the Plan, will be made at the address of the registered holder of each such Equity Interest as set forth in the Debtor's stock transfer ledger. If any holder's distribution is returned as undeliverable, no further distributions to such holder will be made unless and until the Reorganized Debtor is notified in writing of such holder's then current address.

8.1.4 Unclaimed Distributions. The Reorganized Debtor shall file a Notice of Distribution within ten Business Days of the date on which Distributions are made under the Plan. All claims for undeliverable Distributions must be made no later than the 75<sup>th</sup>

day following the date that the Notice of Distribution is filed. After such date, all unclaimed Distributions will revert to the Reorganized Debtor and the remaining Claim or Equity Interest of any holder with respect to such Distribution will be discharged and forever barred.

8.1.5 Uncashed Checks. Checks issued in respect of Allowed Claims and/or Equity Interests will be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Distributions with respect to such un-negotiated checks will revert to the Reorganized Debtor and the remaining Claim or Equity Interest of any holder with respect to such Distribution will be discharged and forever barred.

## **ARTICLE 9 EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **9.1 Executory Contracts and Unexpired Leases.**

The Waco Ground Lease and all Tenant Leases and other executory contracts and unexpired leases set forth on Schedule 1 of the Plan will be assumed upon the Effective Date with respective cure costs of \$0.00. All other executory contracts and unexpired leases will be rejected, unless otherwise dealt with by the Plan or the Confirmation Order, or any other Order of the Court entered prior to the Effective Date.

### **9.2 Assumed Executory Contracts and Unexpired Leases.**

Each executory contract and unexpired lease that is assumed will include (a) all amendments, modifications, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease; and (b) with respect to any executory contract or unexpired lease that relates to the use, ability to acquire, or occupancy of real property, all executory contracts or unexpired leases and other rights appurtenant to the property, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other equity interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements have been rejected pursuant to an order of the Bankruptcy Court or are the subject of a motion to reject filed on or before the Confirmation Date. Amendments, modifications, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtor during this Chapter 11 Case shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

### **9.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.**

Damages arising from the rejection of an executory contract or unexpired lease shall be a General Unsecured Claim against the Debtor unless subordinated under applicable law. Any Claim for damages arising from the rejection of an executory contract or unexpired lease must be asserted in a proof of claim filed with the Bankruptcy Court no later than 20 days following the earlier of: (a) the date of entry of an order of the Bankruptcy Court approving such rejection, or (b) the Effective Date of the Plan. Any Claims not filed within such times shall be discharged

and forever barred. The Reorganized Debtor shall mail a notice to all known affected parties and shall publish a notice in the Waco Tribune of (i) the Debtor's rejection of executory contracts and unexpired leases and (i) the deadline for asserting claims for damages arising from the rejection of such executory contracts and unexpired leases.

#### **9.4 Reservation of Rights.**

Nothing contained in the Plan shall constitute an admission by the Debtor that any such contract or lease is in fact an executory contract or unexpired lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Reorganized Debtor shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

### **ARTICLE 10 EFFECT OF CONFIRMATION**

#### **10.1 Legally Binding Effect.**

The provisions of the Plan shall bind all Creditors and Interest Holders, whether or not they accept the Plan. On and after the Effective Date, all holders of Claims and Equity Interests shall be precluded and enjoined from asserting any Claim (i) against the Debtor, the Reorganized Debtor or its assets and properties based on any transaction or other activity of any kind that occurred prior to the Confirmation Date except as permitted under the Plan; and (ii) any derivative claims, including claims against third parties asserting alter ego claims, fraudulent transfer claims or any other type of successor liability.

#### **10.2 Injunction.**

The entry of the Confirmation Order will operate as a general resolution with prejudice, as of the Effective Date, of all pending legal proceedings, if any, against the Debtor, the Reorganized Debtor and their assets and properties and any proceedings not yet instituted against the Debtor, the Reorganized Debtor or their assets and properties, except as otherwise provided in the Plan. Except as otherwise expressly provided in the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims against the Debtor or its assets and properties are permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor or the Reorganized Debtor, or their assets and properties, with respect to any such Claim, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any such Claim against the Debtor or the Reorganized Debtor, or their assets and properties, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or the Reorganized Debtor, or their assets and properties, with respect to such Claim, (d) asserting any right of subrogation of any kind against any obligation due to the Debtor or the Reorganized Debtor, or the property of the Debtor, the Estate or the Reorganized Debtor with respect to any such Claim and (e) asserting any right of setoff or recoupment against the Debtor, the Estate or the Reorganized Debtor except as specifically permitted by § 553 of the Bankruptcy Code. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, all injunctions or automatic stays provided for in these cases pursuant to § 105, if any, or § 362 of the



Bankruptcy Code, or otherwise, and in existence on the Confirmation Date will remain in full force and effect until the Effective Date.

