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Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

XS RANCH FUND VI, L.P.,
a California limited partnership,

Debtor and
Debtor-in-Possession.

Case No. 16:31367-RE-11
Chapter 11 Proceeding
**DEBTOR’S DISCLOSURE STATEMENT
IN SUPPORT OF DEBTOR’S SECOND
AMENDED CHAPTER 11 PLAN OF
REORGANIZATION**

DATE: January 30, 2018
TIME: 1:30 p.m.
PLACE: Courtroom 201
1300 Clay Street, 2nd Floor
Oakland, CA 94612

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1 I.

2 **INTRODUCTION**

3 The purpose of a disclosure statement is to provide information to enable a typical creditor
4 to make an informed judgment about a plan of reorganization and to enable such creditor to
5 determine whether it is in its best interest to vote for (accept) or against (reject) such plan. The
6 Bankruptcy Court has already approved a disclosure statement [Docket no. _] in this case. The
7 Debtor now seeks approval of its Plan. This Disclosure Statement is in support of the Debtor's
8 Plan.

9 Included on the CD containing this Disclosure Statement is a copy of the Debtor's Plan.
10 THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE
11 ENCLOSED PLAN. The Disclosure Statement summarizes the contents of the Plan, certain
12 information relating to the Plan and the process the Bankruptcy Court follows in determining
13 whether to confirm the Plan.

14 The Bankruptcy Code requires a Disclosure Statement to contain "adequate information"
15 concerning the Plan. On February 2, 2018, the Bankruptcy Court entered an order approving this
16 Disclosure Statement, based upon a finding that this document contained "adequate information"
17 to enable parties affected by the Plan to make an informed judgment regarding the Plan.

18 The Debtor's Plan provides for three classes of secured claims; one class of Priority
19 Claims; one class of General Unsecured Claims; one class of subordinated claims; and one class
20 of Interest Holders. The Effective Date of the Plan is the tenth Business Day of the first full
21 month after entry of the Confirmation Order.

22 Creditors holding Allowed Secured Claims will receive Distributions, which the Debtor
23 has valued at 100 cents on the dollar plus interest, if applicable, on the Distribution Date or over a
24 period of time as described below. The Class of Allowed Priority Claims will receive
25 Distributions, which the Debtor has valued at 100 cents on the dollar plus interest, if applicable,
26 on the initial Distribution Date. The Class of Allowed General Unsecured Claims will receive
27 Distributions, which the Debtor has valued at 100 cents on the dollar plus interest, on the
28 Distribution Date. The Class of Rescission Claims will receive no Distributions based on the

1 Bankruptcy Court's findings and ruling in the Subordination Litigation. Interest Holders will
2 retain their Interests. All Creditors and equity Interest Holders should refer to Article V of the
3 Plan for information regarding the precise treatment of their Claims and Interests.

4 The Debtor's Plan provides for the structured reorganization of the Debtor. The Debtor
5 shall make all payments due under the Plan to holders of Allowed Claims and Allowed Interests
6 from the Net Financing Proceeds, Net Cash flow, Net Sales Proceeds, and the prosecution and
7 liquidation of the Debtor's Avoidance Actions, if any.

8 READ THE DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW
9 ABOUT:

- 10 ➤ **WHO CAN VOTE OR OBJECT TO THE PLAN;**
- 11 ➤ **HOW YOUR CLAIM IS TREATED;**
- 12 ➤ **HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD**
13 **RECEIVE IN LIQUIDATION;**
- 14 ➤ **A BRIEF HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS**
15 **DURING ITS CHAPTER 11 BANKRUPTCY PROCEEDING;**
- 16 ➤ **WHAT FACTORS THE BANKRUPTCY COURT WILL CONSIDER TO**
17 **DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;**
- 18 ➤ **WHAT IS THE EFFECT OF CONFIRMATION; AND**
- 19 ➤ **WHETHER THE PLAN IS FEASIBLE.**

20 The Disclosure Statement cannot tell you everything about your rights. You should
21 consider consulting your own attorney to obtain more specific advice on how the Plan will affect
22 you and your best course of action.

23 Be sure to read the Plan as well as the Disclosure Statement. If there are any
24 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

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II.

DEFINITIONS AND RULES OF INTERPRETATION

2.1 Definitions

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

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

2.1.2 Administrative Claim(s) means any Claim incurred after the Petition Date but before the Confirmation Date for any cost or expense of administration of the Case allowable under Section 330, 331, 503(b), or 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary post-petition expenses of preserving the Estate of the Debtor, any actual and necessary post-petition expenses of operating the business of the Debtor, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under Section 330, 331, or 503 of the Bankruptcy Code and any fees or charges assessed against the Estate of the Debtor under Section 1930 of title 28 of the United States Code.

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

2.1.4 Affiliate(s) means the term shall have the meaning set forth under Section 101(2) of the Bankruptcy Code, including, but not limited to, as to any Person, any other Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”),

1 as applied to any Person, means the possession, direct or indirect, of the power to direct or
2 cause the direction of the management and policies of such Person, whether through the
3 ownership of voting securities or other equity ownership interest, by contract or otherwise.

4 2.1.5 Allowed means Claim(s) or Interest(s), such Claim(s) or Interest(s), to the
5 extent that it or they are “Allowed Claim(s)” or “Allowed Interest(s).”

6 2.1.6 Allowed Amount means:

7 (i) With respect to any Administrative Claim (i) if the Claim is based
8 upon a Fee Application, the amount of such Fee Application that has been
9 approved by an order of the Bankruptcy Court; (ii) if the Claim is based upon any
10 indebtedness or obligation incurred in the ordinary course of business of the Debtor
11 and is not otherwise subject to an Administrative Claim Bar Date, the amount of
12 such Claim that has been agreed to by the Debtor and such creditor, failing which,
13 the amount thereof as fixed by an order of the Bankruptcy Court; or (iii) if the
14 Holder of such Claim was required to file and has filed proof thereof with the
15 Bankruptcy Court prior to an Administrative Claim Bar Date, (1) the amount stated
16 in such proof if no objection to such Proof of Claim is interposed within the
17 applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or
18 the Bankruptcy Court, or (2) the amount thereof as fixed by an order of the
19 Bankruptcy Court if an objection to such proof was interposed within the
20 applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or
21 the Bankruptcy Court. The Allowed Amount of any Administrative Claim which is
22 subject to an Administrative Claims Bar Date and not filed by the applicable
23 Administrative Claims Bar Date shall be zero, and no Distribution shall be made on
24 account of any such Administrative Claim;

25 (ii) With respect to any Claim which is not an Administrative Claim (the
26 “Other Claim”): (i) if the Holder of such Other Claim did not file proof thereof
27 with the Bankruptcy Court on or before the Claims Bar Date, the amount of such
28 Claim as listed in the Debtor’s Schedules as neither disputed, contingent or

1 unliquidated; or (ii) if the Holder of such Claim has filed proof thereof with the
2 Bankruptcy Court on or before the Claims Bar Date, (a) the amount stated in such
3 proof if no objection to such Proof of Claim was interposed within the applicable
4 period of time fixed by the Bankruptcy Code, the Bankruptcy Rules, the Plan or the
5 Bankruptcy Court, or (b) the amount thereof as fixed by an order of the
6 Bankruptcy Court if an objection to such proof was interposed within the
7 applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules, the
8 Plan or the Bankruptcy Court. The Allowed Amount of any Other Claim which is
9 not Filed by the applicable Claims Bar Date, is not listed on the Debtor's Schedules
10 or is listed as disputed, unliquidated, contingent or unknown, and is not allowed
11 under the terms of the Plan shall be zero, and no Distribution shall be made on
12 account of any such Claim; and

13 (iii) With respect to any Interest, (i) the amount provided by or
14 established in the records of the Debtor at the Confirmation Date, provided,
15 however, that a timely filed proof of Interest shall supersede any listing of such
16 Interest on the records of the Debtor; or (ii) the amount stated in a proof of Interest
17 Filed prior to the Confirmation Date if no objection to such Interest was filed prior
18 to the Confirmation Date or such later date as the Bankruptcy Court allows; or
19 (iii) the amount of such Interest as fixed by an order of the Bankruptcy Court.

20 2.1.7 Allowed Claim(s) means except as otherwise provided in the Plan
21 (including with respect to those Classes for which the amount of the Allowed Claims is
22 specified by the Plan), a Claim to the extent of the Allowed Amount of such Claim.

23 2.1.8 Allowed Interest(s) means any Interest to the extent, and only to the
24 extent, of the Allowed Amount of such Interest.

25 2.1.9 Allowed Secured Claim means an Allowed Claim secured by a valid and
26 unavoidable Lien against property in which an Estate has an interest, or which is subject to
27 setoff under Section 553 of the Bankruptcy Code, to the extent of the value, determined in
28 accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of

1 such Allowed Claim in the Estate's interest in such property, or to the extent of the amount
2 subject to any setoff, as the case may be.

3 2.1.10 Asset(s) means any assets that are property of the Debtor pursuant to
4 Section 541 of the Bankruptcy Code, including but not limited to the Property.

5 2.1.11 Available Cash means the Cash deposited into the Distribution Account(s)
6 on or after the Effective Date that is available for making Distributions under the Plan to
7 Holders of Allowed Claims.

8 2.1.12 Avoidance Actions means any action or proceeding filed pursuant to the
9 provisions of Sections 506, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 551 of the
10 Bankruptcy Code, or any similar action or proceeding filed to recover property for or on
11 behalf of the Estate or to avoid a Lien or transfer.

12 2.1.13 Avoidance Actions Recoveries means any Cash or other property received
13 by the Debtor from all or any portion of an Avoidance Action(s), including, but not limited
14 to, awards of damages, attorneys' fees and expenses, interest and punitive damages,
15 whether recovered by way of settlement, execution on judgment or otherwise.

16 2.1.14 Bankruptcy Code means the Title 11 of the United States Code, 11 U.S.C.
17 §§ 101 *et seq.*, as applicable to the Case.

18 2.1.15 Bankruptcy Court means the United States Bankruptcy Court for the
19 Northern District of California, having jurisdiction over the Case and, to the extent of any
20 withdrawal of the reference made pursuant to Section 157 of title 28 of the United States
21 Code, the United States District Court for the Northern District of California; or, in the
22 event such courts cease to exercise jurisdiction over the Case, such court or unit thereof
23 that exercises jurisdiction over the Case in lieu thereof.

24 2.1.16 Bankruptcy Rules means collectively, as now in effect or hereafter
25 amended and as applicable to the Case, (i) the Federal Rules of Bankruptcy Procedure, and
26 (ii) the Local Bankruptcy Rules and General Orders applicable to cases pending before the
27 Bankruptcy Court.
28

1 2.1.17 Business Day means any day, other than a Saturday, a Sunday or a “legal
2 holiday,” as defined in Bankruptcy Rule 9006(a).

3 2.1.18 Case means the Chapter 11 case of the Debtor pending before the
4 Bankruptcy Court.

5 2.1.19 Cash means currency of the United States of America and cash
6 equivalents, including, but not limited to, bank deposits, immediately available or
7 cleared checks, drafts, wire transfers and other similar forms of payment.

8 2.1.20 Causes of Action means any and all claims, demands, rights, actions,
9 causes of action and suits of the Debtor or the Estate, of any kind or character
10 whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on
11 or after the Petition Date, in contract or in tort, at law or in equity or under any other
12 theory of law, that the Debtor or the Debtor’s Estate has or asserts, or may have or
13 assert, against third parties, whether or not brought as of the Effective Date, and which
14 have not been settled or otherwise resolved by Final Order as of the Effective Date,
15 including but not limited to (a) rights of setoff, counterclaim or recoupment, (b) claims
16 on contracts or for breaches of duties imposed by law, (c) rights to object to Claims or
17 Interests, (d) such claims and defenses as fraud, mistake, duress or usury, (e) Avoidance
18 Actions, (f) claims for tax refunds, (g) claims to recover accounts receivable, and (h) any
19 other claims which may be asserted against third parties.

