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5 Bankruptcy Counsel for  
Debtor-in-Possession 220 ADAMS RANCH ROAD, LLC.  
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9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 LOS ANGELES DIVISION  
12

13 In re  
14 220 ADAMS RANCH ROAD, LLC.  
15 Debtor-In-  
Possession.  
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Case No. 2:15-bk-22727-ER

Chapter 11

**DEBTOR'S SECOND AMENDED  
DISCLOSURE STATEMENT AND  
MOTION FOR APPROVAL OF  
SECOND AMENDED  
DISCLOSURE STATEMENT**

**JUDGE**  
Hon. Ernest Robles

23  
24 **TO THE HONORABLE ERNEST ROBLES, UNITED STATES**  
25 **BANKRUPTCY JUDGE; THE OFFICE OF THE UNITED STATES**  
26 **TRUSTEE; THE DEBTOR'S SECURED LENDERS; THE DEBTOR'S 20**  
27 **LARGEST UNSECURED CREDITORS; AND TO OTHER INTERESTED**  
28 **PARTIES AND THEIR ATTORNEYS OF RECORD:**

1           **I.     INTRODUCTION**

2           220 Adams Ranch Road, LLC. (“Debtor”) files this SECOND AMENDED  
3 DISCLOSURE STATEMENT (the “Disclosure Statement”) in support of its  
4 CHAPTER 11 PLAN (“PLAN”).

5           All parties should note that this disclosure statement is explanatory only. The  
6 Plan and the terms of the Plan therein are binding on the parties. Upon approval of  
7 this disclosure statement and exhibits, a Plan and Ballot will be served on all Parties  
8 and offer them the opportunity to vote on the Plan.

9           **II.    BACKGROUND OF THE DEBTOR**

10          For many years JOHN DAVID THOMAS (“Thomas”, “Mr. Thomas”) had  
11 been a real estate developer in Southern California. Mr. Thomas’s business is  
12 extremely cyclical.

13          In the early 2000s, Thomas purchased a single family residence in Colorado  
14 (“the Property”), and shortly thereafter deeded it to a testamentary trust, the 220  
15 Adams Ranch Road Trust, of which Thomas has been the sole trustee.

16          The subject lone on the Property was secured by a first trust deed. After  
17 several transfers, the note ultimately found its way into the hands of JP Morgan  
18 Chase (“Chase”).

19          In 2008, due to the crash in the real estate markets, entities in which Mr.  
20 Thomas held an interest lost several properties and he fell behind on the Chase note  
21 which began to build up arrears.

22          In 2014, due to disagreements concerning the servicing of the Chase note, Mr.  
23 Thomas, as Trustee of the 220 Adams Ranch Road Trust, initiated litigation with  
24 Chase in the Central District of California. The litigation resulted in a settlement by  
25 which the 220 Adams Ranch Road Trust could make payments to pay the arrears in  
26 full over the next few months. However, Chase breached the settlement, withdrew  
27 its consent, and resumed foreclosure proceedings.

1        Shortly before the judicial foreclosure, the 220 Adams Ranch Road Trust  
2 formed 220 Adams Ranch Road, LLC. Mr. Thomas is the sole member of this  
3 business entity. The Property was transferred to the Debtor, 220 Adams Ranch  
4 Road, LLC, prior to foreclosure.

5        Meanwhile, up until recently, the legal proceedings continued in the Central  
6 District of California. They have since been dismissed.

### 7        **III. FIRST AMENDED DISCLOSURE STATEMENT**

8        The Debtor filed its First Amended Disclosure (“FAD”) Statement on  
9 September 21, 2016. A hearing was set on the FAD for October 26<sup>th</sup>, 2016. Both  
10 the United States Trustee and Chase filed objections to the FAD docketed as  
11 numbers 68 and 69 respectively. After discussions by and between the parties, a  
12 Stipulation was reached and filed as Docket #75 to continue the hearing to allow for  
13 a stipulation to be filed between the Debtor, Mr. Thomas and Chase regarding the  
14 treatment of Chase’s claim. However, the Stipulation became moot in light of the  
15 court’s ruling on October 26<sup>th</sup>, 2016 allowing an amended disclosure statement to be  
16 filed. Docket #75 and the court’s tentative ruling from October 26<sup>th</sup>, 2016 are  
17 attached to this statement as exhibits.

### 18        **IV. ALL CREDITORS ARE NOW IN SUPPORT OF THE PLAN**

19        As of the date of this writing, the Debtor’s entire creditor body is now in  
20 support of the Plan<sup>1</sup>. A stipulation was reached with Chase and filed as docket #78.  
21 An agreement for the remaining impaired classified creditor, Val Alahan, is  
22 embodied in this statement and will be memorialized in writing within the next 30  
23 days.

### 24        **V. EFFECTIVE DATE OF THE PLAN**

25        The effective date of the Plan will be 14 days following the entry of the order  
26 confirming the Plan unless a stay of confirmation order is in effect, in which case

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27 <sup>1</sup> The \$800.00 priority tax claim of the California Franchise Tax Board has either been paid  
28 or will be paid so they are presumed to either consent or not be at issue at this time.

1 the effective date will be the first business day after the date on which the stay of the  
2 confirmation order has been lifted, provided that the confirmation order has not been  
3 vacated. (“Effective Date”).

4 The Plan provided as an exhibit to this Disclosure Statement is an exhibit  
5 only. An actual plan, and ballots, will be served after this Disclosure Statement is  
6 approved and that will provide you with an opportunity to vote on the Plan.

## 7 **VI. CLAIMS**

8 The Plan classifies claims and interests in various classes according to their  
9 right to priority. The Plan states whether each class or class of interests is impaired  
10 or unimpaired. This Plan provides for the treatment each class will receive. The  
11 classes in the Plan are summarized as follows:

### 12 **A. UNCLASSIFIED CLAIMS: ADMINISTRATIVE AND** 13 **PRIORITY CLAIMS**

14 Holders of administrative priority claims are entitled to priority pursuant to  
15 Sec. 507(a)(2) of the Bankruptcy Code. These include (i)Professional fees and  
16 costs; (ii)United States Trustee’s Fees; and (iii)post-petition domestic support  
17 obligations. Such claims shall be paid in full on, or as soon as practicable after, the  
18 Effective Date or upon allowance of such claim, whichever is later.

#### 19 **KNOWN CLAIMS:**

20 LAKE FOREST BANKRUPTCY \$15,000 (estimated)

### 21 **B. UNCLASSIFIED CLAIMS: PRIORITY UNSECURED** 22 **CREDITORS**

23 Priority unsecured claims are impaired and entitled to vote under the Plan.  
24 Such creditors will be paid monthly in full over 5 years with 0% interest. Payments  
25 shall be made in equal monthly amortizing installments beginning on the first day of  
26 each calendar month after the Effective Date. Alternatively, if any one of these  
27 classes does not vote to accept the Plan, then each claim in such class must be paid  
28

1 in full on, or as soon as practicable after, the Effective Date or the Plan cannot be  
2 confirmed.

3 KNOWN CLAIMS:

4 CALIFORNIA FRANCHISE TAX BOARD: \$800.00

5 **C. CLASS 1: CONSENTING OR NON-VOTING CLAIMS**

6 Certain creditors have already supplied a stipulation voting in favor of the  
7 Plan or unimpaired and are not voting on the Plan. These are as follows:

8 CLASS 1: JP MORGAN CHASE BANK

9 Chase maintains the senior lien on the Property in an amount of  
10 approximately \$2,833,236.52. The treatment of Chase's claim is embodied in the  
11 attached Exhibit. Chase is voting in favor of the Plan so long as its treatment in the  
12 Plan mirrors its treatment in the attached Exhibit.

13 CLASS 2: VAL ALAHAN

14 Val Alahan is a junior secured creditor with a lien in an amount of  
15 approximately \$120,000 secured to the Property. This was a consensual lien  
16 produced as a result of a settlement agreement between Mr. Alahan and Mr.  
17 Thomas. This lien secured and guaranteed payment for Mr. Alahan. This lien will  
18 be avoided as a term of the Plan and paid by Mr. Thomas directly in conformity  
19 with a payment schedule by and between Mr. Alahan and Mr. Thomas already in  
20 force.

21 The remaining payment schedule is as follows:

- 22 1. \$47,050.50 to be paid on or before December 1, 2016; and  
23 2. \$85,000 to be paid on or before April 15<sup>th</sup>, 2017.

24 A stipulation memorializing these terms will be provided including Mr.  
25 Alahan's vote in favor of the Plan within 30 days of this writing.

26 **D. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

27 There are no executory contracts or unexpired leases of note addressed under  
28 the Plan.

1                   **E. DISCHARGE**

2           Upon confirmation of the Plan, the Debtor may receive a discharge of its pre-  
3 confirmation debts, except such discharge shall not discharge the Debtor from any  
4 debts that are found to be non-dischargeable under Sec. 523 or are obligations  
5 created by this Plan. The payments promised in the Plan constitute new contractual  
6 obligations that replace the pre-confirmation debts proposed to be discharged.  
7 Creditors may not sue to collect upon these debts or obligations so long as the  
8 Debtor is not in material default under the Plan. If the Debtor materially defaults in  
9 performing the Plan, affected creditors may sue the Debtor to enforce the terms of  
10 the Plan, or to discuss the case or to convert it to a case under Chapter 7 of the  
11 Bankruptcy Code.

12                   **VII. VOTING ON CONFIRMATION OF THE PLAN**

13           **a. WHO MAY VOTE:** Only impaired creditors are entitled to vote.  
14           11 U.S.C. Sec. 1124. A creditor is entitled to vote on confirmation  
15 of the Plan unless (i)the creditor's class is unimpaired or is to  
16 receive no distribution; (ii)an objection has been filed to that  
17 creditor's claim; (iii)that creditor's claim is scheduled by the Debtor  
18 as contingent, disputed, unliquidated or unknown and the creditor  
19 has not filed a proof of claim; or (iv)the claim is unclassified (and  
20 thus required by law to be paid in full). A creditor whose claim has  
21 either been objected to or has been scheduled by Debtor as  
22 contingent, disputed, unliquidated or unknown or who has to file a  
23 proof of claim, and who wishes to vote, must move to have its claim  
24 allowed for voting purposes by filing a motion for such relief in  
25 time for that motion to be heard before the hearing on confirmation  
26 of the Plan. A creditor whose claim has been allowed in part as a  
27 secured claim and in part as an unsecured claim is entitled to accept  
28 or reject a Plan in each capacity by delivering one ballot for the

1 secured part of the claim and another ballot for the unsecured  
2 portion of the claim.

3 **b. HOW TO VOTE:** A voting creditor must fill out and return the  
4 attached ballot so that it is received by the Debtor no later than the  
5 date to be specified in the ballot by delivery to: ANERIO V.  
6 ALTMAN, ESQ, LAKE FOREST BANKRUPTCY, 23151  
7 MOULTON PARKWAY, LAGUNA HILLS, CA 92653.

8 **c. EFFECT OF VOTE:** The Plan will be confirmed only if (i)it is  
9 accepted by all impaired classes, or (ii)it is accepted by at least one  
10 impaired class exclusive of insiders (as defined by Sec. 101(31) and  
11 the court determines that the Plan is “fair and equitable” as defined  
12 by Sec. 1129(b)) to all rejecting classes of creditors, and it meets all  
13 of the other criteria required for confirmation. A class of creditors  
14 accepts the Plan if it is accepted by a majority in number and at least  
15 two-thirds in dollar amount of the creditors in that class that vote  
16 timely.

## 17 **VIII. PLAN FUNDING**

### 18 **a. FUNDING FOR THE PLAN**

#### 19 **i. CONTRIBUTIONS BY THOMAS**

20 Funds will be contributed by Thomas, or a business entity designated by  
21 Thomas, to the Debtor. The Debtor has received \$120,000 by this method prior to  
22 the Effective Date, and ongoing distributions will be made as necessary.

#### 23 **ii. DISBURSING AGENT**

24 The Debtor, by way of Mr. Thomas, will act as the disbursing agent (the  
25 “Disbursing Agent”) for distributions to be made to holders of allowed claims. The  
26 Disbursing Agent shall not be required to provide any bond in connection with the  
27 making of any distribution pursuant to the terms of this Plan.

## 28 **IX. RISK FACTORS**

1 There are no known risk factors to the success of the Plan except from the  
2 Debtor's principal's possible loss in employment or employment income.

3 **X. LIQUIDATION ANALYSIS**

4 The Proposed plan meets the liquidation analysis.

5 The Debtor has no property nor assets other than the Property. The Property  
6 has been valued at \$2,020,000 and is over-encumbered by almost \$1,000,000 from  
7 the liens of Chase and Val Alahan. In a Chapter 7 proceeding, there would be no  
8 distribution to any unsecured creditors.

9 **XI. FEASIBILITY**

10 The Plan cannot be confirmed unless the court finds it feasible. A Plan is  
11 feasible if confirmation of the Plan is not likely to be followed by the liquidation or  
12 the need for further reorganization, of the Debtor, unless such liquidation or  
13 reorganization is proposed in the Plan.

14 Here, the Debtor contains sufficient assets in its bank account to begin  
15 performance on its obligations owed to Chase. Further contributions can be made as  
16 necessary to effectuate this plan. There is no potential for liquidation for liquidation  
17 and no further changes that need to be made.

18 **XII. EXHIBITS**

19 Debtor provides the following exhibits in support of this Disclosure  
20 Statement.


- 21 1. EXHIBIT A: PROPOSED PLAN;
- 22 2. EXHIBIT B: PROPOSED BALLOT;
- 23 3. EXHIBIT C: STIPULATION REGARDING OCTOBER 26<sup>th</sup>, 2016;
- 24 4. EXHIBIT D: TENTATIVE ORDER FROM OCTOBER 26<sup>th</sup>, 2016;
- 25 5. EXHIBIT E: STIPULATION WITH CHASE
- 26 6. EXHIBIT F: MONTHLY OPERATING REPORT

27 **XIII. CONCLUSION**




1 Based upon the preceding statements, the Debtor requests that the Court  
2 approve this disclosure statement.

3  
4 Dated: 11/28/16

  
5 ANERIO V. ALTMAN, ESQ.  
6 ATTORNEY FOR 220 ADAMS ROAD, LLC.  
7 DEBTOR IN POSSESSION

8 I declare, under penalty of perjury of the laws of the United States, that I have read  
9 the Disclosure Statement, and these statements are true and correct as to the best of  
10 my knowledge.