### **10.3 Discharge of the Debtor.**

Pursuant to § 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or the Confirmation Order, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of all Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees/representatives of the Debtor prior to the Effective Date or that arise from a termination of employment or a termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code, in this Chapter 11 Case whether or not: (a) a Proof of Claim or Interest based upon such debt, right, Claim, or Interest is Filed or deemed Filed pursuant to § 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such Claim, debt, right, or Interest is Allowed pursuant to § 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Subject to the terms of the Plan and the Confirmation Order, any default by the Debtor with respect to any Claim or Interest that existed immediately prior to or on account of the filing of this Chapter 11 Case shall be deemed satisfied on the Effective Date. Subject to the terms of the Plan, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor, its Estate, the Reorganized Debtor and all successors thereto. As provided in § 524 of the Bankruptcy Code, subject to the terms of the Plan, such discharge shall void any judgment against the Debtor, its Estate, the Reorganized Debtor or any successors thereto at any time obtained to the extent it relates to a Claim or Interest discharged, and operates as an injunction against the prosecution of any action against the Reorganized Debtor or its property and assets to the extent it relates to a discharged Claim or Interest.

### **10.4 Continuation of Anti-Discrimination Provisions of the Bankruptcy Code.**

A Governmental Unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtor, the Reorganized Debtor, or another Person with whom the Debtor has been or is associated or affiliated, solely because of the commencement, continuation, or termination of the case or because of any provision of the Plan or the legal effect of the Plan, and the Confirmation Order will constitute an express injunction against any such discriminatory treatment by a Governmental Unit. Moreover, a Governmental Unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to the Debtor or the Reorganized Debtor based upon any requirement that the Debtor or the Reorganized Debtor place a bond or other surety obligation with such governmental unit as a condition of receipt of such a license, permit, charter, franchise, or other similar grant to the

Debtor or the Reorganized Debtor. All licenses, permits, charters, franchises, or other similar grants to the Debtor are hereby transferred and assigned on the Effective Date (which transfer and assignment is without the assumption of any liabilities arising prior to the Effective Date which liabilities arise out of such license, permit, charter, franchise or similar grant) to the Reorganized Debtor without the need for further application or approval by any Governmental Unit.

#### **10.5 Preservation of Claims and Rights.**

Confirmation of the Plan effects no settlement, compromise, waiver or release of any Claim, Cause of Action, Right of Action or claim for relief unless the Plan or the Confirmation Order specifically and unambiguously so provides. The non-disclosure or non-discussion of any particular Claim, Cause of Action, Right of Action or claim for relief is not and shall not be construed as a settlement, compromise, waiver, or release of any such Claim, Cause of Action, Right of Action or claim for relief.

**The Reorganized Debtor reserves any and all claims and rights against any and all third parties, whether such claims and rights arose before, on or after the Petition Date, the Confirmation Date, the Effective Date, the Record Date and/or any Distribution date, including, without limitation, any and all Causes of Action, Rights of Action and/or claims for relief that the Debtor or the Reorganized Debtor may have against (i) any insurer and/or insurance policies in which either the Debtor and/or their current or former personnel have an insurable or other interest in or right to make a claim against, any other of the Debtor's insurers; or (ii) any recipient of a transfer identified in the Debtor's statements of financial affairs, including any amendments thereto, filed in this Chapter 11 Case. The entry of the Confirmation Order shall not constitute *res judicata* or otherwise bar, estop or inhibit any actions by the Reorganized Debtor relating to any claims, Causes of Action or Rights of Action referred to in this Article, or otherwise. The Reorganized Debtor shall constitute the representative of the Estate for purposes of retaining, asserting and/or enforcing Rights of Action under § 1123(b)(3)(B) of the Bankruptcy Code. On the Effective Date, the Reorganized Debtor shall be substituted as a party of record in all pending litigation brought by or against the Debtor without need for further order of the Bankruptcy Court.**

### **ARTICLE 11** **CONFIRMATION OF THE PLAN**

#### **11.1 Confirmation Hearing.**

Section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan ("Confirmation Hearing"). The Confirmation Hearing has been scheduled before the Honorable Marvin Isgur, Chief United States Bankruptcy Judge, on \_\_\_\_, 2010 at \_\_\_\_ a.m. (Houston time), in Courtroom No. 404, 4<sup>th</sup> Floor, United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) provides that any party in interest may object to confirmation of the Plan. However, an impaired Creditor, who votes to accept the Plan, may not have standing to object to the Plan. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014 and any applicable Local Rules of the Bankruptcy Court. The deadline for filing objections to confirmation of the Plan is \_\_\_\_, 2010. Objections to confirmation must be filed with the Clerk of Court.