20 2.1.21 City means the City of Bastrop, Texas.

21 2.1.22 Claim(s) means the broadest possible meaning under Section 101(5) of
22 the Bankruptcy Code, and shall include (a) any right to payment from the Debtor,
23 whether or not such right is reduced to judgment, liquidated, unliquidated, fixed,
24 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or
25 unsecured, or (b) any right to an equitable remedy for breach of performance if such
26 breach gives rise to a right of payment from the Debtor, whether or not such right to an
27 equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,
28 disputed, undisputed, secured, or unsecured.

1 2.1.23 Claims Bar Date means for any Claim other than an Administrative
2 Claim, October 23, 2017, established by the Bankruptcy Court as the last date for
3 Creditors to file Proof of Claims with the Bankruptcy Court in the Debtor’s case. The
4 exceptions to this Claims Bar Date are: (1) Claims arising from the rejection of
5 executory contracts or unexpired leases; (2) Claims of “governmental units,” as such
6 term is defined in Section 101(27) of the Bankruptcy Code; and (3) Claims arising as the
7 result of transfer avoidance pursuant to Chapter 5 of the Bankruptcy Code. For Claims
8 arising from rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. §
9 365, the last day to file a Proof of Claim is (a) 30 days after the date of entry of the order
10 authorizing the rejection, or (b) 30 days after service of a bar date notice upon the
11 Creditor asserting such Claim, whichever is later. For Claims of “governmental units,”
12 as that term is defined in 11 U.S.C. §101(27), Proofs of Claim are timely filed if filed:
13 (a) before 180 days after the Petition Date, or as otherwise provided in Rule 3002(c)(1)
14 of the Bankruptcy Rules. *See* 11 U.S.C. §502(b)(9). For Claims arising from the
15 avoidance of a transfer under chapter 5 of the Bankruptcy Code, the last day to file a
16 Proof of Claim is 30 days after the entry of judgment avoiding the transfer, or (b) 30
17 days after service of a bar date notice upon the Creditor asserting such Claim, whichever
18 is later.

19 2.1.24 Class means each group of Claims or Interests classified in the Plan
20 pursuant to Sections 1122 and 1123 of the Bankruptcy Code.

21 2.1.25 Committee means the Official Committee of Creditors Holding General
22 Unsecured Claims appointed in this Case by the U.S. Trustee

23 2.1.26 Confirmation Date means the date on which the Confirmation Order is
24 entered on the Bankruptcy Court’s docket.

25 2.1.27 Confirmation Hearing Date means the date of the hearing on the Plan
26 when the Bankruptcy Court confirms the Plan.
27
28

1 2.1.28 Confirmation Order means the order entered by the Bankruptcy Court
2 confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy
3 Code.

4 2.1.29 County means the Treasurer and Tax Collector of the County of Bastrop,
5 Texas.

6 2.1.30 Creditor(s) means any Person who is the Holder of a Claim against the
7 Debtor that arose or accrued or is deemed to have arisen or accrued or to have matured, or
8 otherwise become due, owing, and payable on or before the Petition Date, including,
9 without limitation, Claims of the kind specified in Sections 502(g), 502(h) or 502(i) of the
10 Bankruptcy Code.

11 2.1.31 Crestline means Crestline Direct Finance, L.P. or one of its affiliates as it
12 may designate, as sole lead arranger, on behalf of investments funds managed by Crestline
13 Management, L.P.

14 2.1.32 Debt Discharge Amount means any amount of potential discharged
15 indebtedness for federal income tax purposes.

16 2.1.33 Debtor means XS Ranch Fund, VI, L.P., a Delaware limited partnership.
17 For the purpose of this Plan, reference to “Debtor” shall include the Reorganized Debtor.

18 2.1.34 Default Notice means written notice by any member of a Class who asserts
19 a default under the Plan, which must be made to the Notice Parties via e-mail and certified
20 U.S. Mail.

21 2.1.35 DIP Financing means debtor in possession financing.

22 2.1.36 Disclosure Statement means the Debtor’s Disclosure Statement in Support
23 of the Debtor’s Second Amended Chapter 11 Plan of Reorganization, as such may be
24 further amended or modified.

25 2.1.37 Disputed Claim(s) means all or any part of a Claim other than any
26 Allowed Amount thereof as to which any one of the following applies: (i) no Proof of
27 Claim has been filed with respect to such Claim, and either (a) the Claim is not listed in the
28 Schedules; or (b) the Claim is listed in the Schedules as unliquidated, disputed, contingent,

1 unknown or in a zero amount, (ii) the Claim is the subject (a) to an Avoidance Action;
2 (b) of offset by an Avoidance Action; (c) to a timely objection that has not been resolved
3 by a Final Order; or (d) to a request for estimation in accordance with the Bankruptcy
4 Code, the Bankruptcy Rules, any applicable order of the Bankruptcy Court, or the Plan
5 which is Filed on or before the Claims Objection Deadline, which adversary proceeding,
6 objection, or request for estimation has not been dismissed, withdrawn or determined by a
7 Final Order; or (iii) the Claim is otherwise treated as a “Disputed Claim” pursuant to the
8 Plan.

9 2.1.38 Disputed Lien(s) means an asserted lien(s) against Assets of the Debtor
10 that is either subject to a Disputed Claim, not duly perfected, subject to an Avoidance
11 Action, or subject to an action pursuant to Bankruptcy Code Sections 510(c)(2)
12 and/or 506(d).

13 2.1.39 Distribution(s) means payments to Holders of Allowed Claims and
14 Interests provided for under the Plan.

15 2.1.40 Distribution Account(s) means account(s) to be established for the
16 Property by the Debtor or the Plan Agent at a bank into which the Debtor’s Available Cash
17 shall be deposited.

18 2.1.41 Distribution Date means with respect to any Allowed Claim or Allowed
19 Interest, the date on which a Distribution is required to be made under the Plan.

20 2.1.42 Effective Date means the tenth Business Day of the first full month after
21 entry of the Confirmation Order.

22 2.1.43 Estate means the bankruptcy estate of the Debtor created pursuant to
23 Section 541 of the Bankruptcy Code.

24 2.1.44 Event of Default means the Debtor’s failure to cure within the Grace
25 Period a payment required to be made under the Plan pursuant to the terms herein.

26 2.1.45 Exit Financing means the \$30 million of exit financing agreed to be
27 provided by Crestline, as described in and pursuant to the Commitment Letter dated
28 December 15, 2017 attached as **Exhibit 3** to the Plan.

1 2.1.46 Fee Application(s) means applications of Professional Persons under
2 Sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and
3 reimbursement of expenses in the Case.

4 2.1.47 Filed means delivered to, received by and entered upon the legal docket by
5 the Clerk of the Bankruptcy Court. “File” shall have a correlative meaning.

6 2.1.48 Final Order means an order or judgment of the Bankruptcy Court or other
7 applicable court, as entered on the applicable docket, that has not been reversed, stayed,
8 modified or amended, and as to which the time to appeal, petition for certiorari, or move
9 for reargument or rehearing has expired and as to which no appeal, petition for certiorari,
10 or other proceedings for reargument or to obtain a rehearing shall then be pending or as to
11 which any right to appeal, petition for certiorari, reargue, or obtain a rehearing shall have
12 been waived in writing in form and substance satisfactory to the Debtor or, in the event
13 that an appeal, writ of certiorari, or proceeding for reargument or rehearing of such order
14 or judgment has been sought, such order or judgment shall have been affirmed by the
15 highest court to which such order or judgment was appealed, or certiorari has been denied,
16 or from which reargument or rehearing was sought, and the time to take any further appeal,
17 petition for certiorari or move for reargument or rehearing shall have expired, or such
18 appeal has become moot.

19 2.1.49 Financial Projections means the financial projections for the Plan prepared
20 by the management of the Debtor, which are attached hereto as **Exhibit 1**.

21 2.1.50 First Purchased Property means that certain 6,836.838 acres of real
22 property located in Bastrop County, Texas, purchased by the Debtor from Steiner.

23 2.1.51 General Unsecured Claim(s) means a Claim against the Debtor that is not
24 (a) a Secured Claim, (b) an Administrative Claim, (c) a Tax Claim, (d) a Priority Claim, or
25 (e) a Subordinated Claim.

26 2.1.52 Grace Period means fifteen (15) Business days.

27 2.1.53 Gross Rental Income means all rents, issues and profits generated by the
28 Property.

1 2.1.54 Groundwater Agreement means that certain Ground Water Rights
2 Purchase Agreement dated May 14, 2014, whereby the City purchased among other things,
3 3,000 acre feet of water rights.

4 2.1.55 Holder means the beneficial owner of any Claim or Interest.

5 2.1.56 Interest(s) means any equity security interest in the Debtor within the
6 meaning, of Section 101(16) of the Bankruptcy Code, including, without limitation, any
7 equity ownership interest in the Debtor, whether in the form of common or preferred stock,
8 stock options, warrants, partnership interests, or membership interests.

9 2.1.57 Lien means any lien, encumbrance, pledge or other charge against
10 property.

11 2.1.58 Mechanics Lien Creditor(s) means those creditor(s) who hold an Allowed
12 Secured Claim against the Property based on a valid, non-avoidable mechanics lien.

13 2.1.59 Net Cash Flow means the Gross Rental Income less Operating Costs.

14 2.1.60 Net Financing Proceeds means the proceeds generated from debt or equity
15 capital.

16 2.1.61 Net Sales Proceeds means the Cash generated from the sale(s), liquidation
17 or transfer of the Assets, including the Property, less payment of selling expenses, closing
18 costs, taxes, and any associated Post-Confirmation Expenses pursuant to the Financial
19 Projections and Administrative Claims incurred in furtherance of such sales or liquidation
20 of such Assets.

21 2.1.62 Notice Parties means the Debtor, Debtor's counsel (Winthrop Couchot
22 Golubow Hollander, LLP), the Committee, Committee counsel (Sheppard, Mullin, Richter
23 & Hampton, LLP), and the Plan Agent.

24 2.1.63 Operating Costs means those costs and expenses reasonably necessary to
25 operate, maintain, and manage the Property including a reserve for the payment of real
26 property taxes for the current tax period.

27 2.1.64 Option Agreement(s) means the Repurchase Option Agreements entered
28 into between the Debtor and Steiner and S&S on July 12, 2016, September 29, 2016, and

1 October 27, 2016, respectively, to repurchase from Steiner and S&S 758.028, 507.061 and
2 1,164.571 acres of the Property, respectively.

3 2.1.65 Order for Relief means the order determining that the Debtor was subject
4 to control of the Bankruptcy Court, which was effective June 1, 2017.

5 2.1.66 Orderly Liquidation means an orderly liquidation of all of the Debtor's
6 assets to be conducted in the event of the Debtor's inability to timely raise the Post-
7 Closing Equity, which process is described herein.

8 2.1.67 Partnership Agreement means that certain Agreement of Limited
9 Partnership of XS Ranch Fund VI, L.P., a Delaware limited partnership.

10 2.1.68 Person means an individual, partnership, corporation, limited liability
11 company, business trust, joint stock company, trust, unincorporated association, joint
12 venture, governmental authority, governmental unit, committee or other entity of whatever
13 nature.

14 2.1.69 Petition Date means the date that the Petitioning Creditors filed an
15 involuntary petition for relief under Chapter 7 of the Bankruptcy Code against the Debtor,
16 which was December 23, 2016.