11  
12 Date: 11/28/2016

  
13 JOHN DAVID THOMAS  
14 MANAGING MEMBER  
15 220 ADAMS RANCH ROAD, LLC.  
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## **EXHIBIT A**

1 ANERIO V. ALTMAN, Cal. Bar No. 228445  
2 LAKE FOREST BANKRUPTCY  
3 23151 Moulton Parkway, Suite 131  
4 Laguna Hills, California 92630  
5 Telephone: 949-218-2002  
6 Facsimile: 949-218-2002  
7 avaesq@lakeforestbkoffice.com

8 Bankruptcy Counsel for  
9 Debtor-in-Possession 220 ADAMS RANCH ROAD, LLC.

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 LOS ANGELES DIVISION

13 In re  
14 220 ADAMS RANCH ROAD, LLC.  
15 Debtor-In-  
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Case No. 2:15-bk-22727-ER

Chapter 11

**CHAPTER 11 PLAN**

**JUDGE**

Hon. Ernest Robles

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21 **TO THE HONORABLE ERNEST ROBLES, UNITED STATES**  
22 **BANKRUPTCY JUDGE; THE OFFICE OF THE UNITED STATES**  
23 **TRUSTEE; THE DEBTOR'S SECURED LENDERS; THE DEBTOR'S 20**  
24 **LARGEST UNSECURED CREDITORS; AND TO OTHER INTERESTED**  
25 **PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 ///

**I. INTRODUCTION**

220 Adams Ranch road, LLC, (“Debtor”) files this First Chapter 11 Plan (“Plan”).

Chapter 11 allows the Debtor, and in some cases creditors and other parties in interest, to propose a plan of reorganization. A plan may provide for the Debtor to reorganize by continuing to operate, to liquidate by selling assets of the estate, or a combination of both, among other options. Here, the Debtor is a proponent of the reorganization Plan. THE DOCUMENT YOU ARE READING IS THE PLAN.

This is a reorganization plan. The “Effective Date” of the Plan will be the first business day of the first full calendar month which is at least fourteen (14) days following the date of entry of an order by the Bankruptcy Court (the “Court”) confirming the Plan (the “Confirmation order”) assuming there has been no appeal from, or order staying the effectiveness of, the Confirmation Order.

**II. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. UNCLASSIFIED CLAIMS: ADMINISTRATIVE AND PRIORITY CLAIMS**

Holders of administrative priority claims are entitled to priority pursuant to Sec. 507(a)(2) of the Bankruptcy Code. These include (i) Professional fees and costs; (ii) United States Trustee’s Fees; and (iii) post-petition domestic support obligations. Such claims shall be paid in full on, or as soon as practicable after, the Effective Date or upon allowance of such claim, whichever is later.

**KNOWN CLAIMS:**

LAKE FOREST BANKRUPTCY \$15,000 (estimated)

**B. UNCLASSIFIED CLAIMS: PRIORITY UNSECURED CREDITORS**

Priority unsecured claims are impaired and entitled to vote under the Plan. Such creditors will be paid monthly in full over 5 years with 0% interest. Payments

1 shall be made in equal monthly amortizing installments beginning on the first day of  
2 each calendar month after the Effective Date. Alternatively, if any one of these  
3 classes does not vote to accept the Plan, then each claim in such class must be paid  
4 in full on, or as soon as practicable after, the Effective Date or the Plan cannot be  
5 confirmed.

6 KNOWN CLAIMS:

7 CALIFORNIA FRANCHISE TAX BOARD: \$800.00

8 **C. CLASS 1: CONSENTING OR NON-VOTING CLAIMS**

9 Certain creditors have already supplied a stipulation voting in favor of the  
10 Plan or unimpaired and are not voting on the Plan. These are as follows:

11 CLASS 1: JP MORGAN CHASE BANK

12 Chase maintains the senior lien on the Property in an amount of  
13 approximately \$2,833,236.52. The treatment of Chase's claim is embodied in the  
14 attached Exhibit. Chase is voting in favor of the Plan so long as its treatment in the  
15 Plan mirrors its treatment in the attached Exhibit.

16 CLASS 2: VAL ALAHAN

17 Val Alahan is a junior secured creditor with a lien in an amount of  
18 approximately \$120,000 secured to the Property. This was a consensual lien  
19 produced as a result of a settlement agreement between Mr. Alahan and Mr.  
20 Thomas. This lien secured and guaranteed payment for Mr. Alahan. This lien will  
21 be avoided as a term of the Plan and paid by Mr. Thomas directly in conformity  
22 with a payment schedule by and between Mr. Alahan and Mr. Thomas already in  
23 force.

24 The remaining payment schedule is as follows:

- 25 1. \$47,050.50 to be paid on or before December 1, 2016; and  
26 2. \$85,000 to be paid on or before April 15<sup>th</sup>, 2017.

27 A stipulation memorializing these terms will be provided including Mr.  
28 Alahan's vote in favor of the Plan within 30 days of this writing.

**D. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

There are no executory contracts or unexpired leases of note addressed under the Plan.

**III. CLASS OF INTEREST HOLDERS**

Interest holders are the parties who hold ownership interests (i.e. equity interests) in the Debtor. There is only one interest holder: John David Thomas as the Managing Member of the LLC.

**IV. VOTING ON CONFIRMATION OF THE PLAN**

**a. WHO MAY VOTE:** Only impaired creditors are entitled to vote.

11 U.S.C. Sec. 1124. A creditor is entitled to vote on confirmation of the Plan unless (i)the creditor's class is unimpaired or is to receive no distribution; (ii)an objection has been filed to that creditor's claim; (iii)that creditor's claim is scheduled by the Debtor as contingent, disputed, unliquidated or unknown and the creditor has not filed a proof of claim; or (iv)the claim is unclassified (and thus required by law to be paid in full). A creditor whose claim has either been objected to or has been scheduled by Debtor as contingent, disputed, unliquidated or unknown or who has to file a proof of claim, and who wishes to vote, must move to have its claim allowed for voting purposes by filing a motion for such relief in time for that motion to be heard before the hearing on confirmation of the Plan. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim is entitled to accept or reject a Plan in each capacity by delivering one ballot for the secured part of the claim and another ballot for the unsecured portion of the claim.

**b. HOW TO VOTE:** A voting creditor must fill out and return the attached ballot so that it is received by the Debtor no later than

December 1<sup>st</sup>, 2016 by delivery to: ANERIO V. ALTMAN, ESQ,  
LAKE FOREST BANKRUPTCY, 23151 MOULTON PARKWAY,  
LAGUNA HILLS, CA 92653.

**c. EFFECT OF VOTE:** The Plan will be confirmed only if (i) it is accepted by all impaired classes, or (ii) it is accepted by at least one impaired class exclusive of insiders (as defined by Sec. 101(31) and the court determines that the Plan is “fair and equitable” as defined by Sec. 1129(b)) to all rejecting classes of creditors, and it meets all of the other criteria required for confirmation. A class of creditors accepts the Plan if it is accepted by a majority in number and at least two-thirds in dollar amount of the creditors in that class that vote timely.

## **V. PLAN FUNDING**

### **a. FUNDING FOR THE PLAN**

#### **i. CONTRIBUTIONS BY THOMAS**

Funds will be contributed by Thomas, or a business entity designated by Thomas, to the Debtor. The Debtor has received receive \$120,000 by this method prior to the Effective Date, and ongoing distributions will be made as necessary.

#### **ii. DISBURSING AGENT**

The Debtor, by way of Thomas, will act as the disbursing agent (the “Disbursing Agent”) for distributions to be made to holders of allowed claims. The Disbursing Agent shall not be required to provide any bond in connection with the making of any distribution pursuant to the terms of this Plan.

## **VI. ESTIMATION OF CLAIMS**

Although likely unnecessary, the Debtor may, at any time, request that the Court estimate any contingent or liquidated General Unsecured Claim pursuant to 11 U.S.C. Sec. 502(c) regardless of whether the Debtor previously objected to such claim or whether the Court has ruled on any such objection, and the Court will retain

1 jurisdiction to estimate any claim at any time during litigation concerning any  
2 objection to any claim, including during the pendency of any appeal relating to any  
3 such obligation.

#### 4 **VII. FRACTIONAL DOLLARS**

5 Notwithstanding anything contained herein to the contrary, payments of  
6 fractions of dollars will not be made. Whenever any payment of a fraction of a  
7 dollar under this Plan would otherwise be called for, the actual payment made will  
8 reflect a rounding of such fraction to the nearest dollar. The Disbursing Agent shall  
9 have discretion not to make payments of less than Twenty Five Dollars (\$25) on  
10 account of any allowed General Unsecured Claim, unless a specific request is made  
11 in writing to the Disbursing Agent on or before ninety days after allowance of such  
12 claims.

#### 13 **VIII. EXCULPATION AND RELEASES**

14 To the maximum extent permitted by law, neither the Debtor, the Estate, nor  
15 any of their employees, officers, directors, shareholders, agents, attorneys, members,  
16 representatives, or the professionals employed or retained by any of them, whether  
17 not by Court order (each an "Indemnified Person") shall have or incur liability to  
18 any person or entity for any act taken or omission made in good faith in connection  
19 with or related to the foundation of this Plan, the Disclosure Statement or a contract,  
20 instrument, release or other agreement or document created in connection therewith,  
21 the solicitation of acceptance of or confirmation of this Plan, or the consummation  
22 and implementation of this Plan, and the transactions contemplated therein. Each  
23 Indemnified Person shall in all respects be entitled to reasonably rely upon the  
24 advice of counsel with respect to its duties and responsibilities under the Plan.

#### 25 **IX. INJUNCTIONS**

26 As of the Effective Date and subject to the terms of this Plan and Disclosure  
27 Statement, the Confirmation Order shall enjoin the prosecution, whether directly,  
28 derivatively or otherwise, of any claim, obligation, suit, judgment, damage demand,



1 debt, right, cause of action, liability or interest released, discharged or terminated  
2 pursuant to the Plan.

3 Except as provided in this Plan or the Confirmation Order, as of the Effective  
4 Date, all entities that have held, currently hold, or may hold a claim or other debt or  
5 liability that is discharged or an interest or other right of any equity security holder  
6 that is terminated pursuant to the terms of this Plan, are permanently enjoined from  
7 taking any of the following actions against the Debtor, the Estate, or their property  
8 on account of any such discharged claims, debts or liabilities or terminated interest  
9 or rights: (i)commencing or continuing, in any manner or in any place, any action  
10 or other proceedings; (ii) enforcing, attaching, collecting or recovering in any  
11 manner any judgment, award decree or order (iii)creating perfecting or enforcing  
12 any lien or encumbrance; (iv)asserting a setoff, right of subrogation or recoupment  
13 of any kind against any debt, liability, or obligation due to the Debtor; and  
14 (v)commencing or continuing any action in any manner, n any place that does not  
15 comply with or is inconsistent with the provisions of this Plan.

16 By accepting distributions pursuant to this Plan, each holder of any allowed  
17 claim receiving distributions pursuant to this Plan will be deemed to have  
18 specifically consented to the injunctions set forth in this section.

## 19 **X. LIQUIDATION ANALYSIS**

20 The Proposed plan meets the liquidation analysis.

21 The Debtor has no property nor assets other than th Property. The Property  
22 has been valued at \$2,020,000 and is over-encumbered by almost \$1,000,000 from  
23 the liens of Chase and Val Alahan. In a Chapter 7, there would be no distribution to  
24 any unsecured creditors.

## 25 **XI. DISCHARGE**

26 Upon confirmation of the Plan, the Debtor may receive a discharge of its pre-  
27 confirmation debts, except such discharge shall not discharge the Debtor from any  
28 debts that are found to be non-dischargeable under Sec. 523 or are obligations

1 created by this Plan. The payments promised in the Plan constitute new contractual  
2 obligations that replace the pre-confirmation debts proposed to be discharged.  
3 Creditors may not sue to collect upon these debts or obligations so long as the  
4 Debtor is not in material default under the Plan. If the Debtor materially defaults in  
5 performing the Plan, affected creditors may sue the Debtor to enforce the terms of  
6 the Plan, or to discuss the case or to convert it to a case under Chapter 7 of the  
7 Bankruptcy Code.

8 **XII. EXHIBITS**

9 Debtor provides the following exhibits in support of this Plan

10 1. EXHIBIT A: Stipulation with Chase  
11

12 Dated: \_\_\_\_\_

13 ANERIO V. ALTMAN, ESQ.  
14 ATTORNEY FOR 220 ADAMS ROAD, LLC.  
15 DEBTOR IN POSSESSION  
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**EXHIBIT B**

Anerio V. Altman, Esq. #228445  
Lake Forest Bankruptcy  
23151 Moulton Parkway Suite 131  
Laguna Hills, CA 92653  
Phone (949) 218-2002  
Fax (949) 218-2002  
avaesq@lakeforestbkoffice.com

**ATTORNEY FOR  
DEBTOR-IN-POSSESSION  
220 ADAMS RANCH ROAD, LLC.**

**UNITED STATES BANKRUPTCY COURTS  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In Re: 220 ADAMS RANCH ROAD, LLC.	) BK. No. 2:15-bk-22727-ER
	) <b>Chapter 11</b>
	) <b>CLASS <u>      </u> BALLOT FOR ACCEPTING</b>
	) <b>OR REJECTING PLAN OF</b>
	) <b>REORGANIZATION</b>
	) <b><u>JUDGE</u></b>
	) <b>HONORABLE ERNST ROBLES</b>

220 ADAMS RANCH ROAD, LLC. ("Debtor") filed a plan of reorganization dated  
\_\_\_\_ ("The Plan") for the Debtor in this case. The Court has conditionally approved a  
disclosure statement with respect to the Plan ("the Disclosure Statement). The Disclosure  
Statement provides information to assist you in deciding how to vote your ballot. If you do not  
have a Disclosure Statement, you may obtain a copy from:

1 ANERIO V. ALTMAN, ESQ.  
2 23151 MOULTON PARKWAY  
3 LAGUNA HILLS, CA 92653  
4 PHONE AND FAX: (949) 218-2002  
5 avaesq@lakeforestbkoffice.com

6 Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

7 You should review the Disclosure Statement and the Plan before you vote. You may wish to  
8 seek legal advice concerning the Plan and your classification and treatment under the Plan. Your  
9 claim or equity interest has been placed in class \_\_\_\_ under the Plan. If you hold claims or equity  
10 interests in more than one class, you will receive a ballot for each class in which you are entitled  
11 to vote.

