

1 **GUST ROSENFELD P.L.C.**  
One South Church Ave., Suite 1900  
2 Tucson, Arizona 85701-1627  
Telephone (520) 628-7070  
3 Facsimile No. (520) 624-3849  
Jody A. Corrales – 024869  
4 *jcorrales@gustlaw.com*

5 **Attorneys for Debtor *Starr Pass Residential, LLC***

6 **IN THE UNITED STATES BANKRUPTCY COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 In re:	Case No. 4:14-bk-09117-PS
9 STARR PASS RESIDENTIAL, LLC	(Chapter 11)
10 Debtor.	

11  
12 **DISCLOSURE STATEMENT RELATING TO DEBTOR'S**  
13 **CHAPTER 11 PLAN OF REORGANIZATION DATED DECEMBER 9, 2014**

14 STARR PASS RESIDENTIAL, LLC, the Debtor and Debtor-in-Possession in  
15 the above-captioned Chapter 11 bankruptcy case (“Debtor”), by and through  
16 undersigned counsel, hereby submits the following *Disclosure Statement Relating to*  
17 *Debtor’s Chapter 11 Plan of Reorganization Dated December 9, 2014* (the “Disclosure  
18 Statement”).

19 This Disclosure Statement is submitted pursuant to 11 U.S.C. § 1125.  
20 Bankruptcy Code §1125(b) prohibits the solicitation of acceptances or rejections of a  
21 plan of reorganization, unless such plan is accompanied by a copy of a disclosure  
22 statement that has been approved by the Bankruptcy Court. The purpose of this  
23 Disclosure Statement is to provide creditors and interested parties in this bankruptcy  
24 proceeding with such information as may reasonably be deemed sufficient to allow  
25 creditors and interested parties to make informed decisions regarding the *Debtor’s*  
26 *Chapter 11 Plan of Reorganization Dated December 9, 2014* (the “Plan”). A copy of

1 the Plan is attached hereto as Exhibit 1. This Disclosure Statement contains information  
2 that may influence your decision to accept or reject the Debtor's proposed Plan. Please  
3 read this document with care.

4 The Plan attached as Exhibit 1, provides for full payment to all holders of  
5 Allowed Claims either on the Effective Date of the Plan, or shortly thereafter, or as  
6 creditors may otherwise agree. The source of payment for this full-payment Plan, as set  
7 out in Article 5.1 of the Plan, are from or among the following – (1) third-party funding;  
8 (2) compensation for the use of the Pond by Receiver and/or Lender; (3) exit financing  
9 if necessary; and (4) monetary recovery from damages for claims currently pending in  
10 the State Court Action.

11 Unless otherwise noted, those portions of the Plan and the Disclosure Statement  
12 providing factual information concerning the Debtor and its assets and liabilities have  
13 been prepared from information submitted by the Debtor. The financial information  
14 contained in this Disclosure Statement has not been subjected to an audit by an  
15 independent certified public accountant. For that reason, the Debtor is not able to  
16 warrant or represent that the information contained in this Disclosure Statement is  
17 without any inaccuracy. To the extent practicable, the information has been prepared  
18 from the Debtor's financial books and records and great effort has been made to ensure  
19 that all such information is fairly represented.

20 This Disclosure Statement and the Plan will classify all creditors into Classes.  
21 The treatment of each Class of creditors will be set forth in this Disclosure Statement  
22 and in the Plan. You should carefully examine the treatment of the Class to which your  
23 Claim will be assigned.

24 This Disclosure Statement requires approval by the Bankruptcy Court after  
25 notice and a hearing pursuant to 11 U.S.C. § 1125(b). Once approved, the Disclosure  
26 Statement will be distributed with the Debtor's proposed Plan for voting. Approval of

1 the Disclosure Statement by the Bankruptcy Court does not constitute either  
2 certification or approval of the Debtor's Plan by the Bankruptcy Court or that the  
3 Disclosure Statement is without any inaccuracy.

4 The Bankruptcy Court will confirm the Plan if the requirements of Bankruptcy  
5 Code § 1129 are satisfied. The Bankruptcy Court must determine whether the Plan has  
6 been accepted by each impaired Class entitled to vote on the Plan. Impaired Classes  
7 entitled to vote on the Plan are those Classes of claims whose legal, equitable, or  
8 contractual rights are altered, as defined under Bankruptcy Code § 1124. An impaired  
9 Class of claims is deemed to have accepted the Plan if at least two-thirds (2/3) in  
10 amount of those claims who vote and more than one-half (1/2) in number of those  
11 claims who vote have accepted the Plan. An impaired Class of interests is deemed to  
12 have accepted the Plan, if the Plan has been accepted by at least two-thirds (2/3) in  
13 amount of the allowed interests who vote on the Plan.

14 Even if each Class of creditors does not accept the Plan, the Plan can be  
15 confirmed under Bankruptcy Code § 1129(b), so long as one impaired Class of creditors  
16 accepts the Plan. This is referred to as the "cram down" provision of the Bankruptcy  
17 Code. The failure of each Class to accept the Plan could very well result in a  
18 conversion of this case to Chapter 7 or dismissal of the Chapter 11.

19 Only the votes of those creditors or interested parties whose ballots are timely  
20 received will be counted in determining whether a Class has accepted the Plan.

21 **I. DEFINITIONS**

22 The definitions set forth in Article I of the Plan apply in this Disclosure  
23 Statement, except to the extent other definitions are set forth in this Disclosure  
24 Statement.

25  
26

1 **II. BACKGROUND OF DEBTOR AND EVENTS PRECIPITATING THE**  
2 **CHAPTER 11 CASE**

3 **A. The Debtor**

4 Debtor is a real estate development company founded in 2002, and is the  
5 residential development arm of the Starr Pass Community in Tucson, Arizona.

6 In 2010, as the economy had not yet recovered, Debtor received a Notice of  
7 Foreclosure from National Bank of Arizona on certain undeveloped properties and the  
8 unsold service lots its highly coveted residential development “Wildcat Pass” as the  
9 residential real estate market was flooded with foreclosures. As a result, Debtor is  
10 currently left with only two parcels of land (Block 14 and Block B of Coyote Pass) and  
11 Starr Pass Realty, LLC (“SP Realty”), the on-site real estate company. SP Realty is  
12 responsible for the sale of residential lots and homes in the Starr Pass Community. SP  
13 Realty is comprised of a broker, three registered realtors and an assistant.

14 **B. Background and Events Precipitating the Chapter 11 Case**

15 **1. The U.S. Bank Loan**

16 In August 2006, Column Financial (a wholly owned subsidiary of Credit Suisse)  
17 provided a non-recourse Commercial Mortgage-Backed Security loan (hereinafter, the  
18 “Loan”) to Starr Pass Resort Developments, LLC (the “Borrower”) to refinance the JW  
19 Marriott Starr Pass Resort & Spa in Tucson, Arizona (the “Resort”). The Resort  
20 includes a 27-hole golf course, a luxury 575 room resort hotel, and 20,000 foot spa  
21 facilities.

22 In October 2006, this Loan was consolidated with other loans totaling \$6.2  
23 Billion and sold to the public as securitized bonds or certificates. These tens of  
24 thousands of certificates are held in trust by U.S. Bank, as Trustee, managed by  
25 servicing agents and controlled by a Controlling Certificate Holder (“CCH”) – the  
26 owner of the lowest certificate in the capital stack – in accordance with a Pooling and  
27 Servicing Agreement.

1 This Loan is secured by specifically defined real property and other related assets  
2 pledged by the Borrower to secure the Senior Loan (the “Collateral”). Importantly, the  
3 Collateral does not encompass Block B of Coyote Pass, nor the reclaimed water  
4 reservoir situated thereon (hereinafter, the “Irrigation Pond”), nor certain other third-  
5 party property.

6 On April 12, 2010, Borrower received a Notice of Default for not making a mid-  
7 term deposit (required for the Loan’s extension) from the Master Servicing Agent,  
8 KeyBank, which triggered the appointment of the Special Servicing Agent, Midland  
9 Loan Services (a wholly owned subsidiary of PNC Bank).

10 In July 14, 2010, Midland issued a No-Default Letter as it agreed with the  
11 Borrower that KeyBank’s calculation of the mid-term deposit was grossly in error  
12 (originally noticed as \$5.2 Million, Midland confirmed the Borrower’s calculation of  
13 \$1.5 Million) putting the Loan back in good standing.

14 On August 18, 2010 (the “Maturity Date”), Borrower defaulted on the Loan due  
15 to the volatile real estate market.

## 16 **2. The State Court Action**

17 On October 31, 2011, Lender initiated a receivership action in Pima County  
18 Superior Court under Case No. C20117682 (the “State Court Action”). Borrower did  
19 not oppose the Lender’s receivership efforts.

20 Unfortunately, a straight forward receivership action between the Lender and the  
21 Borrower has evolved into complex litigation, adding six new defendants (including  
22 Debtor) and numerous new causes of actions, including: Fraudulent Transfer,  
23 Declaratory Judgment, Reformation, Implied Easement, Preliminary and Permanent  
24 Injunction, Specific Performance, Corporate Veil/Alter Ego, and the pursuit of a \$145  
25 Million guaranty against the Borrower’s principal, F. Christopher Ansley (“Ansley”).

