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Debtor and Debtor-in-Possession

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11  
12 In re:

13 XS RANCH FUND VI, L.P.,

14  
15 Debtor and  
16 Debtor-in-Possession.

Case No. 16-31367-RE-11

Chapter 11 Proceeding

**DEBTOR'S AMENDED CHAPTER 11 PLAN  
OF REORGANIZATION**

**Confirmation Hearing:**

Date: [TBD]

Time: [TBD]

Place: Courtroom 201  
1300 Clay Street, 2<sup>nd</sup> Floor  
Oakland, California

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1 I.

2 **INTRODUCTION**

3 This Plan<sup>1</sup> is filed by the Debtor as the Plan Proponent in the Debtor's Chapter 11 Case.  
4 The Debtor's Disclosure Statement is sent to you in the same envelope as this document. The  
5 Disclosure Statement has been approved by the Court. It is being provided along with this Plan in  
6 order to provide you with critical information about the Debtor and to help you understand this  
7 Plan. The Disclosure Statement discusses the Debtor's history, business, property, and results of  
8 operations and contains a summary and discussion of this Plan. Holders of Claims and Interests  
9 and parties to executory contracts and unexpired leases are encouraged to read the Disclosure  
10 Statement. No solicitation materials, other than the Disclosure Statement and related materials  
11 transmitted therewith and approved for solicitation purposes by the Court, have been authorized  
12 for use in soliciting acceptances or rejections of this Plan.

13 II.

14 **DEFINITIONS AND RULES OF INTERPRETATION**

15 **2.1 Definitions.** The following defined terms are used in this Plan. Any capitalized  
16 term that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules,  
17 shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules.

18 2.1.1 Additional Purchased Property means that certain 295 additional acres  
19 located in Bastrop County, Texas, adjacent to the First Purchased Property and Second  
20 Purchased Property, purchased by the Debtor from 2008 – 2012 and currently owned by  
21 the Debtor.

22 2.1.2 Administrative Claim(s) means any Claim incurred after the Petition  
23 Date but before the Confirmation Date for any cost or expense of administration of the  
24 Case allowable under Section 330, 331, 503(b), or 507(a)(1) of the Bankruptcy Code,  
25 including, without limitation, any actual and necessary post-petition expenses of  
26 preserving the Estate of the Debtor, any actual and necessary post-petition expenses of  
27

28 <sup>1</sup> All capitalized terms are defined terms set forth in Article II of this Plan.

1 operating the business of the Debtor, all compensation or reimbursement of expenses to  
2 the extent allowed by the Bankruptcy Court under Section 330, 331, or 503 of the  
3 Bankruptcy Code and any fees or charges assessed against the Estate of the Debtor under  
4 Section 1930 of title 28 of the United States Code.

5 2.1.3 Administrative Claims Bar Date means the last date fixed by this Plan  
6 for the filing of Proofs of Claim or requests for payment of Administrative Claims. Under  
7 this Plan, the Administrative Claims Bar Date shall be the first Business Day after the  
8 sixtieth (60th) day after the Confirmation Date.

9 2.1.4 Affiliate(s) means the term shall have the meaning set forth under  
10 Section 101(2) of the Bankruptcy Code, including, but not limited to, as to any Person,  
11 any other Person that directly or indirectly owns or controls, is owned or controlled by, or  
12 is under common ownership or control with, such Person. The term “control” (including,  
13 with correlative meanings, the terms “controlled by” and “under common control with”),  
14 as applied to any Person, means the possession, direct or indirect, of the power to direct or  
15 cause the direction of the management and policies of such Person, whether through the  
16 ownership of voting securities or other equity ownership interest, by contract or otherwise.

17 2.1.5 Allowed means Claim(s) or Interest(s), such Claim(s) or Interest(s), to  
18 the extent that it or they are “Allowed Claim(s)” or “Allowed Interest(s).”

19 2.1.6 Allowed Amount means:

20 (i) With respect to any Administrative Claim (i) if the Claim is based upon  
21 a Fee Application, the amount of such Fee Application that has been approved by a Final  
22 Order of the Bankruptcy Court; (ii) if the Claim is based upon any indebtedness or  
23 obligation incurred in the ordinary course of business of the Debtor and is not otherwise  
24 subject to an Administrative Claim Bar Date, the amount of such Claim that has been  
25 agreed to by the Debtor and such creditor, failing which, the amount thereof as fixed by a  
26 Final Order of the Bankruptcy Court; or (iii) if the Holder of such Claim was required to  
27 file and has filed proof thereof with the Bankruptcy Court prior to an Administrative  
28 Claim Bar Date, (1) the amount stated in such proof if no objection to such Proof of Claim

1 is interposed within the applicable period of time fixed by the Bankruptcy Code, the  
2 Bankruptcy Rules or the Bankruptcy Court, or (2) the amount thereof as fixed by Final  
3 Order of the Bankruptcy Court if an objection to such proof was interposed within the  
4 applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or the  
5 Bankruptcy Court. The Allowed Amount of any Administrative Claim which is subject to  
6 an Administrative Claims Bar Date and not filed by the applicable Administrative Claims  
7 Bar Date shall be zero, and no Distribution shall be made on account of any such  
8 Administrative Claim;

9 (ii) With respect to any Claim which is not an Administrative Claim (the  
10 “Other Claim”): (i) if the Holder of such Other Claim did not file proof thereof with the  
11 Bankruptcy Court on or before the Claims Bar Date, the amount of such Claim as listed in  
12 the Debtor’s Schedules as neither disputed, contingent or unliquidated; or (ii) if the Holder  
13 of such Claim has filed proof thereof with the Bankruptcy Court on or before the Claims  
14 Bar Date, (a) the amount stated in such proof if no objection to such Proof of Claim was  
15 interposed within the applicable period of time fixed by the Bankruptcy Code, the  
16 Bankruptcy Rules, this Plan or the Bankruptcy Court, or (b) the amount thereof as fixed by  
17 Final Order of the Bankruptcy Court if an objection to such proof was interposed within  
18 the applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules, this  
19 Plan or the Bankruptcy Court. The Allowed Amount of any Other Claim which is not  
20 Filed by the applicable Claims Bar Date, is not listed on the Debtor’s Schedules or is listed  
21 as disputed, unliquidated, contingent or unknown, and is not allowed under the terms of  
22 this Plan shall be zero, and no Distribution shall be made on account of any such Claim;  
23 and

24 (iii) With respect to any Interest, (i) the amount provided by or established in  
25 the records of the Debtor at the Confirmation Date, provided, however, that a timely filed  
26 proof of Interest shall supersede any listing of such Interest on the records of the Debtor;  
27 or (ii) the amount stated in a proof of Interest Filed prior to the Confirmation Date if no  
28 objection to such Interest was filed prior to the Confirmation Date or such later date as the

1 Bankruptcy Court allows; or (iii) the amount of such Interest as fixed by a Final Order of  
2 the Bankruptcy Court.

3 2.1.7 Allowed Claim(s) means except as otherwise provided in this Plan  
4 (including with respect to those Classes for which the amount of the Allowed Claims is  
5 specified by this Plan), a Claim to the extent of the Allowed Amount of such Claim.

6 2.1.8 Allowed Interest(s) means any Interest to the extent, and only to the  
7 extent, of the Allowed Amount of such Interest.

8 2.1.9 Allowed Secured Claim means an Allowed Claim secured by a valid and  
9 unavoidable Lien against property in which an Estate has an interest, or which is subject to  
10 setoff under Section 553 of the Bankruptcy Code, to the extent of the value, determined in  
11 accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of  
12 such Allowed Claim in the Estate's interest in such property, or to the extent of the  
13 amount subject to any setoff, as the case may be.

14 2.1.10 Assets means all assets that are property of the Debtor pursuant to  
15 Section 541 of the Bankruptcy Code, including but not limited to the Property.

16 2.1.11 Available Cash means the Cash deposited into the Distribution  
17 Account(s) on or after the Effective Date that is available for making Distributions under  
18 this Plan to Holders of Allowed Claims.

19 2.1.12 Avoidance Actions means any action or proceeding filed pursuant to the  
20 provisions of Sections 506, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 551 of the  
21 Bankruptcy Code, or any similar action or proceeding filed to recover property for or on  
22 behalf of the Estate or to avoid a Lien or transfer.

23 2.1.13 Avoidance Actions Recoveries means any Cash or other property  
24 received by the Debtor from all or any portion of an Avoidance Action(s), including, but  
25 not limited to, awards of damages, attorneys' fees and expenses, interest and punitive  
26 damages, whether recovered by way of settlement, execution on judgment or otherwise.

27 2.1.14 Bankruptcy Code means Title 11 of the United States Code, 11 U.S.C.  
28 §§ 101 *et seq.*, as applicable to the Case.

1           2.1.15    Bankruptcy Court means the United States Bankruptcy Court for the  
2 Northern District of California, having jurisdiction over the Case and, to the extent of any  
3 withdrawal of the reference made pursuant to Section 157 of title 28 of the United States  
4 Code, the United States District Court for the Northern District of California; or, in the  
5 event such courts cease to exercise jurisdiction over the Case, such court or unit thereof  
6 that exercises jurisdiction over the Cases in lieu thereof.

7           2.1.16    Bankruptcy Rules means collectively, as now in effect or hereafter  
8 amended and as applicable to the Case, (i) the Federal Rules of Bankruptcy Procedure,  
9 and (ii) the Local Bankruptcy Rules and General Orders applicable to cases pending  
10 before the Bankruptcy Court.

11           2.1.17    Business Day means any day, other than a Saturday, a Sunday or a  
12 “legal holiday,” as defined in Bankruptcy Rule 9006(a).

13           2.1.18    Capital Investment means the total monies invested in the Debtor by  
14 members of Class 6 and 7, which equals \$54,275,000.

15           2.1.19    Capital Pro Rata means the proportionate share of an Allowed Claim or  
16 Interest held by a member of Class 6 or 7, respectively, relative to the total Capital  
17 Investment. The Capital Pro Rata formula is calculated as follows:

$$\frac{\text{Allowed Claim or Interest of a member of} \\ \text{Class 6 or Class 7}}{\text{Total Capital Investment}}$$

20           2.1.20    Case means the Chapter 11 case of the Debtor pending before the  
21 Bankruptcy Court.

22           2.1.21    Cash means currency of the United States of America and cash  
23 equivalents, including, but not limited to, bank deposits, immediately available or cleared  
24 checks, drafts, wire transfers and other similar forms of payment.

25           2.1.22    Causes of Action means any and all claims, demands, rights, actions,  
26 causes of action and suits of the Debtor or the Estate, of any kind or character whatsoever,  
27 known or unknown, suspected or unsuspected, whether arising prior to, on or after the  
28 Petition Date, in contract or in tort, at law or in equity or under any other theory of law,



1 that the Debtor or the Debtor's Estate has or asserts, or may have or assert, against third  
2 parties, whether or not brought as of the Effective Date, and which have not been settled  
3 or otherwise resolved by Final Order as of the Effective Date, including but not limited to  
4 (a) rights of setoff, counterclaim or recoupment, (b) claims on contracts or for breaches of  
5 duties imposed by law, (c) rights to object to Claims or Interests, (d) such claims and  
6 defenses as fraud, mistake, duress or usury, (e) claims for tax refunds, (f) claims to  
7 recover accounts receivable, and (g) any other claims which may be asserted against third  
8 parties.

9 2.1.23 City means the city of Bastrop, Texas.

10 2.1.24 Claim(s) means the broadest possible meaning under Section 101(5) of  
11 the Bankruptcy Code, and shall include (a) any right to payment from the Debtor, whether  
12 or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent,  
13 matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or  
14 (b) any right to an equitable remedy for breach of performance if such breach gives rise to  
15 a right of payment from the Debtor, whether or not such right to an equitable remedy is  
16 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed,  
17 secured, or unsecured.

18 2.1.25 Claims Bar Date means for any Claim other than an Administrative  
19 Claim, October 23, 2017, established by the Bankruptcy Court as the last date for  
20 Creditors to file Proof of Claims with the Bankruptcy Court in the Debtor's case. The  
21 exceptions to this Claims Bar Date are: (1) Claims arising from the rejection of executory  
22 contracts or unexpired leases; (2) Claims of "governmental units," as such term is defined  
23 in Section 101(27) of the Bankruptcy Code; and (3) Claims arising as the result of transfer  
24 avoidance pursuant to Chapter 5 of the Bankruptcy Code. For Claims arising from  
25 rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. § 365, the last  
26 day to file a Proof of Claim is (a) 30 days after the date of entry of the order authorizing  
27 the rejection, or (b) 30 days after service of a bar date notice upon the Creditor asserting  
28 such Claim, whichever is later. For Claims of "governmental units," as that term is

1 defined in 11 U.S.C. §101(27), Proofs of Claim are timely filed if filed: (a) before 180  
2 days after the Petition Date, or as otherwise provided in Rule 3002(c)(1) of the  
3 Bankruptcy Rules. *See* 11 U.S.C. §502(b)(9). For Claims arising from the avoidance of a  
4 transfer under chapter 5 of the Bankruptcy Code, the last day to file a Proof of Claim is 30  
5 days after the entry of judgment avoiding the transfer, or (b) 30 days after service of a bar  
6 date notice upon the Creditor asserting such Claim, whichever is later.