12 If your ballot is not received by ANERIO V. ALTMAN, ESQ. on or before \_\_\_\_\_, and  
13 such deadline is not extended, your vote will not count as either an acceptance or rejection of the  
14 Plan.

15 If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you  
16 vote.

17 ACCEPTANCE OR REJECTION OF THE PLAN:

18 \_\_\_\_ The undersigned, the holder of a Class \_\_\_\_ claim against the Debtor in the unpaid  
19 amount of \_\_\_\_.

20 \_\_\_\_ The undersigned, the holder of a Class \_\_\_\_ claim against the Debtor, consisting of  
21 \_\_\_\_ principal amount of \_\_\_\_ of the Debtor (For purposes of this Ballot, it is not  
22 necessary and you should not adjust the principal amount for any accrued or unmatured interest.)  
23  
24  
25  
26  
27  
28

(Check one box only)

☐ ACCEPTS THE PLAN

☐ REJECTS THE PLAN

Dated: \_\_\_\_\_

PRINT OR TYPE NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

\_\_\_\_\_  
TITLE (If corporation or partnership)

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RETURN THIS BALLOT TO:

ANERIO V. ALTMAN, ESQ.  
23151 MOULTON PARKWAY  
LAGUNA HILLS, CA 92653  
PHONE AND FAX: (949) 218-2002  
avaesq@lakeforestbkoffice.com

## **EXHIBIT C**

1 ANERIO V. ALTMAN, Cal. Bar No. 228445  
2 LAKE FOREST BANKRUPTCY  
3 23151 Moulton Parkway, Suite 131  
4 Laguna Hills, California 92630  
5 Telephone: 949-218-2002  
6 Facsimile: 949-218-2002  
7 avaesq@lakeforestbkoffice.com

8 Bankruptcy Counsel for  
9 Debtor-in-Possession  
10 220 ADAMS RANCH ROAD, LLC.

11 UNITED STATES BANKRUPTCY COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13 LOS ANGELES DIVISION

14 In re  
15 220 ADAMS RANCH ROAD, LLC.  
16 Debtor.

Case No. 2:15-bk-22727-ER

Chapter 11

**STIPULATION REGARDING  
CONTINUING THE HEARING ON  
THE DISCLOSURE STATEMENT**

**JUDGE**  
Hon. ERNST ROBLES

**HEARING:**  
Date: October 26<sup>th</sup>, 2016  
Time: 10:00am  
Place: 1568

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23 ///

24 ///

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1           **I. INTRODUCTION**

2           DEBTOR 220 ADAMS RANCH ROAD, LLC. ("Debtor"), by and through  
3 counsel, JP MORGAN CHASE BANK ("Chase"), by and through counsel, and the  
4 UNITED STATES TRUSTEE ("UST") by and through counsel, jointly stipulate to  
5 continue the hearing on the Debtor's Disclosure Statement filed on September 21<sup>st</sup>,  
6 2016 as Docket #66.


7           **II. RECITALS**

- 8           a. Debtor filed the Disclosure Statement as Docket #66 on September  
9           21<sup>st</sup>, 2016.
- 10          b. A hearing was scheduled for October 26<sup>th</sup>, 2016 at 10:00 A.M.
- 11          c. The UST filed an objection to the Disclosure Statement as Docket  
12          #68.
- 13          d. Chase filed an objection to the Disclosure Statement as Docket  
14          #69. Chase owns the senior lien on the Debtor's real property  
15          located at 220 Adams Ranch Road in Telluride, CO 81435. Chase  
16          is one of three creditors in the creditor body, and by far the largest  
17          creditor with a claim in excess of \$2.8 Million dollars.
- 18          e. The Debtor filed replies to the objections of Chase and the UST as  
19          Docket #72 and #73.
- 20          f. Debtor is seeking an agreement with Chase for the consensual  
21          treatment of its lien. If obtained, this would be effectuated by a  
22          Stipulation with Chase Regarding Plan Treatment that would be  
23          incorporated and made part of an Amended Chapter 11 Plan and  
24          Disclosure Statement.
- 25          g. Chase is not opposed to a short extension of time for this purpose.

26  
27           **III. STIPULATION**

1 Parties stipulate that as long as the Debtor remains in compliance with  
2 the requirements of the UST, that this hearing may be continued 15 days.

3  
4 Dated: 10/27/16

Signed: 

ANERIO V. ALTMAN, ESQ.  
ATTORNEY FOR DEBTOR

5  
6  
7 Dated: 10/24/16

Signed: 

ALDRIDGE PIPE, LLP.  
TODD S. GARAN  
ATTORNEY FOR CHASE

8  
9  
10  
11 Dated: 10/25/16

Signed: 

DARE LAW  
ATTORNEY FOR  
THE UNITED STATES TRUSTEE

## **EXHIBIT D**

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, October 26, 2016**

**Hearing Room 1568**

10:00 AM

**2:15-22727 220 Adams Ranch Road, LLC**

**Chapter 11**

**#4.00** HearingRE: [66] Motion for approval of chapter 11 disclosure statement (Altman, Anerio)

Docket 66

**Matter Notes:**

10/26/2016

The tentative ruling will be the order.  
Party to lodge order: Movant

**POST PDF OF TENTATIVE RULING TO CIAO**

**Tentative Ruling:**

10/25/2016: For the reasons set forth below, Motion DENIED.

**Pleadings Filed and Reviewed**

- Disclosure Statement:
  - Notice of Motion for Hearing on Debtor's Disclosure Statement [Doc. No.66]
    - § Debtor's First Disclosure Statement and Motion for Approval of First Disclosure Statement ("Disclosure Statement" or "DS") [Doc. No. 66]
    - § Chapter 11 Plan ("Plan") [Doc. No. 66-1]
    - § Objection to Proposed Disclosure Statement ("UST Objection") [Doc. No. 68]
    - § Objection to Debtor's Chapter 11 Disclosure Statement in Support of Chapter 11 Plan ("Secured Creditor Objection") [Doc. No. 69]
    - § Debtor's Reply to the Objection of the United States Trustee

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**CONT...**

**220 Adams Ranch Road, LLC**

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- ("Reply to UST") [Doc. No. 73]
- § Debtor's Reply to the Objection of JP Morgan Chase Bank ("Reply to Secured Creditor") [Doc. No. 72]
- § Request for the Court to Take Judicial Notice of Certain Documents ("Debtor's RJN")
- Notice of Bar Dates for Filing Proofs of claim or Interests and Requests for Payment of Administrative Expenses [Doc. No. 34]
  - § Order (1) Granting Debtor's Motion for Order Establishing Bar Date for Filing Proofs of Claim [Doc. No. 26]; and (2) Vacating
- Order on Stipulation Re: Value of Real Property [Doc. No. 63]
- Monthly Operating Reports:
  - § Monthly Operating Report Number 13 for the Month Ending June 30, 2016 [Doc. No. 58]
  - § Monthly Operating Report Number 13 for the Month Ending July 31, 2016 [Doc. No. 60]
  - § Monthly Operating Report Number 13 for the Month Ending August 31, 2016 [Doc. No. 65]
  - § Monthly Operating Report Number 14 for the Month Ending September 30, 2016 [Doc. No. 70]

**Facts and Summary of Pleadings**

220 Adams Ranch Road, LLC ("Debtor"), filed the instant motion for approval of its First Disclosure Statement ("Motion"). Doc. No. 66. For the reasons set forth below, the Court DENIES the Disclosure Statement as not containing "adequate information" within the meaning of 11 U.S.C. § 1125.

Background and Procedural History

Chapter 11 debtor and debtor-in-possession 220 Adams Ranch Road, LLC ("Debtor"), filed a voluntary petition on August 13, 2015, as a single asset real estate case as defined under 11 U.S.C. § 101(51B) ("Petition"). Doc. No. 1. John David Thomas, a real estate developer in Southern California, previously purchased real property located at 220 Adams Ranch Road, Mountain Village, Colorado 81435 ("Property") in the early 2000s, and, shortly thereafter, deeded the Property to a testamentary trust entitled 220 Adams Ranch Road Trust ("Trust"), of which Mr.

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Thomas was the sole trustee. Doc. No. 66 at 5. Eventually, the Trust formed the Debtor, with Mr. Thomas as the sole member of the entity-Debtor. *Id.* at 6. According to the Debtor's Schedule D, filed on August, 19, 2015, the following two liens, in order of priority, encumber the Property: (1) JPMorgan Chase Bank ("Secured Creditor") in the estimated amount of \$2,573,016 and (2) Val Alahan in the amount of \$175,000. Doc. No. 13.

On July 20, 2016, the Court held a hearing on the Debtor's previously filed motion to set the value of the Property ("Motion to Value"). Doc. No. 59. The Court ordered the Debtor to reasonably cooperate with the Secured Creditor and its appraiser in providing access to the Property to conduct a full inspection. *Id.* Further, in light of the relative complexity of the case and the lack of progress made, the Court imposed the following deadlines: (1) the Debtor shall file and receive approval of a disclosure statement by no later than October 27, 2016, and (2) must confirm a chapter 11 plan of reorganization by no later than January 31, 2017, with failure possibly resulting in cause for the Court to convert or dismiss the case under 11 U.S.C. § 1112(b), without further notice or hearing. *Id.* On August 30, 2016, the Court entered an order approving a subsequent stipulation between the Secured Creditor and the Debtor, which set the value of the Property for purposes of the Debtor's Chapter 11 bankruptcy proceedings at \$2,025,000. Doc. No. 63.

Disclosure Statement

On September 21, 2016, the Debtor filed the Motion. Doc. No. 66. Unless there is a stay, the Effective Date of the Plan will be fourteen days following the entry of the order confirming the Plan.

The Debtor lists Lake Forest Bankruptcy ("Lake") as the only administrative claim in the estimated amount of \$15,000. DS at 3. Lake's claim will be paid in full or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later. *Id.*

The Debtor lists the California Franchise Tax Board ("FTB") as the only priority unsecured creditor in the amount of \$800. DS at 4. FTB's claim will receive monthly payments in full over a five year period with 0% interest. The FTB claim is impaired and if the FTB does not accept the Plan, then the Plan will pay the FTB in

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full on the Effective Date or as soon as practicable after.

The Debtor lists the following classes of claims that are secured against the Property:

- **Class 1: Mr. Alahan, as a junior secured creditor, in the amount of \$120,000:**
  - It is unclear whether Mr. Alahan's claim is impaired or counts as a vote as the Disclosure Statement confusingly refers to creditors in Class 1 as having "already supplied a stipulation voting in favor of the Plan or unimpaired and are not voting in the Plan;"
  - Mr. Thomas plans to pay Mr. Alahan directly in conformity with a payment schedule between Mr. Thomas and Mr. Alahan already in force
- **Class 2: Secured Creditor, as a secured lender, in the amount of \$2,020,000:**
  - The Plan will bifurcate the Secured Creditor's total claim of \$2,833,236.52 into the following: (1) Class 2 in the amount of \$2,020,000 and (2) Class 3 in the amount of \$813,236.
  - The \$2,020,000 will be rewritten into the name of "220 Adams Ranch Road, LLC", with Mr. Thomas remaining as an additional obligor / guarantor;
  - The Secured Creditor's claim in this class will receive payment at an interest rate of 4.5% for 10 years and a balloon payment for the remainder of the obligation at the end of the 10 years.

**Class 3 constitutes the Secured Creditor's remaining lien in the amount of approximately \$813,236.** DS at 5. The Plan states that claimants in Class 3 will receive a payment of \$50,000 to settle all claims against the Debtor and Mr. Thomas.

The Debtor intends to fund the plan with \$100,000 contributed by Mr. Thomas, or a business entity designated by Mr. Thomas, to the Debtor on the Effective Date. DS at 7. Further contributions will be made as necessary and will make up the estimated payments, totaling \$900,000 outside of administrative expenses and priority claims. A final payment of \$2,020,000 may be made by a further loan or refinance. Mr. Thomas will act as the disbursing agent for distributions to holders of allowed claims.

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holders of allowed claims.

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The Disclosure Statement represents that there are no known risk factors except from Mr. Thomas' possible loss in employment or employment income. The Plan states that it meets the liquidation analysis because the Property is over-encumbered by nearly \$1,000,000, leaving nothing to distribute to any unsecured creditors in a chapter 7 liquidation.

Regarding feasibility, the Debtor proposes to fund the plan through one payment of \$50,000 to Class 3 creditors and 120 payments of \$7,500, with a final balloon payment of \$2,020,000, to Class 2 claimants. DS at 8.