26 Debtor asserts the dynamics of the State Court Action changed in April 2012,

1 when Starwood purchased the controlling bond for \$10 Million to become the  
2 Controlling Certificate Holder. Shortly thereafter, Starwood terminated Midland as the  
3 special servicer (who had been negotiating with Debtor in good faith for 24 months) and  
4 appointed Talmage as its own special servicer to facilitate its purchase of the Resort for  
5 the lowest possible price, instead of widely marketing it and selling it through a  
6 competitive bidding process for the benefit of all bond holders. Just five business days  
7 after receiving the loan file, Talmage filed a Second Amended Complaint in the State  
8 Court Action adding six new defendants, including Debtor, in an attempt to gain  
9 ownership over property not identified as Collateral in the loan documents.

### 10 **3. Procedural History Regarding Appointment of Receiver**

11 Douglas P. Wilson was appointed as Receiver in the State Court Action.  
12 However, a Receivership Order that was only intended to include the Lender's  
13 Collateral has been expanded and interpreted broadly to include assets of the Debtor's  
14 estate, some of which Debtor owns free and clear.

15 Despite Debtor's efforts to have various rulings regarding the scope and extent of  
16 the Receivership Order overturned, Debtor continues to be stripped of its assets and  
17 prohibited from obtaining any compensation for the Receiver's use of the same.

### 18 **4. Block 14**

19 Block 14 is a 5-acre parcel of land located approximately one mile away from the  
20 Resort. This parcel is valued at \$5 Million upon development. In 1992, it was zoned R-2  
21 (high density residential) and is one of the best locations for 100 high end condos in the  
22 Starr Pass Community. It is surrounded on all sides by golf holes, along with clear  
23 vistas to the City lights and the Catalina Mountains.

24 Although Block 14 was originally owned by the Debtor, it was conveyed to the  
25 Borrower in 2003 and added to the collateral which secured the construction loan as it  
26 housed the golf maintenance facility and had a number of surface parking spaces used to

1 temporarily satisfy the parking zoning requirements for the Resort until a new \$2.5  
2 Million permanent parking garage structure was built adjacent to Resort (hereinafter, the  
3 “New Parking Garage”). As a result, Block 14 was conveyed by Debtor to Borrower  
4 with the clear understanding that it would be conveyed back to Debtor upon completion  
5 of the New Parking Garage. Accordingly, Block 14 is identified in the Senior Loan  
6 documents as the “Release Parcel.”

7 In December 2006, Marriott took occupancy of the New Parking Garage and in  
8 January 2007 the New Parking Garage was completed. Lender does not dispute this.

9 In 2008, the Borrower delivered the required documentation to satisfy the  
10 administrative conditions for the release and received Lender’s approval regarding the  
11 same. During this approval process, it was discovered that the Loan Agreement did not  
12 contain a provision for the relocation of the golf maintenance facility (also located on  
13 Block 14 and used by the Resort). To remedy this, a Lease was proposed between  
14 Debtor (landlord) and Borrower (tenant) – which would take effect after the conveyance  
15 of the Release Parcel to the Debtor – that provided for the Resort’s continued use of the  
16 golf maintenance until it could be relocated to a new location, which was already  
17 designated in Starr Pass.

18 To align the Collateral with the Marriott Hotel Management Agreement (the  
19 “HMA”), the Lease was incorporated into the Fourth Amendment to the Marriott HMA  
20 (hereinafter, the “Fourth Amendment”). The Fourth Amendment was subsequently  
21 approved by the Lender in writing as it became another administrative condition to  
22 release the Release Parcel from the Collateral.

23 On August 13, 2009, following the execution of the Fourth Amendment and after  
24 obtaining Lender’s consent, Borrower conveyed Block 14 to Debtor (releasing the  
25 Completion Guaranty that Debtor supplied as per the Loan Agreement) via a Warranty  
26 Deed prepared and submitted for recording by Title Security Agency of Arizona.

1           Although the New Parking Garage was completed and Block 14 was no longer  
2 part of the Lender's Collateral, the Marriott continued to require the use the overflow  
3 parking lot located on Block 14. As a result, Debtor entered into a written agreement  
4 with Marriott dated March 21, 2011, which provided for the Resort's use of the  
5 overflow parking lot for special occasions provided that Debtor would be compensated  
6 \$1,000 per day for its use (the "Overflow Parking Lot Agreement").

7           When litigation ensued in the State Court Action regarding the conveyance of  
8 Block 14, the Receiver was put in control of Block 14 because Lender asserted it had  
9 not released the Release Parcel from the Deed of Trust because, according to Lender,  
10 the 10 ministerial conditions outlined in the Loan Agreement were conditions precedent  
11 and were not completely satisfied.

12           On September 5, 2013, Lender was awarded partial summary judgment in the  
13 State Court Action, where the court held Block 14 was conveyed without satisfying  
14 certain conditions precedent. At the outset, it is important to make clear that the Block  
15 14 Ruling is not a final judgment. Although the Debtor uncovered new evidence,  
16 including email chains, deposition testimony, internal servicer reports, and loan history  
17 reports, which clearly demonstrates that Lender authorized the conveyance of Block 14  
18 to Debtor, the judge in the State Court Action denied Debtor's motion for  
19 reconsideration on December 8, 2014. Debtor will appeal this interlocutory ruling when  
20 it becomes a final judgment.

21           The Debtor anticipates that Lender's lien on Block 14 will be resolved in the  
22 state court appellate process or through a valuation hearing in this Court.

### 23           **5. Block B of Coyote Pass**

24           Block B is a 4.5-acre parcel of land zoned for a Reclaimed Water Reservoir in  
25 the residential plat of Coyote Pass. Block B houses a 5-million gallon capacity Irrigation  
26 Pond and pumping station designed to provide irrigation for the Resort's 27 golf holes



1 and also for the irrigation of an additional 9-hole golf course and a new 300 custom  
2 home development, Starr Pass Vistas, and platted as such.

3 Block B was never included as Collateral which secures the Loan. Nonetheless,  
4 Lender claims a security interest in the same. Indeed, Block B was not included in the  
5 ALTA Survey attached to the Title Policy accepted for the Loan closing or in the  
6 Appraisal done for Loan. The original servicer of Lender, in response to the Notice of  
7 Breach referred to above, acknowledges that it was never meant to be part of the Loan  
8 collateral. Notwithstanding the clear understanding of the Borrower and the original  
9 servicer of Lender, Talmage insists that Block B be included in the collateral claiming it  
10 was mistakenly omitted from the Collateral.

11 The Irrigation Pond is vital to the Resort's operations. The Resort would  
12 undoubtedly be in a bind if it could not irrigate its golf course, which is considered a  
13 main feature of the Resort not only from its operations value, but clearly for its aesthetic  
14 value as the rooms, lobby, bars and restaurants all look on to the golf course winding its  
15 way through the desert and mountains.

### 16 **C. Business Plan and Projections**

17 Due to the crippling effect the State Court Action has had on the Debtor's  
18 business operations, the Debtor's operations have been at a stand-still. The Debtor will  
19 supplement the Plan and Disclosure Statement with a business plan and projections as  
20 soon as possible.

### 21 **D. Preferences and Fraudulent Conveyances**

22 To the extent that a preference or fraudulent conveyance occurred before the  
23 bankruptcy filing, such transfer may be recoverable by the bankruptcy estate for the  
24 benefit of the estate under §§ 544, 547, or 548 of the Bankruptcy Code. To date, no  
25 complaints have been filed under any of these theories. The Debtor, however, is  
26 analyzing any such claims for the recovery of preferences or fraudulent conveyances.

1 These potential claims are specifically preserved for the benefit of the bankruptcy  
2 estate. Any recovery that is obtained will be obtained for the benefit of the estate.

3 **III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

4 **A. Administrative Proceedings**

5 The Debtor filed its voluntary Chapter 11 petitions for relief in the United States  
6 Bankruptcy Court for the District of Arizona on June 12, 2014 (the “Petition Date”),  
7 thereby initiating the above-captioned case (the “Chapter 11 Case”). The First Meeting  
8 of Creditors was held on July 24, 2014.

9 On July 2, 2014, Lender filed its *Motion of Secured Creditor U.S. Bank, N.A., as*  
10 *Trustee, for an order (1) Dismissing the Bankruptcy Case, or (2) Granting Relief from*  
11 *the Automatic Stay, or (3) to Abstain from Hearing the Case* [Dkt. #21].

12 On July 14, 2014, Debtor filed its response in opposition thereto. The Court held  
13 a hearing on the matter on August 8, 2014, at which it determined that Lender had made  
14 a *prima facie* case for dismissal, and set an evidentiary hearing on the matter for August  
15 22, 2014.

16 On August 22, 2014, the Court held the evidentiary hearing at which it heard  
17 testimony from Christopher F. Ansley, principal of the Debtor, and arguments from  
18 counsel. The Court took the matter under advisement but ultimately denied Lender’s  
19 motion to dismiss and/or abstain on November 6, 2014, finding the Chapter 11 Case had  
20 been filed in good faith [Dkt. #109].

21 **B. Retention of Professionals and Interim Compensation Order**

22 On June 12, 2014, the Debtor filed its *Application to Employ Gust Rosenfeld,*  
23 *P.L.C. as Counsel for Debtor* [Dkt. #2] as its bankruptcy counsel. On June 19, 2014,  
24 the Court entered the Order appointing GR as Debtor’s counsel effective as of the  
25 Petition Date. [Dkt. #16].

26 On December 5, 2014, the Debtor filed its *Application to Employ Eason Rohde,*

1 *LLC as Special Litigation Counsel for Debtor nunc pro tunc to June 12, 2014* [Dkt.  
2 #117] (the “Eason Rohde Application”) to provide Debtor with competent litigation  
3 counsel in the State Court Action. The order employing the Eason Rohde firm has still  
4 not been approved by the Court.