17 2.1.70 Petitioning Creditors means Peter Mainstain, Dr. Hasso Plattner and
18 Granite Land Company, Inc., and subsequently joined by Jackie Yellin, Trustee of the
19 Gary S. Kading Irrevocable Trust.

20 2.1.71 Phase I Property means that certain 1,938.421 acres of real property from
21 the First Purchased Property collateral.

22 2.1.72 Plan means the Debtor's Second Amended Chapter 11 Plan of
23 Reorganization, including, without limitation, all exhibits, supplements, appendices, and
24 schedules hereto, either in its present form or as it may be altered, amended, or modified
25 from time to time.

26 2.1.73 Plan Agent means the Person that is responsible to administer the Plan and
27 to make Distributions under the Plan, which is expected to be Michael VanderLey of Force
28 10, or such other Person as may be selected by the Debtor.

1 2.1.74 Plan Proponent means the Debtor, which is the party-in-interest that is
2 proposing the Plan.

3 2.1.75 Post-Closing Equity means \$10 million of equity capital that must be
4 raised by the Debtor post-confirmation pursuant to the terms of Exit Financing to be
5 provided by Crestline.

6 2.1.76 Post-Confirmation Expense(s) means the fees and expenses incurred by
7 the Debtor and its professionals following the Confirmation Date (including the fees and
8 costs of Professionals) for the purpose of (i) prosecuting and liquidating the Avoidance
9 Actions; (ii) objecting to and resolving Disputed Claims and Disputed Liens; (iii) selling or
10 otherwise liquidating the Assets; (iv) effectuating Distributions under the Plan; and
11 (v) otherwise consummating the Plan and closing the Debtor's Chapter 11 Case.

12 2.1.77 Priority Claim(s) means any Claim, other than an Administrative Claim or
13 a Tax Claim, to the extent entitled to priority under Section 507(a) of the Bankruptcy
14 Code.

15 2.1.78 Pro Rata means the proportionate share of an Allowed Interest held by a
16 member of Class 7 relative to the total Allowed Interests held by members of Class 7. The
17 Pro Rata formula is calculated as follows:

18 **Pro Rata For Class 7:**

19
$$\frac{\text{Allowed Interest of a member of Class 7}}{\text{Total Allowed Interests of all members of Class 7}}$$

20
21 2.1.79 Professional means a Person (a) employed by the Debtor pursuant to a
22 Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be
23 compensated for services rendered prior to the Effective Date, pursuant to Sections 327,
24 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and
25 reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b) of
26 the Bankruptcy Code.

1 2.1.80 Professional Fees means all Allowed Claims for compensation and for
2 reimbursement of expenses under Sections 328, 330 and/or 503(b) of the Bankruptcy
3 Code.

4 2.1.81 Property means the First Purchased Property, Second Purchased and
5 Additional Purchased Property, which collectively constitutes approximately 8,740 acres
6 of real property located in Bastrop, Texas.

7 2.1.82 Reorganized Debtor means the Debtor, as reorganized under the terms of
8 this Plan on and after the Effective Date, and any successors thereto by merger,
9 consolidation, acquisition, or otherwise.

10 2.1.83 Rescission Claimants means the Petitioning Creditors and other Persons
11 who, at the time, were limited partners who filed a Demand for Arbitration with JAMS,
12 entitled Dr. Hasso Plattner, et al. v. XS Ranch Fund VI, L.P., et al., JAMS Ref. No.
13 1120012347 and entered into the Rescission Claimants Settlement. For convenience, a
14 copy of the list of Rescission Claimants is attached hereto as **Exhibit 5**.

15 2.1.84 Rescission Claims means the Allowed Claims held by the Rescission
16 Claimants.

17 2.1.85 Rescission Claimants Settlement means that certain Agreement of
18 Settlement and Mutual General Release, which *inter alia* provided for a stipulation for
19 entry of arbitration award and the rescission of limited partners' purchase of the limited
20 partnership interests and restitution for their capital contributions in the collective amount
21 of \$28,575,001.

22 2.1.86 Schedules means the schedules of assets and liabilities and list of equity
23 security holders Filed by the Debtor, as required by Section 521 of the Bankruptcy Code,
24 Bankruptcy Rules 1007(a)(3) and (b)(1), and Official Bankruptcy Form No. 6, as amended
25 from time to time.

26 2.1.87 Second Purchased Property means that certain 1,922.597 acres of real
27 property located in Bastrop County, Texas, purchased by the Debtor from Steiner.
28

1 2.1.88 Secured Claim(s) means any Claim, including interest, fees, costs, and
2 charges to the extent allowable pursuant to Bankruptcy Code Section 506, which is secured
3 by a valid and unavoidable lien on the Debtor's Assets.

4 2.1.89 Secured Real Property Tax Claim(s) means the claim(s) held by the
5 County secured by liens on the Property owned by the Debtor.

6 2.1.90 S&S means S&S Investments, LLC, an affiliate of Steiner.

7 2.1.91 Steiner means Steiner & Sons, Ltd.

8 2.1.92 Steiner 1st Claim means the Allowed Claim of Steiner based on Steiner's
9 rights arising from the Steiner 1st Loan.

10 2.1.93 Steiner 1st Loan means that certain seller carryback loan made by Steiner
11 in the amount of \$10,000,000, as part of the purchase price paid by the Debtor to Steiner
12 for the First Purchased Property, as evidenced by the promissory notes and Deed of
13 Security Agreement and Financing Statement entered into on December 19, 2006.

14 2.1.94 Steiner 2nd Claim means the Allowed Claim of Steiner based on Steiner's
15 rights arising from the Steiner 2nd Loan.

16 2.1.95 Steiner 2nd Loan means that certain loan made by Steiner in the amount of
17 \$1,500,000, as evidenced by the promissory notes and Deed of Security Agreement and
18 Financing Statement entered into on September 6, 2013.

19 2.1.96 Steiner 3rd Loan means that certain loan made by Steiner in the amounts
20 of \$5,000,000, as evidenced by the promissory notes and Deed of Security Agreement and
21 Financing Statement entered into on March 20, 2015.

22 2.1.97 Steiner 4th Loan means that certain loan made by Steiner in the amounts
23 of \$1,000,000, as evidenced by the promissory notes and Deed of Security Agreement and
24 Financing Statement entered into on August 6, 2015.

25 2.1.98 Steiner 5th Loan means that certain loan made by Steiner in the amounts
26 of \$2,000,000, as evidenced by the promissory notes and Deed of Security Agreement and
27 Financing Statement entered into on December 18, 2015.

28

1 2.1.99 Steiner Loans means, collectively, the Steiner 1st Loan, Steiner 2nd Loan,
2 Steiner 3rd Loan, Steiner 4th Loan, and Steiner 5th Loan.

3 2.1.100 Steiner Loan Documents means the promissory notes dated December 19,
4 2006 and September 6, 2013, and all security agreements, loan modifications, and all other
5 loan documents related thereto.

6 2.1.101 Steiner Maturity Date means the respective maturity date provided for in
7 each of the respective Steiner Loan Documents, as set forth below:

Loan	Maturity Date
Steiner 1 st Loan	June 19, 2023
Steiner 2 nd Loan	June 19, 2023

8
9
10 2.1.102 Steiner New Maturity Date means the first Business Day following the one
11 year anniversary of the Steiner Maturity Date.

12 2.1.103 Subordination Litigation means the Estate's efforts through adversary,
13 motion, or otherwise, to subordinate, pursuant to Section 510 of the Bankruptcy Code, the
14 Claim(s) held by the Rescission Claimants.

15 2.1.104 Tax means Any tax, charge, fee, levy, impost or other assessment by any
16 federal, state, local or foreign taxing authority, including, without limitation, income,
17 excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad
18 valorem, estimated, severance, stamp, occupation and withholding tax. "Tax" shall
19 include any interest or additions attributable to, or imposed on or with respect to such
20 assessments.

21 2.1.105 Tax Claim(s) means any Claim for any Tax to the extent that it is entitled
22 to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

23 2.1.106 Transferred Property means the 2,430 acres of the Property transferred to
24 Steiner and S&S pursuant to three Purchase Agreements.

25 2.1.107 XS Water means XS Water Company, LLC, a Texas limited liability
26 company and wholly owned subsidiary of the Debtor.

27 **2.2 Rules of Construction**
28

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

19 III.

20 **PLAN CONFIRMATION DEADLINES**

21 The Bankruptcy Court has not confirmed the Plan described in this Disclosure Statement.
22 Accordingly, the terms of the Plan are not binding on anyone. However, if the Bankruptcy Court
23 confirms the Plan, then the Plan will be binding on the Debtor and on all Creditors and Interest
24 Holders in this Case.

25 **3.1 Time and Place of the Confirmation Hearing**

26 The hearing where the Bankruptcy Court will determine whether or not to confirm the
27 Plan will take place at 1300 Clay Street, 2nd Floor, Oakland, California on March 22, 2018, at
28 10:00 a.m. in Courtroom 201.

1 **3.2 Deadline for Voting for or Against the Plan**

2 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot
3 and return the ballot to:

4 Winthrop Couchot Golubow Hollander, LLP
5 Attn: PJ Marksbury
6 660 Newport Center Drive, Suite 400
7 Newport Beach, CA 92660
8 Email: pj@wcghlaw.com
9 Facsimile: (949) 720-4111

10 Your ballot must be **received by** March 9, 2018, or it will not be counted.

11 **3.3 Deadline for Objecting to the Confirmation of the Plan**

12 Objections to the confirmation of the Plan must be filed with the Bankruptcy Court, and
13 served upon the following parties so that they are received by March 9, 2018, at 4:00 p.m,

14 **Counsel to the Debtor:** Garrick A. Hollander, Esq.
15 Winthrop Couchot Golubow Hollander, LLP
16 660 Newport Center Drive, Suite 400
17 Newport Beach, CA 92660
18 Email: ghollander@wcghlaw.com;
19 Facsimile: (949) 720-4151

20 **3.4 Identity of Person to Contact for More Information Regarding the Plan**

21 Any interested party desiring further information about the Plan should contact the
22 Debtor's counsel, Garrick A. Hollander of Winthrop Couchot Golubow Hollander, LLP, via mail
23 at 660 Newport Center Drive, Suite 400, Newport Beach, CA 92660, via telephone at (949) 720-
24 4100, via facsimile at (949) 720-4151 or email at ghollander@wcghlaw.com.

25 **3.5 Disclaimer**

26 The information contained in this Disclosure Statement is provided by the Debtor. The
27 Debtor represents that everything stated in this Disclosure Statement is true to the best of the
28 Debtor's knowledge. No statements or information concerning the Debtor or its Assets are
authorized, other than those set forth herein. The Bankruptcy Court has not yet determined
whether or not the Plan is confirmable and makes no recommendation as to whether or not you
should support or oppose the Plan.

1 The discussion in this Disclosure Statement regarding the Debtor may contain “forward
2 looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995.
3 Such statements consist of any statement other than a recitation of historical fact and can be
4 identified by the use of forward looking terminology such as “may,” “expect,” “anticipate,”
5 “estimate,” or “continue,” or the negative thereof or other variations thereon or comparable
6 terminology. The reader is cautioned that all forward looking statements are necessarily
7 speculative and there are certain risks and uncertainties that could cause actual events or results to
8 differ materially from those referred to in such forward looking statements. The liquidation
9 analyses, distribution projections, projections of financial results and other information are
10 estimates only, and the timing, amount and value of actual distributions to Creditors may be
11 affected by many factors that cannot be predicted. Therefore, any analyses, estimates, or
12 projections may or may not turn out to be accurate.

13 The Debtor and its counsel are presently unaware of any prospective Avoidance Actions
14 other than a potential action to avoid the Liens asserted by the Rescission Claimants and a
15 potential action to avoid the transfer of certain payments to Steiner. The Debtor or other parties-
16 in-interest may seek to investigate, file and prosecute Avoidance Actions after the Confirmation
17 Date or Effective Date of the Plan whether or not the Avoidance Actions are identified in this
18 Disclosure Statement.