**Objections to Disclosure Statement**

On October 5, 2016, the United States Trustee ("UST") filed the UST Objection. Doc. No. 68. The UST argues that the Disclosure Statement does not contain adequate information under 11 U.S.C. § 1125. First, the Debtor fails to provide any information regarding the cash on hand and the amount of money required by the Effective Date, especially in light of the fact that the Lake's administrative claim amounts to \$15,000 and the August Monthly Operating Report ("MOR") shows that the Debtor only has \$124 of cash on hand. Second, the lack of information concerning the financials of Mr. Thomas or the business entity that Mr. Thomas elects to designate in order to effectuate the \$100,000 promised in the Disclosure Statement. Moreover the UST contends that there is a lack of clarity regarding the estimated Plan payments of \$900,000, as the claims of the Lakes, the Secured Creditor, and FTB total \$829,036, especially considering that the Plan proposes to settle the Secured Creditor's Class 3 claim of \$813,236 for only \$50,000 or 0.06% of the amount owed. Third, the Plan seeks an impermissible release of the Secured Creditor's claims against Mr. Thomas, a non-debtor, proposing to discharge \$813,236 against Mr. Thomas and shield him from liability with respect to the claims asserted against by the Secured Creditor. Fourth, the UST represents that the Plan was not proposed in good faith because Mr. Thomas is seeking confirmation to obtain a collateral benefit for himself. Finally, the UST submits that the MORs evince the lack of income generated by the Debtor. Mr. Thomas' attempt to obtain a release of liability for money over and above the \$2,020,000 of the Property while stripping down the liens of the Property and merely pay the Secured Creditor 0.06% of its



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deficiency illustrate the bad faith of the Plan's proposal. The UST submits that the Debtor cannot confirm the Plan without the Secured Creditor's consent.

On October 12, 2016, the Secured Creditor filed its objection. Doc. No. 69. The Secured Creditor disputes its provided amount of \$2,020,000 under the Plan because the Motion to Value agreed to \$2,025,000, making the Plan patently unconfirmable. Secured Creditor Objection at 6, 14. Additionally, the Plan is infeasible because a monthly allocation for property taxes and insurance is at least \$1,548.76 [*See* Claim No. 3-1 (escrow analysis)], which does not include utilities and maintenance. *Id.* at 7. The Debtor's MORs show an average monthly income of only \$1,391.65, including an August MOR that indicates the Debtor has only \$192.34 in available cash. *Id.* at 15. Therefore, the Secured Creditor contends that the Debtor has insufficient cash to meet the administrative expenses under the Plan.

Further, the Debtor generates little income and, at present, does not have sufficient funds to pay the Lake's administrative claim, making the Plan infeasible. *Id.* at 16. Moreover, the Secured Creditor submits that the additional payments of \$7,500 are not sufficient to cover the monthly principal and interest under the Plan and the \$50,000 balloon payment is speculative and unsubstantiated.

There is no evidence as to how the Debtor will pay the Secured Creditor's anticipated unsecured claim of \$808,236.52 in full. *Id.* at 8. The Secured Creditor contends that the Disclosure Statement requires more information as to the treatment of Class 1, including whether Class 1 is impaired or not and how much the Class 1 creditor is being paid on an agreement already in force.

The Secured Creditor believes that the Debtor, Mr. Thomas, and Mr. Alahan may have colluded and the Disclosure Statement requires additional information to better understand the classification of Mr. Alahan's claim, so as to avoid an attempt to gerrymander votes under the Plan. For instance, the Plan treats Mr. Alahan's claim in a separate class than the Secured Creditor's bifurcated unsecured general claim, without any substantive difference. *Id.* 9-10, 20. Moreover, if Mr. Alahan's claim receives more compensation than the Secured Creditor's claim, the discriminatory treatment violates § 1129(b)(1) ("Absolute Priority Rule"). Furthermore, the Secured Creditor contends that the Plan treats the Secured Creditor's claim substantively different than the original terms of the loan executed by Mr. Thomas, even though Mr. Thomas is personally liable on the loan and the Debtor is not. *Id.* at 13. The Secured Creditor argues that the Plan seeks to discharge Mr. Thomas, a non-debtor individual, from liability in violation of § 524(e). *Id.* The Secured Creditor argues that the Plan has not been proposed in good faith because the Plan provides for an

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has not been proposed in good faith because the Plan provides for an inadequate means of implementation and seeks to impermissibly discharge Mr. Thomas, especially in light of the circumstances surrounding the Debtor's formation and lack of operating history. *Id.* at 18.

Response to Objections

On October 19, 2016, the Debtor filed a reply to the UST. Doc. No. 73. The Debtor waives any language that attempts to obviate Mr. Thomas from financial liability, stating there was never an effort to propose a plan in bad faith. Reply to UST at 2. Additionally, the Debtor represents that the September MOR shows a deposit of approximately \$100,000. *See* Doc. No. 70. The Debtor disputes the UST's contention that the proposed disbursements were confusing, but states as follows: (1) administrative claims are estimated at \$15,000, (2) priority tax claims are \$800, (3) Mr. Alahan's claim will be paid separately by Mr. Thomas and the lien will be released from the Property, in an attempt to provide new value to the Debtor, (4) Class 2 claims will receive \$7,500 per month for 120 months for a total of \$900,000 and a final payment of \$2,000,000 after ten years, and (5) the \$50,000 will be paid by the Debtor from funds on hand toward unsecured obligations. Further, the Debtor requests forty-five days to resolve issues with the UST.

On October 19, 2016, the Debtor filed a reply to the Secured Creditor. Doc. No. 72. The Debtor disputes the Secured Creditor's contention that the Disclosure Statement contains inadequate information, reiterating parts of the Disclosure Statement in the context of the *Metrocraft* factors. *See In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bankr. Ga. 1984).

The Debtor admits that the Secured Creditor's claim should be \$2,025,000 and not \$2,020,000, stating that this was a mistake. Reply to Secured Creditor at 4. The Debtor states that the Property's taxes and insurance of \$1,568.76 will be paid outside of the \$7,500 allocated towards the interest on the Secured Creditor's claim. *Id.* The Debtor clarifies that \$7,500 monthly payments are towards the interest only, not including the principle.

The Debtor contends that the Secured Creditor's objection to the Absolute Priority Rule is more appropriately addressed at a plan confirmation hearing and, moreover, the Plan intends contribution from Mr. Thomas to be "new value" in exchange for continued ownership of the Property. *Id.* at 5. The Debtor argues that

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there is a fundamental difference between Mr. Valahan's Class 1 claim and the Secured Creditor's Class 3 claim, stating that Mr. Alahan's claim is the result of a state court judgment and settlement "that, if paid, reduces the total amount of the judgment owed," entirely different from the Secured Creditor's consensual lien. *Id.* at 5. The proposed treatment takes into account potential future litigation between Mr. Alahan, Mr. Thomas, and the Debtor. *Id.* Again, as previously mentioned, the Debtor waives any language that attempts to resolve Mr. Thomas' financial liability to the Secured Creditor and repeats that the September MOR shows a \$100,000 deposit as evidence of the Plan's funding. *Id.* at 6. Finally, the Debtor requests an extension of forty-five days to resolve the issues with the Secured Creditor, stating that the Debtor could "not really begin negotiations" with the Secured Creditor until the filing of the Disclosure Statement. *Id.* at 7.

**Findings of Fact and Conclusions of Law**

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4)

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the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

*In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Notwithstanding, "[a] disclosure statement is not intended to be the primary focus of litigation in a contested chapter 11 proceeding, and care must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing." *In re Broad Assocs. Ltd. P'ship*, 1989 Bankr. LEXIS 2248, at \* 6-7 (Bankr. D. Conn. Dec. 29, 1989); *see also In re Copy Crafter Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) ("[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those deficits that could not be cured by voting."). As a general practice, the Court does not consider objections to a plan before confirmation. Only in extraordinary cases where the plan is obviously and patently unconfirmable will the Court deny approval of an associated disclosure statement. *See In re Phoenix Petroleum, Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("[T]he disclosure statement should be disapproved at the ... [disclosure statement hearing] only where the plan it describes displays fatal facial deficiencies or the stark absence of good faith.").

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In order to give the disclosure statement and plan some context the Court must take into account the events which lead to the bankruptcy filing, including the Debtor's formation, the lack of operating history, and the Debtor's anticipated future. The Debtor filed for bankruptcy on August 13, 2015 [Doc. No. 1], and the Debtor filed for corporate formation on December 15, 2015. *See* sos.ca.gov. Notwithstanding the Debtor's formation, there is a considerable lack of information relating to Mr. Thomas and his proposed contributions. For instance, the Disclosure Statement proposes to fund the Plan by contributions from Mr. Thomas, including \$100,000 by the Effective Date of the Plan. DS at 7. While the September MOR indicates a \$103,000 deposit on October 11, 2016 [See Doc. No. 70], the Disclosure Statement estimates \$900,000 in payments outside of administrative expenses and priority claims over a ten year period. DS at 7. In order for creditors to make an informed decision, the Court finds it appropriate that the Debtor provide disclosures or evidence of Mr. Thomas' financials. The lack of information surrounding the financials of Mr. Thomas is especially concerning, in light of the fact that the Debtor restates financing the balloon payment of \$2,000,000, after ten years, from either Mr. Thomas' contributions or contributions by the Debtor. *See* Reply to the Secured Creditor at 3. Finally, the MORs indicate little revenue generated by the Debtor. *See* Doc. No. 58 (\$4,050 for June), Doc. No. 60 (\$200 for July), Doc. No. 65 (\$1,800 for August), Doc. No. 70 (\$3,900 for September). Consequently, the Plan will rely more heavily on contributions from Mr. Thomas, furthering the need for disclosures.

Additionally, as the Debtor admits, the correct claim for the Secured Creditor's Class 2 Claim should state \$2,025,000 and not \$2,020,000. Moreover, the Plan cannot absolve Mr. Thomas of liability to the Secured Creditor's claim as Mr. Thomas is a non-debtor, third-party individual. *See* 11 U.S.C. 524(e). Finally, the Plan's differential treatment of the Secured Creditor's claim and Mr. Alahan's claim is without clear factual support. The lack of information regarding Mr. Alahan's claim, other than that the claim is already in force and the result of a settlement stemming from a state court judgment, fails to inform creditors as to how Mr. Alahan's claim might affect the Plan, including whether Class 1 is impaired and how much does Class 1 receive pursuant to the settlement. DS at 4, Reply to the Secured Creditor at 5. Further, the Debtor's stated reason for the separation of Mr. Alahan's claim and the Secured Creditor's claim as stemming from future dispute between Mr. Alahan, Mr. Thomas, and the Debtor is insufficient to substantiate differential

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treatment in order to confirm a plan.

Based on the foregoing, the Court DENIES the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. § 1125. The Court will extend the deadline for the Debtor to file and receive an approval of a disclosure statement by no later than **December 6, 2016**, in order to allow the parties an opportunity to negotiate prior to the Debtor filing an Amended Disclosure Statement. The Debtor must file and confirm a chapter 11 plan of reorganization by no later than March 3, 2017. No further extensions will be entertained by the court. Failure to receive approval of the disclosure statement or confirmation of a plan within these deadlines may constitute cause for the court to convert or dismiss the case under 11 U.S.C. § 1112(b) without further notice of hearing.

The Secured Creditor shall lodge a conforming proposed order within 7 days of the hearing.

**Party Information**

**Debtor(s):**

220 Adams Ranch Road, LLC

Represented By  
Anerio V Altman

## **EXHIBIT E**

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Attorneys for Secured Creditor:  
JPMorgan Chase Bank, N.A.

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

In re

220 ADAMS RANCH ROAD, LLC,

Debtors and Debtors in  
Possession.

Case No. 2:15-bk-22727-ER

Chapter 11

**STIPULATION RE: TREATMENT OF  
CREDITOR'S CLAIM UNDER  
DEBTOR'S CHAPTER 11 PLAN OF  
REORGANIZATION**

**Subject Property**

220 Adams Ranch Road  
Mountain Village, CO 81435

This Stipulation Re: Treatment of Claim (“**Stipulation**”) is entered into by and between Secured Creditor, JP Morgan Chase Bank, N.A. (“**Creditor**”), and Debtor, 220 Adams Ranch Road, LLC (the “**Debtor**”), by and through their respective attorneys of record.

The real property which is the subject of this matter is commonly known as 220 Adams Ranch Road, Mountain Village, CA 81435 (hereinafter the “**Subject Property**”), which is more fully described in the Deed of Trust attached hereto as Exhibit B and incorporated herein by this reference.

The Loan is evidenced by a promissory note dated July 12, 2006, executed by John D. Thomas (“**Borrower**”) to Washington Mutual Bank, FA (“**WAMU**”) in the principal sum of \$2,000,000.00 (the “**Note**”). A copy of the Note is attached hereto as **Exhibit A** and incorporated



1 herein by reference.

2 The Note is secured by a 1st Deed of Trust (the “**Deed of Trust**”) granting WAMU a  
3 security interest in the Subject Property, which is more fully described in the Deed of Trust. A copy  
4 of the Deed of Trust is attached hereto as **Exhibit B** and incorporated herein by reference.

5 On or about September 25, 2008, WAMU was closed by the Office of Thrift Supervision and  
6 the FDIC was named receiver. Pursuant to the terms and conditions of a Purchase and Assumption  
7 Agreement between the FDIC as receiver of WAMU and JP Morgan Chase Bank, N.A. (e.g.  
8 “**Creditor**”) dated September 25, 2008, Creditor acquired certain assets of WAMU, including all  
9 loans and all loan commitments of WAMU.

10 On or about June 1, 2013, Borrower entered into a Loan Modification Agreement (“**Loan**  
11 **Modification**”) whereby certain obligations under the Note and Deed of Trust were modified. A  
12 copy of the Loan Modification is attached hereto as **Exhibit C** and incorporated herein by this  
13 reference. The Note, Deed of Trust and Loan Modification may be referred to herein collectively as  
14 the “**Loan**.”

15 On or about August 11, 2016, just two days prior to the instant case being filed, the Debtor  
16 was formed as an entity. A copy of the Articles of Organization for the Debtor is attached hereto as  
17 **Exhibit D** and incorporated herein by this reference.

18 On or about August 11, 2015, Borrower, for no consideration, executed and recorded an  
19 unauthorized Grant Deed transferring his interest in the Subject Property to the newly formed entity  
20 Debtor. A copy of the Grant Deed Transferring the Subject Property to the Debtor is attached hereto  
21 as **Exhibit E** and incorporated herein by this reference.

22 **B. THE BANKRUPTCY FILING**

23 On or about August 13, 2015, Debtor filed a voluntary petition for relief under Chapter 11 of  
24 the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California and  
25 was assigned Case No. 2:15-bk-22727-ER.