7 2.1.26 Class means each group of Claims or Interests classified in this Plan  
8 pursuant to Sections 1122 and 1123 of the Bankruptcy Code.

9 2.1.27 Committee means the Official Committee of Creditors Holding General  
10 Unsecured Claims in this Case appointed by the U.S. Trustee.

11 2.1.28 Confirmation Date means the date on which the Confirmation Order is  
12 entered on the Bankruptcy Court's docket.

13 2.1.29 Confirmation Order means the Final Order entered by the Bankruptcy  
14 Court confirming this Plan in accordance with the provisions of Chapter 11 of the  
15 Bankruptcy Code.

16 2.1.30 County means the Treasurer and Tax Collector of the county of Bastrop,  
17 Texas.

18 2.1.31 Creditor(s) means any Person who is the Holder of a Claim against the  
19 Debtor that arose or accrued or is deemed to have arisen or accrued or to have matured, or  
20 otherwise become due, owing, and payable on or before the Petition Date, including,  
21 without limitation, Claims of the kind specified in Sections 502(g), 502(h) or 502(i) of the  
22 Bankruptcy Code.

23 2.1.32 Crestline means Crestline Direct Finance, L.P. or one of its Affiliates as  
24 it may designate, as sole lead arranger, on behalf of investments funds managed by  
25 Crestline Management, L.P.

26 2.1.33 Debtor means XS Ranch Fund, VI, L.P., a Delaware limited partnership.  
27 For the purpose of this Plan, reference to "Debtor" shall include the Reorganized Debtor.  
28

1                   2.1.34    Default Notice means written notice by any member of a Class who  
2 asserts a default under this Plan, which must be made to the Notice Parties via e-mail and  
3 certified U.S. Mail.

4                   2.1.35    DIP Financing means debtor in possession financing.

5                   2.1.36    Disclosure Statement means the Debtor's Disclosure Statement in  
6 Support of the Debtor's Chapter 11 Plan of Reorganization, as such may be further  
7 amended or modified.

8                   2.1.37    Disputed Claim(s) means all or any part of a Claim other than any  
9 Allowed Amount thereof as to which any one of the following applies: (i) no Proof of  
10 Claim has been filed with respect to such Claim, and either (a) the Claim is not listed in  
11 the Schedules; or (b) the Claim is listed in the Schedules as unliquidated, disputed,  
12 contingent, unknown or in a zero amount, (ii) the Claim is the subject (a) to an Avoidance  
13 Action; (b) of offset by an Avoidance Action; (c) to a timely objection that has not been  
14 resolved by a Final Order; or (d) to a request for estimation in accordance with the  
15 Bankruptcy Code, the Bankruptcy Rules, any applicable order of the Bankruptcy Court, or  
16 this Plan which is Filed on or before the Claims Objection Deadline, which adversary  
17 proceeding, objection, or request for estimation has not been dismissed, withdrawn or  
18 determined by a Final Order; or (iii) the Claim is otherwise treated as a "Disputed Claim"  
19 pursuant to this Plan.

20                   2.1.38    Disputed Lien(s) means an asserted lien(s) against Assets of the Debtor  
21 that is either subject to a Disputed Claim, not duly perfected, or subject to an Avoidance  
22 Action or subject to an action pursuant to Bankruptcy Code Sections 510(c)(2)  
23 and/or 506(d).

24                   2.1.39    Distribution(s) means payments to Holders of Allowed Claims and  
25 Interests provided for under this Plan.

26                   2.1.40    Distribution Account(s) means account(s) to be established for the  
27 Property by the Debtor or the Plan Agent at a bank into which the Debtor's Available  
28 Cash shall be deposited.

1                   2.1.41    Distribution Date means with respect to any Allowed Claim or Allowed  
2 Interest, the date on which a Distribution is required to be made under this Plan.

3                   2.1.42    Effective Date means the tenth Business Day of the first full month after  
4 the fourteenth day after entry of an order confirming the Plan.

5                   2.1.43    Estate means the bankruptcy estate of the Debtor created pursuant to  
6 Section 541 of the Bankruptcy Code.

7                   2.1.44    Event of Default means the Debtor's failure to cure within the Grace  
8 Period a payment required to be made under this Plan pursuant to the terms herein.

9                   2.1.45    Exit Financing means the \$30 million of exit financing agreed to be  
10 provided by Crestline upon confirmation of the Plan, as described in and pursuant to the  
11 Commitment Letter dated December 15, 2017 attached hereto as **Exhibit 3**.

12                  2.1.46    Fee Application(s) means applications of Professional Persons under  
13 Sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and  
14 reimbursement of expenses in the Case.

15                  2.1.47    Filed means delivered to, received by and entered upon the legal docket  
16 by the Clerk of the Bankruptcy Court. "File" shall have a correlative meaning.

17                  2.1.48    Final Order means an order or judgment of the Bankruptcy Court or  
18 other applicable court, as entered on the applicable docket, that has not been reversed,  
19 stayed, modified or amended, and as to which the time to appeal, petition for certiorari, or  
20 move for reargument or rehearing has expired and as to which no appeal, petition for  
21 certiorari, or other proceedings for reargument or to obtain a rehearing shall then be  
22 pending or as to which any right to appeal, petition for certiorari, reargue, or obtain a  
23 rehearing shall have been waived in writing in form and substance satisfactory to the  
24 Debtor or, in the event that an appeal, writ of certiorari, or proceeding for reargument or  
25 rehearing of such order or judgment has been sought, such order or judgment shall have  
26 been affirmed by the highest court to which such order or judgment was appealed, or  
27 certiorari has been denied, or from which reargument or rehearing was sought, and the  
28

1 time to take any further appeal, petition for certiorari or move for reargument or rehearing  
2 shall have expired.

3 2.1.49 First Purchased Property means that certain 6,836.838 acres of real  
4 property located in Bastrop County, Texas and purchased by the Debtor from Steiner.

5 2.1.50 Financial Projections means the financial projections prepared by the  
6 management of the Debtor based on two scenarios - where the claims of the Rescission  
7 Claimants are: (i) subordinated below Equity Interest holders, and (ii) treated pari passu  
8 with Equity Interest Holders, which are attached to the Disclosure Statement as **1A and**  
9 **1B**, respectively.

10 2.1.51 General Unsecured Claim(s) means a Claim against the Debtor that is  
11 not (a) a Secured Claim, (b) an Administrative Claim, (c) a Tax Claim, (d) a Priority  
12 Claim, or (e) a Subordinated Claim.

13 2.1.52 Grace Period means a period of fifteen (15) Business days.

14 2.1.53 Gross Rental Income means all rents, issues and profits generated by the  
15 Property.

16 2.1.54 Holder means the beneficial owner of any Claim or Interest.

17 2.1.55 Interest(s) means any equity security interest in the Debtor within the  
18 meaning, of Section 101(16) of the Bankruptcy Code, including, without limitation, any  
19 equity ownership interest in the Debtor, whether in the form of common or preferred  
20 stock, stock options, warrants, partnership interests, or membership interests.

21 2.1.56 Lien means any lien, encumbrance, pledge or other charge against  
22 property.

23 2.1.57 Mechanics Lien Creditor(s) means those creditor(s) who hold an  
24 Allowed Secured Claim against the Property based on a valid, non-avoidable mechanics  
25 Lien.

26 2.1.58 Net Cash Flow means the Gross Rental Income less Operating Costs.

27 2.1.59 Net Financing Proceeds means the proceeds generated from debt or  
28 equity capital.

1                   2.1.60    Net Sales Proceeds means the Cash generated from the sale(s),  
2                   liquidation or transfer of the Assets, including the Property, less payment of selling  
3                   expenses, closing costs, taxes, and any associated Post-Confirmation Expenses pursuant to  
4                   the Financial Projections and Administrative Claims incurred in furtherance of such  
5                   sale(s) or liquidation of such Assets.

6                   2.1.61    Notice Parties means the Debtor, Debtor's counsel (Winthrop Couchot  
7                   Golubow Hollander, LLP), the Committee, Committee counsel (Sheppard, Mullin, Richter  
8                   & Hampton, LLP), and the Plan Agent.

9                   2.1.62    Operating Costs means those costs and expenses reasonably necessary to  
10                  operate, maintain, and manage the Property including a reserve for the payment of real  
11                  property taxes for the current tax period.

12                  2.1.63    Option Agreement(s) means the Repurchase Option Agreements entered  
13                  into between the Debtor and Steiner and S&S on July 12, 2016, September 29, 2016, and  
14                  October 27, 2016, respectively, to repurchase from Steiner and S&S 758.028, 507.061 and  
15                  1,164.571 acres of the Property, respectively.

16                  2.1.64    Order for Relief means June 1, 2017.

17                  2.1.65    Orderly Liquidation means an orderly liquidation of all of the Debtor's  
18                  assets to be conducted in the event of the Debtor's inability to timely raise the Post-  
19                  Closing Equity, which process is described herein.

20                  2.1.66    Partnership Agreement means that certain Agreement of Limited  
21                  Partnership of XS Ranch Fund VI, L.P., a Delaware limited partnership.

22                  2.1.67    Person means an individual, partnership, corporation, limited liability  
23                  company, business trust, joint stock company, trust, unincorporated association, joint  
24                  venture, governmental authority, governmental unit, committee or other entity of whatever  
25                  nature.

26                  2.1.68    Petition Date means December 23, 2016.  
27  
28

1                   2.1.69    Petitioning Creditors means Peter Mainstain, Dr. Hasso Plattner and  
2 Granite Land Company, Inc., and subsequently joined by Jackie Yellin, Trustee of the  
3 Gary S. Kading Irrevocable Trust.

4                   2.1.70    Plan means the Debtor's Amended Chapter 11 Plan of Reorganization,  
5 including, without limitation, all exhibits, supplements, appendices, and schedules hereto,  
6 either in its present form or as it may be altered, amended, or modified from time to time.

7                   2.1.71    Plan Agent means the Person that is responsible to administer the Plan  
8 and to make Distributions under the Plan, which is expected to be Michael VanderLey of  
9 Force 10, or such other Person selected as may be selected by the Debtor.

10                  2.1.72    Plan Proponent means the Debtor, which is the party-in-interest that is  
11 proposing this Plan.

12                  2.1.73    Post-Closing Equity means \$10 million of equity capital that must be  
13 raised by the Debtor post-confirmation pursuant to the terms of Exit Financing to be  
14 provided by Crestline.

15                  2.1.74    Post-Confirmation Expense(s) means the fees and expenses incurred by  
16 the Debtor and its professionals following the Confirmation Date (including the fees and  
17 costs of Professionals) for the purpose of (i) prosecuting and liquidating the Avoidance  
18 Actions; (ii) objecting to and resolving Disputed Claims and Disputed Liens; (iii) selling  
19 or otherwise liquidating the Assets; (iv) effectuating Distributions under this Plan; and  
20 (v) otherwise consummating this Plan and closing the Debtor's Chapter 11 Case.

21                  2.1.75    Priority Claim(s) means any Claim, other than an Administrative Claim  
22 or a Tax Claim, to the extent entitled to priority under Section 507(a) of the Bankruptcy  
23 Code.

24                  2.1.76    Pro Rata means the proportionate share of an Allowed Claim or Interest  
25 held by a member of Class 6 or 7, respectively, relative to the total Allowed Claims or  
26 Interests held by members of Classes 6 or 7, respectively. The Pro Rata formula is  
27 calculated as follows:  
28

**Pro Rata For Class 6:**

**Pro Rata For Class 7:**

$$\frac{\text{Allowed Claim of a member of Class 6}}{\text{Total Allowed Claims of all members of Class 6}}$$

$$\frac{\text{Allowed Claim of a member of Class 7}}{\text{Total Allowed Claims of all members of Class 7}}$$

2.1.77 Professional means a Person (a) employed by the Debtor pursuant to a Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b) of the Bankruptcy Code.

2.1.78 Professional Fees means all Allowed Claims for compensation and for reimbursement of expenses under Sections 328, 330 and/or 503(b) of the Bankruptcy Code.

2.1.79 Property means the First Purchased Property, Second Purchased Property, and Additional Purchased Property, which collectively constitutes 8,740 acres of real property located in Bastrop, Texas.

2.1.80 Reorganized Debtor means the Debtor, as reorganized under the terms of this Plan on and after the Effective Date, and any successors thereto by merger, consolidation, acquisition, or otherwise.