19 IV.

20 **FACTUAL BACKGROUND OF THE DEBTOR**

21 **4.1 Description of the Debtor and Nature of Debtor’s Business**

22 In 2006, the Debtor purchased the First Purchased Property from Steiner. The Debtor paid
23 \$4,200 an acre, or \$28.7 million for the First Purchased Property. On or about June 1, 2007, the
24 Debtor purchased the Second Purchased Property from Bastrop Beck Investments, Ltd. The
25 Debtor paid \$4,200 an acre, or \$8.1 million cash for the Second Purchased Property. In August
26 2011, the Debtor sold approximately 315 acres of the First Purchased Property, resulting in the
27 First Purchased Property making up a total of 6,521 acres of real property. From 2008 through
28 2012, the Debtor consummated several transactions with various buyers and sellers for the

1 purchase and sale of additional parcels of land in order to implement its planning and entitlement
2 objectives for the project. The net effect of these transactions was to increase the Debtor's real
3 property ownership by approximately 295 additional acres, to a total of 8,740 acres of real
4 property.

5 As referenced in the Partnership Agreement and the offering materials provided to
6 prospective limited partners in connection therewith, the Debtor's goal from the outset of its
7 formation was to entitle and "horizontally develop" (i.e., develop an infrastructure such as roads, a
8 bridge, water, sewer, gas and electric utilities, and other off-site and on-site improvements) the
9 First Purchased Property, Second Purchased Property and any additional property purchased so as
10 to enable the Debtor to sell real property lots at the greatest possible price to developers for their
11 development of a large residential community that would also contain commercial offerings. To
12 that end, the Debtor spent significant money and time surveying and quantifying the land,
13 negotiating for and obtaining entitlements, setting up public improvement district and municipal
14 utility district financing mechanisms, negotiating land sale contracts with homebuilders, and
15 otherwise completing the pre-development work necessary to start horizontal improvements and
16 sell lots to builders.

17 The Debtor also owns a 100% interest in XS Water, which owns the water royalty rights
18 with respect to the Property. The Debtor does not generate any income directly from these rights.
19 The Debtor's subsidiary, XS Water, and the City entered into the Groundwater Agreement
20 whereby the City purchased among other things, 3,000 acre feet of water rights. Pursuant to the
21 Groundwater Agreement: (i) the City is entitled to purchase an additional 3,000 acre feet of water
22 for the purchase price of \$1,000,000 over five years with an annual payment of \$200,000 per year
23 commencing January 1, 2015; and (ii) XS Water is entitled to \$200,000 per year in revenue for 5
24 years, upon satisfaction of certain terms set forth in the Groundwater Agreement. On November
25 1, 2017, the City notified XS Water of its election to purchase the additional water rights.

26 **4.2 The Transferred Property**

27 In order to avoid a foreclosure of the Debtor's Property based on the Debtor's inability to
28 pay \$1.75 million of interest due to Steiner, its senior secured creditor, the Debtor negotiated a

1 transaction whereby it transferred 2,430 of its 8,740 acres of real property to Steiner and its
2 Affiliate S&S, with rights to repurchase the Transferred Property pursuant to three repurchase
3 option agreements.

4.2.1 Purchase Agreements

4
5
6 In July, September, and October 2016, the Debtor transferred the Transferred
7 Property to Steiner and S&S pursuant to three (3) purchase agreements in exchange for
8 Steiner making a cash payment of \$500,000 and accepting the Transferred Property in
9 payment and satisfaction of the Debtor's interest obligation. The general terms of the
10 purchase agreements are summarized as follows:

Date of Purchase Agreement	Party to Agreement	Property Conveyed	Consideration
7/8/16	Steiner	758.028 acres of the Property	\$757,500 of interest satisfied
9/29/16	Steiner	507.061 acres of the Property	\$498,750 of interest satisfied
10/27/16	S&S	1,164.571 acres of the Property	\$500,000 cash plus \$498,750 of interest satisfied

4.2.2 Option Agreements

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12
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17
18 The transfer of the Transferred Property was subject to three Option Agreements in
19 favor of the Debtor, with a deadline to exercise each option by July 12, 2017 and
20 repurchase the Transferred Property by August 12, 2017. Pursuant to Section 108 of the
21 Bankruptcy Code, these deadlines were automatically extended to September 12, 2017,
22 and October 12, respectively; and based on agreement by Steiner and S&S, the deadline to
23 exercise the option under the Option Agreements was further extended to September 29,
24 2017, and the deadline to close on the purchase of any of the Transferred Property was
25 further extended to October 29, 2017. The Option Agreements provided the Debtor with
26 the right, but not the obligation, to repurchase certain amounts of property for specific
27 prices by certain dates, with escalating prices, as set forth below:
28

Date of Option Agreement	Property for Purchase	Purchase Price	Price Escalation if not timely closed	Deposit
7/12/16	758.028 acres of the Property	\$1,350,000 if purchase closes by 8/12/16	\$50,000 per month	\$100,000
9/29/16	507.061 acres of the Property	\$950,000 if purchase closes by 10/29/16	\$25,000 per month	\$100,000
10/27/16	1,164.571 acres of the Property	\$1,728,750 if purchase closes by 11/29/16	\$25,000 per month	\$100,000

4.2.3 Critical Value of the Transferred Property

A material portion of the Transferred Property sat in the middle of – effectively bisecting – the Debtor’s Property. Accordingly, not repurchasing the Transferred Property would have negatively affected the marketability and value of the property owned by the Debtor. Based on an appraisal of the Phase I Property, the Debtor believed that the market value of the Transferred Property was approximately \$30,132,000 to \$36,936,000. To that end, the Debtor sought authority from the Bankruptcy Court to exercise the Option Agreement [See Docket no. 186], and on September 15, 2017, the Bankruptcy Court entered an order authorizing such exercise [See Docket no. 201].

4.3 Estimated Valuations of the Debtor’s Property

Based on an appraisal recently obtained, the current value of the Property, including the Transferred Property, is estimated to be \$62.5 million to \$89.2 million. On December 14, 2017, the Debtor obtained an appraisal of the Property from Jimmy H. Jackson, MAI, of Integra Realty Resources. This Property appraisal concludes that the Property has an “as is” prospective (as of March 15, 2018) market value of \$89.2 million, or approximately \$10,200 per acre, and a liquidation value of \$62.5 million, or approximately \$7,150 per acre. A true and correct copy of the appraisal of the Property is attached hereto as Exhibit 4 and incorporated herein by this reference.

4.4 Secured Claims Asserted Against the Estate

There are three groups of creditors who assert secured claims against the Debtor’s assets.

1 (1) Steiner: As part of the consideration for the First Purchased Property, on
2 December 19, 2006, the Debtor executed a promissory note in the amount of \$10,000,000 in favor
3 of Steiner, which was secured by the First Purchased Property. In or about August 2011, the
4 Debtor sold approximately 315 acres of the First Purchased Property, thereby reducing Steiner's
5 collateral on this loan to 6,521 acres of real property.

6 On September 6, 2013, the Debtor borrowed from Steiner \$1,500,000, and executed a
7 Promissory Note and Deed of Trust and Security Agreement, which secured the loan by the First
8 Purchased Property and Second Purchased Property.

9 On October 28, 2014, Steiner and the Debtor entered into a Partial Release of Lien and
10 Deed of Trust and Security Agreement (effectively, swapping liens against certain property),
11 pursuant to which Steiner released the Phase I Property from its First Purchased Property
12 collateral, and the Debtor granted a replacement lien in favor of Steiner against the Second
13 Purchased Property.

14 On March 20, 2015, the Debtor borrowed from Steiner an additional \$5,000,000, and
15 executed a Promissory Note and Deed of Trust and Security Agreement, which secured the loan
16 by Phase I Property. On August 6, 2015, the Debtor borrowed from Steiner an additional
17 \$1,000,000, and executed a Promissory Note and Deed of Trust and Security Agreement, which
18 secured the loan by Phase I Property. On December 18, 2015, Debtor borrowed from Steiner an
19 additional \$2,000,000, and executed a Promissory Note and Deed of Trust and Security
20 Agreement, which secured the loan by Phase I Property and the Additional Purchased Property.

21 As of the Petition Date, the Debtor owed Steiner the aggregate principal amount of \$19.5
22 million plus accrued interest, which was secured by various tracts of the Property, as follows:

Date of Promissory Note	Principal Amount	Collateral
December 19, 2006	\$10,000,000	First Purchased Property (6,506 acres of the Property)
September 6, 2013	1,500,000	First Purchased Property; Second Purchased Property (i.e., 8,444 acres of the Property)
March 20, 2015	5,000,000	Phase I Property (i.e., 1,938 acres of the Property)
August 6, 2015	1,000,000	Phase I Property (i.e., 1,938 acres of the Property)

1	December 18, 2015	2,000,000	Phase I Property; Additional Purchased Property
2			(i.e., 2,234 acres of the Property)

3 The Steiner Loans provide for non-default interest of between 9% and 12% and “post-
4 maturity” interest at 18% per annum. On September 27, 2017, with the use of DIP Financing
5 proceeds, the Debtor paid off the Steiner 3rd Loan, Steiner 4th Loan, and Steiner 5th Loan,
6 including a principal balance of \$8.0 million plus interest and fees due on account of such loans.
7 The Debtor remains current on its quarterly interest obligations to Steiner by virtue of the DIP
8 Financing proceeds.

9 (2) Rescission Claimants’ Lien. December 16, 2016, the Rescission Claimants
10 recorded an abstract of judgment against the Property. This lien might be avoided as a preference
11 or transferred back to the estate under Section 510(c). In any event, the Rescission Claims on
12 which this Lien is based have been subordinated below all Allowed Claims and Interests pursuant
13 to Section 510(b) by Bankruptcy Court order, as further discussed herein. Consistent with the
14 Bankruptcy Court’s ruling on subordination, the value of the Rescission Claimants’ interests in
15 any of the Debtor’s Assets is \$0 for purposes of Section 506(a)(1) of the Bankruptcy Code, and
16 thus, such lien is void by operation of law pursuant to Section 506(d) of the Bankruptcy Code.

17 (3) Mechanic’s Lien. On January 11, 2017, Longaro & Clarke, L.P. (“Longaro”),
18 recorded an Affidavit Claiming Mechanic’s and Materialman’s Lien in Bastrop, Texas, asserting
19 an unpaid claim in the amount of \$764,289.30. Pursuant to the DIP Financing Order, Longaro
20 was granted a replacement Lien against the Transferred Property, to the same extent, validity and
21 priority of any Liens held by Longaro effective as of the Petition Date, but junior to the Liens
22 granted to Crestline.

23 **4.5 Events Precipitating the Chapter 11 Filing**

24 From early 2014 to the Petition Date, the Petitioning Creditors and others acting in concert
25 with them, embarked on a campaign to cast aspersions on the Debtor and Jim Foster; spread
26 falsehoods about the Debtor’s “viability,” while privately acknowledging its fantastic prospects;
27 and engaged in a campaign to “starve” the Debtor of cash and to oust Jim Foster from control of
28 the Debtor. On March 7, 2014, Hasso Plattner Capital introduced several limited partners to

1 McKinley Capital Partners (“McKinley) to discuss plans about uniting for the express purpose of
2 removing Foster “as the controlling manager of XS Ranch” and to plan a “short-term strategy” for
3 taking over the Debtor. In the course of that telephonic meeting, McKinley partner Dan Aguilar
4 suggested that “If Foster doesn’t play—we starve him of cash.”

