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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

STARPOINTE ADERRA CONDOMINIUMS,
L.P., a Delaware limited partnership,

Debtor.

Chapter 11 Proceedings

No. 2:09-bk-33625 RJH

AMENDED DISCLOSURE STATEMENT TO ACCOMPANY THE DEBTOR'S
LIQUIDATING CHAPTER 11 PLAN
DATED February 7, 2011

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I. INTRODUCTION.

Starpointe Aderra Condominiums, L.P. ("Debtor" or "Starpointe Aderra"), the duly appointed Debtor in Possession in this Chapter 11 Case, has prepared this Disclosure Statement (hereinafter the "Disclosure Statement") to solicit acceptances of its Liquidating Plan (the "Plan") filed with the United States Bankruptcy Court for the District of Arizona on February 7, 2011. The Plan is attached hereto as Exhibit 1. Although Starpointe Aderra initially intended to retain its assets and reorganize its debts, it became clear over the course of the Chapter 11 that without the support of CCS of Arizona II, LLC ("CCS"), the senior secured lender, (which it did not have), it would be difficult if not impossible to succeed in confirming a plan of reorganization. Thus, in January 2011 Starpointe Aderra and CCS negotiated a settlement whereby Starpointe Aderra agreed to stay relief to allow CCS to foreclose on its collateral, and CCS agreed to waive its unsecured claims against Starpointe Aderra and to allow Starpointe Aderra to retain \$600,000 to fund a distribution to its remaining creditors through a plan of liquidation (the "CCS Settlement"). A motion to approve the CCS Settlement was filed with the Bankruptcy Court on February 1, 2011 and is set for hearing on February 16, 2011. The attached Liquidating Plan is premised on the Court's approval of the CCS Settlement.

A. PURPOSE OF THE DISCLOSURE STATEMENT.

Debtor is disseminating this Disclosure Statement pursuant to § 1125 of the Bankruptcy Code to provide holders of Claims against and Interests in the Debtor with sufficient information to permit them to cast votes to accept or reject the Plan. The Bankruptcy Court has approved this Disclosure Statement for use in connection with this process and has also established deadlines for the casting of ballots on the Plan and for estimating Claims. These dates are set forth on the Order and Notice sent with this Disclosure Statement.

1 **B. VOTING ON PLAN AND ELECTION OF TREATMENT.**

2 The Plan provides that each Claim against, or Interest in, the Debtor will be placed
3 into one of several Classes. The Plan also specifies the treatment provided for each such
4 Class. The Classes and their treatment are described in the Plan and below, in Section IV,
5 beginning on page 15. Only holders of Claims or Interests in Classes that are “impaired”
6 under the Plan are entitled to vote on the Plan.

7 If a holder of a Claim or Interest is entitled to vote, such holder may do so by
8 completing and delivering the accompanying ballot form in the manner and within the time
9 specified in the accompanying notice. If you are a holder of a Claim or Interest entitled to
10 vote, **your vote on the Plan is important.**

11 **C. OVERVIEW OF THE DISCLOSURE STATEMENT.**

12 This Disclosure Statement is designed to afford creditors and holders of equity
13 interests in the Debtor with adequate information to make an informed judgment about the
14 Plan. Creditors and Interest holders are urged to read the Plan in its entirety. In the event of
15 a conflict between the Plan and the Disclosure Statement, the terms of the Plan, and the order
16 of the Bankruptcy Court confirming the Plan, shall control.

17 Section II of the Disclosure Statement (beginning on page 8) provides historical
18 information regarding the Debtor’s business, assets and liabilities, and the circumstances
19 surrounding the filing of the bankruptcy proceeding. Section III (beginning on page 12)
20 summarizes developments during the course of this Chapter 11 case. Section IV (beginning
21 on page 15) summarizes the provisions of the Plan, including the classification and treatment
22 of Claims and Interests. Section V (beginning on page 22) contains financial information
23 regarding the Debtor and describes the projections used to prepare the Plan and the
24 distributions to be made under the Plan based upon the assumptions identified in the
25 projections. Section VII (beginning on page 22) discusses the legal requirements for the
26 confirmation of the Plan. Section VIII (beginning on page 25) discusses the tax

1 consequences of the Plan. Section IX (beginning on page 25) discusses certain Claims Bar
2 Date and Effective Date issues raised by the Plan. Section X (beginning on page 26)
3 contains the Debtor's recommendation with respect to the Plan.

4 **D. OVERVIEW OF THE PLAN.**

5 **1. Background to the Reorganization.**

6 Starpointe Aderra is an upscale community of 312 condominium units located in
7 thirteen three-story buildings in North Central Phoenix. Starpointe Aderra is one of several
8 local 'Starpointe' real estate projects developed by Starpointe Communities. The principals
9 of Starpointe Communities are Robert A. Lyles and Patricia A. Watts. Starpointe
10 Communities is a Scottsdale-based business with an impeccable record of building award-
11 winning communities. Over the past fourteen years in business in Arizona, it has grown into
12 a sizeable operation, employing hundreds of construction and real estate related personnel
13 and businesses.

14 On or about June 23, 2005, Starpointe Aderra entered into three loan transactions
15 with Ohio Savings Bank ("OSB") to fund the purchase and construction of the Starpointe
16 Aderra development. The complete Loan Agreement had three notes, a Land Loan, in the
17 original amount of \$20,000,000; a Mezzanine Loan in the original amount of \$3,325,000;
18 and a Unit Construction Loan, in the original amount of \$15,000,000.

19 OSB secured the Loan Agreement with a Deed of Trust, Assignment of Rents,
20 Security Agreement and Fixture Filing (the "Deed of Trust") which was recorded on or about
21 July 25, 2005 with the Maricopa County Recorder's Office. The Loan Agreement was
22 further secured by an Assignment of Rents and Leases and Agreements (the "Assignment of
23 Rents") which was recorded on the same date.

24 Subsequently, on or about January 25, 2007, the parties modified the Loan
25 Agreement to increase the principal amount of the Unit Construction Loan to \$22,877,000
26

1 (the “2007 Loan Modification”). Subsequent to the 2007 Loan modification, AmTrust Bank
2 (“AmTrust”) took over OSB in a banking merger between the parties.