2.1.81 Rescission Claimants means the Petitioning Creditors and other limited partners who filed a Demand for Arbitration with JAMS, entitled *Dr. Hasso Plattner, et al. v. XS Ranch Fund VI, L.P., et al., JAMS Ref. No. 1120012347*, and entered into the Rescission Claimants Settlement.

2.1.82 Rescission Claimants Settlement means that certain Agreement of Settlement and Mutual General Release, which *inter alia* provided for a stipulation for entry of arbitration award and the rescission of limited partners' purchase of the limited partnership interests and restitution for their capital contributions in the collective amount of \$28,575,001.



1           2.1.83    Schedules means the schedules of assets and liabilities and list of equity  
2 security holders Filed by the Debtor, as required by Section 521 of the Bankruptcy Code,  
3 Bankruptcy Rules 1007(a)(3) and (b)(1), and Official Bankruptcy Form No. 6, as amended  
4 from time to time.

5           2.1.84    Second Purchased Property means that certain 1,922.597 acres of real  
6 property located in Bastrop County, Texas and purchased by the Debtor from Steiner.

7           2.1.85    Secured Claim(s) means any Claim, including interest, fees, costs, and  
8 charges to the extent allowable pursuant to Bankruptcy Code Section 506, that is secured  
9 by a valid and unavoidable lien on the Debtor's Assets.

10          2.1.86    Second Purchased Property means that certain 1,922.597 acres of real  
11 property located in Bastrop County, Texas and purchased from Steiner.

12          2.1.87    Secured Real Property Tax Claim(s) means claim(s) held by the County  
13 secured by liens on the Property owned by the Debtor.

14          2.1.88    S&S means S&S Investments, LLC, an Affiliate of Steiner.

15          2.1.89    Steiner means Steiner & Sons, Ltd.

16          2.1.90    Steiner 1<sup>st</sup> Claim means the Allowed Claim of Steiner based on Steiner's  
17 rights arising from the Steiner 1<sup>st</sup> Loan.

18          2.1.91    Steiner 1<sup>st</sup> Loan means that certain seller carryback loan made by Steiner  
19 in the amount of \$10,000,000, as part of the purchase price paid by the Debtor to Steiner  
20 for the First Purchased Property, as evidenced by the promissory notes and Deed of  
21 Security Agreement and Financing Statement entered into on December 19, 2006.

22          2.1.92    Steiner 2<sup>nd</sup> Claim means the Allowed Claim of Steiner based on  
23 Steiner's rights arising from the Steiner 2<sup>nd</sup> Loan.

24          2.1.93    Steiner 2<sup>nd</sup> Loan means that certain loan made by Steiner in the amount  
25 of \$1,500,000, as evidenced by the promissory notes and Deed of Security Agreement and  
26 Financing Statement entered into on September 6, 2013.

1                   2.1.94    Steiner Loan Documents means the promissory notes dated  
2                   December 19, 2006 and September 6, 2013, and all security agreements, loan  
3                   modifications, and all other loan documents related thereto.

4                   2.1.95    Steiner Maturity Date means the respective maturity date provided for in  
5                   each of the respective Steiner Loan Documents, which are as follows:

Loan	Maturity Date
Steiner 1 <sup>st</sup> Loan	June 19, 2023
Steiner 2 <sup>nd</sup> Loan	June 19, 2023

6  
7  
8                   2.1.96    Steiner New Maturity Date means the first Business Day following the  
9                   one year anniversary of the Steiner Maturity Date.

10                  2.1.97    Subordination Litigation means the Estate's efforts through adversary,  
11                  motion, or otherwise, to subordinate, pursuant to Section 510 of the Bankruptcy Code, the  
12                  Claim(s) held by the Rescission Claimants.

13                  2.1.98    Tax means any tax, charge, fee, levy, impost or other assessment by any  
14                  federal, state, local or foreign taxing authority, including, without limitation, income,  
15                  excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad  
16                  valorem, estimated, severance, stamp, occupation and withholding tax. "Tax" shall  
17                  include any interest or additions attributable to, or imposed on or with respect to such  
18                  assessments.

19                  2.1.99    Tax Claim(s) means any Claim for any Tax to the extent that it is  
20                  entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

21                  2.1.100   Transferred Property means the 2,430 acres of the Property transferred  
22                  to Steiner and S&S pursuant to three Purchase Agreements.

23                  2.1.101   Unclaimed Property means any Distribution of Cash that is returned to  
24                  the Plan Agent as undeliverable or the Distribution check is not negotiated within 90 days  
25                  of mailing.

26                  2.1.102   XS Water means XS Water Company, LLC, a Texas eflimited liability  
27                  company and wholly owned subsidiary of the Debtor.  
28

**2.2      Rules of Construction.** For purposes of this Plan and the Disclosure Statement, unless otherwise provided herein or in the Disclosure Statement, (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (c) any reference in this Plan or the Disclosure Statement to an existing document or schedule Filed or to be Filed means such document or schedule, as it may have been or may be amended, modified or supplemented; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) except as otherwise indicated herein all references in this Plan or the Disclosure Statement to Sections and Articles are references to Sections and Articles of or to this Plan; (f) the words "therein," "thereunder" and "thereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; and (g) unless otherwise provided in this Plan or the Disclosure Statement, any reference in this Plan or the Disclosure Statement to a contract, instrument, release, indenture, agreement, or other document being in a particular form or on particular terms and conditions means that such document shall be substantially and materially in such form or substantially and materially on such terms and conditions; and (h) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply to the extent such rules are not inconsistent with the express terms of this Plan or the Disclosure Statement or any other provision in this Section.

### III,

## TREATMENT OF UNCLASSIFIED CLAIMS

As required by the Bankruptcy Code, this Plan places Claims and Interests into various Classes according to their right to priority. However, certain types of Claims are not classified in any Classes under this Plan. These Claims are deemed “unclassified” under the provisions of the Code. They are not considered impaired and they do not vote on this Plan, because they are automatically entitled to the specific treatment provided for them in the Code. The treatment of these unclassified Claims is as provided below.

**3.1 Treatment of Allowed Administrative Claims.** The Bankruptcy Code requires that all Allowed Administrative Claims be paid on the Effective Date of this Plan, unless a

1 particular Holder agrees to a different treatment. The treatment of Allowed Administrative  
2 Claims is as described below. However, such Administrative Claims are continuing to be  
3 incurred. The Debtor shall be liable for the payment of the Allowed Administrative Claims, and  
4 the Allowed Administrative Claims shall be paid from any of the Distribution Account(s) in  
5 which funds exist.

6           **(a)     Repayment of Allowed Administrative Claims.** Except to the extent that  
7 the Holder of an Allowed Administrative Claim agrees to a different treatment and subject  
8 to the Administrative Claims Bar Date set forth herein, the Plan Agent shall pay each  
9 Allowed Administrative Claim in full, in Cash, on the later of (i) the Effective Date,  
10 (ii) within ten (10) Business Days after the date such Administrative Claim becomes an  
11 Allowed Administrative Claim, or (iii) the date such Allowed Administrative Claim  
12 becomes due according to its terms. Notwithstanding the foregoing, any Allowed  
13 Administrative Claim representing obligations incurred in the ordinary course of post-  
14 petition business by the Debtor (including without limitation post-petition trade  
15 obligations) shall be paid in full or performed by the Debtor in the ordinary course of  
16 business, in accordance with the terms of the particular obligation.

17           **(b)     Administrative Claims Bar Date.**

18           **(i)     General Administrative Claims Bar Date.** All applications for final  
19 compensation of Professionals for services rendered and for reimbursement of  
20 expenses incurred on or before the Effective Date and all other requests for  
21 payment of Administrative Claims incurred before the Effective Date under  
22 Sections 507(a)(2) or 507(b) of the Bankruptcy Code (except only for (i) post-  
23 petition, ordinary course trade obligations incurred in the ordinary course of the  
24 Debtor's post-petition business, for which no bar date shall apply, and (ii) post-  
25 petition tax obligations, for which the bar date described in the following Section  
26 shall apply) shall be Filed with the Bankruptcy Court and served upon the Debtor  
27 no later than the General Administrative Claims Bar Date, unless such date is  
28 extended by the Bankruptcy Court after notice to the Debtor. Any such request for

1 payment of an Administrative Claim that is subject to the General Administrative  
2 Claims Bar Date and that is not Filed and served on or before the General  
3 Administrative Claims Bar Date shall be forever barred; any party that seeks  
4 payment of Administrative Claims that (i) is required to file a request for payment  
5 of such Administrative Claims and (ii) does not file such a request by the deadline  
6 established herein shall be forever barred from asserting such Administrative  
7 Claims against the Debtor, its estate, or any of its property.

8 (ii) Administrative Tax Claims Bar Date. Except with respect to the  
9 County, all requests for payment of Administrative Claims by a governmental unit  
10 for Taxes (and for interest and/or penalties related to such Taxes) for any tax year  
11 or period, all or any portion of which occurs or falls within the period from and  
12 including the Petition Date through and including the Effective Date (“Tax  
13 Administrative Claims”) and for which no bar date has otherwise previously been  
14 established, must be filed and served on the Debtor on or before the later of (i)  
15 sixty (60) days following the Effective Date; and (ii) 180 days following the filing  
16 of the tax return for such taxes for such tax year or period with the applicable  
17 governmental unit. Any Holder of any Tax Administrative Claims that is required  
18 to file a request for payment of such taxes and does not file and properly serve  
19 such a request by the applicable bar date shall be forever barred from asserting any  
20 such Tax Administrative Claims against the Debtor.

21 **3.2 Treatment of Tax Claims.** Tax Claims are certain unsecured income,  
22 employment and other taxes described by Code Section 507(a)(8). The Code requires that each  
23 holder of such a Section 507(a)(8) priority tax claim receive the present value of such Claim in  
24 deferred cash payments, over a period not exceeding five (5) years from the Petition Date and that  
25 such treatment not be less favorable than the treatment accorded to nonpriority unsecured  
26 creditors.

27 At the election of the Debtor, the Holder of each Allowed Tax Claim shall be entitled to  
28 receive, on account of such Claim, (i) equal cash payments on the last Business Day of each

three-month period following the Effective Date, during a period not to exceed five (5) years after December 30, 2015, totaling the principal amount of such Claim plus simple interest on any unpaid balance from the Effective Date, calculated at the interest rate available on ninety (90) day United States Treasuries on the Effective Date, (ii) such other treatment agreed to by the Holder of the Allowed Tax Claim and the Debtor, provided such treatment is on more favorable terms to the Debtor than the treatment set forth in clause (i) hereof, or (iii) payment of the full Allowed Tax Claim in Cash on the Effective Date.

#### IV.

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

As required by the Code, this Plan places Claims and Interests into various Classes according to their right to priority and other relative rights. This Plan specifies whether each Class of Claims or Interests is impaired or unimpaired, and this Plan sets forth the treatment each Class will receive. The table below lists the Classes of Claims established under this Plan and states whether each particular Class is impaired or left unimpaired by this Plan. A Class is “unimpaired” if this Plan leaves unaltered the legal, equitable and contractual rights to which the Holders of Claims or Interests in the Class are entitled, with certain exceptions specified in the Bankruptcy Code.

The Debtor has not yet completed its investigation on whether or not the Claims and Interests are Allowed and their listing herein should not be construed as providing for Allowance under this Plan.

CLASSIFICATION OF CLAIMS AND INTERESTS				
Class	Claimant	Collateral	Estimated Claim/Interest	Impaired Status
1	Governmental Units	Property	\$59,000	Unimpaired
2.1	Steiner	First Purchased Property	10,658,000	Impaired
2.2	Steiner	First Purchased Property	1,600,000	Impaired
3	Mechanics Lien Creditors	Property	906,000	Impaired
4	Priority Unsecured Creditors	n/a	0	Unimpaired
5	General Unsecured Creditors	n/a	4,700,000	Impaired

CLASSIFICATION OF CLAIMS AND INTERESTS				
Class	Claimant	Collateral	Estimated Claim/Interest	Impaired Status
6	Subordinated Rescission Claimants	Property	28,575,001	Unimpaired/ Impaired
7	Equity Interest Holders	n/a	25,700,000	Unimpaired

## V.

### **THIS PLAN'S TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

All Claims and rights of the members of Classes and Interests shall be governed by the terms of this Plan only, and all prior agreements shall be null and void, unless otherwise preserved herein. Based on the foregoing, the following is the Plan's treatment of Allowed Claims and Interests.