26 Creditor filed a Proof of Claim against the Debtor’s estate in the amount of \$2,833,236.52,  
27 secured by the Subject Property, with pre-petition arrears in the amount of \$248,379.22. A copy of  
28 Creditor’s Proof of Claim is on file with this Court’s Claims Register at Claim Number 3.

1 On or about June 29, 2016, Debtor filed the Motion seeking to value the Subject Property at  
2 \$2,025,000.00. *See, Docket Number 54.*

3 On July 6, 2016, Creditor filed an Opposition to Debtor's Motion to Value. *See, Docket*  
4 *Number 57.*

5 On August 28, 2016, Creditor and Debtor filed a Stipulation resolving Debtor's Motion to  
6 Value the Subject Property and agreeing the value of the Subject Property for purposes of Debtor's  
7 Bankruptcy proceedings only would be \$2,025,000.00. *See, Docket Number 61.* On August 30,  
8 2016, the Court entered an Order on the parties' Stipulation resolving the Motion to Value. *See,*  
9 *Docket Number 63.*

10 On September 21, 2016, Debtor filed its Chapter 11 Disclosure Statement ("**Disclosure**  
11 **Statement**") and Chapter 11 Plan ("**Plan**"). *See, Docket Number 66 and 66-1.*

12 On October 12, 2016, Creditor filed an Objection to Debtor's Disclosure Statement. *See,*  
13 *Docket Number 69.*

14 **THE PARTIES STIPULATE AS FOLLOWS:**

15 1. Value of Subject Property. The parties agree that the Order [*Docket Number 63*] on  
16 the parties Stipulation Resolving the Debtor's Motion to Value and is hereby vacated, and any  
17 Motion to Value the Subject Property [*Docket Number 54*] is withdrawn. Instead, the parties agree  
18 the value of the Subject Property shall be \$2,025,000.00 for purposes of the liquidation analysis only  
19 for any Chapter 11 Disclosure Statement and Plan filed by Debtor in these proceedings; however,  
20 Debtor will not be seeking to value the Subject Property pursuant to 11 U.S.C. § 506(a)(1) or strip  
21 off or seek to bifurcate any portion of Creditor's Claim based upon this value.

22 2. Secured Claim. Creditor's claim (its successors and/or assigns), secured by the  
23 Subject Property shall be fully secured, paid in full and Debtor's Plan shall not alter or modify the  
24 legal, equitable, and contractual rights under the Loan ("**Secured Claim**"). Creditor's Secured  
25 Claim shall be impaired pursuant to 11 U.S.C. § 1124 only to the extent that Debtor shall cure the  
26 contractual arrears as set forth herein.

27 3. Contractual Payments. Debtor shall tender **regular monthly contractual payments**  
28 to Creditor (and/or its servicer) on the first day of each month for the Secured Claim **commencing**

1 **November 4, 2016 and continuing on the first day of each month thereafter** until the Maturity  
2 Date under the Loan when all outstanding amounts owed on the Secured Claim, including any  
3 escrow payments and/or charges as required per the terms and provisions of this Stipulation and/or  
4 the Loan, are to be paid in full. The amount of the current contractual monthly payment is  
5 \$7,813.05; however, Debtor understands the amount of this payment may be subject to change under  
6 the Loan.

7 4. Escrow Payments. In addition to the principal and interest payment described in  
8 paragraph 3 of this Stipulation, **Debtor shall tender to Creditor** (and/or its servicer) all necessary  
9 **escrow payments** for any and all real property taxes and/or real property insurance advances as  
10 required by Creditor (and/or its servicer) and in accordance with any requirements under the Loan.  
11 Debtor shall tender the necessary escrow payments together with the regular monthly mortgage  
12 payments described in paragraph 3 above, **commencing on November 4, 2016** and continuing on  
13 the first day of each month thereafter until the Maturity Date under the Loan at which time the  
14 Secured Claim, which includes any related escrow charges, must be paid in full. The current amount  
15 of the escrow payment is \$1,447.38; however, Debtor understands the amount of this escrow  
16 payment is subject to change per any escrow analysis of Creditor (and/or its servicer).

17 5. Curing of Contractual Arrears. In addition to the regular contractual and escrow  
18 payments described herein, Debtor shall cure the total contractual arrears owing on Creditor's claim  
19 in the amount of \$340,981.55 as follows: **On or before November 4, 2016, Debtor will make a**  
20 **payment to Creditor in the form of certified funds in the amount of \$120,000.00, and said**  
21 **payment shall be sent to and received by Creditor's counsel of record no later than close of**  
22 **business November 4, 2016.** The remaining balance of the contractual arrears, of \$220,981.55,  
23 shall be cured in equal monthly installments over 60 months without interest. Debtor shall tender  
24 monthly arrearage payments in the amount of \$3,683.03 on the remaining arrears balance of  
25 \$220,981.55, commencing on the first day of the first month following entry of the order confirming  
26 Debtor's Plan, and continuing on the first day of each month thereafter for a period of 60 months at  
27 which time any outstanding contractual arrears owing on Creditor's claim as specified in this  
28 paragraph 5 are to be fully paid. If the Subject Property is sold or the Loan refinanced any time prior

1 to curing the contractual arrears as set forth herein, all outstanding contractual arrears must likewise  
2 be paid in full at the time of any such sale and/or refinancing. Notwithstanding the foregoing, if  
3 Debtor misses any regular contractual or escrow (if applicable) payment after November 4, 2016 as  
4 required herein, said missed payments shall not be subject to this paragraph 5, but instead shall be  
5 considered a default under this Stipulation and subject to any and all remedies hereunder, penalties,  
6 interest or other fees and charges as required under the Loan. Further, to the extent Creditor has  
7 recorded a Notice of Default as to the Subject Property, said Notice of Default shall remain in full  
8 force and effect until the contractual arrears are fully cured as required herein.

9 6. Except as otherwise expressly provided herein, all remaining terms of the Note, Deed  
10 of Trust and Loan Modification, which are incorporated herein by this reference, shall govern the  
11 treatment of Creditor's Secured Claim.

12 7. Pre-Confirmation Default: In the event of any default on any of the provisions of this  
13 Stipulation prior to confirmation of Debtor's Chapter 11 Plan, Creditor (and/or its servicer) shall  
14 provide written notice, via certified mail, to Debtor at the Subject Property and to Debtor's attorney  
15 of record, indicating the nature of default. If Debtor fails to cure the default or payment default with  
16 certified funds after the passage of fourteen (14) calendar days from the date said written notice is  
17 placed in the mail as reflected on the certified receipt, then the Automatic Stay shall terminate,  
18 unless it has already been terminated by operation of law, and Creditor (and/or its servicer) may  
19 commence any and all action necessary to obtain complete possession of the Subject Property under  
20 the terms of the Loan and applicable state law, including but not limited to foreclosure thereof,  
21 without further notice, order, or proceeding of this Court. In the event that Creditor is granted relief  
22 from the automatic stay, the parties hereby stipulate that the 14-day stay provided by Bankruptcy  
23 Rule 4001(a)(3) is waived.

24 8. Post-Confirmation Default. Upon confirmation of Debtor's Chapter 11 Plan, the  
25 Automatic Stay shall be deemed terminated in all respects under the Code as to Creditor, and the  
26 Creditor (and/or its servicer) will no longer be required to provide notice of default in accordance  
27 with paragraph 7 above. Instead, Creditor will provide Debtor notice of any default related to the  
28 Stipulation in accordance with the Loan, and applicable state law and/or proceed with its remedies

1 under the terms of the Loan and applicable state law, including but not limited to foreclosure of the  
2 Subject Property, without further notice, order, or proceeding of this Court.

3 9. Any forbearance by Creditor (and/or its servicer) in exercising any right or remedy,  
4 including, without limitation, Creditor (and/or its servicer) accepting payments from third persons,  
5 entities or successors in interest to Debtor, or in amounts less than the amount due, including as  
6 provided for under this Stipulation, shall not be a waiver of or preclude the Creditor's (and/or  
7 servicer) exercise of any right or remedy under the Stipulation, and/or Loan. The acceptance by  
8 Creditor (and/or servicer) of a late or partial payment shall not act as a waiver of Creditor's right to  
9 proceed hereunder or under the Loan documents.

10 10. The Borrower shall not receive a discharge, or be released in any manner on the debt  
11 owing on the original, unmodified Loan by virtue of Debtor making payments on the Secured Claim  
12 pursuant to this Stipulation, or by virtue of Debtor's instant bankruptcy matter. Creditor reserves  
13 any and all rights as to the Borrower under the Loan.

14 11. In the event the Debtor defaults under this Stipulation and Creditor (and/or its  
15 servicer) forwards a default letter to Debtor, Debtor shall be required to tender Creditor's reasonable  
16 attorneys' fees and costs for each default letter submitted, in addition to the default amount stated  
17 therein, in order to cure the default. Any notice of default that Creditor (and/or its servicer) provides  
18 Debtor and/or Debtor's attorneys pursuant to this Stipulation shall not be construed as a  
19 communication under the Fair Debt Collection Practices Act, 15 U.S.C. §1692.

20 12. Except as expressly provided herein, the Debtor waives any and all claims, causes of  
21 action, whether known or unknown, it currently has against Creditor, and its respective agents,  
22 parents, affiliates, subsidiaries, attorneys, predecessors, current and subsequent holders of the Loan,  
23 successors and assigns in relation to the Loan referenced herein and any and all agreements which  
24 exist between them regarding or relating to the Loan prior to the date of this Stipulation. This waiver  
25 includes Debtor's right to object to Creditor's Claim. The Debtor also releases Creditor and its  
26 respective agents, parents, affiliates, subsidiaries, attorneys, predecessors, current and subsequent  
27 holders of the Loan, successors and assigns from any liability in relation to the Loan prior to the date  
28 of this Stipulation.

1           13. In the event the Debtor seek to sell the Subject Property at anytime prior to  
2 confirming its Chapter 11 Plan, or if it seeks to sell the Subject Property through its Chapter 11 Plan,  
3 Creditor shall be entitled to credit bid at any such sale in an amount not less than the full  
4 unmodified, original outstanding balance owing under the terms of the Loan at said time, and/or  
5 exercise any of its rights pursuant to 11 U.S.C. §§ 363(b), (f), (k) or 1129(b)(2)(A)(ii) as applicable,  
6 and shall be permitted to receive proceeds from the sale of the Subject Property in an amount not  
7 less than the full unmodified, original outstanding balance owing under the terms of the Loan at said  
8 time.

9           14. Nothing herein shall preclude or prevent Debtor from seeking, or the parties from  
10 discussing a potential loan modification with respect to the Loan, or subsequently entering into such  
11 agreement with Creditor (and/or its servicer) after the confirmation of Debtor's Plan; however,  
12 nothing in this Stipulation shall be construed to require or obligate Creditor (and/or its servicer) in  
13 any way to discuss, enter into, agree to enter into, offer or accept any such loan modification.

14           15. Debtor shall be required to attach a copy of this Stipulation to any Chapter 11 Plan  
15 filed in this case as an exhibit, including any modifications thereto or amendments thereto, and the  
16 Plan shall expressly and fully incorporate the terms and provisions of this Stipulation by reference  
17 into Debtor's Chapter 11 Plan (including any modifications or amendments thereto). In the event of  
18 a conflict between a provision of Debtor's Plan and the Stipulation, the Stipulation shall control.  
19 Further, the terms and provisions of this Stipulation may not be modified, altered, or changed by the  
20 Chapter 11 Plan, any subsequently filed amended or modified Chapter 11 Plan of Reorganization  
21 and/or confirmation order on the foregoing without the express written consent of the Creditor.

22           16. In the event the Debtor's case is dismissed or converted to any other chapter under  
23 Title 11 of the United States Bankruptcy Code, Creditor shall retain its lien in the full, unmodified  
24 amount due under the Loan, Debtor will no longer be allowed to cure the delinquent contractual  
25 arrears as set forth herein, and the Automatic Stay shall be terminated without further notice, order  
26 or proceeding of the Court.

27           17. In the event the Debtor asserts that Creditor has failed to properly update its internal  
28 system to comply with the terms of this Stipulation within a reasonable period of time after an order

1 is entered confirming the Debtor's Chapter 11 Plan of Reorganization, which shall be not less than  
2 ninety (90) days, the Debtor shall be required to provide written notice of the alleged lack of  
3 compliance to Creditor and Creditor's counsel of record, Aldridge Pite, LLP at 4375 Jutland Drive,  
4 Suite 200, San Diego, CA 92117, indicating the nature of the alleged lack of compliance. If Creditor  
5 fails to either remedy the alleged lack of compliance and/or provide an explanation refuting the  
6 Debtor's allegation after the passage of ninety (90) days from the date Creditor receives said written  
7 notice (the "**Meet and Confer Period**"), Debtor may proceed with filing the appropriate motion in  
8 bankruptcy court seeking Creditor's compliance. However, provided Creditor has in good faith  
9 sought to remedy Debtor's grievance during the Meet and Confer Period, Debtor shall not request an  
10 award of her attorneys' fees and costs as a sanction as a result of filing said motion.

11 18. Upon entry of an Order approving this Stipulation, and in exchange for the forgoing,  
12 Creditor shall provide a ballot voting in favor of the Debtor's Chapter 11 Plan of Reorganization, as  
13 amended, for the Secured Claim.

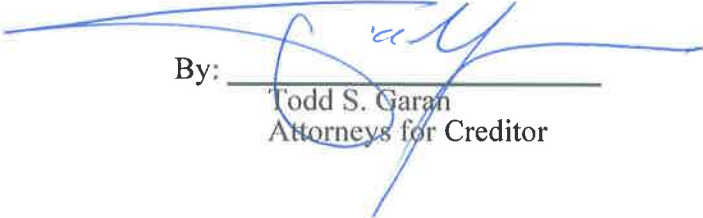
14  
15 Dated: \_\_\_\_\_, 2016

LAKE FOREST BANKRUPTCY.

16  
17 By: \_\_\_\_\_  
Anerio V. Altman  
Attorneys for Debtor

18  
19 Dated: 11/3/, 2016

ALDRIDGE PITE, LLP

20  
21 By:   
Todd S. Garan  
Attorneys for Creditor

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10 award of her attorneys' fees and costs as a sanction as a result of filing said motion.