3 Under the terms of the Loan Agreement, the Land Loan and Mezzanine Loan matured
4 on June 23, 2008 and the Unit Construction Loan matured on December 23, 2008.
5 Unfortunately, due to the collapse of the real estate market, Starpointe Aderra was unable to
6 make the payments due on the maturity dates.

7 In August of 2009, CCS Arizona II, LLC (“CCS”), purchased the Loan Agreement
8 (all three notes) from AmTrust for \$18,424,974. At the time of the purchase, the outstanding
9 loan balance was approximately \$27,015,831.83 (*i.e.*, the Loan Agreement was purchased for
10 an approximate discount of 32%). By acquiring these assets, CCS became a secured creditor
11 with liens in virtually all Starpointe Aderra’s assets. On September 30, 2009, CCS recorded
12 a notice of trustee’s sale on Starpointe Aderra. The trustee’s sale was scheduled for
13 December 30, 2009 (the day immediately following the Petition Date).

14 Understanding that the imminent foreclosure of the property would leave Starpointe
15 Aderra’s unsecured creditors unpaid, and hopeful that the project could fully repay the
16 obligations to CCS and Starpointe Aderra’s remaining creditors over time (based on CCS’s
17 and Starpointe Aderra’s internal projections), Starpointe Aderra sought Chapter 11 protection
18 on December 29, 2009.

19 **2. Funding for the Plan.**

20 Although Starpointe Aderra initially intended to retain its assets and reorganize its
21 debts, it became clear over the course of the Chapter 11 that without the support of CCS
22 (which it did not have), it would be difficult if not impossible to succeed in confirming a plan
23 of reorganization. Thus, in January 2011 Starpointe Aderra and CCS negotiated a settlement
24 whereby Starpointe Aderra agreed to stay relief to allow CCS to foreclose on its collateral,
25 and CCS agreed to waive its unsecured claims against Starpointe Aderra and to allow
26 Starpointe Aderra to retain \$600,000 to fund a distribution to its remaining creditors through

1 a plan of liquidation (the “CCS Settlement”). A motion to approve the CCS Settlement was
2 filed with the Bankruptcy Court on February 1, 2011 and is set for hearing on February 16,
3 2011. The Liquidating Plan is premised on the Court’s approval of the CCS Settlement.

4 Under the Plan, the Debtor intends to distribute to its creditors the \$600,000 in
5 proceeds that it will receive upon approval of the CCS Settlement. The funds will be used to
6 pay down the Allowed Claims of Estate creditors in accordance with the priority scheme set
7 forth in the Bankruptcy Code. Unsecured creditors are impaired under the Plan.

8 **3. Treatment of Claims.**

9 The Plan classifies Claims in accordance with the provisions of the Bankruptcy Code
10 based upon priority, security and other factors. The Plan and Disclosure Statement detail
11 these classes and their treatments, which may be summarized as follows:

12 **(a) Administrative and Priority Claims.**

13 Administrative Claims and expenses arising during Chapter 11 proceedings, and any
14 Allowed Priority Claims will be paid in full on the Effective Date of the Plan.

15 **(b) Secured claims**

16 The only claims secured by liens against the Debtor’s property will be resolved upon
17 the Court’s approval of the CCS Settlement. Under the CCS Settlement, CCS will be granted
18 relief from stay to foreclose and take title to the Real Property. In exchange, CCS will waive
19 its unsecured deficiency claims against the Debtor’s estate and will allow the Debtor to
20 retain \$600,000 for payment toward administrative, priority and unsecured creditors.

21 **(c) General Unsecured Claims**

22 Holders of allowed unsecured claims will be paid their pro rata share of the \$600,000
23 settlement fund after payment of Administrative and Priority Claimants.

1 (d) Equity.

2 Under the Plan, the existing equity interests will be cancelled.

3 E. DEFINITIONS.

4 Most words or phrases used in this Disclosure Statement have their usual and
5 customary meanings. Words or phrases with initial capital letters have the definitions set
6 forth in the Plan or in the Bankruptcy Code.

7 F. MATTERS MERITING SPECIAL ATTENTION.

8 Creditors and other interested parties are urged to read the entire Disclosure
9 Statement and the Plan. The following matters are considered of special importance:

10 **DEADLINE FOR SUBMITTING BALLOTS**

11 **EXECUTED BALLOTS MUST BE RECEIVED NO LATER THAN 5:00**
12 **P.M., MOUNTAIN STANDARD TIME ON THE DUE DATE SET BY**
13 **THE COURT. SINCE MAIL DELAYS MAY OCCUR, BALLOTS**
14 **SHOULD BE MAILED OR DELIVERED WELL IN ADVANCE OF**
15 **THE SPECIFIED DATE. ANY BALLOTS RECEIVED AFTER THE**
16 **DUE DATE MAY NOT BE INCLUDED IN ANY CALCULATION TO**
17 **DETERMINE WHETHER CREDITORS HAVE VOTED TO ACCEPT**
18 **OR REJECT THE PLAN.**

19 **VOTING AND IMPAIRMENT**

20 **THE PLAN AND THIS DISCLOSURE STATEMENT IDENTIFY**
21 **DEBTOR'S JUDGMENT AS TO WHETHER EACH CLASS OF**
22 **CLAIMS OR INTERESTS IS "IMPAIRED" UNDER THE**
23 **BANKRUPTCY CODE, BUT THE COURT ULTIMATELY**
24 **DETERMINES WHETHER A CLASS IS IMPAIRED. THE**
25 **BANKRUPTCY CODE PROVIDES THAT CLAIMS OR INTERESTS**
26 **IN A CLASS THAT IS NOT IMPAIRED SHALL BE CONCLUSIVELY**
DEEMED TO ACCEPT THE PLAN ACCORDINGLY, IF YOU
DISAGREE WITH DEBTOR'S JUDGMENT THAT YOUR CLASS IS
NOT IMPAIRED, YOU SHOULD SUBMIT A BALLOT AND SEEK A
DETERMINATION BY THE COURT OF YOUR RIGHT TO VOTE
ON THE PLAN.