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

### **11.2 Statutory Requirements for Confirmation of the Plan.**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in § 1129 of the Bankruptcy Code, these requirements are as follows:

1. The Plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponent of the Plan complies with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or to be made by the Plan proponent, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable.
5. The proponent of the Plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, or a successor to the Debtor under the Plan; 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 proponent of the Plan has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider.
6. Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor, has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.
7. With respect to each class of impaired claims or equity interests:
  - (a) each holder of a claim or interest of such class:
    - (i) has accepted the Plan; or
    - (ii) will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such

holder would so receive or retain if the Plan Proponent were liquidated under Chapter 7 of the Bankruptcy Code on such date; or

(b) if § 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, the holder of a claim of such class will receive or retain under the Plan on account of such claim property of a value, as of the effective date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secured such claims.

8. With respect to each class of claims or interests:

(a) such class has accepted the Plan; or

(b) such class is not impaired under the Plan;

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that:

(a) with respect to a claim of a kind specified in § 507(a)(1) or § 507(a)(2) of the Bankruptcy Code, on the effective date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(b) with respect to a class of claims of a kind specified in §§ 507(a)(3), 507(a)(4), 507(a)(5) or 507(a)(6) of the Bankruptcy Code, each holder of a claim of such class will receive:

(i) if such class has accepted the Plan, deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the Plan, cash on the effective date of the Plan equal to the allowed amount of such claim; and

(c) with respect to a claim of a kind specified in § 507(a)(8) of the Bankruptcy Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the Plan, equal to the allowed amount of such claim.

10. If a class is impaired under the Plan, at least one class of claims that is impaired has accepted the Plan, determined without including any acceptance of the Plan by any insider.

11. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the plan proponent or any successor to the plan proponent under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Debtor believes that the Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Debtor has complied or will have complied with all of the requirements of Chapter 11, and that the proposal of the Plan is made in good faith.

The Debtor further believe that the holders of all Claims impaired under the Plan will receive payments or distributions under the Plan having a present value as of the Effective Date

in amounts not less than the amounts likely to be received by such holders if the Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code.

Finally, the Debtor does not believe that the confirmation of the Plan will likely be followed by the need for further financial reorganization of the Debtor.

### **11.3 Cramdown.**

In the event that any impaired class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan if, as to each impaired class which has not accepted the Plan, the Plan does not discriminate unfairly and is “fair and equitable.” A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests.

“Fair and equitable” has different meanings with respect to the treatment of secured and unsecured claims. As set forth in § 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

1. With respect to a class of secured claims, the Plan provides:
  - (a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the Plan Proponent or transferred to another entity, to the extent of the allowed amount of such claims; and  
  
(ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder’s interest in the estate’s interest in such property;
  - (b) for the sale, subject to § 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or
  - (c) for the realization by such holders of the indubitable equivalent of such claims.
2. With respect to a class of unsecured claims, the Plan provides:
  - (a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or
  - (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

3. With respect to a class of interests, the Plan provides:
  - (a) that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
  - (b) the holder of any interest that is junior to the interests of such class will not receive or retain under the Plan on account of such junior interest any property.

The Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims. The Debtor believes that the Bankruptcy Court will find these requirements satisfactory and will confirm the Plan.

#### **11.4 Conditions Precedent to Effective Date.**

The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order, in a form and in substance reasonably satisfactory to the Debtor, shall have been entered by the Bankruptcy Court; (ii) the form of all documents necessary or appropriate to give effect to the transactions contemplated under the Plan, if any, have been approved and executed; (iii) all required consents, approvals, and authorizations, if any, have been obtained; (iv) the New Equity Contribution shall have been deposited with the Reorganized Debtor; (v) there shall be no stay of the Confirmation Order in effect; and (vi) all other actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

The Effective Date is defined in the Plan as the day selected by the Debtor that is no earlier than the first Business Day after (i) the date the Confirmation Order becomes a Final Order; and (ii) all conditions precedent specified above have been satisfied or waived.

#### **11.5 Annulment of Plan if Conditions Not Waived or Satisfied.**

The Debtor reserves the right to waive any of the conditions precedent to the Effective Date. If any of the conditions precedent is not waived, and is not satisfied within the specified time periods or can no longer occur, the Confirmation Order will be annulled and the Debtor and all parties in interest will return to the *status quo ante* immediately before the entry of the Confirmation Order.