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12 Creditor shall provide a ballot voting in favor of the Debtor's Chapter 11 Plan of Reorganization, as  
13 amended, for the Secured Claim.

14 Dated: 11/3, 2016

LAKE FOREST BANKRUPTCY.

16 By: 

Anerio V. Altman  
Attorneys for Debtor

19 Dated: \_\_\_\_\_, 2016

ALDRIDGE PITE, LLP

21 By: \_\_\_\_\_  
22 Todd S. Garan  
23 Attorneys for Creditor



# EXHIBIT A

3511S

M35

## ADJUSTABLE RATE NOTE

(FHLB Index - Payment and Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 110% OF THE ORIGINAL AMOUNT (OR \$ 2,200,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

JULY 12, 2006TELLURIDE

CITY

COLORADO

STATE

220 ADAMS RANCH ROAD, MOUNTAIN VILLAGE, CO 81435

PROPERTY ADDRESS

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 2,000,000.00 plus any amounts added in accordance with Section 4 (G) below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WASHINGTON MUTUAL BANK, FA. I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

### 2. INTEREST

Interest will be charged on unpaid principal until the full amount has been paid. Up until the first day of the calendar month that immediately precedes the first payment due date set forth in Section 3 of this Note, I will pay interest at a yearly rate of 7.734 %. Thereafter until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of 1.875 %. The interest rate required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section 7(B) of this Note.

### 3. PAYMENTS

#### (A) Time and Place of Payments

I will pay Principal and interest by making a payment every month. In this Note, "payments" refer to Principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on the first day of each month, beginning on SEPTEMBER, 2006. I will make these payments every month until I have paid all of the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payments will be applied to as of its scheduled due date and will be applied to interest before Principal. If, on AUGUST 01, 2046, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at P.O. BOX 78148 PHOENIX, AZ 85062-8148

, or at a different place if required by the Note Holder.

#### (B) Amount of My Initial Monthly Payments

Each of my monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 5,925.78, unless adjusted at an earlier time under section 4(h) of this Note.

**(C) Payment Changes**

My monthly payment will be recomputed, according to Sections 4(E)(F)(G)(H) and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Interest Rate Change Dates**

The interest rate I will pay may further change on the 1ST day of SEPTEMBER, 2006, and on that day every month thereafter. Each such day is called a "Change Date".

**(B) The Index**

On each Change Date, my interest rate will be based on an Index. The "Index" is the monthly weighted average cost of funds for Eleventh District savings institutions as announced by the Federal Home Loan Bank of San Francisco (the "11th District Monthly Weighted Average Cost of Funds Index"). The most recent Index figure available on each interest rate Change Date is called the "Current Index".

Information on the 11th District Monthly Weighted Average Cost of Funds Index may be obtained by writing to the Federal Home Loan Bank at P.O. Box 7948, San Francisco, California 94120, Attention: Public Information Department; or by calling the Federal Home Loan Bank at [REDACTED]

If the Index is no longer available, the Note Holder will use the new Index as if it were the Index. The new Index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. This information may be available in your library, or you may write to the Federal Reserve Board, Board of Governors, Publications Services, Washington, D.C. 20551. The most recent figure available 15 days prior to each Interest Rate Change Date will be the Current Index. If the new Index is no longer available, the Note Holder will choose an alternate Index which is based upon information comparable to the new Index. The Note Holder will give me notice as to this choice.

**(C) Interest Rate Change Calculation**

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 85 / 100 percentage points 3.850 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. If a new Index is selected, the new Margin will be the difference between the average of the Index for the most recent three year period which ends on the last date the Index was available plus the then effective Margin and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). If an alternate Index is selected, the new Margin will be the difference between the average of the new Index for the most recent three year period which ends on that last date the new Index was available plus the then effective Margin and the average of the alternate Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). In either case, this difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than TEN AND 60 / 100 percentage points 10.600 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

**(E) Payment Change Dates**

Effective every year commencing SEPTEMBER 01, 2007, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the principal Payment and does not apply to any escrow payments Lender may require under the Security Instrument.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a Principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid principal can never exceed a maximum amount equal to 110% of the principal amount original borrowed. In the event my unpaid Principal would otherwise exceed that 110% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the Maturity Date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the fifth anniversary of the due date of the first monthly payment, and on that same day every fifth year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial Prepayment of unpaid Principal.

**5. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "prepayment". When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payment due under the Note.

I may make a full Prepayment or partial Prepayments without payment of any Prepayment charge. The Note Holder will apply all of my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note.

If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may have the effect of reducing the amount of my monthly payments, but the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

#### **6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**Miscellaneous Fees:** I understand that the Note Holder will also charge a return item charge in the event a payment that I make in connection with repayment of this loan is not honored by the financial institution on which it is drawn. The current fee is \$10.00. Lender reserves the right to change the fee from time to time without notice except as may be required by law.

#### **7. BORROWER'S FAILURE TO PAY AS REQUIRED**

##### **(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of Principal and interest. I will pay this late charge promptly but only once of each late payment.

##### **(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

##### **(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

##### **(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

##### **(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attorneys' fees.

#### **8. GIVING OF NOTICES**

Unless Applicable Law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

#### 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

#### 10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

#### 11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

##### **Transfer of the Property or a Beneficial Interest in Borrower.**

If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**12. MISCELLANEOUS PROVISIONS**

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

WITNESS THE HAND (S) AND SEAL(S) OF THE UNDERSIGNED.

  
\_\_\_\_\_  
JOHN DAVID THOMAS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pay to the order of

Without Recourse  
WASHINGTON MUTUAL BANK, FA

By   
CYNTHIA RILEY  
VICE PRESIDENT

WP 1Y  
M35**Prepayment Fee Note Addendum**

This Note Addendum is made this 12TH day of JULY, 2006 and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned (the "Borrower") in favor of WASHINGTON MUTUAL BANK, FA (the "Lender") and dated as of even date herewith (the "Note").

This Note Addendum amends the provision in the Note regarding the Borrower's right to prepay as follows:

**BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal before they are due. Any payment of principal, before it is due, is known as a "prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment." A prepayment of the full amount of the unpaid principal is known as a "full prepayment."

If I make a full prepayment, I may be charged a fee as follows:

If Noteholder receives a prepayment on or before the first anniversary of the date of the Note, the Prepayment Fee shall be equal to TWO percent ( 2.000 %) of the original loan amount. Thereafter, prepayment of the Note shall be permitted without any Prepayment Fee.

The Prepayment Fee shall be payable upon a full prepayment, voluntary or involuntary, including but not limited to a prepayment resulting from Noteholder's permitted acceleration of the balance due on the Note. Notwithstanding the foregoing, nothing herein shall restrict my right to prepay at any time without penalty accrued but unpaid interest that has been added to principal.

When I make a full or partial prepayment I will notify the Noteholder in writing that I am doing so. Any partial prepayment of principal shall be applied to interest accrued on the amount prepaid and then to the principal balance of the Note which shall not reduce the amount of monthly installments of principal and interest (until reamortized as set forth in the Note at the next Payment Change Date) nor relieve me of the obligation to make the installments each and every month until the Note is paid in full. Partial prepayments shall have no effect upon the due dates or the amounts of my monthly payments unless the Noteholder agrees in writing to such changes.



**NOTICE TO THE BORROWER**

Do not sign this Note Addendum before you read it. This Note Addendum provides for the payment of a Prepayment Fee if you wish to repay the loan prior to the date provided for repayment in the Note.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Note Addendum.

  
\_\_\_\_\_  
JOHN DAVID THOMAS

\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT B

SAN MIGUEL COUNTY, CO

DORIS RUFFE CLERK-RECORDER

08-03-2006 12:42 PM Recording Fee \$126.00

2

Return To:

WASHINGTON MUTUAL BANK  
2210 ENTERPRISE DRIVE  
FLORENCE, SC 29501  
DOC OPS M/S FSCE 440

Prepared By:

MELISSA KOEHRER

[Space Above This Line For Recording Data]

ZC01  
M35

**DEED OF TRUST****DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JULY 12, 2006 , together with all Riders to this document.

(B) "Borrower" is JOHN DAVID THOMAS

Borrower is the trustor under this Security Instrument.

(C) "Lender" is WASHINGTON MUTUAL BANK, FA

Lender is a FEDERAL SAVINGS BANK  
organized and existing under the laws of THE UNITED STATES OF AMERICA

**COLORADO - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT****Form 3006 1/01****VMP - 6(CO) (0005)**

Page 1 of 15

Initials: 

VMP MORTGAGE FORMS - (800)521-7291



Lender's address is 2273 N. GREEN VALLEY PARKWAY, SUITE 14, HENDERSON, NV  
89014

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is the Public Trustee of SAN MIGUEL  
County, Colorado.

(E) "Note" means the promissory note signed by Borrower and dated JULY 12, 2006  
The Note states that Borrower owes Lender TWO MILLION AND 00/100

Dollars  
(U.S. \$ 2,000,000.00 ) plus interest. Borrower has promised to pay this debt in regular  
Periodic Payments and to pay the debt in full not later than AUGUST 01, 2046

(F) "Property" means the property that is described below under the heading "Transfer of Rights  
in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late  
charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The  
following Riders are to be executed by Borrower [check box as applicable]:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider                    | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider                    | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable  
final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments  
and other charges that are imposed on Borrower or the Property by a condominium association,  
homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated  
by check, draft, or similar paper instrument, which is initiated through an electronic terminal,  
telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial  
institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale  
transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and  
automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or  
proceeds paid by any third party (other than insurance proceeds paid under the coverages described  
in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of  
all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations  
of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or  
default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest  
under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.)  
and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended  
from time to time, or any additional or successor legislation or regulation that governs the same  
subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and

restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of SAN MIGUEL

:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 4565-33-28-007  
220 ADAMS RANCH ROAD  
MOUNTAIN VILLAGE  
("Property Address"):

which currently has the address of  
[Street]  
[City], Colorado 81435 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions

of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and

Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.



In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall

not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**

**(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as

defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale,

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including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

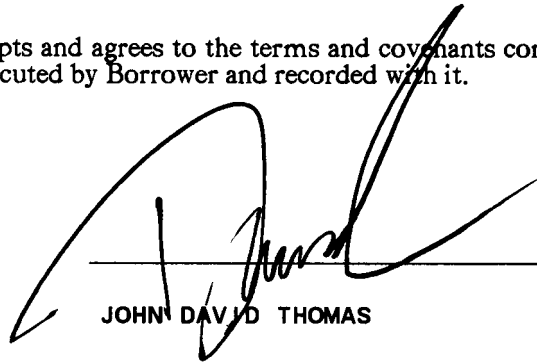
23. **Release.** Upon payment of any sums secured by this Security Instrument, Lender shall request that Trustee release this Security Instrument and shall produce for Trustee, duly cancelled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

  
JOHN DAVID THOMAS

(Seal)

-Borrower

\_\_\_\_\_

(Seal)

-Borrower

\_\_\_\_\_

(Seal)

-Borrower

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(Seal)

-Borrower

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-Borrower



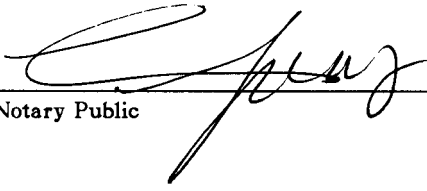
*California, Orange*  
STATE OF ~~COLORADO~~, ~~SAN MIGUEL~~

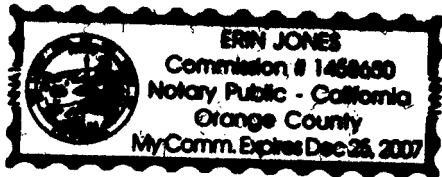
County ss:

The foregoing instrument was acknowledged before me this *19th* day of *July, 2006*,  
by JOHN DAVID THOMAS

Witness my hand and official seal.

My Commission Expires: *12-25-2007*

  
\_\_\_\_\_  
Notary Public



## **Exhibit "A"**

Lot 638-AR, a Replat of Lots 637-C and 638-A, Telluride Mountain Village, Replat of Filing  
28 and Replat of Lots 615-A and 615-C, Filing 21, according to the plat recorded December  
7, 2000 in Plat Book 1 at page 2827,  
County of San Miguel,  
State of Colorado.

EXHIBITA  
Exhibit A – Legal Description



Security Title  
File No [REDACTED]

**ADJUSTABLE RATE RIDER**  
**(FHLB Index - Payment and Rate Caps)**

THIS ADJUSTABLE RATE RIDER is made this 12TH day of JULY, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to WASHINGTON MUTUAL BANK, FA (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

220 ADAMS RANCH ROAD, MOUNTAIN VILLAGE, CO 81435  
(PROPERTY ADDRESS)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 110% OF THE ORIGINAL AMOUNT (OR \$ 2,200,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 7.734 %. Thereafter until the first Change Date (as defined in Section 4 of the Note) I will pay interest at a yearly rate of 1.875 %. The interest rate I will pay will thereafter change in accordance with Section 4 of the Note.

Section 4 of the Note provides for changes in the interest rate and monthly payment as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may further change on the first day of SEPTEMBER, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".

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Page 1 of 6

LRD01USA (VERSION 1.0)

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the monthly weighted average cost of funds for Eleventh District savings institutions as announced by the Federal Home Loan Bank of San Francisco (the "11th District Monthly Weighted Average Cost of Funds Index"). The most recent Index figure available on each interest rate Change Date is called the "Current Index".

Information on the 11th District Monthly Weighted Average Cost of Funds Index may be obtained by writing to the Federal Home Loan Bank at P.O. Box 7948, San Francisco, California 94120, Attention: Public Information Department; or by calling the Federal Home Loan Bank at [REDACTED]

If the Index is no longer available, the Note Holder will use the new Index as if it were the Index. The new Index will be the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. This information may be available in your library, or you may write to the Federal Reserve Board, Board of Governors, Publications Services, Washington, D.C. 20551. The most recent figure available 15 days prior to each Interest Rate Change Date will be the Current Index. If the new Index is no longer available, the Note Holder will choose an alternate Index which is based upon information comparable to the new Index. The Note Holder will give me notice as to this choice.