IMPORTANCE OF VOTE

YOUR VOTE IS IMPORTANT AND MAY DETERMINE WHETHER
THE PLAN IS CONFIRMED. YOU ARE URGED TO STUDY THE

1 PLAN CAREFULLY AND TO CONSULT WITH YOUR COUNSEL
2 ABOUT ITS IMPACT UPON YOUR LEGAL RIGHTS BEFORE
3 VOTING.

4 **HEARING ON CONFIRMATION OF PLAN**

5 THE BANKRUPTCY COURT WILL HOLD A HEARING ON
6 CONFIRMATION OF THE PLAN COMMENCING AT THE TIME
7 AND PLACE STATED IN THE ACCOMPANYING ORDER AND
8 NOTICE. THE HEARING MAY BE CONTINUED FROM TIME TO
9 TIME THEREAFTER WITHOUT FURTHER NOTICE EXCEPT AS
10 GIVEN IN OPEN COURT.

11 **CONFIRMATION ORDER NECESSARY FOR PLAN TO BE
12 EFFECTIVE**

13 THE PLAN SHALL NOT BE EFFECTIVE UNLESS THE COURT
14 ENTERS AN ORDER CONFIRMING THE PLAN.

15 **NO OTHER REPRESENTATIONS AUTHORIZED**

16 NO REPRESENTATIONS CONCERNING DEBTOR OR THE PLAN
17 ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS
18 DISCLOSURE STATEMENT. YOU SHOULD NOT RELY ON ANY
19 ADDITIONAL REPRESENTATIONS OR INDUCEMENTS TO
20 SECURE YOUR VOTE ON THE PLAN.

21 **ABSENCE OF AUDITED FINANCIAL INFORMATION**

22 THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT
23 BEEN SUBJECTED TO A CERTIFIED AUDIT. SUCH
24 INFORMATION AND OTHER STATEMENTS ARE BASED UPON
25 DEBTOR'S BOOKS AND RECORDS AND THE ESTIMATES AND
26 ASSUMPTIONS STATED. ALL INFORMATION IS ACCURATE TO
THE BEST KNOWLEDGE, INFORMATION AND BELIEF OF
DEBTOR, ALTHOUGH THE DEBTOR IS UNABLE TO WARRANT
THAT NO INACCURACIES EXIST.

NO OBLIGATION TO SUPPLEMENT

THE STATEMENTS CONTAINED IN THIS DISCLOSURE
STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS
ANOTHER TIME IS SPECIFIED HEREIN. NEITHER DELIVERY OF
THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF
RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL
UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION
THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION
SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE

1 STATEMENT AND THE MATERIAL RELIED UPON IN
2 PREPARATION OF THIS DISCLOSURE STATEMENT WERE
3 COMPILED. DEBTOR ASSUMES NO DUTY TO UPDATE OR
4 SUPPLEMENT THE DISCLOSURES CONTAINED HEREIN AND
DOES NOT INTEND TO UPDATE OR SUPPLEMENT THE
DISCLOSURES.

5 **NO INDEPENDENT VERIFICATION BY COURT**

6 THE COURT HAS NOT VERIFIED THE ACCURACY OF THE
7 INFORMATION, AND THE COURT'S APPROVAL OF THIS
8 DISCLOSURE STATEMENT MEANS ONLY THAT, IF THE
9 INFORMATION IS ACCURATE, IT IS SUFFICIENT TO PROVIDE
AN ADEQUATE BASIS FOR CREDITORS AND INTEREST
HOLDERS TO MAKE INFORMED DECISIONS WHETHER TO
ACCEPT OR REJECT THE PLAN.

10 **NO SEC APPROVAL**

11 THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR
12 DISAPPROVED BY THE SECURITIES AND EXCHANGE
13 COMMISSION, NOR HAS THE COMMISSION PASSED ON THE
ACCURACY OR ADEQUACY OF THE STATEMENTS IN IT.

14 **II. HISTORY OF THE BUSINESS OPERATIONS OF THE DEBTOR.**

15 **A. FORMATION AND INITIAL CAPITALIZATION OF THE BUSINESS.**

16 Starpointe Aderra is one of several local 'Starpointe' real estate projects developed by
17 Starpointe Communities. The principals of Starpointe Communities are Robert A. Lyles and
18 Patricia A. Watts. Starpointe Communities is a Scottsdale based business with an
19 impeccable record of building award-winning communities. Over the past fourteen years in
20 business in Arizona, it has grown into a sizeable operation, employing hundreds of
21 construction and real estate related personnel and businesses. In 2009, Starpointe
22 Communities was recognized as one of the best places to work in 2009 by the Phoenix
23 Business Journal, with particular recognition going to its charitable work during the
24 economic recession. Starpointe Communities is a successful entrepreneurship in Arizona,
25
26

1 and a recognized innovator in developing affordable condominium communities for many
2 home buyers, renters, and visitors to Arizona.

3 Mr. Lyles is a co-founder of Starpointe Communities and has been active in
4 Arizona's real estate market since 1978. Along with Patricia A. Watts, he founded
5 Starpointe Communities in 1997, which currently owns and/or manages five communities
6 located in the Phoenix/Scottsdale/Chandler metropolitan area. Mr. Lyles is the manager of
7 SP Aderra General Partner, LLC, the general partner of Starpointe Aderra. Mr. Lyles is
8 active in the day-to-day management and marketing of Starpointe Aderra.

9 Ms. Watts co-founded Starpointe Communities in 1997. Prior to that Ms. Watts was
10 the Vice President/Real Estate Investment for Anthem Properties, Ltd., a Vancouver-based
11 real estate development firm. Ms. Watts is also active in the day-to-day management of
12 Starpointe Aderra.

13 On or about June 23, 2005, Starpointe Aderra entered into three loan transactions
14 with OSB to fund the purchase and construction of the Starpointe Aderra development. The
15 complete Loan Agreement had three notes, a Land Loan, in the original amount of
16 \$20,000,000; a Mezzanine Loan in the original amount of \$3,325,000; and a Unit
17 Construction Loan, in the original amount of \$15,000,000. The Loan Agreement was
18 secured by the Deed of Trust and the Assignment of Rents.

19 Subsequently, on or about January 25, 2007, the parties entered into the 2007 Loan
20 Modification. Subsequent to the 2007 Loan modification, AmTrust took over OSB in a
21 banking merger between the parties. In 2009, AmTrust was taken over by the FDIC.