5 **C. Receiver’s Motion for Relief from Mandatory Turnover Provision**

6 On July 24, 2014, counsel for Debtor made an oral request to Receiver’s counsel,  
7 prior to the commencement of the 341 meeting of creditors proceedings, for the  
8 Receiver to stipulate to a turnover order whereby Receiver could remain in possession  
9 and control of the Irrigation Pond in exchange for compensation to the Debtor for the  
10 same. Counsel for Receiver immediately rebuffed the proposed stipulation.

11 On July 31, 2014, in a letter through its counsel, Debtor made a written demand  
12 to counsel for Receiver seeking the Receiver’s turnover of the Irrigation Pond or  
13 compensation regarding the same from the Petition Date on a going-forward basis.

14 On August 4, 2014, Receiver filed its *Motion for Relief Under 11 U.S.C. §*  
15 *543(d)(1)* [Dkt. No. 56]. Lender filed a joinder in support of Receiver’s Motion on  
16 August 19, 2014 [Dkt. No. 65]. Debtor filed its response in opposition on September 5,  
17 2014 [Dkt. No. 75]. Receiver files its reply on November 18, 2014 [Dkt. No. 113]. A  
18 hearing is currently set for December 17, 2014 at 10:00 a.m. in this Court.

19 As of the date of this Disclosure Statement, the Receiver’s continued control  
20 over Estate assets is yet to be determined.

21 **D. Bar Dates for Proofs of Claims**

22 On July 14, 2014, the Debtor filed its *Motion for Order Setting Claims Bar Date*  
23 [Dkt. #33], which the Court granted on August 25, 2014 [Dkt. #70]. Accordingly, the  
24 deadline for creditors to file proofs of claim was October 9, 2014.

25 On or about September 24, 2014, Debtor stipulated to extend the claims bar date  
26 to Lender [Dkt. #78], which the Court granted on September 25, 2014 [Dkt. #80].

1 Similarly, on October 6, 2014, Debtor stipulated to extend the claims bar date to  
2 Receiver [Dkt. #82], which the Court granted on the same date [Dkt. #83].  
3 Accordingly, the first extended deadline for Lender and Receiver to file their respective  
4 proofs of claim was extended to November 7, 2014.

5 On or about November 5, 2014, Lender moved the Court to further extend the  
6 claims bar deadline [Dkt. #94], which the Court ultimately granted [Dkt. #112] over  
7 Debtor's objection [Dkt. #99]. Similarly, Receiver also moved the Court to further  
8 extend the claims bar deadline on November 5, 2014 [Dkt. #100], which the Court  
9 ultimately granted [Dkt. #112] over Debtor's objection [Dkt. #101]. Accordingly, the  
10 second extended deadline for Lender and Receiver to file their respective proofs of  
11 claim was ultimately extended to November 18, 2014.

#### 12 **E. Operating Reports**

13 The Debtor's monthly operating reports are current and copies may be obtained  
14 from the Court's electronic calendar. Excerpted pages from Debtor's most recent  
15 October 2014 report are attached hereto as Exhibit 2.

#### 16 **F. The Adversary Case**

17 On August 7, 2014, Debtor removed certain causes of action pending in the State  
18 Court Action, thereby initiating Adversary Case No. 4:14-ap-00667-PS [Adv. Dkt # 1].  
19 Specifically, Debtor removed Counts 4, 9, 11, 13, 14 and 15 of Lender's Verified Third  
20 Amended Complaint (the "Complaint") and Counts 6, 7, 8 and 9 of Debtor's Amended  
21 Answer to Second Amended Complaint and Amended Counterclaim (the  
22 "Counterclaim") (collectively, the "Removed Claims"). Debtor removed the Removed  
23 Claims because, among other things, they require a determination of whether Lender  
24 has or should have a valid lien or interest in estate property, namely Block B of Coyote  
25 Pass, which Debtor owns free and clear.

26

1 On August 19, 2014, Lender filed its Motion to Abstain and/or Remand and  
2 Dismiss [Adv. Dkt # 2].

3 On September 2, 2014, Debtor filed its response in opposition thereto [Adv. Dkt  
4 # 4].

5 On September 19, 2014, Lender filed its reply [Adv. Dkt # 5].

6 The Court held a hearing on this matter on November 13, 2014, at which the  
7 arguments of counsel were presented. The Court took the Motion under advisement.

8 On December 4, 2014, the Court placed its findings of fact and conclusions of  
9 law and the record and ultimately denied Lender's request for mandatory abstention  
10 under 28 U.S.C. § 1334(c)(2) and/or permissive abstention under 28 U.S.C. §  
11 1334(c)(1); but granted Lender's request for equitable remand under 28 U.S.C. §  
12 1452(b), thereby dismissing the Adversary Proceeding and remanding the Removed  
13 Claims back to state court [Adv. Dkt # 24].

14 **IV. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTOR**

15 **A. Assets**

16 See Exhibit 3 – Liquidation Analysis

17 **B. Liabilities**

18 **1. Priority Claims.** No priority claims have been filed as of the date  
19 of this Disclosure Statement. The anticipated priority claims of professionals are from  
20 the following professionals:

21 *Gust Rosenfeld, PLC (“GR”)*

22 GR is in the process of filing its first fee application as of the date of this  
23 Disclosure Statement. GR's fees and costs continue to accrue as this Chapter 11 Case  
24 progresses to resolution. No compensation has yet been paid to GR as of the date of this  
25 Disclosure Statement.

26 The payment of all professional fees in the case will be made from the sources of

1 payments described above on page 2. Payment of the professional fees will not  
2 adversely impact the feasibility of the Plan.

3 **2. Secured Property Tax Claims.** Pima County filed a secured  
4 claim in the amount of \$14.00 for property taxes arising from Block 14 and a secured  
5 claim in the amount of \$5,897.00 for property taxes arising from Block B of Coyote  
6 Pass. Pima County has withdrawn numerous proofs of claims that were incorrectly filed  
7 in the Chapter 11 Case [Dkt. #115]. The Debtor further reserves the right to object to  
8 Pima County's outstanding claims if necessary.

9 **3. Receiver's Secured Claim.** Receiver timely filed a proof of claim  
10 based on certain interlocutory rulings made in the State Court Action. Receiver's claim  
11 of \$139,000 is bifurcated with \$62,000 being asserted as secured. Debtor refutes the  
12 validity of this claim in its entirety.

13 **4. General Unsecured Claims.** The General Unsecured Claims total  
14 approximately \$889,822 to various creditors, many of which did not file proofs of  
15 claim.

### 16 **C. Administrative Expenses**

17 The Debtor's administrative expenses consist of the fees and costs of attorneys  
18 and other professionals necessary to the Debtor's operations, bankruptcy case, and Plan  
19 of Reorganization. The fees and costs of these professionals will not be precisely  
20 known until the Bankruptcy Case is completed.

21 GR is the Debtor's bankruptcy counsel. GR received a prepetition retainer in the  
22 amount of \$25,000, the source of which was the Debtor's representative, F. Christopher  
23 Ansley. Ansley later supplemented the retainer with an additional \$12,329.38 [Dkt.  
24 #89]. Currently, the Debtor has a total of \$62,329.38, which is currently being held in  
25 trust until further order of this Court.

26 GR is in the process of submitting its first fee application for its costs and

1 expenses for the Court's review and approval. As of the date of this Disclosure  
2 Statement, GR has not been paid for its services. GR's anticipated fees and costs during  
3 the pendency of this case will constitute administrative claims against the Debtor's  
4 estate.

5 The Debtor's special litigation counsel has accrued fees and costs, which have  
6 been and/or will be paid pursuant to the Interim Compensation Order, or as otherwise  
7 agreed to by the parties or ordered by the Court.

8 **V. PLAN SUMMARY**

9 Set out below are the major terms and provisions of the Plan of Reorganization  
10 that the Debtor is proposing to satisfy and treat all claimants and interest holders in this  
11 Chapter 11 Case.

12 **VI. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY**  
13 **INTERESTS**

14 **A. Summary of Classification.**

15	Class 1	Priority Claims	Unimpaired No solicitation required
16	Class 2	Secured Property Tax Claims	Unimpaired No solicitation required
17	Class 3	Asserted Secured Claim of Receiver	Impaired Entitled to Vote
18	Class 4	Unasserted Secured Claim of Lender	Impaired Not Entitled to Vote
19	Class 5	General Unsecured Claims	Impaired Entitled to Vote
20	Class 6	Equity Interests	Impaired Entitled to Vote
21			
22			
23			
24			
25			
26			

1 Pursuant to this Plan and in accordance with Bankruptcy Code § 1123(a)(1), all  
2 Claims of Creditors (except Preserved Ordinary Course Administrative Claims) are  
3 placed in the Classes described below. A Claim is classified in a particular Class only  
4 to the extent that the Claim qualifies within the description of that Class and is classified  
5 in other Classes only to the extent that any remainder of the Claim qualifies within the  
6 description of such other Classes. A Claim also is classified in a particular Class only to  
7 the extent that such Claim has not been paid, released, or otherwise satisfied prior to the  
8 Effective Date. As of the Confirmation Hearing, any Class of Claims which does not  
9 contain any Creditor's Claim will be deemed deleted automatically from the Plan; and  
10 any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily  
11 or provisionally allowed by the Bankruptcy Court for voting purposes) will be deemed  
12 deleted automatically from the Plan with respect to the voting on confirmation of the  
13 Plan.

14 **B. Treatment of Claims.**

15 **Class 1—Priority Claims** Class 1 consists of all Priority Claims, if any, other  
16 than Priority Tax Claims.