**(C) Interest Rate Change Calculation**

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 85/100 percentage points 3.850 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. If a new Index is selected, the new Margin will be the difference between the average of the Index for the most recent three year period which ends on the last date the Index was available plus the then effective Margin and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). If an alternate Index is selected, the new Margin will be the difference between the average of the new Index for the most recent three year period which ends on that last date the new Index was available plus the then effective Margin and the average of the alternate Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). In either case, this difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than 10.600 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

**(E) Payment Change Dates**

Effective every year commencing SEPTEMBER 01, 2007, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected Principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in this new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the Principal Payment and does not apply to any escrow payments Lender may require under the Security Instrument.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed a maximum amount equal to 110% of the principal amount original borrowed. In the event my unpaid Principal would otherwise exceed that 110% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the Maturity Date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial Prepayment of unpaid Principal."

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.**

As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Agreement or other obligations related to the Note or other loan document is acceptable to Lender, (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written assumption agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute an document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.

  
\_\_\_\_\_  
JOHN DAVID THOMAS

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\_\_\_\_\_  
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\_\_\_\_\_  
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## PLANNED UNIT DEVELOPMENT RIDER

7RUS  
M35

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 12TH day of JULY, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

WASHINGTON MUTUAL BANK, FA

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

220 ADAMS RANCH ROAD, MOUNTAIN VILLAGE, CO 81435

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in COVENANTS, CONDITIONS AND RESTRICTIONS

(the "Declaration"). The Property is a part of a planned unit development known as

TOWN OF MOUNTAIN VILLAGE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of

**MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**

VMP-7R (0008)

Form 3150 1/01

Page 1 of 3

Initials: 

VMP MORTGAGE FORMS - (800) 521-7291

incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

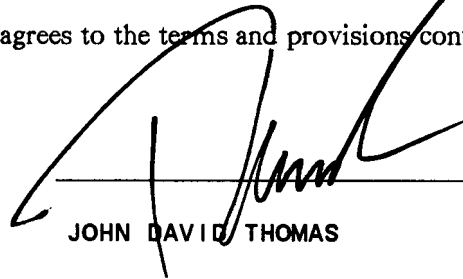
**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

\_\_\_\_\_  
-Borrower

  
JOHN DAVID THOMAS

(Seal)

-Borrower

\_\_\_\_\_  
-Borrower

(Seal)

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-Borrower

(Seal)

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-Borrower

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-Borrower

(Seal)

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-Borrower

(Seal)

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-Borrower

(Seal)

# EXHIBIT C

## LOAN MODIFICATION AGREEMENT

Borrower ("I")<sup>1</sup>: **JOHN D THOMAS**

Lender ("Lender"): **JPMORGAN CHASE BANK, N.A.**

Date of First Lien Security Instrument ("Mortgage") and Note ("Note"): **JULY 12, 2006**

Loan Number: [REDACTED] ("Loan")

Property Address: **220 ADAMS RANCH RD, MOUNTAIN VILLAGE, COLORADO 81435** ("Property")

If my representations in Section 1 continue to be true in all material respects, then the provisions of Section 2 of this Loan Modification Agreement ("Agreement") will, as set forth in Section 2, amend and supplement (i) the Mortgage on the Property, and (ii) the Note secured by the Mortgage. The Mortgage and Note together, as may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement have the meaning given to them in the Loan Documents.

I have provided confirmation of my financial hardship and documents to permit verification of all of my income to determine whether I qualify for the offer described in this Agreement. This Agreement will not take effect unless and until the Lender signs it.

**1. My Representations.** I represent to the Lender and agree:

- A. I am experiencing a financial hardship, and as a result, am either in default under the Loan Documents or a default is imminent.
- B. The Property is neither in a state of disrepair, nor condemned.
- C. There has been no change in the ownership of the Property since I signed the Loan Documents.
- D. I am not a party to any litigation involving the Loan Documents, except to the extent I may be a defendant in a foreclosure action.
- E. I have provided documentation for all income that I earn.
- F. All documents and information I provide pursuant to this Agreement are true and correct.

**2. The Modification.** The Loan Documents are hereby modified as of **JUNE 01, 2013** ("Modification Effective Date"), and all unpaid late charges are waived. The Lender agrees to suspend any foreclosure activities so long as I comply with the terms of the Loan Documents, as modified by this Agreement. The Loan Documents will be modified, and the first modified payment will be due on the date set forth in this Section 2:

- A. The Maturity Date will be: **MAY 01, 2053.**
- B. The modified principal balance of my Note will include all amounts and arrearages that will be past due (excluding unpaid late charges) and may include amounts toward taxes, insurance, or

<sup>1</sup> If there is more than one Borrower or Mortgagor executing this document, each is referred to as "I". For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

other assessments. The new principal balance of my Note is **\$2,683,547.50** ("New Principal Balance").

- C. **\$103,500.00** of the New Principal Balance shall be deferred ("Deferred Principal Balance"), and I will not pay interest or make monthly payments on this amount. The New Principal Balance less the Deferred Principal Balance shall be referred to as the "Interest Bearing Principal Balance," and this amount is **\$2,580,047.50**. The Interest Bearing Principal Balance will re-amortize over **480** months.

Interest will begin to accrue as of **MAY 01, 2013**. The first new monthly payment on the New Principal Balance will be due on **JUNE 01, 2013**, and monthly on the same date thereafter.

This Section 2.C does not apply to the repayment of any Deferred Principal Balance and such a balance will be repaid in accordance with Section 2.D. My payment schedule for the modified Loan is as follows:

I promise to pay monthly payments according to the following schedule with respect to the Interest Bearing Principal Balance.

Years	Interest Rate	Interest Rate Change Date	Monthly Principal & Interest Payment Amount	Payment Begins on	Number of Monthly Payments
1-5	2.000%	05/01/2013	\$7,813.05	06/01/2013	60
6	3.000%	05/01/2018	\$9,076.94	06/01/2018	12
7-40	3.375%	05/01/2019	\$9,566.08	06/01/2019	408

The Lender will notify me of the payment amount prior to the date that the monthly payment on the Interest Bearing Principal Balance will change.

The Deferred Principal Balance of **\$103,500.00** will be due on the Maturity Date unless due earlier in accordance with Section 2.D.

The above terms in this Section 2.C shall supersede any provisions to the contrary in the Loan Documents, including, but not limited to, provisions for an adjustable or step interest rate.

- D. I agree to pay in full (i) the Deferred Principal Balance, if any; and (ii) any other amounts still owed under the Loan Documents, by the earliest of the date I sell or transfer an interest in the Property, subject to Section 3.E below, the date I pay the entire Interest Bearing Principal Balance, or the Maturity Date.
- E. I will be in default if I do not (i) pay the full amount of a monthly payment on the date it is due, or (ii) comply with the terms of the Loan Documents, as modified by this Agreement. If a default rate of interest is permitted under the current Loan Documents, then in the event of default, the interest that will be due on the Interest Bearing Principal Balance will be the rate

set forth in Section 2.C, and there will be no interest payable on the Deferred Principal Balance, if any.

- F. If I make a partial prepayment of principal, the Lender may apply that partial prepayment first to any remaining Deferred Principal Balance before applying such partial prepayment to other amounts due under this Agreement or the Loan Documents.

3. **Additional Agreements.** I agree to the following:

- A. That this Agreement shall supersede the terms of any modification, forbearance, or workout plan, if any, that I previously entered into with the Lender.
- B. To comply, except to the extent that they are modified by this Agreement, or by the U.S. Bankruptcy Code, with all covenants, agreements, and requirements of the Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, impounds, and all other payments, the amount of which may change periodically over the term of my Loan. This Agreement does not waive future escrow requirements. If the Loan includes collection for tax and insurance premiums, this collection will continue for the life of the Loan.
- C. That the Loan Documents are composed of valid, binding agreements, enforceable in accordance with their terms.
- D. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, or by the U.S. Bankruptcy Code, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, or by the U.S. Bankruptcy Code, the Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.
- E. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, I agree as follows: If all or any part of the Property or any interest in it is sold or transferred without the Lender's prior written consent, the Lender may, at its option, require immediate payment in full of all sums secured by the Mortgage. However, the Lender shall not exercise this option if federal law prohibits the exercise of such option as of the date of such sale or transfer. If the Lender exercises this option, the Lender shall give me notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, the Lender may invoke any remedies permitted by the Mortgage without further notice or demand on me.
- F. That, as of the Modification Effective Date, a buyer or transferee of the Property will not be permitted, under any circumstance, to assume the Loan. In any event, this Agreement may not be assigned to, or assumed by, a buyer of the Property.
- G. If any document is lost, misplaced, misstated or inaccurately reflects the true and correct terms and conditions of the Loan Documents as amended by this Agreement, within ten (10) days after my receipt of the Lender's request, I will execute, acknowledge, initial, and

deliver to the Lender any documentation the Lender deems necessary to replace or correct the lost, misplaced, misstated or inaccurate document(s). If I fail to do so, I will be liable for any and all loss or damage which the Lender reasonably sustains as a result of my failure.

- H. All payment amounts specified in this Agreement assume that payments will be made as scheduled.
- I. That, if the Borrower is in bankruptcy upon execution of this document, the Borrower will cooperate fully with the Lender in obtaining any required bankruptcy court and trustee approvals in accordance with local court rules and procedures. The Borrower understands that if such approvals are not received, then the terms of this Agreement will be null and void. If this Agreement becomes null and void, the terms of the original Loan Documents shall continue in full force and effect, and such terms shall not be modified by this Agreement.
- J. If the Borrower(s) received a discharge in a Chapter 7 bankruptcy subsequent to the execution of the Loan Documents, the Lender agrees that such Borrower(s) will not have personal liability on the debt pursuant to this Agreement.
- K. That in agreeing to the changes to the original Loan Documents as reflected in this Agreement, the Lender has relied upon the truth and accuracy of all of the representations made by the Borrower(s), both in this Agreement and in any documentation provided by or on behalf of the Borrower(s) in connection with this Agreement. If the Lender subsequently determines that such representations or documentation were not truthful or accurate, the Lender may, at its option, rescind this Agreement and reinstate the original terms of the Loan Documents as if this Agreement never occurred.
- L. I acknowledge and agree that if the Lender executing this Agreement is not the current holder or owner of the Note and Mortgage, that such party is the authorized servicing agent for such holder or owner, or its successor in interest, and has full power and authority to bind itself and such holder and owner to the terms of this modification.

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

(SIGNATURES CONTINUE ON FOLLOWING PAGES)



TO BE SIGNED BY BORROWER ONLY

**BORROWER** SIGNATURE PAGE TO MODIFICATION AGREEMENT BETWEEN JPMORGAN CHASE  
BANK, N.A. And JOHN D THOMAS, LOAN NUMBER [REDACTED] WITH A MODIFICATION EFFECTIVE  
DATE OF June 01, 2013

In Witness Whereof, the Borrower(s) have executed this agreement.

  
Borrower - JOHN D THOMAS

Date: 6/26/2013

# OFFICIAL CALIFORNIA NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT

State of *California* )

County of *Orange* )

On JUNE 26, 2013 before me Mehdi Zahedi a notary public Personally appeared \_\_\_\_\_

- SOHN D. THOMAS -

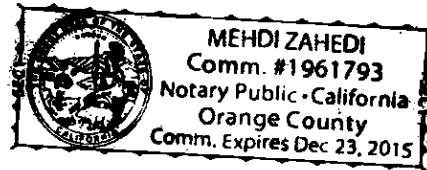
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Mehdi Zahedi*  
Mehdi Zahedi, notary public



Notary Seal

## OPTIONAL

Though the information below is not required by law, it may prove valuable to person(s) relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Title or type of Document \_\_\_\_\_

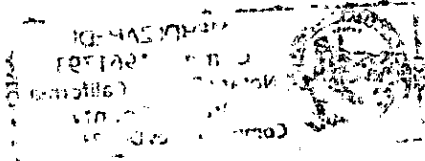
Loan Modification agreement (loan #

Document Date \_\_\_\_\_

NA

Number of pages: \_\_\_\_\_

7 PGS (including this page)



TO BE SIGNED BY LENDER ONLY

LENDER SIGNATURE PAGE TO MODIFICATION AGREEMENT BETWEEN JPMORGAN CHASE BANK,  
N.A. And JOHN D THOMAS, LOAN NUMBER [REDACTED] WITH A MODIFICATION EFFECTIVE DATE  
OF June 01, 2013

In Witness Whereof, the Lender has executed this Agreement.

Lender

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_

*Taccara Evans*

Printed Name: **Taccara Evans**  
Vice President

Date: \_\_\_\_\_

*7.11.13*

# EXHIBIT D



Colorado Secretary of State

Date and Time: 08/11/2015 03:34 PM

ID Number: 20151518472

Document number: 20151518472

Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

ABOVE SPACE FOR OFFICE USE ONLY

### Articles of Organization

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

220 Adams Ranch Road, LLC

*(The name of a limited liability company must contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "llc", or "ltd." See §7-90-601, C.R.S.)*

*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the limited liability company's initial principal office is

Street address

220 Adams Ranch Road

*(Street number and name)*

Mountain Village

*(City)*

CO

*(State)*

81435

*(ZIP/Postal Code)*

United States

*(Country)*

*(Province – if applicable)*

Mailing address

*(leave blank if same as street address)*

456 Mountain Village Blvd

*(Street number and name or Post Office Box information)*

Mountain Village

*(City)*

CO

*(State)*

81435

*(ZIP/Postal Code)*

United States

*(Country)*

*(Province – if applicable)*

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

Name

*(if an individual)*

*(Last)*

*(First)*

*(Middle)*

*(Suffix)*

or

*(if an entity)*

220 Adams Ranch Road, LLC

*(Caution: Do not provide both an individual and an entity name.)*

Street address

220 Adams Ranch Road

*(Street number and name)*

Mountain Village

*(City)*

CO

*(State)*

81435

*(ZIP Code)*

Mailing address

*(leave blank if same as street address)*

456 Mountain Village Blvd

*(Street number and name or Post Office Box information)*

Mountain Village CO 81435  
(City) (State) (ZIP Code)

(The following statement is adopted by marking the box.)