#### **11.6 Retention of Jurisdiction by Bankruptcy Court.**

The Court shall retain and have exclusive jurisdiction over this Chapter 11 Case to the maximum extent provided by law for the following purposes following the Confirmation Date: (a) to determine any and all objections to the allowance and classification of Claims or Interests; (b) to determine the validity and priority of any Lien; (c) to determine the Allowed Amount of any Claim, whether secured or unsecured; (d) to allow any and all applications for allowances of compensation and reimbursement of expenses payable from the estate; (e) to determine any and

all applications or motions pending before the Court on the Effective Date of the Plan, including without limitation any motions for the rejection, assumption or assumption and assignment of any executory contract or unexpired lease; (f) to consider and approve any modification of the Plan, remedy any defect or omission or reconcile any inconsistency in the Plan, or any order of the Court, including the Confirmation Order; (g) to hear and determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan, the Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or related to any of the foregoing; (h) to consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor; (i) to issue orders in aid of execution and implementation of the Plan and the Confirmation Order, to the extent authorized by 11 U.S.C. § 1142 or provided by the terms of the Plan; and (j) to hear and determine matters concerning federal, state or local taxes in accordance with §§ 346, 505 or 1146 of the Bankruptcy Code.

In no event shall the provisions of the Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334.

## **ARTICLE 12 COMPROMISES AND SETTLEMENTS**

### **12.1 Effect of Confirmation Order.**

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate, Creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 Bar Date for Administrative Claims.**

No Administrative Claim, other than Professional Fees and United States Trustee fees and administrative claims for the actual cost of goods and services provided to the Debtor in the ordinary course of business, will be paid unless the holder of such Administrative Claim has filed an application for payment of such Administrative Claim on or before the Administrative Claim Bar Date. Upon the filing of any application for payment, the entity seeking payment of an Administrative Claim shall provide notice by United States Mail in accordance with the Bankruptcy Rules. Any Administrative Claim, other than Professional Fees, United States Trustee fees and administrative claims for the actual cost of goods and services provided to the Debtor in the ordinary course of business, not filed in accordance with the Plan shall be barred

and the Debtor and the Reorganized Debtor shall have no liability for payment of any such Administrative Claim.

### **13.2 Objections to Administrative Claims.**

Objections to Applications for payment of Administrative Claims may be filed by any party in interest. In order to be considered, such objections must be filed on or before the 21<sup>st</sup> day following the date on which the application was filed. Any objections will be determined by the Bankruptcy Court.

### **13.3 Payment of Professional Claims.**

Each holder of a Professional Fee Claim shall be paid in respect of such Professional Fee Claim in Cash, in full, on the Effective Date, or, if such Claim has not been approved by the Bankruptcy Court on or before the Effective Date, promptly after Bankruptcy Court approval of the Professional Fee Claim by a Final Order. Final fee applications for any Professional Fee Claim that has not been approved as of the Effective Date shall be filed within forty-five (45) days of the Effective Date and such applications and objections thereto (if any) shall be filed in accordance with and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the applicable local rules. The failure to file an application by the foregoing deadline shall constitute a waiver of all such Professional Fee Claim.

### **13.4 Payment of United States Trustee Fees.**

Within thirty (30) days of the date that such payments are due, the Reorganized Debtor shall pay all amounts owing to the United States Trustee as fees and costs imposed in connection with this Chapter 11 Case.

### **13.5 Employee Benefits Plans.**

Any Employee Benefit Plans maintained by the Debtor shall be continued by the Reorganized Debtor in accordance with applicable law.

### **13.6 Satisfaction of Liabilities.**

The rights afforded in the Plan and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction and release of all Claims and Interests of any nature whatsoever against the Debtor or its Estate, assets, properties, or interests in property. Neither the Debtor or the Reorganized Debtor shall be responsible for any pre-Effective Date obligations of the Debtor.

### **13.7 Compliance with Tax Requirements.**

In connection with each distribution with respect to which the filing of an information return (such as an Internal Revenue Service Form 1099 or 1042) or withholding is required, the Reorganized Debtor shall file such information return with the Internal Revenue Service and provide any required statements in connection therewith to the recipients of such distribution or effect any such withholding and deposit all moneys so withheld as required by law. With respect



to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received by the Reorganized Debtor within thirty (30) days from the date of such request, the Reorganized Debtor may, at its option, withhold the amount required and distribute the balance to such Person or decline to make such distribution until the information is received.

### **13.8 Amendment of the Plan.**

The Plan may be amended or modified by the Debtor before, or by the Reorganized Debtor after the Effective Date, as provided in § 1127 of the Bankruptcy Code.