- 17 a. Impairment and Voting. Class 1 is unimpaired by the Plan. All holders of  
18 Allowed Priority Claims are not entitled to vote and will not be solicited  
19 to vote on the Plan.
- 20 b. Treatment. Each holder of an Allowed Priority Claim other than a  
21 Priority Tax Claim will receive Cash in an amount equal to its Allowed  
22 Priority Claim on the later of: (i) the Effective Date, or as soon after that  
23 date as feasible; and (ii) 30 days after the Priority Claim is Allowed;  
24 unless, before the later of those two dates, the holder of the Claim and the  
25 Debtor agrees in writing to a different date.



1           **Class 2—Secured Property Tax Claims**Class 2 consists of all Secured Property  
2 Tax Claims.Impairment and Voting. Class 2 is unimpaired by the Plan. All holders of  
3           Class 2 Claims are not entitled to vote and will not be solicited to vote on  
4           the Plan.

5           b.     Treatment. Each holder of an Allowed Class 2 Claim will receive, on  
6 account of such claim, Cash in an amount equal to its Secured Property Tax Claim on  
7 the later of: (i) the Effective Date, or as soon after that date as feasible; and (ii) 30 days  
8 after the Secured Property Tax Claim is Allowed; unless, before the later of those two  
9 dates, the holder of the Claim and the Debtor agrees in writing to a different date.

10           **Class 3—Receiver’s Asserted Secured Claim**Class 3 consists of the claim filed  
11 by Receiver in the amount of \$139,000, \$62,000 of which the Receiver asserts is  
12 secured. Debtor refutes this assertion and has listed all debts owing to Receiver as  
13 disputed and contingent.Impairment and Voting. Class 3 is impaired by the Plan.

14           Receiver is entitled to vote and will be solicited to vote on the Plan.

15           b.     Description of Claim. As of the Petition Date, the Receiver’s Claim  
16 consists of certain rents paid to the Debtor for the use of the Block 14  
17 surface parking lot. The judge in the State Court Action ordered Debtor to  
18 return these funds to the Receiver upon the September 5, 2013, ruling  
19 granting Lender’s motion for summary judgment regarding Block 14.  
20 However, Debtor had already depleted the funds to pay legal fees in  
21 defense of the State Court Action. Debtor continues to refute the assertion  
22 made by both Receiver and Lender that Block 14 is part of Lender’s  
23 Collateral. However, an under advisement interlocutory ruling dated  
24 September 5, 2013 made in the State Court Action has determined Block  
25 14 is indeed part of Lender’s Collateral. That ruling is not a final order.  
26 Debtor will file an Appeal after the Ruling is made final. In the meantime,

1 the State Court has granted a TRO on Block 14 preventing a foreclosure  
2 and preserving the appeal process.

- 3 c. Treatment of Claim. Receiver will not be paid until the underlying  
4 litigation in the State Court Action is resolved to final judgment and  
5 Debtor's appellate rights have been exhausted. In the event the ruling is  
6 unfavorable to Debtor, Receiver's Allowed Claim will be paid in full 180  
7 days after the final resolution of the State Court Action, including Appeal.

8 **Class 4—Unasserted Secured Claim of Lender** Class 4 consists of Lender's  
9 lien on Block 14, by virtue of the court's under advisement interlocutory ruling dated  
10 September 5, 2013 in the State Court Action deeming Block 14 part of Lender's  
11 Collateral. That ruling is not a final order. Debtor will file an Appeal after the Ruling is  
12 made final. In the meantime, the State Court has granted a TRO on Block 14 preventing  
13 a foreclosure and preserving the appeal process. Upon information and belief, the  
14 outstanding debt obligation on Lender's Collateral, which as of the date of this Plan  
15 includes Block 14, is approximately \$145 million. Impairment and Voting. Class 4 is  
16 impaired by the Plan. However, the Debtor asserts Lender is not entitled  
17 to vote because Lender purposely refused to file a proof of claim in the  
18 Chapter 11 Case.

- 19 b. Description of Claim. *See* above.
- 20 c. Treatment. The holder of the Class 4 Claim will not be paid as Debtor has  
21 listed this obligation as disputed and contingent. In the event Lender's  
22 lien is ultimately upheld on appeal, Debtor will pay Lender the fair market  
23 value of Block 14, which upon information and belief, is no more than \$5  
24 million. The Court shall set a valuation hearing on Block 14 at the time of  
25 any confirmation hearing, if necessary. Any allowed Secured Claim of the  
26 Lender shall be paid in equal monthly installments over a 20-year term,

1 with 5.25% interest per annum, commencing 30 days after the final  
2 resolution of the State Court Action, including Appeal.

3 **Class 5—General Unsecured Claims** Class 5 consists of all General Unsecured  
4 Claims. Impairment and Voting. Class 5 is impaired by the Plan. The holders of Class 5  
5 Claims are entitled to vote and will be solicited to vote on the Plan.

- 6 b. Treatment. Each holder of an Allowed Class 5 Claim will be paid the full  
7 amount of its claim in equal monthly installments over a 10-year term,  
8 with no interest, commencing on the first day of the first full month after  
9 the Effective Date.

10 **Class 6 – Equity Interests** Class 6 consists of all Equity Interests. The Equity  
11 Interests consists solely of Equity Interests to be retained by Starr Pass Holdings, LLC  
12 in recognition of the contribution made. Impairment and Voting. Class 6 is impaired by  
13 the Plan but Class members are not entitled to vote since they are insiders.  
14 All holders of Equity Interests will retain those interests under the Plan  
15 and therefore § 1126(g) of the Bankruptcy Code does not apply.

- 16 b. Treatment. All equity interests in Debtor will be transferred to the  
17 Reorganized Debtor.

- 18 c. Subsequent New Value. The Equity Holders are allowed to retain their  
19 interests in the Debtor and thereafter in the Reorganized Debtor by virtue  
20 of the subsequent new value provided by Ansley in his continued  
21 operations of the Debtor.

## 22 **VII. IMPLEMENTATION**

23 **A. Vesting of Assets.** All Estate assets shall vest in the Reorganized Debtor  
24 pursuant to Bankruptcy Code §§ 541(a) and 1141(b) free and clear of all liens, claims,  
25 encumbrances, and interests except to the extent of Allowed Claims pursuant to the  
26 terms specified in the Plan.

1           **B. Plan Payments.** Funds to be used to make Cash payments under the Plan  
2 have been or will be generated from (i) the Reorganized Debtor’s operations and  
3 revenues, (ii) proceeds from the sale of the Pecan Street Plaza Property; (iii) the transfer  
4 of assets of MCL; and (iv) the Exit Financing. The Reorganized Debtor shall make  
5 distributions under the Plan to holders of Allowed Claims and report on activity in this  
6 account in periodic reports to the Court.

7 **VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

8           **A. Assumption or Rejection of Executory Contracts and Unexpired**  
9 **Leases.** All executory contracts and unexpired leases between the Debtor and any  
10 Person are dealt with in the following manner:

11                   **1. Assumption of Executory Contracts and Unexpired Leases.** All  
12 executory contracts and unexpired leases set forth on the schedules of assumed  
13 executory contracts and unexpired leases filed with the Bankruptcy Court as part of the  
14 Plan will be deemed assumed as of the Effective Date. The Debtor will file a motion to  
15 assume the lease with the Starr Pass Country Club [Dkt. #1, Schedule G]. The Debtor  
16 reserves the right to assume any executory contracts and unexpired leases of the Debtor  
17 by appending a schedule of assumed and rejected executory contracts and unexpired  
18 leases no later than ten (10) days before the deadline for voting on the Plan. Any such  
19 appended schedule shall include the cure amount as to each executory contract or  
20 unexpired lease to be assumed. The Debtor will, pursuant to Bankruptcy Code §§  
21 1123(a)(5)(G) and 1123(b)(2) file and serve by first-class mail on each non-debtor party  
22 to such executory contract or unexpired lease, a notice (the “Assumption Notice”),  
23 which will list the cure amount as to each executory contract or unexpired lease to be  
24 assumed. The parties to such executory contracts or unexpired leases to be assumed or  
25 assumed and interested parties will have twenty (20) days from the date of the filing of  
26 the Assumption Notice to file and serve any objection to the assumption of any

1 executory contract or unexpired lease or to the cure amount listed. Any such executory  
2 contracts or leases so appended to the Plan as assumed will be deemed assumed as of  
3 the Effective Date, except for any executory contract or unexpired lease: (i) that has  
4 been rejected in accordance with a Final Order entered before the Confirmation Date; or  
5 (ii) as to which a motion to reject has been filed with the Bankruptcy Court before the  
6 Confirmation Date.

7 **2. Rejection of Executory Contracts and Unexpired Leases.** All  
8 executory contracts and unexpired leases listed in Schedule G will be assumed under the  
9 Plan. No executory contracts or unexpired leases will be rejected.

10 **B. Approval of Assumption or Rejection.** Entry of the Confirmation Order  
11 constitutes: (a) the approval under Bankruptcy Code § 365 of the assumption and  
12 assignment of the executory contracts and unexpired leases assumed and assigned under  
13 the Plan; and (b) the approval under Bankruptcy Code § 365 of the assumption and  
14 rejection of the executory contracts and unexpired leases rejected under the Plan.  
15 Notwithstanding anything contained in Article VIII to the contrary, the Debtor retains  
16 the right to change the treatment (assumed or rejected) of any executory contract or  
17 unexpired lease, thus changing the treatment of the contract or lease under the Plan, at  
18 any time before the Confirmation Hearing.