5 On February 17, 2015, the Rescission Claimants filed and commenced the Arbitration,
6 against the Debtor, Mr. Foster and others ultimately alleging a litany of claims for breach of the
7 Partnership Agreement, breach of fiduciary duty, breach of the covenant of good faith and fair
8 dealing, accounting, dissolution, conversion, embezzlement, removal of the general partner, etc.
9 The Rescission Claimants’ express goal in the arbitration was to remove Foster and take control of
10 the Debtor and the Property. Following fact and expert discovery by the parties throughout 2015
11 and early 2016, the Arbitrator (retired Honorable Richard M. Silver) conducted a three-week trial
12 in February and March 2016. After submitting post-trial briefs, the parties provided closing
13 arguments on April 27, 2016.

14 Having failed to prove their allegations of wrongdoing at trial, the Rescission Claimants
15 chose to settle the Arbitration for nothing more than rescission of investment and return of their
16 capital contributions. In or about July 2016, the parties entered into the Rescission Claimants
17 Settlement, which *inter alia* provided for a stipulation for entry of arbitration award and the
18 rescission of the Rescission Claimants’ purchase of the limited partnership interests in the Debtor
19 and restitution for their capital contributions in the collective amount of \$28,575,001. On
20 December 14, 2016, the Texas state court entered a judgment for rescission of the Rescission
21 Claimants’ investment in the Debtor, confirming the stipulated arbitration award.

22 The litigation prosecuted by the Rescission Claimants caused the Debtor to spend years in
23 litigation, resulting in the incurrence of well in excess of a million dollars in professional and
24 litigation fees, along with the substantial distraction of the Debtor’s time and attention away from
25 the Debtor’s goals and business plan for the Property.

26 On December 23, 2016, the Petitioning Creditors filed an involuntary petition for relief
27 under Chapter 7 of the Bankruptcy Code against the Debtor. On March 13, 2017, the Debtor filed
28 an answer to the involuntary petition. On May 31, 2017, the Debtor consented to an order for

1 relief under Chapter 11. On June 16, 2017, the Bankruptcy Court entered an Amended Order on
2 Debtor's Consent to Entry of Order for Relief and Election to Convert Chapter 7 Case to a Case
3 Under Chapter 11 of the Bankruptcy Code authorizing the Debtor's consent to entry of an order
4 for relief effective June 1, 2017, and granting the Debtor's election to convert the chapter 7 case
5 to a case under chapter 11 of the Bankruptcy Code.

6 **4.6 The Debtor's Plan Financial Projections for the Debtor's Reorganization**

7 The Debtor has prepared the Financial Projections, copies of which are attached hereto as
8 **Exhibit 1.** The Financial Projections present the entire financial template for the Debtor's
9 reorganization effort. The Financial Projections assumes that the Debtor will retain and continue
10 to operate and manage the Property. As the Financial Projections indicate, the Debtor projects
11 that the Net Cash Flow from the operations of the Property, Net Financing Proceeds and Net Sales
12 Proceeds will be sufficient to pay all Allowed Claims in full according to the treatment of such
13 Allowed Claims as described herein.

14 The Financial Projections set forth the Debtor's estimate of the anticipated cash flow of
15 the Reorganized Debtor for the term of the Plan. Projections of anticipated cash flow are based
16 on estimated lot and other land sales revenue, income generated by XS Water from the City
17 under the terms of the Groundwater Agreement, as well as the projected expenses to continue
18 with the Debtor's proposed development of the Property. The Financial Projections contain a
19 description of material assumptions underlying the Financial Projections.

20 Although the Debtor has devoted considerable effort to the development of the Financial
21 Projections and believes that the Financial Projections represent fairly the projected future cash
22 flow of the Debtor, care should be taken in analyzing the Financial Projections as no guarantee
23 exists that the Financial Projections can be met by the Debtor.

24 THE FINANCIAL PROJECTIONS SET FORTH IN THIS DISCLOSURE STATEMENT
25 REPRESENT AN ESTIMATE OF FUTURE PERFORMANCE BASED UPON CERTAIN
26 ASSUMPTIONS SET FORTH IN THE FINANCIAL PROJECTIONS. THESE FUTURE
27 EVENTS MAY OR MAY NOT OCCUR, AND THE FINANCIAL PROJECTIONS MAY NOT
28 BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL

1 RESULTS THAT WILL OCCUR. BECAUSE OF THE UNCERTAINTIES INHERENT IN
2 PREDICTIONS OF FUTURE EVENTS AND EVENTS OUTSIDE OF THE DEBTOR'S
3 CONTROL, THE DEBTOR'S ACTUAL CASH FLOW MAY BE DIFFERENT FROM THAT
4 PREDICTED, AND SUCH DIFFERENCE MAY BE MATERIAL AND ADVERSE TO THE
5 INTERESTS OF CREDITORS.

6 V.

7 **SIGNIFICANT EVENTS IN THE DEBTOR'S CHAPTER 11 CASE**

8 **5.1 Debtor's Operation as Debtor-in-Possession**

9 Since the Petition Date, the Debtor has continued to operate as a "debtor-in-possession"
10 subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code.
11 The Debtor is authorized to operate its business in the ordinary course during the Chapter 11
12 proceedings.

13 **5.2 Debtor In Possession Financing**

14 After a diligent effort to obtain DIP Financing to assist the Debtor in its efforts to
15 repurchase the Transferred Property, which property is critical to the value of the Debtor's
16 Property and ability to reorganize, the Debtor successfully negotiated with Crestline an initial DIP
17 Financing proposal in the amount of \$33 million. Based on the difficulty in timely obtaining
18 Bankruptcy Court approval of the initial DIP Financing pursuant to all of the terms contained in
19 the initial DIP Financing proposal, the Debtor thereafter negotiated with Crestline, the Debtor's
20 secured creditors, and Committee, the terms of a revised proposal for DIP Financing in the
21 amount of \$18.6 million. On September 14, the Bankruptcy Court entered an order approving
22 \$18.6 million of DIP Financing, which provided the Debtor with the ability to, among other
23 things, repurchase the Transferred Property, pay in full the Steiner 3rd Loan, Steiner 4th Loan, and
24 Steiner 5th Loan, and provide the Debtor with monies to pay operating expenses and a portion of
25 professional fees incurred in this Case.

26 **5.3 Debtor's Motion to Exercise Option Agreements**

27 In order to repurchase the Transferred Property, which, as described above, is critical to
28 the marketability and value of the Debtor's Property, and thus, reorganization of the Debtor, the

1 Debtor sought and on September 13, 2017, obtained Bankruptcy Court approval to exercise and
2 implement the Option Agreements. The Debtor used the DIP Financing to exercise the options
3 and repurchase the Transferred Property from Steiner.

4 **5.4 Debtor's Employment of Professionals**

5 The Bankruptcy Court entered an order on July 26, 2017 authorizing the employment of
6 Winthrop Couchot Golubow Hollander, LLP ("WCGH") as the Debtor's general insolvency
7 counsel. The Bankruptcy Court entered an order on September 18, 2017 authorizing the
8 employment of Michael VanderLey as CRO and Force 10 to assist Mr. VanderLey in his CRO
9 duties. The Bankruptcy Court entered an order on August 24, 2017 authorizing the employment
10 of Sheppard, Mullin Richter & Hampton as general insolvency counsel for the Committee. The
11 Bankruptcy Court entered an order on September 11, 2017 authorizing the employment of Squar
12 Milner as the Debtor's tax accountants. The Bankruptcy Court entered an order on November 16,
13 2017 authorizing the employment of Province as the Committee's financial advisor. The
14 Bankruptcy Court entered an order on November 17, 2017 authorizing the employment of Rimon
15 P.C.

16 **5.5 Setting of the Bar Date**

17 Pursuant to the Notice of Chapter 11 Bankruptcy Case, entered by the Bankruptcy Court
18 on June 16, 2017, the Bankruptcy Court set October 23, 2017 as the Bar Date for Creditors to file
19 proofs of Claim against the Debtor's Estate.¹

20 **5.6 Subordination of Rescission Claimants' Claims**

21 Section 510(b) provides for subordination of any "claim arising from rescission of a
22 purchase or sale of a security of the debtor..." It is clear from the face of the Rescission
23 Claimants Settlement and the judgment that Rescission Claimants' Claims arise from rescission of
24 a purchase of securities of the Debtor, as those terms are defined under the Bankruptcy Code. In
25 fact, at a hearing on February 17, 2017, Judge Montali made a comment that Defendants' claims
26

27 _____
28 ¹ Claims of "governmental units" are excepted from the Bar Date but must be filed before November 28, 2017, 180
days after the date relief was entered.

1 were subject to mandatory subordination pursuant to 11 U.S.C. § 510(b), leaving open only the
2 question as to whom they are to be subordinated.

3 The Debtor believes that the literal language of the statute mandates that the Claims of the
4 Rescission Claimants be subordinated below equity. The Rescission Claimants assert that they
5 should be paid ahead of equity (i.e., that they have greater priority than equity). On or about
6 October 10, 2017, the Debtor commenced Subordination Litigation against the Rescission
7 Claimants to subordinate their Claim to below equity by filing a Complaint for Mandatory
8 Subordination Pursuant to 211 U.S.C. §510(b).

9 On October 19, 2017, the Debtor filed Plaintiff's Motion for Summary Judgment and
10 related pleadings, whereby the Debtor sought summary judgment on its complaint. On January
11 11, 2018, the Rescission Claimants filed Defendants' Counter-Motion for Summary Judgment,
12 Defendants' Opposition to Plaintiff XS Ranch Fund VI, L.P.'s Motion for Summary Judgment and
13 Memorandum of Points and Authorities in Support of Defendants' Counter-Motion for Summary
14 Judgment and related pleadings in support of their position. On January 18, 2018, the Debtor filed
15 its reply to the Rescission Claimants opposition and motion for summary judgment. On January
16 25, 2018, the Bankruptcy Court held a hearing on and considered all of the pleadings filed by the
17 Debtor and Rescission Claimants, after which time it made findings that the Rescission Claimants'
18 Claims arose from rescission of a purchase of a security of the Debtor, and ordered that, pursuant
19 to Section 510(b) of the Bankruptcy Code, the Rescission Claims shall be subordinated below
20 Claims and Interests in this Case.

21 VI.

22 **TREATMENT OF UNCLASSIFIED CLAIMS**

23 **6.1 Treatment of Allowed Administrative Claims**

24 As required by the Bankruptcy Code, the Plan places Claims and Interests into various
25 Classes according to their right to priority. However, certain types of Claims are not classified in
26 any Classes under the Plan. These Claims are deemed "unclassified" under the provisions of the
27 Code. They are not considered impaired and they do not vote on the Plan, because they are
28

1 automatically entitled to specific treatment provided for them in the Code. The treatment of these
2 unclassified Claims is as provided below.

3 The Bankruptcy Code requires that all Allowed Administrative Claims be paid on the
4 Effective Date of the Plan, unless a particular Holder agrees to a different treatment. The
5 treatment of Allowed Administrative Claims is as described below. However, such
6 Administrative Claims are continuing to be incurred. The Debtor shall be liable for the payment
7 of the Allowed Administrative Claims, and the Allowed Administrative Claims shall be paid from
8 any of the Distribution Account(s) in which funds exist.