### **13.9 Timing of Distributions.**

When a provision of the Plan requires that a payment shall be made on a certain date, such payment may be made (i) at any time prior to the date on which such payment is due; (ii) in more frequent intervals than set forth in such provision of the Plan; or (iii) not more than 14 days after the date any such payment is due. Notwithstanding the foregoing and unless specifically set forth to the contrary in the Plan, no payment shall be considered late or otherwise result in a default unless the Reorganized Debtor has failed to make the payment after the passage of 30 days following the receipt by the Reorganized Debtor of a written notice advising that a payment has not been received in accordance with the times set forth in this paragraph.

### **13.10 Enforcement of Subordination Agreements/Settlement Agreements.**

Any written (i) subordination agreement between holders of Allowed Claims; and (ii) settlements approved by the Bankruptcy Court during this Chapter 11 Case will be honored according to their terms for the purposes of distribution under the Plan.

### **13.11 Right to Seek Further Orders.**

The Reorganized Debtor, if and to the extent necessary, will seek such orders, judgments, injunctions, regulatory approvals, and rulings that may be required to carry out and further the intentions and purposes, and give full effect to the provisions, of the Plan.

### **13.12 Regulatory Approvals.**

As the Plan is not intended to modify or supplant any regulatory authority over the Debtor or the Reorganized Debtor, all regulatory approvals required in connection with the Plan will be sought and obtained.

### **13.13 Withdrawal of Plan.**

The Debtor reserves the right to withdraw the Plan at any time prior to the Confirmation Date. If the Debtor withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute an admission, waiver or release of any Claims by or against the Debtor, the Estate or any other person, or to prejudice in any

manner the rights of the Debtor, the Estate or any person in any further proceedings involving the Debtor.

#### **13.14 Due Authorization by Creditors.**

Each and every Creditor who elects to participate in the Distributions provided for herein (i) warrants that it is authorized to accept in consideration of its Claim against the Debtor the Distributions provided for in the Plan; (ii) states that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by it under the Plan; and (iii) indemnifies and holds harmless the Reorganized Debtor and their professionals and representatives with respect to such Distributions.

#### **13.15 Filing of Additional Documentation.**

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### **13.16 Substantial Consummation.**

On the Effective Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code §§ 1101 and 1127(b).

#### **13.17 Further Effect of Confirmation.**

Confirmation of the Plan effects no settlement, compromise, waiver or release of any Claim or cause of action unless the Plan or the Confirmation Order specifically so provides. The non-disclosure or non-discussion of any particular Claim or cause of action is not and shall not be construed as a settlement, compromise, waiver, or release of any such Claim or cause of action.

#### **13.18 Reservation of Claims.**

The Debtor and the Reorganized Debtor reserve any and all claims and rights against any and all third parties, whether such claims and rights arose before, on or after the Petition Date, the Confirmation Date, the Effective Date, the Record Date and/or any Distribution Date, including, without limitation, any and all Claims and Causes of Action for relief that the Debtor, the Reorganized Debtor or the Reorganized Debtor may have against any director, officer, any insurer under any insurance policy, or any other person or entity. The entry of the Confirmation Order shall not constitute res judicata or otherwise bar, estop or inhibit any actions by the Debtor or the Reorganized Debtor relating to any Claims or Causes of Action.

#### **13.19 Dates.**

The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Plan.

### **13.20 Governing Law.**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to any conflicts of law principles.

### **13.21 Conflict.**

Except as otherwise provided in the Plan, to the extent the Confirmation Order and/or the Plan are inconsistent with the Disclosure Statement, any other agreement entered into between the Debtor and any third party, the Plan controls the Disclosure Statement and any such agreements and the Confirmation Order (and any other orders of the Bankruptcy Court) controls the Plan.

### **13.22 Setoffs.**

The Reorganized Debtor may, but shall not be required to, set off against any Claims and the payments or Distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever that the Estate or the Reorganized Debtor may have against the Holder of any Claim, but neither the failure to do so nor the Allowance of any such Claims, whether pursuant to the Plan or otherwise, shall constitute a waiver or release by the Reorganized Debtor of any such claims they may have against such Holder of any Claim, and all such claims shall be reserved for and retained by the Reorganized Debtor.

### **13.23 Other Considerations.**

The Plan affords holders of Claims the potential for the greatest realization on the Debtor's assets and, therefore, is in the best interests of such holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) continuation of the Chapter 11 Case; (b) alternative plans of reorganization/liquidation; (c) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code; and (d) dismissal of the Chapter 11 Case.