**5.1 Class 1: Allowed Secured Claims of Governmental Units.** Class 1 consists of any Allowed Secured Claim of governmental units. Class 1 is unimpaired by this Plan. The following treatment shall be in full satisfaction of the Allowed Claims of members of this Class:

**5.1.1 Allowance of Secured Claim.** The members of Class 1 shall be allowed a Secured Claim to the extent of the value of such Creditor's Claim and interest in the Estate's interest in such property, which shall be based on Fair Market Value of the property (or such other value as agreed to between the Debtor and the member of Class 1), securing such Creditor's Claim in Class 1. Based on the value of the Collateral, the Creditor in Class 1 shall have an Allowed Secured Claim in the full amount of their Allowed Secured Claim, plus all applicable costs, fees, charges, and interest, if any.

**5.1.2 Payment of Allowed Secured Claim.** The members of Class 1 shall be paid in full, including all applicable costs, fees, charges, and interest, if any, within thirty days of the Effective Date.

**5.2 Classes 2.1–2.2: Allowed Secured Claims of Steiner.** Classes 2.1–2.2 consist of any Allowed Secured Claim of Steiner. Classes 2.1–2.2 are impaired by this Plan. The following treatment shall be in full satisfaction of Steiner's Allowed Secured Claims.

1                   5.2.1     Lien. Steiner shall retain its underlying lien on the Property, to the same  
2 extent, priority and validity as existed as of the Petition Date, except as modified by any  
3 Court order entered in this Case;

4                   5.2.2     Steiner Loan Documents. Except as modified in this Plan or any Court  
5 order entered in this Case, the terms of the Steiner Loan Documents shall remain in full  
6 force and effect, and Steiner shall retain all of its rights and remedies under the Steiner  
7 Loan Documents. Steiner shall forbear from pursuing its rights and remedies until its  
8 Allowed Secured Claim is paid in full in accordance with the Plan

9                   5.2.3     Default. In the event the Debtor defaults on any payment due to Steiner  
10 under the Plan, Steiner must provide Default Notice to the Notice Parties. If the Debtor  
11 cures such alleged default within the Grace Period, Steiner shall provide to the Notice  
12 Parties written acknowledgement of the Debtor's cure. If, however, the Debtor fails to  
13 cure the alleged default within the Grace Period, then Steiner must seek from the  
14 Bankruptcy Court a determination of an Event of Default. The Debtor shall be entitled to  
15 oppose any such asserted Event of Default. If the Debtor does not timely oppose such  
16 relief, Steiner may pursue all rights and remedies against the Property as may be available  
17 under state law.

18                   If the Court finds that the Debtor did not commit an Event of Default, was excused  
19 from committing an Event of Default, or timely cured an Event of Default, the Debtor  
20 shall continue paying Steiner pursuant to the terms of this Plan. Otherwise, Steiner may  
21 pursue all rights and remedies against the Property as may be available under state law.

22                   5.2.4     Allowance and Payment. In addition to the foregoing, Steiner's Claims  
23 shall be treated as fully secured Allowed Claims in the Allowed Amounts, and shall be  
24 paid as set forth below:



Class	Claim	Estimated Allowed Claim <sup>2</sup>	Payments
2.1	Steiner 1 <sup>st</sup> Claim	10,658,000	The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 1 <sup>st</sup> Claim as of the Effective Date, which are estimated to be \$658,000. The Debtor will make quarterly payments to Steiner on account of the Steiner 1 <sup>st</sup> Claim, each in the amount \$225,000, commencing on the first (1 <sup>st</sup> ) Business Day of the third (3 <sup>rd</sup> ) full month following the Effective Date, and payments due to be paid every three months thereafter until the Steiner New Maturity Date. The Debtor shall pay the principal balance, which is currently \$10,000,000, on the Steiner New Maturity Date for the Steiner 1 <sup>st</sup> Loan.
2.2	Steiner 2 <sup>nd</sup> Claim	1,600,000	The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 2 <sup>nd</sup> Claim as of the Effective Date, which are estimated to be \$100,000. The Debtor will make quarterly payments to Steiner on account of the Steiner 2 <sup>nd</sup> Claim, each in the amount \$33,750, commencing on the first (1 <sup>st</sup> ) Business Day of the third (3 <sup>rd</sup> ) full month following the Effective Date, and payments due to be paid every three months thereafter until the Steiner New Maturity Date. The Debtor shall pay the principal balance, which is currently \$1,500,000, on the Steiner New Maturity Date for the Steiner 2 <sup>nd</sup> Loan.

5.3 **Class 3: Allowed Secured Claims of Mechanics Lien Creditors.** Class 3 consists of any Allowed Secured Claim held by a Mechanics Lien Creditor. Class 3 is impaired by this Plan. The following treatment shall be in full satisfaction of the Allowed Secured Claim of the members of this Class.

5.3.1 **Allowance of Secured Claim.** The member of Class 3 shall be allowed a Secured Claim to the extent of the value of such Creditor's Claim and interest in the Estate's interest in such property, which shall be based on Fair Market Value of the property (or such other value as agreed to between the Debtor and any member of Class 3), securing such Creditor's Claim in Class 3. Based on the value of the Collateral and the Debtor's awareness of members of this Class, the Debtor believes there are two members of this Class, who are believed to have Allowed Secured Claims in the collective amount of \$906,000.

5.3.2 **Payment of Allowed Secured Claim.** The member of Class 3 shall be paid in full, or \$906,000, within thirty days of the Effective Date.

<sup>2</sup> Estimated as of the Petition Date.

1           5.4     **Class 4: Allowed Priority Unsecured Claims.** Class 4 consists of any Allowed  
2 Priority Claim. Class 4 is impaired by this Plan. Members of Class 4 shall be paid, in full  
3 satisfaction of the Allowed Claim of the members of this Class, one lump sum payment within  
4 thirty days of the Effective Date, equal to the Holder's Allowed Claim, plus interest accruing after  
5 the Effective Date at the federal judgment rate as of the Petition Date<sup>3</sup>.

6           5.5     **Class 5: Allowed General Unsecured Claims**

7           Class 5 consists of all Holders of Allowed Claims that have no security or priority and not  
8 subject to subordination (i.e., general unsecured claims). Class 5 is impaired by this Plan. Except  
9 to the extent that a holder of an Allowed General Unsecured Claim agrees to a different treatment,  
10 Members of Class 5 shall be paid, in full satisfaction of the Allowed Claim of the members of this  
11 Class, one lump sum payment within thirty days of the Effective Date, equal to the Holder's  
12 Allowed Claim, plus interest accruing ten days after the Effective Date at the federal judgment  
13 rate as of the Petition Date<sup>4</sup>.

14           5.6     **Class 6: Allowed Subordinated Rescission Claims.** Class consists of any  
15 Allowed Claim of the Rescission Claimants. Class 6 is unimpaired and deemed to accept the Plan  
16 because the Plan does not alter the rights of the members of this Class, but rather provides  
17 treatment consistent with the members' rights determined and dictated by the Court and  
18 Bankruptcy Code. Notwithstanding, if members of Class 6 are subordinated below equity, for  
19 purposes of confirmation of the Plan, the Debtor will treat this class as impaired because it will  
20 receive no distribution in this case, and thus deem the Class as having rejected the Plan.

21           The Rescission Claims will be subordinated through adjudication or settlement, as a result  
22 of Subordination Litigation prosecuted by the Estate. The treatment of the Holders of Allowed  
23 Claims in Class 6 will depend upon the level to which their Allowed Claims are subordinated by  
24 order of the Court. Members of Class 6 shall be paid in one of the following two ways:

25  
26           <sup>3</sup> Under 28 U.S.C. § 1961, the federal judgment rate is the rate equal to the weekly average 1-year constant maturity  
27 Treasury yield, as published by the Board of Governors of the Federal Reserve System. Since the petition was filed  
28 on December 23, 2016, the applicable rate is 0.85%, which is the last published rate on December 30, 2016. See,  
<https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yieldYear&year=2016>.

<sup>4</sup> See footnote 2.

<b>Subordination Results</b>	<b>Treatment</b>
If Rescission Claims are subordinated below equity	Members of Class 6 will receive no Distributions.
If Rescission Claims are subordinated pari passu with equity	Members of Class 6 will receive Distributions at the same time that any Distributions are made to members of Class 7 until members of Class 6 have received Distributions in the aggregate of \$28,575,001. Distributions to members of Class 6 will be calculated based on their Capital Pro Rata share. For example, if \$10,000,000 is initially available for distribution, then each member of Class 6 would receive his Pro Rata share of \$5,264,855, which represents 52.64% (total Rescission Claimants' claims of \$28,575,001 divided by total Capital Investment of \$54,275,000) of the \$10,000,000. If \$50,000,000 more was then available for distribution, members of Class 6 would receive an additional \$23,310,145 in full satisfaction of their Claims, as they would have received \$28,575,001 in total, thereby precluding them from any further Distributions.

**5.7 The Plan's Treatment of Holders of Allowed Interests (Class 7).** Class 7 is comprised of the Interests in all Assets held by the Debtor. Class 7 is unimpaired. The members of this Class shall retain their interests in the Debtor.

The treatment of the holders of Allowed Class 7 Interests under this Plan will depend upon the level to which the Rescission Claimants' claims are subordinated by order of the Court based on the pending Subordination Litigation. Members of Class 7 Interests shall receive Distributions as follows:

<b>Subordination Results</b>	<b>Treatment</b>
If Rescission Claims are subordinated below equity	Members of Class 7 will receive Distributions, on a Pro Rata basis, pursuant to the terms of the Partnership Agreement, as may be amended, if necessary, to implement the Plan.
If Rescission Claims are subordinated pari passu with equity	Members of Class 7 will receive Distributions pursuant to the terms of the Partnership Agreement, as may be amended, if necessary, to implement the Plan. Distributions to members of Class 7 will be calculated based on their Capital Pro Rata share until such time as members of Class 6 have received Distributions in the aggregate of \$28,575,001. Thereafter, Distributions to members of Class 7 shall be paid, on a Pro Rata basis, pursuant to the terms of the Partnership Agreement. In other words, the first \$54,275,000 of Distributions to be made to members of Classes 6 and 7 shall be paid based on their Capital Pro Rata share. Thereafter, members of Class 7 shall be entitled to Distributions, on a Pro Rata basis, pursuant to the terms of the Partnership Agreement.

1 VI.

2 **ACCEPTANCE OR REJECTION OF THIS PLAN**

3 **6.1 Introduction.** PERSONS OR ENTITIES CONCERNED WITH  
4 CONFIRMATION OF THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS  
5 BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY  
6 COMPLEX. The following discussion is intended solely for the purpose of alerting readers about  
7 basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing  
8 Claims. The Debtor cannot represent that the discussion contained below is a complete summary  
9 of the law on this topic.

10 Many requirements must be met before the Court can confirm this Plan. Some of the  
11 requirements include that this Plan must be proposed in good faith, acceptance of this Plan,  
12 whether this Plan pays creditors at least as much as creditors would receive in a Chapter 7  
13 liquidation, and whether this Plan is feasible. The requirements described herein are not the only  
14 requirements for confirmation.

15 **6.2 Who May Object to Confirmation of this Plan.** Any party in interest may object  
16 to the confirmation of this Plan.

17 **6.3 Who May Vote to Accept/Reject this Plan.** A Holder of a Claim or Interest has a  
18 right to vote for or against this Plan if that Holder of the Claim or Interest has a Claim which is  
19 both (1) Allowed or Allowed for voting purposes and (2) Classified in an impaired Class.

20 **6.4 What Is an Allowed Claim/Interest.** As noted above, a Holder of a Claim or  
21 Interest must first have an Allowed Claim or Allowed Interest to vote.

22 **6.5 What Is an Impaired Class.** A Class is impaired if this Plan alters the legal,  
23 equitable, or contractual rights of the Claims or Interests in that Class, other than the right to  
24 accelerate the Claim upon certain kinds of defaults. In this case, the Debtor believes that all  
25 Classes, except Classes 1 and 4 are impaired.

26 **6.6 Who Is Not Entitled to Vote.** The following four types of Claims are not entitled  
27 to vote: (1) Claims that have been disallowed; (2) Claims in unimpaired Classes; (3) Claims  
28 entitled to priority pursuant to Bankruptcy Code Sections 507(a)(2), (a)(3) and (a)(8) and (4)

1 Claims in Classes that do not receive or retain any value under this Plan. Claims in unimpaired  
2 Classes are not entitled to vote because such Classes are deemed to have accepted this Plan.  
3 Claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(2), (a)(3) and (a)(8) are  
4 not entitled to vote because such Claims are not placed in Classes and they are required to receive  
5 certain treatment specified by the Bankruptcy Code. Claims in Classes that do not receive or  
6 retain any property under this Plan do not vote because such Classes are deemed to have rejected  
7 this Plan. The Debtor believes that all Classes, except for Classes 1 and 4 are entitled to vote.

8 **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY**  
9 **STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THIS PLAN.**

10 **6.7 Who Can Vote in More than One Class.** A creditor whose Claim has been  
11 Allowed in part as a Secured Claim and in part as an Unsecured Claim is entitled to accept or  
12 reject a Plan in both capacities by casting one ballot for the secured part of the Claim and another  
13 ballot for the Unsecured Claim. Also, a Creditor may otherwise hold Claims in more than one  
14 Class and may vote the Claims held in each Class.