9 (a) **Payment of Allowed Administrative Claims**

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

21 (b) **Administrative Claims Bar Date**

22 (i) **General Administrative Claims Bar Date**

23 All applications for final compensation of Professionals for services
24 rendered and for reimbursement of expenses incurred on or before the Effective
25 Date and all other requests for payment of Administrative Claims incurred before
26 the Effective Date under Sections 507(a)(2) or 507(b) of the Bankruptcy Code
27 (except only for (i) post-petition, ordinary course trade obligations incurred in the
28 ordinary course of the Debtor's post-petition business, for which no bar date shall

1 apply, and (ii) post-petition tax obligations, for which the bar date described in the
2 following Section shall apply) shall be Filed with the Bankruptcy Court and served
3 upon the Debtor no later than the General Administrative Claims Bar Date, unless
4 such date is extended by the Bankruptcy Court after notice to the Debtor. Any such
5 request for payment of an Administrative Claim that is subject to the General
6 Administrative Claims Bar Date and that is not Filed and served on or before the
7 General Administrative Claims Bar Date shall be forever barred; any party that
8 seeks payment of Administrative Claims that (i) is required to file a request for
9 payment of such Administrative Claims and (ii) does not file such a request by the
10 deadline established herein shall be forever barred from asserting such
11 Administrative Claims against the Debtor, its estate, or any of its property.

12 (ii) **Administrative Tax Claims Bar Date**

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

2 The following is a summary of the involuntary gap claims asserted against
3 the Debtor's estate for services rendered and costs incurred from the Petition Date
4 through the Order for Relief:

5

Involuntary Gap Administrative Claims		
Claimant	Nature	Amount
Force 10	CRO/Financial	98,518
WCGH	Debtor's General Insolvency Counsel	86,320
Total		\$184,838

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7
8
9 The following is a summary of estimated Administrative Claims incurred and paid after the
10 Order for Relief, as well as an estimate of amounts that will be owed as of the Effective Date:

11

Administrative (Non-Cap) Claims				
Claimant	Nature	Accrued²	Paid³	Estimated Balance⁴
Force 10	CRO/Financial	\$487,000	\$211,000	\$525,000
WCGH	Debtor's general counsel	690,000	404,000	650,000
Rimon	Debtor's special counsel	69,000	34,000	150,000
Sheppard	Committee's counsel	172,000		270,000
Province	Committee's financial advisor	45,000		75,000
Squar Milner	Debtor's tax accountants	44,000		0
Total		\$1,507,000	\$649,000	\$1,645,000

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22 **6.2 Treatment of Tax Claims**

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25 ² This is an estimate of Administrative Claims, but excluding involuntary gap claims, accrued through November 30, 2017.

26 ³ This is an estimate of Administrative Claims paid through November 30, 2017.

27 ⁴ Based on the estimated fees and payments anticipated to have accrued and been made, respectively, from November 30, 2017 through March 31, 2017 to each of the professionals. These balances may be higher or lower depending upon actual amounts. Note, this does not include bonus(es) that are anticipated to be sought by Force 10 at the end of the Case based on the financing obtained and success realized in this Case, as contemplated by Force 10's retainer agreement.

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

6 At the election of the Debtor, the Holder of each Allowed Tax Claim shall be entitled to
7 receive, on account of such Claim, (i) equal cash payments on the last Business Day of each three-
8 month period following the Effective Date, during a period not to exceed five (5) years after the
9 Petition Date, totaling the principal amount of such Claim plus simple interest on any unpaid
10 balance from the Effective Date, calculated at the interest rate available on ninety (90) day United
11 States Treasuries on the Effective Date, (ii) such other treatment agreed to by the Holder of the
12 Allowed Priority Tax Claim and the Debtor, provided such treatment is on more favorable terms
13 to the Debtor than the treatment set forth in clause (i) hereof, or (iii) payment of the full Allowed
14 Priority Tax Claim in Cash on the Effective Date. The Allowed Priority Tax Claims are estimated
15 to aggregate approximately \$54,533, consisting of \$43,924 owing to the County, \$9,524 owed to
16 the City, and \$800 owed to the Franchise Tax Board, and \$286 owed to the Internal Revenue
17 Service.

18 VII.

19 CLASSIFICATION OF CLAIMS AND INTERESTS

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

28 The Debtor has not yet completed its investigation on whether or not the Claims and

1 Interests are Allowed and their listing herein should not be construed as providing for Allowance
2 under the Plan.

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CLASSIFICATION OF CLAIMS AND INTERESTS				
Class	Claimant	Collateral	Estimated Claim/Interest	Impaired Status
1	Governmental Units	n/a	\$0	Unimpaired
2.1	Steiner	First Purchased Property	10,656,000	Impaired
2.2	Steiner	First Purchased Property	1,600,000	Impaired
3	Mechanics Lien Creditors	Property	764,289	Impaired
4	Priority Unsecured Creditors	n/a	0	Unimpaired
5	General Unsecured Creditors	n/a	5,657,000 ⁵	Impaired
6	Subordinated Rescission Claimants	Property	28,575,001	Impaired
7	Equity Interest Holders	n/a	25,700,000	Unimpaired

VIII.
THE PLAN'S TREATMENT OF
CLASSIFIED CLAIMS AND INTERESTS

The following is the Plan's treatment of Allowed Claims and Interests.

8.1 Class 1: Allowed Secured Claims of Governmental Units. Class 1 consists of any Allowed Secured Claim of the County, Class 1 is unimpaired by this Plan. The following is a summary description of the treatment of the members of Class 1⁶:

8.1.1 Allowance of Secured Claim. The members of Class 1 shall be allowed a Secured Claim in an amount equal to such Creditor's Allowed Claim, plus all applicable costs, fees, charges, and interest, if any.

⁵ Jim Foster and Coast Range Investments, LLC have agreed to defer payment of their claims aggregating approximately \$3.1 million to a later date upon which to be agreed.

⁶ For more details on the treatment, see the Plan accompanied herewith.

1 8.1.2 Payment of Allowed Secured Claim. The members of Class 1 shall be paid
2 in full within thirty days of the Effective Date.

3 **8.2 Classes 2.1–2.2: Allowed Secured Claims of Steiner.** Classes 2.1–2.2 consist of
4 any Allowed Secured Claim of Steiner. Classes 2.1–2.2 are impaired by this Plan. The following
5 is a summary description of treatment of Steiner’s Allowed Secured Claims⁷.

6 8.2.1 Lien. Steiner shall retain its underlying lien on the Property, to the same
7 extent, priority and validity as existed as of the Petition Date, except as modified by any
8 Court order entered in this Case;

9 8.2.2 Steiner Loan Documents. Except as modified in this Plan or any Court
10 order entered in this Case, the terms of the Steiner Loan Documents shall remain in full
11 force and effect.

12 8.2.3 Default. The Debtor shall have Grace Period within which to cure any
13 asserted default.

14 8.2.4 Allowance and Payment. In addition to the foregoing, Steiner’s Claims
15 shall be treated as fully secured Allowed Claims in the Allowed Amounts, and shall be
16 paid as set forth below:

Class	Claim	Estimated Allowed Claim ⁸	Payments
2.1	Steiner 1 st Claim	10,656,000	The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 1 st Claim as of the Effective Date, which are estimated to be \$656,000. The Debtor will make quarterly payments to Steiner on account of the Steiner 1 st Claim, each in the amount \$225,000, commencing on the first (1 st) Business Day of the third (3 rd) full month following the Effective Date and continuing 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 st Loan.
2.2	Steiner 2 nd Claim	1,600,000	The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 2 nd 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 nd Claim, each in the amount \$33,750, commencing on the first (1 st) Business Day of the third (3 rd)

27 ⁷ For more details on the treatment, see the Plan accompanied herewith.

28 ⁸ Estimated as of the Petition Date.

			full month following the Effective Date and continuing ever 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 nd Loan.
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8.3 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 is a summary description of the treatment of the Allowed Secured Claim of the members of this Class.⁹

8.3.1 Allowance of Secured Claim. The member of Class 3 shall be allowed a Secured Claim in an amount equal to such Creditor’s Allowed, which is estimated at \$764,289, plus applicable interest and costs, if appropriate.

8.3.2 Payment of Allowed Secured Claim. The member of Class 3 shall be paid in full within thirty days of the Effective Date.

8.4 Class 4: Allowed Priority Unsecured Claims. Class 4 consists of any Allowed Priority Claim. Class 4 is impaired by this Plan. Members of Class 4 shall be paid in full within thirty days of the Effective Date, plus interest accruing after the Effective Date at the federal judgment rate as of the Petition Date¹⁰. For more details, see the Plan accompanied herewith.

8.5 Class 5: Allowed General Unsecured Claims

Class 5 consists of all Holders of Allowed Claims that have no security or priority and not subject to subordination (i.e., general unsecured claims). Class 5 is impaired by this Plan. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a different treatment, Members of Class 5 shall be paid in full within thirty days of the Effective Date, or such earlier date as the Debtor may elect, in its sole and absolute discretion, plus interest accruing after the

⁹ For more details on the treatment, see the Plan accompanied herewith.

¹⁰ Under 28 U.S.C. § 1961, the federal judgment rate is the rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System. Since the petition was filed 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>.

1 Petition Date at the federal judgment rate as of the Petition Date¹¹. For more details on the
2 treatment, see the Plan accompanied herewith.

3 **8.6 Class 6: Allowed Subordinated Rescission Claims.** Class consists of any
4 Allowed Claim of the Rescission Claimants. Class 6 is impaired and deemed to reject the Plan
5 because members of this Class will receive no Distribution in this Case.

6 Based on the Bankruptcy Court's order subordinating the Rescission Claims below equity
7 pursuant to Section 510(b) of the Bankruptcy Code, the Holders of Allowed Claims in Class 6 will
8 receive no Distributions in this Case and their Liens are void by operation of law.¹²

9 The Rescission Claimants assert that, notwithstanding the Bankruptcy Court's ruling that
10 the rescission claims shall be subordinated below equity, they are entitled to a distribution. The
11 Debtor disputes the Rescission Claimants' assertion. The Rescission Claimants may appeal this
12 issue. If the Rescission Claimants were ultimately successful on the appeal(s), the effect of such
13 ruling is uncertain and speculative.

14 **8.7 The Plan's Treatment of Holders of Allowed Interests (Class 7).** Class 7 is
15 comprised of the Interests in all Assets held by the Debtor. Class 7 is unimpaired. The members
16 of this Class shall retain their interests in the Debtor.

17 The treatment of the Holders of Allowed Class 7 Interests under this Plan will receive
18 Distributions, on a Pro Rata basis, pursuant to the terms of the Partnership Agreement, as may be
19 amended.¹³

20 IX.

21 ACCEPTANCE OR REJECTION OF THE PLAN

22 **9.1 Introduction.** PERSONS OR ENTITIES CONCERNED WITH
23 CONFIRMATION OF THE PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS
24 BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY
25 COMPLEX. The following discussion is intended solely for the purpose of alerting readers about
26 basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing

27 ¹¹ See footnote 2.

28 ¹² For more details on the treatment, see the Plan accompanied herewith.

¹³ For more details on the treatment, see the Plan accompanied herewith.

1 Claims. The Debtor cannot represent that the discussion contained below is a complete summary
2 of the law on this topic.

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

8 **9.2 Who May Object to Confirmation of the Plan.** Any party in interest may object
9 to the confirmation of the Plan.

10 **9.3 Who May Vote to Accept/Reject the Plan.** A Holder of a Claim or Interest has a
11 right to vote for or against the Plan if that Holder of the Claim or Interest has a Claim which is
12 both (1) Allowed or Allowed for voting purposes and (2) Classified in an impaired Class.

13 **9.4 What Is an Allowed Claim/Interest.** As noted above, a Holder of Claim or
14 Interest must first have an Allowed Claim or Allowed Interest to vote.

15 **9.5 What Is an Impaired Class.** A Class is impaired if the Plan alters the legal,
16 equitable, or contractual rights of the Claims or Interests in that Class, other than the right to
17 accelerate the Claim upon certain kinds of defaults. In this case, the Debtor believes that
18 Classes 2.1, 2.2, 3, 5 and 6 are impaired.