### **13.24 Feasibility of the Plan.**

Pursuant to the Plan, the Debtor proposes an equity infusion into the Debtor, to restructure its indebtedness to Sterling Bank and E.E. Reed and provide for payment to unsecured creditors from the cash flow of the property, the Plan is feasible.

### **13.25 Alternative Plans of Reorganization.**

If the Plan is not confirmed, another party in interest in the case could attempt to formulate and propose a different plan or plans. Such plans might, theoretically, involve some other form of reorganization or liquidation of the Debtor's Property. Any alternative plans, however, would likely result in additional administrative expenses to the estates and would provide little or no benefit. The Plan proposed by the Debtor is straightforward, meets the requirements of § 1129 and provides the best outcome for Creditors.

### **13.26 Liquidation under Chapter 7.**

The Debtor does not believe that the case should be converted to Chapter 7. Conversion to Chapter 7 would result in the loss of the going concern value of the Debtor as well as the additional administrative expenses attributable to statutory trustee fees and professional fees for the trustee's professionals. In a chapter 7 liquidation, the Debtor believes that Sterling Bank would be permitted to foreclose on Heritage Quarters and that no payments would be made to other creditors other than the *ad valorem* taxing authorities. To the contrary, under the Plan, all secured creditors should be paid in full with funds available for the payment of administrative, priority and other unsecured claims. If the true amount of Claims is close to that scheduled by the Debtor, General Unsecured Creditors could receive close to full payment on their claims. This is an estimate only and constitutes the Debtor's best guess based upon the data currently available.

### **13.27 Risk Factors.**

Both failure to achieve confirmation of the Plan, and consummation of the Plan, are subject to certain risks. First, the effectiveness of the Plan is contingent on execution of documents acceptable to Sterling Bank and E.E. Reed as well as the funding of the New Equity Contribution. A number of factors can impact the satisfaction of the conditions precedent to the Effective Date, including factors that are outside of the Debtor's control. While the Debtor believes that the conditions precedent will be accomplished, there is always some risk involved in the type of transaction that is contemplated.

In addition, there are certain risks inherent in the administration process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if Creditors and Interest holders accept the Plan. Although the Debtor believes that the Plan meets such standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Debtor to resolicit acceptances, which could delay and/or jeopardize confirmation of the Plan. The Debtor believes that the solicitation of votes on the Plan will comply with § 1126(b) and that the Bankruptcy Court will confirm the Plan. The Debtor cannot, however, provide assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that such modifications will not require a resolicitation of acceptances.

### **13.28 Taxation.**

#### **13.28.1 Introduction.**

The following discussion summarizes certain federal income tax consequences of the transactions described herein and in the Plan. This discussion is for informational purposes only and does not constitute tax advice. This summary is based upon the Internal Revenue Code and the Treasury Regulations promulgated thereunder, including judicial authority and current administrative rulings and practice as of the date of this Disclosure Statement and will not be updated for subsequent tax or factual developments. Neither the impact on foreign holders of claims and equity interests nor the tax consequences of these transactions under state and local law is discussed. Also, special tax considerations not discussed herein may be applicable to

certain classes of taxpayers, such as financial institutions, broker-dealers, insurance companies, mutual funds, regulated investment companies, real estate investment trusts, trusts, S corporations, dealers and traders in securities and currencies, partnerships and other entities classified as partnerships for federal tax purposes and tax-exempt organizations. Furthermore, due to the complexity of the transactions contemplated in the Plan, and the unsettled status of many of the tax issues involved, the tax consequences described below are subject to significant uncertainties including subsequent legislative and other tax changes. No opinion of counsel has been obtained and no ruling has been requested from the Internal Revenue Service (“IRS”) on these or any other tax issues. There can be no assurance that the IRS will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained. **HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR IS THEREFORE URGED TO CONSULT WITH THEIR TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