15 **6.8 Votes Necessary for a Class to Accept this Plan.** A Class of Claims is deemed to  
16 have accepted this Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in  
17 dollar amount of the Claims vote to accept this Plan. A Class of interests is deemed to have  
18 accepted this Plan when Holders of at least two-thirds (2/3) in amount of the interest holders of  
19 such Class vote to accept this Plan. If no Holders of Claims or Equity Interests eligible to vote in  
20 a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the  
21 Holders of such Claims or Equity Interests in such Class.

22 **6.9 Treatment of Nonaccepting Classes.** As noted above, even if there are impaired  
23 Classes that do not accept the proposed Plan, the Court may nonetheless confirm this Plan if the  
24 nonaccepting Classes are treated in the manner required by the Code and at least one impaired  
25 Class of Claims accepts this Plan. The process by which a plan may be confirmed and become  
26 binding on non-accepting Classes is commonly referred to as “cramdown.” The Bankruptcy  
27 Code allows this Plan to be “crammed down” on nonaccepting Classes of Claims or interests if it  
28 meets all statutory requirements except the voting requirements of Section 1129(a)(8) of the

Bankruptcy Code and if this Plan does not “discriminate unfairly” and is “fair and equitable” with respect to each impaired Class that has not voted to accept this Plan, as set forth in Section 1129(b) of the Bankruptcy Code and applicable case law.

**6.10 Request for Confirmation Despite Nonacceptance by Impaired Class(es).** The Plan Proponent will ask the Court to confirm this Plan by cramdown on any impaired Class if such Class does not vote to accept this Plan.

## VII.

### MEANS OF EXECUTION AND IMPLEMENTATION OF THIS PLAN

**7.1 Introduction.** This Section is intended to address how the Debtor intends to fund and to implement the obligations to Creditors under this Plan. It thus provides information regarding funding sources for the Plan obligations and other material issues bearing upon the performance of this Plan.

**7.2 Source of Funds.** The payments due under the Plan to holders of Allowed Claims and Allowed Interests will be paid from Net Financing Proceeds, Net Cash Flow, Net Sales Proceeds, and the prosecution and liquidation of the Debtor’s Avoidance Actions, if any. The Debtor has obtained from Crestline an Exit Financing commitment (See **Exhibit A**), which provides the Debtor with sufficient funds to pay timely all obligations due on or about the Effective Date, as well as working capital funds from the Debtor’s raise of Post-Closing Equity. The Debtor has been and continues to be in negotiations with investors who have been conducting due diligence on providing additional investment in and/or financing to the Debtor. The following is a summary of the material terms of Crestline’s Exit Financing:

Credit Facility	\$30,000,000
Commitment Expiration	(i) at Crestline’s election in event of a material breach by the Debtor; (ii) January 31, 2018, unless an order is entered approving the Disclosure Statement by such date; or (iii) March 31, 2018, unless the credit facility is closed by such date.
Initial Funding Date	Date that all conditions precedent have been satisfied
Maturity Date	3 years after the Initial Funding Date
Interest Rate	Current/Cash Pay rate: 7% fixed rate per annum, payable quarterly Deferred Rate: 7% fixed per annum, simple interest, due and payable on the Maturity Date

	Deferred Rate: 4% payable on demand
Warrants	Crestline shall be granted warrants equal to 20% of the number of shares of stock at closing on a fully diluted basis
Facility Fee	2% of the total facility amount
Mandatory Prepayment	Mandatory prepayments of (i) 100% from debt issuances, asset sales, cash flow, tax refunds, and insurance proceeds and (ii) 50% from all equity issuances other than Post-Closing Equity
Liens	(i) First lien on all tangible and intangible assets of the Debtor and (ii) first lien on all tangible and intangible assets and equity interests of the Guarantors; (iii) second lien on 4,372 acres of land securing the Steiner 1 <sup>st</sup> Claim and Steiner 2 <sup>nd</sup> Claim.
Conditions	(i) Court shall have entered a final order confirming the Plan; (ii) the principal balance owing on the Steiner 1 <sup>st</sup> Claim and Steiner 2 <sup>nd</sup> Claim shall not become due until after the maturity date of the Exit Financing; (iii) Debtor's delivery of a detailed budget of planned expenditures and sequence of work to be performed acceptable to Crestline; (iv) Delivery to Crestline of an updated Phase I environmental report; and (v) other satisfactory due diligence.
Post-Closing Equity	The Debtor has nine months to raise Post-Closing Equity to fund working capital and critical infrastructure in accordance with the Budget. Any equity capital raised in excess of \$10,000,000 is subject to the mandatory prepayment provisions described above. If the Debtor is unable to timely raise the Post-Closing Equity, the Debtor shall commence and supervise an Orderly Liquidation of its Assets. The Debtor shall identify and interview prospective real estate brokerage firms, from which it will select and retain one for the marketing and sale of the Debtor's Assets, after consultation with Crestline. Thereafter, the Debtor will assist the retained real estate firm in its efforts to market and sell the property, including, e.g., providing property tours and evaluating purchase offers. The Orderly Liquidation shall be concluded within twelve months from the date that the Debtor is unable to timely raise the Post-Closing Equity.

### 7.3 Management of the Debtor and Retention of Professionals After Effective

**Date.** After the Effective Date, it is anticipated that the Debtor's business affairs will be managed by a committee consisting of the Debtor's current general partner, the Plan Agent, and such other persons that may be appointed by the Debtor, the Plan Agent, or sources of additional exit financing provided post-confirmation. The Plan Agent or the Debtor shall be entitled to retain, employ and compensate Professionals, in order to assist with the Debtor's obligations and rights under the terms of the Plan. The Plan Agent or the Debtor may also employ or contract with



1 other persons or entities to perform the obligations created under the Plan. Any Professional  
2 employed by the Plan Agent or the Debtor after the Effective Date, shall be entitled to obtain  
3 from the Debtor payment of the Professional's fees and costs, in the ordinary course, without any  
4 need to give notice to Creditors or other parties-in-interest or to obtain any approval of the  
5 Bankruptcy Court. Notwithstanding the foregoing, if the Debtor or the Plan Agent should fail to  
6 pay any post-Effective Date fees and costs of a Professional entitled to such payment, within  
7 thirty (30) days after the Professional's rendering of its billing statement, the Professional shall be  
8 entitled to seek, by application filed in accordance with the Bankruptcy Rules, an order of the  
9 Bankruptcy Court requiring the Debtor or the Plan Agent to forthwith pay to the Professional its  
10 fees and costs.

11 **7.4 Implementation of Plan.** The Debtor and Plan Agent shall be authorized to, and  
12 shall, take all acts appropriate to implement the provisions of this Plan, including, without  
13 limitation, initiating and thereafter completing infrastructure and other horizontal improvements  
14 to the Property and selling lots to builders, liquidating or otherwise disposing of the Assets,  
15 making Distributions to holders of Allowed Claims, objecting to Disputed Claims, prosecuting or  
16 settling any Causes of Action, entering into financing and other transactions, and executing such  
17 documents as may be necessary to implement the terms of this Plan, including, without limitation,  
18 causing the Debtor to amend its Partnership Agreement to authorize acts consistent with and  
19 necessary to implement this Plan.

20 **7.5 Representative of the Estate.** Except as provided expressly to the contrary herein,  
21 the Plan Agent shall be, and hereby is, appointed as the representative of the Estate pursuant to  
22 sections 1123(a)(5), 1123(a)(7) and 1123(b)(3)(B) of the Bankruptcy Code and, as such, shall be  
23 vested with the authority and power, subject to the provisions of the Plan, to take, among others,  
24 the following acts on behalf of the Debtor: (a) manage, administer and dispose of the Assets for  
25 the benefit of holders of Allowed Claims; (b) file, litigate, prosecute, settle, adjust, retain, enforce,  
26 collect and abandon any Causes of Action in the name of, and for the benefit of, the Estate; (c)  
27 make all Distributions provided for by the Plan; and (d) such other acts as may be appropriate to  
28 administer, wind-down, and close the Case. Except as provided expressly to the contrary by the



1 Plan, as the representative of the Estate, the Plan Agent shall succeed to all of the rights and  
2 powers of the Debtor and the Estate with respect to all Causes of Action, and shall be substituted  
3 for, and shall replace, the Debtor and the Estate as the party-in-interest in all such litigation  
4 pending as of the Effective Date.

5 **7.6 Avoidance Actions.** Unless an Avoidance Action is expressly waived,  
6 relinquished, released, compromised or settled in the Plan or in a Final Order, all rights with  
7 respect to such Avoidance Actions are reserved and the Debtor or the Plan Agent may pursue  
8 such Avoidance Actions. Notwithstanding the foregoing, the Debtor or the Plan Agent shall not  
9 settle or abandon an Avoidance Action valued at greater than \$50,000 except upon ten (10) days'  
10 prior written notice and opportunity to object. Any disputes concerning the settlement or  
11 abandonment of an Avoidance Action shall be submitted to the Bankruptcy Court for resolution  
12 on no less than ten (10) days' notice to the objecting party.

13 **7.7 Collection of Avoidance Actions Recoveries.** All Avoidance Actions Recoveries  
14 realized or obtained by the Debtor or the Plan Agent shall be promptly deposited into the  
15 applicable Distribution Account(s). Except as otherwise provided in the Plan and the  
16 Confirmation Order, the Avoidance Actions Recoveries shall be free and clear of all claims and  
17 liens and shall only be expended in accordance with the provisions of the Plan.

## 18 **VIII.**

### 19 **DISTRIBUTIONS**

20 **8.1 Plan Agent.** The Plan Agent may employ one or more sub-agents on such terms  
21 and conditions as it may agree in its discretion and pay such sub-agent as a Post-Confirmation  
22 Expense from the Distribution Accounts. The Plan Agent shall not be required to provide any  
23 bond in connection with the making of any Distributions pursuant to this Plan.

#### 24 **8.2 Distributions.**

25 **(a) Dates of Distributions.** Any distribution required to be made on the  
26 Effective Date shall be deemed timely if made as soon as practicable after such date and,  
27 in any event, within thirty (30) days after such date. Any distribution required to be made  
28

1 upon a Disputed Claim becoming an Allowed Claim and no longer being a Disputed  
2 Claim shall be deemed timely if made as soon as practicable thereafter.

3 (b) Limitation on Liability. Neither the Debtor nor any of its employees,  
4 members, officers, directors, agents, or professionals or Affiliates shall be liable for (i) any  
5 acts or omissions (except for gross negligence or willful misconduct) in connection with  
6 implementing the Distribution provisions of this Plan and the making or withholding of  
7 Distributions pursuant to this Plan, or (ii) any change in the value of distributions made  
8 pursuant to this Plan resulting from any delays in making such distributions in accordance  
9 with this Plan's terms (including but not limited to any delays caused by the resolution of  
10 Disputed Claims).

11 **8.3 Old Instruments and Securities.**

12 (a) Surrender and Cancellation of Instruments and Securities. Except as  
13 may otherwise be provided in this Plan, as a condition to receiving any distribution  
14 pursuant to this Plan, each Person holding any note or other instrument or security  
15 (collectively "Instruments or Securities" and individually an "Instrument or Security")  
16 evidencing, an existing Claim(s) against the Debtor must surrender such Instrument or  
17 Security to the Plan Agent.

18 (b) Cancellation of Liens. Except as may otherwise be provided in this Plan,  
19 any lien securing any Secured Claim shall be deemed released and discharged, and the  
20 Person holding such Secured Claim shall be authorized and directed to release any  
21 collateral or other property of the Debtor (including, without limitation, any cash  
22 collateral) held by such Person and to take such actions as may be requested by the Debtor  
23 to evidence the release of such lien, including, without limitation, the execution, delivery  
24 and Filing or recording of such releases as may be requested by the Debtor.

25 **8.4 De Minimis Distributions and Fractional Shares.** No Cash payment of less than  
26 fifty dollars (\$50.00) shall be made to any Holder of Claims unless a request therefore is made in  
27 writing to the Plan Agent. Whenever payment of a fraction of a cent would otherwise be called  
28 for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

Any Cash or other property that is not distributed as a consequence of this Section shall, after the last distribution on account of Allowed Claims in the applicable Class, be treated as Unclaimed Property under this Plan.

**8.5 Delivery of Distributions.** Except as provided in this Plan with respect to Unclaimed Property, distributions to Holders of Allowed Claims and Allowed Administrative Claims shall be distributed by mail as follows: (1) with respect to each Holder of an Allowed Claim that has filed a Proof of Claim, at the address for such Holder as maintained by the official claims agent for the Debtor; (2) with respect to each Holder of an Allowed Claim that has not filed a Proof of Claim, at the address reflected on the Schedules filed by the Debtor, provided, however, that if the Plan Agent has received a written notice of a change of address for such Holder, the address set forth in such notice shall be used; or (3) with respect to each Holder of an Allowed Administrative Claim, at such address as the Holder may specify in writing.