19 **C. Cure of Defaults.** On the Effective Date, or as soon after that date as  
20 feasible, or on another date on which the counterparty to the assumed executory contract  
21 or unexpired lease agrees, the Debtor will Cure any defaults under any executory  
22 contract or unexpired lease assumed and assigned under the Plan. Subject to the  
23 occurrence of the Effective Date, any cure amount shall be treated as an Allowed  
24 Administrative Claim under the Plan, and, upon payment of such Allowed  
25 Administrative Claim, all defaults existing as of the Confirmation Date with respect to  
26 such executory contract or unexpired lease shall be deemed cured.

1           **D. Rejection Claims Bar Date.** Any Rejection Claims must be filed with  
2 the Bankruptcy Court by the later of (a) 30 days after the Confirmation Date and (b) 30  
3 days after the applicable executory contract or unexpired lease is rejected under the  
4 Plan. Any Rejection Claim not filed within that time will be forever barred. All  
5 Rejection Claims are Class 4 Claims under the Plan. With respect to any executory  
6 contract or unexpired lease rejected before the Confirmation Date, the deadline for  
7 filing a Rejection Claim remains the deadline set forth in the order of the Bankruptcy  
8 Court authorizing that rejection. If such an order did not contain such a deadline, the  
9 deadline for filing a Rejection Claim is 30 days after the Confirmation Date.

10 **IX. DETERMINATION OF CLAIMS**

11           **A. Objections to Claims.** Notwithstanding the occurrence of the Effective  
12 Date, and except as to any Claim that has been Allowed before the Effective Date, the  
13 Debtor may object to the allowance of any Claim against the Debtor or seek estimation  
14 of any Claim on any grounds permitted by the Bankruptcy Code, including initiation of  
15 an Avoidance Action or Claim Litigation. All objections to Claims must be brought by  
16 filing the appropriate pleading in the Bankruptcy Court before the first Business Day  
17 that is 180 days after the Effective Date, but the Bankruptcy Court may approve a later  
18 date on the Debtor's motion filed (but not necessarily heard) before the first Business  
19 Day that is 180 days after the Effective Date.

20           **B. Contingent Claims.** Until a Contingent Claim becomes an Allowed  
21 Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes  
22 under the Plan. The holder of a Contingent Claim will be entitled to a distribution under  
23 the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent  
24 Claim for reimbursement or contribution held by a Person that may be liable with the  
25 Debtor on a Claim of a Creditor is Disallowed as of the Effective Date if: (a) that  
26 Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is

1 contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to  
2 the rights of the Creditor under Bankruptcy Code § 509.

3 **C. Resolution of Administrative Claims and other Claims.** After the  
4 Effective Date, the Debtor shall have the authority to compromise, settle, otherwise  
5 resolve, or withdraw any objection to Administrative Claims and any other Claims and  
6 to compromise, settle, or otherwise resolve any Disputed Claims without approval of the  
7 Bankruptcy Court, other than with respect to Administrative Claims relating to  
8 Professional Fee Claims.

9 **X. CONDITIONS PRECEDENT**

10 **A. Conditions to Confirmation.** The following are conditions precedent to  
11 confirmation of the Plan:

12 1. Approval of Disclosure Statement. The Bankruptcy Court enters a  
13 Final Order approving the Disclosure Statement.

14 2. Form of Confirmation Order. The Bankruptcy Court enters the  
15 Confirmation Order in form and substance reasonably acceptable to the Debtor. If the  
16 Debtor is unable to reach an agreement with any party regarding the form and substance  
17 of the Confirmation Order, the Bankruptcy Court will resolve all such disputes.

18 3. Substance of Confirmation Order. The Confirmation Order  
19 contains the following:

20 a. The provisions of the Confirmation Order are non-severable and  
21 mutually dependent;

22 b. Approval of the Plan's assumption or rejection of all executory  
23 contracts and unexpired leases;

24 c. The Debtor is released and discharged from all obligations arising  
25 under all executory contracts and unexpired leases rejected during the Chapter 11 Case  
26 or under the Plan; and

1           d.     The Bankruptcy Court retains jurisdiction to the fullest extent  
2 permissible by applicable law and at least to the extent contemplated by Article 10 of  
3 the Plan.

4           **B.     Conditions to Effectiveness.** The following are conditions precedent to  
5 the Effective Date:

6           1.     The Confirmation Date occurs;

7           2.     No request for revocation of the Confirmation Order under Bankruptcy  
8 Code § 1144 is pending;

9           3.     All instruments and agreements to be issued, entered into, delivered, or  
10 filed under the Plan are issued, entered into, delivered, or filed and are effective.

11          **C.     Waiver of Conditions.** The Debtor may waive any condition to  
12 confirmation or the Effective Date, in whole or in part, at any time without notice, an  
13 order of the Bankruptcy Court, or any further action other than proceeding to  
14 confirmation and consummation of the Plan.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



1 **XI. TITLE TO PROPERTY; INJUNCTION; THIRD PARTY RIGHTS AND**  
2 **RELEASES**

3 **A. Vesting of Assets.** Except as specifically provided in the Plan or the  
4 Confirmation Order, all property of the Estate will vest in the Debtor on the Effective  
5 Date and, except as expressly provided for in this Plan, will be free and clear of all  
6 Liens and Claims existing before the Effective Date. From and after the Effective Date,  
7 the Debtor may use and dispose of property free of any restrictions of the Bankruptcy  
8 Code, including the employment of, and payment to, Professionals except as otherwise  
9 provided in the Plan or the Confirmation Order. The Debtor, along with other third-  
10 parties described in Section 5.2 of the Plan shall be the sole entities responsible for all  
11 Distributions to be made under the Plan.

12 **B. Injunction.** Except as provided in the Plan or the Confirmation Order, as  
13 of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim  
14 that is unclassified by the Plan or that is classified by Article 3 of the Plan or that is  
15 subject to a distribution under the Plan, are permanently enjoined from taking any of the  
16 following actions on account of any such Claims or rights: (a) commencing or  
17 continuing in any manner any action or other proceeding against any property to be  
18 distributed under the Plan; (b) enforcing, attaching, collecting, or recovering in any  
19 manner any judgment, award, decree, or order against any property to be distributed  
20 under the Plan; (c) creating, perfecting, or enforcing any Lien or encumbrance against  
21 any property to be distributed under the Plan; and (d) commencing or continuing any  
22 action, in any manner, in any place, that does not comply with or is inconsistent with the  
23 provisions of the Plan or the Bankruptcy Code. Nothing in this Article 11 or elsewhere  
24 in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or  
25 otherwise limiting, the right of any holder of a Claim to assert a right to setoff or  
26 recoupment arising in connection with that Claim as part of the resolution and treatment

1 of that Claim under the Plan. Nothing in this Article 11 or elsewhere in the Plan is to be  
2 construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the  
3 rights of the Debtor to assert and prevail on any Avoidance Action or Litigation Claim.  
4 Nothing in this Article 11 or elsewhere in the Plan enjoins or otherwise precludes (or  
5 may be construed to enjoin or otherwise preclude) any party in interest from enforcing  
6 the terms of the Plan and the Confirmation Order.

7 **C. Exculpation.** The Debtor, or any of its respective directors, managers,  
8 officers, employees, partners, members, agents, representatives, accountants, financial  
9 advisors, investment bankers, or attorneys (but solely in their capacity as such) shall  
10 have or incur no liability for any claim, cause of action or other assertion of liability for  
11 any act taken or omitted to be taken since the Petition Date in connection with, or  
12 arising out of, the Chapter 11 Case, the formulation, dissemination, confirmation,  
13 consummation, or administration of this Plan, property to be distributed under this Plan,  
14 or any other act or omission in connection with the Chapter 11 Case, this Plan, the  
15 Disclosure Statement, or any contract, instrument, document or other agreement related  
16 thereto; provided, however, that the foregoing shall not affect the liability of any person  
17 that would otherwise result from any such act or omission to the extent such act or  
18 omission is determined by a Final Order to have constituted willful misconduct, gross  
19 negligence, actual fraud, or criminal conduct, or intentional unauthorized misuse of  
20 confidential information that causes damages.

21 **D. Releases by Holders of Claims and Equity Interests.** Effective as of  
22 the Confirmation Date, but subject to the occurrence of the Effective Date, and in  
23 consideration of the services provided to the Debtor by the present and former directors,  
24 managers, officers, employees, affiliates, agents, financial advisors, attorneys, and  
25 representatives of the Debtor who acted in such capacities after the Petition Date, (1)  
26 each holder of a Claim or Equity Interest that votes to accept the Plan (or is deemed to

1 accept the Plan) and (2) to the fullest extent possible under applicable law, as such law  
2 may be extended or integrated after the Effective Date, each holder of a Claim or Equity  
3 Interest that does not vote to accept the Plan, (collectively, the “Releasing Parties” and  
4 each a “Releasing Party”) shall release, unconditionally and forever, the Debtor and  
5 each of their respective present and former members, officers, directors, managers,  
6 agents, financial advisors, attorneys, employees, equity holders, parent corporations,  
7 subsidiaries, partners, affiliates, and representatives from any and all claims or causes of  
8 action that exist as of the Effective Date and arise from or relate to, in any manner, in  
9 whole or in part, the operation of the business of the Debtor, the subject matter of, or the  
10 transaction or event giving rise to, the Claim or Equity Interest of such holder, the  
11 business or contractual arrangements between any Debtor or such holder, any  
12 restructuring of such claim or equity prior to the Commencement Date, or any act,  
13 omission, occurrence, or event in any manner related to such subject matter, transaction  
14 or obligation, or occurring or existing on property owned by the Debtor, or arising out  
15 of the Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the  
16 Plan, the consummation thereof, the administration thereof, or the property to be  
17 distributed thereunder; provided, that the foregoing shall not operate as a waiver or  
18 release from any causes of action arising out of the willful misconduct, gross  
19 negligence, actual fraud, criminal conduct, or intentional unauthorized misuse of  
20 confidential information that causes damages of any such Person or Entity.