22 The Starpointe Aderra project is 100% complete. 158 of the 312 condominium units
23 have already been sold, 120 units have been leased (typically for a year or less), and 34 are
24 vacant.
25
26

1 **B. COLLAPSE OF THE REAL ESTATE MARKET AND EFFORTS TO RESTRUCTURE**
2 **THE LOAN AGREEMENT.**

3 Under the terms of the Loan Agreement, the Land Loan and Mezzanine Loan matured
4 on June 23, 2008 and the Unit Construction Loan matured on December 23, 2008.
5 Unfortunately, due to the rapid collapse of the real estate market, Starpointe Aderra was
6 unable to make the payments due on the maturity dates.

7 In the wake of the real estate collapse, AmTrust, a federal savings bank, was under
8 significant regulatory pressure to deal with the Loan Agreement. Lamentably, in December
9 2008, when Starpointe Aderra was on the verge of completing a refinancing deal with
10 AmTrust, the Office of Thrift Supervision issued AmTrust a cease and desist order. That
11 action effectively prevented a refinancing by AmTrust and forced the parties into other
12 solutions.

13 In August of 2009, CCS Arizona II, LLC ("CCS"), purchased the Loan Agreement
14 (all three notes) from AmTrust for \$18,424,974. At the time of the purchase, the outstanding
15 loan balance was \$27,015,831.83 (*i.e.*, the Loan Agreement was purchased for an
16 approximate discount of 32%). By acquiring these assets, CCS became a secured creditor
17 with liens in virtually all Starpointe Aderra's assets.

18 **C. NOTICE OF TRUSTEE'S SALE AND DECISION TO FILE THE PETITION.**

19 On September 30, 2009, CCS recorded a notice of trustee's sale on Starpointe Aderra.
20 The trustee's sale was scheduled for December 30, 2009 (the day immediately following the
21 Petition Date).

22 .
23 Understanding that the imminent foreclosure of the property would leave Starpointe
24 Aderra's unsecured creditors unpaid, and hopeful that the project could fully repay the
25 obligations to CCS and Starpointe Aderra's remaining creditors over time (based on CCS's
26

1 and Starpointe Aderra's internal projections), Starpointe Aderra sought Chapter 11
2 protection.

3 Although Starpointe Aderra initially intended to retain its assets and reorganize its
4 debts, it became clear over the course of the Chapter 11 that without the support of CCS
5 (which it did not have), it would be difficult if not impossible to succeed in confirming a plan
6 of reorganization. Thus, in January 2011 Starpointe Aderra and CCS negotiated a settlement
7 whereby Starpointe Aderra agreed to stay relief to allow CCS to foreclose on its collateral,
8 and CCS agreed to waive its unsecured claims against Starpointe Aderra and to allow
9 Starpointe Aderra to retain \$600,000 (the "CCS Settlement Amount") to fund a distribution
10 to its remaining creditors through a plan of liquidation (the "CCS Settlement"). A motion to
11 approve the CCS Settlement was filed with the Bankruptcy Court on February 1, 2011 and is
12 set for hearing on February 16, 2011. This Liquidating Plan is premised on the Court's
13 approval of the CCS Settlement.

14 **D. DEBTOR'S BUSINESS OPERATIONS.**

15 **1. General Background.**

16 Starpointe Aderra is located at 11640 North Tatum Boulevard, Phoenix, Arizona
17 85028. Starpointe Aderra is an upscale community of 312 condominium units in thirteen
18 three-story buildings. The Debtor does not have its own employees or its own staff.
19 Pursuant to pre-petition agreements with Starpointe Communities, Starpointe Communities
20 (and its agents) operate the Starpointe Aderra community, selling, leasing and maintaining
21 condominium units. Reorganization Factors.

22 Given the general effects of the recession, Debtor does not anticipate anything better
23 than slow to moderate growth in the real estate sector during the anticipated time period for
24 the implementation of the Plan. Moreover, given the depressed real estate market, the
25 liquidation value of the Debtor would likely not make the secured creditor whole and would
26 entirely wipe out unsecured claims. During the course of the case, Debtor became concerned

1 about the long-term prospects of the project in light of the market's failure to rebound.
2 Declining prices and diminishing sales prompted a reevaluation of the Debtor's plan. In
3 addition, the Debtor simply does not have the money necessary to continue a protracted fight
4 with CCS – regardless of the outcome. Due to these factors, Debtor believes that the CCS
5 settlement holds the best chance for maximizing the return for the Debtor's creditors.

6 **E. REASONS FOR FILING CHAPTER 11.**

7 As noted above, the primary rationale for filing this Chapter 11 was to prevent the
8 trustee's sale of the Starpointe Aderra community. Debtor was, and remains, concerned that
9 if left entirely up to CCS, CCS would liquidate the business with nothing left over for the
10 Debtor's remaining creditors.

11 Without this Chapter 11, and the protections afforded herein, the Debtor would be
12 foreclosed upon by CCS. This would essentially wipe out the claims of unsecured creditors
13 and equity holders. By operating under the proposed Chapter 11 Plan, Debtor has had an
14 ability to maximize the recovery for its creditors.

15 **III. POST PETITION OPERATIONS AND DEVELOPMENTS.**

16 **A. DEVELOPMENTS IN THE CHAPTER 11 CASE.**

17 **1. Continued Operations.**

18 This Chapter 11 case was filed on December 29, 2009. Since that time, Debtor has
19 operated the business in accordance with the requirements of the Bankruptcy Code.

20 **2. Employment of Professionals.**

21 Upon commencing these proceedings, Debtor applied for approval to employ Osborn
22 Maledon, P.A., of Phoenix, Arizona, as bankruptcy counsel for the Debtor (Dkt # 5). The
23 Bankruptcy Court granted the application on January 5, 2010 (Dkt # 10). Debtor also sought
24 and obtained approval for the employment of accountants for the Debtor, (Dkt #s 49 and 50),
25 and for the employment of a broker to assist in marketing and selling units (Dkt #s 12 and
26 31).