**8.6 Undeliverable Distributions.** No further distribution of Unclaimed Property shall be made to a Holder of any Allowed Claim unless and until the Plan Agent is notified in writing of such Holder's then current address. Subject to the remainder of this Section and the following Section, Unclaimed Property shall remain in the possession of the Plan Agent pursuant to this Section, and shall be set aside and (in the case of Cash) held in a segregated interest bearing account (as to Cash Unclaimed Property) to be maintained by the Plan Agent until such time as the subject Distribution becomes deliverable. Nothing contained in this Plan shall require the Plan Agent or any other Person to attempt to locate such Person.

**8.7 Disposition of Unclaimed Property.** If the Person entitled thereto notifies the Plan Agent of such Person's Claim to a Distribution of Unclaimed Property within ninety (90) days following such Person's initial Distribution Date, the Unclaimed Property distributable to such Person, together with any interest or dividends earned thereon, shall be paid or distributed to such Person as soon as practicable. Any Holder of an Allowed Claim that does not assert a Claim in writing for Unclaimed Property held by the Plan Agent within ninety (90) days after the Holder's initial Distribution Date shall no longer have any Claim to or Interest in such Unclaimed Property, and shall be forever barred from receiving any distributions under this Plan or otherwise

1 from the Plan Agent. In such cases, any property held for Distribution on account of such Claims  
2 shall become Available Cash and deposited into the Distribution Account.

3 **IX.**

4 **OBJECTIONS TO CLAIMS AND DISPUTED CLAIMS**

5 **9.1 Standing for Objections to Claims.** The Debtor or the Plan Agent shall have the  
6 sole and exclusive right to file, prosecute and resolve objections to Claims. Any objection to a  
7 Claim shall be Filed with the Bankruptcy Court and served on the Person holding such Claim.

8 **9.2 Treatment of Disputed Claims and Disputed Liens.**

9 **(a) No Distribution Pending Allowance.** If any portion of a Claim or lien is a  
10 Disputed Claim or Disputed Lien, no payment or distribution provided for under this Plan  
11 shall be made on account of such Claim or lien unless and until such Claim or lien  
12 becomes Allowed.

13 **(b) Distribution After Allowance.** On the next Distribution Date following the  
14 date on which a Disputed Claim becomes an Allowed Claim and is no longer a Disputed  
15 Claim, the Plan Agent shall distribute to the Person holding such Claim any Cash that  
16 would have been distributable to such Person if on the initial Distribution Date such Claim  
17 had been an Allowed Claim and not a Disputed Claim.

18 **X.**

19 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

20 **10.1 Executory Contracts Potentially Being Assumed.** The Debtor shall have until  
21 the Confirmation Date to assume or reject any of the executory contracts and unexpired leases  
22 attached to this Plan as **Exhibit 1**. The Debtor may add any executory contracts or unexpired  
23 leases to these exhibits, or delete any executory contract or unexpired lease therefrom up to and  
24 including the Confirmation Date.

25 **10.2 Executory Contracts Being Rejected.** The Debtor rejects those executory  
26 contracts and unexpired leases attached to this Plan as **Exhibit 2**. The Debtor reserves the right to  
27 amend **Exhibit 2** to this Plan to include additional unexpired leases and executory contracts on  
28 this exhibit, or to delete unexpired leases and executory contracts from this exhibit, up to and

1 including the Confirmation Date. All executory contracts or unexpired leases not rejected by the  
2 Confirmation Date shall be deemed assumed.

3 **10.3 Bar Date for Rejection Damages.** Any Claim arising out of the rejection of an  
4 executory contract or unexpired lease shall be forever barred and shall not be enforceable against  
5 the Debtor, its Affiliates, its successors, or the Property, and shall not be entitled to any  
6 distribution under this Plan, unless a Proof of Claim for such Claim is filed and served on the  
7 Debtor within thirty (30) days after service of a notice of the rejection of any contract or lease.

## 8 **XI.**

### 9 **LIMITATION OF LIABILITY**

10 **11.1 No Liability for Solicitation or Participation.** As specified in Section 1125(e) of  
11 the Bankruptcy Code, entities that solicit acceptances or rejections of this Plan and/or that  
12 participate in the offer, issuance, sale, or purchase of securities offered or sold under this Plan, in  
13 good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be  
14 liable, on account of such solicitation or participation, for violation of any applicable law, rule, or  
15 regulation governing the solicitation of acceptances or rejections of this Plan or the offer,  
16 issuance, sale, or purchase of securities.

17 **11.2 Limitation of Liability.** To the full extent permissible under 11 U.S.C. §1125(e),  
18 as of the Effective Date, neither the Plan Agent nor the Debtor, nor their respective Affiliates, nor  
19 any of their respective members, officers, directors, employees and other agents, advisors,  
20 attorneys and accountants shall have or incur any liability to any Holder of any Claim or Interest  
21 or any other Person for any act or omission in connection with or arising out of the negotiation,  
22 preparation and pursuit of confirmation of this Plan, the Disclosure Statement, the consummation  
23 of this Plan, the administration of this Plan, the Case or the property to be distributed under this  
24 Plan except: (a) the Plan Agent or the Debtor shall be liable for the performance of obligations  
25 assumed by it or imposed upon it under or by this Plan; and (b) for liability based on willful  
26 misconduct as finally determined by a Final Order of the Bankruptcy Court. The Plan Agent, the  
27 Debtor, and their respective Affiliates, and each of their respective officers, directors, employees  
28 and other agents, advisors, attorneys and accountants shall be entitled to rely, in every respect,

1 upon the advice of counsel with respect to their duties and responsibilities under or with respect to  
2 this Plan.

3 **XII.**

4 **CONDITIONS TO CONFIRMATION AND**  
5 **EFFECTIVENESS OF THIS PLAN**

6 **12.1 Conditions Precedent to Plan Confirmation.** The only condition precedent to  
7 confirmation of this Plan is that the Bankruptcy Court shall have entered a Confirmation Order in  
8 form and substance reasonably acceptable to the Debtor.

9 **12.2 Conditions Precedent to Plan Effectiveness.** The following are conditions  
10 precedent to the effectiveness of this Plan and the occurrence of the Effective Date:

11 12.2.1 The Confirmation Order shall be a Final Order in form and substance  
12 reasonably satisfactory to the Debtor;

13 12.2.2 All agreements, instruments and other acts contemplated by, or to be  
14 entered into, or completed pursuant to, or in order to facilitate the implementation of, this  
15 Plan, as determined by the Debtor, including, without limitation, any and all debtor and/or  
16 equity financing agreements, purchase agreements, and related closing documents shall  
17 have been duly and validly executed and delivered by the parties thereto and completed,  
18 and all conditions to their effectiveness shall have been satisfied or waived, except only  
19 for the entry of the Confirmation Order, and all funding from the re-financing shall have  
20 been effected.

21 **12.3 Waiver of Conditions.**

22 The conditions set forth in Sections 12.1 and 12.2 hereof may be waived by the Debtor  
23 without notice, leave or order of the Bankruptcy Court, and without any formal action other than  
24 proceeding to obtain the Confirmation Order and consummate this Plan.

1 **XIII.**

2 **RETENTION OF JURISDICTION**

3 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective  
4 Date, the Bankruptcy Court shall not be limited under this Plan and the Bankruptcy Court's  
5 jurisdiction shall apply to the fullest extent possible under applicable law.

6 **XIV.**

7 **MODIFICATION OR WITHDRAWAL OF PLAN**

8 **14.1 Modification of Plan.** At any time prior to confirmation of this Plan, the Debtor  
9 may supplement, amend or modify this Plan. After confirmation of this Plan, the Plan Agent or  
10 the Debtor may (i) apply to the Bankruptcy Court, pursuant to Section 1127 of the Bankruptcy  
11 Code, to modify this Plan; and (ii) apply to the Bankruptcy Court to remedy defects or omissions  
12 in this Plan or to reconcile inconsistencies in this Plan.

13 **14.2 Nonconsensual Confirmation.** In the event that any impaired Class of Claims or  
14 Interests shall fail to accept this Plan in accordance with Section 1129(a)(8) of the Bankruptcy  
15 Code, the Plan Proponent (i) may request that the Bankruptcy Court confirm this Plan in  
16 accordance with Section 1129(b) of the Bankruptcy Code, and (ii) in accordance with this Plan,  
17 and may modify this Plan in accordance with Section 1127 of the Bankruptcy Code.

18 **XV.**

19 **EFFECT OF CONFIRMATION OF THIS PLAN**

20 **15.1 Discharge.** The rights afforded in the Plan and the treatment of all Claims therein  
21 shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any  
22 nature whatsoever, including any interest accrued on such Claims from and after the Petition  
23 Date, obligations of, rights against and Interests in the Debtor and the Debtor-in-Possession, or  
24 any of their assets or properties, regardless of whether any property shall have been distributed or  
25 retained pursuant to this Plan. Except as otherwise provided in this Plan or the Confirmation  
26 Order: (i) on the Effective Date, the Debtor shall be deemed discharged and released to the fullest  
27 extent permitted by Section 1141 of the Bankruptcy Code from all Claims, including, but not  
28 limited to, demands, liabilities, and Claims that arose before the Confirmation Date and all debts

of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not:

(a) a proof of claim based on such debt is Filed or deemed Filed pursuant to Section 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to Section 502 of the Bankruptcy Code or (c) the holder of a Claim based on such debt has accepted the Plan; and

(ii) all Persons shall be precluded from asserting against the Debtor, its successors, or their assets or properties any other or further Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Confirmation Date. Except as otherwise provided in the Plan or the Confirmation Order, the Confirmation Order shall act as a discharge of any and all Claims against and all debts and liabilities of the Debtor, as provided in Sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment against the Debtor at any time obtained to the extent that it relates to a Claim discharged.

**15.2 Injunction.** Except as otherwise provided in this Plan or the Confirmation Order, on and after the Effective Date, all Persons who have held, currently hold or may hold a Claim or Interest discharged pursuant to the terms of this Plan (including, but not limited to, states and other governmental units, and any state official, employee, or other entity acting in an individual or official capacity on behalf of any state or other governmental units) are permanently enjoined from taking any of the following actions on account of any such discharged Claim or Interest:

(1) commencing or continuing in any manner any action or other proceeding against the Debtor, its successors, or their respective property; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, its successors, or their respective property; (3) creating, perfecting or enforcing any lien or encumbrance against the Debtor, its successors, or their respective property; (4) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due to any of the Debtor, its successors or their respective property; and (5) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of this Plan or the Confirmation Order. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator.



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XIV.

**MISCELLANEOUS**

**16.1 Payment of Statutory Fees.** All quarterly fees due and payable to the Office of the United States Trustee pursuant to Section 1930(a)(6) of title 28 of the United States Code shall be paid in full on or before the Effective Date, or, to the extent such quarterly fees are disputed, an adequate reserve shall have been established and set aside for payment in full thereof, as required by Section 1129(a)(12) of the Bankruptcy Code. The Debtor shall remain responsible for timely payment of quarterly fees due and payable after the Effective Date and until the Debtor's Case is closed, to the extent required by Section 1930 of title 28 of the United States Code.

**16.2 Payment Dates.** Whenever any payment or distribution to be made under this Plan shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, on the immediately following Business Day.

**16.3 Headings.** The headings used in the Disclosure Statement and in this Plan are inserted for convenience only and neither constitutes a portion of the Disclosure Statement or this Plan nor in any manner affect the construction of the provisions of the Disclosure Statement or this Plan.

**16.4 Other Documents and Actions.** The Debtor may execute such other documents and take such other actions as may be necessary or appropriate to effectuate the transactions contemplated under this Plan.

**16.5 Notices.** All notices and requests in connection with the Disclosure Statement and this Plan shall be in writing and shall be hand delivered or sent by mail, facsimile or email addressed to:

Garrick A. Hollander  
Winthrop Couchot Golubow Hollander, LLP  
660 Newport Center Drive, Suite 400  
Newport Beach, CA 92660  
Facsimile: (949) 720-4151  
Email: ghollander@wcghlaw.com

All notices and requests to any Person holding of record any Claim or Interest shall be sent to them at their last known address or to the last known address of their attorney of record.

1 Any such Person may designate in writing any other address for purposes of this Section, which  
2 designation will be effective on receipt.

3 **16.6 Governing Law.** Unless a rule of law or procedure is supplied by federal law  
4 (including the Bankruptcy Code and Bankruptcy Rules), the laws of the state of California  
5 (without reference to its conflict of law rules) shall govern the construction and implementation of  
6 this Plan and any agreements, documents, and instruments executed in connection with this Plan,  
7 unless otherwise specifically provided in such agreements, documents, or instruments.