21 **E. Reservation of Rights.** Nothing contained in the Plan or the  
22 Confirmation Order shall be deemed to be a waiver or relinquishment of any claim,  
23 cause of action, right of setoff, or other legal or equitable defense that the Debtor had  
24 immediately prior to the Commencement Date, against or with respect to any Claim.  
25 The Debtor shall have, retained, reserved, and be entitled to assert all such claims,  
26 causes of action, rights of setoff, and other legal or equitable defenses that the Debtor

1 had immediately prior to the Commencement Date as fully as if the Chapter 11 Case  
2 had not been commenced, and all of the Debtor's legal and equitable rights respecting  
3 any Claim may be asserted after the Confirmation Date to the same extent as if the  
4 Chapter 11 Case had not been commenced.

5 **XII. RETENTION OF JURISDICTION**

6 **A. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and  
7 the occurrence of the Effective Date, the Bankruptcy Court will retain as much  
8 jurisdiction over the Chapter 11 Case after the Effective Date as legally permissible,  
9 including jurisdiction to:

10 1. Allow, disallow, determine, liquidate, classify, estimate, or establish the  
11 amount, priority, or secured or unsecured status of any Claim, and resolve any request  
12 for payment of any Administrative Claim and any objection to the Allowance or priority  
13 of any Claim;

14 2. Grant or deny any applications for allowance of compensation or  
15 reimbursement of expenses authorized under the Bankruptcy Code or the Plan;

16 3. Resolve any matters related to the assumption or rejection of any  
17 executory contract or unexpired lease to which the Debtor is a party and to hear,  
18 determine and, if necessary, liquidate any Claims arising from such rejection;

19 4. Ensure that distributions required under the Plan are accomplished in  
20 accordance with the Plan;

21 5. Decide or resolve any motions, adversary proceedings, contested matters,  
22 and any other matters and grant or deny any applications or motions involving the  
23 Debtor that may be pending on the Effective Date, including adjudicating the Copper  
24 Canyon litigation;

25  
26

1           6.     Enter any necessary or appropriate orders to implement or consummate  
2 the Plan's provisions and all contracts, instruments, releases, and other agreements or  
3 documents created in connection with the Plan or the Disclosure Statement;

4           7.     Resolve any cases, controversies, suits, or disputes that may arise in  
5 connection with the consummation, interpretation, or enforcement of the Plan, or any  
6 Person's obligations incurred in connection with the Plan;

7           8.     Hear and determine any motion or application to modify the Plan before  
8 or after the Effective Date under Bankruptcy Code § 1127 or modify the Disclosure  
9 Statement or any contract, instrument, release, or other agreement or document issued,  
10 entered into, filed, or delivered in connection with the Plan or the Disclosure Statement;  
11 or hear or determine any motion or application to remedy any defect or omission or  
12 reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure  
13 Statement, or any contract, instrument, release, or other agreement or document issued,  
14 entered into, filed or delivered in connection with the Plan or the Disclosure Statement,  
15 in such manner as may be necessary or appropriate to consummate the Plan, to the  
16 extent authorized by the Bankruptcy Code;

17           9.     Issue injunctions, enter and implement other orders, or take any other  
18 necessary or appropriate actions to restrain any entity's interference with consummation  
19 or enforcement of the Plan;

20           10.    Enter and implement any necessary or appropriate orders if the  
21 Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

22           11.    Determine any other matters that may arise in connection with or related  
23 to the Plan, the Disclosure Statement, the Confirmation Order, or any contract,  
24 instrument, release, or other agreement or document issued, entered into, filed, or  
25 delivered in connection with the Plan, the Disclosure Statement or the Confirmation  
26 Order;

- 1           12. Issue a final decree and enter an order closing the Chapter 11 Case; and  
2           13. Adjudicate the Disputed Claims, and Avoidance Actions and Litigation  
3 Claims and any other cause of action or claims of the estates, if any.

4 **XIII. AMENDMENT AND WITHDRAWAL OF PLAN**

5           **A. Amendment of Plan.** At any time before the Confirmation Date, the  
6 Debtor may alter, amend, or modify the Plan, or any of its attached Exhibits, under  
7 Bankruptcy Code § 1127(a) as long as doing so does not materially and adversely affect  
8 the treatment and rights of the holders of Claims and Equity Interests under the Plan.  
9 After the Confirmation Date but before substantial consummation of the Plan as defined  
10 in Bankruptcy Code § 1101(2), the Debtor may, under Bankruptcy Code § 1127(b),  
11 institute proceedings in the Bankruptcy Court to remedy any defect or omission or  
12 reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation  
13 Order, and any matters necessary to carry out the purposes and effects of the Plan as  
14 long as such proceedings do not materially and adversely affect the treatment of holders  
15 of Claims or Equity Interests under the Plan. The Debtor must serve prior notice of such  
16 proceedings in accordance with the Bankruptcy Rules or applicable order of the  
17 Bankruptcy Court.

18           **B. Revocation or Withdrawal of Plan.** The Debtor may revoke or  
19 withdraw the Plan at any time before the Confirmation Date. If withdrawn or revoked,  
20 the Plan is void and nothing contained in the Plan may be deemed a waiver of any  
21 Claims by or against the Debtor or any other Person in any further proceedings  
22 involving the Debtor or an admission of any sort, and the Plan and any transaction  
23 contemplated by the Plan may not be admitted into evidence in any proceeding.

24           **C. Modification of Confirmed Plan.** The Debtor reserves the right to  
25 petition the Court to modify the confirmed Plan in the event a Material Modification  
26 Event occurs post-confirmation.

1 **XIV. MISCELLANEOUS**

2 **A. Effecting Documents; Further Transactions; Timing.**

3 The Debtor is authorized and directed as of the Effective Date, without further  
4 order of the Bankruptcy Court, to execute, deliver, file, or record all contracts,  
5 instruments, releases, and other agreements or documents, and to take all actions  
6 necessary or appropriate to effect and further evidence the terms of the Plan. All  
7 transactions required to occur on the Effective Date under the terms of the Plan are  
8 deemed to have occurred simultaneously.

9 **B. Exemption from Transfer Taxes.**

10 Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and  
11 exchange of assets or property of the Estates; (b) the execution, assignment,  
12 modification, or recording of any lease or sublease; and (c) the execution, delivery, or  
13 recording of a deed or other instrument of transfer under, in furtherance of, or in  
14 connection with, the Plan, the Confirmation Order, or any transaction contemplated  
15 above, or any transactions arising out of, contemplated by, or in any way related to, the  
16 foregoing are not subject to any document recording tax, stamp tax, conveyance fee,  
17 intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or  
18 governmental assessment and the appropriate state or local government officials or  
19 agents are directed to forego the collection of any such tax or assessment and to accept  
20 for filing or recordation any of the foregoing instruments or other documents without  
21 the payment of any such tax or assessment.

22 **C. Binding Effect.**

23 The Plan is binding on, and inures to the benefit of, the Debtor and the holders of  
24 all Claims and Equity Interests and their respective successors and assigns.

25 **D. Substantial Consummation.**

26

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

3           **E.     Governing Law.**

4           Except to the extent that the Bankruptcy Code or other federal law is applicable  
5 or as provided in any document entered into in connection with the Plan, the rights,  
6 duties and obligations of any Person arising under the Plan are governed by, and  
7 construed and enforced in accordance with, the internal laws of the State of Arizona,  
8 without giving effect to Arizona's choice of law provisions.

9           **F.     Compromises and Settlements of Claims after Confirmation.**

10          After Confirmation, but prior to the Effective Date, pursuant to Rule 9019, the  
11 Debtor may compromise and settle various Claims against it and/or claims that they  
12 may have against others. Following the occurrence of the Effective date, the Debtor, in  
13 its sole discretion, may compromise and settle Claims against the Estate, as well as any  
14 claims that the Estate may have against others, without Bankruptcy Court approval.

15          **G.     Modification of Treatment of Claims.**

16          The Debtor reserves the right to modify the treatment of any Allowed Claim in  
17 any manner adverse only to the holder of that Claim at any time after the Effective Date  
18 on that holder's prior written consent.

19          **H.     Setoffs and Recoupment.**

20          The Debtor may, but is not required to, set off or recoup against any Claim and  
21 the payments or other distributions to be made under the Plan in respect of such Claim,  
22 Claims of any nature that arose before the Petition Date that the Estate may have against  
23 the holder of such Claim to the extent such Claims may be set off or recouped under  
24 applicable law, but neither the failure to do so nor the fact of any Claim under the Plan  
25 becoming Allowed constitutes a waiver or release by the Estate of any such claim that it  
26 may have against such holder.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**I. Notices.**

Any notice required or permitted to be provided under the Plan must be in writing and served by certified return-receipt-requested U.S. mail, hand delivery, overnight courier, or read-receipt-enabled e-mail to:

To the Debtor: F. Christopher Ansley  
3702 W. Tohono Crossing Pl.  
Tucson, AZ 85745-5278

To the Attorneys for the Debtor: Jody A. Corrales, Esq.  
GUST ROSENFELD, P.L.C.  
One S. Church Avenue, Suite 1900  
Tucson, Arizona 85701-1627

**J. Delivery of Notices.**

If personally delivered, notice is deemed delivered on actual receipt; if e-mailed in accordance with the Plan, notice is deemed delivered noon of the first Business Day following transmission; if sent by overnight courier in accordance with the Plan, notice is deemed delivered noon of the first Business Day following deposit with such courier; and if sent by U.S. Mail in accordance with the Plan, notice is deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails or refuses to accept delivery, as of the date of that failure or refusal. Any party to the Plan may change its address for the purposes of the Plan by giving notice of the change.