### **13.28.2 Tax Consequences to the Debtor.**

The Debtor will realize cancellation of indebtedness (“COI”) income in respect of each Claim generally in an amount equal to the excess, if any, of (i) the portion of the Claim (including accrued and previously deducted but unpaid interest) from which the Debtor is (or are deemed to be) discharged; and (ii) the sum of any cash or the “issue price,” under the Internal Revenue Code of 1986 (the “Internal Revenue Code”) §§ 1273(b) and 1274, of any debt obligations distributed under the Plan in discharge of such Claims. The exact amount of COI income realized upon consummation of the Plan has not been finally determined. Under the Internal Revenue Code, a taxpayer is generally required to include COI income in gross income. COI income is not includable in gross income; however, if it occurs in a case under the Bankruptcy Code, provided the taxpayer is under the jurisdiction of a Court in such case and the cancellation of indebtedness is granted by the Court or is pursuant to a plan approved by the Court. The Debtor’s COI income, if any, resulting from the Plan should satisfy these requirements, and, therefore, should not result in recognition of gross income to the Debtor. COI income that is excluded from gross income will reduce certain tax attributes of the taxpayer, including net operating loss and S corporation losses suspended under Internal Revenue Code Section 1361(d) (hereinafter “NOLs”) carryovers, capital loss carryovers and the tax basis of assets, in a specified order of priority beginning with the NOLs and NOL carryovers, unless the taxpayer elects to have the reduction applied first to the tax basis of depreciable assets. The reduction of tax basis is limited to the excess of (i) the aggregate of the tax bases of the taxpayer’s property (determined immediately after the discharge); and (ii) the aggregate liabilities of the taxpayer (determined immediately after the discharge). The exclusion for COI is deemed to occur immediately following the end of the Debtor’s tax year, and not during the tax year, which can impact the consequences to the Debtor’s shareholders particularly with respect to allocable net losses.

No cash is expected to be distributed to the equity holders of the Debtor to satisfy any federal income tax arising from such allocable net income or net gain. Accordingly, equity holders may be required to fund any income tax liability for net income and/or gain from the Debtor from other sources.

### **13.28.3 Tax Consequences to Creditors.**

**In General.** The federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether its Claim constitutes a debt or security for federal income tax purposes, (b) whether the Claimant receives consideration in more than one tax year, (c) whether the Claimant is a resident of the United States, (d) whether all the consideration by the Claimant is deemed to be received by that Claimant as part of an integrated transaction, (e) whether the Claimant utilizes the accrual or cash method of accounting for tax purposes, and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

**Gain or Loss on Exchange.** Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount, as described below) if the Claim was a capital asset in the hand of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

The tax treatment of an Allowed Claim for accrued unpaid interest will depend on the Claimant's tax basis in such Claim, which primarily depends on whether the Claimant has previously recognized income for the accrual of such interest and/or recognized a loss with respect to same. Any such holders should consult with its tax advisor regarding the tax treatment of any such accrued unpaid interest.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

### **13.28.4 Information Reporting and Backup Withholding.**

Under the backup withholding rules of the Internal Revenue Code, holders of Claims may be subject to backup withholding with respect to payments made pursuant to the Plan unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividends and interest income. Any amount withheld under these rules will be credited against the holder's federal income tax liability. Holders of Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

### **13.28.5 Importance of Obtaining Professional Assistance.**

**THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE**

**FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT, THE PLAN OR ANY RELATED MATERIALS, IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY YOU, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON YOU UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND (B) ANY SUCH DISCUSSIONS ARE BEING USED ONLY IN CONNECTION WITH SATISFYING THE REQUIREMENTS IMPOSED UNDER THE BANKRUPTCY CODE FOR DISCLOSURE STATEMENTS, AND (C) YOU SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR WITH RESPECT TO YOUR FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES BASED ON YOUR PARTICULAR CIRCUMSTANCES.**

## **ARTICLE 14** **CAUSES OF ACTION**

### **14.1 Preferences.**

Under the Bankruptcy Code, the Debtor may recover certain preferential transfers of property, including cash, made while insolvent during the 90 days immediately prior to the filing of their bankruptcy petition with respect to pre-existing debts, to the extent the transferee received more than it would have in respect of the pre-existing debt had the Debtor been liquidated under Chapter 7 of the Bankruptcy Code. In the case of “insiders,” the Bankruptcy Code provides for a one-year preference period. There are certain defenses to such recoveries. Transfers made in the ordinary course of the Debtor’s and transferee’s business according to the ordinary business terms in respect of debts less than 90 days before the filing of a bankruptcy are not recoverable. Additionally, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension of credit may constitute a defense to recovery, to the extent of any new value, against an otherwise recoverable transfer of property. If a transfer is recovered by the Debtor, the transferee has an Unsecured Claim to the extent of the recovery. The Reorganized Debtor reserves the right to bring preferential transfer claims.

### **14.2 Fraudulent Transfers.**

Under the Bankruptcy Code and various state laws, the Debtor may recover certain transfers of property, including the grant of a security interest in property, made while insolvent or which rendered the Debtor insolvent. The Reorganized Debtor reserves the right to bring fraudulent conveyance claims.