8 **16.7 Binding Effect.** This Plan and all rights, duties and obligations thereunder shall be  
9 binding upon and inure to the benefit of the Debtor, Holders of Claims, Holders of Interests, and  
10 their respective successors and assigns.

11 **16.8 Successors and Assigns.** The rights, benefits, and obligations of any entity named  
12 or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs,  
13 executors, administrators, successors, and assigns of such entity.

14 **16.9 Severability of Plan Provisions.** If, prior to the Confirmation Date, any term or  
15 provision of this Plan is held by the Bankruptcy Court to be illegal, impermissible, invalid, void  
16 or unenforceable, or otherwise to constitute grounds for denying confirmation of this Plan, the  
17 Bankruptcy Court shall, with the consent of the Debtor, have the power to interpret, modify or  
18 delete such term or provision (or portions thereof) to make it valid or enforceable to the maximum  
19 extent practicable, consistent with the original purpose of the term or provision held to be invalid,  
20 void or unenforceable, and such term or provision shall then be operative as interpreted, modified  
21 or deleted. Notwithstanding any such interpretation, modification or deletion, the remainder of  
22 the terms and provisions of this Plan shall in no way be affected, impaired or invalidated by such  
23 interpretation, modification or deletion.

24 **16.10 No Waiver.** The failure of the Debtor or any other Person to object to any Claim  
25 for purposes of voting shall not be deemed a waiver of the Debtor's right to object to or examine  
26 such Claim, in whole or in part.

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1           **16.11    Inconsistencies.** In the event the terms or provisions of the Disclosure  
2 Statement are inconsistent with the terms and provisions of this Plan or documents executed in  
3 connection with this Plan, the terms of this Plan shall control.

4           **16.12    Exemption from Certain Transfer Taxes and Recording Fees.** Pursuant to  
5 Section 1146 of the Bankruptcy Code, any transfers from the Debtor to any other Person or entity  
6 pursuant to this Plan, or any agreement regarding the transfer of title to or ownership of the  
7 Debtor's real or personal property or of any other interest in such property (including, without  
8 limitation, a security interest) will not be subject to any document recording tax, stamp tax,  
9 conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax,  
10 mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or  
11 governmental assessment, and the Confirmation Order will direct the appropriate state or local  
12 governmental officials or agents to forego the collection of any such tax or governmental  
13 assessment and to accept for filing and recordation any of the foregoing instruments or other  
14 documents without the payment of any such tax or governmental assessment.

15           **16.13    Post-Confirmation Status Report.** Within 180 days following the entry of the  
16 Confirmation Order, the Debtor shall file a status report with the Court explaining what progress  
17 has been made toward consummation of the confirmed Plan. The status report shall be served on  
18 the United States Trustee, the twenty largest unsecured creditors, and those parties who have  
19 requested special notice. Unless otherwise ordered, further status reports shall be filed every 180  
20 days and served on the same entities.

21           **16.14    Post-Confirmation Conversion/Dismissal.** A creditor or party in interest may  
22 bring a motion to convert or dismiss the case under Section 1112(b) of the Bankruptcy Code, after  
23 this Plan is confirmed, if there is a default in performing this Plan. The Debtor reserves the right  
24 to object to any motion for conversion or dismissal. If the Court orders the Case converted to  
25 Chapter 7 after this Plan is confirmed, then all property that had been property of the Chapter 11  
26 Estate, and that has not been disbursed pursuant to this Plan, will revert in the Chapter 7 estate.

1           **16.15    Final Decree.** Once the Estate has been fully administered, as referred to in  
2 Bankruptcy Rule 3022, the Debtor, or other parties as the Court shall designate in the  
3 Confirmation Order, shall file a motion with the Court to obtain a final decree to close the  
4 Debtor's Case.

5 Date: December 22, 2017

**XS RANCH FUND VI, L.P.,**  
a Delaware limited partnership

6  
7  
8 By:   
9 Michael VanderLey  
Its: Chief Restructuring Officer

10 **SUBMITTED BY:**

11 **WINTHROP COUCHOT**  
12 **GOLUBOW HOLLANDER, LLP**

13 By: /s/ Garrick A. Hollander  
14 Garrick A. Hollander  
General Insolvency Counsel for XS Ranch  
Fund VI, L.P., debtor and debtor-in-possession

# Exhibit 1

**EXHIBIT 1**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES BEING ASSUMED**

1. City of Bastrop
2. Clayton Williams Ranch Company
3. Dream Finders Home, LLC
4. Steiner Ranches, LLC
5. WCHB Holdco, LLC

## **Exhibit 2**

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**EXHIBIT 2**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES BEING REJECTED**

**[TO BE PROVIDED]**



# Exhibit 3

**CRESTLINE DIRECT FINANCE, L.P.**  
**201 Main Street, Suite 1900**  
**Fort Worth, Texas 76102**

**PRIVATE AND CONFIDENTIAL**

**December 19, 2017**

**XS Ranch Fund VI, L.P.**

**Attention: Michael VanderLey**

**Commitment Letter**

Ladies and Gentlemen:

Crestline Direct Finance, L.P. (“**CDF**”) is pleased to confirm its commitment to XS Ranch Fund VI, L.P. (the “**Company**”) to act as sole lead arranger, as administrative agent for the Credit Facility, and, through one or more investment funds managed by Crestline Management, L.P. or one of its affiliates, to provide the Company the full \$30 million of the Credit Facility, in each case, on the terms and subject to the conditions contained in this Commitment Letter and in the attached **Annexes A** and **B** hereto (collectively, the “**Commitment Letter**”; capitalized terms used but not defined herein shall have the meanings given to them in the attached **Annex B**).

The Company is a debtor in possession in a proceeding currently pending in the United States Bankruptcy Court in the Northern District of California and governed under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) and assigned case number 16-31367-RE-11 (the “**Bankruptcy Case**”).

Our commitments are subject, in our discretion, to the following conditions: (i) the completion of a due diligence review of the assets, liabilities (including contingent liabilities) and business of the Company and its subsidiaries and the transactions contemplated hereby (including, without limitation, environmental and legal due diligence) in scope and with results satisfactory to CDF in its sole and absolute discretion; (ii) no occurrence, development or change that shall have occurred after the date hereof and no information becoming known after the date hereof, that, in our judgment, has had or could be reasonably expected to have a Material Adverse Change; (iii) there shall not have been any disruption, adverse change or condition in the financial, banking or capital markets generally (iv) the accuracy and completeness of all representations that the Company and its affiliates made to CDF and the Company’s compliance with the terms of this Commitment Letter; and (v) the satisfactory negotiation, execution and delivery of appropriate loan documents relating to the Credit Facility including, without limitation, a credit agreement, guaranties, security agreements, pledge agreements, real property security agreements, opinions of counsel and other related definitive documents (collectively, the “**Loan Documents**”) to be based upon and substantially consistent with the terms set forth in this Commitment Letter and the satisfaction of all conditions precedent set forth in the Loan Documents. Our commitment is also conditioned upon and made subject to our not becoming aware after the date hereof of any new or inconsistent information or other matter not previously disclosed to us relating to the Company or its subsidiaries or the transactions contemplated by this Commitment Letter which we, in our reasonable judgment, deem material and adverse relative to the information or other matters disclosed to us prior to the date hereof.

The terms of this Commitment Letter are intended as an outline of certain of the material terms of the Credit Facility, but do not include all of the terms, conditions, covenants, representations, warranties, default clauses and other provisions that will be contained in the Loan Documents. The Loan Documents shall include, in addition, provisions that are customary or typical for financings of this type.

In addition, the Company represents and covenants that (i) all information, other than Projections (defined below), which has been or is hereafter provided directly or indirectly by the Company or any of its representatives to CDF or the Lenders in connection with the transactions contemplated hereunder (the “**Information**”) is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) all financial projections concerning the Company and its subsidiaries that have been or will be made available to CDF or the Lenders by the Company or any of its representatives (the “**Projections**”) have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time made. You agree that if at any time prior to the Initial Funding Date, any of the representations in the preceding sentence would be incorrect in any material respect if the Information and Projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented, the Information and Projections so that such representations will be correct in all material respects under those circumstances.

By executing this Commitment Letter, you agree to reimburse CDF from time to time on demand for all reasonable out-of-pocket fees and expenses (including, but not limited to, the reasonable fees, disbursements and other charges of all legal counsel to CDF (including, but not limited to, special and local counsel to the Lenders retained by CDF) and examiners, search fees, due diligence expenses, transportation expenses, and appraisal, environmental, audit, and consultant costs and expenses) incurred in connection with the Credit Facility, the syndication thereof, the preparation of the definitive documentation therefor and the other transactions contemplated hereby, regardless of whether any of the transactions contemplated hereby are consummated.

In addition, in connection with arrangements such as this, it is CDF’s policy to receive indemnification. The Company agrees to the provisions with respect to indemnity and other matters set forth in **Annex A**, which is incorporated by reference into this Commitment Letter.

CDF hereby notifies the Company that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the “**Act**”), CDF and each other Lender is required to obtain, verify and record information that identifies the Company, which information includes the Company’s name and address and other information that will allow CDF and each other Lender to identify the Company in accordance with the Act. This notice is given in accordance with the requirements of the Act and is effective for CDF and each other Lender.

CDF and its affiliates, including Crestline Management, L.P. (collectively, in this paragraph, “**Crestline**”) may have economic interests that conflict with those of the Company. You agree that Crestline will act under this letter as an independent contractor and that nothing in this Commitment Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between Crestline and the Company, its stockholders or its affiliates. You acknowledge and agree that (i) the transactions contemplated by this Commitment are arm’s-length commercial transactions between Crestline, on the one hand, and the Company, on the other, (ii) in connection therewith and with the

process leading to such transaction Crestline is acting solely as a principal and not the agent or fiduciary of the Company, its management, stockholders, creditors or any other person, (iii) Crestline has not assumed an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether Crestline or any of its affiliates has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Commitment and (iv) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Company agrees that it will not claim that Crestline has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto. In addition, CDF may employ the services of its affiliates in providing certain services hereunder and may exchange with such affiliates information concerning the Company and other companies that may be the subject of this arrangement, and such affiliates shall be entitled to the benefits afforded to CDF hereunder.

This Commitment Letter may not be assigned by the Company without CDF's prior written consent (and any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. CDF may assign its commitments hereunder, in whole or in part (including, for example, our commitment to provide the Credit Facility), to any of its affiliates or to any Lender, and upon such assignment, we shall be released from the portion of our commitment hereunder that has been assigned. This Commitment Letter may not be amended or any term or provision hereof waived or modified except by an instrument in writing signed by each of the parties hereto, and any term or provision hereof may be amended or waived only by a written agreement executed and delivered by all parties hereto.

Our commitment hereunder shall terminate upon the first to occur of (i) at our election, a material breach by the Company under this Commitment Letter, (ii) February 6, 2018, unless an order is issued by this date in the Bankruptcy Case, approving a Disclosure Statement in form and substance acceptable to CDF and (iii) March 31, 2018, unless the closing of the Credit Facility, on the terms and subject to the conditions contained herein, shall have been consummated on or before such date.

This Commitment Letter may be executed in any number of counterparts, each of which when executed shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter is the only agreement that has been entered into among the parties hereto with respect to the Credit Facility and sets forth the entire understanding of the parties with respect thereto and supersedes any prior written or oral agreements among the parties hereto with respect to the Credit Facility.

**THIS COMMITMENT LETTER 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.**

XS Ranch Fund VI, L.P.  
December 19, 2017  
Page 4

*[Remainder of page intentionally left blank]*

XS Ranch Fund VI, L.P.  
December 19, 2017  
Page 5

Please confirm that the foregoing is in accordance with your understanding by signing and returning to CDF the enclosed copy of this Commitment Letter, whereupon this Commitment Letter shall become a binding agreement between us. We look forward to working with you on this assignment.