1 **3. Creditors' Meeting and Creditors' Committee.**

2 The United States Trustee presided over an initial creditors' meeting under § 341 of
3 the Bankruptcy Code on February 2, 2010. On January 26, 2010, the United States Trustee
4 stated that it could not appoint an unsecured creditors committee. (Dkt # 35).

5 **4. Post-petition operations.**

6 Debtor has continued to market the units and sought and obtained court permission to
7 do so. The Debtor has done so with the cooperation of CCS, its secured lender, and
8 Maricopa County, the taxing authority. Together, these three parties sought and obtained
9 approval of a sales procedures order, which has permitted the Debtor to sell units on
10 abbreviated notice provided that CCS and Maricopa County consent to the sale. Since the
11 filing, the Debtor has sold 18 units for a total sales price of \$4,477,400. Of those sale
12 proceeds, CCS has received \$3,522,131.

13 In early January 2010, Debtor also sought and obtained permission to use cash
14 collateral. (Dkt #s 11 and 38). Currently, with certain restrictions related to the payments of
15 certain fees to Starpointe Communities, the Debtor has CCS's permission to use CCS's cash
16 collateral. In accordance with the cash collateral orders, the Debtor has paid the 2009 taxes
17 owed to Maricopa County (approximately \$122,000). Debtor is also currently holding
18 approximately \$131,000 to pay additional taxes due.

19 **5. Investigation of Potential Claims and Causes of Action.**

20 In connection with its reorganizational responsibilities, the Debtor's management and
21 Debtor's counsel have investigated the potential avoidance actions available to the Debtor.
22 This has been done in conjunction with requests from certain creditors – most specifically,
23 CMS, which wanted to ensure that these claims were appropriately handled in the Plan. The
24 Debtor does not have significant preference actions – most of the payments in the months
25 immediately preceding the filing were relatively minor and made in the ordinary course of
26 business.

1 Additionally, the Debtor examined potential claims and avoidance actions that could
2 arise in connection with certain transactions involving the transfer of money from the Debtor
3 to certain entities in the Starpointe family of entities. During the two years prior to the
4 bankruptcy, the Debtor transferred the following amounts to the following entities:
5 Starpointe Artesia Condominiums, LP (“Artesia”) (\$118,129.75), Starpointe Cobalt
6 Condominiums, LP (“Cobalt”) (\$980,357.46), Starpointe Corriente Condominiums, LP
7 (“Corriente”) (\$2,033,767.33), Starpointe Indigo Condominiums, LLP (“Indigo”) (\$198.33)
8 and CMS/Starpointe Joint Venture, LP (\$38,344.00). Most of these transactions took the
9 form of informal loans from the Debtor to the above-referenced entity. These entities and
10 amounts are disclosed on the Debtor’s schedules and statements as debts owed to the Debtor,
11 and were disclosed in the financial statements of the Debtor prior to the filing.

12 Debtor has not pursued these claims because the entities involved are essentially
13 uncollectible. For example, the condominium project owned by Corriente (\$2,033,767.33)
14 has been foreclosed upon by CCS (the lender in this case). Because Corriente no longer has
15 any assets, it is judgment-proof. The story is the same with the other condominium projects,
16 these projects are either (a) already foreclosed upon; (b) in foreclosure; or (c) not capable of
17 paying their debts to the current lien holders – i.e., creditors more senior to the Debtor. Thus,
18 the Debtor does not currently intend to pursue these claims. CCS’s Stay Lift Motion and the
19 Plan Litigation.

20 Debtor filed its initial Plan and Disclosure Statement on March 29, 2010.
21 Subsequently, in September 2010, Debtor submitted an amended plan that addressed certain
22 concerns raised by CCS and other creditors. CCS contested the Debtor’s plan and sought
23 relief from the automatic stay in an effort to repossess the property. Before the amended plan
24 proceeded to confirmation, the Debtors and CCS litigated issues relating to the voting on the
25 plan – which was unanimously approved by creditors that had not sold their claims to CCS.

26

Notwithstanding the litigation, the parties also simultaneously pursued possible consensual resolutions to their disputes. Ultimately, CCS and the Debtor entered into the CCS Settlement. In conjunction with that CCS Settlement, the Debtor has proposed this Liquidating Plan.

IV. DESCRIPTION OF THE PLAN.

The following section of the Disclosure Statement contains a description of the more important terms of the Plan of Reorganization. The Plan itself is attached hereto as Exhibit 1. Creditors and other parties in interest are encouraged to read the Plan in its entirety, including the exhibits thereto. In case of a conflict between the description in this summary and the terms of the Plan, the terms of the Plan shall control.

A. GENERAL SUMMARY.

Under the Plan, Debtor will distribute the proceeds that it has received from the CCS Settlement. Those payments will be distributed in accordance with the terms of this Plan and the distribution priorities set forth in the Bankruptcy Code. The Plan provides for the classification of Claims against and Interests in the Debtor into various classes, based upon the priority of the Claims within the Bankruptcy Code's priority structure and certain other factors as follows:

#	Class	Description	Impair	Amount and Payment Terms
1.A.	Administrative	Expenses arising after Petition Date.	*	Anticipated \$100,000 On ED** or due date.
1.B.	Tax Priority	Priority Tax Claims.	No	Anticipated \$0. On ED** or due date.
2.A.	Secured	CCS Claims.	No.	Under the terms of the CCS Settlement, CCS has agreed to accept the Real Property in satisfaction of all CCS's claims.
2.C	Secured	Secured Tax Claims	No	This class was paid during the reorganization.
3.A.	General Unsecured	Unsecured claims held by the Debtor's	Yes	Paid their pro rata share of their Allowed Claims from

#	Class	Description	Impair	Amount and Payment Terms
	Claims	unsecured lenders.		the CCS Settlement Amount in accordance with Plan.
3.B.	Ordinary Course Claims	Unsecured claims of the Debtor's vendors and third party and any deficiency-based claims.	Yes	Paid their pro rata share of their Allowed Claims from the CCS Settlement Amount in accordance with Plan.
4.A.	Equity Interest	Interests of equity interests.	Yes	Interest cancelled upon the Effective Date.