**K. Severability.**

If the Bankruptcy Court finds the Plan or any provision of the Plan to be invalid, illegal or unenforceable, or if the Bankruptcy Court cannot confirm the Plan under Bankruptcy Code § 1129, the Bankruptcy Court, at the Debtor's request, may retain the power to alter and interpret the Plan or any such provision to make it valid or enforceable to the maximum extent feasible, consistent with the original purpose of the

1 provision held to be invalid or unenforceable, and such provision will then become  
2 applicable as altered or interpreted. The Confirmation Order constitutes a judicial  
3 determination and provides that each term and provision of the Plan, as it may have  
4 been altered or interpreted in accordance with the foregoing, is valid and enforceable.

5 **L. Plan Documents.**

6 Notwithstanding anything to the contrary contained in the Plan, including any  
7 reference in the Plan to documents in the forms annexed to the Plan as exhibits, the  
8 Debtor may revise any such document by filing the revised document with the  
9 Bankruptcy Court at least five days before the deadline for voting on the Plan, or with  
10 the written consent of all parties in interest that are entitled to vote on the Plan and are  
11 materially and adversely affected by the revision.

12 **M. Inconsistency.**

13 If any inconsistency between the Plan and the Disclosure Statement exists, the  
14 Plan governs. If any inconsistency between the Plan and any document promulgated  
15 under the Plan exists, the document governs.

16 **N. Subordination.**

17 The distributions under the Plan take into account the relative priority of each  
18 Claim in connection with any contractual subordination provisions relating to such  
19 Claim. Accordingly, distributions under the Plan are not and may not be subject to levy,  
20 garnishment, attachment, or other legal process by any holder of a Claim or Equity  
21 Interest purporting to be entitled to the benefits of such contractual subordination, and  
22 all such holders are deemed to have waived all contractual subordination rights they  
23 otherwise may have had.

24 **O. Withholding and Reporting Requirements.**

25 In connection with the Plan and all instruments issued in connection with the  
26 Plan, the Debtor must comply with all withholding and reporting requirements imposed

1 by any federal, state, local, or foreign taxing authority, and all distributions under the  
2 Plan remain subject to any such withholding and reporting requirements. The Debtor  
3 may take all actions necessary to comply with such withholding and reporting  
4 requirements. Notwithstanding any other provision of the Plan, each holder of an  
5 Allowed Claim that has received a distribution under the Plan has sole and exclusive  
6 responsibility for the satisfaction or payment of any tax obligation imposed by any  
7 governmental unit, including income, withholding, and other tax obligation on account  
8 of such distribution.

9 **P. Post-Effective Date Fees; Final Decree.**

10 The Debtor will be responsible for paying any post-Effective Date fees under 28  
11 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court  
12 enters a final decree, which will be as soon as feasible after distributions under the Plan  
13 have commenced. Notice of application for a final decree need be given only to those  
14 holders of Claims and Equity Interests and other parties that, after the Effective Date,  
15 specifically request such notice.

16 **Q. De Minimis Distributions.**

17 No distributions of less than \$10 will be made on account of any Claim. An  
18 Allowed Claim remains eligible for distributions on the first date set for distributions  
19 when such distribution exceeds \$10.

20 **R. Delivery of Distributions; Undeliverable Distributions.**

21 Distributions to a holder of an Allowed Claim will be made: (a) to the address set  
22 forth on the holder's proof of claim, the Schedules, or, if no proof of claim is filed and  
23 the holder does not appear on the Schedules, the holder's last known address; or (b) to  
24 the address set forth in any written notice of address change delivered to the Debtor. If  
25 any holder's distribution is returned as undeliverable, no further distributions to that  
26 holder will be made unless and until the Debtor is notified of the holder's then-current

1 address. Claims held by a holder whose distributions are returned as undeliverable and  
2 who fails to notify the Debtor of its correct address within 90 days after the distributions  
3 are returned to the Debtor as undeliverable will be expunged, after which all unclaimed  
4 property will revert to the Debtor free of any restrictions. Claims in respect of void  
5 checks and the underlying distributions are forever barred against the Debtor, or its  
6 respective property, notwithstanding any federal or state escheat laws to the contrary.  
7 Nothing contained in the Plan requires the Debtor to attempt to locate any holder of an  
8 Allowed Claim.

9 **S. Failure to Negotiate Checks.**

10 Checks issued in respect of distributions under the Plan are void if not negotiated  
11 within 120 days after issuance. Any amounts returned to the Debtor in respect of a non-  
12 negotiated check will be held by the Debtor. Requests for reissuance of any such check  
13 must be made directly to the Debtor by the holder of the Allowed Claim with respect to  
14 which such check originally was issued. All amounts represented by any voided check  
15 will be held until the later of six months after the Effective Date and six months after  
16 the voided check was issued, and all requests for reissuance by the holder of the  
17 Allowed Claim in respect of the voided check must be made before that date.

18 Thereafter, all such amounts reverts in the Debtor free of any restriction. All Claims in  
19 respect of void checks and the underlying distributions are forever barred against the  
20 Debtor, or its respective property, notwithstanding any federal or state escheat laws to  
21 the contrary.

22 **XV. EFFECTS OF CONFIRMATION**

23 Except as otherwise provided in the Plan or the Confirmation Order,  
24 Confirmation acts as a Discharge, effective as of Confirmation, of any and all debts of  
25 the Debtor that arose any time before the entry of the Confirmation Order including, but  
26 not limited to, all principal and all interest accrued thereon, pursuant to Bankruptcy

1 Code § 1141(d)(1). The Discharge shall be effective as to each Claim, regardless of  
2 whether a Proof of Claim thereon was filed, whether the Claim is an Allowed Claim, or  
3 whether the Holder thereof votes to accept the Plan.

4 **XVI. LIQUIDATION ANALYSIS**

5 *See* attached Exhibit 3.

6  
7 **XVII. TAX CONSEQUENCES**

8 Pursuant to Bankruptcy Code § 1125(a)(1), the Debtor is to provide a discussion  
9 of the potential material tax consequences of the Plan to the Debtor, any successor to the  
10 Debtor, and a hypothetical investor typical of the holders of claims or interests in the  
11 case, which would enable such a hypothetical investor of the relevant Class to make an  
12 informed judgment about the Plan. The Debtor, however, need not include such  
13 information about any other possible or proposed plan. In determining whether the  
14 Disclosure Statement provides adequate information, the Court shall consider the  
15 complexity of the case, the benefit of additional information to creditors and other  
16 parties in interest, and the cost of providing additional information.

17 The following discussion summarizes certain considerations that may affect the  
18 anticipated federal income tax consequences of the Plan's implementation to Creditors  
19 and to the Debtor. It does not address all federal income tax consequences of the Plan  
20 nor does it address the state or local income tax or other state or local tax consequences  
21 of the Plan's implementation to Creditors or to the Debtor.

22 This description of the federal income tax consequences of implementing the  
23 Plan is based on Debtor's interpretation of the applicable provisions of the Internal  
24 Revenue Code of 1986, as amended (the "IRC"), the regulations promulgated  
25 thereunder, and other relevant authority. Debtor's interpretation, however, is not binding  
26 on the IRS or any court. The Debtor has not obtained, nor does it intend to obtain, a

1 private letter ruling from the IRS, nor has the Debtor obtained an opinion of counsel  
2 with respect to any of these matters. The discussion below is general in nature and is not  
3 directed to the specific tax situation of any particular interested taxpayer. For these  
4 reasons, all Creditors and Interest Holders should consult with their own tax advisors as  
5 to the tax consequences of implementation of the Plan to them under applicable federal,  
6 state, and local tax laws.

7 **A. Tax Consequences to the Debtor**

8 In general, the amount of any debt of a business entity that is partially or totally  
9 discharged pursuant to a Title 11 bankruptcy case is excluded from gross income.  
10 Generally, the amount of debt discharge income (“DDI”) that is excluded from gross  
11 income must be applied to reduce the tax attributes of the Debtor. The Debtor’s tax  
12 attributes are reduced in the following order: (1) net operating losses (“NOLs”); (2)  
13 general business credits; (3) minimum tax credit; (4) capital loss carryovers; (5)  
14 reduction in tax basis of the Debtor’s property; (6) passive activity loss and credit  
15 carryovers; and (7) foreign tax credit carryovers. The Debtor may elect to apply the debt  
16 discharge exclusion first to depreciable property and thereafter to the tax attributes in  
17 the above prescribed order.

18 **B. Tax Consequences to the Secured and Unsecured Creditors**

19 Both the Secured Claimants and/or the Unsecured Claimants may be required to  
20 report income or be entitled to a deduction as a result of implementation of the Plan.  
21 The exact tax treatment depends on, among other things, each Claimant’s method of  
22 accounting, the nature of each Claimant’s claim, and whether and to what extent such  
23 Claimant has taken a bad debt deduction in prior taxable years with respect to the  
24 particular debt owed to it by the Debtor. Each Holder of a secured claim or an  
25 unsecured claim is urged to consult with his, her, or its own tax advisor regarding the  
26 particular tax consequences of the treatment of his, her, or its claim under the Plan.

1           **C. Tax Consequences to the Interest Holders**

2           Each Interest Holder of the Debtor is urged to consult with his, her, or its own tax  
3 advisor regarding the particular tax consequences of the treatment of his, her, or its  
4 interest under the Plan.