The Debtor conducted a limited analysis of potential recoveries under Chapter 5 of the Bankruptcy Code and concluded that potential claims do not exist. A list of the known payments are set forth in the Debtor’s statements of financial affairs, which are incorporated herein. Creditors and Interest Holders are advised that if they received a voidable transfer, they may be sued whether or not they vote to accept the Plan. All avoidance actions and rights pursuant to §§ 506(c), 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b), 553 and 724 of the

Bankruptcy Code and all causes of action under state, federal or other applicable law shall be retained and may be prosecuted or settled by the Reorganized Debtor in its sole discretion. To the extent that material amounts are recovered, it will enhance the returns to the holders of Unsecured Claims.

**ARTICLE 15**  
**VOTING PROCEDURES AND REQUIREMENTS**

**15.1 Ballots and Voting Deadline.**

A ballot to be used to vote to accept or reject the Plan is enclosed with this Disclosure Statement. A Creditor who is voting must (1) carefully review the ballot and instructions thereon, (2) complete and execute the ballot indicating the Creditor's vote to either accept or reject the Plan, and (3) return the executed ballot to the address indicated thereon by the deadline specified by the Bankruptcy Court.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received by the Debtor no later than \_\_\_\_\_, 2010.

If you hold an impaired Claim against the Debtor return your ballot to:

DAVID R. JONES  
PORTER & HEDGES, L.L.P.  
1000 MAIN STREET, 36<sup>TH</sup> FLOOR  
HOUSTON, TEXAS 77002  
PHONE: 713-226-6653  
FAX: 713-226-6253  
Email: [djones@porterhedges.com](mailto:djones@porterhedges.com)

**TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED  
NO LATER THAN \_\_\_\_\_, 2010**

**15.2 Creditors Entitled to Vote.**

Any Creditor whose Claim is impaired under the Plan is entitled to vote, if either (i) the Debtor has scheduled its Claim on its Statement of Liabilities and such Claim is not scheduled as disputed, contingent or unliquidated, or (ii) such Creditor has filed a Proof of Claim on or before the last date set by the Bankruptcy Court for filing Proofs of Claim and no objection has been filed to such Claim.

Holders of Disputed Claims are not entitled to vote on the Plan. Any Claim to which an objection has been filed and remains pending, is not entitled to vote unless the Bankruptcy Court, upon motion by the Creditor who holds a Disputed Claim, temporarily allows the Claim in an amount that it deems proper for accepting or rejecting the Plan. Any such motion must be heard and determined by the Bankruptcy Court before the date established by the Bankruptcy Court as the final date to vote on the Plan. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the Creditor was not solicited or obtained in good faith or according to the provisions of the Bankruptcy Code.



Classes of Claims that are not impaired are deemed to have accepted a plan of reorganization pursuant to § 1126(f) and, therefore, are not entitled to vote on a plan. Pursuant to § 1126, only classes of claims or interests that are "impaired" are entitled to vote on a plan of reorganization. Generally, a claim is impaired if the plan of reorganization alters the legal, equitable, or contractual rights to which the holder of such claim is otherwise entitled.

### 15.3 Voting Procedures.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by the Debtor, in their sole discretion, and the Debtor's determination will be final and binding. The Debtor also reserves the right to reject any Ballot not in proper form, the acceptance of which would, in the opinion of the Debtor or their counsel, be unlawful. The Debtor further reserves the right to waive any defects or irregularities or conditions or delivery as to any particular Ballot. The interpretation by the Debtor of the provisions of this Disclosure Statement and the Ballots will be final and binding on all parties in interest unless otherwise directed by the Bankruptcy Court. Unless waived, any defects or irregularities concerning deliveries of Ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determine. Neither the Debtor nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made and will be invalidated unless or until all defects and irregularities have been timely cured or waived.

### 15.4 Vote Required for Class Acceptance.

The Bankruptcy Code defines acceptance of a chapter 11 plan by a class of Claims as the acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half in number of the allowed Claims of the class actually voting to accept or reject the proposed plan. The Bankruptcy Code defines acceptance of a chapter 11 plan by a class of Interests as the acceptance by holders of at least two-thirds (2/3) in amount of the allowed Interests in the class actually voting to accept or reject the proposed plan.

### 15.5 Cramdown and Withdrawal of the Plan.

If the Plan is not accepted by all classes of impaired Creditors, the Debtor reserves the right to withdraw the Plan. If the Plan is accepted by one or more Classes of impaired Creditors of the Debtor, the Debtor reserve the right to request the Bankruptcy Court to approve the Plan under 11 U.S.C. § 1129(b). **THE DEBTOR STRONGLY URGES ALL IMPAIRED CREDITORS TO VOTE TO ACCEPT THE PLAN.**

**Date: November 19, 2010.**

By: 

SWB WACO SH GP, LLC

General Partner

By: David Wallace, Vice President

**SCHEDULE 1**