* Not subject to classification under § 1123(a)(1)

** Unless another arrangement between the Debtor and the holder of the claim is reached.

The Plan contains provisions governing the filing of Claims, objections to such Claims, and the allowance and disallowance of Claims. The Plan provides that no distributions will be made on account of Claims until such Claims are Allowed or Estimated in accordance with the terms of the Plan and the Bankruptcy Code. The Plan also provides for the retention of the Bankruptcy Court's jurisdiction over the Debtor to interpret and enforce the Plan.

B. TREATMENT OF CLAIMS AND INTERESTS.

The Plan classifies, and specifies the treatment of, all Claims against, and Interests in, the Debtor, whether such Claims are liquidated or unliquidated, fixed or contingent, disputed or acknowledged, and whether such Claims or Interests are the subject of Proofs of Claim or Interest. The following sections describe the classes and specify their respective treatments.

1. Priority Claims.

Section 507 of the Bankruptcy Code identifies certain types of Claims entitled to payment with priority over all other Claims. Certain of the Priority Claims must be paid in full on the Effective Date of the Plan, pursuant to §§ 1129(a)(9)(A) and (B) of the Bankruptcy Code, in order for a plan to be confirmed. The Plan defines two (2) classes of such claims as Priority Claims and provides for payment in full of such claims as follows:

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1 administrative expenses will be paid on terms during the course of the case and that, on the
2 Effective Date, the Debtor will not be liable for any operating expenses.

3 Debtor's Professional Fees. The Bankruptcy Code requires that fees and expenses of
4 attorneys and other professionals are subject to Court approval under § 330 of the
5 Bankruptcy Code. Accordingly, the Plan provides that the fees of such professionals shall
6 not be paid until Final Orders of the Bankruptcy Court have been entered approving and
7 authorizing payment of such fees. Debtor anticipates that these fees will include the fees of
8 Debtor's counsel, Debtor's accountants and any other professionals the Debtor needs to
9 retain.

10 Debtor anticipates that the aggregate of such fees and expenses will approximate
11 \$300,000. Of this approximately \$186,000 have already been paid from the Debtor's pre-
12 bankruptcy retainer, and there is currently a balance of approximately \$13,000 left to cover
13 additional expenses. Debtor's counsel has voluntarily agreed to a 10% reduction (slightly
14 more than \$10,000) of outstanding unpaid fees. Given this reduction, Debtor anticipates that
15 approximately \$100,000 of the funds in the CCS Settlement will go toward paying Debtor's
16 counsel.

17 Because the Plan provides for payment in full of Class 1.A. Claims as of the Effective
18 Date, the Class 1.A. Claims are not impaired and not entitled to vote.

19 ***b. Class 1.B. Tax Claims***

20 The Plan classifies claims for taxes entitled to priority under § 507(a)(8) of the
21 Bankruptcy Code, as Class 1.B. Claims. Under Section 1129(a)(9)(C) of the Bankruptcy
22 Code, claims for taxes entitled to priority must be paid in full within five years from the date
23 of the order for relief in order to confirm a plan. The payments must be accomplished in a
24 manner not less favorable than the most favored nonpriority unsecured claim. The Plan
25 complies with this requirement by providing that such claims will be paid (i) the Allowed
26 Amount of such Claim from Distribution on the Effective Date.

1 Because the Plan provides for payment in full of Class 1.B. Claims and complies with
2 the requirements of § 1129(a)(9)(C) of the Bankruptcy Code, the holders of Class 1.B.
3 Claims are not likely to vote as an impaired class.

4 **2. Secured Claims.**

5 Secured claims, as defined in §§ 506 and 1111 of the Bankruptcy Code, consist of
6 claims secured by liens or other security interests in property of the Estate. Under § 506(a)
7 of the Bankruptcy Code, a secured claim is ordinarily limited to the lesser of (i) the amount
8 of the claim secured, together with interest and costs, or (ii) the value of the collateral, as
9 determined by the Court. If the value of the collateral is less than the amount of the claim,
10 the balance of the claim is treated as an unsecured claim.

11 **a. Class 2.A Secured Claim.**

12 Class 2.A consists of the Secured Claim of CCS. Pursuant to the CCS Settlement,
13 CCS has withdrawn its Secured Claim against the Debtor. In exchange, CCS will obtain title
14 to the Real Property. Because CCS has withdrawn its claim, the Plan does not treat CCS's
15 claim.

16 **b. Class 2.B Secured Tax Claims.**

17 Each holder of a Class 2.B Secured Tax Claim, to the extent that such Claim is an
18 Allowed Claim, shall receive, on account of such Claim payment in full on the Effective
19 Date. Currently, there are no unpaid Secured Tax Claims, and the Debtor does not anticipate
20 any Effective Date distributions on account of unpaid Secured Tax Claims.

21 Following the filing of the original Plan, the Class 2.B Secured Tax Claim has been
22 paid and this class not impaired.

23 **3. Unsecured Claims.**

24 The remaining claims against the Debtor consist of unsecured claims not entitled to
25 priority under the Bankruptcy Code. The Plan identifies two (2) separate classes of such
26 claims, as follows:

1 ***a. Class 3.A. General Unsecured Claims.***

2 The Plan classifies claims held by the Debtor's unsecured lenders as "General
3 Unsecured Claims." The Class 3.A. Claimant is CMS/Starpointe Joint Venture, L.P. (which
4 received the funds from CMS Fund Advisers, L.P. and CMS Investor LP). CMS/Starpointe
5 Joint Venture, LP loaned the Debtor approximately \$1.5 million pre-petition. CMS
6 Starpointe Joint Venture, LP is a limited partner of the Debtor. Each holder of a General
7 Unsecured Claim, to the extent that such Claim is an Allowed Claim, shall receive, after
8 payment of the Allowed Administrative and Allowed Priority Claims, a distribution from the
9 Effective Date Distribution equal to its pro rata share of the remaining CCS Settlement
10 Amount.