☒ The person appointed as registered agent has consented to being so appointed.

4. The true name and mailing address of the person forming the limited liability company are

Name  
(if an individual) Thomas John David  
(Last) (First) (Middle) (Suffix)  
or

(if an entity)  
(Caution: Do not provide both an individual and an entity name.)

Mailing address 14 Monarch Bay Plaza #288  
(Street number and name or Post Office Box information)  
Monarch Beach CA 92629  
(City) (State) (ZIP/Postal Code)  
United States  
(Province – if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in

(Mark the applicable box.)

☐ one or more managers.

or

☒ the members.

6. (The following statement is adopted by marking the box.)

☒ There is at least one member of the limited liability company.

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_  
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Jarvis	Ryan	M	
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
932 Cooper Ave			
<small>(Street number and name or Post Office Box information)</small>			
<hr/>			
Glenwood Springs	CO	81601	
<small>(City)</small>	<small>(State)</small>	<small>(ZIP/Postal Code)</small>	
<hr/>		United States	
<small>(Province – if applicable)</small>		<small>(Country)</small>	

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

- ☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).



# EXHIBIT E

State Documentary Fee  
Date AUG. 12, 2015  
\$ EXEMPT RJG

SAN MIGUEL COUNTY, CO  
M. KATHLEEN ERIE, CLERK-RECORDER  
08-12-2015 12:20 PM Recording Fee \$11.00

QUIT CLAIM DEED

THIS DEED is made this <sup>August</sup> 10<sup>th</sup> day of ~~July~~, 2015, between The 2010 Adams Ranch Road Trust, Grantor, and 220 Adams Ranch Road, LLC, whose legal address is: 220 Adams Ranch Road, Mountain Village, Colorado 81435, of the County of San Miguel and State of Colorado, Grantee:

WITNESS, that the Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, conveyed, and QUITCLAIMED, and by these presents does remise, release, sell, convey and QUITCLAIM unto the Grantee, its heirs, successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Garfield and State of Colorado, described as follows:

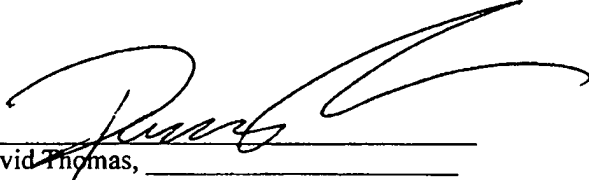
Lot 638-AR a Replat of Lots 637-C and 638-A, Telluride Mountain Village, Replat of Filing 28 and Replat of Lots 615-A and 615-C, Filing 21, according to the plat recorded December 7, 2000 in Plat Book 1 at page 2827, County of San Miguel, State of Colorado

Also known as 220 Adams Ranch Road, Mountain Village, Colorado 81435.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or in equity, to the only proper use, benefit, and behoove of the Grantee, his heirs, successors and assigns forever.

NO DOCUMENTARY FEE - Transfer for title purposes, no consideration paid. C.R.S. §39-13-102.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

By:   
John David Thomas,

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.

The forgoing instrument was acknowledged before me this <sup>AUG.</sup> 10<sup>th</sup> day of ~~July~~, 2015, by John David Thomas as himself of The 2010 Adams Ranch Road Trust.

STATE OF COLORADO }  
COUNTY OF SAN MIGUEL } ss.

(CERTIFIED COPY)

I, M. KATHLEEN ERIE County Clerk and Recorder in  
and for said County and State, do hereby certify that the within and foregoing is a full true and correct copy of  
QUIT CLAIM DEED

No. 438838 as it appears OF  
office in Book N/A at page N/A

Witness my hand and official seal at Telluride, Colorado, this 13TH day of SEPTEMBER, 20 16  
Issued to DOCUMENT PROCESSING SOLUTIONS INC

No. 7745 Fee \$1.25

M. KATHLEEN ERIE  
County Clerk and Recorder, San Miguel County, Colorado

EXHIBIT PAGES  
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EXHIBIT E Deputy.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
4375 Jutland Drive/Suite 200/P.O. BOX 17933/San Diego, CA 92177

A true and correct copy of the foregoing document entitled (*specify*): Stipulation re: Treatment of Creditor's Claim Under Debtor's Chapter 11 Plan of Reorganization

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 11/03/2016, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

United States Trustee, ustregion16.la.ecf@usdoj.gov

United States Trustee (represented by): Hatty K Yip, hatty.yip@usdoj.gov; Dare Law, dare.law@usdoj.gov, ron.maroko@usdoj.gov, melanie.scott@usdoj.gov, queenie.k.ng@usdoj.gov

Attorney for Debtor: Anerio V Altman, lakeforestpacer@gmail.com

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 11/03/2016, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Judge Ernest M. Robles  
Suite 1560, Courtroom 1568  
255 E. Temple Street  
Los Angeles, CA 90012

DEBTOR  
220 Adams Ranch Road, LLC  
PO BOX 4858  
Laguna Beach, CA 92652

ATTORNEY FOR DEBTOR  
Anerio V Altman  
23151 Moulton Parkway, Suite 131  
Laguna Hills, CA 92653

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/03/2016  
*Date*

Esteban Garcia  
*Printed Name*

/s/ Esteban Garcia  
*Signature*

## **EXHIBIT F**

In Re: 220 ADAMS RANCH ROAD, LLC.  <div style="text-align: right;">Debtor(s).</div>	<b>CHAPTER 11 (NON-BUSINESS)</b>  Case Number: <u>8:15-bk-22727-ER</u> Operating Report Number: <u>15</u> For the Month Ending: <u>31-Oct-16</u>
--	--

**I. CASH RECEIPTS AND DISBURSEMENTS**  
**A. (GENERAL ACCOUNT\*)**

1. TOTAL RECEIPTS PER ALL PRIOR GENERAL ACCOUNT REPORTS	15,800.00	
2. LESS: TOTAL DISBURSEMENTS PER ALL PRIOR GENERAL ACCOUNT REPORTS	15,148.94	
3. BEGINNING BALANCE:		651.06
4. RECEIPTS DURING CURRENT PERIOD:	103,000.00	
5. BALANCE:		103,651.06
6. LESS: TOTAL DISBURSEMENTS DURING CURRENT PERIOD	2,614.72	
7. ENDING BALANCE:		101,036.34
8. General Account Number(s):	5724	
Depository Name & Location:	Chino Commercial Bank	

- \* All receipts must be deposited into the general account.
- \*\* Include receipts from the sale of any real or personal property out of the ordinary course of business; attach an exhibit specifying what was sold, to whom, terms, and date of Court Order or Report of Sale.
- \*\*\*This amount should be the same as the total from page 2.

[illegible]



14245 Pipeline Avenue, Chino CA 91710-5639  
909-393-8860 • Fax# 909-485-1279  
www.chinocommercialbank.com  
Return Service Requested



00001584-0004405-0001-0003-TIMR8300061023167555

**ACCOUNT**

**STATEMENT PERIOD** 10/01/2016

To 10/23/2016

**PAGE** 1 of 3

**220 ADAMS RANCH ROAD LLC  
DIP CASE NO. 2:15-bk-22727-ER  
14 MONARCH BAY PLAZA #288  
DANA POINT, CA 92629**

**New Debit Cards Coming Soon!**

We will be upgrading your Chino Commercial Bank Debit Card with new enhanced security features, additional payment options and exceptional benefits. Be on the lookout for your new card, which will be mailed on October 10, 2016, and will become effective on October 24, 2016. If you have any questions, or to request a new Chino Commercial Bank Debit Card, please call your local branch for assistance. We look forward to serving you.

**Debtor in Possession**

**Debtor in Possession**

**Account Summary**

Previous Balance	651.06
Number of Credits	1
Total Credits	103,000.00
Number of Debits	4
Total Debits	2,614.72
New Balance	101,036.34

Average Balance	57,932.44
Minimum Balance	651.06
Average Collected Balance	57,932.44
Total Service Charges	0.00

**Checks ( 3 In Order)**

NO	DATE	AMOUNT
1077	10/17/2016	1,559.72
1078	10/14/2016	35.00

NO	DATE	AMOUNT
1079	10/14/2016	1,000.00

**Other Debits**

DATE	DESCRIPTION	AMOUNT
10/11/2016	Miscellaneous Debit WIRE IN FEE - QUALITY INVESTORS TRUST	20.00

**Other Credits**

DATE	DESCRIPTION	AMOUNT
10/11/2016	Wire Transfer In QUALITY INVESTORS TRUST 2016	103,000.00

**Daily Balance Information**

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
09/30/2016	651.06	10/11/2016	103,631.06	10/14/2016	102,596.06

**"Working for Your Business"**



14245 Pipeline Avenue, Chino CA 91710-5839  
909-393-8880 • Fax# 909-465-1279  
www.chinocommercialbank.com  
Return Service Requested



ACCOUNT

STATEMENT PERIOD 10/01/2016

To 10/23/2016

PAGE 2 of 3

220 ADAMS RANCH ROAD LLC  
DIP CASE NO. 2:15-bk-22727-ER  
14 MONARCH BAY PLAZA #288  
DANA POINT, CA 92629

Daily Balance Information

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
10/17/2016	101,036.34				

00001584-0004477-0002-0003-TTAFB3000100...755/0001-1941-00004-109



"Working for Your Business"



Chino Commercial Bank

Page Number  
Account:

3 of 3

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1077  
9/25/2016  
\$1,559.72  
Power of Attorney  
Chino Commercial Bank  
01-6455-01  
10/17/2016 1077 \$1,559.72

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1079  
9/25/2016  
\$1,000.00  
LAS Vegas  
Chino Commercial Bank  
10/14/2016 1079 \$1,000.00

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1078  
10/7/2016  
\$35.00  
Major Power  
Chino Commercial Bank  
10/14/2016 1078 \$35.00

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1078  
10/7/2016  
\$35.00  
Major Power  
Chino Commercial Bank  
10/14/2016 1078 \$35.00

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1078  
10/7/2016  
\$35.00  
Major Power  
Chino Commercial Bank  
10/14/2016 1078 \$35.00

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1078  
10/7/2016  
\$35.00  
Major Power  
Chino Commercial Bank  
10/14/2016 1078 \$35.00

220 ADAMS RANCH ROAD LLC  
EXP CASE NO. 215-26-22727-ER  
15 WILSON ST. PLAZA 2ND  
OAKLAND, CA 94612

1078  
10/7/2016  
\$35.00  
Major Power  
Chino Commercial Bank  
10/14/2016 1078 \$35.00

Bank statement Date: 10/23/2016 Balance on Statement: \$101,036.34

Plus deposits in transit (a):

Deposit DateDeposit Amount

TOTAL DEPOSITS IN TRANSIT

0.00

**Less Outstanding Checks (a):**

Check NumberCheck DateCheck Amount

**TOTAL OUTSTANDING CHECKS:**

0.00

**Bank statement Adjustments:**

### Explanation of Adjustments-

**ADJUSTED BANK BALANCE:**

**\$101,036.34**

TOTAL DUE:	100,541.50
------------	------------

## V. INSURANCE COVERAGE

	Name of Carrier	Amount of Coverage	Policy Expiration Date	Premium Paid Through (Date)
General Liability	Accord	1421000.00	9/21/2017	9/27/2017
Worker's Compensation				
Casualty				
Vehicle				
Others:				

**ENDING BALANCES FOR THE PERIOD:**

(Provide a copy of of montly account statements for each of the below)

**General Account:**

**Payroll Account:**

**Tax Account:**

**\*Other Accounts:**

**\*Other Monies:**

**\*\*Petty Cash (from below):**

0.00

**TOTAL CASH AVAILABLE:**

0.00

### Petty Cash Transactions:

Date \_\_\_\_\_

## Purpose

Amount

**TOTAL PETTY CASH TRANSACTIONS:**

0.00

\* Specify the Type of holding (e.g. CD, Savings Account, Investment Security), and the depository name, location & account#

**\*\* Attach Exhibit Itemizing all petty cash transactions**

[illegible]

\* Post-Petition Accounts Payable SHOULD NOT include professionals' fees and expenses which have been incurred but not yet awarded by the court. Post-Petition Accounts Payable SHOULD include professionals' fees and expenses authorized by Court Order but which remain unpaid as of the close of the period report

[illegible]

## VII. SCHEDULE OF OTHER AMOUNTS PAID TO INSIDERS

[illegible]

- |  | No            | Yes           |
|--|---------------|---------------|
| 1. Has the debtor-in-possession made any payments on its pre-petition unsecured debt, except as have been authorized by the court? If "Yes", explain below:  | <u>  x  </u>  | <u>      </u> |
| <hr/>  |               |               |
| 2. Has the debtor-in-possession during this reporting period provided compensation or remuneration to any officers, directors, principals, or other insiders without appropriate authorization? If "Yes", explain below:                                       | <u>      </u> | <u>      </u> |
| <hr/>  |               |               |
| 3. State what progress was made during the reporting period toward filing a plan of reorganization   |               |               |
| <u>A new disclosure statement will be filed shortly with stipulations from all creditors.</u>  |               |               |
| <hr/>  |               |               |
| 4. Describe potential future developments which may have a significant impact on the case:   |               |               |
| <hr/>  |               |               |
| 5. Attach copies of all Orders granting relief from the automatic stay that were entered during the reporting period.  |               |               |
| <hr/>  |               |               |
| 6. Did you receive any exempt income this month, which is not set forth in the operating report? If "Yes", please set forth the amounts and sources of the income below.   | <u>  X  </u>  | <u>      </u> |
| <hr/>  |               |               |
| I, [enter your name and title here],<br>declare under penalty of perjury that I have fully read and understood the foregoing debtor-in-possession operating report and that the information contained herein is true and complete to the best of my knowledge. |               |               |

11/17/2016

Date

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EXHIBIT PAGES  
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Principal for debtor-in-possession