19 **9.6 Who Is Not Entitled to Vote.** The following four types of Claims are not entitled
20 to vote: (1) Claims that have been disallowed; (2) Claims in unimpaired Classes; (3) Claims
21 entitled to priority pursuant to Bankruptcy Code Sections 507(a)(2), (a)(3) and (a)(8) and Claims
22 in Classes that do not receive or retain any value under the Plan. Claims in unimpaired Classes
23 are not entitled to vote because such Classes are deemed to have accepted the Plan. Claims
24 entitled to priority pursuant to Bankruptcy Code Section 507 (a)(2), (a)(3) and (a)(8) are not
25 entitled to vote because such Claims are not placed in Classes and they are required to receive
26 certain treatment specified by the Bankruptcy Code. Claims in Classes that do not receive or
27 retain any property under the Plan do not vote because such Classes are deemed to have rejected
28 the Plan. Accordingly, the Debtor believes that only Classes 2.1, 2.2, 3 and 5 are entitled to vote.

1 EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL
2 HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

3 **9.7 Who Can Vote in More than One Class.** A creditor whose Claim has been
4 Allowed in part as a Secured Claim and in part as an Unsecured Claim is entitled to accept or
5 reject a Plan in both capacities by casting one ballot for the secured part of the Claim and another
6 ballot for the Unsecured Claim. Also, a Creditor may otherwise hold Claims in more than one
7 Class and may vote the Claims held in each Class.

8 **9.8 Votes Necessary for a Class to Accept the Plan.** A Class of Claims is deemed to
9 have accepted the Plan when more than one-half (1/2) in number and at least two-thirds (2/3rds) in
10 dollar amount of the Claims vote to accept the Plan. A Class of interests is deemed to have
11 accepted the Plan when Holders of at least two-thirds (2/3rds) in amount of the interest holders of
12 such Class vote to accept the Plan. If no Holders of Claims or Equity Interests eligible to vote in a
13 particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the Holders
14 of such Claims or Equity Interests in such Class.

15 **9.9 Treatment of Nonaccepting Class(es).** As noted above, even if there are impaired
16 Classes that do not accept the proposed Plan, the Bankruptcy Court may nonetheless confirm the
17 Plan if the nonaccepting Classes are treated in the manner required by the Code and at least one
18 impaired Class of Claims accepts the Plan. The process by which a plan may be confirmed and
19 become binding on non-accepting Classes is commonly referred to as “cramdown.” The
20 Bankruptcy Code allows the Plan to be “crammed down” on nonaccepting Classes of Claims or
21 interests if it meets all statutory requirements except the voting requirements of Section 1129(a)(8)
22 of the Bankruptcy Code and if the Plan does not “discriminate unfairly” and is “fair and equitable”
23 with respect to each impaired Class that has not voted to accept the Plan, as set forth in Section
24 1129(b) of the Bankruptcy Code and applicable case law.

25 **9.10 Request for Confirmation Despite Nonacceptance by Impaired Class(es).** The
26 Plan Proponent will ask the Bankruptcy Court to confirm the Plan by cramdown on any impaired
27 Class if such Class does not vote to accept the Plan.

28

X.

MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN

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

10.2 Source of Funds. The payments due under the Plan to holders of Allowed Claims and Allowed Interests will be paid from the Net Cash Flow, Net Sales Proceeds, and Net Financing Proceeds, and the prosecution and liquidation of the Debtor's Avoidance Actions, if any. The Debtor has obtained from Crestline an Exit Financing commitment, 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 upon the Debtor's raise of Post-Closing Equity. A true and correct copy of the Commitment Letter is attached as **Exhibit 3** to the Plan. The Debtor has been and continues to be in negotiations with investors who have been conducting due diligence on 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) February 6, 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. Default Rate: 4% in addition to the Current Pay Rate plus the Deferred Rate 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 st Claim and Steiner 2 nd Claim.
Conditions	(i) Bankruptcy Court shall have entered the Confirmation Order; (ii) the principal balance owing on the Steiner 1 st Claim and Steiner 2 nd 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 from the Effective Date 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.

10.3 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 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 other persons or entities to perform the obligations created under the Plan. Any Professional employed by the Plan Agent or the Debtor after the Effective Date, shall be entitled to obtain from the Debtor payment of the Professional's fees and costs, in the ordinary course, without any need to give notice to Creditors or other parties-in-interest or to obtain any approval of the Bankruptcy

1 Court. Notwithstanding the foregoing, if the Debtor or the Plan Agent should fail to pay any post-
2 Effective Date fees and costs of a Professional entitled to such payment, within thirty (30) days
3 after the Professional's rendering of its billing statement, the Professional shall be entitled to seek,
4 by application filed in accordance with the Bankruptcy Rules, an order of the Bankruptcy Court
5 requiring the Debtor or the Plan Agent to forthwith pay to the Professional its fees and costs.

6 **10.4 Implementation of Plan.** The Debtor and Plan Agent shall be authorized to, and
7 shall, take all acts appropriate to implement the provisions of the Plan, including, without
8 limitation, initiating and thereafter completing infrastructure and other horizontal improvements to
9 the Property and selling lots to builders, liquidating or otherwise disposing of the Assets, making
10 Distributions to holders of Allowed Claims, objecting to Disputed Claims, and prosecuting or
11 settling any Avoidance Action or Causes of Action, entering into financing and other transactions,
12 and executing such documents as may be necessary to implement the terms of the Plan, including,
13 without limitation, causing the Debtor to amend its agreement of limited partnership to authorize
14 acts consistent with and necessary to implement the Plan.

15 **10.5 Representative of the Estate.** Except as provided expressly to the contrary by the
16 Plan, the Plan Agent shall be, and hereby is, appointed as the representative of the Estate pursuant
17 to sections 1123(a)(5), 1123(a)(7) and 1123(b)(3)(B) of the Bankruptcy Code and, as such, shall
18 be vested with the authority and power, subject to the provisions of the Plan, to take, among
19 others, the following acts on behalf of the Debtor: (a) manage, administer and dispose of the
20 Assets for the benefit of holders of Allowed Claims; (b) file, litigate, prosecute, settle, adjust,
21 retain, enforce, collect and abandon any Causes of Action in the name of, and for the benefit of,
22 the Estate; (c) make all Distributions provided for by the Plan; and (d) such other acts as may be
23 appropriate to administer, wind-down, and close the Case. Except as provided expressly to the
24 contrary by the Plan, as the representative of the Estate, the Plan Agent shall succeed to all of the
25 rights and powers of the Debtor and the Estate with respect to all Causes of Action, and shall be
26 substituted for, and shall replace, the Debtor and the Estate as the party-in-interest in all such
27 litigation pending as of the Effective Date.
28

1 **10.6 Avoidance Actions.** Unless an Avoidance Action is expressly waived,
2 relinquished, released, compromised or settled in or as part of the Plan or in a Final Order, all
3 rights with respect to such Avoidance Actions are reserved and the Debtor or the Plan Agent may
4 pursue such Avoidance Actions. Notwithstanding the foregoing, the Debtor or the Plan Agent
5 shall not settle or abandon an Avoidance Action valued at greater than \$50,000 except upon ten
6 (10) days' prior written notice and opportunity to object. Any disputes concerning the settlement
7 or abandonment of an Avoidance Action shall be submitted to the Bankruptcy Court for resolution
8 on no less than ten (10) days' notice to the objecting party. The Debtor and its counsel are
9 presently unaware of any prospective Avoidance Actions other than a potential preferential
10 transfer action to avoid the Liens asserted by the Rescission Claimants and a potential fraudulent
11 transfer action to avoid the transfer of certain payments to Steiner. The Debtor or other parties-in-
12 interest may seek to investigate, file and prosecute Avoidance Actions after the Confirmation Date
13 or Effective Date of the Plan whether or not the Avoidance Actions are identified in this
14 Disclosure Statement.

15 **10.7 Collection of Avoidance Actions Recoveries.** All Avoidance Actions Recoveries
16 realized or obtained by the Debtor or the Plan Agent shall be promptly deposited into the
17 applicable Distribution Account(s). Except as otherwise provided in the Plan and the
18 Confirmation Order, the Avoidance Actions Recoveries shall be free and clear of all Claims and
19 Liens and shall only be expended in accordance with the provisions of the Plan.

20 **XI.**

21 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

22 **11.1 Executory Contracts Potentially Being Assumed.** The Debtor seeks by the Plan
23 to assume all those contracts identified on the Schedule of Assumed Contracts attached as
24 **Exhibit 1** to the Plan. The Debtor may add or remove any executory contracts or unexpired leases
25 to this exhibit up to and including the Confirmation Hearing Date.

26 **11.2 Executory Contracts Being Rejected.** The Debtor rejects by the Plan those
27 executory contracts and unexpired leases attached as **Exhibit 2** to the Plan. The Debtor reserves
28

1 the right to amend **Exhibit 2** to the Plan up to and including the Confirmation Hearing Date to add
2 to or remove from this exhibit unexpired leases and executory contracts.

3 **11.3 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 Project, and shall not be entitled to any distribution
6 under the Plan, unless a Proof of Claim for such Claim is filed and served on the Debtor within
7 thirty (30) days after the receipt of a notice of the rejection of any contract or lease.

8 **11.4 Changes in Rates Subject to Regulatory Commission Approval.** The Debtor is
9 not subject to governmental regulatory commission approval of any rates.

10 XII.

11 **BEST INTEREST OF CREDITORS TEST AND PLAN FEASIBILITY**

12 **12.1 Best Interest of Creditors Test.** The “Best Interest of Creditors” test must be
13 satisfied even if the Plan is accepted by each impaired Class of Claims and if any Holder of an
14 Allowed Claim objects to the Plan on such basis. The “Best Interests Test” requires the
15 Bankruptcy Court to find either that either (i) all Holders of Claims in an impaired Class of Claims
16 have accepted the Plan or (ii) the Plan provides each Holder of Allowed Claims of an impaired
17 Class who has not accepted the Plan with a recovery of property of a value, as of the effective date
18 of the Plan, that is not less than the amount that such Holder would receive if the Debtor were
19 liquidated under Chapter 7 of the Bankruptcy Code. As set forth below, the Debtor’s Creditors
20 will clearly receive a distribution under the Plan equal to or greater than they would receive in a
21 hypothetical Chapter 7.

22 Attached hereto as **Exhibit 2** is a liquidation analysis. The Debtor asserts that the
23 estimated liquidation value of the Property is \$62.5 million. See, Section 1.3, above. The
24 liquidation value of the Debtor’s Assets under a hypothetical Chapter 7 proceeding would be
25 approximately \$25.7 million, which provides for the payment in full of all Allowed Claims
26 entitled to be paid in this Case. As set forth in the Financial Projections, the Debtor believes that
27 the Exit Financing, Net Cash Flow from the operations of the Property, the Net Sales Proceeds,
28 Post-Closing Equity and any additional financing raised will be sufficient to pay in full the

1 Allowed Claims of all Creditors entitled to a Distribution in this Case. Accordingly, the Debtor
2 satisfies the best interest of creditors test.

3 **12.2 Feasibility.** In addition, in order to confirm the Plan, the Bankruptcy Court must
4 find that confirmation of the Plan is not likely to be followed by the liquidation or the need for
5 further financial reorganization of the Debtor. This requirement is imposed by Section
6 1129(a)(11) of the Bankruptcy Code and is generally referred to as the “feasibility” requirement.
7 As set forth below, this requirement is also satisfied.

8 The Debtor shall make all payments due under the Plan to holders of Allowed Claims and
9 Allowed Interests from the Net Cash Flow, Net Sales Proceeds, Net Financing Proceeds, and the
10 prosecution and liquidation of the Debtor’s Avoidance Actions, if any. The Debtor’s ability to
11 make all payments due under the Plan is based upon the Financial Projections attached hereto as
12 **Exhibit 1**, which projections are premised upon the Debtor’s existing contracts and vast
13 knowledge of development needs, in general, and the specific needs for the Property.