5 **XVIII. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS**

6           **A. Objections and Bar Date for Filing Objections**

7           As soon as practicable, but in no event later than 60 days after the Effective Date,  
8 objections to Claims shall be filed with the Bankruptcy Court and served upon the  
9 holders of each of the Claims to which objections are made pursuant to the Bankruptcy  
10 Code and the Bankruptcy Rules. Objections filed after such date will be barred.

11           **B. Settlement of Claims**

12           Settlement of any objection to a Claim not exceeding \$10,000.00 shall be  
13 permitted on the eleventh (11th) day after notice of the settlement has been provided to  
14 the Debtor, Debtor's counsel, the Creditors, the settling party, and other persons  
15 specifically requesting such notice, and if on such date there is no written objection  
16 filed, such settlement shall be deemed approved. In the event of a written objection to  
17 the settlement, the settlement must be approved by the Court on notice to the objecting  
18 party.

19           **C. Estimation of Claims**

20           For purposes of making distributions provided for under the Plan, all Claims  
21 objected to shall be estimated by the Disbursing Agent at an amount equal to (i) the  
22 amount, if any, determined by the Court pursuant to Bankruptcy Code § 502(c) as an  
23 estimate for distribution purposes (ii) an amount agreed to between the Debtor and the  
24 Claimant; or, (iii) that amount set forth as an estimate in the Plan or Disclosure  
25 Statement. Notwithstanding anything herein to the contrary, no distributions shall be  
26 made on account of any Claim until such Claim is an Allowed Claim.

1           **D.     Unclaimed Funds and Interest**

2           Distribution to Claimants shall be mailed by the Reorganized Debtor to the  
3 Claimants at the address appearing on the master mailing matrix unless the Claimant  
4 provides the Reorganized Debtor with an alternative address. After a period of one year  
5 from the date that a distribution was made by the disbursing agent but has gone  
6 uncollected by the Claimant, the disbursing agent shall retain any distributions  
7 otherwise distributable hereunder which remain unclaimed or as to which the disbursing  
8 agent has not received documents required pursuant to the Plan. Thereafter, the  
9 unclaimed funds shall revert in the Reorganized Debtor.

10 **XIX.   NON-ALLOWANCE OF PENALTIES AND FINES**

11           No distribution shall be made under the Plan on account of, and no Allowed  
12 Claim, whether Secured, Unsecured, Administrative, or Priority, shall include any fine,  
13 penalty, exemplary or punitive damages, late charges, default interest or other monetary  
14 charges relating to or arising from any default or breach by the Debtor, and any Claim  
15 on account thereof shall be deemed Disallowed, whether or not an objection was filed to  
16 it.

17 **XX.   CLOSING OF CASE**

18           If the Court does not close this case on its own motion, the Reorganized Debtor  
19 will move the Court to close the case once the Plan is deemed substantially  
20 consummated. Until substantial consummation, the Reorganized Debtor will be  
21 responsible for filing pre- and postconfirmation reports required by the United States  
22 Trustee and paying the quarterly postconfirmation fees of the United States Trustee, in  
23 cash, pursuant to 28 U.S.C. § 1930, as amended. Pursuant to 11 U.S.C. § 1129(a)(12),  
24 all fees payable under Section 1930 of Title 28, as determined by the Court at the  
25 hearing on confirmation of the Plan, will be paid, in cash, on the Effective Date.  
26



1 **XXI. MODIFICATION OF THE PLAN**

2 In addition to its modification rights under Bankruptcy Code § 1127, the Debtor  
3 may amend or modify the Plan at any time prior to Confirmation without leave of the  
4 Court. The Debtor may propose amendments and/or modifications of the Plan at any  
5 time subsequent to Confirmation with leave of the Court and upon notice to Creditors.  
6 After Confirmation of the Plan, the Debtor may, with approval of the Court, as long as it  
7 does not materially or adversely affect the interests of Creditors, remedy any defect or  
8 omission or reconcile any inconsistencies of the Plan, or in the Confirmation Order, if  
9 any may be necessary to carry out the purposes and intent of the Plan.

10 **XXII. JURISDICTION OF THE COURT**

11 The Court will retain jurisdiction until the Plan has been fully consummated for,  
12 including but not limited to, the following purposes:

13 1. The classification of the Claims of any Creditors and the re-examination  
14 of any Claims which have been allowed for the purposes of voting, and for the  
15 determination of such objections as may be filed to the Creditor's Claims. The failure  
16 by the Debtor to object to or examine any Claim for the purpose of voting shall not be  
17 deemed to be a waiver of the Debtor's rights to object to or to re-examine the Claim in  
18 whole or in part.

19 2. To determine any Claims which are disputed by the Debtor, whether such  
20 objections are filed before or after Confirmation, to estimate any Unliquidated or  
21 Contingent Claims pursuant to 11 U.S.C. § 502(c)(1) upon request of the Debtor or any  
22 holder of a Contingent or Unliquidated Claim, and to make determination on any  
23 objection to such Claim.

24 3. To determine all questions and disputes regarding title to the assets of the  
25 Estates, and determination of all causes of action, controversies, disputes or conflicts,  
26 whether or not subject to action pending as of the date of Confirmation, between the

1 Debtor and any other party, including but not limited to, any rights of the Debtor to  
2 recover assets pursuant to the provisions of the Bankruptcy Code.

3 4. The correction of any defect, the curing of any omission or any  
4 reconciliation of any inconsistencies in the Plan, or the Confirmation Order, as may be  
5 necessary to carry out the purposes and intent of the Plan.

6 5. The modification of the Plan after Confirmation, pursuant to the  
7 Bankruptcy Rules and the Bankruptcy Code.

8 6. To enforce and interpret the terms and conditions of the Plan.

9 7. The entry of an order, including injunctions, necessary to enforce the title,  
10 rights and powers of the Debtor, and to impose such limitations, restrictions, terms and  
11 conditions of such title, right and power that this Court may deem necessary.

12 8. The entry of an order concluding and terminating this case.

13 **XXIII. RETENTION AND ENFORCEMENT OF CLAIMS**

14 Pursuant to Bankruptcy Code § 1123(b)(3), the Reorganized Debtor shall retain  
15 and may enforce any and all claims of the Debtor, except those claims specifically  
16 waived herein. Any retained causes of action include, but are not limited to, all  
17 avoidance actions, fraudulent conveyance actions, preference actions, and other claims  
18 and causes of action of every kind and nature whatsoever, arising before the Effective  
19 Date that have not been resolved or disposed of prior to the Effective Date, whether or  
20 not such claims or causes of action are specifically identified in the Disclosure  
21 Statement.

22 Any recovery obtained from retained causes of action shall become an additional  
23 asset of the Debtor, unless otherwise ordered by the Court, and shall be available for  
24 distribution in accordance with the terms of the Plan.

25 **XXIV. EXECUTORY CONTRACTS**

26

1 The treatment of Debtor's executory contracts so set out, infra, at Section VIII.  
2 Debtor incorporates herein by this reference that treatment and procedure.

3 **XXV. REVESTING**

4 Except as provided for in the Plan or in the Confirmation Order, on the Effective  
5 Date the Reorganized Debtor shall be vested with all the property of the Estates free and  
6 clear of all claims, liens, charges, and other interests of Creditors, arising prior to the  
7 Effective Date. Upon the Effective Date, the Reorganized Debtor shall operate its  
8 businesses free of any restrictions.

9 **XXVI. DISCLAIMER**

10 Court approval of this Disclosure Statement and the accompanying Plan of  
11 Reorganization, is not a certification of the accuracy of the contents thereof.  
12 Furthermore, Court approval of these documents does not constitute the Court's opinion  
13 as to whether the Plan should be approved or disapproved.

14 **XXVII. RISKS**

15 The risk of the Plan depends on the Reorganized Debtor successfully continuing  
16 in its business operations at levels and at rates sufficient to generate revenues to satisfy  
17 the Plan payments required and as described in Section VI of this Disclosure Statement.  
18 Based on Debtor's thorough and careful review and analysis of Debtor's operations and  
19 projected future performance, Debtor submits that the long term prospects of this Plan,  
20 however, are favorable. Debtor contends that the Plan represents the best means for  
21 Creditors to recover on their Claims.

22 **XXVIII. PROPONENT'S RECOMMENDATION/ALTERNATIVES TO THE**  
23 **PLAN.**

24 The Debtor recommends that all creditors entitled to vote for the Plan do so and  
25 that they vote in favor of the Plan. The alternatives to confirmation of the Plan would  
26 be either conversion of this case to one under Chapter 7 of the Bankruptcy Code or their

1 dismissal, which would result in the demise of the Debtor's business and creditors  
2 receiving nothing on account of their claims.

3 If the case were converted, the result would be the appointment of a Chapter 7  
4 trustee and, most likely, the hiring of an attorney by the trustee. Expenses incurred in  
5 administering the Chapter 7 case would take priority in the right to payment over  
6 allowed, administrative expenses incurred in the Chapter 11 Case. Both Chapter 7 and  
7 Chapter 11 administrative expenses take priority over the payment of unsecured claims  
8 without priority. In other words, conversion would likely decrease the net amount  
9 available to pay currently existing creditors. The most likely effect of conversion of the  
10 case to a Chapter 7 would be a termination of all of Debtor's business operations and, as  
11 a result, creditors would receive nothing.

12 For all these reasons, the Debtor urges all creditors to vote to accept the Plan and  
13 to return ballots promptly for timely processing and computation.

14 RESPECTFULLY SUBMITTED this 9th day of December, 2014.

15 GUST ROSENFELD P.L.C.

16 By: /s/ Jody A. Corrales - #024869  
17 Jody A. Corrales  
18 *Attorneys for Debtor*  
19  
20  
21  
22  
23  
24  
25  
26