Very truly yours,

**CRESTLINE DIRECT FINANCE, L.P.**

By: Crestline Direct Finance (GP), L.L.C., its general partner  
By: Crestline Investors, Inc., its manager

By: 

Name: John S. Cochran  
Title: Vice-President

**ACCEPTED AS OF THE DATE ABOVE:**

**XS Ranch Fund VI, L.P.**

By: 

Name: Michael VandeLey  
Title: Chief Restructuring Officer

## Annex A

*In the event that CDF becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including stockholders, partners, or other equity holders of the Company, in connection with or as a result of either this arrangement or any matter referred to in this Commitment Letter, the Company agrees to periodically reimburse CDF for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith. The Company also agrees to indemnify and hold CDF harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in the Letters, **and without regard to the exclusive or contributory negligence of CDF or its affiliates, or the partners, directors, agents, employees and controlling persons (if any), as the case may be, of CDF and any such affiliate**, except to the extent that such have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of CDF in performing the services that are the subject of the Letters. If for any reason the foregoing indemnification is unavailable to CDF or is insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by CDF as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of the Company and its stockholders, partners, or other equity holders on the one hand and CDF on the other hand in the matters contemplated by the Letters as well as the relative fault of the Company and CDF with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Company under this paragraph shall be in addition to any liability which the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of CDF and the partners, directors, agents, employees and controlling persons (if any), as the case may be, of CDF and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company, CDF, any such affiliate and any such person. The Company also agrees that neither any indemnified party nor any of such affiliates, partners, directors, agents, employees or controlling persons shall have any liability **based on its or their exclusive or contributory negligence or otherwise** to the Company or any person asserting claims on behalf of or in right of the Company or any other person in connection with or as a result of either this arrangement or any matter referred to in the Letters; except in the case of the Company to the extent that any losses, claims, damages, liabilities or expenses incurred by the Company or its affiliates, stockholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of the Letters; provided, however, that in no event shall such indemnified party or such other parties have any liability for any indirect, consequential or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities related to the Letters. **Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either this arrangement or any matter referred to in the Letters is hereby waived by the parties hereto. The Company agrees that any suit or proceeding arising in respect to this arrangement or any matter referred to in the Letters will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City of New York and the Company agrees to submit to the jurisdiction of, and to venue in, such courts. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either our commitment or any matter referred to in the Letters is hereby waived by the parties hereto. The provisions of this Annex A shall survive any termination or completion of the arrangement provided by the Letters, and this Commitment Letter shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.***

Annex A-1

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## Annex B



### INDICATIVE TERM SHEET

#### \$30 MILLION SENIOR SECURED TERM EXIT FINANCING

<b>Borrower:</b>	XS Ranch Fund VI, L.P., a Delaware limited partnership, (the “ <b>Company</b> ”).	
<b>Guarantors:</b>	<b>XS Water Company LLC</b> and each of the future direct and indirect wholly-owned subsidiaries of the Company (the “ <b>Guarantors</b> ”).	
<b>Sole Lead Arranger:</b>	Crestline Direct Finance, L.P. (“ <b>Crestline</b> ”) or one of its affiliates as may be designated by Crestline (in such capacity, the “ <b>Arranger</b> ”).	
<b>Administrative Agent:</b>	Crestline or one of its affiliates as may be designated by Crestline (in such capacity, the “ <b>Agent</b> ”).	
<b>Lenders:</b>	Investment funds managed by Crestline Management, L.P. (each a “ <b>Lender</b> ” and collectively, the “ <b>Lenders</b> ”).	
<b>Bankruptcy Case:</b>	<p>The Company is a debtor in possession in a proceeding currently pending in the United States Bankruptcy Court in the Northern District of California and governed under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “<b>Bankruptcy Code</b>”) and assigned case number 16-31367-RE-11 (the “<b>Bankruptcy Case</b>”).</p> <p>Pursuant to an order issued in the Bankruptcy Case, the Company entered into an \$18.6 million debtor-in-possession credit agreement which will be repaid and terminated upon the closing of the Credit Facility described herein.</p>	
<b>Credit Facility:</b>	<u>\$30,000,000</u> <b>\$30,000,000</b>	Term Loan <b>Total (“Total Facility Amount”)</b>
<b>Uses of Proceeds:</b>	\$18,600,000 \$ 1,100,000 \$[2,800,000]  \$ 2,625,000  \$ 600,000 \$ 250,000 \$ 500,000  <u>\$[3,525,000]</u>  <b>\$30,000,000</b>	Satisfaction in full of DIP Lender claims Satisfaction in full of allowed administrative claims Payment of allowed unsecured creditors’ claims (final amount to be paid to be determined) Reserve for cash interest under the Credit Facility for the 15 month period post the Initial Funding Date Facility Fee Company and Crestline expenses Default Reserve (to be released upon a successful raise of the Post-Closing Equity) Working capital (final amount to be determined on the amount required to pay the above mentioned creditors of the Bankruptcy Case) to be released to the Borrower upon a successful raise of the Post Closing Equity <b>Total</b>

ANNEX B-1



Although the final amounts paid for the DIP Lenders claims and fees, administrative claims and unsecured creditors' claims will depend on the plan of reorganization, as approved by the Confirmation Order (defined below), in no event shall the Credit Facility be used to pay DIP Lenders claims and fees, administrative claims and unsecured creditors' claims (in the aggregate) in an amount greater than \$26,000,000.

**Initial Funding Date:** The date on which all Conditions Precedent (defined herein) have been satisfied.

**Maturity Date:** The date that is 3 years after the Initial Funding Date (the "**Maturity Date**").

**Interest Rates:** All rates shall be calculated on a 360-day basis:

**Current/Cash-Pay Rate:** **7.0%** fixed rate per annum, payable quarterly.

**Deferred Rate:** **7.0%** fixed rate per annum, simple interest, due and payable on the Maturity Date, subject to Mandatory Prepayments, if applicable. The Deferred Rate shall be in addition to the Current/Cash-Pay Rate.

**Default Rate:** **4.0%** in addition to the Current Rate plus the Deferred Rate, payable on demand.

**Warrants:** Lenders shall earn and be granted warrants equal to 20.0% of the number of shares of the Company's stock at closing on a fully diluted basis.

**Facility Fee:** **2.0%** of the Total Facility Amount, payable to the Arranger on the Initial Funding Date.

**Administration Fee:** **\$25,000** per annum, payable to the Agent annually in advance on the Initial Funding Date and on each anniversary thereof.

**Amortization:** None.

**Mandatory Prepayments:** Mandatory prepayments of (i) 100% from debt issuances (unless otherwise approved by Lender), asset sales, cash flow, tax refunds, and insurance/condemnation proceeds and (ii) 50% from all equity issuances (other than permitted amount under Post-Closing Equity).

**Yield Maintenance:** Months 0-24, callable for Principal Amount, and a Yield Maintenance Premium<sup>1</sup>. This applies to both voluntary or Mandatory Prepayments of the Term Loan.

**Collateral:** Shall be (i) first lien on all tangible and intangible assets of the Company and (ii) first lien on all tangible and intangible assets and equity interests of the Guarantors, subject only to customary permitted liens and Permitted Liens as defined herein.

**Permitted Lien:** Lien over approximately 4,372 acres of land evidenced by those two (2) promissory notes, each made by Borrower in favor of Steiner & Sons, LTD and, respectively, (i) dated December 19, 2006, in the principal amount of \$10,000,000, and (ii) dated September 6, 2013, in the principal amount of \$1,500,000, each of the foregoing as amended (the "**Steiner Debt**").

Lenders under the Credit Facility to be granted a second lien over the 4,372 acres of land securing the Steiner Debt.

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<sup>1</sup> The "Yield Maintenance Premium" is equal to the aggregate amount of interest at the Current Rate and Deferred Rate that would have otherwise been payable from the date of prepayment through the 24<sup>th</sup> month after the Initial Funding Date on the prepaid principal amount.

## ANNEX B-2

NY\876033.4

<b>Conditions Precedent:</b>	<p>1. The U.S. Bankruptcy Court shall have entered a final order (such order, the “<b>Confirmation Order</b>”) confirming a Chapter 11 plan of reorganization for the Debtors in accordance with Section 1129 of the Bankruptcy Code.</p> <p>2. Steiner Debt shall continue to mature post the Maturity Date.</p> <p>3. Company’s delivery of a detailed budget of planned expenditures in amount and sequence of work to be performed acceptable to Agent (the “<b>Budget</b>”).</p>
<b>Post-Closing Equity:</b>	<p>Post the Initial Funding Date the Borrower shall be granted a period of nine months to raise \$10,000,000 of equity capital in cash (the “<b>Minimum Equity Expiration Date</b>”) to fund working capital and critical infrastructure in accordance with the Budget. Any equity capital raised (either within this nine month period or beyond) greater than \$10,000,000 shall be subject to the Mandatory Prepayment provisions above.</p> <p>In the event the Borrower is unable to raise the \$10,000,000 of equity capital, the chief restructuring officer (under the confirmed plan of reorganization) shall appoint a third party marketing firm (to be approved by the Lender) to conduct an orderly liquidation of all assets of the Borrower (the “<b>Sale Process</b>”).</p> <p>The mechanics of the Sale Process shall be documented within the Chapter 11 plan of reorganization subject to the Confirmation Order and shall include but not be limited to the following concepts.</p> <ul style="list-style-type: none"> <li>• The Sale Process shall be concluded (with bids presented to creditors) within 12 months from the Minimum Equity Expiration Date.</li> <li>• In the event the offers received under the Sale Process are insufficient to repay the Credit Facility (including any accrued and unpaid interest or payments under Yield Maintenance provisions) the Lenders shall preserve their right to bid the amount of the Credit Facility as a credit bid, i.e. not a cash bid.</li> </ul>
<b>Financial Covenants:</b>	Customary and appropriate for Crestline transactions, including without limitation, financial covenants (measured monthly), to be determined.
<b>Affirmative Covenants:</b>	Customary and appropriate for Crestline transactions including without limitation, delivery of financial statements and other information, maintenance of existence, payment of taxes and claims, maintenance of properties and insurance, inspections, lender meetings, compliance with laws, and compliance with contractual obligations.
<b>Negative Covenants:</b>	Customary and appropriate for Crestline transactions including without limitation, limitations on indebtedness (including public improvement district financing without Lender approval), liens, guarantees, negative pledges, restricted payments, subsidiary distributions, investments, fundamental changes, disposition of assets, acquisitions, disposal of subsidiary interests, sale and lease-backs, transactions with affiliates, conduct of business, changes to material contracts, and deposit accounts.
<b>Representations and Warranties, Events of Default, and Indemnification:</b>	Customary and appropriate for Crestline transactions.

## ANNEX B-3

NY\876033.4

**Other Conditions  
and Requirements:**

Usual and customary for Crestline transactions of this type, including, but not limited to the following:

- Documents governing the Credit Facility satisfactory legal opinions (which shall not contain any expiration dates and shall cover, among other issues, enforceability, no conflicts, and other relevant issues under Texas law), corporate records, and documents from public officials and officers' certificates shall have been delivered;
- Delivery to Lenders of an updated Phase I environmental report;
- Financial reporting to be provided on a monthly basis;
- Project status update to be provided on a monthly basis;
- Other satisfactory due diligence, including but not limited to: business due diligence, management background checks, environmental reviews, and legal review.

**Choice Of Law:**

State of Texas

**Expense Reimbursement:**

The Borrower (or estate of the Bankruptcy Case) agrees to fully reimburse Crestline's reasonable expenses, including but not limited to engagement of consultants and legal counsel. This provision shall also apply in the event where this term sheet is executed and the Borrower does not proceed with a financing with the Lenders as contemplated herein.

*Except with respect to the Expense Reimbursement provision, this Indicative Term Sheet is intended for discussion purposes only and does not purport to summarize all the terms, conditions, representations, warranties and other provisions with respect to the transactions referred to herein. This Indicative Term Sheet does not constitute an offer, agreement, or commitment by Crestline or any of its affiliates to enter into any transaction. Any such commitment (i) will be subject to completion of our credit approval process, (ii) will be subject to the execution and delivery of a definitive Commitment Letter reasonably acceptable to all parties and their respective counsel, (iii) will be subject to the completion of our legal and business due diligence and our satisfaction with the results thereof, and (iv) will assume the accuracy and completeness in all material respects of the information provided by or on behalf of the Company. This Indicative Term Sheet is confidential and may not be disclosed to any person or entity other than the Company's respective officers, directors, employees and professional advisors. NOTE THAT ALL INDICATIVE INTEREST RATES AND INDICATIVE OTHER TERMS REFERRED TO HEREIN ARE SUBJECT TO CHANGE BASED ON PREVAILING MARKET CONDITIONS AND SHOULD BE CONSIDERED INDICATIVE FOR THE INTENDED TRANSACTION FOR ONLY SEVEN DAYS FROM THE DATE FIRST WRITTEN ABOVE.*

*It is understood and agreed that Crestline will act under this Indicative Term Sheet as an independent contractor and nothing herein, the transaction contemplated hereby or otherwise, shall be deemed to create a fiduciary duty or fiduciary or agency relationship between any equity sponsor of Company, Guarantors or any of their respective affiliates, stockholders, employees or creditors, on the one hand, and Crestline or any of its affiliates, stockholders, employees or creditors, on the other. Company and each of the equity sponsors of Company agree that they shall not make, and hereby waives, any claim based on an assertion of such a fiduciary duty or relationship. Nothing in this Indicative Term Sheet is intended to confer upon any other person (including affiliates, stockholders, employees or creditors of the Company) any rights or remedies hereunder or by reason hereof.*

**ANNEX B-4**

NY\876033.4