14 XIII.

15 **LIMITATION OF LIABILITY**

16 **13.1 No Liability for Solicitation or Participation.** As specified in Section 1125(e) of
17 the Bankruptcy Code, entities that solicit acceptances or rejections of the Plan and/or that
18 participate in the offer, issuance, sale, or purchase of securities offered or sold under the Plan, in
19 good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be
20 liable, on account of such solicitation or participation, for violation of any applicable law, rule, or
21 regulation governing the solicitation of acceptances or rejections of the Plan or the offer, issuance,
22 sale, or purchase of securities.

23 **13.2 Limitation of Liability.** To the full extent permissible under 11 U.S.C. §1125(e),
24 as of the Effective Date, neither the Committee, Plan Agent, or the Debtor, nor any of their
25 Affiliates, nor any of their respective members, officers, directors, employees and other agents,
26 advisors, attorneys and accountants shall have or incur any liability to any Holder of any Claim or
27 Interest or any other Person for any act or omission in connection with or arising out of the
28 negotiation, preparation and pursuit of confirmation of the Plan, the Disclosure Statement, the

1 consummation of the Plan, the administration of the Plan, the Case or the property to be
2 distributed under the Plan except: (a) the Plan Agent or the Debtor shall be liable for the
3 performance of obligations assumed by it or imposed upon it under or by the Plan; and (b) for
4 liability based on willful misconduct as finally determined by a Final Order of the Bankruptcy
5 Court. The Plan Agent, the Debtor and their Affiliates, and each of their respective officers,
6 directors, employees and other agents, advisors, attorneys and accountants shall be entitled to rely,
7 in every respect, upon the advice of counsel with respect to their duties and responsibilities under
8 or with respect to the Plan.

9 **XIV.**

10 **CONDITIONS TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

11 **14.1 Conditions Precedent to Plan Effectiveness.** The following are conditions
12 precedent to the effectiveness of this Plan and the occurrence of the Effective Date:

13 14.1.1 The Confirmation Order shall be entered by the Bankruptcy Court and be in
14 form and substance reasonably satisfactory to the Debtor;

15 14.1.2 All agreements, instruments and other acts contemplated by, or to be
16 entered into, or completed pursuant to, or in order to facilitate the implementation of, this
17 Plan, as determined by the Debtor, including, without limitation, any and all debtor and/or
18 equity financing agreements, purchase agreements, and related closing documents shall
19 have been duly and validly executed and delivered by the parties thereto and completed,
20 and all conditions to their effectiveness shall have been satisfied or waived, except only for
21 the entry of the Confirmation Order, and all funding necessary to pay the Creditors
22 pursuant to the terms of the Plan shall have been effected.

23 **14.2 Waiver of Conditions.** The conditions set forth in Sections 14.1 hereof may be
24 waived by the Debtor without notice, leave or order of the Bankruptcy Court, and without any
25 formal action other than proceeding to obtain the Confirmation Order.

1 **XV.**

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 the Plan and the Bankruptcy Court's
5 jurisdiction shall apply to the fullest extent possible under applicable law.

6 **XVI.**

7 **MODIFICATION OR WITHDRAWAL OF PLAN**

8 **16.1 Modification of Plan.** At any time prior to confirmation of the Plan, the Debtor
9 may supplement, amend or modify the Plan. After confirmation of the Plan, the Plan Agent or the
10 Debtor may (i) apply to the Bankruptcy Court, pursuant to Section 1127 of the Bankruptcy Code,
11 to modify the Plan; and (ii) apply to the Bankruptcy Court to remedy defects or omissions in the
12 Plan or to reconcile inconsistencies in the Plan.

13 **16.2 Nonconsensual Confirmation.** In the event that any impaired Class of Claims or
14 Interests shall fail to accept the Plan in accordance with Section 1129(a)(8) of the Bankruptcy
15 Code, the Plan Proponent (i) may request that the Bankruptcy Court confirm the Plan in
16 accordance with Section 1129(b) of the Bankruptcy Code, and (ii) in accordance with the Plan,
17 and may modify the Plan in accordance with Section 1127 of the Bankruptcy Code.

18 **XVII.**

19 **TAX CONSEQUENCES OF PLAN**

20 **17.1 Introduction.** The implementation of the Plan may have federal, state and local
21 tax consequences to the Debtor and the Holders of Claims and Interests. No tax opinion has been
22 sought or will be obtained with respect to any tax consequences of the Plan. This Disclosure
23 Statement does not constitute, and is not intended to constitute, either a tax opinion or tax advice
24 to any person, and the summary contained herein is provided for informational purposes only.

25 The discussion below summarizes only certain of the federal income tax consequences
26 associated with the Plan's implementation. This discussion does not attempt to comment on all
27 aspects of the federal income tax consequences associated with the Plan, nor does it attempt to
28 consider various facts or limitations applicable to any particular Holder of a Claim or Interest

1 which may modify or alter the consequences described herein. A Holder of a Claim or Interest
2 may find that the tax consequences of the Plan to such Holder differs materially from the tax
3 consequences discussed below because of such Holder's facts and circumstances. This discussion
4 does not address state, local or foreign tax consequences or the consequences of any federal tax
5 other than the federal income tax.

6 The following discussion is based upon the provisions of the Internal Revenue Code, the
7 regulations promulgated thereunder, and existing judicial decisions and administrative rulings. In
8 light of the rapidly-changing nature of tax law, no assurance can be given that legislative, judicial
9 or administrative changes will not be forthcoming that would affect the accuracy of the discussion
10 below. Any such changes could be material and could be retroactive with respect to the
11 transactions entered into or completed prior to the enactment or promulgation thereof. The tax
12 consequences of certain aspects of the Plan are uncertain due to the lack of applicable legal
13 authority and may be subject to judicial or administrative interpretations that differ from the
14 discussion below.

15 **HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED TO CONSULT WITH**
16 **THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND**
17 **TO THE DEBTORS OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN,**
18 **INCLUDING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

19 **17.2 Federal Income Tax Consequences to the Debtor.** Consummation of the Plan
20 may reduce substantially the amount of the Debtor's aggregate outstanding indebtedness. In
21 general, the Internal Revenue Code provides that a taxpayer who realizes a discharge of
22 indebtedness must include the Debt Discharge Amount in its gross income in the taxable year of
23 discharge to the extent that the Debt Discharge Amount exceeds any consideration given for such
24 discharge.¹⁴ However, if a taxpayer is in a Title 11 case and the discharge of indebtedness occurs
25 pursuant to a plan approved by the Bankruptcy Court, as in this Case, then such discharge of
26

27
28 ¹⁴ No income from the discharge of indebtedness is realized to the extent that payment of the liability being
discharged would have given rise to a deduction.

1 indebtedness is specifically excluded from gross income. Accordingly, the Debtor will not be
2 required to include in income any Debt Discharge Amount as a result of Plan transactions.

3 Although the Debtor will not have to include the Debt Discharge Amount resulting from
4 Plan transactions in its gross income, there will be a tax effect. The Internal Revenue Code
5 requires certain tax attributes of a debtor to be reduced by the Debt Discharge Amount excluded
6 from income. Tax attributes are reduced in the following order of priority: net operating losses
7 and net operating loss carryovers; general business credits; minimum tax credits; capital loss
8 carryovers; basis of property of the taxpayer; passive activity loss or credit carryovers; and foreign
9 tax credit carryovers. Tax attributes are generally reduced by one dollar for each dollar excluded
10 from gross income, except that general tax credits, minimum tax credits and foreign tax credits are
11 reduced by 33.3 cents for each dollar excluded from gross income.

12 An election can be made to alter the order of priority of attribute reduction by first
13 applying the reduction against depreciable property held by the taxpayer in an amount not to
14 exceed the aggregate adjusted basis of such property. The Debtor has not yet decided whether to
15 make such election. The deadline for making such election is the due date (including extensions)
16 of the Debtor's federal income tax return for the taxable year in which such debt is discharged
17 pursuant to the Plan.

18 Any Claim against the Debtor (except a Claim that would give rise to a deduction if paid)
19 that is discharged by payment to a Creditor of Cash and/or property will result in the creation of a
20 Debt Discharge Amount reducing tax attributes to the extent that the adjusted issue price of the
21 debt discharged (plus accrued interest) exceeds the fair market value of the payment made in
22 cancellation thereof.

23 A Debtor's Debt Discharge Amount may be increased to the extent that a person holding
24 unscheduled Claims fails to timely file a proof of claim and has his claim discharged on the
25 Confirmation Date pursuant to Bankruptcy Code Section 1141.

26 **17.3 Tax Consequences To Creditors.** A Holder of a Claim who receives a
27 Distribution on the account of such Claim that is less than the Holder's adjusted basis in such
28 Claim may be entitled to claim a bad debt deduction for this difference. A bad debt deduction is

1 allowed in the taxable year of the Creditor in which a debt becomes wholly worthless. The
2 discharge of a Claim pursuant to the Plan establishes that such Claim is wholly worthless as of the
3 date of discharge (assuming the Holder of the Claim receives no consideration under the Plan with
4 respect to such Claim). It is possible, however, that such Claim may have become wholly
5 worthless on an earlier date, depending upon all the facts and circumstances. The Debtor
6 expresses no opinion regarding the date or dates on which Claims discharged under the Plan
7 become worthless.

8 **XVIII.**

9 **MISCELLANEOUS**

10 **18.1 Discharge of Debtor and Injunction.** The rights afforded in the Plan and the
11 treatment of all Claims therein shall be in exchange for and in complete satisfaction, discharge,
12 and release of all Claims of any nature whatsoever, including any interest accrued on such Claims
13 from and after the Petition Date, against the Debtor or any of its assets or properties.

14 **18.2 Headings.** The headings used in the Disclosure Statement and in the Plan are
15 inserted for convenience only and neither constitutes a portion of the Disclosure Statement or the
16 Plan nor in any manner affect the construction of the provisions of the Disclosure Statement or the
17 Plan.

18 **18.3 Notices.** All notices and requests in connection with the Disclosure Statement and
19 the Plan shall be in writing and shall be hand delivered or sent by mail, facsimile or email
20 addressed to:

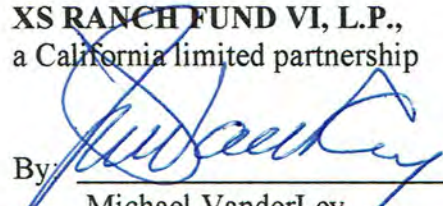
21 Garrick A. Hollander, Esq.
22 Winthrop Couchot Golubow Hollander, LLP
23 660 Newport Center Drive, Suite 400
24 Newport Beach, CA 92660
25 Facsimile: (949) 720-4111
26 Email: ghollander@wcghlaw.com

27 All notices and requests to any Person holding of record any Claim or Interest shall be sent
28 to them at their last known address or to the last known address of their attorney of record. Any
such Person may designate in writing any other address for purposes of this Section, which
designation will be effective on receipt.

1 **18.4 Inconsistencies.** In the event the terms or provisions of the Disclosure Statement
2 are inconsistent with the terms and provisions of the Plan or documents executed in connection
3 with the Plan, the terms of the Plan shall control.

4 Date: February 5, 2018

XS RANCH FUND VI, L.P.,
a California limited partnership

By: 

Michael VanderLey
Its: Chief Restructuring Officer

9 **SUBMITTED BY:**
10 **WINTHROP COUCHOT**
11 **GOLUBOW HOLLANDER, LLP**

12 By: /s/ Garrick A. Hollander
Garrick A. Hollander
13 General Insolvency Counsel to
14 the Debtor and Debtor-in-Possession

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