11 Debtor anticipates that General Unsecured Claims will not exceed \$1,900,000. Class
12 3.A. Claims are impaired.

13 ***b. Class 3.B Ordinary Course Claims.***

14 The Plan classifies claims held by the Debtor's unsecured vendors and its non-
15 bankruptcy professionals as "Ordinary Course Claims." In addition, any deficiency-based
16 claim, i.e., a claim based upon a deficiency between the value of a secured creditor's
17 collateral and the secured creditor's Allowed Claim, will also be encompassed in this Class
18 3.B (other than the deficiency claims of CCS, which will be deemed waived Court approval
19 of the CCS Settlement). Each holder of an Ordinary Course Claim, to the extent that such
20 Claim is an Allowed Claim, shall receive, after payment of the Allowed Administrative and
21 Allowed Priority Claims, a distribution from the Effective Date Distribution equal to its pro
22 rata share of the remaining CCS Settlement Amount.

23 Debtor anticipates that Allowed General Unsecured Claims will not exceed
24 \$1,280,804.74. Class 3.B. Claims are impaired.

1 **4. Equity Interests.**

2 ***a. Class 4.A. Equity Interests.***

3 The Plan classifies all equity interests in the Debtor as Class 4.A. The Plan provides
4 that these equity interests will be cancelled on the Effective Date.

5 Class 4.A. Interests are impaired.

6 **C. IMPLEMENTATION OF THE PLAN.**

7 **1. Distribution of the CCS Settlement.**

8 Within 14 days of the date that the Confirmation Order becomes a Final Order, the
9 Plan Agent will distribute the \$600,000 received from the CCS Settlement in accordance
10 with the terms of the Plan. Approximately \$100,000 will go to administrative creditors and
11 the remaining \$500,000 will be shared pro rata, *i.e.*, in proportion to the total amount of their
12 Allowed Claims, by the unsecured creditors in Class 3.A and 3.B. It is anticipated that each
13 unsecured creditor will recover between \$.10 and \$.20 per dollar of its Allowed Claim.

14 **2. Payment of Claims.**

15 Unless otherwise agreed to, the holders of Administrative and Allowed Priority
16 Claims shall be paid on the Effective Date. These Claims shall be funded from the Effective
17 Date Distribution.

18 Unless otherwise agreed to, and after payment of the Administrative and Allowed
19 Priority Claims, the holders of Allowed Unsecured Claims will be paid the pro rata share of
20 their Allowed Claims from the Effective Date Distribution.

21 **3. Liquidating Agent retains the Debtor's assets.**

22 Under the terms of the Debtor's Plan, any remaining assets, including those claims
23 and causes of action held by the Debtor referenced in Section III.A.5 above, will be
24 transferred to the Plan's Liquidating Agent. As part of Plan confirmation, the Debtor will
25 request that Starpointe Communities be appointed the Disbursing Agent under the Plan, *i.e.*,
26 the party charged with making the payments set forth in the Plan.

1 **D. RETENTION OF JURISDICTION.**

2 The Plan provides for the retention of jurisdiction in the Bankruptcy Court to interpret
3 and enforce the Plan, to resolve disputed claims and to enforce the obligations under the
4 Plan.

5 **THE FOREGOING IS ONLY A SUMMARY OF THE PLAN. CREDITORS ARE URGED TO READ THE PLAN IN FULL AND TO**
6 **CONSULT WITH THEIR COUNSEL AND/OR FINANCIAL**
7 **ADVISERS REGARDING THE PLAN'S TERMS AND LEGAL**
8 **EFFECT. CREDITORS ARE ADVISED THAT, SHOULD THE PLAN**
9 **BE CONFIRMED, THE PLAN AND THE ORDER CONFIRMING THE**
 PLAN SHALL BE BINDING ON CREDITORS, THE DEBTOR, AND
 THE REORGANIZED DEBTOR.

10 **V. FINANCIAL INFORMATION AND PROJECTIONS.**

11 **A. DEBTOR'S CURRENT FINANCIAL CONDITION.**

12
13 Debtor has prepared current balance sheets and profit and loss statements for the
14 Debtor for the months of November and December 2010 and those are attached hereto as
15 Exhibit 2.

16 **B. PROJECTIONS OF SOURCES AND USES OF CASH.**

17 Debtor has prepared a projection of the sources and uses of funds that will be
18 distributed under the Plan. That spreadsheet is attached hereto as Exhibit 3.

19 **VI. LEGAL REQUIREMENTS FOR CONFIRMATION.**

20 This Section of the Disclosure Statement discusses the legal requirements for
21 Confirmation of the Plan as established by § 1129 and other provisions of the Bankruptcy
22 Code.

23 **A. VOTING ON PLAN.**

24 The Bankruptcy Code contains detailed provisions regarding which creditors and
25 interest holders are entitled to vote on a plan or reorganization. In general, the creditors and
26 interest holders in classes that are not impaired under the Plan are not entitled to vote and are

1 conclusively presumed to accept a plan. Creditors and interest holders in classes that receive
2 nothing under the plan need not vote and are conclusively presumed to reject a plan.
3 Creditors and interest holders whose claims or interests are “impaired” under the plan are
4 entitled to vote on the plan.

5 The Debtor believes that the following classes are impaired under the plan and are
6 entitled to vote on the Plan: Class 3.A. (General Unsecured Claims --Unsecured), Class 3.B.,
7 (Ordinary Course Claims -- Unsecured) and Class 4.A. (Equity Claims).

8 If a party in interest believes that it holds a Claim or Interest in another Class that is
9 impaired under § 1124 of the Bankruptcy Code, such party may request the Bankruptcy
10 Court to determine its right to vote on the plan.

11 **B. ACCEPTANCE OF PLAN BY CREDITORS.**

12 A Class of Claims impaired under the Plan “accepts” the Plan only if (a) more than
13 one-half of the holders who submit ballots for Claims in that Class vote to accept, and (b) the
14 holders of Claims accepting the Plan hold at least two-thirds ($\frac{2}{3}$), by dollar amount, of the
15 voted Claims within that Class. A Class of Interests impaired under the Plan “accepts” the
16 Plan only if two-thirds ($\frac{2}{3}$) of the voted Interests in such Class have voted to accept the Plan.
17 If the requisite acceptances of each Class of Claims or Interests are obtained and the Plan is
18 confirmed, the Plan will be binding with respect to all holders of Claims and Interests of each
19 Class, including members who did not vote or who voted to reject the Plan.

20 **C. BEST INTERESTS OF CREDITORS.**

21 Section 1129(a)(7) of the Bankruptcy Code provides that, as a condition to
22 confirmation, a Plan must provide that any creditor or interest holder not voting to accept the
23 Plan must receive, under the Plan, distributions of a value at least equal to that which such
24 creditor would receive if Debtor were liquidated under Chapter 7 of the Bankruptcy Code.
25 This provision is generally referred to as the “best interest test.”
26

1 The Debtor believes that the best interest test is satisfied by the Plan. For the purpose
2 of applying the “best interest test,” Debtor has prepared an estimate of the results of a
3 liquidation, which is attached as Exhibit 3 to this Disclosure Statement. This estimate
4 indicates that Debtor’s liquidation would likely result in insufficient funds to result in any
5 distribution to unsecured claims (Class 3.A. and 3.B.).

6 **D. CONFIRMATION POSSIBLE WITHOUT ACCEPTANCE BY CREDITORS.**

7 Debtor intends to request the Bankruptcy Court to confirm the Plan even if a Class of
8 Claims or Interests does not accept the Plan. To do so, the Bankruptcy Court must find that
9 the Plan is fair and equitable with respect to each Class of Claims or Interests that is impaired
10 and has not accepted the Plan. Debtor believes that the Plan will satisfy the fair and equitable
11 requirements of the Bankruptcy Code to the extent such requirements are applicable based
12 upon the vote of Creditors on the Plan.

13 **1. Fair and Equitable Treatment of Secured Claims.**

14 With respect to a Class of Secured Claims that does not accept the Plan, the
15 Bankruptcy Code’s “fair and equitable” standard includes a requirement that the holders of
16 the Claims either (i) retain their liens on the collateral and receive cash payments, on the
17 Effective Date or in installments, of a value equal to the amount of the Secured Claim, or (ii)
18 receive the realization of the indubitable equivalent of the Secured Claim. Debtor believes
19 that this standard is satisfied by the Plan, because there are no unwithdrawn Secured Claims.

20 **2. Fair and Equitable Treatment of Unsecured Claims.**

21 With respect to an unsecured, non-accepting Class of Claims, the Bankruptcy Code’s
22 “fair and equitable” standard includes a requirement that either (i) the holders of the Claims
23 receive cash payments, on the Effective Date or in installments, of a value equal to the
24 amount of the Claim, or (ii) no Class of junior Claims or Interests receives anything on
25 account of such junior Claim or Interest. Debtor believes that this standard is satisfied by the
26 Plan, because all Administrative and Allowed Priority Claims will be paid in full and

1 Unsecured Claims will be paid pro rata from the CCS Settlement Amount. No class junior to
2 the Unsecured Claims will receive anything on account of their junior Claim or Interest.

3 **VII. TAX CONSEQUENCES OF PLAN.**

4 The filing of this Chapter 11 proceeding and/or the consummation of the Plan may
5 have federal and state tax consequences for the Debtor and its creditors. Some of the
6 potential consequences are summarized below.

7 Debtor anticipates that the consummation of the Plan of Reorganization may result in
8 some recognition of “discharge of indebtedness income,” ordinarily taxable under
9 § 61(a)(12) of the Tax Code. Any cancellation of indebtedness income may require a
10 reduction in the Debtor’s basis in its assets and other tax attributes in accordance with
11 § 108(b).

12 In general, creditors receiving cash under the Plan may recognize an ordinary or
13 capital loss based upon the difference between the amount of their claim and the value of the
14 assets received by them under the Plan.

15 **IN NO EVENT WILL DEBTOR OR ANY AFFILIATE OR**
16 **PROFESSIONAL ADVISORS ENGAGED BY ANY OF THEM BE**
17 **LIABLE IF, FOR ANY REASON, THE FEDERAL TAX**
18 **CONSEQUENCES OF THE PLAN ARE OTHER THAN AS**
19 **ANTICIPATED. CREDITORS MUST LOOK SOLELY TO AND RELY**
20 **SOLELY UPON THEIR OWN ADVISORS AS TO THE FEDERAL**
21 **TAX CONSEQUENCES OF THIS PLAN.**

22 **VIII. CLAIMS BAR DATES AND EFFECTIVE DATE.**

23 **1. BAR DATES.**

24 The bar date for the filing of proofs of claim was September 23, 2010 and an
25 additional, supplemental bar date was set for January 17, 2011.

26 **2. PLAN EFFECTIVE DATE.**

“Effective Date” means the date upon which all conditions to the effectiveness of the
Plan have been satisfied and the Reorganized Debtor take steps necessary to substantially

1 consummate the Plan. The Effective Date shall occur, at the discretion of the Debtor, not
2 more than thirty (30) days after the Confirmation Date, provided that the Bankruptcy Court
3 may, for cause shown, extend the time for the occurrence of the Effective Date.

4 **IX. RECOMMENDATION OF THE DEBTOR.**

5 Debtor recommends that the Plan of Reorganization be approved. Before making this
6 recommendation, Debtor considered, and rejected, the alternative of proposing a Plan based
7 upon one or more of the following different approaches:

8 **Equity Buyout/Re-Capitalization.** As part of its reorganization efforts, Debtor
9 attempted various other solutions including seeking capital through the sale of equity. Part of
10 the Debtor's inability to attract investment capital was the current recession – and consequent
11 illiquidity of the credit markets. An equity investment is simply not feasible.

12 **Refinancing.** As in the case of seeking an equity partner or buy out, the illiquid
13 capital markets and weakness in the real estate market have essentially eliminated the
14 Debtor's ability to attract a suitable refinancing source.

15 **Total Liquidation.** Debtor also considered the option of total liquidation under
16 Chapter 7. Liquidation of the Debtor's real estate assets in the current market, however, held
17 very little chance for a substantial recovery for the Debtor's creditors. In addition,
18 liquidation of the Debtor's real and personal property holds little hope of netting any
19 significant recovery due to the CCS liens encumbering this property. Debtor believes that a
20 liquidating plan – utilizing the proceeds from the CCS Settlement – holds the best possible
21 recovery for creditors.

22 In light of these alternatives, Debtor believes that the Plan is in the best interest of all
23 creditors and parties in interest.

24 DATED this 7th day of February, 2011.
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/s/Robert A. Lyles
Robert A. Lyles, Manager, Debtor in Possession

OSBORN MALEDON P.A.

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